

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

HONDURAS PRÓSPERA INC.
ST. JOHN'S BAY DEVELOPMENT COMPANY LLC
PRÓSPERA ARBITRATION CENTER LLC

Claimants

v.

THE REPUBLIC OF HONDURAS

Respondent

ICSID CASE NO. ARB/23/2

CLAIMANTS' MEMORIAL

15 October 2025

WHITE & CASE

 **Bruchou & Funes de Rioja**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	2
II. FACTUAL BACKGROUND.....	14
A. For decades, Honduras has been experimenting with special economic zones to attract investment and address its longstanding economic and political problems.....	14
1. Honduras has a longstanding history of political instability, poverty, insecurity, violence, and corruption impeding investment and economic development.....	15
2. For decades, Honduras has looked to special economic zones to promote certain areas of its economy, attract investment, and address its longstanding economic and political problems	18
(a) SEZs are well-established mechanisms for States to attract investment and encourage economic development.....	19
(b) Honduras puts in place various forms of SEZs to promote specific areas of its economy and attract investment	22
(c) Honduras tries to put in place semi-autonomous SEZs	26
B. Honduras establishes the ZEDE Legal Framework to attract foreign investment and guarantees its legal stability for 50 years	28
1. In 2013, Honduras adopts the ZEDE Legal Framework	28
(a) Objectives of the ZEDE Legal Framework	29
(b) Overview of the ZEDE Constitutional Provisions.....	31
(c) Overview of the ZEDE Organic Law	33
2. The ZEDE Legal Framework preserves Honduras’s sovereignty while offering a high degree of autonomy for ZEDEs and legal stability, both of which are key to attract investment.....	35
(a) Honduras designs the ZEDEs to preserve sovereignty	35
(b) The ZEDE Legal Framework contains two key features to attract investment: a high degree of autonomy for ZEDEs and legal stability	40
(i) Honduras vests ZEDEs with a high degree of autonomy from the central Government of Honduras	41
(ii) Honduras guarantees the legal stability of the ZEDE Legal Framework for 50 years through various layers of protection	44
3. In 2014, the Honduran Supreme Court upholds the constitutionality of the ZEDE Legal Framework.....	47
4. Honduras actively induces foreign investment in ZEDEs through a global marketing strategy	49
C. Claimants invest in Honduras at the Government’s invitation and in reliance on the ZEDE Legal Framework and Honduras’s guarantees of legal stability	55

1.	Honduras invites the co-founders of Honduras Próspera, Inc. to invest in a ZEDE	55
2.	Attracted by Honduras’s proposition, Mr. Brimen joins forces with Mr. Delgado to develop an investment in a ZEDE	58
3.	HPI works with Honduras to establish Próspera ZEDE and put in place its governance structure.....	59
	(a) In 2017, HPI prepares a detailed plan to establish a ZEDE on Roatán and submits an application to CAMP to create Próspera ZEDE	60
	(b) In December 2017, Honduras certifies the incorporation of Próspera ZEDE	65
	(c) In 2018, CAMP appoints a Technical Secretary for Próspera ZEDE and approves its Charter and Bylaws	66
	(d) In early 2018, HPI decides to expand Próspera ZEDE to Port Satuyé in La Ceiba.....	71
	(e) Between 2018 and 2019, HPI receives support from the central Government, local authorities, and neighboring communities	73
	(f) In 2019, Honduras and HPI amend the Charter and Bylaws of Próspera ZEDE	77
4.	Between 2019 and 2021, HPI works to implement its business plan and to build Próspera ZEDE into a transformative platform for economic growth and development and make a positive impact on Honduras	79
	(a) Claimants refine their business model and grow their corporate group to implement it.....	79
	(b) Claimants develop and refine Próspera ZEDE’s regulatory framework to deliver world-class governance	83
	(c) Claimants further develop the master planning and infrastructure for Próspera ZEDE and construct world-class real estate designed to attract residents and investors.....	84
	(d) Claimants devote substantial efforts to business development and attracting investors to establish businesses in Próspera ZEDE, with success.....	89
	(e) Claimants invest in the development of neighboring communities.....	93
5.	Meanwhile, Honduras continues to support the ZEDE regime through various authorities and enters into the LSA with HPI pursuant to the ZEDE Organic Law extending further guarantees of legal stability	97
6.	Between 2021 and 2022, Claimants acquire major infrastructure, finalize plans for investments, and continue to implement the business plan	102
	(a) Claimants acquire luxury infrastructure, progress their overall plan to develop their hub in Roatán, and start commercializing the Duna Residences .	103
	(b) Claimants design and lay the legal foundations for an international financial center in Roatán	107
	(c) Claimants work with Deloitte to develop further plans for investment in key industries in Próspera ZEDE	109

(d)	Claimants partner with Jacobs Engineering to develop a nearshoring hub master plan.....	111
D.	In 2022, Honduras repeals the ZEDE Organic Law and initiates a process to repeal the ZEDE Constitutional Provisions, which was never completed; in the absence of continued political support, the ZEDE Legal Framework is declared unconstitutional <i>ex tunc</i> in 2024 by a stacked Supreme Court in a highly flawed decision that is marred by irregularities and contrary to fundamental principles of Honduran law	112
1.	In late 2021, Honduras elects a new President who runs on a populist leftist platform, including repealing the ZEDE Legal Framework.....	113
2.	In early 2022, as Ms. Castro enters into power, Honduras descends into political chaos and seeks to repeal the ZEDE Legal Framework	119
3.	In April 2022, Honduras passes legislation to repeal the ZEDE Legal Framework, leaving existing ZEDEs in a legal vacuum.....	124
4.	Honduras refuses to clarify if it will respect Claimants’ right to legal stability, but continuously attacks them and interferes with their investments	128
5.	Honduras’s attacks on the ZEDE Legal Framework have an immediate impact on Claimants’ investments	137
(a)	Honduras interferes with Próspera ZEDE operations.....	137
(b)	Honduras’s measures impact fundraising for the Próspera ZEDE project	138
(c)	Honduras’s measures impact the attraction of investors to Próspera ZEDE	139
6.	The Castro Government stacks the Supreme Court and, unable to secure the repeal of the ZEDE Constitutional Provisions at the political level, turns to the Court which holds in 2024 that the ZEDE Legal Framework is unconstitutional <i>ab initio</i> in a decision that is marred by procedural irregularity, substantively deeply flawed, and contrary to fundamental principles of Honduran law	142
7.	Following the 2024 Supreme Court Decision, Honduras doubles down on its harassment and interference with Claimants’ investments but still stops short of forcing Claimants or Próspera ZEDE to stop operating	154
E.	Despite the severe harm caused by Honduras’s actions, Claimants have used best efforts to mitigate their damages	159
III.	THE TRIBUNAL HAS JURISDICTION OVER CLAIMANTS’ CLAIMS AND CLAIMANTS HAVE COMPLIED WITH CAFTA-DR’S ADMISSIBILITY REQUIREMENTS.....	166
A.	The Parties have consented in writing to the present arbitration.....	167
1.	Claimants and Honduras have consented in writing to ICSID arbitration of Claimants’ CAFTA-DR claims	167
2.	HPI and Honduras have consented in writing to ICSID arbitration of HPI’s contractual claims for breach of the LSA.....	168
B.	Claimants are entitled to submit their claims under CAFTA-DR and the LSA to ICSID arbitration	168
1.	Claimants satisfy the nationality requirement under the ICSID Convention for purposes of their claims under both CAFTA-DR and the LSA, as well as the	

nationality requirement under CAFTA-DR for purposes of their claims under CAFTA-DR	170
2. Claimants made investments in Honduras, which qualify as covered investments under CAFTA-DR and as investments under the ICSID Convention.....	171
3. The dispute between Claimants and Honduras is a legal dispute arising directly out of Claimants’ investment, as required by the ICSID Convention	173
4. CAMP’s authorization of Claimants’ investment and the LSA qualify, respectively, as an investment authorization and an investment agreement under CAFTA-DR, for the breach of which Claimants are entitled to submit a claim to arbitration under Article 10.16 of CAFTA-DR	174
C. With regards to their claims under CAFTA-DR, Claimants have complied with the applicable notice and waiver requirements, and their claims are timely.....	179
IV. HONDURAS HAS BREACHED ITS OBLIGATIONS UNDER SECTION A OF CHAPTER TEN OF CAFTA-DR, THE LSA, AND THE CHARTER OF PRÓSPERA ZEDE	181
A. Honduras has violated its obligations under Section A of Chapter Ten of CAFTA-DR.....	181
1. Honduras has failed to accord Claimants’ investments fair and equitable treatment..	181
(a) Article 10.5 of CAFTA-DR requires Honduras to accord fair and equitable treatment to covered investments	182
(i) CAFTA-DR protects Claimants’ legitimate expectations	186
(ii) CAFTA-DR prohibits measures that are arbitrary or unreasonable, discriminatory, non-transparent or inconsistent, or harassing	192
(b) Honduras has breached Claimants’ legitimate expectations that they would be able to develop Próspera ZEDE and reap the corresponding benefits for at least 50 years	196
(i) By enacting the ZEDE Legal Framework, promoting it to foreign investors, inviting and authorizing Claimants to invest, and expressly guaranteeing legal stability in multiple ways, Honduras created a legitimate expectation in Claimants that they would be able to develop Próspera ZEDE and reap the corresponding benefits for at least 50 years	197
(ii) Claimants invested in Honduras in reliance on those legitimate expectations	204
(iii) Honduras breached Claimants’ legitimate expectations.....	206
(c) Honduras’s measures are arbitrary and unreasonable, discriminatory, non-transparent and inconsistent, and harassing.....	210
(i) Honduras’s steps to repeal the ZEDE Legal Framework and its refusal to acknowledge Claimants’ legal stability rights were arbitrary and unreasonable, discriminatory, and non-transparent and inconsistent.....	211
(ii) The Supreme Court’s decision declaring the ZEDE Legal Framework unconstitutional <i>ex tunc</i> was arbitrary and unreasonable, as well as non-transparent and inconsistent.....	219

(iii)	From the moment President Castro came to power through to today, Honduras has harassed Claimants	224
2.	Honduras has failed to accord Claimants legal stability guaranteed under the Honduras-Kuwait BIT in breach of the Most Favored Nation guarantee in Article 10.4 of CAFTA-DR.....	226
(a)	Article 10.4 of CAFTA-DR requires Honduras to accord covered investors and investments treatment no less favorable than that accorded to investors of other States and their investments under other treaties, including the Honduras-Kuwait BIT	227
(b)	Honduras has breached its obligation under Article 10.4 of CAFTA-DR to accord Claimants the same 50 years of legal stability that it accorded Kuwaiti investors under Article 16 of the Honduras-Kuwait BIT.....	229
3.	If Honduras takes the position that Claimants’ rights under the ZEDE Legal Framework no longer exist, Honduras has unlawfully expropriated Claimants’ investments in breach of Article 10.7 of CAFTA-DR.....	230
(a)	Article 10.7 of CAFTA-DR regulates direct and indirect expropriation of tangible and intangible property rights or interests in an investment	231
(i)	The Treaty regulates direct expropriation	236
(ii)	The Treaty regulates indirect expropriation	237
(b)	If Honduras takes the position that Claimants’ rights under the ZEDE Legal Framework no longer exist, Honduras has unlawfully expropriated Claimants’ investments.....	241
(i)	If Honduras takes the position that Claimants’ right under the ZEDE Legal Framework no longer exist, Honduras has directly expropriated Claimants’ investments	245
(ii)	Alternatively, Honduras has indirectly expropriated Claimants’ investments.....	246
(iii)	Honduras has failed to comply with the requirements of Article 10.7, rendering any expropriation unlawful	248
B.	Honduras has breached its legal stability obligation under the LSA.....	250
C.	Honduras has breached its commitments under the Charter of Próspera ZEDE.....	256
V.	CLAIMANTS ARE ENTITLED TO FULL REPARATION IN THE FORM OF RESTITUTION OR, ALTERNATIVELY, COMPENSATION IN THE AMOUNT NEEDED TO WIPE OUT ALL THE CONSEQUENCES OF HONDURAS’S TREATY BREACHES	258
A.	Honduras is under an obligation to make full reparation, which in this case is restitution or, in lieu thereof, monetary damages in an amount to compensate Claimants for the value of their investments and for their moral damages	259
B.	Claimants’ claim for restitution.....	263
C.	Claimants’ claim for compensation for the harm to Claimants’ investments	265
1.	Intrinsic value of Claimants’ Financial Plan	266
2.	BRG’s assessment of damages	267

(a)	Applicable principles	267
(b)	<i>But-for</i> scenario	269
(i)	The income approach is the appropriate valuation method for the <i>but-for</i> value	269
(ii)	BRG’s Income Approach calculation.....	277
(c)	<i>Actual</i> scenario	284
(d)	Damages sustained by Claimants	285
D.	Claimants’ claim for moral damages.....	286
E.	No dilution through taxation	288
F.	Honduras must pay post-award interest on all amounts awarded	289
VI.	HONDURAS SHOULD BEAR THE COSTS OF THIS PROCEEDING	290
VII.	REQUEST FOR RELIEF	291

1. Honduras Próspera Inc. (“**HPI**”), St. John’s Bay Development Company LLC (“**SJBDC**”), and Próspera Arbitration Center LLC (“**PAC**” and, jointly with HPI and SJBDC, “**Claimants**”) hereby submit their Memorial on the Merits in support of their claims against the Republic of Honduras (“**Honduras**” or “**Respondent**”) under the Dominican Republic-Central America-United States Free Trade Agreement (“**CAFTA-DR**”)¹ and the Agreement for Legal Stability and Investor Protection between Honduras Próspera and Honduras (the “**LSA**”).² Claimants’ Memorial is accompanied by:

- Witness Statement of Mr. Erick A. Brimen, co-founder and Chief Executive Officer of HPI (“**Brimen**”);
- Witness statement of Mr. Gabriel Delgado Ayau, co-founder of HPI (“**Delgado**”);
- Witness Statement of Mr. Thomas D. Murcott, consultant to HPI and member of the Board of Directors of HPI (“**Murcott**”);
- Witness Statement of Mr. Chirag V. Shah, Director of the Roatán Financial Services Authority (“**Shah**”);
- [REDACTED]
- Expert Report of Professor Julien Chaisse, addressing special economic zones in comparative international perspective (“**Chaisse**”);
- Expert Report of Mr. Aldo Cosenza, addressing issues of Honduran Law (“**Cosenza**”);
- Damages Assessment Expert Report of Dr. Manuel A. Abdala and Mr. Santiago Dellepiane, Managing Directors at Berkeley Research Group (“**BRG**”);
- Exhibits C-181 to C-819; and
- Legal authorities CLA-115 to CLA-249.

¹ Dominican Republic-Central America-United States Free Trade Agreement dated 5 Aug. 2004 (“**CAFTA-DR**”) (CLA-2).

² Agreement for Legal Stability and Investor Protection entered into by and between Honduras Próspera and the Republic of Honduras dated 9 Mar. 2021 (“**Initial LSA**”) (CLA-6); Amendment to Agreement for Legal Stability and Investor Protection entered into by and between Próspera and Honduras (“**Amendment to the LSA**”) 18 Nov. 2021 (CLA-7).

I. INTRODUCTION

2. In 2024, the World Bank – which has set itself the mission of ending extreme poverty and boosting shared prosperity – found that the economic growth observed over the past quarter century has stalled, that poverty reduction has come to a standstill, and that 2020-30 is set to be a lost decade. The situation is particularly dire in the Latin American / Caribbean region, which has the sad distinction of having the highest share of high inequality in the world. As the World Bank concluded, “[e]nding poverty and boosting shared prosperity on a livable planet will require novel ways of organizing economic activity.”³
3. This is the tragedy at the heart of this case: Honduras and Claimants were building a transformative platform that, modeled on similar proven platforms elsewhere in the world, was carefully designed to catalyze massive development and create jobs for the people of Honduras. Their shared vision was that prosperity was achievable through good governance and policies that attracted investment and allowed opportunities to flourish. But then in early 2022 came the Castro government that trumpeted socialist ideals and the “refoundation” of Honduras, by which it meant the overturning of its predecessor’s laws and projects. To this government, legal stability was inherently suspect, and voluntary guarantees and undertakings – whether found in the State’s Constitution, laws, contracts, or treaties – were smeared as affronts to an archaic notion of sovereignty in which the State-as-strongman cannot be bound at all, even by its own commitments. Delivering good governance became less important than revanchism, political patronage, and nepotism, with the ruling family and its apparatchiks controlling nearly all levers of power. No longer valued partners, Claimants became the target of wild political vitriol and were defamed as criminals. Rather than working towards prosperity, Honduras undermined its own legal framework, disregarded deeply-rooted fundamental legal doctrines, upended Claimants’ investments, and frustrated the hopes of many of its own citizens. It did not have to be this way.

³ World Bank, *Poverty, Prosperity, and Planet Report* (2024) (C-373).

4. The facts of this dispute are clear.⁴ Honduras has long been one of the least developed nations in Latin America. Despite its great potential, the country has been plagued by a culture of political instability, corruption, and violence that has kept it mired in poverty and has driven many of its hardworking but hungry people to flee in search of a better life. For decades, Honduras's problems seemed intractable, as government after government, on the left and on the right, proved unable or unwilling to bring about needed reforms.
5. Then, just over a decade ago, Honduras conceived of an innovative form of special economic zone ("SEZ") to attract much-needed foreign investment and generate growth. SEZs have a long and successful track record around the world as catalysts of development, and Honduras had been experimenting with various types of SEZ since at least 1976. Professor Julien Chaisse – a Professor of Law at the City University of Hong Kong and world-renowned legal expert on SEZs, who for decades has studied SEZs and advised States, international organizations, and the private-sector on SEZs – explains that SEZs are commonly used by States and are lawful manifestations of sovereignty, not exceptions to it. There now are thousands of different SEZs all over the world, of many different forms, but some of the most successful examples are semi-autonomous SEZs that have generated exponential growth by adopting pro-market policies and regulation, for example the Dubai International Financial Centre ("DIFC") in the United Arab Emirates.
6. After having studied successful SEZ experiences in Asia, in 2013, Honduras amended its Constitution and put in place the legal framework for a new kind of semi-autonomous SEZ regime, with objectives that were explicit in its very name: Employment and Economic Development Zones ("ZEDE" for the Spanish term *Zonas de Empleo y Desarrollo Económico*). Honduras made its motives explicit from its first ZEDE decree:

reducing poverty and marginalization can be achieved by creating new employment, educational and health care access opportunities for the Honduran people, under conditions of economic and environmental sustainability The creation of employment is one of the most urgent needs of the Honduran people

⁴ See *infra* § II.

and one of the greatest obligations of the State; therefore, the Zones for Employment and Economic Development are spaces in the country where hundreds of thousands of Hondurans will find new opportunities.⁵

7. Honduras enshrined the ZEDEs at the highest levels of Honduran Law. The primary components of the framework are (i) Articles 294, 303 and 329 of the Constitution (“**ZEDE Constitutional Provisions**”),⁶ and (ii) the Organic Law of the Economic Development and Employment Zones⁷ (“**ZEDE Law**” or “**ZEDE Organic Law**” and, together with the ZEDE Constitutional Provisions, “**ZEDE Legal Framework**”), which authorized the establishment of ZEDEs as semi-autonomous zones subject to their own legal regime.
8. The ZEDE Legal Framework reflects Honduras’s deliberate policy choice to adopt a model proven elsewhere in the world of competitive semi-autonomous economic development zones, enabling the adoption of necessary policies to attract the investment needed to uplift the Honduran people. Building on examples of successful SEZs elsewhere, Honduras authorized the ZEDEs “to establish their own policy and regulations” and to develop “Autonomous Cities,”⁸ consistent with international best practices and the rule of law, as attested to by Professor Chaisse.
9. In addition, anticipating that these would be long-term ventures, Honduras guaranteed investors in ZEDEs legal stability so that long term transformative investment could be made in a country otherwise unable to attract such investment. The ZEDE Law itself provided that in the event of its repeal, it would remain in effect for the term established in legal stability agreements with ZEDE residents or investors, and that the transition period could be “no less than 10 years, during which time the rights of inhabitants and investors in the [ZEDEs] shall remain in effect.” Honduras extended this period to 50 years shortly after the ZEDE Law was enacted, by entering into a bilateral

⁵ Decree No. 236-2012, approving the constitutional amendments allowing for Employment and Economic Development Zones dated 24 Jan. 2013 (“**ZEDE Constitutional Provisions**”) (C-2) (emphasis added).

⁶ Constitution of Honduras of 1982 with Amendments through 2013 dated 20 Mar. 2013 (C-4) Arts. 294, 303, 329.

⁷ See Decree No. 120-2013, approving the Organic Law of the ZEDEs (“**ZEDE Law**”) (C-6).

⁸ See ZEDE Law (C-6), Arts. 1-2 (emphasis added).

investment treaty with Kuwait (“**Honduras-Kuwait BIT**”) that expressly guaranteed the legal stability of the ZEDE Legal Framework for 50 years. This 50-year period automatically applied to all investors in ZEDEs pursuant to Most Favored Nation (“**MFN**”) provision in Article 32 of the ZEDE Organic Law, in which Honduras guaranteed natural and legal persons operating in ZEDEs the “automatic extension of any better treatment that is granted or has been granted to the other parties to an international trade agreement signed by the State of Honduras.” It also applied to U.S. investors such as Claimants pursuant to the MFN provision in CAFTA-DR.

10. Further, and in any event, as Claimant’s expert on Honduran law Aldo Cosenza explains, the rights acquired by investors pursuant to the ZEDE Legal Framework constitute property rights and are constitutionally protected against expropriation without compensation and retroactive changes to the law. Mr. Cosenza is well-positioned to opine on these and other Honduran law matters in this case. Over the course of more than three decades of legal practice, he has worked in both the private and public sector, including as Assistant Prosecutor with the Public Prosecutor’s Office, External Advisor to the Cassation Prosecutor’s Office, Legal Advisor to the President of the Republic, Judge of the Second Court of Appeals of Tegucigalpa, and advisor to the Office of the Secretary of General Government Coordination and the Office of the Secretary of Finance in connection with public-private partnerships, among other things.
11. Over the following years, the Supreme Court of Honduras upheld the constitutionality of the ZEDE Legal Framework no less than three times and Honduras supplemented and strengthened the ZEDE Legal Framework with additional instruments (*e.g.*, regulations, agreements, and authorizations). In addition, Honduras launched a concerted campaign to attract foreign investment in the ZEDEs, particularly from investors from the U.S. As the President of Honduras told the United Nations:

[w]e need more investments . . . Honduras has reformed its Constitution in order to create one of the best platforms in the world for investment and employment: the Zones for Employment and Economic Development, known as ZEDEs
[T]o attract long-term investments and ensure good jobs, we guarantee political

stability and transparency based on international treaties and agreements I invite you all to discover this great opportunity.⁹

12. In 2016, Honduras approached Mr. Erick Brimen, a U.S. citizen of Venezuelan origin with a background as an investment banker, executive, and founder of successful startups, who was known to be interested in SEZs, and invited him to invest in a ZEDE. For months, Honduran officials courted Mr. Brimen, touting the amazing prospects in a ZEDE, noting the many development opportunities, and underscoring Honduras's legal stability undertakings. Honduras did the same with Mr. Gabriel ('Gabe') Delgado, a Guatemalan entrepreneur who had been looking to establish a semi-autonomous SEZ in the region and decided to partner with Mr. Brimen.
13. Honduras's pitch could hardly have been better directed. Messrs. Brimen and Delgado both had roots in Latin America and had been profoundly influenced by the disfunction and inability of governments in the region to deliver prosperity despite the region's wealth of natural resources and many other advantages. As a result of their experiences, they had come to believe that the best way to deliver prosperity was to create an ecosystem that provided good governance, which, as has been proven time and again, attracts investment, fosters entrepreneurialism, and allows individuals the freedom to build, all of which generates growth and opportunities. In 2017, they formed HPI to make this vision come true in Honduras.
14. HPI and Honduras established a ZEDE ("**Próspera ZEDE**"), starting on Honduras's island of Roatán in the Caribbean, and subsequently expanding into nearby La Ceiba, on the north shore of the Honduran mainland. HPI and its affiliates invested to create the regulatory and physical infrastructure that would make Próspera ZEDE attractive to investors, including a common law legal regime, familiar and flexible regulations, a bill of rights protecting people of all income levels, low taxation, and protections for the environment, all in accordance with international best practices and the ZEDE Legal Framework. Claimants' business model was to attract businesses and people

⁹ See Speech of the President of Honduras to the UN General Assembly dated 24 Sep. 2014 (C-10) (emphasis added).

to the ZEDE and for Claimants to run two main business lines from which they would derive substantial profit: (i) provision of governance-as-a-service to the residents of the ZEDE in return for which Claimants would be paid a fee; and (ii) real estate development, including developing land in the ZEDE and selling it for a profit, and charging development fees to third-party developers who would be invited to develop the ZEDE according to master plans developed by Claimants with world-class consultants including Deloitte, Ernst & Young, and Jacobs Engineering.

15. Mr. Brimen and Mr. Delgado put together a world-class team of experts with experience developing some of the most successful SEZs in the world, including Mr. Chirag Shah (the former Chief Strategy & Business Development Officer of the DIFC, where he was the longest serving executive) and Mr. Tom Murcott (a marketing and real estate development expert who successfully master-planned and attracted investors to multi-billion dollar city-scale development projects in Asia, including Songdo International Business District near the Seoul international airport in Korea and Meixi Lake in China), both of whom are witnesses in these proceedings, as well as other experts such as Jeffrey Singer (the former CEO of the DIFC), Oliver Porter (the founder and architect behind the private city of Sandy Springs, Georgia, which has over 100,000 residents), and Ott Vatter (the creator of Estonia's digital governance system).
16. Claimants' efforts and proven execution capacity impressed investors from around the world, validating Claimants' vision and the viability of their partnership with Honduras in Próspera ZEDE. Claimants succeeded in attracting important companies to Próspera, including, for example, cutting edge healthcare firms. Claimants also succeeded in raising over US\$ 166 million and were on track to invest half a billion dollars in Honduras by 2025. Further, as Mr. Shah recounts, Claimants launched an international financial center in Próspera ZEDE, the Roatán International Financial Center ("**RIFC**"), modelled on the DIFC, to make Roatán a gateway for foreign investment in Honduras and Latin America. Likewise, Mr. Murcott explains that Claimants were developing the Satuyé port in La Ceiba into a major industrial nearshoring hub, with expected investments of US\$ 5 billion over the following decade.

17. Such investments translated into real benefits for Hondurans, exactly as Honduras had envisioned. Among the Claimants' most important accomplishments was delivering on the objective of the ZEDE of fomenting prosperity. Since its creation, Próspera ZEDE has created thousands of jobs. On Roatán, 40% of the community of Crawfish Rock depends on Próspera ZEDE. Crawfish Rock had long been overlooked by the Honduran Government, but Claimants contributed vital services to the community, including running water, English classes, an after-school program, and transportation for older students who would otherwise have to walk an hour and a half to reach the nearest school, as well as funding for entrepreneurs and training programs for adult residents. [REDACTED]
- [REDACTED]
- [REDACTED]
18. But then things changed radically. In late 2021, Honduras elected Ms. Xiomara Castro as President. Ms. Castro had, together with her husband former President Manuel ('Mel') Zelaya, created the Liberty and Refoundation Party ("**LIBRE**" for the Spanish *Libertad y Refundación*), which had as its guiding principle the automatic opposition to all policies and initiatives enacted in Honduras since Mr. Zelaya's impeachment in 2009. When Ms. Castro assumed the Presidency in 2022, it became clear that LIBRE's proposed refoundation of Honduras meant the stifling of dissent and silencing opponents through denunciations and threats of violence; it meant the consolidation of power, including by stacking the Supreme Court; it meant nepotism, as the Zelaya-Castro family assumed roles of leadership roles in Congress, powerful ministries, and the Supreme Court; it meant scandal, as the links between some of those very same family members with organized crime and drug-traffickers were revealed.
19. Honduras had designed the ZEDEs to be insulated from politics and corruption and had guaranteed investors stability. Under the Castro regime, however, the ZEDE Legal Framework became a target to be condemned and abolished, because it had been a flagship policy of her predecessor. The President and her allies called the ZEDE Legal Framework criminal and worse; vilified the ZEDEs

- and equated them with death squads and drug traffickers (without a single shred of evidence); and singled out Próspera ZEDE as an enemy of the Honduran people to be fought and defeated.
20. The attack on Claimants' investments was not limited to invective and vile rhetoric. In April 2022, Honduras passed decrees to repeal the ZEDE Legal Framework by beginning the process to amend the ZEDE Constitutional Provisions and repealing the ZEDE Organic Law. Notwithstanding its many prior undertakings of legal stability used to induce investment, Honduras did not address the rights of existing investors in the ZEDEs, and, despite repeated requests from Claimants, refused to clarify the legal status of Próspera ZEDE or whether Honduras would honor its legal stability undertakings.
21. As Ms. Castro's regime lost political support, however, Honduras ultimately was unable to amend the ZEDE Constitutional Provisions according to the process established in the Constitution. But the anti-ZEDE partisans did not give up. They turned to the Supreme Court, meanwhile stacked by the government and presided over by a member of the Zelaya-Castro extended family. In 2024, in a highly criticized process rife with irregularities, the Supreme Court of Honduras declared that the entire ZEDE Legal Framework was unconstitutional with *ex tunc* effects. As the Court itself observed, the *ex tunc* effect that it gave to its decision – seeking to invalidate all of the very significant investments in ZEDEs during the 10-year period that the regime was in existence – was without precedent in the history of Honduras. The Court's decision merely exacerbated the cloud of uncertainty over existing ZEDE investors, as the minuscule part of the (otherwise very lengthy) decision addressing these investors is nonsensical, given that it wrongly equates private initiative in ZEDEs with the ZEDEs themselves (which are political subdivisions of Honduras) and simultaneously purports to protect the rights of these investors while also denying them.
22. Honduras's conduct has had a profound economic impact on Claimants, who have been prevented from developing Próspera ZEDE in accordance with their rights under the ZEDE Legal Framework. As a result of Honduras's conduct, Claimants' governance-as-a-service and real estate businesses have not been able to take advantage of the expected transformative value of the Próspera ZEDE

platform that Claimants put in place together with Honduras. BRG has calculated that the intrinsic value of Claimants' business plan, had they been allowed to carry it out, was on average US\$ 10.6 billion.

23. The loss to Honduras is even greater, however, as Próspera ZEDE would have become a key economic driver for Honduras. Moreover, as by law 90% of all workers employed in Próspera ZEDE were required to be Hondurans, thousands upon thousands of Hondurans would have had jobs that paid more than anywhere else in the country. Beyond the lost opportunities, Honduras's measures have a very real impact on Hondurans who already rely on Próspera ZEDE. Whatever the President of Honduras may say, Claimants are not the enemies of the Honduran people.
24. The testimonials of Próspera ZEDE's many beneficiaries speak for themselves:
- "There was nothing. Nothing . . . and now it has crops because we have planted the crops so that there would be a source of work for women and men. So that's why I stayed."¹⁰
 - "Thanks to Próspera . . . I have my daughter in school here. She is learning English. She is learning about computers. So I am happy, thanks to God, and thanks to Próspera for giving us another opportunity to succeed, providing us with work."¹¹
 - "[I]t has help[ed] me survive . . . They have helped me and I feel happy and content . . . It's a good opportunity for anyone who wants to work and for those of us who are working, well, for us, it's a support."¹²
 - "This is going to bring prosperity to this country. I bless the one who had the idea of this beautiful project. I thank God because this project is very good . . . This is what this country and this city needs."¹³
 - "There were people who did not have jobs, who have jobs now. They are working. Where would we go look for work if there is no work. If there is work, there is development, then here we have it, why would we go anywhere else?"¹⁴

¹⁰ Testimonial by Danilo Velasquez, Próspera dated 12 Feb. 2024 (C-374).

¹¹ Testimonial by Rosaly Kerington, Próspera, X @PROSPERAGLOBAL dated 29 Jun. 2023 (C-375).

¹² Testimonial by Juan López, Próspera dated 13 Nov. 2023 (C-376).

¹³ Testimonial by Mauren Sánchez, Próspera dated 4 Sep. 2023 (C-377).

¹⁴ Testimonial by Francisco López, Próspera dated 2 Nov. 2023 (C-378).

- “I feel very proud to have worked [in Próspera ZEDE] . . . which will provide modern solutions for the country’s economic growth.”¹⁵
- “I feel very happy to be able to have an opportunity like the one that Próspera has given me . . . This project will transform Honduras attracting all the talent we have in the entire coastal region that is waiting for an opportunity like this one with open doors for everyone to grow.”¹⁶
- “Próspera came and they brought equality to us, and that is why I am so passionate about Próspera . . . [y]ou don’t have to be scared of change. Change is good . . . [T]his is one of the best things that has ever happened to Roatán.”¹⁷

25. Honduras does not want the world to hear these stories. From the highest levels of government, officials use vile rhetoric and threaten anyone who supports the ZEDEs with criminal charges. This has real consequences. The first Technical Secretary of Próspera ZEDE, once the State’s highest executive authority in the ZEDE, resigned after an assassination attempt. Many Honduran jurists supporting Claimants in private declined to appear publicly as experts in these proceedings out of fear of retaliation. The same is true for a number of other individuals and companies who have benefited from Próspera ZEDE or were planning to invest in it before the Castro Government upended the regime and sought to demonize and/or retaliate against anyone having ever been involved with ZEDEs or speaking out in their favor. Speaking on behalf of Claimants takes courage.
26. The Tribunal will hear from one witness who has already experienced threats and retaliation for speaking in support of Próspera ZEDE and whose identity must therefore be kept confidential. [REDACTED]

¹⁵ Testimonial by Carlos Flores, Próspera, X @PROSPERAGLOBAL dated 13 Jan. 2023 (C-379).

¹⁶ Testimonial by Eric Paz, Próspera, X @PROSPERAGLOBAL dated 27 Jan. 2023 (C-380).

¹⁷ Testimonial by Ariana Dixon, Próspera dated 8 Mar. 2024 (C-381).

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27. There are two main reasons for Honduras's rhetoric and threats. On the one hand, Próspera ZEDE is a convenient political target, whose foreign developers are easily demonized as current-day colonizers eager to plunder Honduras. The Government's public statements have often been merely performative grandstanding for political reasons. On the other hand, Honduras does not have a legitimate factual or legal basis for opposing Claimants. Lacking in reasonable arguments, the Government resorts to invective and unjustified use of the State apparatus, including its criminal justice system.
28. One example of Honduras's empty rhetoric is its attempt to justify its anti-ZEDE position by appealing to a medieval view of sovereignty, according to which the (now Castro-run) State must have a monopoly over governance and yet (incongruously) somehow lacked the power to create SEZs that in no way compromise the territorial integrity of Honduras. To understand the Government's real ideal of sovereignty, one need only consider the countries with whom it now aligns most closely: Venezuela and Cuba. In reality, it is not sovereignty but populist ideology and politics that is driving Honduras's newfound hatred of the ZEDEs.
29. The profound irony of Honduras's appeals to sovereignty is that the anti-ZEDE position has never enjoyed popular support. According to post-election polling in 2022, only 3% of Ms. Castro's voters reported opposition to ZEDEs as a principal factor driving their vote.
- ***
30. Ultimately, whatever the reasons or policy choices of its current Government, and whatever the consequences for its people, Honduras's measures are unlawful.
31. Honduras's attempts to dismantle the ZEDE Legal Framework run afoul of Honduras's own law and the Rule of Law itself. They are also blatant violations of Honduras's international obligations

vis-à-vis Claimants, as Claimants demonstrate below.¹⁹

- Honduras has violated its obligations under Article 10, Section A (the investment protection chapter) of CAFTA-DR:
 - Honduras has failed to accord Claimants' investments fair and equitable treatment in breach of Article 10.5 of CAFTA-DR by violating Claimants' legitimate expectations and through measures that are arbitrary and unreasonable, discriminatory, non-transparent and inconsistent, and harassing.
 - Honduras has failed to accord Claimants legal stability guaranteed under the Honduras-Kuwait BIT in breach of the MFN guarantee in Article 10.4 of CAFTA-DR.
 - If Honduras clarifies the legal uncertainty that it has created and takes the position that Claimants' rights under the ZEDE Legal Framework no longer exist, Honduras has unlawfully expropriated Claimants' investments in breach of Article 10.7 of CAFTA-DR.
- Honduras has breached its legal stability obligations under the LSA.
- Honduras has breached its commitments under the Charter of Próspera ZEDE.

32. The Tribunal has jurisdiction to hear and determine Claimants' claims for these breaches pursuant to Article 10, Section B of CAFTA-DR, which entitles U.S. investors to bring claims at ICSID against Honduras on their own behalf for breaches of Article 10, Section A of CAFTA-DR and for breaches of an investment agreement such as the LSA and of an investment authorization such as the Charter of Próspera ZEDE.²⁰ The ICSID arbitration clause in the LSA separately entitles HPI to bring claims for breaches of Honduras's obligations under the LSA vis-à-vis HPI and its affiliates SJBD and PAC.²¹

33. Claimants are entitled to full reparation of the damages resulting from Honduras's unlawful conduct.²² As part of its attempt to litigate this dispute in the press, Honduras has sought to portray Claimants as greedy filibusters out to bankrupt Honduras. Nothing could be farther from the truth.

¹⁹ See *infra* § IV.

²⁰ See *infra* § III.

²¹ See *id.*

²² See *infra* § V.

Notably, as underscored time and time again, Claimants would much prefer a constructive dialogue with Honduras to arbitration, but Honduras has thus far refused. Moreover, while BRG has calculated that the intrinsic value of Claimants' business plans, had they been allowed to come to fruition as expected, would have been on average US\$ 10.6 billion, that is not what Claimants are seeking.²³

- Claimants' preferred resolution to this dispute would be for the parties to put aside their differences and partner to continue developing Próspera ZEDE together. Claimants continue to hold out hope that Honduras – possibly under new leadership after the general elections at the end of this year – will see reason, and that together they may build Próspera ZEDE into the catalyst of growth and development that it was always meant to be.
- If Honduras continues to insist on the litigious path, however, Claimants requests the Tribunal to order Honduras to take such steps as may be necessary for the restitution of Claimants' rights under the ZEDE Legal Framework in accordance with Article 10.26(b) of CAFTA-DR, to the extent this is practical as of the date of the award. As explained below, this would include, without limitation, Honduras (i) explicitly recognizing Claimants' rights under the ZEDE Legal Framework and ensuring that they shall remain in effect and be adequately protected for the full period of legal stability guaranteed by Honduras, (ii) to the extent Honduras take the position that Claimants no longer have these rights, restoring those rights in their entirety, and (iii) allowing Claimants' exercise of these rights and ceasing and desisting from all interference therewith as well as from harassing and vilifying Claimants. It would also include monetary compensation to make Claimants whole for losses incurred as a result of Honduras's measures through the date of restitution, in an amount to be determined as of the date of award; or
- Alternatively, in lieu of the foregoing, Claimants request monetary damages in accordance with Article 10.26(a) of CAFTA-DR. As explained below, BRG calculates the losses caused by Honduras's unlawful actions to amount to US\$ 1.63 billion as of the date of this Memorial.
- Claimants also seek moral damages for the harm caused Claimants and their corporate officers as a result of Honduras's vilification and intimidation tactics, in the amount of US\$ 1 million.

II. FACTUAL BACKGROUND

A. FOR DECADES, HONDURAS HAS BEEN EXPERIMENTING WITH SPECIAL ECONOMIC ZONES TO ATTRACT INVESTMENT AND ADDRESS ITS LONGSTANDING ECONOMIC AND POLITICAL PROBLEMS

34. Honduras has a longstanding history of political instability, poverty, insecurity, violence, and corruption impeding investment and economic development (Section II.A.1). It has looked for

²³ Claimants reserve the right to amend their request for relief during the course of the arbitration, including the forms of relief requested and their damages calculation.

decades to special economic zones (“SEZs”) to address these problems and attract investment into certain areas of its economy (Section II.A.2).

1. Honduras has a longstanding history of political instability, poverty, insecurity, violence, and corruption impeding investment and economic development

35. In 1982, after nearly twenty years of de facto military rule, Honduras transitioned to a civil government and adopted the Constitution that remains in force today, albeit with over two dozen amendments.²⁴ In the decades that followed, power in Honduras alternated between the left-leaning Liberal Party and the right-leaning National Party, with scandal upon scandal implicating officials from each party during each period.²⁵
36. Political conflict and instability continued during the 21st century. In June 2009, for example, President Manuel (‘Mel’) Zelaya of the Liberal Party (the husband of Honduras’s present President, Xiomara Castro) tried to eliminate constitutional restrictions on serving a second term. When Mr. Zelaya tried to move forward with a referendum that had been blocked by Honduras’s Supreme Court and declared illegal by the Honduran Congress, the Supreme Court ordered his arrest. On 28 June 2009, the Honduran military expelled Mr. Zelaya to Costa Rica, and Roberto Micheletti became interim president. Following elections in November 2009, Porfirio Lobo of the National Party assumed the presidency in January 2010.²⁶
37. Meanwhile, Honduras has struggled with serious economic and social problems: over the years, jobs and economic opportunities have decreased, while poverty, violence, and crime have increased.²⁷ Honduras is one of the poorest countries in the Western Hemisphere with a Gross

²⁴ See ConstitutionNet, *Constitutional history of Honduras* (C-382); Constitution of Honduras of 1982 with Amendments through 2013 (C-4).

²⁵ See National Anticorruption Council, 100 Years of Corruption and Impunity in Honduras (1 Jan. 2017) (C-383).

²⁶ See Wayne M. Clegern and J. Roberto Moncada R., *Honduras in History*, BRITANNICA (27 Sep. 2025) (C-384).

²⁷ See Louis-Alexandre Berg and Marlon Carranza, Crime, Violence, and Community-Based Prevention in Honduras, WORLD BANK GROUP (1 Jun. 2015) (C-385) pp.5, 7, 40 (“The nature of violence in Honduras has evolved considerably over the past decade. . . . The percentage of the population living in poverty increased from 58.3 percent in 2007 to 66.2 percent in 2012, while youth unemployment increased from 4.9 to 8.2 percent

Domestic Product (“GDP”) per capita lower than every country in the region except Nicaragua and Haiti,²⁸ and with growth that continues to lag behind that of its regional peers.²⁹ As of 2023, Honduras had one of the worst levels of income inequality in the region with a Gini index of 0.52.³⁰ Staggeringly high numbers of Hondurans are illiterate (31% of those aged 60+ and 13% of those aged 15+) with very low school attendance rates (56% of those aged 12-14 and 28% of those aged 15-17).³¹ Infrastructure, roads, ports, and energy grids are all underdeveloped, which further constrains basic transportation, commerce, and access to essential services.³² Unsurprisingly, the exodus of Hondurans seeking economic opportunity and better lives continues, particularly to the U.S.³³

38. Successive Honduran governments have failed to meaningfully alleviate the country’s poverty. In fact, deficient governance itself is a key cause of the economic situation. Honduras underperforms in virtually every development and governance index.³⁴ It features weak protection of property

in the same period (World Bank 2014). Honduras has also maintained one of the highest levels of income inequality in Latin America. . . . The growth of crime can be understood in the context of several risk factors that have worsened during this period, including poverty, unemployment Economic conditions were often cited as the root of everything that is wrong in the country, including crime, but residents also revealed how these problems contribute to violence in particular ways. Most respondents pointed to the individual-level effects of poverty in driving people, especially youth, to participate in crime.”); Ralph Lee Woodward and Wayne M. Clegern, *Honduras*, BRITANNICA (27 Sep. 2025) (C-386) (“Honduras, like its neighbours in the region, is a developing nation whose citizens are presented with innumerable economic and social challenges”).

- ²⁸ See *GDP per capita, current prices, U.S. dollars per capita*, INTERNATIONAL MONETARY FUND (Oct. 2022) (C-69).
- ²⁹ See Monica Robayo *et al.*, *Toward a path of poverty reduction and inclusive growth: Honduras poverty assessment*, WORLD BANK (2 Feb. 2023) (C-387) p. 1. See also Laura A. Gores, *et al.*, *Honduras – Public investment management assessment – PIMA and climate PIMA*, IMF ELIBRARY (27 Dec. 2024) (C-388).
- ³⁰ See *Honduras: Events of 2024*, Human Rights Watch (C-389).
- ³¹ See *Honduras: Events of 2024*, Human Rights Watch (C-389).
- ³² See *Assessing the Level of Economic Development in Honduras*, LATAM FDI (8 Mar. 2025) (C-390).
- ³³ See Results of the National Migration and Remittances Survey - Honduras 2023, National Institute of Statistics and International Organization for Migration (1 Jan. 2023) (C-391) p. 27; Adam Isacson and Maureen Meyer, *Halfway to the U.S.: Report from Honduras*, WASHINGTON OFFICE ON LATIN AMERICA (2 Jun. 2023) (C-392); Diana Roy and Amelia Cheatham, *Central America's Turbulent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (13 Jul. 2023) (C-393); Expansion, *Hondurans Migrate More* (1 Jan. 2020) (C-394).
- ³⁴ See World Bank, *Creating Markets in Honduras: Fostering Private Sector Development for a Resilient and Inclusive Economy* (14 May 2022) (C-395) p. 22 (“In 2020, Honduras scored poorly on all six dimensions of the World Bank’s Worldwide Governance Indicators. The weakest area of governance was rule of law (17.3

rights and an unreliable real property registry, an ineffective judiciary, and burdensome regulations, all of which hinder economic freedom and ease to do business.³⁵ As the U.S. State Department's latest Investment Climate Statement reports, Honduras's untransparent policies and its lack of effective laws to foster market-based competition are a concern cited by both foreign and domestic firms in Honduras.³⁶ According to a recent World Bank study that identified numerous challenges faced by Honduras (*e.g.*, declining productivity, limited access to investment and finance, business and trade regulations that dampen competition, lack of adequate infrastructure, and low quality of education), these issues are exacerbated by weak institutions and governance, and the “top challenge” and “primary concern” in Honduras is corruption:

[c]ompetition is constrained by entrenched state capture and incumbents, which is exacerbated by weak checks and balances. Favoritism in government decisions is increasing, and there are growing indications of patronage and undue influence in relationships between politicians and businesses. The capacity of the system to curtail these practices is limited, as checks and balances are weak in Honduras, even compared to neighboring countries³⁷

39. In addition, violence and crime are endemic in Honduras.³⁸ According to a recent Global Study on

percentile), followed by control of corruption (20.7 percentile), political stability and the absence of violence or terrorism (26.4 percentile), government effectiveness (29.8 percentile), voice and accountability (29.9 percentile), and regulatory quality (34.1 percentile).”). *See also* World Bank, *Worldwide Governance Indicators – Country Table: Honduras (1996–2023)* (11 Nov. 2024) (C-396).

