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**Lithuania
and
Serbia and Montenegro**

Agreement between the Government of the Republic of Lithuania and the Council of Ministers of Serbia and Montenegro on the reciprocal promotion and protection of investments. Vilnius, 29 March 2005

Entry into force: *2 December 2005 by notification, in accordance with article 13*

Authentic texts: *English, Lithuanian and Serbian*

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**Lituanie
et
Serbie-et-Monténégro**

Accord entre le Gouvernement de la République de Lituanie et le Conseil des Ministres de la Serbie-et-Monténégro relatif à la promotion et à la protection réciproques des investissements. Vilnius, 29 mars 2005

Entrée en vigueur : *2 décembre 2005 par notification, conformément à l'article 13*

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[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT

**BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA
AND THE COUNCIL OF MINISTERS OF SERBIA AND MONTENEGRO**

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 favourable conditions for greater economic cooperation between the Contracting Parties,

Desiring to create and maintain favourable conditions for reciprocal investments,

Convinced that the promotion and protection of investments will contribute to the enhancement of entrepreneurial initiative and thereby significantly contribute to the development of economic relations between the Contracting Parties,

Have agreed as follows:

**Article 1
Definitions**

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of assets 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 securities of a company 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 copyrights and neighboring rights, industrial property rights, such as patents, licenses, industrial designs or models, trade marks 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: profit, capital gains, dividends, interests, royalties, patent and 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 legislation 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 Serbia and Montenegro; "the territory of the Contracting Party" shall mean the territory of the Republic of Lithuania or 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 shall admit such investments subject to its laws and regulations.

2. Investments of 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 of 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 so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege 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 partially to taxation.

Article 4 **Compensation for Losses**

1. Investors of one Contracting Party who suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be 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 investments or part thereof by the forces or authorities of the other Contracting Party, or
- (ii) destruction of their investments or part thereof by the 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 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 Agency 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 the commencement of negotiations, it shall, upon the request of either Contracting Party be referred to an arbitration tribunal.

3. The arbitration 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 by the two Contracting Parties, shall be appointed as Chairman of the arbitration tribunal.

4. If the arbitration 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 either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party, or if he 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 arbitration 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 arbitration 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 the 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 investments 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 of 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, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Vilnius this 29 day of March 2005 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 Government
of the Republic of Lithuania



For the Council of Ministers
of Serbia and Montenegro

