

IN ACCORDANCE WITH THE PROVISIONS OF
THE TREATY ON THE EURASIAN ECONOMIC UNION OF 29 MAY 2014
UNDER THE 2013 UNCITRAL ARBITRATION RULES

CLAIMANT

OOO Manolium-Processing

Russian Federation, 109004, Moscow
Stanislavskogo Street, 11, floor 1, office VII

CLAIMANT'S COUNSEL

Grant Hanessian

Sergei Voitishkin

Vladimir Khvalei

Baker McKenzie

v.

STATE

Republic of Belarus

represented by:

1) President of the Republic of Belarus

Republic of Belarus, 220016, Minsk
Kirova Street, 43

2) Government of the Republic of Belarus

Republic of Belarus, 220010, Minsk
Sovetskaya Street, 11

3) Ministry of Justice of the Republic of Belarus

Republic of Belarus, 220004, Minsk
Kollektornaya Street, 10

4) Minsk City Executive Committee

Republic of Belarus, 220030, Minsk
Prospekt Nezavisimosti, 8

NOTICE OF ARBITRATION

15 November 2017

**Baker
McKenzie.**

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LIST OF ABBREVIATIONS

Abbreviation	Description
Additional Agreement No. 1	Additional Agreement No. 1 to the Investment Contract dated 10 October 2003
Additional Agreement No. 2	Additional Agreement No. 2 to the Investment Contract dated 22 October 2003
Additional Agreement No. 3	Additional Agreement No. 3 to the Investment Contract dated 30 October 2003
Additional Agreement No. 4	Additional Agreement No. 4 to the Investment Contract dated 8 February 2007
Additional Agreement No. 5	Additional Agreement No. 5 to the Investment Contract dated 16 December 2008
Additional Agreement No. 6	Additional Agreement No. 6 to the Investment Contract dated 20 April 2011
Amended Investment Contract	Additional Agreement No. 4 to the Investment Contract dated 8 February 2007
Arrested Property	New Communal Facilities arrested on 5 July 2016 pursuant to the resolution of the Tax Inspectorate to cover the debt of Manolium-Engineering before the budget of the Republic of Belarus
Arbitral Tribunal	Arbitral tribunal in arbitration proceedings between the Claimant and the Republic of Belarus constituted in accordance with the UNCITRAL Arbitration Rules
Belarusian SCC	State Control Committee of the Republic of Belarus
Building at Masherova	Building at Masherova Street, 3, Minsk, that Manolium-Engineering was to purchase from Minsktrans in accordance with the provisions of the Amended Investment Contract
Buildings to be Demolished	Real estate items of Minsktrans on the territory of the land plot for the Investment Object in the center of Minsk that the Claimant was to demolish in accordance with the provisions of the Investment Contract

Building under Reconstruction	Communal Facility (building located at: Mendeleeva Street, 36, Minsk) that the Claimant was to reconstruct in accordance with the provisions of the Investment Contract
CAO of the Ministry of Finance	Controller and Auditor Office of the Ministry of Finance of the Republic of Belarus
CAO of the Ministry of Finance Report	Report prepared by the Controller and Auditor Office of the Ministry of Finance of the Republic of Belarus in respect of examining financial and business operations of Manolium-Engineering dated 22 February 2016
Checkpoint	The checkpoint
Claimant or Manolium-Processing	OOO " <i>Manolium-Processing</i> "
Committee for Architecture	MCEC Committee for Architecture, Urban Planning and Land Management
Communal Facilities	Depot, Motor Transport Base and Building under Reconstruction that the Claimant was to design, construct and reconstruct in accordance with the provisions of the Investment Contract
Construction Documents	Construction documents
Depot	Communal Facility and New Communal Facility of the " <i>Trolleybus depot with the capacity of 220 trolleybuses in the Uruchye-6 microdistrict</i> " that the Claimant was to design and construct in accordance with the provisions of the Investment Contract, and from 8 February 2007 – Manolium-Engineering in accordance with the Amended Investment Contract
Depot Facilities Gratuitous Use Agreement	Agreement for the gratuitous use of the administrative and accommodation block and the checkpoint building with the Depot heat point dated 14 November 2011 entered into by and between Manolium-Engineering and Minsktrans
Dispute	Dispute between the Republic of Belarus and Manolium-Processing in accordance with the provisions of the Treaty on the Eurasian Economic Union dated 29 May 2014
EEU Treaty	Treaty on the Eurasian Economic Union dated 29 May 2014

FET Standard	Fair and equitable treatment of any EEU member-state in respect of investments and investment-related activities conducted by investors of other member states in accordance with Protocol No. 16 to the EEU Treaty
First Tax Audit Report	Tax audit report performed by the Tax Inspectorate to examine Manolium-Engineering operations dated 17 May 2016
Gosstroy	Inspectorate of the Department of Control and Supervision over Construction for Minsk
ILC Articles on State Responsibility	Articles on State Responsibility for Internationally Wrongful Acts of the UN International Law Commission adopted by Resolution of the UN General Assembly No. 56/589 dated 12 December 2001
Investment Contract	Investment Contract entered into by and between the Republic of Belarus and the Claimant dated 3 June 2003
Investment Law of the Republic of Belarus	Law on Investment of the Republic of Belarus dated 12 July 2013
Investment Object	Investment construction project for the shopping, cultural and recreation center within streets Kiseleva-Krasnaya-Nezavisimosti-Masherova in the center of Minsk authorized to be implemented in accordance with the terms and conditions of the Tender
Investment Object Construction Schedule	Construction schedule for the Investment Object approved by the Claimant in April 2011
Investment Object Location Selection Act	MCEC's act of selection the location of the land plot for the Investment Object in the center of Minsk dated 25 March 2009
Library Payment	Claimant's payment of USD 1,000,000, to construct the National Library
Manolium-Engineering	Foreign enterprise " <i>Manolium-Engineering</i> "
MCEC	Minsk City Executive Committee
MCEC Decision on Land Plot Provision for Depot Construction	Decision adopted by MCEC dated 24 May 2007 on provision the Manolium-Engineering with a land plot for constructing the Depot in

	Uruchye-6
MCEC Decision on Land Plot Provision for Road Construction	Decision adopted by MCEC dated 2 May 2008 on provision the Manolium-Engineering with a land plot for construction of the Road in Uruchye-6
Ministry of Finance	Ministry of Finance of the Republic of Belarus
Minskstroy	State Production Association " <i>Minskstroy</i> "
Minsktrans	State Enterprise " <i>Minsktrans</i> " (as of the date of the Tender – Unitary Enterprise " <i>Transport and Communications Office</i> ")
Motor Transport Base	Communal Facility that the Claimant was to design and construct in accordance with the Investment Contract
National Library	National Library in Minsk
New Communal Facilities	Depot, Pull Station and the Road that Manolium-Engineering was to design and construct in accordance with the provisions of the Amended Investment Contract
Notice of Arbitration	Notice of arbitration of OOO " <i>Manolium-Processing</i> " dated 15 November 2017
Paritet-Standart	Audit firm OOO " <i>Paritet-Standart</i> "
Paritet-Standart Report	Report prepared by audit firm OOO " <i>Paritet-Standart</i> " to assess the investments made by Manolium-Engineering in implementation of the provisions of the Amended Investment Contract dated 5 November 2012
Parties	Claimant and Respondent engaged in the Dispute
Pre-Arbitration Notice	Pre-arbitration notice of OOO " <i>Manolium-Processing</i> " dated 25 April 2017
Protocol No. 16 to EEU Treaty	Protocol on Trade in Services, Incorporation, Activities and Investments (Annex 16) to the Treaty on the Eurasian Economic Union dated 29 May 2014
Pull Station	New Communal Facility entitled " <i>Pull substation to supply electricity to the trolleybus depot and trolley line along Gintovta Street in Uruchye-6</i> " that Manolium-Engineering was to

	design and construct in accordance with the provisions of the Amended Investment Contract
Pull Station Gratuitous Use Agreement	Agreement for the gratuitous use of the Pull Station dated 6 July 2010 entered into by and between Manolium-Engineering and Minsktrans
Registration and Cadastre Agency	Republican Unitary Enterprise Minsk City Agency for State Registration and Land Cadastre
Registration and Cadastre Agency Report	Report prepared by Republican Unitary Enterprise Minsk City Agency for State Registration and Land Cadastre to determine the Claimant's expenses in respect of the New Communal Facilities dated 16 June 2015
Republic of Belarus or Respondent	Republic of Belarus
Road	New Communal Facility entitled " <i>Section of Gorodetskaya Street from Gintovta Street up to the entry to the trolleybus depot with utilities and trolleybus line</i> " that Manolium-Engineering was to design and construct in accordance with Additional Agreement No. 4 or the Amended Investment Contract
RSDC	Republican Unitary Enterprise " <i>Republican Scientific and Development Center for Pricing in Construction</i> "
Second Tax Audit Report	Report of the unscheduled on-site tax audit performed by the Tax Inspectorate in respect of Manolium-Engineering operations dated 24 March 2017
Tax Inspectorate	Inspectorate of the Ministry of Taxes and Levies of the Republic of Belarus
Tender	Tender for investment projects for the right to shared construction of public and communal facilities initiated on 24 April 2003
Trolleybus Depot No. 1	Unitary Enterprise Trolleybus Depot No. 1
UNCITRAL Arbitration Rules	UNCITRAL Arbitration Rules of 2013
UNCITRAL Rules on Transparency	UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration which come into effect on 1 April 2014

I. INTRODUCTION

1. The Claimant (as defined in para. 10 below) submits the present Notice of Arbitration (the "**Notice of Arbitration**") against the Republic of Belarus in accordance with Articles 84-85 of the Protocol on Trade in Services, Incorporation, Activities and Investments (Annex 16) to the Treaty on the Eurasian Economic Union dated 29 May 2014¹ (the "**Protocol No. 16 to the EEU Treaty**") under Article 3 of the 2013 UNCITRAL Arbitration Rules² (the "**UNCITRAL Arbitration Rules**").
2. The Dispute between the Claimant and the Republic of Belarus (the "**Dispute**"), hereinafter collectively referred to as the "**Parties**", arose due to numerous violations by the Republic of Belarus of its international legal obligations and laws of the Republic of Belarus, which resulted in the Claimant's substantial damages.
3. In 2003, the Claimant and the Republic of Belarus entered into the Investment Contract (as defined in para. 66 below), pursuant to which the Claimant was authorized to construct a large buildings' complex in the center of Minsk.
4. Against the right to construct the above complex, the Claimant was to build up a number of communal facilities which the Republic of Belarus was to take ownership of subject to performance of the Claimant's obligations.
5. In implementation of the Investment Contract, the Republic of Belarus failed to render the required assistance, and in certain cases even directly created obstacles to the construction by failing to timely provide land plots, to timely issue the necessary permits and approvals and by imposing additional obligations, not covered by the Investment Contract, on the Claimant.
6. In 2014, the Investment Contract was terminated in the court proceedings as initiated by the Republic of Belarus.

¹ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, paragraphs 84-85. **Exhibit C-1.** Official website of the Eurasian Economic Commission, "*The Treaty on the Eurasian Economic Union entered into force*". // Available at: <http://www.eurasiancommission.org/ru/nae/news/Pages/01-01-2015-1.aspx>.

² **Exhibit CL-4.** 2013 UNCITRAL Arbitration Rules. // Available at: <https://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-2013/UNCITRAL-Arbitration-Rules-2013-e.pdf>

7. As a result of such wrongful acts on the part of the Republic of Belarus in respect of the Claimant and its Investments, the Claimant incurred significant damages in the form of direct damage and lost profit.
8. The present arbitration was initiated under the provisions of Protocol No. 16 to the Treaty on the Eurasian Economic Union of 2014 and taking into account the provisions of national laws of the Republic of Belarus.³
9. The Claimant reserves the rights to:
 - a. amend the claims made to any extent; and
 - b. make any additional submissions in the course of arbitration proceedings in order to (i) complete the claims against the Republic of Belarus and (ii) respond to any allegations and arguments brought in by the Republic of Belarus.

II. PARTIES TO ARBITRATION AND OTHER COMPANIES INVOLVED

2.1. Claimant

10. The Claimant in the present Dispute is Limited Liability Company Manolium-Processing (the "**Claimant**" or "**Manolium-Processing**"),⁴ registered under the Russian laws at the following address:

Russian Federation, 109004, Moscow

Stanislavskogo Street, 11, floor 1, office VII

11. In this Dispute, the Claimant is represented by:⁵

Grant Hanessian

Grant.Hanessian@bakermckenzie.com

³ **Exhibit CL-10.** Investment Law of the Republic of Belarus.

⁴ **Exhibit C-2.** Resolution No. 1 of the founder of Manolium-Processing dated 20 November 2000. **Exhibit C-3.** Certificate of registration of Manolium-Processing and extract from the register of legal entities **Exhibit C-4.** Charter of Manolium-Processing of 2015 (4th edition).

⁵ **Exhibit C-9.** Powers of attorney to represent the Claimant dated 1 March 2017 and 13 November 2017.

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2.2. Respondent

12. The Respondent in the present Dispute is the Republic of Belarus (the "**Respondent**" or the "**Republic of Belarus**").
13. The Notice of Arbitration was delivered to the following Respondent's representatives:

President of the Republic of Belarus
Aleksander Grigorievich Lukashenko
Republic of Belarus, 220016, Minsk
Kirova Street, 43

Government of the Republic of Belarus
Republic of Belarus, 220010, Minsk
Sovetskaya Street, 11

Ministry of Justice of the Republic of Belarus

Republic of Belarus, 220004, Minsk
Kollektornaya Street, 10

Minsk City Executive Committee
Republic of Belarus, 220030, Minsk
Prospekt Nezavisimosti, 8

2.3. Manolium-Engineering

14. On 18 March 2004, the Claimant established and registered on the territory of the Republic of Belarus foreign enterprise Manolium-Engineering (the "**Manolium-Engineering**").⁶
15. The enterprise was incorporated for the purposes of effective implementation of the provisions of the Investment Contract with the Republic of Belarus (as defined in para. 66).
16. The Claimant was and continues to be the sole participant in the charter capital of Manolium-Engineering.⁷
17. Subsequently, Manolium-Engineering exercised the function of the Claimant's investment facility on the territory of the Republic of Belarus and implemented the Investment Contract as instructed by the Claimant.
18. Non-performance and violation of the relevant obligations on the part of the Republic of Belarus (as demonstrated below) resulted in the insolvency of Manolium-Engineering. For the purposes of complying with the provisions of Belarusian laws, in October 2016 Manolium-Engineering had to initiate bankruptcy proceedings.⁸ In

⁶ **Exhibit C-5.** Certificate of state registration of Manolium-Engineering in the Unified State Register of Legal Entities and Individual Entrepreneurs dated 18 March 2004. **Exhibit C-6.** Certificate of state registration of Manolium-Engineering in the Unified State Register of Legal Entities and Individual Entrepreneurs dated 16 April 2004. **Exhibit C-7.** Charter of Manolium-Engineering dated 16 April 2004.

⁷ **Exhibit C-3.** Certificate of registration of Manolium-Processing and extract from the register of legal entities Manolium-Engineering.

⁸ **Exhibit C-8.** Application of Manolium-Engineering to initiate the liquidation procedure dated 14 October 2016.

February 2017, the procedure in bankruptcy was introduced in respect of assets of Manolium-Engineering.⁹

III. FACTUAL BACKGROUND

3.1. Republic of Belarus

3.1.1. General Information

19. On 26 December 1991, the Republic of Belarus became a sovereign state.
20. Belarus is divided into 6 regions; the capital and the largest city of the Republic is Minsk having a special status of the city of republican significance.¹⁰
21. In the North-West the Republic shares borders with Lithuania, in the West – with Poland, in the North – with Latvia, in the East – with Russia and in the South – with Ukraine.



Figure 1. Geography of Belarus

⁹ Exhibit C-179. Official portal of the system of common courts of the Republic of Belarus, "Information on cases in connection with economic insolvency (bankruptcy) for the period from 1 February 2017 through 28 February 2017. // Available at: <http://www.court.gov.by/minsk-city/bankrotstvo/info/ddc9b031d3234694.html>.

¹⁰ Exhibit CL-5. Law of the Republic of Belarus dated 12 July 2000 No. 410-Z "On the Status of the Capital of the Republic of Belarus – Minsk", *Narodnaya Gazeta*. // Available at: <http://laws.newsby.org/documents/laws/law0781.htm>.

3.1.2. Political System And State Administration

22. The state power in the Republic of Belarus is divided into legislative, executive and judicial branches.¹¹
23. The head of state and the head of the executive branch of state power in Belarus is Mr. Aleksander Lukashenko.
24. Mr. A. Lukashenko has been holding the position of the President of the Republic of Belarus since 1994. As of now, A. Lukashenko is having his fifth presidential tenure (2015-2020).

3.1.3. Economic System Of The State

25. There are both state and private types of property in the Republic of Belarus.¹² The ownership structure of profit-making organizations of the Republic of Belarus is dominated by companies partially owned by the government.
26. According to the statistics yearbook of the Republic of Belarus for 2015, state unitary enterprises make up 38.8% of all profit-making legal entities registered on the territory of Belarus.¹³
27. The Belarusian economy is largely dependent on its trade export partners with Russia being the largest of them (in 2014, 42.1% of all exports of the Republic of Belarus went to Russian markets).¹⁴
28. In 2015, the Belarusian economy went into recession, with the real GDP reduced by 3.9%¹⁵ and GDP in USD terms decreased by 26.9%.

¹¹ **Exhibit CL-6.** Constitution of the Republic of Belarus of 1994, with amendments adopted during the republican referenda held on 24 November 1996 and 17 October 2004, *Narodnaya Gazeta*, Art. 6.

¹² **Exhibit CL-6.** Constitution of the Republic of Belarus of 1994, with amendments adopted during the republican referenda held on 24 November 1996 and 17 October 2004, *Narodnaya Gazeta*, Art. 13.

¹³ **Exhibit C-10.** Statistics yearbook of the Republic of Belarus for 2015. // Available at: http://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_724/.

¹⁴ **Exhibit C-11.** "Doing Business in Belarus 2015" Report prepared by Ernst & Young, page 11. // Available at: [http://www.ey.com/Publication/vwLUAssets/ey-doing-business-belarus-2015-eng/\\$FILE/ey-doing-business-belarus-2015-eng.pdf](http://www.ey.com/Publication/vwLUAssets/ey-doing-business-belarus-2015-eng/$FILE/ey-doing-business-belarus-2015-eng.pdf).

29. For the last 20 years, the GDP growth value has become negative for the first time.
30. According to Belstat, the Belarusian GDP is now demonstrating the worst dynamics since the 1990s.¹⁶

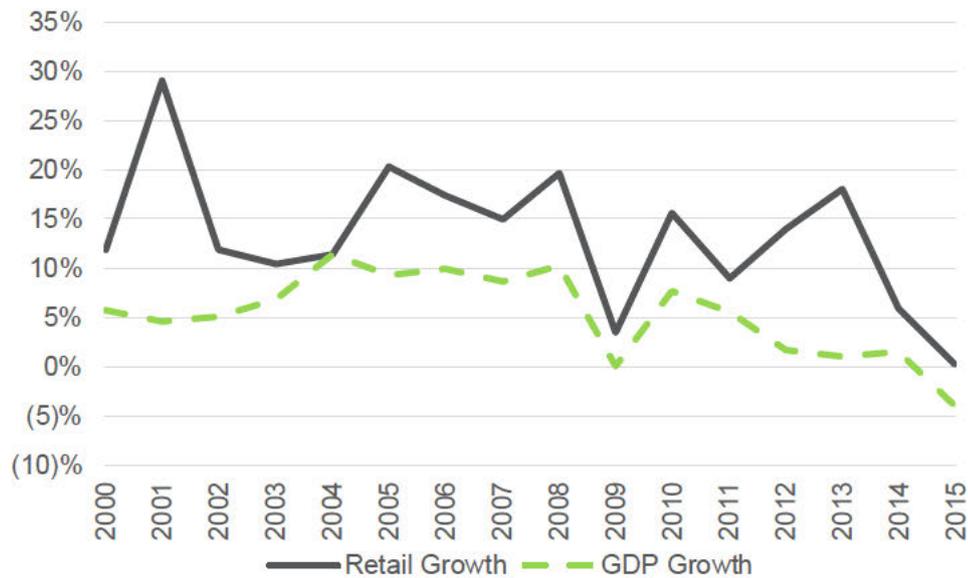


Figure 2. GDP and retail growth of the Republic of Belarus for 2000-2015¹⁷

31. According to international credit rating agencies Standard&Poors, Fitch and Moody's, the credit rating of Belarus has never exceeded Ba (B+) since 2007.
32. Credit obligations with such rating are considered speculative and are exposed to a high credit risk.
33. As of 17 June 2016, Moody's assigned rating Caa1 to Belarus.
34. Credit obligations with rating Caa1 are considered obligations of a very low quality and are exposed to a very high credit risk.¹⁸

¹⁵ **Exhibit C-12.** Economic review of the Republic of Belarus prepared by the World Bank dated 28 April 2016. // Available at: <http://pubdocs.worldbank.org/en/775841461815774862/Belarus-economic-update-spring-2016-ru.pdf>.

¹⁶ **Exhibit C-13.** GDP of Belarus in 2015 // Business Gazette dated 29 January 2016. // Available at: <http://bdg.by/news/authors/vvp-belarusi-v-2015-om-godu>.

¹⁷ **Exhibit C-14.** Navigant Expert report dated 24 April 2017, Figure 4.

¹⁸ **Exhibit C-15.** Credit rating of the Republic of Belarus, Trading Economics Portal. // Available at: <http://ru.tradingeconomics.com/belarus/rating>.

35. Another distinctive feature of the Republic of Belarus is significant bureaucratization of doing business on its territory.
36. According to the World Bank's "*Doing Business 2016*" Report, Belarus (along with Barbados, Moldova, Fiji, Ghana and some other countries) has one of the most non-transparent procedures of obtaining construction permits, which significantly hinders investors' operations.¹⁹
37. In particular, certain regulations of the Republic of Belarus related to obtaining construction permits are not publicly available.

3.1.4. Currency System Of The State

38. The official currency of the Republic of Belarus is the Belarusian ruble.
39. From early 2004 until late 2008, the BYR/USD/RUS exchange rate remained actually unchanged.
40. The global financial crisis of 2008-2009 had a material adverse effect on the economic development of the state, which led to a blustering fall of the foreign trade turnover in September 2008.
41. To this effect, in December 2008, a need to strengthen the macroeconomic and financial state policy and devalue its currency by 20% in order to amortize the attack on the Belarusian ruble became obvious.²⁰
42. In January 2009 – March 2010, the IMF stand-by program was implemented (financing for macroeconomic stabilization programs) that allowed to drastically reduce the money supply and restrict government expenses and demand for money on the part of the public sector.

¹⁹ **Exhibit C-16.** "*Doing Business 2016*" Report prepared by the World Bank, page 63. // Available at: <http://russian.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB16-Full-Report.pdf>.

²⁰ **Exhibit C-17.** V.N. Usosky, *Impact of the financial and economic crisis of 2008-2011 on cyclical fluctuations of the Belarusian banking system and economy*, page 2.

43. Such robust economic program directed at restricting the economy resulted in almost a zero economy growth in 2009.
44. Nonetheless, in the second half of 2010 the disproportion in the currency market between the Belarusian ruble and foreign currency only increased, which compelled the government to introduce in February-April 2011 the system of currency constraints by means of creating the foreign currency deficit.²¹
45. However, later on, the situation in respect of the Belarusian ruble continued deteriorating.
46. In the first quarter 2011, the "overheating" of the economy gave rise to chaotic market fluctuations, which resulted in a cyclical surge in prices. The increasing economic imbalance was largely driven by state-controlled prices for goods and money (exchange rate and interest rates).²²
47. As a result of the crisis, the USD rate established by the National Bank in 2011 increased from 3,000 to 8,500 Belarusian rubles, while the aggregate devaluation for ten months amounted to 189%.²³
48. Rates for retail consumer loans increased up to 120% per annum, which almost caused Belarusian banks to go bankrupt.
49. As a result, the largest investment banks Deutsche Bank and BNP Paribas refused to collaborate with Belarus.²⁴
50. As of now, the Republic of Belarus is also facing severe financial difficulties.
51. Belarus intends to primarily rely on borrowings from the International Monetary Fund and other external creditors.²⁵

²¹ **Exhibit C-17.** V.N. Usosky, *Impact of the financial and economic crisis of 2008-2011 on cyclical fluctuations of the Belarusian banking system and economy*, page 3.

²² **Exhibit C-17.** V.N. Usosky, *Impact of the financial and economic crisis of 2008-2011 on cyclical fluctuations of the Belarusian banking system and economy*, page 2.

²³ **Exhibit C-18.** Official website of news portal of Belarus Naviny.By, "Belarusian ruble is a global leader for devaluations. // Available at: http://naviny.by/rubrics/finance/2011/10/20/ic_media_infografic_114_4103.

²⁴ **Exhibit C-19.** Official website of news portal Rosbalt, "Belarusian banks on the verge of collapse". // Available at: <http://www.rosbalt.ru/world/2011/11/08/909813.html>.

3.1.5. Regulation Of Foreign Investments And Treatment Of Foreign Investors

52. The financial crisis of 2011 caused the decrease of direct foreign investments in 2012 by 75% as compared to the previous year.²⁶

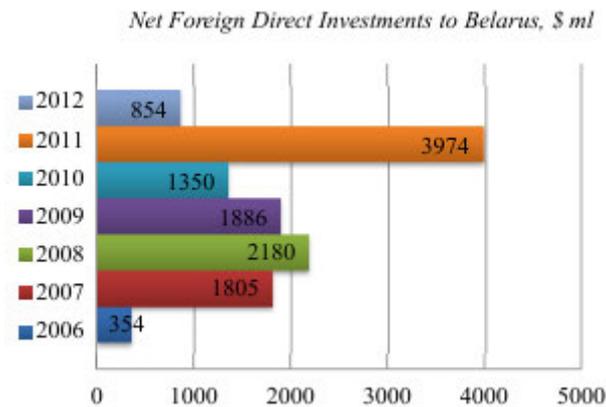


Figure 3. Inflow of net direct foreign investments to Belarus for 2006-2012²⁷

53. The flow of direct foreign investments in the Republic of Belarus have been consistently decreasing since 2014. For example, in 2014 direct foreign investments decreased by 6.6% as compared to 2013,²⁸ while the inflow of direct foreign investments in 2015 amounted to only 2.7% of the domestic GDP.²⁹
54. Therefore, the investment climate in the Republic of Belarus remains unstable. According to experts, the closed economy and administrative barriers frighten investors away and considerably decrease the inflow of foreign investments to the country.³⁰

²⁵ **Exhibit C-20.** Official website of information and analytical portal BelGazeta, "Is Belarus on the verge of a debt crisis?// Available at: <http://www.belgazeta.by/ru/1044/economics/32803>.

²⁶ **Exhibit C-21.** Official website of Belarusian news portal Belarus Digest, "Belarus Sends Confusing Messages To Investors. // Available at: <http://belarusdigest.com/story/belarus-sends-confusing-messages-investors-13046>.

²⁷ **Exhibit C-21.** Official website of Belarusian news portal Belarus Digest, "Belarus Sends Confusing Messages To Investors. // Available at: <http://belarusdigest.com/story/belarus-sends-confusing-messages-investors-13046>.

²⁸ **Exhibit C-10.** Statistics yearbook of the Republic of Belarus for 2015, page 440. // Available at: http://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_724/.

²⁹ **Exhibit C-22.** World Bank's Report for 2016, "Country Program Snapshot, page 2. // Available at: <http://pubdocs.worldbank.org/en/61671460152921917/Belarus-Snapshot-eng.pdf>.

³⁰ **Exhibit C-23.** Official website of news portal Nabiny.by, "Belarus frightens investors. // Available at: http://naviny.by/rubrics/economic/2012/11/14/ic_articles_113_179897.

55. In order to attract foreign investors, Belarus is extensively involved in international bilateral and multilateral treaties related to protecting investor rights and ensuring guarantees of enforcement of international arbitral awards.
56. In particular, Belarus is party to the following treaties:
- a. 51 bilateral investment treaties for protection and promotion of foreign investments;³¹
 - b. Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (161 member-states);³²
 - c. Convention on protection of the investor's rights of 1997;³³
 - d. Energy Charter Treaty of 1994 (53 member-states);³⁴
 - e. UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 195 (156 member-states);³⁵ and
 - f. Treaty on the Eurasian Economic Union dated 29 May 2014 (the "**EEU Treaty**").³⁶
57. In addition, Belarus contributes to the activity of international economic and financial organizations.³⁷
58. An acute need to reform the investment legislation was recognized by President of the Republic of Belarus Mr. A. Lukashenko himself, who emphasized that attracting

³¹ **Exhibit C-24.** UNCTAD data: Investment Policy Hub. List of effective bilateral and multilateral international investment treaties of the Republic of Belarus. // Available at: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/18#iialnnerMenu>.

³² The Convention is available at:

<http://www.arbitrations.ru/userfiles/file/Law/Treaty/icsid%20convention%20russian.pdf>.

³³ The Convention is available at: <http://www.pravo.by/main.aspx?guid=3871&p0=N09700028>.

³⁴ The Treaty is available at: <http://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECT-ru.pdf>.

³⁵ The Convention is available at: http://www.uncitral.org/uncitral/ru/uncitral_texts/arbitration/NYConvention.html.

³⁶ The Treaty is available at: https://docs.eaeunion.org/docs/ru-ru/0043610/itia_05062014.

³⁷ In particular, the Republic of Belarus is a member of the World Bank group:

- a. International Bank for Reconstruction and Development, International Finance Corporation;
- b. Multilateral Investment Guarantee Agency; and
- c. International Centre for Settlement of Investment Disputes.

Exhibit C-25. Information about membership of the Republic of Belarus in international organizations. // Available at: <https://mfa.gov.by/multilateral/organization/>.

foreign investments to the country is prevented by bureaucratic barriers and the lack of clear laws.³⁸

59. To this effect, a distinctive feature of direct foreign investments to Belarus is that the majority of such investments is attracted against the personal guarantee and representations of President A.G. Lukashenko.³⁹
60. As a standard practice, direct agreements with investors are concluded, as it is in the present case too.

IV. CLAIMANT'S PROJECT

4.1. General Information About The Claimant's Project

61. On 24 April 2003, the Minsk City Executive Committee (the "**MCEC**") initiated a tender of investment projects for granting the right to shared construction of public and communal facilities (the "**Tender**").⁴⁰
62. The Tender was intended to attract the investor for implementation of the investment project of shared construction of the shopping, cultural and recreation center within streets Kiseleva-Krasnaya-Nezavisimosti-Masherova⁴¹ in the center of Minsk (the "**Investment Object**").
63. On 22 May 2003, the Claimant filed an application to participate in the Tender.⁴²
64. On 30 May 2003, the Tender Commission declared the Claimant the winner.⁴³
65. On 4 June 2003, MCEC notified the Claimant of the Tender results⁴⁴ and on 5 June 2003 issued the relevant decision to approve it.⁴⁵

³⁸ **Exhibit C-26.** Official website of news portal of Belarus TUT.BY, "*Lukashenko recognized that Belarus would not recover its growth without the IMF and foreign investments*". // Available at: <http://news.tut.by/economics/493456.html>.

