LITHUANIA

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including

ANNEX I: Law on Commercial Arbitration of the Republic of Lithuania (2012)
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Chapter I. Introduction

1. THE LAW ON ARBITRATION

a. The 2012 Law on Commercial Arbitration

The Law on Commercial Arbitration of the Republic of Lithuania (the "Law on Commercial Arbitration" or "the Law"), which entered into force on 30 June 2012, superseding the previous version of 1996, is the main law in Lithuania regulating arbitration (see **Annex I** hereto). The Law on Commercial Arbitration is mainly based on the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") (1985 version, including the 2006 amendments) and regulates legal relations arising out of the arbitration agreement, including arbitration proceedings, arbitral awards, enforcement of foreign arbitral awards and the authority of the Lithuanian courts in the sphere of arbitration.

In contrast to the Model Law, the Law on Commercial Arbitration applies to both national and international commercial arbitration.

The Law on Commercial Arbitration is applicable irrespective of the citizenship or nationality of the parties to a dispute, and of whether or not the arbitration proceedings are organized by a permanent arbitral institution. The provisions of the Law are applicable (1) to arbitration proceedings where the place of arbitration is in the territory of Lithuania (Art. 2(1)); and (2) whether or not the place of arbitration is in Lithuania, to: recognition of the arbitration

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agreement and disputes over its validity, application of interim measures by the courts, and recognition and enforcement of foreign arbitral awards (Art. 2(2)).

b. Definitions and rules of interpretation

Where a provision of the Law leaves the parties free to determine a certain issue, except for the choice of the law applicable to the settlement of the dispute, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination (Art. 4(1) of the Law on Commercial Arbitration). The parties may agree to deviate from all provisions of the Law with the exception of those provisions that are of a mandatory nature (Art. 4(2) of the Law).

In the interpretation of the Law on Commercial Arbitration, regard is to be had to the 1985 UNCITRAL Model Law including all its subsequent amendments, which shall be applied in a subsidiary manner in interpreting the Law on Commercial Arbitration (Art. 4(5)).

Questions concerning matters governed by, but not expressly settled in, the Law on Commercial Arbitration, are to be settled by reference to the principles of fairness, equity and good faith and other general principles of law (Art. 4(6)). The Law on Commercial Arbitration must be interpreted in a manner which most effectively reflects the principles of arbitration.

c. Principles of arbitration

The Law on Commercial Arbitration provides a list of principles applicable to arbitral proceedings (Art. 8 of the Law on Commercial Arbitration):

(1) Any arbitral tribunal, and any permanent arbitral institution and its chairman shall be independent when settling the issues regulated by the Law;
(2) The court is prohibited from interfering with the activities of any arbitral tribunal, permanent arbitral institution or its chairman, except in cases provided for in the Law on Commercial Arbitration;
(3) Arbitral proceedings are confidential;
(4) Parties to arbitration enjoy equal procedural rights;
(5) Parties to arbitration are free to dispose of their rights; and
(6) The process of arbitration shall be governed by the principles of autonomy, economy, cooperation, and arbitral proceedings shall be adversarial and expeditious.

d. Code of Civil Procedure

Enforcement of national and foreign arbitral awards in Lithuania is governed by the procedure determined in the Law on Commercial Arbitration and the Code of Civil Procedure of the Republic of Lithuania ("CCP"). Important provisions related to arbitration are also found in Part VI ("Enforcement Procedures") and Part VII ("International Civil Procedure") of the CCP. The CCP regulates the procedure for recognition and enforcement of foreign

arbitral awards, and the enforcement of arbitral awards (see Part VI, Chapter LVIII and Part VII, Chapter LX, Sections Four and Five, CCP, included as **Annex II**, hereto).

e. Conventions and treaties

Lithuania has ratified the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), which entered into force in Lithuania on 12 June 1995, and made the reservation that Lithuania will apply the rules of the New York Convention in respect of arbitral awards issued in the territories of non-contracting states only on a basis of reciprocity.

Lithuania has also ratified the Convention on Conciliation and Arbitration within the Commission on Security and Cooperation in Europe of 1992 (which entered into force in Lithuania on 19 February 1998), the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the ICSID Convention, which entered into force in Lithuania on 5 August 1992), the Energy Charter Treaty (which entered into force in Lithuania on 13 December 1998) and fifty bilateral investment treaties so far.

2. PRACTICE OF ARBITRATION

a. History

Arbitration is a comparatively new notion in Lithuania, and gained popularity after the restoration of independence in Lithuania in 1990. Accordingly, the arbitral institutions in Lithuania are not overloaded with cases. For example, the Vilnius Court of Commercial Arbitration ("the VCCA") – the most popular arbitral institution in Lithuania – has registered the following number of cases during the last six years:[1]

2012 – twenty-nine cases;
2013 – thirty-five cases;
2014 – twenty-eight cases;
2015 – twenty-one cases,
2016 – eighteen cases
2017 – twenty-six cases.

b. Arbitral institutions

Under the Law on Commercial Arbitration (see **Annex I** hereto), permanent arbitral institutions may be established by Lithuanian public organizations

1. Data is provided by the secretariat of the Vilnius Court of Commercial Arbitration. Available online at <http://www.arbitrazas.lt/failai/VKAT%20statistika%202017%20m..pdf>.

representing Lithuanian undertakings engaged in industry, business and legal activities (i.e., chambers of commerce or trade associations).

The main arbitral institution in Lithuania is the VCCA, a permanent arbitral institution that organizes arbitral proceedings for resolving both national and international commercial disputes between natural persons and/or legal entities. The VCCA is the best-known arbitral institution in Lithuania; it also provides conciliation and mediation services and acts as appointing authority in *ad hoc* arbitration proceedings. Its address is:

Vilnius Court of Commercial Arbitration
Valančiaus str. 1A-7
LT-03155 Vilnius, Lithuania
Telephone: +370 5 261 45 17
Facsimile: +370 5 278 43 63
E-mail: info@arbitrazas.lt
Website: <www.arbitrazas.lt>

The new version of the VCCA arbitration and conciliation rules is available in Lithuanian and English on the website.[2]

The following arbitral institutions are also registered in Lithuania:

Vilnius International and National Commercial Arbitration
Gedimino pr. 64-63
LT-01111 Vilnius, Lithuania
Telephone: +370 5 249 60 33
Mobile: +370 6 877 25 00
E-mail: info@vilniausarbitrazas.lt
Website: <www.arbitration.lt>[3]

and

Association Klaipėda International Maritime Arbitration
Taikos pr. 18-1
LT-91224 Klaipėda, Lithuania
No website

Since the Vilnius Court of Commercial Arbitration is the best-known arbitral institution in Lithuania, the analysis of arbitration issues in this National Report will refer mostly to the Arbitration Rules of the VCCA ("the Rules" or "the Arbitration Rules of the VCCA"), which govern the arbitration proceedings in that institution.

2. <www.arbitrazas.lt/arbitrazo-reglamentas.htm>.
3. The rules are available (in Lithuanian) at <http://www.vilniausarbitrazas.lt/en/rules-of-procedure>.

3. BIBLIOGRAPHY

a. Books

There are few books concerning arbitration in Lithuania, since arbitration started becoming important in Lithuania only recently:

Mikelėnas, V. and Dominas, G.
International Commercial Arbitration (Justitia 1995) 411 pages (in Lithuanian)

Mikelėnas, V., Nekrošius, V., Zemlytė, E.
Commentary on the Law on Commercial Arbitration of the Republic of Lithuania (Registrų Centras 2016) 191 pages (in Lithuanian)

b. Articles

The following recent scholarly articles may be distinguished as having an impact on the development of arbitral jurisprudence:

Kaminskiene, Natalija
"Application of interim measures in international arbitration: the Lithuanian approach", No. 1(119), Jurisprudence (2010) 18 pages (in Lithuanian)

Mikelėnas, Valentinas
"Issues of the Arbitration Proceedings in Light of Lithuanian Courts' Practice", No. 2(60) *Justitia* (2006) 19 pages (in Lithuanian)

"The Legal Status of an Arbitrator", No. 1(63) *Justitia* (2007) 27 pages (in Lithuanian)

Norkus, Rimvydas and Sinkevicius, Edvardas
"Issues of Compatibility between Insolvency Proceedings and Commercial Arbitration", No. 19(4), *Jurisprudence* (2012) 20 pages (in Lithuanian)

c. Journals

Since 2015, the annual journal *Arbitration Theory and Practice* is published and it is exclusively dedicated to articles related to arbitration. The editor of the journal is Valentinas Mikelėnas.

Chapter II. Arbitration Agreement

1. FORM AND CONTENTS OF THE AGREEMENT

a. Arbitration clause and submission agreement

Under the provisions of the Law on Commercial Arbitration (see **Annex I** hereto), the parties may agree to resolve their dispute either by including an arbitration clause in their contract or by concluding a separate agreement

known as an arbitration agreement (Art. 10 of the Law). An arbitration clause or agreement may be concluded in respect of a particular dispute which already exists, as well as in respect of future disputes.

b. Form and contents of the agreement

According to Art. 10(2) of the Law on Commercial Arbitration, an arbitration agreement must be concluded in writing and is considered to be made in writing if it is concluded:

(1) as a document signed by both parties;
(2) by exchange of letters, including by means of electronic devices if the authenticity and the completeness of the transferred information can be assured;
(3) by using electronic devices, provided that the authenticity and the completeness of the transferred information is assured and the information stored in such devices is thereafter accessible;
(4) by exchanging statements of claim and statements of defence where the existence of an arbitration agreement is alleged by one party and not denied by the other; or
(5) there is other written evidence confirming that the parties have concluded or recognized the conclusion of the arbitration agreement.

The Law on Commercial Arbitration also provides that a reference in a contract concluded by the parties to a document containing an arbitration clause constitutes an arbitration agreement if that document meets the requirements set out in Art. 10(2). (Art. 10(3).)

With the exception of the requirements indicated above, the Law on Commercial Arbitration does not further specify the content of the arbitration agreement. The Supreme Court of Lithuania has stated in numerous cases that an express intention of the parties to submit their disputes to arbitration constitutes an essential part of the arbitration agreement.[4] Nevertheless, the lack of other necessary provisions regarding, for instance, the arbitral tribunal, the arbitral institution or the scope of the arbitration agreement may render the implementation of such an arbitration agreement difficult or impossible. Notably, upon the request of a party, an arbitration agreement may be recognized as null and void on the general grounds applicable for recognition of contracts as null and void. Moreover, the arbitration agreement is considered null and void if it does not conform to the definition or form of the arbitration agreement determined by the Law on Commercial Arbitration or if an arbitration agreement is concluded for resolving disputes that are non-arbitrable (Art. 11 of the Law). Art. 10(2) provides for application of the "Kompetenz-

4. This rule is firmly established in the decision of the Supreme Court of Lithuania No. 3K-7-999, dated 25 November 2003, and in the decision of the Supreme Court of Lithuania No. 3K-3-542, dated 29 October 2004.

Kompetenz" doctrine in Lithuania, meaning that if the arbitral tribunal is constituted, it shall rule first on its jurisdiction over the dispute, including the validity of the arbitration agreement, as set out in Art. 19 of the Law.

c. Model arbitration clause
The VCCA recommends the following arbitration clause:

In English:

> "Any dispute, controversy or claim arising out of or relating to this contract, its breach, termination or validity, shall be settled by arbitration in the Vilnius Court of Commercial Arbitration in accordance with its Rules.
> The number of arbitrators shall be ....
> The venue of arbitration shall be ....
> The language of arbitration shall be ...."

In the original Lithuanian:

> "*Kiekvienas ginčas, nesutarimas ar reikalavimas, kylantis iš šios sutarties ar susijęs su šia sutartimi, jos pažeidimu, nutraukimu ar galiojimu, galutinai sprendžiamas arbitražu Vilniaus komercinio arbitražo teisme pagal šio teismo reglamentą.*
> *Arbitražinio teismo arbitrų bus ....*
> *Arbitražinio teismo posėdžiai vyks ... (vieta).*
> *Arbitražiniame procese bus vartojama ... kalba.*"

2. PARTIES TO THE AGREEMENT

a. Capacity
There are no specific restrictions on persons who may resolve their disputes through arbitration; therefore any natural or legal person who has general capacity may conclude an arbitration agreement. Under Lithuanian conflict of law rules determined in the Civil Code, such capacity is generally determined by the law of the domicile of the person whose capacity is in question, distinct from the *lex arbitri* or material law applicable to the dispute.

b. Bankruptcy
Commencement of bankruptcy proceedings against one of the parties to an arbitration agreement has no effect on the validity or application of the arbitration agreement, on the possibility of settling the dispute in arbitration, or on the arbitral tribunal's jurisdiction over the dispute (Art. 49(7) of the Law on Commercial Arbitration, see **Annex I** hereto). However, a company that is under bankruptcy proceedings is prohibited from concluding any new arbitration agreements. The other parties to the arbitration agreement may

request that their claims against the contractual party which is under bankruptcy proceedings be settled in the court where the bankruptcy case is heard.

c. State or State agencies

Disputes involving State or municipal enterprises, institutions or organizations (with the exception of the Bank of Lithuania, which can conclude arbitration agreements without any permission) may not be submitted to arbitration without the consent of the founder of such entity (Art. 12(3) of the Law). The Government of the Republic of Lithuania or its authorized public authority may generally conclude an arbitration agreement concerning disputes arising from "commercial contracts" to which the Government or its authorized public authority is a party (Art. 12(4) of the Law).

d. Multi-party arbitration

The Law on Commercial Arbitration provides that co-claimants or co-respondents shall jointly nominate one arbitrator. Co-claimants may either nominate their joint arbitrator in their request for arbitration or do so within twenty days of submission of the request for arbitration. Correspondingly, co-respondents are given twenty days to appoint their joint arbitrator after receipt of the nomination of the arbitrator made by claimant or co-claimants. Failing such agreement among the co-parties to the proceedings, the arbitral institution administering the arbitration case, or Vilnius District Court if the parties are engaged in an *ad hoc* arbitration, shall appoint the arbitrator (Art. 14(5)-(6) of the Law).

In addition, the Arbitration Rules of the VCCA provide that when there is more than one claimant or respondent, arbitrators shall be appointed as agreed by the parties and in a manner that results in the appointment of one arbitrator to represent the Claimants and one arbitrator to represent the Respondents (Art. 16(5) of the Rules).

Lithuanian arbitration doctrine takes the view that the best way to resolve problems related to multi-party arbitration is to use consensual methods, such as agreement between all parties regarding consolidation, or arbitration agreements setting the rules for informing all parties of the claimant's request for arbitration and providing other parties to the contract or transaction a right to submit their own claims in the same proceedings within a specified period of time (see IBA Guidelines for Drafting International Arbitration Clauses).

3. DOMAIN OF ARBITRATION

a. Arbitrability

Under Art. 12 of the Law on Commercial Arbitration (see **Annex I** hereto), disputes arising from constitutional, family and administrative legal relations, as well as disputes connected with patents, trademarks and service marks, may

not be submitted to arbitration. Disputes arising out of employment or consumer contracts may be submitted to arbitration only if the arbitration agreement is concluded after the dispute arises.

b. Filling gaps

With regard to the question whether an arbitral tribunal may fill gaps in a contract, i.e., matters that are left open in the contract for subsequent discussion, no difficulty arises if the tribunal is authorized to fill such gaps under the law applicable to the substance of the dispute. According to Lithuanian law, certain gaps in the contract may be filled by interpreting the contract under the rules of interpretation determined in the Civil Code.

c. Adapting contracts

The adaptation of the contract to fundamentally changed circumstances is possible under the provisions of the Civil Code if two conditions are fulfilled. The first condition is that the performance of a contract is considered obstructed because of such fundamentally changed circumstances, i.e., either the cost of performance has increased materially, or the value thereof has diminished materially. The second condition is that:

- these circumstances occur or become known to the aggrieved party after the conclusion of the contract;
- these circumstances could not reasonably have been foreseen by the aggrieved party at the time of the conclusion of the contract;
- these circumstances are beyond the control of the aggrieved party; and
- the risk of occurrence of these circumstances was not assumed by the aggrieved party (see Art. 6.204 of the Civil Code).

Where the performance of a contract becomes obstructed, the aggrieved party has the right to request the other party to modify the contract. Such a request has to be made immediately after the occurrence of the obstruction. The request for modification of the contract entitles the aggrieved party to suspend performance of the contract. Where within a reasonable time the parties fail to reach an agreement on the modification of the contractual obligations, either of them may bring an action to a court or arbitral tribunal. The court or arbitral tribunal may (1) terminate the contract and establish the date and terms of its termination; and (2) modify the conditions of the contract and restore the balance of the contractual obligations of the parties.

4. SEPARABILITY OF THE ARBITRATION CLAUSE

Art. 19 of the Law on Commercial Arbitration (see **Annex I** hereto) provides for the doctrine of separability, which determines that an arbitration clause that

forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void does not necessarily entail the invalidity of the arbitration clause.

5. EFFECT OF THE AGREEMENT (SEE ALSO CHAPTER V.4 – JURISDICTION)

a. Duty of court

Under Art. 11 of the Law on Commercial Arbitration (see **Annex I** hereto) and under the New York Convention, a court shall refuse to accept a claim based on subject matter that is subject to an arbitration agreement. The court is obliged to refuse to accept such a claim.

If one party, despite the arbitration agreement, initiates court proceedings and the court accepts the claim, the court has to establish whether the subject matter of the claim is subject to an arbitration agreement. If so, the court will refuse to hear the claim (Art. 296(1)(9) CCP, see **Annex II** hereto). If the court establishes that the subject matter of the claim is not covered by the arbitration agreement, the court will proceed in order to resolve the dispute.

b. Court examination of the arbitration agreement

When deciding whether it should refuse to accept a claim that is subject to an arbitration agreement, the court may conduct either a prima facie review or full review of the arbitration agreement. Only a prima facie review will be made where the arbitration agreement is not ambiguous and the claim before the court clearly covers the subject matter that, under the arbitration agreement, should be submitted to arbitration. If the circumstances are more ambiguous and if the parties raise objections such as that the arbitration agreement is pathological or does not cover the matter submitted to the court, the court will review and evaluate the circumstances of the case related to the court's jurisdiction to hear the case.

c. Kompetenz-kompetenz

Under the Law on Commercial Arbitration, the arbitral tribunal itself has the right to decide on its own jurisdiction. The arbitral tribunal may also rule on any objections with respect to the existence or validity of the arbitration agreement (see Art. 19 of the Law).

Under the Law on Commercial Arbitration, a claim that the arbitral tribunal does not have jurisdiction has to be raised not later than the submission of the statement of defence. A party is not precluded from raising such a claim by the fact that it has participated in the appointment of an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority arises during the

arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified (see Art. 19(2) of the Law).

Where the parties have agreed to arbitrate and one party makes an application to have the matter heard by a court in Lithuania, the rules in the CCP and the Law on Commercial Arbitration would be applied (if Art. II(3) of the New York Convention does not apply). If the claim arising out of a matter subject to arbitration agreement is submitted to the court, the court shall refuse on its own initiative to accept the claim pursuant to Art. 11 of the Law on Commercial Arbitration and Art. 137 of the CCP. If the fact that the dispute should be referred to arbitration arises at a later stage of the proceedings, the court may even at that later stage refuse to hear the claim, since under Art. 296 of the CCP, one of the grounds for refusing to hear a claim is the existence of an arbitration agreement, where the arbitration agreement deals with the same matter as referred to the national court.

Chapter III. Arbitrators

1. QUALIFICATIONS

a. Requirements

Any competent natural person may be appointed as arbitrator, unless otherwise agreed by the parties. In all cases the person's written consent to act as an arbitrator is required (Art. 14(1) of the Law on Commercial Arbitration, see **Annex I** hereto).

Attorneys, bailiffs and notaries, even though they are prohibited from receiving incomes from activities outside their professional sphere, may receive incomes from their practice as arbitrators.

b. Restrictions

As judges are prohibited by law from engaging in other remunerated employment relations, a judge cannot be appointed as an arbitrator in Lithuania, unless the judge agrees to act as an arbitrator on a pro bono basis.

c. Disclosure requirements

A person who is approached in connection with his possible appointment as an arbitrator must reveal to the parties to the dispute, the arbitral institution or Vilnius District Court any circumstances likely to give rise to justifiable doubts as to his impartiality or independence (Art. 15(1) of the Law). This obligation continues throughout the arbitral proceedings.

2. APPOINTMENT OF ARBITRATORS

Under Art. 14(2) of the Law on Commercial Arbitration (see **Annex I** hereto), the parties shall be free to agree on a procedure of appointing the arbitrator or arbitrators. Failing such agreement:

- in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator;
- in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he or she shall be appointed, upon request of a party, by the chairman of the permanent arbitral institution;
- if a claimant fails to appoint an arbitrator in the request for arbitration and fails to appoint an arbitrator within twenty days of submission of the request for arbitration, the chairman of the permanent arbitral institution shall make the appointment. The same applies if a respondent fails to appoint an arbitrator within twenty days of receipt of the request for arbitration and if the party-appointed arbitrators within twenty days of their appointment fail to appoint the presiding arbitrator.

In cases of *ad hoc* arbitration, where a party or parties has or have failed to make an appointment, the appointment(s) shall be made by Vilnius District Court (Art. 14(3) of the Law).

3. NUMBER OF ARBITRATORS (SEE ALSO CHAPTER V.2 – MAKING OF THE AWARD)

The parties are free to determine the number of arbitrators. Failing such determination, the number of arbitrators shall be three and in all cases the number of arbitrators must be uneven (Art. 13 of the Law on Commercial Arbitration, see **Annex I** hereto).

4. CHALLENGE TO ARBITRATORS

a. Grounds

Pursuant to Art. 15(2) of the Law on Commercial Arbitration (see **Annex I** hereto), an arbitrator may be challenged only if there are circumstances that give rise to justifiable doubts as to his or her impartiality or independence or if he or she does not possess the qualifications agreed to by the parties. The same is provided by Art. 19 of the Arbitration Rules of the VCCA.

Under the Law, a party may challenge an arbitrator appointed by that party or together with the other party, only for reasons of which the party becomes aware after the appointment has been made (Art. 15(3) of the Law).

b. Procedure

The parties may agree on a procedure for challenging an arbitrator. Failing such agreement, a party who intends to challenge an arbitrator has to send a written statement of the reasons for the challenge to the arbitral tribunal. This must be done within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any grounds for challenge of the arbitrator. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the non-challenged members of the arbitral tribunal decide on the challenge (see Art. 16(2) of the Law). If an arbitral tribunal is composed of a sole arbitrator or if the challenge is made against all members of the tribunal, the arbitrators themselves shall decide on the challenge.

Under the Arbitration Rules of the VCCA, the challenge of an arbitrator or the termination of his mandate has to be decided by the Chairman of the VCCA (Art. 19(7) of the Rules).

Neither the Law on Commercial Arbitration nor the Arbitration Rules of the VCCA provide requirements as to the form and content of the challenge decision. Notwithstanding this, it is reasonable to expect that the decision should be in writing.

If a challenge under any procedure agreed upon by the parties or under the procedure of the Law on Commercial Arbitration is not successful, the challenging party within twenty days of the decision rejecting the challenge may request Vilnius District Court to decide on the challenge. If the case is administered by VCCA, the decision of the chairman of the arbitral institution is not subject to appeal, including appeal in the national courts. Proceedings may continue pending a determination of the challenge (Art. 19 of VCCA Rules).

