A G R E E M E N T

BETWEEN

BOSNIA AND HERZEGOVINA

AND

THE REPUBLIC OF SAN MARINO

ON THE PROMOTION

AND RECIPROCAL PROTECTION OF INVESTMENTS

Bosnia and Herzegovina and the Republic of San Marino (hereinafter referred to as **"**the Contracting Parties"**)**;

Desiring to promote greater economic cooperation between them, with respect to investment by nationals and legal entities of one Contracting Party in the territory of the other Contracting Party;

Recognising that agreement upon the treatment to be accorded to such investment will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

Have agreed as follows:

Article 1
Definitions

For the purposes of the Agreement:

1. The term "investment" means every kind of assets invested for the purpose of acquisition of economic benefit or other business purpose by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include in particular, though not exclusively:

   a) movable and immovable property as well as any other rights *in rem* such as mortgages, liens, pledges, usufructs and similar rights;

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

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

   d) intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are parties to them, included, but not limited to, industrial property rights, copyrights and neighbouring rights, trademarks, patents, industrial design and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;

   e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

   Any subsequent change in the form in which assets are invested or reinvested shall not affect their character as investments provided that such change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made**.**

2. The term “investor” means:

   a) In respect of Bosnia and Herzegovina:

      (i) Physical persons deriving their status as Bosnia and Herzegovina citizens from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina;

      (ii) Legal persons established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.

   b) In respect of the Republic of San Marino:

      (i) A natural person having the nationality of the Republic of San Marino who makes an investment in the territory of the other Contracting Party;

(ii) A legal person incorporated, constituted or otherwise duly organised in accordance with the laws and regulations of the Republic of San Marino, having its seat and performing real business activity in the territory of the Republic of San Marino and invests in the territory of Bosnia and Herzegovina;

3. The term “returns” means income deriving from an investment and includes, in particular, though not exclusively, profits, dividends, interests, capital gains, royalties, patents licence fees, fees and other compensations.

4. The term "without delay" means such period as is normally required for the completion of necessary formalities for the payments of compensation or for the transfer of payments. The said period shall commence for payments of compensation on the day of expropriation and for transfers of payments on the day on which the request for transfer has been submitted. It shall in no case exceed one month.

5. The term ″freely convertible currency″ means any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

6. The term "territory" means:

   a) With respect to Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, whole bed and subsoil and air space above, including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina which has been or might in the future be designated under the law of Bosnia and Herzegovina in accordance with international law as an area within which Bosnia and Herzegovina may exercise rights with regard to the seabed and subsoil and the natural resources.

   b) With respect to the Republic of San Marino: the territory of the Republic of San Marino, including any other area within which the Republic of San Marino, in accordance with international law, exercises sovereign rights or its jurisdiction.

Article 2
Promotion and admission of investments

1. Each Contracting Party shall encourage and create favourable, stable and transparent conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of either Contracting Party, on the investment opportunities in its territory.

3. Each Contracting Party shall grant, whenever necessary, in accordance with its laws and regulations, without delay, the permits required in connection with the activities of consultants or experts engaged by investors of Each Contracting Party.

4. Each Contracting State shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporarily and work in its territory. Immediate family members of such key personnel shall also be granted similar treatment with regard to entry and temporary stay in the host Contracting State.

Article 3
Protection of investments

1. Each Contracting Party shall extend in its territory full legal protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, disposal, sale and if it is the case, the liquidation of such investments in its territory.

2. Investments or returns of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment in accordance with international law and provisions of this Agreement.

Article 4
National treatment and most favoured nation treatment

1. Neither Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party a treatment less favourable than that which it accords to investments and returns of its own investors, or to investments and returns of investors of any other third State, whichever is more favourable to the investors concerned.

2. Neither Contracting Party shall accord in its territory to the investors of the other Contracting Party, as regards expansion, management, maintenance, enjoyment, use, or disposal of their investment, a treatment which is less favourable than that which it accords to its own investors or to the investors of any third State, whichever is more favourable to the investors concerned.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from**:**

   a) the membership of or association with any existing or future customs union or economic union, free trade area, common market, or similar international agreements to which either of the Contracting Party is or may become a Party in the future;

   b) any international agreement or arrangement, completely or partially relate to taxation.

Article 5
Expropriation

1. A Contracting Party shall not expropriate or nationalize directly or indirectly an investment in its territory of an investor of another Contracting Party or subjected to requisition or take any measure or measures having equivalent effect (hereinafter referred to as "expropriation") except:

   a) for a purpose which is in the public interest related to the internal needs,

   b) on a non-discriminatory basis,

   c) in accordance with due process of law, and

   d) accompanied by payment of prompt, adequate and effective compensation.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. The compensation shall include interest at a normal commercial rate for current transactions from the date of expropriation until the date of payment.

3. Compensation shall be paid in a freely convertible currency and made transferable without delay, to the country designated by the claimants concerned.

4. The affected investors of either Contracting Party shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, concerning the legality of the expropriation, its process and the valuation of the investment in accordance with the principles set out in paragraph 1 of this Article.

Article 6
Compensation for damage or loss

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events in the territory of the other Contracting Party they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than the treatment that the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors of the other Contracting Party**.**

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

a) requisitioning of their property or part thereof by its forces or authorities;

b) destruction of their property or part thereof by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded a prompt restitution, adequate and effective compensation for the damage or loss sustained during the period of the requisitioning as a result of destruction of their property. Resulting payments shall be made in freely convertible currency and be freely transferable without undue delay.

