

DECREE N° 905

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF EL SALVADOR,

WHEREAS:

- I.- Article 101 of the Constitution establishes that the State will promote Economic and Social Development by increasing production, productivity and rational use of resources, and that, to the same end; it will foster diverse productive sectors.
- II.- Article 102 of our Magna Carta stipulates that the State will promote and protect private enterprise under the necessary conditions to augment national wealth, and to ensure its benefits to the largest amount of Salvadoran citizens.
- III.- One of the of the Republic's Government objective is to promote private investment initiatives as a potential trigger, to encourage the creation of jobs and income generation, and that the creation of wealth is strengthened within the country.
- IV.- It is necessary to set rules that guarantee legal security for investors, as to maintain the conditions that are decisive for their initiative, and that allow for the generation of sustainable economic growth, establishing mechanisms that foster, facilitate and promote greater investments in our country.

THEREFORE,

Using its Constitutional authority, and by initiative of the President of the Republic, through the Ministers of Finance and of Economy, respectively,

DECREES the following:

**LAW OF LEGAL SECURITY FOR INVESTMENTS**

**CHAPTER I**

**GENERAL PROVISIONS**

**OBJECT AND PURPOSE**

Art. 1.- The objective of this Law is to attract and promote National and Foreign Investment through a legal framework that guarantees legal security to investors, through the execution of Legal Security Contracts, aiming to contribute effectively to the economic and social development of the country; to the growth of strategic sectors; to the efficient integration of the national and international economy, and to the creation of employment.

**SCOPE OF APPLICATION**

Art. 2.- The following will be subject to this Law: natural and legal persons, whether national or foreign, whom carry out new investment projects, or whom expand already existing ones within the national territory, that contribute to the strengthening of the country's productive forces, and that generate aggregate value to develop the following sectors that are strategic and necessary for the growth of the country's economy: aeronautics, agroindustry, aquaculture, electronics, energy, strategic infrastructure, logistics, health services, remote business services, tourism, telecommunications, diverse manufacturing, science and technology.

New sectors may be incorporated if they comply with the requirements, form and parameters established in this Law and its Regulations; these must be based on technical analyses that will be prepared by PROESA, together with specialized entities, which will be mandated to collaborate on the preparation of the mentioned technical analysis.

**DEFINITIONS**

Art. 3.- The following definitions apply for the purposes of the present Law:

- a) MINEC: Ministry of Economy;
- b) PROESA: Organism in charge of Promoting Exports and Investments in El Salvador;
- c) Contract: Legal Security Contract;
- d) National Treatment: Consists in ensuring equal treatment to foreign and national investments, without any further exception than those stipulated by enforceable Laws;
- e) Freedom to make investments: Any person, whether natural or legal, national or foreign, may make any type of investment in El Salvador, except for those limited by Law;
- f) Stability: Certainty that legal conditions contracted with the investor will be maintained;
- g) Time Considerations: The Legal Security Contracts shall have a specified term;
- h) Transparency: The evaluation and approval procedures for Legal Security Contracts executed by the relevant authorities must guarantee publicity of their actions and proper accountability;
- i) Investment Promotion: The Legal Security Contracts will seek to promote national and foreign investment within the national territory, to foster economic and social development;
- j) Institutional Efficiency: Promptness by the appropriate authorities regarding procedures, ensuring the lowest cost possible for investors; and,
- k) Good Faith: The relations between the State and the investor must be governed by honesty, trust and mutual respect.

**CHAPTER II**

**LEGISLATIVE INDEX**

**RESPONSIBLE ENTITIES**

**PROESA**

Art. 4.- Within the framework of the current Law, PROESA will have the following authorities:

- a) To develop the application form to receive the protections established in the present Law, and to provide said form to the interested investors;
- b) To verify compliance of the requirements established under Art. 7 of this Law once the interested investor receives the application form, and to resolve through duly grounded resolution, the approval or rejection thereof;
- c) To request a report and enlightened opinion by any public institution whenever necessary given the nature of the investment and the work to be developed;
- d) To proceed with the revision appeal in case of rejection of the application;
- e) To issue an opinion about the change of investment ownership if required by the MINEC;
- f) To define the new sectors that will be subject to the enforcement of this Law; and,
- g) All others as established under the present Law.

