

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT OF GEORGIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Belarus and the Government of Georgia, hereinafter referred to as the "Contracting Parties",

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

Intending to promote favorable conditions for investments of investors of one Contracting Party in the state territory of the other Contracting Party, and

Conscious that the promotion and reciprocal protection of investments, on the basis of this Agreement, will stimulate business initiatives and increase of economic prosperity in both States,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement the following terms shall mean:

1. Investment - every kind of assets invested by an investor of one Contracting Party in the state territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and shall include, in particular:

- a) movable and immovable property as well as any other property rights, such as servitude, pledge, mortgage and usufruct;
- b) shares, stocks or any other form of participation in a company;
- c) debentures, bonds, loans and other forms of debt;
- d) claims to money or to any performance under contract having an economic value;
- e) intellectual property rights which are directly related to covered investments;
- f) concessions conferred by the laws and regulations of the Contracting Party in the state territory of which the investments are made or under a contract and any licenses and permits issued by a competent authority, including concessions to search for, extract, cultivate or exploit natural resources.

In order to qualify as an investment for the purposes of the present Agreement, an asset must have the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, and the assumption of risk.

The arbitration award or any order or judgment rendered with regard to the covered investment shall not be considered as investment for the purposes of the present Agreement.

2. Returns - amounts yielded by an investment and shall include, in particular, profits, dividends, interest, royalties, capital gains, or any payments and all other lawful income in kind related to an investment.

3. Investor with regard to either Contracting Party - any natural or legal person of the state of that Contracting Party who invests in the state territory of the other Contracting Party:

a) natural person - any natural person having the nationality of the state of either Contracting Party in accordance with its laws and regulations;

b) legal person - shall mean with respect to either Contracting Party: any legal entity incorporated or constituted in

accordance with its laws and regulations and having its registered office together with substantial economic activities in the state territory of that same Contracting Party.

4. "Territory" means:

- a) in respect of the Republic of Belarus: the territory of the Republic of Belarus in accordance with the Constitution of the Republic of Belarus including land, internal waters, and the air space of the Republic of Belarus and the territory on which the Republic of Belarus exercises sovereignty and jurisdiction in accordance with international law;
- b) in respect of Georgia: the territory defined by Georgian legislation, including land territory, its subsoil and the air space above it, internal waters and territorial sea, the sea bed, its sub-soil and the air space above them, in respect of which Georgia exercises sovereignty, as well as the contiguous zone, the exclusive economic zone and continental shelf adjacent to its territorial sea, in respect of which Georgia may exercise its sovereign rights and/or jurisdiction in accordance with the international law.

5. Laws and regulations with regard to either Contracting Party shall mean the laws and regulations of the state of the Contracting Party concerned.

## **Article 2. Promotion and Protection of Investments**

- 1. Each Contracting Party shall encourage investments by investors of the other Contracting Party in its state territory and shall admit such investments in accordance with its laws and regulations.
- 2. Each Contracting Party shall at any time accord to the investments made by investors of the other Contracting Party in the state territory of the former fair and equitable treatment and full protection and security in accordance with customary international law. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments of investors of the other Contracting Party in its state territory.

## **Article 3. National Treatment and Most-favoured-nation Treatment**

- 1. Each Contracting Party shall in its state territory accord to investments of investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of investments, treatment no less favorable than that accorded, in like circumstances, to investments of its own investors or to investments of investors of any third state, whichever is more favorable.
- 2. Each Contracting Party shall in its state territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment no less favorable than that accorded, in like circumstances, to its own investors or to investors of any third state, whichever is more favorable.
- 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 Party and to their investments the benefit of any treatment, preference or privilege which may be granted by the former Contracting Party by virtue of:
  - a) free trade area, customs union, common market, economic and monetary union or similar forms of regional economic integration to which the state of the Contracting Party is or may become a member;
  - b) agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation.
- 4. Contracting Parties recognize that, most favorable treatment referred to in paragraphs 1 and 2 of this Article shall not encompass the dispute resolution mechanisms or any undertakings concerning the contractual obligations of the host state as provided in this or other international agreements.
- 5. Provisions of this Article shall not apply to government procurement.

## **Article 4. Expropriation**

- 1. Investments of investors of either Contracting Party shall not be nationalized or expropriated directly or indirectly, or subjected to any other measures, having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the state territory of the other Contracting Party except for a public purpose, on a non-discriminatory basis, in accordance with due process of law, and against prompt, adequate and effective compensation.
- 2. The compensation referred to in paragraph 1 of this Article shall be made without undue delay in a freely convertible

currency in which investment has been made, shall be effectively realizable and freely transferable.

Such compensation shall be equivalent to the market value of the expropriated investments at the date of expropriation or immediately before impending expropriation became public knowledge, whichever is the earlier, and in case of delay in payments, shall include interest from the date of expropriation until the date of full payment at a commercial rate established on a market basis, which shall be not less than the London Interbank Offered Rate (LIBOR) in conformity with the currency in which investment has been made.

3. The preceding paragraphs shall not, however, impair in any way the right of a Contracting Party to enforce such laws or take measures or regulatory actions, as it deems necessary to protect legitimate public welfare objectives, such as public health, safety, and the environment as well as to secure the payment of taxes or other contributions or penalties.

