

Agreement between the Swiss Confederation and the Republic of El Salvador on the Promotion and Reciprocal Protection of Investments

Preamble

The Swiss Federal Council

and

the Government of the Republic of El Salvador,

hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation in the mutual interest of both States,

With the intention of creating and maintaining favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party Contracting Party,

Recognizing the need to encourage and protect foreign investments in order to promote the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investor" means, with respect to the Republic of El Salvador and the Swiss Confederation, respectively:

(a) natural persons who, according to its legislation, are considered its nationals;

(b) legal entities, including corporations, registered companies, partnerships or any other entities incorporated or otherwise organized under its laws, which have their seat, together with actual economic activities, in its territory

(c) legal entities, such as subsidiaries and branches, established in any country, which are controlled, directly or indirectly, by nationals or by legal entities, respectively, under subparagraphs (a) and (b) of this paragraph.

(2) The term "investments" includes all categories of assets, and in particular:

(a) ownership of movable and immovable property, as well as all other real rights, such as easements, mortgages, pledges on real and movable property;

(b) shares and other forms of participation in companies;

(c) monetary claims and rights to any activity with economic value

(d) copyrights, industrial property rights (such as patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source), transfer of knowledge (know-how) and goodwill

(e) concessions, including concessions for research, extraction or exploitation of natural resources, as well as any other right conferred by law or by contract, or granted by decision of the authority pursuant to the law.

(3) The term "territory" includes the maritime areas adjacent to the coastal State which may exercise sovereignty or jurisdiction over them in accordance with international law.

Article 2. Encouragement, Admission

(1) Each Contracting Party shall encourage, to the extent possible, investments by investors of the other Contracting Party in its territory and shall admit such investments in accordance with its laws and regulations.

(2) Once it has admitted an investment into its territory, each Contracting Party shall issue, in accordance with its laws and regulations, the necessary permits in connection with such investments, including the execution of licensing, technical, commercial or administrative assistance contracts, as well as the authorizations required for the activities of consultants or other qualified persons of foreign nationality.

Article 3. Protection, Non-discrimination

(1) Each Contracting Party shall protect investments made in its territory in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, increase, sale and, where appropriate, liquidation of such investments. In particular, each Contracting Party shall issue the authorizations referred to in Article 2(2) of this Agreement.

(2) Each Contracting Party shall guarantee in its territory fair and equitable treatment for investments of investors of the other Contracting Party. Such treatment shall be no less favorable than that accorded by each Contracting Party to investments made in its territory by its own investors or that accorded by each Contracting Party to investments made in its territory by investors of the most favored nation, if the latter treatment is more favorable.

(3) Most-favored-nation treatment shall not apply to privileges which a Contracting Party grants to investors of a third State under an agreement establishing a free trade area, a customs union or a common market or under an agreement for the avoidance of double taxation.

Article 4. Free Transfer

Each Contracting Party, in whose territory investors of the other Contracting Party have made investments, shall guarantee to such investors the free transfer of payments relating to such investments, in particular

(a) interest, dividends, profits and other current income;

(b) loan repayments;

(c) amounts intended to cover the costs of managing the investments;

(d) royalties and other income derived from the rights listed in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;

(e) additional capital contributions necessary for the maintenance or development of the investments;

(f) proceeds from the sale or liquidation of all or part of an investment, including any capital gains.

Article 5. Expropriation, Compensation

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measure having the same character or effect, against investments of investors of the other Contracting Party, except for reasons of public interest and provided that such measures are non-discriminatory, comply with legal requirements and give rise to the payment of effective and adequate compensation. The amount of the compensation, including interest, shall be paid in the national currency of the

The amount of the compensation, including interest, shall be paid in the national currency of the country of origin of the investment and shall be paid without delay to the entitled person, irrespective of his domicile or registered office.

(2) Investors of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of emergency, revolt, occurring in the territory of the other Contracting Party, shall be accorded by the latter Party treatment no less favourable than that which it would accord to its own investors or to those of the most favoured nation as regards restitution, compensation, indemnity or any other valid consideration.

Article 6. Investments Prior to the Agreement

This Agreement shall also apply to investments made before its entry into force in the territory of a Contracting Party, in accordance with its laws and regulations, by investors of the other Contracting Party. It shall not apply to differences and

disputes arising prior to its entry into force.