³⁹ **Exhibit C-27.** Official website of news portal Business Gazette, "*Lukashenko invites investors to Belarus and issues guarantees to them*". // Available at: <http://bdg.by/news/economics/18964.html>.

⁴⁰ **Exhibit C-28.** Tender documents for the Tender dated 24 April 2003.

⁴¹ The former name of Prospekt Nezavisimosti is prospekt Franciska Skorina, of Masherova Street–Varvasheni Street. **Exhibit C-29.** Official website of news portal of Belarus TUT.BY, "*Two central prospekts of Minsk – Franciska Skorina and Masherova – renamed into Nezavisimosti and Pobediteley*". // Available at: <http://news.tut.by/politics/52941.html>.

⁴² **Exhibit C-30.** Claimant's bid to participate in the Tender dated 22 May 2003.

⁴³ **Exhibit C-31.** Protocol 2 on the results of the Tender dated 30 May 2003.

66. On 6 June 2003, the Claimant and the Republic of Belarus represented by MCEC and Unitary Enterprise⁴⁶ Transport and Communications Office (the "Minsktrans") entered into the Investment Contract (the "**Investment Contract**").⁴⁷
67. Subject to the terms and conditions of the Investment Contract, the Claimant acquired the right to design and construct the Investment Object in the center of Minsk with the total investment of at least USD 81,698,000 on a land plot with the total area of 6.477 ha.⁴⁸

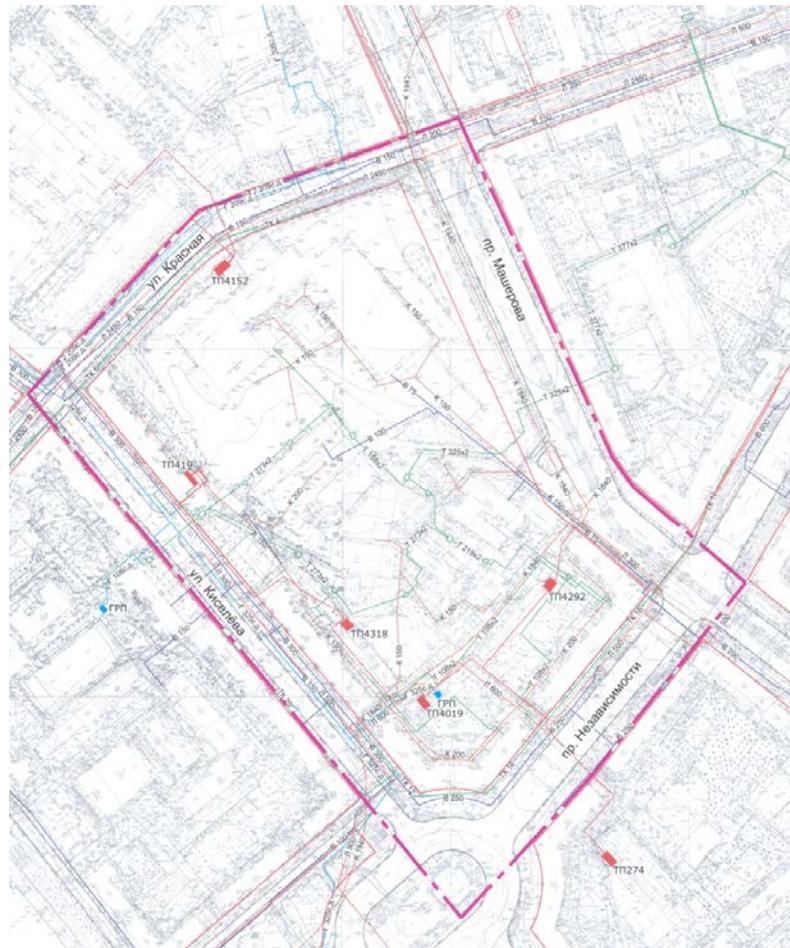


Figure 4. Location of the Investment Object in Minsk, Belarus⁴⁹

⁴⁴ **Exhibit C-32.** Letter from MCEC to the Claimant dated 4 June 2003.

⁴⁵ **Exhibit C-33.** Decision of MCEC on approving the results of the Tender dated 5 June 2003.

⁴⁶ A unitary enterprise is a corporate form of a legal entity in the Republic of Belarus, pursuant to which the property of such legal entity is owned by its founder. In this case, it is an enterprise of a communal form of ownership.

⁴⁷ **Exhibit C-34.** Investment Contract.

⁴⁸ **Exhibit C-34.** Investment Contract, Clause 3.

⁴⁹ **Exhibit C-34.** Investment Contract, Schedule 1.

68. The territory of the quarter surrounded by streets Kiseleva-Krasnaya-Nezavisimosti-Masherova in the central district of Minsk hosted residential buildings, adjacent yard territories, as well as land plots of Minsktrans and of Unitary Enterprise "Trolleybus Depot No. 1" (the "Trolleybus Depot No. 1").
69. As of the date of the Tender, land plots on the territory of the Investment Object were distributed among land users as follows: ⁵⁰

No.	Name of land user	Area, ha	Ground of land use (number and date of MCEC decision)	Address
1	Trolleybus Depot No. 1	5.244	No. 338 dated 3 April 1998; Clause 3.2 – for 5 years	Masherova St., 5
2	Minsktrans	0.6979	No. 338 dated 3 April 1998; Clause 3.1 – for 5 years	Masherova St., 5
3	Joint-Stock Company "Dionisiy"	0.0647	No. 201 dated 18 November 1998; Clause 1.1	Prospekt Nezavisimosti, 37a
4	Unitary Enterprise "Medik"	0.4704	No. 580 dated 15 May 2001; Clause 3.1	Masherova St., 3

70. Pursuant to the general plan of Minsk, the run-down Trolleybus Depot No. 1⁵¹ was to be relocated to the Uruchye-6 microdistrict at the expense of the Claimant, due to the following reasons: ⁵²
- a. The territory of the specified quarter in the center of Minsk was of a public nature and required reorganization with the subsequent construction of service facilities.

⁵⁰ Exhibit C-28. Tender documents for the Tender dated 24 April 2003, page 5.

⁵¹ Exhibit C-35. Letter from MCEC to the President of the Republic of Belarus dated 26 May 2006. Exhibit C-36. Photoreport: an abandoned trolleybus depot in the center of Minsk, 20 August 2014. // Available at: <https://realt.onliner.by/2014/08/20/trollpark>.

⁵² Exhibit C-28. Tender documents for the Tender dated 24 April 2003, page 5.

- b. As of the date of the Tender, one of the key areas of forming the urban environment of the center of Minsk was the creation of pedestrian streets and zones as an inner-block area of urban infrastructure.
71. As of the date of initiating the Tender, the development of Kiseleva Street was represented by 4- and 5-storied residential buildings. The yard territories of the quarter housed about 40 box garages of individual users.
72. After construction of the Investment Object by efforts of the Claimant, the center of the city would be expected to be transformed by the largest national shopping and entertainment complex having no precedents in the Republic of Belarus;⁵³ namely, the following facilities would be built:
- a. shopping block along the entire complex: a chain of leased shops and boutiques;
 - b. business sector along the projected residential development: representative offices of firms, press center, exhibitions, zone for ceremonies and gala events;
 - c. service sector along the entire complex: meal facilities, bars, housekeeping service, fitness;
 - d. transport complex:
 - i. underground 3-tier parking for 250 cars, entry/exit from Masherova street;
 - ii. 5-tier parking lot for 300 cars, entry/exit from Krasnaya street;
 - iii. parking lot for 50 cars on Masherova street; and
 - e. administrative building in the center of the facility.

⁵³ **Exhibit C-37.** Belarusian business gazette, "*Russian investor will change the center of Minsk, 10 September 2014*". // Available at: <http://bdg.by/news/news.htm%3F62618,2>.

73. The site was expected to be developed by quarters; on the layout, the complex would look like an extended trapezium with sides of 400x290x350x180 m and 2-4-5-6-8 floors of buildings.⁵⁴
74. After the construction and putting into operation of the Investment Object, Minsk would create 3-3.5 thousand jobs and obtain USD 50-100 million per year as tax payments to the state budgets of the city and of the Republic.⁵⁵
75. According to the initial plan, the Claimant was to put the Investment Object into operation no later than in 2009⁵⁶. Therefore, the timing for implementation of the said project amounted to approximately 6 years. Such timing was realistic, provided that Belarusian authorities performed their obligations in a timely manner.
76. To obtain the right to construct the Investment Object, the Claimant was obliged to:⁵⁷
- a. Design and construct the trolleybus depot with the capacity of 220 trolleys in the Uruchye-6 microdistrict of Minsk⁵⁸ with the obligation of putting it into operation no later than in 2006 (the "**Depot**"). The Depot ought to have been built in order to remove Trolleybus Depot No. 1⁵⁹ from the center of Minsk.
 - b. Design and construct a joint production base of car fleets Nos. 1 and 3 with the capacity of 450 buses (the "**Motor Transport Base**") on the land plot provided by MCEC with the obligation of putting it into operation within three years of the provision of the land plot and construction permit by MCEC. Besides, MCEC was to provide such land plot to the Claimant for the purposes of construction of the Motor Transport Base until 31 December 2003.⁶⁰
 - c. Reconstruct the building located at: Minsk, Mendeleeva Street, 36 (the "**Building under Reconstruction**") to host the administrative and management personnel of

⁵⁴ **Exhibit C-28.** Tender documents for the Tender dated 24 April 2003, page 5.

⁵⁵ **Exhibit C-35.** Letter from MCEC to the President of the Republic of Belarus dated 26 May 2006.

⁵⁶ **Exhibit C-34.** Investment Contract, Clause 5.3.

⁵⁷ **Exhibit C-34.** Investment Contract, Clauses 2.1-2.3.

⁵⁸ Uruchye-6 is a residential microdistrict in the Pervomaysky district in the North-East of Minsk, Belarus. **Exhibit C-38.** Map of microdistrict "Uruchye-6" dated 24 April 2017.

⁵⁹ **Exhibit C-35.** Letter from MCEC to the President of the Republic of Belarus dated 26 May 2006. Photoreport: an abandoned trolleybus depot in the center of Minsk, 20 August 2014. // Available at: <https://realt.onliner.by/2014/08/20/trollpark>.

⁶⁰ **Exhibit C-34.** Investment Contract, Clause 2.2.

Minsktrans and a training center for drivers of trolleys and trams with the obligation to put it into operation no later than in 2006,⁶¹

hereinafter collectively referred to as the "**Communal Facilities**".

77. Therefore, in accordance with the initial plan the Claimant was expected to build and transfer the Communal Facilities into the communal ownership of Minsk⁶² within 3 years on the territory, to which Trolleybus Depot No. 1 and other facilities ought to have been removed from the center of Minsk; and the Claimant could have constructed the Investment Object until 2009 on the land plot with the total area of 6.477 ha⁶³ thus made available for construction.
78. Provided that, the Investment Object could have been constructed in parallel with the construction of the Communal Facilities, which was of importance for complying the general timelines of implementing the project under the Investment Contract.
79. In addition, until 14 July 2003⁶⁴ the Claimant was to enter with Minsktrans into the purchase agreement in respect of the real estate items located on the land plot for the Investment Object to be demolished (the "**Buildings to be Demolished**").
80. Pursuant to the terms of the Tender, investments amounting to USD 15 million were expected to be made, including:⁶⁵
- a. design and construction of the Depot – **USD 6.8 million**;
 - b. design and construction of the Motor Transport Base – **USD 6 million**;
 - c. reconstruction of the Building under Reconstruction – **USD 1.2 million**; and
 - d. purchase of the Buildings to be Demolished – **USD 1 million**.

⁶¹ In December 2004, the Building under Reconstruction was removed from the list of Communal Facilities as mutually agreed upon by MCEC, Minsktrans and the Claimant, see **Exhibit C-39**. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 21 January 2004. **Exhibit C-40**. Decision of MCEC dated 2 December 2004.

⁶² **Exhibit C-34**. Investment Contract, Clauses 2, 6.11, 8.3.

⁶³ **Exhibit C-34**. Investment Contract, Clauses 2, 3.

⁶⁴ **Exhibit C-34**. Investment Contract, Clause 6.15.

⁶⁵ **Exhibit C-41**. Letter from the Main Office of Internal Affairs of the Republic of Belarus dated 3 August 2005.

81. In addition, the Claimant was to invest **USD 1 million** in "*communal and Republican enterprises located in Minsk that have an unsatisfactory balance structure*".⁶⁶
82. Accordingly, the total amount of investments proposed to be made in favor of the Communal Facilities was to constitute **USD 16 million**, while the value of the Investment Object ought to have made up at least **USD 81,698,000**.⁶⁷
83. Therefore, subject to the investments into Communal Facilities, the aggregate amount of investments was to be at least **USD 97,698,000**.
84. In accordance with the Investment Contract, MCEC assumed, among others, the following obligations:⁶⁸
- a. issue a permit to the Claimant for performing design and survey works at the Communal Facilities and Investment Object;
 - b. provide land plots to the Claimant for construction and operation of the Communal Facilities and Investment Object;
 - c. render assistance to the Claimant in implementation of design and construction of the Communal Facilities and Investment Object, including:
 - i. agree upon the architectural designs within 30 days of the Claimant's provision of its duly executed construction documents (the "**Construction Documents**");
 - ii. ensure entering, by 14 July 2003, into the agreement between Minsktrans and the Claimant in respect of purchasing the Buildings to be Demolished; and
 - iii. release the Claimant from paying MCEC's expenses for the utilities, transport and social infrastructure, as well as from land-related payments.

⁶⁶ **Exhibit C-28.** Tender documents for the Tender dated 24 April 2003, Clause 2.4.4, page 9.

⁶⁷ **Exhibit C-34.** Investment Contract, Clause 3.

⁶⁸ **Exhibit C-34.** Investment Contract, Clause 7.

85. In accordance with the Investment Contract, Minsktrans assumed the following obligations:⁶⁹

- a. approve Construction Documents of the Communal Facilities and Investment Object; and
- b. after the putting the Communal Facilities into operation, register its ownership title to the Communal Facilities.

86. Pursuant to the Investment Contract, in the event that:

- a. MCEC or Minsktrans performed their obligations under the Investment Contract in an untimely manner;
- b. other competent public authorities and legal entities subordinate to MCEC took actions (omissions) preventing proper performance of the Investment Contract,

then the timelines of design, construction and putting into operation the Communal Facilities and Investment Object were to be proportionately extended by a reasonable period necessary for the Claimant to perform its obligations.⁷⁰ At the same time the Claimant was not considered as the party which breached the Investment Contract in such a case.

87. However, as described in details below, due to various bureaucratic formalities the Claimant failed to construct the Communal Facilities in a timely manner, which inevitably resulted in the appreciation of construction and non-compliance with the agreed upon construction schedule.

4.2. Amendments To The Amount And Periods Of Investments Under The Investment Contract (2003)

88. Notwithstanding that the Investment Contract provided for very tight deadlines to commence implementation of the project (in particular, in respect of making the land

⁶⁹ Exhibit C-34. Investment Contract, Clause 8.

⁷⁰ Exhibit C-34. Investment Contract, Clause 5.4.

plot available for constructing the Motor Transport Base and entering into the relevant agreement regarding the Buildings to be Demolished)⁷¹, MCEC failed to timely obtain the consent of the President of the Republic of Belarus to perform the Investment Contract.

89. In addition, shortly after conclusion of the Investment Contract, the Claimant experienced imposition of obligations not covered by the Contract that were related to the construction of the National Library (the "**National Library**") in Minsk.
90. The story of financing the National Library is indicative and it clearly demonstrates the conditions of doing business in the Republic of Belarus.
91. Thus, since 2002 each Belarusian public official is to contribute his/her daily salary, each schoolchild – 50 US cents and each manager – USD 15 for the construction of the National Library.⁷²
92. Due to the lack of clear and reliable sources of financing this project, Belarusian public authorities forced Belarusian companies to get engaged in construction.
93. Notwithstanding that the construction of the National Library was completed in 2006, many companies were paid therefor only 3 years later. In light of the fact that a number of Belarusian companies that acted as technical "*customers*" of construction were declared bankrupt, several contractors obtained no consideration at all.⁷³
94. The Claimant had to contribute to building the National Library as well. Shortly after executing the Investment Contract, the State Control Committee of the Republic of Belarus (the "**Belarusian SCC**") recognized the Claimant's obligation under the Investment Contract⁷⁴ to invest USD 1,000,000 in development of the laboratory of

⁷¹ **Exhibit C-34.** Investment Contract, Clauses 2.2, 6.14.

⁷² **Exhibit C-42.** Official website Lenta.ru, "*Lukashenko instructed all Belarusians to pool some money for the National library*". // Available at: <https://lenta.ru/world/2002/10/11/stroika/>.

⁷³ **Exhibit C-43.** Official website of Belarusian gazette Solidarnost, "*Constructors are still unpaid their fees for the National Library*". // Available at: http://gazetaby.com/cont/art-2016.php?sn_nid=16888.

⁷⁴ **Exhibit C-34.** Investment Contract, Clause 6.13.

the "*Minsk Instrument Engineering Plant*"⁷⁵ to be contradictory to the Tender Documentation.

95. The Belarusian SCC delivered a proposal to the President of the Republic of Belarus that it would be more reasonable that the Claimant invest the same amount (USD 1,000,000) into construction of the National Library.⁷⁶
96. By the way, spending cash funds on constructing the National Library was not covered by the Tender Documentation, which in no way embarrassed representatives of the Belarusian SCC.
97. Moreover, the Government of the Republic of Belarus asserted that, according to the Tender, the Claimant was to indemnify MCEC against expenses on creating the infrastructure in connection with implementing the investment project, while the Investment Contract released the Claimant from the said duty. To this effect, the Government of the Republic of Belarus required bringing the Investment Contract into compliance with the Tender terms and conditions.⁷⁷
98. For this purpose, on 10 October 2003, MCEC, Minsktrans and the Claimant signed Additional Agreement No. 1 to the Investment Contract (the "**Additional Agreement No. 1**")⁷⁸.
99. In addition to the "*voluntary*" payment of USD 1 million to construct the National Library (the "**Library Payment**"), the Claimant was obliged to indemnify MCEC's expenses on creating the infrastructure⁷⁹ that could make up a significant amount.
100. The period of performance of the Claimant's obligation to enter into the sale and purchase agreement with Minsktrans in respect of the Buildings to be Demolished was extended from 10 July 2003 until 10 December 2003.⁸⁰

⁷⁵ **Exhibit C-44.** Letter from the State Control Committee of the Republic of Belarus to the President of the Republic of Belarus dated 31 July 2003.

⁷⁶ **Exhibit C-44.** Letter from the State Control Committee of the Republic of Belarus to the President of the Republic of Belarus dated 31 July 2003. **Exhibit C-45.** Resolution of the President of the Republic of Belarus to implementing the project under the Investment Contract dated 5 November 2003.

⁷⁷ **Exhibit C-46.** Letter from the Council of Ministers of the Republic of Belarus to the President of the Republic of Belarus dated 30 October 2003.

⁷⁸ **Exhibit C-47.** Additional Agreement No. 1.

⁷⁹ **Exhibit C-47.** Additional Agreement No. 1, Clause 2.

101. The term of MCEC's making the land plot available to the Claimant for designing and constructing the Motor Transport Base was extended from 31 December 2003 until 30 March 2004.⁸¹
102. Other terms for performance of obligations under the Investment Contract remained without any amendments.
103. Only 12 days after conclusion of the Additional Agreement No. 1, *i.e.* on 22 October 2003, MCEC, Minsktrans and the Claimant signed Additional Agreement No. 2 to the Investment Contract (the "**Additional Agreement No. 2**")⁸² that superseded Additional Agreement No. 1, but duplicated the arrangement in respect of changing the deadline for entering into the sale and purchase agreement regarding the Buildings to be Demolished and making the land plot for the Motor Transport Base available.
104. Pursuant to Additional Agreement No. 2, Minsktrans was to enter into the sale and purchase agreement in respect of the Buildings to be Demolished only after obtaining the constructed Communal Facilities; only then MCEC was to make the land plot for constructing the Investment Object available to the Claimant.⁸³
105. Such amendments to the Investment Contract deprived the Claimant of the opportunity to perform the works of constructing the Communal Facilities and designing the Investment Object in parallel.
106. However, by that time, MCEC also failed to obtain the consent of the President of the Republic of Belarus to perform the Investment Contract, and that is why on 30 October 2003 the Council of Ministers of the Republic of Belarus approached the President⁸⁴, and the relevant decision was obtained on 5 November 2003.⁸⁵

⁸⁰ **Exhibit C-47.** Additional Agreement No. 1, Clause 3.

⁸¹ **Exhibit C-47.** Additional Agreement No. 1, Clause 4.

⁸² **Exhibit C-48.** Additional Agreement No. 2.

⁸³ **Exhibit C-48.** Additional Agreement No. 2, Clause 2.9.

⁸⁴ **Exhibit C-46.** Letter from the Council of Ministers of the Republic of Belarus to the President of the Republic of Belarus dated 30 October 2003.

⁸⁵ **Exhibit C-45.** Resolution of the President of the Republic of Belarus to implementing the project under the Investment Contract dated 5 November 2003.

107. On 25 November 2003, MCEC, Minsktrans and the Claimant signed Additional Agreement No. 3 to the Investment Contract (the "**Additional Agreement No. 3**")⁸⁶ that clarified the details of making the Library Payment and imposed that duty on the Claimant's founder, being *Manolium Trading Ltd* company.

108. On 30 December 2003, Manolium Trading Ltd. paid the Library Payment to the account of the Ministry of Finance of the Republic of Belarus.⁸⁷

4.3. Issues In Performance Of The Investment Contract In 2004-2006

4.3.1. Change Of The Party To The Investment Contract

109. The Republic of Belarus, having invited foreign investors to participate in the Tender in respect of the project under the Investment Contract, turned out to be unable to perform its obligations by virtue of statutory constraints. Notwithstanding that in accordance with the Investment Contract MCEC assumed the obligation to issue a permit for performing design and survey works at the Communal Facilities and Investment Object⁸⁸ to the Claimant, it was rendered impossible due to the contradiction that existed in Belarusian laws at that time.

110. Under relevant Belarusian laws at that time, foreign legal entities were not entitled to obtain the ownership title, have on lease or perform design and survey works on land plots on the territory of the Republic of Belarus. That provision was amended only in 2009⁸⁹ and before the amendments rendered performance of MCEC's obligations impossible.

111. To overcome those difficulties, on 18 March 2004, the Claimant incorporated Belarusian legal entity *Manolium-Engineering*⁹⁰, though it was not obliged to do so.

⁸⁶ **Exhibit C-49.** Additional Agreement No. 3.

⁸⁷ **Exhibit C-50.** Confirmation of the Library Payment dated 30 December 2003.

⁸⁸ **Exhibit C-34.** Investment Contract, Clause 7.

⁸⁹ **Exhibit CL-7.** Code of the Republic of Belarus No. 226-3 dated 4 January 1999 "*On the Land*" (extracts).

⁹⁰ **Exhibit C-5.** Certificate of state registration of Manolium-Engineering in the Unified State Register of Legal Entities and Individual Entrepreneurs dated 18 March 2004. **Exhibit C-6.** Certificate of state registration of Manolium-Engineering in the Unified State Register of Legal Entities and Individual Entrepreneurs dated 16 April 2004. **Exhibit C-7.** Charter of Manolium-Engineering dated 16 April 2004.

Manolium-Engineering was to become the Claimant's technical operator in Belarus for implementation of the project under the Investment Contract.

112. However, Belarusian authorities refused to issue the required permits to Manolium-Engineering by referring to the fact that Manolium-Engineering was not a formal party to the Investment Contract.

113. Notwithstanding that in December 2004 the MCEC's chairman instructed its deputy⁹¹ to execute the relevant agreement, it had not occurred until 2006, when the Amended Investment Contract was signed.⁹²

114. A failure to sign additional agreements to the Investment Contract (to declare Manolium-Engineering a party thereto) and to make the relevant land plots available delayed the operations of Manolium-Engineering to design and construct the Depot and Motor Transport Base by almost 3 years.⁹³

4.3.2. Failure To Issue A Permit To Design And Construct The Land Plot For The Depot

115. As indicated above, pursuant to the Investment Contract the Claimant was to put the Depot into operations no later than in 2006⁹⁴. MCEC in its turn was to make such land plots available to the Claimant for construction of the Communal Facilities upon performance of survey works and approval the architectural object.⁹⁵

116. On 15 July 2004, MCEC issued a decision that the land plot required to construct the Depot would be made available to Minsktrans only after the stages for Depot construction were developed.⁹⁶

117. However, Belarusian authorities refused to issue a permit to construct the Depot to Manolium-Engineering, since Manolium-Engineering was not a party to the

⁹¹ **Exhibit C-40.** Decision of MCEC dated 2 December 2004.

⁹² **Exhibit C-51.** Order of MCEC dated 29 September 2006.

⁹³ **Exhibit C-52.** Letter from Manolium-Engineering to MCEC dated 19 May 2005.

⁹⁴ **Exhibit C-34.** Investment Contract, Clause 5.1

⁹⁵ **Exhibit C-34.** Investment Contract, Clause 7.2.

⁹⁶ **Exhibit C-53.** Decision of MCEC dated 15 July 2004.

Investment Contract – in their opinion, the approval of design and further construction could have been obtained only by the Tender winner in 2003.⁹⁷

118. As a result of a failure to perform the obligations assumed by MCEC and Minsktrans for issuing permits for the design works and for making land plots available, the Claimant did not obtain either of them. Consequently, the Claimant could not perform the construction of the Depot within the period specified in the Investment Contract ("*no later than on 2006*") even theoretically.

4.3.3. Failure To Make The Land Plot Available For Constructing The Motor Transport Base

119. Pursuant to the Investment Contract, the land plot for constructing the Motor Transport Base was to be made available by MCEC by 30 March 2004⁹⁸, but the Claimant did not obtain it either at that time or in the following years.

120. The reason for that was that the said land plot was occupied by "*Combine for Reinforced Concrete Products 214*".

121. The mentioned enterprise was controlled by the Ministry of Defense of Belarus, and MCEC was – neither at the time of concluding the Investment Contract, nor later – authorized to dispose of such land plot.⁹⁹

122. Lengthy negotiations of MCEC and Minsktrans with the Ministry of Defense of the Republic of Belarus led nowhere.¹⁰⁰ For this reason, the Motor Transport Base was never constructed.

⁹⁷ **Exhibit C-54.** Letter from Manolium-Engineering to MCEC dated 19 January 2005.

⁹⁸ **Exhibit C-48.** Additional Agreement No. 2, Clause 2.2.

⁹⁹ **Exhibit C-55.** Letter from the Committee for Economy to MCEC dated 28 July 2004.

¹⁰⁰ **Exhibit C-56.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 3 December 2003. **Exhibit C-57.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 17 December 2003. **Exhibit C-58.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 4 February 2004. **Exhibit C-59.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 17 March 2004. **Exhibit C-60.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 7 April 2004. **Exhibit C-61.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 24 June 2004.

4.4. Execution Of The Amended Investment Contract

123. A failure of the Republic of Belarus to perform its obligations rendered the implementation of the project under the Investment Contract within the initially specified timelines impossible. To this effect, on 21 February 2005, Manolium-Engineering notified MCEC of suspending the works.¹⁰¹
124. On 24 March 2006, the Claimant asked the assistant to President of the Republic of Belarus for assistance in performing the Investment Contract.¹⁰²
125. That petition took effect, and on 26 May 2006, MCEC finally approached the President of the Republic of Belarus to approve the following amendments to the Investment Contract:¹⁰³
- a. to transfer a portion of Claimant's rights and obligations to Manolium-Engineering (*i.e.* change the party to the Contract); and
 - b. to replace the Claimant's obligation to construct the Communal Facilities with the obligation to construct the Depot and the pull substation to supply electricity to the Depot and the trolley line amounting to at least USD 15,000,000.
126. On 11 July 2006, the President of the Republic of Belarus approved those amendments to the Investment Contract¹⁰⁴.
127. Based on the decision of the President of the Republic of Belarus, representatives of MCEC and other of its controlled public bodies prepared their own draft additional agreement to be accorded with the Claimant¹⁰⁵.
128. After a lengthy stage of obtaining internal approvals within MCEC and Minsktrans, on 8 February 2007, Additional Agreement No. 4 to the Investment Contract¹⁰⁶, by which MCEC, Minsktrans and MCEC reached an agreement to restate the Investment

¹⁰¹ **Exhibit C-62.** Letter from Manolium-Engineering to MCEC dated 21 February 2005

¹⁰² **Exhibit C-63.** Letter from the Claimant to the Assistant to President of the Republic of Belarus dated 24 March 2006.

¹⁰³ **Exhibit C-35.** Letter from MCEC to the President of the Republic of Belarus dated 26 May 2006.

¹⁰⁴ **Exhibit C-64.** Resolution of the President of the Republic of Belarus dated 11 July 2006.

¹⁰⁵ **Exhibit C-65.** Letter from the Committee for Economy dated 17 January 2007.

¹⁰⁶ **Exhibit C-66.** Additional Agreement No. 4.

Contract (the "**Additional Agreement No. 4**" or "**Amended Investment Contract**") was signed.

(i) *Right to implement the Investment Object*

129. Pursuant to the Amended Investment Contract, the Claimant and Manolium-Engineering were to design, construct and transfer the following facilities into the communal ownership by December 2008¹⁰⁷ (the "**New Communal Facilities**"):

- i. design and construction of the Depot;
- ii. construction of the pull substation to supply electricity to the Depot (the "**Pull Station**"); and
- iii. design and construction of the section of Gorodetskaya Street from Gintovta Street up to the entry into the Depot with utilities and the trolley line (the "**Road**").

130. Manolium-Engineering was to transfer, and MCEC was to accept, the New Communal Facilities into the communal ownership of Minsk within one month of signing the acceptance acts for operation or from the date of their state registration.¹⁰⁸

131. Therefore, the Claimant's obligations in respect of the Motor Transport Base and Building under Reconstruction set forth by the Investment Contract were replaced with the obligations to construct the Pull Station and the Road.

132. In performing the obligations in respect of the New Communal Facilities, the Claimant was entitled to design the land plot for the Investment Object.¹⁰⁹

133. After performing the Claimant's obligations and upon the results of design works at the land plot for the Investment Object, MCEC was to make available to the Claimant

¹⁰⁷ **Exhibit C-66.** Additional Agreement No. 4, Clauses 2.1 – 2.3, Clause 6.1.

¹⁰⁸ **Exhibit C-66.** Additional Agreement No. 4, Clauses 2, 8.11.