5. TERMINATION OF THE ARBITRATOR'S MANDATE

In this regard, Art. 17(1) of the Law on Commercial Arbitration (see **Annex I** hereto) provides as follows:

> "If an arbitrator becomes *de jure* or *de facto* unable to perform his/her functions or delays performing his/her functions without valid reasons, he/she shall resign his/her office. The arbitrator's mandate shall terminate if he/she resigns or if the parties agree on his/her removal from office. If the arbitrator fails to perform his/her duty to resign or the parties fail to agree on his/her removal from office, any of the parties may apply to the chairman of

> the permanent arbitral institution regarding resolution of the respective issue. In such case, the decision of the chairman of the permanent arbitral institution shall be final and not subject to appeal. In the case of *ad hoc* arbitration the respective issue shall be resolved by Vilnius District Court; the ruling of this court shall be final and not subject to appeal."

6. LIABILITY OF ARBITRATORS

Lithuanian laws do not include any special provision concerning civil liability of arbitrators. Moreover, to the knowledge of the authors, there have been no such cases in Lithuania where the liability of an arbitrator was claimed. In doctrine the opinion exists that the arbitrator would be held liable if he or she causes damage intentionally or through gross negligence.

Chapter IV. Arbitral Procedure

1. PLACE OF ARBITRATION (SEE ALSO CHAPTER V.3 – FORM OF THE AWARD)

a. Determination
The Law on Commercial Arbitration (see **Annex I** hereto) defines "place of arbitration" as the place of arbitration indicated in the arbitration agreement or determined by the arbitral tribunal (Art. 3(8)). The Law makes a distinction between the place of arbitration and the place of hearings and notes that they may not be the same.

b. Legal consequences
"Place of arbitration" governs the applicability of the Law on Commercial Arbitration – the Law on Commercial Arbitration applies to the arbitral proceedings only if the "place of arbitration" is located in Lithuania (with some limited exceptions as provided above). By contrast, "place of arbitral proceedings" is defined as a place where hearings of the arbitral tribunal are held or where other parts of the arbitration take place (Art. 3(3)). Art. 3(8) of the Law provides that the place of arbitration may be different from the place where the arbitral proceedings are conducted.

2. ARBITRAL PROCEEDINGS IN GENERAL

a. Mandatory provisions
The Law on Commercial Arbitration (see **Annex I** hereto) does not determine any specific guidelines that have to be adhered to while determining procedural matters, when the law is silent on that particular issue. The only exception is a

mandatory requirement enshrined in the Law on Commercial Arbitration, under which the arbitral tribunal should ensure that the parties to the dispute have equal procedural rights and that each party has an equal opportunity to present its case (Art. 28(1)).

b. Determining procedure

According to the Law on Commercial Arbitration, the parties may agree on the procedure applicable to the conduct of the arbitral proceedings (Art. 28(2)). Failing such agreement, the arbitral tribunal may conduct the arbitral proceedings in such manner as it considers appropriate (Art. 28(3)). However, mandatory rules determined by law may not be overruled by the agreement of the parties.

Parties to the dispute may agree on the procedural rules as long as their agreement does not contradict mandatory requirements of law (Art. 28(2)). Therefore, the parties may jointly give instructions to the arbitral tribunal on procedural matters. Since the Law on Commercial Arbitration clearly establishes that the parties to the dispute have the right to decide upon the arbitration procedure, the arbitral tribunal cannot overrule their decision unless the agreement of the parties contradicts mandatory rules of law.

c. Exchange of written pleadings

The Law on Commercial Arbitration provides that within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements (Art. 32 of the Law).

According to the rules of the VCCA, the parties shall exchange at least the statement of claim and answer to the claim or counterclaim before the oral hearing takes place (Arts. 9 and 14 of the Rules).

d. Oral hearing

As to the oral hearing, according to the Law on Commercial Arbitration the parties may either agree that an oral hearing will be held during the arbitration proceedings or that the case will be examined without an oral hearing, i.e., on the basis of documents and other evidence provided by the parties. Even if the parties have agreed that no oral hearing should be held, the arbitral tribunal will still hold such a hearing, if such is subsequently requested by any party to the dispute (see Art. 34 of the Law).

3. EVIDENCE

a. General

The Law on Commercial Arbitration (see **Annex I** hereto) confers on the tribunal the power, in the absence of party agreement, to conduct the arbitration in such manner as it considers appropriate (Art. 28(3)). This includes the power to determine the admissibility and weight of any evidence (Art. 33(7)). Under the Arbitration Rules of the VCCA, the parties may agree on the admissibility of evidence. If such agreement is not reached, all issues related to admissibility, relevance and any other evidential matters are resolved by the arbitral tribunal (Art. 36 of the Rules).

The evidentiary rules provided in the Code of Civil Procedure ("CCP") are not applicable to arbitral proceedings.

b. Evidence of fact witnesses

The Law on Commercial Arbitration does not regulate issues related to witnesses and their testimony in arbitral proceedings. The Arbitration Rules of the VCCA also do not provide whether witnesses have to be sworn in before the arbitral tribunal. In practice, witnesses are usually not sworn in before their testimony, but are informed that under the Criminal Code of the Republic of Lithuania they have to tell the truth. In case of false testimony, a witness shall be subject to criminal liability with imposition of punishment ranging from community services to imprisonment for a term of up to two years.

Arbitrators do not have the power to compel witnesses to testify before the arbitral tribunal. However, the Law on Commercial Arbitration provides for court assistance in taking evidence in the following terms:

> "If persons called as witnesses fail to appear or having appeared refuse to be witnesses, the arbitral tribunal may allow the party requesting examination of the witness to apply to Vilnius District Court within the term set by the arbitral tribunal requesting examination of the witnesses according to the procedure established in the Code of Civil Procedure and this Law. Examination of witnesses in Vilnius District Court shall be *mutatis mutandis* subject to the provisions of the ninth clause of Chapter XIII of Section II of the Code of Civil Procedure. During examination of witnesses in court, the arbitral tribunal may stay or postpone the arbitral proceedings." (Art. 36(2))

The Law on Commercial Arbitration does not regulate the hearing of witnesses. Thus, the parties are free to determine the rules for witness examination. In the absence of such agreement, the arbitral tribunal may conduct the hearing of witnesses in such a manner as it considers appropriate.

The Arbitration Rules of the VCCA provide that the party asking to summon a witness must notify the arbitral tribunal, not later than within fifteen days of the hearing, and submit the name, surname and the place of residence of the witness, the facts of the case that the witness may confirm or refute and

the language in which the witness will testify. If the party fails to fulfil the aforementioned requirements, the arbitral tribunal may refuse to summon the witness (see Art. 39 of the Rules).

Cross-examination of witnesses is regulated neither by the Law on Commercial Arbitration nor by the Arbitration Rules of the VCCA. Therefore, cross-examination is not forbidden, unless the parties agree otherwise.

c. Documentary evidence

Under Art. 37 of the Arbitration Rules of the VCCA, after the transmission of the file to the arbitral tribunal, the parties shall exchange their documentary evidence. The documentary evidence has to be submitted to the arbitral tribunal after being translated into the language of the arbitration. The arbitral tribunal may refuse to accept evidence that is not relevant to the hearing or that is submitted late, if it considers that the party failed to submit the aforesaid evidence earlier without a valid reason and the acceptance thereof may substantially delay the proceedings (Art. 36(5) of the Rules).

d. Document disclosure

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from Vilnius District Court assistance in taking evidence. The arbitrators and parties are allowed to participate in the procedure of taking evidence in court (give explanations, ask questions and exercise other rights necessary for collection of evidences) (Art. 38 of the Law). The rules of the CCP shall apply in this taking of evidence. The party seeking the discovery of documents must indicate in its request to the court: requested written evidence; grounds on the basis of which a particular person is assumed to possess written evidence; and circumstances to be proved by written evidence.

The VCCA Arbitration Rules only provide for the right of the arbitral tribunal to order any party to submit, within a fixed period of time, the evidence to confirm certain facts or circumstances, without specifying the procedure for the disclosure of documents (Art. 36(4) of the Rules). In practice, parties agree on the procedure for production of documents or choose the IBA Rules on the Taking of Evidence in International Arbitration (2010) as applicable rules or guidance in this regard.

4. TRIBUNAL-APPOINTED EXPERTS (SEE CHAPTER IV.3 FOR PARTY-APPOINTED EXPERT WITNESSES)

The Law on Commercial Arbitration (see **Annex I** hereto) provides that, unless the parties have agreed otherwise, the arbitral tribunal may appoint an expert or several experts to opine on certain issues (Art. 36 of the Law). The Arbitration Rules of the VCCA provide that the expert may be appointed subject to a request of a party or subject to the agreement of the party. The VCCA Rules

also provide that an expert or experts may be appointed to clarify matters related to the foreign applicable law (Art. 38 of the Rules).

The parties shall be informed about an appointed expert and upon the request of the arbitral tribunal the parties shall provide all necessary information and documentation to them (Art. 36(3)(2) of the Law). Under the Rules of the VCCA, experts may be challenged on the same grounds as arbitrators. The arbitral tribunal hearing the dispute is free to decide upon the challenge of an expert (Art. 38(6) of the Rules).

Under the Rules of the VCCA, a copy of the expert's report shall be submitted to the parties before the main hearing and the parties may make their comments on the report either orally or in writing. However, the expert's report has to be evaluated like other evidence and is not binding on the arbitral tribunal (Arts. 38(4) and 38(7) of the Rules).

The Law on Commercial Arbitration further determines that, unless otherwise agreed by the parties and a party so requests or if the arbitral tribunal considers it necessary, the expert shall participate in a hearing and deliver his written or oral report, as well as answering the questions of the parties (Art. 36(4) of the Law). The Arbitration Rules of the VCCA also provide that (expert) witnesses appointed by the parties may also be invited to the hearing in order to testify on the points at issue (Art. 38(8) of the Rules).

5. INTERIM MEASURES OF PROTECTION (SEE ALSO CHAPTER I.1 – LAW ON ARBITRATION)

a. General

Under the Law on Commercial Arbitration (see **Annex I** hereto), unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party and upon informing other parties, grant interim measures aimed at ensuring that the party's request or relief will be enforced or that the evidence of the case will be preserved (Art. 20).

The party requesting an interim measure shall satisfy the arbitral tribunal that:

(1) there is a reasonable possibility that the requesting party will succeed on the merits of the claim (the determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination);
(2) if the measure is not granted, the enforcement of the award is likely to be substantially threatened or that it will be incapable of being enforced;
(3) interim measures are economic and proportional to the aim perceived.

A party requesting the preservation of evidence held by the other party must prove that:

(1) the evidence may be material to the case; and
(2) there is a credible risk that if no interim measures are applied the other party may destroy or harm the evidence.

The arbitral tribunal may grant the following interim measures:

(1) prohibition against concluding agreements or taking certain actions;
(2) obligation of a party to preserve assets related to the arbitration, furnish a monetary deposit, bank or insurance guarantee; and
(3) obligation to preserve evidence that might be material to the arbitration (Art. 20(2)(3)).

The arbitral tribunal cannot order any other interim measures such as attachments, appointment of an administrator or interim measures related to the protection of perishable goods.

The party may request Vilnius District Court to apply interim measures or to order the preservation of evidence before the date of commencement of arbitration or before the constitution of the arbitral tribunal (Art. 27 of the Law). Such requests may also be made after the constitution of the arbitral tribunal. The other party may ask that the provision of security for costs be made a condition of the grant of interim measures.

VCCA Arbitration Rules provide for the possibility of appointing an emergency arbitrator to deal with an application for interim measures prior to the constitution of the arbitral tribunal (Art. 35 and Exhibit 1 of the Rules).

b. Preliminary orders

Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested (Art. 21(1) of the Law).

The arbitral tribunal may grant a preliminary order *ex parte*, provided it considers that:

(1) prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure;
(2) there is a reasonable possibility that the requesting party will succeed on the merits of the claim; and
(3) interim measures are economic and proportional to the goal to be achieved by such measures (Art. 21(2) of the Law).

Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications,

including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto (Art. 21(4) of the Law).

At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time. The arbitral tribunal shall decide promptly on any objection to the preliminary order.

A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case (Art. 21(6) of the Law).

A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court.

c. Enforcement of interim measures

A decision of the arbitral tribunal applying interim measures is binding on the parties. However, if such decision of an arbitral tribunal is not observed by the party, Vilnius District Court upon the request of the other party shall issue an enforcement order. Such requests are heard orally and upon notification to the other party or parties.

The court may refuse to grant the enforcement order if:

(1) the request for issuing the enforcement order is defective, where the defect cannot be corrected during the hearings;
(2) the party against which the interim measures are applied proves that it was not properly informed of the arbitral tribunal's examination of the request for application of interim measures and thus was prevented from presenting its position;
(3) the arbitral tribunal has manifestly exceeded its powers by applying the interim measures;
(4) the arbitral tribunal's order for security for costs was not complied with; and
(5) the arbitral tribunal amended or cancelled the order granting interim measures (Art. 25(4) of the Law on Commercial Arbitration).

The order of Vilnius District Court rejecting the request for issuing the enforcement order may be appealed.

d. Enforcement of interim measures applied by foreign arbitral awards

Foreign arbitral awards and rulings granting interim measures are recognized and enforced in the Republic of Lithuania (Art. 26(1) of the Law). The request for recognition and enforcement of such awards and rulings must be submitted to the Lithuanian Court of Appeal. The court may refuse to grant recognition and enforcement if such award or ruling is incapable of being enforced in the

territory of the Republic of Lithuania, or if other circumstances as set out in Art. 25(4)(2)-(5) (circumstances denying the enforcement of domestic awards on application of interim measures, see above) are present.

6. REPRESENTATION AND LEGAL ASSISTANCE

The Law on Commercial Arbitration (see **Annex I** hereto) does not include provisions regarding representation of a party before an arbitral tribunal. Under Art. 5 of the Arbitration Rules of the VCCA, however, the parties are entitled to conduct the arbitration themselves or through their authorized representatives (except when a party does not have legal capacity in a particular field, in which case it must be represented by a legal representative (Art. 38 Code of Civil Procedure ("CCP", see **Annex II** hereto)). A party appointing a representative shall communicate his or her surname, name, address, telephone and e-mail address to the VCCA in writing.

If a party in the arbitral proceedings is represented by another person, the representative must provide "proof of authorization" to the arbitral tribunal and the VCCA proving that he or she is authorized to represent the party. Such proof may be a representation agreement for the attorney and attorney's assistants or a power of attorney (Art. 5(3) of the Rules).

Under the VCCA Arbitration Rules, a party in the arbitral proceedings may be represented not only by an attorney but also by any other person. Accordingly, it is reasonable to conclude that representatives who are admitted to the bar in a foreign country may also represent a party in the arbitral proceedings in Lithuania. The authors are not aware of any case law to the contrary.

7. DEFAULT

Under the Law on Commercial Arbitration (see **Annex I** hereto), if, without showing sufficient cause, any party fails to appear at the arbitration hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and issue an arbitral award based on the evidence provided to it (Art. 35 of the Law). Alternatively, the arbitral tribunal may terminate the arbitral proceedings or leave the case unheard depending on the circumstances as established in the Law (Art. 49 of the Law). The Arbitration Rules of the VCCA include a similar provision with regard to a party's failure to appear at the hearing (Art. 33 of the Rules).

8. CONFIDENTIALITY OF THE AWARD AND PROCEEDINGS

a. Confidentiality of the arbitral award and proceedings

The Law on Commercial Arbitration (see **Annex I** hereto) provides that one of the principles applicable in arbitral proceedings is that the arbitral proceedings are confidential (Art. 8(3) of the Law). However, the Law does not specify how and to what extent the duty of confidentiality applies.

The Arbitration Rules of the VCCA provide that, unless the parties agree otherwise, the arbitral tribunal should hear a case *in camera* (Art. 30(2) of the Rules). If the arbitral tribunal or any of the parties so request, interpreters and/or translators as well as witnesses and experts may participate in the hearing. Without the approval of the parties, other persons may not participate in the arbitral proceedings. Under the Rules, neither an arbitral tribunal nor the VCCA itself may publish an arbitral award or make it public without the consent of both parties to the dispute (Art. 43(2) of the Rules).

To the best knowledge of the authors, in practice the confidentiality of documents filed in arbitration proceedings as well as the confidentiality of the arbitral award is very strictly followed in Lithuania.

b. Confidentiality of arbitration-related court proceedings

The Law on Commercial Arbitration foresees that where the Vilnius Regional Court provides court assistance in arbitration proceedings, the material of such case is non-public (Art. 9(2) of the Law).

The Law on Commercial Arbitration does not provide for protection of confidentiality of documents in proceedings for recognition and enforcement of arbitral awards. The confidentiality of the case documents, court hearings and judgments on recognition and enforcement of arbitral awards is exclusively governed by the Code of Civil Procedure ("CCP").

Documents in proceedings for recognition and enforcement of arbitral awards form part of the public record (Art. 10(1) CCP, see **Annex II** hereto)). A party wishing to preserve the confidentiality of the documents has to file a request for such protection to the court examining the case (Art. 10(2) CCP).

Similarly, court hearings where the recognition and enforcement of the arbitral award is examined are public (Art. 9(1) CCP). However, a party wishing to maintain confidentiality may request a confidential hearing, or the court itself may decide upon it on certain grounds (for instance, in order to protect privacy of a natural person, or of state, professional or commercial secrets) (Art. 9(1) CCP).

Finally, judgments on recognition and enforcement of arbitral awards are in principle published (Art. 9(1) CCP), but a party wishing to preserve confidentiality may apply to the court for an order to maintain confidentiality.

Chapter V. Arbitral Award

1. TYPES OF AWARD

The Law on Commercial Arbitration (see **Annex I** hereto) classifies arbitral awards into partial, final and additional awards, whereas procedural issues are settled by orders (Art. 42 of the Law). An arbitral tribunal makes a final determination of a case by issuing a final award (Art. 43 of the Law). The arbitral tribunal may resolve a part of the dispute by making a partial award (Art. 44). By issuing a partial award, an arbitral tribunal may decide on its jurisdiction over the dispute, on independent claims arising out of substantive legal relations and on other matters the parties or the arbitral tribunal deem necessary (Art. 44 of the Law on Commercial Arbitration). An additional award serves as a means for determining claims that were made by the parties in the arbitral proceedings but were left unsettled in the final award. An additional award may also be used to correct or interpret the award when there is a need for:

(1) correction of clerical or calculation errors;
(2) explanation of the award or part of it; or
(3) allocation of the arbitration costs among the parties (Art. 45 of the Law).

2. MAKING OF THE ARBITRAL AWARD

a. Decision-making
Under the Law on Commercial Arbitration (see **Annex I** hereto), an arbitral award is rendered by majority decision, unless the parties agree otherwise. Where there is no majority, or in the case of a tie, the final decision shall be made by the presiding arbitrator (Art. 40(1) of the Law). Questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or by all members of the arbitral tribunal (see Art. 40(2) of the Law). The Arbitration Rules of the VCCA provide for an award to be rendered by majority decision, and by the presiding arbitrator where there is no majority (Art. 43(1) of the Rules).

b. Time limits
Under the Arbitration Rules of the VCCA, the arbitral tribunal must substantively resolve the dispute by rendering an arbitral award not later than six months after the file is transmitted to the arbitral tribunal. The final award must be made within as short a time as possible after the main hearing is held but no longer than thirty days after the last main hearing or submission of post-hearing briefs. In exceptional cases the Chairman of the VCCA may extend the

term to render an arbitral award for up to an additional thirty days (Art. 42 of the Rules) or longer – if there is agreement of the parties. Neither the Law nor the VCCA Rules determine the consequences if the arbitral tribunal does not render the arbitral award during the period indicated in the rules agreed to by the parties; therefore the legal consequences of such a failure are not clear.

c. Dissenting opinions

Under the Law, an arbitrator who refuses to sign an award has the right to submit a dissenting opinion, which has to be in writing and is attached to the arbitral award (Art. 46(1)).

3. FORM OF THE AWARD

With regard to the form of the arbitral award, the Law on Commercial Arbitration (see **Annex I** hereto) provides:

> "An award of the arbitral tribunal shall be in writing and signed by the arbitrators or the arbitrator. The arbitral award shall be legitimate if signed by a majority of arbitrators with the other arbitrators indicating their reasons for not signing. An arbitrator or arbitrators disagreeing with the opinion of the majority shall have the right to present their separate opinion in writing which shall be attached to the arbitral award. The parties may agree that the chairman of the arbitral tribunal may sign the award unilaterally." (Art. 46(1))

The arbitral award must state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the arbitral award implements a settlement agreement concluded by the parties (Art. 46(2) of the Law).

The Law provides further that the arbitral award must indicate the date and place of issuing the award. The arbitral award is deemed to have been made at the location indicated in the award (Art. 46(3)). A copy of the arbitral award signed by the arbitral tribunal has to be delivered to each party (Art. 46(4)).

The Arbitration Rules of the VCCA include a provision requiring arbitrators to submit the draft award to the VCCA Court of Arbitration for "assessment" for compliance with the formal requirements of the VCCA Court before issuing the award. The VCCA Court of Arbitration has to provide its assessment not later than ten days after it receives the award (Art. 42(4) of the Rules).

4. JURISDICTION (SEE ALSO CHAPTER II.5 – EFFECT OF THE AGREEMENT)

a. Power of arbitrators

Art. 19(1) of the Law on Commercial Arbitration (see **Annex I** hereto) establishes the so-called "competence-competence" rule, under which the arbitral tribunal itself has the right to decide on its own jurisdiction. The arbitral tribunal may also rule on any objections with respect to the existence or validity of the arbitration agreement.

b. Form of jurisdictional decision

Under Art. 19(3) of the Law, the arbitral tribunal may decide on the issue of jurisdiction by issuing either a partial award or a final award.

c. Appeal

The Law on Commercial Arbitration does not provide for the possibility to appeal the arbitrators' decision on jurisdiction to court. However, a party claiming that the arbitral tribunal has no jurisdiction over the dispute may request the court to declare that the arbitration agreement is invalid. There is also a possibility to request the setting aside of a partial award in which the arbitral tribunal has found that it has jurisdiction over the dispute (Art. 50 of the Law).

d. Timing of objection

The timing of challenges to the arbitral tribunal's jurisdiction depends on whether a party is claiming that an arbitral tribunal: (1) lacks jurisdiction; or (2) is exceeding the powers granted to it by the arbitration agreement.

A plea that an arbitral tribunal does not have jurisdiction must be raised not later than the submission of a statement of defence. The party's participation in the appointment of an arbitrator shall not preclude its right to raise such a plea. A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter arises that, in the opinion of the party, is beyond the scope of the authority of the arbitral tribunal. The arbitral tribunal may also admit such a plea at a later stage of arbitral proceedings if it considers that the delay is justified (Art. 19(2) of the Law).

A number of cases decided by the Lithuanian Court of Appeals and the Supreme Court of Lithuania have decided that a party must raise jurisdictional objections in the case at the time determined in Art. 19 of the Law on Commercial Arbitration. If a party fails to raise such objections in due time, it waives its right to raise such plea.[5]

5. See ruling of the Court of Appeals of Lithuania in civil case No. 2A-149/2008 dated 22 January 2008; ruling of the Supreme Court of Lithuania in civil case No. 3K-3-156/2007 dated 6 April 2007.

e. Role of court

Theoretically, pursuant to Art. 11 of the Law, a party may approach a court before the commencement of arbitral proceedings, asking it to establish whether the arbitration agreement is valid. Under Art. 11 of the Law, the court may establish:

(1) whether the arbitration agreement complies with the validity requirements generally established for contracts;
(2) whether the arbitration agreement complies with the requirements established in Art. 10 of the Law (with regard to the substance and form of the arbitration agreement); and
(3) whether the arbitration agreement complies with the requirements established in Art. 12 of the Law (with regard to non-arbitrable disputes). By such decision, the court indirectly decides the issue of the arbitral tribunal's jurisdiction.

