

No. 29987

FRANCE
and
EL SALVADOR

**Convention on the reciprocal encouragement and protection
of investments (with exchanges of letters). Signed at
Paris on 20 September 1978**

Authentic texts: French and Spanish.

Registered by France on 28 April 1993.

FRANCE
et
EL SALVADOR

**Convention sur l'encouragement et la protection réciproques
des investissements (avec échanges de lettres). Signée à
Paris le 20 septembre 1978**

Textes authentiques : français et espagnol.

Enregistrée par la France le 28 avril 1993.

[TRANSLATION — TRADUCTION]

CONVENTION¹ 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 increase economic cooperation between the two States and to create favourable conditions for French investments in El Salvador and Salvadoran investments in France,

Convinced that the encouragement and protection of such investments are likely to stimulate transfers 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 Convention:

1. The term “investments” shall apply to all categories of property, rights and interests, particularly but not exclusively:

(a) Movable and immovable property and all other real rights such as mortgages, preferences, usufructs, sureties and similar rights;

(b) Shares, issue premiums and other forms of participation, albeit minority or indirect, in companies organized in the territory of either Party;

(c) Claims, bonds or any rights to benefit having an economic value;

(d) Copyright, industrial property rights, technical processes, registered trade names and goodwill;

(e) Concessions accorded by law or by virtue of a contract, in particular concessions for prospecting, cultivating, mining or developing natural resources, including those situated in the adjacent maritime zones in which the Contracting Parties exercise sovereign rights; it being understood that the said assets shall be or shall have been invested in accordance with the legislation of the Contracting Party in whose territory the investment is made, before or after the entry into force of this Convention.

Any change in the form in which assets are invested shall not affect their status as an investment, provided that the change is not contrary either to the legislation of the State in whose territory the investment is made or to the approval granted for the original investment.

2. The term “nationals” shall apply to individuals having the nationality of either Contracting Party.

¹ Came into force on 12 December 1992, i.e., one month after the exchange of the instruments of approval (on 12 November 1992), in accordance with article 13.

3. The term “companies” shall apply to any body corporate organized in the territory of either Contracting Party in accordance with its legislation and having its registered office there.

Article 2

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

Article 3

Each Contracting Party shall undertake to accord in its territory just and equitable treatment, in accordance with the principles of international law, to the investments of nationals and companies of the other Party and to ensure that the exercise of the right so granted is not impeded either *de jure* or *de facto*.

Such treatment shall be at least the same as that accorded by each Contracting Party to nationals or companies of the most-favoured nation.

Article 4

Nationals and companies of either Contracting Party shall, when conducting professional and economic activities connected with investments made in the territory of the other Party, be accorded national treatment or most-favoured nation treatment if the latter is more advantageous.

Article 5

1. The Contracting Parties shall not take any expropriation or nationalization measures or any other measures which could cause nationals and companies of the other Party to be dispossessed, directly or indirectly, of the investments belonging to them in its territory, except for reasons of public necessity and provided that these measures are neither discriminatory nor contrary to a specific undertaking.

Any dispossession measures taken shall give rise to the payment of fair compensation, which shall correspond to the real value of the investments on the date of dispossession.

Such compensation, the amount and methods of payment of which shall be determined not later than the date of dispossession, shall be effectively realizable. It shall be paid without delay and be freely transferable.

2. Investors from either Contracting Party whose investments have suffered losses as a result of war or any other armed conflict, revolution, national state of emergency or revolt occurring in the territory of the other Contracting Party shall receive from the other Contracting Party treatment that is no less favourable than that accorded to its own investors.

Article 6

The Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party shall accord to these nationals or companies the free transfer of:

(a) Income from such investments;

(b) Royalties from the intangible property listed in article 1, paragraph 1, above;

- (c) Payments made towards the repayment of duly contracted loans;
- (d) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation or increases in the invested capital;
- (e) The compensation for dispossession provided for in article 5 above.

Nationals of either Contracting Party who have been authorized to work in connection with an investment made 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 carried out without delay and at the official rate of exchange applicable on the date of transfer.

Article 7

Insofar as the regulations of one Contracting Party provide for guaranteeing external investments, a guarantee may be granted on the basis of a case-by-case review for investments made by its nationals or companies in the territory of the other Party.

The guarantee referred to in the preceding paragraph shall not be available for investments by nationals and companies of one Contracting Party in the territory of the other Party unless the investments have been granted prior approval by the latter Party.

Article 8

Each Contracting Party shall agree to submit to the International Centre for Settlement of Investment Disputes (ICSID) or, if it is legally impossible to have recourse to this body, to the International Chamber of Commerce, any dispute which may arise between it and a national or company of the other Contracting Party, also in cases where the latter enters into the rights of one of its nationals or companies under article 9 of this Convention.