³⁵ *See* Heritage Foundation, *Economic freedom country profile: Honduras* (1 Feb. 2025) (C-397); U.S. Department of State, 2025 Honduras Investment Climate Statement (1 Sep. 2025) (C-398) p. 21 (“There are claims of widespread corruption in land sales, deed filing, and dispute resolution, including claims against attorneys, real estate companies, judges, and local officials. Although Honduras has made some progress, the property registration system is perceived as unreliable and a constraint on investment.”).

³⁶ *See* U.S. Department of State, 2025 Honduras Investment Climate Statement (1 Sep. 2025) (C-398) p. 8.

³⁷ *See* World Bank, *Honduras: Paths toward building a resilient society: Systematic country diagnostic* (1 Feb. 2022) (C-399) p. 20. *See also* World Bank, *Creating Markets in Honduras: Fostering Private Sector Development for a Resilient and Inclusive Economy* (14 May 2022) (C-395) p. 22 (“Weak institutions and governance exacerbate the difficulty of doing business in Honduras. In 2020, Honduras scored poorly on all six dimensions of the World Bank’s Worldwide Governance Indicators. The weakest area of governance was rule of law (17.3 percentile), followed by control of corruption (20.7 percentile), political stability and the absence of violence or terrorism (26.4 percentile), government effectiveness (29.8 percentile), voice and accountability (29.9 percentile), and regulatory quality (34.1 percentile).”).

³⁸ *See Honduras: Events of 2024*, Human Rights Watch, (C-389) (“Honduras has been for years among one of the most violent countries in the world, with police reporting 3,035 murders in 2023, a homicide rate of 31 per 100,000 people. . . . Honduras has the highest rate of femicides in Latin America and the Caribbean, with approximately 7 femicides per 100,000 women.”).

Homicide by the United Nations Office on Drugs and Crime, Honduras ranks among the countries with the highest homicide rates globally.³⁹ Similarly, according to the Index of Economic Freedom, Honduras has “one of the world’s highest homicide rates” and “[g]angs and transnational criminal networks prey on communities, often in collusion with authorities.”⁴⁰ Violence disproportionately affects women and youth, who are often forced to flee their homes.⁴¹ It also has significant economic implications, with an overall cost of approximately 14% of Honduras’s GDP.⁴²

40. Far from improving, it sadly appears that Honduras’s problems are getting worse. In 2011, Transparency International’s Corruption Perceptions Index (the most widely used ranking of public sector corruption in the world) ranked Honduras 133rd in the world for corruption.⁴³ The 2024 edition ranked it 154th, above only Haiti, Nicaragua, and Venezuela in the Western Hemisphere.⁴⁴ According to Human Rights Watch, current President Xiomara Castro “has made little progress in fighting corruption and restoring democratic institutions” and Honduras continues to suffer from “widespread corruption, a compromised judiciary, [and] high levels of violence.”⁴⁵ Likewise, the U.S. State Department reports that “U.S. businesses and citizens report corruption in the public sector and the judiciary is a significant constraint to investment in Honduras.”⁴⁶

2. For decades, Honduras has looked to special economic zones to promote certain areas of its economy, attract investment, and address its longstanding economic and political problems

41. SEZs have a long and successful track record around the world of generating exponential economic

³⁹ See Global Study on Homicide 2023: Chapter 2: Homicide Trends and Patterns, United Nations Office on Drugs and Crime (1 Jan. 2023) (C-400) p. 46.

⁴⁰ Heritage Foundation, *2022 Index of Economic Freedom* dated 2022 (C-88) p. 220.

⁴¹ See UNHCR, *Honduras Operational Update* (1 Jan. 2025) (C-401).

⁴² See World Bank, *Honduras: Paths toward building a resilient society: Systematic country diagnostic* (1 Feb. 2022) (C-399) pp. 18-19.

⁴³ See Transparency International, *Corruption Perception Index 2011* (2011) (C-1) p. 3.

⁴⁴ See Transparency International, *Corruption Perception Index 2024* (1 Jan. 2024) (C-402).

⁴⁵ *Honduras: Events of 2024*, Human Rights Watch (C-389).

⁴⁶ U.S. Department of State, *2025 Honduras Investment Climate Statement* (1 Sep. 2025) (C-398) p. 28.

and other growth as a result of the adoption of pro-market policies and regulations (Section II.A.2.a). Needing to generate investment and catalyze employment and economic development, Honduras has experimented with various types of SEZs since the 1970s (Section II.A.2.b), including a form of semi-autonomous SEZ in 2011 (Section II.A.2.c).

(a) SEZs are well-established mechanisms for States to attract investment and encourage economic development

42. SEZs are State-created jurisdictions subject to special legal regimes. According to Professor Julien Chaisse, one of the world’s foremost legal experts on SEZs,⁴⁷ SEZs are legally constituted jurisdictions within a State’s territory, where a distinct regulatory framework applies, typically granting delegated powers and authority, fiscal and custom benefits, and legal structures to ensure stability and predictability.⁴⁸ As Professor Chaisse confirms, SEZs, “are not *ad hoc* constructs but deliberate legal creations, embedded in constitutional, statutory, or executive instruments, designed to give investors enforceable assurances of regulatory stability.”⁴⁹
43. As a general matter, the purpose of SEZs is to attract investment and promote economic development. As Professor Chaisse explains, States use SEZs “to attract foreign investment, generate employment, and enhance competitiveness [and to] pursue other State-defined purposes, such as regional development, experimentation with alternative legal systems, or growth in a

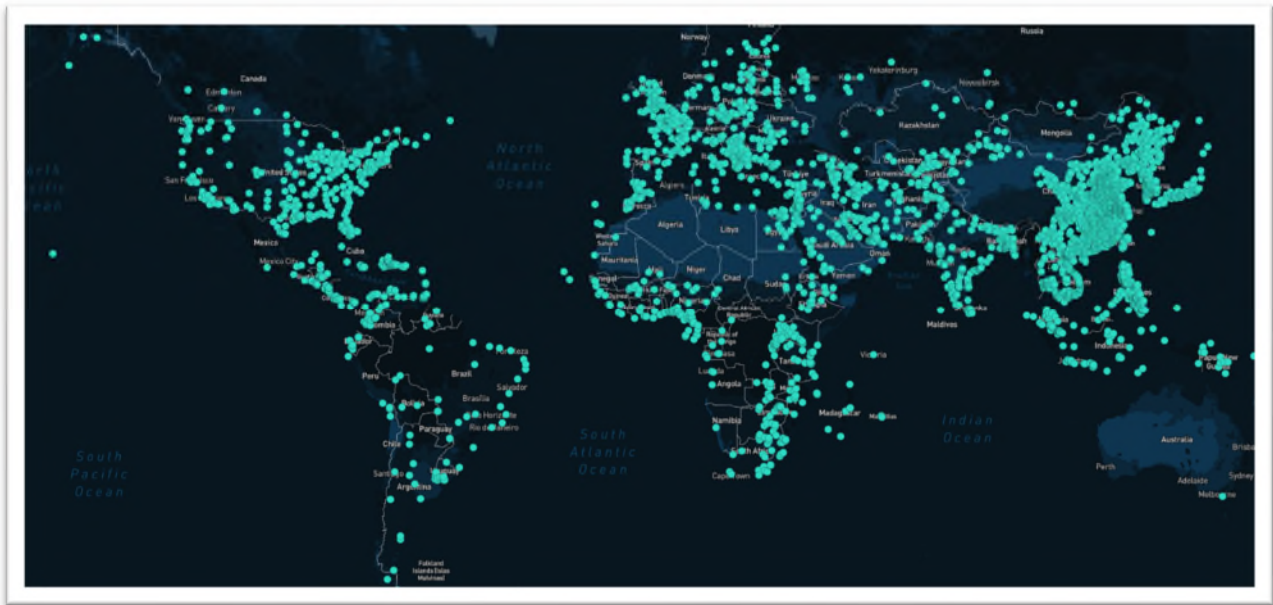
⁴⁷ Chaisse ¶¶ 3-4 (describing his extensive expertise in the legal structuring of SEZs and international economic law and representative mandates on behalf of States, international organizations, and the private sector, including Malaysia’s State-owned External Trade Development Corporation, Ethiopia, Sri Lanka, Iraq, the International Trade Centre, the World Bank, the Asian Development Bank, and the United Nations Economic and Social Commission for Asia and the Pacific), Annex A (*Curriculum Vitae* of Professor Chaisse, listing his significant academic experience and publications on SEZs).

⁴⁸ Chaisse ¶¶ 10, 19, 21-22, 26. *See also* World Investment Report 2019: Chapter 4: Special Economic Zones, United Nations Trade and Development (1 Jan. 2019) (C-403) p. 128 (“SEZs go by many names and come in many varieties and sizes. They have in common that, within a defined perimeter, they provide a regulatory regime for businesses and investors distinct from what normally applies in the broader national or subnational economy where they are established.”); Teresa Cheng, *Special Economic Zones: A Catalyst for International Trade and Investment in Unsettling Times?*, JOURNAL OF WORLD INVESTMENT & TRADE 20, 32 (2019) (C-241) pp. 4-6 (providing an overview of types of modern SEZs, and adopting a broad definition of SEZ to capture recent models that are not confined to specific geographic areas, such as the Dubai Multi Commodities Centre, Dubai International Financial Centre (“**DIFC**”), and Qatar International Financial Centre, and other wide-area SEZs, such as the Shanghai Pilot Free Trade Zone).

⁴⁹ Chaisse ¶ 10.

specific sector or industry.”⁵⁰

44. SEZs exist in myriad forms and variations all over the world. In 2019, UNCTAD inventoried at least 5,383 SEZs in 147 economies.⁵¹ In 2020, a survey of SEZ counts found estimates ranging from 2,149 to 10,000 SEZs based on varying inclusion criteria.⁵² Likewise, recent mappings of SEZs show thousands of zones, across every continent.⁵³



45. As Professor Chaisse explains, there are a range of different SEZs at different stages of development and with different institutional models.⁵⁴ For the purposes of this case, he identifies several modern SEZs that are relevant, including Shenzhen SEZ (China), the Astana International

⁵⁰ Chaisse ¶ 18. *See also* Special Economic Zones: Performance, Lessons Learned, and Implications for Zone Development, FIAS (1 Apr. 2008) (C-404) p. 1 (“For developing countries, special economic zones (SEZs) traditionally have had both a policy and an infrastructure rationale. In terms of policy, the SEZ can be a useful tool as part of an overall economic growth strategy to enhance industry competitiveness and attract foreign direct investment (FDI).”).

⁵¹ *See* World Investment Report 2019: Chapter 4: Special Economic Zones, United Nations Trade and Development (1 Jan. 2019) (C-403).

⁵² *See* Thibault Serlet, *How Many Special Economic Zones Are There?*, ADRIANOPE GROUP (1 Jul. 2020) (C-405).

⁵³ *See* Open Zone Map (C-406).

⁵⁴ Chaisse ¶¶ 11-15. *See also* Douglas Z. Zeng, *The Past, Present, and Future of Special Economic Zones and Their Impact*, JOURNAL OF INTERNATIONAL ECONOMIC LAW 24, 259 (8 Apr. 2021) (C-244) pp. 261-266 (explaining the five generations of SEZs, from export processing zones (first generation) to intelligent cities (fifth generation)).

Financial Centre (Kazakhstan), the Mauritius Freeport (Mauritius), the Panamá-Pacífico Special Economic Area and the Colón Free Zone (Panama), the Qatar Financial Centre (Qatar), the Abu Dhabi Global Market, the DIFC, the Jebel Ali Free Zone, and the Ras Al Khaimah International Corporate Centre (United Arab Emirates (“UAE”)), which, according to Professor Chaisse, are representative of the variety of modern comparative SEZs (*e.g.*, specialized corporate registries, industrial zones, logistics hubs, and financial centers, etc.).⁵⁵ Likewise, Professor Chaisse notes that other special jurisdictions share functional similarities with modern SEZs, such as Singapore, which has integrated SEZ functions into its national economic strategy and effectively operates as a nationwide SEZ, and Hong Kong, a special administrative region within China that benefits from a high degree of autonomy – maintaining its own regulatory framework, fiscal independence, and specialized systems of adjudication.⁵⁶

46. Over time, these SEZs have proven to be highly successful in catalyzing economic development and international trade, attracting substantial foreign direct investment, generating significant employment, and driving massive GDP growth.⁵⁷ For example, SEZs have resulted in billions of dollars of net benefits to jurisdictions as diverse as China and Dubai, in both of which SEZs account for 20% or more of GDP,⁵⁸ and there is no shortage of other success stories.⁵⁹

⁵⁵ Chaisse ¶¶ 16, 20, 24-26, 46-49, Table 1, Annex B.

⁵⁶ See Chaisse n. 17.

⁵⁷ See Chaisse ¶ 18.

⁵⁸ See Douglas Z. Zeng, *The Past, Present, and Future of Special Economic Zones and Their Impact*, JOURNAL OF INTERNATIONAL ECONOMIC LAW 24, 259 (8 Apr. 2021) (C-244) pp. 265 (“In some countries, the SEZ model has played a catalytic role in growth and structural transformation . . .”), 267 (“[China’s zones] have yielded impressive results. Estimates show that the national-level SEZs (including various industrial parks) account for more than 30 million jobs and about 22% of national Gross Domestic Product (GDP), 46% of FDI, and 60% of exports. . . . The special zone programme’s net benefits over 3 years are estimated to amount to about US\$15.62 billion. . . . In the Middle East and North Africa, SEZs have played an important role in catalysing export-oriented diversification in countries such as the Arab Republic of Egypt, Morocco, and the United Arab Emirates. The most notable examples are SEZs in the United Arab Emirates, where the first free zone was established at the Jebel Ali Port in 1985. It generated 135,000 jobs (cumulative) and over US\$80 billion worth of trade and contributes over 20% of GDP of Dubai in recent years.”).

⁵⁹ See Teresa Cheng, *Special Economic Zones: A Catalyst for International Trade and Investment in Unsettling Times?*, JOURNAL OF WORLD INVESTMENT & TRADE 20, 32 (2019) (C-241) p. 7 (“[T]here is no shortage of

47. Critically, being the fruit of deliberate State development policies and laws, there is no question that SEZs are valid exercises of State sovereignty. As Professor Chaisse explains, States create SEZs as an exercise of a sovereign power and as instruments to achieve national policy objectives.⁶⁰ States expressly delegate certain powers and authority to SEZs through defined legislative or constitutional mandates, while retaining core sovereign functions.⁶¹ As Professor Chaisse explains:

[t]he fact that express constitutional or statutory enactments establish the legal foundation for the delegated or conferred powers of SEZs confirms that such powers operate within, rather than outside, the sovereign legal order of the State. . . . These legislative foundations show that modern SEZs derive their autonomy through clearly defined statutory delegations by the State, as an exercise of sovereignty to pursue policy objectives⁶²

(b) Honduras puts in place various forms of SEZs to promote specific areas of its economy and attract investment

48. For half a century, Honduras has created numerous SEZs seeking to promote investment, in numerous economic sectors and offering a variety of incentives.⁶³
- In 1976,⁶⁴ Honduras created the Free Zone of Puerto Cortes (“**ZOLIPC**” for the Spanish term *Zona Libre de Puerto Cortes*) to foster commercial and industrial development in the geographical area of Puerto Cortes.⁶⁵ Within the area of the ZOLIPC, Honduras granted various benefits, including, among other things, exemption from customs duties and certain taxes.⁶⁶ The ZOLIPC was administered by Honduras’s State-owned port company, and Honduras allowed private companies to establish and operate exports businesses and related activities within the ZOLIPC.⁶⁷ As Honduras indicated at the time it created it, the ZOLIPC would benefit the country by generating employment, expediting commercial and

examples of SEZs which prove to be highly successful in attracting foreign direct investment and supporting a wider economic reform strategy of the relevant countries. . . . The global experience in SEZs has shown that, if done right, SEZs do have strong potential to serve as a catalyst for international trade and investment”).

⁶⁰ Chaisse ¶¶ 21, 24 (“SEZs are creatures of national law. States establish SEZs as legally constituted jurisdictions that derive their legitimacy from statutory or constitutional authorisations. Although their specific designs may vary, modern SEZs have in common certain core legal attributes that enable them to operate as instruments of national policy.”).

⁶¹ Chaisse ¶ 22.

⁶² Chaisse ¶¶ 23-24.

⁶³ See Cosenza § 2.2.

⁶⁴ At the time, Honduras was under the *de facto* rule of General Juan Alberto Melgar Castro.

⁶⁵ See Decree No. 356-1976 published on 21 Jul. 1976 (C-407), Recitals, Art. 1; Cosenza § 2.2.1.

⁶⁶ See Decree No. 356-1976 published on 21 Jul. 1976 (C-407) Art. 1, 12, 18; Cosenza § 2.2.1.

⁶⁷ See Decree No. 356-1976 published on 21 Jul. 1976 (C-407) Art. 2.

industrial activities, and developing trade with neighboring nations.⁶⁸ In 1979, Honduras expanded the scope of the ZOLIPC regime to the regions of Ampala, Tela, Choloma, Omoa and La Ceiba.⁶⁹

- In 1987,⁷⁰ Honduras established a SEZ regime called Industrial Zones for Processing for Exports (“**ZIPs**” for the Spanish term *Zonas Industriales de Procesamiento para Exportaciones*).⁷¹ Honduras granted companies authorized to operate within the ZIPs framework various benefits, including total and partial exemptions from certain customs duties, charges, and taxes.⁷² Unlike the ZOLIPC, ZIPs are privately administered and owned,⁷³ but they remain under fiscal oversight by the State.⁷⁴ Companies wishing to operate a ZIP must incorporate a sole-purpose corporate vehicle and obtain an authorization from the National Executive Branch (Ministry of Economy and Commerce).⁷⁵ Honduras created the ZIPs because they would help create jobs and enhance its ability to compete with other countries,⁷⁶ by promoting the use of local labor in export-oriented manufacturing and service industries.⁷⁷
- In 1992,⁷⁸ Honduras amended the legal framework of ZIPs to create a new SEZ regime called the Free Tourism Zones (“**ZOLTs**” for the Spanish term *Zonas Libres Turísticas*).⁷⁹ Under this new regime, the Executive could designate geographic areas where it wanted to promote tourism, and businesses within those areas would enjoy tax and customs benefits to facilitate starting tourism-related businesses.⁸⁰

⁶⁸ See *id.* Recitals, Art. 1; Cosenza § 2.2.1.

⁶⁹ See Decree No. 787-1979 published on 28 Jul. 1979 (C-408) Art. 1; Cosenza § 2.2.1.

⁷⁰ At the time, José Azcona del Hoyo (Liberal Party) was the President of Honduras.

⁷¹ See Decree No. 37-1987 published on 27 Apr. 1987 (C-409) Art. 1; Cosenza § 2.2.2.

⁷² See Decree No. 37-1987 published on 27 Apr. 1987 (C-409) Art. 3; Cosenza § 2.2.2.

⁷³ See Decree No. 37-1987 published on 27 Apr. 1987 (C-409) Art. 1.

⁷⁴ See *id.* Art. 2.

⁷⁵ See Decree No. 37-1987 published on 27 Apr. 1987 (C-409) Arts. 4-8 (providing that, to operate a ZIP, the operating company must: (i) be incorporated as a Fixed Capital Corporation with a subscribed and paid-in capital of no less than two million Lempiras; (ii) have as its exclusive purpose the operation of ZIPs; (iii) demonstrate the availability of the real estate required for the purposes of the ZIP; and (iv) demonstrate the availability of the technical and financial resources to promote, provide services, and develop the infrastructure required to generate a minimum of five thousand new jobs within a period of five years. The Decree further provides that the authorization to incorporate the operating company shall be granted by the National Executive Branch).

⁷⁶ See Decree No. 37-1987 published on 27 Apr. 1987 (C-409) Recitals.

⁷⁷ See *id.* Art. 2; Cosenza § 2.2.2.

⁷⁸ At the time, Rafael Leonardo Callejas (National Party) was President of Honduras.

⁷⁹ See Decree No. 84-1992 published on 7 Jul. 1992 (C-410); Cosenza § 2.2.3.

⁸⁰ See *id.*

- In 1998,⁸¹ Honduras enacted the Law for the Stimulus of Production, Competitiveness and Support for Human Development, which extended the scope of the ZOLIPC regime to the whole territory of Honduras under the name Free Zones (“**ZOLIs**” for the Spanish term *Zonas Libres*).⁸² ZOLIs are physically delimited areas under fiscal oversight of the central government established to promote export-oriented industrial and commercial activities through customs and tax benefits to companies operating within the regime.⁸³ Agreement of the Ministry of Economic Development No. 41-2020 provides that to establish a Free Zone, interested parties must submit an application and receive authorization from the Ministry of Economic Development to act as an “Operator” or “Operator-User” of a Free Zones.⁸⁴ According to the World Bank, ZOLIs “have been an essential component of the country’s success in attracting apparel investments” and “[m]uch of the on-going success that Honduras has had in attracting and retaining FDI is a product of the favorable operating environment provided by zones.”⁸⁵ As of 2022, Honduras had 39 ZOLIs with 586 companies operating, accounting for 18.7% of imports and 19.2% of exports.⁸⁶
- In 2001,⁸⁷ Honduras created a regime for Agricultural Export Zones (“**ZADEs**” for the Spanish term *Zonas Agrícolas de Exportación*) in privately owned rural estates in specific demarcated zones to promote high-value agricultural production with local labor and with the purpose of exporting local products.⁸⁸ ZADEs had to be authorized by the Ministry of Industry and Commerce,⁸⁹ and investors in ZADEs enjoyed various benefits, including customs and tax exemptions.⁹⁰
- In 2006,⁹¹ Honduras created a SEZ for Tourism in the Bay Islands (“**ZOLITUR**” for the Spanish term *Zona Libre Turística del Departamento de Islas de la Bahía*) with a special customs, fiscal and territorial regime, covering the Department of the Bay Islands (except for the Cochinos Archipelago).⁹² Private entities operating within the ZOLITUR regime enjoy exemptions from certain taxes and import duties.⁹³ To receive those benefits,

⁸¹ At the time, Carlos Roberto Flores Facussé (Liberal Party) was President of Honduras.

⁸² See Decree No. 131-1998 published on 20 May 1998 (C-411) Art. 17; Cosenza § 2.2.1.

⁸³ See Decree No. 8-2020 published on 14 Feb. 2020 (C-412) Art. 1 (amending Art. 2 of Decree No. 357-1976).

⁸⁴ See Agreement of the Secretariat of Economic Development No. 41-2020 published on 10 May 2020 (C-413) Arts. 2-3. In Honduras, regulations issued by agencies are often called “agreement” (*acuerdo* in Spanish).

⁸⁵ Report No. 26554-HO, *Project Appraisal Document on a Proposed Credit in the Amount of SDR 20.5 Million (US\$28.06 Million Equivalent) to the Republic of Honduras for Enhancing Competitiveness: Trade Facilitation and Productivity Improvement Project*, WORLD BANK GROUP (22 Sep. 2003) (C-414).

⁸⁶ See Report by the Secretariat WT/TPR/S/443, *Trade Policy Review*, WORLD TRADE ORGANIZATION (7 Jun. 2023) (C-415).

⁸⁷ Carlos Roberto Flores Facussé (Liberal Party) was President at the time.

⁸⁸ See Decree No. 233-2001 published on 1 Feb. 2002 (C-416) Arts. 1, 2; Cosenza § 2.2.4.

⁸⁹ See Agreement of the Secretariat of Finance No. 649-2003 published on 18 Nov. 2003 (C-417) Art. 6.

⁹⁰ See Decree No. 233-2001 published on 1 Feb. 2002 (C-416) Art. 3; Cosenza § 2.2.4.

⁹¹ Manuel Zelaya (Liberal Party) was President at the time.

⁹² See Decree No. 181-2006 published on 8 Jan. 2007 (C-418) Art. 1; Cosenza § 2.2.5.

⁹³ See Decree No. 181-2006 published on 8 Jan. 2007 (C-418) Arts. 13, 26.

individuals and companies have to obtain an authorization from the *Comisión Administradora* of ZOLITUR, which is part of the Ministry of Finance.⁹⁴ The purpose of ZOLITUR is to foster sustainable socio-economic development and domestic and international tourism in the Bay Islands.⁹⁵ By the end of 2015, 336 companies were benefiting from the ZOLITUR regime.⁹⁶

49. Notably, the creation of these SEZs in Honduras has not been limited to a single political party or ideology. Of the above-listed SEZs, all but the ZOLIPC and the ZOLT were created while the Liberal Party was in power, including under the administration of former president Manuel Zelaya. As explained in the next sub-section, subsequent Governments led by the National Party continued using SEZs to pursue opportunities for economic development.
50. Honduras has repealed three of the above regimes (ZOLT, ZADE, and ZOLITUR). In all cases, Honduras's repeal legislation expressly preserved the rights of companies that were operating under the regimes and benefits being repealed.
- In 1998, Honduras repealed the ZOLT regime, expressly providing that existing rights under the regime would survive the repeal and remain in place until their expiration.⁹⁷ Further, Honduras even specified that pending applications were to be resolved applying the ZOLT regime as if it had not been repealed.⁹⁸ As Mr. Cosenza explains, “[this] means that this transition regime not only sought to protect vested rights in their strictest sense, but also protected individuals who had a legitimate expectation of acquiring them.”⁹⁹
 - In 2003, Honduras repealed the decree authorizing the ZADE regime.¹⁰⁰ The repeal legislation provided that applications to accede to the benefits of the ZADE regime submitted before 2 April 2003 would be resolved in accordance with the repealed law,¹⁰¹ thus recognizing the acquired rights under the regime, even for those that had already

⁹⁴ See Agreement No. 1097-2007 published on 13 Dec. 2007 (C-479) Arts. 5, 9-11; Cosenza § 2.2.5.

⁹⁵ See Decree No. 181-2006 published on 8 Jan. 2007 (C-418) Recitals, Art. 2.

⁹⁶ See Report by the Secretariat WT/TPR/S/336, *Trade Policy Review*, WORLD TRADE ORGANIZATION (24 Mar. 2016) (C-480).

⁹⁷ See Decree No. 314-1998, published on 23 Apr. 1999 (C-419) Arts. 20-21; Cosenza ¶¶ 29, 49(a).

⁹⁸ See Decree No. 314-1998, published on 23 Apr. 1999 (C-419) Art. 21. See also Cosenza § 2.3.2.

⁹⁹ Cosenza ¶ 49(a).

¹⁰⁰ See Decree No. 51-2003, published on 10 Apr. 2003 (C-420) Art. 56(4); Cosenza §§ 2.2.4, § 2.3.2.

¹⁰¹ Decree No. 51-2003, published on 10 Apr. 2003 (C-420) Art. 54 (“The applications to accede to the benefits of Decree No. 233-2001 dated 29 December 2001, which contain the Constituent Law of the Agricultural Export Zones (ZADE), submitted before 2 April 2003 shall be resolved in accordance with that Decree.”). See also Cosenza § 2.3.2.

submitted an application that was pending.¹⁰² As of 2022, almost 20 years after the repeal, at least one company continued to operate under the ZADE regime.¹⁰³

- Likewise, in 2017, Honduras repealed the tax and fiscal benefits associated with the ZOLITUR regime,¹⁰⁴ and the repeal legislation expressly provided that vested rights under the prior regime had to be respected.¹⁰⁵

51. As Mr. Cosenza explains, Honduras was legally required to proceed this way because “the power of governments to reform or repeal Special Regimes through [their constitutional powers] cannot result in an infringement or violation of the vested rights of individuals”¹⁰⁶ Accordingly, Honduras used transition regimes when it modified or repealed an SEZ, “regulating the treatment that will continue to be afforded to the persons who have already obtained such benefits, and generally stipulating that such persons will continue to enjoy them despite the new rule.”¹⁰⁷

(c) Honduras tries to put in place semi-autonomous SEZs

52. In 2011, Honduras established a regime for a form of SEZ called the Special Development Regions (“**REDs**” for the Spanish term *Región Especial de Desarrollo*) which were to be semi-autonomous and have governance separate from the central Government of Honduras.¹⁰⁸

53. Honduras’s reasons for establishing the RED regime were to fight poverty and foment growth and

¹⁰² See Cosenza ¶ 49(b).

¹⁰³ See Report by the Secretariat WT/TPR/S/443, *Trade Policy Review*, WORLD TRADE ORGANIZATION (7 Jun. 2023) (C-415) p. 61.

¹⁰⁴ See Decree No. 68-2017, published on 17 Aug. 2017 (C-421) Art. 25.2.; Cosenza §§ 2.2.5, 2.3.2.

¹⁰⁵ Decree No. 68-2017, published on 17 Aug. 2017 (C-421) Art. 25 (“The processing of benefits held by taxpayers who benefitted from any tourism regime that is repealed in the current Law, pass[es] to . . . the [ZOLITUR] Administrative Commission in accordance with the mandates provided in the Tax Code, the Law of Fiscal Responsibility and the Law on the Organization of Public Finances, Control of Exemptions, and Anti-evasion Measures another applicable legal framework; respecting the rights acquired under prior legislation.”) (emphasis added); Cosenza § 2.3.2.

¹⁰⁶ Cosenza ¶ 47.

¹⁰⁷ Cosenza ¶ 48.

¹⁰⁸ See Decree No. 283-2010, published on 15 Feb. 2011 (C-422). See also Decree No. 4-2011, published on 7 Mar. 2011 (C-423); Decree No. 123-2011, published on 23 Aug. 2011 (C-423). The Constitution of Honduras may only be amended by two thirds of the votes of all the members of Congress, ratified by the subsequent regular legislative session, by the same number of votes. See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 373.

economic development. As Honduras noted at the time:

in the recent history of humanity some societies as poor as ours have created the conditions to grow rapidly, becoming developed and more equitable societies through the adoption of public-management models based on the granting of high degrees of autonomy to certain regions of the country.¹⁰⁹

54. Honduras's highest authorities travelled abroad to learn from successful city-scale projects in SEZs in other countries and invite foreign investors to build REDs in Honduras. Among other trips, a delegation presided by the President of Honduras visited South Korea's Incheon Free Economic Zone and its Songdo International Business District ("**Songdo IBD**") near Seoul's international airport.¹¹⁰ Songdo IBD is a 1,500-acre purpose-built business district developed by the Government of South Korea through a partnership with private companies that is part of the Incheon Free Economic Zone.¹¹¹ Tom Murcott, who is currently a board member at HPI and previously led Claimants' marketing efforts and contributed to the master planning and infrastructure development of Próspera ZEDE, and is submitting a witness statement on behalf of HPI with this Memorial, was the Global Investment Officer of the executive developer of Songdo IBD at the time. He describes that he received the Honduran delegation and gave them a tour of Songdo IBD.¹¹² Mr. Murcott recalls that by the end of the visit, members of the delegation of the Honduran government "invited [them] to develop city-scale projects in Honduras" using the RED framework, but they decided not to pursue the project because they had their "hands full with [their] endeavors in Asia."¹¹³
55. Although the REDs were considered a national priority,¹¹⁴ the regime proved short-lived. In 2012, before any REDs could be created, the Supreme Court of Honduras held that the REDs regime was

¹⁰⁹ Decree No. 283-2010, published on 15 Feb. 2011 (C-422) Recitals.

¹¹⁰ Murcott ¶ 8.

¹¹¹ Murcott ¶ 6.

¹¹² Murcott ¶¶ 1, 6.

¹¹³ Murcott ¶ 8.

¹¹⁴ See *Juan Orlando Hernández defends reforms*, LA PRENSA (24 Jan. 2011) (C-425).

unconstitutional.¹¹⁵ Despite this setback, Honduras remained interested in the possibility of semi-autonomous SEZs, and proceeded to refine the idea into a model that could be approved by the Supreme Court.

B. HONDURAS ESTABLISHES THE ZEDE LEGAL FRAMEWORK TO ATTRACT FOREIGN INVESTMENT AND GUARANTEES ITS LEGAL STABILITY FOR 50 YEARS

56. In 2013, Honduras adopted the ZEDE Legal Framework, consisting of provisions in its Constitution and the ZEDE Organic Law (all as defined below) (Section II.B.1). The ZEDE Legal Framework preserves Honduras's sovereignty while offering a high degree of autonomy for ZEDEs and legal stability, both of which are key to attract investment (Section II.B.2). In 2014, the Honduran Supreme Court repeatedly upheld the constitutionality of the ZEDE Legal Framework (Section II.B.3). Thereafter, Honduras actively induced foreign investment in ZEDEs through a global promotion strategy (Section II.B.4).

1. In 2013, Honduras adopts the ZEDE Legal Framework

57. In 2013, Honduras put in place the legal framework for a new semi-autonomous SEZ that accorded regulatory, administrative, and economic autonomy to the SEZ, while the SEZ remained an integral part of the State subject to oversight by Honduran authorities and to the provisions of the Honduran Constitution regarding territory and fundamental national laws such as those relating to Honduras's sovereignty, administration of justice, national defense, foreign relations, and electoral matters: the Employment and Economic Development Zones (“**ZEDEs**” for the Spanish term Zonas de Empleo y Desarrollo Económico).
58. The primary components of this framework are (i) Articles 294, 303 and 329 of the Constitution (the “**ZEDE Constitutional Provisions**”), which authorize the establishment of semi-autonomous zones subject to special legal regimes;¹¹⁶ and (ii) the Organic Law of the Economic Development

¹¹⁵ See Judgment RI-769-11, Honduran Supreme Court (17 Oct. 2012) (C-426).

¹¹⁶ Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Arts. 294, 303, 329. See also Decree No. 236-2012, published on 24 Jan. 2013 (C-2) (approving the ZEDE Constitutional Provisions); Decree No. 9-

and Employment Zones (the “**ZEDE Law**” or “**ZEDE Organic Law**” and, together with the ZEDE Constitutional Provisions, the “**ZEDE Legal Framework**”),¹¹⁷ which establishes the ZEDE legal regime and its scope. The ZEDE Legal Framework reflects Honduras’s deliberate policy choice to create legally autonomous zones within a sovereign structure, balancing the needs of international investors with the integrity of the Honduran state. Over time, Honduras supplemented the framework with additional instruments (*e.g.*, treaties, regulations, agreements, authorizations) to further the regime’s objectives.

59. Below, Claimants detail the objectives of the ZEDE Legal Framework as stated by Honduras (Section II.B.1.a) and provide an overview of the ZEDE Constitutional Provisions (Section II.B.1.b) and the ZEDE Organic Law (Section II.B.1.c).

(a) Objectives of the ZEDE Legal Framework

60. The ZEDE Legal Framework makes clear that Honduras’s objective in establishing the ZEDE regime was generating employment and economic development. Among other things, Honduras specifically set out the following in the Decree enacting the ZEDE Constitutional Provisions:

in the recent history of mankind, certain societies as poor as or poorer than ours have created conditions conducive to rapid growth—thus becoming developed and more equitable societies—by adopting public management models relying on granting high levels of autonomy to certain zones in Honduras, without this involving surrendering sovereignty

job creation is one of the most pressing needs of the Honduran people and one of the overriding obligations of the Government. Therefore, the Zones for Employment and Economic Development constitute areas in Honduras where hundreds of thousands of Hondurans will find new opportunities. Similarly, micro, small, and medium-sized companies will have access to new markets to offer their goods and services.¹¹⁸

61. The ZEDE Law further confirmed that “[t]he creation of Zones of Economic Development and

2013, published on 20 Mar. 2013 (C-3) (ratifying the ZEDE Constitutional Provisions contained in Decree No. 236-2012); Cosenza § 3.2.1.

¹¹⁷ See ZEDE Law (C-6). See also Cosenza § 3.2.2.

¹¹⁸ Decree No. 9-2013, published on 20 Mar. 2013 (C-3) Recitals.

Employment (ZEDE), has the purpose of generating sources of employment to ensure development opportunities in the areas of health, education, infrastructure, public security, among others, to improve the living conditions of the Honduran population.”¹¹⁹

62. Honduras’s objectives were in line with the objectives of SEZs around the world. As Professor Chaisse explains, a key objective of SEZs is to attract investment, boost employment and competitiveness, and promote certain areas of their territories or their economy, including by implementing separate legal systems.¹²⁰
63. In this regard, the ZEDE Law explicitly acknowledged that its objective was to enable the creation of SEZs such as “International Financial Centers,” “Autonomous Cities,” “Special Investment Districts,” “Special Economic Zones,” and “Zones subject to a Special Legal System,” among others.¹²¹
64. From the start, Honduras realized that long-term international investment was critical to catalyze ZEDes and economic development. Article 1 of the ZEDE Law provided in relevant part:

[t]he Zones of Economic Development and Employment (ZEDE) . . . are created for the purpose of accelerating the fulfillment of the goals of the National Plan¹²² and to facilitate conditions that allow the country to become integrated into world markets under highly competitive and stable rules. This shall be achieved through the adoption of technologies that [allow production with high added value], in an environment that is transparent and capable of attracting the domestic and foreign investment required for accelerated growth, creating the jobs that are needed to reduce social inequalities and to provide the population with the education, health, public security and infrastructure services that will allow a real improvement in the living conditions of Hondurans.¹²³

¹¹⁹ ZEDE Law (C-6) Second Recital.

¹²⁰ *See supra* § II.A.2.a; Chaisse ¶ 18. *See also* Special Economic Zones: Performance, Lessons Learned, and Implications for Zone Development, FIAS (1 Apr. 2008) (C-404) p. 1 (“For developing countries, special economic zones (SEZs) traditionally have had both a policy and an infrastructure rationale. In terms of policy, the SEZ can be a useful tool as part of an overall economic growth strategy to enhance industry competitiveness and attract foreign direct investment (FDI).”).

¹²¹ ZEDE Law (C-6) Art. 2.

¹²² As explained below, the National Plan is a constitutionally mandated long-term plan that had to be devised to promote economic and social development pursuant to the ZEDE Constitutional Provisions. *See* Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 329.

¹²³ ZEDE Law (C-6) Art. 1 (emphasis added).

65. In August 2013, Honduras doubled down on its commitment to establish ZEDEs as promptly as possible by creating the “Program for the Establishment of the ZEDEs,” a body to be integrated by individuals appointed by the President of Honduras, tasked with disseminating information about the ZEDEs “to domestic and foreign investors interested in the development of projects within the ZEDEs,” and “[e]xecut[ing] the necessary promotion activities to attract the capital required for the construction and development of the ZEDEs.”¹²⁴
66. Shortly thereafter, as Honduras reported that the first studies for the creation of a ZEDE were progressing, officials emphasized that a ZEDE “is not just about creating a free zone but creating a globally competitive space under a regime of legal certainty which will attract foreign investment.”¹²⁵

(b) Overview of the ZEDE Constitutional Provisions

67. The ZEDE Constitutional Provisions introduced the possibility of establishing ZEDEs in Honduras. This was accomplished through an amendment to the Honduran Constitution that, as a matter of law, required Congressional approval in two successive legislative sessions to take effect.¹²⁶ Honduras satisfied this requirement by passing Decree No. 236-2012 on 24 January 2013 and Decree No. 9-2013 on 20 March 2013, which amended Articles 294, 303, and 329 of the Constitution.¹²⁷
- *Article 294* refers to Congress’ power to divide the national territory into departments and autonomous municipalities. In adopting the ZEDE Constitutional Provisions, Honduras added that Congress could also create zones subject to special regimes in accordance with Article 329 of the Constitution.¹²⁸

¹²⁴ Decree No. 153-2013 published on 5 Aug. 2013 (C-5) Art. 1 (emphasis added).

¹²⁵ *Honduras: New president refloats “Charter City”*, CENTRAL AMERICA DATA (11 Feb. 2014) (C-427).

¹²⁶ Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 189 (providing that the legislative year begins on the twenty fifth of January of each year), Art. 373 (providing that Congress can amend the Constitution only by two thirds of the votes of all its members and a separate ratification by the same quorum in the subsequent regular legislative session). *See also* Cosenza § 3.2.1.

¹²⁷ Decree No. 236-2012 published on 24 Jan. 2013 (C-2); Decree No. 9-2013 published on 20 Mar. 2013 (C-3). *See also* Cosenza § 3.2.1.

¹²⁸ *See* Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 294.

- *Article 303* refers to the judicial branch and its composition (*i.e.*, the Supreme Court of Justice, the Courts of Appeals, and the courts). In adopting the ZEDE Constitutional Provisions, Honduras added that the judicial branch also included tribunals with exclusive competence in zones of the country subject to special regimes.¹²⁹
- *Article 329* refers to Honduras's obligation to promote economic and social development, including, among other things, the establishment of a long-term national plan to be mandatorily fulfilled by successive governments. In adopting the ZEDE Constitutional Provisions, Honduras added a subsection authorizing the establishment of ZEDEs, containing a number of provisions, including the following that are most relevant for this case:¹³⁰
 - Honduras may establish zones of the country subject to special regimes that (i) have juridical personality; (ii) are subject to a special fiscal regime; (iii) are able to incur obligations and enter into contracts; and (iv) enjoy functional and administrative autonomy that shall include the functions, powers, and obligations that the Constitution and laws confer on municipalities.
 - The creation of a specific ZEDE is a power of the National Congress which may create a ZEDE by a two-third majority of votes. However, in zones of low population density, ZEDEs may be created without a vote of Congress. Zones of low population density are defined as those "in which the number of permanent inhabitants per square kilometer is less than the average for rural zones," which average was to be established in a ruling by the National Institute of Statistics (referred to by the Spanish acronym "**INE**").¹³¹
 - The creation of such zones must respect the provisions of the Honduran Constitution regarding territory,¹³² and the "zones are subject to the national legislation in all topics related to sovereignty, application of justice, national defense, foreign relations, electoral matters, and issuance of identification documents and passports."

¹²⁹ *See id.* Art. 303.

¹³⁰ *See id.* Art. 329.

¹³¹ *Id.* Art. 329 ("The creation of a zone subject to a special regime is the exclusive power of the National Congress, by a qualified majority, given an approving plebiscite by two thirds in accordance with that established in article five of the Constitution. This requirement is not necessary for special regimes created in zones of low population density. A zone of low population density means those in which the number of permanent inhabitants per square kilometer is less than the average for rural zones calculated by the National Institute of Statistics, which shall issue the corresponding ruling.").

¹³² *See id.* Art. 329 ("[t]he National Congress, upon approving the creation of zones subject to special regimes must guarantee that where appropriate there is respect for the ruling issued by the International Court of Justice of the Hague on the 11th of September, 1992 and that provided in articles 10, 11, 12, 13, 15, and 19 of the Constitution of the Republic regarding the territory.").

- For the creation and operation of such zones, Congress must approve an organic law “which may only be modified, reformed, interpreted or revoked by a favorable two thirds of the members of the National Congress.”
- Authorities of the zones are mandated to adopt the best national and international practices “to guarantee the existence and permanence of the social, economic, and legal environment adequate in order to be competitive at the international level.”
- The judicial branch is mandated to create tribunals with exclusive and autonomous competency over the zones. The law may also establish obligatory subjection to arbitration, and judicial systems or traditions from other parts of the world may be adopted.

(c) Overview of the ZEDE Organic Law

68. Once the ZEDE Constitutional Provisions were ratified, Honduras proceeded to comply with the mandate established in Article 329 of the Constitution by enacting the ZEDE Organic Law on 6 September 2013, through Decree No. 120-2013.¹³³
69. The ZEDE Law begins by setting out the principles underlying the regime, including with respect to sovereignty (Article 1), development objectives (Article 2), autonomy (Article 3), taxes, budget, and finances (Article 4), adoption of international best practices to attract investment (Article 5), non-discrimination (Article 6), adoption of regulations (Article 7), and regulatory hierarchy (Article 8).¹³⁴
70. The ZEDE Law goes on to establish myriad provisions with respect to the fundamental rights and duties existing within a ZEDE, its governance, and the organization and operation of ZEDes, including robust legal stability guarantees for investors, as further detailed below. The features that are particularly relevant for purposes of the present case are briefly summarized below:
- *Fundamental Rights.* All persons within the ZEDE shall have equal rights, without discrimination of any kind, except as set forth in the Constitution or the ZEDE Law.¹³⁵ Specifically, all persons in the ZEDE “have the obligation to respect their peers, society,

¹³³ ZEDE Law (C-6). *See also* Cosenza § 3.2.2.

¹³⁴ ZEDE Law (C-6) Arts. 1-8. *See also* Cosenza § 3.2.2.

¹³⁵ ZEDE Law (C-6) Art. 9.

humanity, the Law and the internal regulations of the [ZEDEs] in accordance with the Constitution of the Republic and international Human Rights instruments.”¹³⁶

- *Governance.* Honduras’s authorities for the purposes of the ZEDE Legal Framework are the Committee for the Adoption of Best Practices (“**CAMP**”) and the Technical Secretary, who is the highest executive officer of the ZEDE and its legal representative. As further detailed below, the Technical Secretary is empowered to enter into legal stability agreements on behalf of Honduras.¹³⁷
- *Dispute Resolution.* The ZEDEs are subject to a special jurisdiction and will have autonomous and independent courts with exclusive jurisdiction in all instances on matters that are not subject to mandatory arbitration. Judges shall be appointed by the judicial branch from a list proposed by CAMP. Notably, the law anticipates that judges should have extensive knowledge and experience in the application of Common or Anglo-Saxon Law. Arbitration may be agreed contractually and is mandatory in all matters of a contractual or patrimonial nature.¹³⁸
- *Real Estate.* For ZEDEs created in areas of low density, ownership of land will be administered by the ZEDEs on behalf of Honduras. Incorporation of property into the ZEDEs is a ministerial process that operates through a declaration before a notary public by the owner and entry into the special register kept for this purpose by the ZEDEs. Land belonging to Honduras may form part of the ZEDEs, and Honduras may expropriate property it considers necessary for the expansion thereof.¹³⁹
- *Fiscal Regime.* The ZEDEs are required to have an independent fiscal regime and to collect taxes. The ZEDE Law provides a menu of permissible components for the tax regime, which must be decided by CAMP.¹⁴⁰ 12% of tax revenues must be allocated equally to: (i) a fund to strengthen the Judicial Branch, (ii) a fund for certain projects to be used in accordance with priorities determined by the Legislature, (iii) a fund for certain projects to be used in accordance with priorities determined by the Executive Branch, (iv) a fund for municipal projects, and (v) the defense of national sovereignty by strengthening the Armed Forces.¹⁴¹
- *MFN Treatment.* Natural and legal persons within the ZEDE are automatically entitled to “any better treatment that is granted or has been granted to the other parties to an international trade agreement signed by the State of Honduras.”¹⁴²

¹³⁶ *Id.* Art. 10.

¹³⁷ *See id.* Arts. 11-12.

