

GAR INVESTMENT TREATY ARBITRATION

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# Lithuania

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## Overview of investment treaty programme

### 1 What are the key features of the investment treaties to which this country is a party?

#### (a) BITs/MITs

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Albania (7 December 2007)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Argentina (1 September 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Armenia (16 March 2007)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Australia (10 May 2002)	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Austria (1 July 1997)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Azerbaijan (1 July 2007)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Belarus (16 May 2002)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Belgium–Luxembourg (06 September 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Bosnia-Herzegovina (16 March 2009)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Bulgaria (25 April 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
China (1 June 1994)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Croatia (30 January 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Czech Republic (12 July 1995)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Denmark (9 December 1992)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Estonia (20 June 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Finland (8 January 1993)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
France (12 January 1995)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Germany (27 June 1997)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Georgia (1 November 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Greece (10 July 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Hungary (20 May 2003)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
India (1 December 2011)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Iceland (18 April 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Italy (15 April 1997) <sup>1</sup>	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Israel (11 July 1996)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Jordan (5 May 2003)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Kazakhstan (25 May 1995)	Yes	Yes	Yes	Yes	No	6 months	No	Yes

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Kyrgyzstan (20 February 2009)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
South Korea (9 November 1993)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Kuwait (15 January 2003)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Latvia (23 July 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Macedonia (13 January 2012)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Moldova (29 May 2003)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Mongolia (3 May 2004)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Netherlands (1 April 1995)	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Norway (20 December 1992)	Yes	Yes	Yes	Yes	No	3 months	No	Yes
Poland (6 August 1993)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Portugal (14 August 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Romania (15 December 1994)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Russian Federation (24 June 2004)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Serbia and Montenegro (2 December 2005)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Slovenia (15 May 2002)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Spain (22 December 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Sweden (2 September 1992)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Switzerland (14 May 1993)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Tajikistan (15 December 2010)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Turkey (7 July 1997)	Yes	No	Yes	Yes	Yes	6 months	Yes	Yes
Ukraine (06 March 1995)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
United Kingdom (21 September 1993)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
United States of America (12 November 2001)	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Uzbekistan (11 November 2002)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Venezuela (1 August 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Vietnam (24 April 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

## Qualifying criteria - any unique or distinguishing features?

### 2 What are the distinguishing features of the definition of “investor” in this country’s investment treaties?

Issue	Distinguishing features in relation to the definition of ‘investor’
Seat of the investor/place of business	Most of Lithuanian investment treaties provide that a juridical person incorporated or duly organised according to the laws of a contracting party (ie, a country that is party to the treaty) is an ‘investor’. However, there are treaties that require that such entities have their ‘substantive business operations’ (eg, Lithuania–Bosnia and Herzegovina/India/Poland/Mongolia/Portugal BIT) or/and their ‘seat’ (eg, Lithuania–Argentina/Czech Republic/ Spain/China/Latvia BIT) or/and ‘place of effective management’ (eg, Lithuania–Sweden BIT) within the territory of a contracting party. There are also treaties with denial of benefits clauses, for example, Lithuania–Australia BIT provides that where a company of a party is owned or controlled by a citizen or a company of any third country, the parties may decide jointly in consultation not to extend the rights and benefits of the agreement to that company.
Notion of Control	It is also notable that some of the Lithuanian investment treaties do not require that a juridical person should be incorporated in a contracting state. However, such juridical person should be controlled by a national of contracting state (Lithuania–Australia BIT). Similarly, as in the latter example, Lithuania–Austria BIT requires that the extent of control of such person should be dominant or as it is the case in Lithuania–Kazakhstan BIT, such extent of control must provide for substantial part of ownership right. However, the Lithuania–Israel BIT explicitly provides that it would not extent protection to juridical persons incorporated in Lithuania that are controlled directly or indirectly by Israeli nationals.
Natural persons	In respect of natural persons, ‘investor’ is normally defined to include both citizens or nationals and permanent residents of a contracting party. However, under the Lithuania–Bosnia and Herzegovina BIT, persons investing in Lithuania should not only have nationality of Bosnia and Herzegovina, but also a permanent place of residence or main business activity in Bosnia and Herzegovina.
Dual nationals	Most of Lithuanian investment treaties are silent on the issue of dual nationality. However, the Lithuania–Israel BIT requires that natural persons should be nationals of a contracting state, but they should not also have nationality of another contracting state. Thus, a dual national having both Lithuanian and Israel nationality would not be protected by the latter treaty.
Right to invest	It should be noted that some of Lithuanian investment treaties require that an investor should not only have the nationality of a contracting state, but also a right to invest. For example, Lithuania–Russia BIT provides that an investor shall mean any natural person who is a national of the state of this contracting party according to the legislation of this contracting party and ‘authorised to invest’ in the territory of the other contracting party according to the legislation of the latter contracting party.