The only ground for suspension of the arbitral proceedings under the Law on Commercial Arbitration is examination of the witnesses in the courts (Art. 36(2)).

5. APPLICABLE LAW

Under the Law on Commercial Arbitration (see **Annex I** hereto), parties to a dispute are free to determine the law applicable to their dispute. Any designation of the law or legal system of a state is considered to be a direct referral to the substantive law of that state (unless otherwise indicated) and not to its conflict of laws rules (Art. 39(1)). Failing any designation by the parties, the arbitral tribunal shall apply the law which it considers applicable to the particular dispute. In addition, the tribunal must always take trade customs (*lex mercatoria*) into account (Art. 39(2)).

The Law further provides that the arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so (Art. 39(3)). However, to the best of the authors' knowledge, it is very rare in practice for a tribunal to decide on this basis.

6. SETTLEMENT

Under Art. 47 of the Law on Commercial Arbitration (see **Annex I** hereto), the parties may terminate arbitral proceedings by agreeing to the amicable settlement of their dispute. Upon the parties' request, the arbitral tribunal has a right to issue an arbitral award on agreed terms confirming the settlement agreement or to issue a ruling terminating the arbitration case. An arbitral

award confirming the settlement agreement is deemed a final award of the arbitral tribunal, and, hence, can be set aside by the Court of Appeals of Lithuania. It also has to comply with the requirements provided for the final arbitral award under Art. 46, with the exception of the requirement that an arbitral award contains reasons. Nevertheless, the arbitral tribunal may refuse to approve the settlement agreement if it contradicts the rules regulating validity of contracts of the legal system chosen by the parties or applicable in the arbitral proceedings.

7A. CORRECTION AND INTERPRETATION OF THE ARBITRAL AWARD

Art. 45 of the Law on Commercial Arbitration (see **Annex I** hereto) sets out the grounds for correction and interpretation of an arbitral award. As stated above, a party may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of a similar nature. A party may also ask the arbitral tribunal to give an interpretation of a part of the award resolving the dispute. Such request may be submitted by a party within thirty days of receipt of the award and the arbitral tribunal, within thirty days of receipt of such request, shall resolve these issues by rendering an additional award. In addition, the arbitral tribunal may introduce such corrections or give an interpretation of an award on its own initiative within thirty days of the date of the final award (Art. 45(2)).

If necessary, the arbitral tribunal may extend the period of time within which, according to the Law, it must correct mistakes or provide interpretation (Art. 45(4)). However, the arbitral tribunal cannot change the essence of the arbitral award by interpreting or correcting it (Art. 45(5)).

7B. ADDITIONAL AWARD

Pursuant to Art. 45(1) of the Law on Commercial Arbitration (see **Annex I** hereto), a party may, within thirty days of receipt of the award, ask the arbitral tribunal to make an additional award regarding claims presented in the arbitral proceedings, but omitted from the arbitral award. If the arbitral tribunal considers the request to be justified, it must consider these claims within thirty days and render an additional arbitral award.

The additional arbitral award should be in the same form as the final award and should be made under the rules stated in Chapter V.3 above.

8. FEES AND COSTS

a. Types of fees and costs

The Law on Commercial Arbitration (see **Annex I** hereto) provides that, unless otherwise agreed by the parties, the arbitral tribunal, taking into consideration the circumstances of the case and the conduct of the parties, shall allocate the arbitration costs between the parties in its award (Art. 48(3)). As set out in Art. 48(1) of the Law, arbitration costs consist of:

(1) arbitrators' fees and other reasonable expenses incurred by the arbitrators;
(2) expenses incurred by the permanent arbitral institution and other reasonable expenses as agreed by the parties;
(3) expenses reasonably incurred by the parties.

The fees applicable by the permanent arbitral institution, the method for calculating the costs of arbitration, and the procedure for payment and repayment of the costs of arbitration are set out in the rules of the arbitration proceedings and (or) in the agreement between the parties. In cases of *ad hoc* arbitration, such issues shall be settled by agreement between the parties and/or in the rules applicable to the *ad hoc* arbitration.

Under the Arbitration Rules of the VCCA, for instance, the expenses related to arbitration fees include a registration fee, an administration (arbitration) fee and a compensation fee, each of which is briefly outlined below. The Board of the VCCA approves the tariffs and payment procedure for arbitration fees.

b. Deposit

At the time of writing, under the VCCA Rules, a claimant must pay a registration fee of EUR 400 plus VAT, when submitting a claim. Such registration fee is not refundable and a claim will not be submitted to arbitration until the registration fee is paid.

The amount of the "administration" fee (which is intended to cover the fees of the arbitrators) depends on the amount of the claim and counterclaim. The claimant must pay the administration fee in advance. Until the administration fee is paid, the case will not be transferred to the arbitral tribunal. The VCCA charges the following administration fees:

AMOUNT OF THE CLAIM IN EUR	ADMINISTRATION FEE IN EUR (VAT EXCLUDED) (WHEN ONE ARBITRATOR IS APPOINTED*)
Up to 30,000	820 + 2.7% of the amount in dispute
From 30,000 to 60,000	1,630 + 2.5% of the amount in dispute exceeding 30,000
From 60,000 to 300,000	2,380 + 2% of the amount in dispute exceeding 60,000
From 300,000 to 1,500,000	7,180 + 0.5% of the amount in dispute exceeding 300,000
From 1,500,000 to 3,000,000	13,180 + 0.3% of the amount in dispute exceeding 1,500,000
From 3,000,000 to 30,000,000	17,680 + 0.1% of the amount in dispute exceeding 3,000,000
From 30,000,000 to 200,000,000	44,680 + 0.03% of the amount in dispute exceeding 30,000,000
Over 200,000,000	95,680

* If the arbitral tribunal consists of three arbitrators, the administration fee will be increased by 70 percent.

For non-monetary claims, at the time of writing, the arbitration fee consisted of an administration fee of minimum EUR 600, maximum EUR 7,200 and an arbitrator's fee, which is EUR 50-150 per hour (excluding VAT). The amount of the arbitrator's fee for non-monetary claims in each particular case will be set by the Chairman of the VCCA.

c. Fees of arbitrators

A "compensation" fee is payable in order to cover the expenses sustained by the arbitrators, witnesses, experts or interpreters living outside the place of arbitration (i.e., for travel, accommodation and other expenses arising from participation in arbitral proceedings), as well as the expenses for the services of experts and interpreters.

The amount of the compensation fee is set by the Secretariat of VCCA, based on corresponding transport tariffs, hotel price-lists and other documents. The compensation fee must be paid at the beginning of the arbitration proceedings within the term indicated by the Secretariat of the VCCA. If the compensation fee is not paid within the indicated period, the examination of the case may be postponed, or a request to call witnesses, experts or interpreters may be refused. The amount can be specified and corrected by the Secretariat of VCCA during the course of the hearings, according to submitted

documents proving expenses. Excess amounts shall be returned and those not fully paid shall be paid.

d. Costs of legal assistance to parties

Expenses incurred in relation to the participation of the representatives of the parties (including attorneys), personally invited witnesses, experts or interpreters must in the first instance be covered by the party who invites such persons, unless otherwise agreed by the parties.

e. Allocation of costs

Under the Rules of VCCA and unless the parties agree otherwise, the losing party compensates the costs of the other party. If the claim is partially successful, the parties share the arbitration fees in proportion to their successful and unsuccessful claims. If the dispute is settled, parties shall share the arbitration fees in proportion to the accepted and rejected claims, unless the amicable agreement between the parties provides otherwise (Art. 7(4) of the Rules).

Under the Law on Commercial Arbitration (Art. 48(3)) and the Rules of VCCA (Art. 42(3)), the arbitral tribunal has to decide the issue of apportionment of costs in the final arbitral award.

9. NOTIFICATION OF THE AWARD AND REGISTRATION

There is no requirement for registration of an arbitral award in court. Under the Law on Commercial Arbitration (see **Annex I** hereto), the arbitral award "shall take effect from the moment it is made and shall be binding on the parties" (Art. 41(1)). If the case is conducted under the Arbitration Rules of the VCCA, the case file and one copy of the arbitral award shall be deposited with the VCCA for a period of one year (Art. 42(5)).

10. ENFORCEMENT OF DOMESTIC AND INTERNATIONAL AWARDS RENDERED IN LITHUANIA (SEE ALSO CHAPTER VI – ENFORCEMENT OF FOREIGN ARBITRAL AWARDS)

Arbitral awards made in the Republic of Lithuania can be directly enforced in Lithuania under the same rules as judgments issued by national courts (Art. 41 of the Law, see **Annex I** hereto).

The courts of the lowest instance (district courts) have jurisdiction to issue an enforcement order for an arbitral award rendered in Lithuania, in case a party to the arbitration proceedings fails to comply with the award (Art. 41(4)). The district courts may refuse to issue the enforcement order only if there is not enough data provided, or the arbitral award was set aside, or the time bar

for issuing an enforcement order has expired (Art. 41(5)). The time bar for submitting arbitration awards for enforcement is five years after the arbitration award comes into force (Art. 41(7)).

11. PUBLICATION OF THE AWARD

There is no dedicated journal or periodical in which arbitral awards are published in Lithuania. Moreover, the Law on Commercial Arbitration (see **Annex I** hereto) provides for the general principle of confidentiality to be applicable in arbitration proceedings. Under the VCCA Arbitration Rules, neither an arbitral tribunal nor the VCCA may publish an arbitral award or make it public without the consent of both parties to the dispute (Art. 43(2) of the Rules).

Chapter VI. Enforcement of Foreign Arbitral Awards

1. ENFORCEMENT UNDER CONVENTIONS AND TREATIES

a. Recognition and enforcement

Lithuania is party to the 1958 New York Convention (which entered into force in Lithuania on 12 June 1995). An arbitral award rendered in any state that is a party to the New York Convention is recognized and enforced in Lithuania according to the provisions of the New York Convention and Art. 51 of the Law on Commercial Arbitration (see **Annex I** hereto).

A party applying for recognition and enforcement of a foreign arbitral award must be a party to the arbitration case and supply the Court of Appeals of Lithuania with an original duly authenticated arbitral award or a duly certified copy thereof and an original arbitration agreement or a duly certified copy thereof (Art. 51(2) of the Law and Art. 811(2) of the Code of Civil Procedure ("CCP", see **Annex II** hereto)). Pursuant to Art. 811(3) of the CCP, no stamp duty is charged on applications for recognition and enforcement of foreign arbitral awards.

Upon recognition by the Court of Appeals of Lithuania, a foreign arbitral award has the same status as a national judgment and is enforced in the manner prescribed by the Code of Civil Procedure (Art. 51(4) of the Law). The party requesting recognition of a foreign arbitral award may at the same time request its enforcement.

b. Grounds to deny recognition and enforcement of foreign arbitral awards

An arbitral award may be denied recognition and enforcement under Art. 810 of the CCP. The grounds for refusal of recognition and enforcement of the

arbitral award are not provided in the domestic of law of Lithuania, thus, the grounds established in Art. V of the New York Convention shall apply. (Art. 51(1) of the Law.)

c. Procedure and possibility of appeal

Upon recognition by the Lithuanian Court of Appeals, a foreign arbitral award has the same status as a national judgment and is enforced in the manner prescribed by the Code of Civil Procedure (Art. 51(4) of the Law; Arts. 773-779 and 813-815 CCP). Requests concerning recognition of foreign arbitral awards are heard by a panel of three judges of the Court of Appeals of Lithuania in the form of written proceedings (Art. 811 CCP). The court hearing the request may recognize only a part of the award, either upon the request of the party or of its own accord. The court is entitled to suspend the recognition proceedings if the arbitral award is challenged or when a time limit for filing such a challenge has not yet expired.

A ruling of the Court of Appeals of Lithuania granting or denying recognition and enforcement of a foreign arbitral award may be appealed to the Supreme Court of Lithuania within a period of 30 days (see Art. 51(3) of the Law and Art. 811 (2) CCP).

Notably, Lithuanian court practice regarding interpretation of the New York Convention establishes that courts may suspend proceedings on the recognition and enforcement of foreign arbitral awards, applying general rules of the Code of Civil Procedure regarding the suspension of the proceedings.[6] The most often-applied ground for suspension is if examination of a case on recognition and enforcement of a foreign arbitral award is impossible until another civil, criminal or administrative case has been examined (Art. 163 CCP).

2. ENFORCEMENT WHERE NO CONVENTION OR TREATY APPLIES

In ratifying the New York Convention, Lithuania made the reservation that Lithuania will apply the rules of the New York Convention in respect of arbitral awards made in the territory of contracting states (the "reciprocity reservation"). However, it is difficult to predict how in practice an arbitral award rendered in a country that is not a signatory to the New York Convention would be recognized and enforced in Lithuania, since to the best knowledge of the authors at the time of writing there is no Lithuanian case law on this issue.

6. Ruling of the Supreme Court of Lithuania in civil case No. 3K-7-55216 *AS "Parekss Banka" v. UAB "Parex lizingas*" dated 16 December 2004.

3. RULES OF PUBLIC POLICY

It is established in Lithuanian court practice that the notion of public policy provided in the New York Convention should be understood to be international public policy. Courts may refuse to recognize and enforce an arbitral award if recognition and enforcement of an arbitral award would contravene the constitutional principles that are recognized internationally or if an arbitral award obliges the parties to breach imperative norms or principles of due process of the Republic of Lithuania.[7] For example, in a couple of cases heard by Lithuanian courts on the recognition and enforcement of arbitral awards, it has been established that Lithuanian public policy would be violated if the award that is being recognized awards interest at a rate that may be considered usurious.[8]

It is worth mentioning that in the case *Apatit Fertilizers S.A. v. AB Lifosa*,[9] the Supreme Court of Lithuania emphasized that the principle of public policy has to be understood as the fundamental interests of the State and individuals. Moreover, the court emphasized that in such cases, public policy has to be given an international and not a domestic dimension.

Chapter VII. Means of Recourse

1. APPEAL ON THE MERITS FROM AN ARBITRAL AWARD

In Lithuania there is no second arbitral instance where arbitral awards can be appealed on material grounds. There is also no procedure for appeal to a court.

A party wishing to challenge an arbitral award may submit an application for setting aside of the award to the Court of Appeals of Lithuania in accordance with the provisions of the Law on Commercial Arbitration (see **Annex I** hereto).

7. Ruling of the Supreme Court of Lithuania in civil case No. 3K-3-161/2008 dated 12 March 2008; also Ruling of the Supreme Court of Lithuania in civil case No. 3K-3-443/2008 dated 30 September 2008.
8. Ruling of the Supreme Court of Lithuania in civil case No. 3K-3-612/2004, dated 17 November 2004.
9. Ruling of the Supreme Court of Lithuania in civil case No. 3K-3-145 *Apatit Fertilizers S.A. v. AB Lifosa,* dated 21 January 2002.

2. SETTING ASIDE OF THE ARBITRAL AWARD (ACTION FOR ANNULMENT, VACATION OF THE AWARD)

a. Grounds for setting aside

Under the Law on Commercial Arbitration (see **Annex I** hereto), arbitral awards may not be reviewed on the merits. Pursuant to Art. 50(3) of the Law, an arbitral award may be set aside by the Court of Appeals of Lithuania if the party submitting the application, proves one of the grounds on the following exhaustive list:

> "1) one of the parties to the arbitration agreement was legally incapable under the applicable law or the arbitration agreement is not effective under the law applicable by the parties' agreement, or if the parties have not agreed regarding the law applicable to the arbitration agreement, according to the laws of the state in which the arbitral award was made; or
> 2) the party against which the arbitral award is intended to be enforced was not properly notified of the appointment of the arbitrator or the arbitral proceedings, or otherwise was not provided with a possibility to present its own explanations; or
> 3) the arbitral award was made in respect of a dispute or a part of a dispute that was not referred to arbitration. If the part of the dispute referred to arbitration may be separated, that part of the arbitral award resolving the issues referred to arbitration may be recognized and enforced; or
> 4) the composition of the arbitral tribunal or the arbitration proceedings did not meet the agreement between the parties and/or the imperative provisions of this Law; or
> 5) the dispute may not be referred to arbitration according to the laws of the Republic of Lithuania; or
> 6) the arbitral award contradicts the public policy of the Republic of Lithuania."

In addition, under Art. 50(4) of the Law, an arbitral award may be set aside by the Court of Appeals of Lithuania *ex officio* if the Court finds the circumstances indicated in paragraphs (5) and (6) above.

b. Procedure

i. Time limits and suspension of enforcement

As required under the Law on Commercial Arbitration, the Court of Appeals of Lithuania shall refuse to accept an application for challenging an arbitral award after the lapse of one month from the date on which the arbitral award was rendered (Art. 50(5)).

The Court of Appeals of Lithuania, after having accepted an application for setting aside of an arbitral award, under exceptional circumstances may suspend the enforcement of the award at the request of a party (Art. 50(2)).

However, the Law on Commercial Arbitration does not specify any conditions for suspension.

An application challenging an award has to be examined before the Court of Appeals of Lithuania within no more than ninety days after the application is admitted (Art. 50(7)).

The ruling of the Court of Appeals regarding setting aside of the arbitral award may be appealed to the Supreme Court of Lithuania (Art. 50(8)).

ii. Remission to the arbitral tribunal

When asked to set aside an award, the Lithuanian Court of Appeals may, if so requested by a party, suspend the setting aside proceedings for a definite time period in order to enable the arbitral tribunal to resume the arbitral proceedings or take such other action as in the opinion of the Court of Appeals would eliminate the grounds for setting aside the arbitral award (Art. 50(6)). As the Court of Appeals may suspend the setting aside proceedings for a definite time period only if so requested by a party, the court may not itself remit the case to the arbitral tribunal. The court may remit the case to the arbitral tribunal only upon the request of a party.

c. Waivers

The Law on Commercial Arbitration establishes the general rule that if a party, knowing that any provision of the Law on Commercial Arbitration from which the parties may derogate or any requirement under the arbitration agreement has not been complied with, still participated in arbitral proceedings without submitting any objections, such party is deemed to have waived its right to object (Art. 7(1)). A party may waive its right: to claim that the arbitration agreement is invalid; to ask for cancellation of the arbitration agreement; or to object to the recognition or enforcement of the award.

d. Effect of an award that has been set aside

If an award has been set aside it ceases to exist, at least within the jurisdiction of Lithuania.

3. OTHER MEANS OF RECOURSE

There are no other means of recourse against an arbitral award in Lithuania.

Chapter VIII. Conciliation/ Mediation

1. GENERAL

a. ADR in Lithuania

In addition to arbitration, other types of alternative dispute resolution (ADR), mainly court mediation and private conciliation, are practiced in Lithuania. Such techniques create the conditions for disputing parties to reach settlement in civil cases more effectively and speedily than would be possible in state courts.

Public awareness of mediation is growing, and the number of private mediations is rising. Nonetheless, ADR is still quite new in Lithuania and is only beginning to increase in popularity.

b. Institutions

The VCCA and the local courts are the main institutions providing mediation and conciliation services under its Rules of Mediation and Conciliation Procedure. The VCCA may designate qualified mediators with both legal and psychological experience, who will act as mediators and conciliators (see contact details above).

2. LEGAL PROVISIONS

Under Art. 231 of the Code of Civil Procedure ("CCP", see **Annex II** hereto) the local courts during preparatory hearings for a dispute are encouraged to suggest that the parties settle their dispute amicably by concluding a settlement agreement. The parties may agree to attempt to settle the dispute by court mediation.

Court mediators are specifically qualified court judges or their assistants. The chairman of the court appoints one or two mediators who assist the parties in their pursuit of peaceful settlement of the dispute. The procedure of mediation is confidential, minutes are not taken during the meetings between the parties and mediators and all the requests, concessions, recognitions, etc. made by the parties are without prejudice to the case if the parties fail to reach an agreement and the case returns to the judge. The mediator, if necessary, may organize meetings with one of the parties to the dispute. The parties to mediation may at any time withdraw from mediation without any particular reason. In such case, the mediator may not be the judge hearing the case in the court.

Another way for peaceful settlement of the dispute is conciliatory mediation regulated by the Law on Conciliatory Mediation in Civil Disputes (the Mediation Law) (see **Annex III** to this Report). The Mediation Law is not based on the UNCITRAL Model Law on International Commercial Conciliation.

The Mediation Law provides that the parties may conclude a written agreement to mediate their dispute before or after a dispute emerges (Art. 3(1)).

Notably, if the agreement on mediation includes a time limit during which the dispute should be mediated, the parties can refer their dispute to court or arbitration only after the time limit for mediation expires. If the agreement on mediation does not contain a time limit, then the dispute can be referred to arbitration or court only after one month following the party's written suggestion to resolve the dispute through mediation (Art. 3(2)). However, parties can refer their dispute to the court or arbitration prior to the term provided by the mediation agreement if the mediation has been terminated (Art. 3(2)).

Art. 9 of the Mediation Law provides that mediation terminates if:

(1) one of the parties declares in writing that it is not willing to mediate;
(2) the mediator issues a written report to the parties terminating the mediation;
(3) one of the parties notifies the mediator and the other party that it is withdrawing from the mediation proceedings;
(4) all parties to the mediation declare in writing that the mediation is terminated; or
(5) the parties conclude the conciliation agreement.

If the parties conclude a conciliation agreement during the mediation proceedings, such agreement is binding on both the parties (Art. 6(2) of the Mediation Law). If the mediated dispute is not at the same time examined in the court, the parties may request the court to confirm their settlement agreement according to the rules of the CCP (Art. 6(3)). A settlement agreement confirmed by the court is binding and can be enforced according to the general enforcement rules (Art. 6(3)).

Chapter IX. Investment Treaty Arbitration

a. Conventions and treaties

Lithuania is a member of the Energy Charter Treaty of 1994, which came into force in Lithuania on 13 December 1998. In addition, Lithuania has adopted the ICSID Convention (which entered into force in Lithuania on 5 August 1992), and has concluded fifty bilateral investment treaties so far,[10] which

10. By 2009, countries with which Lithuania had concluded BITs included: Albania; Argentina; Armenia; Australia; Austria; Azerbaijan; Belarus; Belgium-Luxembourg Economic Union; Bosnia and Herzegovina; Bulgaria; China; Croatia; Czech Republic; Denmark; Estonia; Georgia; Germany; Greece; Hungary; Iceland; Israel; Italy; Jordan; Kazakhstan; Kyrgyz Republic; Korea; Kuwait; Latvia; Poland; Moldova; Mongolia; Netherlands; Norway; Portugal; France; Romania; Russian Federation; Serbia and Montenegro; Slovenia; Spain;

can be found on the Lithuanian parliamentary website (in Lithuanian).[11] Some of Lithuania's bilateral investment treaties are also available at <www.unctadxi.org/templates/DocSearch.aspx?id=779>.

Lithuania also makes use of a model bilateral investment treaty, which is attached to this National Report as **Annex IV**.

b. National investment legislation

The Law on Investments of the Republic of Lithuania (which came into force on 18 November 2004) determines that disputes relating to infringement of the rights and lawful interests of an investor shall be settled according to the procedure established by the laws of the Republic of Lithuania. Disputes between foreign investors and the Republic of Lithuania relating to infringement of their rights and lawful interests (investment disputes) shall be considered, upon agreement between the parties, by the courts of the Republic of Lithuania, international arbitration bodies or other institutions. The Law on Investments provides further that investment disputes shall also be settled with due regard to the provisions of international treaties. Foreign investors have the right to apply directly to the ICSID Centre.

Finland; Sweden; Switzerland; Turkey; Ukraine; United Kingdom; USA; Uzbekistan; Venezuela; and Vietnam.

