

In the matter of an arbitration under the UNCITRAL Arbitration Rules

between

OOO MANOLIUM-PROCESSING

Claimant

v.

THE REPUBLIC OF BELARUS

Respondent

TERMS OF APPOINTMENT

ARBITRAL TRIBUNAL

Juan Fernández-Armesto (Presiding Arbitrator)
Stanimir A. Alexandrov
Brigitte Stern

ADMINISTRATIVE SECRETARY

Krystle M. Baptista Serna

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I. PARTIES

1. CLAIMANT

1. The Claimant is OOO MANOLIUM-PROCESSING [“**Claimant**” or “**MP**”], a Russian company with registered address at 11 Stanislavskogo Street, Ground floor, room VII, Moscow 109004, Russia and the following person of contact:

Aram Ekavyan (director)

2. Claimant is represented by:

Grant Hanessian
BAKER & MCKENZIE LLP
452 Fifth Avenue New York,
NY 10018 United States

grant.hanessian@bakermckenzie.com

Vladimir Khvalei
Sergei Voitishkin
Alexandra Shmarko
BAKER & MCKENZIE CIS LTD.
White Gardens 9 Lesnaya Street
Moscow 125047 Russia

vladimir.khvalei@bakermckenzie.com
sergei.voitishkin@bakermckenzie.com
alexandra.shmarko@bakermckenzie.com

2. RESPONDENT

3. The Respondent is the REPUBLIC OF BELARUS [“**Respondent**” or “**Belarus**”].
4. Respondent is represented by:

David Goldberg
Julia Ogievetsky
WHITE & CASE LLP
5 Old Broad Street London
EC2N 1DW United Kingdom

dgoldberg@whitecase.com
jogievetsky@whitecase.com

Julia Zagonek
Oleg Volodin
William Grazebrook
WHITE & CASE LLC
4 Romanov Pereulok
Moscow 125009 Russia

jzagonek@whitecase.com
ovolodin@whitecase.com
wgrazebrook@whitecase.com

5. Claimant and Respondent will collectively be referred to as the “**Parties**”.

II. ARBITRAL TRIBUNAL

1. CONSTITUTION OF THE ARBITRAL TRIBUNAL

6. On November 15, 2017 Claimant appointed as arbitrator¹:

Stanimir A. Alexandrov
1501 K Street, N.W.
Suite C-072
Washington D.C. 20005
United States of America
Tel.: +1 202 736 8186
Email: salexandrov@alexandrovlaw.com

7. On December 15, 2017 Respondent appointed as arbitrator²:

Brigitte Stern
7, rue Pierre Nicole
Code A1672
Paris 75005
France
Tel.: +33 1 40 46 93 79
Email: brigitte.stern@jstern.org

8. On January 17, 2018 Mr. Alexandrov and Prof. Stern designated as Presiding Arbitrator:

Juan Fernández-Armesto
ARMESTO & ASOCIADOS
General Pardiñas, 102, 8º izda.
28006 Madrid
Spain
Tel.: +34 91 562 16 25
Email: jfa@jfarmesto.com

9. By letter of February 1, 2018, Mr. Armesto accepted his appointment as Presiding Arbitrator.
10. Each arbitrator has provided a Statement of Independence and Availability.
11. The Parties confirm that they have no objection to the appointment of the arbitrators in respect of matters known to them, or that they should have known, at the date of signature of these Terms of Appointment.
12. All notifications arising in the course of the arbitration addressed to the Tribunal shall be made to the abovementioned addresses.

¹ Notice of Arbitration, para. 568.

² Reply to Notice of Arbitration, p. 16.