¹⁰⁹ **Exhibit C-66.** Additional Agreement No. 4, Clause 5.

a land plot for construction of the Investment Object that the Claimant was to put into operation no later than in December 2012.¹¹⁰

134. In the event of:

- a. untimely performance by MCEC and Minsktrans of their obligations, and
- b. acts (omission) of the competent communal entities of Minsk that prevented the Claimant or Manolium-Engineering from performing their obligations,

the deadlines for completing the design, construction and putting into operation of the New Communal Facilities were to be proportionately extended by a reasonable period necessary for proper performance of the terms and conditions of the Amended Investment Contract¹¹¹.

135. Pursuant to the Amended Investment Contract, Manolium-Engineering was to purchase only the building at Masherova Street, 3 on the territory of the land plot for the Investment Object (the "**Building at Masherova**") held on the balance sheet of Minsktrans.

136. It is noteworthy that Manolium-Engineering was not to purchase any property on the land plot for the Investment Object, other than the Building at Masherova, as the Claimant's obligation to purchase the Buildings to be Demolished laid down in the Investment Contract was removed.¹¹²

137. Along with that, the Amended Investment Contract contained the obligation of Manolium-Engineering to cover the losses of land users for the Buildings to be Demolished on the land plot for the Investment Object and pay a compensation for the Buildings to be Demolished in communal ownership based on acts issued by the valuation committee.¹¹³

¹¹⁰ **Exhibit C-66.** Additional Agreement No. 4, Clauses 4, 6.2.

¹¹¹ **Exhibit C-66.** Additional Agreement No. 4, Clause 6.3.

¹¹² **Exhibit C-34.** Investment Contract, Clause 6.15.

¹¹³ **Exhibit C-66.** Additional Agreement No. 4, Clauses 8.4, 8.17 -8.18.

138. The amount of the said obligation was also included into the Claimant's investments into the New Communal Facilities – **USD 15,000,000**.¹¹⁴

(ii) Amount of Investments Under the Amended Investment Contract

139. The amount of the Claimant's investments into the New Communal Facilities remained unchanged – not more than **USD 15,000,000**.¹¹⁵

140. However, MCEC initiated amendments to the Amended Investment Contract to include the Claimant's obligation that if the specified amount of investments were exceeded, the Claimant was to cover all additional expenses at its own cost, and if the amount of the actual expenses were less than the specified amount – remit the difference into the budget of Minsk.¹¹⁶

141. The above amount of investments included the following:¹¹⁷

- i. All Claimant's expenses on the New Communal Facilities;
- ii. Expenses to purchase the Building at Masherova;
- iii. Costs stipulated by the laws of the Republic of Belarus that the Claimant shall incur in connection with the provision of the land plot for constructing and designing the New Communal Facilities, including indemnification of losses of land users (holders and owners of land plots) caused by the withdrawal of their land plots and demolition of buildings in the zone of constructing the New Communal Facilities; and
- iv. Costs on indemnifying losses to the public bodies of the Republic of Belarus for the Buildings to be Demolished on the land plot intended for the Investment Object¹¹⁸.

¹¹⁴ **Exhibit C-66**. Additional Agreement No. 4, Clauses 8.18, 11.

¹¹⁵ **Exhibit C-66**. Additional Agreement No. 4, Clause 11.

¹¹⁶ **Exhibit C-66**. Additional Agreement No. 4, Clauses 7.10, 8.19.

¹¹⁷ **Exhibit C-66**. Additional Agreement No. 4, Clause 11.

¹¹⁸ **Exhibit C-66**. Additional Agreement No. 4, Clause 8.17.

142. The amount of the Claimant's investments into the Investment Object has not changed as compared to the Investment Contract and was **at least USD 81,698,000**.¹¹⁹

143. Accordingly, the total amount of the Claimant's investments under the Investment Contract was to be **at least USD 97,698,000**.

(iii) MCEC's Obligations Under The Amended Investment Contract

144. In accordance with the Amended Investment Contract, MCEC assumed a number of obligations, including the following obligations:¹²⁰

- a. to provide the Claimant with a permit to design and construct the New Communal Facilities and Investment Object in accordance with the established procedure;
- b. to render assistance to the Claimant in designing and constructing the New Communal Facilities and Investment Object;
- c. to issue a decision to enter into the sale and purchase agreement in respect of the Building at Masherova by and between Minsktrans and Manolium-Engineering within 7 days after signature and approval of the acceptance act for operation or state registration of the New Communal Facilities;
- d. to ensure the acceptance of the New Communal Facilities into the communal ownership within one month of execution and approval of the acceptance acts for operation or from the date of state registration of their construction;
- e. to consider "a possibility to release" Manolium-Engineering from indemnification of MCEC's expenses on utilities, transportation and social infrastructure items, as well as other mandatory payments of Manolium-Engineering in connection with the design and construction of the New Communal Facilities; and

¹¹⁹ **Exhibit C-66.** Additional Agreement No. 4, Clause 12.

¹²⁰ **Exhibit C-66.** Additional Agreement No. 4, Clause 9.

- f. to provide the Claimant with the lease right in respect of the land plot for the Investment Object after the Claimant performs its obligations for transferring the New Communal Facilities into the communal ownership.

(iv) *Minsktrans' Obligations Under The Amended Investment Contract*

145. In accordance with the Amended Investment Contract Minsktrans assumed a number of obligations, including the following: ¹²¹

- a. to approve Construction Documents for the New Communal Facilities; and
- b. to enter into the sale and purchase agreement with Manolium-Engineering in respect of the Building at Masherova within 7 days of MCEC's decision to sell the Building at Masherova.

(v) *Procedures for Amendments and Termination of the Amended Investment Contract*

146. The Amended Investment Contract might have been terminated in the following manner: ¹²²

- a. **At the initiative of either Party** under the laws of the Republic of Belarus;
- b. **At the initiative of MCEC in a judicial procedure, if:**
 - i. the construction of the New Communal Facilities was not performed within the timing specified in the Amended Investment Contract through the Claimant's fault subject to:
 - 1) untimely performance by MCEC and Minsktrans of their obligations;
 - and

¹²¹ **Exhibit C-66.** Additional Agreement No. 4, Clause 10.

¹²² **Exhibit C-66.** Additional Agreement No. 4, Clause 16.

2) acts (omission) of the competent communal entities of Minsk that prevented proper implementation of the investment project,

for which reason the timing of completing the design, construction and putting the New Communal Facilities into operation was to be proportionately extended by a reasonable period necessary for proper performance of the terms and conditions of the Amended Investment Contract; and

ii. Manolium-Engineering failed to proceed with constructing and assembly operations within 6 months of obtaining a construction permit in respect of the New Communal Facilities and Investment Object.

c. **At the initiative of the Claimant in a judicial procedure** in the event of untimely performance of obligations by MCEC, Minsktrans and other competent communal entities of Minsk preventing proper performance of the Amended Investment Contract. Provided that, the **Claimant was to be indemnified against the expenses actually incurred under the Amended Investment Contract.**

(vi) *Financial Liability of the Claimant and Manolium-Engineering*

147. If the Claimant or Manolium-Engineering failed to perform financial obligations through their fault in respect of designing and constructing the New Communal Facilities and Investment Object, the Claimant would be deprived of the right to perform the Amended Investment Contract.¹²³

148. If the suspension of construction and conservation of the New Communal Facilities occurred:

a. through the fault of the Claimant or Manolium-Engineering, the Claimant was to pay to MCEC a fine for incompleting construction in the amount of 0.1% of the estimate value of constructing such facilities;¹²⁴

¹²³ **Exhibit C-66.** Additional Agreement No. 4, Clause 17.

¹²⁴ **Exhibit C-66.** Additional Agreement No. 4, Clause 18.

- b. through the fault of MCEC, Minsktrans or as a result of acts (omission) of other competent state authorities and legal entities subordinated to MCEC, a fine in the amount of 0.1% of the estimate value of constructing such facilities would be paid to the Claimant.¹²⁵

4.5. Design And Construction Of The New Communal Facilities And Investment Object After Conclusion Of The Amended Investment Contract

4.5.1. Design And Construction Of The "Depot" New Communal Facility

149. Pursuant to the provisions of the Amended Investment Contract, Manolium-Engineering was to put the Depot into operation no later than in December 2008¹²⁶, *i.e.* the Claimant was provided with one year and 10 months for construction and transfer of the Depot into the communal ownership.
150. In accordance with the Amended Investment Contract, Manolium-Engineering was to transfer, and MCEC was to accept, the Depot into the communal ownership within one month of putting the Depot into operation or of state registration of construction of the relevant real estate item.¹²⁷
151. On 20 March 2007, Manolium-Engineering prepared Construction Documents of the Depot.¹²⁸
152. But only two months later, on 24 May 2007, MCEC made available to the Claimant for temporary use the land plots with the total area of 8.1407 ha for constructing the Depot in Uruchye-6 in Minsk with the construction period until 1 August 2009¹²⁹ (the "**MCEC Decision on Land Plot Provision for Depot Construction**").

¹²⁵ **Exhibit C-66.** Additional Agreement No. 4, Clause 19.

¹²⁶ **Exhibit C-66.** Additional Agreement No. 4, Clause 6.1.

¹²⁷ **Exhibit C-66.** Additional Agreement No. 4, Clauses 2, 8.8.

¹²⁸ **Exhibit C-67.** Order of Manolium-Engineering No. 1-C dated 20 March 2007.

¹²⁹ **Exhibit C-68.** Decision of MCEC dated 24 May 2007.

153. In June 2007, the rights of temporary use of the land plots for the Depot construction which were granted to Manolium-Engineering were registered.¹³⁰
154. On 15 October 2007, Manolium-Engineering obtained a construction permit¹³¹ valid until 30 January 2008. Taking into account the fact that pursuant to the Amended Investment Contract the Depot should have been constructed until December 2008, such short term of the construction permit was in no way substantiated.
155. As a result, during the construction the Claimant was compelled to repeatedly contact the Inspectorate of the Department of Control and Supervision over Construction for Minsk (the "Gosstroy") requesting to issue new permits that Gosstroy each time granted for various short periods.
156. In addition, during the construction of the Depot the Claimant experienced the following issues:
- a. instead of assisting in performing the works, MCEC instructed Belarusian construction companies to suspend the construction of the Depot in order to perform the works of construction of "*Minsk-Arena*" (for the World Championship of Hockey) and other scheduled Minsk facilities as a matter of urgency;
 - b. the same instruction was given to suppliers of materials;
 - c. the equipment designed for the Depot could not be supplied, as by that time it was not already manufactured in the Republic of Belarus.
157. Due to all these factors, in September 2008 Manolium-Engineering approached Manolium-Engineering to extend the deadline for putting the Depot into operation from December 2008 until June-July 2009.¹³²

¹³⁰ **Exhibit C-69.** Certificate of registration of the right of temporary use granted to Manolium-Engineering in respect of the land plots for construction of the Depot in Uruchye-6 dated 29 June 2007.

¹³¹ **Exhibit C-70.** Construction permit issued by Gosstroy for constructing the Depot dated 15 October 2007.

¹³² **Exhibit C-71.** Letter from Manolium-Engineering to MCEC dated 11 September 2008.

158. On 16 December 2008 the parties concluded an Additional Agreement No. 5 to the Amended Investment Contract (the "**Additional Agreement No. 5**"), thus extending the deadline of putting the New Communal Facilities into operation from December 2008 until July 2009.¹³³
159. On 3 September 2009 MCEC, without any substantiation, reduced the total area of the land plots for construction of the Depot from 8.1407 ha down to 8.0469 ha and extended the period of the land plot's temporary use until 1 August 2010.¹³⁴
160. However, the decision taken by MCEC to dismiss the general contractor and other contractors that performed the construction of the New Communal Facilities and to relocate them until September-October 2010 to perform the top-priority operations for public services' facilities in Minsk rendered the completion of the Claimant's project until 1 August 2010¹³⁵ almost impossible.
161. As a result, on 6 September 2010, Manolium-Engineering contacted MCEC to extend the period of land plots' temporary use for construction of the New Communal Facilities until 1 July 2011.¹³⁶
162. On 16 September 2010, MCEC issued a decision to extend the timing of the land plots' temporary use for Manolium-Engineering with the total area of 8.0469 ha to complete the construction of the Depot until 1 July 2011.¹³⁷
163. On 20 April 2011, MCEC, Minsktrans, the Claimant and Manolium-Engineering signed Additional Agreement No. 6 to the Investment Contract (the "**Additional Agreement No. 6**") that established the following:¹³⁸
- a. the new deadline of putting the New Communal Facilities into operation was changed to 1 July 2011 instead of 1 July 2009; and

¹³³ **Exhibit C-72.** Additional Agreement No. 5.

¹³⁴ **Exhibit C-73.** Decision of MCEC dated 3 September 2009.

¹³⁵ In accordance with the decision of MCEC dated 3 September 2009 (**Exhibit C-73**).

¹³⁶ **Exhibit C-74.** Letter from Manolium-Engineering to MCEC dated 6 September 2010.

¹³⁷ **Exhibit C-75.** Decision of MCEC dated 16 September 2010.

¹³⁸ **Exhibit C-76.** Additional Agreement No. 6, Clauses 1, 2.

- b. liability of the Claimant and/or Manolium-Engineering for a failure to comply with the timing of performance of the works per each Facility in the form of the fine amounting to 0.1% of the total estimate value per each day of such non-compliance per each Facility.

164. Due to delays caused by the untimely provision to Manolium-Engineering of the land plot for construction of the Depot and of the construction permit, Manolium-Engineering was unable to hand over the complex of Depot buildings in full until 1 July 2011.

165. In light of the fact that Manolium-Engineering almost completed the construction of the administrative and accommodation block of the Depot, on 29 June 2011, Manolium-Engineering requested MCEC to put it into operation by the specified date.¹³⁹

166. However, Minsktrans notified Manolium-Engineering that it considers it *"inappropriate... to isolate the administrative and accommodation block into a separate pull complex and put it into operation, as its purpose is to ensure the operation of the entire trolleybus fleet"*¹⁴⁰.

167. In October 2011, Manolium-Engineering completed the construction of the administrative and accommodation block and the checkpoint (the "**Checkpoint**") with treatment facilities and repeatedly attempted to put those Facilities into operation.¹⁴¹

168. As requested by Minsktrans, on 14 November 2011, Manolium-Engineering and Minsktrans entered into the agreement for gratuitous use of the administrative and accommodation block and Checkpoint building with the central heat unit of the Depot¹⁴² (the "**Depot Facilities Gratuitous Use Agreement**"), pursuant to which

¹³⁹ **Exhibit C-77.** Letter from Manolium-Engineering to MCEC dated 29 June 2011.

¹⁴⁰ **Exhibit C-78.** Letter from Minsktrans to Manolium-Engineering dated 22 July 2011.

¹⁴¹ **Exhibit C-79.** Letter from Manolium-Engineering to MCEC dated 7 September 2011. **Exhibit C-80.** Letter from Manolium-Engineering to MCEC dated 12 October 2011. **Exhibit C-81.** Letter from Minsktrans to Manolium-Engineering dated 27 October 2011.

¹⁴² **Exhibit C-82.** Depot Facilities Gratuitous Use Agreement.

Minsktrans assumed the obligations to maintain and operate those facilities until their transfer into the communal ownership of Minsk¹⁴³.

169. Therefore, two of the three buildings of the Depot complex were transferred to Minsktrans for gratuitous use. Accordingly, notwithstanding their completion, neither MCEC, not Minsktrans did not accept them into the communal ownership.¹⁴⁴

170. At the same time, for the period of more than 3 years (until 30 December 2014) Minsktrans operated two of the three completed construction facilities within the Depot.

171. Due to the fact that Minsktrans intended to supplement the Depot Facilities Gratuitous Use Agreement with the duty of Manolium-Engineering to cover Minsktrans' expenses on maintaining and operating those facilities, and Manolium-Engineering disagreed with that, the parties terminated the said agreement by mutual consent on 30 December 2014.¹⁴⁵

4.5.2. Design And Construction Of The "Road" New Communal Facility

172. Pursuant to the provisions of the Amended Investment Contract, Manolium-Engineering was to put the Road into operation no later than in December 2008.¹⁴⁶

173. In accordance with the Amended Investment Contract, Manolium-Engineering was to transfer, and MCEC was to accept the Road into the communal ownership within one month of the date of accepting the Facility into operation or state registration of construction of the relevant real estate item.¹⁴⁷

174. On 20 March 2008, Manolium-Engineering prepared Construction Documents of the Road.¹⁴⁸

¹⁴³ **Exhibit C-82.** Depot Facilities Gratuitous Use Agreement, Clause 7.

¹⁴⁴ **Exhibit C-83.** Letter from the Claimant to MCEC dated 19 March 2013.

¹⁴⁵ **Exhibit C-84.** Agreement on terminating the Depot Facilities Gratuitous Use Agreement dated 30 December 2014.

¹⁴⁶ **Exhibit C-66.** Additional Agreement No. 4, Clause 6.1.

¹⁴⁷ **Exhibit C-66.** Additional Agreement No. 4, Clauses 2, 8.8, 9.3.9.

¹⁴⁸ **Exhibit C-85.** Order of Manolium-Engineering No. 1-C dated 20 March 2008.

175. Only 2 months later, on 2 May 2006, MCEC made available to Manolium-Engineering for temporary use the land plots with the total area of 1.5769 ha for the construction period until 1 August 2009¹⁴⁹ (the "**MCEC Decision on Land Plot Provision for Road Construction**").
176. On 29 May 2008, Gosstroy issued to Manolium-Engineering a construction permit in respect of the Road valid until 31 October 2008.¹⁵⁰
177. The limitation of the construction period imposed by Gosstroy constituted a breach of the provisions of the Amended Investment Contract, because the Agreement provided for completing the construction of the Road and putting it into operation no later than in December 2008.
178. Only in August 2008, *i.e.* 5 months after Construction Documents' of the Road preparation, the right of temporary use of the land plots for constructing the Road by Manolium-Engineering was registered, while it was impossible to proceed with construction without this right.¹⁵¹
179. In the course of the construction, the Claimant faced the same issues, as in constructing the Depot, and in September 2008 Manolium-Engineering approached Manolium-Engineering to extend the deadline for commissioning the Road from December 2008 until June-July 2009.¹⁵²
180. Pursuant to Additional Agreement No. 5 dated 16 December 2008, the timing for putting the New Communal Facilities into operation was changed from "*no later than in December 2008*" to "*no later than in July 2009*".¹⁵³
181. Subsequently, MCEC extended the period of temporary use of the land plots with the total area of 1.5769 ha by Manolium-Engineering until 1 July 2009 to complete the Road construction.¹⁵⁴

¹⁴⁹ **Exhibit C-86.** Decision of MCEC dated 2 May 2008.

¹⁵⁰ **Exhibit C-87.** Construction permit issued by Gosstroy dated 29 May 2008.

¹⁵¹ **Exhibit C-88.** Certificate of registration of the right of temporary use granted to Manolium-Engineering in respect of the land plots for construction the Depot in Uruchye-6 dated 20 August 2008.

¹⁵² **Exhibit C-71.** Letter from Manolium-Engineering to MCEC dated 11 September 2008.

¹⁵³ **Exhibit C-72.** Additional Agreement No. 5, Clause 1.

182. On 3 September 2009, MCEC extended the period of using the land plot for constructing the Road until 1 August 2010¹⁵⁵, which basically extended the term of construction.
183. On 6 September 2010, Manolium-Engineering contacted MCEC to extend the period of temporary use of the land plots for construction of the Road until 1 July 2011.¹⁵⁶
184. In September 2010, MCEC issued a decision to extend the period for temporary use of the land plots by Manolium-Engineering to complete the construction of the Road until 1 July 2011.¹⁵⁷
185. However, this decision of MCEC was documented as an addendum to the Amended Investment Contract only on 20 April 2011 by the conclusion of Additional Agreement No. 6 by and between MCEC, Minsktrans, the Claimant and Manolium-Engineering.¹⁵⁸
186. On 1 July 2011, the Claimant completed the works on the Road and made a decision to create the acceptance committee for putting the Road into operation.¹⁵⁹
187. Therefore, the Claimant, even taking into account the delays of Belarusian authorities in providing the land plot and the construction permit, complied with its obligations for constructing the Road in accordance with Additional Agreement No. 6 to the Amended Investment Contract.
188. In accordance with the Amended Investment Contract, Manolium-Engineering assumed the obligation to transfer, and MCEC undertook to accept the New Communal Facilities into the communal ownership within one month of the date of

¹⁵⁴ **Exhibit C-89.** Decision of MCEC dated 22 January 2009.

¹⁵⁵ **Exhibit C-73.** Decision of MCEC dated 3 September 2009.

¹⁵⁶ **Exhibit C-74.** Letter from Manolium-Engineering to MCEC dated 6 September 2010.

¹⁵⁷ **Exhibit C-75.** Decision of MCEC dated 16 September 2010. **Exhibit C-90.** Certificate of state registration of the State Committee for Property No. 500/708-4289 dated 11 October 2010.

¹⁵⁸ **Exhibit C-76.** Additional Agreement No. 6.

¹⁵⁹ **Exhibit C-91.** Order of Manolium-Engineering No. 1-C dated 1 July 2011.

putting those Facilities into operation or state registration of construction of the relevant real estate items.¹⁶⁰

189. However, only on 13 December 2011, Minsktrans expressed its interest in accepting the Road into the communal ownership by requiring the Claimant to provide a calculation of expenses incurred in connection with construction of the Road to decide on transfer of the Road Facility into the communal ownership.¹⁶¹

190. But even after the provision of the requested information, Minsktrans failed to accept the Road into the communal ownership.¹⁶²

4.5.3. Design And Construction Of The "Pull Station" New Communal Facility

191. Pursuant to the provisions of the Amended Investment Contract, Manolium-Engineering was to put the Pull Station into operation no later than in December 2008.¹⁶³

192. In accordance with the Amended Investment Contract, Manolium-Engineering was to transfer, and MCEC was to accept the Pull Station into the communal ownership within one month of putting the Pull Station into operation or state registration of construction of the relevant real estate item.¹⁶⁴

193. On 10 April 2008, Manolium-Engineering prepared Construction Documents of the Pull Station.¹⁶⁵

194. Only on 30 May 2008, *i.e.* 15 months after signing Additional Agreement No. 4, MCEC made available to Manolium-Engineering the land plots with the total area of 2.10 ha for temporary use for the period of constructing the Pull Station.¹⁶⁶

¹⁶⁰ **Exhibit C-66.** Additional Agreement No. 4, Clauses 2, 8.8, 9.3.9.

¹⁶¹ **Exhibit C-92.** Letter from Minsktrans to Manolium-Engineering dated 13 December 2011.

¹⁶² **Exhibit C-83.** Letter from the Claimant to MCEC dated 19 March 2013. **Exhibit C-93.** Letter from the Claimant to MCEC dated 27 May 2013. **Exhibit C-94.** Letter from the Claimant to MCEC dated 27 June 2013. **Exhibit C-95.** Letter from the Claimant to MCEC dated 18 July 2014.

¹⁶³ **Exhibit C-66.** Additional Agreement No. 4, Clause 6.1.

¹⁶⁴ **Exhibit C-66.** Additional Agreement No. 4, Clauses 2, 8.8, 9.3.9.

¹⁶⁵ **Exhibit C-96.** Order of Manolium-Engineering No. 3-C dated 10 April 2008.

¹⁶⁶ **Exhibit C-97.** Decision of MCEC dated 30 May 2008.

195. Only in August 2008, *i.e.* 4 months after approval of Construction Documents and 4 months prior to the expiration of the period stipulated by the Amended Investment Contract, Gosstroy issued a construction permit to Manolium-Engineering¹⁶⁷, without which Manolium-Engineering could not start any construction operations.
196. Therefore, the Claimant was actually deprived of the opportunity to perform its obligations of constructing the Pull Station for 8 months.
197. By Additional Agreement No. 5 dated 16 December 2008 the period of putting the New Communal Facilities into operation was extended from December 2008 until July 2009.¹⁶⁸
198. On 3 September 2009, MCEC extended the period for use of the land plot for construction of the Road until 1 August 2010¹⁶⁹, which basically extended the term of construction.
199. Due to the fact that the Claimant completed the construction of the Pull Station in June 2010, Manolium-Engineering transferred the Pull Station to Minsktrans for gratuitous use on 6 July 2010 (the "**Pull Station Gratuitous Use Agreement**").¹⁷⁰
200. In accordance with the Pull Station Gratuitous Use Agreement, Minsktrans accepted the Pull Station for temporary gratuitous use and assumed the obligation to maintain and operate the facility until its transfer into the communal ownership of Minsk.¹⁷¹
201. On 30 July 2010, the commission composed of the chairmen of MCEC, Minsktrans and the Claimant accepted the Pull Station for operation.¹⁷²
202. The commission did not bring any objections in accepting the Pull Station.
203. On 8 October 2010 the Pull Station was registered as a real estate item.¹⁷³

¹⁶⁷ **Exhibit C-98.** Construction permit issued by Gosstroy for construction of the Pull Station dated 19 August 2008.

¹⁶⁸ **Exhibit C-72.** Additional Agreement No. 5.

¹⁶⁹ **Exhibit C-73.** Decision of MCEC dated 3 September 2009.

¹⁷⁰ **Exhibit C-99.** Pull Station Gratuitous Use Agreement.

¹⁷¹ **Exhibit C-99.** Pull Station Gratuitous Use Agreement., Clause 1.1, 6.1.

¹⁷² **Exhibit C-100.** Acceptance Act in respect of the Pull Station dated 30 July 2010.

204. Due to the fact that the Claimant performed its obligations under the Amended Investment Contract for putting the Pull Station into operation and registering it as a real estate item¹⁷⁴, MCEC and Minsktrans were obliged to accept the Facility into the communal ownership of Minsk within one month of putting the Pull Station into operation, i.e. from 30 July 2010.¹⁷⁵
205. In light of this, in October 2010 Manolium-Engineering asked MCEC to accept the Pull Station into the communal ownership.¹⁷⁶
206. However, Minsktrans refused to accept the Pull Station into the communal ownership by stating that the issue should be dealt with upon the expiry of one year of its operation, i.e. in July 2011¹⁷⁷, although that requirement was not based on the contract.
207. It is noteworthy that neither MCEC, nor Minsktrans brought any claims in accepting the Pull Station¹⁷⁸, but on 22 July 2011, Minsktrans refused to put the Pull Station on its accounts due to "*defects preventing electric power supply to electric transport*".¹⁷⁹
208. In September 2011, Minsktrans repeatedly refused to accept the Pull Station, that time by reason of the need to consider the transfer of the Facility into the communal ownership "*from the moment of putting the trolleybus fleet into operation*", i.e. the "*Depot*" New Communal Facility, and that absolutely contradicted the provisions of the Amended Investment Contract.¹⁸⁰
209. Due to the fact that MCEC left numerous requests of Manolium-Engineering for putting the Pull Station into operation without any answer¹⁸¹ or refused without any substantiation, on 21 October 2011, Manolium-Engineering notified the Belarusian SCC of MCEC's and Minsktrans' failures to perform their obligations to accept the

¹⁷³ **Exhibit C-101.** Registration of the Pull Station as a permanent structure dated 1 October 2010.

¹⁷⁴ **Exhibit C-66.** Additional Agreement No. 4, Clause 2, 8.8.

¹⁷⁵ **Exhibit C-66.** Additional Agreement No. 4, Clause 9.3.9.

¹⁷⁶ **Exhibit C-102.** Letter from Manolium-Engineering to MCEC dated 11 October 2010. **Exhibit C-103.** Letter from Manolium-Engineering to MCEC dated 21 October 2010.

¹⁷⁷ **Exhibit C-104.** Letter from Minsktrans to Manolium-Engineering dated 17 November 2010.

¹⁷⁸ **Exhibit C-100.** Acceptance Act in respect of the Pull Station dated 30 July 2010.

¹⁷⁹ **Exhibit C-78.** Letter from Minsktrans to Manolium-Engineering dated 22 July 2011.

¹⁸⁰ **Exhibit C-105.** Letter from Minsktrans to Manolium-Engineering dated 19 September 2011.

¹⁸¹ For example, **Exhibit C-106.** Letter from Manolium-Engineering to MCEC dated 11 August 2011. **Exhibit C-107.** Letter from Manolium-Engineering to MCEC dated 11 October 2011. **Exhibit C-80.** Letter from Manolium-Engineering to MCEC dated 12 October 2011.

Pull Station into the communal ownership that continued for over a year from the date of registration the Pull Station as a real estate item.¹⁸²

210. The Manolium-Engineering's application took effect, and 6 days later, *i.e.* on 27 October 2011, Minsktrans requested Manolium-Engineering to provide its post-completion documentation for the Pull Station to accept the said facility into the communal ownership.¹⁸³

211. However, 4 days later, *i.e.* on 31 October 2011, Minsktrans notified Manolium-Engineering of its readiness to accept the Pull Station subject to the replacement of electric machinery.¹⁸⁴

212. As of now, neither MCEC, nor Minsktrans accepted the Pull Station into the communal ownership.

4.5.4. Design Of The Investment Object

213. In February 2005, Manolium-Engineering developed the following preliminary key technical and economic indexes of the Investment Object:¹⁸⁵

- a. shopping and entertainment center of 6 floors and the total area of 120,000 m², including the underground territory;
- b. five-star hotel complex of 9 floors with 200 rooms and the center for business meetings – 2 halls for 50-100 persons, including the underground territory;
- c. sports and fitness complex with the total area of 6,000 m² and the underground parking for 100 cars;
- d. multifunctional transformable hall for 500-700 persons with the total area of 2,000 m²;

¹⁸² **Exhibit C-108.** Letter from Manolium-Engineering to the State Control Committee of the Republic of Belarus dated 21 October 2011.

¹⁸³ **Exhibit C-81.** Letter from Minsktrans to Manolium-Engineering dated 27 October 2011.

¹⁸⁴ **Exhibit C-109.** Letter from Minsktrans to Manolium-Engineering dated 31 October 2011.

¹⁸⁵ **Exhibit C-110.** Composition and the key technical and economic indexes for the Investment Object dated 25 February 2005.

- e. business center of 6 floors with the total area of 6,000 m²;
- f. fashion house with the total area of 6,000 m²; and
- g. building of Manolium-Engineering's Building at Masherova Street, 3 for the Claimant's representation office, Manolium-Engineering's office and a parking complex for employees.

214. However, the fact that Manolium-Engineering was not a party to the Investment Contract was used by MCEC as the ground to refuse to issue a permit to develop the city-planning project of the Investment Object.¹⁸⁶

215. To that end, in March 2006 Manolium-Engineering suspended the elaboration of the quarter design for the Investment Object.¹⁸⁷

216. On 11 July 2006, the President of the Republic of Belarus approved amendments to the Investment Contract¹⁸⁸ and made a decision to grant to the Claimant lease rights to the land plot for the Investment Object and the ownership title to the Investment Object upon completion of construction.

