AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT OF THE REPUBLIC OF YEMEN ON THE PROMOTION AND THE RECIPROCAL PROTECTION OF INVESTMENTS

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

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

Intending to create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party, recognizing that the promotion and reciprocal protection of investments under this Agreement will stimulate business initiatives in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1. The term "investment" means every kind of assets invested by investors 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:

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

2) shares, stocks, debentures and any other forms of participation in companies;

3) claims to money or to any performance under contract having economic value associated with an investment;

4) intellectual and industrial property rights (such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), «know-how» and «goodwill» and any other similar rights recognized by both Contracting Parties in accordance with their respective laws and regulations;

5) concessions under public law, including concessions to search for, extract and exploit natural resources, as well as all other rights given by law, by contract or by decision of the authority, in accordance with the national law of the Contracting Party host of the investment.

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

2. The term "returns" means the amounts yielded by an investment and includes, in particular though not exclusively, profit, dividends, interests, capital gains, royalties and fees.

3. The term "investor" means with regard to either Contracting Party:

1) natural persons who are the nationals of one Contracting Party in accordance with its law, and who make investments in the territory of the other Contracting Party;

2) legal persons, including companies, business associations and other partnerships and organizations, which are constituted or otherwise duly organized under the laws of that Contracting Party and have their main office in the territory of that Contracting Party and which make investments in the territory of the other Contracting Party.

4. The term "territory" in respect of either Contracting Party means the territory of the state of Contracting Party concerned

including land, internal waters, territorial sea, the seabed and subsoil over which the Contracting Party have sovereign rights or jurisdiction in accordance with international law.

5. The terms "laws and regulations", «law(s)», «nationals» in respect of cither Contracting Party means the laws and regulations of the State of the Contracting Party concerned and nationals of the State of the Contracting Party concerned accordingly.

Article 2. Promotion and Protection of Investments

Each Contracting Party shall promote 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.

Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full legal protection in the territory of the other Contracting Party under this Agreement. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors 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 and Most Favoured Nation Treatment

Each Contracting Party shall accord in its territory to investments or returns of investors of the other Contracting Party, treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

Each Contracting Party shall accord in its territory to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or to investors of any third State.

The provisions of this Article shall noTbe construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

1) any existing or future free trade area, customs union, common market or similar international agreement, including other forms of regional economic cooperation, to which either of the Contracting Parties is or may become a party, or

2) any international agreement which is related wholly or mainly to taxation.

Article 4. Expropriation

Investment of investors of one Contracting Party in the territory of the other Contracting Party shall not be requisitioned, expropriated, nationalized or subjected to measures having effect equivalent to expropriation (hereinafter referred to as «expropriation») except for a public purpose in accordance with due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

Such compensation shall amount to the actual value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier. The actual value shall amount in accordance with adopted international practice and shall include interest calculated on the LIBOR basis from the date of expropriation until the date of payment with regard to the currency in which the investment is made. The compensation shall be made without delay in the currency in which investment has been made, shall be effectively realizable and freely transferable.

The investor suffered losses shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article 6. Free Transfer

Each Contracting Party shall 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, particularly, though not exclusively:

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

b) repayments of loans recognized by both Contracting Party as investment;

c) amounts assigned to cover expenses relating to the management of the investment;

d) capital and additional ammounts necessary for the maintenance or development of the investment;

e) proceeds from the sale or partial or total liquidation of the investment, including possible increment values;

f) compensation under Articles 4 and 5 of this Agreement.

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 one Contracting Party has granted any financial guarantee against noncommercial risks with regard to an investment by one of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the rights of the first-named Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first-named Contracting Party.

Article 8. Settlement of Disputes between the Contracting Parties

Disputes between Contracting Parties regarding the interpretation or application of this Agreement shall, as far as possible, be settled by negotiations through diplomatic channels.

If the Contracting Parties cannot settle any dispute as defined above within six months after the beginning negotiations, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this Article.

The arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third country as Chairman to be appointed by the two Contracting Parties. The arbitrators shall be appointed within two months and the Chairman within three months from the date on which either Contracting Party has informed the other of its intention to submit the dispute to an arbitral tribunal.

If within the mentioned period specified in paragraph 3 of this Article the necessary appointments have not been made, 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 if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is also 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 shall be invited to make the necessary appointments.

The Chairman of the arbitral tribunal shall be a national of a third State with which both Contracting Parties have diplomatic relations.

The arbitral tribunal established under this Article shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and any other costs shall be born in equal parts by the Contracting Parties. The tribunal may, however, to determine a different decision regarding the costs. The tribunal shall determine its own procedure.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

Any dispute which may arise between an investor of a Contracting Party and the other Contracting Party concerning the investment of this investor, shall be the subject to consultations between the parties to the dispute for the purpose of solving the case amicably.

If these consultations do not result in a solution within six months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:

1) the competent court of the Contracting Party in the territory of which the investment has been made; or

2) the International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18th, 1965; or

3) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

The decisions of the arbitral tribunal shall be final and binding on either Contracting Party.

During arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not allege as defence 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 his or its losses.

Neither Contracting Party shall pursue to settle through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award reached by an arbitral tribunal.

Article 10. Application of other Rules

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 rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over this Agreement

Article 11. Pre-agreement Investments

This Agreement shall be applied to all investments, made by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the respective laws and regulations, prior to as well as after the entry into force of this Agreement, but shall not be applied to any dispute concerning investments that may have arisen before the entry into force of this Agreement.

Article 12. 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 at the time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force, Duration and Termination

This Agreement shall enter into force thirty days after the Contracting Parties notify each other in writing that their respective internal constitutional requirements, necessary for the entry into force of this Agreement, have been fulfilled.

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force for the same period unless the expiration of twelve month from the date on which either Contracting Party shall give written notice of termination to the other Contracting Party.

In respect of investment made prior to the termination of this Agreement the provisions of this Agreement shall continue to be effective for a period of ten years from the date those investments were established.

In witness whereof, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

Done at Minsk on the 18 th of July 2003 in three originals in the Russian, Arabic and English languages, each text 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 the Republic of Yemen