### 3 What are the distinguishing features of the definition of “investment” in this country’s investment treaties?

Issue	Distinguishing features in relation to the concept of ‘investment’
Eligible assets	Most Lithuanian investment treaties define ‘investment’ to include ‘every kind of asset invested country by an investor of other contracting party in accordance with the laws of the host state’. However, there are treaties that contain a more extensive definition. For example, the Lithuania–Australia BIT requires that an asset invested must be ‘owned or controlled’ by an investor. Similarly, Lithuania–USA/Kuwait BITs provide that an investment must be ‘owned or controlled directly or indirectly’ by an investor.

Issue	Distinguishing features in relation to the concept of 'investment'
Economic activity	Some Lithuanian treaties require that an investment must be related to 'economic activity'. For example, Lithuania–Czech Republic BIT provides that definition of investment would include every kind of asset related to economic activity. Similar definitions can be found also in Lithuania–Denmark BIT, Lithuania–Estonia BIT, Lithuania–Iceland BIT, Lithuania–Ukraine BIT and Lithuania–Hungary BIT.
Existing and new investments	It is noted that Lithuania–Portugal BIT includes a separate protocol that stipulates that protection provided by the treaty is also extended to investors when they had already invested in the contracting party and want to extend their activity or to pursue their investment activity in other areas. Such investments are regarded as new investments under the treaty.
Commencement of coverage	Some Lithuanian investment treaties protect all existing investments (eg, Lithuania–Albania/Hungary/Tajikistan BITs), whereas others only protect investments made after a specific date (eg, Lithuania–Germany/Vietnam BITs).
Accordance with local laws	Most Lithuanian investment treaties explicitly require investments to have been made in accordance with the contracting party's laws. However, the Lithuania–Vietnam BIT stipulates that protection is only afforded to those investments made in Vietnam that were approved by the Vietnamese government.

## Substantive protections - any unique or distinguishing features?

### 4 What are the distinguishing features of the fair and equitable treatment standard in this country's investment treaties?

Issue	Distinguishing features of the fair and equitable treatment standard
Illustrations of the FET standard	Most Lithuanian investment treaties simply provide that each Contracting party shall ensure fair and equitable treatment to investments (eg, Lithuania–Iceland/Kyrgyzstan, Russian Federation BITs). However, the Lithuania–Kuwait BIT indicates that the treaty does not obligate the contracting party to provide any tax exemptions to foreign investors, although such privileges could be provided for local nationals or other investors having their permanent place of residence in a contracting party. In addition, the Lithuania–Russian Federation BIT provides a reservation that contracting parties have a right to deny or limit certain activity of investors in accordance with local laws of the host state.
Customary international law	Some Lithuanian investment treaties expressly equate the obligation to provide fair and equitable treatment with the concept of fair and equitable treatment under customary international law (eg, Lithuania – Finland/Venezuela/France BITs).

### 5 What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

Issue	Distinguishing features of the 'expropriation' standard
Indirect expropriation	Some of Lithuanian investment treaties expressly protect against direct as well as indirect (or 'creeping') expropriation (eg, Lithuania–Argentina/Armenia/Belarus/Georgia BITs).
Recourse to local court	The Lithuania–Russian Federation BIT additionally provides that notwithstanding investor's right to initiate arbitration, additional protocol of the Lithuania–Russian Federation BIT provides for a right of immediate recourse to local courts of the country performing expropriation where the dispute 'relates to the amount of compensation payable' as a result of an expropriation of property.
Interpretation of expropriation	The Lithuania–India BIT provides that when establishing that expropriation actually occurred, a separate investigation should be performed, taking into account that (i) it does not mean that expropriation occurred if a certain economical measure that has a negative economic impact on investment had occurred, (ii) it must be established what is the extent of such negative economical measure on the investor or a company, (iii) it must be established what is the extent of such negative economical measure having due regard to rational and legitimate expectations, (iv) a direct link between the measure and public interest should be established. In addition, the Lithuania–India BIT provides that there is no expropriation in rare cases when public interests regarding health, security or environment are at stake.