217. Based on the decision of the President of the Republic of Belarus, representatives of MCEC and other of its controlled public bodies prepared their own draft additional agreement to be coordinated with the Claimant.¹⁸⁹

218. After a lengthy period of obtaining internal approvals within MCEC and Minsktrans, on 8 February 2007, MCEC, Minsktrans and Manolium-Engineering signed the Amended Investment Contract¹⁹⁰, pursuant to which Manolium-Engineering was to put the Investment Object into operation no later than in December 2012.¹⁹¹

¹⁸⁶ **Exhibit C-111.** Letter from the Committee for Architecture to the Committee for Economy dated 9 June 2005.

¹⁸⁷ **Exhibit C-112.** Letter from Minsktrans to Manolium-Engineering dated 16 March 2006.

¹⁸⁸ **Exhibit C-64.** Resolution of the President of the Republic of Belarus dated 11 July 2006.

¹⁸⁹ **Exhibit C-65.** Letter from the Committee for Economy dated 17 January 2007.

¹⁹⁰ **Exhibit C-66.** Additional Agreement No. 4.

¹⁹¹ **Exhibit C-66.** Additional Agreement No. 4, Clause 6.2

219. MCEC was to lease out the land plot for construction of the Investment Object to the Claimant after performing the relevant obligations in respect of the New Communal Facilities.¹⁹²
220. However, prior to transfer of the New Communal Facilities into the communal ownership, the Claimant was entitled to perform the design of the Investment Object.¹⁹³ However, it required obtaining the relevant MCEC permit in accordance with Belarusian laws.
221. In accordance with the Amended Investment Contract, MCEC was to lease out the land plot for constructing the Investment Object to Manolium-Engineering:
- a. upon the results of survey and design works;
 - b. upon the results of coordination and approval of the architectural project; and
 - c. subject to the compliance with the obligations to construct and transfer the New Communal Facilities into the communal ownership of Minsk within the period established by the Amended Investment Contract.¹⁹⁴
222. For the purposes of performance of survey and design works for the Investment Object, MCEC was to make available to the Claimant or to Manolium-Engineering the land plot by the act of land plot selection, in the absence of such act the construction would be rendered impossible.
223. Pursuant to the schedule of design and construction of the Investment Object, Manolium-Engineering intended to construct the Investment Object from the third quarter 2009 until third quarter 2012. The Investment Object should have been put into operation in forth quarter 2012.¹⁹⁵

¹⁹² **Exhibit C-66.** Additional Agreement No. 4, Clause 9.3.8.

¹⁹³ **Exhibit C-66.** Additional Agreement No. 4, Clause 5.

¹⁹⁴ **Exhibit C-66.** Additional Agreement No. 4, Clause 9.2.

¹⁹⁵ **Exhibit C-113.** Schedule of design and construction of the Investment Object dated 28 December 2007.

224. But only in June 2009, after numerous requests of the Claimant¹⁹⁶, MCEC approved the act of selection of the land plot's location for the Investment Object (the "**Investment Object Location Selection Act**"), pursuant to which Manolium-Engineering acquired the right to design the Object, but did not acquire any rights to hold or use such land plot.¹⁹⁷
225. As indicated above, due to a failure by the Republic of Belarus to perform its obligations, the deadlines for construction and transfer of the New Communal Facilities into the communal ownership were extended until 1 July 2011¹⁹⁸, but formally the deadline for putting the Investment Object into operation (no later than in December 2012) was not amended.
226. Due to the fact that the initial construction period for the Investment Object suggested that the works were to be conducted for 3 years, it is quite obvious that within one year and 5 months (from 1 July 2011 until December 2012) the Claimant had no objective opportunity to construct the Investment Object.
227. In addition, the wrongful acts on the part of MCEC and Minsktrans by their consistent refusal to accept the New Communal Facilities after performance of the Claimant's obligations rendered the implementation of the Investment Object impossible in principle.
228. Only more than a year after providing the Investment Object Location Selection Act, *i.e.* on 17 May 2010, MCEC instructed MCEC to demolish the Buildings to be Demolished.¹⁹⁹
229. MCEC's request was quite strange because Manolium-Engineering had no rights in respect of the land plot, as well as in respect of the buildings and structures thereon and the relevant demolition permit.

¹⁹⁶ **Exhibit C-114.** Letter from Manolium-Engineering to MCEC dated 5 November 2007. **Exhibit C-115.** Letter from Manolium-Engineering to MCEC dated 27 May 2008.

¹⁹⁷ **Exhibit C-116.** Investment Object Location Selection Act dated 25 March 2009.

¹⁹⁸ **Exhibit C-76.** Additional Agreement No. 6.

¹⁹⁹ **Exhibit C-117.** Letter from Manolium-Engineering to MCEC dated 17 May 2010.

230. For this reason, on 9 September 2010, Manolium-Engineering asked to write off the Buildings to be Demolished from the balance of their owners and to transfer the ownership title to such buildings to Manolium-Engineering, and to provide Manolium-Engineering with a demolition permit.²⁰⁰
231. On 18 October 2010, in contradiction with its previous instructions, MCEC refused Manolium-Engineering to have such permit stating that Manolium-Engineering failed to perform its obligations to construct and put the New Communal Facilities into operation and that the effective legislation did not entail the transfer of the ownership title to buildings and structures to the person to whom the land plot was made available for construction.²⁰¹
232. In April 2011, after signing Additional Agreement No. 6 that changed the deadline to put the New Communal Facilities into operation to 1 July 2011, Manolium-Engineering provided , an updated schedule of designing and constructing the Investment Object upon the MCEC's request²⁰² (the "**Investment Object Construction Schedule**").
233. Pursuant to such schedule, Manolium-Engineering was to commence construction in the second quarter of 2011 and put the Investment Object into operation in forth quarter of 2014.²⁰³
234. The Investment Object Construction Schedule entailed investments to be made by the Claimant from 2011 until 2014 in the amount of 1,570 billion non-denominated Belarusian rubles (equivalent of USD 80,000,000²⁰⁴), in particular:²⁰⁵
- a. hotel construction – 160 billion non-denominated Belarusian rubles (equivalent of USD 8,100,000);

²⁰⁰ **Exhibit C-118.** Letter from Manolium-Engineering dated 9 September 2010.

²⁰¹ **Exhibit C-119.** Letter from Manolium-Engineering dated 28 October 2010.

²⁰² **Exhibit C-120.** Schedule of Manolium-Engineering in respect of designing and constructing the Investment Object of April 2011.

²⁰³ **Exhibit C-120.** Schedule of Manolium-Engineering in respect of designing and constructing the Investment Object of April 2011.

²⁰⁴ The USD equivalent is hereinafter calculated at the exchange rate of the National Bank of the Republic of Belarus as at 16 October 2017.

²⁰⁵ **Exhibit C-120.** Schedule of Manolium-Engineering in respect of designing and constructing the Investment Object of April 2011.

- b. construction of the shopping complex with apartments and an underground parking – 520 billion non-denominated Belarusian rubles (equivalent of USD 26,400,000);
- c. construction of the shopping center with an underground parking – 480 billion non-denominated Belarusian rubles (equivalent of USD 24,400,000); and
- d. construction of the Investment Object infrastructure – 410 billion non-denominated Belarusian rubles (equivalent of USD 20,000,000).

235. In April 2011, the cost of constructions works in Minsk increased by approximately 228% as compared to the same parameter in 2006.²⁰⁶

Table 1. Changes to the cost of construction in Minsk from 2006 to 2011

Period	Changes to the cost of construction in Belarusian rubles (%)	Index as of last December	Index as of this December
2007 as compared to 2006	13.80	1,392.048	1,584.191
2008 as compared to 2007	20.79	1584.191	1,913.568
2009 as compared to 2008	2.47	1,913.568	1,960.813
2010 as compared to 2009	18.87	1960.813	2,330.787
2011 as compared to 2010	96.23	2330.787	4,573.784
2011 as compared to 2006	228.57	1,392.048	4,573.784

²⁰⁶ In calculating changes to the cost of construction in Belarusian rubles, indices of changes to the cost of construction and assembly operations in Minsk were made use of, subject to the cost of physical resources (for facilities not exempt from VAT, Construction Documents were developed with the use of resource estimate standards) to the cost in basic prices as of 1 January 2006. Such indices of changes to the cost of construction are approved by orders of the Ministry of Architecture and Construction of the Republic of Belarus.

236. Since the cost of construction in Minsk was constantly increasing, the Claimant, in assessment of its subsequent investments into the Investment Object, was governed by the level of the cost of construction as of April 2011.
237. Thus, the Claimant assessed the total amount of investments into the Investment Object for the period from 2011 until 2014 taking into account the expectations in respect of the subsequent level of the cost of construction and pursuant to the relevant indexes in April 2011.
238. However, on 26 April 2011, the MCEC Committee for Architecture, City-Planning and Land Management (the "**Committee for Architecture**") notified Manolium-Engineering that the construction project of the preparatory period to demolish buildings and structures on the land plot for the Investment Object was removed from consideration of the Committee for Architecture "*in connection with the absence of the initial approvals*"²⁰⁷. Nonetheless, the Committee for Architecture failed to provide any substantiation of such decision.
239. In light of the fact that in 2011-2014 the Claimant's work to perform its obligations under the Amended Investment Contract was actually terminated through the fault of Belarusian public authorities, the Claimant had no objective possibility to make a more detailed calculation of investments into constructing the Investment Object.
240. Therefore, as was demonstrated by subsequent events, the issue of designing and constructing the Investment Object by the Claimant was actually brought to a close, notwithstanding that the Claimant still reserved the right to implement the Investment Object.

²⁰⁷ **Exhibit C-121.** Letter from the Committee for Architecture to Manolium-Engineering dated 26 April 2011.

4.6. Negotiations Between The Claimant And The Republic Of Belarus. Termination Of The Investment Contract

4.6.1. First Round Of Negotiations, Administrative Proceedings In The Court Of The Republic Of Belarus

241. The period for use of the land plots made available by MCEC to the Claimant for construction of the New Communal Facilities expired on 1 July 2011.
242. Notwithstanding numerous requests of Manolium-Engineering²⁰⁸, MCEC as the competent public authority refused to extend it.²⁰⁹
243. In addition, MCEC insisted on continuing the construction of the New Communal Facilities by the Claimant in the absence of the right of temporary use of the relevant land plots²¹⁰, which is prohibited by Belarusian laws²¹¹.
244. On 28 August 2012, Minsktrans initiated evaluation of the Claimant's expenses on works performed in respect of the New Communal Facilities and purchased production equipment in the amount of **USD 13,521,464**²¹².
245. Manolium-Engineering disagreed with Minsktrans's approach and, on 20 September 2012, sent a proposal to MCEC to conduct an independent audit of expenses incurred in respect of the New Communal Facilities.²¹³ But MCEC did not accept the proposal asserting that such audit should be conducted jointly with representatives of Minsktrans.²¹⁴

²⁰⁸ **Exhibit C-122.** Letter from Manolium-Engineering to MCEC dated 24 November 2011.

²⁰⁹ **Exhibit C-123.** Letter from Minsktrans to Manolium-Engineering dated 6 December 2011.

²¹⁰ **Letter from MCEC dated 5 January 2012. Exhibit C-125.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 9 January 2012. **Exhibit C-126.** Letter from MCEC to the Claimant dated 18 June 2012.

²¹¹ **Exhibit C-127.** Letter from Gosstroy to Manolium-Engineering dated 21 April 2012.

²¹² **Exhibit C-128.** Letter from Minsktrans to Manolium-Engineering dated 28 August 2012.

²¹³ **Exhibit C-129.** Letter from Manolium-Engineering to MCEC dated 20 September 2012.

²¹⁴ **Exhibit C-130.** Letter from MCEC to Manolium-Engineering dated 3 October 2012.

246. On 5 November 2012, audit firm OOO Paritet-Standard (the "**Paritet-Standart**") assessed the investments made by Manolium-Engineering in implementing the provisions of the Amended Investment Contract (the "**Paritet-Standart Report**").²¹⁵
247. According to the Paritet-Standart Report, as of 31 December 2012 the amount of investments of Manolium-Engineering in terms of designing and constructing the New Communal Facilities constituted the equivalent of **USD 18,313,814.96**.²¹⁶
248. In December 2012 – January 2013, MCEC and the Claimant take steps to resolve the dispute by executing an additional agreement on termination of the Amended Investment Contract.²¹⁷
249. However, in February 2013, MCEC accused the Claimant of delaying the process of signing the additional agreement on termination the Amended Investment Contract, because the Claimant refused to incorporate MCEC's terms regarding, among others, the exclusion of responsibility of the Republic of Belarus for a failure to comply with its obligations into the draft.²¹⁸
250. In March 2013, the Claimant proposed to MCEC the following alternative options of performance of the Amended Investment Contract (instead of transferring the New Communal Facilities into the communal ownership):²¹⁹
- a. upon decision of MCEC, Minsktrans shall accept the New Communal Facilities within one month and then MCEC shall authorize Manolium-Engineering to subsequently implement the Investment Contract pursuant to the terms and conditions of the Tender within one month; and
 - b. MCEC shall entitle Minsktrans to complete the construction of the Depot at its cost and expense and make available to Manolium-Engineering the land plot for

²¹⁵ **Exhibit C-131.** Paritet-Standart Report.

²¹⁶ **Exhibit C-131.** Paritet-Standart Report, page 2.

²¹⁷ **Exhibit C-132.** Letter from MCEC to the Claimant dated 10 December 2012. **Exhibit C-133.** Letter from Manolium-Engineering to MCEC dated 18 December 2012. **Exhibit C-134.** Letter from MCEC to Manolium-Engineering dated 18 January 2013.

²¹⁸ **Exhibit C-135.** Letter from MCEC to the Claimant dated 4 February 2013.

²¹⁹ **Exhibit C-136.** Letter from the Claimant to MCEC dated 4 March 2013.

building panel houses whose proceeds will be used to compensate Minsktrans's expenses.

251. MCEC refused to consider the Claimant's options, insisted that the Claimant should consent on the draft agreement on termination of the Investment Contract and also asked to transfer the New Communal Facilities into the communal ownership as soon as possible.²²⁰

252. In March 2013, the Claimant attempted to transfer the New Communal Facilities into the communal ownership and return the land plot for the Investment Object.²²¹

253. On 14 March 2013, MCEC invalidated the Investment Object Location Selection Act.²²²

254. Such MCEC's decision contained no substantiation and was issued in violation of the provisions of the Amended Investment Contract.

255. In September 2013, MCEC notified the Claimant of its intention to file a claim requiring to terminate the Amended Investment Contract with the Economic Court of Minsk.²²³

4.6.2. Proceedings With The First Instance Court Of The Republic Of Belarus

256. On 14 October 2013 MCEC and Minsktrans filed a claim with the economic court of Minsk to terminate the Amended Investment Contract due to material violations of the said agreement by the Claimant, since the Claimant failed to transfer the New Communal Facilities into the communal ownership within the specified timing.²²⁴

257. In parallel with legal proceedings, on 18 June 2014, the Claimant asked MCEC to accept the New Communal Facilities into the communal ownership of Minsk and

²²⁰ **Exhibit C-137.** Letter from MCEC to the Claimant dated 11 March 2013.

²²¹ **Exhibit C-83.** Letter from the Claimant to MCEC dated 19 March 2013.

²²² **Exhibit C-138.** Decision of MCEC dated 14 March 2013.

²²³ **Exhibit C-139.** Letter from MCEC to the Claimant dated 19 September 2013.

²²⁴ **Exhibit C-140.** Statement of claim to terminate the Investment Contract.

proposed applying USD 3,000,000 to complete the works on the New Communal Facilities.²²⁵ But that proposal was not considered by MCEC and Minsktrans.

258. At the same time, on 15 August 2014, MCEC made the land plot intended for the Investment Object (whose selection act was repealed by MCEC on 14 March 2013²²⁶) available to one of the largest construction companies of Belarus State Production Association "*Minskstroy*" (the "**Minskstroy**")²²⁷ appointed as a contractor to implement the program of residential construction and a general contractor to build socially important facilities of the city of Minsk.²²⁸

259. Nonetheless, as of now no operations are conducted on the territory of the land plot for the Investment Object and the state of the former territory of Minsktrans continues to deteriorate.²²⁹

260. In September 2014, Judge Grushetsky of the Economic Court of Minsk who individually considered the case engaged Republican Unitary Enterprise Minsk City Agency for State Registration and Land Cadastre (the "**Registration and Cadastre Agency**") as an expert to determine the amount of investments made by Manolium-Engineering into the New Communal Facilities.²³⁰

261. In the absence of any legal grounds, Judge Grushetsky awarded the expenses on conducting a forensic expertise only on Manolium-Engineering in the amount of 455,178,600 Belarusian rubles (equivalent of USD 43,000).

262. To this effect, Manolium-Engineering refused to pay the value of such examination, and on 1 September 2014, Judge Grushetsky issued a decision to consider the case based on materials available.²³¹

²²⁵ **Exhibit C-141.** Letter from Manolium-Engineering to MCEC dated 18 July 2014

²²⁶ **Exhibit C-138.** Decision of MCEC dated 14 March 2013.

²²⁷ **Exhibit C-142.** Decision of MCEC dated 15 August 2014. **Exhibit C-143.** Letter from Minsktrans to Manolium-Engineering dated 19 September 2014.

²²⁸ **Exhibit C-144.** Official website of State Production Association *Minskstroy*, "About . // Available at: http://www.minskstroy.by/ob_ob_edinenii/.

²²⁹ **Exhibit C-36.** Photoreport: an abandoned trolleybus depot in the center of Minsk, 20 August 2014. // Available at: <https://realt.onliner.by/2014/08/20/trollpark>.

²³⁰ **Exhibit C-145.** Ruling of the Economic Court of Minsk on scheduling a forensic expertise and suspending court proceedings dated 30 July 2014.

²³¹ **Exhibit C-146.** Ruling of the Economic Court of Minsk on resuming court proceedings dated 1 September 2014.

263. On 9 September 2014, Judge Grushetsky rendered a decision on termination of the Amended Investment Contract.²³²
264. In addition to numerous mistakes in terms of the content, the decision did not contain the statement of reasons of the analysis the judge conducted and conclusions the judge made, as well as the analysis of acts of the Claimant and Manolium-Engineering jointly with Belarusian laws and the provisions of the Amended Investment Contract.
265. It is noteworthy that approximately 6 months later, the law-enforcement bodies of the Republic of Belarus placed Judge Grushetsky under detention and accused him of accepting bribes, fraudulent conduct and instigation for giving bribes.
266. Subsequently, Yuri Grushetsky spent more than 15 months in a pretrial detention center of the State Security Committee of the Republic of Belarus. On 4 July 2016, he was found guilty, in particular, of accepting bribes, fraudulent conduct on a large scale and instigation for giving bribes and was sentenced to 11 years in a correctional facility of reinforced regimen.²³³

4.6.3. Proceedings With The Court Of Appeal Of The Republic Of Belarus

267. On 9 October 2014, Manolium-Engineering filed an appeal against the judgment of the Economic Court of Minsk on terminating the Amended Investment Contract and petitioned to repeal the said judgment.²³⁴
268. On 29 October 2014, the court of appeal upheld the judgment of the Economic Court of Minsk on terminating the Amended Investment Contract.²³⁵

²³² **Exhibit C-147.** Judgment of the Economic Court of Minsk dated 9 September 2014.

²³³ **Exhibit C-148.** Official website of information and analytical weekly publication BelGazeta, "Watered irrigators". **Exhibit C-180.** Official portal of the system of courts of general jurisdiction of the Republic of Belarus, "The Supreme Court issued a judgment in the criminal case involving Grushetsky, Melnikova, Vintskevich, Khaletskaya, Rikun and Gretskaya". // Available at: http://www.court.gov.by/justice/press_office/ff0a160fbbc6266e.html. **Exhibit C-181.** Official website of Belarusian telegraph agency Novosti Belarusi, "Judges of the Economic Court of Minsk were sentenced to 11 and years in prison". // Available at: <http://www.belta.by/incident/view/sudji-ekonomicheskogo-suda-minska-poluchili-11-i-13-let-tjurmy-200409-2016/>.

²³⁴ **Exhibit C-149.** Appeal of Manolium-Engineering dated 9 October 2014.

²³⁵ **Exhibit C-150.** Ruling of the instance of appeal of the Commercial court of Minsk dated 29 October 2014.

4.6.4. Second Round Of Negotiations, Proceedings In The Court Of Cassation Of The Republic Of Belarus

269. On 29 November 2014, Manolium-Engineering filed a cassation appeal with the Supreme Court of the Republic of Belarus to dismiss the judgments of the first instance court and court of appeal on terminating the Amended Investment Contract.²³⁶

270. On 27 January 2015, the Supreme Court of the Republic of Belarus dismissed the Manolium-Engineering's cassation appeal and upheld the judgments of the lower courts on termination of the Amended Investment Contract.²³⁷

271. In January 2015, MCEC, Minsktrans, the Claimant and Manolium-Engineering resumed negotiations on the estimate of the Claimant's costs, and MCEC objected to the amount of the Claimant's Investments into the New Communal Facilities that was established in the Paritet-Standart Report (3 years later) of USD 18,313,814.96.²³⁸

272. In support of its position stated that Manolium-Engineering conducted an audit without representatives of Minsktrans and required providing an opinion about estimate of the Claimant's costs prepared by a special state valuation firm approved by MCEC.²³⁹

273. In February 2015, the Claimant, Manolium-Engineering, MCEC and Minsktrans were extensively involved in negotiations about estimate of the Claimant's costs on the New Communal Facilities and reached a decision that such estimate should be provided by the Registration and Cadastre Agency (it was a proposal of MCEC).²⁴⁰

²³⁶ **Exhibit C-151.** Cassation appeal of Manolium-Engineering dated 29 November 2014.

²³⁷ **Exhibit C-152.** Decision of the Supreme Court of the Republic of Belarus dated 27 January 2015.

²³⁸ **Exhibit C-131.** Paritet-Standart Report, page 6.

²³⁹ **Exhibit C-130.** Letter from MCEC to Manolium-Engineering dated 3 October 2012.

²⁴⁰ **Exhibit C-153.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 4 February 2015.

274. On 16 June 2015, the Registration and Cadastre Agency completed the preparation of the opinion to determine the Claimant's expenses in respect of the New Communal Facilities (the "**Registration and Cadastre Agency Report**").²⁴¹
275. Based on the analysis of documents confirming the Claimant's Investments and expenses for 2004-2013, the Registration and Cadastre Agency established that the amount of the Claimant's expenses incurred in constructing the New Communal Facilities was equivalent to USD 18,129,933.17.²⁴²
276. Upon obtaining the said opinion, Manolium-Engineering immediately required to compensate incurred expenses to the Claimant in the amount of USD 19,129,933.17, including the Library Payment.²⁴³
277. On 7 August 2015, MCEC did not admit the Registration and Cadastre Agency Report, as the agreement by and between Manolium-Engineering and the said agency did not provide for rendering "*independent valuation*" services.²⁴⁴
278. Thus, according to MCEC, the Registration and Cadastre Agency Report included improper expenses and without taking into account the impossibility of requiring the New Communal Facilities for the urban needs in their current state, for which reason the said opinion did not serve the ground for compensating the losses incurred by the Claimant.
279. On 20 August 2015 Manolium-Engineering emphasized to MCEC the arrangement reached by negotiations held in February 2015²⁴⁵ regarding MCEC's consent to indemnify the Claimant against actually incurred expenses of the New Communal Facilities.

²⁴¹ **Exhibit C-154.** Registration and Cadastre Agency , page 2.

²⁴² **Exhibit C-154.** Registration and Cadastre Agency , page 43.

²⁴³ **Exhibit C-155.** Letter from Manolium-Engineering to MCEC dated 17 June 2015. **Exhibit C-50.** Confirmation of the Library Payment dated 30 December 2003.

²⁴⁴ **Exhibit C-156.** Letter from MCEC to Manolium-Engineering dated 7 August 2015.

²⁴⁵ **Exhibit C-153.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 4 February 2015.

280. In addition, Manolium-Engineering asked MCEC to provide calculations of the actual expenses of the Claimant to be indemnified to the Claimant according to MCEC.²⁴⁶

281. MCEC disagreed with Manolium-Engineering, since during the meeting in February 2015 the Claimant was notified of the possibility of proper consideration of the issue of compensating expenses, provided that the following conditions were met:²⁴⁷

- a. obtaining the results of evaluation by the Registration and Cadastre Agency;
- b. confirmation of the intended purpose of the amounts applied directly to creating the New Communal Facilities; and
- c. relevance of the said Facilities for Minsk.

282. According to MCEC, none of the conditions listed above was met by Manolium-Engineering, for which reason the latter was not entitled to obtain incurred expenses.

4.6.5. Third Round Of Negotiations, CAO Of The Ministry Of Finance Report And The Second Administrative Proceedings In The Court Of The Republic Of Belarus

283. On 3 February 2016, the Ministry of Finance of the Republic of Belarus (the "**Ministry of Finance**") instructed the Controller and Auditor Office of the Ministry of Finance (the "**CAO of Ministry of Finance**") and Republican Unitary Enterprise Republican Scientific and Development Center for Pricing in Construction (the "**RSDC**") to perform a non-scheduled audit of certain issues of financial and business operations of Manolium-Engineering.²⁴⁸

284. The CAO of the Ministry of Finance and RSDC performed an audit of operations of Manolium-Engineering for the period from 5 April 2004 until 25 January 2016.

²⁴⁶ **Exhibit C-157.** Letter from Manolium-Engineering to MCEC dated 20 August 2015.

²⁴⁷ **Exhibit C-158.** Letter from MCEC to Manolium-Engineering dated 4 September 2015.

²⁴⁸ **Exhibit C-159.** Order of the Ministry of Finance dated 3 February 2016.

285. Thus, according to the report of CAO of the Ministry of Finance and RSDC in respect of auditing Manolium-Engineering dated 22 February 2016²⁴⁹ (the "**CAO of the Ministry of Finance Report**"):

- a. Manolium-Engineering did not commit any violations in constructing the New Communal Facilities;
- b. according to the Registration and Cadastre Agency Report, the Claimant's expenses to be compensated in the amount of USD 18,129,933.17 were established correctly, reflected in the financial statements of Manolium-Engineering and documented; and
- c. upon the results of the audit, documented expenses of the Claimant in respect of the New Communal Facilities amounted to USD 19,434,679²⁵⁰.

286. On 5 April 2016, the court of the Pervomaysky district of Minsk initiated administrative proceedings against Manolium-Engineering in connection with the untimely return of the land plots for the New Communal Facilities.

287. Almost immediately, such proceedings were terminated due to the absence of any elements of an administrative offense in acts taken by Manolium-Engineering.

288. The most recent request of the Claimant to accept the New Communal Facilities into the communal ownership was addressed to MCEC on 21 April 2016²⁵¹ and remained unanswered by the public bodies of the Republic of Belarus.

289. Nonetheless, the public bodies selected the strategy of exerting the pressure on the Claimant by legal proceedings and on 13 May 2016 the Economic Court of Minsk resolved to dismiss the judgment of the court of the Pervomaysky district dated 5 April 2016 (on terminating administrative proceedings against Manolium-Engineering due to the absence of any elements of an administrative offense) and refer the case for a new consideration in connection with "*non-objective consideration*

²⁴⁹ **Exhibit C-160.** CAO of the Ministry of Finance Report.

²⁵⁰ **Exhibit C-160.** CAO of the Ministry of Finance Report, page 16.

²⁵¹ **Exhibit C-161.** Letter from the Claimant to MCEC dated 21 April 2016.

of the facts and evidence" on the part of the court and *"incorrect evaluation of the evidence to the case"*²⁵², but this time by a different judge.

290. On 17 May 2016, another judge of the court of the Pervomaysky district of Minsk issued a ruling on bringing Manolium-Engineering to administrative liability and imposing an administrative fine amounting to 52,500,000 non-denominated Belarusian rubles (equivalent to USD 2,668).²⁵³

291. In the said ruling, the court of the Pervomaysky district arrived to completely different conclusions, in particular, in respect of the protraction by Manolium-Engineering of the construction of the New Communal Facilities and violation of laws in respect of returning the land plots to the lands of Minsk (in the absence of the rights to use such land plots).

292. All attempts of Manolium-Engineering to challenge the above decision on bringing the latter to administrative liability failed.²⁵⁴

4.7. Selling The Land Plot To Another Investor

293. In September 2017, the land plot for the Investment Object that the Claimant was authorized to develop in 2003 was sold to another developer – A-100 Development²⁵⁵ – the company having no experience of construction in Minsk.

294. The above land plot was sold for 17,050,000 denominated Belarusian rubles (equivalent of USD 8,650,000).

295. It was expected that the said land plot with the area of 6.76 ha would host *"a residential complex composed of facilities of social and public importance and*

²⁵² **Exhibit C-162.** Decision of the Economic Court of Minsk dated 13 May 2016.

²⁵³ **Exhibit C-163.** Decision of the Economic Court of Minsk dated 14 June 2016. **Exhibit C-182.** Resolution of the court of the Pervomaysky district of Minsk dated 17 May 2016 (operative part and statement of reasons).

²⁵⁴ **Exhibit C-163.** Decision of the Economic Court of Minsk dated 14 June 2016. **Exhibit C-183.** Complaint of Manolium-Engineering to the resolution of the court of the Pervomaysky district of Minsk dated 9 June 2016. **Exhibit C-184.** Resolution of the Minsk City Court dated 3 August 2016

²⁵⁵ **Exhibit C-185.** Official website of news portal of Belarus TUT.BY, *"Almost fivefold of the initial price. A-100 acquired the section of the trolleybus depot in the center of Minsk.* // Available at: <https://news.tut.by/economics/559888.html>.

underground parkings" ²⁵⁶, *i.e.* would be used to implement the project similar to the Investment Object.

4.8. Tax Claims Of The Republic Of Belarus Against The Claimant

296. On 17 May 2016, the Inspectorate of the Ministry of Taxes and Levies of the Republic of Belarus (the "**Tax Inspectorate**") conducted a tax audit in respect of the activities of Manolium-Engineering for 2013-2016 without any order to conduct the same²⁵⁷ (the "**First Tax Audit Report**").

297. Pursuant to the First Tax Audit Report, Manolium-Engineering was to repay the indebtedness before the budget for a failure to pay a land tax for the period from 1 January 2013 through 31 December 2016 in the amount of 18,538,186.226 denominated Belarusian rubles (equivalent of USD 9,410,000) and the penalty of 4,380,990.859 denominated Belarusian rubles (equivalent of USD 2,225,000).²⁵⁸

298. The Tax Inspectorate issued the said decision on the basis of making available to Manolium-Engineering the land plots for the New Communal Facilities for temporary use in 2013-2016 that were not returned to MCEC.

299. As indicated in Clause 241 above, on 1 July 2011, the right granted to Manolium-Engineering in respect of temporary use of the land plots for the New Communal Facilities expired. Notwithstanding numerous requests of the Claimant, MCEC failed to extend such right, but required the Claimant to continue construction.