11. The Lithuanian parliamentary website can be found at <www3.lrs.lt> and the list of BITs at <www3.lrs.lt/pls/inter3/dokpaieska.rezult_l?p_nr=&p_nuo=&p_iki=&p_org=&p_drus=1&p_kalb_id=1&p_title=investicij%F8%20skatinimo&p_text=&p_pub=&p_met=&p_lnr=&p_denr=&p_es=0&p_rus=1&p_tid=&p_tkid=&p_t=0&p_tr1=2&p_tr2=2&p_gal=>.

ANNEX I

LAW ON COMMERCIAL ARBITRATION OF THE REPUBLIC OF LITHUANIA (2012)*

CHAPTER I. GENERAL PROVISIONS

Article 1. Purpose of the Law

This Law regulates arbitral proceedings taking place in the Republic of Lithuania, establishes the requirements for the form and content of the arbitration agreement, the composition and competence of the arbitral tribunal, the application of interim measures and making of preliminary rulings and arbitral awards and closing a case without making an award on its merits, the procedure for setting aside arbitral awards, and the procedure for recognition and enforcement of foreign arbitral awards in the territory of the Republic of Lithuania, and also regulates other issues pertaining to arbitration.

Article 2. Scope of the Law

1. This Law shall apply to arbitration, if the place of arbitration is in the territory of the Republic of Lithuania, irrespective of the citizenship or nationality of the parties to the dispute, as well as irrespective of whether the parties to the dispute are natural or legal entities and whether the arbitration procedure is organized by a permanent arbitral institution or *ad hoc* arbitration is held.

2. The provisions of this Law regulating judicial recognition of an arbitration agreement, challenge to such agreement, application of interim measures by a court and recognition and enforcement of foreign arbitral awards, shall be applied irrespective of the place of arbitration or the place where any parts of the arbitration procedure are carried out.

Article 3. Main terms of the Law

1. "*Ad hoc* arbitration" means arbitration where, according to the agreement of the parties, the dispute resolution procedure is not organized by a permanent arbitral institution.

2. "Arbitrator" means a natural person appointed, either by a party to the dispute or by agreement of the parties to the dispute or according to the procedure established by this Law, to resolve the dispute.

3. "Place of arbitral proceedings" means a place where hearings of the arbitral tribunal are held or other parts of the arbitration of a commercial dispute take place.

4. "Arbitral proceedings" means a commercial arbitration procedure from the commencement of the dispute in arbitration until the day of coming into effect of the arbitral award or of the ruling closing the case without making an award on its merits.

5. "Arbitration agreement" means an agreement by two or more parties to refer to an arbitral tribunal all or certain disputes which have arisen or which may arise between them in respect of any particular contractual or other legal relationship that may be the subject matter of the arbitral proceedings. A state, municipality or other public legal entity may also conclude an arbitration agreement.

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* In effect 2 April 1996, No. I-1274, Vilnius. New wording of the Law from 30 June 2012, No. XI-2089, 21 June 2012; as amended; in effect as from 1 July 2017. Unofficial translation

6. "Regulations of arbitral procedure" means the rules approved by a permanent arbitral institution as a basis for examining and resolving disputes in arbitration.

7. "Arbitral tribunal" means an arbitrator or panel of arbitrators handling the arbitration case.

8. "Place of arbitration" means the place of arbitration indicated in the arbitration agreement or determined by the arbitral tribunal. If the parties have not agreed on the place of arbitration or the parties' agreement regarding the place of arbitration is not clear and if the place of arbitration has not been determined by the arbitral tribunal, the place of arbitration shall be deemed to be the office of the relevant permanent arbitral institution; in the case of *ad hoc* arbitration, the location of the domicile or place of business of the respondent, and in the case of several respondents, the location of the domicile or place of business of one of the respondents at the claimant's choice. The place of arbitration may be different from the place of arbitral proceedings.

9. "Institutional arbitration" means arbitration where, upon agreement of the parties, dispute resolution is organized and administered, conditions are created for arbitral proceedings and other powers granted under agreement of the parties are exercised by a permanent arbitral institution.

10. "Commercial arbitration" (hereinafter – "arbitration") means a mode of resolving a commercial dispute where natural persons or legal entities agree to refer or undertake to refer their dispute not to a court, but to an arbitrator (or arbitrators) appointed by their agreement or according to the procedure established by this Law (irrespective of whether the arbitration procedure is organized by a permanent arbitral institution (institutional arbitration) or *ad hoc* arbitration is held) who make(s) the arbitral award which is binding upon the parties to the dispute.

11. "Commercial dispute" means any controversy between the parties over issues of fact and/or law arising out of contractual or non-contractual legal relationships, including, but not limited to, supply of goods or provision of services, distribution, commercial agency, factoring, lease, contracting, consulting, engineering services, licencing, investing, financing, banking activity, insurance, concession, creation and carrying out of joint ventures and any other industrial or business cooperation, compensation for damage caused through violation of rules of the competition law, agreements concluded based on public procurement, transportation of goods or passengers by air, sea and land.

12. "Permanent arbitral institution" means a public legal entity organizing and administering arbitration on an ongoing basis.

13. "Chairman of a permanent arbitral institution" means a natural person appointed according to the procedure established by the incorporation documents of the permanent arbitral institution to organize the activities of this institution and discharge the administrative functions of this institution and the functions attributed to him/her by this Law.

14. "Court" means any institution or organization being a part of the judicial system of the state.

15. "Foreign arbitral award" means an arbitral award made in an arbitration case where the place of arbitration is outside the Republic of Lithuania.

Article 4. Interpretation and terms of the Law

1. In all cases where this Law gives the parties to the dispute the freedom to decide on certain issues, except for the right to select the substantive law applicable to dispute resolution, the parties to the dispute may decide themselves on this issue or appoint any third party or institution to make a decision.

2. The parties to the dispute shall have the right upon their mutual agreement to deviate from all rules of this Law, except for the imperative rules.

3. A reference to an agreement of the parties regarding examination of the dispute in arbitration also includes any arbitration rules referred to in that agreement.

4. The provisions of this Law regarding the claim or answer to the claim shall also be applied *mutatis mutandis* to the counterclaim or answer to the counterclaim.

5. The interpretation of this Law and the terms used in it should be subject in a subsidiary manner to the 1985 Model Law of the United Nations Commission on International Trade Law regarding international commercial arbitration, with subsequent amendments and supplements.

6. The issues governed by this Law, but not regulated by it in detail, shall be dealt with in accordance with the principles of justice, reasonableness, good faith and other general principles of law.

7. This Law shall be interpreted to ensure the maximum compliance of the arbitration procedure taking place according to this Law with the arbitration principles.

Article 5. Permanent arbitral institution

1. Associations of the Republic of Lithuania representing entities active in the field of industry, business and legal activities of the Republic of Lithuania may establish independent limited civil liability legal entities having the legal form of a permanent arbitral institution. The main function of a permanent arbitral institution is to organize and administer arbitration, discharge other functions conferred by the parties to the dispute and related to the activity of the permanent arbitral institution.

2. The issues of establishment and management, representation and liability of the permanent arbitral institutions stipulated in paragraph 1 of this article shall be resolved according to the procedure established by laws. The statute of the permanent arbitral institution prepared and approved by the founders of the permanent arbitral institution shall be registered with the Register of Legal Entities according to the procedure established by legal acts.

3. The permanent arbitral institution shall be prohibited from resolving disputes by arbitration or exerting any influence on the arbitral proceedings, arbitral tribunal or arbitrators, except for giving advice to the arbitral tribunal regarding the form of an arbitral award. During arbitral proceedings, the permanent arbitral institution shall only have the rights that were granted to it upon agreement of the parties to the dispute. The permanent arbitral institution may not refuse to fulfil its functions, if it has announced its activities in public and the parties to the arbitral proceedings pay the permanent arbitral institution the charges established by such permanent arbitral institution.

4. The permanent arbitral institution shall approve the regulations of arbitral procedure. The regulations of arbitral procedure approved by the permanent arbitral institution shall be legally binding upon the parties only where the parties have decided to apply them under their arbitration agreement.

5. The permanent arbitral institution shall be headed by its chairman. The chairman of the permanent arbitral institution shall discharge the functions determined in this Law and attributed to him/her by the permanent arbitral institution.

Article 6. Receipt of written notifications

Unless the parties have agreed otherwise, it shall be deemed that:

1) any written notification has been received, if it is delivered to the addressee personally, to his/her place of business, place of residence or postal address or by means of electronic devices. If, after making a reasonable inquiry, it is impossible to identify any such locations, a written notification shall be deemed to have been received by the addressee when such notification is delivered by registered mail or any other means witnessing the sending of the notification by the sender, to the last known place of business, place of residence or postal address or to the last known electronic address of the addressee;

2) the notification is received on the day on which it is handed in or delivered according to item 1 of this article.

Article 7. Waiver of the right to objection

1. If a party to the dispute being aware of its infringed right proceeds with participation in the arbitral procedure and fails to express its dissent as to such infringement within a reasonable time, such party shall be deemed to have waived its right to object.

2. The rule established in paragraph 1 of this article shall also be applied to claims regarding the invalidity or cancellation of the arbitration agreement, and to claims regarding the recognition and enforcement of the arbitral award.

Article 8. Principles of arbitration procedure

1. The arbitral tribunal, permanent arbitral institution and its chairman shall be independent while resolving the issues regulated in this Law.

2. Courts may not interfere with the activity of the arbitral tribunal, permanent arbitral institution and its chairman, except for cases stipulated in this Law.

3. The arbitration procedure shall be confidential.

4. The parties to arbitration shall have equal procedural rights.

5. The parties to arbitration shall have the right to freely dispose of their rights.

6. The arbitration procedure shall take place in compliance with the principle of autonomy of the parties, the adversarial principle, and principles of economy, cooperation and expedition.

Article 9. Court's assistance in the arbitration procedure

1. The arbitration agreement shall not prevent the party or parties or, in the cases established by this Law, the arbitral tribunal, from applying to:

1) Vilnius District Court regarding performance of the actions indicated in Articles 14, 16, 17, 25, 27, 36 and 38 of this Law;

2) The Court of Appeals of Lithuania regarding performance of the actions indicated in Articles 26, 50 and 51 of this Law.

2. Vilnius District Court decides on issues indicated in item 1 of paragraph 1 of this article, in the simplified procedure and *mutatis mutandis* applies provisions of Chapter XXXIX of the Code of Civil Procedure of the Republic of Lithuania. The materials of such cases are non-public.

CHAPTER II. ARBITRATION AGREEMENT

Article 10. Form of an arbitration agreement

1. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract concluded by the parties.

2. The arbitration agreement shall be concluded in writing and shall be considered to be valid if:

1) executed as a joint document signed by the parties; or

2) concluded in an exchange by the parties of letters (which may be sent by means of electronic devices, provided that the integrity and authenticity of the information being transmitted is ensured) or other documents recording the fact of conclusion of such agreement; or

3) concluded by means of electronic devices, provided that the integrity and authenticity of the information being transmitted is ensured and the information contained therein can be accessed for further use; or

4) the parties exchange a claim and an answer to the claim where one of the parties asserts, while the other party does not deny, that they have concluded the arbitration agreement; or

5) there is other written evidence to the effect that the parties have concluded or recognize the arbitration agreement.

3. The reference in a contract concluded by the parties to a document containing an arbitration clause shall constitute an arbitration agreement, provided that the contract or the document meets the requirements of form established in paragraph 2 of this article.

Article 11. Judicial recognition of the arbitration agreement

1. Having received a claim regarding a matter in respect of which the parties have concluded an arbitration agreement in the form established in Article 10 of this Law, the court shall reject the claim. If the fact of conclusion of the arbitration agreement transpires after the court has admitted the claim, the court shall not proceed with the case regarding the matter in respect of which the arbitration agreement was concluded.

2. The arbitration agreement may be recognized as invalid in judicial procedure upon request of one of the parties under the general grounds of recognizing transactions as invalid or upon finding violation of the requirements of Articles 10 and 12 of this Law. Once the arbitral proceedings have commenced, the issue of invalidity of the arbitration agreement shall be resolved only according to the procedure established in Article 19 of this Law.

3. The court shall stay the case if hearing of the case may not proceed pending the disposition of the arbitration case.

Article 12. Disputes not to be referred to arbitration

1. All disputes may be resolved in arbitration, except for cases stipulated in this article.

2. Arbitration may not resolve disputes which should be heard under administrative proceedings or hear cases, the examination of which falls within the competence of the Constitutional Court of the Republic of Lithuania. Disputes arising from family legal relationships and disputes regarding registration of patents, trademarks and design may not be referred to arbitration. Disputes arising from employment and consumer

contracts, except for cases where the arbitration agreement was concluded after the dispute arose, may not be referred to arbitration.

3. Disputes to which a state or municipal enterprise or an institution or organization, except for the Bank of Lithuania, is a party, may not be referred to arbitration, unless the prior consent of the founder of such enterprise, institution or organization regarding the arbitration agreement has been obtained.

4. The Government of the Republic of Lithuania (hereinafter – the Government) or its authorized state institution may conclude an arbitration agreement in respect of disputes relating to commercial contracts concluded by the Government or its authorized state institution under the general procedure.

CHAPTER III. COMPOSITION OF THE ARBITRAL TRIBUNAL

Article 13. Number of arbitrators

1. The parties may determine the number of arbitrators. The number of arbitrators shall be uneven. An arbitral award made by an arbitral tribunal consisting of an even number of arbitrators shall not render such an award invalid.

2. Failing such determination, three arbitrators shall be appointed.

Article 14. Appointment of arbitrators

1. Any natural person with legal capacity may be appointed an arbitrator, unless the parties agree otherwise. In all cases the written consent of a person willing to act as an arbitrator shall be required.

2. The parties may agree at their discretion regarding the procedure for appointment of an arbitrator or arbitrators in compliance with the requirements of paragraphs 5 and 6 of this article.

3. Unless the parties agree otherwise, then:

1) where the arbitral tribunal is to consist of three arbitrators, each of the parties shall appoint one arbitrator, and these two arbitrators shall appoint the third arbitrator – the chairman of the arbitral tribunal;

2) where the arbitral tribunal is to consist of one arbitrator and the parties cannot agree regarding such appointment, the chairman of the permanent arbitral institution shall appoint an arbitrator at the request of any of the parties;

3) where the claimant stating its claim fails to appoint an arbitrator within twenty days following the day of stating the claim, the chairman of the permanent arbitral institution shall appoint an arbitrator within twenty days following the expiration of the term for the claimant to appoint an arbitrator;

4) where the respondent fails to appoint an arbitrator within twenty days following the day of receipt of the claim, the chairman of the permanent arbitral institution shall appoint an arbitrator within twenty days following the expiration of the term for the respondent to appoint an arbitrator;

5) where the arbitrators appointed by the parties fail to agree on the appointment of the third arbitrator within twenty days following their appointment, the chairman of the permanent arbitral institution shall appoint this arbitrator within twenty days following the expiration of the term for the arbitrators to appoint the third arbitrator;

6) in case of *ad hoc* arbitration, if a party fails to appoint an arbitrator within twenty days, or if the arbitrators appointed by the parties fail to agree on appointment of the chairman of the arbitral tribunal within twenty days following their appointment, Vilnius District Court shall appoint the arbitrator or chairman of the *ad hoc* arbitral tribunal within twenty days following the expiration of the term for the party to appoint an arbitrator or for the arbitrators to appoint the chairman of the arbitral tribunal.

4. If upon agreement by the parties regarding the procedure for appointment of arbitrators, one of the parties fails to comply with this agreement, the arbitral tribunal shall be composed according to the procedure established in paragraph 3 of this article.

5. Where two or more claimants are involved in arbitration (procedural cooperation), when submitting their claim they shall present a written agreement regarding joint appointment of an arbitrator. If when submitting their claim the co-claimants fail to present a written agreement regarding the joint appointment of an arbitrator, the co-claimants shall present such agreement within twenty days following the day of submitting the claim. Should the co-claimants fail to appoint an arbitrator within this term, the chairman of the permanent arbitral institution shall appoint an arbitrator within twenty days following the expiration of the above term. In the case of *ad hoc* arbitration, should the co-claimants fail to appoint an arbitrator within the set term, Vilnius District Court shall appoint an arbitrator within twenty days following the expiration of the above term.

6. Where two or more respondents are involved in arbitration (procedural cooperation), the co-respondents shall present a written agreement regarding the joint appointment of an arbitrator. The written agreement shall be presented within twenty days following the day of receipt of a request of the claimant or the co-claimants to appoint an arbitrator. Should the co-respondents fail to appoint an arbitrator within this term, the chairman of the permanent arbitral institution shall appoint an arbitrator within twenty days following the expiration of the above term. In case of *ad hoc* arbitration, should the co-respondents fail to appoint an arbitrator within the set term, Vilnius District Court shall appoint an arbitrator within twenty days following the expiration of the above term.

7. When appointing an arbitrator (arbitrators), the chairman of the permanent arbitral institution or Vilnius District Court shall take into consideration the essence of the dispute, the requirements for the arbitrator as agreed by the parties, as well as the circumstances ensuring the independence and impartiality of the arbitrator (arbitrators).

8. Decisions made by the chairman of the permanent arbitral institution falling within his/her competence in the cases stipulated in this article, as well as rulings made by Vilnius District Court falling within its competence in the cases stipulated in this article, shall be final and not subject to appeal.

Article 15. Grounds for challenging an arbitrator

1. A person approached in connection with his/her possible appointment as an arbitrator shall, prior to giving his/her consent to act as an arbitrator and taking into consideration Article 6 of this Law, notify in writing the parties, the permanent arbitral institution, Vilnius District Court (or other entity when the parties' agreement or the arbitration rules chosen by the parties obligate them to do so) of all circumstances likely to give rise to reasonable doubts as to his/her independence or impartiality. The arbitrator shall also notify the existence of such circumstances after his/her appointment or during the

arbitral proceedings, if he/she has not done so before or the circumstances have occurred after his/her appointment or during the arbitral proceedings.

2. An arbitrator may be challenged only where there are reasonable doubts as to his/her independence or impartiality or when he/she lacks a qualification required by the parties.

3. A party may challenge the arbitrator appointed by it, or by it together with the other party, only in respect of circumstances of which the party becomes aware after the appointment has been made.

Article 16. Procedure for challenging an arbitrator

1. The parties may agree on the procedure for challenging the arbitrator, appealing against the decision on challenging the arbitrator and other matters pertaining to the procedure for challenging the arbitrator.

2. In the absence of agreement regarding the procedure for challenging the arbitrator, a party intending to challenge the arbitrator shall notify the arbitral tribunal in writing on the reasons for challenging within fifteen days after it has become aware of the constitution of the arbitral tribunal or the circumstances indicated in Article 15.2 of this Law. Unless the arbitrator subject to challenge resigns from his/her office or the other party agrees to the challenge, the remaining arbitrators of the arbitral tribunal shall decide this issue of challenging the arbitrator. If the arbitral tribunal consists of one arbitrator or all arbitrators of the arbitral tribunal are challenged, the arbitrator himself/herself (the arbitrators themselves) shall decide on the issue of challenge.

3. If the challenge is rejected according to the procedure established in paragraph 2 of this article, the challenging party may, within twenty days after having received the notice on rejection of the challenge, request Vilnius District Court to make a ruling on challenging the arbitrator. The ruling made by Vilnius District Court on this matter shall be final and not subject to appeal. While the party's request regarding challenging the arbitrator is being considered by Vilnius District Court, the arbitral tribunal, including the arbitrator subject to challenge, may proceed with the arbitral proceedings and make an arbitral award.

Article 17. Termination of the arbitrator's mandate

1. If an arbitrator becomes *de jure* or *de facto* unable to perform his/her functions or delays performing his/her functions without valid reasons, he/she shall resign his/her office. The arbitrator's mandate shall terminate if he/she resigns or the parties agree on his/her removal from office. If the arbitrator fails to perform his/her duty to resign or the parties fail to agree on his/her removal from office, any of the parties may apply to the chairman of the permanent arbitral institution regarding resolution of the respective issue. In such case, the decision of the chairman of the permanent arbitral institution shall be final and not subject to appeal. In the case of *ad hoc* arbitration the respective issue shall be resolved by Vilnius District Court; the ruling of this court shall be final and not subject to appeal.

2. Termination of the arbitrator's mandate shall not constitute recognition of any of the grounds stipulated in this article or Article 15.

Article 18. Appointment of a substitute arbitrator

1. Where the mandate of an arbitrator terminates according to Articles 15 or 17 of this Law or the arbitrator resigns from office due to other reasons or the arbitrator's mandate terminates on other grounds, a substitute arbitrator shall be appointed according to the same procedure that was applicable to the appointment of the arbitrator whose mandate terminated.

2. Upon appointment of a substitute arbitrator, the case shall be reheard, unless the parties agree otherwise.

CHAPTER IV. COMPETENCE OF THE ARBITRAL TRIBUNAL

Article 19. Right to make a decision on the competence to examine a dispute

1. The arbitral tribunal shall have the right to make a decision on its competence to examine the dispute, including cases where doubts arise in respect of the existence of an arbitration agreement or its validity. To this end, the arbitration clause, which forms a part of the contract, shall be treated as an agreement not contingent on the other conditions of the contract. The decision of the arbitral tribunal regarding recognition of the contract as invalid, shall not entail per se recognition of the arbitration clause as invalid.

2. The party's plea that the arbitral tribunal is incompetent to arbitrate shall be made not later than submission of the statement of defence. The party's participation in appointing an arbitrator shall not preclude it from raising such a plea. The plea that the arbitral tribunal is incompetent to arbitrate shall be made as soon as the matter alleged by the party to be beyond the competence of the arbitral tribunal is raised during the arbitral proceedings. The arbitral tribunal may admit the plea stipulated in this paragraph later on, if it considers such delay justified.

3. The arbitral tribunal may rule on the plea indicated in paragraph 2 of this article by making a partial or final arbitral award.

CHAPTER V. INTERIM MEASURES AND PRELIMINARY RULINGS

Article 20. Interim measures

1. Unless the parties have agreed otherwise, upon request of any of the parties the arbitral tribunal, having notified the other parties, may by its ruling apply interim measures aimed at ensuring the fulfilment of the party's claims and preserving the evidence.

2. Interim measures may include the following:

1) prohibiting a party from participating in certain transactions or performing certain actions;

2) obligating a party to protect property relating to the arbitral proceedings, providing a deposit, bank or insurance guarantee;

3) obligating the party to preserve evidence that may be relevant to the arbitral proceedings.

3. A party requesting the arbitral tribunal to apply the interim measures indicated in items 1 and 2 of paragraph 2 of this article shall prove that:

1) its claims in the action are likely justified; determination of such likelihood shall not affect the right of the arbitral tribunal to make another award or ruling subsequently during the arbitration proceedings;

2) failure to take these measures may render enforcement of the arbitral award considerably more difficult or impossible;

3) interim measures are economic and proportional to the goal to be achieved by such measures.

4. A party requesting the arbitral tribunal to apply the interim measures indicated in item 3 of paragraph 2 of this article shall prove that:

1) the evidence requested to be preserved may be relevant to the case;

2) there is a real threat that upon failure to undertake the interim measures the evidence requested to be preserved will be destroyed or damaged by the other party thus making it unusable during the arbitral proceedings.

5. The arbitral tribunal may obligate the party to notify it immediately of any material change in the circumstances that were taken as a basis for resolving the issue regarding application of interim measures.

Article 21. Preliminary orders

1. Unless the parties have agreed otherwise, a party may request the arbitral tribunal to apply interim measures without notice to the other party by submitting an application for a preliminary order obligating the respective party not to take any actions that may impede the applying of interim measures during the examination of the application for interim measures.