## 6 What are the distinguishing features of the national treatment/most-favoured-nation treatment standard in this country's investment treaties?

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Common limitations	Lithuanian BITs explicitly provide that the provision of 'most favoured nation' and/or 'national' treatment does not extend to the benefits of membership of a customs union, monetary union or free trade area, nor to taxation agreements and/or taxation legislation.
Scope	Generally, the 'most favoured nation' protection contained within Australia's BITs applies to 'investments', 'returns on investments' and activities associated with investments (eg, Lithuania–Argentina/Australia/China BITs). However, some Lithuanian BITs do not expressly extend protection to activities associated with investments (eg, Lithuania–Albania/Austria/Latvia BITs). One of the most extensive scope of the MFN treatment is found in the Lithuania–Kuwait BIT, which extends the MFN treatment to compensations, transfers, income, management of investments, support and possession of the latter, and any other associated activity.
Exceptions on national treatment and most favoured nation standard	Some of Lithuania's BITs provide for limitations on the national treatment and most favoured nation standard. For example, the Lithuania–Belarus BIT provides that contracting parties shall have a right to establish certain exceptions regarding investors of contracting party and investors of third parties in certain economic areas where activity of foreign investors is prohibited. A similar clause is also found in the Lithuania–Bulgaria BIT. In addition, the Lithuania–Kuwait BIT provides that measures that are needed to take because of the security, welfare and health of society and public order are not regarded as a 'less favourable' treatment.

## 7 What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country's investment treaties?

Issue	Distinguishing features of the 'protection and security' standard
Extent of obligation	The formulation of the obligation to provide 'protection and security' in Lithuanian investment treaties is not uniform. Some provide for 'full protection and security' (eg, Lithuania–Albania/Jordan/Macedonia/Georgia BITs). However, other treaties just provide that the host country would 'protect' investments (Lithuania–Mongolia/Switzerland BITs). The Lithuania–France BIT provides that the host state would 'seek' that rights of investors could be executed juridically and factually. The Lithuania–Germany BIT provides that contracting parties would ensure 'protection and guarantees' to the investments of nationals or companies of other contracting party.
Continuity	Lithuania–Italy BIT provides that contracting parties would maintain the legal system that guarantees the continuity of legal protection to investors.

## 8 What are the distinguishing features of the umbrella clauses contained within this country's investment treaties?

Issue	Distinguishing features of any 'umbrella clause'
Scope	As compared with the majority of Lithuanian treaties, a rather small number of them contain a typical umbrella clause (Lithuania–Austria/Belarus/Belgium–Luxembourg/ Denmark/ Finland/ Germany/ Greece/ Italy/ Israel/ Kyrgyzstan/ Kuwait/ Moldova/ Mongolia/Netherlands/Romania/ Switzerland/ Tajikistan/Turkey/United Kingdom/USA BITs).
Qualification of the obligation	Although Lithuania's investment treaties extend the obligation to honour 'any' commitments related to investments, the Lithuania–Austria BIT provides that the obligation to honour commitments (ie, the umbrella clause) is limited to commitments related to investment contract.
Performance	The Lithuania–Italy BIT requires a contracting party to maintain a legal system that would guarantee continuity of legal treatment of investors, including execution of all obligations towards any certain investor in a 'bona fide' manner.