Article 7
Transfers

1. Each Contracting Party shall ensure the free transfer of payments relating to an investment in its territory of an investor of another Contracting Party in and out of its territory. Such transfers shall include in particular, though not exclusively:

   a) the initial capital and additional amounts to maintain or increase an investment;

   b) returns;

   c) funds in repayment of loans related to an investment;

   d) proceeds from the sale or liquidation of all or any part of the investment;

   e) payments of compensation under Articles 5 and 6 of this Agreement;

   f) payments arising out of the settlement of an investment dispute under Articles 10 and 11 of this Agreement;

   g) earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. Each Contracting Party shall ensure that the transfers under paragraph 1 of this Article shall be effected without delay in a freely convertible currency at the official rate of exchange valid on the date of transfer in the territory of the Contracting party in which investment is made.

3. Transfers shall be done in accordance with the procedures established by the exchange regulations of the Contracting Party in whose territory the investment was made, which shall not imply a rejection, suspension or denaturalisation of such transfer.

4. The Contracting Parties undertake to accord to such transfers a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

Article 8
Subrogation

1. If one Contracting Party or its designated agency (for the purpose of this Article: the ″First Contracting Party″) makes a legal payment to any of its investors under a guarantee or a contract of insurance against non-commercial risks given in respect of an investment in the territory of the Contracting Party (for the purpose of this Article: the ″Second Contracting Party″), the Second Contracting Party shall recognise, notwithstanding its rights under the Article 11 of this Agreement,:

   a) the assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and

   b) that the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The First Contracting Party shall be entitled in all circumstances to:

   a) the same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment, referred to in paragraph 1 above; and

   b) any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive it by virtue of this Agreement, in respect of the investment concerned and its related returns.

3. In the case of subrogation as defined in paragraph 1 of this Article, the investor shall not sue or pursue a claim unless authorised to do so by the Contracting Party or its agency.

Article 9
Application of other obligations

If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to this Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rule shall to the extent that it is more favourable, prevail over this Agreement.

Article 10
Settlement of Disputes between a Contracting Party and an investor of the other Contracting Party

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be settled amicably through consultations and negotiations.

2. If a dispute can not be settled in accordance with paragraph 1 of this Article within a period of a three months from the date on which either party to the dispute requested amicable settlement, the investor concerned may submit the dispute either to:

   a) The competent court or administrative tribunal of the Contracting Party in the territory of which the investment has been made; or

   b) Ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

   c) The International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre") through conciliation or arbitration established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington D.C. on 18 March 1965 (hereinafter referred to as "the Convention"), in the event both Contracting Parties shall have become a party to the Convention.

3. A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and in which before such dispute arises the majority of shares are owned by investors of the other Contracting Party, shall in accordance with Article 25 (2) (b) of the Convention be treated for the purpose of this Convention as the company of the other Contracting Party.

4. Neither Contracting Party shall pursue through the diplomatic channels any dispute referred to the Centre unless:

   a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by the Centre, decides that the dispute is not within the jurisdiction of the Centre; or

   b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

5. The arbitration award shall be based on:

   - the provisions of this Agreement;

   - the laws of the Contracting Party in whose territory the investment has been made including the rules relative to conflict of laws; and

- the rules and universally accepted principles of international law.

6. The arbitration award shall be final and binding on both parties to the dispute and shall be executed according to the law of the Contracting Party concerned.

7. During the arbitral or execution proceedings Contracting Party shall not assert as a defence, objection, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received by investor who is contending party, pursuant to an insurance or guarantee contract against political risks.

Article 11
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 by negotiations through diplomatic channels.

2. If a dispute according to paragraph (1) of this Article cannot be settled six (6) months from the date of request for settlement, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.

3. Such arbitral tribunal shall be constituted ad hoc for each individual case as follows: each Contracting Party shall appoint one arbitrator. Those two arbitrators shall agree upon a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intension to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two (2) further months.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may invite the President of the International Court of Justice to make any necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding on both Contracting Parties.

7. Each Contracting Party shall bear the costs of its own member of the tribunal and of its legal representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties**.**

8. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article 10 and is still before the court. This will not impair the possibility of dispute settlement in accordance with paragraph 1 of this Article.

Article 12
Consultations and exchange of information

1. Upon the request by either Contracting Party, the other Contracting Party shall, without undue delay, begin consultations concerning interpretation and application of this Agreement.

2. Upon the request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of the other Contracting Party may have on investments covered by this Agreement.

Article 13
Application of the Agreement

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party prior as well as after the entry into force of this Agreement, but shall not be applied to the disputes which have arisen in connection with the investments of investor of one Contracting Party in the territory of State of the other Contracting Party before the entry into force of this Agreement.

Article 14
Entry into force, duration and denunciation

1. This Agreement shall enter into force on the date of receipt of the latter notifications through diplomatic channels by which either Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of ten (10) years and shall be extended thereafter for following ten year periods unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may, by giving one year in advance written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

4. In respect of investments made or acquired prior to the date when the denunciation of this Agreement become effective, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of denunciation of this Agreement.

5. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering into force of the present Agreement.

6. This Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

DONE in Rome on 2 August 2011 in two originals, each in the Bosnian/Croatian/Serbian, Italian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For Bosnia and Herzegovina	For the Republic of San Marino
Branko Kesić Ambassador of Bosnia and Herzegovina in the Republic of Italy	**Daniela Rotondaro** Ambassador of the Republic of San Marino in the Republic of Italy