

# **Agreement between the Government of the Republic of Belarus and the Government of the Republic of Estonia on the promotion and mutual protection of investments (concluded in...**

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## **Agreement between the Government of the Republic of Belarus and the Government of the Republic of Estonia on the promotion and mutual protection of investments**

**Wednesday, October 21, 2009**

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

Wishing to deepen economic cooperation for the mutual benefit of both states,

Desiring to create and maintain favorable conditions for investment by investors of the State of one Contracting Party in the territory of the State of the other Contracting Party,

Recognizing that promotion and mutual protection of investments on the basis of this Agreement will facilitate the development of business initiatives in both countries,

Have agreed on the following:

### **Article 1. Definitions**

For the purposes of this Agreement, the following terms will have the following meaning:

1. Investor - any natural or legal person of the state of one of the Contracting Parties, investing in the territory of the state of the other Contracting Party:

A) an individual - any natural person who is a citizen of a State of one of the Contracting Parties in accordance with its legislation;

B) a legal entity in respect of any of the Contracting Parties - any legal entity established or established in accordance with the legislation of its state.

2. Investments - all types of property invested by an investor of the state of one Contracting Party in the territory of the state of the other Contracting Party in accordance with the legislation of the latter and including, in particular:

A) movable and immovable property, as well as such property rights as mortgages, pledge rights, liens and similar rights;

B) shares, shares, bonds or other forms of participation in a commercial organization;

C) the right to claim money or any performance of obligations under a contract of financial value;

D) intellectual and industrial property rights, including copyrights, patents for inventions, trademarks, industrial designs, indications of place of origin of goods and technical processes, secrets of production, trade names, know-how and goodwill, and other similar rights recognized Legislation of the states of both Contracting Parties;

E) concessions granted in accordance with the legislation of the State of the Contracting Party in whose territory the investments are made or by the competent authority in accordance with the contract, including the rights to explore, develop, produce or exploit natural resources.

Any change in the form in which investment or reinvestment of property is carried out does not affect its nature as an investment provided that such a change does not contradict the legislation of the state of the relevant Contracting Party in whose territory the investment is made.

3. Revenues are the amounts received through investments and, in particular, including profits, dividends, interest, royalties, income from the increase in the value of property or other similar payments related to investments.

4. Territory - the land, internal waters and territorial sea of the State of the Contracting Party and the airspace above them, as well as the maritime space beyond the territorial sea, including the seabed and subsoil, over which the State of that Contracting Party in accordance with applicable national legislation and international law exercises Jurisdiction or sovereign rights.

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

1. Each Contracting Party shall promote investment and create favorable conditions for investors of the State of the other Contracting Party to make investments in its territory and shall allow such investments in accordance with its legislation.

2. Investments of investors of the state of each of the Contracting Parties will be invariably granted a fair and equitable treatment, as well as full legal protection and security in the territory of the state of the other Contracting Party. Each of the Contracting Parties in the territory of its state undertakes not to interfere with the management, maintenance, use or disposition of investments by investors of the state of the other Contracting Party by taking unreasonable or discriminatory measures.

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

1. Each of the Contracting Parties shall provide in the territory of its State with respect to investments and investors' income the states of the other Contracting Party a regime no less favorable than that which it provides in respect of investments and incomes of investors of its state or investments and income of investors of any third state, in Depending on which of them, according to the investor, is the most favorable.

2. Each of the Contracting Parties undertakes to provide in the territory of its State to investors of the State of the other Contracting Party with respect to the management, maintenance, use or disposition of their investments, a regime no less favorable than that accorded to investors of its state or investors of any third State, depending on which of them, according to the investor, is the most favorable.

3. The provisions of paragraphs 1 and 2 of this article shall not be interpreted in such a way as to oblige one Contracting Party to extend to investors the States of the other Contracting Party and their investment the advantages of any regime, benefits or privileges that may be granted by the latter Contracting Party by virtue of:

A) agreements on a free trade area, customs union, common market, economic or monetary union or other similar international agreement, including other forms of regional economic cooperation, of which each of the Contracting Parties is or may become a member in the future;

B) an international agreement or agreement relating entirely or mainly to the taxation to which each of the Contracting Parties is a party or may become in the future.

