

# **Agreement between the Government of the Republic of Bulgaria and the Republic of San Marino on promotion and mutual protection of investments**

The Government of the Republic of Bulgaria and the Republic of San Marino, hereinafter referred to as "contracting parties"

Desiring to develop greater economic cooperation between them in relation to investments made by natural and legal persons of one Contracting Party in the territory of the other Contracting Party

Recognizing that agreement on the treatment to be accorded to such investments will stimulate the flow of private capital and the economic development of the Contracting Parties

Agreeing that sustainable framework for investment will maximize effective utilization of economic resources and improve living standards,

Decided to conclude an agreement on promotion and mutual protection of investments

They have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter, and include in particular, but not exclusively:

a) rights over movable and immovable property and other property rights such as mortgages, liens, pledges, and similar rights;

b) shares, stocks, securities and any other form of participation in a company;

c) claims to money or to any performance having economic value;

d) intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, as far as both Contracting Parties are parties thereto, including but not

Limited to copyright and related rights, patents, trademarks, trade names, industrial designs and rights in technical processes, rights in plants, know-how and goodwill;

e) rights to engage in economic and commercial activities conferred by law, under contract, including rights to prospect, develop, extract or exploit natural resources;

f) any increase in the value of the initial investment.

Any change in the form in which assets are invested or reinvested does not affect their character as investment, provided that such change is in accordance with the law of the Contracting Party in whose territory the investment has been made.

2. The term "returns" means the amounts legally yielded by an investment and in particular, but not exclusively, includes profits, interest, capital gains, dividends, licensing fees, royalties and other fees.

3. The term "investor" means:

a) a natural person who is a national of one Contracting Party who invests in the territory of the other Contracting Party;

b) any company, organization, company or other form of incorporation incorporated or constituted under the law of one

Contracting Party and established in the territory of the Contracting Party, whether with or without legal personality.

4. The term "without delay" means the normal period required to implement the necessary formalities for the transfer of payments. This period starts from the day of receipt of the request for transfer and does not last more than one month.

5. The term "freely convertible currency" means any currency determined by the International Monetary Fund periodically as freely usable currency in accordance with the texts of the Agreement of the International Monetary Fund and any amendments thereto.

6. The term "territory" means:

(I) with respect to the Republic of Bulgaria, the Republic of Bulgaria, including the territorial sea and continental shelf and the exclusive economic zone over which Bulgaria exercises sovereign rights or jurisdiction in accordance with international law;

(II) for the Republic of San Marino, the Republic of San Marino, including any other area of San Marino, over which it exercises sovereign rights or jurisdiction in accordance with international law.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favorable conditions in its territory for investments by investors of the other Contracting Party and admit such investments in accordance with its laws, giving them fair and equitable treatment and protection. Furthermore provide full legal protection and security of investments and returns of investors of the other Contracting Party.

2. In case of reinvestment of returns from an investment, these reinvestments and their proceeds will benefit from the same treatment and protection as the initial investments.

3. No Contracting Party shall not impair by unreasonable or

Discriminatory measures the management, maintenance, use, possession, acquisition or disposal of investments in its territory by investors of the other Contracting Party.

4. In order to promote the flow of mutual investments, each Contracting Party shall endeavor to inform the other Contracting Party in its request for investment opportunities in its territory.

5. Each Contracting Party shall, where appropriate, in accordance with its legislation and without delay permits required in connection with the activities of consultants or experts hired by investors of either Contracting Party.

6. Each Contracting Party shall consider favorably and in accordance with its legislation questions concerning entry, stay, work and movement in its territory of nationals of other Contracting Party who carry out activities associated with investments specified in this Agreement and members of their families forming part of their households.

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

1. Each Contracting Party shall in its territory investments by investors of the other Party treatment no less favorable than that accorded to investments of its own investors or investments of investors of any third state, which is -blagopriyatno.

2. Each Contracting Party shall in its territory of investors of the other Contracting Party treatment as regards the management, maintenance, use, possession or disposal of their investments no less favorable than that it accords to its own investors or investors of any third country which is more favorable.

