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Conditions for Foreign Investments in Lithuania

Lithuanian business law topics

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Conditions for Foreign Investments in Lithuania

INTRODUCTION

Legal Basis

The principal Act relating to foreign investment regime in Lithuania is the Law on Investment No. VIII-1312 issued on 7 July 1999, as amended and supplemented. This act provides equal investment rules for domestic and foreign investors by listing areas and methods concerning where and how to attract different types of investment. The specific features of foreign investment regulation in a limited number of cases (e.g. state defence, national security) are presented below in this article. Special rules for investment can also be found in the Law on Banking, the Law on Insurance, and laws on other financial institutions. Those rules take precedence over the general rules of the Law on Investment in case of investment in specific areas.

Lithuania is still more a capital-importing country and the Lithuanian government tries to attract foreign investment in particular by the methods and in territories which are listed in the Law.

Pursuant to the Law on Investment¹, the Lithuanian government might provide favourable conditions for private investment. The state supports investment in Lithuania if it employs the methods specified in the law, and:

1. no less than LTL 20 million (and, in certain regions marked by high unemployment and social problems, no less than LTL 5 million) is invested in, a) measures for the upgrading of technology of prospective industries, b) the improvement of the ecological situation, c) development of small and medium-sized business;
2. is invested in greenfield sites; i.e. invested starting with the designing and construction of immovable property in territory which has not been built upon;
3. is invested in incomplete buildings (construction works) which cannot be finished due to

the lack of resources, or which, due to the prolonged construction process, become unnecessary (unfit for use according to its purpose) for the state (municipal) institutions;

4. is invested in problematic territories (parts of the state territory with specific social and economic problems meeting the criteria for problematic territories established by the government);
5. is invested in free economic zones, science and technology parks;
6. is invested in innovations, clusters of knowledge economy (geographic interconnected groups of enterprises and institutions in certain fields).

Investment in Lithuania is promoted by means of various methods², such as granting tax privileges, covering employees' re-qualification costs, etc.

The Lithuanian government does not limit or divide foreign investment in Lithuania either according to the periods, areas of investment or other criteria. Foreign investors are free to choose the period, methods, and measures of investment, with exceptions in certain specific cases provided for in the laws of the Republic of Lithuania discussed in the relevant sections of this article.

I. Admission of Foreign Investment

General Provisions

Pursuant to the Law on the Procedure of Proclamation and Coming into Force of Laws and other Legal Acts of the Republic of Lithuania No. I-119 dated 6 April 1993, only those laws and other legal acts which have been proclaimed in accordance with

¹ Article 12 of the Law on Investment.

² Article 13 of the Law on Investment.

the procedure established in the official gazette "Valstybes zinios" (Official Gazette) are in force and can be applied in Lithuania. The date of publication of the relevant issue of "Valstybes zinios" is deemed to be the date of publication of the legal act in question. If the law itself does not provide otherwise, the laws adopted by the Seimas (the Lithuanian Parliament) come into force on the date of their promulgation; and other legal acts adopted by the Seimas, government resolutions, and other legal acts, the next day following their promulgation unless those acts provide for other day of coming into force.

The Lithuanian Constitution³ stipulates that no act is in force if it was not promulgated in accordance with the established procedure. This provision has been approved by the Constitutional Court of the Republic of Lithuania on numerous occasions.

Regulation of Admission

1. REQUIREMENTS FOR FOREIGN INVESTMENT

Only few statutory restrictions exist in respect of foreign investment in Lithuania. One of these is established in the Law on Investment, under which the spheres of national security and state defence are predominantly allocated to the state or local capital.

Foreign Investment in regulated markets such as banking, insurance, brokerage, and others, usually requires the production of confirmations and evidence about the legality of the foreign capital to be invested in Lithuania. Additional documents about the corporate investor participants or related (group) companies can be required.

Currently, probably the most important limitation on foreign investment in Lithuania is the restriction on obtaining title to land, and especially title to agricultural land. The Law amending Article 47 of the Lithuanian Constitution provides that non-agricultural land may be acquired and owned by foreign entities and individuals engaged in business activities in Lithuania, as specified in the Constitutional Law adopted on 20 June 1996 and complying with the criteria of European and transatlantic integration which Lithuania has embarked on. Such foreign business entities and individuals may acquire non-agricultural land required for the construction and operation of buildings and facilities necessary for their direct activities.

1.1 COMMON PROVISIONS: ACQUISITION OF NON-AGRICULTURAL LAND, INTERNAL WATERS AND FORESTS

The Lithuanian Constitution, as amended⁴, provides that the acquisition of the land, internal waters and forests shall be subject to the terms and conditions set out in the Constitutional Law.

The Constitutional Law on the implementation of paragraph 3 of Article 47 of the Constitution⁵ (hereinafter referred to as the "Constitutional Law") provides that foreign subjects are allowed to acquire land in Lithuania only if they meet European and transatlantic integration criteria, based on origin requirement.

Foreign legal persons and other foreign organisations meet the European and transatlantic criteria if they are set up in:

- (i) the European Union Member States or states parties to the Europe (Association) Agreement concluded with the European Communities and their member states; or
- (ii) Member States of the Organisation for Economic Co-operation and Development, North Atlantic Treaty Organization and states parties to the European Economic Area Agreement.

Correspondingly, foreigners (natural persons) shall be deemed to meet the European and transatlantic integration criteria if they are nationals or permanent residents of the states specified above. Foreigners, regardless of their nationality, as well as persons without nationality, shall be entitled to acquire land, internal waters, and forests, provided they are permanent residents of Lithuania.

However, the Constitutional Law provides that foreign subjects meeting the European and transatlantic criteria may not acquire agricultural land before the end of the seven-year transitional period defined in the Treaty of the Accession of the Republic of Lithuania to the European Union⁶, , i.e., 2011, subject to certain exceptions mentioned below.

1.2 ACQUISITION OF AGRICULTURAL LAND

The Constitutional Law provides that agricultural land may be acquired by:

- (i) foreigners (natural persons) who have been permanently living and engaged in agricultural activities in Lithuania for at least three years, or

³ Part 2 of Article 7 of the Constitution of the Republic of Lithuania.

⁴ No. IX-1305, *Official Gazette*, 2003, No. 14-540.

⁵ The Constitutional Law of the Republic of Lithuania on the implementation of paragraph 3 of Article 47 of the Constitution of the Republic of Lithuania (No. IX-1381, *Official Gazette*, 2003, No. 34-1418). This law changed the previous Constitutional law on the subjects, procedure, terms and conditions, and restrictions applicable to the acquisition of land plots, provided for in paragraph 2 of article 47 of the Constitution of the Republic of Lithuania.

⁶ *Official Gazette*, 2004, No. 1-1.

- (ii) foreign legal persons and other foreign organisations which have set up representative offices or branches.

However, although the above-mentioned conditions must be met before deciding to invest in agricultural land, a number of other restrictions must be borne in mind.

The Provisional Law on the Acquisition of Agricultural Land⁷, as amended, (hereinafter "Provisional Law") sets out the specific conditions under which both national and foreign entities may transfer and acquire agricultural land in Lithuania. "Agricultural land" means plots of land used or designated for use for the functioning of agricultural enterprises and farms, and for the development of other agricultural activities, including farming land, the land occupied by dwelling houses and farm buildings, yards, roads, land suitable for conversion into farmland, and other land contained in the plots.

1.2.1 NATURAL PERSONS

The Provisional Law sets out the following conditions, which apply to natural persons who wish to acquire agricultural land:

- Maximum area
- A natural person may acquire land not exceeding 300 hectares, except when the limit is exceeded as a result of heritage or the land was acquired as a result of restoration of ownership rights lost during nationalisation⁸.