## **Article 4. Expropriation**

1. Investments of investors of a State of one of the Contracting Parties in the territory of the State of the other Contracting Party shall not be subject to nationalization, expropriation or other measures whose effect is directly or indirectly equivalent to nationalization or expropriation (hereinafter - expropriation), other than:

A) in the public interest;

B) on a non-discriminatory basis;

C) in accordance with due process of law and

D) with the provision of timely, adequate and effective compensation.

2. Compensation is the market value of the expropriated investment at the time immediately preceding the expropriation or its promulgation, whichever occurred earlier (hereinafter - the valuation date). Such market value is expressed in freely convertible currency at the market exchange rate prevailing for the relevant payment currency on the valuation date.

3. Compensation shall include the interest calculated for the period from the date of expropriation to the payment date at a rate not lower than the London Interbank Offering Rate (LIBOR). Compensation is paid without delay, must be effectively implemented and transferred without restrictions.

4. An investor of one Contracting Party whose investments were expropriated in the territory of the State of the other Contracting Party shall be entitled to promptly review his case, including an assessment of his investment and compensation in accordance with the provisions of this article, by a judicial or other authorized and independent authority of the State of the Contracting Party, Which conducts expropriation.

## **Article 5. Indemnification**

1. Investors of a State of one of the Contracting Parties whose investments incurred losses in the territory of the State of the other Contracting Party due to war, armed conflict, state of emergency, revolution, insurrection or insurrection in the territory of the State of the other Contracting Party, as regards compensation Or other settlement, the treatment is no less favorable than that which the last Contracting Party provides the investor Oram their state or to investors of any third state, depending on which of them, according to the investor's opinion, is more favorable.

2. Without prejudice to paragraph 1 of this article, investors of a State of one of the Contracting Parties who, in any of the situations referred to in this paragraph, incur losses in the territory of the State of the other Contracting Party due to:

A) the requisition of their investments, in whole or in part, by the armed forces or the authorities of the latter; or

B) the destruction of their investments, in whole or in part, by the armed forces or the authorities of the latter, while this was not due to the necessity of the provision,

The latter Contracting Party will be provided with compensation or compensation that in any case must be timely, adequate and effective, and compensation from the moment of requisition or destruction to the date of actual payment must be in accordance with paragraphs 2 to 4 of Article 4 of this Agreement.

## **Article 6. Translations**

1. Each Contracting Party shall guarantee to investors of the State of the other Contracting Party after the fulfillment of their tax obligations the unimpeded transfer of investment-related payments to its territory and abroad. Such transfers include, in particular:

A) income, as defined in paragraph 3 of Article 1 of this Agreement;

B) the main and additional contributions necessary to maintain or develop investments;

C) amounts for repayment of loans;

D) proceeds from full or partial sale or liquidation of investments;

E) compensation provided for in Articles 4 and 5 of this Agreement;

F) payments arising from the settlement of investment disputes;

G) earnings of individuals hired from abroad in connection with investments in accordance with the legislation of the Contracting Party in whose territory the investments were made.

2. Transfers mentioned in this Article will be effected without delay in freely convertible currency at the current market exchange rate effective at the date of transfer.

## **Article 7. Subrogation**

1. In the event that one of the Contracting Parties or its authorized organization (hereinafter referred to as the insurer) makes payment to its investors under an insurance contract or guarantees of non-commercial risks granted in respect of investor investments in the territory of the state of the other Contracting Party, the last Contracting Party shall recognize:

A) transfer by law or transaction related to investment of any right or right of claim of such investor to the insurer and

B) the insurer's right to exercise the rights and rights of claim by virtue of the subrogation principle and assume obligations related to investments.

2. Subrogated rights or claims will not exceed the original rights or rights of claim of the investor concerned.

3. Any dispute between one Contracting Party and the insurer shall be settled in accordance with the provisions of Article 8 of this Agreement.

## **Article 8.**

"Disputes between one Contracting Party and an investor of the State of the other Contracting Party

1. Any dispute directly related to investments between one Contracting Party and an investor of the State of the other Contracting Party shall be resolved in a peace-loving way between the parties to the dispute.

2. If such dispute can not be resolved within three months from the date of the written application for settlement of the dispute, the investor may refer the dispute for resolution of his choice to:

A) the competent courts of the State of the Contracting Party in whose territory the investments were made; or

B) International Center for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Individuals and Legal Entities of Other States, opened for signature on March 18, 1965 in Washington; or

C) an arbitration court "ad hoc" established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

D) any other previously agreed international arbitration court "ad hoc".

