

El Salvador

Investment Law (1999)

Unofficial translation

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Decree No. 732 the Legislative Assembly of the Republic of El Salvador

Official Gazette No. 210

[Preamble]

WHEREAS:

- I. It is the State's duty to promote economic and social development, through an increment in production and productivity;
- II. That one way to promote economic and social development is to increase local and foreign investment that devotes resources to productive activities, necessary to generate employment and maintain a sustained economic growth, benefiting all inhabitants of the country;
- III. That besides promoting and providing incentives to investment in general; it is important to attract foreign investment to the country, so that with the input of capital, technology, know-how and experience, efficiency and competitiveness of the productive activities to which those resources are allocated are increased;
- IV. That in order to increase the level of foreign investment in the country, an adequate legal framework, including clear and precise regulations, in accordance with the best practices on the subject, and allowing for international competition in an effort to attract new investments is required;
- V. That to the above mentioned effects, it is convenient to set up a governmental agency in charge of promoting investment and facilitating investors to comply with the requisites and procedures established by law;

THEREFORE, in the exercise of their constitutional mandate, and at the initiative of the President of the Republic, through the Ministry of Economy and representatives Julio Antonio Gamero Quintanilla, Julio Eduardo Moreno Niños, Alejandro Dagoberto Marroquín, José Mauricio Quinteros, Jorge Alberto Villacorta Muñoz, Lorena Guadalupe Peña Mendoza, Alejandro Rivera, Gerson Martínez, Kirio Waldo Salgado Mina, René Aguiluz Carranza, Donald Ricardo Calderón Lam y Gerardo Antonio Suvillaga.

DECREES the following:

Investment Law

Chapter I. Objective and Scope

Article 1. Objective of the Law

The objective of this law is to promote investment in general and foreign investment in particular, in order to contribute to the economic and social development of the country, through an increment in productivity, employment generation, export of goods and services and production diversification.

Article 2. Definition

To the effects of this law, the words below have the following meaning:

- a. Investments: Tangible and intangible assets or resources, the providing of services or financing in local or foreign currency of free convertibility, devoted to the execution of economic activities, or to the expansion or improving of existing activities, for the production of goods or services, and the generation of employment;
- b. Foreign Investments: investments made through tangible or intangible assets or resources, to provide services or financing in local or foreign currency of free convertibility, transferred from abroad by foreign investors, in accordance with this law. Funds in foreign currency of free convertibility, arising from remittances of Salvadorans living abroad, either for family support or for the acquisition of housing for their family groups, are not included in the category of foreign investments;
- c. Local Investments: investments made by local investors with tangible or intangible assets or resources, to provide services or financing in local currency;
- d. Foreign Investor: Individuals or legal entities, and Salvadoran nationals living abroad for more than an uninterrupted year, who invest in the country;
- e. National Investor: Salvadoran individuals or legal entities, permanently living in El Salvador, who invest in the country.

Article 3. Types of Investment

Among those assets or resources considered as investment in accordance with literal a) of article 2 of this law, are included, among others, the following:

- a. Local or foreign capital destined to establish commercial companies, or to the acquisition, whether total or partial, of existing commercial companies;
- b. Local or foreign capital destined to the acquisition of local real estate; as well as to establish all types of real property rights;
- c. Local or foreign capital destined to the acquisition of any type of property rights on tangible assets, particularly industrial plants, new and refurbished machinery, parts and accessories, raw materials and intermediate products, all of which are used by commercial companies;
- d. The purchase or acquisition of stock or participation in Salvadoran commercial companies, as well as those derived from capital increment due to capitalization of profits, reserves, assets revaluation or from loans or additional capital inputs; e) Capital inputs arising from profit derived from the duly registered original investment, destined to the purchase or acquisition of stock or participation in other commercial companies;
- e. Capital inputs arising from profit derived from the duly registered original investment, destined to the purchase or acquisition of stock or participation in other commercial companies;
- f. Loans contracted in freely convertible foreign currency, destined to the execution of productive activities on the part of individuals or legal entities;
- g. Funds destined to the acquisition of liabilities issued by legal entities residing in the country, in compliance with the requirements established in the regulations to this law;

h. Those internationally accepted intangible assets including, among others: copyright, provision of services, equipment rental contracts, technical services, and administrative knowledge know-how;

i. Resources destined to development of participation contracts or joint venture agreements, under shared risk contract mode, that grant the foreign investor a participation in the industrial, commercial or service activity of a Salvadoran company, in exchange for participation of a portion in the global amount of profit.

Chapter II. Treatment of investments

Article 4. Ease of Procedures

In order to ease the establishment and development of local and foreign investments, the State grants brief and simple legal registration procedures to their owners; and also, in the case of foreign investments, for its repatriation by the owners.

The procedures and requirements for establishment and registration of investment shall be the subject of the Regulations to this law.

Article 5. Equality for all investors

Foreign investors and the commercial companies in which they participate, shall enjoy the same rights and be bound by the same responsibilities as local investors and partnerships, with no exceptions other than those established by law, and no unjustified or discriminatory measures which may hinder the establishment, administration, use, usufruct, extension, sale and liquidation of their investments, shall be applied to them.

Article 6. Freedom of Investment

Any individual or legal entity, local or foreign, may make any type of investments in El Salvador, except those limited by law, and may not be subjected to discrimination or differences due to their nationality, residence, race, sex or religion.

Article 7. Activities limited to investment

According to the stipulations contained in the Constitution of the Republic and auxiliary laws, investments shall be limited in the following activities and conditions:

- a. Small scale trade, industry, and provision of services, most particularly coastal fishing as established by law, are the exclusive right of Salvadorans by birth and Central American nationals.
- b. The subsoil belongs to the State, which may grant concessions for its exploitation;
- c. Foreign nationals whose country of origin does not grant the same rights to Salvadorans shall not be allowed to acquire rural property, except in those cases when the land shall be used for industrial plants;
- d. No individual or legal entity shall own rural property in excess of two hundred forty five hectares. This limitation shall not be applicable to cooperative associations or peasants community associations, which are subject to a special regime;

e. The State is entitled to regulate and overview public services provided by private companies, as well as to approve their rates, except those established in accordance with international treaties or agreements;

f. State concession shall be required for the exploitation of piers, railways, channels, and other public infrastructure, under the terms and conditions stipulated by law;

g. Investments in stock of Banks, Financial Institutions and Foreign Exchange Institutions, shall be bound by the limitations stated in the laws governing those institutions.

Article 8. Expropriation

According to the Constitution of the Republic, expropriation shall proceed, due to legally established cause of public need or social interest, prior advance payment of fair indemnity,

–When expropriation is caused or arises by reason of war, public disaster, or when required for the provision of water or electric energy, or the construction of housing or highways, streets or any type of public roads, the indemnity may not be paid in advance;

–When justified by the amount of the indemnity, payment may be made in installments, in which case the corresponding banking interest shall be paid. Such payment will preferably be made in cash.

Chapter III. Guarantees and rights for foreign investment

Article 9. Transfer of funds

Foreign investors are guaranteed transfers abroad of funds related to their investment. These transfers shall be made without delay through the banking system, previous conversion into foreign currency. Such transfers include, among others:

- a. Net profit and dividends produced by their investments;
- b. Funds arising from total or partial selling of the investment , and those resulting from withdrawal of such investments, due to transfer to third parties;
- c. Principal and interest payments arising from loans or liabilities issued by legal entities residing in the country, acquired by the foreign investor in accordance with the law;
- d. Payment of royalties resulting from investments in intangible assets, in accordance with the corresponding agreement;
- e. Resources invested and registered, from participation or joint venture contracts, under the shared risk contract mode, and the resulting profit;
- f. Payments derived from indemnities resulting from expropriation;
- g. Payments resulting from the application of decisions regarding solution of controversies contained in this law;

h. Any other payment resulting from lawful activities related to the operation of the investment in the country.