¹³⁸ *See id.* Arts. 14-21.

¹³⁹ *See id.* Arts. 25-28.

¹⁴⁰ *See id.* Art. 29.

¹⁴¹ *See id.* Art. 44.

¹⁴² *Id.* Art. 32.

- *Creation.* Consistent with the Constitution, the ZEDE Law provides that Congress may create ZEDEs in both low population density and high population density areas, and that specified areas are declared subject to the ZEDE regime without further need for a vote by Congress.¹⁴³ Specifically, Article 39 makes low population density areas in departments adjoining the Gulf of Fonseca and the Caribbean Sea immediately subject to the ZEDE regime, and provides that owners who wish to incorporate their property into a ZEDE in those areas may do so through a declaration before a notary public and registration in the special register kept for this purpose by the ZEDEs. The National Institute of Statistics (INE) is required to identify the areas located within these departments and CAMP is required to determine the necessary procedures.¹⁴⁴
- *Legal Stability.* In the event of its repeal (which requires a two-thirds supermajority vote of the National Congress), the ZEDE Law shall nonetheless remain in effect for a transition period established in the legal stability agreements with ZEDE residents or investors or no less than 10 years, “during which time the rights of inhabitants and investors in the [ZEDEs] shall remain in effect.”¹⁴⁵

2. The ZEDE Legal Framework preserves Honduras’s sovereignty while offering a high degree of autonomy for ZEDEs and legal stability, both of which are key to attract investment

71. Honduras designed the ZEDE Legal Framework to preserve Honduras’s sovereignty (Section II.B.2.a), while offering a high degree of autonomy for ZEDEs and legal stability, both of which are key to attracting investment (Section II.B.2.b).

(a) Honduras designs the ZEDEs to preserve sovereignty

72. Honduras designed the ZEDE Legal Framework to ensure that the regime did not impinge on its sovereignty.¹⁴⁶ This is apparent both from the multiple provisions of the ZEDE Legal Framework expressly protecting sovereignty, as well as from the design of the regime to ensure that the ZEDEs remained subject to the control of Honduran authorities and fundamental laws.

¹⁴³ *Id.* Arts. 38-39.

¹⁴⁴ *See id.* Art. 39; Cosenza § 3.2.2. (explaining that “through Article 39, the National Congress directly declared the low population density areas of the municipalities located in departments bordering the Gulf of Fonseca and the Caribbean Sea (Cortés, Islas de Bahía, Colón, Atlántida, Gracias a Dios, Valle, and Choluteca) to be subject to the ZEDE Regime. That same provision set forth the procedure for incorporating land into the ZEDE Regime by means of a notarial declaration and registration in the special registry created for such purpose, and granted the Committee for the Adoption of Best Practices (CAMP) authority over this process. Article 39 of the Organic Law was thus an act of the National Congress itself which designated those areas as zones subject to the ZEDE Regime without the need for a new legislative decree.”).

¹⁴⁵ ZEDE Law (C-6) Art. 45.

¹⁴⁶ Cosenza §§ 4.2, 4.4.

73. *First*, the ZEDE Legal Framework repeatedly confirms that it must operate in a way that is compatible with Honduras's sovereignty. Building on the ZEDE Constitutional Provisions,¹⁴⁷ the ZEDE Law provides that ZEDEs "are an inalienable part of the State of Honduras," and that notwithstanding the broad autonomy granted to the ZEDEs, they remain "subject to the Constitution of the Republic and the national government in matters relating to sovereignty, the enforcement of justice, territory, national defense, foreign affairs, electoral matters, and the issuance of identity documents and passports."¹⁴⁸
74. Likewise, the ZEDE Law, like the ZEDE Constitutional Provisions, confirms that "Articles 10, 11, 12, 13, 15 and 19 of the Constitution of the Republic are fully applicable" in the ZEDE.¹⁴⁹ The referenced constitutional provisions are significant. Articles 10, 11, and 12 refer to the continental, insular and maritime territory of Honduras and Honduras's exercise of sovereignty of jurisdiction over the air space and subsoil thereof; Article 13 provides that Honduras's sovereignty over its territory is inalienable and imprescriptible; Article 15 expresses Honduras's support for "the principles and practices of international law, that promote solidarity and self-determination of peoples, non-intervention and the strengthening of universal peace and democracy;" and Article 19 provides that "[n]o authority may enter into or ratify treaties or grant concessions that damage the territorial integrity, the sovereignty or the independence of the Republic."¹⁵⁰
75. Whatever Honduras may say today, it clearly did not consider at the time of the ZEDE Legal Framework's adoption that it was damaging its territorial integrity, sovereignty, or independence.
76. *Second*, Honduras designed the ZEDE governance structure so as to ensure that ZEDEs could never become private enclaves outside of the control and supervision of the State. Specifically, Honduras

¹⁴⁷ See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Arts. 294, 329; Cosenza § 4.2.1.

¹⁴⁸ ZEDE Law (C-6) Art. 1. See Cosenza § 4.2.2.

¹⁴⁹ ZEDE Law (C-6) Art. 1. See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 329 (providing that in approving the creation of ZEDEs, Congress must guarantee articles 10, 11, 12, 13, 15, and 19 of the Constitution of the Republic regarding the territory); Cosenza §§ 4.2.1, 4.2.2.

¹⁵⁰ Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Arts. 15, 19.

put the ZEDE's governance in the hands of two authorities: CAMP and the Technical Secretary of each ZEDE.¹⁵¹

77. In accordance with the ZEDE Law, CAMP is the central oversight and governing body responsible for key aspects of ZEDE governance. Its functions are specified in the ZEDE Law and include (i) approving its internal regulations; (ii) approving or disapproving the actions or conduct of the ZEDE Technical Secretary; (iii) appointing and removing the Technical Secretary of each ZEDE; (iv) establishing general policy and transparency guidelines to facilitate the achievement of ZEDE objectives; (v) approving or disapproving the regulations issued by the Technical Secretary; (vi) proposing judges or magistrates for the ZEDE Special Jurisdiction; (vii) filling its vacancies; (viii) designating adjacent areas for future expansion and planning of a ZEDE; (ix) employing an internationally renowned audit firm to audit the ZEDEs; and (x) exercising any other powers granted by the ZEDE Law (*e.g.*, granting prior approval for expropriations intended to expand the ZEDEs, deciding tax regime components, and determining the procedures to comply with the provisions of Article 39).¹⁵²
78. CAMP is composed of 21 members of recognized integrity, leadership, executive ability, and international prestige.¹⁵³ Initial members are appointed by the President of the Republic and ratified by the National Congress, while subsequent vacancies are filled by CAMP.¹⁵⁴ The first 21 members of CAMP were appointed by the President on 14 January 2014 and ratified by the Congress on 11 February 2014.¹⁵⁵
79. In accordance with the ZEDE Law, the Technical Secretary of each ZEDE is its highest executive

¹⁵¹ See ZEDE Law (C-6) Arts. 11-12; Cosenza § 4.3.

¹⁵² See ZEDE Law (C-6) Arts. 11, 28, 29, 39; Cosenza § 4.3.1.

¹⁵³ See ZEDE Law (C-6) Art. 11.

¹⁵⁴ See *id.* Art. 11.

¹⁵⁵ See Decree No. 368-2013 published on 11 Feb. 2014 (C-428).

officer and legal representative.¹⁵⁶ The Technical Secretary's functions under the ZEDE Law include: (i) representing the ZEDE; (ii) signing legal stability agreements (binding on Honduras in accordance with Article 45); (iii) establishing trusts; (iv) managing the administration and governance of the ZEDE and implementing policy measures determined by CAMP; (v) suggesting to CAMP measures appropriate to ensure compliance with the objectives of the ZEDE Law; (vi) enacting the ZEDE regulations and submitting them to CAMP for approval or disapproval; (vii) applying the rules of the ZEDE; (viii) appointing *ad hoc* Secretaries; (ix) issuing temporary resolutions to ensure efficient provision of public services or promote competition; (x) developing a ZEDE promotion plan and implementing it; and (xi) exercising any other functions assigned under the ZEDE Law or delegated by CAMP.¹⁵⁷

80. Technical Secretaries must be Honduran nationals of renown honorability and capacity.¹⁵⁸ The Technical Secretary for each ZEDE is appointed (and may be removed) by CAMP upon a proposal by the ZEDE's promoters and organizers or its inhabitants, depending on whether the ZEDE is located, respectively, in a low population density area or a high population density area.¹⁵⁹ Technical Secretaries serve a term of seven years, throughout which they are accountable to CAMP.¹⁶⁰
81. Given the objective of making the ZEDEs semi-autonomous, the framework strikes a balance between ensuring that the ZEDEs remain under State authorities and insulating the ZEDE authorities from the political instability and corruption endemic in the country.
82. *Third*, the ZEDE Legal Framework integrates the ZEDEs into the broader Honduran legal order and, notwithstanding that the ZEDEs are semi-autonomous by design, a number of specific laws

¹⁵⁶ See ZEDE Law (C-6) Art. 12; Cosenza § 4.3.2.

¹⁵⁷ See ZEDE Law (C-6) Art. 12; Cosenza § 4.3.2.

¹⁵⁸ See ZEDE Law (C-6) Art. 12.

¹⁵⁹ See ZEDE Law (C-6) Art. 11.

¹⁶⁰ See ZEDE Law (C-6) Art. 12.

continue to apply therein.

83. In addition to the express references to sovereignty, the ZEDE Constitutional Provisions make clear that the ZEDEs, while innovative, are not a radical departure from the previous legal order by equating the ZEDEs to established institutions. For example, under Article 294 of the Constitution, ZEDEs are territorial subdivisions of Honduras created by Congress, like departments and autonomous municipalities, and under Article 329 of the Constitution, they enjoy the functions, powers, and obligations that the Constitution and Honduran laws confer on municipalities.¹⁶¹ Likewise, under Article 303, the special ZEDE jurisdiction is a component of the Judicial Branch, like Honduras's other courts.¹⁶²
84. In addition, the ZEDE Organic Law reinforces the express safeguards as to sovereignty by establishing the following regulatory hierarchy for the ZEDEs: (i) the Constitution, insofar as it is applicable; (ii) international treaties entered into by Honduras, insofar as they are applicable; (iii) the ZEDE Organic Law; (iv) other laws specified by the ZEDE Law; and (v) the internal regulations issued by the ZEDE authorities or adopted therein.¹⁶³ Article 41 of the ZEDE Law provides that the following national laws apply within the ZEDEs: legislation on national symbols; legislation on the territorial sea and contiguous zones; and, unless otherwise approved by Congress, the Criminal Code and supplementary legislation criminalizing offenses and imposing penalties or permitting the extradition of nationals or foreigners,¹⁶⁴ especially for crimes such as drug trafficking, money laundering, trafficking in persons, genocide, terrorism, child pornography, exploitation of minors and organized crime.¹⁶⁵
85. In sum, the ZEDE Legal Framework preserves and reinforces Honduran sovereignty through a legal

¹⁶¹ See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Arts. 294, 329.

¹⁶² See *id.* Art. 303.

¹⁶³ See ZEDE Law (C-6) Art. 8; Cosenza §§ 3.2.2, 4.2.2, 4.4.

¹⁶⁴ See ZEDE Law (C-6) Art. 41; Cosenza §§ 3.2.2., 4.4.

¹⁶⁵ See ZEDE Law (C-6) Art. 41.

regime that guarantees the primacy of the Constitution, limits ZEDE powers, and maintains the exclusive competence of the central government in matters essential to national sovereignty.

(b) The ZEDE Legal Framework contains two key features to attract investment: a high degree of autonomy for ZEDEs and legal stability

86. Honduras elected to include two elements in the ZEDE Legal Framework that were critical to making the ZEDE Legal Framework a powerful catalyst for investment and, thereby, economic growth and prosperity: a “high degree of autonomy”¹⁶⁶ (Section II.B.2.b.i) and “legal stability” (Section II.B.2.b.ii).¹⁶⁷ Professor Chaisse confirms that both characteristics are hallmarks of modern SEZs.¹⁶⁸
87. These two elements are critical because they guarantee investors a degree of insulation from Honduras’s endemic political risks, corruption, legal instability, and other threats to the rule of law. This is particularly important in the context of long-term investments in jurisdictions with a history of abrupt ideological shifts accompanying changes in government, leaving investors exposed to a weak policy environment, as is the case in Honduras.¹⁶⁹

¹⁶⁶ Decree No. 236-2012 published on 24 Jan. 2013 (C-2) Third Recital. *See* Cosenza § 4.

¹⁶⁷ ZEDE Law (C-6) Arts. 12(2), 45. *See also* Cosenza § 5.

¹⁶⁸ Chaisse ¶¶ 21-22 (“[M]odern SEZs have in common certain core legal attributes that enable them to operate as instruments of national policy. The first element of modern SEZs lies in their delegated powers. SEZs exercise delegated authority within limits fixed by legislative or constitutional mandates that expressly define their powers.”), ¶ 25 (“A second element of modern SEZs lies in their internal governance mechanisms. SEZs typically establish administrative bodies empowered to issue regulations, approve permits and registrations, oversee zone operations”), ¶ 26 (“A third element of modern SEZ regimes is the presence of legal structures and mechanisms intended to provide stability and predictability. States may accomplish this in a variety of ways, including through stability guarantees or instruments that expressly protect investor reliance interests. . . . The objective of these mechanisms is to ensure predictability and protect against volatility, while preserving the ability of the State to exercise core sovereign functions.”).

¹⁶⁹ Chaisse ¶¶ 38-39 (“These layers ostensibly were intended to give investors assurances of stability and entitle investors to rely on the legal and regulatory framework in force at the time of their investment. An international comparison confirms that the stability Honduras guaranteed to investors under the ZEDE Legal Framework is particularly robust.”); Teresa Cheng, *Special Economic Zones: A Catalyst for International Trade and Investment in Unsettling Times?*, JOURNAL OF WORLD INVESTMENT & TRADE 20, 32 (2019) (C-241) p. 10 (“[A] well-designed legal infrastructure of an SEZ would be composed of SEZ laws that are sufficiently stable to ensure consistent, transparent and predictable implementation of the SEZ policy”); Douglas Z. Zeng, *The Past, Present, and Future of Special Economic Zones and Their Impact*, JOURNAL OF INTERNATIONAL ECONOMIC LAW p. 273 (“[A] predictable and transparent legal and regulatory framework can help ensure clarity of roles and responsibilities of various parties and provide protection and certainty to developers and investors. Such a

(i) Honduras vests ZEDEs with a high degree of autonomy from the central Government of Honduras

88. As noted, the ZEDE Constitutional Provisions (i) bestow ZEDEs with “functional and administrative autonomy,” including all functions and powers of municipalities; and (ii) recognize that ZEDEs have “juridical personality” and capacity to incur obligations and enter contracts.¹⁷⁰ The ZEDE Law, in turn, further details the various kinds of autonomy that ZEDE enjoy, including, for example:

- *Regulatory Autonomy.* ZEDEs may adopt their own policy and regulations, and enjoy operational and administrative autonomy, drawing on international best practices and legal traditions from other parts of the world, provided these uphold or improve upon Honduran constitutional principles, especially regarding human rights.¹⁷¹
- *Dispute Resolution Autonomy.* ZEDEs are subject to an exclusive jurisdiction over all matters not subject to mandatory arbitration, staffed with judges proposed by CAMP, insulated from external interference, and with legal immunity.¹⁷² Contractual or patrimonial disputes are subject to mandatory arbitration.¹⁷³
- *Fiscal and Financial Autonomy.* ZEDEs shall have a special fiscal regime authorizing them to create their own budgets, collect and manage taxes, set service fees, and enter into contracts and agreements independently of the national or municipal governments.¹⁷⁴
- *Economic and Trade Autonomy.* ZEDEs are deemed extra-territorial fiscal and customs zones, and imports into ZEDEs are exempt from national taxes and duties.¹⁷⁵
- *Infrastructure Autonomy.* ZEDEs may regulate their own ports and airports, setting fees as they deem appropriate.¹⁷⁶

framework also helps to ensure that the zones attract the right investments and are established with high business, social, and environmental standards. A solid legal framework will also buffer zones from unpredictable risks, such as political setbacks or interference and land speculation, as well as health crisis, such as COVID-19, among other factors. In addition, strong and long-term government commitment provides additional support for a zone’s success by ensuring policy continuity and adequate provision of various public goods and services.”).

¹⁷⁰ Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 329.

¹⁷¹ See ZEDE Law (C-6) Arts. 1, 3, 5, 8.

¹⁷² See ZEDE Law (C-6) Arts. 3, 14, 15, 17, 19.

¹⁷³ See ZEDE Law (C-6) Art. 20.

¹⁷⁴ See ZEDE Law (C-6) Arts. 4, 29.

¹⁷⁵ See ZEDE Law (C-6) Arts. 31, 32.

¹⁷⁶ See ZEDE Law (C-6) Art. 32.

- *Monetary Autonomy.* ZEDEs are exempt from national exchange controls and may establish their own monetary policies, including the use of freely convertible currencies and the operation of financial markets.¹⁷⁷
- *Property and Land Management Autonomy.* ZEDEs administer land within their jurisdiction, including State-owned land, and may enter into lease agreements, subdivide, or otherwise manage property for lawful purposes.¹⁷⁸
- *Internal Security Autonomy.* ZEDEs shall establish their own police, criminal investigation, intelligence, prosecution, and penitentiary systems.¹⁷⁹
- *Social Services Autonomy.* ZEDEs may establish their own systems for education, health, social security, and scientific promotion, and regulate them.¹⁸⁰
- *Environmental Autonomy.* ZEDEs must adopt their own policies for environmental protection and preservation.¹⁸¹

89. These autonomies do not mean that ZEDEs are extra-constitutional or lawless enclaves. As noted above, the ZEDEs remain part of Honduras under the control of Honduran authorities, and the ZEDEs must exercise their autonomy within the limits of the Constitution and the ZEDE Law.¹⁸² For instance, tax autonomy may not exceed the caps established by the ZEDE Law or create any new taxes not included in the law;¹⁸³ labor regulations must guarantee labor rights and prioritize domestic workers;¹⁸⁴ trade autonomy must guarantee free movement of goods, capital, and intangible assets;¹⁸⁵ the ZEDE courts are created and their judges are appointed by the Honduran Judiciary;¹⁸⁶ the ZEDEs' internal security policies must keep links to Honduras's national security

¹⁷⁷ See ZEDE Law (C-6) Art. 30.

¹⁷⁸ See ZEDE Law (C-6) Art. 27.

¹⁷⁹ See ZEDE Law (C-6) Art. 22.

¹⁸⁰ See ZEDE Law (C-6) Art. 33.

¹⁸¹ See ZEDE Law (C-6) Art. 37.

¹⁸² See Cosenza § 4.2.

¹⁸³ See ZEDE Law (C-6) Art. 29; Cosenza § 4.2.2.

¹⁸⁴ See ZEDE Law (C-6) Arts. 35, 36; Cosenza § 4.2.2.

¹⁸⁵ See ZEDE Law (C-6) Art. 31; Cosenza § 4.2.2.

¹⁸⁶ See ZEDE Law (C-6) Arts. 14, 15; Cosenza § 4.2.2.

strategy;¹⁸⁷ and regulatory autonomy and the adoption of best practices must abide by Honduran fundamental rights.¹⁸⁸

90. The ZEDE Law envisions that ZEDEs may develop one or a combination of different models, including “International Financial Centers,” “Autonomous Cities,” or other forms of autonomous SEZs.¹⁸⁹ This flexible framework reflects Honduras’s policy choice to position ZEDEs as hubs for development, capable of tailoring their institutional design and adopting alternative systems to promote innovation. As Professor Chaisse explains, “[t]his structure confirms a model of functional delegation. ZEDEs operate as autonomous administrative jurisdictions for defined economic purposes but remain constitutionally subordinate to the Honduran State in all areas reserved to national authority.”¹⁹⁰ Professor Chaisse additionally explains that “[i]nternational practice confirms that autonomy within SEZs is a policy tool, not something anomalous. Honduras’s approach to the ZEDE Regime parallels models in other jurisdictions where zones operate with degrees of autonomy under defined State oversight.”¹⁹¹ Mr. Murcott, who has

¹⁸⁷ See ZEDE Law (C-6) Art. 22; Cosenza § 4.2.2.

¹⁸⁸ See ZEDE Law (C-6) Arts. 3, 5.

¹⁸⁹ See ZEDE Law (C-6) Art. 2.

¹⁹⁰ Chaisse ¶ 31. See also *id.* ¶ 35 (“Although the ZEDE Regime grants ZEDEs significant autonomy, it does so without detracting from State sovereignty. . . . [T]he Constitution and the ZEDE Organic Law confirm that the ZEDEs are inalienable components of the Honduran State and subjects them to the Constitution and the central government in matters concerning sovereignty, administration of justice, territorial integrity, national defence, foreign affairs, electoral processes, and the issuance of identity documents. In addition, Honduras established CAMP as the mechanism through which the State exercised direct legal supervision over the ZEDEs. Its authority to appoint or remove Technical Secretaries, approve or disapprove ZEDE rules, and oversee annual audits ensured that ZEDE autonomy remained a form of conditional delegation, not an abdication of State sovereignty. The Technical Secretary, although functioning as the highest executive officer within each ZEDE, was a CAMP appointee who served at its discretion. Such institutional arrangements ensured that all internal governance structures remained ultimately embedded in, and accountable to, the legal and political institutions of the Honduran State.”).

¹⁹¹ Chaisse ¶ 36. See also *id.* ¶ 24 (“[M]odern SEZs derive their autonomy through clearly defined statutory delegations by the State, as an exercise of sovereignty to pursue policy objectives . . .”), ¶ 48 (“A similar analytical pattern applies across the other SEZs surveyed in this Report. Whether Panama’s Colón Free Zone, Mauritius’s Freeport, the financial centre of Astana, or the large-scale economic zones of Shenzhen and Jebel Ali, each reflects the dual logic of (i) State-delegated authority with meaningful scope for internal governance, and (ii) ultimate anchoring within the legal and constitutional order of the host State. Próspera ZEDE fits squarely within this global spectrum, while standing out in the degree of constitutional entrenchment underpinning its governance model.”), ¶¶ 53-54 (“Próspera ZEDE’s territorial, economic, and legal scope must be assessed against

extensive experience building city-scale projects in Asia, testifies that he found the autonomy of ZEDEs particularly appealing, as in previous projects he had seen how the involvement of central government and agencies made it “more challenging for the development to succeed.”¹⁹² Mr. Murcott recalls that when he learned of the ZEDE Legal Framework he immediately saw that ZEDE’s autonomy was “unique opportunity for the private sector partner to build something meaningful” and that it was an “amazing accomplishment by Honduras.”¹⁹³

91. As Professor Chaisse explains, the increased reliance on SEZs by States reflects a broader policy shift toward hybrid governance models involving private actors, aligning with the growing use of public-private partnerships, and private sector participation in governance and the provision of public infrastructure.¹⁹⁴

(ii) Honduras guarantees the legal stability of the ZEDE Legal Framework for 50 years through various layers of protection

92. The ZEDE Legal Framework also provides investors with independent and complementary sources of legal stability, all of which were central to attracting and retaining long-term investment.

international State practice. Thousands of SEZs operate globally, many with extensive administrative and judicial autonomy. A focused comparison with regimes that combine high levels of regulatory delegation with strong investor protections shows that Próspera ZEDE falls within this established pattern. Its constitutional basis offers an additional layer of legal certainty, but its autonomy remains subject to limits not present in some of the comparator jurisdictions, including, for example, that it remains subject to State supervision through CAMP and the Technical Secretary. Comparatively, Próspera ZEDE is best seen as in alignment with SEZs at the upper end of the autonomy spectrum, because like those SEZs, it exercises regulatory and adjudicatory powers under State delegation and incorporates mechanisms of investor protection.”).

¹⁹² Murcott ¶ 11.

¹⁹³ Murcott ¶ 11.

¹⁹⁴ Chaisse ¶ 15 (“Both SEZs and PPPs reflect a change from direct State provision of economic infrastructure and services toward delegated or shared models of governance involving private actors, and both can have long-term contractual frameworks, structured allocation of regulatory and financial risk, and private participation in the development of infrastructure or public services.”). *See also* Teresa Cheng, *Special Economic Zones: A Catalyst for International Trade and Investment in Unsettling Times?*, JOURNAL OF WORLD INVESTMENT & TRADE 20, 32 (2019) (C-241) pp. 15-16 (“The institutional structure of an SEZ can range from fully public, with the SEZ being operated, developed and regulated by the government, to fully private, with the SEZ being privately operated and developed. . . . [I]n 2005, 62% of the 2301 zones in developing and transition countries were private sector developed and operated. In between the two extremes, there is also the public-private partnership (PPP) model. PPP model is becoming a very important model . . . [and] can take many forms During the early stage of the establishment of Shenzhen SEZ in China, joint ventures and private developers from Hong Kong have provided significant contribution to the development of basic infrastructure of the SEZ through PPPs.”).

93. *First*, the ZEDE Legal Framework is designed to be difficult to repeal and, thus, more removed from Honduras's political instability than other legislation. Being enshrined in the Constitution, the ZEDE Constitutional Provisions could only be repealed by an amendment thereto, *i.e.*, by decree of Congress, in regular session, with two thirds of the votes of all its members, ratified by the subsequent regular legislative session, by the same number of votes.¹⁹⁵ In turn, pursuant to both the ZEDE Constitutional Provisions and the ZEDE Organic Law, the ZEDE Law may only be repealed by a vote of two thirds of Congress and, depending on the population of the ZEDE, a referendum of the ZEDE inhabitants.¹⁹⁶
94. *Second*, pursuant to the ZEDE Organic Law, even in the event that it is repealed, it shall nonetheless remain in effect for ZEDE inhabitants and investors for a transition period. According to Article 45, the transition period shall be "the term indicated in the legal stability clause or contract," or, at minimum, "not be less than ten (10) years."¹⁹⁷ During that transition period "the rights of inhabitants and investors in the [ZEDes] shall remain in effect."¹⁹⁸ Accordingly, Honduras guaranteed investors in the ZEDE legal stability for a minimum of 10 years from any repeal of the ZEDE Organic Law, and anticipated that Technical Secretaries could sign legal stability agreements providing for longer periods.¹⁹⁹
95. *Third*, on 15 January 2014, Honduras entered into a bilateral investment treaty with Kuwait that expressly guaranteed the legal stability of the ZEDE Legal Framework.²⁰⁰ This was the first

¹⁹⁵ See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 373.

¹⁹⁶ See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 329; ZEDE Law (C-6) Art. 45.

¹⁹⁷ ZEDE Law (C-6) Art. 45.

¹⁹⁸ ZEDE Law (C-6) Art. 45.

¹⁹⁹ See Cosenza §§ 4.3.2, 5.2.

²⁰⁰ Honduras-Kuwait BIT (CLA-3). The Honduras-Kuwait BIT entered into force on 28 January 2016. See Honduras-Kuwait BIT (CLA-3) Art. 15 (providing that the treaty shall enter into force thirty (30) days after the date of receipt of the later notification through diplomatic channels by which the Parties inform each other of the completion of their respective internal legal requirements); Decree No. 367-2013 published on 12 Apr. 2014 (C-429) (showing that Honduras approved the Honduras-Kuwait BIT in April 2014 and notified Kuwait of the completion of its internal procedures on 29 May 2014); Official Letter No. 04-DGTC from the Undersecretary of

investment treaty Honduras signed following the enactment of the ZEDE Legal Framework.

Article 16(4) of the Honduras-Kuwait BIT provides as follows:

[i]n the case of investments made under the regime of ZEDE or located in an area of the territory of the Republic of Honduras that has been designated as a ZEDE, the Republic of Honduras declares that . . . all the provisions under Articles 294, 303 and 329 of the Constitution of the Republic of Honduras; the ZEDE Organic Law; and all rights, conditions, procedures and protections, either explicit or implicit included therein respectively, shall remain as guarantees and should be guaranteed . . . for a timeframe of not less than fifty (50) years.²⁰¹

96. This fifty-year legal stability guarantee to Kuwaiti investors became automatically applicable to all investors in the ZEDEs pursuant to Article 32 of the ZEDE Organic Law, in which Honduras guaranteed natural and legal persons operating in ZEDEs the “automatic extension of any better treatment that is granted or has been granted to the other parties to an international trade agreement signed by the State of Honduras.”²⁰² Accordingly, pursuant to the MFN provision of the ZEDE Organic Law, the fifty-year legal stability guarantee contained in the Honduras-Kuwait BIT was automatically extended to all investors in the ZEDEs.²⁰³ As detailed below, in seeking to induce investment, Honduras actively touted the Honduras-Kuwait BIT and its application to all investors in ZEDEs, regardless of their nationality.²⁰⁴
97. In addition, as detailed below, U.S. investors are also entitled to the benefits of Honduras’s legal stability guarantee in the Honduras-Kuwait BIT pursuant to Article 10.4 of CAFTA-DR, which also provides for MFN treatment.

State of Honduras to the Honduran Ambassador to Mexico dated 5 Jan. 2016 (C-430) p. 2 (stating that Honduras notified Embassy of Kuwait that it completed the internal legal procedures required under the Honduras-Kuwait BIT through a verbal note sent on 29 May 2014); Note No. 197/EMB/15 from the Embassy of Kuwait to the Embassy of Honduras published on 28 Dec. 2015 (C-431) (showing that Kuwait approved the treaty through Law No. 137/2014, published on 13 January 2015, and transmitted its notification to Honduras on 28 December 2015); Certificate issued by the Secretariat of Foreign Affairs and International Cooperation of Honduras dated 15 Feb. 2022 (C-432) (certifying that the Honduras-Kuwait BIT entered into force on 28 January 2016).

²⁰¹ Honduras-Kuwait BIT (CLA-3) Art. 16(4).

²⁰² ZEDE Law (C-6) Art. 32. *See* Cosenza § 5.3.

²⁰³ *See* ZEDE Law (C-6) Art. 32. *See also* Honduras-Kuwait BIT (CLA-3) Art. 16(4).

²⁰⁴ *See infra* § II.B.4.

3. In 2014, the Honduran Supreme Court upholds the constitutionality of the ZEDE Legal Framework

98. On 26 May 2014, the Constitutional Chamber of the Supreme Court of Justice of Honduras unanimously dismissed a challenge to the constitutionality of the ZEDE Constitutional Provisions and the ZEDE Organic Law.²⁰⁵ Among other things, the Court took into account an opinion of the National Prosecutor's Office of Honduras (*Ministerio Público*) recommending that the Court reject the challenge.²⁰⁶ After considering the petitioner's allegations, the Court found them all unfounded, as follows.

- *The ZEDE Legal Framework does not impair the territorial integrity of Honduras.* The Supreme Court held that ZEDEs remain an inalienable part of Honduras, subject to the Constitution and the national government, and that the ZEDE Legal Framework does not affect the territory of Honduras and respects Articles 10, 11, 12, 13, 15 and 19 of the Constitution.²⁰⁷
- *The ZEDE Legal Framework is not inconsistent with Congress' taxing powers.* The Supreme Court held that Articles 4 and 23 of the ZEDE Organic Law (which authorize ZEDEs to establish their own budgets, collect and manage taxes, and use their revenues independently) are a valid implementation of the ZEDE Constitutional Provisions and a legitimate exercise by Congress of its powers.²⁰⁸
- *The ZEDE Legal Framework does not undermine national sovereignty.* The Supreme Court held that sovereignty is exercised within a unified State through specialized

²⁰⁵ See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (C-8). See also Cosenza § 3.3.1.

²⁰⁶ See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (C-8) p. 1 (noting that the National Prosecutor's Office submitted an opinion stating that the constitutional challenge should be denied); Opinion of the National Prosecutor of Honduras dated 20 Feb. 2014 (C-433) ("[S]ince the purpose of the unconstitutionality action is to determine the constitutionality of the norms subject to constitutional review, by comparing the content of Decrees 236-2012 and 120-2013 with the norms of the Constitution of the Republic invoked by the petitioner, no violation of such constitutional precepts is found; therefore, since there is no conflict between the primary norm and the secondary norm, it is appropriate to apply the aforementioned Decrees. . . . Based on the foregoing, the Public Prosecutor's Office ruled that the appeal of unconstitutionality SHOULD BE DECLARED UNFOUNDED."); *ZEDEs are legal, says the Prosecutor*, EL HERALDO (20 Apr. 2014) (C-7).

²⁰⁷ See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (C-8) Recital No. 11. See also Cosenza § 3.3.1.

²⁰⁸ See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (C-8) Recital No. 12. See also Cosenza § 3.3.1.

institutions, and that the ZEDE Legal Framework is an exercise of Honduras's sovereignty through Congress.²⁰⁹

- *The ZEDE Legal Framework is not undemocratic.* The Supreme Court noted that ZEDE regulations remain subordinate to the Constitution, international treaties, the ZEDE Organic Law, and only then to internal ZEDE rules, thereby ensuring that the ZEDE regime respects the constitutional form of government.²¹⁰
- *The ZEDE Legal Framework does not violate constitutional rights.* The Supreme Court held that the ZEDEs do not infringe on the rights of equality before the law, freedom of movement, the right not to be expatriated, and labor protections, noting that these remain guaranteed under the ZEDE Legal Framework, that residency in a ZEDE is entirely voluntary, and the ZEDEs cannot be considered foreign States.²¹¹

99. The Supreme Court rejected at least two other unconstitutionality claims against the ZEDE Legal Framework in 2014.²¹² In both decisions, the Supreme Court affirmed the ruling of 26 May 2014 and dismissed the unconstitutionality actions.²¹³
100. As Mr. Cosenza explains, from a domestic law perspective, these rulings carried *res judicata* effect and bound all public authorities, including because the existence of three consecutive consistent judgments of the Supreme Court established mandatory legal doctrine.²¹⁴ Moreover, as Mr. Cosenza further explains, the Supreme Court's dismissal of those actions reflected major support for the regime:

²⁰⁹ See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (C-8) Recital No. 14. See also Cosenza § 3.3.1.

²¹⁰ See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (C-8) Recital No. 14.

²¹¹ See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (C-8) Recital No. 15.

²¹² Decision of the Supreme Court of Honduras, Case No. RI 179-2014 dated 10 Jun. 2014 (C-434) pp. 5, 23 (referencing the Supreme Court's decision of 26 May 2014 rejecting the unconstitutionality claim and refraining from issuing a new decision on the matter); Decision of the Supreme Court of Honduras, Case No. RI 174-2014 dated 12 Aug. 2014 (C-435) pp. 22-23 (referencing the Supreme Court's decision of 26 May 2014 rejecting the unconstitutionality claim and refraining from issuing a new decision on the matter). The Supreme Court also rejected another challenge for lack of standing. See Decision of the Supreme Court of Honduras, Case No. RI-424-2014 dated 29 Apr. 2014 (C-436). See also Cosenza § 3.3.

²¹³ See *id.*

²¹⁴ Cosenza ¶ 78 (“[T]he existence of the three (3) consecutive and consistent judgements of the Constitutional Chamber . . . has the following implications . . . The creation of a legal doctrine in that regard, which became a direct source of Honduran substantive law, of general and mandatory application. . . . no other Court or Branch of the State can question the legal doctrine so created. . . . [and] the Legal doctrine was of mandatory observance for any lower court in the event they were to hear any specific case where such doctrine might be applicable.”).

From a legal standpoint, the dismissal of those actions reflected major support for the regime: the Judgments communicated that the Constitutional Chamber had analyzed a variety of grounds invoked by the claimants and dismissed the actions, so it was to be expected that any possible new actions that might be filed on similar grounds would also be dismissed as set forth in Article 91 of the Law on Constitutional Justice of Honduras.²¹⁵

4. Honduras actively induces foreign investment in ZEDEs through a global marketing strategy

101. Once the Supreme Court had spoken and dispelled any uncertainties regarding the validity of the ZEDE Legal Framework, Honduras doubled down on its promotional efforts and designed and undertook a campaign to promote the ZEDE Legal Framework, making this a strategic priority.
102. The priority placed by Honduras on promoting the ZEDEs can be clearly appreciated from the 2014 address to the United Nations by President Juan Orlando Hernández (who had replaced President Lobo in January 2014), which underscored Honduras's need for investment and the many benefits offered by the ZEDE Legal Framework, and specifically touted the provision of legal stability required for long-term foreign investment:

[w]e need more investments to come into our country to generate jobs that may translate into higher income for families.

To that end, Honduras has reformed its Constitution in order to create one of the best platforms in the world for investment and employment: the Zones for Employment and Economic Development, known as ZEDEs.

Honduras' ZEDE is not just another free-trade zone—like all 3,500 already existing in the world. Ours is very different because it is comprehensive in nature. . . . [A] ZEDE offers the world the well-known Anglo-Saxon Common Law system, with mandatory arbitration, and international courts. . . . [W]e offer competitiveness in an open market, with simple, straightforward rules, coupled with extremely attractive and sustainable incentives to encourage the creation of good jobs under the most decent conditions. . . . [A] ZEDE offers a technical, non-political, cost-effective structure, without bureaucratic obstacles, to companies that need to operate at the speed of markets and technology in the 21st century, and with full assurances of transparency and security under the rule of law.

And, finally, in order to attract long-term investments and ensure good jobs, we guarantee political stability and transparency based on international treaties and

²¹⁵ Cosenza ¶ 81.

agreements, together with the backing of an international commission consisting of 21 trustees, in order to ensure compliance with best practices for workers and investors alike.

I invite you all to discover this great opportunity.²¹⁶

103. This was not a one-time speech. In 2014, Honduras launched the Strategic Government Plan 2014-2018, which made promotion of the ZEDEs its very first strategy for economic development.²¹⁷ Consistent with this strategy, over the following years Honduras's Ministry of Economic Development (i) retained international advisors from PricewaterhouseCoopers to design an investment attraction mechanism that would integrate the ZEDE Legal Framework with broader economic development incentives;²¹⁸ (ii) engaged with international institutions, including by hosting three missions from the Inter-American Development Bank ("IDB") to explore potential areas of support for the ZEDE initiative and its institutional development;²¹⁹ and (iii) held promotional events in Texas and Georgia in the U.S. and across Honduras showcasing ZEDE opportunities to potential investors.²²⁰ Honduran officials likewise promoted the ZEDEs during various official trade missions throughout the world. In 2014, a delegation to South Korea promoted the ZEDEs to Korean investment groups and reviewed a ZEDE prefeasibility study by Korean company Posco Plantec.²²¹ According to the mayors of the Amapala, Alianza, and

²¹⁶ Speech of the President of Honduras to the UN General Assembly 24 Sep. 2024 (C-10) (emphasis added).

²¹⁷ See Strategic Government Plan 2014-2018, Presidency of the Republic of Honduras dated Apr. 2014 (C-437) p. 42 ("c) Promoting the [ZEDEs], as an opportunity for the country to attract new investments via the creation of geographically-defined zones in which highly competitive and stable regulations, good practices and rules are used and applied with their own administration regime, in a transparent, regulated and secure environment."). Honduras published an updated version of the plan in December 2015, which included the same language. See Strategic Government Plan 2014-2018: Plan for Everyone for a Better Life, Presidency of the Republic of Honduras (Dec. 2015) (C-438) p. 31.

²¹⁸ See Ministry of Economy of Honduras, *Technical Report of Achievements 2014-2017* dated Dec. 2017 (C-18) p. 1.

²¹⁹ See *id.* p. 1.

²²⁰ See *id.* p. 2.

²²¹ See Peralta, Adriana, *Honduras: Supreme Court rejects constitutional challenge against ZEDEs*, PANAM POST (20 Jun. 2014) (C-9).

Nacaome municipalities who participated in the delegation, the goal was to create a “Honduran Busan.”²²²

104. That same year, Honduras created a ZEDE website (zede.gob.hn) with relevant information on the regime.²²³
105. In 2015, Honduras presented the ZEDE investment opportunity in meetings around the world, including in South Korea, Japan, and the U.S., particularly including during State visits by President Hernandez.²²⁴ In April 2015, President Hernández visited Washington, Texas, and Florida to promote foreign investment, and in Washington, he specifically promoted the ZEDEs at a meeting with the U.S. Chamber of Commerce.²²⁵ In July 2015, President Hernández conducted an official visit to South Korea, where he met with the South Korean president and the Korean International Cooperation Agency (“KOICA”).²²⁶ KOICA presented feasibility studies for the development of a ZEDE in southern Honduras that included the construction of a port in Ampala and the establishment of logistic and research centers in the region.²²⁷ That same month, President Hernández visited Japan, where he met with the President²²⁸ and presented Honduras’s new policy

²²² See César Andrés Panting, *Nacaome, Alianza and Amapala dream of being the first model city*, LA PRENSA (28 Sep. 2014) (C-439). Busan is the second largest city and number one trading hub in South Korea, with a population of 3.4 million people and a total area of 770.17 square kilometers as of 2022. Since opening Korea’s first international port in 1876, the city has become a hub of trade, commerce and industry. Busan, *About Busan, Introduction* (C-440). Busan is part of the Busan-Jinhae Free Economic Zone, a global hub for international business and logistics and the second-oldest Free Economic Zone in South Korea, established in 2003. BJFEZ, *Who we are* (C-441).

²²³ See *Inaugurating new president, Honduras prepares special zones to offer investors and workers world standards for RULE OF LAW*, HONDURAN ZEDE (11 Jan. 2013) (C-442).

²²⁴ See *Honduras: Hernández will present ZEDE in March, South Korea and USA*, REVISTA ESTRATEGIA Y NEGOCIOS (21 Jan. 2015) (C-443).

²²⁵ See *President Hernández after trip to the United States: “It was a very positive tour that projected Honduras in a regional context”*, EL INFORMATIVO (26 Apr. 2015) (C-444).

²²⁶ See *Honduran President Reaffirms Cooperation with South Korea*, EL HERALDO (20 July 2015) (C-445).

²²⁷ See *id.*

²²⁸ See *Official Visit to Japan by President Juan Orlando Hernández (Result)*, EMBASSY OF JAPAN IN HONDURAS (6 Feb. 2016) (C-446).

- priorities, including promotion of the ZEDEs.²²⁹ In Japan, the Honduran delegation also attended an IDB seminar, and met with the Director of the Japan International Cooperation Agency and the Japan Business Federation.²³⁰ During the August 2015 Hispanic Commerce Conference in Louisiana, Honduran officials speaking to potential investors described the ZEDEs as one of the bases for Honduras's investment structure.²³¹ In November 2015, President Hernández again visited the U.S. to promote the ZEDEs and meet with investors.²³²
106. Likewise, CAMP played an active role in promoting ZEDEs to foreign investors. Among other promotion efforts, CAMP held events in the United States seeking to induce US investors to develop ZEDEs.²³³
107. By 2016, Honduras expanded the information on the official ZEDE website to include the requirements for the creation of new ZEDEs (such as the submission of feasibility studies, proof of financial capacity, and submission of a master plan) and announcing that ZEDE applications would be received starting in May 2016.²³⁴
108. In July 2016, through an Executive Decree, the President provided funding to promote ZEDEs and classified ZEDEs as a national priority due to the benefits they would bring to Honduran economy, improving conditions of life through investment, education, economic growth and security.²³⁵
109. In October 2017, the Government of Honduras hosted a high-level investment promotion event at the Presidential Palace to present its national program of investment in ZEDEs. The event brought

²²⁹ See Ministry of Foreign Affairs of Japan, Honduras-Japan Joint Statement: <https://www.mofa.go.jp/files/000091939.pdf> dated 2016 (C-447).

²³⁰ See *Official Visit to Japan by President Juan Orlando Hernández (Result)*, EMBASSY OF JAPAN IN HONDURAS (6 Feb. 2016) (C-446).

²³¹ See Country Brand Honduras is exhibited in Louisiana, PROCESO DIGITAL (12 Aug. 2015) (C-449).

²³² See *Honduran President on Tour to U.S. to Boost Investment in the Country*, HONDURPRENSA (9 Nov. 2015) (C-450).

²³³ See Delgado ¶ 18.

²³⁴ See *Requirements to be part of the ZEDE regime*, ZEDE (14 Nov. 2016) (C-451) ("Article 39 of the ZEDE Organic Law grants [CAMP] the authority to incorporate projects to the ZEDE regime. . . . The process of acceptance and revision of requests for incorporation to the ZEDE regime begins May 3rd 2016.").

²³⁵ See Executive Decree No. PCM-0060-2016 dated 25 Jul. 2016 (C-452) Art. 2.

together domestic and international investors, including companies from Canada, the U.S., Finland, the Philippines, China, and Taiwan, several of which expressed their interest in investing in the ZEDE regime.²³⁶ During the event, President Hernández made a point of referring to his visits to Singapore, South Korea, and Hong Kong, concluding with an invitation for investors to “have confidence” in Honduras.²³⁷

110. That same month, it was reported that the KOICA had delivered a feasibility study for a ZEDE logistics hub requiring an initial investment of approximately US\$ 30 million.²³⁸ According to the Honduran Ministry of Economic Development, several private ZEDE projects across the country were under review, each supported by its own feasibility study, and Honduras had received expressions of interest from potential investors from Colombia, Taiwan, Canada, the U.S., and South Korea.²³⁹ Honduras expected that such ZEDEs would generate 200,000 jobs over the coming years, in a range of industries (*e.g.*, metals, textiles agroindustry, energy, tourism, technology, forest products), and across the seven departments in which ZEDEs had been pre-authorized: Cortés, Atlántida, Colón, Islas de la Bahía, and Gracias a Dios on the Caribbean coast, and Valle and Choluteca on the Pacific coast.²⁴⁰

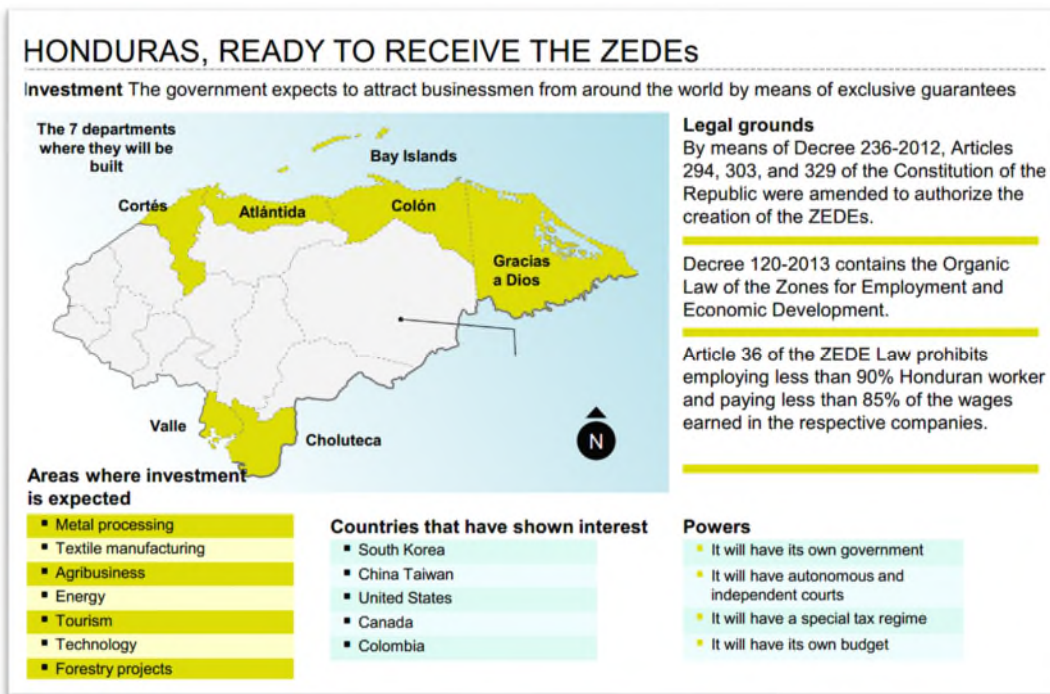
²³⁶ See Bustillo, Yoni, *Ten companies are interested in creating ZEDEs*, EL HERALDO (24 Oct. 2017) (C-15).