1.2.2 LEGAL PERSONS

Requirements for legal persons to acquire the agricultural land:

- Maximum area
- The maximum area of acquired land for legal persons is 2000 hectares, except when the limit is exceeded as a result of heritage or the land was acquired as a result of restoration of ownership rights lost during nationalisation.

1.2.3 RIGHT OF FIRST PRIORITY

The acquisition, and especially the later transfer, of the agricultural land are restricted by setting an order of priority to be followed in land purchase dealings. The state-owned agricultural land shall be offered firstly to individual farmland users, other farm-

ers, and neighbours of the land plot in question - if they are farmers or agricultural companies - and then to certain others⁹. If none of these subjects wish to acquire the land plot, it shall be sold at auction.

The acquisition of private agricultural land is also subject to an order of priority based on engagement in agricultural activities and the principle of rational farm holding. The right of first priority shall be enjoyed by:

- the co-owner of a plot;
- a person (farmer or agricultural companies) who has been using the particular plot of land in question for at least one year.

To summarise, foreign entities from the European Union and other western countries may invest in land under the same conditions as nationals of Lithuania. However, acquisition of agricultural land is subject to certain restrictions aimed at protecting persons engaged in agricultural activities. It should be noted that these restrictions will probably be abolished when the seven-year transitional period expires on 1 May 2011, although the term may be prolonged for a further period of three years.

1.3 LABOUR LEGISLATION

As a general rule, a foreign national wishing to take up employment under an employment contract must obtain a work permit.

Following the Law on the Legal Status of Aliens¹⁰, nationals of an EU Member State and their family members intending to work in the Republic of Lithuania under an employment contract shall not be required to obtain a work permit. In addition, on 14 August 2009 the Ministry of Social Security and Labour issued a new Order concerning work permits for foreign nationals (aliens), which sets out a list of exceptions under which foreign nationals are not required to obtain work permits. This list contains special cases applicable for owners and CEOs of locally registered entities, contracts negotiators, employees having employment contracts with the companies having registered office in any member state of WTO.

The Ministry of Social Security and Labour is in charge of issuing work permits for foreign nationals. The foreign national's application for a work permit is examined within a maximum period of two months from the date of filing the application. If granted, the

⁷ No. IX-2406, *Official Gazette*, 2004, No. 124-4490.

⁸ Art. 4 of the Provisional Law.

⁹ Art. 5 of the Provisional Law.

¹⁰ No. IX-2206, *Official Gazette*, 2004, No. 73-2539

work permit is issued for a period of no longer than two years and must state the job (position) and the enterprise (institution) where the foreign national will be employed.

1.4 REQUIREMENTS FOR LOCAL COLLABORATION

No special requirement to collaborate at the local level applies in respect of foreign investors, but for some activities, such as trade and production, permission from the local authorities might be obligatory under the national law. Under the Law on Local Self-Government, local authorities are responsible for the promotion of the conditions for foreign investment. Such promotion might involve, for example, special investors' attraction programs aimed at attracting more foreign investment to a local market of trade, production, and other relevant spheres. In those cases, local authorities usually examine proposals made by foreign investors and issue special licences.

1.5 CAPITALISATION REQUIREMENTS

Some types of enterprises in Lithuania are subject to certain capitalisation requirements. This applies to public and private limited liability companies, insurance companies, banks, credit unions, and investment companies. Capitalisation requirements for other types of enterprises may be established under separate Lithuanian laws.

According to the Law on Companies, the minimum authorised capital for public limited liability companies is LTL 150,000 (EUR 43,443), and for private limited liability companies it is LTL 10,000 (EUR 2,896.20). Both public and private limited liability companies must form and maintain the obligatory reserve fund, which cannot be smaller than one-tenth of the authorised capital. If part of the obligatory reserve is used to cover the losses, the yearly deductions from profit to the reserve until it would reach the established maximum must be not less than one-twentieth of the yearly profit. When a company is developing its activities, the ownership capital cannot be lower than one-half of the registered authorised capital.

Under the Law on Insurance of the Republic of Lithuania No. IX-1737, which came into force on 1 January 2004, the minimum capital level applicable for insurance companies is:

- Organisational fund formed by the incorporators: EUR 300,000.
- Minimum authorised capital: EUR 1 million.
- Minimum guarantee fund: EUR 2 million when

carrying out non-life insurance and EUR 3 million when carrying out life assurance.

- Technical deferments of the insurance company must be covered (invested) into "reliable" property established in the law.

The Law on Banking of the Republic of Lithuania No. IX-2085, which came into force on 1 May 2004, stipulates that the minimum authorised capital of the bank must be not less than EUR 5 million. Where specialised banks which carry out only certain type of activities as provided for in the licence are concerned, the figure is EUR 1 million. One-twentieth of the yearly profit is deducted to the obligatory bank reserve. This reserve can be used only to cover the losses of the bank.

Under the Law on Credit Unions of the Republic of Lithuania No. VIII-1683, as amended and supplemented, the minimum share capital of the union must be not less than LTL 15,000 (EUR 4,344.30) and deductions to the reserve fund not less than 20% of yearly net profit until the fund would reach 1/5 of the ownership capital. The reserve fund is used to cover the losses.

The capitalisation of investment funds of varying capital depends upon the area of activities of the fund. The following requirements are established for the capital of voluntary pension accumulation funds¹¹:

- Neither the initial nor the authorised capital of the management enterprise can be less than EUR 150, 000.
- If the value of the portfolios managed by the management enterprise exceeds EUR 250 million the management enterprise must increase the owner's capital by a sum amounting to not less than 0.02% of the amount by which the value of the managed portfolios of EUR 250 million is exceeded.
- With the increase in value of the managed investment portfolios, such ratio of managed and ownership capital must be maintained constantly until the amount of ownership capital reaches EUR 10 million.

Some capitalisation requirements may apply in respect of the organisers of lotteries and other business activities pursuant to Lithuanian law.

1.6 REQUIREMENTS WITH REGARD TO ENVIRONMENTAL PROTECTION

There are no special requirements for foreign investment in Lithuania with regard to environmental protection. Lithuania is a member of a number of

¹¹ Article 7 of the Law on Additional Voluntary Pension Accumulation.

international conventions, but there is no special treatment for foreign investment. Note, however, that for some specific activities, such as the exploitation of nature resources, permission must be obtained from the governmental authorities responsible for environmental protection.

Apart from the national legislation, a host of international conventions to which Lithuania has become party should also be mentioned. These are: a) the 25 June 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (which entered into force in Lithuania, with certain derogations, from 28 April 2002); b) 1992 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (ratified on 25 February 1997); c) 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitat (in force from 1 January 1997); d) 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (in force from 20 December 1993); e) 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals (ratified on 22 May 2001); f) 1979 Geneva Convention on Long-range Transboundary Air Pollution.

Environmental issues are also regulated by various bilateral and regional agreements to which Lithuania is a party.

1.7 REQUIREMENTS WITH REGARD TO LOCAL EQUITY

There are no restrictions on the amount of foreign ownership in Lithuanian companies. A foreign company or a foreign national may own up to 100% of the shares (capital) of a Lithuanian company. No minimum holding requirements exist for foreign investors, although minimum capital requirements established for Lithuanian companies without foreign capital participation are applicable to Lithuanian companies in which foreign capital is invested.

1.8 RESTRICTIONS BASED ON PUBLIC POLICY OR PUBLIC HEALTH

The international and national requirements in respect of money laundering, anti-terrorism actions, safe financial and insurance services, as well as financial crimes, are applicable in Lithuania. The flow of investment into Lithuania from some countries, or by particular persons suspected of criminal activities, breach of public policy or public health, can be restricted. E.g., in the year 2003 the Central Bank of Lithuania refused to give investment permis-

sion for a Luxembourg citizen because of his connection with Russian criminals and their activities.