Article 9

When one Contracting Party, by virtue of a guarantee issued in respect of an investment made in the territory of the other Party, makes payments to one of its own nationals or companies, it shall thereby enter into the rights and shares of the said 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 specific undertaking by one Contracting Party vis-à-vis nationals and companies of the other Party shall be governed, without prejudice to the provisions of this Convention, by the terms of that undertaking, insofar as its provisions are more favourable than those laid down by this Convention.

Article 11

Most-favoured-nation treatment, as provided for by articles 3 and 4 of this Convention, shall not, however, include privileges granted by either Contracting Party, by virtue of its participation in or association with a free-trade area, customs union or common market, to nationals and companies of a third State.

Article 12

Any dispute concerning the interpretation or application of this Convention which cannot be settled within a period of six months through the diplomatic channel may be submitted, at the request of either Contracting Party, to an arbitral tribunal to be formed in the following manner:

Each Contracting Party shall designate an arbitrator within one month of the date on which the request for arbitration is received. The two arbitrators so designated shall, within two months of the notification by the Party which was the later in designating its arbitrator, choose a third arbitrator, who shall be a national of a third State, to serve as chairman of the tribunal.

If the time limits specified in the preceding paragraph are not observed, either Contracting Party may, in the absence of any other agreement on the matter, request the Secretary-General of the United Nations to make the necessary designations. If the Secretary-General is a national of either Contracting Party or if, for some other reason, he is prevented from performing this function, the most senior Under-Secretary-General not having the nationality of either Contracting Party shall make the necessary designations.

The Contracting Parties may agree beforehand to designate, for a period of five years, subject to extension, a person to serve as the third arbitrator in the event of a dispute. The tribunal shall take its decisions by a majority of votes. The decision of the arbitral tribunal shall be final and fully enforceable.

The tribunal shall establish its own rules of procedure.

Each Contracting Party shall defray the expenses incurred by the arbitrator designated by it in accordance with the foregoing provisions. Expenses connected with the chairman and other expenses shall be shared equally by the two Contracting Parties.

Article 13

This Convention 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.

This Convention shall enter into force one month after the date of the exchange of instruments of ratification or approval.

This Convention is concluded for an initial period of 10 years. It shall remain in force thereafter unless one year's notice of termination is given in writing through the diplomatic channel by either Contracting Party.

In the event of termination, this Convention shall continue to be applicable to investments made prior to its termination for a period of 20 years.

IN WITNESS WHEREOF, the representatives of the two Governments, duly authorized thereto, have signed this Convention.

DONE in Paris on 20 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]

EXCHANGES OF LETTERS

*I a*FRENCH REPUBLIC
OFFICE OF THE MINISTER OF ECONOMIC AFFAIRS

Sir,

During the negotiations which led to the signing today of the Convention between our two countries on the Reciprocal Encouragement and Protection of Investments, the Salvadoran delegation expressed the desire that the said Convention should apply only to approved investments.

The French delegation has accepted this point of view in the light of the provisions of the penultimate subparagraph of article 1, paragraph 1. Consequently, it is understood that the Convention shall apply to all investments made to date in accordance with the legislation of the country in whose territory the investment is made and shall apply in future to investments made with the prior approval of government authorities.

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

Accept, Sir, etc.

RENÉ MONORY

His Excellency Mr. Julio Ernesto Astacio
Vice-President of the Republic of El Salvador

II a

REPUBLIC OF EL SALVADOR
OFFICE OF THE VICE-PRESIDENT

Sir,

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

[See letter I a]

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

Accept, Sir, etc.

JULIO ERNESTO ASTACIO

His Excellency Mr. Monory
Minister of Economic Affairs
of the French Republic

I b

REPUBLIC OF EL SALVADOR
OFFICE OF THE VICE-PRESIDENT

Sir,

During the negotiations which led to the signing today of the Convention between our two countries on the Reciprocal Encouragement and Protection of Investments, your delegation indicated that the French expression “utilité publique” (“public necessity”) used in article 5, paragraph 1, of the said Convention includes, in particular, the concept of public interest to which the Constitution of my country refers.

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

Accept, Sir, etc.

JULIO ERNESTO ASTACIO

His Excellency Mr. Monory
Minister of Economic Affairs
of the French Republic

II *b*FRENCH REPUBLIC
OFFICE OF THE MINISTER OF ECONOMIC AFFAIRS

Sir,

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

[*See letter I b*]

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

Accept, Sir, etc.

RENÉ MONORY

His Excellency Mr. Julio Ernesto Astacio
Vice-President of the Republic of El Salvador