Article 10. Scope of rights for remittance and free convertibility

The foreign investor cannot claim remittance rights or free convertibility as granted by this law, in order to avoid compliance with: (a) fiscal, labor and social security responsibilities; (b) liabilities to third parties, particularly in the event of bankruptcy, stop payment or creditors fraud; and (c) all other responsibilities stated by law.

Article 11. Investors residence

Foreign investors with an investment of over four thousand minimum wages prevailing at the date of their investment, shall be entitled to the issuance of an Investors Residence , to stay and work in the country. This permit shall be granted at their request, within thirty days from the date of registration of their foreign investment, with no requirements other than presentation of: (a) certificate of registration of their investment, (b) their passport issued by the authorities of their country of origin, (c) the required health exams; and (d) the corresponding form, with information required by the immigration authorities.

The temporary investors residence shall be granted for an extendable one-year period. Upon compliance with the corresponding legal requirements, Permanent residence may be granted to those investors. The residence permit may be cancelled due to lack of compliance with legal immigration requirements on the part of the foreign investor, or due to their investment registration being revoked. The Investor Residence stipulated in this article shall be granted to the individual foreign investor and his accompanying family group. It shall also be granted to the foreign individual and his accompanying family group, when he is the Legal Representative for the local partnership or foreign branch office established in the country.

Article 12. Access to local financing

Foreign investors shall have access to internal financing available from, and in accordance with the terms established by financial institutions.

Article 13. Property protection and safety

The Constitution of the Republic, recognizes and guarantees local and foreign investors the protection of their property, and the right to freely dispose of their assets.

Chapter IV. Responsibilities

Article 14. Investors' responsibilities

All local or foreign investors are bound to comply with the responsibilities established by law, particularly those relating to fiscal, labor and social security matters.

Chapter V. Disputes

Article 15. Settlement of disputes

Should disputes or differences arise among local and foreign investors and the state, regarding the investments made by them in El Salvador, the parties may resort to the corresponding courts of justice, in accordance with existing legislation and legal procedures.

Chapter VI. Registration of investments

Article 16. Establishment of the national investments office

The National Investments Office, which henceforth may also be referred to as (ONI), is hereby established as an agency of the Ministry of Economy, in charge of facilitating, centralizing, and coordinating governmental procedures which, in accordance with the law, must be followed by local and foreign investors, towards the execution of their economic, commercial, fiscal, immigration, and any other responsibilities; as well as to generate statistical data on those investments. This office and its data registers are of public nature.

The ONI shall establish a one-stop window to facilitate all the procedures investors have to comply with, and to do so it shall receive delegations or the collaboration requested from other governmental agencies.

The ONI shall create the mechanisms required to prepare statistics on local and foreign investment in the country. To perform this task it may request data from those governmental agencies deemed necessary, which are bound to provide such data within the specified time.

Article 17. Registration of foreign investments

Foreign investors must register their investments at the ONI, who shall issue a Credential granting the owner foreign investor status, and stating the registered investment.

Article 18. Performance requirements

Under no circumstances shall the ONI condition the registration of foreign investment to compliance with the following performance requirements:

- a. Exporting a determinate type, level of percentage of goods;
- b. Reaching a determinate degree or percentage of local contents;
- c. Acquiring, using, or granting preference to goods produced in the territory, or acquiring goods from local producers;
- d. Linking in any manner the volume or value of imports to the volume or value of exports, or with the amount of foreign currency income associated to that investment;
- e. Restricting the sale of goods or services produced or provided by the investment in the territory, relating them in any manner to the volume or value of the production, exports or profit in foreign currency the investment generates;

- f. Transferring to an individual or legal entity, in the territory, technology, productive processes or any other reserved knowledge, except when required by a court of law or administrative tribunal, or any other competent authority to correct a so called violation to the laws on competition or to act in a manner that is not incompatible with local legislation;
- g. Acting as exclusive provider of goods produced or services provided to a specific, regional or international market;
- h. The above shall be understood without regard to the dispositions contained in international treaties, and the laws governing environmental and public health matters.