## 9 What are the other most important substantive rights provided to qualifying investors in this country?

Issue	Other substantive protections
Free transfer of payments	All Lithuanian investment treaties contain a provision that requires the contracting parties to permit investors to freely transfer investments and investment returns. While the expression of the right is not uniform, it is subject in some respect to the laws and policies of the host state. The majority of treaties establish that payments should be made in the same currency as the investment itself.
Non-impairment	Most of Lithuania's BITs impose upon contracting parties an obligation not to impair the management, maintenance, use, enjoyment or disposal of investments. Some treaties impose an obligation to ensure provision of necessary permits, licences needed for the investment (eg, Lithuania–Mongolia BIT).
Armed conflict/civil unrest	Majority of Lithuania's investment treaties guarantee investors of contracting parties 'most favoured nation' treatment in regards to compensation paid to other investors of other states in the case of armed conflict or civil unrest. Some treaties also provide for 'national' treatment in such circumstances (eg, Lithuania–Germany/Hungary/Uzbekistan).

## 10 Do this country's investment treaties exclude liability through carve-outs, non-precluded measures clauses, or denial of benefits clauses?

There are only a few treaties with denial of benefits clauses, for example, Lithuania–Australia BIT provides that where a company of a party is owned or controlled by a citizen or a company of any third country, the parties may decide jointly in consultation not to extend the rights and benefits of the agreement to that company.

## Procedural rights in this country's investment treaties

## 11 Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural Rights
Fork-in-the-road	Some of Lithuanian investment treaties contain fork-in-the-road provisions (eg, Lithuania–Argentina/Greece/Iceland BITs). Under these treaties, investors must elect either to pursue their claim through the local courts or by international arbitration. They cannot do both. However, some of these treaties expressly provide that the election to submit a dispute to arbitration may not preclude an investor commencing proceedings in local courts (eg, the Lithuania–Bosnia-Herzegovina BIT).
Waiver of local remedies	Some of the fork-in-the-road provisions are accompanied by provisions that provide that the right to commence arbitration is conditional on the investor waiving its rights to pursue any other cause of action said to arise from the same circumstances giving rise to the alleged breach of the treaty in either of the contracting party's courts or tribunals (eg, Lithuania–Belgium–Luxembourg BIT). Similarly, the Lithuania–Austria BIT provides that when an investor initiates ICSID arbitration, the investor also waives its right to exhaust any local remedies.
Exhaustion of local remedies	The right to commence arbitration under some Lithuanian investment treaties is contingent on the exhaustion of local remedies. For example, the Lithuania–Armenia/Azerbaijan BIT provides that arbitration proceedings can be commenced after all local remedies have been exhausted.
ICSID or ad-hoc arbitration	Most Lithuanian investment treaties provide a right of recourse to ICSID (eg, Lithuania–Korea/Latvia BITs). It is noted that Lithuania–Israel BIT provides only and solely for ICSID arbitration. Most of the treaties also allow investors to pursue an arbitration claim through: (i) an ad hoc tribunal applying the rules contained within the Washington Convention (eg, Lithuania–Poland/Jordan BITs); (ii) an ad hoc tribunal constituted in accordance with the UNCITRAL rules (eg, Lithuania–Vietnam/Hungary/Slovenia BITs); and/or (iii) any other tribunal acting in accordance with any other arbitration rules as is mutually agreed by the parties (eg, Lithuania–USA BIT). Some of Lithuania's investment treaties also refer to the use of a commercial arbitral institution, that is, ICC arbitration in Paris (eg, the Lithuania–Spain BIT) or SCC Stockholm arbitration (eg, the Lithuania–Russian Federation BIT).
Diplomatic negotiations	The Lithuania–Italy BIT provides that both contracting parties shall refrain from negotiations through diplomatic channels regarding any questions regarding the investment arbitration or litigation commenced until it is concluded. Similarly, the Lithuania–Israel BIT provides that contracting parties shall refrain from diplomatic negotiations regarding the dispute unless the arbitral tribunal finds that it does not have jurisdiction or if one contracting party does not comply with the award.

