

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA AND THE COUNCIL OF MINISTERS OF SERBIA AND SLOVAKIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Lithuania and the Council of Ministers of Serbia and Montenegro, hereinafter referred to as "the Contracting Parties",

Desiring to create favorable conditions for more intensive economic cooperation between the Contracting Parties;

Desiring to create and maintain favorable conditions for mutual investment;

Convinced that the promotion and protection of investment will promote a private business initiative and will, in particular, contribute to the development of economic cooperation between the Contracting Parties,

Have agreed as follows:

## **Article 1. Concepts**

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, though not exclusively, shall include:

(i) Movable and immovable property and any other rights in rem, such as mortgages, liens or pledges;

(ii) Shares, stocks, debentures, as well as other kinds of security and any other form of participation in a company;

(iii) Claims to money or any other claim under contract having an economic value;

(iv) Intellectual property rights such as copyright and related rights, industrial property rights such as patents, licenses, industrial designs, and utility models, trademarks, as well as goodwill, technical processes and know-how;

(v) Concessions granted in accordance with the laws and regulations of the Contracting Party in the territory where the investment is being made, including concessions to explore, extract and exploit natural resources.

A change in the form in which assets are invested shall not affect their character as investments.

2. The term "returns" shall mean the amounts yielded by an investment and, in particular, though not exclusively, includes: profits, capital gains, dividends, interest, royalties, patents, license fees and other similar fees.

3. The term "investor" shall mean:

(i) A natural person who is a national or permanent resident of one Contracting Party and making investments in the territory of the other Contracting Party;

(ii) A legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its headquarters in the territory of that Contracting Party and making investments in the territory of the other Contracting Party.

4. The term "territory" shall mean:

(i) In respect of the Republic of Lithuania: the land territory, internal waters, territorial sea and the airspace above them, as

well as any area beyond the territorial sea, including the seabed and subsoil, over which the Republic of Lithuania exercises sovereign rights or jurisdiction in accordance with its national law and international law;

(ii) In respect of Serbia and Montenegro: the area encompassed by land boundaries, as well as the sea, seabed and its subsoil beyond the territorial sea over which Serbia and Montenegro exercises, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction .

5. "The laws and regulations of the Contracting Party" shall mean the laws and regulations of the Republic of Lithuania or of Serbia and Montenegro; "the territory of the Contracting Party" shall mean the territory of the Republic of Lithuania or of Serbia and Montenegro.

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

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and, in shall admit such investments subject to its laws and regulations.

2. Investments or investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full legal protection and security in the territory of the other Contracting Party.

## **Article 3. National Treatment and Most Favoured Nation Treatment**

1. Each Contracting Party shall in its territory accord investments of the other Contracting Party treatment no less favourable than that which it accords to investments of its own investors or to investments of investors or any third State, whichever is the more favourable.

2. Each Contracting Party shall, in its territory, accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third state, whichever is more favourable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which the former Contracting Party may grant by virtue of:

(i) A customs union, free trade zone, economic or monetary union, common market or similar international agreement establishing such unions or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or

(ii) Any international agreement or arrangement, relating wholly or partly to taxation.

## **Article 4. Compensation for Losses**

1. Investors of one Contracting Party who losses owing to war or other armed conflict, a state or national emergency, revolt, insurrection or riot in the territory or the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards, restitution, indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be made without undue delay and shall be freely transferable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(i) Requisitioning of their investment or part thereof by the military forces or authorities of the other Contracting Party; or

(ii) The total or partial destruction of their investments by the armed forces or authorities of the other Contracting Party, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate, effective and shall be freely transferable.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the

other Contracting Party except for the public interest. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and against adequate compensation which shall be equivalent to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include the interest calculated on the LIBOR basis from the date of expropriation until the date of payment, and shall be made without undue delay and be freely transferable.

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

## **Article 6. Transfers**

1. Each Contracting Party shall, upon payment of all fiscal and other financial obligations in conformity with its laws and regulations, guarantee to the investors of the other Contracting Party free transfer into and out of its territory of payments related to their investments, in particular, though not exclusively:

(i) The initial capital and additional amounts to maintain or increase the investment;

(ii) Returns;

(iii) Payments made under a contract, including a loan agreement;

(iv) Proceeds of sale or liquidation of all or part of the investment;

(v) The earnings of personnel engaged from abroad in connection with an investment in its territory;

(vi) Payments of compensation under Articles 4 and 5 of this Agreement, as well as payments arising from the settlement of a dispute under Article 9.