Under Article 1.81 of the Civil Code of the Republic of Lithuania, any agreements contrary to the public policy or public health are void from the moment of their conclusion.

2. INCENTIVES FOR INVESTMENT

The Law on Investment adopted on 7 July 1999, as amended and supplemented, as well as other laws, guarantees equal conditions for operations. The investor has the right to manage, use, and dispose of the object of investment in Lithuania, in compliance with its laws and other legal acts. The investor has the right, upon paying the taxes in the manner prescribed by Lithuanian law, to convert into foreign currency and/or transfer the profits abroad without restriction¹². The foreign investor may make a monetary contribution to the economic entity's capital under formation both in foreign currency and in the Lithuanian national currency.

State and local authorities and officers have no right to interfere either with the management and use of, or the disposal by the investors, of the object of investment. Any damage inflicted upon the investor by unlawful acts of state or local authorities and their officers must be compensated according to the procedure established by national law.

Disputes relating to infringement of the rights and lawful interests of the investor or investors must be settled in accordance with the procedure established by national law. Disputes between the foreign investors and the Republic of Lithuania relating to infringement of their rights and lawful interests (investment disputes) are to be considered, upon agreement between the parties, by the courts of the Republic of Lithuania, international arbitration bodies, or other institutions. Investment disputes are also to be settled with due regard being taken of the international treaty provisions. In the case of investment disputes, the foreign investors have the right to apply directly to the International Centre for Settlement of Investment Disputes¹³.

The Law on the Fundamentals of Free Economic Zones was adopted on 28 June 1995, and laid down the foundations of the regulation of free economic zones (see below for details).

Investors may invest in the Republic of Lithuania in accordance with the procedure established by law, by employing the following methods: 1) by setting up an economic entity, acquiring the capital of, or a

¹² Article 5 of the Law on Investment.

¹³ Article 6 of the Law on Investment.

share in, an economic entity registered in Lithuania; 2) by acquiring securities of all types; 3) by creating or acquiring fixed assets, or increasing their value; 4) by lending funds or other assets to economic entities, in respect of which the investor owns a share in the capital, enabling them to control, or exercise an influence on, the economic entity; 5) by executing concession contracts and lease contracts with options to purchase pursuant to the Law on Concessions¹⁴, as well as public private partnership (PPP) agreements¹⁵.

Investment of capital of foreign origin is permitted in all spheres of business, with the exception of those relating to the security and defence of the state (except investments from foreign subjects selected by Lithuania complying with the criteria of European and transatlantic integration, provided the State Defence Council consents to this).

Investors have the right to acquire title to all types of immovable property in Lithuania. As noted above, the Law amending Article 47 of the Constitution of the Republic of Lithuania provides that non-agricultural land may be acquired and owned by foreign entities and individuals engaged in business activities in Lithuania, as specified in the Constitutional Law adopted on 20 June 1996 and complying with the criteria of European and transatlantic integration which Lithuania has embarked on. Foreign business entities and individuals may acquire non-agricultural land required for the construction and operation of buildings and facilities necessary for their direct activities.

2.1 GUARANTEES AGAINST EXPROPRIATION

Expropriation of the object of investment is allowed only in the cases specified, and in accordance with the procedure set forth, in the laws of the Republic of Lithuania. It may only occur on the basis of public needs, and the investor or investor must be paid fair compensation in the manner prescribed by the government. The amount of compensation for the object of investment taken is to be determined in accordance with the procedure established by the Law on the Principles of Property and Business Assessment, and other legal acts, and must correspond to the market value of the object prior to the expropriation or prior to public declaration thereof, whichever happens earlier (hereinafter referred to as 'the date of assessment'). Compensation must be paid in the national currency of Lithuania within three months of the date of expropriation of the object of investment.

Included in the sum of compensation is the sum of interest amounting to the arithmetical weighted average of the annual interest rate of the last calendar quarter auctions of government securities with maturities of up to one year, within the period from the moment of expropriation of the object of investment to the day of payment of the compensation (hereinafter referred to as 'period of delay'). Upon the request of a foreign investor, compensation can be paid in any currency for which London Inter Bank Offered Rate (LIBOR) is quoted. The sum of compensation is converted according to the official exchange rate of the Litās against the foreign currency announced by the Bank of Lithuania on the day of assessment. The amount of compensation includes the sum of interest amounting to the London Inter Bank Offered Rate (LIBOR) quoted for the appropriate currency on the day of receipt of compensation, calculated for the period the duration whereof is the closest to the period of delay. Compensation may be transferred abroad without any restrictions¹⁶.

2.2 INCOME TAX AND PROFIT TAX RELIEF

There is no income tax relief for foreign investment under the Law on Investment and the Law on Income Tax¹⁷ in Lithuania. However, the income of non-residents will be taxed in Lithuania only if income is received through the permanent establishment in Lithuania or the type of income in question is listed in the Law on Income Tax, in case it is not received through the permanent establishment in Lithuania. These include income from distributable profit, rental income from real estate located in Lithuania, income from the transfer of real estate or movable property registered in Lithuania, and other forms of income. The same income tax rate applies both to residents and non-residents and only depends on the type of income received.

Alongside the general taxation of profit in Lithuania, the Law on Fundamentals of Free Economic Zones provides that an enterprise in the free economic zone, in which capital investment has reached not less than EUR 1 million during six taxable periods starting with the taxable period during which this sum of investment was reached, does not pay profit tax, and during the other ten taxable periods a 50% reduction tariff in respect of profit tax is applied. The privilege established in this part can only be applied where not less than 75% of the income of the zone enterprise for the appropriate taxable period is made up of income from the manufacturing, production, and recycling of goods, storing activities,

¹⁴ The Law on Concessions No. IX-1647.

¹⁵ This option comes into force as from 1 January 2010.

¹⁶ Article 7 of the Law on Investment.

¹⁷ The Law on Income Tax No. IX-1007.

wholesale in goods stored in the zone, and/or provision of services related to the aforementioned types of activities carried out in the zone (transportation of goods manufactured, produced, recycled or stored in the zone as well as goods needed for the manufacturing, production or recycling, service, construction in the territory of the zone and other services related to the aforementioned activities). The privilege cannot in any case be applied to credit institutions or insurance companies.

Lithuania currently has signed and applies 46 bilateral agreements on avoidance of double taxation of income and profit. Agreements have been signed with most European countries, the United States, Canada and other countries. The actual list of bilateral agreements and international treaties on avoidance of double taxation of income and profit can be found on the official website of the Ministry of Finance using the link www.finmin.lt (follow the links on taxation and international taxation).

Pursuant to the Law on Profit Tax, companies registered in foreign countries are subject to 10% withholding tax on certain types of Lithuanian-source income generated not through the permanent establishments of the foreign enterprise in question. Those incomes are: a) interest except for the cases provided for in the said law; b) income from distributed profit; c) honoraries from intellectual property activities and compensation for breach of authors' rights; d) annual payments for the activities as members of the supervisory board; e) income from transfer of real estate registered in Lithuania¹⁸.

2.3 DEPRECIATION ALLOWANCE

Pursuant to the Law on Profit Tax, depreciation is allowed for long-term assets and prestige. The Law presents depreciation terms and methods applicable for different types of assets.

2.4 CUSTOM DUTIES RELIEF

There is no special custom duties relief for foreign investment. Custom duties are applicable in line with the unified European Custom Code.

2.5 TAX-FREE INTEREST LOANS

There is no tax-free interest on loans in Lithuania pursuant to the general taxation rules, but it can be agreed upon in the investment agreement concluded with the government.

