# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT OF THE KINGDOM OF CAMBODIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Belarus and the Govermnent of the Kingdom of Cambodia, hereinafter referred to as the "Contracting Parties",

DESIRING to intensify economic cooperation to the mutual benefit of both States,

INTENDING to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, and

CONSCIOUS that the promotion and reciprocal protection of investments, on the basis of the present Agreement, will stimulate the business initiatives in the both States,

HAVE AGREED AS FOLLOWS:

## Article 1. DEFINITIONS

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

a) movable and immovable property as well as any other property rights such as mortgages, liens, pledges, and similar rights;

b) shares, stocks and debentures of companies or any other participation in a company;

c) claims to money or to any performance having an economic value;

d) intellectual property rights, including copyrights, patents, trade marks, industrial designs, geographical indications and technical processes, trade secrets, business names, know-how and goodwill, as well as other similar rights validated by the laws and regulations of both Contracting Parties;

e) concessions conferred by the laws and regulations of the Contracting Party in the territory of which the investments were made or under a contract by a competent authority, including concessions to search for, extract, cultivate or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment provided that such alteration does not contradict the laws and regulations of the relevant Contracting Party.

2. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interest, royalties, capital gains, or any payments in kind related to an investment.

3. The term "investor" shall mean any natural or legal person of one of the Contracting Parties who invests in the territory of the other Contracting Party:

a) the term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws and regulations;

b) the term "legal person" shall mean with respect to either Contracting Party any legal entity incorporated or constituted in

accordance with, and recognized as legal person by its laws.

4. The term "territory" means the land territory, internal waters and territorial sea of the Contracting Party and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which that Contracting Party exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law.

## Article 2. PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments, in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments of investors in the territory of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

## Article 3. NATIONAL TREATMENT AND MOST-FAVOURED-NATION TREATMENT

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment not less favourable than that accorded to investments and returns of its own investors or to investments or returns of investors of any third state, whichever is more favourable according to the investors concerned.

2. Each Contracting Party shall in its territory accord to investors of other Contracting Party, as regards management, maintenance, use, enjoyment or disposal their investment, treatment not less favourable than that accorded to own investors or to investors of any third State, whichever is more favourable according to the investors concerned.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting and to their investments the benefit any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a) free trade area, customs umon, common market, economic and monetary union or similar international agreements including other forms regional economic cooperation to which either of the Contracting Paiiy is or may become a party;

b) agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation.

## Article 4. EXPROPRIATION

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to any other measures, direct or indirect, having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a purpose which is in the public interest, on a non-discriminatory basis, in accordance with due process of law, and against prompt, adequate and effective compensation.

2. The compensation shall be made without delay in the currency in which investment has been made, shall be effectively realizable and freely transferable. Such compensation shall amount to the fair market value of the expropriated investments the time immediately before expropriation or impending expropriation became public knowledge, whichever is the earlier, and shall include interest from the date of expropriation until the date of payment at a rate, which shall be not less than the London Interbank Offered Rate (LIBOR) in conformity with the currency in which investment has been made.

3. Where a Contracting Party expropriates the assets or a part thereof of a company, which has been incorporated or constituted in accordance with the law in force in its territory, in which investors of the other Contracting Party have an investment, including through the ownership of shares, it shall ensure that the provisions of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party.

4. The investor whose investments are expropriated shall have the right to prompt review of its case and of valuation of its investments in accordance with the principles set out in this Article, by a judicial or other competent authority of the Contracting Pmiy making the expropriation.

## Article 5. COMPENSATION FOR LOSSES

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Contracting Party to its own investors or investors of the most favoured nation, whichever, according to the investor, is the more favourable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

a) requisitioning of its investment or a part thereof by the latter's armed forces or authorities; or

b) destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation,

shall be accorded by the latter Contracting Party in accordance with its laws and regulations restitution or compensation which in either case shall be prompt, adequate and effective and, with respect to compensation, shall be made in accordance with paragraphs 2-4 of Article 4 of the present Agreement from the date of requisitioning or destruction until the date of actual payment.