300. On 21 June 2016, the Tax Inspectorate delivered to Manolium-Engineering amendments and variations to the First Tax Audit Report²⁵⁹, where:

- a. it asserted that the court of the Pervomaysky district issued a judgment against Manolium-Engineering on 17 May 2016 on bringing the latter to administrative

²⁵⁶ **Exhibit C-185.** Official website of news portal of Belarus TUT.BY, "*Almost fivefold of the initial price. A-100 acquired the section of the trolleybus depot in the center of Minsk.*" // Available at: <https://news.tut.by/economics/559888.html>.

²⁵⁷ **Exhibit C-164.** First Tax Audit Report dated 17 May 2016.

²⁵⁸ **Exhibit C-164.** First Tax Audit Report dated 17 May 2016.

²⁵⁹ **Exhibit C-165.** Letter from the Tax Inspectorate to Manolium-Engineering dated 21 June 2016. **Exhibit C-166.** Amendments and supplements to the First Tax Audit Report dated 21 June 2016.

liability, since the land plots for the New Communal Facilities were not returned in a timely manner;

b. required Manolium-Engineering to repay the indebtedness before the budget in the amount of 26,444,081.02 denominated Belarusian rubles (equivalent of USD 13,420,000) for 2013-2016, in particular:

i. land tax in the amount of 20,046,478.92 denominated Belarusian rubles (equivalent of USD 10,200,000); and

ii. penalty accrued in the amount of 6,397,602.1 denominated Belarusian rubles (equivalent of USD 3,250,000).

301. On 5 July 2016, the Tax Inspectorate arrested the New Communal Facilities (the "**Arrested Property**")²⁶⁰ in the amount of 20,699,817.7 denominated Belarusian rubles (equivalent of USD 10,500,000).

302. Such seizure was performed to secure tax requirements of the Republic of Belarus against the Claimant in the amount of 26,444,081.02 denominated Belarusian rubles (equivalent of USD 13,400,000).

303. On 19 July 2016, the Tax Inspectorate delivered to Manolium-Engineering a resolution in respect of the First Tax Audit Report²⁶¹, by which it resolved to recover:

a. indebtedness of Manolium-Engineering before the budget in the amount of **20,046,478.92 denominated Belarusian rubles** (equivalent of USD 10,200,000) for 2013-2016; and

b. penalty accrued on the indebtedness of Manolium-Engineering for the land tax in the amount of **6,397,602.1 denominated Belarusian rubles** (equivalent of USD 3,250,000).

²⁶⁰ **Exhibit C-167.** Order of the Tax Inspectorate for arrest of the land plots dated 5 July 2016.

²⁶¹ **Exhibit C-168.** Decision of the Tax Inspectorate dated 19 July 2016.

304. On the next day (20 July 2016), the Tax Inspectorate filed an application to initiate writ proceedings with the Economic Court of Minsk against Manolium-Engineering to recover **27,064,607.83 denominated Belarusian rubles** (equivalent of USD 13,700,000), which constituted the indebtedness of Manolium-Engineering for paying:²⁶²
- a. land tax in respect of the land plots for the New Communal Facilities in the amount of **20,046,478.41 denominated Belarusian rubles** (equivalent of USD 10,200,000) for 2013-2016; and
 - b. penalty on the land tax in respect of the land plots for the New Communal Facilities in the amount of **7,018,129.42 denominated Belarusian rubles** (equivalent of USD 3,560,000) for 2013-2016.
305. Under the effective legislation of the Republic of Belarus, a failure to perform or improper performance by a taxpayer of his/her tax obligations serves the ground for applying measures of enforcing such tax obligations and paying the relevant penalty, as well as for imposing the relevant liability on such person.²⁶³
306. To that end, the Tax Inspectorate applied to Manolium-Engineering measures of enforcing its tax obligations and penalty payment and produced to Manolium-Engineering payment documents for the unconditional recovery on account of the enterprise.
307. To effect the seizure, the Tax Inspectorate²⁶⁴ filed a petition to obtain a court order to recover the indebtedness from Manolium-Engineering on account of the Arrested Property²⁶⁵.
308. On 18 August 2016, the Economic Court of Minsk issued a judgment to recover from Manolium-Engineering the indebtedness for non-payment of the land tax for 2013-

²⁶² **Exhibit C-169.** Application of the Tax Inspectorate dated 20 July 2016.

²⁶³ **Exhibit CL-8.** Tax Code of the Republic of Belarus (extracts), Article 37, Clause 5.

²⁶⁴ **Exhibit CL-9.** Economic Procedural Code of the Republic of Belarus (extracts).

²⁶⁵ **Exhibit C-169.** Application of the Tax Inspectorate dated 20 July 2016, page 3.

2016 in the amount of 20,699,817.7 denominated Belarusian rubles (equivalent of USD 10,500,000) on account of the Arrested Property.²⁶⁶

309. Until the sale of such property, the indebtedness of Manolium-Engineering before the budget remains outstanding.

310. As of 10 November 2016 the indebtedness of Manolium-Engineering amounted to:²⁶⁷

- a. **20,046,478.41 denominated Belarusian rubles** (equivalent of USD 10,200,000) for a failure to pay the land tax for 2013-2016; and
- b. **8,181,065.73 denominated Belarusian rubles** (equivalent of USD 4,150,000) as the penalty accrued on the tax liability of Manolium-Engineering before the budget.

311. As instructed by the President, from November 2016 public bodies performed their own valuation of the New Communal Facilities for their gratuitous transfer into the communal ownership of Minsk.²⁶⁸

312. On 1 December 2016, as resolved by MCEC, the land plots underlying the New Communal Facilities were divested from the alleged use of Manolium-Engineering.²⁶⁹

313. As far as the Claimant knows, in January 2017, to partially repay the indebtedness of Manolium-Engineering on taxes before the budget, the President of the Republic of Belarus resolved to divest and transfer the Arrested Property into the ownership of Minsk (namely, Minsktrans), *i.e.* into the communal ownership, and debit the amount of indebtedness before the budget.²⁷⁰

²⁶⁶ **Exhibit C-170.** Judgment of the Economic Court of Minsk dated 18 August 2016.

²⁶⁷ **Exhibit C-171.** Extract from the records of the Ministry of Taxes in respect of the indebtedness of Manolium-Engineering as of 10 November 2016.

²⁶⁸ **Exhibit C-172.** Letter from the Department of Humanitarian Activities of the Administrative Office of the President of the Republic of Belarus dated 18 November 2016.

²⁶⁹ **Exhibit C-173.** Decision of MCEC dated 1 December 2016.

²⁷⁰ **Exhibit C-186.** Amendments to the Second Tax Audit Report dated 18 May 2017

314. By now, the order of the President of the Republic of Belarus on divesting the Arrested Property has not been either published or notified to the Claimant. Public officials of the Republic of Belarus are afraid of serving a copy of such order on the Claimant in connection with threatened wrongful acts on the part of their superiors.

315. Therefore, the Republic of Belarus has finally accepted the New Communal Facilities into the communal ownership and in parallel illegally and unreasonably divested the Claimant's Investments.

316. In October 2016, Manolium-Engineering was compelled to initiate bankruptcy proceedings because of the impossibility to repay the indebtedness on taxes before the budget²⁷¹. On 8 February 2017, the procedure in bankruptcy was introduced in respect of Manolium-Engineering.²⁷²

317. In connection with initiating such procedure in bankruptcy, on 24 March 2017, the Tax Inspectorate repeatedly conducted a non-scheduled tax audit of the business of Manolium-Engineering (the "**Second Tax Audit Report**").²⁷³

318. The Tax Inspectorate reached a conclusion that the indebtedness of Manolium-Engineering on tax obligations amounted to **16,530,306.38 denominated Belarusian rubles**²⁷⁴ (equivalent of USD 8,400,000), namely:

- a. **13,844,783.97 denominated Belarusian rubles** (equivalent of USD 7,000,000) as the indebtedness of Manolium-Engineering for the land tax and immovable property tax; and
- b. **2,685,522.41 denominated Belarusian rubles** (equivalent of USD 1,350,000) as the penalty accrued on the indebtedness of Manolium-Engineering on its tax liabilities.

²⁷¹ **Exhibit C-8.** Application of Manolium-Engineering to initiate the liquidation procedure dated 14 October 2016.

²⁷² **Exhibit C-179.** Official portal of the system of common courts of the Republic of Belarus, "Information on cases in connection with economic insolvency (bankruptcy) for the period from 1 February 2017 through 28 February 2017.

²⁷³ **Exhibit C-187.** Second Tax Audit Report dated 24 March 2017.

²⁷⁴ **Exhibit C-187.** Second Tax Audit Report dated 24 March 2017.

319. On 18 May 2017, the Tax Inspectorate introduced amendments to the Second Tax Audit Report²⁷⁵ and on 13 June 2017 resolved that Manolium-Engineering had an indebtedness on taxes before the budget in the amount of **14,525,203.07 denominated Belarusian rubles** (equivalent of USD 7,400,000), *i.e.* reduced the amount of indebtedness specified in the Second Tax Audit Report²⁷⁶, namely:

- a. **11,826,511.43 denominated Belarusian rubles** (equivalent of USD 6,000,000) as the indebtedness for the land tax and immovable property tax; and
- b. **2,698,691.64 denominated Belarusian rubles** (equivalent of USD 1,400,000) as the penalty accrued on the indebtedness on taxes.

320. In contradiction with the resolution of the Tax Inspectorate dated 18 May 2017 on making amendments to the Second Tax Audit Report, on 22 September 2017 the Tax Inspectorate notified Manolium-Engineering that the indebtedness of Manolium-Engineering on taxes amounted to **20,913,550.93 denominated Belarusian rubles** (including the penalty in the amount of 4,411,009.14 Belarusian rubles)²⁷⁷ (equivalent of USD 10,600,000).

V. LEGAL FRAMEWORK

5.1. Application Of The Provisions Of The EEU Treaty

321. The EEU Treaty shall apply to this Dispute.

322. The EEU Treaty entered into force on 1 January 2015.²⁷⁸ The parties to the EEU Treaty are the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Armenia and the Kyrgyz Republic.

²⁷⁵ **Exhibit C-186.** Amendments to the Second Tax Audit Report dated 18 May 2017

²⁷⁶ **Exhibit C-188.** Decision of the Tax Inspectorate in respect of the Second Tax Audit Report and amendments dated 18 May 2017 to the Second Tax Audit Report dated 13 June 2017.

²⁷⁷ **Exhibit C-189.** Letter from the Tax Inspectorate to Manolium-Engineering dated 22 September 2017.

²⁷⁸ **Exhibit C-1.** Official website of the Eurasian Economic Commission, "*The Treaty on the Eurasian Economic Union entered into force*". // Available at: <http://www.eurasiancommission.org/ru/nae/news/Pages/01-01-2015-1.aspx>.

323. The Republic of Belarus ratified the EEU Treaty on 9 October 2014 by adopting the Law "On Ratifying the Treaty on the Eurasian Economic Union"²⁷⁹. The Law entered into force on 14 October 2014.

324. The Russian Federation ratified the EEU Treaty by adopting on 3 October 2014 the Federal Law "On Ratifying the Treaty on the Eurasian Economic Union"²⁸⁰, which entered into force on 15 October 2014.

325. Protocol No. 16 to the EEU Treaty contains the provisions regarding protection of investors' investments on the territory of EEU member-states.

326. In accordance with Clause 65 of Protocol No. 16 to EEU Treaty:

"The provisions of this section shall apply to all investments made by investors of the Member States on the territory of another Member State starting from December 16, 1991." [Claimant's emphasis]

327. Accordingly, the EEU Treaty and, in particular, the provisions of Protocol No. 16 are applicable to the Claimant's Investments on the territory of the Republic of Belarus.

5.2. Application Of The Investment Law Of The Republic Of Belarus

328. The Law of the Republic of Belarus on Investments dated 12 July 2013 (the "**Investment Law of the Republic of Belarus**")²⁸¹ is applicable to the Dispute.

329. In accordance with Article 2 of the Investment Law of the Republic of Belarus:²⁸²

"Article 2. Scope Of Application Of This Law

This Law is applicable to relation connected with carrying out investments in the territory of the Republic of Belarus, with the exception of:

²⁷⁹ **Exhibit CL-1.** Law on the Republic of Belarus dated 9 October 2014 "On Ratifying the Treaty on the Eurasian Economic Union". // Available at: <http://www.pravo.by/main.aspx?guid=12551&p0=H11400193&p1=1&p5=0>.

²⁸⁰ **Exhibit CL-2.** Federal Law on the Russian Federation dated 3 October 2014 No. 279-FZ "On Ratifying the Treaty on the Eurasian Economic Union". // Available at: http://www.consultant.ru/document/cons_doc_LAW_169401/.

²⁸¹ **Exhibit CL-10.** Investment Law of the Republic of Belarus.

²⁸² **Exhibit CL-10.** Investment Law of the Republic of Belarus, Articles 2, 3.

contributing property to non-commercial organizations in relation to the property of which their founders (participants) do not have ownership or other real rights;

acquisition of securities, except for shares;

acquisition or construction by citizens of the Republic of Belarus, foreign citizens or stateless persons of dwelling houses, dwelling promises for residence of these citizens of the Republic of Belarus, foreign citizens or stateless persons and/or members of their families;

extending loans, credits and repayment thereof, placement of bank deposits.

Article 3. Legislation Of The Republic Of Belarus In The Sphere Of Investments

[...]

If a treaty of the Republic of Belarus establishes other rules than those provided by this Law, the rules of the treaty are applied."

330. Therefore, the Claimant, in substantiation of its requirements to Belarus, may refer to the provisions of the Investment Law of the Republic of Belarus in addition to the provisions of Protocol No. 16 to the EEU Treaty.

5.3. The Claimant Is An Investor In Accordance With The Requirements Set Forth By The EEU Treaty And The Investment Law Of The Republic Of Belarus

331. The Claimant is an investor in the present case in accordance with the requirements established by the provisions of Protocol No. 16 to the EEU Treaty and the Investment Law of the Republic of Belarus for qualifying an investor.

332. Pursuant to Protocol No. 16 to the EEU Treaty, investor is defined as follows:²⁸³

²⁸³ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, Clause 6.

"8) *"investor of a Member State" means any person of a Member State making investments on the territory of another Member State in accordance with the legislation of the latter..."*

333. Provided that the person of a Member State is defined by Protocol No. 16 to the EEU Treaty as follows:²⁸⁴

"10) *"person of a Member State" means any natural person or juridical person of a Member State;*

[...]

27) *"juridical person of a Member State" means an organisation with any organizational form, created or incorporated on the territory of a Member State in accordance with the legislation of that Member State."* [Claimant's emphasis]

334. The Claimant – Manolium-Processing – is a legal entity (a juridical person) registered in accordance with the established procedure on the territory of the Russian Federation.

335. Therefore, Manolium-Processing is an *"Investor"* in accordance with the provisions of the EEU Treaty and falls under its protection.

336. In addition, the Claimant satisfies the requirements to an investor set forth by the Investment Law of the Republic of Belarus:²⁸⁵

"Investors are citizens of the Republic of Belarus, foreign citizens and stateless persons residing permanently in the territory of the Republic of Belarus, including individual entrepreneurs, and also legal persons of the Republic of Belarus, carrying out investments in the territory of the Republic of Belarus; foreign citizens and stateless persons not residing permanently in the territory of the Republic of Belarus, citizens of the Republic of Belarus residing permanently outside the Republic of Belarus, foreign or international legal

²⁸⁴ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, Clause 6.

²⁸⁵ **Exhibit CL-10.** Investment Law of the Republic of Belarus, Article 1.

persons (organizations not being legal persons), carrying out investments in the territory of the Republic of Belarus (hereinafter – foreign investors)."

[Claimant's emphasis]

337. In light of the fact that Manolium-Processing is a legal entity registered in accordance with the Russian laws that made investments on the territory of the Republic of Belarus, it satisfies the requirements of an "Investor" defined by the Investment Law of the Republic of Belarus.

5.4. The Claimant Made Investments On The Territory Of The Republic Of Belarus

338. Investments made by the Claimant on the territory of the Republic of Belarus comply with the requirements established by Protocol No. 16 to the EEU Treaty and the Investment Law of the Republic of Belarus for qualifying "Investments".

5.4.1. Requirements In Respect Of Investments Set Forth By The EEU Treaty And The Investment Law Of The Republic Of Belarus

339. In accordance with Clause 6 of Protocol No. 16 to EEU Treaty:²⁸⁶

"3) "investment activities" means possession, use and/or disposal of investments;

[...]

7) "investments" means tangible and intangible assets invested by an investor of a Member State into subjects of entrepreneurial activity on the territory of another Member State in accordance with the legislation of the latter, including:

funds (cash), securities and other property;

²⁸⁶ Exhibit CL-3. Protocol No. 16 to EEU Treaty, para. 6.

rights to engage in entrepreneurial activities granted under the legislation of the Member States or under a contract, including, in particular, the right to exploration, development, production and exploitation of natural resources;

property rights and other rights having monetary value..."

340. In accordance with Clause 66 of Protocol No. 16 to EEU Treaty:²⁸⁷

"Incorporation within the meaning of sub-paragraph 24 of paragraph 2 of this Protocol shall constitute a form of investment."

341. Pursuant to Protocol No. 16 to the EEU Treaty:²⁸⁸

"24) "incorporation":

creation and/or acquisition of a juridical person (participation in the capital of a created or incorporated juridical person) of any corporate form and form of ownership provided for by the legislation of the Member State on the territory of which such juridical person is created or incorporated;

acquisition of control over a juridical person of a Member State through gaining an opportunity to, either directly or via third persons, determine decisions to be adopted by such juridical person, including through the management of votes granted by voting shares (participatory interest) and membership on the board of directors (supervisory board) and other governing bodies of such juridical person;

opening of a branch;

opening of a representative office; or

registration as an individual entrepreneur.

²⁸⁷ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, Clause 66.

²⁸⁸ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, Clause 6.

The incorporation shall be carried out, among other things, for the purposes of trade in services and/or manufacture of goods" [Claimant's emphasis]

342. In accordance with Article 1 of the Investment Law of the Republic of Belarus:²⁸⁹

"Investments are any property and other objects of civil rights belonging to an investor on the right of ownership, another legal basis which allows him to dispose of such objects being invested in the territory of the Republic of Belarus in ways provided by this Law with a view to receive profit (incomes) and/or achieving another significant result or with other purposes not related to personal, family, household and other likewise use, in particular: movable and immovable property, including shares, stakes in the statutory fund, stocks in the property of a commercial organization created in the territory of the Republic of Belarus, monetary means, inclusive of attracted ones, including loans, credits; rights of claim having assessment of their value; other objects of civil rights having assessment of their value, with the exception of those objects of civil rights the circulation of which is not allowed (objects withdrawn from circulation)." [Claimant's emphasis]

5.4.2. Qualification Of Investments

343. The Claimant made the following Investments on the territory of the Republic of Belarus that are compliant with the requirements of Protocol No. 16 to the EEU Treaty and the Investment Law of the Republic of Belarus:

- a. financing of the design and construction of the Communal Facilities, New Communal Facilities and Investment Object by the Claimant in the Republic of Belarus; and
- b. incorporation of the enterprise (Manolium-Engineering) on the territory and under the laws of the Republic of Belarus for the purposes of implementation of the Investment Contract and financing the construction of the Communal Facilities, New Communal Facilities and Investment Object.

²⁸⁹ **Exhibit CL-10.** Investment Law of the Republic of Belarus, Article 1.

344. Therefore, the Investments made by the Claimant on the territory of the Republic of Belarus are protected by Protocol No. 16 to the EEU Treaty and the Investment Law of the Republic of Belarus.

5.5. The Claimant's Claims Comply With The Provisions Of The EEU Treaty And The Investment Law Of The Republic Of Belarus

345. The Claimant's claims against the Republic of Belarus shall be considered in accordance with the provisions of the EEU Treaty.

346. In accordance with Protocol No. 16 to EEU Treaty:²⁹⁰

"65. The provisions of this section shall apply to all investments made by investors of the Member States on the territory of another Member State starting from December 16, 1991."

84. All disputes between a recipient state and an investor of another Member State arising from or in connection with an investment of that investor on the territory of the recipient state, including disputes regarding the size, terms or order of payment the amounts received as a compensation of damages pursuant to paragraph 77 of this Protocol and the compensation provided for by paragraphs 79-81 of this Protocol, or the order of payment and transfer of funds provided for in paragraph 8 of this Protocol, shall be, where possible, resolved through negotiations. [Claimant's emphasis]

347. Accordingly, since:

- a. the Claimant is an Investors on the territory of the Republic of Belarus;
- b. the Claimant's claims against the Republic of Belarus are connected with Investments made by the Claimant on the territory of the Republic of Belarus as the recipient state;

²⁹⁰ Exhibit CL-3. Protocol No. 16 to EEU Treaty, paras. 65, 84.

- c. the Claimant made Investments on the territory of the Republic of Belarus after 16 December 1991; and
- d. there is a Dispute between the Claimant and the Republic of Belarus connected with the Investments, including the determination of the amounts, conditions and order of payment amounts to be paid as a compensation of damages and compensation for expropriation of Investments;

all Claimant's claims against the Republic of Belarus elaborated on in the Notice of Arbitration fall under regulation of the EEU Treaty.

348. The Claimant's claims are also based on the provisions of the Investment Law of the Republic of Belarus as an applicable national law instrument that governs the protection of rights and guarantees of investors on the territory of the Republic of Belarus.

5.6. Legal Protection Of The Claimant Set Forth By The EEU Treaty And The Investment Law Of The Republic Of Belarus

349. Protocol No. 16 to the EEU Treaty and the Investment Law of the Republic of Belarus provide for the following legal guarantees for the Claimant and its Investments.

5.6.1. Guarantees Of The Claimant's Rights In Case Of Expropriation

350. Pursuant to para. 79 of Protocol No. 16 to the EEU Treaty, investments of an investor of any Member State shall not be subject to direct or indirect expropriation or nationalization on the territory of another Member State:²⁹¹

"Investments of investors of a Member State made on the territory of another Member State shall not be subject to direct or indirect expropriation, nationalization and other measures with consequences equivalent to those of expropriation or nationalization (hereinafter "expropriation"), except in cases where such measures are taken for the public benefit in the procedure

²⁹¹ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, para. 79.

determined by the legislation of the recipient state, are not discriminatory and involve prompt and adequate compensation." [Claimant's emphasis]

351. In the event of expropriation of investments, the recipient state shall pay a compensation to the Claimant that shall correspond to the market value of Investments expropriated from investors on the date immediately preceding the date of their actual expropriation or the date when it becomes known about the upcoming expropriation.²⁹²
352. The compensation shall be paid by the recipient state to the Claimant without delay, within the period provided for by the legislation of the recipient state, but no later than within 3 months from the date of expropriation.
353. Provided that such compensation shall be freely transferable abroad from the territory of the recipient state in a freely convertible currency.
354. In case of a delayed payment of a compensation, interest shall be accrued in the period from the date of expropriation until the date of actual payment of the compensation, to be calculated at the domestic interbank market rate for actually provided loans in US dollars for up to 6 months, but not below the rate of LIBOR or in the procedure determined by the agreement between the investor and the recipient state.²⁹³
355. The Investment Law of the Republic of Belarus does not contain the definition of "*expropriation*" but provides for the Claimant's guarantees in case of nationalization or requisition of Investments.
356. In accordance with Article 12 of the Investment Law of the Republic of Belarus:²⁹⁴

"Property being investments or being created as a result of carrying out investments may not be gratuitously nationalized or requisitioned.

²⁹² **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, para. 80.

²⁹³ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, para. 81.

²⁹⁴ **Exhibit CL-10.** Investment Law of the Republic of Belarus, Article 12.

Nationalization is possible only on motives of public necessity and subject to timely and full compensation of the value of the nationalized property and other damages being caused by the nationalization.

The order and conditions of the nationalization, and also payment of the compensation of the value of property being nationalized and other damages being caused by the nationalization are determined in the basis of the law on order and conditions of the nationalization of this property adopted in accordance with the Constitution of the Republic of Belarus.

[...]

The amount of compensation provided by part two and four of this Article may be appealed by the investor in the court."

5.6.2. Guarantees Of The Fair And Equitable Treatment In Respect Of Investments And Investment-Related Activities Of The Claimant

357. Pursuant to Protocol No. 16 to the EEU Treaty, a Member State shall ensure on its territory the fair and equitable treatment to investments and investment-related activities conducted by investors of other Member States:²⁹⁵

"Each Member State shall ensure on its territory fair and equitable treatment to investments and investment-related activities conducted by investors of other Member States."

358. In accordance with Clauses 69-71 of Protocol No. 16 to the EEU Treaty²⁹⁶, the recipient shall ensure the fair and equitable treatment of investor's investments in the following manner:

"69. The treatment specified in paragraph 68 of this Protocol shall not be less favorable than the treatment accorded by the Member State in respect of

²⁹⁵ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, para. 68.

²⁹⁶ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, paras. 68-71.

investments and investment-related activities conducted by its domestic (national) investors.

70. The treatment accorded by each Member State, under the same (similar) circumstances, to investors of any other Member State, their investments and investment-related activities shall be no less favourable than the treatment accorded to investors of any third state, their investments and activities related to such investments.

71. The treatments provided for in paragraphs 69 and 70 of this Protocol shall be accorded by the Member States as selected by the investor, depending on the most favourable treatment."

359. Therefore, the recipient state shall create for the investor in respect of investments and investment-related activities the most favored treatment or the national treatment, at the discretion of the investor.

5.6.3. Protection Of The Claimant's Investments On The Territory Of The Republic Of Belarus

360. In accordance with paragraph 76 of Protocol No. 16 to EEU Treaty²⁹⁷:

"Each Member State shall guarantee and ensure on its territory, in accordance with its legislation, the protection of investments of investors of other Member States."

361. Therefore, the Republic of Belarus had an obligation to guarantee and ensure on its territory the protection of the Claimant's Investments on its territory.

5.6.4. Other Guarantees

362. The provisions of paragraph 72 of Protocol No. 16 to the EEU Treaty establish the obligation of the recipient state to create favorable conditions for investments and enable such investments:²⁹⁸

²⁹⁷ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, Clause 76.

"Each Member State shall create favourable conditions for investment in its territory to investors of other Member States and shall enable such investments in accordance with its legislation."

363. The provisions of paragraph 75 of Protocol No. 16 to the EEU Treaty establishes guarantees to investors to use and dispose of the income generated as a result of investments for any purposes:²⁹⁹

"Each recipient state shall guarantee the following to investors of other Member States, upon completion by the latter of their obligations under all tax-related and other legislation of the recipient state:

1) the right to use and dispose of the income generated as a result of investments for any purposes not prohibited by the legislation of the recipient state;

2) the right to use and dispose of the income generated as a result of investments for any purposes not prohibited by the legislation of the recipient state; and

3) the right to freely transfer investment-related funds (cash) and payments referred to in paragraph 8 of this Protocol to any country, at the discretion of the investor."

364. The Investment Law of the Republic of Belarus provides a similar guarantee for the Claimant:³⁰⁰

"After the payment of taxes dues (duties), other obligatory payments to the republican and local budgets, state non-budgetary funds established by the legislation of the Republic of Belarus, foreign investors are guaranteed an unobstructed transfer outside the Republic of Belarus of profit (incomes) and other monetary means legally received, connected with carrying out of

²⁹⁸ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, para. 72.

²⁹⁹ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, para. 75.

³⁰⁰ **Exhibit CL-10.** Investment Law of the Republic of Belarus, Article 11.

investments in the territory of the Republic of Belarus, and also of payments being made in favour of a foreign investor and connected with carrying out of foreign investments, including:

monetary means received by foreign investors after a partial or full termination of the carrying out of investments in the territory of the Republic of Belarus, including monetary means received by foreign investors as a result of alienation of investments, and also of the property being created as a result of carrying out investments, other objects of civil rights;;

[...]

monetary means payable to foreign investors according a court resolution."

VI. VIOLATIONS OF THE REPUBLIC OF BELARUS IN RESPECT OF THE CLAIMANT AND INVESTMENTS

6.1. Responsibility Of The Republic Of Belarus For Acts Of The State Organs And State-Owned Entitles

365. The Republic of Belarus bears responsibility for all acts of its state organs that resulted in causing harm to the Claimant and Investments made.

366. The Republic of Belarus is responsible for acts of the following state organs and state-owned entities:

- a. MCEC;
- b. Minsktrans; and
- c. Court of the Pervomaysky district of Minsk, Economic Court of Minsk and the Supreme Court of the Republic of Belarus.

367. The responsibility of the above state organs and state-owned entities for damage caused to the Claimant and its Investments made on the territory of the Republic of

Belarus should be established in accordance with the Articles on State Responsibility for Internationally Wrongful Acts of the UN International Law Commission adopted by Resolution of the UN General Assembly No. 56/589 dated 12 December 2001 (the "**ILC Articles on State Responsibility**").³⁰¹

368. In accordance with the ILC Articles on State Responsibility, the primary rule of responsibility of state for acts of its public bodies stipulates the following:³⁰²

"1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State." [Claimant's emphasis]

369. In addition, acts of a person or entity which is not an organ of the State but that exercises elements of the governmental authority shall also be considered an acts of the State:³⁰³

"The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."

(a) Responsibility Of The Republic Of Belarus Before The Claimant For Acts Of MCEC In Respect Of The Claimant And Investments

³⁰¹ **Exhibit CL-11.** ILC Articles on State Responsibility. // Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G01/638/27/pdf/G0163827.pdf?OpenElement>.

³⁰² **Exhibit CL-11.** ILC Articles on State Responsibility, art. 4.

³⁰³ **Exhibit CL-11.** ILC Articles on State Responsibility, art. 5.

370. In accordance with the provisions of the ILC Articles on State Responsibility, acts of MCEC in respect of the Claimant shall be considered acts of the Republic of Belarus.³⁰⁴

371. The Minsk City Executive Committee (MCEC) is a local authority of the city of Minsk in accordance with the provisions of the Law of the Republic of Belarus "*On Local Administration and Self-Administration in the Republic of Belarus*":³⁰⁵

"1. Local administration is a form of organization and activities of local executive and regulatory bodies (hereinafter "executive and regulatory bodies") to deal with local issues pursuant to general national interests and interests of the citizens.

2. The local administration system is composed of three territorial levels: regional, base and primary, and includes regional, city, district, settlement and village executive committees (hereinafter "executive committees"), as well as local district councils in cities (hereinafter "local administrations", unless indicated otherwise)." [Claimant's emphasis]

372. For example, MCEC is in charge of managing:³⁰⁶

"Economy, market reforms, foreign trade activity, enterprises and organizations of transport and communications, housing, communal services and power engineering, city planning, services industry, public health services, physical training, sport and tourism, education and culture, social security and public relations."

373. Accordingly, MCEC is an organ of the state in accordance with laws of the Republic of Belarus and performs governmental functions, and all acts taken by MCEC in respect of the Claimant and Investments shall be considered acts of the Republic of Belarus.

³⁰⁴ **Exhibit CL-11.** ILC Articles on State Responsibility, page 4.