Article 7. More Favourable Conditions

Without prejudice to the provisions of this Agreement, the more favourable conditions which have been or may be agreed by one of the Contracting Parties with the investors of the other Contracting Party shall apply.

Article 8. Subrogation

If a Contracting Party has granted a financial guarantee of any kind against non-commercial risks in respect of an investment of one of its investors in the territory of the other Contracting Party, the latter shall recognize the subrogation of the first Contracting Party in the rights of the investor, if a payment has been made under this guarantee by the first Contracting Party.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) In order to resolve disputes between a Contracting Party and an investor of the other Contracting Party, and without prejudice to Article 10 of this Agreement (Disputes between Contracting Parties), consultations shall be held between the parties concerned.

(2) If such consultations do not result in a solution within six months of the request for consultations, the investor may submit the dispute, at its option

(a) to the International Centre for Settlement of Investment Disputes (ICSID), established by the Washington Convention of March 18, 1965, for the Settlement of Investment Disputes between States and Nationals of Other States; or

(b) to an ad hoc arbitral tribunal which, unless the parties to the dispute otherwise agree, shall be constituted under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) The Contracting Party to the dispute may not, at any stage of the proceedings, rely on its immunity or on the fact that the investor has received, under an insurance contract, compensation covering all or part of the damage suffered.

(4) Neither Contracting Party shall seek to settle by diplomatic means a dispute submitted to international arbitration unless the other Contracting Party does not comply with the arbitral award.

(5) The arbitral award shall be final and binding on the parties to the dispute.

Article 10. Disputes between Contracting Parties

(1) Disputes between Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If the Contracting Parties fail to reach a settlement within six months of the dispute arising, the dispute shall be submitted, at the request of either Contracting Party, to an arbitral tribunal composed of three members.

Each Contracting Party shall appoint an arbitrator, and the two arbitrators so appointed shall appoint the chairman of the tribunal, who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator or responded to the invitation of the other Contracting Party to do so within two months, the arbitrator shall be appointed, at the request of the latter Contracting Party, by the President of the International Court of Justice.

(4) If the two arbitrators cannot agree on the choice of the chairman within two months of their appointment, the chairman shall be appointed by the President of the International Court of Justice at the request of either Contracting Party.

(5) If, in the cases provided for in paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from exercising this function or if he is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President and, if the latter is prevented from exercising this function or if he is a national of one of the Contracting Parties, they shall be made by the most senior member of the Court who is not a national of any of the Contracting Parties.

(6) Unless the Contracting Parties provide otherwise, the court shall determine its own procedure.

(7) The decisions of the court shall be final and binding on the Contracting Parties.

Article 11. Other Obligations

Each contracting party shall at all times respect its obligations with regard to the investments of investors of the other contracting party.

Article 12. Entry Into Force, Renewal, Termination

(1) This Agreement shall enter into force on the day on which both governments have notified each other that the constitutional formalities required for the approval and entry into force of international agreements have been completed; it shall remain in force for ten years. If it is not denounced in writing six months before the expiration of this period, it will be considered renewed, under the same conditions, for a period of two years, and so on.

(2) In the event of denunciation, the provisions of Articles 1 to 11 of this Agreement shall continue to apply for a period of ten years to investments made prior to the official notification of denunciation.

Done at El Salvador, this 8th day of December 1994, in two originals, in French and Spanish, both texts being equally authentic.

For the Swiss Federal Council:

Nicolas Imboden

For the Government of the Republic of El Salvador:

Victor Manuel Lagos Pizzati

Protocol

In signing the Agreement between the Swiss Confederation and the Republic of El Salvador on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have further agreed on the following provisions, which shall be considered an integral part of this Agreement.

Ad Article 2 and 3

It is understood that, in accordance with the principles set forth in these Articles, the concepts of sustainable development and environmental protection are applicable to all investments.

Ad Article 3

In the application of the principles of national treatment and most-favored-nation treatment, no reference shall be made to the legal provisions relating to handicraft-type enterprises, which, according to the Constitution of the Republic of El Salvador, are reserved for natives of the Republic of El Salvador and Central American nationals.

Done at El Salvador, on 8 December 1994, in two originals, in French and Spanish, both texts being equally authentic.

For the Swiss Federal Council:

Nicolas Imboden

For the Government of the Republic of El Salvador:

Victor Manuel Lagos Pizzati