## Article 6. TRANSFERS

1. Each Contracting Party, taking into account the national laws and regulations, shall at any case guarantee to the investors of the other Contracting Party, after they have fulfilled all their fiscal obligations, the free transfer of payments relating to their investments, particuiarly, though not exclusively:

a) returns as defined in paragraph 2, Article 1 of this Agreement;

b) capital and additional amounts necessary for the maintenance or development of the investment;

c) funds in repayment of loans;

d) proceeds of the total or partial sale or liquidation of the investment;

e) compensation under Articles 4 and 5 of this Agreement;

f) earnings of natural persons engaged from abroad in connection with investment subject to the laws and regulations of the Contracting Party, in which territory the investments have been made.

2. The transfers mentioned in this Article shall be made without delay in a freely convertible currency at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party from which territory the transfer is made.

## Article 7. SUBROGATION

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assigmnent of any right or claim of such an investor to the former Contracting Party or its designated agency, and the right of the fonner Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

## Article 8. DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. Any dispute ansmg directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute.

2. If the dispute has not been settled within six (6) months from the date on which it was notified in writing, the dispute may, at the choice of the investor, be submitted to:

a) the competent courts of the State of the Contracting Party in the teffitory of which the investment is made; or

b) arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at

Washington on 18 March 1965, provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention; or

c) the ICSID Additional Facility Rules, provided that either the disputing Contracting Party or the Contracting Paiiy of the investor, but not both, is a paiiy to the ICSID Convention; or

d) an ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as may be amended by the two paities to the dispute; or

e) any other ad hoc arbitration tribunal agreed upon by the parties to the dispute.

3. Once the investor has submitted the dispute to any settlement procedure stated in paragraph 2 a) to e) of this Article, the choice of the procedure is final.

4. Any arbitration under this Article shall be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. No arbitration under this Article shall be held in the territories of the Contracting Parties. Claims submitted to arbitration under paragraph 2 d) -e) of this Article shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

5. Each Contracting Paiiy hereby gives its consent to the submission of a dispute between it and an investor of the other Contracting Party to international arbitration in accordance with the provisions of paragraphs 2 b) -d) of this Article. No further written agreement between a Contracting Party and an investor of the other Contracting Party is thus needed.

6. During the arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not assert, as a defense, its sovereignty or the fact that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or a part of the losses.

7. The award shall be final and binding on the parties to the dispute.

## Article 9. DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Disputes between the Contracting Parties concemmg the interpretation and application of this Agreement shall, as far as possible, be settled through negotiations.

2. If the dispute cannot thus be settled within six (6) months following the date on which either Contracting Party requested such negotiations, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within four (4) months from the date of appointment of the other two members.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Comi of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the costs of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

## Article 10. APPLICATION OF OTHER RULES

1. If the provisions of law of either Contracting Party or obligations under international law, existing at present or established hereafter between the Contracting Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over

this Agreement.

2. Each Contracting Party shall observe any other obligation it may have with regard to a specific investment of an investor of the other Contracting Paity.

## Article 11. COORDINATING INSTITUTIONS

For the purposes of implementation of the present Agreement the Contracting Parties appoint coordinating institutions:

from the Republic of Belarus - the Ministry of Economy;

from the Kingdom of Cambodia - the Council for the Development of Cambodia.

## Article 12. APPLICABILITY OF THIS AGREEMENT

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment that arose or any claim that was settled before its entry into force.

## Article 13. CONSULTATIONS

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and a time to be agreed upon through diplomatic channels.

## Article 14. ENTRY INTO FORCE, DURATION AND TERMINATION

1. The Contracting Parties shall notify each other in writing when their constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth (30) day following the date of receipt of the last notification.

2. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering into force of this Agreement.

3. This Agreement shall remain in force for a period of ten (10) years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention not to extend the validity of the Agreement in twelve (12) months. The Agreement shall be considered terminated after twelve (12) months from the date when the other Contracting Party has received such notification.

4. Either Contracting Party may terminate this Agreement by means of written notification to the other Contracting Party through diplomatic channels. The Agreement shall be considered terminated after twelve (12) months from the date when the other Contracting Party has received such notification.

5. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1-13 shall remain in force for a further period of ten (10) years from the date of tennination of this Agreement.

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

DONE in duplicate at Minsk on 23 April 2014 in the Russian, Khmer and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF BELARUS

FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA