Treaty between the Federal Republic of Germany and the Republic of El Salvador on the Promotion and Reciprocal Protection of Capital Investments

The Federal Republic of Germany and the Republic of El Salvador,

In the desire to deepen economic cooperation for the mutual good of both States,

In the endeavor to create and maintain favorable conditions for the investments of investors of one Contracting State in the territory of the other Contracting State,

Recognizing that the promotion and protection of such investments are appropriate to stimulate private economic initiatives and increase the prosperity of both States,

Have agreed as follows:

Article 1. Definitions

1. The term "investments" means assets of any kind, in particular:

a) Ownership of movable and immovable property as well as all other rights in rem, such as easements, mortgages, usufruct and pledge rights,

b) Shares in companies and other types of participations in companies,

c) Claims arising from loans used to create an economic value or claims for benefits having an economic value,

d) Intellectual property rights, such as, in particular, copyrights, patents, utility models, technical procedures, trademarks and trade marks, trade names, industrial designs, business and trade secrets,

e) Concessions conferred by law or public law, including concessions for the exploration, management, extraction or exploitation of raw materials,

A change in the form in which assets are invested does not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

3. The term "investor" means:

a) With regard to the Federal Republic of Germany:

(i) Germans within the meaning of the Basic Law for the Federal Republic of Germany,

(ii) All legal persons and any commercial or other company or group of companies with or without legal personality having their head office in the territory of the Federal Republic of Germany, irrespective of whether their activity is directed to profit or not;

b) As regards the Republic of El Salvador:

(i) All natural persons who are deemed to be nationals under their legal system,

(ii) Legal entities, including companies, institutions and associations, trade associations or any other legal person established or otherwise constituted under the laws of the Republic of El Salvador, having its head office and economic activity within its territory, whether its activity is directed to profit Or not;

4. The term "territory" shall mean, in respect of each Contracting State, the territory subject to its sovereignty, as well as the marine territories in which international law allows the respective Contracting State to exercise sovereign rights or sovereign powers.

Article 2. Promotion and Protection of Investments

(1) Each State Party shall, in accordance with its legislation, permit and allow investors of the other Contracting State to invest in its territory as far as possible.

(2) Each State Party shall, within its territory, protect the investments made in accordance with its legal system by investors of the other Contracting State and shall not affect the administration, use, exploitation, extension, disposal and liquidation of an investment by unjustified or arbitrary measures. Income from the investment and, in the case of reinvestment, its income also enjoy the same protection as the investment.

(3) Each State Party shall treat investments in a fair and equitable manner in any case.

Article 3. Treatment of Investments

(1) Each State Party shall treat investments situated in its territory which are owned or controlled by investors of the other Contracting State no less favorable than the investments of its own investors or investments by investors of third States.

(2) Each Contracting State shall treat investors of the other Contracting State no less favorably than its own investors or investors of third States with regard to the operations carried out in its territory in connection with its investments.

(3) This treatment does not relate to the privileges granted by a Contracting State to investors of third countries because of their membership in a customs or economic union, a common market or a free trade area or because of its association with it.

(4) The treatment provided for in this article does not apply to benefits granted by a Contracting State to investors of third countries under a double tax treaty or other agreements on tax questions.

(5) Where, under the laws of a Contracting State or under obligations under international law which exist or are established in the future between the Contracting States, a general or special rule giving the investments of the investors of the other Contracting State more favorable treatment than under this Treaty , This provision shall be governed by this Treaty in so far as it is more favorable.

(6) Each State Party shall comply with any other obligation which it has assumed in respect of investments in its territory by investors of the other Contracting State.

(7) A less favorable treatment within the meaning of this Article shall be in particular: the different treatment in the case of restrictions on the purchase of raw materials and auxiliary materials, energy and fuels, and all kinds of production and operating means, the different treatment in the case of disabilities of sales Of products at home and abroad as well as other measures with similar effects. Measures to be taken for reasons of public security and order, public health or morality shall not be regarded as less favorable treatment within the meaning of this Article.

(8) This Article does not require a Contracting State to extend tax advantages, exemptions and reductions granted to investors established in its territory under the tax laws to investors established in the territory of the other Contracting State.

(9) States Parties shall, in accordance with their national legislation, formally examine applications for the entry and residence of persons of one Contracting State who wish to enter the territory of the other Contracting Party in connection with an investment; The same shall apply to workers of one Contracting State who are entering and residing in the territory of the other Contracting State in the context of an investment, in order to pursue an activity as an employee. Applications for the granting of the work permits required by the respective legal orders are also examined with due care.

(10) In the case of carriage of goods and persons in connection with an investment, a Contracting State shall neither eliminate or hinder the transport undertakings of the other Contracting State, subject to the international agreements existing between the Contracting States, and, where necessary, authorize the transports to be carried out.

Article 4. Protection of Property

(1) Investments by investors of a Contracting State shall enjoy full protection and full security in the territory of the other

Contracting State.

(2) Investments by investors of a Contracting State may be expropriated, nationalized, or directly or indirectly subjected to other measures which are equivalent to expropriation or nationalization in the territory of the other Contracting State only for the benefit or welfare of the public and for compensation.