Article 19. Mandate of the ONI

The ONI's mandate is as follows:

- a. To Register all local and foreign investments presented for consideration, in as much as they comply with the corresponding legal requirements;
- b. To Facilitate all investors and to coordinate with other governmental agencies, the compliance with all procedures required to establish new companies and those to be followed for the regular development of same;
- c. To Assist all investors in the legal procedures regarding permits, authorizations and benefit concessions to be obtained, for their companies and foreign personnel, as well as any administrative procedure required by law;
- d. To execute all procedures delegated on it by other governmental agencies, in order to facilitate compliance on the part of investors, their companies and foreign personnel;
- e. To Prepare statistics on local and foreign investment;
- f. All other responsibilities stipulated by law.

Article 20. Proof of income of foreign investments in foreign currency

Foreign investments involving transfers in foreign currency of free convertibility should come through the local financial system; and for registration purposes, a foreign currency income certificate, issued by the corresponding institution will be needed.

Article 21. Proof of existence of other foreign investments

The existence of foreign investments not implying transfer of freely convertible foreign currency shall be proven by way of contracts and other documents required by the regulations to this law.

Article 22. Foreign investment registration application

After complying with the corresponding legal requirements, the foreign investor or his proxy shall apply for registration of the investment before the ONI. These procedures may be carried out by the legal representative or legal counsel for the Salvadoran company in which the foreign investment was made. The ONI should register the investment within thirty days after the date of application or compliance of any prevention imposed on it. If the register has not been made after such period, approval by the ONI shall be deemed granted, and the ONI shall be bound to grant the registration and to issue the corresponding Resolution.

Article 23. Appeals

Any resolution related to Foreign Investment Registration issued by the ONI may be appealed before the Ministry of Economy within three working days after receiving the corresponding notice, and should be resolved within the next eight working days.

Article 24

Should the Resolution on Foreign Investment Registration issued by the Ministry of Economy be in disagreement with the investor's request, and should the investors wish to withdraw their investment from El Salvador, the foreign investors are granted the right to repatriate foreign currency and to re-export tangible goods effectively interned into the country.

Chapter VII. General stipulations

Article 25. Cooperation with other governmental agencies

All other governmental or autonomous agencies, institutions and organizations whose activities are related to investment, are bound to cooperate with the Ministry of Economy and the National Investment Office, to enforce compliance with this law and to facilitate the execution of the responsibilities of the latter.

Article 26. Prior foreign investment registers

Existing foreign investment registers at the Ministry of Economy are recognized as valid, and will automatically enjoy the guarantees and rights stipulated by this law, except on the subject of disputes arising before enforcement of this law.

Article 27. Foreign investment pending registration

Those Foreign Investment applications pending registration at the date of enforcement of this law shall continue to be processed in accordance to the procedure established by this law.

Article 28. Transitory dispositions

Those foreign investments which to the date of enforcement of this law are not registered at the Ministry of Economy, or which while being registered have not updated their investment registration, enjoy a 180 day period to make their corresponding registration.

Article 29. Repeals

The following Legislative Decrees are abolished from the date of enforcement of this law:

Legislative Decree No. 960, dated April 28, 1998; published in the Official Gazette No. 85, Volume No. 299, dated May 9, 1998, containing the Law for the Promotion and Guarantee of Foreign investment, as well as the latter amendments to such law;

Legislative Decree No. 279 dated March 4, 1969; published in the Official Gazette No. 60, Volume No. 222, dated March 27, 1969, containing the Trade and Industrial Exercise Regulatory Law, as well as the latter amendments to such law.

Article 30. Law enforcement

The present decree shall enter in force forty-five days after publication thereof in the Official Gazette.

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