AGREEMENT BETWEEN THE CZECH REPUBLIC AND THE REPUBLIC OF SAN MARINO ON EXCHANGE OF INFORMATION ON TAX MATTERS

The Czech Republic and the Republic of San Marino (hereinafter referred to as "San Marino"), desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

Article 1
Object and Scope of the Agreement

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

2. Information received by the requesting Party under this Agreement may be used in the requesting Party as evidence in criminal proceedings only if judicial or other competent authorities of the requested Party give consent to it in accordance with the laws of the requested Party if such consent is, under these laws, necessary.

Article 2
Jurisdiction

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3
Taxes Covered

1. The taxes covered by this Agreement are the existing taxes imposed by the laws of the Contracting Parties.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4
General definitions

1. For the purposes of this Agreement, unless otherwise defined the term:

a) "Contracting Party" means the Czech Republic or San Marino as the context requires;
b) "competent authority" means
   i) in the case of the Czech Republic the Minister of Finance or his authorized representative;
   ii) in the case of San Marino, the Minister of Finance, his authorized representative or the authority which is designated as a competent authority for the purpose of this Agreement;
c) "person" includes an individual, a company and any other body of persons;
d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
e) "publicly traded company" means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
f) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
g) "recognized stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
h) "collective investment fund or scheme" means any pooled investment instrument, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
i) "tax" means any tax to which the Agreement applies;
j) "requesting Party" means the Contracting Party requesting information;
k) "requested Party" means the Contracting Party requested to provide information;
l) "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
m) "information" means any fact, statement or record in any form whatever;
n) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
o) "criminal proceedings" means proceedings conducted by law enforcement authorities, prosecutors and courts in order to establish guilt for violations of criminal laws and impose appropriate sentences;
p) "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of taxes to which the Agreement applies, any meaning under the applicable tax law of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5
Exchange of Information upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party to demonstrate the foreseeable relevance of the information to the request:

a) the identity of the person under examination or investigation;
b) a statement of the information sought including its nature and the form in which the requesting Party wishes to receive the information from the requested Party;
c) the tax purpose for which the information is sought;
d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
e) to the extent known, the name and address of any person believed to be in possession of the requested information;

f) a statement that the request is in conformity with the law and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

g) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

a) Confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request.

b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6
Tax Examinations Abroad

1. A Contracting Party may, in accordance with its domestic laws, following receipt of notice from the Requesting Party, allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7
Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

a) produced for the purposes of seeking or providing legal advice or
b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the requesting Party in the same circumstances.

Article 8
Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 9
Costs

Ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance shall be borne by the requesting Party.

Article 10
Implementation measures

The Contracting Parties shall adopt and publish the laws, regulations and administrative provisions necessary to comply with, and give effect to, the terms of the Agreement.

Article 11
Language

Requests for assistance and answers thereto shall be drawn up in English or any other language agreed bilaterally between the competent authorities of the Contracting Parties under Article 13.

Article 12
Other International Agreements or Arrangements

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to the co-operation in tax matters.

Article 13
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreements under this Article.

4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 14
Protocol

The attached Annex contains an explanatory Protocol to the Agreement and shall be an integral part of this Agreement.

Article 15
Entry into force

Each of the Contracting Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its domestic law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect

a) for criminal tax matters on that date; and

b) for all other matters covered in Article 1 in respect of any taxable period beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 16
Termination

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through the diplomatic channels, by giving written notice of termination. In such event, the Agreement shall cease to have effect in both Contracting Parties on 1st January in the calendar year next following that in which the notice is given.

2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorized thereto, have signed the Agreement.

Done in duplicate at Prague this 25th day of November 2011, in the English language.

For the Czech Republic

Karel Schwarzenberg

For the Republic of San Marino

Antonella Mularoni

ANNEX

PROTOCOL

CONCERNING

THE INTERPRETATION AND APPLICATION OF THE AGREEMENT

BETWEEN

THE CZECH REPUBLIC AND THE REPUBLIC OF SAN MARINO
ON THE EXCHANGE OF INFORMATION ON TAX MATTERS.

1. Pursuant to Article 9 of the Agreement, costs that would be incurred in the ordinary course of administering the domestic tax laws of the requested Party will be borne by the requested Party when such costs are incurred for the purpose of responding to a request for information. Ordinary costs include internal administration costs, any minor external costs and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requesting Party.

2. Direct extraordinary costs incurred in providing assistance shall be borne by the requesting Party. Examples of such costs include, but are not limited to, the following:

a) reasonable costs charged by third parties for copying documents on behalf of the requested Party;
b) reasonable costs of engaging experts, interpreters, or translators when necessary;
c) reasonable costs of conveying documents to the requesting Party;
d) reasonable litigation costs of the requested Party in direct relation to a specific request for information, including costs of engaging external counsel and advisers; and
e) reasonable costs of obtaining depositions or testimony.

3. If the extraordinary costs pertaining to a particular request are expected to exceed 500 EUR, the competent authority of the requested Party shall contact the competent authority of the requesting Party to determine whether the requesting Party wants to pursue the request and bear the costs.