2. **ADMINISTRATIVE SERVICES**

A. **Registrar and Depositary**

13. The Permanent Court of Arbitration [**“PCA”**] shall provide the following administrative services in support of the Parties and the Tribunal:
14. **Registrar**: the PCA shall maintain an archive of filings and correspondence. Upon request, the PCA shall carry out administrative tasks on behalf of the Tribunal, the primary purpose of which would be to reduce the costs that would otherwise be incurred by the Tribunal carrying out purely administrative tasks. Work carried out by the PCA shall be billed in accordance with the PCA’s schedule of fees. PCA fees and expenses shall be paid in the same manner as the Tribunal’s fees and expenses³.
15. **Depositary of funds**: the PCA shall manage the amounts deposited by the Parties to cover the Tribunal’s fees, expenses and any applicable VAT, at no charge⁴.
16. At the Tribunal’s request, the PCA shall invite the Parties to make an initial deposit pursuant to Article 43 UNCITRAL Arbitration Rules [**“UNCITRAL Rules”**]. The PCA will review the adequacy of the deposit regularly and, at the request of the Tribunal, may invite the Parties to make supplementary deposits in accordance with Article 43 UNCITRAL Rules. The unused balance held on deposit upon the termination of the arbitration shall be returned to the Parties as directed by the Tribunal.
17. In accordance with the PCA’s standard policies, any transfer fees or other bank charges incurred will be charged by the PCA to the deposit. No interest will be paid on the deposit.
18. The deposits shall be made by electronic transfer to the following (EURO case) account:
- | | |
|----------------------------|--|
| Bank: | ABN Amro Bank N.V. Gustav Mahlerlaan 10 1082 PP Amsterdam The Netherlands |
| Bank Identifier Code (BIC) | ABNANL2A |
| IBAN: | NL56 ABNA 0480 4373 51 |
| Name of beneficiary: | Permanent Court of Arbitration |
| Reference: | 2018-06/[Manolium-Processing/Belarus] |
19. Additionally, the PCA will make its hearing and meeting rooms in the Peace Palace at The Hague or elsewhere available to the Parties and the Tribunal at no charge (costs relating to catering, court reporting, or other support associated with hearings or meetings at the Peace Palace or elsewhere shall be covered with the funds deposited by the Parties).

³ Joint communication of the Parties submitted on February 21, 2018, para. 3(c).

⁴ Joint communication of the Parties submitted on February 21, 2018, para. 3(d).

20. The contact details of the PCA are as follows:

Permanent Court of Arbitration

Attn:

Ms. Evgeniya Goriatcheva

Ms. Erin Vaccaro (Case Manager)

Peace Palace

Carnegieplein 2

2517 KJ The Hague

The Netherlands

Tel.: +31 70 3024175

Fax: +31 70 3024167

Email: egoriatcheva@pca-cpa.org

evaccaro@pca-cpa.org

21. The PCA and its officials are bound by the same confidentiality duties applicable to the Parties and the Tribunal in this arbitration.

B. Administrative Secretary

22. With the consent of the Parties and his co-arbitrators, the President appoints the following Administrative Secretary (the “**Secretary**”):

Krystle M. Baptista

ARMESTO & ASOCIADOS

General Pardiñas, 102

28006 Madrid

Spain

Tel.: +34 91 562 16 25

Fax: +34 91 515 91 45

Email: kbs@jfarmesto.com

23. The Secretary works for Armesto & Asociados, the same firm of arbitrators to which the President belongs. Armesto & Asociados’ professional activity is limited to acting as arbitrators. The Parties received the Secretary’s *curriculum vitae* and declaration of independence and impartiality on March 14, 2018.
24. The Members of the Tribunal will personally make all decisions required to adjudicate the merits of the present dispute and all procedural issues. To personally fulfill its decision-making functions, the President may draw on the help of the Secretary. The Secretary’s tasks will be performed upon the President’s specific instructions, under its direct supervision and responsibility, and will not release the Tribunal of any of its decision-making duties.
25. When instructed by the President, the Secretary may perform the following tasks:
- Organize and maintain the President’s arbitral file;
 - Attend meetings, hearings and deliberations; take notes;

- Summarize submissions, review evidence and authorities, conduct legal research, write notes or memoranda on factual and legal issues, prepare preliminary drafts of decisions or sections of awards under the specific instruction and continuous control and supervision of the President.
26. The Secretary shall be bound by the same duties of confidentiality, independence and impartiality as the members of the Tribunal.
27. The President may remove the Secretary at its discretion. The President will remove the Secretary if she ceases to work for Armesto & Asociados. The President may, subject to the Parties' agreement, appoint a substitute, by submitting to the Parties the substitute's *curriculum vitae* and declaration of independence and impartiality.

III. NOTIFICATIONS AND COMMUNICATIONS

28. The Parties agree that their main submissions and all other notifications and communications between them or among the Tribunal and the Parties shall be transmitted by electronic mail to the email addresses indicated in Sections I and II *supra*.
29. The Parties agree that the periods of time agreed by them or fixed by the Tribunal shall start to run on the day following the date on which a notification or communication is made in accordance with this section and that, if the first or last day of the relevant period of time granted is an official holiday or a non-business day in the Republic of Belarus, the Russian Federation, the United Kingdom or the country where the notification or communication is deemed to have been made, the period of time shall begin to run at the beginning of the first following business day or expire at the end of the first following business day. For the purpose of these proceedings, Saturdays and Sundays should be considered non-business days.
30. Any Party shall immediately notify in writing the other Party and the members of the Tribunal of any change in its address. Failing such notification and confirmation of receipt by the Presiding Arbitrator of the Tribunal, all communications sent to the above addresses shall be deemed valid.