²³⁷ See *Honduras will become the development hub of the region with the ZEDEs*, Presidential Palace of Honduras, YOUTUBE dated 23 Oct. 2017 (C-453) minutes 7:03-7:25, 13:05.

²³⁸ See *The government seeks to generate 200 thousand Jobs via the ZEDEs*, EL HERALDO (22 Oct. 2017) (C-454).

²³⁹ See *The government seeks to generate 200 thousand jobs via the ZEDEs*, EL HERALDO (22 Oct. 2017) (C-454).

²⁴⁰ See *The government seeks to generate 200 thousand Jobs via the ZEDEs*, EL HERALDO (22 Oct. 2017) (C-454).



111. In November 2017, at a public event in Tegucigalpa (the capital of Honduras), the co-chair of CAMP, Mark Klugmann, delivered a speech in which he highlighted that ZEDES were attracting international support, citing contributions of US\$ 4 million from the Government of South Korea and US\$ 20 million from the IDB, and noted that the U.S., Canada, and Europe were all important allies in the ZEDE project. He concluded that ZEDES would give Honduras a competitive advantage and predicted that Honduras's success would serve as a catalyst for broader regional prosperity.²⁴¹
112. In January 2018, CAMP issued ZEDE Regulation No. 001-2018,²⁴² which established “the procedure to comply with the provisions of” Article 39 of the ZEDE Law which, as explained, made certain low density areas in the country subject to the ZEDE regime and instructed CAMP to determine the procedure to incorporate land in these areas into the ZEDE regime.²⁴³ ZEDE

²⁴¹ See *Speech on the Zones for Employment and Economic Development (ZEDES) in Honduras. November 2017*, videotester6, YOUTUBE dated 24 Aug. 2018 (C-455).

²⁴² ZEDE Regulation No. 001-2018 dated 30 Jan. 2018 (C-456).

²⁴³ See *supra* § II.B.1.c; ZEDE Law (C-6) Art. 39.

Regulation No. 001-2018 provides that CAMP would administer and operate a general ZEDE Register, while each ZEDE could also keep its own property register.²⁴⁴

113. Given the scale of Honduras's promotion efforts and its specific efforts to attract foreign investment, it was only a matter of time before Honduras would get its first ZEDE and foreign investment into the ZEDE regime.

C. CLAIMANTS INVEST IN HONDURAS AT THE GOVERNMENT'S INVITATION AND IN RELIANCE ON THE ZEDE LEGAL FRAMEWORK AND HONDURAS'S GUARANTEES OF LEGAL STABILITY

114. Claimants invested in the development of a ZEDE at the invitation of Honduras (Section II.C.1) and in reliance on the ZEDE Legal Framework and the myriad undertakings and assurances by the Government that they would have legal stability (Section II.C.2). Honduras worked with HPI to establish Próspera ZEDE in late 2017 and to develop its governance structure (Section II.C.3). Between 2019 and 2021, HPI worked to implement its business plan and to build Próspera ZEDE into a transformative platform for economic growth and development and make a positive impact on Honduras (Section II.C.4). Meanwhile, Honduras continued to support the ZEDE regime through various authorities and entered into the LSA with HPI pursuant to the ZEDE Organic Law extending further guarantees of legal stability (Section II.C.5). Between 2021 and 2022, Claimants acquired major infrastructure, finalized plans for investments, and continued to implement the business plan (Section II.C.6).

1. Honduras invites the co-founders of Honduras Próspera, Inc. to invest in a ZEDE

115. In the context of its efforts to promote the ZEDes and attract foreign investors, Honduras reached out to Erick A. Brimen and Gabriel Delgado Ayau and invited them to invest in a ZEDE.
- Mr. Brimen is a U.S. national of Venezuelan origin, who, over the course of his life became convinced that "market forces and entrepreneurship, together with good governance, could drive economic development and address societal challenges like poverty by creating the conditions for prosperity".²⁴⁵ In addition to a successful career in finance and as a startup

²⁴⁴ See ZEDE Regulation No. 001-2018 dated 30 Jan. 2018 (C-456) Arts. 11, 12.

²⁴⁵ Brimen ¶ 5.

founder, Mr. Brimen was involved in the Competitiveness and Enterprise Cities Project which focused on the development of charter cities as a vehicle to generate growth.²⁴⁶ In 2014, he founded NeWAY Capital LLC (“**NeWAY**”), an investment fund focused on the funding of enterprise cities that actively pursued investment opportunities in the U.S. and around the world.²⁴⁷ Mr. Brimen learned about the ZEDE Legal Framework in 2014, and soon thereafter was introduced to members of CAMP who invited him to Honduras.²⁴⁸

- Mr. Delgado is a Guatemalan entrepreneur working on using special jurisdictions to implement governance reform to “benefit individuals and create better living conditions for people that would otherwise be stuck in unfavorable environments.”²⁴⁹ Mr. Delgado was one of the first investors to attempt to develop a RED in Honduras and even signed a Memorandum of Understanding with Honduras to that effect.²⁵⁰ He was unable to proceed, however, because the RED regime was declared unconstitutional.²⁵¹ Mr. Delgado recounts that this was a disappointing experience for him.²⁵² Once Honduras put the ZEDE Legal Framework in place, Mr. Delgado was approached by members of CAMP who invited him to invest in a ZEDE²⁵³

116. During 2016, Messrs. Brimen and Delgado separately had meetings with CAMP and other Honduran authorities, during which they were given assurances about the benefits of the ZEDE Legal Framework, including the legal stability that was guaranteed to investors. Mr. Brimen recalls that he met a range of Honduran officials, including members of CAMP such as Carlos Pineda (the Head of Honduras’ regulatory agency in charge of overseeing public-private partnerships, Superintendencia de Alianza Público Privada and a member of Honduras’s National Commission for Public-Private Alliances (*Comisión Nacional de las Alianzas Público Privadas* or “**COALIANZA**”)), Octavio Sánchez (a member of COALIANZA), and Ebal Díaz (Minister of the Presidency), as well as Arnaldo Castillo (Minister of Economic Development), the head of the National Property Institute (“**Property Institute**”), the head of the Tax Authority, and even

²⁴⁶ See Brimen ¶¶ 9-10.

²⁴⁷ See Brimen ¶ 10.

²⁴⁸ See Brimen ¶ 13.

²⁴⁹ Delgado ¶ 7.

²⁵⁰ See Delgado ¶ 9; Memorandum of Understanding between Grupo de Desarrollos Especiales LLC and COALIANZA dated 4 Sep. 2012 (C-457).

²⁵¹ Delgado ¶ 9.

²⁵² Delgado ¶ 10.

²⁵³ Delgado ¶ 11.

President Juan Orlando Hernández.²⁵⁴ These encounters left Mr. Brimen with a strong sense of confidence in the ZEDE initiative. He observed that the officials he met were knowledgeable, sophisticated, and genuinely committed to the success of the ZEDEs:

[m]y impression after the meetings with CAMP and the other officials was positive. I felt that the people in charge of overseeing the ZEDE regime shared my views on the importance of good governance and market forces for development. They also seemed to sincerely believe that the ZEDEs could lift Honduras out of poverty and were committed to making the ZEDE regime work.²⁵⁵

117. Mr. Brimen was particularly struck by the measures the country had implemented to safeguard the regime's legal stability. Mr. Brimen recalls:

[t]he more we learned about the ZEDE regime, the more attractive it became. It was not just that the content of the regime would allow us to execute our vision; it was also impressive to see the several protective layers Honduras had built around the regime to ensure its legal stability.²⁵⁶

118. Meanwhile, Honduran officials were similarly touting the ZEDE regime to Mr. Delgado. Given Mr. Delgado's experience with the RED regime, members of CAMP were at pains to assure him that the ZEDE Legal Framework did not face the same constitutionality issues that had arisen with the RED regime and, in fact, had been carefully designed to ensure its constitutionality.²⁵⁷

119. Honduras's promising ZEDE Legal Framework coupled with CAMP's promotion efforts and strong assurances of legal protection convinced each of Mr Brimen and Mr. Delgado that ZEDEs were worth exploring and had immense potential. Mr. Brimen recalls that he decided to analyze the ZEDE Legal Framework further "[b]ased on the meetings with CAMP and their representations."²⁵⁸ He also recalls that one of the most attractive features of the ZEDE Law Framework was that it would allow an investor to "develop an enterprise city that would attract

²⁵⁴ See Brimen ¶ 16; Delgado ¶¶ 8-13.

²⁵⁵ Brimen ¶ 17.

²⁵⁶ Brimen ¶ 19.

²⁵⁷ Delgado ¶ 12.

²⁵⁸ Brimen ¶ 18.

investment through good governance, including a pro-market regulatory system.”²⁵⁹

120. Similarly, Mr. Delgado recalls that he “met between five and eight times with Mr. Sánchez and Mr. Pineda” and decided to move forward with a ZEDE project because he wanted to create a new “Hong Kong in the Americas” and offer “innovative governance and regulatory frameworks to promote prosperity and create massive upward mobility.”²⁶⁰ In June 2016, CAMP granted Mr. Delgado’s company, Haven Capital (“**Haven**”) a conditional authorization to develop a ZEDE based on a proposal that entailed 4,500 jobs and an investment of US\$ 80 million.²⁶¹

2. Attracted by Honduras’s proposition, Mr. Brimen joins forces with Mr. Delgado to develop an investment in a ZEDE

121. During 2016, as they were both exploring an investment in a ZEDE, Mr. Brimen and Mr. Delgado met and realized they shared a common vision.²⁶² They eventually decided to partner to develop a ZEDE.²⁶³
122. Mr. Brimen and Mr. Delgado – now partners – made additional visits to Honduras in 2016 and 2017, and had meetings with Honduran officials to discuss the ZEDE regime, including the legal stability rights of investors.²⁶⁴ On 11 March 2017, in response to questions from NeWAY, CAMP expressly stated that the legal stability guarantee in the Kuwait-Honduras BIT would extend to any investor in a ZEDE pursuant to the ZEDE Organic Law:

[*NeWAY question*] 2. Is the Honduran Government prepared to [offer] protections via its own Legal Stability Agreement (LSA) with the ZEDE or directly with foreign investors? These agreements would also protect against adverse changes to the ZEDE law or the Constitution. An LSA with the Technical Secretary only, will probably not be accepted by investors as [sufficient] legal protection. . . .

²⁵⁹ Brimen ¶ 20.

²⁶⁰ Delgado ¶¶ 10, 12.

²⁶¹ See Delgado ¶ 16; Certificate of conditional authorization for incorporation to the ZEDE regime granted by CAMP to Haven dated 24 Jun. 2016 (C-458).

²⁶² See Brimen ¶ 25; Delgado ¶ 19.

²⁶³ See Brimen ¶ 27; Delgado ¶¶ 21-22.

²⁶⁴ See Brimen ¶¶ 18-19, 32.

[*CAMP answer*] A 50 year LSA was included in a Bilateral Investment Treaty (BIT) with Kuwait. By extent, article [32] of the ZEDE's Organic Law makes that provision enforceable by any investor in a ZEDE.²⁶⁵

123. The legal stability of the ZEDE Legal Framework was a critical consideration in deciding to invest in Honduras. As Mr. Brimen explains:

[c]ritically for a long-term investment that would require years of development, the ZEDE legal regime also guaranteed legal stability²⁶⁶

In the meetings, CAMP emphasized that even if the ZEDE Law was repealed, it would continue to apply to investors in the ZEDE regime. CAMP specifically mentioned that in addition to the law's ten years default transition regime, Honduras had signed an investment treaty with Kuwait . . . that guaranteed 50 years of legal stability, and that this would apply automatically to all investors through the most favored nation . . . provisions in the ZEDE Law and CAFTA-DR.²⁶⁷

The layer upon layer of protection, in the Constitution, the ZEDE Law, and the Honduras-Kuwait BIT, plus what CAMP and other officials told us, convinced me that we could have a successful long-term investment that would be protected for decades to come.²⁶⁸

3. HPI works with Honduras to establish Próspera ZEDE and put in place its governance structure

124. Over the next years, HPI worked with Honduras to establish Próspera ZEDE and put in place its governance structure. HPI prepared a detailed plan to establish a ZEDE on Roatán and submitted an application to CAMP to create Próspera ZEDE in late 2017 (Section II.C.3.a); CAMP certified the incorporation of Próspera ZEDE in December 2017 (Section II.C.3.b) and appointed a Technical Secretary for Próspera ZEDE and approved its Charter and Bylaws in 2018 (Section II.C.3.c); HPI decided to expand Próspera ZEDE to Port Satuyé in La Ceiba (Section II.C.3.d) and received support for its plans from authorities at every level of Government as well as neighboring communities (Section II.C.3.e); and in 2019, Honduras and HPI amended

²⁶⁵ See Letter from CAMP responding to Erick Brimen's ZEDE Law interpretation request dated 11 Mar. 2017 (C-459) p. 4.

²⁶⁶ Brimen ¶ 22.

²⁶⁷ Brimen ¶ 23.

²⁶⁸ Brimen ¶ 24.

the Charter and Bylaws of Próspera ZEDE (Section II.C.3.f).

(a) In 2017, HPI prepares a detailed plan to establish a ZEDE on Roatán and submits an application to CAMP to create Próspera ZEDE

125. On 28 August 2017, Mr. Brimen and Mr. Delgado created Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, which would later be renamed Honduras Próspera, Inc.²⁶⁹ The two principal shareholders were NeWAY (represented by Mr. Brimen) and Kayros Holdings LLC (“**Kayros**”) (represented by Mr. Delgado).²⁷⁰ NeWAY contributed US\$ 1,250,000 in capital and received a 68% interest. Kayros contributed US\$ 250,000 capital and intellectual property valued at US\$ 285,715, and received a 29% interest.²⁷¹ The third shareholder was Tristan Monterroso, a Honduran pastor and community organizer on the island of Roatán and prior acquaintance of Mr. Brimen’s, who contributed with social development projects and community contacts and received a 3% interest.²⁷² Over the following months, HPI made significant investments to establish what would become Próspera ZEDE. Throughout this process, it remained in contact with CAMP to ensure that its efforts would succeed.²⁷³
126. Out of various sites that were considered, HPI decided to begin its ZEDE venture on the Island of

²⁶⁹ See Certificate of Formation of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, State of Delaware, Secretary of State, Division of Corporations dated 28 Aug. 2017 (C-14). On 31 December 2018, the Board of Directors of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC changed the name of the entity to Honduras Próspera LLC. See Resolution of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, Written Consent of Board of Directors dated 31 Dec. 2018 (C-23). On 17 July 2019, the company’s name was changed to Honduras Próspera, LLC. See Certificate of Amendment of the Name of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, State of Delaware, Secretary of State, Division of Corporations dated 17 Jul. 2019 (C-29). On 28 Nov. 2020, Honduras Próspera, LLC was converted to a Delaware Corporation, Honduras Próspera, Inc. See Effectuating Board and Member Action by Consent (Approval and Ratification of Conversion to Delaware Corporation), Honduras Próspera LLC dated 28 Nov. 2020 (C-34); Certificate of Incorporation of Honduras Próspera, State of Delaware, Secretary of State, Division of Corporations dated 1 Dec. 2020 (C-35).

²⁷⁰ See Brimen ¶ 30; Delgado ¶ 22; Limited Liability Company Operating Agreement of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC dated 30 Jun. 2018 (C-19) Exh. B.

²⁷¹ See Brimen ¶ 30; Delgado ¶ 22; Limited Liability Company Operating Agreement of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC dated 30 Jun. 2018 (C-19) Exh. B p. 54.

²⁷² See Brimen ¶ 30; Delgado ¶ 22; Limited Liability Company Operating Agreement of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC dated 30 Jun. 2018 (C-19) Exh. B p. 54.

²⁷³ See Brimen ¶ 32; Delgado ¶ 23.

Roatán, in the Bay Islands department in the Caribbean Sea.²⁷⁴ Roatán was an ideal location to jumpstart the ZEDE project because of its strategic location close to the north coast of Honduras and easy accessibility from the U.S. The island also has an English-speaking population, a beautiful natural environment, and existing transportation infrastructure, including an international airport, a terminal for cruise ships, and a ferry connecting it with the mainland. Notably, Roatán also had already been identified by Honduras as a priority area for the development of ZEDEs.²⁷⁵



*Location of the Island of Roatán*²⁷⁶

127. On 22 September 2017, HPI submitted to CAMP a presentation on “The City of Roatán,” a proposed large-scale project for the development of a city in Roatán under the ZEDE Legal

²⁷⁴ See Brimen ¶ 26. Mr. Delgado had started focusing on Roatán as the potential location of a ZEDE after exploring other areas in mainland Honduras and having grown convinced that Roatán’s “natural beauty, its English speaking population, and its status as a destination for international travelers” made it a more desirable location. Delgado ¶ 16.

²⁷⁵ See *supra* § II.B.4; *The government seeks to generate 200 thousand Jobs via the ZEDEs*, EL HERALDO (22 Oct. 2017) (C-454) (showing the Bay Islands including Roatán as one of the departments in which ZEDEs had been pre-authorized and in which ZEDE investments were expected); Ministry of Economy of Honduras, *Technical Report of Achievements 2014-2017* dated Dec. 2017 (C-18) pp. 21-22 (mentioning that the Bay Islands were identified as potential development hubs for ZEDEs). Pursuant to Article 39 of the ZEDE Law, the low-population-density areas of Roatán were subject to the ZEDE regime. See *supra* § II.B.1.c; ZEDE Law (C-6) Art. 39 (“[T]he areas with low population density in the municipalities located in departments adjoining the Gulf of Fonseca and the Caribbean Sea are declared subject to the [ZEDE] regime.”).

²⁷⁶ *Roatan*, Britannica (C-460).

Framework.²⁷⁷ The presentation synthesized Mr. Brimen's and Mr. Delgado's joint vision, building on their years of work on special economic zones as catalysts for growth and developing a plan for the establishment of a ZEDE under Honduras's ZEDE Legal Framework. Among other things, their plan contemplated the gradual creation of a thriving six-figure population zone; the creation of a substantial number of jobs over the first ten years; purposeful social impact and community involvement; access to affordable and effective dispute resolution mechanisms supported by rule of law and security services; a common law system and an online e-governance platform; and later expansion of the ZEDE to other areas in Honduras according to a phased approach.²⁷⁸

128. Shortly thereafter, on 24 September 2017, Mr. Brimen sent a letter to a CAMP member explaining the benefits of starting on Roatán and expanding in a phased approach to foster transformative economic and social development in Honduras. Among other things, Mr. Brimen noted:

[f]or me, the ZEDE framework creates an opportunity to optimize the external factors individuals face - including the incentive structures, memorialized system of values, etc. - that when designed properly [sic] enable individuals to reach, with the least friction possible, the highest expression of their dreams and ambitions. . . . This small community will inspire others, and a number of transformed and inspiring communities will transform the island and the country As with everything else, I intend to seek and drive results in a phased approach so that we can build the necessary momentum.²⁷⁹

129. Mr. Brimen recalls that HPI started working on a formal application to CAMP following the requirements that CAMP conveyed, which were available on its website.²⁸⁰ CAMP's requirements were: (i) identifying a low density population area in accordance with Article 39 of the ZEDE Law; (ii) submitting a feasibility study; (iii) submitting evidence of financial means to undertake a ZEDE project; (iv) submitting a master plan of the envisioned ZEDE; and (v) incorporating the land on

²⁷⁷ See Presentation The City of Roatán: A Zone for Economic Development and Employment dated 22 Sep. 2017 (C-307) p. 2.

²⁷⁸ See Presentation The City of Roatán: A Zone for Economic Development and Employment dated 22 Sep. 2017 (C-307) pp. 4-11.

²⁷⁹ Letter from Erick A. Brimen to Octavio Sánchez (CAMP) dated 24 Sep. 2017 (C-315) pp. 3, 6-7.

²⁸⁰ See Brimen ¶ 28; *Requirements to be part of the ZEDE regime*, ZEDE (14 Nov. 2016) (C-451).

which the ZEDE would be developed to the ZEDE regime through a statement before a declaration public.²⁸¹

130. Between September and December 2017, HPI had numerous meetings and exchanges with CAMP to convert its September presentation submitted into a formal application to establish a ZEDE.²⁸² During one such meeting on 8 November 2017, Mr. Brimen and members of CAMP once again discussed legal stability protections available under the ZEDE Legal Framework, and the Honduran officials confirmed that the Technical Secretary “is entitled by the ZEDE law to sign Legal Stability Agreements . . . acting as public officer and representative of Honduras”²⁸³
131. During that same period, HPI began to acquire the property that would become the seed of Próspera ZEDE on Roatán. As a launching ground, HPI had identified land in Pristine Bay on the northern shore of Roatán, adjoining the community of Crawfish Rock. Mr. Delgado knew the area well, had visited Pristine Bay before, and had identified “what [he] thought was an ideal location.”²⁸⁴ HPI created two Honduran land-holding vehicles over September and October 2017 for purposes of the acquisition: Brimont Holding Company S.A. and Brimont Investments S.A.²⁸⁵ On 15 December 2017, HPI made its first land acquisition through Brimont Investments S.A., which purchased a

²⁸¹ See Brimen ¶ 28; *Requirements to be part of the ZEDE regime*, ZEDE (14 Nov. 2016) (C-451). These requirements were consistent with the requirement included in the conditional authorization that CAMP granted to Haven in June 2016. See Delgado ¶ 17; Certificate of conditional authorization for incorporation to the ZEDE regime granted by CAMP to Haven dated 24 Jun. 2016 (C-458).

²⁸² See Brimen ¶¶ 33-36.

²⁸³ Notes of Discussion with CAMP dated 8 Nov. 2017 (C-462).

²⁸⁴ Delgado ¶¶ 12, 16.

²⁸⁵ See Deed of Incorporation of Brimont Holding Company S.A. dated 22 Sep. 2017 (C-301). The initial shareholders of Brimont Holding were Mr. Brimen and Cesar Abraham Tercero Núñez, a Honduran national. In October 2018, Mr. Brimen acquired Mr. Núñez’s shareholding and ceded all but one of his shares to HPI. Registry of Shareholders of Brimont Holding Company S.A. dated 16 Oct. 2018 (C-302); Notarization of Shareholder Registry of Brimont Holding Company S.A. dated 17 Oct. 2018 (C-303); Deed of Incorporation of Brimont Investment S.A. dated 28 Sep. 2017 (C-304). The shareholders of Brimont Investments were Brimont Holding and César Abraham Tercero Nuñez. In October 2018, Gladys Xiomara Medina Díaz became a shareholder in place of César Abrahán Tercero Núñez. Share Certificate of Brimont Investment S.A. dated 10 Oct. 2018 (C-305); Notarization of Shareholders Registry of Brimont Investments S.A. dated 17 Oct. 2018 (C-306).

parcel of 4.7 acres between Pristine Bay and Crawfish Rock in Roatán.²⁸⁶

132. Then, on 29 December 2017, after months of close coordination with CAMP, HPI submitted its formal application to incorporate a ZEDE (then named the Village of North Bay) under the ZEDE Legal Framework (“**ZEDE Application**”).²⁸⁷ In accordance with CAMP’s requirements,²⁸⁸ the ZEDE Application included, among other things, a Master Plan & Feasibility Study for the first phase of the ZEDE,²⁸⁹ with a layout designed by renowned urbanist Juan Pablo Rosales (who, among other accolades, developed a community master plan for a community in the U.K. for the Prince of Wales and a master plan for Ciudad Cayala in Guatemala),²⁹⁰ and evidence of financial means.²⁹¹
133. The ZEDE Application also included projections for job creation, anticipated business sectors to be targeted (*e.g.*, medical tourism, recreational tourism, online outsourcing, sustainable open water fish farming), social impact & community improvement plans, and an overview of the governance framework, policies, and legal instruments to be established, including the implementation of a justice system and dispute resolution mechanisms.²⁹²

²⁸⁶ See Title for Purchase of Land (4.7 Acres) by Brimont Investments S.A. to Loma de Obos S.A. dated 15 Dec. 2017 (C-463).

²⁸⁷ See ZEDE Application Packet for: Village of North Bay, A Zone for Economic Development and Employment, by Sociedad para el Desarrollo Socio-Económico de Honduras, LLC (C-17) p. 7. The ZEDE Application was printed on the letterhead of NeWAY Capital but stated that HPI was the entity proposing the creation of the ZEDE.

²⁸⁸ See *Requirements to be part of the ZEDE regime*, ZEDE (14 Nov. 2016) (C-451) (stating that CAMP required ZEDE applications to include a feasibility study, evidence of financial means, and a master plan).

²⁸⁹ See ZEDE Application Packet for: Village of North Bay, A Zone for Economic Development and Employment, by Sociedad para el Desarrollo Socio-Económico de Honduras, LLC (C-17) § 1.

²⁹⁰ See ZEDE Application Packet for: Village of North Bay, A Zone for Economic Development and Employment, by Sociedad para el Desarrollo Socio-Económico de Honduras, LLC (C-17) p. 13 (“[Juan Pablo Rosales] received his architecture degree from Universidad Francisco Marroquin and his MBA from University of Miami. He began following the work of the brilliant new-urbanist Leon Krier, an English architect who [has] worked on projects worldwide and was selected by the Prince of Wales, Charles, to Master Plan a community for him in the U.K. Mr. Rosales brought Mr. Krier to Guatemala and developed the Master Plan and Design for Ciudad Cayala, a new multi-use community of 42 [hectares] within Guatemala City.”). See also Delgado ¶¶ 24-26.

²⁹¹ See ZEDE Application Packet for: Village of North Bay, A Zone for Economic Development and Employment, by Sociedad para el Desarrollo Socio-Económico de Honduras, LLC (C-17) § 7.

²⁹² See *id.* pp. 19, 36, 37, 39, 40-55.

134. In addition, the ZEDE Application included written commitments from a diverse group of investors, each expressing their intent to invest in the ZEDE project, contingent upon its approval by Honduras. The letters of intent were accompanied by reference letters from financial institutions attesting to the investors' financial capacity.²⁹³
135. Throughout, the ZEDE Application demonstrated how HPI would expand from its initial 4.7 acres into a large-scale, long-term project in close cooperation with Honduras. As HPI explained:

[w]e look forward to continue working with you over the coming months to help build the foundations of this promising vision while in parallel seeking to maximize our positive social impact on behalf of the people of Honduras and beyond.

While our project's long term vision is grand, requiring ultimately north of 9-figures of investment (in USDs), our entrepreneurial approach, starting with a pilot and then moving forward by phases, is best aligned with an agile culture of results driven execution. To this end, our pilot project and phase 1 of development requires **\$10M and \$5.5M respectively**. Alongside our pilot project we will be working closely with you to develop the overall governing framework and optimized regulatory environment.²⁹⁴

(b) In December 2017, Honduras certifies the incorporation of Próspera ZEDE

136. On 29 December 2017, CAMP convened in the Office of the Executive Secretary of the Council of Ministers at the Presidential Residence in Tegucigalpa.²⁹⁵ Upon consideration of the ZEDE Application, CAMP issued a Certificate of Registration and Incorporation ("**Próspera ZEDE Authorization**") whereby it incorporated Próspera ZEDE (then called the ZEDE Village of North Bay) into the ZEDE regime and authorized its development by HPI:

[a]fter careful consideration, the Standing Committee decided to grant [the] project authorization for the development of a Zone for Employment and Economic Development in low population or uninhabited land that [HPI] has bought and in

²⁹³ See *id.* pp. 97-106.

²⁹⁴ *Id.* p. 2 (emphasis in original).

²⁹⁵ See Act No. 17 issued by CAMP dated 29 Dec. 2017 (C-464).

several lots over which they have purchased options in the Municipality of Roatan, Island of Roatan, Bay Islands of the Republic of Honduras.²⁹⁶

137. CAMP also confirmed the incorporation of Claimants' 4.71 acre parcel between Pristine Bay and Crawfish Rock into the ZEDE.²⁹⁷ Clearly indicating the intent that this was just a launchpad and more land would be incorporated, CAMP registered the parcel as Property No. 1.²⁹⁸
138. In addition, the Próspera ZEDE Authorization instructed HPI, as the ZEDE's promotor and organizer, to propose candidates for appointment as Technical Secretary of the ZEDE in accordance with Article 11.3.b. of the ZEDE Law;²⁹⁹ required that the Technical Secretary, once appointed, establish a trust for the purposes established in the ZEDE Law; and required an environmental impact study before breaking ground.³⁰⁰
139. This was a major milestone for HPI: Honduras had approved its application to create the first ZEDE in Honduras under the ZEDE Legal Framework with all the attendant rights and guarantees of autonomy and legal stability. Now, HPI could proceed to organize the ZEDE and develop its own business within it.

(c) In 2018, CAMP appoints a Technical Secretary for Próspera ZEDE and approves its Charter and Bylaws

140. Following the incorporation of Próspera ZEDE, HPI collaborated with CAMP to put in place the

²⁹⁶ Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay dated 29 Dec. 2017 (C-16).

²⁹⁷ See ZEDE Application Packet for: Village of North Bay, A Zone for Economic Development and Employment, by Sociedad para el Desarrollo Socio-Económico de Honduras, LLC (C-17) p. 9, 59 (attaching the agreement of land incorporation into the ZEDE Village of North Bay of 4.717 acres); Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay dated 29 Dec. 2017 (C-16).

²⁹⁸ See Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay, dated 29 Dec. 2017 (C-16).

²⁹⁹ See *supra* §II.B.1.c; ZEDE Law (C-6) Art. 11.3.b. (“[CAMP’s functions shall be the following]: To appoint and remove the Technical Secretary of each [ZEDE], the appointment shall be made upon a proposal from: . . . b. [t]he promoters or organizers of the [ZEDE] in case it is located in an area of low population density.”).

³⁰⁰ See Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay dated 29 Dec. 2017 (C-16). Próspera ZEDE submitted the required environmental impact study to CAMP in September 2019. Letter from Próspera ZEDE to CAMP dated 23 Sep. 2019 (C-465); Environmental Technical Report of Corporate Offices Seed Project by ACQUA dated Sep. 2019 (C-466).

governance structure for the ZEDE,³⁰¹ including the appointment of the Technical Secretary, who would be the ZEDE's chief executive officer, and the enactment of the Próspera ZEDE's Charter and Bylaws, which would be the basic regulation for how the ZEDE would operate.

141. In the months leading to the adoption of the Charter and Bylaws, HPI worked closely with CAMP to define the key parameters for how Próspera ZEDE would operate. One notable instance of this collaboration occurred in March 2018, when representatives of HPI (including Mr. Brimen and Mr. Delgado) met with representatives of CAMP (Mr. Sánchez and Mr. Pineda) to discuss various points on Próspera ZEDE's governance, including its legal and policy structures.³⁰² At the conclusion of the meeting, the participants executed a written memorandum reflecting the joint understanding of HPI and CAMP on the fundamentals of governance.³⁰³
142. On 27 June 2018, in accordance with Honduras's instructions in the Próspera ZEDE Authorization and the ZEDE Law, HPI proposed Tristan Monterroso as the Technical Secretary candidate for CAMP's consideration and approval.³⁰⁴ Mr. Monterroso was a native of Roatán, where he was also a pastor with strong ties to the community.³⁰⁵ He was also well known to Mr. Brimen, who knew him to be an honorable person.³⁰⁶ The nomination was accompanied by personal and professional information to ensure that CAMP could perform full background checks.³⁰⁷ To avoid any appearance of a conflict of interests, Mr. Monterroso agreed to place his minority shareholding in

³⁰¹ See Delgado ¶ 29.

³⁰² See *id.* ¶ 30.

³⁰³ Memorandum, General and structural issues when forming a ZEDE dated 20 Mar. 2018 (C-311).

³⁰⁴ See Letter from Mr. Erick Brimen to CAMP dated 27 Jun. 2018, proposing Mr. Monterroso as Technical Secretary (C-467).

³⁰⁵ See Email from Erick A. Brimen relating TS Nomination Letter, attaching SDEH Nomination of TS dated 27 Jun. 2018 (C-468); Letter from Mr. Erick Brimen to CAMP dated 27 Jun. 2018, proposing Mr. Monterroso as Technical Secretary (C-467).

³⁰⁶ See Brimen ¶ 44.

³⁰⁷ See Letter from Mr. Erick Brimen to CAMP dated 27 Jun. 2018, proposing Mr. Monterroso as Technical Secretary (C-467) (including Mr. Monterroso's motivation letter and CV).

HPI in a blind trust.³⁰⁸

143. On 21 August 2018, in accordance with Article 11 of the ZEDE Law, CAMP appointed Mr. Monterroso as the Technical Secretary for Próspera ZEDE (then still known as the ZEDE Village of North Bay).³⁰⁹
144. On 23 August 2018, following months of close collaboration between HPI and CAMP, the Technical Secretary signed the Charter and Bylaws of the ZEDE Village of North Bay (“**Charter**”), which CAMP formally approved that same day.³¹⁰
145. The Charter is the sole organic rule of the ZEDE and is superior to all other rules of the ZEDE. It sets out the founding principles and rules for the governance and operation of Próspera ZEDE and ratifies Honduras’s authorization to HPI to carry out its investment in Próspera ZEDE.
- The Charter memorializes the purpose of Próspera ZEDE, namely “to promote human flourishing by protecting the individual rights of life, liberty, and property; furthermore, facilitating Honduras’ integration into world markets, attracting domestic and foreign investment, creating jobs, and allowing sustained improvement of the living conditions of its residents.”³¹¹
 - The Charter confirms that HPI is the Promoter and Organizer of Próspera ZEDE, “entitled to all rights and duties conferred under the [ZEDE Organic Law].”³¹²
 - The Charter confirms that Próspera ZEDE is a special regime zone in the form of a ZEDE, that possesses “all the rights, privileges, and duties of a ZEDE in the Republic of Honduras and has its own legal personality.”³¹³
 - The Charter establishes a Council for the ZEDE (“**Council**” or “**Próspera Council**”), composed of the Technical Secretary, a Secretary, a Treasurer, and six other members, which shall hold regular meetings at least twice per year and may approve statutes, regulations, ordinances, and resolutions for issuance by the Technical Secretary.³¹⁴

³⁰⁸ See Brimen ¶ 44.

³⁰⁹ See Appointment of Technical Secretary of ZEDE Village of North Bay (C-21).

³¹⁰ See Charter and Bylaws of ZEDE Village of North Bay dated 23 Aug. 2018 (CLA-4).

³¹¹ See *id.* § 2.03.

³¹² *Id.* § 1.02(k).

³¹³ *Id.* § 2.01(3).

³¹⁴ See *id.* Art. III §§ 3.05, 3.09(11).

- The Charter establishes a Trust to manage assets, collect taxes and oversee public funds, which may delegate the provision of services to a General Service Provider (“GSP”).³¹⁵ The duration of the contract with the GSP may be up to 50 years.³¹⁶
- The Charter provides that the primary instruments of governance in the ZEDE shall be the Agreements of Coexistence entered into by ZEDE residents with the ZEDE on the basis of informed consent.³¹⁷ It further requires that all residents and businesses in the ZEDE enter into a service contract with the GSP.³¹⁸
- In accordance with CAMP’s ZEDE Regulation No. 001-2018, the Charter provides for a Próspera ZEDE Registry for property incorporated in Próspera ZEDE.³¹⁹

146. To support the development of Próspera ZEDE, HPI assembled a team and advisory board including thought leaders, business and real estate development professionals, and successful entrepreneurs with first-hand experience in developing SEZs.³²⁰ Notable members included (in alphabetical order):

- *Tom Murcott*: a seasoned marketing and real estate development expert who successfully master planned and attracted investors in city-scale projects in Asia as part of partnerships with local governments.³²¹ At Songdo IDB, a 15,000-acre US\$ 35 billion purpose-built city in South Korea, Mr. Murcott was part of the team that successfully populated the city and attracted businesses “by offering favorable legal and regulatory conditions” and providing a convenient location and world-class infrastructure, including “a 105-acre park in the middle modelled after New York City’s Central Park.”³²² Mr. Murcott also helped develop the master plan for another city-scale project called Meixi Lake, in China’s Hunan province, which featured “an artificial lake of around 500 acres, a convention center, an R&D district, and high rise mixed-use residential towers. . . .”³²³ Mr. Murcott joined HPI after a careful evaluation of the Próspera ZEDE’s chances of success based on his

³¹⁵ See *id.* Arts. V, VII.

³¹⁶ See *id.* § 7.01(2).

³¹⁷ See *id.* § 3.09.

³¹⁸ See *id.* § 7.04.

³¹⁹ See *supra* § II.C.4.b; ZEDE Regulation No. 001-2018 dated 30 Jan. 2018 (C-456); Charter and Bylaws of ZEDE Village of North Bay dated 23 Aug. 2018 (CLA-4) § 11.06.

³²⁰ Brimen ¶¶ 29, 57-59; NeWAY, *Meet the Team* (C-300).

³²¹ Murcott ¶¶ 5-10, Appendix A.

³²² See Brimen ¶ 29(b); Murcott ¶¶ 6-7, Appendix A p. 1.

³²³ Murcott ¶ 9.

accumulated experience assessing the viability of city-scale projects worldwide based on his direct experience with such projects in China and South Korea;³²⁴

- *Oliver Porter*: an expert in the field of private city governance with years of experience developing innovative public-private partnerships for cities. He is the founder and architect behind the private city of Sandy Springs, Georgia with a population over 100,000, and has catalyzed the creation of several new cities around the world based upon his new model of public-private partnerships for municipal governance.³²⁵
- *Chirag Shah*: the former Chief Strategy & Business Development Officer of the DIFC,³²⁶ which was the catalyst for transforming Dubai from a rustic village in the UAE into a booming metropolis.³²⁷ The DIFC hosts over 7,700 active companies and despite its relatively small working population (approximately 48,000 professionals), it contributes approximately 6% of the UAE's GDP.³²⁸ Mr. Shah is a globally recognized financial services expert with a proven track record in banking, capital markets, fintech, financial infrastructures, insurance, real estate, asset management, and regulatory policy.³²⁹ He has a long-standing reputation of succeeding in building international financial centers, and joined the project after careful consideration "because it had serious leadership," and "because [he] thought [they] could replicate the success in Dubai in Honduras."³³⁰
- *Jeffrey Singer*: an international professor of international business, M&A and business ethics, and former senior Vice-President of Nasdaq OMX Group.³³¹ Mr. Singer is the former CEO of the DIFC and former CEO of Nasdaq Dubai, who led the DIFC out of the global financial crisis in 2008 and through a sustained period of rapid growth;³³²
- *Shanker Singham*: a renowned expert and advisor to governments on trade and SEZs. Mr. Singham is the Director of the International Trade and Competition Unit ("ITCU") of the UK-based think tank Institute of Economic Affairs, with experience in the privatization of the United Kingdom electricity market, the transition of Central and Eastern European economies to capitalism, and trade liberalization in Latin America;³³³

³²⁴ *Id.* ¶¶ 10-12.

³²⁵ *See NeWAY, Meet the Team* (C-300).

³²⁶ Shah ¶ 7; Appendix A p. 2.

³²⁷ Shah ¶ 27.

³²⁸ *Id.* ¶ 8.

³²⁹ *See NeWAY, Meet the Team* (C-300); Brimen ¶ 58(a); Shah ¶¶ 6-9; Appendix A p. 1.

³³⁰ Shah ¶ 10.

³³¹ *See NeWAY, Meet the Team* (C-300).

³³² *See id.*

³³³ *See id.*

- *Ott Vatter*: entrepreneur, real estate investor, and E-governance expert who built and served as managing director of Estonia’s digital E-residency program.³³⁴ Mr. Vatter worked with Estonia for years, helping the country create its strategic roadmap and develop the E-residency system from conception to implementation.³³⁵

147. Each of these experts was engaged to contribute to the vision of planning and developing Próspera ZEDE into a center of prosperity that could be a “catalyst[] for true transformation and growth,” and guided by “a strong moral compass focusing on addressing pressing local needs and delivering good profits and positive social change.”³³⁶

(d) In early 2018, HPI decides to expand Próspera ZEDE to Port Satuyé in La Ceiba

148. As anticipated in the ZEDE Application, Claimants quickly focused on expanding Próspera ZEDE beyond Roatán.³³⁷ As Mr. Delgado explains, Roatán was intended to be the “foothold” of Próspera ZEDE, with the mainland as the next step of development.³³⁸

149. HPI chose the Port of Satuyé, on the outskirts of La Ceiba in the department of Atlántida on the northern coast of Honduras. La Ceiba is the second most important port in Honduras and is both a short ferry ride from Roatán and easily accessible from the U.S. by sea.

³³⁴ *See id.*

³³⁵ *See id.*

³³⁶ *See NeWAY, Investment Model* (C-448).

³³⁷ *See* Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay dated 29 Dec. 2017 (C-16).

³³⁸ Delgado ¶ 28.



150. As Mr. Brimen explains, La Ceiba was “an ideal site for a business and industrial hub focused on manufacturing and supply chain services.”³³⁹ Shortly after the Charter was signed, Mr. Brimen laid out the plans for La Ceiba and its relationship to the Roatán hub as follows:

[w]e envision a future where Roatan grows to be the Hong Kong equivalent for the region - with top-talent from the island and around the world living in a wealthy and largely service-based economy. From Roatan, this top-talent will organize and develop a myriad of business opportunities that include the mainland, particularly in and around La Ceiba where land is cheaper, labor is plentiful, and opportunities abound for massive development opportunities that have tremendous profitability potential thanks to our ZEDE jurisdiction.³⁴⁰

151. Roatán and La Ceiba were uniquely positioned to replicate the dynamic between Hong-Kong and Shenzhen in the western hemisphere. Both locations would together form a prosperity hub on the northern corridor of Honduras. Roatán would develop into an International Financial Center and service hub emulating the success of Hong Kong, while La Ceiba would unleash untapped potential of export-oriented industries.³⁴¹ And much like how Hong-Kong’s financial center funded the early

³³⁹ Brimen ¶ 65.

³⁴⁰ Internal Letter from NeWAY and HPI CEO, Erick A. Brimen dated 26 Aug. 2018 (C-318)

³⁴¹ See “Roatán-La Ceiba: The Hong Kong-Shenzhen of the Caribbean” (C-470).

investments into Shenzhen's manufacture centers, Próspera ZEDE's development in Roatán would be able to provide the investment capital needed to launch industries in La Ceiba.³⁴²

152. Mr. Murcott, who joined the project in early 2018, recalls that one of the reasons he thought Próspera ZEDE had great potential was that "HPI had identified an excellent location for their port,"³⁴³ and particularly that La Ceiba has "access to an international airport with a long runway that could be used for both cargo and passenger flights."³⁴⁴ Having easy access to an international airport had been a key driver of success in Songdo IBD, Mr. Murcott's previous project in South Korea.³⁴⁵
153. La Ceiba also had already been identified by Honduras as a priority area for the development of ZEDEs.³⁴⁶
154. As Mr. Brimen explains, beginning in 2018, HPI engaged in business planning and coordination efforts in relation to La Ceiba which eventually led to the incorporation of the first plot of land in La Ceiba into Próspera ZEDE in 2021.³⁴⁷

(e) Between 2018 and 2019, HPI receives support from the central Government, local authorities, and neighboring communities

155. Between 2018 and 2019, Honduras went to considerable lengths to support and reinforce HPI's decision to establish Próspera ZEDE on Roatán and La Ceiba. The evidence shows a multi-level State effort to welcome the investment: letters of support were issued; express governmental

³⁴² See "Roatán-La Ceiba: The Hong Kong-Shenzhen of the Caribbean" (C-470).

³⁴³ Murcott ¶ 11.

³⁴⁴ Murcott ¶ 11.

³⁴⁵ Murcott ¶ 7.

³⁴⁶ See *supra* § II.B.4; *The government seeks to generate 200 thousand Jobs via the ZEDEs*, EL HERALDO (22 Oct. 2017) (C-454) (showing Atlántida as one of the departments in which ZEDEs had been pre-authorized and in which ZEDE investments were expected). Pursuant to Article 39 of the ZEDE Law, the low-population-density areas of Roatán were subject to the ZEDE regime. See *supra* § II.B.1.c; ZEDE Law (C-6) Art. 39 ("[T]he areas with low population density in the municipalities located in departments adjoining the Gulf of Fonseca and the Caribbean Sea are declared subject to the [ZEDE] regime.").

³⁴⁷ See Brimen ¶¶ 57-61, 65; Email from CAMP to Próspera ZEDE Technical Secretary dated 29 Mar. 2021 (C-471); Certificate of Registration and Incorporation of Parcels into Próspera ZEDE dated 29 Mar. 2021 (C-331).

commitments were articulated regarding infrastructure, security, and energy; and the surrounding communities showed enthusiastic endorsement. HPI enjoyed, and was encouraged to rely upon, the sustained backing of Honduras.

156. In August 2018, the mayor of La Ceiba wrote to Mr. Brimen “offer[ing his] voice in support of the ZEDE model,” and inviting investment in a 431-acre parcel in the Port of Satuyé.³⁴⁸ Endorsement at the Congress level followed. On 10 October 2018, Congressman Bader Dip, representing the Department of Atlántida in which La Ceiba is located, wrote Mr. Brimen reiterating the commitments of the mayor of La Ceiba and giving assurances of his “full support.”³⁴⁹
157. Support from Roatán was equally categorical. On 22 March 2019, the mayor of Roatán wrote to Mr. Brimen to express his support and the support of the Municipality of Roatán for the ZEDE efforts on the island, and to “invite [Mr. Brimen] to utilize this ZEDE jurisdiction to help [his] ventures in sustainable open water fish farming, medical tourism, education, and hospitality, finance and other target industries flourish in Roatán.”³⁵⁰
158. Less than two weeks later, on 1 April 2019, the Governor of the Bay Islands also sent a letter to Mr. Brimen, urging him “to pursue a ZEDE in the Bay Islands,” offering the “full support of the department of the Bay Islands,” and committing to provide “the aide we can” to realize the project.³⁵¹
159. HPI also fostered positive relations with the local communities, particularly Crawfish Rock, a community of English-speaking Afro-descendants located in the Pristine Bay area, where Próspera ZEDE’s activities in Roatán are centered. [REDACTED]
- [REDACTED]
- [REDACTED]

³⁴⁸ See Letter from the Mayor of La Ceiba to Erick Brimen dated 14 Aug. 2018 (C-20).