Issue	Procedural Rights
Applicable law	Lithuanian investment treaties that provide a right to refer a dispute to ICSID (or to an ad hoc tribunal applying the rules contained within the ICSID Convention) are generally silent as to what law or laws are to govern the parties' dispute (eg, the Lithuania–Spain BIT provides that the tribunal shall decide the dispute in accordance with the treaty and the applicable rules and principles of international law). Where such treaties are silent as to governing law the applicable law is likely to be determined in accordance with article 42 of the ICSID Convention. Article 42 provides that in the absence of an agreement between the parties, the tribunal shall apply the law of the contracting state party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable (similar formulation is found in Lithuania–Macedonia BIT). With respect to ad hoc arbitration (not governed by the ICSID Convention), Lithuanian investment treaties generally do not contain provisions on applicable law and just provide that arbitral tribunals would be formed pursuant to the dispute resolution mechanism of an investment treaty. As for UNCITRAL arbitration, the majority of treaties enable parties to modify the arbitration rules under mutual agreement of the parties (eg, Lithuania–Finland BIT).

## 12 What is the approach taken in this country's investment treaties to standing dispute resolution bodies, bilateral or multilateral?

Most Lithuanian investment treaties provide a right of recourse to ICSID, SCC and UNCITRAL Arbitration. Few of the treaties provide for ICC arbitration. No other standing dispute resolution bodies, bilateral or multilateral are usually envisaged.

## 13 What is the status of this country's investment treaties?

Lithuania is among 23 EU member states that signed the agreement for the termination of intra-EU bilateral investment treaties ('termination agreement') on 5 May 2020. The agreement follows the declarations of 15 and 16 January 2019 on the legal consequences of the judgment of the Court of Justice in *Achmea* and on investment protection in the European Union, where member states committed to terminate their intra-EU BITs.

The termination agreement implements the March 2018 European Court of Justice judgment (*Achmea* case), where the Court found that investor-state arbitration clauses in intra-EU bilateral investment treaties ('intra-EU BITs') are incompatible with the EU Treaties.

Signatories of the termination agreement are Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain.

The termination agreement was ratified by the Lithuanian Parliament in July 2021 and has entered into force. Therefore, intra-EU BITs are formally terminated by the Republic of Lithuania. However, further disputes are envisioned regarding the sunset clauses and their legal force for future disputes under the intra-EU BITs.

## Practicalities of commencing an investment treaty claim against this country

### 14 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent	If the treaty does not stipulate upon whom a dispute notice is to be served, the notice should be addressed to the Prime Minister of Lithuania or the Office of the Prime Minister of the Republic of Lithuania and the Minister of Justice.
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### 15 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	Usually, the Ministry of Justice or the Ministry of Finance manages investment treaty arbitrations on behalf of the government of Lithuania. The ministry responsible for management of the investment arbitration would be appointed after the receipt of notices or claims by foreign investors and after the review of the nature of such claims.
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- 16 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

## Internal/external counsel

Arrangements for the defence of investor-state arbitration are determined by the Lithuanian government on a claim-by-claim basis. As it was indicated above, when the claim is received, then the government would appoint the responsible Ministry to manage the dispute on behalf of the government. The appointed Ministry would then announce a formal public procurement process to hire lawyers and law firms. Potentially any law firm could represent the government of Lithuania after winning the public procurement process on legal representation.

## Practicalities of enforcing an investment treaty claim against this country

- 17 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

## Washington Convention implementing legislation

Came into force in Lithuania in 1992-08-05. Published in the official gazette *Valstybės Žinios* in 2002, No. 115-5137.

- 18 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

## New York Convention implementing legislation

Came into force in Lithuania on 2 February 1995. Implementing act – Resolution of the Parliament of the Republic of Lithuania regarding ratification of 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1995-01-17 No. I-760.

- 19 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

## Legislation governing non-ICSID arbitrations

Lithuania does not have any specific law governing investment arbitrations seated in the territory of Lithuania.  
As for substantive investment protection standards, reference could be made to the Law on Investments of the Republic of Lithuania.

- 20 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

## Compliance with adverse awards

To date, only one adverse investment treaty award was rendered against the Republic of Lithuania in the *L. Bosca v Lithuania* case conducted under the UNCITRAL arbitration rules at the PCA. On 17 May 2013, the arbitral tribunal, composed of the Hon. Marc Lalonde (Presiding arbitrator) along with Mr Daniel Price and Prof. Brigitte Stern, issued an award in favour of Mr Luigi Bosca in which it was declared that the Republic of Lithuania had breached its obligation to grant just and fair treatment to the claimant.  
Luigiterzo Bosca was awarded €3.686 million in arbitration costs.  
However, on 17 December 2013, the Court of Appeals refused to recognise and enforce the Award on public policy grounds.  
After the claimant appealed the ruling of the Court of Appeals to the Supreme Court of Lithuania, the latter had annulled the ruling of the Court of Appeals and granted recognition and enforcement of the arbitral award in June 2014.