IV. ARBITRATION AGREEMENT

31. The Claimant instituted this arbitration in accordance with Articles 84 and 85(3) of Annex 16 to the Treaty on the Eurasian Economic Union dated May 29, 2014 [the "**EEU Treaty**"], which read as follows:

“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 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)".

V. SUMMARIES OF THE PARTIES' CLAIMS AND RELIEF SOUGHT

32. The purpose of the following summaries is to set out the general scope of the proceedings for the Arbitral Tribunal, without prejudice to any other or further allegations, arguments or contentions contained in the pleadings or submissions already filed, and in such submissions as will be made in the course of this arbitration.

33. No statement or omission in these summaries is to be interpreted as a waiver by the Parties of any issue of fact or law.

1. CLAIMANT'S CLAIMS AND RELIEF SOUGHT

1.1 CLAIMANT'S SUMMARY OF FACTUAL CIRCUMSTANCES

34. The dispute between the Claimant and Belarus arose from a sequence of international law breaches and violations of national legislation by Belarus in relation to the Claimant and its Investments.

35. In 2003, the Claimant on the one side and Belarus through the Minsk City Executive Committee and Communal Unitary Enterprise "Minsktrans" [the "**Minsktrans**"] on the other side concluded an Investment Contract for construction of an Investment Object (office and residential premises) in the lucrative part in the center of Minsk⁵.

⁵ CS-I. Notice of Arbitration, paras. 61 – 67.

36. Under the terms of the Investment Contract, the Claimant was obliged to construct various municipal facilities in order to obtain a right to develop an “**Investment Object**”⁶.
37. For the purposes of performing the Investment Contract, the Claimant incorporated in Belarus “Manolium-Engineering” Company [the “**Manolium-Engineering**”]⁷.
38. While Belarus undertook to assist the Claimant with implementing the Investment Contract, it not only failed to render any assistance, but, *vice versa*, created numerous obstacles to the Claimant in its performance of the Investment Contract.
39. In particular, during the period 2003–2013, Belarus failed to provide land plots for the construction of municipal facilities in a timely manner. This also resulted in delay in getting the necessary construction permits and approvals. Moreover, Belarus continuously extended the scope of the Claimant’s obligations under the Investment Contract⁸.
40. As a result, the Claimant was in technical delay to build the municipal facilities provided by the Investment Contract⁹. Belarus, relying on this technical delay, did not extend the temporal Claimant’s right to use land for construction purpose, as a result the construction permit was also not extended.
41. At that time, the Claimant managed to build 95% of the new transport facility and intended to transfer it to state ownership. However, Belarus refused to assume ownership of these facilities¹⁰.
42. Simultaneously, Belarus initiated proceedings in local state courts for termination of the Investment Contract, relying on alleged delays and other breaches committed by the Claimant¹¹.
43. In September 2014, the state courts granted Belarus’ claim to terminate the Investment Contract. The proceedings in the trial court were conducted with numerous procedural violations, but the higher courts and the Supreme Court of Belarus upheld the decision in 2015¹².
44. As a result of the sequence of actions described above, the Claimant has been totally deprived of its right to construct an Investment Object and has lost any opportunity to obtain profit from its Investments¹³.

⁶ CS-I. Notice of Arbitration, paras. 76 – 83.

⁷ CS-I. Notice of Arbitration, paras. 14 – 18.

⁸ CS-I. Notice of Arbitration, paras. 115 – 122.

⁹ CS-I. Notice of Arbitration, paras. 419 – 503.

¹⁰ CS-I. Notice of Arbitration, paras. 204 – 206, 211-212, 257, 461, 520 – 522.

¹¹ CS-I. Notice of Arbitration, paras. 255 – 256.

¹² CS-I. Notice of Arbitration, paras. 256 – 266; 266 – 268; 269 – 270.

¹³ CS-I. Notice of Arbitration, paras. 419 – 503.

