

Agreement between the Government of the French Republic and the Government of the Republic of El Salvador on the reciprocal encouragement and protection of investments

The Government of the French Republic and the Government of the Republic of El Salvador,

Desiring to develop economic cooperation between the two States and to create favorable conditions for French investment in El Salvador and Salvadoran investment in France,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development, have agreed on the following provisions:

Article 1.

For the purposes of this Agreement :

1. The term "investment" means property, rights and interests of every kind and particularly but not exclusively:

(a) movable and immovable property as well as all other real rights such as mortgages, liens, usufructs, bonds and similar rights ;

b) Shares, stock options and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the parties;

c) Bonds, debts or any other rights to performance with economic value;

d) Copyrights, industrial property rights, technical processes, registered names and goodwill;

(e) concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those in adjacent maritime areas in which the contracting parties exercise sovereign rights, provided that such assets shall be or have been invested in accordance with the laws of the contracting party in whose territory the investment is made, whether before or after the entry into force of this Agreement.

Any change in the form of investment of the assets shall not affect their characterization as an investment, provided that such change is not contrary to the law of the State in whose territory the investment is made or to the approval granted for the original investment.

2. The term "nationals" means natural persons possessing the nationality of one of the Contracting Parties.

3. "Companies" means any legal entity incorporated in the territory of one of the Contracting Parties in accordance with the laws of that Party and having its registered office therein

Article 2.

Each Contracting Party shall admit and encourage, within the framework of its legislation, investments made in its territory by nationals and companies of the other Party.

Article 3.

Each Contracting Party undertakes to accord in its territory fair and equitable treatment, in accordance with the principles of international law, to investments of nationals and companies of the other Party and to ensure that the exercise of the right so recognized is not impeded either in law or in fact.

Such treatment shall be at least equal to that accorded by each Contracting Party to the nationals or companies of the most favored nation.

Article 4.

The nationals and companies of one of the contracting Parties shall benefit, for the exercise of professional and economic activities connected with investments which they have made in the territory of the other Party, from the national regime or from the regime of the most favored nation if the latter is more favorable.

Article 5.

1. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which would be to deprive, directly or indirectly, the nationals and companies of the other Party of the investments belonging to them in its territory, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

Any expropriation measures that may be taken shall give rise to the payment of fair compensation, the amount of which shall correspond to the real value of the said investments on the day of the expropriation.

This compensation, the amount of which and the terms of payment shall be fixed at the latest on the date of the expropriation, shall be effectively realizable. It shall be paid without delay and freely transferable.

2. Investors of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt in the territory of the other Contracting Party shall be accorded by the latter Party treatment no less favorable than that accorded to its own investors.

Article 6.

Each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party shall grant to such nationals or companies the free transfer of:

(a) Income from the said investments ;

(b) royalties derived from the intangible rights referred to in Article 1 (1) above

(c) payments made for the repayment of loans regularly contracted

d) The proceeds from the total or partial sale or liquidation of the investment, including capital gains or increases in the capital invested;

e) the dispossession indemnities provided for in Article 5 above.

The nationals of each of the contracting parties who have been authorized to work on an investment in the territory of the other contracting party shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay and at the official rate of exchange applicable on the date of transfer.

Article 7.

Insofar as the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory of the other.

Investments by nationals and companies of one of the Contracting Parties in the territory of the other Party may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the approval of the latter Party.

Article 8.

Each of the Contracting Parties agrees to submit to the International Centre for Settlement of Investment Disputes (ICSID) or, if recourse to the former body proves impossible in law, to the International Chamber of Commerce, any dispute which

may arise between it and a national or a company of the other Contracting Party, including cases where the latter is subrogated to the rights of one of its nationals or companies in application of Article 9 of this Agreement.

Article 9.

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and actions of that national or company. The subrogation of rights shall also extend to the rights of transfer and arbitration referred to in Articles 6 and 8 above.

Article 10.

Investments which have been the subject of a special undertaking by one of the Contracting Parties in respect of the nationals and companies of the other Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that undertaking, in so far as it contains provisions more favorable than those provided for in this Agreement.

Article 11.

The most-favored-nation treatment provided for in Articles 3 and 4 of this Agreement shall not, however, extend to the privileges which a Contracting Party accords to the nationals and companies of a third State by virtue of its participation in or association with a free-trade area, a customs union or a common market.

Article 12.

Any dispute relating to the interpretation or application of this Agreement which has not been settled by diplomatic means within a period of six months may, at the request of either Contracting Party, be submitted to an arbitral tribunal which shall be constituted as follows

Each of the Contracting Parties shall appoint an arbitrator within one month from the date of receipt of the request for arbitration.

