

# **AGREEMENT FOR THE PROMOTION, GUARANTEE AND PROTECTION OF INVESTMENTS BETWEEN THE REPUBLIC OF SAN MARINO AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA**

The Republic of San Marino and the Great Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as the "Contracting Parties");

Desiring to promote greater economic co-operation between the two countries;

Desiring to create favourable conditions for investment by investors from both countries in the territory of the other country;

Recognising that the encouragement and contractual protection of such investment will stimulate private enterprise and enhance the prosperity of both countries;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

1. Investment" means any type of property, in particular:

a) movable and immovable property, as well as any other right in rem, such as pledges, guarantees and mortgages;

b) shares, stocks and other forms of participation in companies;

c) financial claims used for the purpose of realising economic value or any other right to benefits having economic value;

d) intellectual property rights, in particular copyrights, patents and industrial designs, trademarks, trade names, trade secrets, technical processes, know-how and inventions;

e) rights to engage in economic activities conferred under public law, including concessions for the exploration, extraction and exploitation of natural resources; any change in the form in which the assets are invested shall not affect their investment character.

2. Income" means the sums derived from an investment during a given period, such as profits, dividends, interest, royalties or fees.

3. The term "investors" means, in respect of each Contracting Party:

a) natural persons who

- in the case of the People's Socialist People's Libyan Arab Jamahiriya, are considered to be nationals according to its applicable laws;

- in the case of the Republic of San Marino, are considered to be San Marino nationals according to its applicable laws;

b) legal entities, including companies and business associations and other organisations, whether incorporated or not, established in the territory of that Contracting Party, whether or not their activities are for the purpose of making profits.

4. The term "territory" means the territory of each Contracting Party, including its territorial waters, exclusive economic zone and continental shelf, insofar as international law permits the Contracting Party to exercise sovereign rights or jurisdiction over such areas.

## **Article 2. Investment Promotion and Protection**

1. Each Contracting Party shall, so far as possible, encourage investments by investors of the other Contracting Party in its territory and shall authorize such investments in accordance with its laws.
2. Each Contracting Party shall give in its territory fair and equitable treatment to the investments of investors of the other Contracting Party and full protection under this Agreement. The income from the investment and, in the case of any reinvestment thereof, the relevant proceeds shall enjoy the same protection as is accorded to the investment.
3. The Contracting Parties shall not prejudice in any manner whatsoever, whether by arbitrary or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments in their territory by investors of the other Contracting Party.

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall accord to investments in its territory owned or controlled by investors of the other Contracting Party treatment no less favourable than that it accords to the investments of its own investors or to the investments of investors of any Contracting Party.
2. Each Contracting Party shall accord to the investors of the other Contracting Party treatment no less favourable than that it accords to its own investors or to the investors of any third country with respect to activities related to their investments in its territory.
3. For the purposes of this Article "activities" shall mean more specifically, but not exclusively: the management, maintenance, use, enjoyment and disposal of an investment. In particular, for the purposes of this Article, "less favourable treatment" means: inequitable treatment arising from restrictions on the purchase of raw or ancillary materials, energy or fuel or means of production or processing of any kind, inequitable treatment arising from prohibitions to market products within or outside the country, as well as any measures having similar effects. Measures taken for reasons of public safety, public order, public health or public morality shall not be considered as "less favourable treatment" within the meaning of this Article.
4. The treatment granted under this Article shall not apply to the privileges accorded by each Contracting Party to investors of third countries as a result of their participation in, or association with, a customs or economic union, a common market or a free trade area.
5. The treatment granted under this Article shall not apply to advantages which each Contracting Party grants to investors of third countries by reason of double taxation or other taxation agreements.
6. The provisions of this Article shall not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, exemptions and reductions which, under its taxation laws, are accorded only to investors resident in its territory.
7. The Contracting Parties shall give special consideration, within the framework of their domestic legislation, to applications for entry and stay made by persons of one Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of one Contracting Party who, in connection with an investment, wish to enter the territory of the other Contracting Party and stay therein for the purpose of employment. Applications for work permits shall also be given special consideration.
8. The investors of each Contracting Party shall be free to choose the means of international transportation for the transportation of persons and capital goods directly related to the investment within the meaning of this Agreement.

## **Article 4. Compensation In Case of Expropriation**

1. The investments of the investors of each Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.
2. The investments of the investors of each Contracting Party shall not be directly or indirectly expropriated, controlled or subjected to measures having similar effects in the territory of the other Contracting Party, except in the public interest and upon compensation. Such compensation shall be equal to the value of the expropriated investment immediately prior to the date on which the expropriation, nationalisation or equivalent measure, actual or threatened, was made public. The compensation shall be paid without delay and shall include accrued bank interest up to the date of payment; it shall be effectively realisable and freely transferable. Not later than the date of the expropriation, nationalisation or equivalent

measure, appropriate steps shall have been taken to determine and pay the compensation. The legality of the expropriation, nationalisation or equivalent measure, as well as the amount of the compensation, shall be subject to review in ordinary judicial proceedings.

3. Investors of each Contracting Party whose investments have suffered losses in the territory of the other Contracting Party as a result of war or other armed conflict, revolution, a state of national emergency or insurrection shall be accorded by the other Contracting Party treatment no less favourable than that accorded by the latter to its own investors in respect of restitution, compensation, indemnification or other settlement. Such payments shall be freely transferable.

4. Investors of each Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party for the purposes of this Article.

## **Article 5. Free Transfer**

Each Contracting Party shall grant to the investors of the other Contracting Party the free transfer of payments relating to an investment, including in particular:

- (a) the initial capital and additional units for the maintenance or growth of the investment;
- (b) income;
- (c) repayments of loans;
- (d) sums arising from the total or partial liquidation or sale of the investment; and
- (e) compensation under Article 4.