³⁰⁵ **Exhibit CL-12.** Law of the Republic of Belarus dated 4 January 2010 No. 108-Z "*On Local Administration and Self-Administration in the Republic of Belarus*", page 2.

³⁰⁶ **Exhibit C-174.** Official website of MCEC, "*On the enterprise*". // Available at: <https://minsk.gov.by/ru/org/10/>.

(b) **Responsibility Of The Republic Of Belarus Before The Claimants For Acts Of Minsktrans**

374. In accordance with the ILC Articles on State Responsibility, the Republic of Belarus bears responsibility before the Claimant for all acts of Minsktrans in respect of the Claimant and its Investments.

375. Pursuant to Article 5 of the ILC Articles on State Responsibility:³⁰⁷

"The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."

376. Minsktrans is a communal transport unitary enterprise, *i.e.* a state-owned legal entity³⁰⁸ exclusively owned by the Republic of Belarus.

377. Provided that one of the primary purposes of Minsktrans's operations is to provide passenger transport to the population, which is the functions performed by the state.

378. Therefore, Minsktrans as a state-owned legal entity of the Republic of Belarus exercises elements of governmental authority, whereupon acts taken by Minsktrans in respect of the Claimant and its Investments shall be attributable to the Republic of Belarus.

(c) **Responsibility Of The Republic Of Belarus Before The Claimant For Acts Of The Court Of The Pervomaysky District Of Minsk, Economic Court of Minsk And The Supreme Court Of The Republic Of Belarus**

379. The Economic Court of Minsk and the Supreme Court of the Republic of Belarus that in 2014-2015 issued judgments on termination of the Amended Investment

³⁰⁷ Exhibit CL-11. ILC Articles on State Responsibility, page 5.

³⁰⁸ Exhibit C-175. Official website of Minsktrans, "General information". // Available at: <http://www.minsktrans.by/ru/about/obshchie-svedeniya.html>.

Contract³⁰⁹, as well as the court of the Pervomaysky district of Minsk that in 2016 issued a judgment on Manolium-Engineering's administrative liability for "*delaying the construction process*" in respect of the New Communal Facilities and violation of the laws in respect of returning the land plots to the lands of Minsk³¹⁰ are state organs of the Republic of Belarus performing judicial functions.

380. Pursuant to Article 4 of the ILC Articles on State Responsibility:³¹¹

"1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State." [Claimant's emphasis]

381. The fact that the courts exercise the judicial function is confirmed by Article 109 of the Constitution of the Republic of Belarus that establishes the following:³¹²

"The judicial power in the Republic of Belarus is exercised by courts.

The system of courts is based on the territorial and specialization principles.

The judicial organization in the Republic of Belarus is determined by law."

382. Therefore, all acts of the court of the Pervomaysky district of Minsk, the Economic Court of Minsk and the Supreme Court of the Republic of Belarus resulting in termination of the Republic of Belarus, in bringing the Claimant to administrative and

³⁰⁹ **Exhibit C-147.** Judgment of the Economic Court of Minsk dated 9 September 2014. **Exhibit C-150.** Ruling of the instance of appeal of the Commercial court of Minsk dated 29 October 2014. **Exhibit C-152.** Decision of the Supreme Court of the Republic of Belarus dated 27 January 2015.

³¹⁰ **Exhibit C-182.** Resolution of the court of the Pervomaysky district of Minsk dated 17 May 2016 (operative part and statement of reasons)

³¹¹ **Exhibit CL-11.** ILC Articles on State Responsibility, page 4.

³¹² **Exhibit CL-6.** Constitution of the Republic of Belarus of 1994, with amendments adopted during the republican referenda held on 24 November 1996 and 17 October 2004, *Narodnaya Gazeta*, page 109.

tax liability, as well as in causing damage to the Claimant shall be attributable to the Republic of Belarus.

6.2. Violation By The Republic Of Belarus Of Its Guarantee To Provide The Claimant With The Fair And Equitable Treatment In Respect Of Investments And Investment-Related Activities

6.2.1. FET Standard In Respect Of Investments And Investment-Related Activities

383. According to paragraph 68 of Protocol No. 16 to the EEU Treaty:³¹³

"Each Member State shall ensure on its territory fair and equitable treatment to investments and investment-related activities conducted by investors of other Member States." [Claimant's emphasis]

384. Therefore, Protocol No. 16 to the EEU Treaty establishes the fair and equitable treatment of each EEU member state in respect of investments and activities conducted by investors of other member states (the "**FET Standard**").

385. The articles regarding the FET Standard shall be construed in accordance with their ordinary meaning in the context of Article 31 of the Vienna Convention on the Law of Treaties of 1969.³¹⁴

386. The arbitral tribunal in the *Oostergetel v. Slovak Republic* investment case, relying on awards on such investment disputes, as *Bayindir Insaat v. Pakistan*³¹⁵, *Metalclad v. Mexico*³¹⁶, *Saluka v. Czech Republic*³¹⁷, *Waste Management v. Mexico*³¹⁸, *Lauder v. Czech Republic*³¹⁹, *Duke Energy v. Ecuador*³²⁰, *Mondev v. USA*³²¹, established that

³¹³ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, paragraph 68.

³¹⁴ **Exhibit CL-13.** Vienna Convention on the Law of Treaties dated 23 May 1969, page 31.

³¹⁵ **Exhibit CL-14.** *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009, paragraph 178.

³¹⁶ **Exhibit CL-15.** *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, paragraph 76.

³¹⁷ **Exhibit CL-16.** *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, paragraph 308.

³¹⁸ **Exhibit CL-17.** *Waste Management, Inc. v. United Mexican States ("No. 2")*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, paragraph 98.

³¹⁹ **Exhibit CL-18.** *Ronald S. Lauder v. The Czech Republic*, UNCITRAL, Final Award, 3 September 2001, paragraph 292.

³²⁰ **Exhibit CL-19.** *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008, paragraph 340.

the arbitration practice steadily identifies the following factors as elements of the FET Standard:³²²

"A number of factors have been repeatedly identified as forming part of the FET Standard. These include the obligations to act transparently and grant due process, to refrain from taking arbitrary or discriminatory measures, from exercising coercion, and from frustrating the investor's reasonable expectations with respect to the legal framework affecting the investment. Tribunals have emphasised that the FET guarantee must be appreciated in concreto, taking into account the specific circumstances of each case."

387. Pursuant to the position of the arbitral tribunal in proceedings in respect of the *Rumeli v. Kazakhstan*³²³ investment case that summarized an extensive arbitration practice on the FET Standard, the following elements are identified:

- a. obligation of the state to act in a transparent manner in respect of the investments;
- b. obligation of the state to act in good faith in respect of the investments;
- c. obligation of the state to refrain from any arbitrary treatment of the investor and investments;
- d. obligation of the state not to deny justice to the investor;
- e. obligation of the state to respect procedural propriety and due process.; and
- f. obligation of the state to respect the investor's reasonable and legitimate expectations.

388. In addition, an important characteristic of the due treatment of the investor and investments by the state in accordance with the FET Standard is a proactive nature of

³²¹ **Exhibit CL-20.** *Mondev International Ltd. v. United States of America*, Award, 11 October 2002, paragraph 116.

³²² **Exhibit CL-21.** *Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, UNCITRAL, Final Arbitral Award, 23 April 2012, paragraph 221.

³²³ **Exhibit CL-22.** *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Arbitral Award, 29 July 2008, paragraph 609.

activities of the state to encourage and promote investment activities. The relevant interpretation was given in the case *MTD v. Chile*³²⁴ that established:

"[...] fair and equitable treatment should be understood to be treatment in an even-handed and just manner, conducive to fostering the promotion of foreign investment. Its terms are framed as a pro-active statement—'to promote', 'to create', 'to stimulate' — rather than prescriptions for a passive behavior of the State or avoidance of prejudicial conduct to the investors."

389. Any violation of at least one element of the FET Standard implies violation of such treatment in general. In the present case, the Republic of Belarus breached at least two of its obligations constituting the FET Standard in accordance with Protocol No. 16 to the EEU Treaty, namely: the Republic of Belarus failed to act in good faith in respect of the Claimant and its Investments, as well as failed to ensure transparency in its relations with the Claimant.

390. As established by the arbitration practice, the FET Standard may be violated as a result of several acts on the part of the state represented by its public bodies.

391. For example, the arbitral tribunal for the investment dispute of *Société Générale v. The Dominican Republic*³²⁵ noted the following:

"While normally acts will take place at a given point in time independently of their continuing effects, and they might at that point be wrongful or not, it is conceivable also that there might be situations in which each act considered in isolation will not result in a breach of a treaty obligation, but if considered as a part of a series of acts leading in the same direction they could result in a breach at the end of the process of aggregation ..." [Claimant's emphasis]

392. Therefore, the violation of the FET Standard on the part of the Republic of Belarus took the form of related acts and omission that, taking in the aggregate, resulted in causing harm to the Claimant.

³²⁴ **Exhibit CL-23.** *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Arbitral Award, 25 May 2004, paragraph 113.

³²⁵ **Exhibit CL-24.** *Société Générale v. The Dominican Republic*, LCIA Case No. UN7927, Arbitral Award on Preliminary Objections on Jurisdiction, 19 September 2008, paragraph 91.

6.2.2. The Republic Of Belarus Failed To Perform The Obligation To Act In A Transparent Manner In Respect Of The Claimant

393. One of the elements of the FET Standard is the principle of transparency of investment regulation.

394. The importance of transparency and public availability of legal and administrative regulation is recognized by international organizations, in particular, by the Organization for Economic Cooperation and Development.³²⁶

395. The principle of transparency could be interpreted in a narrow or a broad meaning:³²⁷

"[The basic meaning] involves core measures for informing the public about policy and these measures are of universal relevance. The broader view of transparency relating to successful communication about policy requires consideration of national institutions, values, preferences and ways of doing things." [added by the Claimant]

396. Transparency may be ensured, among others, by the following:³²⁸

"[C]onsulting with interested stakeholders; simplifying and codifying legislation, including sector-specific legislation; drafting in clear language; developing registers of existing and proposed regulations; expanding the use of electronic dissemination of regulatory material; and by publishing and reviewing administrative decisions."

397. Arbitral tribunals in proceedings on investment disputes support a similar approach.

³²⁶ **Exhibit C-175.** Official website of the Organization for Economic Co-operation and Development. // Available at: <http://www.oecd.org/dac/aid-architecture/acommonstandard.htm>.

³²⁷ **Exhibit C-177.** "Public Sector Transparency and the International Investor", Organization for Economic Co-operation and Development, 2003, page 20. // Available at: <https://www.oecd.org/investment/investment-policy/18546790.pdf>.

³²⁸ **Exhibit C-178.** "Policy Framework for Investment, version of 2015", Organization for Economic Co-operation and Development, OECD publishing house, Paris, page 24. // Available at: http://www.oecd-ilibrary.org/finance-and-investment/policy-framework-for-investment-2015-edition_9789264208667-en.

398. For example, in one of the most recent awards in respect of the investment dispute of *Crystallex v Venezuela*³²⁹ the arbitral tribunal relying upon awards on other investment disputes noted the following:

"[...] as noted by a number of arbitral tribunals, FET "requires that any regulation of an investment be done in a transparent manner [...]"."

399. The transparency principle included in the FET Standard as applicable to statutory regulation was generated by the arbitral tribunal in proceedings on the dispute of *LG&E v Argentina*:³³⁰

"[V]iolations of the fair and equitable treatment standard may arise from a State's failure to act with transparency –that is, all relevant legal requirements for the purpose of initiating, completing and successfully operating investments made, or intended to be made under an investment treaty should be capable of being readily known to all affected investors."

400. As indicated above, in 2016 the Republic of Belarus initiated a number of tax audits and administrative proceedings in respect of Manolium-Engineering³³¹ in connection with the alleged arbitrary occupation of the land plots for the New Communal Facilities.

401. As a result of beneficial for the state law enforcement, in late 2016 the Tax Inspectorate determined the following indebtedness of Manolium-Engineering before the budget:³³²

- a. **20,046,478.41 denominated Belarusian rubles** (equivalent of USD 10,200,000) for a failure to pay the land tax for 2013-2016; and

³²⁹ **Exhibit CL-25.** *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, paragraph 579.

³³⁰ **Exhibit CL-26.** *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, paragraph 128.

³³¹ **Exhibit C-164.** First Tax Audit Report dated 17 May 2016. **Exhibit C-165.** Letter from the Tax Inspectorate to Manolium-Engineering dated 21 June 2016. **Exhibit C-166.** Amendments and supplements to the First Tax Audit Report dated 21 June 2016.

³³² **Exhibit C-171.** Extract from the records of the Ministry of Taxes in respect of the indebtedness of Manolium-Engineering as of 10 November 2016.

- b. **8,181,065.73 denominated Belarusian rubles** (equivalent of USD 4,150,000) as the penalty accrued on the tax liability of Manolium-Engineering before the budget.

402. Subsequently, the Tax Inspectorate repeatedly changed the amount of indebtedness of Manolium-Engineering before the budget without any substantiation.

403. Subsequently, the Tax Inspectorate repeatedly changed the amount of indebtedness of Manolium-Engineering without any substantiation:

- a. on 24 March 2017 – in its Second Tax Audit Report;³³³
- b. on 18 May 2017 – in amendments to its Second Tax Audit Report;³³⁴ and
- c. on 22 September 2017 – in the letter of the Tax Inspectorate to Manolium-Engineering.³³⁵

404. Those frequent and unreasonable changes to the amount of indebtedness of Manolium-Engineering either upwards or downwards without any substantiation are an evident indicator of the inconsistency of the Belarusian tax authorities' acts.

405. In addition, the absence of the proper interpretation of numerous changes to the amount of indebtedness demonstrates that the mechanism of calculation of fines and penalties is totally non-transparent and arbitrary.

406. The occurrence of such a significant indebtedness with the ever-changing amount that is mandatory for repayment resulted in the fact that the President obliged numerous public authorities to conduct an additional evaluation of the New Communal Facilities for their gratuitous transfer into the ownership of Minsk.³³⁶

³³³ **Exhibit C-187.** Second Tax Audit Report dated 24 March 2017.

³³⁴ **Exhibit C-188.** Decision of the Tax Inspectorate in respect of the Second Tax Audit Report and amendments dated 18 May 2017 to the Second Tax Audit Report dated 13 June 2017.

³³⁵ **Exhibit C-189.** Letter from the Tax Inspectorate to Manolium-Engineering dated 22 September 2017.

³³⁶ **Exhibit C-172.** Letter from the Department of Humanitarian Activities of the Administrative Office of the President of the Republic of Belarus dated 18 November 2016.

407. Ultimately, the land plots where the New Communal Facilities are located were withdrawn from the alleged use by Manolium-Engineering³³⁷, and in December 2016, as secretly instructed by the President of the Republic of Belarus, the New Communal Facilities were taken out on account of the debt of Manolium-Engineering before the state and finally accepted to the communal ownership.
408. As of the date of the present Notice of Arbitration, the Claimant failed to be provided with the document directly related to its infringed rights and divested Investments in Belarus, failed to secure its legal defense and failed to be notified of the exact amount of the indebtedness of Manolium-Engineering on taxes before the budget.
409. Even on account of its own funds, the Claimant failed to gain access to the document, since the representatives of the competent public bodies are afraid of serving a copy of the order issued by the President on the Claimant in connection with threatened wrongful acts in their respect on the part of their superiors.
410. Those acts resulted in violating the principles of openness and transparency towards the Claimant and its Investments on the territory of the Republic of Belarus.

6.2.3. The Republic Of Belarus Failed To Perform The Obligation To Act In Good Faith In Respect Of The Claimant

411. The principle of good faith is one of the general principles of law in accordance with paragraph 1(c) Article 38 of the UN Statute of the International Court of Justice.³³⁸ The good faith requirement applies both internationally and nationally.
412. In support of this position, the arbitral tribunal in proceedings in respect of the investment dispute of *Malicorp v. Egypt* noted as follows:³³⁹

"It is indisputable, and this Arbitral Tribunal can do no more than confirm it, that the safeguarding of good faith is one of the fundamental principles of

³³⁷ **Exhibit C-173.** Decision of MCEC dated 1 December 2016.

³³⁸ **Exhibit CL-27.** United Nations, Statute of the *International Court of Justice*, 18 April 1946. // Available at: <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>.

³³⁹ **Exhibit CL-28.** *Malicorp Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/08/18, Award, 7 February 2011, paragraph 116.

international law and the law of investments. As in domestic law, the principle fulfils a complementary function; it allows for lacunae in the applicable laws to be filled, and for that law to be clarified by the specific application of existing principles."

413. The importance of the good faith principle in investment arbitration appears, among others, in the obligation of the recipient state to act in good faith recognized as one of the components of the FET Standard.

414. The arbitral tribunals issuing awards in such cases, as *Rumeli v. Kazakhstan*³⁴⁰, *Paushok v. Mongolia*³⁴¹, *Saluka v. Czech Republic*³⁴², *Roussalis v. Romania*³⁴³, *Binder v. Czech Republic*³⁴⁴, are totally supportive of the conclusion about the significance of the principle of good faith in ensuring the FET Standard.

415. In the present case, the public bodies of the Republic of Belarus – MCEC and Minsktrans – acted in bad faith towards the Claimant during the entire period of making Investments:

- a. on entering into the Investment Contract and Amendments thereto;
- b. on performing the obligations under the Investment Contract and the Amended Investment Contract; and
- c. on terminating the Amended Investment Contract.

416. The Republic of Belarus not only failed to take any acts to encourage the investment activities and Investments pursuant to the FET Standard, but, on the contrary, prevented the Claimant from conducting investment activities.

³⁴⁰ **Exhibit CL-22.** *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Arbitral Award, 29 July 2008, paragraph 609.

³⁴¹ **Exhibit CL-29.** *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*, Award on Jurisdiction and Liability, 28 April 2011, paragraph 253.

³⁴² **Exhibit CL-16.** *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, paragraph 303.

³⁴³ **Exhibit CL-30.** *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011, paragraph 314.

³⁴⁴ **Exhibit CL-31.** *Rupert Binder v. Czech Republic*, UNCITRAL, Final Award, 15 July 2011, paragraph 447.

417. The bad faith conduct of the public bodies of the Republic of Belarus took the following forms:

- a. MCEC and Minsktrans protracted the process of issuing construction permits and making available the land plots for constructing the Communal Facilities and the New Communal Facilities;
- b. MCEC protracted the process of making available the land plot for designing the Investment Object;
- c. MCEC and Minsktrans contributed to disrupting the deadlines of constructing and transferring the New Communal Facilities into the communal ownership; and
- d. the public bodies of the Republic of Belarus unreasonably required the Claimant to continue building the New Communal Facilities and wrongfully terminated the Amended Investment Contract.

418. Those wrongful acts of Belarusian public bodies rendered the following operations objectively impossible:

- a. timely performance of the Claimant's obligations under the Amended Investment Contract in respect of the New Communal Facilities; and
- b. Claimant's works to design³⁴⁵ and construct the Investment Object.

(i) MCEC and Minsktrans deliberately protracted the process of issuing construction permits and making available the land plots for constructing the Communal Facilities and the New Communal Facilities

419. As a result of wrongful acts of MCEC and Minsktrans, the Claimant failed to perform its obligations for construction and the transfer of the Communal Facilities and the New Communal Facilities into the communal ownership.

³⁴⁵ The design of the Investment Object shall be interpreted as the valuation of investments and expenses of the investor, as well as the preparation of a detailed schedule of constructing the facility.

420. Thus, in accordance with the Investment Contract, MCEC was to make available the land plot to the Claimant for constructing the Motor Transport Base prior to 30 March 2004³⁴⁶, but the Claimant failed to obtain it either at the specified date or in subsequent years, since such land plot was occupied by "*Combine for Reinforced Concrete Products 214*".
421. MCEC and Minsktrans repeatedly negotiated to discuss the issue of making the land plot available to the Claimant for construction of the Motor Transport Base, but failed to take any acts to perform their obligations under the Investment Contract to this effect, and the Claimant never obtained the required land plot.³⁴⁷
422. In respect of the land plot for constructing the Depot, on 15 July 2004 MCEC issued the following decision:³⁴⁸
- a. to allow Manolium-Engineering to act as the customer of design works for the Depot; and
 - b. to make the land plot available to Minsktrans only after the completion of the design stages for constructing the Depot.
423. The said decision of MCEC contradicted the terms and conditions of the Investment Contract³⁴⁹, since it entailed making the land plot available to Minsktrans, rather than to the Claimant.
424. However, MCEC failed to perform its obligations of making the land plot available to Minsktrans for constructing the Depot, notwithstanding that on 10 December 2004 Manolium-Engineering discharged its obligations for developing the design stages of construction of the Depot in accordance with the Investment Contract.

³⁴⁶ **Exhibit C-48.** Additional Agreement No. 2, Clause 2.2.

³⁴⁷ **Exhibit C-56.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 3 December 2003. **Exhibit C-57.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 17 December 2003. **Exhibit C-58.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 4 February 2004. **Exhibit C-59.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 17 March 2004. **Exhibit C-60.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 7 April 2004. **Exhibit C-61.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 24 June 2004.

³⁴⁸ **Exhibit C-53.** Decision of MCEC dated 15 July 2004.

³⁴⁹ **Exhibit C-34.** Clause 7.2.

425. Therefore, in the absence of the land plots for constructing the Communal Facilities, the Claimant was unable to perform its obligations in accordance with the Investment Contract.
426. Delays in making the land plots available for constructing the Communal Facilities combined with high inflation rates in the Republic of Belarus resulted in significant growth of the cost of constructing the facilities and subsequent negotiations between the Parties for entering into the Amended Investment Contract.³⁵⁰
427. The draft Amended Investment Contract was discussed in the course of negotiations for three years (from 2004 until 2007), during which MCEC and Minsktrans avoided signing the draft Amended Investment Contract in every way possible, while MCEC even intended to sell the land plot for the Investment Object at a public auction in 2006.³⁵¹
428. Only after the Claimant approached the assistant to President of the Republic of Belarus, MCEC finally asked the President for assistance in allowing Manolium-Engineering to become the party to the Investment Contract and changing the list of the Communal Facilities in the Investment Contract.³⁵²
429. According to the Investment Contract, if MCEC or Minsktrans failed to timely discharge their obligations under the Investment Contract or delayed performance of the Agreement, then the timing of the design, construction and putting into operation of the Communal Facilities and the Investment Object were to be proportionately extended by a reasonable period necessary for the Claimant to perform its obligations.³⁵³ In addition, the Claimant was not to be considered the party which breached of the Investment Contract in such a case.
430. However, notwithstanding the untimely performance by MCEC and Minsktrans of their respective obligations under the Investment Contract, the timing for performing

³⁵⁰ **Exhibit C-55.** Letter from the Committee for Economy to MCEC dated 28 July 2004. Letter from MCEC to the President of the Republic of Belarus dated 26 May 2006.

³⁵¹ **Exhibit C-63.** Letter from the Claimant to the Assistant to President of the Republic of Belarus dated 24 March 2006.

³⁵² **Exhibit C-35.** Letter from MCEC to the President of the Republic of Belarus dated 26 May 2006.

³⁵³ **Exhibit C-34.** Clause 5.4.

the Claimant's obligations pursuant to the Amended Investment Contract were not proportionately extended in consideration of violations committed.

431. Subsequently, Belarusian public bodies failed to discharge their obligations under the Amended Investment Contract in the following manner:

- a. Gosstroy issued a construction permit to the Claimant in respect of the Depot only on 15 October 2007, *i.e.* 5 months from the MCEC Decision on Land Plot Provision for Depot Construction³⁵⁴, for which reason the Claimant was unable to commence construction of the Depot for 5 months.
- b. On 15 October 2007, Gosstroy issued a construction permit to the Claimant in respect of the Depot only for three months, *i.e.* valid until 30 January 2008³⁵⁵, which violated the period of construction established by the Amended Investment Contract – until December 2008.
- c. On 29 May 2008, Gosstroy issued a construction permit to the Claimant in respect of the Road valid until 31 October 2008³⁵⁶, which violated the period of construction established by the Amended Investment Contract – until December 2008.
- d. Only on 19 August 2008, *i.e.* 4 months after coordinating Construction Documents of the Pull Station and 4 months prior to the expiration of the Amended Investment Contract ("*until December 2008*"), Gosstroy issued a construction permit to Manolium-Engineering for constructing the Pull Station³⁵⁷, without which Manolium-Engineering could not start any construction operations. Therefore, the Claimant was deprived of the opportunity to perform its obligations of constructing the Pull Station for 4 months.
- e. On 20 August 2008, *i.e.* only 5 months after Construction Documents' preparation for the Road, the right of temporary use of the land plots for constructing the Road by Manolium-Engineering was registered. Without the

³⁵⁴ **Exhibit C-70.** Construction permit issued by Gosstroy for constructing the Depot dated 15 October 2007.

³⁵⁵ **Exhibit C-70.** Construction permit issued by Gosstroy for constructing the Depot dated 15 October 2007.

³⁵⁶ **Exhibit C-87.** Construction permit issued by Gosstroy dated 29 May 2008.

³⁵⁷ **Exhibit C-98.** Construction permit issued by Gosstroy for construction of the Pull Station dated 19 August 2008.

said right, commencing any construction operations was rendered impossible³⁵⁸. Accordingly, the Claimant was deprived of the opportunity to discharge its obligations in respect of constructing the Road for 5 months.

- f. After 1 July 2011, *i.e.* after the expiry of the period for performing the Claimant's obligations of constructing and transferring the New Communal Facilities into the communal ownership, in 2011-2012 MCEC compelled the Claimant to continue construction in violation of Belarusian laws.³⁵⁹

432. The above violations of the good faith principle by the public bodies of the Republic of Belarus that prevented performing the Amended Investment Contract should have resulted in extending the period of discharging the Claimant's obligations in the procedure set forth by the Amended Investment Contract,³⁶⁰ so that the Claimant could discharge its obligations thereunder in full.

433. However, neither MCEC, nor Minsktrans took any acts to assist the Claimant in performing its obligations, which contributed to further non-performance of construction obligations and rendered the transfer of the New Communal Facilities into the communal ownership within the period laid down by the Amended Investment Contract (until 1 July 2011) impossible.

(ii) *MCEC Deliberately Protracted The Process Of Making Available The Land Plot For Designing The Investment Object*

434. MCEC deliberately protracted making the land plot available to the Claimant for designing the Investment Object in violation of the Amended Investment Contract.

³⁵⁸ **Exhibit C-88.** Certificate of registration of the right of temporary use granted to Manolium-Engineering in respect of the land plots for construction the Depot in Uruchye-6 dated 20 August 2008.

³⁵⁹ **Exhibit C-124.** Letter from MCEC dated 5 January 2012. **Exhibit C-125.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 9 January 2012. **Exhibit C-126.** Letter from MCEC to the Claimant dated 18 June 2012.

³⁶⁰ **Exhibit C-66.** Additional Agreement No. 4, Clause 6.3.

435. MCEC was to lease out the land plot for constructing the Investment Object to the Claimant after performing the relevant obligations in respect of the New Communal Facilities (construction and transfer into the communal ownership).³⁶¹
436. But prior to transfer of the New Communal Facilities into the communal ownership, the Claimant could perform the design of the Investment Object.³⁶² However, it required obtaining the relevant MCEC permit in accordance with Belarusian laws.
437. Therefore, concurrently with designing and constructing the New Communal Facilities, the Claimant was expected to design the Investment Object to put it into operation no later than in December 2012.³⁶³
438. However, only in June 2009, more than 2 years after conclusion of the Amended Investment Contract, MCEC made the land plot available to the Claimant for designing the Investment Object.³⁶⁴
439. Since on the said date the Claimant had no construction permit (due to the absence of the approved draft Investment Object), while in July 2009 the Claimant was to start construction³⁶⁵, such delay on the part of MCEC was non-acceptable.
440. During the above period, Belarusian public bodies committed a number of material delays in making the land plots available to the Claimant for constructing the New Communal Facilities and issuing the construction permits.³⁶⁶
441. The Parties finally reached an agreement to postpone the deadlines of constructing and transferring the New Communal Facilities into the communal ownership until 1 July 2011.³⁶⁷
442. But the deadline for putting the Investment Object into operation (no later than in December 2012) was not accordingly extended in the manner provided for by the

³⁶¹ **Exhibit C-66.** Additional Agreement No. 4, Clause 9.3.8.

³⁶² **Exhibit C-66.** Additional Agreement No. 4, Clause 5.

³⁶³ **Exhibit C-113.** Schedule of design and construction of the Investment Object dated 28 December 2007.

³⁶⁴ **Exhibit C-116.** Investment Object Location Selection Act dated 25 March 2009.

³⁶⁵ **Exhibit C-113.** Schedule of design and construction of the Investment Object dated 28 December 2007.

³⁶⁶ Clauses 152-157, 175-179 above.

³⁶⁷ **Exhibit C-76.** Additional Agreement No. 6.

Amended Investment Contract³⁶⁸ because of a failure of MCEC and Minsktrans to perform their obligations and because of their acts that prevented performance of the Contract.

443. Since the initial construction period for the Investment Object implied performance of the works within 3 years (from 2009 until 2012)³⁶⁹, it is quite obvious that within 17 months – 1 year and 5 months (from 1 July 2011 until December 2012) the Claimant had no objective opportunity to complete the construction and commissioning of the Investment Object.

444. On 26 April 2011, the Committee for Architecture notified Manolium-Engineering of the impossibility of further consideration of the Investment Object project "*in connection with the absence of the initial approvals*"³⁷⁰.

445. As a result of acts taken by MCEC and Minsktrans that rendered the transfer of the New Communal Facilities into the communal ownership by 1 July 2011 impossible, the Investment Object became impossible to implement.

446. On 14 March 2013, MCEC recognized the Investment Object Location Selection Act to be invalid³⁷¹ and on 15 August 2014 made the land plot for the Investment Object available to Minskstroy³⁷², a state-owned company and general contractor for building facilities in Minsk³⁷³.

(iii) MCEC And Minsktrans Contributed To Disrupting The Deadlines Of Constructing And Transferring The New Communal Facilities Into The Communal Ownership

447. Wrongful acts of MCEC and Minsktrans in respect of the Claimant contributed to a failure of the Claimant to discharge its obligations of constructing and putting the New Communal Facilities into operation until 1 July 2011.

³⁶⁸ **Exhibit C-66.** Additional Agreement No. 4, Clause 6.3.

³⁶⁹ **Exhibit C-113.** Schedule of design and construction of the Investment Object dated 28 December 2007.

³⁷⁰ **Exhibit C-121.** Letter from the Committee for Architecture to Manolium-Engineering dated 26 April 2011.

³⁷¹ **Exhibit C-138.** Decision of MCEC dated 14 March 2013.

³⁷² **Exhibit C-142.** Decision of MCEC dated 15 August 2014. **Exhibit C-143.** Letter from Minsktrans to Manolium-Engineering dated 19 September 2014.

³⁷³ **Exhibit C-144.** Official website of State Production Association Minskstroy, "*About Association*". // Available at: http://www.minskstroy.by/ob_ob_edinenii/.