2.6 REMITTANCE OF PROFITS (see also Section "Incentives for Investment" above)

Pursuant to the Law on Measures for Prevention of Money Laundering adopted on 19 June 1997, as amended, the financial institutions, performing a monetary operation, must submit to the Financial Crime Investigation Service data confirming the customer's identity and information about the performed monetary operation, if the total amount of the customer's single operation in cash or of several interrelated operations in cash exceeds EUR 15 000 or the corresponding amount in foreign currency¹⁹. In addition, any natural person entering or leaving the EU and carrying cash of a value of EUR 10 000 or more shall declare that sum to the competent authorities of the EU Member State through which he is entering or leaving the EU. It should be noted that the obligation to declare applies to the natural person carrying the cash regardless of whether that person is the owner²⁰.

II. Treatment

Standard of Treatment

Pursuant to the bilateral agreements on foreign investment and the protection they afford either the principle of national treatment or that of most favourable treatment for foreign investment applies in Lithuania. In most cases, the fair and equitable treatment rule is also mentioned in the agreements. The most favourable treatment principle under some of the bilateral agreements might be not applicable for foreign investment from particular countries if it must be designed according to the special rules governed by regional or international treaties and investment comes from countries other than those which are party to regional or international treaties.

1. REGULATIONS

1.1 GRANTING OF PERMITS AND IMPORT AND EXPORT LICENSES

There is no special system for permits for foreign investors in order to invest in Lithuania, nor is it necessary to obtain any general investment permission or licence. However, investment in some spheres of activity, including banking, insurance, the business of investment companies, as well as certain others, may require a permit from the supervisory authorities in order to invest. For example, if a foreign in-

¹⁸ Articles 4, 5 and 37 of the Law on Profit Tax.

¹⁹ Article 17 of the Law on Measures for Prevention of Money Laundering.

²⁰ Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community.

vestor wishes to acquire a controlling shareholding in a bank, the consent of the Central Bank pursuant to the Law on Banking²¹ is required.

1.2 ISSUE OF NECESSARY ENTRY AND STAY VISAS

Pursuant to the Law on the Legal Status of Aliens²², the entry in and stay in the Republic of Lithuania of an alien who is not an EU member state national shall be subject to Council Regulation (EC) No 539/2001 of 15 March 2001 with all the subsequent amendments, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those third countries whose nationals are exempt from that requirement. The Government of the Republic of Lithuania may grant exemptions from the visa requirement. Following the Regulation, nationals of third countries listed on the list of third countries whose nationals must be in possession of visas shall be required to be in possession of a visa when crossing the external borders of the Member States²³. The non-visa regime which means that nationals of non-visa regime countries may stay in Lithuania without visa of no more than three months within 6 months period, currently applies for citizens from 66 countries, including all the member states of the European Union, the United States, Japan, Switzerland, China (Hong Kong SAR and Macao SAR), Brazil, Australia and various other countries. The full list of the countries whose citizens do not require a visa to enter Lithuania can be found on the official website of the Department of Migration using the link www.migracija.lt. In order to enter Lithuania, in addition to the possible visa requirement, the foreign national must meet various other standard requirements, such as having a valid travel document and so on.

There are two types of visas: 1) the Schengen visa, and 2) the national visa. The Schengen visa may be a) airport-transit; b) transit; and c) short-term.

1.3 DISCRIMINATION AMONG FOREIGN INVESTORS

The concept of discrimination in respect of foreign investors is not known in Lithuania except for a limited number of cases involving obtaining plots of land (see above).

2. CUSTOMS UNION OR FREE-TRADE AREA AGREEMENTS ENTITLING OF PARTY STATES TO MORE FAVOURABLE TREATMENT

Lithuania is a member state of the European Union; consequently the European Union Custom Code fully applies in Lithuania.

3. TRANSFER OF FUNDS

As was mentioned earlier in this article, the investor has the right to manage, use, and dispose of the object of investment in Lithuania in compliance with national laws and other legal acts. The investor has the right, upon paying tax in the manner prescribed by national law, to convert into foreign currency and/or transfer abroad without any restrictions the funds and profits (income) held by him or her by ownership right²⁴. The transfer of funds and profit can be made both in local and foreign currency.

Pursuant to the Law on Profit Tax, profit tax rate on dividends to foreign shareholders (companies and natural persons) is 20%. However, dividends to foreign shareholders are tax-free in Lithuania if: a) the holding threshold is more than 10% of the registered capital and it lasts not less than 12 months in a row; b) the foreign shareholder is not located or domiciled in an offshore territory. This rule shall not apply and dividends are subject to 20% tax rate if the company paying the dividends (which is not a Free Economic Zone company) applied 0% profit tax rate on taxable profit or applied tax incentive in cases stipulated in the Law on Profit Tax.

4. SALARIES AND WAGES OF FOREIGN PERSONNEL

Salaries and wages for foreign employees are taxed in the same way as salaries of the residents of Lithuania. Pursuant to the Law on Income Tax²⁵, the employer must deduct 15% income tax from the employees' salary. In addition, following the Law on Approval of State Social Insurance Fund Budget of 2009, the employer shall pay 23.3% for pension social insurance, 3.4% for illness and maternity social insurance, 1% for unemployment social insurance, 3% for health insurance; whereas the employee shall pay 3% for pension social insurance and 6% for health insurance. The employer must also pay a monthly sum amounting to 0.1% to the Guarantee Fund²⁶. The royalties paid to members

²¹ Article 8 and 25 of the Law on Banking No. IX-2085.

²² The Law on the Legal Status of Aliens No. IX-2206.

²³ Article 1 (1) of the Council Regulation (EC) No 539/2001 of 15 March 2001.

²⁴ Article 5 of the Law on Investment.

²⁵ The Law on Income Tax No. IX-1007.

²⁶ Article 4 of the Law on Guarantee Fund No. VIII-1926.

of the Board and the Supervisory Board must be taxed in Lithuania.

5. NET REVENUES REALISED FROM THE INVESTMENT

There are no statutory provisions for net revenue realised from foreign investment, but it is possible to agree on these issues with the government in the investment agreement.

6. TRANSFER OF FUNDS FOR THE PAYMENT OF DEBTS OR DISCHARGE OF OTHER CONTRACTUAL OBLIGATIONS

The debtor resident in Lithuania is free to discharge his or her contractual or statutory obligations using funds at his or her free disposal. However, there are some rules for discharge of obligations applicable both to foreign investors and residents of Lithuania.

Firstly, payments in cash can be paid only using the national currency, Litas, as well as the currency of the EU (the Euro) if the parties so agree. Non-cash settlements can be made in any currency if the parties so agree²⁷.

Secondly, articles 6.54 and 6.55 of the Civil Code of the Republic of Lithuania provide that:

1. If the parties have not agreed otherwise, contributions received when discharging an obligation are first of all allocated for the compensation of expenses incurred by the creditor related to the announcement of the requirement to discharge the obligation.
2. In the second place, contributions are allocated to pay interest according to the succession of their payment maturity.
3. In the third place, contributions are allocated for the payment of forfeit.
4. In the fourth place, contributions are allocated for the discharge of the main obligation.
5. The creditor has the right to decline the contribution proposed by the debtor if the debtor indicates a different distribution of contributions than that established in sub-paragraphs 1, 2, 3 and 4 of this paragraph.
6. The creditor may decline to accept the sum paid to discharge of the main due obligation if at the same time the current due interest is not paid.