3. The provisions on national treatment and most-favored-nation of this Agreement shall not apply to benefits provided to the Contracting Party by virtue of its obligations as a member of a customs, economic or monetary union, common market or free trade zone.

4. The provisions of this Agreement shall not be construed as an obligation of a Contracting Party to extend to investors of the other Contracting Party or investments of those investors and the proceeds from them the benefit of any treatment, preference or privilege which may be provided by Contracting party under an international agreement or arrangement relating wholly or mainly to taxation.

5. Each Contracting Party reserves the right to make or maintain in accordance with its legislation exceptions to the national treatment granted under paragraphs 1 and 2 of this Article. Any new exception will apply only to investments made after the entry into force of this exception.

6. If the provisions of domestic law of a Contracting Party or obligations under existing or future international agreements applicable between the Contracting Parties or other international treaties to which they are parties, contain regulations, whether general or particular, providing for treatment more favorable than that provided in the contract, such provisions prevail over this contract.

7. Unless otherwise specified, provided in Article 3 treatment applies for the whole contract.

## **Article 4. Treatment of Losses**

Of investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflict, emergency or other similar events shall be accorded treatment as regards restitution, indemnification, compensation or other settlement less favorable than that accorded to its own investors or investors from a third country, which is more favorable. Resulting payments shall be freely transferable in convertible currency.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be expropriated, nationalized or subjected to measures having effect equivalent to expropriation or nationalization (hereinafter "expropriation") in the territory of the other Contracting Party except under the law, especially important state needs that can not be met otherwise discriminatory basis and against prompt, effective and adequate compensation.

2. This compensation amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge that occurred earlier paid without delay and includes an annual interest rate equal to the 12-month LIBOR quoted currency in which investments are made until the payment.

3. The affected investor is entitled under the law of the Contracting Party making the expropriation, to prompt review by a competent judicial or other independent authority of that Contracting Party of his case and of valuation of its investment in accordance with the principles set out in this Article.

## **Article 6. Other Liabilities**

Each Contracting Party shall observe any other obligation it may have entered with regard to investments made in its territory by investors of the other Contracting Party.

## **Article 7. Transfer of Funds**

1. Without prejudice to measures taken by the European Union, each Contracting Party shall allow investors of the other Contracting Party after all their tax and other mandatory payments free transfer of sums related to their investments and in particular, but not exclusively:

- a) capital and additional amounts intended to maintain or increase investment;
- b) the proceeds from the investment;
- c) proceeds obtained from the total or partial liquidation of an investment;
- d) amounts required for the payment of costs arising from the operation of the investment, such as loan repayments, payment of patents or license fees or payment of other charges;
- e) compensation payable in accordance with Article 4 and 5;
- f) the remuneration received by nationals of the other Contracting Party for work or services performed in connection with investments made in its territory in accordance with its laws and regulations;
- g) payments arising from the settlement of investment disputes in accordance with Art. 9 and Art. 10 of this contract.

2. The transfers referred to in the preceding paragraph shall be carried out without delay in the currency of the country of the investor or in freely convertible currency in accordance with the currency legislation of the Contracting Party in whose territory the investment was made.

## **Article 8. Subrogation**

1. If one Contracting Party or its designated agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer to the former Contracting Party or its designated agency by law or legal deal of all rights or claims of the party indemnified, and that the first Contracting party or its designated agency is entitled by virtue of subrogation to exercise such rights and enforce such claims to the same extent as the party indemnified.

2. The subrogation of the Contracting Party or its designated agency in the rights and claims of the insured investor and extend the right of transfer referred to in Article 7 of this Agreement.

3. The Contracting Parties shall be entitled in all circumstances to:

a) equal treatment in terms of their acquired rights, obligations and claims by rights transferred;

b) any payment received under those rights and claims, as far as the party indemnified is entitled to receive under this agreement in respect of the investment concerned and its related returns.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible, through negotiations between the Contracting Parties.