45. Although the municipal facilities constructed by the Claimant were not formally transferred to the state ownership, Belarus used these facilities without any payments¹⁴.
46. In addition, in 2016, shortly after the termination of the Investment Contract, Belarus initiated extensive tax audits of Manolium-Engineering for alleged non-payment of land tax for the land where the municipal facilities were constructed¹⁵. Thus, from one side Belarus did not extend a right to use land plot for construction purposes, referring to a technical delay in construction, and refused to accept built facilities (although in fact using them without payment), and from the other side it imposed on Manolium-Engineering taxes penalties for alleged use of the same land plot.
47. In December 2016, the municipal facilities were transferred to the municipal ownership in accordance with a secret Decree of the President of Belarus as a penalty for non-payment of taxes¹⁶. Thus, Belarus received the municipal facilities and paid nothing for them.
48. In 2017, as a result of imposed fines and penalties, Manolium-Engineering went into bankruptcy¹⁷.
49. In September 2017, Belarus sold the land plot intended for construction of the Investment Object to another investor¹⁸.

1.2 CLAIMANT'S POSITION ON JURISDICTION

50. With regard to the jurisdictional objections raised by the Respondent, the MP's position is as follows.
51. *First*, the Arbitral Tribunal has temporal jurisdiction to decide the dispute between the Claimant and Belarus:
 - a. The provisions of the EEU Treaty do not provide any temporal limitations to the submission of disputes to arbitration. Provisions of Section VII (Investments) of Annex 16 to the EEU Treaty are applied in relation to investments made from 16 December 1991¹⁹. This Section includes, inter alia, a provision on resolution of investor-state disputes²⁰. Thus, the dispute resolution provision applies to any disputes in relation to investments made from 16 December 1991;
 - b. The Respondent refers to the non-retroactive application of the EEU Treaty under Article 28 of the Vienna Convention on the Law of Treaties²¹.

¹⁴ CS-I. Notice of Arbitration, paras. 168, 199 –200, 464.

¹⁵ CS-I. Notice of Arbitration, paras. 296 – 320.

¹⁶ CS-I. Notice of Arbitration, paras. 407 – 409.

¹⁷ CS-I. Notice of Arbitration, para. 316.

¹⁸ CS-I. Notice of Arbitration, paras. 293 – 295.

¹⁹ Exhibit CL-3. Annex 16 to the EEU Treaty, clause 65.

²⁰ Exhibit CL-3. Annex 16 to the EEU Treaty, clauses 84 – 87.

²¹ RS-I. Response to the Notice of Arbitration, paras. 27 – 31.

Contrary to the Respondent's position, it is established in international law that the principle of non-retroactivity is not violated if any dispute is referred to the arbitration proceedings after the treaty entered into force irrespective of the time when the violation of international law occurred²².

- c. The Respondent's breaches occurred as a result of several related events, some of them occurred after entering into force of the EEU Treaty. Thus, in any event, the EEU Treaty is applicable to the present dispute.
 - d. The Law of Belarus of July 12, 2013 "On Investments" also provides a right of the foreign investor to refer the dispute to international arbitration in accordance with UNCITRAL Rules²³. Thus, irrespective of the application of EEU Treaty, the Tribunal has jurisdiction based on Belarusian laws.
52. *Second*, the present case should be resolved by the Arbitral Tribunal under the EEU Treaty, not by the courts of Belarus under the Investment Contract:
- a. The claim in this arbitration is based not only on the Respondent's breach of the Investment Contract, but also on the Respondent's breach of its obligations under international treaties and Belarusian domestic laws, providing for protection of foreign investments;
 - b. The actions resulted in deprivation of the Claimant of its Investments were not limited to the termination of the Investment Contract. Belarus has also violated its international obligations acting through the tax and other state authorities and the state courts.
53. *Third*, the actions of Minsktrans should be attributable to Belarus because Minsktrans exercised elements of governmental authority in its relations with the Claimant.
54. For these reasons, the present Tribunal has jurisdiction to decide the present case.

1.3 CLAIMANT'S POSITION ON MERITS

55. By committing the actions described above, Belarus has violated Belarusian laws and the following provisions of the EEU Treaty:
- a. Belarus has violated the fair and equitable treatment ["FET"] standard established in Article 68 of Annex 16 to the EEU Treaty by failing to act transparently and in good faith with regard to the Claimant and its Investments²⁴.

²² Exhibit CL-33. *Mavrommatis Palestine Concessions* (PCIJ), 30 August 1924, Series A, no. 2, p 35.