Where a debtor is obliged to discharge more than one obligation to the same creditor the following rules apply:

1. Where a debtor is obliged to repay the same creditor in respect of several debts of the same type, he or she may state when paying which debt is being repaid. However the debtor does not have the right, without the consent of the creditor, to allocate contributions for an obligation which has not yet fallen due for discharge in preference to contributions in respect of an obligation which has fallen due for discharge.
2. If the debtor does not state the obligation for the discharge of which the contribution is being allocated, and no other agreement has been made between the parties, it is considered that the contribution is allocated to the debt that has fallen due for repayment. Where several debts have fallen due for repayment and none of them is secured it is considered that the oldest debt is the one to be settled. Where several debts have fallen due for repayment, and one of these is secured, it is considered that the secured debt is the one to be settled. If all the debts to be settled are secured, it is considered that the debt restricting the rights of the debtor most is the one to be repaid; and if all debts are equally restrictive then the oldest debt is the one to be settled. If none of these criteria can be applied the contribution is distributed proportionately among all debts.
3. Thirdly, special rules apply for discharge of an obligation during the bankruptcy and restructuring procedures of an enterprise and pursuant to the relevant laws^{28 29}.

7. LIQUIDATION OR SELLING OF INVESTMENT

Three types of investment selling are possible in Lithuania: a) share deal, b) assets deal, c) selling of the enterprise as a complex of assets, rights, patents (licences) and obligations. There are no restrictions in Lithuanian law on foreign investors using any or all of these methods.

Pursuant to Article 6.393 of the Civil Code of the Republic of Lithuania, the sales agreement in respect of a sale of real estate must be concluded in writing and approved by the public notary. Article 6.403 of the Code stipulates that agreement on

²⁷ Article 3 of the Law on Foreign Currency No. I-202.

²⁸ The Law on Company Bankruptcy No. IX-216.

²⁹ The Law on Company Restructuring No. IX-218.

transfer of an enterprise must be concluded in writing. In both cases, failure to comply with formal requirements renders the agreements void. Agreements for the transfer of real estate and enterprises are valid as against third parties after they are registered, as applicable, in the Real Estate or Legal Entities Register.

Agreements for the transfer of shares can be concluded in the Stock Exchange (for listed shares) and in the non-regulated (OTC) market.

8. TRANSFER OF COMPENSATION FOR LOSS DUE TO WAR, ARMED CONFLICT, REVOLUTION, OR INSURRECTION

There are no detailed statutory provisions on how to compensate investors for delay of transfer of funds or payment of compensation due to war, armed conflicts, revolutions, and insurrections. However, Article 6(1) of the Law on Investment provides general rules concerning the responsibility of the government and compensation of loss: 'State and local authorities and officers shall have no right to interfere with the management and use as well as disposal of by the investors of the object of investment according to the procedure prescribed by the laws of the Republic of Lithuania. Damage inflicted upon the investor by unlawful acts of state or local authorities and their officers shall be compensated according to the procedure established by the laws of the Republic of Lithuania.'

9. REINVESTMENT OF FUNDS

Pursuant to the Law on Investment³⁰, reinvestment means investment of the profit (income) in the economic entity from which the profit (income) was obtained. According to Article 3 of the same law reinvestment is treated as direct investment with all the consequences flowing from this. If a national establishment having foreign capital reinvests its profits in Lithuania those reinvestments will be treated as national rather than foreign investments. Bilateral investment agreements or agreements among investors and with the government (or municipality) may provide otherwise and consequently agreed foreign investment incentives might also be applicable to reinvested capital.

Pursuant to the Law on Profit Tax, there is no profit tax relief for profit re-invested in Lithuania. Therefore, investment made by companies can be deducted from income for the purpose of profit tax if:

- it is actually incurred;
- it is usual unit expenditure for this type of activity;

- it is necessary to earn unit income or to receive the economic benefit of the unit;
- documents confirming the expenditure are available.

10. TAX

Exemptions and Fiscal Incentives (see Sections "Incentives for investment" and "Income and Profit tax Relief" above).

III. Protection of Foreign Investment

Property Protection

1. NATIONALISATION AND EXPROPRIATION (see also paragraph entitled 'Guarantees against expropriation')

1.1 CONDITIONS/LEGISLATION

The Constitution of the Republic of Lithuania provides that, 'Property shall be inviolable. The rights of ownership shall be protected by law. Property may only be seized for the needs of society according to the procedure established by law and must be adequately compensated for³¹. As mentioned earlier in this article, Article 7 of the Law on Investment provides details on this issue. Anti-nationalisation and anti-expropriation clauses are included in most bilateral investment agreements.

The conditions under which expropriation may occur are as follows: a) public interest (needs of society), b) adequate (fair) compensation, c) compensation must be paid not later than three months after expropriation takes place. For the period from expropriation until payment of compensation interest must be counted and paid to investor.

1.2 COMPENSATION, ADEQUACY AND DETERMINATION

Compensation must be adequate in value as compared with the seized assets. Adequacy must be measured by a fair evaluation of assets to be seized made pursuant to the Law on Fundamentals of Assets and Business Evaluation³². The real market value must always be the measure employed for evaluation purposes. The principles of evaluation can be found in Article 6 of the mentioned law.

Market value can be calculated using methods of comparative value, reproducible value, value of the

³⁰ Article 2 of the Law on Investment.

³¹ Article 23 of the Constitution.

³² The Law on Fundamentals of Assets and Business Evaluation No. VIII-1202.

income of usage, special value, and other methods approved by the Lithuanian Government and international practice.

1.3 TERMINATION AND AMENDMENT OF A CONTRACT OR DISCLAIMER OF LIABILITY UNDER A CONTRACT WITH FOREIGN INVESTOR

Pursuant to Article 13(1)(6) of the Law on Investment, 'The Republic of Lithuania or an authorised authority in accordance with the procedure established by the Civil Code of the Republic of Lithuania shall conclude with the investors investment contracts which establish special investment and business conditions.' Under Article 2.36(1) of the Civil Code of the Republic of Lithuania, 'The State, municipality or their institutions shall be participants of civil relations on equal grounds as other participants of these relations.' However, it is worth noting that both the state and municipalities or other public authorities in civil legal relations act on the basis of special capacity, i.e. cannot conclude and as a consequence later carry out transactions which conflict with the goals and objectives of the government laid down in the Constitution or other laws.

The principle of the freedom to contract³³ is fully applied for the conclusion and implementation of contracts in Lithuania. It covers: a) right to conclude a contract at free will including such which are not laid down in the Civil Code or other laws, but are not in conflict with them, b) the right to agree at free will on the terms (contents) of the contract, c) the right,

in accordance with the procedure prescribed by the contract and laws, to terminate the contract justly and fully compensate the other party for losses incurred as a consequence of termination.

Pursuant to Article 6.256(2) of the Civil Code of the Republic of Lithuania, a 'person who failed to discharge his contractual obligation or discharged it improperly must compensate the other party to the contract the losses incurred thereof and to pay penalty if agreed'. Under Article 6.258(1) of the Civil Code of the Republic of Lithuania the penalty must be laid down in the contract signed by the parties. If this requirement is expressed in order to compensate losses, then the penalty is calculated by reference to the sum of the losses. Moreover, the creditor cannot demand at the same time both the penalty and discharge of the obligation in kind, except in cases involving breach of the term in which the obligation should be discharged. Agreements between the parties, other than the latter two mentioned, are void under Article 6.258(2) of the Civil Code. The court has the power to reduce the amount of the penalty if it is unjustifiably large.

Moreover, the Civil Code prescribes that yearly interest calculated at the rate of 5% or 6% (for commercial transactions) be applied for the period between the obligation becoming due for discharge and full discharge of the obligation being made, even if the parties have not agreed to this effect. This provision is also applied in cases where the debt is recovered through the court. Pursuant to Article 6.37(2) of the Civil Code, interest in the amounts mentioned above is calculated, at the request of the creditor, on the outstanding sum from the day the case is initiated in court until the full implementation of the court ruling.