**MINISTRY OF ECONOMY**

Art. 5.- Within the framework of the present Law, MINEC will have the following attributions:

- a) Executing the Legal Security Contracts subject to prior favorable resolution by PROESA;
- b) Administration, verification and oversight of the obligations and conditions established under the Contract;
- c) Request information to the investor regarding compliance with the obligations established under Article 16 of this Law;
- d) Have access to the facilities or projects, and others as established in the Contract;

- e) Keep a record of the Legal Security Contracts subscribed in application of the present Law which shall be public in nature; and,
- f) All others established in this Law.

**CHAPTER III**

**PROCEDURES TO ENTER INTO GUARANTEE AGREEMENTS**

Art. 6.- Upon subscription of the Contract, the signing investors will enjoy the following guarantees:

- a) Tax stability at national level, derived from the legal regime of the applicable taxes;
- b) Tax stability at municipal levels, derived from the legal regime of the applicable municipal taxes;
- c) Stability regarding tax exemptions contained in Special Laws, during the period for which they were granted by the incumbent institutions;
- d) Stability of customs regimes, derived from Special Laws related to the refund of import duties, suspensive or in full discharge from customs rules;
- e) According to the Investment Law, stability of the free transfer abroad of funds resulting from foreign investment; and
- f) Stability of immigration laws related to the residency of investors, in accordance with the provisions of the Investment Law and all other relevant legislation.

All guarantees described under this article will be subject to the compliance of the provisions of Art. 16 of this Law.

Indirect taxes are exempted from the present regime of legal tax stability.

During the duration of the Legal Security Contracts, said stability may not be based on regulations declared unconstitutional by the Constitutional Chamber of the Supreme Court of Justice.

**INFORMATION AND DOCUMENTATION REQUIREMENTS**

Art. 7.- To be protected by the guarantees established in the present Law, all investors shall submit an application before PROESA in accordance with the format provided by said institution, that will include the following information and attachments:

- a) General data of the natural or legal investor, as well as of its legal representative or proxy holder, including certified copies by a notary; articles of association and its modifications, if any; current credentials of the legal representative, or of the corresponding power of attorney if acting through a proxy holder; likewise, these must be accompanied by copies certified by a notary of

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the Single Identification Document (DUI by its initials in Spanish), or Passport and Tax Identification Number (TIN) of the legal representative or proxy holder, as applicable, and a certification of the photocopy of the VAT card;

- b) Description of the activity to be performed by the investor, together with its corresponding investment plan, which must include, among other things:
  - i. Area and amount of the investment, according with the term specified under Article 14 of this Law;
  - ii. Number and type of employment that will be generated;
  - iii. The commitment to train the human resources to be hired;
  - iv. Transfer of technology during the execution of the activities;
  - v. An estimate of the economic added value;
  - vi. Social benefits to be generated by the activity;
  - vii. Reasons that justify the stability of the whole investment, in case of expansion; and,
  - viii. In general, the means by which the objectives of this Law be achieved.
- c) Statement of the judicial regime whose stability is being requested, in accordance with the provisions of Art. 6 of the present Law;
- d) Origin of the resources to be used for investment, through an affidavit or any other form of evidence considered in our legislation; and,
- e) Fiscal, municipal, customs, social security and pension fund solvencies from the corresponding institutions. Said documents will not be required if dealing with natural or legal persons not domiciled in the country.

In accordance with Art. 24 of the Notary Public's Performance Act of Voluntary Jurisdiction and Other Issues, in those cases where the documents to be presented come from a country with a language other than Spanish, they must be accompanied by the corresponding translation. If the documents submitted have been properly translated abroad into the Spanish language and have been correctly legalized, said proceedings will not be required. All documents coming from abroad must be duly authenticated or apostilled, as necessary.