³⁴⁹ Letter from Congressman Bader Dip to Erick Brimen dated 10 Oct. 2018 (C-22).

³⁵⁰ Letter from the Mayor of Roatán to Erick Brimen dated 22 Mar. 2019 (C-24).

³⁵¹ Letter from the Governor of the Bay Islands to Erick Brimen dated 1 Apr. 2019 (C-25).



160. As explained by Mr. Brimen, HPI's management actively sought the consent and support of neighboring villages and key local leaders by engaging in consultations and creating win-win situations through job creation and income-generating opportunities:

[t]hese initiatives were not required under the ZEDE regime, but were important to us because we genuinely wanted to make a greater and early difference in people's lives.³⁵³

161. In April 2019, HPI's representatives, Mr. Brimen and Joel Bomgar (a member of HPI's Board of Directors), met with the President of Honduras, the Minister of Economic Development, and members of CAMP to provide an update on HPI's progress in Próspera ZEDE and address any questions.³⁵⁴ HPI had "the full support of the President and his ministers and secured a follow-up meeting with the full Supreme Court."³⁵⁵

162. Shortly thereafter, HPI's representatives met with Justices of the Supreme Court of Honduras to support the creation of the ZEDE jurisdiction and presented a list of international judges and jurists that could be appointed to it.³⁵⁶ On 10 April 2019, Mr. Brimen was invited to deliver a presentation before all the justices of the Supreme Court and the President of Honduras to discuss next steps for the creation of the ZEDE jurisdiction.³⁵⁷

163. HPI also met with Honduran officials from the Property Institute and other authorities to obtain support and ensure that Honduras implemented appropriate measures to allow the transfer of land

³⁵² [REDACTED]

³⁵³ Brimen ¶ 56.

³⁵⁴ See North Bay Prosperity Fund, LP Quarterly Update for Q1 2019, presented by HPI (C-472) p. 5.

³⁵⁵ *Id.* p. 6.

³⁵⁶ See *id.* pp. 5-6.

³⁵⁷ See *id.* p. 6.

from the national Property Registry to the special property register for ZEDEs pursuant to the ZEDE Law and CAMP's Regulation No. 001-2018³⁵⁸ and thereby allow Próspera ZEDE to function. On 10 June 2019, the Property Institute adopted procedures for transferring real estate registrations from the national Property Registry to the registries of the ZEDEs.³⁵⁹ This was a key step for enabling ZEDEs to establish and maintain their own specialized property registries in accordance with CAMP's regulations,³⁶⁰ and helped ensure administrative autonomy and control over land management within their jurisdictions.³⁶¹ Notably, the Property Institute's procedures do not contemplate the transfer of real estate registrations back into the national Property Registry,³⁶² which reflects Honduras's intent that ZEDEs would become a permanent feature of the legal framework applicable to land within Honduran territory and that land incorporated into the regime would remain under that status indefinitely.

164. Mr. Shah also made several trips to Honduras and, together with Mr. Brimen, met with local leaders and officials, such as representatives of the Central Bank of Honduras.³⁶³ During one such trip in October 2019, Mr. Shah delivered a presentation to local business leaders and government officials covering his experience building the DIFC.³⁶⁴ Among other things, Mr. Shah's presentation addressed the importance of the legal foundations that the UAE had put in place to enable the

³⁵⁸ ZEDE Law (C-6) Art. 26 (providing that real estate included within "the spatial area of competence" of ZEDEs may be incorporated into the ZEDE regime in accordance with the provisions of Article 25" and that "[o]wners of real estate who wish to incorporate their property into this regime must [i] make a declaration before a notary public and [ii] have it entered in the special register kept for this purpose by the [ZEDEs]"), Art. 39 (providing that that "[o]wners of real estate who wish to incorporate their property into [the ZEDE regime] must [i] make a declaration before a notary public and [ii] register it in the special register kept for this purpose by the [ZEDEs]"); ZEDE Regulation No. 001-2018 dated 30 Jan. 2018 (C-456).

³⁵⁹ See Certification of the Agreement No. CD-IP-008-2019 issued by the Property Institute dated 10 Jun. 2019 (C-325).

³⁶⁰ See *supra* § I.B.4.

³⁶¹ See Brimen ¶¶ 72-73.

³⁶² See generally Certification of the Agreement No. CD-IP-008-2019 issued by the Property Institute dated 10 Jun. 2019 (C-325).

³⁶³ See Shah ¶¶ 11-12.

³⁶⁴ See Shah ¶ 12; Chirag Shah (Strategic Advisor), Honduras Próspera – Platform for Prosperity dated October 2019 (C-182).

creation of the DIFC and how having “world-class governance was essential to the DIFC’s success.”³⁶⁵ Mr. Shah recalls that during and after his presentation there was a “sense of excitement” in the audience and that local officials had high hopes for Próspera ZEDE’s ability to bring investments and development to Honduras.³⁶⁶

(f) In 2019, Honduras and HPI amend the Charter and Bylaws of Próspera ZEDE

165. In August 2019, Claimants engaged in conversations with Honduras about amendments to the Charter. On 15 August 2019, HPI met with CAMP officials in the Presidential House to discuss governance, taxes, enhanced human rights protections, and hierarchy of legal instruments, among other matters to consider in a prospective amendment to the Charter.³⁶⁷ Following additional discussions, CAMP approved the amendment of the Charter and Bylaws of ZEDE Village of North Bay (“**Amended Charter**”) on 13 September 2019.³⁶⁸
166. The Amended Charter formally changed the name of the ZEDE Village of North Bay to Próspera ZEDE, and introduced changes to the ZEDE’s legal and institutional framework, including among other things: clarification that the boundaries of Próspera ZEDE would encompass all of the real property incorporated into it under the ZEDE Law, provision that the incorporation of any property not owned by HPI or its affiliates would require the consent of HPI,³⁶⁹ enumeration of the rights of residents;³⁷⁰ refinement of the governance structure of the Próspera Council, including provisions as to the selection process, terms, removal, and suspension of its members;³⁷¹ refinement of the

³⁶⁵ Shah ¶ 12. See Chirag Shah (Strategic Advisor), Honduras Próspera – Platform for Prosperity dated October 2019 (C-182) pp. 8-10, 11-15.

³⁶⁶ Shah ¶ 12.

³⁶⁷ See Agenda for Intergovernmental meeting CAMP-ZEDE of North Bay dated 15 Aug. 2019 (C-474); Minutes of Intergovernmental Meeting – CAMP-ZEDE of North Bay dated 15 Aug. 2019 (C-475).

³⁶⁸ See Charter of Próspera ZEDE dated 12 Sep. 2019 (CLA-5); Letter from CAMP to the Technical Secretary of Próspera ZEDE dated 12 Sep. 2019 (C-31); Certificate issued by CAMP on 23 Oct. 2020 (C-476).

³⁶⁹ See Charter of Próspera ZEDE dated 12 Sep. 2019 (CLA-5) § 2.01(4).

³⁷⁰ See *id.* § 2.06.

³⁷¹ See *id.* §§ 3.08, 3.15.

procedure for promulgation and approval of statutes and regulations, including specific timeframes;³⁷² implementation of a tax structure that capped aggregate tax revenues at 7.5% of Próspera ZEDE's GDP, with maximum rates for income tax (10%), value-added tax (5%), land-value tax (2.5%), and the possibility of setting fixed mandatory payments instead of other taxes;³⁷³ and the creation of a "Resident Bill of Rights" to be incorporated into the Agreements of Coexistence with residents, which enumerates fundamental rights, including the right to life, property, freedom of thought, speech, conscience, and religion, freedom of contract, procedural due process, freedom from ex post facto laws, privacy, and presumption of liberty.³⁷⁴

167. Professor Chaisse confirms that the Amended Charter and Próspera ZEDE's internal governance structure are in line with international best practices and modern SEZ models, and operate within well-defined constitutional and supervisory limits:

Próspera ZEDE . . . is a case of institutional differentiation within the accepted bounds of SEZ design. Its regulatory autonomy is extensive, but it does not exceed comparative models. What distinguishes Próspera ZEDE is its innovative structure. Its internal legal system is consolidated, rule-based, and anchored in constitutional and statutory delegation. The result is legal sophistication, not legal exception. . . . The Amended and Restated Charter and Bylaws of Próspera ZEDE establish a comprehensive internal governance system, including rulemaking, administrative, judicial, and fiscal functions. CAMP approved the Charter and retains supervisory powers. The Charter of Próspera ZEDE does not itself codify contract or property law; rather, acting under the ZEDE Organic Law, it delegates rule-making to the Technical Secretary and Council, the Trustees of which are selected by the Promoter and Organizer and Residents. These internal mechanisms, subject at all times to CAMP's supervisory authority, mean that the Council functions as a democratically structured administrative body operating within a State-approved trust framework.³⁷⁵

³⁷² See *id.* § 3.09(8).

³⁷³ See *id.* §§ 8.01, 8.02. In addition, only 50% of income tax is deemed taxable (resulting in an effective 5% income tax), only 10% of business income tax is deemed taxable (resulting in an effective 1% tax on gross income), and only 50% of a final retail sales price is deemed value added (resulting in an effective 2.5% sales tax). See Brimen ¶ 85(d).

³⁷⁴ See Charter of Próspera ZEDE dated 12 Sep. 2019 (CLA-5) Art. XII. The Charter also maintained the provision for a Próspera ZEDE Registry. See *id.* § 11.06.

³⁷⁵ Chaisse ¶¶ 41, 44-45.

4. Between 2019 and 2021, HPI works to implement its business plan and to build Próspera ZEDE into a transformative platform for economic growth and development and make a positive impact on Honduras

168. Between 2019 and 2021, HPI worked to implement its business plan and build Próspera ZEDE into a transformative platform for economic growth and development, making a positive impact on Honduras. Claimants refined their business model and grew their corporate group to implement it (Section II.C.4.a); developed and refined Próspera ZEDE’s regulatory framework to deliver world-class governance (Section II.C.4.b); further developed the master planning and infrastructure for Próspera ZEDE and constructed world-class real estate designed to attract residents and investors (Section II.C.4.c); devoted substantial efforts to business development and convince investors to establish businesses in Próspera ZEDE (Section II.C.4.d); and invested in the development of neighboring communities (Section II.C.4.e).

(a) Claimants refine their business model and grow their corporate group to implement it

169. In early 2019, Claimants engaged Ernst & Young (“EY”), one of the world’s leading professional services firms, to perform a comprehensive commercial and market analysis aimed at validating and streamlining their initial business plan and maximizing attraction of top-tier institutional capital and strategic partners. The mandate, code-named “Project Oasis,” culminated in a final report delivered in July 2019.³⁷⁶ EY confirmed that Roatán and La Ceiba enjoyed significant strategic advantages, particularly within a ZEDE: (i) Roatán was Honduras’s premier tourist destination, had existing international airport connectivity, deep-water cruise-ship infrastructure, availability of an English-speaking workforce, and strong brand recognition in North American leisure markets; while (ii) La Ceiba had a strategic location and an existing port and international airport.³⁷⁷

170. Claimants business model is premised on two principal lines of business: (i) governance as a service (“GaaS”), which includes delivery of municipal services through the GSP as well as providing

³⁷⁶ See EY, Project Oasis Final Report (Jul. 2019) (C-322).

³⁷⁷ See EY, Project Oasis Final Report (Jul. 2019) (C-322) pp. 20-48.

dispute resolution services, and (ii) real estate acquisition and development.

171. Claimants' GaaS business, its main line of business, consists of the delivery of Próspera ZEDE's governance services on a for-profit basis, as had been carefully discussed with Honduras over years, throughout the process of creating Próspera ZEDE and putting in place its governance framework.³⁷⁸ As Mr. Brimen explains:

GaaS is HPI's core product. It is rooted in the most true and tested model in the world: where good governance is provided, economic activity and investment follow. By making world-class governance accessible, we would empower businesses to thrive, attract high-quality employers, and generate well-paid jobs for the local population.³⁷⁹

172. In parallel, Claimants' real estate business included the acquisition of land and its incorporation into Próspera ZEDE where it would immediately increase in value and could be developed and its value further increased. As Mr. Brimen explains:

[o]n the real estate side, we developed a land-banking strategy, which consisted of acquiring land – through purchase or option agreements – and incorporating it into the ZEDE. This allowed the ZEDE to expand and increased the value of the land, which received an uplift from the ZEDE status. Indeed, due to improved governance and the regulatory and business environment, the value of the land would be multiplied several times (as happened in Hong Kong, Singapore, and other special economic zones). In addition, as third parties developed their own projects in the ZEDE, we would be entitled to collect development right fees for the use or transfer of real estate and therefore would benefit from facilitating their efforts.³⁸⁰

173. To better execute these businesses, HPI further refined its corporate structure and created additional entities for particular purposes. Among others and in particular:

- On 17 April 2019, HPI formed ZEDE of North Bay GSP, Inc in Próspera ZEDE,³⁸¹ which was formally accepted as GSP of Próspera ZEDE by the Council on 26 September 2019.³⁸² As Mr. Brimen explains, “the GSP would be the operational backbone of the ZEDE, with the right and responsibility to deliver core governance services and administer day-to-day

³⁷⁸ See *supra* § II.C.3.

³⁷⁹ Brimen ¶ 70.

³⁸⁰ Brimen ¶ 71.

³⁸¹ Articles of Incorporation for ZEDE of North Bay GSP, Inc. dated 17 Apr. 2019 (C-313).

³⁸² See Próspera ZEDE, Resolution Authorizing Entry into Third Amended Response to Request for Proposal (General Services Provider) dated 26 Sep. 2019 (C-314).

operations, for example by managing registries, overseeing security, collecting taxes on behalf of the ZEDE, and implementing approved regulations, subject both to the ZEDE's internal governance and the supervision and approval of CAMP.”³⁸³

- On 11 June 2019, HPI formed Claimant SJBDC in Delaware (initially named “Próspera Land SPV 1 LLC”).³⁸⁴ The company was formed to develop and manage HPI's properties on Roatán and be responsible for construction projects.³⁸⁵ Mr. Brimen describes the division of focus between HPI and SJBDC as follows: “HPI would be focused on GaaS and incubating land holding and development companies in exchange for a development fee, and SJBDC would be our land holding company and real estate investment vehicle in Roatán.”³⁸⁶
- In November 2019, HPI and certain renown retired U.S. judges and legal experts formed Claimant Próspera Arbitration Center LLC (“PAC”) as a limited liability company in the State of Texas.³⁸⁷ PAC was intended to become a world-class arbitration center, with experienced international jurists, scholars, and litigators serving as arbitrators, to deliver top-notch services within Próspera ZEDE (where arbitration was the default dispute resolution mechanism for contractual and patrimonial disputes) thereby further contributing to good governance as a fundamental pillar of Próspera ZEDE's value proposition and accordingly as a catalyst for investment and growth. Among the distinguished jurists participating in PAC were Arthur John Pelander III, former Justice of the Arizona Supreme Court, and John C. Gemmill, former Judge of the Arizona Court of Appeals.³⁸⁸ PAC's business plan explains its offering as follows:
 - PAC would serve as the default arbitration service provider for all contractual and patrimonial disputes in Próspera ZEDE (in accordance with Article 20 of the ZEDE Law).³⁸⁹ All private disputes in Próspera ZEDE would by default be administered by PAC (unless parties agreed otherwise), improving upon the model already proven successful in the courts of the DIFC. To that purpose, PAC's initial goals included: (i) establishing a relationship with, among others, ICSID, in order to access the institutional and procedural support it offers to conciliation

³⁸³ Brimen ¶ 50.

³⁸⁴ See Certificate of Formation of Próspera Land SPV 1 LLC, State of Delaware, Department of State, Division of Corporation dated Oct. 2016 (C-12); Amended and Restated Operating Agreement for St. John's Bay Development Company LLC dated 10 Sep. 2021 (C-40).

³⁸⁵ See Amended and Restated Operating Agreement for St. John's Bay Development Company LLC dated 10 Sep. 2021 (C-40).

³⁸⁶ Brimen ¶ 73.

³⁸⁷ See Certificate of Filing of PAC, Office of the Secretary of State, State of Texas dated Nov. 4, 2019 (C-32); Limited Liability Company Operating Agreement of Próspera Arbitration Center LLC dated Dec. 31, 2019 (C-33).

³⁸⁸ See Limited Liability Company Operating Agreement of Próspera Arbitration Center LLC dated 31 Dec. 2019 (C-33) Exhibit B. See also Próspera Arbitration Center, *Our Roster of Arbiters* (C-90).

³⁸⁹ See Business Plan for Próspera Arbitration Center dated 2020 (C-477) p. 1; ZEDE Law (C-6) Art. 20 (“The Zones of Economic Development and Employment (ZEDE) must make use of mandatory arbitration for all matters of a contractual or patrimonial nature . . .”).

commissions, tribunals, and other committees; and (ii) the development of the legal assistance and labor dispute mechanisms that Próspera ZEDE is required to provide pursuant to Articles 21 and 35 of the ZEDE Organic Law.³⁹⁰

- PAC would provide related services such as physical facilities (*i.e.*, hearing and meeting rooms with advanced technology), appointment of arbitrators, and appointment of experts in arbitral proceedings, as well as providing professional training, consulting services and digital platforms.³⁹¹
- PAC would initially be focused on Próspera ZEDE, but eventually expand internationally to the rest of Latin America and non-Latin America countries that are or could be important trading partners for ZEDEs in Honduras.³⁹² Ultimately, the purpose of PAC was both to deliver high-quality dispute resolution (which would, in turn, catalyze development and attract investment to Próspera ZEDE) and generate profits.³⁹³

174. Meanwhile, HPI was raising funds from sophisticated investors. In August 2019, HPI launched its Series A equity financing round, with a goal of raising US\$ 5 million to fund construction and operations in Próspera ZEDE.³⁹⁴ The Series A round closed in May 2020, having proved extremely successful: it was oversubscribed, raising approximately US\$ 14.5 million of capital for HPI, 290% of its target.³⁹⁵

175. As Claimants successfully obtained financing and their vision became feasible, they prepared detailed and comprehensive financial modeling documents, which established forecasts for Claimants' expected business operations:

- In March 2020, Claimants developed a 30 Year Financial plan for Claimants' vision of Próspera ZEDE ("**Financial Plan**"). This document established comprehensive projections for key components of Próspera ZEDE, including its anticipated growth, GDP

³⁹⁰ See Business Plan for Próspera Arbitration Center dated 2020 (C-477) pp. 7-8.

³⁹¹ See Business Plan for Próspera Arbitration Center dated 2020 (C-477) pp. 9-11.

³⁹² See Business Plan for Próspera Arbitration Center dated 2020 (C477) p. 6.

³⁹³ See Limited Liability Company Operating Agreement of Próspera Arbitration Center LLC dated 31 Dec. 2019 (C-33) § 2.6.

³⁹⁴ See Brimen ¶ 77.

³⁹⁵ See *id.*

and population statistics, land value, and land incorporation. It also provides detailed revenue and cost components for Claimants' GaaS business.³⁹⁶

- In August 2021, Claimants developed a 7-Year Real Estate Business Financial Model ("Real Estate Financial Model"). This model outlines the planned catalyst investments for the Pristine Bay area, including the planned residential and commercial developments, anchor tenants, and timelines for execution. It also includes projections for the anticipated sales revenues for development rights granted to third party developers.³⁹⁷

176. At the end of 2020, HPI also reorganized itself as a Delaware corporation "to maximize [its] access to capital as it expands and enhances its operations as promoter and organizer of Próspera ZEDE" ³⁹⁸ HPI was incorporated as a Delaware corporation on 1 December 2020.³⁹⁹

(b) Claimants develop and refine Próspera ZEDE's regulatory framework to deliver world-class governance

177. Between 2019 and 2021, Claimants continued developing the foundations of Próspera ZEDE's world-class governance institutions and infrastructure.

178. HPI developed an innovative regulatory framework for Próspera ZEDE that would attract investment and foster entrepreneurialism. This included, among other things, the following rules promulgated by the Technical Secretary in accordance with the Charter: (i) the Roatán Common Law Code;⁴⁰⁰ (ii) the Land Title Law;⁴⁰¹ (iii) the Próspera Arbitration Statute;⁴⁰² (iv) the Próspera Tax Statute;⁴⁰³ (v) the Próspera Personal Registry Statute;⁴⁰⁴ (vi) the Próspera Labor Statute;⁴⁰⁵ and

³⁹⁶ 30-Year Financial Plan dated 2020 (C-326); Brimen ¶ 79.

³⁹⁷ Próspera, *St. John's Bay Development Company, Pristine Bay Golf Resort conversion into City of St. John's Bay (a Próspera City)* dated 30 Aug. 2021 (C-482).

³⁹⁸ Effectuating Board and Member Action by Consent (Approval and Ratification of Conversion to Delaware Corporation), Honduras Próspera LLC dated 28 Nov. 2020 (C-34).

³⁹⁹ See Certificate of Incorporation of Honduras Próspera, State of Delaware, Secretary of State, Division of Corporations dated 1 Dec. 2020 (C-35).

⁴⁰⁰ Roatán Common Law Code dated 3 Jan. 2019 (C-483).

⁴⁰¹ Land Title Law of Próspera dated 6 Jun. 2019 (C-484).

⁴⁰² Próspera Arbitration Statute 2019 dated 22 Nov. 2019 (C-485).

⁴⁰³ Próspera Tax Statute 2019 dated 13 Sep. 2019 (C-486).

⁴⁰⁴ Próspera Personal Registry Statute dated 19 Nov. 2019 (C-487).

⁴⁰⁵ Próspera Labor Statute dated 17 Feb. 2020 (C-488).

(vii) the Próspera Decentralized Land Regulation Statute.⁴⁰⁶ The Próspera ZEDE Code of Rules now contains over 4,000 pages of regulations, evidencing Claimants' efforts in developing a transparent, modern and innovative regulatory framework.⁴⁰⁷

179. HPI also put in place the Próspera ZEDE Registry website. As noted, HPI created the Próspera ZEDE Registry to implement CAMP's ZEDE Regulation No. 001-2018, which provides for a general ZEDE Registry operated and administered by CAMP as well as specialized registers for each ZEDE.⁴⁰⁸ The Próspera ZEDE Registry records all property titles transferred from the Property Registry, as well as any transactions affecting those titles thereafter.⁴⁰⁹ Claimants are submitting the entire Próspera ZEDE Registry into the record along with an explanatory list of real property detailing the dates on which CAMP certified each property's incorporation and its registration in Próspera ZEDE, as well as its current status, among other things.⁴¹⁰
180. Claimants' focus on GaaS was validated by EY, which issued a second report addressing Claimants' Próspera ZEDE business on 2 July 2020. Among the three main ways that EY identified for Claimants to generate value from Próspera ZEDE, one was precisely the delivery of municipal services in return for a share of the taxes collected in Próspera ZEDE.⁴¹¹

(c) Claimants further develop the master planning and infrastructure for Próspera ZEDE and construct world-class real estate designed to attract residents and investors

181. To realize their vision of Próspera ZEDE as a hub of economic activity and a thriving community, and their associated for-profit business lines, Claimants spent substantial effort further master-planning and operationalizing the physical infrastructure of Próspera ZEDE. HPI and SJBDC (and

⁴⁰⁶ Próspera Decentralized Land Regulation Statute dated 10 Nov. 2020 (C-489).

⁴⁰⁷ Próspera ZEDE Code of Rules dated 1 Aug. 2024 (C-490).

⁴⁰⁸ *See supra* § I.B.4; ZEDE Regulation No. 001-2018 dated 30 Jan. 2018 (C-456) Arts. 11, 12.

⁴⁰⁹ *See* Próspera Property Registry (C-818).

⁴¹⁰ *See* Real Property List dated 15 Oct. 2025 (C-491). *See also* Próspera ZEDE Registry and transaction records (C-252 to C-290).

⁴¹¹ *See* EY, Project Oasis II: Phase I Final Report dated 2 Jul. 2020 (C-492) pp. 18, 41.

their affiliates) acquired and incorporated land into Próspera ZEDE in furtherance of their real estate development business and to benefit from the expected dramatic increase in land value upon incorporation into the ZEDE. By January 2022, Claimants had incorporated 1,006 acres of land into Próspera ZEDE.⁴¹² Claimants built world-class real estate on this land in order to attract residents and business investors to Próspera ZEDE that would further develop the ZEDE in partnership with HPI.

182. As HPI and SJBDC progressed, they received strong validations from EY. As explained above, in 2019 EY confirmed that Próspera ZEDE's locations in Roatán and La Ceiba were optimal.⁴¹³ EY made the following recommendations as to development focus at that time:

- Próspera ZEDE's hub on Roatán should optimally focus on tourism, medical tourism, developing an international financial center, and attracting light manufacturing and high-skilled talent, specifically professionals in the tourism, education, medical innovation, financial, and other knowledge industries.⁴¹⁴
- Meanwhile, for La Ceiba, EY recommended diversified business and logistics industries centered on (i) an aircraft maintenance center, (ii) a banana processing plant, (iii) a coffee processing plant, (iv) a marine service center which would provide a shipbuilding and repair center for vessels, and (v) a modular construction center.⁴¹⁵

183. EY had also confirmed that Claimants' phased approach to development would allow them to manage risk, adapt to evolving market circumstances, and demonstrate the viability of the ZEDE model to investors and stakeholders, while also providing flexibility to adjust the type, pace, and scale of investment in response to market conditions and developments.⁴¹⁶ In addition, EY's 2020 report confirmed that one of the main drivers of the project was its real estate business, specifically business opportunities arising from the appreciation of land.⁴¹⁷

⁴¹² Real Property List dated 15 Oct. 2025 (C-491).

⁴¹³ *See supra* § II.C.4.c; EY, Project Oasis Final Report (July 2019) (C-322) pp. 20-48.

⁴¹⁴ *See* EY, Project Oasis Final Report (Jul. 2019) (C-322) pp. 20-48.

⁴¹⁵ *See id.* pp. 87, 114.

⁴¹⁶ *See* Brimen ¶ 66; EY, Project Oasis Final Report (Jul. 2019) (C-322) p.112.

⁴¹⁷ *See* EY, Project Oasis II: Phase I Final Report dated 2 Jul. 2020 (C-492) pp. 18, 41.

184. Having an excellent master plan with world-class public infrastructure was essential to the success of Próspera ZEDE.⁴¹⁸ Claimants undertook that effort under the leadership of Mr. Murcott, who as noted had master-planned major and huge successful special jurisdictions in Asia.⁴¹⁹ Claimants partnered with Jacobs Engineering, a Fortune 500 company and one of the world’s leading providers of technical, professional, and construction services, with extensive experience in managing complex infrastructure projects around the world. In July 2020, Jacobs Engineering submitted a proposal to support the master planning and implementation (including operation and maintenance) of a City in Próspera ZEDE.⁴²⁰ HPI and Jacobs Engineering entered into an Agreement for Professional Services in September 2020.⁴²¹ Mr. Murcott explains that pursuant to this agreement, Jacobs Engineering appointed Jim Nicholds, a seasoned municipal executive, as Project Manager in charge of supporting HPI.⁴²² He also recalls that he relied on Jacobs Engineering for support “with planning (including commenting on our master plans), evaluating infrastructure, and considering alternatives to develop our energy grid on Roatán.”⁴²³ A few months later, Jacobs Engineering published a press release showcasing their involvement in Próspera ZEDE and stating that they were committed to “help[ing] the people of Roatán achieve their vision for economic growth” and that “to bring this project to life is a privilege.”⁴²⁴
185. As Próspera ZEDE grew, Claimants started developing real estate projects, mostly through SJBDC

⁴¹⁸ See Murcott ¶¶ 7, 11, 13.

⁴¹⁹ See *supra* § II.C.3.c; Murcott ¶¶ 7, 12-13.

⁴²⁰ Jacobs Engineering, *Proposal for City Operations & Facility Management Services – Startup Phase* dated 16 Jul. 2020 (updated as of 4 September 2020) (C-493); Murcott ¶ 15.

⁴²¹ Jacobs Engineering, *Proposal for City Operations & Facility Management Services – Startup Phase* dated 16 Jul. 2020 (updated as of 4 September 2020) (C-493) Appendix A p. 12 (showing that the contract was signed on 4 September 2020); Murcott ¶ 15.

⁴²² Murcott ¶ 15; Jacobs Engineering, *Proposal for City Operations & Facility Management Services – Startup Phase* dated 16 Jul. 2020 (updated as of 4 September 2020) (C-493) pp. 5, 8.

⁴²³ Murcott ¶ 16.

⁴²⁴ See Jacobs Engineering, *Jacobs to Design and Manage Municipal Services Contract for Development Project in Honduras* dated 7 Dec. 2020 (C-328).

and under the leadership of Mr. Delgado.⁴²⁵ Claimants' first and most iconic project was the Beta Building, designed by Guatemalan architecture studio ACÁ.⁴²⁶ The Beta Building provides private offices, co-working spaces, and common areas for up to 75 employees and reached full occupancy within 6 months of completion in February 2021.⁴²⁷ Mr. Delgado notes that the Beta Building quickly became a landmark and Claimants' home in Próspera ZEDE.⁴²⁸



Photograph of Beta Building

186. The Beta Building was followed by the Beta Residences (later renamed Beta Offices), initially envisioned and designed by Max Medina, a Director at international firm Laboratory for Visionary Architecture (“LAVA”) specializing in “space architecture . . . futuristic designs . . . and creating structures inspired by nature.”⁴²⁹ The Beta Offices have a modular structure to provide a customizable and expandable office space.⁴³⁰ The offices were completed in mid-2021⁴³¹ and,

⁴²⁵ See Delgado ¶ 34.

⁴²⁶ See *id.* ¶ 36.

⁴²⁷ See Próspera, Próspera Development Progress dated 2022 (C-320) p. 1.

⁴²⁸ See Delgado ¶ 36.

⁴²⁹ *Id.* ¶ 39; Max Medina Fuentes, LAVA (C-494).

⁴³⁰ See Próspera, Próspera Development Progress dated 2022 (C-320) p. 3; Delgado ¶ 39.

⁴³¹ See Delgado ¶ 39.

given the demand for commercial office space, an expansion was completed in early 2022.⁴³²



Photograph of Beta Offices

187. To provide housing solutions for the residents and businesses that would populate the ZEDE, Claimants commissioned a master plan from Guatemalan architecture studio ACÁ for a construction with 250 housing units for young professionals, which was completed in May 2021.⁴³³
188. After further internal work, Claimants completed a plan for “Duna Residence,” a three-tower complex with mixed-used spaces.⁴³⁴

⁴³² See Próspera, Próspera Development Progress dated 2022 (C-320) p. 3.

⁴³³ Studio ACÁ, *Beta Site: 250 housing units for your professionals* (May 2021) (C-495). See also Delgado ¶ 40.

⁴³⁴ See Delgado ¶ 40.



Prototype of Duna Residences

189. Mr. Delgado explains that SJBDC’s plan was to contribute the land for the Duna Residences into a vehicle and fund the project with up to 20% equity plus a bank loan, and partner with a developer to handle the construction.⁴³⁵ SJBDC used Dionysius LLC (“**Dionysius**”) (a local vehicle), to develop Duna Residences, and partnered with local construction companies with experience in similar projects including Postensa, a Tegucigalpa-based construction company with experience in housing and office towers.⁴³⁶ Mr. Delgado further explains that HPI secured verbal confirmation from Banco Atlántida, a Honduran bank, that it would provide the loan needed to fund Duna Residences and a term sheet was under discussion.⁴³⁷

(d) Claimants devote substantial efforts to business development and attracting investors to establish businesses in Próspera ZEDE, with success

190. In parallel, Claimants focused on business development and attracting world-class investors to

⁴³⁵ See *id.* ¶ 42.

⁴³⁶ See *id.* ¶ 41; *Projects*, Postensa Vertical Construction (C-496).

⁴³⁷ See Delgado ¶ 42.

build a booming economy in Próspera ZEDE together. This partnership model was the third main business driver that EY had identified in its 2020 report.⁴³⁸ Claimants' efforts were hugely successful: they received expressions of interest from dozens of companies around the world and many started operations in Próspera ZEDE. Unfortunately, Claimants are not able to identify many of these investors by name because their interest in Próspera ZEDE is not in the public domain and they are hesitant to be mentioned in connection with this arbitration for fear of retaliation by Honduras.⁴³⁹ Claimants provide a selection below.

191. During the first quarter of 2019, representatives of HPI sought to attract large companies in strategic sectors that could become anchor tenants. During that period, Claimants met with major potential investors in the areas of business process outsourcing, energy, entertainment, manufacturing, and health and wellness, as well as higher education providers.⁴⁴⁰
192. A key member of Claimants' business development team was Mr. Murcott, who assumed the role of Chief Marketing Officer of NeWAY and leveraged his two-decade career in marketing, existing contacts, and direct experience in Songdo IBD, to promote Próspera ZEDE and attract businesses and occupiers.⁴⁴¹ Mr. Murcott testifies that CIGA Healthcare, an Irish multi-national that manufactures and sells medical test diagnostics⁴⁴² was "enthusiastic" about the ZEDE and wanted to "relocate[e] part of [its] manufacturing plants from Asia to Próspera ZEDE."⁴⁴³ He also testifies

⁴³⁸ See EY, Project Oasis II: Phase I Final Report dated 2 Jul. 2020 (C-492) pp. 18, 41.

⁴³⁹ Murcott ¶ 18; Brimen n. 88; Delgado ¶ 33.

⁴⁴⁰ See North Bay prosperity Fund, LP Quarterly Update for Q1 2019, presented by HPI (C-472) p. 7.

⁴⁴¹ Murcott ¶¶ 5-6, 14.

⁴⁴² CIGA Healthcare is a Northern Ireland based company that sells its over-the-counter and professional diagnostic tests to pharmacies and health services in over 70 countries. It is a preferred supplier of the UK National Health Service and of Ireland's Health Service Executive. CIGA Healthcare also supplies global retailers including Amazon and Walmart. Its flagship brand is "Suresign," through which it commercializes leading products (including professional products for test analysis) to health services and clinicians across the globe, and also supplies specialized veterinary products. Its success has been recognized with prestigious awards, including being Highly Commended in the Global Player category by the Chamber Business Awards in 2023. See Ciga Healthcare Homepage (C-497).

⁴⁴³ Murcott ¶ 19.

that Akira Back, a renowned Chef with restaurants in luxury hotels around the world (including Michelin-Starred restaurants) canvassed sites to develop an integrated hospitality development in the ZEDE.⁴⁴⁴

193. Mr. Delgado also contacted potential investors including call centers, financial institutions, and medical businesses, and concluded memorandums of understanding or letters of interest with several of them.⁴⁴⁵ Among others, Mr. Delgado signed a Memorandum of Understanding or Letter of Interest with (i) Fundación Montesquieu to offer higher education programs (*e.g.*, computed science, MBA, and LLM degrees);⁴⁴⁶ (ii) Hover Racing Grand Prix to host a manned drone race in the ZEDE;⁴⁴⁷ (iii) Allied Global Services, a business process outsourcing company that planned a US\$ 5 million investment and would have created 1,000 jobs;⁴⁴⁸ (iv) Greenergize Energy to build a solar farm with an energy storage system and a microgrid;⁴⁴⁹ (v) the International Hotel Development division of Marriott International for the Caribbean and Latin America, which was interested in operating a hotel in the ZEDE;⁴⁵⁰ (vi) Guatemalan floor tiles and ceramic manufacturer Samboro, which wanted to establish a manufacturing unit in Roatán;⁴⁵¹ and (vii) a company that wanted to build a marina and an adjacent waterfront town to service boats in Roatán.⁴⁵²

194. In parallel, Mr. Brimen also signed Memorandums of Understanding or Letters of Interest with

⁴⁴⁴ *Id.* ¶ 20.

⁴⁴⁵ *See* Delgado ¶ 33.

⁴⁴⁶ *See* Letter of Interest between NeWAY (through HPI) and Hover Racing Championship dated 4 Feb. 2019 (C-498); Delgado ¶ 33(a).

⁴⁴⁷ *See* Letter of Interest between NeWAY (through HPI) and Hover Racing Championship dated 4 Feb. 2019 (C-498); Delgado ¶ 33(b).

⁴⁴⁸ *See* Memorandum of Understanding between NeWAY (through HPI) and Allied Global Services dated 13 Mar. 2019 (C-499); Delgado ¶ 33(c).

⁴⁴⁹ *See* Letter of Interest between NeWAY (through HPI) and Greenergize Energy dated 8 Apr. 2019 (C-500); Delgado ¶ 33(d).

⁴⁵⁰ *See* Letter of Interest from Marriot International dated 13 Jun. 2019 (C-336); Delgado ¶ 33(e); Brimen ¶ 87(b).

⁴⁵¹ *See* Exploratory Memorandum of Understanding between HPI and Samboro S.A. (Nov. 2019) (C-501); Delgado ¶ 33(f).

⁴⁵² *See* Memorandum of Understanding between HPI and Adaptive Medical Systems Inc. dated 17 Sep. 2020 (C-502); Delgado ¶ 35.

potential investors. For instance, in May 2021, HPI (through Mr. Brimen), signed a Memorandum of Understanding with FND Technologies Global PTE. Ltd, a Singaporean company specialized in digital transformation and software solutions through project management and consulting services, that intended to invest US\$ 700,000 to establish a regional office in Próspera ZEDE.⁴⁵³

195. During 2019, Claimants also partnered with CEMESA, a local group that operates a major hospital in San Pedro Sula (the second-largest city in Honduras and its main business and financial center located on the north coast of the mainland) and another in Roatán to develop a medical tourism hub in Próspera ZEDE.⁴⁵⁴ In December 2019, Claimants and CEMESA completed a full real estate master plan and business plan to build “Próspera Medical Center,” a complex consisting of a US\$ 15 million investment to build a new world-class hospital in Roatán.⁴⁵⁵ As Mr. Delgado explains, “Próspera Medical Center” was envisioned to “attract foreign patients looking for more affordable high quality care” by offering, among other things, “a heliport, twenty clinics, a full laboratory, magnetic resonance equipment, and an excellent staff of doctors (12 residents and 15 specialists).”⁴⁵⁶

196. Below are examples of companies that started operating in Próspera ZEDE in this time period:

- *Higher Ground Education*, a U.S.-headquartered company and the world’s largest operator of Montessori schools. Higher Ground Education stated in a case study that Próspera ZEDE enabled it to adopt procedures that work best for its students, tailoring its offerings to the local market.⁴⁵⁷ Guidepost Montessori Roatán’s first class in 2021 served 6 children. The next semester, the number of students doubled to 12. As of the Fall 2022 semester, the school served over 30 children.⁴⁵⁸ By mid-2023, the school had four classrooms with capacity for up to 70 students and offered programs for children between 2.5 and 15 years old.⁴⁵⁹

⁴⁵³ See Memorandum of Understanding between HPI and FND Technologies Global PTE dated 31 May 2021 (C-335); Brimen ¶ 87(a).

⁴⁵⁴ See Delgado ¶ 32.

⁴⁵⁵ See Honduras Próspera, *Próspera Medical Center* (Dec. 2019) (C-503) p.4; Delgado ¶ 33(g).

⁴⁵⁶ Honduras Próspera, *Próspera Medical Center* (Dec. 2019) (C-503) pp.7-8; Delgado ¶ 33(g).

⁴⁵⁷ Próspera, *Próspera Development Progress* dated 2022 (C-320) pp. 43, 45.

⁴⁵⁸ See *id.* p. 47.

⁴⁵⁹ See Lunney, Edward, *Guidepost Montessori at Roatan*, PRÓSPERA COMMUNITY (1 Jul. 2023) (C-504).

- *Aerialoop*, a commercial drone delivery service to rapidly reduce the time or move goods across the island of Roatán.⁴⁶⁰
- *Circular Factory*, a startup founded by Alicia Nahmad, an architect specializing in robotic assisted design, announced construction of a micro-factory in Próspera ZEDE in 2021.⁴⁶¹ The company creates micro-factories specialized in computational technologies and advanced manufacturing to offer on-site digital fabrication capabilities for the construction industry through customizable machines. These micro-factories allow the production of mass-customized kits of parts to assemble buildings. The concept is to use local labor and materials, instead of importing finished parts from abroad, and at the same time produce complex shapes to enable highly complex projects.⁴⁶²
- *Relay Human Cloud*, a remote support company that assists companies by giving them access to a global talent pool of remote workers.⁴⁶³

197. These examples evidence that Próspera ZEDE was a healthy operational project that was rapidly attracting businesses to take residence and operate in the ZEDE, creating employment and economic activity.

(e) Claimants invest in the development of neighboring communities

198. In addition to the indirect impact of economic activity in Próspera ZEDE on the improvement of the lives of people in the surrounding community, Claimants have actively fostered social development in Honduras. In 2019 HPI built a new water well system to provide running water to the Crawfish Rock community homes for the first time.⁴⁶⁴

⁴⁶⁰ See *Trey Goff – Próspera: Building the Future of Governance*, Free Cities Foundation, YOUTUBE dated 4 Nov. 2022 (C-505) minute 19:44-20:28.

⁴⁶¹ *High tech carpentry factory will be installed on Roatán*, LA PRENSA (30 Sep. 2021) (C-506).

⁴⁶² See *Trey Goff – Próspera: Building the Future of Governance*, Free Cities Foundation, YOUTUBE, (4 Nov. 2022) (C-505) minute 17:21-19:13; *Circular Factory* web site (C-507).

⁴⁶³ *Relay Human Cloud, About us* (C-508).

⁴⁶⁴ See Brimen ¶ 52; [REDACTED]



*Picture of residents next to a sign that reads
“Próspera – Providing running water since September 2019.”*

199. In addition, HPI created the Próspera Foundation (previously named Institute for Excellence and the North Bay Foundation),⁴⁶⁵ a social impact organization dedicated to connecting with and empowering the local community with skills, education, and opportunities to generate wealth and prosperity.⁴⁶⁶ Próspera Foundation’s programs include the following:

- *Community revitalization tokens (“CRTs”)* is an intra-community currency granted to community members in exchange for contributions which help revitalize their community that can be redeemed at local businesses for a pre-determined level of goods or services. Próspera Foundation remunerates each local business for the goods or services it provides in exchange for the CRTs.⁴⁶⁷
- *Community Excellence Squad (“CES”)* employs at-risk youth to collaborate on projects to improve their community and serve as positive role models. CES has reduced overall crime levels and stimulated the local economy.⁴⁶⁸

⁴⁶⁵ Amendment to Foreign Entity Registration Statement for North Bay Foundation, S.A. dated 3 Dec. 2020 (C-509) pp. 5-8 (attaching notarized shareholder meeting minutes for North Bay Foundation, S.A., confirming that on 15 June 2020, the company’s name was changed to Próspera Foundation. The minutes also confirm that the Institute for Excellence S.A., was incorporated on 21 March 2018 in Roatán, and on 11 April 2019, the company’s name was changed to North Bay Foundation, S.A.).

⁴⁶⁶ See North Bay Foundation, *About Us* (C-316); Brimen ¶¶ 53-55.

⁴⁶⁷ See Honduras Próspera, *The North Bay Foundation Presentation* (C-510) pp. 12-13.

⁴⁶⁸ See *id.* pp. 9-10.



Pictures of CES members working on the construction of the Crawfish Rock Community Center and of Members of HPI and the Próspera Foundation team with CES members

- *Legacy Project* works with elders and leaders of the local indigenous community and conducts interviews to identify key markers, symbols and cultural mores that HPI and Próspera ZEDE can take into consideration in future developments.⁴⁶⁹



Mr. Erick Brimen with a Village Elder in the Roatán Pilot Project Community

- *Local Entrepreneurship and Women's Empowerment Programs* include entrepreneurship funding, mentorship, and training for local residents to support the creation of small businesses with viable business models, and equip residents with skills for high-demand jobs.⁴⁷⁰ One such example is the Aliadas program, which focuses on equipping women

⁴⁶⁹ See *id.* pp. 17-18.

⁴⁷⁰ See *id.* p. 7-8; *Learn about Próspera*, PRÓSPERA dated 18 Mar. 2021 (C-511) pp. 3, 6.

with technology and communications skills needed for online jobs, such as coding, digital marketing, writing, and digital product development.⁴⁷¹



Photographs of Empowerment Funding in action

- *CADMUS Academy* is a bilingual private school for the local community that opened on 11 February 2019.⁴⁷²



Pictures of CADMUS Academy Opening Day

- *Educational and After-School Tutoring Programs* where a teacher provides free after-school classes in English to students from the community to complement their school education.⁴⁷³ Students are also provided computers to access an online education program called the Kahn Academy.⁴⁷⁴ As the local school in Crawfish Rock only offers classes up

⁴⁷¹ Learn about Próspera, PRÓSPERA dated 18 Mar. 2021 (C-511) pp. 3, 6; Brian David Lovo, *Próspera Foundation's Woman Digital Academy de Fundación: helping island women become technology entrepreneurs*, DIARIO ROATÁN (15 Feb. 2021) (C-512).

⁴⁷² See Honduras Próspera, The North Bay Foundation Presentation (C-510) pp. 3-4.

⁴⁷³ See Brimen ¶ 54; [REDACTED]

[REDACTED] Presentation "The North Bay Foundation" (C-510) p. 5.

⁴⁷⁴ [REDACTED]
Brimen ¶ 54.

to the 6th grade, NFB provides free transportation for students to attend school outside of Crawfish Rock, supporting their ability to continue their education.⁴⁷⁵



The after-school program in action

5. Meanwhile, Honduras continues to support the ZEDE regime through various authorities and enters into the LSA with HPI pursuant to the ZEDE Organic Law extending further guarantees of legal stability

200. While Próspera ZEDE was growing, Honduras continued to support the ZEDE Legal Framework through various authorities including its Supreme Court and the President, , and by providing further legal stability guarantees to Claimants in the LSA.