## 21 Describe the national government's attitude towards investment treaty arbitration

### Attitude of government towards investment treaty arbitration

There have only been a few investment treaty arbitration cases against Lithuania. Thus, no substantive conclusions could be made on this matter. So far, the government had always complied with its commitments under its investment treaties and was willing to refer investment disputes to international tribunals in accordance with the provisions of its bilateral investment treaties. On the other hand, this may change while taking into account that Lithuania is among 23 member states that signed and ratified the agreement for the termination of intra-EU bilateral investment treaties ('termination agreement'). The agreement follows the declarations of 15 and 16 January 2019 on the legal consequences of the judgment of the Court of Justice in *Achmea* and on investment protection in the European Union, where member states committed to terminate their intra-EU BITs. Therefore, Lithuania will now refuse to arbitrate any intra-EU investor-state disputes and will not recognise any awards made under the intra-EU BITs. Recently, following the *Achmea* ruling, the Lithuanian government has withdrawn its counterclaim against Veolia corporation in ICSID arbitration and has submitted this claim to Lithuanian courts pursuant to the termination agreement. This case is currently pending before Lithuanian courts.

## 22 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

### Attitude of local courts towards investment treaty arbitration

To date, Lithuanian courts have been called upon to enforce an investment treaty award against Lithuania in one case only (see above). Lithuanian courts, however, have also demonstrated a pro-international arbitration approach. For example, a Cyprus company enforced a 2004 LCIA award rendered against the region of Kaliningrad (Russian Federation) for its failure to reimburse a loan. The award was enforced in Lithuania against two buildings that the region of Kaliningrad owned there. In 2006, the government of the region of Kaliningrad (Russian Federation) commenced ICC arbitration proceedings against the Republic of Lithuania based on the bilateral investment treaty between the Russian Federation and Lithuania where it claimed compensation for the expropriation of its assets further to the enforcement of the 2004 LCIA award. The ICC arbitral tribunal found that it did not have jurisdiction over the dispute and that the application was unfounded. *Government of the Region of Kaliningrad v the Republic of Lithuania* (Paris Court of Appeal, Pôle 1, Chambre 1, 18 November 2010 No. 09/19535).

## National legislation protecting inward investments

### 23 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Law on Investments	Yes	Yes	Yes	Yes	Yes

## National legislation protecting outgoing foreign investment

### 24 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
	Although there are number of options in private business area, there is no national public investment guarantee scheme purposed to protect local investors when investing abroad. Therefore, the main security source for local investors when investing abroad is the diplomatic relations and a vast net of bilateral investment agreements signed by Lithuania.

## Awards

25 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties.

Awards
<i>Government of the Region of Kaliningrad v the Republic of Lithuania</i> (Paris Court of Appeal, Pôle 1, Chambre 1, 18 November 2010 No. 09/19535)
<i>Parkerings-Compagniet AS v Republic of Lithuania</i> , ICSID case No. ARB/05/8, Award, 11 September 2007
<i>Tokios Tokenles v Ukraine</i> , ICSID Case No. ARB/02/18
<i>Luigiterzo Bosca (Italy) v The Republic of Lithuania</i> (UNCITRAL) Award, 17 May 2013, PCA Case No. 2011-05
<i>UAB 'ARVI' ir ko and UAB 'SANITEX' (Lithuania) v Republic of Serbia</i> (ICSID Case No. ARB/09/21)
<i>UAB E energija (Lithuania) v Republic of Latvia</i> (ICSID Case No. ARB/12/33)
Pending proceedings
<i>Veolia Environnement SA and others v Republic of Lithuania</i> (ICSID Case No. ARB/16/3)
<i>Donatas Aleksandravicius v the Kingdom of Denmark</i> (ICSID Case No. R20200048)
<i>Garsu Pasaulis v the Kyrgyz Republic</i> (UNCITRAL Case No. AA784)
<i>UAB Pavilniu saules slenis 14 and UAB Modus grupe v Republic of Belarus</i> (ICSID Case No. ARB/21/2)