### EVALUATION CRITERIA

Art. 8.- PROESA, to approve or reject the application, must evaluate the following:

- a) That the application complies with the requirements established under Article 7 of the present Law;
- b) That the investments correspond to the sectors established according to Article 2 of the present Law;
- c) That the objectives and eligibility criteria established in the present Law are fulfilled, as necessary; and,
- d) If dealing with the expansion of an existing investment, that the projected effects on the economic and social development of the country are evidently higher and justify the coverage of previous investments.

#### **APPLICATION PROCESS**

Art. 9.- Once the application referred to above has been received, PROESA will verify that it complies with all requirements established in this Law to continue with the process and give a resolution regarding the Contract application, to which end it will have a maximum period of 25 business days, starting from the date on which the application is submitted, to either approve or reject the application through a duly grounded resolution.

#### **INTER-INSTITUTIONAL COOPERATION**

Art. 10.- If PROESA considers that the information submitted by the investor in the application needs to be expanded or verified, it may require a report or enlightened opinion from any public institution related to the project issue and within the limits of their competencies, and these will be obliged to provide it within 15 business days, starting from the date of the request. This period is included under Article 9 of this Law.

Once the period mentioned in the previous paragraph expires, if no response has been received from the institution from which the report or opinion was requested, it will be considered as a favorable report or opinion, and the process will continue.

#### **PREVENTION**

Art. 11.- If the application referred to in the present provision does not fulfill the legal requirements, PROESA, through a duly grounded resolution, will advise the applicant, so that he, within a 15 business day period, may submit the documentation or information missing from the submitted application. This term will start on the day following the notification, and may be extended for an equal period by means of a justified request from the interested party.

When the term referred to in the above paragraph, or when the supplemental information or documentation has been submitted, PROESA will continue processing the corresponding application. The period to rectify the prevention will suspend the maximum period described under Article 9 of the present Law. If the interested party does not rectify within the previously established period of preventions stated in the resolution, the application will be rejected and filed.

If the applicants were still interested in carrying out the project, they would have to submit a new application.

#### JUDICIAL REVIEW

Art. 12.- A rejection of application will be subject to judicial review before PROESA; this must be filed by the interested party within a period not greater than ten business days from the date of notification. Notwithstanding the preceding, the resolution will not result in an action to claim compensation.

### CHAPTER 8

#### LEGAL SECURITY CONTRACT

##### SUBSCRIPTION

Art. 13.- Once the referred to application is approved, PROESA will send the corresponding documentation to the Ministry of Economy, no later than ten business days starting on the date of the resolution, so that the corresponding contract might be drafted, for which the investor will sign a Legal security Contract, hereon after referred to as "The Contract", with the purpose of accessing the stability guarantees included in the present Law, no later than 15 business days starting on the date on which the favorable resolution issued by PROESA is sent. Said Contract must be granted through a public deed, and will include, at a minimum, the following:

- a) Certification of the resolution issued by PROESA, through which the application referred to in Art. 9 of this Law is approved;
- b) Reference of the legal provisions of the different laws whose stability is being ensured;
- c) The amount and objective of the investment;
- d) The obligations accepted by the investors per the statements included in the investment plan referred to under item b) of the Art. 7 of this Law;
- e) The commitment to allocate three per cent (3%) of the total investment value included in the Contract for the execution of local development works in the municipality where the investment will be established; this must be disbursed during the first two years, starting on the date on which the project begins operations. Likewise, the Contract must include a definition of the way in which said works will be selected and executed, in coordination with the incumbent Municipal Authorities and the Fund for Social Investment for Local Development (FISDL by its initials in Spanish);
- f) The causes for Contract termination;
- g) The period of execution; and,
- h) Validity of the Contract.

The parties may agree on additional clauses depending on the nature of the investment, as long as these do not contradict the present Law, its principles and the current body of law. In no case may guarantees additional to those established in Article 6 of the present Law be stipulated.

If one of the conditions mentioned above is omitted, the Contract will be void.

Once said Contract is subscribed, the investor will have a two-year period to start the execution of the investment in the terms agreed, which may be extended for one period of equal duration, one time only, at the request of the investor, submitting justifications for the extension; during which period he will be obliged to fulfill all requirements to operate legally. Throughout this period, it is understood that the Legal security Contract will remain in effect.