201. In December 2019, CAMP approved ZEDE Morazán (also known as Ciudad Morazán), which sits on a 24-hectare site on the outskirts of Choloma, a city in the northwest of Honduras.⁴⁷⁶ According to its website, it offers residential solutions, an industrial area, commercial spaces, parks, churches, schools and other civic meeting points and infrastructure works.⁴⁷⁷ On 26 December 2019, CAMP appointed Carlos Alfonso Fortín Lardizábal as Technical Secretary of ZEDE Morazán.⁴⁷⁸ The ZEDE's Charter and Bylaws were published on 29 April 2020.⁴⁷⁹ The investors in ZEDE Morazán

⁴⁷⁵ Brimen ¶ 54; [REDACTED]

⁴⁷⁶ See Morazán ZEDE Record of existence dated 15 Jul. 2020 (C-513); CAMP's Official Communication 16-2021 dated 5 Jul. 2021 (C-514).

⁴⁷⁷ See Ciudad Morazán official website (C- 515).

⁴⁷⁸ See Morazán ZEDE Record of existence dated 15 Jul. 2020 (C-513).

⁴⁷⁹ See Ciudad Morazán official website (C- 515).

have brought their own ICSID arbitration against Honduras.⁴⁸⁰

202. On 26 November 2020, CAMP approved ZEDE Orquídea, which is located in San Marcos de Colón, Choluteca, in southern Honduras.⁴⁸¹ ZEDE Orquídea reportedly has an agricultural focus, and aimed to become the largest producer and exporter of tomatoes, peppers and chiles in Central America.⁴⁸² By September 2021, ZEDE Orquídea reportedly had created 600 permanent jobs, and planned to employ an additional 200 employees by the end of 2021 and reach 2700 employees in four years.⁴⁸³
203. In addition, Honduras's support for Próspera ZEDE continued, and was most clearly expressed in the execution of a legal stability agreement with HPI. As detailed above, the ZEDE Organic Law authorizes the Technical Secretary to enter into legal stability agreements that are binding on Honduras, such that if the ZEDE Law is repealed it shall remain in effect for the term established in the legal stability agreement if it exceeds the ten-year default period set forth in the law.⁴⁸⁴ Prior to the creation of Próspera ZEDE, CAMP expressly confirmed that the Technical Secretary was empowered to enter into legal stability as a representative of Honduras.⁴⁸⁵
204. On 9 March 2021, HPI and Honduras (through the Technical Secretary for Próspera ZEDE) entered

⁴⁸⁰ In May 2025, Overseas Real Estate LLC (acting as the promoter of ZEDE Morazán) initiated arbitration proceedings against Honduras before ICSID, seeking an amount that could exceed US\$ 100 million dollars. *See* Marcia Perdomo, *Claim by Morazán ZEDE could exceed US\$ 100 million*, CRITERIO.HN (27 May 2025) (C-355).

⁴⁸¹ *See* CAMP's Official Communication 16-2021 dated 5 Jul. 2021 (C-514).

⁴⁸² *See Chamba! More than 600 direct jobs have generated the Zede "Orquídea" in Choluteca*, HCH En Vivo, YOUTUBE dated 25 Sep. 2021 (C-516) minutes 0:23-1:03 (Victor Wilson, ZEDE Orquídea investor, stating that "[w]e're going to be cultivating . . . 160 hectares . . . [of] colorado chile, mini peppers, cherry tomatoes, and grape tomatoes . . ." to be sold in the United States to generate 1.8 billion lempiras annually).

⁴⁸³ *See id.* minutes 0-0:13 (reporting that "[600] permanent jobs are among the evolutionary and positive changes in the Agroalfa facilities in [ZEDE Orquídea]."), 0:15-0:20 (Victor Wilson, ZEDE Orquídea investor, stating that by the end of 2021 there would be 800 employees and 2,700 employees in four years), 3:00-3:20 (reporting that "[ZEDE Orquídea] also brings positive economic and growth effects for the department of Choluteca . . . [including] indirect jobs since many people, because of the changes in the area, have already had the opportunity to improve their finances and succeed.").

⁴⁸⁴ *See supra* § II.B.2.b.ii; ZEDE Law (C-6) Arts. 12(2), 45.

⁴⁸⁵ *See* Notes of Discussion with CAMP dated 8 Nov. 2017 (C-462).

into the Agreement for Legal Stability and Investor Protection (“**Initial LSA**”).⁴⁸⁶ The LSA was subsequently amended on 18 November 2021⁴⁸⁷ (“**Amendment to the LSA**” and, together with the Initial LSA, “**LSA**”). For the purposes of Article 45 of the ZEDE Organic Law, the LSA establishes a term continuing “until the latter of (a) January 15, 2064; or (b) TEN (10) years after the last of any amendment, reformation, interpretation or repeal of all or any portion of the ZEDE law.”⁴⁸⁸

205. The LSA provides HPI and its affiliates with important stability guarantees, including with respect to the stabilization of non-discrimination rights and treaty rights,⁴⁸⁹ as well as a general stabilization of law and policy, consistent with Article 45 of the ZEDE Law:

[f]or the duration of the Agreement Term, all of the [ZEDE Legal Framework] . . . and all rights, conditions, procedures and protections either explicit or implicit included therein respectively, shall remain as guarantees and shall be guaranteed by the Republic of Honduras as applied to Honduras Próspera, its agents, officers, board members, shareholders, and affiliates by majority ownership or control, and all other investors and lawful inhabitants of Próspera ZEDE.⁴⁹⁰

206. For present purposes, it is notable that Honduras’s guarantee extends to HPI and its “affiliates by majority ownership or control” (*i.e.*, SJBDC and PAC), and that the LSA contains explicit acknowledgments by Honduras relevant to the enforcement and interpretation of CAFTA-DR (*e.g.*, that Article 16(4) of the Honduras-Kuwait BIT is incorporated into CAFTA-DR pursuant to the MFN provision in Article 10.4 thereof,⁴⁹¹ that HPI is an enterprise of the U.S.,⁴⁹² and that any breach of the LSA’s terms by the Republic of Honduras constitutes an unlawful expropriation of

⁴⁸⁶ See Agreement for Legal Stability and Investor Protection entered into by and between Honduras Próspera and the Republic of Honduras dated 9 Mar. 2021 (“**Initial LSA**”) (CLA-6).

⁴⁸⁷ See Amendment to Agreement for Legal Stability and Investor Protection entered into by and between Próspera and Honduras dated 18 Nov. 2021 (“**Amendment to the LSA**”) (CLA-7).

⁴⁸⁸ Initial LSA (CLA-6) §1.1.

⁴⁸⁹ See *id.* §§ 1.2-1.3.

⁴⁹⁰ *Id.* § 1.4.

⁴⁹¹ See *id.* § 1.3 (“Article 16(4) of the Kuwait-Honduras BIT [is] incorporated pursuant to the most favored nation clauses of Article 10.4 of the CAFTA-DR . . .”).

⁴⁹² See *id.* § 1.3.

HPI's vested legal rights,⁴⁹³ among other things).

207. In addition, the LSA contains dispute resolution provisions, including providing that claims for monetary relief arising under or in any way related to the LSA shall be submitted to ICSID arbitration.⁴⁹⁴
208. Honduras likewise acknowledged that damages for breaches of the LSA may be difficult to ascertain or predict, and therefore agreed that, in lieu of such compensation, HPI could elect to seek an award of liquidated damages.⁴⁹⁵ The amount of liquidated damages was originally set at US\$ 45 million,⁴⁹⁶ and subsequently increased to US\$ 150 million, which amount shall increase by 10% per annum compounded on the last day of each calendar year, plus any reasonable attorney's fees, litigation/arbitration expenses, and court costs/arbitration fees.⁴⁹⁷ While the liquidated damages are insignificant compared to the multi-billion-dollar fair market value of Claimants' investment as explained in Section V below, they are interesting insofar as they represent an acknowledgement by Honduras of the multiple owed on Claimants' investments at that the time of the LSA.
209. As Mr. Brimen explains, the decision to enter into the LSA in 2021 was the culmination of a deliberate process to establish a robust operational and legal foundation for Próspera ZEDE:

after having built the operational framework and put the building blocks in place for Próspera ZEDE, HPI and Honduras entered into a legal stability agreement ("LSA"). The LSA was an additional protection on top of all the other general stability guarantees made by Honduras, specific to HPI and its affiliates, which gave us extra comfort now that the foundations for success were in place. It was also attractive to potential investors in HPI and its affiliates. Most importantly, the LSA guaranteed legal stability until at least 15 January 2064.⁴⁹⁸

210. Honduras provided further support to Claimants through its Customs Authority ("**Customs**

⁴⁹³ See *id.* § 1.3.

⁴⁹⁴ See *id.* § 2.2.

⁴⁹⁵ See *id.* § 3.8.

⁴⁹⁶ See *id.* § 3.8.

⁴⁹⁷ See Amendment to the LSA (CLA-7) § 2.

⁴⁹⁸ Brimen ¶ 82.

Administration”). On 25 March 2021, the Technical Secretary of Próspera ZEDE and the National Director of the Customs Administration entered into an agreement on the provision of customs services in the ZEDE (“**Customs Agreement**”), pursuant to which the Customs Administration agreed to establish and operate a customs post within Próspera ZEDE, providing control, supervision, and fiscal oversight of goods entering and leaving the zone.⁴⁹⁹ As consideration, Próspera ZEDE agreed to pay an operations fee to the Customs Administration and provide adequate facilities.⁵⁰⁰ Pursuant to the Customs Agreement, the Customs Administration subsequently appointed specific officers to provide the customs services required within the ZEDE.⁵⁰¹

211. The Customs Agreement was another major milestone in the development of Próspera ZEDE. Expeditious import and export activities are key to businesses, and being able to provide this service significantly enhanced the value proposition of Próspera ZEDE for investors.⁵⁰²

212. On 16 June 2021, President Juan Orlando Hernández highlighted the efforts and progress made by Honduras with respects to the ZEDEs. According to the President:

the [ZEDEs] [a]re under construction, they are already creating jobs and obviously Honduras is on the map [W]ith this instrument we tell the foreign and the national investors: Honduras is here! I also want to thank the Technical Secretaries of the three [ZEDE] that are already underway in the country, for that confidence. Thank the investors for believing in my country. Thank the foreign and national investors because this is already a reality and we are reaping the effort of many years ago.⁵⁰³

213. On 15 June 2021, the Supreme Court of Honduras further cemented the ZEDE Legal Framework in the domestic legal order by formally establishing the special ZEDE jurisdiction that was

⁴⁹⁹ See Agreement between Próspera ZEDE and the Honduran Customs Administration dated 29 Mar. 2021 (C-330).

⁵⁰⁰ See *id.* §§ 5, 9.

⁵⁰¹ See Letters from Honduran Customs Administration to Próspera ZEDE (C-518).

⁵⁰² See Brimen ¶ 83.

⁵⁰³ *Broadcast creation of special tribunal for 16 June 21*, Presidential Palace of Honduras, YOUTUBE dated 20 Jun. 2021 (C-519) minute 4:02 – 5:30.

mandated by the ZEDE Legal Framework.⁵⁰⁴ The act of the Supreme Court creating the ZEDE jurisdiction states as follows:

[p]ursuant to Articles 303 and 329 of the Honduran Constitution, **the Special Jurisdiction is hereby established for the Zones for Employment and Economic Development (ZEDEs)**, as created by constitutional mandate; which shall be comprised of courts that will be part of the Honduran Judicial Branch and will have exclusive jurisdiction over such zones. These special jurisdiction courts shall have competent powers to hear criminal, childhood and adolescence matters in accordance with the Constitution, the international treaties in force in the Republic of Honduras and the other applicable laws.

These courts shall also hear matters concerning contract or property issues subject to mandatory arbitration, if an agreement exists to waive arbitration and to submit to the decision of the competent courts, in accordance with the matter involved and the venue where the ZEDE is located.⁵⁰⁵

214. These developments were further confirmation of Honduras's support for the ZEDE Legal Framework and, given the Supreme Court's involvement, its legality.

6. Between 2021 and 2022, Claimants acquire major infrastructure, finalize plans for investments, and continue to implement the business plan

215. Between 2021 and 2022, Claimants acquired major infrastructure, finalized plans for investments, and continued to implement the business plan. Claimants acquired luxury infrastructure, progressed their overall plan to develop their hub in Roatán, and started to commercialize the Duna Residences (Section II.C.6.a); designed and laid the legal foundations for an international financial center in Roatán (Section II.C.6.b); worked with Deloitte to develop further plans for investment in key industries in Próspera ZEDE (Section II.C.6.c); and partnered with Jacobs Engineering to develop a nearshoring hub master plan (Section II.C.6.d).

⁵⁰⁴ See Supreme Court of Honduras, Agreement No. CSJ-01-2021 dated 15 Jun. 2021 (C-37) p. 2 (emphasis added). See also Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Arts. 303, 329; ZEDE Law (C-6) Art. 14.

⁵⁰⁵ Supreme Court of Honduras, Agreement No. CSJ-01-2021 dated 15 Jun. 2021 (C-37) p. 2 (emphasis in original).

(a) Claimants acquire luxury infrastructure, progress their overall plan to develop their hub in Roatán, and start commercializing the Duna Residences

216. In January 2022, Claimants incorporated a beautiful resort in Pristine Bay (“**Pristine Bay Resort**”) that they had acquired into Próspera ZEDE.⁵⁰⁶ Pristine Bay Resort is an oceanfront property that includes standalone villas, a hotel, a beach club, bars, restaurants, pools, and a golf course designed by famous golf course architect Pete Dye that ranked as number one in Honduras.⁵⁰⁷ It is adjacent to the Mesoamerican barrier reef, the second largest coral reef in the world.⁵⁰⁸ Pristine Bay Resort also comprises Las Verandas Hotel & Villas, a first-class hotel with modern-classic style rooms and spacious villas with private pools and terraces.⁵⁰⁹ Incorporating Pristine Bay Resort into Próspera ZEDE provided Claimants with immediate access to high-capacity and top-quality infrastructure that could be used to receive investors and run businesses in the ZEDE. As Mr. Shah recalls, he recommended acquiring Pristine Bay Resort because it “already had a beautiful resort and golf course” and having such physical infrastructure was “critical” to attract businesses, which are looking for a location to “do business, live, and play.”⁵¹⁰

⁵⁰⁶ See Resolution approving voluntary incorporation of specific privately owned lot(s) of land (322.824 Acres) located in Pristine Bay into Próspera ZEDE dated 18 Nov. 2021 (C-520).

⁵⁰⁷ *Golf Digest ranks Pristine Bay Resort’s Black Pearl No. 1 golf course in Honduras*, THE GOLF WIRE (16 Apr. 2012) (C-521); *Pete Dye, famed golf course architect and Hall of Famer, dies at 94*, ESPN (9 Jan. 2020) (C-522) (honoring Pete Dye as “one of the game’s great course architects”).

⁵⁰⁸ See *A destination designed to amaze*, Pristine Bay Resort (C-523).

⁵⁰⁹ See *Las Verandas Hotel & Villas*, Pristine Bay Resort (C-524).

⁵¹⁰ Shah ¶ 13.



Photograph of the Pristine Bay Resort



Photograph of Las Verandas Hotel & Villas

217. In late 2021, Claimants completed a full master plan for their project in Roatán with Strato Urbanismo, a Brazilian expert consultant in urban planning.⁵¹¹ Mr. Delgado explains that Claimants had acquired valuable knowledge “about the available land and geography through [their] experience building,” and the purpose of the updated master plan was to adjust their plan

⁵¹¹ See Próspera and Strato Urbanismo Presentation: Roatán Masterplan dated 17 Dec. 2021 (C-337).

accordingly.⁵¹² The plan included residential areas, a central business district, hospitality, entertainment and cultural facilities, an educational district, as well as medical and city services.⁵¹³

A few weeks later, in January 2022, Claimants started circulating their first brochure of Duna Residences, marketing it to residents and businesses for pre-launch sales.⁵¹⁴

218. Claimants also invested significant effort and resources in master planning and designing a portfolio of infrastructure projects for development in Roatán:

- *Beyabu*, a bespoke collection of customizable residencies designed by world-renown Zaha Hadid Architects.⁵¹⁵
- *Pristine Heights Roatán Residences*, an apartment complex commissioned to LPA Architects based on a detailed market study and master plan.⁵¹⁶



- *Leaf Residences*, consisting of efficiency residences for young professionals and blue-collar workers designed to maximize functional space, providing attractive and affordable

⁵¹² Delgado ¶ 43.

⁵¹³ See Próspera and Strato Urbanismo Presentation: Roatán Masterplan dated 17 Dec. 2021 (C-337) p. 5.

⁵¹⁴ See Duna Residences, *Living in Roatán – Re-think the Future* (C-525); Delgado ¶ 50.

⁵¹⁵ Beyabu’s official website (C-526). Zaha Hadid Architects have designed the Guangzhou Opera House, the London Aquatics Centre for the 2012 Summer Olympics, the King Abdullah Financial District Train Station, and most recently the Navi Mumbai International Airport which was inaugurated in October 2025 and will serve up to 90 million passengers per year. See Zaha Hadid Architects, *Archive* (C-527); Zaha Hadid Architects, *India’s Prime Minister Inaugurates Navi Mumbai International Airport (NMIA)* dated 9 Oct. 2025 (C-528).

⁵¹⁶ LPA Architects Presentation, *Pristine Heights Roatán Residences* dated 29 Nov. 2022 (C-529).

housing.⁵¹⁷ Under the leadership of Mr. Delgado, Claimants selected the best land for the project within the master plan, concluded a modern conceptual design, and built model apartments.⁵¹⁸



Prototype of Leaf Residencies

- *Affordable housing for workers.* Claimants also commissioned the design and master-planned affordable housing for blue collar workers.⁵¹⁹



⁵¹⁷ See Trey Goff – *Próspera: Building the Future of Governance*, Free Cities Foundation, YOUTUBE dated 4 Nov. 2022 (C-505) minute 22:38 onwards; Delgado ¶ 47; Honduras Próspera, *Leaf Residences* (C-531).

⁵¹⁸ See Delgado ¶¶ 43-36; Honduras Próspera, *Master plan of low-cost residences* (C-530); Honduras Próspera, *Leaf Residences* (C-531).

⁵¹⁹ See Honduras Próspera, *Master plan of low-cost residences* (C-530) pp. 17, 22, 32; Delgado ¶ 47.

(b) Claimants design and lay the legal foundations for an international financial center in Roatán

219. In Roatán, one of Claimants' main focuses was developing the Roatán International Financial Center (“**RIFC**”) under the leadership of Mr. Shah, the former Chief Strategy Officer for the DIFC.⁵²⁰ Between late 2021 and April 2022, Mr. Shah led the efforts to prepare a white paper that became a business plan for the RIFC (“**RIFC Business Plan**”).⁵²¹ As reflected in the RIFC Business Plan, the RIFC was to be a regional international financial center that could serve as “the gateway” to bring foreign investors into Próspera ZEDE, and then to Central America and Latin America.⁵²² The RIFC would leverage Próspera ZEDE’s strategic location, stable legal framework, and “uniquely attractive business environment.”⁵²³ The RIFC Business Plan also identified as a major advantage that Próspera ZEDE was a “new” jurisdiction with a clean reputation that could compete with other jurisdictions with more dubious track-records in the region.⁵²⁴

220. The RIFC Business Plan had three pillars:

- a) Financial Technology/Decentralized Finance, where “Próspera ZEDE and the RIFC could develop regulations to protect and encourage innovation faster and more effectively than other [international financial centers].”⁵²⁵ The RIFC Business Plan identifies this specific market sector as having great potential because it is a segment where companies often suffer from “lack of regulatory clarity.”⁵²⁶ As Mr. Shah explains, the RIFC could position itself as an ideal destination with “the technical expertise, political will, and institutional capacity to provide this nascent sector with a home in Latin America.”⁵²⁷

⁵²⁰ See Shah ¶¶ 14-15.

⁵²¹ See The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188).

⁵²² *Id.* p. 5; Shah ¶ 14.

⁵²³ Shah ¶ 16(a). See also The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188) pp. 6, 9.

⁵²⁴ Shah ¶ 16(e). See also The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188) p. 6.

⁵²⁵ Shah ¶ 17(a). See also The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188) pp. 24-26.

⁵²⁶ Shah ¶ 17(a). See also The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188) p. 24.

⁵²⁷ Shah ¶ 17(a); The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188) pp. 22, 24-27.

- b) The RIFC is uniquely positioned to fill the gap for a regional international financial center in Latin America. Mr. Shah explains that Latin America is an underserved region because none of the main competing financial centers (*e.g.*, Mexico City, Sao Paulo, Santiago, Buenos Aires, Panama City, and Miami) “ha[ve] been able to offer a holistic solution to the fractured economies in the region.”⁵²⁸ The RIFC’s offering of a fully bilingual jurisdiction under common law located in Central America placed it in a privilege position to attract capital and talent from other financial centers.⁵²⁹
- c) Lastly, the RIFC was to be the core of the local financial system of Próspera ZEDE and the main provider of banking services for the local economy. The RIFC Business Plan saw great potential in this segment because of its privileged position to serve the thousands of inhabitants that would move into Próspera ZEDE and its thousands of e-residents.⁵³⁰

221. In addition to completing the RIFC Business Plan, Claimants also put in place the legal framework that was necessary for it to function, starting with the Roatán Financial Services Authority, an independent financial regulator and supervisor established by Próspera ZEDE’s GSP.⁵³¹ Mr. Shah explains that the RFSA “was designed to replicate the Dubai Financial Services Authority, the regulator of the DIFC”⁵³² and that the RFSA was essential to “reassure major regulators in jurisdictions like New York or London” which had to authorize financial institutions within their purview to operate in the RIFC.⁵³³ In early 2022, Mr. Shah was appointed as a Director of the RFSA, together with Mr. José Luis Moncada, the former President of Honduras’s National Commission of Banking and Insurance (“**National Bank & Insurance Commission**”); Mr. Alexander Rolfe, a former Assistant Director, Chief, Senior Resolution Planning Specialist, and Supervisory Examiner at the United States’ Federal Deposit Insurance Corporation; and Dr. Sohan

⁵²⁸ Shah ¶ 17(b). *See also* The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188) pp. 11, 13-14, 16, 27.

⁵²⁹ *See* Shah ¶¶ 16(a)-(b), 17(b); The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188) p. 27.

⁵³⁰ *See* Shah ¶ 17(c); The Roatán International Financial Center (RIFC): The Premier Gateway to and from Latam dated 24 Apr. 2022 (C-188) pp. 18, 29.

⁵³¹ *See* Shah ¶ 19; Proclamation of Formation of the Roatán Financial Services Authority and Appointment of its Members by Administrative Action published on 18 Apr. 2022 (C-187); Próspera ZEDE, Próspera Financial Regulation A published on 24 Jan. 2022 (C-186).

⁵³² Shah ¶ 20.

⁵³³ *Id.* ¶ 22.

Dasgupta, a former Deputy General Counsel of the U.S. Department of Homeland Security.⁵³⁴

Once created in mid-2022, the RFSA started issuing regulations to ensure that the RIFC met all the global best-practices standards to operate as a financial center, including for innovative sectors such as Financial Technology and cryptocurrency.⁵³⁵

222. With this legal infrastructure was in place, Próspera ZEDE became the kind of jurisdiction that could attract financial institutions and financial services companies and offer the legal certainty that such companies require to extend loans or underwrite insurance premiums, among other transactions.⁵³⁶ As Mr. Shah explains, creating a desirable legal framework for financial services companies was exactly what he had done in the DIFC, with great results.⁵³⁷ He further notes that “[a]ll the indicators were extremely positive, and [he] was confident that [the RIFC] would be a major success” and that it could replicate the model that he had implemented in Dubai.⁵³⁸

(c) Claimants work with Deloitte to develop further plans for investment in key industries in Próspera ZEDE

223. In December 2021, HPI retained Deloitte as part of its ongoing assessment of development plans for Próspera ZEDE and tasked them with conducting market analysis and preparing business cases that could be pursued and used to attract investors to the Roatán and La Ceiba hubs. A team from Deloitte was asked to perform a financial, legal, and tax assessment of three anchor projects: ports, medical tourism, and a financial center. In addition, Deloitte was asked to prepare high-level information memoranda to be used to promote and sell the three anchor projects to potential investors.⁵³⁹

⁵³⁴ See Shah ¶ 21; Roatán Financial Services Authority, *About* (C-342); Próspera ZEDE, Proclamation of Formation of the Roatán Financial Services Authority and Appointment of its Members by Administrative Action published on 18 Apr. 2022 (C-187) p. 2.

⁵³⁵ See Shah ¶ 22; Próspera ZEDE, Próspera Financial Regulation A published on 24 Jan. 2022 (C-186).

⁵³⁶ See Shah ¶ 25.

⁵³⁷ See *id.* ¶¶ 19-20.

⁵³⁸ *Id.* ¶ 27

⁵³⁹ See Brimen ¶ 87(d).

224. Over the following months, Deloitte conducted extensive research and in early 2022 they delivered extensive reports addressing market demand, competitive advantages, projected financial performance, and the regulatory incentives underpinning the projects contemplated for Próspera ZEDE:

- *Puerto La Ceiba.* Deloitte addressed the value chain required to establish a regional hub capable of serving Próspera ZEDE, the Bay Islands, and the agro-industrial corridor.⁵⁴⁰ In addition, Deloitte identified four additional anchor sectors whose growth trajectories and logistics profiles aligned with the La Ceiba build-out: the palm-oil agro-industry; the textile sector; laminated-wood manufacturing; and distributed energy generation.⁵⁴¹
- *Medical tourism.* Deloitte confirmed that the Roatán hub could realistically capture approximately 18,000 treatments per annum across bariatric, orthopedic, and plastic surgery, rehabilitation services, and other specialized procedures and treatments, predicated on cost arbitrage *vis-à-vis* U.S. providers, daily air links to Miami, and a ZEDE tax burden capped at 5% on corporate income and 2.5% VAT.⁵⁴²
- *Holistic Center.* Deloitte forecast that a luxury holistic rehabilitation facility of 35-65 keys could address roughly 0.19% of an identified U.S. high-income demand pool (\approx 638,000 patients), while achieving a modeled 25% reduction in capital expenditure and 18% lower operating expense relative to regional benchmarks because of ZEDE fiscal rules.⁵⁴³
- *Rehabilitation Center.* Deloitte projected that a 20-30 room, beachfront addiction-treatment residence could service 240 patients annually (\approx 0.72 % of the targeted U.S. market of 33,309), while achieving a modeled 25% reduction in capital expenditure and 10% lower operating expense relative to regional benchmarks, and leverage the ZEDE's 19% incremental profit uplift.⁵⁴⁴
- *Specialty Clinic.* Deloitte envisioned a multi-specialty center with four operating theatres and up to 5,000 patients per year (\approx 0.56 % of the 886,159 U.S. patient demand cohort), while achieving a modeled 19% reduction in capital expenditure and 21% lower operating expense relative to regional benchmarks, in addition to duty-free import of medical equipment and a 26% net-salary increase for medical personnel.⁵⁴⁵

⁵⁴⁰ See Deloitte Report, Project Próspera: Port of la Ceiba dated 25 Mar. 2022 (C-339).

⁵⁴¹ *Id.*

⁵⁴² See Deloitte Report, Próspera Project: Medical Tourism dated 25 Mar. 2022 (C-340); St. John's Bay Brochure (Addiction Center) dated 25 Mar. 2022 (C-341) p. 8.

⁵⁴³ See St. John's Bay Brochure (Holistic Center) dated 25 Mar. 2022 (C-537) pp. 5, 10.

⁵⁴⁴ See St. John's Bay Brochure (Addiction Center) dated 25 Mar. 2022 (C-341) pp. 5, 10.

⁵⁴⁵ See St. John's Bay Brochure (Specialty Clinic) dated 25 Mar. 2022 (C-538) pp. 5, 9, 10.

- *Financial Center*. Deloitte confirmed the feasibility of a financial center and identified three key targets: crypto-exchanges, digital payments/e-wallets and digital credit origination.⁵⁴⁶

225. These findings confirmed the demand for and viability of Próspera ZEDE's offering in Roatán and La Ceiba.

(d) Claimants partner with Jacobs Engineering to develop a nearshoring hub master plan

226. As regards La Ceiba, Jacobs Engineering completed a full master plan for the Satuyé port in 2022.⁵⁴⁷ Mr. Murcott, who led the efforts with Jacobs Engineering, highlights the large scale of the project, which envisioned an investment of approximately US\$ 600 million to build “a 396-acre city-scale development that would house 100,000 workers and 25,000 residents.”⁵⁴⁸ Jacobs Engineering's master plan sought to leverage La Ceiba's location to build a nearshoring hub that could ship cargo to the main ports in the southern U.S.⁵⁴⁹ The master plan for the Satuyé port included detailed plans to develop sophisticated infrastructure, including “a port terminal, plans for a power generation facility and transmission, water treatment and distribution, wastewater collection and treatment, and roadway access, in addition to urban elements and a proper industrial park.”⁵⁵⁰ Jacobs Engineering designed the Satuyé port to be a true powerhouse that could enable “exponential growth for local and regional commercial sectors” and was expected to entail over US\$ 5 billion in investments in the course of a decade.⁵⁵¹

227. The anchor tenant for the Satuyé port was CIGA Healthcare.⁵⁵² As previously mentioned, CIGA Healthcare is an international manufacturer of rapid diagnostic tests and the company was

⁵⁴⁶ See Deloitte Report Próspera Project: Financial Center dated 25 Mar. 2022 (C-539).

⁵⁴⁷ Port of Satuyé Nearshoring Hub, Infrastructure Master Plan 2022 (C-540).

⁵⁴⁸ Murcott ¶ 17; Port of Satuyé Nearshoring Hub, Infrastructure Master Plan 2022 dated 2022 (C-540) p. 4.

⁵⁴⁹ Murcott ¶ 17; Port of Satuyé Nearshoring Hub, Infrastructure Master Plan 2022 dated 2022 (C-540) pp. 4, 6.

⁵⁵⁰ Murcott ¶ 17; Port of Satuyé Nearshoring Hub, Infrastructure Master Plan 2022 dated 2022 (C-540) pp. 16-66.

⁵⁵¹ Port of Satuyé Nearshoring Hub, *Infrastructure Master Plan 2022* (C-540) p. 4.

⁵⁵² *Id.* p. 66.

interested in relocating part of its facilities from Asia to take advantage of Próspera ZEDE's strategic location close to the U.S.⁵⁵³ Mr. Murcott notes that in May 2022 HPI and CIGA Healthcare signed a Letter of Intent to jointly explore "relocate[ing] their manufacturing, assembly, and supply chain distribution facilities from China to La Ceiba."⁵⁵⁴

228. In sum, thanks to the hard work of Claimants and the significant financial and other resources they poured into the project for over five years, Claimants and Próspera ZEDE had put all the necessary legal and physical infrastructure in place, were thriving, and were set to take Próspera ZEDE and Claimants' business to the next level: massive growth and creation of economic opportunity and jobs for Hondurans, with Claimants and Honduras reaping the economic benefits of Claimants' efforts. Things turned out very differently, however, as Honduras after creating the ZEDE regimen and supporting it for the better part of a decade took a 180-degree turn and reneged on the promises of the ZEDE Legal Framework.

D. IN 2022, HONDURAS REPEALS THE ZEDE ORGANIC LAW AND INITIATES A PROCESS TO REPEAL THE ZEDE CONSTITUTIONAL PROVISIONS, WHICH WAS NEVER COMPLETED; IN THE ABSENCE OF CONTINUED POLITICAL SUPPORT, THE ZEDE LEGAL FRAMEWORK IS DECLARED UNCONSTITUTIONAL *EX TUNC* IN 2024 BY A STACKED SUPREME COURT IN A HIGHLY FLAWED DECISION THAT IS MARRED BY IRREGULARITIES AND CONTRARY TO FUNDAMENTAL PRINCIPLES OF HONDURAN LAW

229. In late 2021, Honduras elected Xiomara Castro as President who ran on a populist leftist platform, including repealing the ZEDE Legal Framework (Section II.D.1). When Ms. Castro entered into power in early 2022, Honduras descended into political chaos and sought to repeal the ZEDE Legal Framework (Section II.D.2). In April 2022, Honduras then passed legislation to repeal the ZEDE Legal Framework, leaving existing ZEDes in a legal vacuum (Section II.D.3). Honduras refused to clarify if it would respect Claimants' right to legal stability, but continuously attacked them and interfered with their investments (Section II.D.4), with an immediate impact on Claimants' investments (Section II.D.5). When in 2023, Honduras was unable to secure the repeal of the ZEDE

⁵⁵³ See *supra* § II.C.3.a; Murcott ¶ 19.

⁵⁵⁴ Murcott ¶ 19; Letter of Intent between HPI and CIGA Healthcare dated 19 May 2022 (C-478).

Constitutional Provisions, the Castro Government stacked the Supreme Court which held in 2024 that the ZEDE Legal Framework was unconstitutional ab initio in a decision that was marred by procedural irregularity, substantively deeply flawed, and contrary to fundamental principles of Honduran law (Section II.D.6). Following the 2024 Supreme Court Decision, Honduras doubled down on its harassment and interference with Claimants' investments but still stopped short of forcing Claimants or Próspera ZEDE to stop operating (Section II.D.7).

1. In late 2021, Honduras elects a new President who runs on a populist leftist platform, including repealing the ZEDE Legal Framework

230. As noted above, the ZEDE Legal Framework and Próspera ZEDE enjoyed significant support from Honduras and local communities from inception and over the years, both because of their potential to generate economic development and because of the concrete benefits that Claimants were already providing.⁵⁵⁵ Honduras adopted the ZEDE Legal Framework through a constitutional amendment and enabling legislation.⁵⁵⁶ The Supreme Court confirmed the constitutionality of the ZEDE Legal Framework on various occasions.⁵⁵⁷ Honduras enthusiastically supported the ZEDEs and Claimants' project over the years.⁵⁵⁸ Likewise, Próspera ZEDE developed close ties with local communities, including through Claimants' social projects.⁵⁵⁹

231. In mid-2020, Claimants became aware of scattered opposition to the ZEDEs from nascent political organizations, but this was limited and was not considered a real cause for concern. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁵⁵ See *supra* § II.C.3.e.

⁵⁵⁶ See *supra* § II.B.1.

⁵⁵⁷ See *supra* § II.B.3.

⁵⁵⁸ See *supra* § II.C.3.e.

⁵⁵⁹ See *supra* § II.C.4.e.

[REDACTED] These scare tactics were countered by the mayor and vice-mayor of Roatán, who visited Crawfish Rock and reassured the community about Próspera ZEDE:

[REDACTED]

232. Mr. Brimen recalls that this initial opposition to Próspera ZEDE consisted mostly of protests by NGOs and that “[i]t did not concern us very much because the government of Honduras and the local community were firmly supportive of our efforts.”⁵⁶²
233. This changed during the presidential campaign of 2021, as Xiomara Castro, the main opposition candidate, made attacks on the ZEDEs a plank of her political platform,⁵⁶³ while President Hernández publicly touted Honduras’s support of the ZEDE regime⁵⁶⁴ thrusting ZEDEs into the eye of the political storm.⁵⁶⁵
234. Ms. Castro is the leader of the LIBRE Party, which she co-founded in 2011 with her husband,

⁵⁶⁰ [REDACTED]

⁵⁶¹ [REDACTED]

⁵⁶² Brimen ¶ 92.

⁵⁶³ See *Government Plan to Refound Honduras 2022-2026* dated 5 Sep. 2021 (C-541) pp. 5, 29; Umanzor, Daniel, *Xiomara Castro presents her Government Plan for the Refounding of Honduras 2022-2026*, NOTI BOMBA (5 Sep. 2021) (C-39); Xiomara Castro de Zelaya, TWITTER @XIOMARACASTROZ dated 7 Aug. 2021 (C-38).

⁵⁶⁴ See Ethel Valladares, *Zonas de Empleo Desarrollo Económico ZEDE are already under construction in Honduras and they create jobs*, VTV (C-542). (“President Juan Orlando Hernández highlights [ZEDEs,] and that [three ZEDEs] are under construction in Honduras, [which] will generate a healthy quantity of jobs for Hondurans. The head of State wonders if those who oppose the [ZEDEs] do it out of lack of awareness or out of ignorance.”).

⁵⁶⁵ See Brimen ¶ 93; Delgado ¶ 48; “ZEDE” Google Trend Search (C-546) (showing the search trend for the term “ZEDE” between 2014 to 2024, and evidencing a notable drop in search interest between 2014 and 2018 and a drastic increase in searches during the presidential campaign).

former President Manuel Zelaya,⁵⁶⁶ after he was removed from office.⁵⁶⁷ Mr. Zelaya is widely viewed as the de facto power behind Ms. Castro.⁵⁶⁸ Commentators have noted the Zelaya-Castro partnership's "tendencies toward authoritarian rule, nepotism, political clientelism, and the cooptation of various branches of government," and equated them to the Ortega-Murillo regime in Nicaragua.⁵⁶⁹ The entrenchment of Zelaya-Castro family members in the LIBRE Party (and the Castro Administration) is particularly notable given the alleged connection that many of them have connected with organized crime, including drug trafficking.⁵⁷⁰

235. Revanchism is at the heart of the Zelaya-Castro political project, often explicitly. Manuel Zelaya

⁵⁶⁶ See Redacción, *Xiomara Castro seeks to break presidential tradition in Honduras*, RADIO CADENA VOCES (15 Nov. 2021) (C-543) ("Iris Xiomara Castro . . . made her home alongside José Manuel Zelaya Rosales, whom she married in 1979 She began her experience in the political sphere as an organizer for the feminist movement of the Liberal Party, and would later appear as an essential piece in her husband's presidential campaign, until his eventual passage to the presidency, thus becoming the first lady of Honduras. . . . In 2012 popular recognition of her leadership would place her center stage, announcing her awaited presidential candidacy at the head of [LIBRE]"). *Xiomara Castro, the first female president of Honduras and the woman who returns the left to power after the coup d'état against her husband*, BBC (1 Dec. 2021) (C-544) ("Xiomara Castro, from [LIBRE] and wife of former president Manuel Zelaya, won the elections in Honduras [I]n July 2012, she launched her first presidential campaign for the Partido Libre, created alongside her husband.").

⁵⁶⁷ See *supra* § II.A.1.

⁵⁶⁸ See L. Aguilar, J. Avila, *The Zelaya clan returns to power in Honduras*, CONTRA CORRIENTE (27 May 2022) (C-545).

⁵⁶⁹ See Madrid, Yarely, *The Castro-Zelaya's in Honduras are copying the authoritarian manual from Daniel Ortega*, EXPEDIENTE PÚBLICO (29 Mar. 2023) (C-116).

⁵⁷⁰ See, e.g., Classified Memorandum by Ambassador Charles A. Ford, WIKILEAKS dated 6 Dec. 2005 (C-163) ¶ 4 ("Zelaya's family tree raises eyebrows. . . . Carlos [Zelaya], who later became a congressman, was reportedly driving a car used in the kidnapping of Camilo Giron and Junior Kafati (the son of Salomon Kafati), who were later murdered (in the early 1980s). Although he claimed to be innocent, Carlos served 10 years in jail in connection with this incident."); Classified Memorandum by Ambassador Charles A. Ford, WIKILEAKS dated 15 May 2008 (C-164) ¶¶ 1, 8, 15 ("Over [President Manuel Zelaya's] two and a half years in office, he has become increasingly surrounded by those involved in organized crime activities. . . . There also exists a sinister Zelaya, surrounded by a few close advisors with ties to both Venezuela and Cuba and organized crime. . . . Due to his close association with persons believed to be involved with international organized crime, the motivation behind many of his policy decisions can certainly be questioned. I am unable to brief Zelaya on sensitive law enforcement and counter-narcotics actions due my concern that this would put the lives of U.S. officials in jeopardy. . . . His pursuit of immunity from the numerous activities of organized crime carried out in his Administration will cause him to threaten the rule of law and institutional stability."); Ryan C. Berg, *From Bad to Worse: The Xiomara Castro Administration Begins to Weaponize the Honduran State*, CSIS (4 Nov. 2024) (C-173) ("Ironically, the Castro administration swept to power on an anti-corruption message. Castro juxtaposed her administration to the prosecution and eventual conviction of her predecessor, Juan Orlando Hernández. As the video in question well demonstrates, the rumors are likely true – the Castro-Zelaya family appears embedded in some of the same criminal networks as its predecessor.").

was removed from office in 2009⁵⁷¹ following his attempts to hold an unconstitutional referendum to amend the Constitution so as to abolish the term limit preventing him from serving another term as President.⁵⁷² Following a short interim-presidency, rival National Party assumed control of the presidency.⁵⁷³ It is the position of Ms. Castro and her allies that what happened in 2009 was illegitimate, that the democratically elected governments that followed were dictatorships,⁵⁷⁴ and that all laws and policies originating during that period (including the ZEDE Legal Framework) are per se illegitimate and should be repealed.⁵⁷⁵

236. During her campaign, Ms. Castro attacked the ZEDEs fiercely. Rather than making a reasoned and informed policy argument, Ms. Castro's attacks on the ZEDEs were based on invective. Instead of engaging with the ZEDE Legal Framework, which was well enshrined in Honduran law and which Honduras had promoted for the better part of a decade, President Castro denounced the ZEDEs as

⁵⁷¹ See Analyst in Latin American Affairs (name redacted), Honduran Political Crisis, Jun. 2009-Jan. 2010 (1 Feb. 2010) (C-547) p. 4 ("On June 28, 2009 . . . the Honduran military surrounded the presidential residence, arrested President Zelaya, and flew him to exile in Costa Rica, . . . Zelaya was charged with crimes against the form of government, treason, abuse of authority, and usurpation of functions for calling a referendum without the approval of the National Congress and intending to use the INE to supervise the vote rather than the Supreme Electoral Tribunal. . . . The Honduran National Congress ratified the ouster soon after the military forced Zelaya from the country.").

⁵⁷² See *id.* p. 2 ("In March 2009, President Zelaya issued an executive decree introducing a process that eventually could have led to changes to the Honduran constitution. The decree called on the National Statistics Institute (INE) to hold a popular referendum on June 28, 2009, to determine if the country should include a fourth ballot box during the general elections in November 2009. The fourth ballot would consult Hondurans about whether the country should convoke a national constituent assembly to approve a new constitution.") p. 3 ("The proposal was immediately criticized by a number of officials. President of Congress Roberto Micheletti expressed ardent opposition, the 2009 presidential nominees of the PL and the PN—both of whom later indicated that they were open to a constitutional assembly—accused Zelaya of trying to perpetuate himself in power, the Attorney General's office accused Zelaya of violating the constitution, and the Honduran judiciary declared Zelaya's proposal unconstitutional. Nonetheless, Zelaya pushed forward President Zelaya's refusal to accept the court rulings, however, sparked rumors that he was planning an institutional coup that would dissolve Congress and immediately call a constitutional assembly.").

⁵⁷³ See *id.* pp. 5, 9 ("Roberto Micheletti assumed the office of the presidency following Zelaya's removal. . . . On November 29, 2009, Honduras held general elections Former President of Congress and 2005 National Party (PN) presidential nominee Porfirio Lobo easily defeated his closest rival").

⁵⁷⁴ See Government Plan to Refound Honduras 2022-2026 dated 5 Sep. 2021 (C-541) p. 4.

⁵⁷⁵ See *id.* p. 5 ("[T]he worst harm that we, Hondurans of our generation, have suffered is the regime that been installed in the last decade . . . [that] presses to impose in a triumphal advertising march the ZEDEs, hated by the general population and universally rejected . . . The laws with which the dictatorship operates must be repealed and lost civil rights restored . . .").

“criminal,”⁵⁷⁶ a “false promise,” and as “robbing [us Hondurans] of [our] sovereignty.”⁵⁷⁷ Her “Plan to Refound Honduras” declared, in the face of all evidence to the contrary, that ZEDEs were “hated by the population in general, rejected universally,” and blamed ZEDEs for “disarticulat[ing],” “plunder[ing]” and “exploit[ing]” Honduras.⁵⁷⁸ She vowed to repeal the ZEDE Legal Framework “within 100 days of assuming the presidency.”⁵⁷⁹

237. Ms. Castro and her LIBRE Party also tied the ZEDE Legal Framework to the prior administrations.⁵⁸⁰ Their attacks on the ZEDE were often overtly attacks on her political rivals, whom she accused, without any evidence, of using the ZEDEs for nefarious purposes.⁵⁸¹
238. Ms. Castro specifically targeted Próspera ZEDE, which she called “an enemy of the Honduran people” to be fought and defeated.⁵⁸² Ms. Castro even campaigned on Roatán where she sought to incite the local community against Claimants.⁵⁸³ [REDACTED]

⁵⁷⁶ M. Zelaya, *Xiomara Castro: The poverty that Honduras is experiencing has a first and last name*, HONDUSA TV (21 Jun. 2021) (C-549).

⁵⁷⁷ *The government's promises to generate employment through the ZEDEs are false: Xiomara Castro*, HONDUDIARIO (21 Jun. 2021) (C-550).

⁵⁷⁸ Government Plan to Refound Honduras 2022-2026 dated 5 Sep. 2021 (C-541) pp. 5, 29.

⁵⁷⁹ Umanzor, Daniel, *Xiomara Castro presents her Government Plan for the Refounding of Honduras 2022-2026*, NOTI BOMBA (5 Sep. 2021) (C-39).

⁵⁸⁰ See Zelaya, M, *Xiomara Castro: The poverty that Honduras is experiencing has a first and last name*, HONDUSA TV (21 Jun. 2021) (C-549). (“[Xiomara Castro] said that the ZEDEs are the biggest crime being committed by the Government. ‘They are stealing our sovereignty. We, as a party, must always stand up in favor of those fights that are carried out against the ZEDEs in the country’ . . . Castro de Zelaya categorized the promises of the government to generate jobs through the ZEDEs as false, ‘how can it be that to generate jobs we have to hand over the most precious thing which is the homeland.’). *Government Plan to Refound Honduras 2022-2026* (C-541) p. 5 (“[T]he worst harm that we, Hondurans of our generation, have suffered is the regime that has been installed in the last decade . . . [that] presses to impose in a triumphal advertising march the ZEDEs, hated by the general population and universally rejected . . . The laws with which the dictatorship operates must be repealed and lost civil rights restored . . .”).

⁵⁸¹ M. Zelaya, *Xiomara Castro: The poverty that Honduras is experiencing has a first and last name*, HONDUSA TV (21 Jun. 2021) (C-549). (“‘What they need [is] a refuge to go hide in for all the crimes they have committed in this country, because [they are] afraid that when they leave power justice will begin to take action’ . . .”).

⁵⁸² Xiomara Castro de Zelaya, TWITTER @XIOMARACASTROZ dated 7 Aug. 2021 (C-38); “*Zede Próspera is an enemy of the Honduran people!*” *the strong words of Xiomara Castro*, LPH (5 Dec. 2021) (C-41).