2. INVESTMENT INSURANCE

There is no investment insurance as a special type of business insurance in Lithuania. Investors can secure their investment by the following types of insurance: a) business property, including real estate and movable property insurance against fire, flood, and earthquake, as well as other natural disasters, and actions by third parties including thefts, robberies and so on; b) insurance of business termination due to fire and the impact of other types of natural disaster; c) cargo insurance; d) civil liability insurance; e) others. Investors may find a particular type of suitable insurance and its terms on the websites of Lithuanian insurance companies, which are obliged to publish this information on the Internet. Here are several useful links: www.if.lt, www.ergo.lt, www.ld.lt. Please contact competent specialists for advice on insurance brokerage services.

The deposits and securities held in Lithuanian credit unions, banks and other legally permissible institutions are automatically secured by a special kind of insurance pursuant to the relevant law, the details of which please find below:

2.1 ELIGIBLE INVESTOR

According to Article 2(11) of the Law on Insurance of Deposits and Liabilities to Investors of the Republic of Lithuania³⁴, the investor is a natural or legal person holding a deposit with a bank, branch of a bank or a credit union, with the exception of the entities whose deposits under the said law may not be covered by insurance. Where the natural or legal person (with the exception of a management company, where it manages collective investment undertakings and pension funds) having a deposit acts as a trustee, the trustor shall be held an investor. Where a group of persons has rights of claim to the funds under contracts, each person of the group shall be held an investor and the funds shall be divided among them in equal portions unless the

³³ Article 6.156 of the Civil Code of the Republic of Lithuania.

³⁴ The Law on Insurance of Deposits and Liabilities to Investors of the Republic of Lithuania No IX-975, dated 20 June 2002.

contracts under which their rights of claim arise or court rulings provide otherwise.

2.2 ELIGIBLE INVESTMENTS

According to Article 3(2) of the Law on Insurance of Deposits and Liabilities to Investors, insurance cover liabilities to the investors to repay the securities and deposits irrespective of their denomination or money in Litas or foreign currency.

2.3 INSURABLE RISK

According to Article 2(2) of the Law on Insurance of Deposits and Liabilities to Investors, the investors are insured against the institution of bankruptcy proceedings against a credit union, commercial bank or an undertaking, or the taking of a decision by a supervisory authority on the discontinuation of banking activities, where a credit union or a commercial bank/ branch is not able to settle with creditors or when an undertaking or subsidiary of an undertaking is not able to meet its liabilities to the investors.

3. GUARANTEE AND SURETY PROVIDED BY A THIRD PARTY

The use of guarantees as a means of securing discharge of an obligation is regulated by Article 6.906.97 of the Civil Code. A guarantee is considered to be a unilateral obligation assumed by the guarantor to be liable to the creditor for the sum agreed if the debtor does not discharge the obligation or discharges it improperly. The responsibility of the guarantor is a subsidiary one, i.e. the guarantor is liable to the creditor only when the debtor himself cannot discharge the obligation properly. The guarantee is an independent obligation, not dependent on the fate of the main obligation.

Guarantees, in Lithuania, should not be confused with sureties. The use of sureties is regulated by Article 6.76-6.89 of the Civil Code, which provides that the person who has stood surety is jointly liable with the debtor to the creditor for failure to discharge the obligation or improper discharge of the obligation, i.e. the creditor can freely choose from which of the two persons to demand the discharge of the obligation if the debtor does not discharge it properly and in a timely manner.

4. PROTECTION OF INVESTMENT BY A MORTGAGE-PLEDGE OR CHARGE

Legal transactions involving mortgage-pledge and charge are governed by equity law; consequently parties cannot agree on restricted issues while taking or giving these kinds of securities.

A charge, or, to be more precise, a floating charge as the only type of charge possible in Lithuania, can be granted over the stock in trade. The scope of the

floating charge extends to future property as well as to property presently owned by the chargor. The effect of the floating charge on present and future stock in trade is that as the stock turns over in the ordinary course of business, items sold pass out of the security but new items come within the scope of the charge as soon as they are acquired by the chargor. The weak point of the floating charge in Lithuania is that Article 4.204(2) - which provides that future rights may be an object of the charge only if such a possibility is provided for by law - effectively prevents the chargor from presenting future receivables as security for the creditor. Currently, no law provides the opportunity to create this type of security. All formal requirements in respect of the regulation of registered pledges also apply to floating charges.

Mortgages may generally be used only in respect of real estate, including plots of land, but also apply to aircrafts and ships as registered macro-objects. For other types of assets pledge provisions apply. Mortgages must be made in writing, authorised by a public notary and registered at the public Mortgage Register using a special form of mortgage bond. The mortgaged property cannot be transferred to the possession of a creditor or third party, and any agreement seeking to give effect to such a transaction will be null and void. The mortgaged property must be registered in the Real Estate Register and insured for the benefit of the creditor, except where land insurance is concerned. Subsequent mortgages are possible if the parties do not agree otherwise in the mortgage bond. In case of non-fulfilment of contractual secured obligations, the creditor is entitled to the proceeds of sale of the mortgaged assets. Any purported transfer of the mortgaged property into the ownership of the creditor will be void, except in cases where the bailiff is entitled to offer the mortgaged assets to the creditor following an unsuccessful public auction procedure. Creditors can also act as administrators of security and cover the debt from the assets administration proceeds. In case the mortgaged object is real estate, the plot of land necessary for the usage of the real estate, or the rights to this plot of land, must be mortgaged together with the real estate.

Beside the floating charge described above, a pledge can be created either as a registered or an unregistered pledge in Lithuania. Where possession of pledged assets is transferred to a third party or remains for the pledgor, the pledge agreement must be signed, authorised by a public notary, and registered in the Mortgage Register using a special chattel bond form. Where possession of the object of the security is transferred to the creditor, the parties can agree on an unregistered pledge, in respect of which the formal requirements are less strict. Rules contrary to the above-mentioned are void. The provisions of Article 4.204(2) of the Civil Code concerning future assets as legitimate security also

apply where both registered and unregistered pledges are concerned. In case of non-fulfilment of secured contractual obligations, the creditor is entitled to the proceeds of sale of pledged assets. The transfer of the object of security to the ownership of the creditor is also possible in the case of a pledge.

In case of bankruptcy, all the above-mentioned types of security provide preferable status to the creditor to such extent that the creditor is entitled to proceeds from the sold security in order to satisfy his or her claim, while the other creditors' claims are covered under the Law on Bankruptcy³⁵, taking into consideration the order of priority of creditors' claims and proportionality principles.

Both pledges and floating charges are possible in Lithuania. However, floating charges can be granted only over the stock in trade. A mortgage is applicable only to real estate, including land and macro-objects as mentioned above. Pledges, charges and mortgages are not independent obligations under Lithuanian law. Consequently, their destiny depends on the discharge of the main obligation secured by any of the above-mentioned types of security. Pledges, charges and mortgages can be combined together as securities for one or more obligations and/or one or more creditors. Creditors' priority depends on security registration in the Hypothec Register.

Lithuanian law and court practice does not as yet recognise any form of over-securitisation doctrine.

IV. Settlement of Investment Disputes

As was mentioned earlier in this article, disputes between the foreign investor or investors and the Republic of Lithuania relating to infringement of rights and lawful interests (investment disputes) are to be considered, upon agreement between the parties, by the Lithuanian courts, international arbitration bodies, or other institutions. Investment disputes shall also be settled with due regard being taken of the provisions of international treaties. The Lithuanian dispute settlement system is usually limited to negotiation, arbitration and/or court trial. The Code of Civil Procedure of the Republic of Lithuania, approved by Law No. IX-743 on the Approval, Effectiveness and Implementation of the Civil Procedure Code of the Republic of Lithuania dated 28 February 2002 (hereinafter referred to as 'the Code of Civil Procedure of Lithuania'), applies both to civil and commercial disputes. There is neither a commercial code nor a special code of commercial pro-

cedure for the settlement of commercial disputes in Lithuania.