3. If the investor chooses the competent court of the state in whose territory the investment is made or any arbitration procedure, as provided for in subparagraphs 2 (b) - 2 (d), for the consideration of the dispute, such choice becomes final for the investor.

4. Each Contracting Party shall give its consent to transfer the dispute with the investor of the State of the other Contracting Party to the international arbitration court in accordance with the provisions of paragraphs 2 (b) to 2 (d) of this article. No further written agreement between the Contracting Party and the investor of the State of the other Contracting Party will be required in the future.

5. A Contracting Party which is a party to a dispute can not, at any stage of the arbitral proceedings or enforcement of an arbitral award, raise objections to the receipt by the investor, the other party to the dispute, of compensation under an insurance contract covering part or all of the losses incurred.

6. The decision of the arbitral tribunal is final and binding on both parties to the dispute. Each Contracting Party undertakes to implement the decision of the arbitral tribunal in accordance with its legislation.

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

1. Disputes between the Contracting Parties regarding the interpretation and application of this Agreement shall, if possible, be settled through negotiations.
2. If the dispute can not be resolved in the above manner within six months from the application of any of the Contracting Parties for such negotiations, the dispute shall, at the request of any of the Contracting Parties, be referred to an arbitration tribunal composed of three members.
3. The arbitral tribunal shall be established for each particular case as follows. Within two months after receipt of the application for arbitration, each of the Contracting Parties will appoint one member of the court. These two members of the court will be determined by a citizen of a third state who, with the mutual consent of the Contracting Parties, will be appointed chairman of the court. The chairman must be appointed within four months of the appointment of the other two members.
4. If the necessary appointments have not been made within the time limits specified in paragraph 3 of this article and if the Contracting Parties have not agreed otherwise, any Contracting Party may apply for the necessary appointments to the President of the International Court of Justice. If the President of the International Court of Justice is a national of a State of one of the Contracting Parties or is unable to carry out the aforementioned acts for another reason, the request for the necessary appointments will be addressed to the next seniorest member of the International Court of Justice who is not a national of either Contracting Party and is in a position The above actions.
5. The arbitral tribunal takes decisions by a majority of votes. The decisions of the court are final and binding on both Contracting Parties. Each of the Contracting Parties shall bear the costs of its appointed member of the court and its representatives at the court sessions. The President's expenses, as well as other expenses, will be divided equally between the Contracting Parties. The court may also decide otherwise with respect to expenses. The arbitration court itself determines the rules of its work.

## **Article 10. Application of other Rules**

Nothing in this Agreement shall prevent any Contracting Party or its investor investing in the territory of the other Contracting Party in the event that any matter is governed simultaneously by this Agreement and the other international treaty to which the Contracting Parties are Parties to enjoy the benefits of those provisions that are With regard to this issue more favorable.

## **Article 11. Application of this Agreement**

The provisions of this Agreement shall apply to all investments made by investors of the state of any of the Contracting Parties in the territory of the state of the other Contracting Party in accordance with its legislation before and after the entry into force of this Agreement but will not apply to any dispute in respect of investments that arose prior to accession Of this Agreement in force, or to any claims settled prior to the entry into force of this Agreement.

## **Article 12. Consultations**

If necessary, representatives of the Contracting Parties shall consult on any matter affecting the implementation of this Agreement. These consultations will be held at the invitation of one of the Contracting Parties at the place and time agreed by diplomatic channels.

## **Article 13.**

"Entry into force, duration, modification and termination

1. The Contracting Parties shall notify each other in writing of the implementation of the domestic procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the receipt of the last of these notifications.
2. This Agreement shall remain in force for a period of ten years and shall continue to be in effect for the following ten-year periods until no Contracting Party has notified the other Contracting Party in writing at least twelve months in advance of its intention to terminate this Agreement.
3. This Agreement may be amended and supplemented, as agreed between the Contracting Parties in writing. For the entry into force of any such amendments and additions, the same procedure as that required for the entry into force of this Agreement will be applied.

4. With respect to investments made prior to the termination of this Agreement, the provisions of Articles 1 to 12 shall remain in effect for ten years from the date of termination of this Agreement.

In witness whereof the representatives, duly authorized thereto, have signed this Agreement.

Done in duplicate in Minsk on 21 October 2009 in the Russian, Estonian and English languages, all texts being equally authentic. In the event of a divergence in the interpretation of the provisions of this Agreement, preference will be given to the English text.

For the Government For the Government of the Republic of Belarus of the Republic of Estonia Signature Signature

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