2. The party requesting the arbitral tribunal to make a preliminary order shall prove that:

1) notice to the other party of the application for interim measures may significantly prevent the goals of such measures from being achieved;

2) the grounds indicated in items 1 and 3 of Article 20.3 of this Law are present.

3. The party requesting the arbitral tribunal to make a preliminary order shall reveal to the arbitral tribunal all circumstances that may be relevant in examining this request. The party shall have this duty throughout the term of the preliminary order.

4. Upon making a preliminary order, the arbitral tribunal shall immediately deliver the application for interim measures, the application for a preliminary order, the preliminary order itself and any correspondence of the party applying for the preliminary order and the arbitral tribunal (if any) (including information about oral examination of the application for a preliminary order, if such examination was held) to all the parties according to the procedure established in Article 6 of this Law.

5. The arbitral tribunal shall provide the party in respect of which the preliminary order was made with the possibility to be heard and examine the points of defence of this party in respect of the preliminary order as expeditiously as possible.

6. The preliminary order shall be effective for twenty days following making of the order. During this period, the arbitral tribunal, having heard the party in respect of which the preliminary ruling was made and having examined the points of defence of this party, if any, may apply the respective interim measures.

7. The preliminary order shall be binding upon the parties, however, it shall not be a document subject to enforcement by a court.

Article 22. Revising and repealing rulings on interim measures and repealing of preliminary orders
The arbitral tribunal may, upon request of a party and in exceptional circumstances upon notifying all parties, on its own initiative, revise or repeal the ruling on interim measures or repeal the preliminary order.

Article 23. Securing compensation of losses that might possibly be incurred through the application of interim measures or making of a preliminary order
1. The arbitral tribunal may obligate the party applying for interim measures to provide security for compensation of the other party's losses that might possibly be incurred through the application of interim measures.

2. The arbitral tribunal shall obligate the party applying for a preliminary order to provide security for compensation of the other party's losses that might possibly be incurred through making a preliminary order, unless it finds no grounds for requesting security for compensation of such losses.

Article 24. Compensation of losses that might possibly be incurred through application of interim measures or making of a preliminary order
1. Having applied for interim measures or a preliminary order, the party shall be liable for the losses incurred through application of these interim measures or making of the preliminary order, if it is subsequently found during the arbitral proceedings that the interim measures or preliminary order obtained are groundless.

2. Upon the request of a party, the arbitral tribunal may by its final award obligate the party upon whose request the interim measures were applied to compensate the losses incurred through application of the interim measures.

Article 25. Enforcement of rulings on interim measures and grounds for refusing to issue an enforcement order
1. The ruling of the arbitral tribunal on interim measures shall be a document subject to enforcement.

2. Should the ruling of the arbitral tribunal on interim measures not be complied with, Vilnius District Court shall, upon the party's request and according to the procedure established in the Code of Civil Procedure of the Republic of Lithuania (hereinafter – the Code of Civil Procedure), issue an enforcement order. The application for an enforcement order shall be examined at a court hearing upon notice to the parties to the arbitral proceedings. Failure by the parties to appear at the hearing shall not prevent the court from deciding on the matter of issuing the enforcement order.

3. The party upon whose request Vilnius District Court issued the enforcement order for enforcing the ruling on interim measures shall immediately notify this court of any change or cancellation of the interim measures. Any request for revising or cancelling the enforcement order shall be examined at a court sitting upon notifying the parties to the arbitral proceedings. Failure by the parties to appear at the hearing shall not prevent the court from deciding on the matter of revising or cancelling the enforcement order.

4. Vilnius District Court may refuse to issue an enforcement order only if:

1) insufficient data is presented for determination of the mandatory content of the enforcement order and such deficiency cannot be removed during the examination of the request for the enforcement order in the court;

2) the party against which the enforcement order is requested proves that the arbitral tribunal has not notified it properly of the examination of the matter regarding application of the interim measures thus preventing the party from presenting its own explanations;

3) the arbitral tribunal obviously exceeded its competence in making the ruling on interim measures;

4) the ruling of the arbitral tribunal on securing compensation of losses that might possibly be incurred through application of the interim measures has not been complied with;

5) the arbitral tribunal has revised or cancelled the ruling on interim measures.

5. A separate appeal may be submitted against the ruling of Vilnius District Court on refusal to issue the enforcement order.

Article 26. Recognition or enforcement of foreign arbitral awards or rulings on interim measures and grounds for refusal to recognize or enforce a foreign arbitral award or ruling

1. An arbitral award or ruling on interim measures made in any other state may be recognized and enforced in the territory of the Republic of Lithuania.

2. A party's request to recognize and allow enforcement of the foreign arbitral award or ruling on interim measures shall be submitted to the Court of Appeals of Lithuania. The content of this request shall be subject *mutatis mutandis* to the provisions of Article 51.2 of this Law.

3. The Court of Appeals of Lithuania may by its ruling refuse to recognize or enforce a foreign arbitral award or ruling on interim measures, if:

1) enforcement of such award or ruling in the territory of the Republic of Lithuania is impossible;

2) there are the grounds stipulated in items 2, 3, 4 and 5 of Article 25.4 of this Law.

4. Any appeal against a ruling of the Court of Appeals of Lithuania stipulated in this article shall be subject *mutatis mutandis* to the provisions of Article 51.3 of this Law.

Article 27. Court orders for interim measures and preservation of evidence

1. A party shall have the right to apply to Vilnius District Court for interim measures or preservation of evidence before commencement of the arbitral proceedings or before the formation of the arbitral tribunal. Upon the request of a party, the court may also order interim measures or preservation of evidence after the formation of the arbitral tribunal. In such case, the other party shall have the right according to the procedure established in the Code of Civil Procedure to request security for compensation of losses that might possibly be incurred through application of the interim measures or preservation of the evidence.

2. Refusal by the court to order the interim measures or preservation of the evidence shall not prevent the party from requesting the arbitral tribunal during the arbitral proceedings to order the interim measures or preservation of the evidence.

CHAPTER VI. ARBITRAL PROCEEDINGS

Article 28. General provisions concerning arbitral proceedings

1. The parties to the dispute shall have equal procedural rights in arbitration proceedings. Each of the parties shall have an equal opportunity to justify its claims or points of defence.

2. In compliance with the imperative provisions of this Law, the parties to the dispute may agree on the procedure according to which their disputes will be examined in arbitration.

3. Failing such agreement of the parties regarding the procedure for examination of disputes, the arbitral tribunal may, in compliance with the provisions of this Law, examine the dispute according to the procedure it deems appropriate.

Article 29. Place of arbitral proceedings

1. The parties may agree on the place of arbitral proceedings. Failing such agreement, the place of arbitral proceedings shall be established by the arbitral tribunal taking into consideration the circumstances of the case and convenience for the parties.

2. Notwithstanding the provisions of paragraph 1 of this article, the arbitral tribunal may, unless the parties agree otherwise, gather at any place they deem suitable for arbitrators' consultations, for hearing witnesses, experts or parties, or for the examination of documents, goods or other property.

Article 30. Commencement of arbitral proceedings

Unless the parties agree otherwise, the arbitral proceedings shall be deemed to have been commenced on the day on which the respondent received a request for arbitration or a statement of claim. The request for arbitration or the statement of claim shall contain the names or first and last names of the parties, the essence of the dispute, a reference to the arbitration agreement and the name of the proposed arbitrator. The claim shall comply with the requirements of Article 32 of this Law.

Article 31. Arbitration language

1. Unless the parties agree otherwise, the language or languages to be used during the arbitral proceedings shall be determined by the arbitral tribunal. Unless the parties have agreed on the arbitration language, until the arbitral tribunal determines the arbitration language, the arbitration language shall be deemed the language in which the arbitration agreement is concluded.

2. The arbitration language shall be used for submission to the arbitral tribunal and the permanent arbitral institution of all written documents of the parties, conducting the arbitral proceedings, drawing up of awards, rulings of the arbitral tribunal and the permanent arbitral institution or other documents adopted by the arbitral tribunal and the permanent arbitral institution, unless otherwise determined in the agreement of the parties or the ruling of the arbitral tribunal.

3. The arbitral tribunal may determine other arbitration language at any time during the arbitral proceedings, unless it may result in infringement of the right to be heard of the parties.

Article 32. Claim and statement of defence

1. Within the term agreed by the parties or determined by the arbitral tribunal, the claimant shall indicate the circumstances justifying his/her claim and issues in dispute, appoint an arbitrator (if no arbitrator has been appointed) and state claims in action, while the respondent shall submit his/her points of defence, unless the parties have agreed otherwise.

2. Unless the parties agree otherwise, during the arbitral proceedings, any of them may change or supplement their claims in action or statement of defence, except for cases where the arbitral tribunal recognizes that it is not expedient to allow such changes or additions to be made due to the unreasonably delayed submission thereof.

Article 33. Evidence and burden of proof

1. Unless the parties have agreed otherwise or it is otherwise required under the law applicable to the dispute, each of the parties shall prove the circumstances justifying its claims or points of defence.

2. During the arbitral proceedings, the arbitral tribunal may request the parties to present documents or other evidence relating to the case being examined.

3. The arbitral tribunal shall have the right to refuse to admit evidence which could have been presented earlier during the arbitral proceedings and the presentation of which will delay the arbitral proceedings.

4. Unless the parties agree otherwise, no evidence shall be binding on the arbitral tribunal.

5. Unless the parties agree on the rules of evidence applicable to the arbitral proceedings, such rules shall be determined by the arbitral tribunal. In the absence of a determination of the rules of evidence applicable to the arbitral proceedings, the gathering of evidence and distribution of the burden of proof shall be subject to the provisions of this Law.

6. If a party fails to present evidence as requested by the arbitral tribunal, the arbitral tribunal may make an award based on the available evidence or in exceptional cases evaluate the fact of failure to present the evidence against the defaulting party.

7. The arbitral tribunal shall have the right to establish the admissibility, sufficiency and relevance of any evidence to the case.

Article 34. Oral and written examination of the case

1. Unless the parties have agreed on the form of arbitral proceedings, the arbitral tribunal shall decide on the form of arbitral proceedings. The arbitral proceedings may be held according to oral, written or other procedure. If the parties have agreed that the case will be examined without direct participation of the parties, the arbitral tribunal shall at any time during the arbitral proceedings switch to an oral examination, if so requested by any of the parties to the dispute.

2. The parties shall be notified of all hearings of the arbitral tribunal in advance, with reasonable notice required.

3. All evidence, documents or other information presented by a party to the arbitral tribunal shall be presented to the other party. Evidence, documents or other information received by the arbitral tribunal shall also be presented to the parties.

Article 35. Absence of a party
Unless the parties have agreed otherwise, where a party fails to present a mandatory procedural document or does not take part in the arbitral hearing without a valid reason, the arbitral tribunal shall have the right to proceed with the arbitral proceedings and make an arbitral award based on the evidence available in the case or make procedural decisions stipulated in Article 49 of this Law.

Article 36. Witnesses and experts
1. The arbitral tribunal shall determine the time, place and mode of examination of witnesses and experts.

2. If persons called as witnesses fail to appear or having appeared refuse to be witnesses, the arbitral tribunal may allow the party requesting examination of the witness to apply to Vilnius District Court within the term set by the arbitral tribunal requesting examination of the witnesses according to the procedure established in the Code of Civil Procedure and this Law. Examination of witnesses in Vilnius District Court shall be *mutatis mutandis* subject to the provisions of the ninth clause of Chapter XIII of Section II of the Code of Civil Procedure. During examination of witnesses in court, the arbitral tribunal may stay or postpone the arbitral proceedings.

3. Unless the parties agree otherwise, the arbitral tribunal may:

1) appoint one or several experts to present findings on particular questions given by the arbitral tribunal;

2) request a party to provide any information related to the case to the expert, or to produce, or provide access to, evidence pertaining to the case.

4. Unless the parties have agreed otherwise, if any party requests or the arbitral tribunal so decides, the expert must participate at the hearing and present his/her findings and answer the questions put to him/her by the parties or the arbitral tribunal.

5. The parties shall have the right to request the arbitral tribunal to allow them to examine their own witnesses.

Article 37. Joining of arbitration cases
Arbitration cases may be joined upon agreement of the parties.

Article 38. Assistance of the court in gathering evidence
The arbitral tribunal or a party, upon approval of the arbitral tribunal, shall have the right to apply to Vilnius District Court and request assistance in gathering evidence. Gathering of evidence in court shall be *mutatis mutandis* subject to the provisions of the ninth clause of Chapter XIII of Section II of the Code of Civil Procedure. The arbitrators and the parties shall have the right to take part in any hearing of Vilnius District Court held under the request stipulated in this article and ask questions, present explanations orally or in writing and exercise other procedural rights required for gathering evidence.

CHAPTER VII. MAKING OF AWARDS AND CLOSING OF THE ARBITRATION PROCEEDINGS WITHOUT MAKING AN AWARD ON THE MERITS

Article 39. Substantive law applicable to a dispute

1. The arbitral tribunal shall resolve disputes in accordance with the law selected by the parties as applicable to the dispute. The reference to the applicable foreign law shall mean reference to the national substantive law of the respective state, rather than the conflict of laws rules of that state.

2. If the parties have failed to agree on the applicable law, the arbitral tribunal shall apply the law, which in the justified opinion of the arbitral tribunal, is applicable in resolving a particular dispute, including trade customs (*lex mercatoria*).

3. The arbitral tribunal acts based on the principles *ex aequo et bono* (at equity) or *amiable compositeur* (amicable mediation) only in cases where the parties expressly authorize it to do so.

Article 40. Making of an award by the arbitral tribunal consisting of several arbitrators

1. Unless the parties have agreed otherwise, an arbitral award shall be made by a majority vote of the arbitrators. If there is no majority of votes for making the arbitral award or in case of a tie, the chairman of the arbitral tribunal shall have the casting vote.

2. Notwithstanding the provisions of paragraph 1 of this article, procedural issues of the arbitral proceedings may be solved unilaterally by the chairman of the arbitral tribunal, provided he/she is authorized by the parties or all other arbitrators of the arbitral tribunal for that purpose.

3. If an arbitrator refuses to participate in examining a dispute by the arbitral tribunal without any valid reason, this shall not preclude the remaining arbitrators of the arbitral tribunal from making a legitimate award.

Article 41. Taking effect and enforcement of an arbitral award

1. An arbitral award shall take effect from the moment it is made and shall be binding on the parties.

2. An arbitral award shall be deemed made from the date indicated in the arbitral award.

3. After the arbitral award takes effect, the same parties to the dispute shall not have the right to state a further claim regarding the same subject and on the same grounds.

4. An arbitral award shall be a document subject to enforcement, to be enforced from the moment of taking effect according to the procedure established in the Code of Civil Procedure. If the arbitral award, the place of which is in the Republic of Lithuania, is not executed, the district court of the place of arbitration issues an enforcement order upon the request of the party in accordance with the procedure set out in the Code of Civil Procedure. The examination of the request to issue an enforcement order is conducted in writing.

5. The district court may refuse to issue an enforcement order in case:

1) the data provided is not sufficient to determine the mandatory content of the enforcement order and it is not possible to remedy this defect during the examination of the request to issue the enforcement order before the court;

2) the arbitral award is set aside;

3) there is a ground to refuse to issue an enforcement order, set out in paragraph 6 of article 646 of the Code of Civil Procedure.

6. A separate appeal may be submitted against the ruling of the district court on refusal to issue the enforcement order.

7. Enforcement orders under arbitration awards may be submitted for enforcement within five years after the arbitration award comes into force.

Article 42. Types of arbitral awards

1. The arbitral tribunal may make a final award on the merits, a partial award or an additional award.

2. The arbitral tribunal shall have the right to make orders on procedural matters.

Article 43. Final arbitral award

The arbitral tribunal shall fully resolve the dispute by making its final award.

Article 44. Partial arbitral award

1. The arbitral tribunal shall resolve a part of the dispute by making a partial award.

2. The partial arbitral award shall be final only in respect of the part of the dispute that has been resolved in full.

3. A partial arbitral award may be made:

1) concerning the competence of the arbitral tribunal to examine the dispute (Article 19 of this Law);

2) on independent claims arising from substantive legal relationships;

3) in other cases stipulated by the parties or the arbitral tribunal.

Article 45. Additional arbitral award. Revision and interpretation of an arbitral award

1. An additional arbitral award shall be made to resolve any claims stated during the arbitral proceedings that were not, however, resolved by the arbitral award made. An additional award may also be made to revise or interpret the arbitral award where it is necessary:

1) to correct spelling, arithmetic or other similar mistakes in the arbitral award;

2) to elucidate the substantive provisions of the arbitral award or a specific part thereof;

3) to resolve the issue of distribution of the arbitration costs.

2. The additional arbitral award may be made on the initiative of the arbitral tribunal or upon request of an interested party. The arbitral tribunal may on its own initiative make an additional award within thirty days after the final arbitral award has been made. An interested party shall have the right to submit a request for an additional arbitral award not later than thirty days following the day of receipt of the arbitral award.

3. The additional arbitral award shall be made within thirty days after the request for this award by the interested party has been received. The additional award shall form part of the arbitral award and shall be subject to the provisions of Article 46 of this Law.

4. The arbitral tribunal shall have the right to extend or renew the terms set in paragraphs 2 and 3 of this article.

5. The additional award may not alter the essence of the arbitral award.

Article 46. Form and content of the award of the arbitral tribunal

1. An award of the arbitral tribunal shall be in writing and signed by the arbitrators or the arbitrator. The arbitral award shall be legitimate if signed by a majority of arbitrators with the other arbitrators indicating their reasons for not signing. An arbitrator or arbitrators disagreeing with the opinion of the majority shall have the right to present their separate opinion in writing which shall be attached to the arbitral award. The parties may agree that the chairman of the arbitral tribunal may sign the award unilaterally.

2. The arbitral award shall contain the reasoning on which it is based, unless the parties have agreed that reasoning is not necessarily to be provided or the arbitral award is made on agreed terms under item 1 of Article 47.1 of this Law.

3. The arbitral award shall state the date and place of making it. The arbitral award shall be deemed to have been made on the date and at the location as indicated in the arbitral award.

4. Each party shall be given a copy of the signed arbitral award. Delivery of the arbitral award may be postponed until the arbitration costs have been paid in full.

Article 47. Settlement of a dispute

1. The parties shall have the right to terminate the arbitration case by a settlement agreement. Upon request by the parties, the arbitral tribunal shall have the right:

1) to approve the settlement agreement concluded by the parties by an arbitral award; or

2) to make a ruling on termination of the arbitration proceedings.

2. The arbitral award approving the settlement agreement concluded by the parties shall be a final arbitral award.

Article 48. Decision on arbitration costs

1. Arbitration costs shall include:

1) the arbitrators' fees and other reasonable expenses incurred by them;

2) expenses incurred by the permanent arbitral institution or other reasonable expenses incurred under agreements of the parties;

3) reasonable expenses incurred by the parties.

2. Fee rates applied by the permanent arbitral institution, procedure for calculation, payment and repayment of arbitration costs shall be established in the regulations of arbitral procedure and/or agreement of the parties not contradicting the regulations of arbitral procedure. In the case of *ad hoc* arbitration the amount of arbitrators' fees, the procedure for calculation, payment and repayment of the arbitration costs shall be established by the parties' agreement and/or in the *ad hoc* arbitration rules.

3. Unless the parties have agreed otherwise, in view of the circumstances of the case, and the conduct of the parties, the arbitral tribunal shall allocate the arbitration costs between the parties in its arbitral award.

4. Whenever the case is closed on any of the grounds indicated in this law, the arbitral tribunal shall have the right to resolve the issue of allocation of the arbitration costs on its own initiative.

Article 49. Termination of arbitral proceedings

1. The arbitral proceedings are terminated by a final arbitral award or a ruling made by the arbitral tribunal on the grounds stipulated in paragraphs 2 and 4 of this article.

2. The arbitral tribunal shall make a ruling to terminate the arbitral proceedings where:

1) the case may not be examined in arbitration;

2) a judgment of the court has taken effect in respect of the dispute between the same parties, regarding the same subject and on the same grounds;

3) an arbitral award has taken effect in respect of the dispute between the same parties, regarding the same subject and on the same grounds;

4) the claimant has withdrawn its claim, unless the respondent objects to such withdrawal of the claim and the arbitral tribunal recognizes the legal interest of the respondent in finally resolving the dispute;

5) the parties have concluded a settlement agreement or the arbitral tribunal has decided to terminate the arbitration proceedings by a ruling according to the procedure established in item 2 of Article 47.1 of this Law;

6) a natural person who was one of the parties to the proceedings has died and succession of his/her rights is not possible;

7) a legal body that was one of the parties to the proceedings has been liquidated and succession of its rights is not possible;

8) it is impossible to examine the arbitration case and the claimant has no right to apply to arbitration in future regarding resolution of the same dispute.

3. Upon termination of the arbitral proceedings, the parties shall not be allowed to make a repeat application to arbitration regarding a dispute between the same parties, regarding the same subject and on the same grounds.

4. The arbitral tribunal shall have the right to make a ruling on not proceeding with a request for arbitration or the claim where:

1) the request for arbitration or the claim was filed by a legally incapable natural person;

2) the request for arbitration or the claim was filed on behalf of the claimant by a person not authorized to plead the arbitration case;

3) another arbitral tribunal is already examining the dispute between the same parties, regarding the same subject and on the same grounds;

4) having not requested that the case be examined in their absence, both parties have failed to appear without valid reasons;

5) the person who has filed the request for arbitration or the claim has failed to pay the determined arbitration costs;

6) the claimant does not file a claim in accordance with the requirements of Articles 30 or 32 of this Law;

7) the parties who are not subject to bankruptcy proceedings ask the arbitral tribunal not to examine the dispute in arbitration based on paragraph 8 of this article;

8) the arbitral tribunal decides that the arbitration case is not subject to further examination or its examination is impossible.

5. A decision not to proceed with the request for arbitration or the claim shall not preclude the parties from repeat applications to arbitration regarding resolution of the dispute.

6. A ruling of the arbitral tribunal shall take effect from the moment it is made and it must be complied with by the parties.

7. The institution of bankruptcy proceedings against a party to the arbitration agreement or application of other bankruptcy proceedings against a party to the

arbitration agreement shall have no impact on the arbitration proceedings, the validity and application of the arbitration agreement, the possibility of resolving the dispute in arbitration or the competence of the arbitral tribunal to resolve the dispute, except for the cases stipulated in paragraphs 8 and 9 of this article.

8. A company against which bankruptcy proceedings are instituted may not conclude a new arbitration agreement. Property claims against a party to the arbitration agreement against which bankruptcy proceedings are instituted shall be examined in the court instituting the bankruptcy proceedings, upon request of all parties to the arbitration agreement against which no bankruptcy proceedings are instituted.

9. If property claims against the party to the arbitration agreement against which bankruptcy proceedings are instituted are examined in arbitration, the arbitral tribunal shall provide a reasonable period of time to the bankruptcy administrator to become familiar with the arbitration proceedings and prepare for its examination, and the claimant shall notify the court examining the bankruptcy proceedings of the claims being examined in arbitration and present explanations justifying such claims and schedule of evidence. The arbitral tribunal shall in its award determine the amount of the mutual claims of the parties. Upon making the arbitral award, the court examining the bankruptcy proceedings shall approve the mutual claims of the parties determined in the arbitral award. The court examining the bankruptcy case may refuse to approve the creditor's claims examined in arbitration until the arbitral award approving the amount of those claims has been made; however, the court shall approve all undisputed claims (or the undisputed part thereof) according to the procedure established by the Enterprise Bankruptcy Law of the Republic of Lithuania.