In cases of the expansion of an existing investment, the subscription of the Legal security Contract will suppose the coverage of the whole investment of the already established productive unit, but not of all other investments made by the subscribing investor in other sectors or economic areas.

Once the parties have signed the Contract, the Ministry of Economy will send it to the Ministry of Treasury and other institutions involved within fifteen working days, at the latest.

#### **AMOUNT OF THE INVESTMENT TO BE CARRIED OUT AND TERM OF THE CONTRACT**

Art. 14.- To obtain the guarantees granted by the Legal security Contract under this Law, national or foreign investors must make an investment equal to or greater than four-thousand two-hundred and twenty (4,220) current minimum wages of the industrial sector, in Dollars of the United States of America, in new projects or expanding already existing ones.

The term of the Contract will be in direct relation with the amount of the investment, as follows:

- a) Investments in fixed assets for an amount equal to between 4,220 and 21,100 current minimum wages from the industrial sector; they may have a Contract for a maximum period of up to five (5) years. The investment must be executed in full during the first two years, beginning at the start of the works; and
- b) Investments in fixed assets for an amount equal to between 21,101 and 42,200 current minimum wages for the industrial sector may have a contract for a maximum period of up to ten (10) years. The investment must be executed in full during the first five years, beginning at the start of the works; and,
- c) Investments in fixed assets for an amount equivalent to more than 42,200 current minimum wages for the industrial sector may have a contract for a maximum period of up to twenty (20) years. The investment must be executed in full during the first ten years, beginning at the start of the works.

The Contract will be in effect from the time of its subscription by the parties; however, the term of the Contract will begin on the date when the execution of the investment starts.

Once the Legal security Contract is subscribed, a natural or legal person benefitting from it may not sign another Contract of the same nature deriving from future investments, before the first contract's term has ended.

#### CONTRACT MODIFICATIONS

Art. 15.- In case of approval of reforms to the national or municipal legal regime guaranteed during the term of the Contract, the investor may request to the Ministry of Economy modifications thereof, whenever he considered said reforms to be favorable, to which end he must submit all pertinent documentation that justifies them.

The Ministry of Economy must issue a resolution on the request, no later than ten business days after the request is submitted. The resolution to approve the request will state the reforms to the national or municipal legal regime to be incorporated to the Contract, and the same shall be signed within fifteen working days, at the latest.

If there is no statement regarding said modifications within the established term, it will be understood that said changes will be applicable to the Contract from the expiration of said term, as long as the investor has presented all required documentation.

#### CHAPTER V

#### OBLIGATIONS OF THE INVESTORS

#### OBLIGATIONS

Art. 16.- All investors that sign a Legal security Contract must fulfill the following obligations:

- a) Those established in the Contract during the stipulated term and per the Investment Plan referred to under item b) of Article 7;
- b) Register the investment with the National Investment Office of the Ministry of Economy;
- c) Be solvent with the Ministry of Treasury and with the corresponding Municipality regarding payment of the corresponding taxes;
- d) Be solvent in payments with the Salvadoran Institute of Social Security and the different Pension Fund Administrators, of all contributions and withholdings made to their workers, corresponding to the immediate previous month;
- e) Send to the Ministry of Economy, on January 31 and on July 31 of every year, semester reports that reflect compliance with the commitments acquired and established in the Contract;
- f) Comply with the established on item d) of Article 5 of this Law;
- g) Comply with the operation permits and authorizations corresponding for the type of productive activity to be performed, in the term established for the start of investment

covered under Art. 13 of the Present Law, and,

- h) Comply with the guarantee scheme established in Art. 6 of the present Law; infringement of this scheme will bring about, with prior analysis by PROESA, the request to terminate the Legal security Contract regulated by this Law.