## **Article 5. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the state territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the state 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 that accorded by the latter Contracting Party to its own investors or investors of any third state, whichever is more favourable.

2. Without prejudice to paragraph 1 of this Article, investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the state 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 restitution or compensation.

## **Article 6. Free Transfer**

1. Each Contracting Party shall guarantee to the investors of the other Contracting Party, after they have fulfilled all their fiscal obligations, free transfer of payments relating to their investments, in particular:

- 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 investments subject to the laws and regulations of the Contracting Party in the state territory of which 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 in the Contracting Party from the state territory of which the transfer is made.

3. Notwithstanding paragraphs 1 - 2 of this Article, either Contracting Party may delay or prevent a transfer, through equitable, non-discriminatory and good faith application of measures relating to:

- a) the integrity and stability of its financial system in consistency with the rights and obligations of the states of the Contracting Parties as members of the International Monetary Fund (IMF) under the Articles of Agreement of the Fund;
- b) bankruptcy, insolvency or the protection of the rights of creditors;
- c) issuing, trading or dealing in securities;
- d) criminal offences;
- e) social security or public retirement;

f) taxation;

g) ensuring compliance with the judgments in adjudicatory proceedings;

h) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities.

## **Article 7. Subrogation**

If a Contracting Party or its designated agency makes a payment under a guarantee or contract of insurance against non-commercial risks in respect of an investment of its investor in the state territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such an investor to the former Contracting Party or its designated agency, and the right of the former 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. Legal disputes between an investor of one Contracting Party and the other Contracting Party arising out of the investment of the former in the state territory of the latter Contracting Party, concerning an alleged breach of an obligation of the Contracting Party under this Agreement, which caused loss or damages to the investor of the other Contracting Party shall be settled amicably.

2. If the dispute has not been settled within three (3) 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 state territory 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) arbitration under the ICSID Additional Facility Rules, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party 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 parties to the dispute, with the exclusion of "UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration"; or

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

3. Once the investor has submitted the dispute to any forum provided in paragraph 2 (a)-(e) of this Article, the choice of such forum is final to the exclusion of all other forms as regards the dispute with the same or identical subject-matter.

4. Any arbitration under the paragraph 2 (c)-(d) of 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.

5. Each Contracting Party 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. The award shall be final and binding on the parties to the dispute.

7. Neither Contracting Party shall pursue to settle through diplomatic channels a dispute submitted to international arbitration.

8. No investment dispute may be submitted for resolution by arbitration under the present Article if more than five years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and the loss or damage that the latter has allegedly incurred.

## **Article 9. Disputes between the Contracting Parties**

1. Any dispute regarding the application or interpretation of this Agreement shall be resolved between the Contracting Parties by means of consultations and/or negotiations as far as possible.

2. If the dispute cannot thus be settled within six (6) months following the date on which either Contracting Party requested such negotiations or consultations, 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 as a 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 Court 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**

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

## **Article 11. Rights to Regulate**

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to:

- a) secure compliance with laws and regulations that are not inconsistent with this Agreement;
- b) protect environment or human, animal, or plant life or health;
- c) regulate the conservation of living or non-living exhaustible natural resources;
- d) ensure the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. The adoption, maintenance or enforcement of such measures is subject to the requirement that they are not applied in an arbitrary or unjustifiable manner or do not constitute a disguised restriction on investments of investors of the other Contracting Party.

## **Article 12. Denial of Benefits**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a legal person of such other Contracting Party and to investments of that investor if citizens of a non-Party own or control the enterprise and the denying Contracting Party does not maintain diplomatic relations with the non-Party.

2. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a legal person of such other Contracting Party and to investments of that investor if the enterprise has no substantial business activities in the state territory of the other Contracting Party and natural and legal persons of a non-Party, or of the denying Contracting Party, own or control the legal person.

## **Article 13. Applicability of this Agreement**

This Agreement shall apply to all investments made by investors of either Contracting Party in the state 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 or any claim concerning an investment that arose or that was settled before the entry into force of this Agreement.

## **Article 14. Consultations**

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

## **Article 15. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the first day of the next month following the day of the receipt of the last written notification through the diplomatic channels, by which the Contracting Parties shall notify each other on the completion of internal procedures necessary for the entry into force of this Agreement.

2. This Agreement shall remain in force for a period of ten (10) years. Thereafter, the Agreement shall continue to be in force unless terminated in accordance with paragraph 3 of this Article.

3. A Contracting Party may terminate this Agreement at the end of the initial ten-year period or at any time thereafter by giving one (1) year written notice through the diplomatic channels to the other Contracting Party.

4. Amendments and additions may be introduced to the Agreement upon mutual consent of the Contracting Parties, which shall be formed as a separate document and enter into force in accordance with the paragraph | of this Article. Such amendments and additions shall constitute an integral part of this Agreement.

5. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1-14 shall remain in force for a further period of five (5) years from the date of termination of this Agreement.

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

DONE in duplicate at Minsk on 1 March 2017 in the Russian, Georgian and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of the Republic of Belarus

For the Government of Georgia