10. The powers of the arbitral tribunal shall expire upon making the final arbitral award (except for the cases stipulated in Article 45 and Article 50.6 of this Law), termination of the arbitral proceedings or decision not to proceed with the request for arbitration or the claim.

CHAPTER VIII. SETTING ASIDE THE ARBITRAL AWARD

Article 50. Grounds and procedure for setting aside the arbitral award

1. A party may seek to have an arbitral award set aside by submitting an application to the Court of Appeals of Lithuania on the grounds stipulated in this article.

2. Upon admitting the application regarding the arbitral award, the Court of Appeals of Lithuania may, at the request of one of the parties, suspend enforcement of the arbitral award in exceptional cases.

3. The Court of Appeals of Lithuania may set aside an arbitral award when the party submitting the application presents evidence demonstrating that:

1) one of the parties to the arbitration agreement was legally incapable under the applicable law or the arbitration agreement is not effective under the law applicable by the parties' agreement, or if the parties have not agreed regarding the law applicable to the arbitration agreement, according to the laws of the state in which the arbitral award was made; or

2) the party against which the arbitral award is intended to be enforced was not properly notified of the appointment of the arbitrator or the arbitral proceedings or otherwise was not provided with a possibility to present its own explanations; or

3) the arbitral award was made in respect of a dispute or a part of a dispute that was not referred to arbitration. If the part of the dispute referred to arbitration may be separated, that part of the arbitral award resolving the issues referred to arbitration may be recognized and enforced; or

4) the composition of the arbitral tribunal or the arbitration proceedings did not meet the agreement of the parties and/or the imperative provisions of this Law; or

5) the dispute may not be referred to arbitration according to the laws of the Republic of Lithuania; or

6) the arbitral award contradicts the public policy of the Republic of Lithuania.

4. The Court of Appeals of Lithuania verifies *ex officio* whether the challenged arbitral award contradicts the grounds established in items 5 and 6 of paragraph 3 of this article.

5. The Court of Appeals of Lithuania will refuse to admit any application filed more than one month after the making of the arbitral award, or, if the application was filed in respect of an additional award stipulated in Article 45 of the Law, after the day on which the arbitral tribunal made the additional award.

6. Upon receipt of an application regarding the arbitral award, the Court of Appeals of Lithuania may by its reasoned ruling, if so requested by a party to the dispute, suspend the proceedings regarding setting aside the arbitral award in order for the arbitral tribunal to be able to resume the arbitral proceedings or take other actions which, in the opinion of the Court of Appeals of Lithuania, would remove the basis for setting aside the arbitral award.

7. The application regarding the arbitral award has to be examined before the Court of Appeals of Lithuania within no more than ninety days after the application is admitted in the Court of Appeals of Lithuania. The examination of this application is conducted in writing.

8. The ruling of the Court of Appeals of Lithuania stipulated in paragraph 6 of this article regarding staying of proceedings and the ruling regarding setting aside or refusal to set aside the arbitral award may be appealed against to the Supreme Court of Lithuania according to the procedure established by the Code of Civil Procedure.

CHAPTER IX. RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article 51. Recognition and enforcement of foreign arbitral awards

1. An arbitral award made in any state party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall be recognized and enforced in the Republic of Lithuania according to the provisions of this article and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

2. A party requesting recognition or recognition and enforcement of a foreign arbitral award shall submit a request to the Court of Appeals of Lithuania. This request shall be accompanied by the originals of the foreign arbitral award in respect of which recognition or recognition and enforcement is sought and the arbitration agreement or properly certified copies thereof. If the arbitral award or the arbitration agreement is not drawn up in the official language of the state, the party making the application shall present properly certified translations of these documents into the official language of the state.

3. The Court of Appeals of Lithuania shall make a ruling in respect of a request for recognition or recognition and enforcement of a foreign arbitral award. This ruling shall come into effect from the moment it is made. The ruling of the Court of Appeals of Lithuania may be appealed against to the Supreme Court of Lithuania within thirty days following the day on which it was made. Filing of the appeal regarding the ruling of the Court of Appeals of Lithuania stipulated in this paragraph and the proceedings under this appeal shall be subject *mutatis mutandis* to the provisions of Chapter XVII of the Code of Civil Procedure.

4. Once the ruling regarding recognition or recognition and enforcement of the foreign arbitral award takes effect, the foreign arbitral award shall be a document subject to enforcement according to the procedure established in the Code of Civil Procedure.

ALGIRDAS BRAZAUSKAS
PRESIDENT OF THE REPUBLIC OF LITHUANIA

ANNEX II

THE CODE OF CIVIL PROCEDURE OF THE REPUBLIC OF LITHUANIA (excerpts)*

PART I. GENERAL PROVISIONS

(…)

CHAPTER II. PRINCIPLES OF CIVIL PROCEDURE

Article 9. Access to Court Hearings

1. The hearings of matters are public in all courts. A court may pass a motivated ruling to hear a case *in camera*: to protect private or family life of a person, also when a publicly heard matter may disclose a state, professional or commercial secret or when the court takes measures to reconcile the parties.

2. At a court session held *in camera* the participants of the proceeding, and, if necessary, also witnesses, interpreters and translators and experts may be present.

3. Court hearing *in camera* shall be in accordance with all procedural regulations. Substantive provisions of a court judgment shall be announced publicly except for cases on adoption and cases on the custody of a child or the provision of care, the designation of a child's guardian or curator.

4. Persons under sixteen years of age shall not be present at court sessions, unless they are participants or witnesses in the matter.

5. A court may use any technical devices or appliances to record court proceedings and evidence and examine same. Participants in the proceeding may perform sound recording in a public court session to record the court session in order to execute their procedural functions. Participants in the proceeding shall inform the chairman of the session about the recording. Participants in the proceeding, who fail to inform the court about the performed sound recording, shall be prosecuted under the laws of the Republic of Lithuania. Other persons are prohibited from filming, taking photographs, making sound or video recordings or using other technical devices and appliances during the court session. Persons, violating this prohibition during the court session, shall be prosecuted under the laws.

Article 10. Access to Case Files

1. All case files and files of enforcement proceedings, except for the files of cases heard during a session *in camera*, shall be public and available to persons not party to the proceeding. Such persons have the right, as provided by law, to make copies and extracts of the case file. The said persons are qualified for the right after the coming into force of the judgment or final ruling on court proceedings, and if the case can be heard in cassation – after it has been heard in cassation or after the expiry of the term

* Approved by Decree No. IX-743, dated 28 February 2002. As amended; in effect as from 1 July 2017. Unofficial translation by Valiunas Ellex.

for appeal in cassation. The right to access the file of enforcement proceedings comes into effect when the judgment is enforced.

2. Upon passing a judgment or final ruling on court proceedings in a public court session, the court shall have the right, at the request of participants in a proceeding or on its own initiative, to determine by a motivated ruling that a case file or a part thereof is not public, when it is necessary to protect private life, family life or property, keep information about a person's health confidential, or also when there are grounds to deem that a state, official, professional, commercial or other secret protected by laws may be disclosed. A separate appeal against a court ruling, which denied the request, may be submitted.

3. A person, wishing to access the file of a decided case, shall submit an application in the set form to the chairman of the respective court and indicate his/her name, surname, place of residence and identification number as well as the purpose of accessing the file. The procedure for accessing the file of a decided case is set forth by the Minister of Justice after coordinating the issue with the Office of the Chief Archivist of the Republic of Lithuania.

4. Case files containing a state or official secret shall be made available to persons afforded such a right in compliance with laws and for those who need such information to execute their functions. A person who provides documents or material to the court including data containing professional or commercial secrets, can request the court not to make them available for viewing and copying. The court will make a ruling in this respect.

(…)

CHAPTER III. CASES TO BE HEARD IN COURTS

Article 22. Referral of Civil Cases to Courts

1. Disputes in connection with or arising out of civil, family, labour, intellectual property, competition, bankruptcy, restructuring, public auction and other private legal relationships are referred to courts for investigation in the procedure set forth by this Code. In cases prescribed by laws, preliminary dispute resolution in extrajudicial procedure may be established.

2. Courts also investigate cases by way of special legal proceedings and petitions regarding acceptance and enforcement of judgments by foreign courts and arbitral awards in the Republic of Lithuania, also petitions regarding arbitral institutions operating in the territory of the Republic of Lithuania.

Article 23. Referral of a Dispute to Arbitration

1. Parties may agree to refer any dispute of fact or law to arbitration, except disputes that pursuant to laws cannot be resolved by arbitration.

2. In cases, provided by the Law on Commercial Arbitration of the Republic of Lithuania, courts provide legal aid to the parties of arbitral proceedings and to the arbitral court. The competence of courts in arbitral proceedings is provided for by this Code and the Law on Arbitration.

Article 24. Priority of Case Referral to Court

1. If several interrelated claims are joined in a single case, and at least one of them is referred to a court, then all claims shall be investigated in a court.

2. In case of any doubts or conflict of laws regarding whether a specific dispute should be referred to a court or any other institution, the dispute shall be investigated in a court.

3. Provisions of paragraphs 1 and 2 of this Article do not apply in case the parties have entered into an agreement to refer the settlement of the dispute to arbitration.

(…)

CHAPTER V. PARTICIPANTS IN PROCEEDINGS

(…)

Article 38. Capacity to take Civil Proceedings

1. Ability to implement one's rights in a court and authorize a representative to lead a case (capacity to take civil proceedings) is vested upon legal persons and natural persons of lawful age – eighteen years, minors who have concluded marriage in accordance with laws, also minors declared fully capable (emancipated) in statutory procedure.

2. According to the law, legal representatives of minors from fourteen to eighteen years of age as well as natural persons, whose civil capacity is restricted in a particular field, shall respectively be their parents, foster-parents or guardians. Under-age or natural persons, whose civil capacity is restricted, who are parties or third persons in a case must be informed about the court proceedings and encouraged to participate.

3. Under-age persons from fourteen years of age shall have the right to independently appeal to a court regarding defence of their rights or interests protected by laws, if a dispute arises out of or in connection with relationships where they have full civil capacity.

4. Rights and interests protected by laws of under-age persons under fourteen years of age and natural persons legally incapacitated in a particular field shall be defended in a court by their representatives in accordance with law – respectively by their parents, foster-parents, guardians, except for cases provided for in this Code.

(…)

CHAPTER XI. PROCEDURE

(…)

Section IV. Statement of Claim

(…)

Article 137. Acceptance of a Statement of Claim

1. A court shall resolve a question of the acceptance of a statement of claim by making a resolution. This procedural action shall be considered the initiation of a civil case.

2. A court shall refuse to accept a statement of claim if:

1) the action should not be heard in court;

2) the action is outside the jurisdiction of that court;

3) the interested person, after petitioning the court, failed to comply with the procedure established by the laws for the prior extrajudicial adjudication of that category of cases;

4) there is an effective court or arbitration court judgment made concerning a dispute between the same parties concerning the same subject matter and on the same grounds or a court ruling to accept the plaintiff's waiver of the statement of claim or to approve the peaceful settlement agreement between the parties;

5) there is a case filed with the court concerning a dispute between the same parties concerning the same subject matter and on the same grounds;

6) the parties have concluded an agreement to hand the dispute over to arbitration;

7) the statement of claim is filed by a natural person legally incapable in a particular field;

8) a party that is not authorized to conduct the case has filed the application in the name of the interested party.

3. The court, in refusing to accept an application, shall make a reasoned ruling to that effect. In the ruling, the court must indicate to which institution or court the applicant needs to petition if the case should not be heard in the court or is not within the jurisdiction of that court, or how to eliminate the circumstances precluding the acceptance of the statement of claim. The court ruling concerning the acceptance of a statement of claim must be made no later than within ten days after the corresponding statement of claim was registered with the court. If it is requested in the statement of claim to apply interim security measures, the question of accepting the statement of claim must be decided mutatis mutandis applying the provisions of Article 147 of the Code. A copy of the court ruling whereby the court refuses to accept the statement of claim, as well as the statement of claim and its annexes (except, when they are sent via electronic media), no later than within three days after the ruling to refuse to accept the statement of claim, shall be served or sent to the applicant.

4. The refusal of a court to accept a statement of claim shall not prevent the petitioning of the court again with the same statement of claim if the circumstances precluding the acceptance of the statement of claim are eliminated or disappear.

5. A separate appeal may be filed concerning a court ruling whereby a court has refused to accept a statement of claim.

6. A judge, after accepting an application about the fact of the initiation of a civil case concerning the legal status of an object that can be registered or the rights in rem to it, no later than the next business day shall notify thereof the manager of the public register where the object or the rights in rem to it are registered. The judge, after having accepted the application concerning initiation of a bankruptcy or restructuring case, no later than the next business day shall inform the responsible institution commissioned by the Government.

(…)

CHAPTER XII. COURT HEARINGS. THE USE OF ELECTRONIC COMMUNICATION DEVICES IN COURT PROCEEDINGS

(…)

Section II. Suspension of Proceedings

Article 163. Obligatory Suspension of Proceedings
A court must suspend proceedings in the following instances:

1) when an individual party dies or a corporate party is dissolved, if legal relations concerned in the dispute allow the transfer of rights;
2) when a party becomes incapacitated in a particular field;
3) when the hearing of a particular case is impossible before another case is decided in the civil, criminal or administrative procedure;
4) when a case is heard whereby property claims are raised against the defendant, and it turns out that satisfaction of the same property claims is related to proceedings in a criminal case;
5) when a case is heard whereby property claims are raised against the defendant, and it turns out that bankruptcy or restructuring proceedings have been instituted against the defendant;
6) when a case is heard whereby property claims are raised against a commercial bank, and it turns out that the bank has an interim receiver appointed by the Bank of Lithuania;
7) when a court applies to the Constitutional Court in the procedure and on the bases defined in Article 3, paragraph 3 of the Code;
8) when a court applies to the Administrative Court in the procedure and on the bases defined in Article 3, paragraph 4 of the Code;
9) when the court turns to a competent judicial institution of the European Union on the bases defined in Article 3, paragraph 5 of the Code;
10) in other instances set forth by law.

(…)

CHAPTER XIV. CONTENTIOUS PROCEEDINGS

Section I. Preparation for Civil Hearing in Court

(…)

Article 231. Conciliatory proceedings
1. After the essence of the dispute is identified in a preliminary session, the court shall suggest to both parties that they come to a mutually acceptable compromise agreement and close the case in a peaceful settlement. The court may take measures to reconcile the parties. Upon request of the parties, in accordance with the procedures set by the Council of Judges, judicial conciliatory mediation can be commenced. The mediator cannot take part in the judicial proceedings concerning the merits.

2. Conciliation proceedings may be applied to the entire dispute or any part thereof (individual claims).

3. A peaceful settlement of the case in the preliminary session shall be approved by a ruling in the procedure set forth in Article 140, paragraph 3, of the Code.

4. Should the parties fail to settle the case, the court will consider the opinions of the participants in the proceedings, prepare the case for court hearing and appoint the venue and time of the hearing that shall be notified to the participants in the proceeding.

5. In cases when during the preliminary hearing it turns out that additional actions of preparation for court hearing are not necessary, the court is entitled to start the oral hearing and resolve the case on the merits right after the preliminary court session without passing a ruling specified in Article 232 below. If this is the case, the preliminary hearing shall proceed as the court hearing.

(…)

PART II. PROCEEDINGS IN COURTS OF FIRST INSTANCE

(…)

CHAPTER XV. DECISION AND RESOLUTIONS IN COURTS

(…)

Section III. Termination of Proceedings

Article 293. Grounds for Termination of Proceedings

The court shall terminate the proceedings:

1) if the case is not subject to investigation by the court according to civil proceedings, except when the case falls within the jurisdiction of the Administrative Court;

2) if the plaintiff or the petitioner has not complied with the procedure for prior extrajudicial investigation of the dispute established by the law for cases of the said category and it is no longer possible to have recourse to this procedure;

3) if the court's judgment adopted in relation to a dispute between the same parties thereto, regarding the same subject matter and on the same grounds, or a court ruling to accept the plaintiff's withdrawal of the claim or to approve a peaceful settlement agreement between the parties has become effective;

4) if the plaintiff has withdrawn his claim and the court has allowed the withdrawal;

5) if the parties have entered into a peaceful settlement agreement and the court has approved it;

6) if the arbitral award passed in relation to a dispute between the same parties thereto, regarding the same subject matter and on the same ground has become effective;

7) if, upon the demise of a natural person who was one of the parties to the proceedings, the legal relation of the dispute precludes legal succession;

8) if, upon the liquidation of a legal person who was one of the parties to the proceedings, the legal relation of the dispute precludes legal succession;

9) in other cases provided for by this Code.

(…)

Section IV. Leaving the Petition Unconsidered

Article 296. Grounds for leaving a Petition Unconsidered

1. The court shall leave a petition unconsidered:

1) if the plaintiff or the petitioner failed to observe, upon petition to the court, the procedure for preliminary extra-judicial investigation of the case prescribed for cases of the category and the possibility of compliance with the procedure still exists;

2) if the petition has been filed by a natural person legally incapacitated in a particular field;

3) if the petition has been filed on behalf of the plaintiff or petitioner by a person not authorized to conduct the proceedings;

4) if a dispute between the same parties regarding the same dispute and on the same ground is pending before the court;

5) if the defendant does not request a judgment *in absentia* in a case provided for in Article 246 paragraph 1 of this Code;

6) if both parties did not request that the case be heard in their absence and failed to appear without any good reason;

7) if the person who filed the petition has failed to pay the stamp duty of a fixed amount;

8) if several claims have been filed and the stamp duty has been paid only for some of them – to the extent that the petition concerns claims in respect of which stamp duty has not been paid;

9) if the parties had concluded an agreement to bring their disputes to arbitration;

10) in the cases indicated in Article 139 paragraph 1 of this Code;

11) if it is found at the case hearing in the court of first instance that the petition does not meet the requirements set for the contents of a claim;

12) in other cases provided for in this Code and the Civil Code.

2. A claim shall be left unconsidered with reference to paragraph 1, §§ 7, 8 and 11 hereof only if the party fails to eliminate the shortcomings within a specified period and only at the court of first instance.

3. A claim may be left unconsidered with reference to paragraph 1, § 3 hereof only if the party fails to rectify the shortcomings within the time period set by the court.

(…)

PART VI. ENFORCEMENT PROCEDURES

(…)

CHAPTER LVIII. PECULIARITIES OF EXECUTION OF JUDGMENTS OF FOREIGN COURTS AND ARBITRATION TRIBUNALS

Article 773. General Procedure for Execution of Judgments of Foreign Courts and Arbitration Tribunals

1. Procedure for execution of judgments prescribed in this Chapter shall apply exclusively in the settlement of issues related to execution of judgments of foreign courts and arbitration tribunals.

2. Judgments of foreign courts and arbitration tribunals shall be executed in the Republic of Lithuania under the general procedure, unless specified otherwise in this Chapter.

Article 774. Procedure for Issue of Enforceable Instruments and Submission Thereof for Execution

Enforceable instruments based on judgments of foreign courts and arbitration tribunals recognized and permitted for execution in the Republic of Lithuania shall be issued by the Lithuanian Court of Appeals which shall send them to the plaintiff (recoverer) if the latter specifies in the application to recognize the judgment that such recognition is required for enforcement of the judgment in the Republic of Lithuania.

Article 775. Enclosures to Enforceable Instruments

Enclosures to the submitted enforceable instrument shall contain a certified copy of the ruling whereby the judgment of a foreign court or arbitration tribunal is recognized and sanctioned for execution in the Republic of Lithuania, a certified copy of the foreign court judgment with its translation into Lithuanian, certified according to the law (if the international agreement sets forth that judgments shall be submitted translated into the Lithuanian language).

Article 776. Recovery of Payments Indicated in Foreign Currency

Amounts indicated in foreign currency shall be recovered in *euros* at an exchange reference rate between *euro* and the foreign currency published by the European Central Bank on the date of rendering the judgment. In case the exchange reference rate between *euro* and foreign currency is not published by the European Central Bank, amounts indicated in foreign currency shall be recovered in *euros* at an exchange rate between *euro* and foreign currency fixed by the Bank of Lithuania on the date for rendering the judgment.

Article 777. Applications Concerning the Execution in Stages or the Postponement of Execution of Judgments of Foreign Courts and Arbitration Tribunals

Applications concerning the execution in stages or the postponement of execution of judgments of foreign courts and arbitration tribunals shall be considered by the Lithuanian Court of Appeals.

Article 778. Return of Enforceable Document

1. If a debtor leaves the Republic of Lithuania for residence in another country or if his place of residence is unknown, the execution proceedings shall be closed and enforceable instruments shall be returned to the Lithuanian Court of Appeals and filed in the case regarding recognition of the judgment of the foreign court or arbitration tribunal.

2. When returning the enforceable instrument to the Court of Appeals the bailiff shall notify this to the plaintiff (recoverer). The bailiff shall also inform the plaintiff about recoveries made in accordance with that enforceable instrument in the Republic of Lithuania. The plaintiff shall be entitled to apply to the Lithuanian Court of Appeals for repeated submission of the enforceable instrument for execution.

Article 779. Search of a Debtor in the Process of Execution of Judgments of Foreign Courts or Arbitration Tribunals
A debtor may be declared wanted in the Republic of Lithuania in the procedure specified in Article 620 of this Code and only on written request of the plaintiff.

PART VII. INTERNATIONAL CIVIL PROCEDURE

CHAPTER LIX. JURISDICTION AND APPLICATION OF LEGAL RULES

Section I. General Provisions

Article 780. Application of Standards
Provisions of Part VII of this Code shall apply unless an international agreement to which the Republic of Lithuania is a party governs relevant relations otherwise.

Article 781. Priority of National Jurisdiction
1. If at the moment of lodging a claim the case falls under the jurisdiction of courts of the Republic of Lithuania, this jurisdiction shall remain regardless of any later changes.

2. If according to the rules of jurisdiction set in this Code Lithuanian courts have a remit to hear civil cases, this remit shall not disappear when the same case is heard in a foreign court.

Article 782. Consequences of Non-jurisdiction
The court hearing the case must on its own initiative check whether the case falls under the jurisdiction of courts of the Republic of Lithuania. If after institution of the proceedings the court states that the case is beyond the jurisdiction of Lithuanian courts, the petition shall be left unconsidered.

Article 783. Jurisdiction
1. District courts shall hear civil proceedings as courts of first instance, when a foreign country is one of the parties.

2. The Vilnius District Court shall hear civil proceedings regarding inter-country adoption as a court of first instance.

3. A claim against a defendant who has no place of residence in the Republic of Lithuania may be lodged according to the *situs* of his property or the last known place of residence in the Republic of Lithuania.

4. Civil proceedings may be referred for hearing in a foreign court based on an international agreement to which the Republic of Lithuania is a party and in the procedure prescribed therein.

5. A court ruling to refer the case for hearing by a foreign court may be appealed against through filing a separate appeal.

Section II. General Rules of National Jurisdiction

Article 784. Jurisdiction of Proceedings Regarding Family Legal Relations

1. Family proceedings shall fall under the jurisdiction of courts of the Republic of Lithuania if at least one of the spouses is a citizen of the Republic of Lithuania or a stateless person with permanent place of residence in the Republic of Lithuania.

2. When both spouses are permanent residents of the Republic of Lithuania, their family proceedings shall be heard exclusively by courts of the Republic of Lithuania.

3. Courts of the Republic of Lithuania shall have a remit to hear family proceedings in cases where both spouses are foreigners permanently residing in the Republic of Lithuania.

Article 785. Jurisdiction of Proceedings Regarding Legal Relations between Parent and Child

1. Courts of the Republic of Lithuania shall have exclusive jurisdiction over proceedings regarding legal relations between parent and child or adoption legal relations if any of the parties is a citizen of the Republic of Lithuania or a stateless person with permanent place of residence in the Republic of Lithuania.