2. Without prejudice to the measures adopted by the European Union, transfers of payments referred to in paragraph 1 of this Article shall be made in convertible currency, at the market rate of exchange prevailing on the date of transfer and effected without undue delay in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

## **Article 7. Subrogation**

1. If one Contracting Party or its designated makes a payment to its own investors under a guarantee given in respect of an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize:

(i) The assignment to the first Contracting Party or its designated Agency by law or by legal transaction of any rights and claims of the indemnified investor, and

(ii) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, and shall assume obligations pertaining to the investments.

2. The rights or claims so subrogated shall not exceed the original rights or claims of the investor.

3. Subrogation of the rights and obligations of the indemnified investor shall also apply to the transfer of payments effected in accordance with Article 6 of this Agreement.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, through negotiations.

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the date of commencement of negotiations, it shall, upon the request of either Contracting Party, be referred to an Arbitral Tribunal.

3. The arbitral tribunal referred to in paragraph 2 of this Article shall be constituted on an ad hoc basis for each individual case in the following way: within three months as of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator. Within two months, these two arbitrators shall select the third arbitrator - a third country national who on approval of the two Contracting Parties, shall be appointed as Chairman of the arbitral tribunal.

4. If the arbitral tribunal is not set up within the periods specified in paragraph 3 of this Article, either Contracting Party may,

in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision on the basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law. The arbitral tribunal shall decide by a majority vote. Its awards shall be final and binding on both Contracting Parties. The tribunal shall establish its own procedure.

6. Each Contracting Party shall bear the expenses of its own arbitrator and of its representation in the arbitration proceedings. The costs of the Chairman and the remaining expenses shall be borne in equal parts by the Contracting Parties.

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

1. In case of a dispute between an investor of one Contracting Party and the other Contracting Party relating to investment in its territory, the investor shall notify the host Contracting Party in writing. Such notification shall include detailed information about the dispute. Disputes shall, if possible, be settled amicably by negotiations.

2. If the dispute referred to in paragraph 1 of this Article cannot be settled amicably within six months from the date of the written notification provided for in paragraph 1, either party to the dispute, at the choice of the investor, may submit the dispute for settlement to:

(i) A competent court of the Contracting Party which is a party to the dispute; or

(ii) An ad hoc arbitral tribunal according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(iii) The International Center for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965, in the event that both Contracting Parties are parties to this Convention.

3. The award shall be final and binding on both parties to the dispute and shall be enforced in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

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

If the laws of either Contracting Party or international agreements existing at present or established hereafter between the Contracting Parties or other international agreements of the Contracting Party contain provisions entitling investment by investors of the other Contracting Party to a treatment more favourable than that provided for by the present Agreement, such provisions shall prevail.

## **Article 11. Consultations**

Representatives of the Contracting Parties shall hold consultations, when necessary, concerning matters related to the interpretation and application of this Agreement. These consultations shall be held at the proposal of one of the Contracting Parties, at the time and place to be agreed upon through diplomatic channels.

## **Article 12. Previous Investments**

This Agreement shall also apply to the investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations and shall be applicable from the date of its entry into force. However, this Agreement shall not apply to any dispute concerning an investment which arose or could have arisen, or any claim which was settled before its entry into force.

## **Article 13. Entry Into Force, Duration and Termination of the Agreement**

1. This Agreement shall enter into force on the day when the Contracting Parties have notified each other in writing that all

necessary constitutional formalities for its entry into force have been completed.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall be automatically extended for successive periods of five years unless either Contracting Party notifies in writing, at least twelve months prior to its date of expiry, to the other Contracting Party or its decision to terminate this Agreement.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall remain in force for a further period of ten years from that date.

In witness whereof, the undersigned Plenipotentiaries of the Governments listed below have signed this Agreement.

Done in duplicate at Vilnius, this 29th day of March 2005, in in the Lithuanian, Serbian and English languages, each text being equally authentic. In the event of any divergence in interpretation, the English text shall prevail.

For the Council of Ministers of Serbia and Montenegro

For the Government of the Republic of Lithuania