⁵⁸³ Xiomara Castro’s Speech in Roatán, Xiomara Castro de Zelaya Post, FACEBOOK dated 7 Aug. 2021 (C-551) (“Próspera is an enemy of the Honduran people and especially an enemy here, of this town of Roatán. It is an enemy and we must see it as an enemy. And we have to fight to be able to defeat them.”); Statement during Roatán Visit, Xiomara Castro de Zelaya Post, FACEBOOK dated 7. Aug. 2021 (“Upon our arrival in Roatán, we

[REDACTED]

239. Even if many Hondurans did not believe Ms. Castro’s vitriol, it was alarming. As Mr. Delgado recalls, the mere possibility of having a president that wanted to destroy the ZEDE Legal Framework “was an abrupt change for foreign investors in ZEDEs,” which had enjoyed many years of Government support and had been insistently induced to invest in ZEDEs.⁵⁸⁵

240. Ms. Castro won the Presidency in November 2021, and in her first speech as president-elect, she grouped ZEDEs with the worst scourges of Honduras, like death squads and drug trafficking:

I want to say it from the deepest part of our heart and that the Honduran people feel ‘out with war, out with hate, out with death squads, corruption, drug trafficking, out with ZEDE, out with drug trafficking and out with poverty’⁵⁸⁶

241. Despite Ms. Castro’s incendiary rhetoric, Claimants hoped that they could find a way to work with the new Government. As Mr. Brimen explains:

[d]espite her anti-ZEDE rhetoric, I relied on Honduras’s guarantees of legal stability, and at first I was hopeful that we could develop a working relationship with the new government. The regime had layer upon layer of legal protections and explicit guarantees, and we were not a political actor, so we expected those guarantees to be honored.⁵⁸⁷

made clear our position against the ZEDE. PRÓSPERA is an enemy of the Honduran people. . . . We organized to win the elections house to house, neighborhood to neighborhood. The ZEDE is leaving, taking the National Party out of power.) (C-552).

584

⁵⁸⁵ Delgado ¶ 49.

⁵⁸⁶ *After the first CNE results, Xiomara Castro declares herself the winner of the general elections in Honduras*, EL HERALDO (28 Nov. 2021) (C-292) (quoting Ms. Castro’s first speech).

⁵⁸⁷ Brimen ¶ 95.

242. Indeed, ZEDEs were hardly the demons that kept Hondurans up at night and needed to be destroyed at all cost, as Ms. Castro had made them out to be during her election campaign. CID Gallup⁵⁸⁸ conducted a post-election poll released in February 2022, which showed that among Ms. Castro's voters, only 3% cited opposition to ZEDEs as the principal driver for their vote.⁵⁸⁹

2. In early 2022, as Ms. Castro enters into power, Honduras descends into political chaos and seeks to repeal the ZEDE Legal Framework

243. Honduras descended into political chaos even before Ms. Castro assumed office. During the first session of the new legislature, violence broke out as competing factions of the governing coalition disputing who should serve as Speaker assaulted one another on the floor of the National Congress.⁵⁹⁰ Two different congressmen claimed to be the legitimately-elected speaker and established parallel Congressional Boards (*Junta Directiva*).⁵⁹¹ This splintered the legislature into two separate assemblies – one led by congressman Luis Redondo, who had Ms. Castro's support but lacked a quorum, operating in Tegucigalpa, and another led by congressman Jorge Calix, which had a quorum but was forced to flee the capital.⁵⁹²

⁵⁸⁸ CID Gallup is a company with over 45 years of experience in consulting, business intelligence, and information gathering and analysis for market research, social studies, public opinion, and politics. *See* CID Gallup, *About us* (C-592).

⁵⁸⁹ *See* CID Gallup Presentation: Public Opinion Study dated Jan. 2022 (C-593) p. 13.

⁵⁹⁰ *See* *Xiomara Castro: screams, blows and scenes of chaos in the Honduran Congress after a division in the party of the president-elect*, BBC (21 Jan. 2022) (C-42).

⁵⁹¹ The Congressional Board is the executive body of Congress, in charge of coordinating legislative activities, among other functions. *See* Decree No. 363-2013 containing the Organic Law of the Legislative Branch (C-594), Arts. 14, 21. With regards to the existence of two simultaneous Congressional Boards, *see* *Parliamentary Crisis in Honduras threatens the governability of Xiomara Castro's presidency*, EXPEDIENTE PÚBLICO (23 Jan. 2022) (C-595) (“Two [C]ongressional [B]oards were sworn in for the Honduran National Congress this Sunday 23 January, leading to a serious constitutional crisis that threatens the stability of being able to govern by Xiomara Castro Jorge Cálix was anointed president of the Honduran Congress for the 2022-2026 term with support of the Honduran Partido Nacional of the current president Juan Orlando Hernández, the [Partido] Liberal, the [Partido] Anticorrupción and a minority group from her own political group, in opposition to a political agreement of the Libre leadership with the Partido Salvador de Honduras (PSH) to leave office to Luis Redondo. . . . The president-elect, Xiomara Castro, despite all this, recognized her ally Luis Redondo as president of the parliament.”).

⁵⁹² *See* *Shadows of illegality in Congressional Board meeting sharpen political crisis in Honduras*, EXPEDIENTE PÚBLICO (10 Aug. 2022) (C-602) (“On January 23, when the Congressional Board was to be elected, which is usually the same as the provisional one, Calix changed the place of the session and moved it to a country club located almost an hour from the capital. For Mejía Rivera, this action ‘implies a fraud of law because it was



Picture of violence during first session of new legislature⁵⁹³

244. Members of the Congress disfavored by Ms. Castro received death threats and had their homes riddled with bullets, prompting some to flee Honduras with their families, seeking asylum in Costa Rica and Mexico.⁵⁹⁴ Rather than calming the situation, Ms. Castro called for the police to remove the security barriers around the National Congress building and for her supporters to occupy the building in support of Mr. Redondo.⁵⁹⁵ Castro called dissident lawmakers “traitors” and expelled

impossible that the deputies who were already in Congress, in the center of Tegucigalpa, could get to that call in time.’ The matter went from bad to worse, because that day two sessions were held, one in Bosques de Zambrano, where Cáliz was sworn in as president of Congress; and another in the legislative building, with Redondo sworn in as its president. . . . In the Redondo session ‘there was no quorum’ For attorney Barrientos, the board of directors of Redondo ‘is illegal for the simple reason that it was elected by alternates’ and although the organic law allows them to vote in the absence of the member deputies, ‘It is until the president of the Congress is elected that he proceeds to incorporate the alternates (...) besides that it is necessary to have at least 65 deputies (members) and in that meeting only 44 participated’.”); *The United States have called on Honduran politicians to resolve the crisis in Parliament with a “peaceful and constitutional dialogue,”* INFOBAE (29 Jan. 2022) (C-50).

⁵⁹³ See *Screams, blows and kick in a controversial vote in the Honduran Congress*, LAVANGUARDIA, YOUTUBE dated 22 Jan. 2022 (C-598).

⁵⁹⁴ See *Supporters of LIBRE occupy the house of Dr. Denis Chirinos and demand his resignation*, PROCESO DIGITAL (21 Jan. 2022) (C-49); *Shots fired and paint thrown at the house of former footballer and congressman Wilmer Cruz*, LA PRENSA (27 Jan. 2022) (C-46); Sierra, Karen, *The families of “dissident members of Congress” of LIBRE party are outside of Honduras for security reasons, affirms Juan Ramon Flores*, TU NOTA (31 Jan. 2022) (C-51); *Exile, complaints and deadlock over the Speakership of the National Congress*, LA PRENSA (31 Jan. 2022) (C-52); *Dissident LIBRE members of congress consider exile given the lack of guarantees*, PROCESO DIGITAL (31 Jan. 2022) (C-346).

⁵⁹⁵ See de León, Ana, *Citizens “occupy” the Parliament of Honduras, embroiled in a political crisis*, SWISSINFO.CH (26 Jan. 2022) (C-45) (“The Honduran Parliament has become a ‘People’s Congress’ taken over by citizens since last Sunday, when the elected president, Xiomara Castro, ordered the police to take all fences away; now its doors are open with no time schedules or security.”).

them from the LIBRE Party,⁵⁹⁶ while also stating that the dissident faction would not be permitted to take office.⁵⁹⁷

245. As this chaos unfolded and the greater part of Congress was sitting outside Tegucigalpa, in late January 2022 Claimants learned of efforts to repeal the ZEDE Legal Framework. Mr. Delgado recalls meeting with one of the competing Speakers of Congress, Mr. Calix, during this time, and asking about the possibility of a repeal.⁵⁹⁸ Mr. Calix told Mr. Delgado that he anticipated that the ZEDE Legal Framework would be repealed, but assured him that Claimants' acquired rights would be respected.⁵⁹⁹ Meanwhile, Ms. Castro's preferred Speaker in Tegucigalpa, Mr. Redondo, pushed a bill through the rump legislature that sought to repeal the ZEDE Legal Framework and provided for the prosecution on charges of treason of Hondurans who had been involved with it.⁶⁰⁰ As Mr. Brimen recalls, "[w]hile we knew that we were guaranteed legal stability, the chaotic circumstances in Honduras started to have a negative impact on our ability to execute our business plan. HPI and SJBDC immediately sent a cease and desist letter on 25 January 2022."⁶⁰¹ Despite reports stating that Mr. Redondo's bill had been approved,⁶⁰² it ultimately did not become law and has since been quietly forgotten by Honduras.

⁵⁹⁶ See *Xiomara Castro expels LIBRE congressmen who disrespected agreement and selected Cáliz as interim president of the CN*, EL HERALDO (21 Jan. 2022) (C-599); *Honduras political dispute resolved, paving way for president's anti-corruption agenda*, REUTERS (7 Feb. 2022) (C-56);.

⁵⁹⁷ See *Xiomara Castro asks the National Police to lift the barriers that protect the National Congress*, PROCESO DIGITAL (22 Jan. 2022) (C-43) ("She pointed out that the interim steering committee presided over by Jorge Cáliz will not be permitted to take office permanently."); de León, Ana, *Citizens "occupy" the Parliament of Honduras, embroiled in a political crisis*, SWISSINFO.CH (26 Jan. 2022)(C-45).

⁵⁹⁸ See Delgado ¶ 52.

⁵⁹⁹ See *id.*

⁶⁰⁰ See Decree No. 6-2022, Index of Decrees of the National Congress of Honduras dated 3 Feb. 2022 (C-54) Art. 3). In Honduras, treason is punishable by up to twenty years of imprisonment. Individuals found guilty of treason are disqualified to take public office for twice the length of their imprisonment and lose their citizenship if they are Honduran nationals. See Decree No. 130-2017, enacting the Criminal Code of Honduras, published on 10 May 2019 (C-26) Arts. 555, 562.

⁶⁰¹ Brimen ¶ 96; Letter from HPI and SJBDC to the National Congress of Honduras (25 Jan. 2022) (C-44).

⁶⁰² See *Redondo's National Congress annuls ZEDEs through a legislative decree*, EL HERALDO (4 Feb. 2022) (C-55).

246. On 27 January 2022, Ms. Castro assumed the Presidency of Honduras, being sworn in by a judge rather than the Speaker of Congress, as the law and custom typically required in Honduras.⁶⁰³ In

her inaugural speech she announced a radical legislative agenda, including the repeal of the ZEDE

Legal Framework:

[d]uring the first month of legislative activity, we must undo the abhorrent constitutional and legal reforms introduced through contracts of the Executive illegally endorsed by the National Congress that undermine the people's sovereignty, such as the ZEDEs.⁶⁰⁴

247. These were difficult weeks for Claimants and supporters of the ZEDEs. Among other distressing incidents, Tristan Monterroso, the Technical Secretary of Próspera ZEDE, resigned effective 28 January 2022,⁶⁰⁵ after nearly being assassinated, as recounted by Mr. Brimen:

Tristan Monterroso resigned as Technical Secretary of Próspera ZEDE after having been confronted on the beach by a gunman who admitted to having been hired to assassinate him but stopped after recognizing Tristan as a pastor.⁶⁰⁶

248. Mr. Brimen explains that “[t]his climate of political violence fundamentally altered how I could operate. While I believed it was critical for me to remain in Roatán, I was forced to enhance personal security to protect myself and my family and, subsequently, we stayed outside the country for prolonged periods when there were heightened tensions.”⁶⁰⁷

249. HPI nominated Jorge Colindres for appointment as the new Technical Secretary and submitted the

⁶⁰³ See Judge Karla Romero, *who swore in president Xiomara explains why she alluded to a prohibition in the constitution*, PROCESO DIGITAL (28 Jan. 2022) (C-48).

⁶⁰⁴ Presidential Inauguration of 2022, *The President of the Republic, Xiomara Castro, sends a message to Honduras* dated 27 Jan. 2022 (C-47) p. 4 (emphasis added).

⁶⁰⁵ See Tristan Mason Monterroso, *Management Report 2022*, Próspera ZEDE (19 May 2022) (C-554) pp. 2-3 (“I acknowledge and certify that I have resigned from the positions of Technical Secretary, Próspera Council Trustee, and sole administrator of Próspera Foundation, S.A., and that my former authority within the Office of the Technical Secretary has transitioned to my successor, Mr. Jorge Constantino Colindres Castillo, effective January 28, 2022. . . . [I]n the interim period between January 28, 2022 and April 28, 2022 . . . I signed various . . . instruments as ‘outgoing’ Technical Secretary before I received notice that CAMP had approved the appointment of my successor to the Office of the Technical Secretary.”).

⁶⁰⁶ Brimen ¶ 99.

⁶⁰⁷ See Brimen ¶ 100.

standard background documents in January 2022.⁶⁰⁸ CAMP appointed Jorge Colindres as the new Technical Secretary of Próspera ZEDE on 28 April 2022.⁶⁰⁹

250. Meanwhile, in February 2022, with no clear explanation, Congress acknowledged Mr. Redondo as Speaker.⁶¹⁰ Notably, the status of acts taken by the divided Congress was not addressed, raising questions as to their status and legitimacy.⁶¹¹
251. Honduras then launched a general campaign against the established legal framework for investment.⁶¹² Numerous investors have voiced concerns regarding expropriation of private assets, non-tariff measures against U.S. imports, increasingly frequent armed land invasions, and

⁶⁰⁸ On 19 January 2022, HPI submitted a request to CAMP to appoint Jorge Colindres as the replacement of Tristan Monterroso as Technical Secretary. The nomination was accompanied by personal and professional information, including a clean criminal record. *See* Nomination petition from HPI to CAMP dated 19 Jan. 2022, requesting appointment of Jorge Colindres as Technical Secretary (C-600). The petition included Mr. Colindres's CV, copies of IDs and results of background check against all major criminal database and sanctions lists. *See* (C-601).

⁶⁰⁹ Ratification of Promulgations of Próspera ZEDE dated 28 Apr. 2022 (C-167). *See also* Brimen ¶ 99 (“[Mr. Monterroso] was replaced as Technical Secretary by Jorge Colindres, an attorney who had strongly defended Próspera ZEDE for a long time and had sought out involvement with the project and briefly served as Assistant General Counsel to HPI.”).

⁶¹⁰ *See Honduras political dispute resolved, paving way for president's anti-corruption agenda*, REUTERS (7 Feb. 2022) (C-56).

⁶¹¹ *See Shadows of illegality in Governing Board of Congress meeting sharpen political crisis in Honduras*, EXPEDIENTE PÚBLICO (10 Aug. 2022) (C-602) (“[F]or those who maintain that the Governing Board is illegal, the scene is serious because it implies that ‘anything you do has no validity, including all the decrees that have been issued up until today’, said constitutional lawyer Juan Carlos Barrientos according to *Expediente Publico*.”); *ultimahora.hn*, X @ULTIMAHORAHN dated 4 Aug. 2022 (C-603) (“@cnhonduras National Anticorruption Council [a Honduran organization created by law to help fight corruption, which consists of representatives from civil society] confirms its position that the [Congressional Board] of the [National Congress] directed by Louis Redondo is ILLEGAL and acts de facto.”); Gabriela Castellanos, X @GCASTELLANOSL dated 17 Jan. 2023 (C-604) (Executive Director of the National Anticorruption Council stating: “The illegal [Congressional Board] of the [Consejo Nacional] made the unconstitutional appointment of the Attorney General and Deputy as preparatory acts for the great corruption.”); Gabriela Castellanos, X @GCASTELLANOSL dated 17 Jan. 2023 (C-605) (Executive Director of the National Anticorruption Council stating: “There is no longer room for protest, much less for dissent, it remains to face the parliamentary dictatorship imposed by the illegality of its board of directors.”).

⁶¹² *See, e.g.*, Decree No. 46-2022, approved on 12 May 2022 (C-561) Arts. 2, 4, 6 (declaring a the electricity sub-sector to be in a state of “national emergency” forcing renegotiation of contracts with private power producers, and enabling State expropriation of private assets); *Honduras seeks to negotiate CAFTA: “The ability to compete has been lost”*, BILATERALS.ORG (9 May 2022) (C-606) (expressing an intent to renegotiate CAFTA-DR, and suggesting that trade agreements and investor protections guaranteed under CAFTA might not be honored); *Italian company affected by land invasions sues the State for \$70 million*, HCH (26 Oct. 2022) (C-608) (reporting on the government's failure to enforce property rights against illegal land invasions – or indeed, its officials' open sympathy with “land recovery” movements – creating massive legal insecurity for investors).

politically motivated threats of criminal prosecution.⁶¹³ As a result, Honduras faces a wave of investor-State arbitrations.⁶¹⁴

3. In April 2022, Honduras passes legislation to repeal the ZEDE Legal Framework, leaving existing ZEDEs in a legal vacuum

252. In February 2022, Honduras appointed Fernando García, one of Manuel Zelaya’s former schoolteachers who had worked with him during his presidency, as “Anti-ZEDE Commissioner,” a new position that Ms. Castro created to lead efforts to repeal the ZEDE Legal Framework.⁶¹⁵
253. On 20 April 2022, the National Congress heard Mr. García.⁶¹⁶ In his speech, he advocated for the repeal of the ZEDE Legal Framework based on nationalistic sentiments and invoking supposed principles of righteousness and sovereignty.⁶¹⁷
254. Congress then purported to debate bills to repeal the ZEDE Constitutional Provisions and the ZEDE Law in a session marked by nationalist rhetoric, fervent speeches, and enthusiastic applause, rather than any serious discussion of policy. In tenor, the proceedings swung wildly between the eerily politburesque and the surreally carnivalesque. Among other things, Congress launched into an impromptu singing of the national anthem while members of Congress raised their fists.⁶¹⁸ The Vice President of Congress called for the repeal of the ZEDE Legal Framework, alleging that “[n]ever in the history of the violation of the Honduran constitution and laws had we seen so much

⁶¹³ See 2024 investment climate statements: Honduras, U.S. DEPARTMENT OF STATE (2024) (C-118) p. 2.

⁶¹⁴ See *Overseas Real Estate LLC v. Republic of Honduras* (ICSID Case No. ARB(AF)/25/4); *International Container Terminal Services Inc. v. Republic of Honduras* (ICSID Case No. ARB/24/34); *Operadora Portuaria Centroamericana, S.A. de C.V. v. Republic of Honduras* (ICSID Case No. ARB/24/33); *Víctor Miguel Silhy Zacarías v. Republic of Honduras* (ICSID Case No. ARB/24/32); *X-Elio Energy S.L. v. Republic of Honduras* (ICSID Case No. ARB/24/31); *Eléctricas de Medellín Ingeniería y Servicios S.A.S. v. Republic of Honduras*, ICSID Case No. ARB/24/24; *Inversiones y Desarrollos Energéticos, S.A. v. Republic of Honduras* (ICSID Case No. ARB/23/40); *Norfund and KLP Norfund Investments AS v. Republic of Honduras* (ICSID Case No. ARB/23/13); *Scatec ASA v. Republic of Honduras* (ICSID Case No. ARB/23/12); *Autopistas del Atlántico, S.A. de C.V. and others v. Republic of Honduras* (ICSID Case No. ARB/23/10).

⁶¹⁵ See *Fernando García has been appointed by the president of Honduras to fight against ZEDEs*, CRITERIO (10 Feb. 2022) (C-53).

⁶¹⁶ See *ZEDEs Repealed*, PROCESO DIGITAL (20 Apr. 2022) (C-610).

⁶¹⁷ See *ZEDEs Repealed*, PROCESO DIGITAL (20 Apr. 2022) (C-610).

⁶¹⁸ See Luis M. Valle, X @LUISM_VALLE dated 21 Apr. 2022 (C-611).

prostitution as with the approval of the ZEDEs.”⁶¹⁹

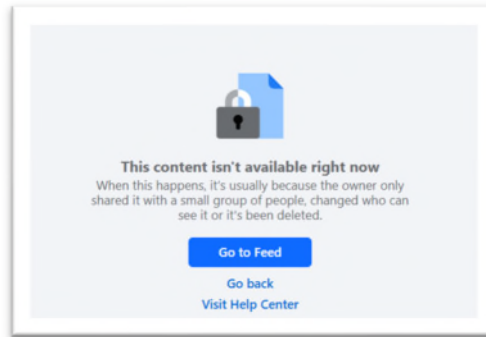


Members of Congress engaged in impromptu singing and salutes

255. In Congress’s hours-long session, there was no consideration whatsoever of data regarding the status and work of the ZEDEs and the costs and benefits of the ZEDE Legal Framework. Apparently, no studies or impact assessments were prepared in advance of the session for Congress members’ consideration, as none were discussed during the day. And there was no consultation with – or testimony from – anyone actually involved in the ZEDE regime, whether CAMP, the Technical Secretaries, or investors in ZEDE like Claimants. Nor was there any testimony of experts or any serious discussion of policy. The text of the Decrees was not deliberated, and the Decrees were adopted without any modification. Further, at no point was there any proper consideration of the Supreme Court’s 2014 decisions upholding the constitutionality of the ZEDE Legal Framework and their implications. Nor were Honduras’s prior legal stability undertakings addressed, much less was any policy (rational or otherwise) articulated as to the State’s continuing obligations thereunder. The above statements are based on the official video of the session, which Claimants

⁶¹⁹ See Proceso Digital, TWITTER @PROCESODIGITAL dated 21 Apr. 2022 <https://x.com/ProcesoDigital/status/1517011458764197888> (C-612) minute 0-0:08.

viewed online on Congress's Facebook site. They are unable to produce the video, however⁶²⁰ as it was taken offline shortly before this submission. Claimants intend to ask Honduras to produce it during document production.



256. At 10:54 pm on 20 April 2022, Congress was called to vote on the bill to repeal the ZEDE Constitutional Provisions by a show of hands. Within seconds, the Secretary of Congress declared the bill approved by unanimity. After another hour of grandstanding, shortly after midnight on 21 April 2022, Congress voted on the bill to repeal the ZEDE Organic Law, again by a show of hands. Again, within seconds, the bill was declared approved by unanimity.⁶²¹ The “unanimous” vote was by acclamation and not objectively verified and the official minutes of the session have never been made public.⁶²²
257. Honduras published Decree No. 32-2022 (“**Decree No. 32**”) in the Official Gazette dated 21 April 2022. Decree No. 32 was the first step of the process to eliminate the ZEDE Constitutional Provisions:

⁶²⁰ See Broadcast of Honduras's National Congress session held on 20 Apr. 2022 (Vote on Bill to Repeal the ZEDE Organic Law), Honduras's National Congress Post, FACEBOOK, <https://www.facebook.com/congresonacionalhn/videos/715996636099287>.

⁶²¹ See Palencia, Gustavo, *Honduran Congress unanimously nixes special economic zones* (21 Apr. 2022) (C-707) (“Honduras’ Congress unanimously repealed a law overnight which allowed for the creation of special economic zones exempt from some national laws and taxes throughout the country, known as Zones for Employment and Economic Development (ZEDEs).”).

⁶²² Throughout the 2022 legislative session, Congress reportedly relied on *ad hoc* procedures that made it impossible to verify alleged quorums and vote counts. See Burgos, Jorge, *National Congress continues approving laws without system for recording Congressmen votes*, CRITERIO (12 Apr. 2022) (C-708).

[t]o repeal in full the following enacting and ratifying Constitutional Amendment Decrees creating and governing the [ZEDEs]: Decree No. 236-2012 . . . , through which the National Congress amended Articles 294, 303, 304 and 329 of the Constitution of the Republic; and ratifying Decree No. 09-2013 . . . through which the National Congress ratified the amendment to Articles 294, 303, 304 and 329 of the Constitution of the Republic.⁶²³

258. Decree No. 32 also provides that any legal norms stemming from the ZEDE Constitutional Provisions (*e.g.*, organic laws, laws, regulations, resolutions, provisions, acts, agreements, concessions, and any other rules in favor of the ZEDE) “shall not be legally valid.”⁶²⁴ Notably, Decree No. 32 does not mention the Honduras-Kuwait BIT and makes no provision as to Honduras’s international obligations thereunder (which are automatically applicable to all investors in the ZEDE regime pursuant to the MFN provision in the ZEDE Law and to U.S. investors pursuant to the MFN provision in CAFTA-DR).⁶²⁵
259. As noted above, the Constitution of Honduras provides that constitutional amendments are only effective if they are ratified by Congress in the next regular legislative session⁶²⁶ Decree No. 32 itself acknowledges that the repeal would not be effective until that requirement is complied with.⁶²⁷ Congress never ratified the repeal of the ZEDE Constitutional Provisions, failing to even bring the question to a vote during the 2023 regular legislative session, and therefore, the Constitution was not amended to remove the ZEDE Constitutional Provisions.⁶²⁸
260. Honduras published Decree No. 33-2022 (“**Decree No. 33**”) in the Official Gazette dated 26 April

⁶²³ Decree No. 32-2022 published on 21 Apr. 2022 (C-57) Art. 1. *See also* Cosenza § 6.2.1.

⁶²⁴ Decree No. 32-2022 published on 21 Apr. 2022 (C-57) Art. 2. *See also* Cosenza § 6.2.1.

⁶²⁵ *See supra* § II.B.2.b.ii.

⁶²⁶ *See supra* § II.D.2.b; Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 373.

⁶²⁷ *See* Decree No. 32-2022 published on 21 Apr. 2022 (C-57) Art. 3 (“This Decree shall be constitutionally ratified by this National Congress in the next regular session and shall become effective on the day of its publication in Official Gazette ‘La Gaceta.’”).

⁶²⁸ *See* Cosenza ¶ 119(f) (“Given that the decree involves an amendment in the form of a repeal of a prior Constitutional Reform, such ratification was an inescapable formal requirement, pursuant to Article 373 of the Constitution. However, such ratification never took place, as it was not possible to identify any such Decree issued by the National Congress during the subsequent legislative period (2023-2024), much less has such a decree been published in the ‘La Gaceta’ Official Gazette. All of the foregoing means that the constitutional reform procedure (in the form of a repeal) was not perfected.”); *infra* § II.D.6.

2022. Pursuant to Decree No. 33, Honduras repealed the ZEDE Organic Law with immediate effect:

[t]o repeal in full the Decree containing the Organic Law of the Zones for Employment and Economic Development (ZEDEs), approved on June 12, 2013, through Decree No. 120-2013 . . . This Decree shall become effective on the day of its publication in the Official Gazette ‘La Gaceta.’⁶²⁹

261. Decree No. 33 also repealed all other laws, rules or provisions approved by Congress related to the ZEDE Organic Law, including: Decree No. 368-2013, which ratified the appointment of the members of CAMP; Decree No. 153-2013, which contained the Program for the Development of ZEDEs; and Decree No. 32-2021 (and its amendments) related to the sales tax on the goods and services which the ZEDEs provide in the Honduran market.⁶³⁰ Again, however, Decree No. 33 makes no mention of the Honduras-Kuwait BIT nor makes any provision as to Honduras’ international obligations thereunder. It also does not address the sunset provision in Article 45 of the ZEDE Law itself providing that the ZEDE Law would remain in place for the duration agreed in legal stability agreements and for at least ten years.⁶³¹

4. Honduras refuses to clarify if it will respect Claimants’ right to legal stability, but continuously attacks them and interferes with their investments

262. The recitals of Decree No. 32 and Decree No. 33 state that they would not give rise to “any compensation for any individual or legal entity, nor for any investor,”⁶³² but, as noted, neither decree contains any provision as to the post-repeal legal status of existing ZEDEs or mentions any transitory regime that would account for the legal stability rights to which existing investors in the ZEDEs were entitled in accordance with Honduras’s guarantees of legal stability.⁶³³

⁶²⁹ Decree No. 33-2022 published on 26 Apr. 2022 (C-60) Arts. 1, 3.

⁶³⁰ *See id.* Art. 2.

⁶³¹ *See supra* § II.B.1.c.

⁶³² Decree No. 32-2022, published on 21 Apr. 2022 (C-57) Seventh Recital; Decree No. 33-2022, published on 26 Apr. 2022 (C-60) Seventh Recital.

⁶³³ *See Cosenza* ¶ 124 (“[T]he repealing Decrees No. 32-2022 and No. 33-2022 neither considered nor provided for any transition mechanisms to acknowledge vested legal rights held by ZEDE investors.”).

263. Notably, as Mr. Cosenza explains, the omission of provisions as to the rights of existing ZEDE investors was contrary to Honduran law on the protection of vested or acquired rights, which is based on a century of legal tradition since its development in the 1906 Honduran Civil Code,⁶³⁴ and is reflected in the Constitution⁶³⁵ and national legislation,⁶³⁶ and was further upheld by the Supreme Court in numerous rulings.⁶³⁷
264. As Mr. Cosenza further explains, it was also inconsistent with Honduras's prior legislative practice when repealing other SEZ models: as explained above, Honduras expressly protected the acquired rights of investors when it repealed the ZOLT, ZADE and ZOLITUR regimes, and at least one company continued to operate under the ZADE regime almost 20 years after the legislative

⁶³⁴ The acquired rights doctrine is essentially a robust form of grandfathering in which good faith investor reliance on a legislative framework is protected by ensuring that repeals and modifications do not unsettle that reliance. *See* Honduran Civil Code (1906) (C-548), Art. 7. ("Laws cannot have retroactive effect, except in criminal matters, when the new law is favorable to the defendant."); Cosenza § 2.3.1.

⁶³⁵ *See, e.g.*, Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 61 ("The Constitution guarantees to all Hondurans and to foreigners residing in the country the right to the inviolability of life, and to individual safety, freedom, equality before the law, and property."), Art. 96 ("No law has retroactive effect, except in criminal matters when the new law favors the defendant."), Art. 106 ("No one may be deprived of his property except by reason of public need or interest defined by law or a decision based on law, and shall not take place without assessed prior compensation. . . ."); Cosenza §§ 2.3.1, 5.4.2.

⁶³⁶ *See, e.g.*, Constitutional Justice Law (*Ley sobre Justicia Constitucional*) (C-709) Art. 94 ("Of the Effects of the Judgement. – Publication. The judgment declaring the unconstitutionality of a rule will be immediately enforced, and will have general effects and therefore shall repeal the unconstitutional rule, and must be communicated to the National Congress, who will publish it in the Official Gazette. The judgment shall not affect legal situations that have already been definitively resolved and enforced.") (emphasis added); Honduran Civil Code (1906) (C-548) Art. 7 ("Laws cannot have retroactive effect, except in criminal matters, when the new law is favorable to the defendant."), Art. 2370 ("Variations introduced by this Code, which affect rights acquired under the previous Civil Legislation, shall not have retroactive effect. . . . 18a.- In every act or contract shall be understood incorporated the laws in force at the time of its celebration."). *See also* Cosenza § 2.3.1.

⁶³⁷ *See* Decision of the Supreme Court of Honduras, Case No. AA-299-18 dated 6 Mar. 2019 (C-710) ("The new law must always be assumed better than the previous one, when the legislator introduces an innovation he does so undoubtedly because this is required by the public convenience, either to better regulate the legislative matter, or to correct the existing abuses, the social interest therefore requires that the new law be implemented as soon as possible, but in the face of this social interest, there are other specific interests of great importance, interests that must be respected equally, because otherwise neither the state nor the fortune of the members of the community would be guaranteed and social life would not be possible. This is the case with respect to vested rights, and these rights must therefore be respected. . . [T]he doctrine of non-retroactivity must be based on a double consideration in the first place, respect for the social interest and respect for the acquired rights of individuals."); Decision of the Supreme Court of Honduras, Case No. AA-281-19 dated 3 Jun. 2022 (C-711) ("The vested right is recognized from the complete fulfillment of the requirements The protection of vested rights has strong protection because they are already considered as part of the property of the owner."). *See also* Cosenza §§ 2.3.1, 5.4.2.

repeal.⁶³⁸ Thus, Honduras was well aware of its doctrine of acquired rights and applied it when repealing other SEZ regimes; it is only with respect to the ZEDE regime that Honduras did not follow its decades-old precedent and law.

265. To make things worse, Decree No. 32 and Decree No. 33 ignored Article 45 of the ZEDE Law, which expressly provides that in the event of repeal the ZEDE Law shall remain in force for the duration provided in the applicable legal stability agreement, or at a minimum for ten years.⁶³⁹ Decree No. 32 and Decree No. 33 also were in clear violation of Honduras's 50-year legal stability commitment under the Honduras-Kuwait BIT, which could be extended to non-Kuwaiti investors through MFN clauses (including the one in Article 32 of the ZEDE Law).⁶⁴⁰
266. The absence of any provision for the existing ZEDEs created great legal uncertainty as to the status of Próspera ZEDE and Claimants' investments. This was compounded by contradictory statements by Honduran officials, who took a range of incompatible positions on the matter. For example:
- The day after the publication of Decree No. 32, Speaker Redondo stated that investors in ZEDEs are "not entrepreneurs, but criminals," and that ZEDEs were "illegal companies" that had ceased to exist and were not entitled to rights as a consequence of the repeal of the ZEDE Law.⁶⁴¹ Former President Mel Zelaya and the Anti-ZEDE Commissioner endorsed this position.⁶⁴²
 - On 23 April 2022, the Secretary of State for the Office of the President announced that Honduras would form a working group with ZEDE investors to explore a possible

⁶³⁸ As explained above, Honduras expressly protected the acquired rights of investors when it repealed the ZOLT, ZADE, and ZOLITUR regimes. At least one company continued to operate under the ZADE regime almost 20 years after the legislative repeal. *See supra* § II.A.2.b.

⁶³⁹ *See* Cosenza §§ 5.3, 6.4.

⁶⁴⁰ *See id.* §§ 5.3, 6.4.

⁶⁴¹ *See* "They are not business people, they are criminals" states the speaker of the Congress of Honduras about the owners of ZEDEs, CRITERIO (22 Apr. 2022) (C-58).

⁶⁴² *See* Jorge Burgos, *After repealing the ZEDE, the next step is prosecuting their promoters for treason*, CRITERIO HN (21 Apr. 2022) (C-349) ("In recent statements, Manuel Zelaya, former president, general coordinator of the Partido Libre and advisor to the president and his wife Xiomara Castro, expressed that 'the ZEDEs are an act of treason' and those who promoted them 'should be brought to justice'. . . The presidential designate against the ZEDE, Fernando García, has the same assessment, who highlights that those who participated in the creation of the regimes 'have committed the crime of treason to the country'.").

negotiated agreement that would allow investors to protect their investments under a new legal framework.⁶⁴³

- Also on 23 April, Honduras's Tax Authority published a technical note acknowledging that existing ZEDES including Próspera ZEDE remained valid and that the legal stability guarantees in the Honduras-Kuwait BIT applied to all investors in ZEDES pursuant to the ZEDE Law's MFN provision, and therefore existing ZEDES could remain in existence for fifty years:

[i]t should be noted that, in the month of April, 2022, the ZEDE regime was abolished in Honduras through the repeal in the Constitution of the Republic (under Decree 32-2022) and its Organic Law together with other complementary decrees (Decree 33-2022). Therefore, there is no possibility at this time of creating new ZEDES in the rest of the country. The only ZEDES in force would be those already established prior to the repeal as Próspera, Ciudad Morazán and Orquídea. According to the repealed laws, the ZEDES would be in force for at least 10 years after their repeal. However, the State of Honduras signed an Agreement for the Promotion and Reciprocal Protection of Investments with the State of Kuwait in 2014, ratified by Legislative Decree 367-2013. In Article 16 of this Agreement, the benefits of ZEDES are guaranteed to investors for 50 years. As the ZEDE Law included most-favored-nation (MFN) treatment, this benefit would extend to all investors who have participated in the ZEDE regime. To conclude, the ZEDES currently constituted may be in force for a period of no less than 50 years.⁶⁴⁴

267. In the absence of an official position by Honduras, and faced with such contradictory statements from Honduran officials, Claimants sought to engage with Honduras to clarify the effects of Decree No. 32 and Decree No. 33 for their investments in Próspera ZEDE.
268. On 26 April 2022, HPI sent a letter to President Castro and other officials (including the Minister of Economic Development and the Attorney General), setting out its understanding and expectation

⁶⁴³ See *Government will seek consensus with entrepreneurs that already invested in ZEDES, according to private secretary*, PROCESO DIGITAL (23 Apr. 2022) (C-59). A similar understanding – that investors would be able to protect their investments under a different legal regime – was also informed by the press. Vienna Herrera, *Broken promises for women, agriculture, and the environment mark Xiomara Castro's first 100 days*, CONTRACORRIENTE (7 May 2022) (C-712) (“On April 20, the Law for Employment and Economic Development Zones (ZEDE) and other related decrees were repealed by the National Congress and ratified by President Castro. However, companies located in a ZEDE will now be directed by the Ministry of Development to register under one of the existing regimes for special economic zones.”).

⁶⁴⁴ See Alex Baquis, Roberto Ramos and Jose Carlo Bermúdez, ZEDE: Tax policy implications and their impact on income tax, TAX ADMINISTRATION SERVICE (Apr. 2022) (C-358).

⁶⁴⁴ *Id.* p. 8 (emphasis added).

that Honduras would respect its legal stability rights, pursuant to which the ZEDE Legal Framework remained in full effect as to its investments in Próspera ZEDE, notwithstanding Decree No. 32 and Decree No. 33:

[HPI] understands and expects that Honduras will respect its legal stability commitments and, correspondingly, that the ZEDE legal framework remains in full effect as to Honduras Próspera . . . [and] welcomes constructive dialogue and invites your cooperation in relation to opportunities for Honduras.⁶⁴⁵

269. Honduras ignored the invitation to a dialogue. Not having received any response, on 11 May 2022, HPI sent another letter to President Castro, copying the same officials (and including Mr. Héctor Zelaya, President Castro's son and Private Secretary), reiterating the terms of its prior letter.⁶⁴⁶ Once again, Honduras did not respond.

270. Meanwhile, Honduran officials continued issuing contradictory statements. For example:

- On 11 June 2022, the head of Honduran Customs Administration stated that there would be a transition period for existing ZEDEs, which would become ZOLIs.⁶⁴⁷
- On 15 June 2022, Speaker Redondo stated that “[n]o ZEDE has any legal basis, they hold no vested rights, and they are null from a constitutional origin.”⁶⁴⁸
- On 20 September 2022, President Castro stated before the UN General Assembly: “Every inch of the homeland that was usurped in the name of the sacrosanct free market, ZEDEs, and other regimes of privilege was drenched in the blood of Indigenous peoples.”⁶⁴⁹
- In October 2022, the Anti-ZEDE Commissioner stated that the ZEDE Legal Framework was based on a “grotesque” legal framework that was “null from the outset,” and companies established in the ZEDEs could choose to transition into another form of special economic zone existing under Honduran law.⁶⁵⁰

⁶⁴⁵ Letter from Honduras Próspera to President Castro dated 26 Apr. 2022 (C-61).

⁶⁴⁶ See Letter from Honduras Próspera to President Castro dated 11 May 2022 (C-63).

⁶⁴⁷ See *ZEDEs will be ruled by the law of free zones*, Canal 8 Honduras, YOUTUBE dated 11 Jun. 2022 (C-65).

⁶⁴⁸ Andy Salgado, *Próspera ZEDE was created under a regime whose ideology is imprisoned in the U.S.: Pedro Barquero*, TU NOTA (15 Jun. 2022) (C-713).

⁶⁴⁹ Address by President Xiomara Castro at the 77 UN assembly (C-348).

⁶⁵⁰ See *Companies established in the ZEDE Can Adhere to Existing Special Regimes*, RADIO AMERICA (2 Oct. 2022) (C-68).

- In November 2022, Speaker Redondo declared that the ZEDEs “have always been unconstitutional.”⁶⁵¹

271. On 3 June 2022, Claimants delivered a Request for Consultations and Negotiations under Article 10.15 of the CAFTA-DR to Honduras,⁶⁵² to which Honduras did not respond. On 16 September 2022 Claimants delivered a Notice of Intent to Submit Claims to Arbitration Pursuant to Article 10.16 of the CAFTA-DR.⁶⁵³
272. In September 2022, Claimants learned that judicial actions were underway against CAMP members, accusing them of treason.⁶⁵⁴
273. Still, Honduras refused to take an official position as to the status of ZEDEs. On 3 November 2022, Honduras’s Minister of Economy Pedro Barquero told the press that an international dispute with Próspera ZEDE was probably inevitable, and that “[w]e have been clear that the Law was repealed, but even so the Law was illegal, because it violated the Constitution from its origin and national sovereignty.”⁶⁵⁵ The next day, Mr. Barquero met with Claimants’ counsel. Asked point-blank what the Government’s position was as to the legal status of the existing ZEDEs, Mr. Barquero stated that he could not answer, adding that what had been stated in public was a “political position.”⁶⁵⁶

⁶⁵¹ “*The Zede cannot claim rights because they are illicit*” *Insists Luis Redondo*, EL MUNDO (7 Nov. 2022) (C-72).

⁶⁵² See Letter from Claimants to Honduras’s Directorate-General of Economic Integration and Trade Policy dated 3 Jun. 2022 (C-64).

⁶⁵³ See Letter from Claimants to Letter from Claimants to Honduras’s Directorate-General of Economic Integration and Trade Policy dated 16 Sep. 2022 (C-67).

⁶⁵⁴ See Jorge Burgos, *For his participation in ZEDE, former president Ricardo Maduro is denounced for treason*, CRITERIO (14 Sep. 2022) (C-742) (“Yesterday, [Monday, 12 August] we filed a complaint, specifically, against Ricardo Maduro, who is a former president of the Republic, and also against Octavio Sánchez Barrientos, both members of the CAMP who, in the framework of the promotion of the ZEDEs, we analyze, demonstrate, and maintain that it was and continues to be an injury to the national, territorial and peoples sovereignty, which interferes with the exercise of human rights. We filed a complaint for four crimes, the main one being the crime of treason to the country’, Castillo confirmed to Criterio.hn.”). See *Honduras: ‘Human rights should be more than just talk. They should be reflected in practice*, CIVICUS (23 Jan. 2024) (C-714).

⁶⁵⁵ *Próspera ZEDE Prepares Claim for Millions Against Honduras*, BILATERALS.ORG (3 Nov. 2022) (C-70).

⁶⁵⁶ Minutes of meeting between representatives of Claimants and the Secretary of Economic Development dated 4 Nov. 2022 (C-555).

274. On 21 November 2022, further judicial actions were filed against the Technical Secretaries of ZEDEs, including Mr. Jorge Colindres, accusing them of treason.⁶⁵⁷
275. Unable to resolve the dispute amicably, Claimants submitted their Request for Arbitration initiating this case on 20 December 2022.
276. Facing international claims, Honduran officials redoubled their attacks on the ZEDEs. On 3 January 2023, Minister Barquero asserted that the ZEDE Law “never existed,” claiming it was “null from the outset” and that it was “unconstitutional and violated not only [Honduras’s] Constitution but also [Honduras’s] sovereignty.”⁶⁵⁸ Days later, on 9 January 2023, the Anti-ZEDE Commissioner publicly threatened criminal prosecutions for treason, claiming to have a list of 100 people who were under investigation for their links to the ZEDEs, including individuals related to Próspera ZEDE, for which he said he had “identified more than 30 people.”⁶⁵⁹
277. On 31 January 2023, President Castro stated she had “nothing to negotiate” with Claimants.⁶⁶⁰
278. Honduras denounced the ICSID Convention on 24 February 2024. The Attorney General explained Honduras’s decision noting that ICSID “prevents our legal system from combating public-private corruption and its devastating consequences, such as that of projects that put the ‘ZEDE’ territory up for sale, the extractionist model and economic colonialism.”⁶⁶¹
279. Ultimately, it was impossible to know with certainty whether such statements to the press were or were not a “political position,” as Mr. Barquero had previously described them.⁶⁶² Despite the

⁶⁵⁷ See Marcia Perdomo, *Technical secretaries of the repealed ZEDEs in Honduras are denounced for treason*, CRITERIO.HN (21 Nov. 2022) (C-715) (“The Alternative for Community and Environmental Vindication of Honduras (ARCAH) filed a complaint on Monday for treason against the technical secretaries of the Zones of Employment and Economic Development (ZEDE) Próspera, Orquídea and Morazán.”).

⁶⁵⁸ *Frente a Frente – 3 de enero de 2023*, TVC Play, YOUTUBE dated 3 Jan. 2023 (C-716) minute 32:16 – 33:28.

⁶⁵⁹ Fernando Emilio García Rodríguez’ radio interview, RADIO GLOBO (9 Jan. 2023) (C-560).

⁶⁶⁰ Public statement made by Xiomara Castro (C-719). See also Post published on Político HN X account (30 Jan. 2023) (C-720).

⁶⁶¹ *Denunciation of the ICSID Convention*, PROCURADURÍA GENERAL DE LA REPÚBLICA PRESS RELEASE dated 6 Mar. 2024 (C-96).

⁶⁶² See *supra* ¶ 244.

Anti-ZEDE Commissioner's public statement to the contrary,⁶⁶³ neither Claimants nor their executives were ever notified of any investigation and no charges were brought against them. Nor did Honduras take any steps to shut down Próspera ZEDE, which continued to operate openly, exercising its acquired rights under Honduran law.⁶⁶⁴

280. Further adding to this state of ambiguity as to the status of Próspera ZEDE and Claimants' investment, CAMP continued to operate, charging its regular fees,⁶⁶⁵ sending regulatory requests,⁶⁶⁶ and even approving regulations for Próspera ZEDE.⁶⁶⁷ CAMP also continued certifying the incorporation of lands into Próspera ZEDE and keeping its Registry of land incorporated to ZEDEs.⁶⁶⁸
281. After Honduras enacted Decree No. 32 and Decree No. 33, Próspera ZEDE employees and residents continued to support the project.⁶⁶⁹ Local residents highlighted that Próspera ZEDE was already generating high-quality jobs with high salaries and work-life balance, and offering professional and educational opportunities that Hondurans previously had to seek abroad.⁶⁷⁰ As

⁶⁶³ See *supra* ¶ 247; Fernando Emilio García Rodríguez' radio interview, RADIO GLOBO (9 Jan. 2023) (C-560).