448. *Firstly*, the Claimant faced the situation that in 2008 MCEC hindered the construction of the New Communal Facilities:

- a. instead of assisting in performing the works, MCEC instructed Belarusian construction companies to stop building the Depot in order to perform the works of constructing Minsk-Arena (for the World Cup of Hockey) and other scheduled Minsk facilities as a matter of urgency;
- b. the same instruction was given to suppliers of materials;
- c. the equipment designed for the Depot could not be supplied, as by that time it was not manufactured in the Republic of Belarus.

449. Such acts were unacceptable, since they:

- a. violating the provisions of the Amended Investment Contract; and
- b. rendered performance by the Claimant of its obligations of constructing and commissioning the facilities until December 2008 impossible³⁷⁴.

450. Already in 2010, after extending the deadline for putting the New Communal Facilities into operation until 1 August 2010³⁷⁵, MCEC made a decision to dismiss the general contractor and other contractors that constructed the facilities and to relocate them to perform scheduled operations for improving the city-planning of Minsk until September-October 2010.

451. This decision of MCEC rendered the timely completion of the New Communal Facilities impossible, for which reason the Claimant was compelled to ask for extending the timing for performance of its obligations until 1 July 2011.³⁷⁶

452. *Secondly*, notwithstanding that the Claimant discharged its obligations to construct the New Communal Facilities, MCEC and Minsktrans avoided to accept the facilities into the communal ownership in every way possible.

³⁷⁴ **Exhibit C-71.** Letter from Manolium-Engineering to MCEC dated 11 September 2008.

³⁷⁵ **Exhibit C-73.** Decision of MCEC dated 3 September 2009.

³⁷⁶ **Exhibit C-74.** Letter from Manolium-Engineering to MCEC dated 6 September 2010.

453. In accordance with the Amended Investment Contract, Manolium-Engineering was to transfer, and MCEC was to accept the Road into the communal ownership within one month of the date of accepting the Facility into operation or state registration of creating the relevant real estate item.³⁷⁷
454. Performance of the obligations to transfer the New Communal Facilities into the communal ownership "*triggered*" the Claimant's right to the land plot in the center of Minsk to construct the Investment Object that, as follows from the below, MCEC and Minsktrans were unwilling to make available to the Claimant.
455. The Depot was composed of the following buildings:
- a. production facility;
 - b. administrative and accommodation block; and
 - c. CP with the controlling unit.
456. In November 2011, Minsktrans accepted from the Claimant two of the three buildings constituting the Depot (administrative and accommodation block and Checkpoint with treatment units)³⁷⁸, while the production facility of the Depot was never put into operation.
457. So, Minsktrans operated two of the three completed construction facilities constituting the Depot.
458. Notwithstanding the readiness of the Depot for operation in full, neither MCEC, nor Minsktrans accepted the facility into the communal ownership.³⁷⁹
459. As for the Road, on 1 July 2011 the Claimant completed the works on the facility and resolved to create the acceptance committee for putting it into operation.³⁸⁰

³⁷⁷ **Exhibit C-66.** Additional Agreement No. 4, Clauses 2, 8.8, 9.3.9.

³⁷⁸ **Exhibit C-82.** Depot Facilities Gratuitous Use Agreement, paragraph 7.

³⁷⁹ **Exhibit C-83.** Letter from the Claimant to MCEC dated 19 March 2013.

³⁸⁰ **Exhibit C-91.** Order of Manolium-Engineering No. 1-C dated 1 July 2011.

460. Therefore, the Claimant, even subject to the delays of Belarusian authorities in provision of the land plot and issuing the construction permit, complied with its obligations for construction of the Road.
461. Subsequently, neither MCEC, nor Minsktrans issued a decision to accept the Road into operation and into the communal ownership, though in December 2011 Minsktrans required the Claimant to provide calculations of its expenses in constructing the Road to resolve on transferring the facility into the communal ownership.³⁸¹
462. After that, the issue of the reasons to refuse accepting the Road into operation was not brought up, notwithstanding numerous requests of the Claimant.³⁸²
463. Even after the provision of the necessary information, Minsktrans did not adopt any decision on accepting the Road into the communal ownership, notwithstanding that the Claimant discharged its obligations to construct the Road in a timely manner and the Claimant's requests to accept the facility.
464. In respect of the Pull Station, the Claimant completed its construction in June 2010 and on 6 July 2010 transferred it to Minsktrans for gratuitous operation.³⁸³
465. On 30 July 2010, the commission composed of the chairmen of MCEC, Minsktrans and the Claimant approved the putting of the Pull Station into operation.³⁸⁴
466. The commission did not bring any objections in accepting the Pull Station.
467. On 8 October 2010, the Pull Station underwent state registration as a real estate item.³⁸⁵

³⁸¹ **Exhibit C-92.** Letter from Minsktrans to Manolium-Engineering dated 13 December 2011.

³⁸² **Exhibit C-83.** Letter from the Claimant to MCEC dated 19 March 2013. **Exhibit C-93.** Letter from the Claimant to MCEC dated 27 May 2013. **Exhibit C-94.** Letter from the Claimant to MCEC dated 27 June 2013. **Exhibit C-95.** Letter from the Claimant to MCEC dated 18 July 2014.

³⁸³ **Exhibit C-99.** Pull Station Gratuitous Use Agreement.

³⁸⁴ **Exhibit C-100.** Acceptance Act in respect of the Pull Station dated 30 July 2010.

³⁸⁵ **Exhibit C-101.** Registration of the Pull Station as a permanent structure dated 1 October 2010.

468. Pursuant to the Amended Investment Contract, MCEC and Minsktrans were obliged to accept the Facility into the communal ownership of Minsk within one month of commissioning the Pull Station, i.e. from 30 July 2010.³⁸⁶

469. Finally, Minsktrans and Minsktrans refused to accept the Pull Station into the communal ownership allegedly by reason of the energy supply deficit and asserted that the issue of transferring the Facility into the communal ownership ought to be considered "*from the moment of putting the trolleybus fleet into operation*", i.e. the New Communal Facility Depot, which absolutely contradicted the provisions of the Amended Investment Contract.³⁸⁷

470. Because of a failure to perform the obligations and because of protracting the implementation of the Investment Contract on the part of MCEC and Minsktrans, the timing for performance of the Claimant's obligations ought to have been extended by a reasonable period so that that Claimant could discharge its obligations in respect of the New Communal Facilities.³⁸⁸

471. Accordingly, wrongful acts of MCEC and Minsktrans resulted in the Claimant's failure to perform its obligations to construct and transfer the New Communal Facilities into the communal ownership by 1 July 2011, which led to subsequent termination of the Investment Contract initiated by MCEC and Minsktrans on illegitimate grounds.

(iv) Public Authorities Of The Republic Of Belarus Unreasonably Required The Claimant To Continue Building The New Communal Facilities And Wrongfully Terminated The Amended Investment Contract

472. Notwithstanding that the timing of performing the Claimant's obligations for constructing and transferring the New Communal Facilities into the communal ownership expired on 1 July 2011 (together with the right of temporary use of the land

³⁸⁶ **Exhibit C-66.** Additional Agreement No. 4, Clause 9.3.9.

³⁸⁷ **Exhibit C-78.** Letter from Minsktrans to Manolium-Engineering dated 22 July 2011. **Exhibit C-105.** Letter from Minsktrans to Manolium-Engineering dated 19 September 2011. **Exhibit C-106.** Letter from Manolium-Engineering to MCEC dated 11 August 2011. **Exhibit C-107.** Letter from Manolium-Engineering to MCEC dated 11 October 2011. **Exhibit C-80.** Letter from Manolium-Engineering to MCEC dated 12 October 2011.

³⁸⁸ **Exhibit C-66.** Additional Agreement No. 4, Clause 6.3.

plots) and notwithstanding numerous requests of the Claimant, MCEC did not extend the said right.

473. Nonetheless, MCEC required the Claimant to continue construction of the New Communal Facilities³⁸⁹, while the Claimant attempted to return the land plots to comply with statutory requirements of the Republic of Belarus that establish administrative liability for arbitrary construction.³⁹⁰

474. From 2012 until 2014, the Claimant, MCEC and Minsktrans attempted to resolve the dispute in connection with the Claimant's "*failure*" to perform the obligations of transferring the New Communal Facilities into the communal ownership.

475. During negotiations, the Claimant offered MCEC:

a. to transfer the New Communal Facilities into the communal ownership due to their readiness; and

b. alternative options of performing the Amended Investment Contract.³⁹¹

476. But MCEC refused to consider the Claimant's options, insisted on the Claimant's coordinating a draft agreement on terminating the Investment Contract and asked to transfer the New Communal Facilities into the communal ownership as soon as practicable³⁹², but did not take any acts for accepting the same.

477. On 9 September 2014, the Economic Court of Minsk issued a decision under the petition of MCEC and Minsktrans on terminating the Amended Investment Contract.³⁹³

478. In addition to numerous errors in terms of content, such decision basically omitted the statement of reasons of why the judge made such conclusions, as well as lacked the analysis of acts of the Claimant and Manolium-Engineering in accordance with

³⁸⁹ **Exhibit C-124.** Letter from MCEC dated 5 January 2012. **Exhibit C-125.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 9 January 2012. **Exhibit C-126.** Letter from MCEC to the Claimant dated 18 June 2012.

³⁹⁰ **Exhibit C-127.** Letter from Gosstroy to Manolium-Engineering dated 21 April 2012.

³⁹¹ **Exhibit C-136.** Letter from the Claimant to MCEC dated 4 March 2013.

³⁹² **Exhibit C-137.** Letter from MCEC to the Claimant dated 11 March 2013.

³⁹³ **Exhibit C-147.** Judgment of the Economic Court of Minsk dated 9 September 2014.

Belarusian laws and the provisions of the Amended Investment Contract, which evidenced an obvious prejudice of the court towards the Claimant and an intention to issue a decision in favor of Belarusian public bodies.

479. On 29 October 2014, the court of appeal upheld the decision on terminating the Amended Investment Contract, for which reason the Agreement was finally terminated on the specified date.³⁹⁴

480. During subsequent negotiations regarding the Investments made by the Claimant into the New Communal Facilities, MCEC (3 years later) commenced challenge of the Paritet-Standart Report, under which the amount of Investments made up USD 18,313,814.96³⁹⁵, since the opinion was prepared without participation of Minsktrans's representatives.

481. For example, to evaluate the costs incurred by the Claimant in designing and constructing the New Communal Facilities, MCEC required to provide a report prepared by a special state valuation firm approved by MCEC.³⁹⁶

482. In February 2015, the representatives of the Claimant, Manolium-Engineering, MCEC and Minsktrans reached an agreement to compensate the Claimant's expenses subject to the valuation by the Registration and Cadastre Agency.³⁹⁷

483. Pursuant to the Registration and Cadastre Agency Report, the amount of the Claimant's expenses constituted USD 18,129,933.17.³⁹⁸

484. Some later, MCEC refused to recognize the Registration and Cadastre Agency Report, as the agreement by and between Manolium-Engineering and the said agency did not provide for rendering "*independent valuation*" services.³⁹⁹

485. Thus, according to MCEC, the Registration and Cadastre Agency Report included improper expenses and without taking into account the impossibility of requiring the

³⁹⁴ **Exhibit C-150.** Ruling of the instance of appeal of the Commercial court of Minsk dated 29 October 2014.

³⁹⁵ **Exhibit C-131.** Paritet-Standart Report, page 6.

³⁹⁶ **Exhibit C-130.** Letter from MCEC to Manolium-Engineering dated 3 October 2012.

³⁹⁷ **Exhibit C-153.** Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 4 February 2015.

³⁹⁸ **Exhibit C-154.** Registration and Cadastre Agency, page 43.

³⁹⁹ **Exhibit C-156.** Letter from MCEC to Manolium-Engineering dated 7 August 2015.

New Communal Facilities for the urban needs in their current state, for which reason the said opinion did not serve the ground for compensating the losses incurred by the Claimant.

486. MCEC disagreed with Manolium-Engineering, since during the meeting in February 2015 the Claimant was notified of the possibility of proper consideration of the issue of compensating expenses, provided that the following conditions were met:⁴⁰⁰

- a. obtaining the results of evaluation by the Registration and Cadastre Agency;
- b. confirmation of the intended purpose of the amounts applied directly to creating the New Communal Facilities; and
- c. relevance of the said Facilities for Minsk.

487. According to MCEC, none of the conditions listed above was met by Manolium-Engineering, for which reason the latter was not entitled to obtain incurred expenses.

488. In 2016, Belarusian public bodies selected the strategy of exerting pressure on the Claimant through initiating numerous legal proceedings in order (as it turned out) to divest the land plots, the New Communal Facilities, and to bring the Claimant to tax liability.

489. The first administrative proceedings in order to check the land plots for the New Communal Facilities made available to Manolium-Engineering in connection with the untimely return of the land plots was instigated by the court of the Pervomaysky district of Minsk in April 2016 and shortly terminated in the absence of elements of crime in acts taken by Manolium-Engineering.

490. In May 2016, the court of superior instance being the Economic Court of Minsk ruled out to repeal the said judgment on terminating proceedings and remand the case for a new trial in connection with "*non-objective consideration of the facts and evidence*"

⁴⁰⁰ **Exhibit C-158.** Letter from MCEC to Manolium-Engineering dated 4 September 2015.

on the part of the court and "*incorrect evaluation of the evidence to the case*"⁴⁰¹, but this time by a different judge.

491. Finally, on 17 May 2016, another judge of the court of the Pervomaysky district of Minsk issued a decision on bringing Manolium-Engineering to administrative liability and imposing an administrative fine amounting to 52,500,000 non-denominated Belarusian rubles (equivalent to USD 2,668)⁴⁰² due to:

- a. protraction of constructing the New Communal Facilities by Manolium-Engineering; and
- b. breaches of laws in respect of returning the land plot to Minsk (provided there exists no right to use such land plots).

492. The said judgment of the court of the Pervomaysky district of Minsk was made use of by the public bodies to generate the grounds to bring Manolium-Engineering to tax liability for the arbitrary occupation of the land plots for the New Communal Facilities and recovery of "*the existing indebtedness*" before the budget in the form of divesting the land plots and the New Communal Facilities.

493. In June 2016, the Tax Inspectorate required Manolium-Engineering (based on the judgment of the court of the Pervomaysky district dated 17 May 2016) to pay the indebtedness before the budget in the amount of 26,444,081.02 denominated Belarusian rubles for 2013-2016.⁴⁰³

494. In July 2016 the Tax Inspectorate arrested the Arrested Property⁴⁰⁴ in the amount of 20,699,817.7 denominated Belarusian rubles (equivalent of USD 10,700,000).

495. On 1 December 2016, the land plots underlying the New Communal Facilities were divested from the alleged "*use*" of Manolium-Engineering as resolved by Manolium-Engineering⁴⁰⁵.

⁴⁰¹ **Exhibit C-162.** Decision of the Economic Court of Minsk dated 13 May 2016.

⁴⁰² **Exhibit C-182.** Resolution of the court of the Pervomaysky district of Minsk dated 17 May 2016 (operative part and statement of reasons)

⁴⁰³ **Exhibit C-165.** Letter from the Tax Inspectorate to Manolium-Engineering dated 21 June 2016. **Exhibit C-166.** Amendments and supplements to the First Tax Audit Report dated 21 June 2016.

⁴⁰⁴ **Exhibit C-167.** Order of the Tax Inspectorate for arrest of the land plots dated 5 July 2016.

496. As of 10 November 2016, the indebtedness of Manolium-Engineering before the budget amounted to:⁴⁰⁶

- a. **20,046,478.41 denominated Belarusian rubles** (equivalent of USD 10,200,000) for a failure to pay the land tax for 2013-2016; and
- b. **8,181,065.73 denominated Belarusian rubles** (equivalent of USD 4,150,000) as the penalty accrued on the tax liability of Manolium-Engineering before the budget.

497. In January 2017, in accordance with a secret instruction of the President of the Republic of Belarus, the New Communal Facilities were divested from the Claimant and transferred into the communal ownership of Minsk on account of the indebtedness of Manolium-Engineering for taxes before the budget.

498. As of now, the public bodies of the Republic of Belarus failed to serve such decision of the President on the Claimant, and the Claimant failed to gain access to the said document.

499. Therefore, the public bodies of the Republic of Belarus terminated the Amended Investment Contract in an illegitimate manner and subsequently took active steps to divest the Investments made by the Claimant by wrongfully bringing the latter to tax liability.

(v) MCEC Sold The Land Plot For The Investment Object To Another Investor

500. In September 2017, MCEC sold the land plot underlying the trolleybus depot at Masherova Street to A-100 Development.⁴⁰⁷

501. It is important to note that A-100 Development is not experienced in constructing facilities in Minsk.

⁴⁰⁵ **Exhibit C-173.** Decision of MCEC dated 1 December 2016.

⁴⁰⁶ **Exhibit C-171.** Extract from the records of the Ministry of Taxes in respect of the indebtedness of Manolium-Engineering as of 10 November 2016.

⁴⁰⁷ **Exhibit C-185.** Official website of news portal of Belarus TUT.BY, "*Almost fivefold of the initial price. A-100 acquired the section of the trolleybus depot in the center of Minsk*". // Available at: <https://news.tut.by/economics/559888.html>.

502. The said land plot is expected to host a residential complex composed of facilities of social and public importance and underground parkings.

503. Therefore, the public bodies that wrongfully deprived the Claimant of the opportunity to construct the Investment Object on the territory of the Depot subsequently sold the land plot for the Investment Object to a third party without notifying the Claimant thereof and without offering the Claimant to purchase such land plot for construction.

6.2.4. Violation Of The Investment Contract On The Part Of The Republic Of Belarus is Equivalent To Breaching Protocol No. 16 To The EEU Treaty

504. The investment contract and the international investment treaty have different legal features, accordingly, any violations of the investment contract by the recipient state may not be automatically considered violations of the international investment treaty (or the international treaty with investment provisions).

505. According to the arbitration practice, any violation of the investor-state investment contract may constitute a violation of the international treaty, if the host state in breach of the contract acts in its public capacity, in particular, made use of administrative resources.

506. This approach to assessment of violations was demonstrated, in particular, in the award for the investment dispute of *Bayindir v. Pakistan* that established that a failure to perform the investment contract may be qualified as a violation of the international treaty, if such violation constitutes⁴⁰⁸:

"[A] breach different in nature from a simple contract violation, in other words one which the State commits in the exercise of its sovereign power."

⁴⁰⁸ **Exhibit CL-14.** *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009. paragraph 180.

507. In the present case, the Republic of Belarus in performing the Investment Contract and in violating its provisions exercised its public powers.⁴⁰⁹

508. Therefore, in performing the Investment Contract with the Claimant the Republic of Belarus acted in its public capacity using the Claimant's obligations to exercise the state functions.

509. Accordingly, a violation of the Investment Contract on the part of the Republic of Belarus is equivalent to breaching the provisions of Protocol No. 16 to the EEU Treaty

6.3. The Republic Of Belarus Illegally Expropriated The Claimant's Investments

(a) Obligation Of The Republic Of Belarus To Refrain From Expropriation of the Investors' Investments On The Territory Of The State

510. According to paragraph 79 of Protocol No. 16 to the EEU Treaty:⁴¹⁰

"Investments of investors of a Member State made on the territory of another Member State shall not be subject to direct or indirect expropriation, nationalization and other measures with consequences equivalent to those of expropriation or nationalization (hereinafter "expropriation"), except in cases where such measures are taken for the public benefit in the procedure determined by the legislation of the recipient state, are not discriminatory and involve prompt and adequate compensation." [Claimant's emphasis]

511. Accordingly, the provisions of Protocol No. 16 to the EEU Treaty impose a general prohibition on expropriation and measures with consequences equivalent to those of expropriation, except where such measures:

- a. are taken for the public benefit;

⁴⁰⁹ **Exhibit C-28.** Tender documents for the Tender dated 24 April 2003. **Exhibit C-35.** Letter from MCEC to the President of the Republic of Belarus dated 26 May 2006. **Exhibit C-45.** Resolution of the President of the Republic of Belarus to implementing the project under the Investment Contract dated 5 November 2003.

⁴¹⁰ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, paragraph 79.

- b. are taken in the procedure determined by the legislation of the recipient state;
- c. are not discriminatory; and
- d. involve prompt and adequate compensation.

(b) **Illegal Expropriation Of Investments**

512. The Republic of Belarus illegally expropriated the Claimant's Investments as a result of the termination of the Amended Investment Contract.

513. The termination of the Amended Investment Contract constitutes an indirect expropriation.

514. According to the arbitration investment practice, to determine the fact of indirect expropriation, it is necessary to establish the economic effect of the measure taken by the state in respect of the Claimant.

515. For example, in the case of *Tecmed v. Mexico*⁴¹¹ the arbitral tribunal concluded that indirect expropriation is a measure resulting in the investor:

"is radically deprived of the economical use and enjoyment of its investment, as if right related thereto [...] has ceased to exist."

516. The termination of the Amended Investment Contract resulted in deprivation of the Claimant of all Investments made, as well as of the opportunity to gain economic benefits from his/her own Investments.

517. The Amended Investment Contract provided for making the land plot available to the Claimant for constructing the Investment Object, provided that the Claimant performed the obligations of:

⁴¹¹ **Exhibit CL-32.** *Tecnicas Medioambientales Tecmed SA v. United Mexican States*, ICSID Case No. ARB (AF)/00/3, Award, 29 May 2003, paragraph 115.

- a. constructing and transferring the New Communal Facilities into the communal ownership; and
- b. making the Library Payment.

518. The Claimant performed its obligation to make the Library Payment and construct the New Communal Facilities within the specified period even against the background of the delays and failures on the part of MCEC and Minsktrans.

519. As stated above, MCEC and Minsktrans contributed to a failure of the Claimant to transfer the New Communal Facilities into the communal ownership, since they did their best to prevent their acceptance.

520. The public bodies of the Republic of Belarus assumed the obligation to accept the New Communal Facilities into the communal ownership and to lease out the land plot to the Claimant for constructing the Investment Object.⁴¹²

521. However, the Republic of Belarus, having accepted the New Communal Facilities into operation, failed to accept them into the communal ownership of the city of Minsk prior to terminating the Amended Investment Contract.

522. As of now, the New Communal Facilities are finally accepted into the communal ownership of Minsk (but only under a secret instruction of the President of the Republic of Belarus that was never served on the Claimant) and are made use of by the Republic of Belarus.

523. The termination of the Amended Investment Contract in litigation released the Republic of Belarus from performing its obligation under the Investment Contract after performing the Claimant's obligations.

524. The economic effect of termination of the Investment Contract is equal to the effect of expropriation. As a result of terminating the Investment Contract, the Claimant was deprived of the opportunity to gain any economic benefit from its Investments. The

⁴¹² **Exhibit C-66.** Additional Agreement No. 4, Clauses 9.2, 9.3.8, 9.3.9.

termination of the Amended Investment Contract in litigation initiated by the Republic of Belarus deprived the Claimant of the right to construct the Investment Object.

525. The Republic of Belarus failed to pay any compensation to the Claimant for expropriating its Investments⁴¹³, for which reason such expropriation is illegal.

526. Therefore, the Republic of Belarus illegally expropriated the Claimant's Investments resulting from the termination of the Amended Investment Contract.

6.4. Losses Caused To The Claimant By The Republic Of Belarus

(a) Standard Of Compensation of Losses Caused By Expropriation

527. Protocol No. 16 to the EEU Treaty provides for the following standard of compensation for expropriating investments (the "**Expropriation Standard**"): ⁴¹⁴

"80. The compensation referred to in paragraph 79 of this Protocol shall correspond to the market value of investments expropriated from investors on the date immediately preceding the date of their actual expropriation or the date when it becomes known about the upcoming expropriation.

81. The compensation referred to in paragraph 79 of this Protocol shall be paid without delay, within the period provided for by the legislation of the recipient state, but not later than within 3 months from the date of expropriation and shall be freely transferable abroad from the territory of the recipient state in a freely convertible currency.

In case of a delayed payment of a compensation, interest shall be accrued in the period from the date of expropriation until the date of actual payment of the compensation, to be calculated at the domestic interbank market rate for actually provided loans in US dollars for up to 6 months, but not below the rate

⁴¹³ Exhibit CL-3. Protocol No. 16 to EEU Treaty, paragraph 79.

⁴¹⁴ Exhibit CL-3. Protocol No. 16 to EEU Treaty, paragraph 80.

of LIBOR or in the procedure determined by the agreement between the investor and the recipient state."

528. Therefore, since the Republic of Belarus expropriated the Investments, it shall pay to the Claimant a prompt and adequate compensation for expropriation of Investments from the Claimant in the amount of the market value of such Investments as of the date preceding such expropriation.

529. Since the Republic of Belarus has not paid any such compensation to the Claimant by now, interest shall be accrued on the amount of the compensation to be calculated "*at the domestic interbank market rate for actually provided loans in US dollars for up to 6 months, but not below the rate of LIBOR*", as there does not exist any agreement by and between the Republic of Belarus and the Claimant to the contrary.

(b) Losses Incurred By The Claimant Resulting From Expropriation Of Its Investments By The Republic Of Belarus

530. As a result of wrongful acts of the Republic of Belarus represented by its public bodies in respect of the Claimant and expropriation of Investments made by the Claimant on the territory of the Republic of Belarus, the Claimant incurred damage in the amount of **USD 208,200,000 or, alternatively, USD 45,550,000**, and, in particular:⁴¹⁵

- a. losses in the form of the Claimant's lost profit resulting from losing the right to perform the Amended Investment Contract (including interest accrued) in the amount of **USD 171,300,000 or, alternatively, USD 8,650,000**; and
- b. direct losses caused by the expropriation of the New Communal Facilities by the public bodies (including interest accrued) in the amount of **USD 36,900,000**.

531. This Notice of Arbitration encloses the Claimant's expert report dated 24 April 2017 prepared by Travis Taylor (from Navigant) that contains a detailed and evidential

⁴¹⁵ **Exhibit C-14.** Navigant Expert report dated 24 April 2017.

analysis and calculation of the Claimant's losses caused by acts taken by the Republic of Belarus.

532. The Claimant states that the losses were estimated in preparing the Pre-Arbitration Notice as at 31 March 2017, but the Claimant reserves the right to change the loss estimate at subsequent stages of arbitration proceedings between the Claimant and the Republic of Belarus.

VII. ARBITRATION PROCEDURE

7.1. Application Of The UNCITRAL Arbitration Rules Of 2013

533. In accordance with paragraphs 84-85 of Protocol No. 16 to EEU Treaty:⁴¹⁶

"84. All disputes between a recipient state and an investor of another Member State arising from or in connection with an investment of that investor on the territory of the recipient state, including disputes regarding the size, terms or order of payment of the amounts received as compensation of damages pursuant to paragraph 77 of this Protocol and the compensation provided for in paragraphs 79-81 of this Protocol, or the order of payment and transfer of funds provided for in paragraph 8 of this Protocol, shall be, where possible, resolved through negotiations.

85. If a dispute may not be resolved through negotiations within 6 months from the date of a written notification of any of the parties to the dispute on negotiations, it may be referred to the following, at investor's option:

1) a court of the recipient state duly competent to consider relevant disputes;

2) international commercial arbitration court at the Chamber of Commerce of any state as may be agreed by the parties to the dispute;

3) ad hoc arbitration court, which, unless the parties to the dispute agree otherwise, shall be established and act in accordance with the Rules of

⁴¹⁶ Exhibit CL-3. Protocol No. 16 to EEU Treaty, paragraphs 84-85.

Arbitration of the United Nations Commission on International Trade Law (UNCITRAL);

4) *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 of March 18, 1965, in order to resolve the dispute under the provisions of the Convention (provided that it has entered into force for both Member States that are parties to the dispute) or under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (if the Convention has not entered into force for one or both the Member States that are parties to the dispute).*" [Claimant's emphasis]

534. Pursuant to Article 1(2) of the UNCITRAL Arbitration Rules⁴¹⁷:

"The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date."

535. The EEU Treaty containing the parties' agreement to refer disputes to *ad hoc* arbitration under the UNCITRAL Arbitration Rules was concluded on 29 May 2014⁴¹⁸, *i.e.* after 15 August 2010.

536. Accordingly, in considering the dispute by *ad hoc* arbitration in accordance with the UNCITRAL Arbitration Rules, the UNCITRAL Arbitration Rules of 2013 shall apply.⁴¹⁹

⁴¹⁷ **Exhibit CL-4.** 2013 UNCITRAL Arbitration Rules, Article 1(2).

⁴¹⁸ Treaty on the Eurasian Economic Union dated 29 May 2014 // Available at: <https://docs.eaeunion.org/ru-ru/Pages/DisplayDocument.aspx?s=bef9c798-3978-42f3-9ef2-d0fb3d53b75f&w=632c7868-4ee2-4b21-bc64-1995328e6ef3&l=540294ae-c3c9-4511-9bf8-aaf5d6e0d169&EntityID=3610>

⁴¹⁹ **Exhibit CL-4.** 2013 UNCITRAL Arbitration Rules, Article 1(2).

537. In addition, the UNCITRAL Rules on Transparency in the context of Treaty-based investor-state arbitration proceedings shall apply to the present arbitration⁴²⁰ (the "**UNCITRAL Rules on Transparency**") by virtue of the below.

538. Pursuant to Article 1(1) of the UNCITRAL Arbitration Rules:⁴²¹

"The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Rules on Transparency") shall apply to investor-State arbitration initiated under the UNCITRAL Arbitration Rules pursuant to a treaty providing for the protection of investments or investors ("treaty") concluded on or after 1 April 2014 unless the Parties to the treaty have agreed otherwise" [Claimant's emphasis]

539. The EEU Treaty that contains the parties' agreement on referring disputes to *ad hoc* arbitration pursuant to the UNCITRAL Arbitration Rules was concluded after 1 April 2014, namely, on 29 May 2014, and the Member States of the EEU Treaty did not rule out application of the UNCITRAL Rules on Transparency by their mutual agreement.

540. Accordingly, the UNCITRAL Rules on Transparency shall apply to the present arbitration proceedings.

⁴²⁰ UNCITRAL Rules on Transparency. // Available at: <http://www.uncitral.org/pdf/russian/texts/arbitration/arb-rules-2013/UNCITRAL-Arbitration-Rules-2013-R.pdf>

⁴²¹ UNCITRAL Rules on Transparency, Article 1(1).