## CHAPTER VI

### FINAL PROVISIONS

#### EARLY TERMINATION OF THE CONTRACT

Art. 17.- The Legal Security Contract will be considered terminated for the following causes:

- a) By investor resignation, communicated in writing to the Ministry of Economy;
- b) Non-compliance on the investor's part of any of the obligations stated under Article 16 of the present Law;
- c) Non-compliance on the start-up of investment execution, as per the term established under Article 13 of the present Law, or due to failure on the part of the investor to register with the National Investment Office at the Ministry of Economy, unless there is proof of force majeure or unforeseen circumstances; just as because of withdrawing all or part of the investment, in such a way that it drops below the amount established under Article 14 of the present Law, depending on the case; and,
- d) If the investing society finds itself used for committing or covering up the crimes established by the Law Regulating Activities Relating to Drugs and the Law Against Money and Asset Laundering; as well as the Crimes related to Public Treasury, to Public Health and to Nature and the Environment, regulated in the Criminal Code, if there were a firm and definitive court decision guilty verdict, for which the incumbent Judge, or the Office of the General Attorney, must inform the Ministry of Economy and PROESA.

In case of items b), c) and d), the termination of the Contract will proceed after proving non-compliance by the investor, through a procedure in which the Ministry of Economy will grant a hearing to the administrated party, for a term of ten business days; a duly grounded resolution will be issued, once this has been done, within twenty-five business days, which must be notified to the investor. There will be no remedy for said resolution.

If non-compliance were proven, the Ministry of Economy will declare the early termination of the Contract, which will result in the loss of the guarantees granted upon said termination.

**REGARDING OWNERSHIP**

Art. 18.- Any change in the ownership of the investment which originated the Contract must be approved by the Ministry of Economy, with prior favorable opinion by PROESA.

The MINEC will grant or reject an owner the guarantees stipulated in the Contract, with the rights or obligations corresponding to the amount of the initial investment.

**DISPUTE RESOLUTION**

Art. 19.- The parties must establish within the clauses of the Legal security Contract a mechanism to resolve controversies that might arise during its application, execution, or in the interpretation of the present Law or of the Contract itself, in the framework of the Art. 15 of the Investment Law.

**SYSTEM OF EXCEPTOINS**

Art. 20.- Investments in metallic mining or financial investments will not be included in the present Law.

**SPECIAL NATURE**

Art. 21.- The provisions of the present Law, by their special nature, will prevail over any others to the contrary.

**TERM**

Art. 22.- The current Decree will enter into effect eight days after its publication in the Official Gazette.

GIVEN IN THE BLUE ROOM OF THE LEGISLATIVE PALACE: San Salvador, on the eighteenth day of the month of December of Two-thousand fourteen.

OTHON SIGFRIDO REYES MORALES,  
PRESIDENT.

ENRIQUE ALBERTO LUIS VALDEZ SOTO,  
FIRST VICE-PRESIDENT.

GUILLERMO ANTONIO GALLEGOS NAVARRETE,  
SECOND VICE-PRESIDENT.

**LEGISLATIVE ASSEMBLY - REPUBLIC OF EL SALVADOR 12**

JOSE FRANCISCO MERINO LOPEZ,  
THIRD VICE-PRESIDENT.

LORENA GUADALUPE PEÑA MENDOZA,  
FOURTH VICE-PRESIDENT.

CARLOS ARMANDO REYES RAMOS,  
FIFTH VICE-PRESIDENT.

GUILLERMO FRANCISCO MATA BENNETT,  
FIRST SECRETARY.

MANUEL VICENTE MENJIVAR ESQUIVEL,  
SECOND SECRETARY.

SANDRA MARLENE SALGADO GARCIA,  
THIRD SECRETARY.

JOSE RAFAEL MACHUCA ZELAYA,  
FOURTH SECRETARY.

IRMA LOURDES PALACIOS VASQUEZ,  
FIFTH SECRETARY.

ERNESTO ANTONIO ANGULO MILLA,  
SIXTH SECRETARY.

FRANCISCO JOSE ZABLAH SAFIE,  
SEVENTH SECRETARY.

JOSE SERAFIN ORANTES RODRIGUEZ,  
EIGHTH SECRETARY.

PRESIDENTIAL PALACE: San Salvador, on the twelfth day of the month of January of two-thousand fifteen.

PUBLISH IT,

Salvador Sanchez Ceren,  
President of the Republic.

Juan Ramon Carlos Enrique Caceres Chavez,  
Minister of Treasury.

Tharsis Salomon Lopez Guzman,  
Minister of Economy.

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