The two arbitrators so appointed shall choose as chairman of the tribunal within two months of the notification of the party which last appointed its arbitrator, a third arbitrator who shall be a national of a third State.

If the time limits set out in the above paragraph have not been observed, either Contracting Party, in the absence of any other applicable agreement, shall invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Under-Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

The Contracting Parties may agree in advance to designate, for a renewable period of five years, the person who will act as third arbitrator in the event of a dispute. The tribunal shall take its decisions by majority vote. The decision of the arbitral tribunal shall be final and binding by operation of law.

The tribunal shall determine its own rules of procedure.

Each Contracting Party shall bear the costs of the arbitrator appointed by it in accordance with the above provisions. The costs of the chairman and other costs shall be borne by both Contracting Parties in equal shares.

Article 13.

The present Agreement shall be approved in accordance with the constitutional procedure applicable in each of the two States; the exchange of instruments of ratification or approval shall take place as soon as possible.

The present Agreement shall enter into force one month after the date of the exchange of the instruments of ratification or approval.

This Agreement is concluded for an initial period of ten years. It shall remain in force after that term unless either Contracting Party denounces it in writing through diplomatic channels with one year's notice.

In the event of denunciation, this Agreement shall remain in force for twenty years in respect of investments made prior to its denunciation.

In WITNESS WHEREOF, the representatives of the two Governments, duly authorized to that effect, have signed the present Agreement.

Done at Paris, this 20th day of September 1978, in two originals in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic :

RENÉ MONORY

For the Government of the Republic of El Salvador :

JULIO ERNESTO ASTACIO

EXCHANGE OF LETTERS N° 1

FRENCH REPUBLIC

The Minister of Economy

To His Excellency Mr. Julio Ernesto Astacio,

Vice-President of the Republic of El Salvador

Mr. Vice President,

During the negotiations that led to the signing today of the Agreement between our two countries on the reciprocal encouragement and protection of investments, the Salvadoran delegation expressed the wish that the said Agreement should only apply to approved investments.

The French delegation accepted this view in the light of the provisions of the penultimate sub-paragraph of paragraph 1 of Article 1. It is therefore understood that the Agreement applies to all investments made up to now in accordance with the legislation of the country in whose territory the investment is made and will apply in the future to investments which have received the approval of the governmental authorities.

I would be grateful if you could confirm your agreement to the above.

Yours faithfully Mr. Vice President, the assurance of my highest consideration.

REPUBLIC OF EL SALVADOR

The Vice President

To His Excellency Mr. Monory, Minister of the Economy of the French Republic

Dear Mr. Monory

I have the honor to acknowledge receipt of your letter of today, which reads as follows

"During the negotiations which led to the signing today of the Agreement between our two countries on the reciprocal encouragement and protection of investments, the Salvadoran delegation expressed the wish that the said Agreement should apply only to approved investments.

"The French delegation accepted this view in the light of the provisions of the penultimate sub-paragraph of paragraph 1 of Article 1. It is therefore understood that the Agreement applies to all investments made up to now in accordance with the law of the country in whose territory the investment is made and will apply in the future to investments which have received the approval of the governmental authorities.

"I would be grateful if you could confirm your agreement to the above.

I have the honor to confirm my agreement to this text.

Please accept, Sir, the assurance of my highest consideration.

EXCHANGE OF LETTERS N° 2

REPUBLIC OF EL SALVADOR

The Vice President

To His Excellency, Mr. Monory, Minister of the Economy of the French Republic

Dear Mr. Monory

During the negotiations which led to the signing today of the Agreement between our two countries on the reciprocal encouragement and protection of investments, your delegation indicated that the French expression "utilité publique" mentioned in Article 5, paragraph 1, of the said Agreement includes, among other things, the notion of social interest referred to in the Constitution of my country.

I should be grateful if you would confirm your agreement with the foregoing.

Please accept, Sir, the assurance of my highest consideration.

FRENCH REPUBLIC

The Minister of Economy

To His Excellency Mr. Julio Ernesto Astacio,

Vice-President of the Republic of El Salvador

Mr. Vice-President,

I have the honor to acknowledge receipt of your letter of today's date, which reads as follows

"During the negotiations that led to the signing today of the Agreement between our two countries on the reciprocal encouragement and protection of investments, your delegation indicated that the French expression "utilité publique" (public utility) mentioned in Article 5, paragraph 1, of the said Agreement includes, inter alia, the notion of social interest referred to in the Constitution of my country.

"I should be grateful if you would confirm your agreement with the foregoing.

I have the honour to confirm my agreement with this text.

Please accept, Mr. Vice President, the assurance of my highest consideration.