2. When both parties are permanent residents of the Republic of Lithuania, their cases specified in paragraph 1 above shall be heard exclusively by courts of the Republic of Lithuania.

3. Courts of the Republic of Lithuania shall have a remit to hear proceedings regarding legal relations between parent and child or adoption legal relations in cases where both parties are foreigners permanently residing in the Republic of Lithuania.

Article 786. Hearing of Proceedings Regarding in rem Legal Relations

Courts of the Republic of Lithuania shall have exclusive jurisdiction to investigate cases regarding *in rem* legal relations connected with an immovable object located in the Republic of Lithuania.

Section III. Rules of National Jurisdiction in Litigation Proceedings

Article 787. Principles

1. Matters to be heard in litigation proceedings, but omitted in Part VII, Chapter LIX, Section II, of this Code shall be attributed to the jurisdiction of courts of the Republic of Lithuania, if:

1) at the moment of filing a claim the defendant is in Lithuania, has his permanent place of residence or resides in Lithuania;

2) the defendant is a holder of property or ownership rights in Lithuania;

3) the subject matter of litigation is a thing or inheritance located in Lithuania or an obligation that has occurred or should be performed in Lithuania.

2. The parties may agree in writing to have property disputes resolved in courts of the Republic of Lithuania.

Article 788. Agreement on Limitation of Competence of Lithuanian Courts

1. Entities engaged in economic-commercial activities may agree in writing to have disputes arising out of contractual legal relations investigated in courts outside Lithuania, if such agreement does not contravene the law of the country to which courts' discretion investigation of the dispute is intended to be referred. The mentioned

agreement is not allowed for proceedings falling under exclusive jurisdictions of courts of the Republic of Lithuania.

2. The agreements mentioned in paragraph 1 above shall be taken into consideration by the court only on request of the party concerned. Such request may be filed before commencement of hearing of the case on its merits.

Section IV. Rules of National Jurisdiction in Special Proceedings

Article 789. Principles

1. Courts of the Republic of Lithuania shall have exclusive jurisdiction over the hearing of proceedings concerning the declaration of a natural person as incapable in a particular field or of limited active capacity in a particular field, dead or missing, if such person is a citizen of the Republic of Lithuania or a stateless person with permanent place of residence in the Republic of Lithuania.

2. Courts of the Republic of Lithuania shall be entitled to declare a foreign person as dead or missing if:

1) a person entitled to file a relevant application to the court has a permanent place of residence in the Republic of Lithuania;

2) the foreigner was residing in the Republic of Lithuania or had property located in the Republic of Lithuania.

3. Other special proceedings shall be also attributed to the remit of Lithuanian courts if at least one participant in the proceedings is a citizen of the Republic of Lithuania.

Section V. Proceedings beyond Jurisdiction of Courts of the Republic of Lithuania

Article 790. Persons Non-qualified as Defendants

1. Persons enjoying diplomatic immunity and their family members may not be defendants in courts of the Republic of Lithuania.

2. The provision in paragraph 1 shall not apply if:

1) a dispute arises in relation to an immovable object located in the Republic of Lithuania and held by the persons mentioned in paragraph 1 of this Article or relevant international organizations;

2) a dispute arises out of inheritance legal relations;

3) a dispute arises out of other economic relations where persons mentioned in paragraph 1 of this Article above are not involved as persons enjoying diplomatic immunity.

3. Persons may not be qualified as defendants in courts of the Republic of Lithuania when claims are filed against them regarding performance of their official functions and the mentioned persons are:

1) civil servants performing consular functions on behalf of other countries regardless of their citizenship;

2) foreign administration or technical employees of diplomatic missions or consulates of foreign countries or other persons equivalent to the aforesaid by the power of international agreements, laws or international practices.

4. The provisions of paragraph 3 of this Article shall not apply to civil servants performing consular functions, as well as administrative and technical staff members of consulates, if a claim against them is filed for damages made by a motor vehicle.

Article 791. Non-Application of Exceptions

1. Exceptions specified in paragraphs 1 and 3 of Article 790 of the Code shall not apply in cases when upon commissioning persons the state clearly waives application of immunity to them.

2. Waiver of immunity to officers of international organizations can be declared exclusively by such international organizations.

3. When persons mentioned in paragraphs 1 and 3 of Article 790 of the Code file a claim in a court of the Republic of Lithuania, a counterclaim against them can be filed in the procedure stipulated by this Code.

Article 792. Prohibition to Perform Actions of Execution

1. Persons mentioned in paragraphs 1 and 3 of Article 790 of this Code shall not be exposed to any actions of execution except for cases when they can be defendants in courts of the Republic of Lithuania.

2. Persons mentioned in paragraphs 1 and 3 of Article 790 of this Code may be exposed to actions of execution if appropriate states or international organizations declare, in accordance with Article 791 above, waiver of immunity also in respect of the process of execution.

3. Performance of the actions of execution shall be prohibited in the premises of diplomatic representative offices, missions, consulates of foreign countries as well as residences of the persons mentioned in paragraph 1 of Article 790 of this Code, except for cases when the head officer of the diplomatic representative office or mission agrees with the mentioned performance.

CHAPTER LX. PROCEEDINGS

Section I. General Provisions

Article 793. Civil Legal Capacity and Active Legal Capacity in Respect of Proceedings

1. Legal capacity and active legal capacity of foreign persons and stateless persons is qualified in compliance with provisions of this Code. Foreign persons without active civil legal capacity or with restricted active legal capacity in respect of proceedings according to laws of their respective country shall be considered as having active legal capacity in respect of proceedings if they meet the requirements specified in Article 38 of the Code.

2. Based on mutuality, lawyers may be permitted to represent foreign persons specified in paragraph 1 of this Article in courts of the Republic of Lithuania if such foreign persons are citizens of relevant countries.

Article 794. Plaintiff's Duty to Ensure Compensation of Litigation Costs

1. On request of a defendant, a plaintiff who is a natural or legal foreign person must pay a security amount in the procedure defined in this Code to ensure the compensation of any likely litigation costs.

2. The duty indicated in paragraph 1 above shall not be applied:

1) when the plaintiff holds property in the Republic of Lithuania that is enough to compensate the litigation costs;

2) in non-property domestic (family) proceedings, in proceedings instituted in accordance with the filed counterclaim and in proceedings where issuance of a court order is requested;

3) in proceedings when parties thereto agree to have disputes investigated in courts of the Republic of Lithuania;

4) when the granting of security is prohibited in a relevant international treaty.

3. The defendant is entitled to request an order to ensure the compensation of the litigation costs no later than at the time of performing the first procedural action. The mentioned request can be stated later if the foreign status of the natural or legal plaintiff is discovered during the hearing of the matter.

4. If the defendant admits the stated request in part and this is enough to compensate future litigation costs, the defendant shall not be entitled to request an order to ensure compensation of potential litigation costs by the plaintiff.

Article 795. Establishment of the Amount of the Security

1. The court hearing the case shall establish the size of the security amount in compliance with the provisions of this Code and taking into consideration the likely litigation costs of the defendant, except for the costs that would occur due to lodging of a counterclaim, and the fact that the size of the security amount should not preclude the party from an opportunity to exercise the right to legal remedy. The time limit fixed for payment of the security amount shall be not less than three business days. If the security amount is not paid by the expiration of the time limit fixed by the court, the court shall leave the claim unheard.

2. If during investigation of the case it turns out that the established security amount is too small, the court shall be entitled to increase the amount thereof on request of the defendant.

3. In all cases security shall be paid in money.

Article 796. Repayment of Security

If during the proceedings the reason for claiming security for compensation of the litigation costs disappears, the court shall release the plaintiff from the duty to ensure the compensation of the litigation costs on request of the plaintiff and, after hearing the opinion of the defendant, shall repay the paid security amount.

Article 797. Compensation of Litigation Costs with the Amount of Security

1. The court shall decide on covering the litigation costs with the amount of security on application of the defendant.

2. The application mentioned in paragraph 1 above shall be filed before the closure of the hearing of the case on its merits at the latest. If the relevant application is not filed before the time limit fixed herein, the court shall repay the paid security amount on request of the plaintiff.

3. The court shall decide to repay the security amount to the plaintiff immediately, if the *res judicata* judgment clearly shows that covering of the incurred litigation costs is not due to the defendant.

Article 798. Defendant's Right of Priority

Defendant's right to have the litigation costs borne by him compensated with the amount of security shall take precedence over other creditors.

Article 799. Application of Legal Rules in Special Proceedings
Security-related provisions of this Section shall also apply to special proceedings when a petitioner is a natural or legal person of a foreign country.

Section II. Exemption of a Foreign Natural or Legal Person from Payment of Litigation Costs, Legal Assistance, Services, Security of Evidence

Article 800. Exemption of A Foreign Natural or Legal Person from Payment of Litigation Costs
1. The same conditions of exemption from, reduction, deferral and scheduling of payment of litigation costs as are applied to Lithuanian persons shall be applied to foreign natural or legal persons.

2. Stateless persons with a residence in the Republic of Lithuania shall enjoy the same rights as do citizens of the Republic of Lithuania.

Article 801. Court Communications
1. When hearing cases, courts of the Republic of Lithuania communicate with courts of foreign states regarding legal assistance through the Ministry of Justice of the Republic of Lithuania, except for the cases when international treaties and legal acts of the European Union provide that it shall be communicated directly.

2. Courts of the Republic of Lithuania shall refuse to provide legal assistance when:

1) an action required is against the public order or independence of the Republic of Lithuania;

2) an action required is beyond the remits of courts of the Republic of Lithuania;

3) a state from which a request for legal assistance is received has refused provision of legal assistance to courts of the Republic of Lithuania.

Article 802. Rogatory Letters
1. Courts of the Republic of Lithuania shall comply with requests for legal assistance by a court or other authority of a foreign state in conformity with the law of the Republic of Lithuania. A court of the Republic of Lithuania to whom a request for legal assistance has been referred may, at the initiative of the requesting court or other authority of a foreign state, apply other rules than those provided for by laws of the Republic of Lithuania, unless they are prohibited by the law of the Republic of Lithuania or are against the public order of the Republic of Lithuania.

2. If a court or other authority of a foreign state has applied to a court of the Republic of Lithuania for serving a procedural document that is not translated into Lithuanian on persons in the territory of the Republic of Lithuania, the document shall be served when the addressee expresses his will to accept the document. In case of refusal to accept the procedural document, the addressee should be given explanations regarding the likely consequences of such refusal.

Article 803. Request of Lithuanian Courts for Legal Assistance
1. Courts of the Republic of Lithuania may apply with a request for legal assistance abroad to diplomatic missions, consulates of the Republic of Lithuania, foreign courts or other authorities.

2. Courts of the Republic of Lithuania shall send rogatory letters to diplomatic missions or consulates for legal assistance when a person who is to be interrogated or

on whom a procedural document is to be served is a citizen of the Republic of Lithuania residing in a foreign country or employed with the diplomatic mission or consulate of the Republic of Lithuania.

3. Courts of the Republic of Lithuania shall send rogatory letters to courts or other authorities of foreign states for legal assistance when a person who is to be interrogated or on whom a procedural document is to be served is not a citizen of the Republic of Lithuania or when execution of other procedural action is required. Courts of the Republic of Lithuania shall have a right to request foreign courts to permit the use of communication technologies (videoconference, teleconference, etc.) while collecting evidence.

4. Paragraph 3 of this Article shall also apply in cases when execution of actions referred to in paragraph 2 above is impossible through embassies or consulates of the Republic of Lithuania.

Article 804. Service of Procedural Documents on Persons in the Territory of the Republic of Lithuania

Procedural documents shall be served on persons who fall beyond the jurisdiction of the courts of the Republic of Lithuania while staying in the territory thereof through the Ministry of Foreign Affairs of the Republic of Lithuania.

Article 805. Appointment of an Authorized Person

1. If a party residing in a foreign country has failed to appoint a legal representative, such party must appoint an authorized person residing in the Republic of Lithuania on whom relevant procedural documents shall be served.

2. If a party residing in a foreign country fails to fulfil the duty specified in paragraph 1 above and to appoint an authorized person, all procedural documents deliverable to the party in a foreign country shall be retained in the file of the case and considered delivered. The mentioned consequences must be explained to the party at the first serving. A duty to file a plea to the claim and the consequences of non-filing thereof, as well as who is qualified to be an authorized person, must be also explained to the party.

Article 806. Security of Evidence

A court of the Republic of Lithuania may secure evidence existing in Lithuania when this is required for passing a judgment by a court in a foreign state. A request to secure the evidence is filed with a district court in the territory where the securable evidence is located.

Article 807. Official Written Evidence of Foreign States

Official written evidence of foreign states shall have equal legal power as Lithuanian official written evidence. However, if a document is related to the passing of title to real estate located in Lithuania, such document should be legalized by a diplomatic mission or consulate of the Republic of Lithuania. The same rules shall apply to the documents the authenticity of which is doubted by the court.

Section III. Application of Foreign Law

Article 808. Application of Foreign Law

1. In cases set forth in international treaties or laws, a court shall apply, interpret and define the contents of foreign law on its own initiative (*ex officio*).

2. If application of foreign law is set forth by a mutual agreement, all evidence related to the contents of legal rules of the applied foreign law, in accordance with the official interpretation of such law as well as practice of its application and doctrine in a relevant foreign state, shall be provided by the party to the dispute that relies on the foreign law. On request of the party, the court may assist in the party's efforts to collect information about the applicable foreign law.

3. If the court or the party relying on the foreign law fails to fulfil the duty referred to in paragraphs 1 and 2 above, the law of the Republic of Lithuania shall apply.

4. In exceptional cases, when urgent provisional safeguards should be taken to secure rights or property of a person, the court may resolve matters of immediate urgency in accordance with the law of the Republic of Lithuania until the law applicable to the dispute and its contents are established.

Section IV. Procedure for Recognition of Judgments of Foreign Courts (Arbitration Tribunals) Except for the Courts of the EU Member States

Article 809. Legal Meaning of Recognition of Judgments of Foreign Courts (Arbitration Tribunals)

1. Judgments of foreign courts (arbitration tribunals) may be enforced in the Republic of Lithuania only after being recognized by the Lithuanian Court of Appeals acting as a body authorized by the state to recognize such judgments.

2. Recognition is not required for *res judicata* foreign judgments concerning disputes among/between persons who are not citizens of the Republic of Lithuania, except where such judgments serve as a basis for contracting a marriage or registration of any other acts of civil status, registration of other rights in the public register.

3. In case of a judgment in effect, made by a foreign court on the issue of marriage termination, separation or concluding the marriage void, the legal documents, providing civil status in Republic of Lithuania, are amended without any specific procedures. Within one year after the realization of the amendment of civil status, persons concerned may apply to the Lithuanian Court of Appeals, on the basis of Articles 810, 811 and 812 of this Code, to declare the amendments based on the foreign judgment, void.

4. The provisions of this code on the enforcement of foreign court judgments, are applicable mutatis mutandis to the decisions of other institutions of foreign states, which, by the laws of their country, are entitled to rule on issues, which are within the jurisdiction of the courts of Lithuania.

Article 810. Conditions for Recognition of Judgments of Foreign Courts (Arbitration Tribunals)

1. Judgments of foreign courts shall be recognized on the basis of international treaties. In the absence of an international treaty, recognition of foreign judgments shall be disallowed in the following cases:

1) the judgment is not *res judicata* under laws of the country where the judgment was made;
2) the proceedings are attributed to the exclusive competence of courts of the Republic of Lithuania or a third country in accordance with provisions of the law of the Republic of Lithuania or international treaty;
3) a party who did not participate in the proceedings was not duly informed about the institution of civil proceedings and was not provided with an opportunity to exercise procedural remedies or proper representation (if the party had no active legal capacity in a particular legal field or its active capacity was limited in a particular field) during the proceedings;
4) the judgment of a foreign court the recognition of which is requested is incompatible with a judgment passed by a court of the Republic of Lithuania in the proceedings between the same parties;
5) the judgment is against the public order stipulated in the Constitution of the Republic of Lithuania;
6) when passing the judgment, a court of a foreign country resolved matters on legal capacity or active legal capacity, legal representation, family property or inheritance legal relations of a citizen of the Republic of Lithuania, and this is against the international private law of the Republic of Lithuania, except for cases when Lithuanian courts would have passed the same judgment in the proceedings.

2. The presence of the conditions referred to in subparagraphs 4 and 6 of paragraph 1 above shall not be required to be checked if the court judgment of a foreign state passed in accordance with the law of that state confirms that a person residing in the Republic of Lithuania comes into an inheritance that was in the territory of such state at the moment of the deviser's death.

3. Provisions in paragraph 1 of this Article shall not apply either to the proceedings specified in paragraph 2 of Article 809. In this case, the Lithuanian Court of Appeals may disallow recognition of a foreign judgment only under the reasoning that the judgment is against the public order stipulated in the Constitution of the Republic of Lithuania.

4. When resolving the matter of recognition of a judgment of a foreign court, the lawfulness and reasonableness of the judgment may not be checked.

5. Judgments of foreign courts based on international treaties shall be recognized in accordance with the provisions contained therein.

6. Conditions for recognition of awards of foreign arbitration tribunals are defined by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 and the Law on Commercial Arbitration.

Article 811. Request for Recognition of a Judgment

1. Any persons having a legal interest in the proceedings may apply to the Lithuanian Court of Appeals for recognition of a judgment of a foreign court (arbitral award).The application forms must conform with the standard requirements for procedural documents.

2. The petitioner shall submit, along with the petition to recognize a judgment of a foreign court (arbitral award), the judgment of the foreign court (arbitral award), its translation into Lithuanian in conformity with the certification requirements provided by law, proof of *res judicata* of the judgment/award as well as proofs that a party who

did not participate in the hearing had been duly notified on the venue and time of the hearing of civil proceedings. If the petitioner does not live in the Republic of Lithuania and has not delegated a representative in the case or authorized a person to obtain procedural documents, who lives (or has a business site) in the Republic of Lithuania (Art. 805 of this Code), in the petition to accept (refuse to accept) a ruling of a foreign court (arbitral award) the petitioner has to indicate an address in the Republic of Lithuania to which procedural documents may be sent.

3. For the recognition of an award, made by a foreign arbitral tribunal, a party of the arbitral proceedings has the right to submit a petition to the Lithuanian Court of Appeals. Along with the petition for recognition of an award made by a foreign arbitral tribunal, documents listed in the Law on Commercial Arbitration have to be provided.

4. Petitions for recognition of judgments of foreign courts (arbitral awards) shall not be levied with stamp duties.

Article 812. Hearing concerning the recognition of judgments of foreign courts

1. Petitions concerning recognition of judgments of foreign courts shall be heard by a sole judge of the Lithuanian Court of Appeals, however the chairman of the Lithuanian Court of Appeals or the head of the Civil Case Law Division, taking the complexity of the case into account, can compose a panel of three judges of the Lithuanian Court of Appeals to examine the petition. A court, examining the petition, by its ruling can also transfer the petition to a panel of three judges. The examination of the petition is conducted in writing, except in situations when the court, taking into account the circumstances of the case, decides to examine the case in an oral hearing. A court ruling on the recognition of a judgment of a foreign court (arbitral award) shall come into force from the date the ruling is rendered. The court ruling may be appealed against in a cassation appeal according to the rules of judicial process in cassation court. The judicial process can be renewed.

2. The court hearing the petition on recognition of a judgment of a foreign court may recognize only a part of the judgment of the foreign court.

3. The petitioner is entitled to request recognition of a part of a judgment of a foreign court.

4. The court hearing the petition on recognition of a judgment of a foreign court is entitled to suspend the hearing if the judgment of the foreign court has been appealed against in a usual form for control of judgments of courts of the relevant state, or when a time limit for filing such an appeal has not lapsed yet.

5. A petition to recognize a judgment of a foreign court may be considered not submitted and by a ruling returned to the petitioner or if the petition has already been accepted – may be left unheard, if it is established that the petition was filed in disrespect of the procedure promulgated in this Code or international treaties. The court may provide a timeframe for the defects of the form or content to be corrected (Art. 115), if the petitioner lives in the Republic of Lithuania or has provided an address to which procedural documents could be sent, or has appointed a representative in the case or entitled a person to receive procedural documents, if they live (have business sites) in Lithuania (Art. 805). In case the defects are not corrected in the given time, the petition is considered not submitted and is returned to the petitioner.

6. A matter of permission to enforce the judgment may be heard together with the petition to recognize the judgment of a foreign court.

Section V. Procedure for Permission to Enforce Judgments of Foreign Courts (Arbitration Tribunals) Except the Courts of the EU Member States

Article 813. Enforceability

1. Judgments/awards of foreign courts/arbitration tribunals may be enforced if:

1) the judgment/award is enforceable in the state the courts of which have passed the judgment/award;

2) the judgment/award is recognized in the procedure specified in Part VII, Chapter LIX, Section IV of this Code.

2. Requirements of paragraph 1 of this Article shall also apply to judgments of a Justice of Peace passed in a foreign country.

3. The creditor must submit, along with the request to permit enforcement of a judgment/award of a foreign court/arbitration tribunal, the documents specified in Article 811, paragraph 2, of this Code as well as confirmation that the judgment/award is enforceable in the state the court of which has passed the judgment/award.

4. Recognized arbitral awards are enforceable documents and are enforced according to part VI of the Code.

Article 814. Hearing

Petitions for permission to enforce judgments of foreign courts shall be heard in the procedure specified in Article 812 of this Code.

Article 815. Right to Suspend the Hearing

1. On request of the appellant in cassation, the cassation court that hears a cassation appeal concerning permission to enforce a judgment of a foreign court shall be entitled to suspend the enforcement if this judgment of the court is appealed against in the state where it was passed in a usual form of control of judgments of courts of a relevant state, or when a time limit for filing such an appeal has not lapsed yet. In this case, the court is entitled to fix a time limit for filing the appeal.

2. In cases specified in paragraph 1 above, concurrently with permitting enforcement of the judgment of the foreign court, the court is entitled to request a cash deposit in the procedure defined in this Code.

Section VI. Procedure for Recognition of, and Permission to Enforce, Peaceful Settlement Agreements Ratified by a Court of a Foreign State, Except for the Courts of the EU Member States

Article 816. Procedure for Recognition of, and Permission to Enforce, Peaceful Settlement Agreements

1. A peaceful settlement agreement, once ratified by a foreign court, can be recognized and enforced in the Republic of Lithuania if it is enforceable in the state where it was concluded and unless it contradicts the public order stipulated in the Constitution of the Republic of Lithuania.

2. The procedure for recognition and enforcement of peaceful settlement agreements ratified by foreign courts in the Republic of Lithuania is governed by Part VII, Chapter LX, Sections IV and V of the Code.

Article 817. Procedure for Recognition of, and Permission to Enforce, Court Rulings
Lithuanian courts may recognize and enforce foreign court rulings concerning application of interim security measures. Rulings referred to in this Article shall be recognized and enforced in the Republic of Lithuania in the same procedure as judgments of foreign courts (arbitration tribunals) and provided only that the interested party has been duly informed of the venue and time of the hearing.

ANNEX III

LAW ON CONCILIATORY MEDIATION IN CIVIL DISPUTES OF THE REPUBLIC OF LITHUANIA (2008)
15 July 2008 No. X-1702
(As last amended on 26 November 2015 – No. XII-2085)*

Article 1.Purpose of the Law

1. This Law shall establish the basic conditions of conciliatory mediation in civil disputes and legal consequences of its use.

2. This Law shall apply to extrajudicial and judicial conciliatory mediation in civil disputes, with the exception of the disputes that arose out of such civil rights and duties the settlement agreements concluded whereon would be considered void under the law. This Law shall not apply to judicial conciliation conducted by the judge hearing the case.