7.2. Terms And Conditions Of Submission Of The Disputes To International Arbitration

541. Pursuant to Protocol No. 16 to the EEU Treaty, the following terms and conditions for an investor to refer to international arbitration are in place:

- a. the Claimant shall fulfill the requirement on holding negotiations with the state within six months of delivering the pre-arbitration notice to the Republic of Belarus;⁴²² and
- b. the Claimant shall not refer the Dispute for settlement to a national court or any other international arbitration courts prior to referring the same to the arbitral tribunal for resolving the Dispute with the Republic of Belarus (the "**Arbitral Tribunal**") in respect of Investments.⁴²³

542. The above conditions for initiating arbitration proceedings are met by the Claimant.

(a) The Claimant Fulfilled The Requirement On Holding Pre-Arbitration Negotiations With The Respondent

543. In accordance with Protocol No. 16 to EEU Treaty:⁴²⁴

"All disputes between a recipient state and an investor of another Member State arising from or in connection with an investment of that investor on the territory of the recipient state, including disputes regarding the size, terms or order of payment of the amounts received as compensation of damages pursuant to paragraph 77 of this Protocol and the compensation provided for in paragraphs 79-81 of this Protocol, or the order of payment and transfer of funds provided for in paragraph 8 of this Protocol, shall be, where possible, resolved through negotiations." [Claimant's emphasis]

⁴²² **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, paragraph 84.

⁴²³ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, paragraph 86.

⁴²⁴ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, paragraph 84.

544. The Claimant complied with the requirement on holding pre-arbitration negotiations with the Respondent within the period of six months.
545. On 25 April 2017, the Claimant delivered the Pre-Arbitration Notice to the Respondent (the "**Pre-Arbitration Notice**").⁴²⁵
546. By sending its Pre-Arbitration Notice, the Claimant invited the Republic of Belarus to enter into negotiations and take measures to resolve the Dispute within six months stipulated by the EEU Treaty.
547. The period of six months intended for holding pre-arbitration negotiations expired on 25 October 2017.
548. On 26 October 2017 the Claimant obtained the e-mail response to the Pre-Arbitration Notice from the Ministry of Economy of the Republic of Belarus dated 24 October 2017.⁴²⁶
549. The representatives of the Republic of Belarus notified of the process of considering the Pre-Arbitration Notice and offered the Claimant to hold a meeting to discuss the parties' positions on 3 November 2017 in Minsk.
550. On 27 October 2017, the Claimant delivered a reply⁴²⁷ to the above letter where it supported the initiative of holding such meeting, but indicated the impossibility of conducting such meeting in Minsk on the proposed dates. As an alternative, the Claimant offered to meet in Moscow on 6 or 7 November.
551. On 30 October 2017, the representative of the Ministry of Economy answered to the Claimant⁴²⁸ about the impossibility of holding a meeting on the date proposed by the Claimant and re-invited the Claimant to a meeting in Minsk by offering a number of possible dates.

⁴²⁵ **Exhibit C-190.** Pre-Arbitration Notice of the Claimant dated 25 April 2017.

⁴²⁶ **Exhibit C-191.** Letter from the Ministry of Economy of the Republic of Belarus to the Claimant dated 24 October 2017.

⁴²⁷ **Exhibit C-192.** Letter from the Claimant to the Ministry of Economy of the Republic of Belarus dated 27 October 2017.

⁴²⁸ **Exhibit C-193.** Letter from the Ministry of Economy of the Republic of Belarus to the Claimant dated 30 October 2017.

552. On 1 November 2017, the Claimant sent a response to the above letter⁴²⁹ stating its fundamental point that the meeting should take place in Moscow, rather than in Minsk and proposed holding the same on 13 or 14 November 2017 in Moscow.

553. In its letter dated 1 November 2017 the Claimant indicated that in the absence of the Parties' agreement on the place of the meeting, the Claimant shall consider such meeting impossible.

554. On 14 November 2017, the Ministry of Economy of the Republic of Belarus in its letter stated that discussions of the parties' position was impossible⁴³⁰ due to the discrepancies between the parties as of the convenient forum.

555. Therefore, the Claimant took reasonable efforts to coordinate the place and time of holding negotiations with Belarus, but failed to agree upon such discussions.

556. In consideration of the above, the settlement of the dispute between the Republic of Belarus and the Claimant is not considered practical.

557. On 25 October 2017, six-month period provided for by the EEU Treaty for holding negotiations expired.

558. Accordingly, the Claimant may now refer the Dispute to *ad hoc* arbitration pursuant to the UNCITRAL Arbitration Rules of 2013.

(b) **The Claimant Did Not Refer The Dispute To National Courts Or Any Other International Arbitration Courts**

559. In accordance with Protocol No. 16 to EEU Treaty:⁴³¹

"An investor having referred a dispute for settlement to a national court or one of the arbitration courts specified in sub-paragraphs 1 and 2 of paragraph 85 of

⁴²⁹ **Exhibit C-194.** Letter from the Claimant to the Ministry of Economy of the Republic of Belarus dated 1 November 2017.

⁴³⁰ **Exhibit C-195.** Letter from the Ministry of Economy of the Republic of Belarus to the Claimant dated 14 November 2017.

⁴³¹ **Exhibit CL-3.** Protocol No. 16 to EEU Treaty, paragraph 86.

this Protocol shall not have the right to redirect the dispute to any other court or arbitration.

The choice made by an investor with respect to a court or arbitration referred to in paragraph 85 of this Protocol shall be final."

560. The Claimant did not refer to any national courts of the Republic of Belarus or any other international arbitration courts to resolve the investment dispute with the Republic of Belarus in connection with Investments prior to delivering the Notice of Arbitration to the Arbitral Tribunal under the UNCITRAL Arbitration Rules.

561. Accordingly, there exist no obstacles for the Claimant to refer the matter to the Arbitral Tribunal pursuant to the UNCITRAL Arbitration Rules.

7.3. Constitution Of The Arbitral Tribunal

562. According to Article 3 of the UNCITRAL Arbitration Rules⁴³² the notice of arbitration shall include, among others:

"[...] a proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon."

563. Protocol No. 16 to the EEU Treaty does not contain any provisions on the number of arbitrators in arbitration proceedings. The issues as to the number of arbitrators, language and place of arbitration have not been previously agreed by the parties.

564. Pursuant to Article 7 of the UNCITRAL Arbitration Rules:⁴³³

"If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed."

⁴³² **Exhibit CL-4.** 2013 UNCITRAL Arbitration Rules, Article 3(3)(g).

⁴³³ **Exhibit CL-4.** 2013 UNCITRAL Arbitration Rules, Article 7(1).

565. Accordingly, the Arbitral Tribunal for resolving the Dispute shall be constituted by three arbitrators.

7.4. Arbitrator Appointed By The Claimant

566. Pursuant to Article 3 of the UNCITRAL Arbitration Rules:⁴³⁴

"The notice of arbitration may also include: c) Notification of the appointment of an arbitrator [...]"

567. The Claimant hereby appoints Stanimir Alexandrov as an arbitrator.

568. The contact details of the arbitrator appointed by the Claimant is given below:

Stanimir A. Alexandrov PLLC
1501 K Street, N.W.
Suite C-072
Washington D.C. 20005
salexandrov@alexandrovlaw.com

7.5. Designation Of An Appointing Authority

569. Pursuant to Article 3 of the UNCITRAL Arbitration Rules:⁴³⁵

"The notice of arbitration may also include: a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1 [...]"

570. In its turn, in accordance with Article 6 of the UNCITRAL Arbitration Rules⁴³⁶:

"Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court

⁴³⁴ **Exhibit CL-4.** 2013 UNCITRAL Arbitration Rules, Article 3(4)(c)

⁴³⁵ **Exhibit CL-4.** 2013 UNCITRAL Arbitration Rules, Article 3(4)(a).

⁴³⁶ **Exhibit CL-4.** 2013 UNCITRAL Arbitration Rules, Article 6(1).

of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority."

571. The Claimant hereby proposes the Secretary-General of the Permanent Court of Arbitration at The Hague (the Netherlands) as an appointing authority.

7.6. Place Of Arbitration

572. Pursuant to Article 18 of the UNCITRAL Arbitration Rules:⁴³⁷

"If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration. "

573. The Claimant proposes The Hague (the Netherlands) as the place of arbitration.

7.7. Language Of Arbitration

574. Pursuant to Article 19 of the UNCITRAL Arbitration Rules:⁴³⁸

"Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings."

575. In the absence of the Parties' agreement, the Claimant proposes to use the Russian language as the language of arbitration.

⁴³⁷ Exhibit CL-4. 2013 UNCITRAL Arbitration Rules, Article 18 (1).

⁴³⁸ Exhibit CL-4. 2013 UNCITRAL Arbitration Rules, Article 19 (1).

VIII. CLAIMANT'S PRAYER FOR RELIEF

576. The Claimant respectfully requests the Arbitral Tribunal to issue an arbitral award on the Dispute declaring that the Republic of Belarus violated its obligations in relation to the Claimant under the Belarusian laws and EEU Treaty, and ordering that the Republic of Belarus:

- a) Has unlawfully expropriated the Claimant's Investments;
- b) Has violated the FET Standard toward the Claimant and its Investments;
- c) Is obligated to compensate the Claimant for:
 - i. Direct damages in the amount of **USD 36,900,000**;
 - ii. Loss of the Claimant's profit in the amount of **USD 171,300,000** or, alternatively, in the amount of **USD 8,650,000**;
 - iii. Pre-award and post-award interest accrued on the above amounts; and
 - iv. Arbitration costs, including legal costs, in full.

577. The Claimant respectfully reserves its right to amend its position and prayers for relief, including the quantification of damages, at any further stage of the arbitral proceedings.

Respectfully submitted,

[signature]

Vladimir Khvalei,
Baker & McKenzie CIS Limited

LIST OF FACTUAL EXHIBITS

- Exhibit C-1. Official website of the Eurasian Economic Commission, "*The Treaty on the Eurasian Economic Union entered into force*"
- Exhibit C-2. Resolution No. 1 of the founder of Manolium-Processing dated 20 November 2000
- Exhibit C-3. Certificate of registration of Manolium-Processing and extract from the register of legal entities on Manolium-Engineering
- Exhibit C-4. Charter of Manolium-Processing of 2015 (4th edition)
- Exhibit C-5. Certificate of state registration of Manolium-Engineering in the Unified State Register of Legal Entities and Individual Entrepreneurs dated 18 March 2004
- Exhibit C-6. Certificate of state registration of Manolium-Engineering in the Unified State Register of Legal Entities and Individual Entrepreneurs dated 16 April 2004
- Exhibit C-7. Charter of Manolium-Engineering dated 16 April 2004
- Exhibit C-8. Application of Manolium-Engineering to initiate the liquidation procedure dated 14 October 2016
- Exhibit C-9. Powers of attorney to represent the Claimant dated 1 March 2017 and 13 November 2017
- Exhibit C-10. Statistics yearbook of the Republic of Belarus for 2015
- Exhibit C-11. "*Doing Business in Belarus 2015*" Report prepared by Ernst & Young
- Exhibit C-12. Economic review of the Republic of Belarus prepared by the World Bank dated 28 April 2016
- Exhibit C-13. GDP of Belarus in 2015 // Business Gazette dated 29 January 2016
- Exhibit C-14. Navigant Expert report dated 24 April 2017
- Exhibit C-15. Credit rating of the Republic of Belarus, Trading Economics Portal
- Exhibit C-16. "*Doing Business 2016*" Report prepared by the World Bank
- Exhibit C-17. V.N. Usosky, Impact of the financial and economic crisis of 2008-2011 on cyclical fluctuations of the Belarusian banking system and economy
- Exhibit C-18. Official website of news portal of Belarus Naviny.By, "*Belarusian ruble is a global leader for devaluations*"
- Exhibit C-19. Official website of news portal Rosbalt, "*Belarusian banks on the verge of collapse*"

- Exhibit C-20. Official website of information and analytical portal BelGazeta, "*Is Belarus on the verge of a debt crisis?*"
- Exhibit C-21. Official website of Belarusian news portal Belarus Digest, "*Belarus Sends Confusing Messages To Investors*"
- Exhibit C-22. World Bank's Report for 2016, "*Country Program Snapshot*"
- Exhibit C-23. Official website of news portal Nabiny.by, "*Belarus frightens investors*"
- Exhibit C-24. UNCTAD data: Investment Policy Hub. List of effective bilateral and multilateral international investment treaties of the Republic of Belarus
- Exhibit C-25. Information about membership of the Republic of Belarus in international organizations
- Exhibit C-26. Official website of news portal of Belarus TUT.BY, "*Lukashenko recognized that Belarus would not recover its growth without the IMF and foreign investments*"
- Exhibit C-27. Official website of news portal Business Gazette, "*Lukashenko invites investors to Belarus and issues guarantees to them*"
- Exhibit C-28. Tender documents for the Tender dated 24 April 2003
- Exhibit C-29. Official website of news portal of Belarus TUT.BY, "*Two central prospects of Minsk – Francisca Skorina and Masherova – renamed into Nezavisimosti and Pobediteley*"
- Exhibit C-30. Claimant's bid to participate in the Tender dated 22 May 2003
- Exhibit C-31. Protocol 2 on the results of the Tender dated 30 May 2003
- Exhibit C-32. Letter from MCEC to the Claimant dated 4 June 2003
- Exhibit C-33. Decision of MCEC on approving the results of the Tender dated 5 June 2003
- Exhibit C-34. Investment Contract
- Exhibit C-35. Letter from MCEC to the President of the Republic of Belarus dated 26 May 2006
- Exhibit C-36. Photoreport: an abandoned trolleybus depot in the center of Minsk, 20 August 2014
- Exhibit C-37. Belarusian business gazette, "*Russian investor will change the center of Minsk, 10 September 2014*"
- Exhibit C-38. Map of microdistrict "*Uruchye-6*" dated 24 April 2017
- Exhibit C-39. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 21 January 2004
- Exhibit C-40. Decision of MCEC dated 2 December 2004

- Exhibit C-41. Letter from the Main Office of Internal Affairs of the Republic of Belarus dated 3 August 2005
- Exhibit C-42. Official website Lenta.ru, "*Lukashenko instructed all Belarusians to pool some money for the National library*"
- Exhibit C-43. Official website of Belarusian gazette Solidarnost, "*Constructors are still unpaid their fees for the National Library*"
- Exhibit C-44. Letter from the State Control Committee of the Republic of Belarus to the President of the Republic of Belarus dated 31 July 2003
- Exhibit C-45. Resolution of the President of the Republic of Belarus to implementing the project under the Investment Contract dated 5 November 2003
- Exhibit C-46. Letter from the Council of Ministers of the Republic of Belarus to the President of the Republic of Belarus dated 30 October 2003
- Exhibit C-47. Additional Agreement No. 1
- Exhibit C-48. Additional Agreement No. 2
- Exhibit C-49. Additional Agreement No. 3
- Exhibit C-50. Confirmation of the Library Payment dated 30 December 2003
- Exhibit C-51. Order of MCEC dated 29 September 2006
- Exhibit C-52. Letter from Manolium-Engineering to MCEC dated 19 May 2005
- Exhibit C-53. Decision of MCEC dated 15 July 2004
- Exhibit C-54. Letter from Manolium-Engineering to MCEC dated 19 January 2005
- Exhibit C-55. Letter from the Committee for Economy to MCEC dated 28 July 2004
- Exhibit C-56. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 3 December 2003
- Exhibit C-57. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 17 December 2003
- Exhibit C-58. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 4 February 2004
- Exhibit C-59. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 17 March 2004
- Exhibit C-60. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 7 April 2004
- Exhibit C-61. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 24 June 2004

- Exhibit C-62. Letter from Manolium-Engineering to MCEC dated 21 February 2005
- Exhibit C-63. Letter from the Claimant to the Assistant to President of the Republic of Belarus dated 24 March 2006
- Exhibit C-64. Resolution of the President of the Republic of Belarus dated 11 July 2006
- Exhibit C-65. Letter from the Committee for Economy dated 17 January 2007
- Exhibit C-66. Additional Agreement No. 4
- Exhibit C-67. Order of Manolium-Engineering No. 1-C dated 20 March 2007
- Exhibit C-68. Decision of MCEC dated 24 May 2007
- Exhibit C-69. Certificate of registration of the right of temporary use granted to Manolium-Engineering in respect of the land plots for construction of the Depot in Uruchye-6 dated 29 June 2007
- Exhibit C-70. Construction permit issued by Gosstroy for constructing the Depot dated 15 October 2007
- Exhibit C-71. Letter from Manolium-Engineering to MCEC dated 11 September 2008
- Exhibit C-72. Additional Agreement No. 5
- Exhibit C-73. Decision of MCEC dated 3 September 2009
- Exhibit C-74. Letter from Manolium-Engineering to MCEC dated 6 September 2010
- Exhibit C-75. Decision of MCEC dated 16 September 2010
- Exhibit C-76. Additional Agreement No. 6
- Exhibit C-77. Letter from Manolium-Engineering to MCEC dated 29 June 2011
- Exhibit C-78. Letter from Minsktrans to Manolium-Engineering dated 22 July 2011
- Exhibit C-79. Letter from Manolium-Engineering to MCEC dated 7 September 2011
- Exhibit C-80. Letter from Manolium-Engineering to MCEC dated 12 October 2011
- Exhibit C-81. Letter from Minsktrans to Manolium-Engineering dated 27 October 2011
- Exhibit C-82. Depot Facilities Gratuitous Use Agreement
- Exhibit C-83. Letter from the Claimant to MCEC dated 19 March 2013
- Exhibit C-84. Agreement on terminating the Depot Facilities Gratuitous Use Agreement dated 30 December 2014
- Exhibit C-85. Order of Manolium-Engineering No. 1-C dated 20 March 2008

- Exhibit C-86. Decision of MCEC dated 2 May 2008
- Exhibit C-87. Construction permit issued by Gosstroy dated 29 May 2008
- Exhibit C-88. Certificate of registration of the right of temporary use granted to Manolium-Engineering in respect of the land plots for construction the Depot in Uruchye-6 dated 20 August 2008
- Exhibit C-89. Decision of MCEC dated 22 January 2009
- Exhibit C-90. Certificate of state registration of the State Committee for Property No. 500/708-4289 dated 11 October 2010
- Exhibit C-91. Order of Manolium-Engineering No. 1-C dated 1 July 2011
- Exhibit C-92. Letter from Minsktrans to Manolium-Engineering dated 13 December 2011
- Exhibit C-93. Letter from the Claimant to MCEC dated 27 May 2013
- Exhibit C-94. Letter from the Claimant to MCEC dated 27 June 2013
- Exhibit C-95. Letter from the Claimant to MCEC dated 18 July 2014
- Exhibit C-96. Order of Manolium-Engineering No. 3-C dated 10 April 2008
- Exhibit C-97. Decision of MCEC dated 30 May 2008
- Exhibit C-98. Construction permit issued by Gosstroy for construction of the Pull Station dated 19 August 2008
- Exhibit C-99. Pull Station Gratuitous Use Agreement
- Exhibit C-100. Acceptance Act in respect of the Pull Station dated 30 July 2010
- Exhibit C-101. Registration of the Pull Station as a permanent structure dated 1 October 2010
- Exhibit C-102. Letter from Manolium-Engineering to MCEC dated 11 October 2010
- Exhibit C-103. Letter from Manolium-Engineering to MCEC dated 21 October 2010
- Exhibit C-104. Letter from Minsktrans to Manolium-Engineering dated 17 November 2010
- Exhibit C-105. Letter from Minsktrans to Manolium-Engineering dated 19 September 2011
- Exhibit C-106. Letter from Manolium-Engineering to MCEC dated 11 August 2011
- Exhibit C-107. Letter from Manolium-Engineering to MCEC dated 11 October 2011
- Exhibit C-108. Letter from Manolium-Engineering to the State Control Committee of the Republic of Belarus dated 21 October 2011
- Exhibit C-109. Letter from Minsktrans to Manolium-Engineering dated 31 October 2011

- Exhibit C-110. Composition and the key technical and economic indexes for the Investment Object dated 25 February 2005
- Exhibit C-111. Letter from the Committee for Architecture to the Committee for Economy dated 9 June 2005
- Exhibit C-112. Letter from Minsktrans to Manolium-Engineering dated 16 March 2006
- Exhibit C-113. Schedule of design and construction of the Investment Object dated 28 December 2007
- Exhibit C-114. Letter from Manolium-Engineering to MCEC dated 5 November 2007
- Exhibit C-115. Letter from Manolium-Engineering to MCEC dated 27 May 2008
- Exhibit C-116. Investment Object Location Selection Act dated 25 March 2009
- Exhibit C-117. Letter from Manolium-Engineering to MCEC dated 17 May 2010
- Exhibit C-118. Letter from Manolium-Engineering dated 9 September 2010
- Exhibit C-119. Letter from Manolium-Engineering dated 28 October 2010
- Exhibit C-120. Schedule of Manolium-Engineering in respect of designing and constructing the Investment Object of April 2011
- Exhibit C-121. Letter from the Committee for Architecture to Manolium-Engineering dated 26 April 2011
- Exhibit C-122. Letter from Manolium-Engineering to MCEC dated 24 November 2011
- Exhibit C-123. Letter from Minsktrans to Manolium-Engineering dated 6 December 2011
- Exhibit C-124. Letter from MCEC dated 5 January 2012
- Exhibit C-125. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 9 January 2012
- Exhibit C-126. Letter from MCEC to the Claimant dated 18 June 2012
- Exhibit C-127. Letter from Gosstroy to Manolium-Engineering dated 21 April 2012
- Exhibit C-128. Letter from Minsktrans to Manolium-Engineering dated 28 August 2012
- Exhibit C-129. Letter from Manolium-Engineering to MCEC dated 20 September 2012
- Exhibit C-130. Letter from MCEC to Manolium-Engineering dated 3 October 2012
- Exhibit C-131. Paritet-Standart Report
- Exhibit C-132. Letter from MCEC to the Claimant dated 10 December 2012

- Exhibit C-133. Letter from Manolium-Engineering to MCEC dated 18 December 2012
- Exhibit C-134. Letter from MCEC to Manolium-Engineering dated 18 January 2013
- Exhibit C-135. Letter from MCEC to the Claimant dated 4 February 2013
- Exhibit C-136. Letter from the Claimant to MCEC dated 4 March 2013
- Exhibit C-137. Letter from MCEC to the Claimant dated 11 March 2013
- Exhibit C-138. Decision of MCEC dated 14 March 2013
- Exhibit C-139. Letter from MCEC to the Claimant dated 19 September 2013
- Exhibit C-140. Statement of claim to terminate the Investment Contract
- Exhibit C-141. Letter from Manolium-Engineering to MCEC dated 18 July 2014
- Exhibit C-142. Decision of MCEC dated 15 August 2014
- Exhibit C-143. Letter from Minsktrans to Manolium-Engineering dated 19 September 2014
- Exhibit C-144. Official website of State Production Association Minskstroy, "*About Association*"
- Exhibit C-145. Ruling of the Economic Court of Minsk on scheduling a forensic expertise and suspending court proceedings dated 30 July 2014
- Exhibit C-146. Ruling of the Economic Court of Minsk on resuming court proceedings dated 1 September 2014
- Exhibit C-147. Judgment of the Economic Court of Minsk dated 9 September 2014
- Exhibit C-148. Official website of information and analytical weekly publication BelGazeta, "*Watered irrigators*"
- Exhibit C-149. Appeal of Manolium-Engineering dated 9 October 2014
- Exhibit C-150. Ruling of the instance of appeal of the Commercial court of Minsk dated 29 October 2014
- Exhibit C-151. Cassation appeal of Manolium-Engineering dated 29 November 2014
- Exhibit C-152. Decision of the Supreme Court of the Republic of Belarus dated 27 January 2015
- Exhibit C-153. Minutes of the meeting attended by MCEC, Minsktrans and the Claimant dated 4 February 2015
- Exhibit C-154. Registration and Cadastre Agency Report
- Exhibit C-155. Letter from Manolium-Engineering to MCEC dated 17 June 2015
- Exhibit C-156. Letter from MCEC to Manolium-Engineering dated 7 August 2015
- Exhibit C-157. Letter from Manolium-Engineering to MCEC dated 20 August 2015

- Exhibit C-158. Letter from MCEC to Manolium-Engineering dated 4 September 2015
- Exhibit C-159. Order of the Ministry of Finance dated 3 February 2016
- Exhibit C-160. CAO of the Ministry of Finance Report
- Exhibit C-161. Letter from the Claimant to MCEC dated 21 April 2016
- Exhibit C-162. Decision of the Economic Court of Minsk dated 13 May 2016
- Exhibit C-163. Decision of the Economic Court of Minsk dated 14 June 2016
- Exhibit C-164. First Tax Audit Report dated 17 May 2016
- Exhibit C-165. Letter from the Tax Inspectorate to Manolium-Engineering dated 21 June 2016
- Exhibit C-166. Amendments and supplements to the First Tax Audit Report dated 21 June 2016
- Exhibit C-167. Order of the Tax Inspectorate for arrest of the land plots dated 5 July 2016
- Exhibit C-168. Decision of the Tax Inspectorate dated 19 July 2016
- Exhibit C-169. Application of the Tax Inspectorate dated 20 July 2016
- Exhibit C-170. Judgment of the Economic Court of Minsk dated 18 August 2016
- Exhibit C-171. Extract from the records of the Ministry of Taxes in respect of the indebtedness of Manolium-Engineering as of 10 November 2016
- Exhibit C-172. Letter from the Department of Humanitarian Activities of the Administrative Office of the President of the Republic of Belarus dated 18 November 2016
- Exhibit C-173. Decision of MCEC dated 1 December 2016
- Exhibit C-174. Official website of MCEC, "*On the enterprise*"
- Exhibit C-175. Official website of Minsktrans, "*General information*"
- Exhibit C-176. Official website of the Organization for Economic Co-operation and Development
- Exhibit C-177. "*Public Sector Transparency and the International Investor*", Organization for Economic Co-operation and Development, 2003
- Exhibit C-178. "*Policy Framework for Investment, version of 2015*", Organization for Economic Co-operation and Development, OECD publishing house, Paris
- Exhibit C-179. Official portal of the system of common courts of the Republic of Belarus, "*Information on cases in connection with economic insolvency (bankruptcy) for the period from 1 February 2017 through 28 February 2017*"

- Exhibit C-180. Official portal of the system of courts of general jurisdiction of the Republic of Belarus, *"The Supreme Court issued a judgment in the criminal case involving Grushetsky, Melnikova, Vintskevich, Khaletskaya, Rikun and Gretskaya"*
- Exhibit C-181. Official website of Belarusian telegraph agency Novosti Belarusi, *"Judges of the Economic Court of Minsk were sentenced to 11 and years in prison"*
- Exhibit C-182. Resolution of the court of the Pervomaysky district of Minsk dated 17 May 2016 (operative part and statement of reasons)
- Exhibit C-183. Complaint of Manolium-Engineering to the resolution of the court of the Pervomaysky district of Minsk dated 9 June 2016
- Exhibit C-184. Resolution of the Minsk City Court dated 3 August 2016
- Exhibit C-185. Official website of news portal of Belarus TUT.BY, *"Almost fivefold of the initial price. A-100 acquired the section of the trolleybus depot in the center of Minsk"*
- Exhibit C-186. Amendments to the Second Tax Audit Report dated 18 May 2017
- Exhibit C-187. Second Tax Audit Report dated 24 March 2017
- Exhibit C-188. Decision of the Tax Inspectorate in respect of the Second Tax Audit Report and amendments dated 18 May 2017 to the Second Tax Audit Report dated 13 June 2017
- Exhibit C-189. Letter from the Tax Inspectorate to Manolium-Engineering dated 22 September 2017
- Exhibit C-190. Pre-Arbitration Notice of the Claimant dated 25 April 2017 (without attachments)
- Exhibit C-191. Letter from the Ministry of Economy of the Republic of Belarus to the Claimant dated 24 October 2017
- Exhibit C-192. Letter from the Claimant to the Ministry of Economy of the Republic of Belarus dated 27 October 2017
- Exhibit C-193. Letter from the Ministry of Economy of the Republic of Belarus to the Claimant dated 30 October 2017
- Exhibit C-194. Letter from the Claimant to the Ministry of Economy of the Republic of Belarus dated 1 November 2017
- Exhibit C-195. Letter from the Ministry of Economy of the Republic of Belarus to the Claimant dated 14 November 2017

LIST OF LEGAL EXHIBITS

- Exhibit CL-1. Law on the Republic of Belarus dated 9 October 2014 "*On Ratifying the Treaty on the Eurasian Economic Union*"
- Exhibit CL-2. Federal Law on the Russian Federation dated 3 October 2014 No. 279-FZ "*On Ratifying the Treaty on the Eurasian Economic Union*"
- Exhibit CL-3. Protocol No. 16 to EEU Treaty
- Exhibit CL-4. 2013 UNCITRAL Arbitration Rules
- Exhibit CL-5. Law of the Republic of Belarus dated 12 July 2000 No. 410-Z "*On the Status of the Capital of the Republic of Belarus – Minsk*", *Narodnaya Gazeta*
- Exhibit CL-6. Constitution of the Republic of Belarus of 1994, with amendments adopted during the republican referenda held on 24 November 1996 and 17 October 2004, *Narodnaya Gazeta*
- Exhibit CL-7. Code of the Republic of Belarus No. 226-3 dated 4 January 1999 "*On the Land*" (extracts)
- Exhibit CL-8. Tax Code of the Republic of Belarus (extracts)
- Exhibit CL-9. Economic Procedural Code of the Republic of Belarus (extracts)
- Exhibit CL-10. Investment Law of the Republic of Belarus
- Exhibit CL-11. ILC Articles on State Responsibility
- Exhibit CL-12. Law of the Republic of Belarus dated 4 January 2010 No. 108-Z "*On Local Administration and Self-Administration in the Republic of Belarus*"
- Exhibit CL-13. Vienna Convention on the Law of Treaties dated 23 May 1969
- Exhibit CL-14. *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009
- Exhibit CL-15. *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000
- Exhibit CL-16. *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006
- Exhibit CL-17. *Waste Management, Inc. v. United Mexican States ("No. 2")*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004
- Exhibit CL-18. *Ronald S. Lauder v. The Czech Republic*, UNCITRAL, Final Award, 3 September 2001
- Exhibit CL-19. *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008

- Exhibit CL-20. *Mondev International Ltd. v. United States of America*, Award, 11 October 2002
- Exhibit CL-21. *Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, UNCITRAL, Final Arbitral Award, 23 April 2012
- Exhibit CL-22. *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Arbitral Award, 29 July 2008
- Exhibit CL-23. *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Arbitral Award, 25 May 2004
- Exhibit CL-24. *Société Générale v. The Dominican Republic*, LCIA Case No. UN7927, Arbitral Award on Preliminary Objections on Jurisdiction, 19 September 2008
- Exhibit CL-25. *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016
- Exhibit CL-26. *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006
- Exhibit CL-27. United Nations, *Statute of the International Court of Justice*, 18 April 1946 with amendments
- Exhibit CL-28. *Malicorp Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/08/18, Award, 7 February 2011
- Exhibit CL-29. *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*, Award on Jurisdiction and Liability, 28 April 2011
- Exhibit CL-30. *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011
- Exhibit CL-31. *Rupert Binder v. Czech Republic*, UNCITRAL, Final Award, 15 July 2011
- Exhibit CL-32. *Tecnicas Medioambientales Tecmed SA v. United Mexican States*, ICSID Case No. ARB (AF)/00/3, Award, 29 May 2003

LIST OF EXPERT REPORTS

Exhibit CER-1. Navigant Expert Report dated 24 April 2017