Lithuania is a member of the following conventions relevant to foreign investment and related disputes: a) 1965 Washington Convention on the Settlement of Investment Disputes between States and the Natural and Legal Persons of other States (since 5 August 1992); b) 1954 Convention of Civil Process (since 16 July 2003).

1. GOOD OFFICES AND MEDIATION

Parties are free to agree in the investment agreements as to how negotiations or mediation should be arranged. Usually parties agree on the procedural matters, order of correspondence, and number of mediators. Since year 2006 the mediation is also possible in some courts after the formal court procedure was started in order to solve the dispute.

2. JUDICIAL TRIBUNALS FOR THE ADJUDICATION OF INVESTMENT DISPUTES

2.1 MUNICIPAL COURTS

Pursuant to the Law on Courts³⁶, the Lithuanian Court system consists of Municipal (local) Courts, District Courts, the Court of Appeal, and the Supreme Court. The Municipal and District Courts are entitled to hear various disputes, including those relating to infringement of rights of international investors if the parties did not agree on the settlement of such disputes by way of arbitration or by referral to international organisations. Local courts can only settle such disputes in which the amount of the claim involved does not exceed in total LTL 100,000 (EUR 2897). Higher value claims must be heard by the District Courts. The District Courts are also responsible for the settlement of contest disputes, bankruptcy and restructuring cases, and other disputes pursuant to Article 27 of the Code of Civil Procedure. The actual court that hears the dispute must be chosen taking into consideration the domicile or location of the registered head office of the defendant, if parties did not agree on the particular court to which any disputes should be addressed in the investment agreement. Only exceptional jurisdiction for certain kinds of disputes, such as disputes relating to real estate, cannot be changed by the parties.

Under the Code of Civil Procedure, disputes should not be referred to the Local or District Courts if the parties have agreed to settle disputes by way of arbitration.

³⁵ The Law on Company Bankruptcy No. IX-216.

³⁶ The Law on Courts No. IX-732

2.2 ARBITRATION

Arbitration can be arranged either under international or local arbitration rules. Only one institutional local arbitration institution exists in Lithuania. That is Vilnius International and National Commercial Arbitration (hereinafter referred to as the 'Vilnius Arbitration'), which is a limited liability non-profit making and nongovernmental permanent public institution of judicial type (court of third parties) founded in 2003 on the basis of the corps of arbitrators of Vilnius International Commercial Arbitration (recently liquidated), and the know-how gained during the years of activity thereof. The incorporation documents of this arbitral institution were drafted and registered in accordance with the procedures established by the Law on Commercial Arbitration and the Law on Public Institutions.

The main aims of the Vilnius Arbitration are organising arbitral proceedings for the hearing and settling of international and national commercial disputes arising between business entities, and the provision of administrative support to the arbitral tribunals composed for the settlement of such disputes. Where the parties to the dispute so request, the Vilnius Arbitration organises conciliation procedures by applying methods of mediation and conciliation only (i.e. adjudication of disputes without court and arbitration).

Detailed information about arbitration rules and eligible arbiters can be found on the website www.arbitration.lt.

2.3 ENFORCEMENT OF JUDGEMENTS AND ARBITRAL AWARDS

In the same way as for the other Member States of the European Union, the Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters³⁷ has applied in Lithuania since 1 May 2004. For the recognition of decisions emanating from non-EU member states as well for cases not regulated by the above-mentioned Regulation, the provisions of the Code of Civil Procedure of Lithuania apply. Pursuant to the Code of Civil Procedure of Lithuania, the Court of Appeal is responsible for the recognition of foreign courts and arbitration decisions. The Court of Appeal may refuse to approve the foreign decision for enforcement in Lithuania only in a limited number of cases. These basically relate to the infringement of rights of the participants in the trial, as well as conflict with the provisions of Lithuanian constitutional or public law³⁸.

Bailiffs are responsible for the enforcement of local and foreign decisions recognised by the Court of Appeal, if necessary. The party involved is free to choose a bailiff's office. The expenses involved in the enforcement of decisions are first laid upon the creditor (claimant) and later can be levied upon the debtor (defendant).

V. Business Activities in Free Economic Zones

Pursuant to the Law on Fundamentals of Free Economic Zones³⁹, enterprises established in free economic zones and doing business there, as well as the capital invested in those zones, will be treated under special rules. The most important of these are presented below.

1. GOVERNMENTAL POLICY TOWARDS FREE ECONOMIC ZONES

Similarly to the Law on Investment, the Law on Fundamentals of Free Economic Zones provides that investments, legally earned profit, income, dividends, rights and legitimate interests of the investors shall be protected by the laws of the Republic of Lithuania. Consequently, foreign investors are entitled to all types of investment protection under the national law. The system of state guarantees of investment security apply to all economic entities engaged in economic and commercial activities as well as other activities in the zone. The state shall guarantee the economic entities the right to bring in the zone and to take out of the zone, and the Republic of Lithuania, capital and profit. Investors shall be guaranteed the right to own 100% of the assets of an enterprise operating in the zone.

The terms and conditions for the investment of capital or the existence of investment shall not change for five years from the beginning of investment for those investors who invested the capital owned by them by the right of ownership according to the procedure and conditions established at the time a relevant law was in effect.

2. SPECIAL RULES APPLICABLE TO ENTERPRISES IN FREE ECONOMIC ZONES

2.1 FOUNDING AND CONTROL OF AN ENTERPRISE

The enterprise of the zone shall be an enterprise of any form and type of ownership situated within the zone and registered by the zone administration company in accordance with the requirements of the

³⁷ Official Journal L012, 16/01/2001 P. 0001-0023.

³⁸ Article 810 of the Code of Civil Procedure of Lithuania.

³⁹ The Law on Fundamentals of Free Economic Zones No. I-976.

law, to which the terms and conditions of activities established by the Law on Fundamentals of Free Economic Zones and state guarantees for its activities within the zone shall apply⁴⁰. No restrictions apply to foreign investment in free economic zones, except the general provisions of Lithuanian law. The enterprise carried on in the zone shall operate in compliance with the Law on Fundamentals of Free Economic Zones, the law of the zone⁴¹, the statute of the zone, its bylaws and founding documents, as well as the agreement with the zone administration company concerning the terms and conditions applying to activities in the zone. The economic-commercial activities specified in the founding documents, to which restrictions imposed by the Lithuanian law shall not apply, shall be permitted in the zone. However, retail trade shall be permitted only to the extent it serves to satisfy the internal needs of the zone.

Article 7(8) of the Law on Fundamentals of Free Economic Zones provides that an enterprise in the zone may not set up subsidiaries or representations outside the zone. Therefore, the zone enterprise may be the founder of an enterprise located outside the zone. Furthermore, an enterprise located outside the zone may be the founder of an enterprise in the zone. Taking into consideration the provisions of the Lithuanian Law on Companies, the allowance for the above-mentioned enterprises to participate as founders might be understood as unconditional permission to participate in the capital of those enterprises later but having shareholder's status.

2.2 ACTIVITIES OF THE ENTERPRISE IN THE ZONE

The following spheres of capital investment and activities are prohibited for enterprises in the zone:

- economic-commercial activities connected with ensuring state security and defence, as well as with the production, storage or selling of arms, ammunition or explosives, or activities having a harmful effect on the environment;
- production, processing, storage, and neutralisation of hazardous and radioactive materials;
- production, selling and storage of narcotics, narcotic, virulent, and poisonous substances;
- processing, selling and storage of crops containing narcotic, virulent, and poisonous substances;
- manufacture of vodka, liqueur, and other liquors;
- manufacture of securities, paper money and coins, postage stamps;
- founding and keeping of gambling-houses;
- organisation of lotteries;
- preparation and broadcasting of radio and TV programmes, with the exception of technical servicing of radio and TV activities and printing-houses;
- treatment of patients who are ill with serious and especially dangerous infectious diseases, including venereal and contagious skin diseases, aggressive forms of mental disease;
- treatment of animals ill with especially dangerous diseases;
- settlement of labour migration issues.

