Agreement between the Government of the Republic of Belarus and the Government of the Republic of Equatorial Guinea on the promotion and mutual protection of investments

The Government of the Republic of Belarus and the Government of the Republic of Equatorial Guinea, hereinafter referred to as the Contracting Parties,

Desiring to create favorable conditions for investors of one Contracting Party to make investments in the territory of the other Contracting Party,

Recognizing that the mutual promotion and protection of investments on the basis of this Agreement will stimulate the flow of investments and contribute to the development of mutually beneficial trade, economic, scientific, and technical cooperation,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1.1 “Investment” means all types of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation, including, but not limited to:

a) movable and immovable property;

b) shares, deposits, and other forms of participation in commercial organizations;

c) rights to claim money or other performance of obligations under a contract having economic value;

d) exclusive rights to intellectual property (copyrights, patents, industrial designs, models, trademarks or service marks, technology, commercially valuable information, know-how);

e) rights to engage in entrepreneurial activities granted on the basis of legislation or a contract, including, in particular, rights related to the exploration, development, extraction, and exploitation of natural resources;

f) loans granted in connection with investments made by a legal entity of one Contracting Party to a legal entity of the other Contracting Party which is its subsidiary or branch;

g) loans granted by a bank or non-bank financial institution of one Contracting Party to a legal entity of the other Contracting Party in connection with investments.

For the purposes of this Agreement and for greater certainty, the term “investment” does not include:

i) any pre-operating expenses incurred in connection with the admission, establishment, acquisition or expansion of an enterprise that arose prior to the commencement of business operations of the enterprise in the territory of the Host Contracting Party, unless otherwise provided in a contract between the investor and one of the Contracting Parties;

ii) claims for the payment of money arising exclusively from commercial contracts for the sale of goods or services, or from the provision of credit in connection with a commercial transaction.

In order to qualify as investments under this Agreement, assets must have the characteristics of investments, such as an obligation in respect of capital or other resources, an expectation of income or profit, and the assumption of risk.

No change in the form of investment shall affect its qualification as an investment, provided that such change is not contrary to the legislation of the Host Contracting Party.

1.2 “Investor” means a person who makes investments in the territory of the Host Contracting Party in accordance with its legislation:

a) a natural person of a Contracting Party - any person who is a citizen of the relevant Contracting Party in accordance with its applicable legislation; or

(b) a legal entity of a Contracting Party means any legal entity duly established or otherwise formed in accordance with the laws of the relevant Contracting Party.

1.3 “Host Contracting Party” means the Contracting Party in whose territory the investor makes investments.

1.4 “Income” means amounts received as a result of investments and includes, in particular, royalties and other fees, profits, capital gains, interest, or dividends.

1.5 “Territory of a Contracting Party” means, in relation to:

a) the Republic of Belarus - the territory of the Republic of Belarus under its sovereignty and over which the Republic of Belarus exercises sovereign rights and jurisdiction in accordance with its legislation and international law;

b) the Republic of Equatorial Guinea - the territory of the Republic of Equatorial Guinea, as well as its exclusive economic zone and continental shelf, as defined in accordance with the 1982 United Nations Convention on the Law of the Sea.

1.6 “Legislation” in relation to a Contracting Party means the laws and other normative legal acts of the Republic of Belarus or the laws and other normative legal acts of the Republic of Equatorial Guinea.

1.7 “Tax Convention” means an international treaty governing taxation matters.

1.8 “Measure” means any form of legally binding government act that directly affects an investor or its investment, and includes any law or other normative legal act, regulation, procedure, requirement, final court decision, or enforceable decision of a Contracting Party.

Article 2. Protection of Investments

2.1 Each Contracting Party shall endeavor to create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its legislation.

2.2 Each Contracting Party shall ensure, in accordance with its legislation, the full protection of investments of investors of the other Contracting Party in its territory.

Article 3. Minimum Standard of Treatment

Investments of investors of a Contracting Party shall be accorded, on a permanent basis, treatment in accordance with the minimum standard of treatment of foreigners provided for by international law, including fair and equitable treatment, full protection and security in the territory of the receiving Contracting Party. Neither Contracting Party shall in any way impede the establishment, management, operation, implementation, acquisition, expansion, sale, liquidation, or transfer of such investments through the adoption of unreasonable or discriminatory measures.

Article 4. National Treatment

4.1 Each Host Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favorable than that which it accords to its own investors and their investments in like circumstances with respect to the establishment, acquisition, expansion, management, use, and disposal of investments in its territory.

4.2 “Similar circumstances” in paragraph 4.1 of this Article and paragraph 5.1 of Article 5 of this Agreement require a full examination of all conditions in each specific case of investment, including, in particular:

a) their impact on third parties and the population of the Host Contracting Party;

b) their impact on the local, regional, and national environment, including the cumulative impact of all investments on the environment;

c) the sector in which the investor is investing;

d) the regulatory process normally used in the application of a specific measure;

e) other factors directly relevant to the investment or investors in relation to the application of a specific measure. Such examination shall not be limited to or biased in favor of any one factor.