²³ Exhibit CL-10. Law of Belarus of 12 July 2013 "On Investments", Art. 13.

²⁴ CS-I. Notice of Arbitration, paras. 383 – 509.

- b. Belarus has committed indirect expropriation of the Claimant's Investments terminating the Investment Contract and has violated Article 79 of Annex 16 to the EEU Treaty²⁵.
- c. As a consequence of the Respondent's unlawful actions toward the Claimant and its Investments in Belarus, the Respondent is obligated to compensate the damages suffered by the Claimant²⁶.

1.4 CLAIMANT'S PRAYERS FOR RELIEF

56. 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.
57. 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 proceedings²⁷.

2. BELARUS' CLAIMS AND RELIEF SOUGHT

58. The Respondent challenges the jurisdiction of the Tribunal and, alternatively, denies all of the Claimant's claims. The Respondent respectfully requests that the Tribunal:
- a. declare that it has no jurisdiction and order the Claimant to bear all the costs and fees incurred by the Respondent in connection with these proceedings; or
 - b. dismiss the claims over which the Tribunal determines that it has jurisdiction in their entirety and order the Claimant to bear all the costs and fees incurred by the Respondent in connection with these proceedings.

²⁵ CS-I. Notice of Arbitration, paras. 512 – 526.

²⁶ CS-I. Notice of Arbitration, para. 576.

²⁷ CS-I. Notice of Arbitration, paras. 576 – 577.

VI. APPLICABLE RULES

1. APPLICABLE SUBSTANTIVE RULES

59. The Tribunal shall decide this dispute in accordance with the EEU Treaty, complemented by International Law, and in accordance with Belarusian Law when applicable.

2. APPLICABLE PROCEDURAL RULES

60. The Parties agree that the UNCITRAL Rules as revised in 2013, including the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration of April 2014 [“**UNCITRAL Rules on Transparency**”] shall be applicable to the dispute²⁸.
61. The Parties also agree that the provisions of the International Bar Association [“**IBA**”] Rules on the Taking of Evidence in International Arbitration adopted by IBA Council on May 29, 2010, should apply to the dispute²⁹. For the avoidance of doubt, by this the Parties agree that the Tribunal may seek guidance from, but will not be bound by, the IBA Rules on the Taking of Evidence in International Arbitration.
62. In order to ensure effective case management, the Arbitral Tribunal, after consulting with the Parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the Parties or any imperative rules applicable to the proceedings.
63. A failure by any Party to object promptly to any non-compliance with non-imperative Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such Party to make such an objection, unless such Party can show that, under the circumstances, its failure to object was justified.

VII. PROCEDURAL TIMETABLE

64. The arbitration shall be conducted in accordance with the Procedural Timetable established by the Arbitral Tribunal in a procedural order.
65. The Tribunal may modify such Procedural Timetable at any time, after consultation with the Parties.

VIII. LANGUAGE

66. The Parties agree that the language of the proceedings shall be English³⁰.

²⁸ CS-I. Notice of Arbitration, para. 533-540; RS-I, Response to Notice of Arbitration, para. 72; Joint communication of the Parties submitted on February 21, 2018, para. 3(f).

²⁹ Joint communication of the Parties submitted on February 21, 2018, para. 3(g).

³⁰ Joint communication of the Parties submitted on February 21, 2018, para. 3(b).

IX. PLACE OF THE ARBITRATION

67. The Parties agree that the legal place of this arbitration shall be The Hague (Netherlands)³¹.

X. CONFIDENTIALITY

68. The Parties agree that the UNCITRAL Rules on Transparency will apply to these proceedings³². The PCA will publish on its website information regarding the name of the disputing parties, the economic sector involved and the treaty under which the claim is being made, as well as a hyperlink to the UNCITRAL Case Repository, where further information about this matter will be published in accordance with Article 8 of the UNCITRAL Rules on Transparency.

XI. QUORUM AND DECISIONS OF THE TRIBUNAL

69. A quorum shall be constituted by all three members of the Tribunal. Unless the Parties otherwise agree, a quorum shall be required for all hearings and all meetings of the Tribunal.
70. After consultation with the co-Arbitrators, the Presiding Arbitrator shall be empowered to execute procedural orders on behalf of the Arbitral Tribunal. The Presiding Arbitrator shall also be empowered to modify any time limit, especially in case of urgency.
71. Any award shall be signed by the Tribunal in the required number of counterparts.