A licence issued by the Government of the Republic of Lithuania or its authorised state institution must be obtained for licensed activities specified in the law. Investment of capital into exploitation of natural resources shall be prohibited without a concession.

2.3 TAXATION RULES

Article 15 of the Law on Fundamentals of Free Economic Zones provides special rules for the taxation of enterprises of free economic zones, payment of custom and stamp duties, social security and health insurance surcharges. Under the Law, enterprises registered in the zone and their employees pay import duties as established in Paragraph 10 of Article 4 of the 12 September 1992 Council Regulation (EEC) No. 2913/92 establishing the customs code of the Community. Enterprises registered in the zone and their employees under the procedure established by the laws of the Republic of Lithuania also pay state levies and only the following taxes and contributions:

- profit tax;
- natural persons' income tax;
- tax for environment pollution and natural resources;
- contributions of obligatory state social insurance;
- contributions of obligatory health insurance;
- value-added tax, excise duty, and other taxes - in the procedure and the cases prescribed by the legal acts regulating these taxes (i.e. in general procedure).

⁴⁰ Article 7 (1) of the Law on Fundamentals of Free Economic Zones.

⁴¹ There are special Laws for each of the two free economic zones in Kaunas and Klaipeda regions.

Pursuant to Article 15(3) of the Law on Fundamentals of Free Economic Zones, profit tax relief is granted for enterprises in free economic zones: the enterprise in the zone the capital investment into which has reached a sum of not less than EUR 1 million during six taxable periods starting with that taxable period during which this amount was reached shall not pay profit tax, and during the remaining ten taxable periods the 50% reduction tariff in respect of profit tax is applied. This privilege only applies where not less than 75% of the income of the enterprise in the zone for the appropriate taxable period is made up of income from the manufacturing, production, recycling of goods, storing activities, wholesale in goods stored in the zone, and/or the provision of services related to the aforementioned types of activities carried out in the zone (transportation of goods manufactured, produced, recycled or stored in the zone, as well as goods needed for the manufacturing, production or recycling, service, construction in the territory of zone and other services related to the aforementioned activities). The application of this privilege requires the opinion of an auditor confirming the necessary share of the capital investment. If prior to the expiration of the established term of application of the privilege the sum of the capital investment reduces and does not reach EUR 1 million the privilege is withdrawn for the taxable period during which the capital investment is so reduced, and can be resumed during taxable periods in which the capital investment reaches EUR 1 million.

The privileges discussed above do not apply in respect of credit institutions and insurance companies. Pursuant to the Law on Profit Tax, the taxable period equals one calendar year or another period of 12 consecutive months upon the request of the taxpayer to the tax administrator.

Dividends received by investors in the free economic zone are tax-exempt, i.e. the general provisions of the Law on Profit Tax and the Law on Income Tax do not apply in this situation. Alongside the tax relief on dividends there is no requirement to re-invest those sums back into the free economic zone or Lithuania.

2.4 PAYMENTS AND SETTLEMENTS IN THE ZONE

Following the Law on Fundamentals of Free Economic Zones, national currency, Litas, shall be used for the payments and settlements in the zone. Foreign currency may be used for payments and settlements among zone companies.

2.5 MISCELLANEOUS

Some additional requirements for companies engaging in business in the free economic zones may arise. The most usual situation is cooperation with the managing company of the free economic zone in most respects, such as construction of new buildings, development of a newly-commenced business, land lease relations.

VI. Concessions

Pursuant to the Law on Concessions of the Republic of Lithuania⁴², the object of concession may be economic activity carried out by the concessionaire related to the design, construction, development, reconstruction, modification, repair, management, use and/or maintenance of the objects of infrastructure, provision of public services, management of the state or municipal assets and/or use (including exploitation of natural resources). Pursuant to Article 2 of the same law a concessionaire may be a subject of the Republic of Lithuania or foreign subject to whom a concession is granted. A subject is considered to be: an enterprise of any type, consortium, association, institution, organisation, or a subject of different legal form or type established or acting under the applicable laws of the Republic of Lithuania or foreign state. However, a natural person is not considered to be a subject for the purposes of concessions.

The concession agreement may be concluded in relation to the following areas of activity:

- energy, including heat and power energy, extraction, transfer, distribution, supply of oil and natural gas;
- railway lines and systems;
- water economy including extraction, lifting, treatment, amelioration and distribution of water;
- waste water including collection, pipage, treatment and desilting;
- use, recycling and management of waste as established in the Law on Waste Management of the Republic of Lithuania;
- infrastructure of roads, bridges, tunnels, parking and other road transport;
- telecommunications infrastructure;
- others (see the Law on Concessions for more details).

⁴² The Law on Concessions No. IX-1647.

It is important to note that an object of a concession can be an asset which under exceptional right belongs to the state, e.g. depth of the ground, water bodies of state significance etc. Also the object of concession can be the continental shelf of the Baltic Sea and the economic zone in the Baltic Sea, as well as natural resources lying in the depth of the ground.

The right of concession under the Law on Concession is granted through a public tender with the some exceptions.

Alongside the contractual requirements of the Civil Code of Lithuania, the Law of Concessions⁴³ provides a list of clauses to be incorporated in the concession agreements. Parties are also free to agree on other conditions provided these do not conflict with the provisions of the Civil Code of Lithuania and the Law on Concessions. The law applicable to the concession agreement can be chosen pursuant to the rules of the Civil Code of Lithuania. Consequently, parties have a right to agree on the applicable law, except in those cases when the choice of law is restricted by statutory provisions (e.g. pursuant to Article 1.48(1) of the Civil Code of Lithuania, the decisive law for the title and other rights *in rem* is the law of the place where the property is located at the moment that the holder of the title or other rights *in rem* changes).

VII. Public Private Partnerships

As from 1 January 2010 the Law on Investments provides for a possibility to conclude agreements on public private partnerships. Under the agreement on public private partnerships, the public subject grants the right to the private subject to perform certain activity, manage and use the state or municipal property needed for such activity and undertakes to pay to the private subject for its activity, and

the private subject undertakes to perform the agreed activity and ensure the investments required for such activities. The private subject might be only a legal person (local or foreign) of any legal form or other subject without legal person status established following the laws of any foreign country.

The agreements on public private partnerships shall be concluded in writing for at least 3 years; however, such period cannot exceed 25 years. The Law on Investments provides for a list of conditions that shall be included into the agreement.

Following the agreement on public private partnerships, the private subject might be granted a right to perform the activity related to design, construction, reconstruction, repair, renewal, management, use and maintenance of infrastructure, new or transferred for management and usage state or municipality property in such fields as transport, education, health and social security, culture and other. In case the private subject creates new asset such asset shall pass by the right of ownership to the state or municipality after termination of the agreement. The public subject may transfer for usage and management a state or municipal real estate or other assets under the agreement for gratuitous use or trust agreement to the private subject for the purpose of performance of the agreement on public private partnerships, except for the land. If the land is needed, then such land shall be leased to the private subject without an auction.

It shall be mentioned that the main differences between the concession and public private partnership agreement are the source of private subject's income and level of participation of the public subject. In case of concession the public sector is not very active and the main source of income of a concessionaire is income received directly from the end-users. Whereas in case of the public private partnership the public sector is very active and constitutes the main buyer of the services.

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This briefing constitutes a general guide only. It is not intended to contain legal advice: this should be sought as appropriate in relation to the particular matter in hand. If you would like further information on the issues outlined in this briefing, please contact Bernotas & Dominas Glimstedt: tel: +370 5 2690 700, fax: +370 5 2690 701, vilnius@glimstedt.lt

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