2. If a dispute between the Contracting Parties can not be settled in this way within six months from the start of negotiations at the request of either Contracting Party, it refers to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within two months of receipt of the request for arbitration, each Contracting Party shall designate one member of the tribunal. These two members then choose a third, which with the approval of both Contracting Parties shall be determined Chairman of the tribunal. Chairman shall be appointed within two months from the date of determination of the other two members.

4. If within the periods specified in paragraph 3 of this Article shall not be made the necessary appointments, each Contracting Party may, in the absence of the other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a citizen of either Contracting Party or otherwise prevented from discharging the said function, the Vice President will be invited to make the necessary appointments. If the Vice President is a citizen of

Either Contracting Party or if he too is prevented from discharging the said function, the next most senior Member of the International Court of Justice who is not a citizen of either Contracting Party shall be invited to make the necessary appointments.

5. The Court shall determine its own procedure.

6. The arbitral tribunal shall take its decision based on the provisions of this Agreement and the generally accepted principles and rules of international law. The arbitral tribunal shall take its decision by majority vote. This decision is final and binding on the contracting parties.

7. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitration process. The costs of the chairman and other costs shall be borne equally by the Contracting Parties. The arbitral tribunal shall decide on the final payment of costs, taking into account the outcome of the proceedings and the responsibility for inflicting costs.

## **Article 10. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. A dispute between a Contracting Party and an investor of the other Contracting Party regarding the obligations of the Parties under this agreement in connection with investments by investors of the other Contracting Party shall be permitted as far as possible, through negotiations.

2. If such a dispute can not be settled within six months from the date on which either party to the dispute has requested settlement through negotiations, the investor concerned may submit the dispute to:

a) the competent court of the Contracting State party to the dispute; or

b) in case of dispute with respect to Articles 3 to 8 of this contract the investor may choose instead to resolve the dispute through arbitration before:

i) an arbitral tribunal ad hoc, established under the Arbitration Rules of the Commission of the United Nations on International Trade Law (UNCITRAL); or

ii) the International Centre for Settlement of Investment Disputes established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, signed in Washington on March 18, 1965 (ICSID), if both Contracting Parties are parties to the Convention.

For this purpose, each Contracting Party hereby declares its consent to that international arbitration.

If a dispute arises and the parties to the dispute decide to refer it to arbitration by assigning it to one of the bodies set out in the letter "b" of this article, they waive their right to refer to the other.

3. The decision is final and binding and shall be enforced in accordance with national law, each Party shall ensure the recognition and enforcement in accordance with its domestic law.

4. A Contracting Party which is party to the dispute can not, at any stage of the consultation or arbitration proceedings or enforcement of the decision to make an objection that the investor who is the other party to the dispute has received compensation under warranty relating in whole or part of its losses.

## **Article 11. Consultations**

Any Contracting Party may propose the other Contracting Party to start consultations on all matters relating to the interpretation or application of this Agreement. The other Contracting Party shall take appropriate measures for such consultation.

## **Article 12. Application of the Treaty**

The provisions of this Treaty shall apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Treaty, but will not apply to disputes that have already arisen before its entry into force.

## **Article 13. Amendments to the Treaty**

This Agreement may be amended and supplemented by mutual agreement of the Parties. Such amendments shall be made in the form of separate protocols, which form an integral part of the contract which entered into force in accordance with Article 14 of this Treaty.

## **Article 14. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the date of receipt of the last written notification through diplomatic channels by which one Contracting Party shall notify the other Party that their respective internal procedures required for the entry into force of the contract.

2. This contract is concluded for a period of 10 years and will continue in force thereafter for successive periods of 10 years unless either Contracting Party notifies in writing through diplomatic channels at least six months in advance the other Party of its intention to terminate the contract.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall remain in force for a further period of 10 years from the date of termination of this contract.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this contract.

DONE in Sofia on February 23, 2007 in two originals in the Bulgarian, Italian and English languages, all texts being equally authentic. In case of divergence of interpretation prevail English text