XII. IMMUNITY

72. The Tribunal and its members, as well as the Administrative Secretary, enjoy immunity from suit and from any liability to appear as party or witness in connection with any matter related to the arbitration, in accordance with the provisions of the Headquarters Agreement between the Kingdom of the Netherlands and the PCA.

XIII. REMUNERATION OF THE TRIBUNAL AND THE SECRETARY

73. The Parties and the Tribunal undertake to manage the proceedings in a cost-efficient way, avoiding unnecessary delay or expense.
74. The fees of the members of the Tribunal shall be calculated by reference to work done in connection with this arbitration and shall be charged at EUR 600.00 (six hundred Euros) per hour³³.

³¹ Joint communication of the Parties submitted on February 21, 2018, para. 3(a).

³² Joint communication of the Parties submitted on February 21, 2018, para. 3(f).

³³ Joint communication of the Parties submitted on February 21, 2018, para. 3(e)(i).

75. The Secretary shall receive an hourly fee of EUR 300.00 (three hundred Euros) for her participation in the Tribunal's sessions and for other work performed in connection with this arbitration³⁴.
76. Travel time of the Tribunal and of the Secretary should be charged at fifty percent (50%) of the regular rate³⁵.
77. All secretariat and administrative expenses incurred in relation to the arbitration will be reimbursed at cost. The members of the Tribunal and the Secretary shall be entitled to recover such expenses as are reasonably incurred in connection with this arbitration, provided that claims for expenses (e.g. travel and accommodation costs) are supported by invoices or receipts³⁶.
78. All fees and expenses should be disbursed from the deposited amount upon presentation of a quarterly invoice by the Arbitrators and the Secretary. The Tribunal may withhold any award or decision until such fees and expenses have been paid.

XIV. VAT

79. To the extent that Value Added Tax ["**VAT**"] (or any other indirect tax) may be due on the Arbitrators' or the Secretary's fees under the applicable tax rules, the Parties undertake to pay such VAT at the prevailing rate upon submission of an invoice addressed to them by the Arbitrators or the Secretary.
80. Upon an invitation by the Tribunal, the Parties shall, as soon as reasonably practicable, pay an advance on the VAT amount which is likely to be due.

XV. ACKNOWLEDGEMENT OF THE PARTIES

81. By signing these Terms of Appointment, the Parties acknowledge that they agree to submit to this arbitration and expressly waive any objections they may have with respect to the constitution of the Tribunal.

XVI. REPRESENTATIONS

82. The persons acting on behalf of Claimant and Respondent represent to the other Party and to the Tribunal that they are duly authorized to sign these Terms of Appointment on behalf of the entities which they represent, and that these Terms of Appointment are hereby validly adopted by such entities.
83. These Terms of Appointment are executed in five originals signed by the Presiding Arbitrator, the co-Arbitrators, the Claimant and the Respondent, on their corresponding signature pages.

³⁴ Joint communication of the Parties submitted on February 21, 2018, para. 3(e)(ii).

³⁵ Joint communication of the Parties submitted on February 21, 2018, para. 3(e)(iii).

³⁶ Joint communication of the Parties submitted on February 21, 2018, para. 3(e)(iv).

84. This document may be signed in counterparts. A copy of the document, incorporating all signatures, and duly certified by the Presiding Arbitrator and/or the Tribunal's Secretary, shall for all purposes represent a valid and enforceable original of this agreement.

Legal place of this arbitration: The Hague (Netherlands)

Signed as of May 10, 2018

CLAIMANT
OOO MANOLIUM-PROCESSING

Name of representative: 

Title: Baker & McKenzie CIS, Limited, partner

Date and description of power of attorney: power of attorney of 13 November 2017 signed by A. Ekavian on behalf of Manolium-Processing LLC (Exhibit C-9)

RESPONDENT
THE REPUBLIC OF BELARUS



Name of representative: David Goldberg

Title: Partner

Date and description of power of attorney: Proof of Authority No. 22/57 dated 18 April 2018 signed by P. Utyupin on behalf of the Government of the Republic of Belarus

THE ARBITRAL TRIBUNAL



Juan Fernández-Armesto
Presiding Arbitrator

Date: May 10, 2018



Stanimir A. Alexandrov
Co-Arbitrator

Date: May 10, 2018.

Brigitte Stern.

Brigitte Stern
Co-Arbitrator

Date: 25 May 2018