## Reading List

26 Please provide a list of any articles or books that discuss this country's investment treaties.

Daujotas, Rimantas 'International Investment Law and Arbitration', Eugrimas (2015).  
 Daujotas, Rimantas. 'Distinguishing features of Lithuanian bilateral investment treaties', *Justitia* (2014).  
 Daujotas, Rimantas. 'Foreign Investment Protection Regime of the Republic of Lithuania.' *Eurasia Arbitration Journal* 1 (2013).  
 Daujotas, Rimantas. 'Assessment of the New UNCITRAL Arbitration Rules of 2010.' Available at SSRN 1866198 (2011).  
 Daujotas, Rimantas. 'MFN Principle and Investor's Nationality in Investor-State Arbitration-Alternating Jurisdictional Requirements of BIT's through MFN Principle.' *Eurasia Arbitration Journal* 1 (2013).

## Notes

1 Expired. No longer in force since 15 April 2012.



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Ramūnas Audzevičius has been the partner and the co-head of dispute resolution practice at Motieka & Audzevičius since 2003. Ramūnas is highly experienced in business, commercial and regulatory disputes involving the application of EU, international and foreign law, and corporate investigations.

His practice involves representation of the clients under ICSID, UNCITRAL, ICC, SCC, LCIA, MKAS, GAFTA, FOSFA, Vilnius Court of Commercial Arbitration rules and others. Ramūnas also constantly sits as an arbitrator in international arbitrations. He also handles matters before the Supreme Court, the Supreme Administrative Court and the Court of Appeal in Lithuania. Ramūnas has been involved in advising clients in litigious matters decided by courts of the highest instances in Russia, Ukraine, Belarus, Azerbaijan, Latvia and Estonia.

Ramūnas studied at Harvard, London and Vilnius Universities as well as Moscow School of Social and Economic Sciences.

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Rimantas Daujotas is disputes partner in the dispute resolution practice group. Rimantas was involved as adviser or counsel in all major and most important international arbitrations in Lithuania and the Baltic Region and has substantial experience in handling high-value international commercial and investor-state arbitration cases. Being recommended arbitrator at the majority of EU arbitration centres, Rimantas is one of the leading individuals on international investment law and arbitration in the region. Rimantas holds PhD degree from Queen Mary University of London and PhD degree from Vilnius University. Currently, Rimantas also studies International Relations at the University of Cambridge. Rimantas was invited as a visiting scholar at Columbia Law School in NYC and the National University of Singapore. In addition, Rimantas was awarded an LLM in commercial law from the University of Edinburgh. He is a prolific author on international investment law, international arbitration, international law and has a growing body of scholarship. Rimantas is a lecturer in WTO law and international investment arbitration.

His working languages are English, Russian and Lithuanian.



Being the constant GAR 100 firm in Lithuania and the Baltics, Motieka & Audzevičius arbitration team is fully recognised as the leading arbitration practice in Lithuania and the region. Motieka & Audzevičius has its core practices in dispute resolution, corporate and M&A, regulatory and antitrust, tax and fintech. The firm's arbitration expertise is recognised by the leading international law directories, such as the *The Legal 500*, *GAR 100*, *Chambers Global*, *Chambers Europe*, *Who's Who Arbitration* and others.

Geographically, the focal point of the firm's activities is the Baltic region, where in collaboration with Latvian partners Skrastiņš & Dzenis and Estonian law firm TARK an outstanding service quality is offered. Other geographical areas of activity include Scandinavian countries, Poland, Russia, Ukraine, Belarus and other CIS countries. The lawyers' expertise is ensured by their premier legal education from world leading legal education institutions, such as Harvard, Oxford, Cambridge, Columbia, Georgetown, Singapore, MIDS and Queen Mary University of London. The team has also substantial experience in landmark arbitration disputes, especially in the energy and natural resources, pharmaceutical, aviation sectors, banking and financial services, healthcare, agriculture, real estate and construction.

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