Article 5. Most-favored-nation Treatment

5.1 Subject to the exceptions provided for in paragraph 5.2 of this Article, each Host Contracting Party shall accord to investors and their investments treatment no less favorable than that which it accords to investors of any third State and their investments in like circumstances with respect to the establishment, acquisition, expansion, operation, ownership, and disposal of investments in its territory.

5.2 Nothing in paragraph 5.1 of this Article shall oblige the Host Contracting Party to grant investors the benefits of any treatment, preference or privilege arising from:

a) any customs union, a free trade area, common market or currency union, or any similar international agreement or other form of regional preferential agreement, present or future, to which either Contracting Party is or may become a party;

b) any tax convention;

c) any bilateral investment agreements to which either Contracting Party is or may become a party.

Article 6. Expropriation

6.1 Investments of investors of the Host Contracting Party in the territory of the other Contracting Party shall not be subject to measures of expropriation, equivalent in effect to expropriation or nationalization (hereinafter referred to as “expropriation”), except where such measures are taken:

a) in the public interest;

b) in accordance with the law of the Host Contracting Party, if any;

c) on a non-discriminatory basis; and

d) subject to timely, adequate and effectively implemented compensation.

6.2 The compensation referred to in paragraph 6.1 of this Article shall:

a) be determined on the basis of the market value of the expropriated investments, calculated at the prices prevailing on the date when the actual implementation or impending expropriation became known;

b) be paid without undue delay in freely convertible currency and be fully realizable with the possibility of unimpeded transfer from the territory of the Host Contracting Party to the territory of the other Contracting Party. From the moment of expropriation until the moment of payment of compensation, interest shall be paid on the amount of compensation at a commercial rate established on a market basis in the territory of the Host Contracting Party.

Article 7. Compensation for Losses

7.1 Investors of a Contracting Party whose investments suffer losses in the territory of the Host Contracting Party as a result of war, insurrection, civil unrest or other similar circumstances shall be granted, with respect to restitution, compensation, compensation or other forms of settlement, treatment no less favorable than that accorded by the receiving Contracting Party to its own investors or to investors of any third State in respect of measures taken by it in connection with such losses, whichever is more favorable.

7.2 Without prejudice to paragraph 7.1 of this Article, investors of a Contracting Party who suffer losses in the territory of the receiving Contracting Party in connection with the circumstances specified in this paragraph as a result of:

a) the requisition of their investments in whole or in part by the armed forces or authorities of the Host Contracting Party;

b) the destruction (annihilation) of their investments in whole or in part by the armed forces or authorities of the Host Contracting Party, provided that this was not caused by the necessity of the situation or by military operations,

The Host Contracting Party shall ensure their restoration or provide compensation or timely, adequate, and effectively enforceable compensation in accordance with paragraph 6.2 of Article 6 of this Agreement.

Article 8. Transfer of Payments

8.1 The receiving Contracting Party shall guarantee investors of the other Contracting Party, after they have fulfilled all their tax obligations, the unimpeded transfer in freely convertible currency within its territory and beyond its borders, in particular, but not exclusively:

a) income;

b) funds paid in repayment of loans and credits recognized by both Contracting Parties as investments, as well as accrued interest;

c) wages and other remuneration received by investors and individuals of the other Contracting Party who are authorized to work in connection with the implementation of investments in the territory of the Host Contracting Party;

d) proceeds from the partial or total sale or liquidation of investments;

e) royalties and fees for the rights specified in subparagraph 1.1 (d) Article 1 of this Agreement;

f) payments for management, technical assistance, and technical maintenance;

g) payments related to the implementation of investment projects in accordance with the contract for any supply of goods, works, and services necessary for the project;

h) compensation provided for in Articles 6 and 7 of this Agreement.

8.2 Such transfers may be made to residents and non-residents of the Contracting Parties participating in the implementation of investment projects and shall be made without hindrance, without delay, and in freely convertible currency at the market rate prevailing on the date of transfer.

Article 9. Subrogation

The receiving Contracting Party or its authorized body that has made a payment to an investor on the basis of a guarantee against non-commercial risks in respect of investments in the territory of the other Contracting Party by virtue of subrogation, shall be entitled to exercise the rights of the investor to the same extent as the investor himself. Such rights shall be exercised in accordance with the legislation of the Contracting Party.

Article 10. Settlement of Disputes between the Host Contracting Party and an Investor of the other Contracting Party

10.1 Disputes between the Host Contracting Party and an investor of the other Contracting Party arising out of the investments of such investor in the territory of the Host Contracting Party, including disputes concerning the amount, conditions or procedure for payment of compensation in accordance with Articles 6 and 7 of this Agreement or the procedure for the transfer of payments provided for in Article 8 of this Agreement, shall be settled, as far as possible, through negotiation.

10.2 If the dispute cannot be settled through negotiation within six months from the date on which either party to the dispute has requested settlement through negotiation, the dispute shall be submitted, at the choice of the investor, to:

a) the competent court or arbitration of the Host Contracting Party; or

b) an ad hoc arbitration tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or

c) the International Centre for Settlement of Investment Disputes established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965, for the settlement of the dispute in accordance with the provisions of that Convention (provided that it has entered into force for both Contracting Parties) or in accordance with the Additional Rules of the International Centre for Settlement of Investment Disputes (in the event that the Convention has not entered into force for one or both Contracting Parties).