3. This Law shall apply to the settlement of national and cross-border disputes.

4. *Repealed since 01-01-2016*.

5. This Law shall implement the legal acts of the European Union listed in the Annex to this Law.

6. Other legal acts may provide for peculiarities of conciliatory mediation in civil disputes of specific categories.

Article 2. Definitions

1. "Party to a civil dispute" (hereinafter referred to as a "party to a dispute") means a person involved in a dispute whose rights and duties are affected by the resolution of the dispute.

2. "Civil dispute" (hereinafter referred to as a "dispute") means a dispute that is or may be heard in civil proceedings in a court of general jurisdiction.

3. "Conciliatory mediation in civil disputes" (hereinafter referred to as "conciliatory mediation") means civil dispute settlement procedure whereby one or several mediators in civil disputes assist the parties to a civil dispute in reaching an amicable agreement.

4. "Agency administering the provision of conciliatory mediation in civil disputes" (hereinafter referred to as an "administrator of conciliatory mediation services") means a public or private legal person that recommends or appoints mediators, proposes or determines rules for conciliatory mediation, administers the costs of conciliatory mediation, provides premises for the procedure to be conducted in and/or provides other services related to conciliatory mediation.

5. "Mediator in civil disputes" (hereinafter referred to as a "mediator") means a third impartial natural person who is involved in settling a civil dispute between other persons with a view to assisting in reaching an amicable agreement.

6. "Cross-border civil dispute" means a dispute in which at least one of the parties' domicile or habitual place of residence or registered office is in a state other than the state of any other party to the dispute on the date on which:

* Unofficial translation by Valiunas Ellex.

a. the parties to the dispute conclude an agreement on the use of conciliatory mediation after the dispute has arisen;
b. a court, where this is provided for by the law, indicates to use conciliatory mediation;
c. an obligation to use conciliatory mediation arises under legal acts;
d. the court suggests to the parties to the dispute to attempt settling the dispute through conciliatory mediation.

7. In line with the provisions of Articles 7 and 8 of this Law, a dispute for the settlement of which a judicial or arbitral procedure is initiated in a state other than the state of domicile or the habitual place of residence or registered office of the parties to the dispute on the date specified in subparagraphs 1, 2 or 3 of paragraph 6 of this Article, after conciliatory mediation between the parties to the dispute has been held, shall also be considered a cross-border civil dispute.

Article 3. Conciliatory Mediation Agreement

1. Conciliatory mediation shall be used on the basis of a written agreement between the parties to a dispute. The parties to the dispute may agree on conciliatory mediation either after the dispute has arisen or prior to it.

2. Where parties to a dispute agree to settle the dispute through conciliatory mediation, they must attempt to settle the dispute by this procedure before referring to court or arbitration. If a conciliatory mediation agreement sets time limits for the termination of conciliatory mediation, the party to the dispute may refer to court or arbitration only after the expiry of these time limits. Where no time limits for the termination of conciliatory mediation have been set in the conciliatory mediation agreement, the party to the dispute may refer to court or arbitration one month after suggesting to the other party to the dispute in writing to settle the dispute through conciliatory mediation. The party to the dispute may refer to court disregarding the time limits set in this paragraph if conciliatory mediation terminates in accordance with Article 9 of this Law.

3. The court hearing a civil case may suggest to the parties to a dispute that they attempt to settle the dispute through conciliatory mediation. If the parties to the dispute accept the court's suggestion, the court shall adjourn the case.

Article 4. Appointment of Mediators, their Impartiality, Professional Conduct and Responsibility

1. A mediator shall be appointed by agreement between the parties to a dispute and with the consent of the mediator. The appointment of the mediator and his consent shall be executed in writing, usually also incorporating the provision on the mediator's duty to adhere to the European Code of Conduct for Mediators.

2. The number of mediators shall be set by agreement between the parties to a dispute. Where there is no agreement between the parties to the dispute, one mediator shall be appointed.

3. Parties to a dispute may agree that a third party or an administrator of conciliatory mediation services will select or recommend a mediator for them. Where this is provided for in a conciliatory mediation agreement or where there is no agreement between the parties to the dispute regarding the selection of a mediator, the mediator may, at the joint request of the parties to the dispute, be appointed by a district court in accordance with the simplified procedure set forth in Chapter XXXIX of the

Code of Civil Procedure of the Republic of Lithuania. A person shall be appointed mediator only with his written consent.

4. A mediator must act with impartiality towards the parties to a dispute. The mediator may accept a proposal to commence conciliatory mediation or continue the commenced conciliatory mediation only where he has informed the parties to the dispute of the circumstances known to him likely to give rise to doubts regarding his impartiality and where the parties to the dispute have agreed that he would conduct conciliatory mediation.

5. A mediator must provide the parties to a dispute with information on his education and experience.

6. A mediator may not act as an arbitrator or a judge in the same dispute wherein he conducted or is conducting conciliatory mediation, with the exception of the cases where the parties to a dispute agree in writing to appoint the mediator as an arbitrator and he has no objections thereto. In addition, the mediator may not act as a counsel or other representative of any party to the dispute in the same dispute wherein he conducted or is conducting conciliatory mediation.

7. Conciliatory mediation may be provided for remuneration and free of charge. Where conciliatory mediation is provided for remuneration, the procedure shall commence only after a mediator agrees in writing with the parties to a dispute regarding the amount of remuneration and the procedure of payment.

Article 5. Conciliatory Mediation Procedure

1. Parties to a dispute may agree on the nature and procedure of conciliatory mediation by indicating a preferred set of rules or by establishing individual rules for conciliatory mediation subject to mutual agreement. Information and electronic communication technologies may be used in the process of conciliatory mediation by mutual agreement of the parties to the dispute.

2. Where there is no agreement between the parties to a dispute on the nature and procedure of conciliatory mediation or where an agreement between the parties to the dispute does not provide for specific actions to be taken by a mediator, the mediator must perform specific actions properly, taking into account the circumstances of the dispute, including possible imbalances of power between the parties to the dispute, any wishes of the parties to the dispute and the need for a prompt settlement of the dispute, and acting in compliance with legal acts.

3. A mediator may hold a meeting with one party to the dispute without the other party to the dispute attending the meeting.

4. Only parties to a dispute, their representatives and a mediator may be present in the process of conciliatory mediation. At the request or with the consent of the parties to the dispute, other persons may also be present in the process of conciliatory mediation. Having established that there are more parties involved in the dispute being settled, the mediator shall propose to the parties participating in the dispute settlement procedure to agree with the other parties involved in the dispute to settle the dispute through conciliatory mediation.

5. Any party to a dispute can withdraw from conciliatory mediation without specifying the reasons for withdrawal. This shall not prevent the parties to the dispute from repeatedly agreeing to settle the dispute through conciliatory mediation.

6. A mediator shall inform the parties to a dispute and terminate conciliatory mediation if an amicable agreement which may be reached by the parties to the dispute

is, in the mediator's opinion, unenforceable or illegal, having regard to the circumstances of the dispute and the competence of the mediator, or if the mediator recognises that continuing conciliatory mediation is unlikely to result in a settlement.

Article 6. Settlement Agreement

1. Settlement agreements concluded in the course of conciliatory mediation shall be subject to the requirements set forth in the Civil Code of the Republic of Lithuania and other laws.

2. A settlement agreement concluded by the parties to a dispute in the course of conciliatory mediation shall have a statutory effect on the parties to the dispute.

3. Where a dispute being settled through conciliatory mediation is not simultaneously heard in court, a settlement agreement may, at the joint request of the parties to the dispute or one of the parties to the dispute with the written consent of the other party to the dispute, be submitted to court for approval in accordance with the simplified procedure set forth in Chapter XXXIX of the Code of Civil Procedure of the Republic of Lithuania. The application for approval of the settlement agreement shall be lodged, at the choice of the parties to the dispute, with a district court at the place of residence or registered office of one of the parties to the dispute. An effective settlement agreement approved by a court ruling shall be treated as a final judgment (*res judicata*) by the parties to the dispute and its execution may be enforced.

Article 7. Confidentiality

1. Unless parties to a dispute have agreed otherwise, the parties to the dispute, mediators and administrators of conciliatory mediation services must keep confidential all information regarding conciliatory mediation and related issues, with the exception of the information required to approve or execute a settlement agreement concluded in the course of conciliatory mediation and information failure to disclose whereof would contravene the public interest (particularly where a child's interests need to be safeguarded or where a risk of damage to a natural person's health or life needs to be prevented). This provision shall also apply to judicial, arbitration and other dispute settlement procedures, either related or unrelated to the dispute which was settled through conciliatory mediation.

2. A mediator may not disclose any confidential information provided to him by one party to the dispute to the other party to the dispute without the consent of the party that has submitted the information.

3. In the event of nonfeasance or misfeasance of the obligations set in paragraphs 1 and 2 of this Article, mediators and administrators of conciliatory mediation services shall be held liable under the law.

Article 8. Suspension of Limitation Periods

1. Upon commencement of conciliatory mediation, limitation periods shall be suspended.

2. For the purposes of suspension of limitation periods, commencement of conciliatory mediation shall be considered the day on which one party to a dispute directly or through another person (representative, mediator, administrator of conciliatory mediation services or any other authorised person) sends a written proposal to the other party to the dispute on the settlement of the dispute through conciliatory mediation.

3. Where conciliatory mediation terminates without a settlement agreement, the limitation periods shall resume. In this case, the remaining limitation period shall be extended in accordance with paragraph 3 of Article 1.129 of the Civil Code of the Republic of Lithuania.

Article 9. Termination of Conciliatory Mediation

The moment of termination of conciliatory mediation shall be considered:

1. day on which one party to the dispute sends the other party to the dispute a written statement objecting to the settlement of the dispute through conciliatory mediation. Where the parties to the dispute have not concluded a conciliatory mediation agreement and one party to the dispute has presented to the other party to the dispute a proposal specified in paragraph 2 of Article 8 of this Law, it shall be considered that conciliatory mediation terminates at the earliest of the following: on the day when the party to the dispute that has received the proposal from the other party to the dispute sends a written statement to the other party to the dispute objecting to the settlement of the dispute through conciliatory mediation or one month after the dispatch of the proposal if, within that period of time, the other party to the dispute has not expressed written consent to settle the dispute through conciliatory mediation;

2. on the day when the mediator presents a written notification of termination of conciliatory mediation to all parties to the dispute;

3. on the day when the party to the dispute presents to the mediator and the other party to the dispute a written notification of his withdrawal from conciliatory mediation;

4. on the day when all parties to the dispute present to the mediator a written notification of termination of conciliatory mediation;

5. on the day when the parties to the dispute conclude a settlement agreement.

Article 10. Conciliatory Mediation Services Provided by the State. Promotion of Development of Conciliatory Mediation

1. Judicial conciliatory mediation shall be carried out in courts of general jurisdiction in the cases and according to the procedure established by the Judicial Council.

2. Extrajudicial conciliatory mediation services ensured by the State may be provided in the cases and in the accordance with the procedure laid down by the law.

3. With a view to promoting the development of conciliatory mediation and ensuring its quality, a measures plan, approved by the Ministry of Justice, shall be drawn up.

Article 11. Final Provisions

This Law shall apply solely to conciliatory mediation agreements concluded and conciliatory mediation procedures commenced after the entry into force of this Law.

Annex to Republic of Lithuania Law on Conciliatory Mediation in Civil Disputes

LEGAL ACTS OF THE EUROPEAN UNION IMPLEMENTED BY THIS LAW

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3).

LITHUANIA

ANNEX IV

STANDARD DRAFT AGREEMENT OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA ON PROMOTION AND PROTECTION OF INVESTMENTS*

*In effect 2 May 2005, No. 481, Vilnius***

The Government of the Republic of Lithuania and the Government of ..... (hereinafter referred to as the "Contracting Parties"):

desiring to develop economic cooperation to the mutual benefit of both sides;

intending to create favourable conditions for investments of investors of one Contracting Party on the territory of the state of the other Contracting Party;

acknowledging that the promotion and protection of investments will stimulate private business initiatives and will improve welfare of both states,

have agreed as follows:

Article 1. Definitions

In this Agreement:

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

a) movable and immovable property as well as any other rights *in rem* such as mortgage claims, right to pledged or retained property;

b) shares, debentures or any other forms of participation in a company;

c) financial claims or claims to perform any actions having an economic value;

d) intellectual property rights, primarily, copyrights, industrial property rights such as: rights to a patent, industrial design, utility models, trade marks, names of legal entities, also, commercial experience;

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* Unofficial translation by Lideika, Petrauskas Valiunas ir partneriai LAWIN.

** On the Approval of the Standard Draft Agreement of the Government of the Republic of Lithuania on Promotion and Protection of Investments, implementing item 13 of the Rules on Preparation and Drafting of International Agreements of the Republic of Lithuania approved by the 1 October 2001 Resolution No. 1179 of the Government of the Republic of Lithuania (Official Gazette *Valstybės žinios*, 2001, No. 84-2938; 2004, No. 175-6497), the Government of the Republic of Lithuania hereby decides:

To approve the standard draft agreement of the Government of the Republic of Lithuania on promotion and protection of investments (attached).

Minister of Transport and Communications, acting for the Prime Minister Zigmantas Balčytis and Minister of Foreign Affairs, Antanas Valionis

APPROVED by the 2 May 2005 Resolution No. 481 of the Government of the Republic of Lithuania.

e) business reputation;

f) any right conferred by law or under contract to carry out economic activity, including concessions to prospect, produce and exploit natural resources.

Any alteration of the form in which assets are invested performed according to the law of the host state, shall not affect their status as investment.

2. The term "investor" shall mean for both Contracting Parties:

a) natural persons having the nationality of that Contracting Party in accordance with its laws and regulations, also persons without nationality residing in it;

b) legal entities incorporated in accordance with laws and regulations of that Contracting Party.

3. The term "returns" shall mean all amounts yielded by an investment and primarily, though not exclusively, includes profits, capital gains, interest, dividends, royalties, patent or licence fees and other remunerations.

4. The term "territory of the state" shall mean for both Contracting Parties the sovereign territory of their state and any other areas on which the state of those Contracting Parties implements its sovereign rights and exercises jurisdiction in accordance with international law.

5. The term "laws and regulations" shall mean for both Contracting Parties laws and regulations effective on the territory of their state.

Article 2. Promotion of Investments

One Contracting Party shall encourage investors of the state of the other Contracting Party to make investments on the territory of its state and shall allow such investments according to its laws and regulations.

Article 3. Protection and Regime of Investments

1. Either Contracting Party shall always ensure a fair and equitable regime for investments of investors of the other Contracting Party and also their full security and protection.

2. None of the Contracting Parties shall impede management, maintenance, use, enjoyment or disposal of investments by investors of the other Contracting Party by unilateral or discriminative measures.

3. One Contracting Party shall apply to investments of investors of the other Contracting Party a regime not less favourable than that applied by it to investments of its own investors or investors of any third state, taking into account which regime is more favourable.

4. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party a more favourable regime, preferences or privileges, which may be extended by the first Contracting Party to investors of a third state by virtue of:

a) present or future participation in a customs union, common market, free trade area, other forms of regional economic cooperation or similar international agreements to which the Contracting Party is or may be a party;

b) present or future agreements for avoidance of double taxation or other agreements related to taxation.

Article 4. Expropriation

1. None of the Contracting Parties shall expropriate, nationalize on the territory of its state investments of investors of the other Contracting Party and shall not apply to them measures causing similar consequences (hereinafter referred to as "expropriation"), unless:

a) such expropriation is performed for public needs according to the procedure established by laws;

b) such expropriation is performed on a non-discriminatory basis;

c) prompt, adequate and effective compensation is paid.

2. The compensation referred to in item c of paragraph 1 of this Article shall meet the market value of expropriated investments existing immediately before the expropriation or before the intended expropriation became public knowledge, whichever occurred earlier. Such compensation shall be paid without unreasonable delay and it shall include interest calculated from the expropriation date according to London bank exchange rate (LIBOR).

3. Investors whose property is subject to expropriation shall, without prejudice to their rights set fort in Article 8 of this Agreement, have the right to claim immediate examination of their case by judicial or other competent and independent authorities of the state of the expropriating Contracting Party and establishment if such expropriation and compensation related thereto complies with the principles of this Article and laws and regulations of the expropriating Contracting Party.

Article 5. Compensation for Losses

1. When investments by investors of one Contracting Party suffer damage owing to war, a state of national emergency, revolt, insurrection or other similar events on the territory of the state of the other Contracting Party, such investors shall be accorded by the latter Contracting Party a regime not less favourable than that which such Contracting Party accords to its own investors or to investors of any third state, taking into account which regime is more favourable. Any compensation related thereto shall be paid immediately and transferred freely.

2. Notwithstanding paragraph 1 of this Article, investors of one Contracting Party who suffer losses on the territory of the state of the other Contracting Party resulting from:

a) full or partial requisitioning of their investments by military forces or governmental authorities of the state of the latter Contracting Party; or

b) full or partial destruction of their investments by military forces or governmental authorities of the state of the latter Contracting Party when it is not necessary,

shall be accorded restitution or prompt, adequate and effective compensation.

Article 6. Transfers

1. One Contracting Party shall guarantee to investors of the other Contracting Party that funds related to investments shall be freely transferred to the territory of its state and from the territory of its state, primarily:

a) amounts of initial capital and additional amounts to maintain or increase investment;

b) returns;

c) proceeds of full or partial liquidation of investment;

d) funds for repayment of loans directly related to investment;

e) compensations provided according to the provisions of Articles 4 and 5;

f) payments carried out in accordance with the guarantee or insurance agreement indicated in Article 7;

g) wages from persons employed in foreign states whose work on its territory is related to investments.

2. Without prejudice of the measures established by the European Union, transfers shall be performed without unreasonable delay in currency in which investments were carried out, or upon the investor's consent, in any other convertible currency according to the

currency exchange market rate effective on the day of the transfer on the territory of the state of the Contracting Party in which investments were carried out.

3. Both Contracting Parties shall accord to the transfers stipulated in paragraphs 1 and 2 of this Article a regime not less favourable than that which they apply to transfers related to investments of investors of any third state.

4. Notwithstanding the previous provisions of this Article, both Contracting Parties may fairly, on a non-discriminatory basis and reasonably apply measures related to taxation, protection of creditors' rights or meant for implementation of other laws and regulations.

Article 7. Subrogation

If a Contracting Party or its designated agency (the first Contracting Party) makes payment under the provided guarantee or insurance agreement related to the investment existing on the territory of the state of the other Contracting Party (the second Contracting Party), the second Contracting Party shall recognize:

a) the assignment, whether under the law or pursuant to a legal transaction, of all rights or claims by the party which received the compensation to the first Contracting Party; as well as

b) that the first Contracting Party shall exercise rights and enforce claims acquired by way of subrogation in the same way as the party to which losses are compensated.

Article 8. Settlement of Investment Disputes

1. Disputes of one Contracting Party and an investor of the other Contracting Party pertaining to its investments on the territory of the first state shall be settled in an amicable way, if possible. The investor shall inform the Contracting Party on whose territory investments were made in writing about the existing dispute, also providing full information.

2. If the dispute cannot be settled amicably within six months following the time when the written notification indicated in paragraph 1 of this Article was received, the Contracting Party on whose territory the investments were made or an investor, if it exercised all administrative and legal conditions, shall have the right to refer the dispute:

according to the procedure and in the cases set forth in the Convention on the Settlement of Investment Disputes between States and Nationals of other States – to the International Centre for Settlement of Investment Disputes (ICSID), established according to the above Convention, for reconciliation of the parties to the dispute or settlement of the dispute if both Contracting Parties are parties to this Convention; or to *ad hoc* arbitration set up according to the Rules of Arbitration Procedure of the United Nations Commission on International Trade Law (UNCITRAL). These Rules may be amended by written agreement of the parties to the dispute.

3. Arbitral awards recognized by the Contracting Party according to the procedure established by legal acts shall be final and binding on the parties to the dispute. Both Contracting Parties shall immediately carry out these awards and undertake measures for their effective implementation on their territory.

4. None of the Contracting Parties in its defence shall refer to the fact that full or partial compensation for the losses incurred or other compensation is paid or is to be paid under the provided guarantee or insurance agreement.

Article 9. Settlement of Disputes Between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

2. If the Contracting Parties fail to agree within six months following the beginning of the dispute, such dispute shall, upon request of either Contracting Party, be submitted to arbitration.

3. The Arbitration shall be constituted for each individual case in the following way: within two months of the receipt by one Contracting Party of the request of the other Contracting Party for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall within two months select a third arbitrator who shall be a national of a third state. Upon approval of the both Contracting Parties, the third arbitrator shall be appointed chairman of the arbitration.

4. If within the period specified in paragraph 3 of this Article the arbitration has not been constituted and there is no other agreement, either Contracting Party may request the chairman of the International Court of Justice to make the necessary appointments. If the chairman is a national of the state of either Contracting Party, or if he is otherwise prevented from discharging the said function, the deputy chairman of the International Court of Justice shall be requested to make the necessary appointments. If the deputy chairman also happens to be a national of either Contracting Party or is prevented from discharging the said function, another member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be requested to make the necessary appointment.

5. The arbitration shall set its working procedure itself. Arbitration awards shall be passed by a majority of votes. Awards shall be final and binding on both Contracting Parties.

6. Both Contracting Parties shall bear costs related to activities of the arbitrator appointed by them and their representation in examination of the dispute in arbitration; costs related to activities of the chairman of arbitration and other costs shall be born by both Contracting Parties in equal parts. However, the arbitration may decide that a bigger part of the costs shall be born by one Contracting Party and such decision shall be binding on both Contracting Parties.

Article 10. Provisions on a More-Favoured-Nation Treatment

If a regime accorded by laws or obligations under the international law of the state of one Contracting Party, effective presently or which will be passed later, to investments of investors of the other Contracting Party is more favourable than this Agreement, a more favourable regime shall be applied.

Article 11. Consultations

Upon request of one Contracting Party, the other Contracting Party shall immediately agree to hold consultations regarding the interpretation and application of this Agreement.

Article 12. Application of this Agreement

1. This Agreement shall be applied to investments made by investors of one Contracting Party on the territory of the state of the other Contracting Party according to laws and regulations of this Contracting Party both prior to and after entry into effect of this Agreement, however, it shall not be applied to disputes related to investments which have arisen or could have arisen prior to entry into effect of this Agreement, or to any claims examined prior to entry into effect of this Agreement.

2. This Agreement shall not be applied also to relations pertaining to acquisition, use, operation and disposal of land. These issues shall be regulated by laws and regulations effective on the territory of the states of the Contracting Parties.

Article 13. Amendments
During the entry into force of this Agreement or at any time later the provisions of this Agreement may be amended according to agreement in writing by the Contracting Parties. Such amendments shall come into effect when the Contracting Parties notify each other on performance of all internal procedures required for the entry into effect of this Agreement.

Article 14. Entry into Force, Term and Termination of the Agreement
1. This Agreement shall enter into force on the day when the Contracting Parties notify each other in writing on performance of all internal procedures required for the entry into effect of this Agreement.

2. This Agreement shall be effective for fifteen (15) years. Upon expiration of this period, it shall be effective further on until expiration of twelve (12) months from the day on which one Contracting Party notifies in writing the other Contracting Party regarding termination of this Agreement.

3. Investments made until the date of termination of this Agreement shall be subject to the provisions of Articles 1-12 of this Agreement for another ten (10) years from this date.

Signed on ..... in two counterparts in the Lithuanian, ... and ..... Languages; all texts shall be authentic. In case of any disagreements regarding interpretation of this Agreement, the text in ..... shall prevail.

On behalf of the
Government of the Republic of Lithuania

On behalf of the
Government