## **Article 6. Subrogation**

In the event that a Contracting Party makes a payment to one of its investors under a guarantee in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the first Contracting Party under Article 10, recognise the assignment, by operation of law or by virtue of a legal relationship, of any right or claim of such investor against the first Contracting Party. The second Contracting Party also recognises the subrogation of the first Contracting Party to any right or claim (rights in subrogation) that that Contracting Party may assert to the same extent as the assignee. As regards the transfer of payments made pursuant to such rights by subrogation, paragraphs 2 and 3 of Article 4 and Article 5 shall apply *mutatis mutandis*.

## **Article 7. Provisions on Transfers**

1. Transfers pursuant to Article 4(2) or (3) and Articles 5 or 6 shall be effected without delay at the current rate of exchange applicable on the date of the transfer. A transfer is deemed to have been effected "without delay" if it is effected within the period normally necessary for the completion of the transfer formalities. That period begins on the date on which the request is made and in no case should exceed two months.

2. In the absence of an exchange market, the rate used shall be the rate most recently applied by the respective Central Bank for inward investment or the most recent exchange rate for the conversion of currency into Special Drawing Rights, whichever is more favourable to the investor.

## **Article 8. Other Provisions**

1. If the law of a Contracting Party or any existing or subsequently entered into international obligations between the Parties in addition to this Agreement contain any provision, whether general or specific, entitling the investors of the other Contracting Party to treatment more favourable than that provided for in this Agreement, that provision shall, to the extent more favourable, take precedence over this Agreement.

2. Each Contracting Party shall comply with any other obligations assumed with respect to investments made in its territory by investors of the other Contracting Party.

## **Article 9. Scope of Application**

This Agreement shall apply to investments made prior to its entry into force by investors of each Contracting Party in the

territory of the other Contracting Party in accordance with the laws of the latter Contracting Party. However, this Agreement shall not apply to disputes arising before its entry into force.

## **Article 10. Dispute Settlement between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, so far as possible, be settled by the Governments of the two Contracting Parties.
2. In the event that a dispute cannot be so settled within three months from the date on which the matter was raised by a Contracting Party, it shall, at the request of a Contracting Party, be submitted to an arbitral tribunal.
3. Such arbitral tribunal shall be constituted on an ad hoc basis as follows: each Contracting Party shall appoint one member. Those two members shall choose as president a national of a third State, who shall be nominated by the Governments of the two Contracting Parties. The members shall be appointed within two months and the chairperson within five months of the date on which a Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.
4. If the time limits referred to in paragraph 3 above are not observed, the Contracting Parties may, in the absence of other arrangements, invite the President of the International Court of Justice to make the relevant appointments. If the President is a national of one of the Contracting Parties or is otherwise unable to serve, the Vice President should make the necessary appointments. In the event that the Vice-President is also a national of one of the Contracting Parties or is otherwise prevented from exercising that function, the necessary appointments should be made by the most senior member of the Court who is not a national of either Contracting Party.
5. The arbitral tribunal shall decide by a majority of votes and its decisions shall be binding. Each Contracting Party shall bear the expenses of its member and of its representatives in the arbitral proceedings; the expenses of the Chairman and the remaining expenses shall be borne equally by the two Parties. In respect of costs, the arbitral tribunal may determine a different settlement. In all other respects, the arbitral tribunal shall determine its own rules.
6. The chairman of the arbitral tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

## **Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any investment dispute arising between a Contracting Party and an investor of the other Contracting Party shall, to the extent possible, be settled amicably between the parties to the dispute.
2. If a dispute cannot be settled within six months from the date on which it was submitted by one of the parties to the dispute, it shall, at the request of the investor of the other Contracting Party, be submitted to arbitration. Unless otherwise agreed between the parties, the provisions of Article 10(3) to (5) shall apply mutatis mutandis, provided that the appointment of the members of the arbitral tribunal in accordance with Article 10(3) has been made by the parties to the dispute and that, to the extent that the time limits referred to in Article 10(3) are not met, each party to the dispute may invite, in the absence of any other agreement, the of other arrangements, the President of the International Court of Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The arbitral award shall be enforced in accordance with domestic law.
3. During the arbitration proceedings or the enforcement of the arbitral award, the Contracting Party involved in the dispute may not claim that the investor of the other Contracting Party has received compensation under an insurance contract intended to cover in whole or in part the losses suffered.
4. In the event that both Contracting Parties have acceded to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, disputes referred to in this Article between the parties to the dispute shall be submitted to arbitration in accordance with the said Convention unless the parties otherwise agree and each Contracting Party declares that it accepts that procedure.

## **Article 12. Relationship between the Contracting Parties**

This Agreement shall enter into force whether or not diplomatic or consular relations exist between the Contracting Parties.

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

1. This Agreement shall be subject to ratification and the exchange of instruments of ratification shall take place after completion of the appropriate legal procedures.

2 This Agreement shall enter into force one month after the date of exchange of instruments of ratification. It shall have effect for a period of ten years and shall be extended thereafter for an equal period, unless a Contracting Party denounces it in writing through diplomatic channels twelve months before its expiry. After the expiry of the ten-year period, this Agreement may be terminated by either Contracting Party at any time upon twelve months notice.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of the preceding Articles shall remain in force for a further period of twenty years after the date of termination of this Agreement.

Done at Tripoli this 10th day of December 2006, in duplicate, in the Arabic and Italian languages, all texts being equally authentic.

For the Republic of San Marino

Fiorenzo Solfi

Secretary of State for Foreign Affairs and Political Affairs

For the Great Socialist People's Libyan Arab Jamahiriya

Abdurahman Mohamed Shalgam

Secretary of the General People's Committee for Foreign Affairs and International Cooperation