10.3 The arbitral award shall be final and binding on both parties to the dispute. Each Contracting Party undertakes to ensure the enforcement of such a decision in accordance with the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on June 10, 1958.

Article 11. Settlement of Disputes between the Contracting Parties

11.1 Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled by negotiation. If the dispute is not settled in this manner within six months from the date of commencement of the negotiations, at the request of either Contracting Party, it shall be referred to an arbitral tribunal.

11.2 An arbitral tribunal shall be established for each individual case, for which purpose each Contracting Party shall appoint one member of the arbitral tribunal within two months of the date of receipt of the notification of arbitration.These two members shall then elect a citizen of a third State who, with the approval of both Contracting Parties, shall be appointed as the chair of the arbitral tribunal within one month of the appointment of the other two members. The members of the tribunal shall be appointed within two months and the chairman within three months of the date of notification by either Contracting Party of its intention to refer the dispute to arbitration.

11.3 If the necessary appointments are not made within the time limits specified in paragraph 11.2 of this Article, any Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make such appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or is otherwise unable to perform this function, the Vice-President of the International Court of Justice shall be requested to make the necessary appointments. If the Vice-President of the International Court of Justice is also a national of one of the Contracting Parties or is unable to perform the said function for other reasons, the next senior member of the International Court of Justice who is not a national of one of the Contracting Parties shall be requested to make the necessary appointments.

11.4 The arbitral tribunal shall render its decision by a majority vote. Such decision shall be final and binding on the Contracting Parties. Each Contracting Party shall bear the expenses incurred by the arbitral tribunal member it has appointed and by its representation in the arbitral proceedings. The expenses related to the activities of the chair of the arbitral tribunal, as well as other expenses, shall be borne by the Contracting Parties in equal shares. However, the tribunal may provide in its decision that one of the Contracting Parties shall bear a larger share of the expenses, and such decision shall be binding on both Contracting Parties. The arbitral tribunal shall determine its own procedure.

Article 12. Scope of Application

This Agreement shall apply to all investments made in the territory of one Contracting Party in accordance with its legislation by investors of the other Contracting Party before and after the entry into force of this Agreement. However, this Agreement shall not apply to claims or disputes that arose prior to its entry into force.

Article 13. General Exceptions

13.1 Subject to the requirement that the measures taken by the Contracting Parties shall not constitute a means of arbitrary or unjustified discrimination against investors or a disguised restriction on investment flows, nothing in this Agreement shall be construed as preventing a Contracting Party from adopting or enforcing measures of public welfare designed and applied for the purpose of:

a) protecting national security;

b) protecting the life or health of humans, animals or plants;

c) protecting the environment; and

d) conserving living or non-living exhaustible natural resources.

13.2 Nothing in this Agreement shall be interpreted as preventing a Contracting Party from adopting, maintaining, or applying any measure that it considers appropriate to ensure that investment activities in its territory are conducted in a manner consistent with the principles set out in paragraph 13.1 (a) to (d) of this Article.

Article 14. Transparency

14.1 Each Contracting Party shall promptly publish or otherwise make available its laws, regulations, procedures, administrative and judicial decisions of general application, as well as international treaties that may affect the conduct of investments by investors in the territory of the Host Contracting Party.

14.2 Nothing in this Agreement shall require the Contracting Parties to provide or permit access to any confidential or privileged information, including information relating to specific investors or investments, the disclosure of which would be contrary to the maintenance of public order or to the laws of that Contracting Party protecting confidentiality, or would be prejudicial to the interests of investors.

Article 15. Consultations

The Contracting Parties shall, upon request of either Party, consult on any matter relating to the interpretation or application of this Agreement.

Article 16. Entry Into Force and Duration

16.1 This Agreement shall enter into force thirty days after the date of receipt through diplomatic channels of the last written notification by the Contracting Parties of the completion of their internal procedures necessary for its entry into force.

16.2 This Agreement may be amended by mutual written consent of the Contracting Parties. Any amendments shall enter into force in accordance with the procedure provided for the entry into force of this Agreement.

16.3 This Agreement shall remain in force for a period of fifteen years and shall be automatically extended for subsequent periods of five years, unless one Contracting Party notifies the other Contracting Party in writing through diplomatic channels at least twelve months before the expiry of the relevant period of its intention to terminate this Agreement.

16.4 With regard to investments made prior to the date of termination of this Agreement and falling within its scope, the provisions of all other articles of this Agreement shall continue to apply for a period of fifteen years following the date of termination of this Agreement.

Done at Malabo on December 9, 2023, in two copies, each in the Russian, Spanish, and English languages, all texts being equally authentic. In case of any discrepancies in the interpretation of the provisions of this Agreement, the English text shall prevail.

For the Government of the Republic of Belarus

Sergei Aleinik

Minister of Foreign Affairs

For the Government of the Republic of Equatorial Guinea

Simeon Oyon Ono Ange

Minister of Foreign Affairs, International Cooperation and Diaspora