(3) The compensation must be equal to the market value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation shall be paid forthwith and interest shall be payable from the date of expropriation, nationalization or comparable measure until the time of payment at the usual bank interest rate; It must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified in a legal procedure.

(4) The investors of one Contracting State whose investments in the territory of the other Contracting State are being damaged by war or other armed conflict, national emergency, civil unrest and similar events occurring in the territory of the other Contracting State shall be liable to the latter for damage, A different damage settlement is treated no less favorably than its own investors or those from a third state. Such payments must be freely transferable.

Article 5. Transfers

(1) The Contracting State in whose territory an investment has been made guarantees the investors of the other Contracting State the free transfer of the payments connected with the investment. These transfers shall include in particular:

a) The capital and additional amounts for the maintenance or expansion of the investment,

b) The income,

c) Income from the full or partial sale or liquidation of the investment,

d) Payments for the repayment of a loan, and

e) The compensation provided for in Article 4.

(2) Transfers pursuant to Article 4 (3) and (4), Articles 5 and 6, shall be effected immediately in freely convertible currency at the market rate valid on the Transfertag. A transfer, which takes place within a time limit which is normally necessary to comply with the transfer formalities, is deemed to be carried out immediately. The deadline begins with the submission of a corresponding application and may under no circumstances exceed two months.

(3) In the absence of a foreign exchange market, the exchange rate resulting from the ratio of the conversion rates used by the International Monetary Fund at the time of the conversion of the currencies of the Contracting States into special drawing rights shall apply.

Article 6. Subrogation

(1) If a Contracting State makes payments on the basis of a non-commercial risk guarantee in respect of an investment made by an investor in the territory of the other Contracting State, the latter Contracting State shall recognize the entry of the former into the rights or claims of the investor. Furthermore, the other Contracting State acknowledges that the former is entitled to exercise the rights and entitlements transferred to the same extent as his predecessor, without prejudice to the rights of the former Contracting State referred to in Article 8 of this Treaty.

(2) Article 4 (3) and (4) and Article 5 shall apply mutatis mutandis to the transfer of those payments.

Article 7. Existing Investments

This Agreement shall also apply to investments made by investors of one Contracting State in the territory of the other Contracting State in accordance with its legislation before the entry into force of this Treaty. However, this agreement does not apply to differences of opinion which arose before its entry into force.

Article 8. Settlement of Disputes between the Contracting States

(1) Dissenting differences between the Contracting States concerning the interpretation and application of this Treaty shall,

as far as possible, be amicably settled through talks or negotiations.

(2) If no agreement is reached within six months from notification of the disagreement, each State Party may, in accordance with the provisions of this Article, submit the dispute to an arbitration tribunal.

(3) The arbitral tribunal shall be constituted on a case-by-case basis, consisting of three members, composed of the following: within two months from the notification of the request for arbitration, each State Party shall appoint one member. These two members agree, within thirty days from the appointment of the last member, to another member, who must be a national of a third state, as the chairman of the arbitral tribunal.

(4) If an appointment is not made within the time limits set out in paragraph 3, any State Party may ask the President of the International Court of Justice to make the appointment. If the President of the International Court of Justice is a national of one of the Contracting States or if he is prevented from exercising this function, the Vice-President shall appoint him; If that national of one of the Contracting States is or is prevented, the next member of the Court of Justice, who is not a national of either Contracting State, shall appoint him.

(5) The chairman of the arbitral tribunal shall be a national of a State to which both Contracting States have diplomatic relations.

(6) The arbitral tribunal shall decide by a majority of votes. Its decisions shall be final and binding for both Contracting States.

(7) Each State Party shall bear the costs of its member as well as its representation in the arbitration proceedings. The costs of the chairman and the other costs shall be borne by them equally. The arbitral tribunal may adopt a different cost regime.

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

(1) Any differences of opinion regarding investments between a Contracting State and an investor of the other Contracting State shall, as far as possible, be settled amicably between the parties concerned.

(2) If the dispute can not be settled within six months from the date of its assertion by one of the two parties, it shall, at the request of the investor of the other Contracting State, submit to arbitration under the Convention of 18 March 1965 on the Dispute Settlement between States And members of other States (ICSID) provided that the parties to the dispute do not make a different agreement on the arbitration tribunal to be called.

(3) The arbitration award shall be binding and shall not be subject to any means of redress or other remedies other than those provided for in the said Convention. It is enforced under national law.

(4) The State Party to the dispute shall not argue during an arbitration or arbitration proceedings as an objection that the investor of the other Contracting State has received compensation for part of the loss or damage caused by an insurance.

Article 10. Continuation of Validity

This Treaty shall apply regardless of whether diplomatic or consular relations exist between the Contracting States.

Article 11. Final Provisions

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible.

(2) The Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely, unless one of the Contracting States terminates the contract in writing with a period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 10 shall continue to apply for an additional fifteen years from the date of expiry of the Treaty.

Done at Bonn on December 11, 1997 in two copies, in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany

Kinkel

For the Republic of El Salvador

Gonzalez Giner