⁶⁶⁴ See *supra* § II.D.3.

⁶⁶⁵ See Non-Negotiable Warrant of Payment from Próspera ZEDE to the CAMP ZEDE Trusts dated 22 Nov. 2022 (C-74).

⁶⁶⁶ See Communication SE-CAMP No. 004-2022 from CAMP to the Technical Secretary of Próspera ZEDE dated 28 Nov. 2022 (C-75).

⁶⁶⁷ See Letter from CAMP to Próspera ZEDE Technical Secretary dated 27 Jan. 2023 (C-354).

⁶⁶⁸ See Certificate of Registration and Incorporation of Real Property by CAMP dated 21 Jun. 2022 (C-66); Letter from CAMP to Próspera ZEDE Technical Secretary dated 27 Jan. 2023 (C-722) (requesting the Technical Secretaries of Próspera ZEDE, ZEDE Morazan and ZEDE Orquídea to provide updated information of Property and Commercial registries).

⁶⁶⁹ See Compilation of Testimonials collected by Claimants from the website of Próspera ZEDE (C718).

⁶⁷⁰ See Testimonial by Carlos Flores, Próspera, X @PROSPERAGLOBAL dated 13 Jan. 2023 (C-379) ("I feel very proud to have worked on the tower of the Duna Residence, the tallest tower in Roatán. Right now I'm at the advanced carpentry factory that's here to bring modern solutions for the development of the country. Próspera is for Hondurans."); Testimonial by Darwin Reyes, Próspera, X @PROSPERAGLOBAL dated 17 Jan. 2023 (C-723) ("[S]imilarly, the opportunities that we've had here have been immense and, well, I am happy that the project is in Honduras. They're not just opportunities for us, but for all the hondurans who are here. We can develop our skills in Honduras without having to leave the country."); Testimonial by Josue, Próspera, X @PROSPERAGLOBAL dated 14 Jun. 2023 (C-762) (Josue's testimony: "The positive impact that it has had on my professional career has been opening the door of opportunities to work with companies like Todo Servicio Romero, which is one of

one project manager observed, Próspera “will transform Honduras by attracting talent from across the entire coastal region,”⁶⁷¹ while others described the initiative as “a foundation for a better future in Honduras.”⁶⁷² Clearly, local communities continued to view Próspera ZEDE as an opportunity for development and enduring prosperity.

282.

[REDACTED]

[REDACTED]

[REDACTED]

those that is leading the construction of such important projects as Dunas Residence in Próspera, Roatán, creating job opportunities for many people, elevating their work experience.”); Testimonial by Rosaly Kerington, Próspera, X @PROSPERAGLOBAL dated 29 Jun. 2023 (C-375) (“Thanks to Próspera. Economically it has helped me a lot. And I am happy because I have my daughter in school here, who is learning English, is learning about computers. I am happy, thanks to God and to Próspera for giving us another opportunity to succeed, like providing us with work. And I have no complaints about the salary because it’s very good and the work schedule is also comfortable. Thank you.”).

⁶⁷¹ Testimonial by Eric Paz, Próspera, X @PROSPERAGLOBAL dated 27 Jan. 2023 (C-380) (“I feel very happy to be able to have an opportunity like the one that Próspera has given me. At one point I considered taking the route to migrate searching for new professional horizons. I am from the coast, I am from the Atlantic coast, I grew with a dream to be able to contribute a little, a grain of sand to my country and Próspera gave me the opportunity to develop myself here professionally speaking. It is going to transform Honduras through being able to attract talent in the whole costal region, that is waiting for an opportunity like the one that Próspera is giving, it’s waiting for something to open the doors so that it can develop itself. Próspera is for Honduras.”).

⁶⁷² Testimony of visitors who attended a Decentralizing Finance Summit at Próspera ZEDE, Próspera, X @PROSPERAGLOBAL dated 25 May 2023 (C-819) (“And I really just fell in love with the community here. Everyone was just so welcoming, and I just loved how everyone was so committed to the mission and vision of Próspera, and I couldn’t think of anything greater to become a part of.”) (“It’s been incredible to learn more about Próspera’s Platform, which are the benefits of being here, and honestly I leave very happy, these three days have been very interesting, I have learned a lot.”) (“Próspera is trying to attract people and they have to be not just a little better than any other city, they have to be a whole lot better than any other place to do business, and they are trying that, they are doing that, they’re attracting businesses right now, and that’s what excites me about their culture.”) (“No hay límite para poder explorar Próspera.”) (“I think what’s happening here is incredible, I feel like it can be the beginning of a better future for Honduras.”).

[REDACTED]

5. Honduras's attacks on the ZEDE Legal Framework have an immediate impact on Claimants' investments

283. Honduras's attacks on the ZEDE Legal Framework had an immediate impact on Claimants' investments: Honduras interfered with Próspera ZEDE operations (Section II.D.5.a) and its measures impacted fundraising for the Próspera ZEDE project (Section II.D.5.b) as well as the attraction of investors to Próspera ZEDE (Section II.D.5.c).

(a) Honduras interferes with Próspera ZEDE operations

284. Although Honduras did not shut down Claimants' operations in Próspera ZEDE outright, various officials sought to interfere with its operations. For example, and without limitation:

- The National Bank & Insurance Commission indirectly restricted Claimants' capacity to transfer and receive funds. For example, in June 2022, Ficohsa Bank, a Honduran Bank, froze the bank accounts of one of Claimants' subsidiaries and started rejecting money transfers from the U.S. to entities incorporated in Próspera ZEDE. Ficohsa Bank executives told Claimants that they had been pressured by the National Bank & Insurance Commission but refused to put this in writing out of fear of retaliation.⁶⁷⁴
- The Tax Authority informed Próspera ZEDE vendors that the repeal of the ZEDE law eliminated the legal recognition of ZEDE-registered entities.⁶⁷⁵ The Tax Authority also stopped processing requests for tax identification numbers for entities incorporated in Próspera ZEDE, which affects their access to local banking.⁶⁷⁶
- After Claimants filed their Request for arbitration, the Honduran Customs Administration suspended services under the Customs Services Agreement with Próspera ZEDE.⁶⁷⁷ The head of the agency refused to recognize Próspera ZEDE's independent customs authority

⁶⁷³ [REDACTED]

⁶⁷⁴ See Brimen ¶ 106(b).

⁶⁷⁵ See *id.* ¶ 106(c).

⁶⁷⁶ See *id.* ¶¶ 106(c), 107.

⁶⁷⁷ See Marcia Perdomo, *Customs does not recognize privileges of the ZEDE regime, states the head of the entity*, CRITERIO.HN (16 Nov. 2023) (C-567).

under the ZEDE Law.⁶⁷⁸ At the same time, however, the Customs Administration also continued to accept payments from Próspera ZEDE under its service contract.⁶⁷⁹

- Roatán’s Department of Tax Control issued closure notices to various cafés in Próspera ZEDE for failing to pay municipal taxes that were not applicable to them as ZEDE businesses. These actions caused public disruption, as police officers were deployed to the affected businesses.⁶⁸⁰

285. These measures evidenced an *ad hoc* approach by various officials. Absent definitive action to stop operations in Próspera ZEDE, it appeared that Honduras was trying to maintain deniability, while keeping Claimants in a state of legal uncertainty.

(b) Honduras’s measures impact fundraising for the Próspera ZEDE project

286. Even as Claimants tried to continue operating, Honduras’s measures had a significant impact on their efforts to raise funds. While Claimants attracted some investment, this was nowhere near what they reasonably expected in 2021 before Honduras’s measures. The legal uncertainty created by the measures caused established and institutional investors to back out, and only a narrower pool of high-risk tolerant and/or ideologically-aligned investors remained willing to invest.⁶⁸¹

287. In the summer of 2021, prior to the repeal of the ZEDE Law, HPI had launched a “Series B” Fundraising to attract capital through convertible notes pursuant to which noteholders would have the right to obtain equity in either HPI or SJBDC.⁶⁸² The Series B round targeted US\$ 150 million in convertible notes, of which the default allocation was US\$ 50 million to HPI (operations and

⁶⁷⁸ See *id.*

⁶⁷⁹ See, e.g., Próspera ZEDE payment to Honduran Customs Administration for 2022-23 customs fee dated 22 Apr. 2022 (C-481); Email from Próspera ZEDE Trust to CAMP dated 22 Apr. 2022 (C-563); Próspera ZEDE payment to Honduran Customs Administration for 2024-25 customs fee dated 22 Mar. 2024 (C-359). See also Non-Negotiable Warrant of Payment from Próspera ZEDE to the CAMP ZEDE Trusts dated 22 Nov. 2022 (C-74) (effecting payment of CAMP supervision fees for November 2022); CAMP Invoice to Próspera ZEDE for supervision fees dated 8 Aug. 2024 (C-556).

⁶⁸⁰ See Roatán Infoinsular Post on Municipal Closure of Café dated 20 Mar. 2023, (C-562) (including photos of closure of coffee shop and notice of business closure). See also Official Letter from the Regional Departmental Directorate of the Ministry of Governance, Justice and Decentralization dated 2 Sep. 2022 (C-564).

⁶⁸¹ See Brimen ¶ 108.

⁶⁸² See *id.* ¶ 90.

off-Roatán real estate investment) and US\$ 100 million to SJBDC (on-Roatán real estate investment).⁶⁸³ The proceeds were to be used for the continued development of Próspera ZEDE, including: the development of Pristine Bay and acquisition of adjacent land; funding residential, hospitality, office, and mixed-use developments; investment in the e-Próspera digital governance platform; and strategic investments in equity stakes in key tenant businesses expected to benefit from first-mover advantages.⁶⁸⁴

288. The Series B round raised US\$ 116 million by the end of 2024. While this was a very significant amount, particularly in view of the circumstances, it was only 77% of the targeted US\$ 150 million. This stands in stark contrast with the prior Series A round which, as explained above, raised 290% of its target even though it took place in the thick of the COVID-19 pandemic.⁶⁸⁵ HPI and SJBDC could not reach their target because of Ms. Castro coming into power and the repeal of the ZEDE Law and the subsequent uncertainty as to whether Honduras would renege on its legal stability guarantees.⁶⁸⁶

(c) Honduras's measures impact the attraction of investors to Próspera ZEDE

289. As detailed above, the success of Claimants' investment depended on the capacity to attract investors to Próspera ZEDE.⁶⁸⁷ Despite the strong indicia of success going into 2022, Ms. Castro's demonization of the ZEDEs beginning in the lead-up to the elections and Honduras's actions to repeal the ZEDE Legal Framework in April 2022 dramatically reduced the attractiveness of Próspera ZEDE and scared away investors. While some companies did choose to invest, these tended to be high-risk investors and not established companies.

290. Claimants' executives explain the circumstances:

⁶⁸³ See *id.*

⁶⁸⁴ See Brimen ¶¶ 87(c), 118(b).

⁶⁸⁵ See *supra* § II.C.4.a; *id.* ¶ 109.

⁶⁸⁶ See Brimen ¶ 109.

⁶⁸⁷ See *supra* §§ II.C.6.c, II.D.5.a-b.

- Mr. Brimen testifies that “[t]he Government’s refusal to honor its legal stability commitments and animus against our project have completely upended our plans and severely undermined our operations. They have caused immeasurable harm in the form of both loss of huge revenue opportunities as well as significantly higher costs and expenses. We have not been able to complete planned construction and anticipated projects. And we lost very significant expected investments from world-class companies that no longer wished to be associated with Próspera ZEDE in light of what was happening in Honduras. The few investors that have been willing to stay involved are the more risk-tolerant companies or those that are ideologically aligned with our vision.”⁶⁸⁸
- Mr. Delgado testifies that “[d]espite the initial excitement and the memorandums of understanding” that he had secured previously, “very few businesses wanted to come to Próspera ZEDE while it was under public attack and its legal status was uncertain.”⁶⁸⁹ As he recalls, most investors “were unwilling to risk going into business in a jurisdiction that was so strongly opposed by the Government of Honduras.”⁶⁹⁰ Moreover, Mr. Delgado explains that Honduras’s measures also impacted Claimants’ relationship with domestic partners, particularly financial institutions.⁶⁹¹ Notably, Banco Atlántida decided to not extend the previously agreed loan to finance the construction of Duna Residences, forcing HPI to fund 100% of the project (which also became more costly as a result of the measures).⁶⁹²
- Mr. Murcott recalls that all the major investment projects that he had focused on “fell through, one by one, once Xiomara Castro took office as President and the Honduran Government embraced her rhetoric against ZEDEs.”⁶⁹³ He explains that outside investors, saw the statements and measures of Honduras “as a threat to their businesses and projects if they pursued them in the ZEDE.”⁶⁹⁴ That was the case with CIGA Healthcare, which was intended to be the anchor tenant of the port of Satuyé but ultimately decided against investing because of Honduras’s measures.⁶⁹⁵ Similarly, Chef Back also abandoned his plan for a hospitality project and in the end decided not to pursue its investment because of the Government’s attacks on ZEDEs.⁶⁹⁶
- Similarly, Mr. Shah recalls that the RIFC could not attract financial institutions and financial services companies to Roatán. He explains that “[g]iven that legal certainty was the cornerstone of our offering,” it became almost impossible to attract investors to the

⁶⁸⁸ Brimen ¶ 117.

⁶⁸⁹ Delgado ¶ 56.

⁶⁹⁰ *Id.*

⁶⁹¹ *See id.* ¶ 57.

⁶⁹² *See id.*

⁶⁹³ Murcott ¶ 22.

⁶⁹⁴ *Id.*

⁶⁹⁵ *See supra* § II.C.4.d; Murcott ¶¶ 19, 22.

⁶⁹⁶ *See supra* § II.C.4.d; Murcott ¶¶ 20, 22.

RIFC.⁶⁹⁷ The few investors that persevered with their plans promptly withdrew or simply failed because “Honduras’s measures made it impossible for them to gain admission into the global financial environment.”⁶⁹⁸

291. As another example, on 14 April 2023, Invercorp Investment Management, a reputed boutique investment advisory and wealth management firm⁶⁹⁹ that had been planning to invest in a mortgages company for the Duna Residences, advised that it would not pursue its investment.⁷⁰⁰ As Invercorp explained:

[a]fter careful evaluation and consideration of the project, our team has decided to pass on this investment. Our decision is not a reflection of the potential of the project or your team’s capabilities, but rather a result of our inability to accurately quantify the risk involved in the investment due to the current political opposition to the jurisdiction in Honduras.

While we find the opportunity attractive, our investment firm is committed to mitigating risks as much as possible to ensure the best possible outcome for our investors. The current political climate in Honduras makes it difficult for us to accurately assess the level of risk involved in this particular investment.⁷⁰¹

292. Another notable missed opportunity was the partnership between HPI and Jacobs Engineering. As mentioned above, in 2020, HPI had concluded a broad agreement with Jacobs Engineering to plan and implement municipal services in Próspera ZEDE.⁷⁰² In addition, in 2022, Claimants had completed a master plan for a nearshoring hub in the Satuyé port in La Ceiba with Jacobs Engineering.⁷⁰³ Mr. Murcott explains that Honduras’s attacks on ZEDEs “frustrated [their] ability to undertake the major projects that [they] had planned with Jacobs Engineering.”⁷⁰⁴

293. Unable to attract investors or partners to undertake construction of major projects, Claimants had

⁶⁹⁷ Shah ¶ 30.

⁶⁹⁸ *Id.*

⁶⁹⁹ Singular, *Success Stories, Invercorp – Project Overview* (4 Feb. 2025) (C-729).

⁷⁰⁰ See Letter from Invercorp Investment Management to HPI dated 14 Apr. 2023 (C-730).

⁷⁰¹ *Id.* (C-730) (emphasis added).

⁷⁰² See *supra* § II.C.6.d.

⁷⁰³ See Murcott ¶ 17; Brimen ¶¶ 65, 81.

⁷⁰⁴ Murcott ¶ 22.

no choice but to shelve all the infrastructure projects that they had in the pipeline for development and construction (e.g., the Satuyé Port, Pristine Heights, Beyabu, and Leaf).⁷⁰⁵

6. The Castro Government stacks the Supreme Court and, unable to secure the repeal of the ZEDE Constitutional Provisions at the political level, turns to the Court which holds in 2024 that the ZEDE Legal Framework is unconstitutional *ab initio* in a decision that is marred by procedural irregularity, substantively deeply flawed, and contrary to fundamental principles of Honduran law

294. As explained above, Decree No. 32 was not sufficient to amend the Constitution. To remove the ZEDE Constitutional Provisions, Honduras needed a second vote ratifying the amendment during the next legislative session.⁷⁰⁶ But except for Ms. Castro's die-hards, the anti-ZEDE fever had abated, and Ms. Castro's allies in Congress never submitted a ratification bill to a vote during the 2023 legislative session, evidently because they knew they did not have the necessary votes. In September 2023, Speaker Redondo attempted to defend the failure to call a vote on ratification, claiming that it was part of a broader strategy in the face of the international claims against Honduras:

[i]n reality, there is nothing stuck. There is a legislative strategy that obviously I will not detail. . . . There is a strategy for that issue and the strategy is due to actions abroad that have occurred with regard to this issue, to an issue of an unconstitutional legal system that did not give value or purpose to the ZEDEs. And that some structures were taken advantage of to want to implement it and that have already been repealed. But there is timing, there is a moment. We can ratify at any moment. We are not in a rush because the purpose of the ZEDE no longer exists. That they can make arbitrations or requests, that they do everything. The President has already announced the position that the Executive would be on this, which we support, because there is a strategy and that strategy is something that cannot be revealed because they are issues of national security⁷⁰⁷

295. Mr. Redondo's excuses were not credible. If Honduras was serious about amending the

⁷⁰⁵ See *supra* § II.C.6.a; Delgado ¶ 57.

⁷⁰⁶ See *supra* § II.D.3; Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 373 ("The amendment of this Constitution may be decreed by the National Congress, in regular session, with two thirds of the votes of all its members. The decree shall specify for that purpose the article or articles that are to be amended, which must be ratified by the subsequent regular legislative session, by the same number of votes, in order to take effect.") (emphasis added).

⁷⁰⁷ Statement made by Luis Redondo on *Frente a Frente* (C-732) minute 0:52-2:11. See also *Failure to ratify the elimination of the ZEDE is due to a strategy, says Redondo*, EL HERALDO (5 Sep. 2023) (C-731).

Constitution, timing was a very real concern, because the constitutionally mandated end of the legislative session was 31 October 2023.⁷⁰⁸ Moreover, repealing the ZEDE Organic Law did not void Honduras's legal stability guarantees to investors in existing ZEDEs – the entire point of these guarantees was that they would endure in the face of repeal.⁷⁰⁹

296. On 7 November 2023, the Permanent Commission of the Congress, arguably invalidly constituted and presided over by the Castro-allied Speaker of Congress Luis Redondo,⁷¹⁰ issued a statement asserting that the ZEDEs were not entitled to operate since the passage of Decrees No. 32 and 33, and asserting that the Public Prosecutor was obligated to promptly bring criminal charges against the ZEDEs.⁷¹¹ The Permanent Commission of the Congress is a body that operates during recess periods and has limited administrative and procedural functions and had no legal authority to issue such a statement.⁷¹² Tellingly, days later, a member of Congress from the LIBRE Party lamented that the ZEDEs continued to exist, stating that a repeal required votes and could not be accomplished through “a coarse press release.”⁷¹³ Likewise, the Public Prosecutor did not bring

⁷⁰⁸ See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 189 (“The legislative branch exercises itself through a Congress of Representatives, who shall be elected by direct vote. It shall convene in the capital of the Republic in regular sessions on the twenty-fifth of January of each year without the necessity of convocation and shall adjourn its sessions on the thirty-first of October of the same year.”).

⁷⁰⁹ ZEDE Law (C-6) Art. 45 (“Should this Organic Law be repealed, it shall remain in effect for the term indicated in the legal stability clause or contract signed with individuals or corporations residing or investing in the Zones of Economic Development and Employment (ZEDE). The transition period may not be less than ten (10) years, during which time the rights of inhabitants and investors in the Zones of Economic Development and Employment (ZEDE) shall remain in effect.”).

⁷¹⁰ The Permanent Commission is body of Congress composed of 9 members (and their respective alternates) appointed by the Congressional Board, for the purposes of carrying out certain tasks during the congressional recess. See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 207. On 31 October 2023, the Congressional Board presided by Mr. Luis Redondo – the Castro-supported Speaker of Congress – appointed the Permanent Commission, which was presided over by Mr. Redondo himself. Resolution-003-2023-JD-CN on the Board of Directors of the National Congress of Honduras, appointing and installing the Permanent Commission of the National Congress (31 Oct. 2023) (C-734).

⁷¹¹ See Statement of the Permanent Commission of Congress dated 7 Nov. 2023 (C-735). See also *Permanent Commission reiterates repeal of the ZEDEs and clarifies that it will not approve the Law of Tax Justice*, RADIOAMERICA.HN (7 Nov. 2023) (C-736).

⁷¹² See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 207.

⁷¹³ Sánchez, Selvin, *Only ratifying the repeal in the subsequent legislature could ZEDEs be eliminated*, state jurists, EL PULSO (8 Nov. 2023) (C-737); Rodolfo Pastor: “The ZEDE repeal should have been ratified,” EL HERALDO (15 Nov. 2023) (C-738).

any charges pursuant to the Permanent Commission's statement.

297. Meanwhile, local communities continued to support Claimants and Próspera ZEDE. In December 2023, residents of Crawfish Rock voiced their support for Próspera ZEDE at a community event, highlighting how it had benefitted a community that had been forgotten for many years:

many women showed their frustration with tears in their eyes that they are against the [Próspera ZEDE] project, given that they bring livelihood to their families thanks to the employment that Próspera generates on the island. . . .

[B]ecause 40% of the community works in Próspera ZEDE, which represents an influx of more than \$200,000.00 a year to a community of just over 400 people . . . some 60 people rose up against the Socialist Government and began to say that the community has been abandoned for decades, so the community is happy with the opportunities that have come thanks to the investments that Próspera ZEDE has managed to bring.⁷¹⁴

298. Public opinion was still in favor of ZEDEs. A survey of 1,000 people carried out between October and November 2023 reported that 0.5% saw the ratification of the ZEDE repeal as the biggest challenge to be solved in the country,⁷¹⁵ and 60% agreed that the government should use all available legal instruments (including ZEDEs) to create opportunities for Hondurans.⁷¹⁶
299. Having lost legislative support, the Castro Government turned to the Supreme Court of Honduras.
300. Pursuant to the Constitution of Honduras, Supreme Court justices are supposed to be elected by the National Congress from a list prepared by an official Nominating Board made up of representatives from the Supreme Court, the Honduran Bar Association, the National Commissioner of Human Rights, the Honduran Council of Private Enterprise, faculty from the National Autonomous University of Honduras, civil society organizations, and Labor Confederations.⁷¹⁷ In 2022, Respondent passed a Decree modifying the nomination process, which

⁷¹⁴ *Population of Crawfish Rock appears divided on the ZEDE topic*, DIARIO ROATÁN (11 Dec. 2023) (C-739) (emphasis added).

⁷¹⁵ See “MacroDato-Ciudadanía e independientes-Nov 2023 (Medios)” (C-740) p. 13.

⁷¹⁶ See “MacroDato-Ciudadanía e independientes-Nov 2023 (Medios)” (C-740) p. 17.

⁷¹⁷ See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 311.

was seen at that time as an effort by President Castro to stack the Court in her favor.⁷¹⁸ In fact, under the Castro Administration, the process became nakedly political: members were replaced on a partisan basis rather than a meritocratic one.⁷¹⁹ Notably, the Government interfered with the Nominating Board to exclude members and Supreme Court candidates that held a favorable view of the ZEDE Legal Framework:

- In August 2022, Ms. Marianella Ulloa withdrew her candidacy to serve on the Nominating Board because of backlash she suffered for having defended ZEDEs in the past.⁷²⁰

⁷¹⁸ See Decree No. 74-2022 published on 20 Jul. 2022 (C-104); *Honduras: The Government of Xiomara Castro prepares a tailored Supreme Court*, EXPEDIENTE PÚBLICO (22 Jul. 2022) (C-105). Among other things, the reform Decree changed who could be nominated (*e.g.*, eliminating requirements that precluded members of political parties, former members of the Nominating Board, relatives of members of the Nominating Board and of Congress, and individuals with rulings against them for serious crimes, domestic violence, and failure to pay child support), and changed the scoring criteria to be taken into account (*e.g.*, reducing the points that had to be awarded for personal and professional integrity and professional ethics).

⁷¹⁹ See *Honduras elected the 15 new justices of the Supreme Court*, EXPEDIENTE PÚBLICO (16 Feb. 2023) (C-110) (abstract stating that “[t]he Supreme Court is subject to political control,” and article further elaborating that “[t]he Supreme Court of Justice of Honduras is moving away from the political independence that was sought in this process, since 5 magistrates respond to the interests of the National Party, 4 to the Liberal Party and 6 to those of Libre, which thus adds the control of the Judicial Power to that already held by the Government and Congress.”); Final Report of Oversight on the Process of Election and Selection of Justices of the Supreme Court: Lessons Learned and Recommendations for Future Processes of Electing High Public Officials, CENTRE FOR THE STUDY OF DEMOCRACY, LAWYERS WITHOUT BORDERS CANADA AND THE DUE PROCESS OF LAW FOUNDATION (Apr. 2023) (C-748) p. 17 (“The election of the 15 justices, based on political affinities with the three major political parties, represented a recurring negative practice in this type of selection, as this phase of the process turned into a game of political interests, without any objective discussion about the candidates’ qualifications. This political negotiation dynamic sidelined individuals of notable integrity, capability, and suitability who were not assessed or chosen for inclusion in the Court.”), p. 18 (“By electing the justices based on a pre-defined slate, the National Congress limited the possibility of individual votes for candidates who were not favored by political parties.”).

⁷²⁰ On 28 August 2022, Mr. Odir Fernández withdrew his candidacy to integrate the Nomination Board because he did not want to be on the same ticket as Ms. Ulloa, a candidate that had defended ZEDEs publicly. See Jorge Burgos, *Nomination of candidate from private universities for Board Nomination generates controversy*, CRITERIO (28 Aug. 2022) (C-744) (“On 26 August, the private universities anointed Ulloa and Fernández as their candidates, incumbent and substitute, to participate in the assembly. . . from which the representatives of public and private law universities and schools of Honduras will be selected before the board of proponents. However, after Odir Fernández. . . revealed this Sunday that he was withdrawing from the process, this because he did not want to share a ticket with Marielena Ulloa, who has publicly defended the [ZEDEs], has generated a stir around the election of representatives of the universities.”). The following day, Ms. Ulloa withdrew her candidacy to serve on the Nominating Board. See *Attorney María Elena Ulloa also waives her aspirations to serve on the Board of Nominators*, HONDUDIARIO, (29 Aug. 2022) (C-745) (“The controversy in the case of the lawyer Ulloa, arose because she has represented clients with the issue of the [ZEDEs] . . . The lawyer highlighted that her job is not a sin, ‘I am retiring, my career is not politics (...), I do not need that for my career’ . . .”).

- In its interviews, the Nominating Board reportedly asked the candidates about their stance on the ZEDE Legal Framework.⁷²¹
- In January 2023, the Nominating Board decided to exclude candidates from the Supreme Court that had upheld the constitutionality of ZEDEs in prior Supreme Court decisions.⁷²²

[t]he creation of the [ZEDEs], in the opinion of the Nominating Board, contradicts the Constitution of the Republic. . . . Nevertheless, the Supreme Court of Justice established special jurisdictions for these areas, with the full knowledge that this situation was contrary to constitutional precepts. . . . It is evident in this case that, by act or omission, the current judges have breached their promise of law, by permitting by act or omission the violation of the constitutional text The Nominating Board . . . has considered, within the profile of the judge the characteristics indicated above and . . . appreciates that they do not meet the desired profile at this historic moment in which the aspiration of the people is to have a truly independent and impartial Supreme Court of Justice, with which they feel confident that constitutional order will prevail over personal, political and economic interests.⁷²³

301. Despite these blatant interferences with the process, once the Nominating Board submitted a list of 45 candidates ranked according to their qualifications, Speaker Redondo stated that the Nominating Board's ranking was "irrelevant," and that Congress would choose the 15 justices according to its own preferences.⁷²⁴ Ultimately, the ruling LIBRE party reached an agreement with the Liberal and National parties to divide the 15 seats on the Court amongst themselves, with the LIBRE party being allotted six justices, while the National and Liberal parties were allotted five and four justices, respectively,⁷²⁵ all of which were anti-ZEDE by virtue of the Nominating Board's previous

⁷²¹ See *Candidates to the Court asked about hourly employment and the ZEDE*, LA PRENSA (4 Jan. 2024) (C-746).

⁷²² See *Nominating Board for the Proposition of Candidates for Judges of the Supreme Court of Justice*, API (18 Jan. 2023) (C-747).

⁷²³ *Candidates to the Court asked about hourly employment and the ZEDE*, LA PRENSA (4 Jan. 2024) (C-746) ¶¶ 101-104 (emphasis added).

⁷²⁴ See *The Castro-Zelaya's seek to control the Supreme Court of Honduras*, EXPEDIENTE PÚBLICO (25 Jan. 2023) (C-109).

⁷²⁵ See *Corruption and nepotism. Learn of the history of the justices of the new Supreme Court of Honduras*, EXPEDIENTE PÚBLICO (17 Feb. 2023) (C-112).

exclusion. Tellingly, President Castro's husband took credit for shaping the Court,⁷²⁶ and specifically called for it to rule the ZEDE Legal Framework unconstitutional:

[w]e hope that [the justices of the Supreme Court of Justice] will review the appeal of unconstitutionality on the ZEDE Law, which constitutes a carte blanche for pirates and filibusters of gross intervention or invasion of possibly national and transnational capital.⁷²⁷

302. Notably, the new Presiding Justice of the Supreme Court was Ms. Rebeca Lizette Raquel Obando, the aunt of President Castro's son in law and a member of the LIBRE party, which raised obvious concerns over the Supreme Court's independence (in addition to concerns about ties to drug trafficking and other crime).⁷²⁸ On the same date that Ms. Obando was appointed as Presiding Justice, the Supreme Court modified its regulations to create six "substitute justices" to participate in the Plenary Sessions of the Court, which were to be designated by the Court and appointed to participate in plenary sessions by the Presiding Justice (*i.e.*, Ms. Obando).⁷²⁹ The legality of the move was questioned because the Constitution of Honduras does not provide for substitute justices.⁷³⁰

⁷²⁶ See "Mel" Zelaya thinks that new Supreme Court will reverse re-election and ZEDEs, HONDUDIARIO (21 Feb. 2023) (C-115) ("The husband of President Xiomara Castro confirmed that he did play a leading role in the election of the Court . . . 'The appointments were made by Congress, but of course I was a protagonist from the first day until the Court was achieved, because as you know I coordinate the Libre party.'").

⁷²⁷ *Id.*

⁷²⁸ See Madrid, Yarely, *The Castro-Zelaya's in Honduras are copying the authoritarian manual from Daniel Ortega*, EXPEDIENTE PÚBLICO (29 Mar. 2023) (C-116) ("The last key nomination for the Libre Party was to the Supreme Court of Justice (CSJ in Spanish). Amid irregularities in the early hours of February 17, Rebecca Lizette was named president of the CSJ. In addition to being a supporter of the governing party, Lizette has a history of money laundering and her daughter has been linked to Juan Matta-Ballesteros, a former Honduran drug lord with ties to the Medellín Cartel who is currently detained in the United States."); *Honduras elected the 15 new justices of the Supreme Court*, EXPEDIENTE PÚBLICO (16 Feb. 2023) (C-110) (stating that by virtue of the election in which Ms. Obando became Presiding Justice, the Supreme Court "is moving away from political independence").

⁷²⁹ See *Agreement of the Supreme Court of Honduras* published in Gazette No. 36,158, § B amending the Supreme Court's Internal Regulations dated 17 Feb. 2023 (C-111) ("The Supreme Court of Justice shall have the following powers: . . . Approve by three quarters (3/4) of its members, a list of not less than six (6) magistrates for the Plenary Sessions of the Supreme Court of Justice, who shall be chosen from the last list of candidates proposed to the National Congress by the Nominating Board, who shall be called to integrate in successive and rotating order to the Plenary Sessions, but exceptionally to the different Chambers of the Supreme Court of Justice.").

⁷³⁰ *SC modified its internal regulations to create deputy judges*, HONDUDIARIO (18 Feb. 2023) (C-114); *Final Report of Oversight on the Process of Election and Selection of Justices of the Supreme Court: Lessons Learned and*

303. By late summer 2024, the Zelaya-Castro family was embroiled in scandal, with the President's nephew and brother-in-law having to resign from their positions as Minister of Defense and congressional leader, respectively, after having been found consorting with drug-traffickers.⁷³¹ Notably, in August 2024, Ms. Castro controversially canceled Honduras's extradition treaty with the United States alleging "interference" and "interventionism,"⁷³² despite having herself extradited her predecessor to the United States to face drug-trafficking charges mere weeks after she assumed power in 2022.⁷³³
304. That same month, newly-appointed Presiding Justice of the Supreme Court Raquel Obando found herself under investigation and facing calls for her resignation after her husband was implicated in

Recommendations for Future Processes of Electing High Public Officials, CENTRE FOR THE STUDY OF DEMOCRACY, LAWYERS WITHOUT BORDERS CANADA AND THE DUE PROCESS OF LAW FOUNDATION (Apr. 2023) (C-748) p. 19 ("One situation that arose as a result of the consensus or agreements reached between the country's political forces the country's political forces was the creation of the position of substitute or member judges, a position not provided for in the Constitution of the Republic and which could only be approved prior to a reform to the Constitution. Although this position was approved by the Plenary of the new Court . . . this initiative demonstrated the power and interference of the partisan political system in the judiciary.").

⁷³¹ In August 2024, President Castro's nephew and Minister of Defense, Mr. José Manuel Zelaya, met with an accused drug-trafficker in Venezuela, triggering reactions from the U.S. Ambassador. See *Noticieros Hoy Mismo*, X @HOYMISMO_TSI dated 28 Aug. 2024 (C-128). Mr. Zelaya resigned thereafter. See *Honduras: President's brother-in-law admits to meeting with drug-trafficker*, DEUTSCHE WELLE (1 Sep. 2024) (C-132); Torres, M., *Two weeks after narco video! National Congress accepted the resignation of Carlos Zelaya*, HCH TELEVISIÓN DIGITAL (18 Sep. 2024) (C-140).

In September 2024, a video was released of President Castro's brother-in-law, Congressman Carlos Zelaya, meeting with a known drug-trafficker. See Ernst, Jeff, *et al.*, *Narco Video Shows Traffickers Discussing Bribes With Honduras President's Brother-in-Law*, INSIGHT CRIME (3 Sep. 2024) (C-133); *Narco video of Carlos Zelaya, a "Devastating Blow" for LIBRE, says deputy Sabillón*, NOTICIAS 24/7 (20 Sep. 2024) (C-144); *The narco video is "devastating" for Libre, but even more serious is the removal of the extradition treaty*, HONDUDIARIO (20 Sep. 2024) (C-146); Vilar, José, *What is happening in Honduras? Alleged corruption or an attempted coup d'état*, LA ESTRELLA (6 Sep. 2024) (C-136). Mr. Zelaya (who is Mr. José Zelaya's father) also resigned. See *Honduras: President's brother-in-law admits to meeting with drug-trafficker*, DEUTSCHE WELLE (1 Sep. 2024) (C-132); *President of Honduras appoints new Defense minister amidst drug scandal*, MSN (3 Sep. 2024) (C-134).

⁷³² See, e.g., Wagner, James, *et al.*, *Honduras says it will end extradition treaty with U.S. in force since 1912*, THE NEW YORK TIMES (29 Aug. 2024) (C-130); *Uproar in Honduras over the annulment of the extradition treaty with the U.S.: who benefits?*, FRANCE 24 (30 Aug. 2024) (C-131); Sandoval, Elvin, *The Government of Honduras denounces its extradition treaty with the United States and accuses Washington of "interference,"* CNN ESPAÑOL (28 Aug. 2024) (C-129).

⁷³³ See U.S. Dept. Of Justice, Juan Orlando Hernández, Former President of Honduras, Indicted on Drug-Trafficking and Firearms Charges, Extradited to the United States from Honduras, U.S. Dept. of Justice (21 Apr. 2022) (C-749).

bribe-taking,⁷³⁴ but refused to resign.⁷³⁵ Shortly thereafter, on Tuesday, 7 September 2024, Ms. Obando issued a summons for a plenary session of the Court on Friday, 20 September 2024.⁷³⁶ The two issues on the agenda⁷³⁷ were a challenge to the constitutionality of Article 34 of the ZEDE Organic Law (which provides for ZEDEs to establish educational policies⁷³⁸) that had been working its way up the judicial system,⁷³⁹ and a challenge to the so-called Political Amnesty Law designed to protect allies of President Castro and her husband former President Zelaya.⁷⁴⁰ The circumstances of the summons were immediately questioned and raised concerns that the plenary session was being engineered to ensure rulings while nine sitting judges were unavailable, using substitute justices.⁷⁴¹ Among other criticisms, the former Vice-President of Honduras and a Member of Congress called using substitute judges to obtain a ruling on the constitutionality of the ZEDE Legal Framework a clear power-grab by the LIBRE party.⁷⁴²

⁷³⁴ See *José Luis Melara Murillo, husband of the president of the SC, at the center of corruption scandal*, CHOLUSAT SUR (C-150); Madrid, Yarely, *Arrest of Judge Marco Vallecillo rattles Supreme Court leadership in Honduras*, EXPEDIENTE PÚBLICO (21 Aug. 2024) (C-127); ICN.Digital, INSTAGRAM @ICN.DIGITAL dated 19 Aug. 2024 (C-124). See also *Jorge Cáliz calls for impeachment of SC president, Rebeca Ráquel*, HCH Televisión Digital, YOUTUBE dated 20 Aug. 2024 (C-126).

⁷³⁵ See *Rebeca Obando refuses to resign from the SC: "They want to remove the people who work well,"* EL HERALDO (19 Aug. 2024) (C-125).

⁷³⁶ See Judicial Branch of Honduras, *Summons to Plenary Session* (17 Sep. 2024) (C-137).

⁷³⁷ See *id.*

⁷³⁸ See ZEDE Law (C-6) Art. 34 ("The Zones of Economic Development and Employment (ZEDE) must establish their own educational and curricular policies at all levels. The practice of professions or academic degrees within the Zones of Economic Development and Employment (ZEDE) shall not be conditioned by membership or association. However, the authorities of the Zones of Economic Development and Employment (ZEDE) may require the corresponding academic accreditation for the exercise of certain professions.").

⁷³⁹ See Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C559) p. 1.

⁷⁴⁰ See Galo, Katerin, *Almost two years after its approval, pro-government deputies refuse to amend Amnesty Law*, CRITERIO (11 Dec. 2023) (C-117).

⁷⁴¹ See *Call for SC plenary session to address ZEDE and amnesty raises suspicion among the opposition*, EL HERALDO (18 Sep. 2024) (C-138).

⁷⁴² See *id.* p. 2 (reporting that Congress representative Tomás Zambrano described the move as an attempt to by the Libre Party to "disqualify political opposition" and "declare the ZEDEs unconstitutional."); *Nasralla says magistrates are being sent to approve illegalities in the Honduran SC*, EL ESPECTADOR (19 Sep. 2024) (C-142) (reporting that former Vice-President Nasralla stated that using substitute members was a common practice to manufacture a majority and adopt controversial decisions, a practice he called "corrupt.").

305. That same day, 20 September 2024, the Supreme Court issued a press release announcing that the ZEDE Legal Framework had been found to be unconstitutional with *ex tunc* effect.⁷⁴³ President Castro promptly issued several public statements celebrating her political victory and taking credit for dismantling the ZEDE Legal Framework:
- On 20 September 2024, Ms. Castro openly celebrated the Supreme Court’s decision to declare the ZEDE Legal Framework unconstitutional.⁷⁴⁴
 - On 21 September 2024, President Castro again celebrated the Supreme Court’s decision by calling the ZEDE Legal Framework a “treason” against the State, and celebrated her “social and political victories” together with her husband Mr. Zelaya.⁷⁴⁵
 - On 25 September 2024, Ms. Castro gave a speech before the UN stating that “her Government” had dismantled the ZEDE regime.⁷⁴⁶
306. Notably, the Supreme Court had not yet released its decision and would not do so for months. On 14 November 2024, the Honduran press published what reportedly was a copy of the decision, which was dated 20 September 2024 but was not signed by all the justices.⁷⁴⁷ A week later, on 21 November 2024, the Supreme Court’s “X” account announced that the opinion was being notified to the National Congress, and the press reported that justices had signed the decision just that

⁷⁴³ See *Press Release*, PODER JUDICIAL (20 Sep. 2020 (C-145)).

⁷⁴⁴ Xiomara Castro de Zelaya, X @XIOMARACASTROZ dated 21 Sep. 2024 (C-750) (“We celebrate and recognize the patriotic, historical, just and legal decision of the [Supreme Court], which by majority of votes declared unconstitutional Decree 236-2012 on the reform of articles 294, 303, and 329 of the Constitution, as well as Decree 120-2013 containing the Organic Law of the #ZEDES, for violating articles of our sovereignty. Justice for the Honduran people is not selling our territory in parts or privatizing our sovereignty.”).

⁷⁴⁵ Xiomara Castro de Zelaya, X @XIOMARACASTROZ dated 21 Sep. 2024 (C-147) (“Mel . . . this day will be remembered forever, as the day of Dignity and Sovereignty of Honduras recovered with the ruling of the Court that repealed the decree of treason [against the State], ZEDE, 48 years of happy marriage and public struggles with great social and political victories, speak more than a thousand words.”) (emphasis added).

⁷⁴⁶ Partido Libre, X @PARTIDOLIBRE dated 21 Sep. 2024 (C-772) (Xiomara Castro stating that “[t]he international project of the ZEDE model cities, which sold our territory to pieces as a spoil for multinational capital approved by stateless people in the [previous narco-regime], has been definitively canceled by my Government of Democratic Socialism. Today I recognize the historic ruling of the Supreme Court of Justice and the support of the National Congress.”) (emphasis added).

⁷⁴⁷ See Unofficial Decision of the Supreme Court of Honduras, Case No. RI 0738-2021 ruling on the unconstitutionality of ZEDE Legal Framework dated 20 Sep. 2024, published by Honduran press on 14 Nov. 2024 (C-172).

week.⁷⁴⁸ An official version of the Supreme Court’s decision was finally published on 25 November 2024.⁷⁴⁹ While similar to the partially-signed copy that had previously been leaked to the press, the official decision was not identical,⁷⁵⁰ further calling into question how and when the decision came to be.

307. Beyond the irregular process and its nakedly political motivations, the decision itself raises serious concerns.
308. *First*, the Supreme Court disavowed its own 2014 decisions that the ZEDE Legal Framework was constitutional,⁷⁵¹ and declared the entire regime unconstitutional (with *ex tunc* effect). Such a sweeping decision was entirely unnecessary to address the case before the Supreme Court, which challenged only a single article of the ZEDE Law which by then had been repealed.⁷⁵² Despite the limited scope of the challenge, the Supreme Court of Honduras expanded the scope of the proceedings *sua sponte* to address the constitutionality of the entire ZEDE Legal Framework, including both the ZEDE Constitutional Provisions and the ZEDE Organic Law.⁷⁵³ According to the Court, the entire ZEDE system was “illegitimate because it originated from acts that supplanted the sovereign will residing in the original Constituent,”⁷⁵⁴ and further ordered that “any domestic or international provision that aimed to create . . . ‘model cities,’ and [ZEDEs], is hereby expelled from the national legal system.”⁷⁵⁵

⁷⁴⁸ See M. Torres, *Notificada la Sentencia que declara Inconstitucionalidad de las ZEDE; certificación va al CN*, HCH (21 Nov. 2024) (C-178).

⁷⁴⁹ Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559).

⁷⁵⁰ The official version is certified by the Secretary of the Court and includes some formal and clerical adjustments. See Comparison of Unofficial and Official Decision of the Supreme Court of Honduras (C-812).

⁷⁵¹ See Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 52-57; Cosenza § 7.2.

⁷⁵² See Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 16-17; Cosenza § 7.5.

⁷⁵³ See Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 16-17; Cosenza § 7.3.

⁷⁵⁴ Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) p. 3.

⁷⁵⁵ *Id.* p. 59 (emphasis added).

309. *Second*, the *ex tunc* effect of the Supreme Court’s decision, which has devastating consequences for legal certainty, is unprecedented and contrary to Honduran constitutional law.⁷⁵⁶ Notably, the decision is inconsistent with the acquired rights doctrine, which is based on over a century of legal tradition in Honduran law and has been repeatedly upheld by Honduran courts.⁷⁵⁷ The Supreme Court itself acknowledged that this was an exceptional, first, and unique decision in the history of the judiciary in Honduras:

[t]he unconstitutionality that follows against the creation and establishment of the [ZEDEs], produces retroactive or *ex tunc* effects, as an exceptional and, up until this moment in the judicial history of Honduras, unique case.⁷⁵⁸

310. The Supreme Court in effect amended the Constitution by redrafting Articles 294, 303 and 329 with retroactive effect.⁷⁵⁹ In doing so, the Court disregarded the Law on Constitutional Justice,⁷⁶⁰ which provides that any declaration of unconstitutionality shall have effects for the future (*ex nunc*) and not retroactively (*ex tunc*). Mr. Cosenza explains:

under the applicable constitutional and legal system, it has not been contemplated that the Judgments handed down by the Constitutional Chamber of the Honduran Supreme Court of Justice or by the Court, sitting *en banc*, which hold a law unconstitutional, may be issued with *ex tunc*, or retroactive, effect. Such conclusion is also accepted by Honduran legal scholars . . . In this regard, Judgment RI 0738-2021 lacks an express legal support on the applicable constitutional and legal framework, as would be required pursuant to the principle of legality which must prevail in any State under the Rule of Law.⁷⁶¹

311. *Third*, the Supreme Court’s position with respect to investors in existing ZEDEs was

⁷⁵⁶ See Cosenza ¶ 143 (“Judgment RI 0738-2021 has no precedent in Honduran constitutional law”), ¶ 147 (“Judgment RI 0738-2021 lacks an express legal support on the applicable constitutional and legal framework, as would be required pursuant to the principle of legality which must prevail in any State under the Rule of Law.”).

⁷⁵⁷ See *supra* § II.A.2.b; Cosenza §§ 2.3.1, 5.4.2.

⁷⁵⁸ Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) p. 18 (emphasis added).

⁷⁵⁹ See *id.* p. 59.

⁷⁶⁰ Constitutional Justice Law (*Ley sobre Justicia Constitucional*) (C-709) Art. 94 (“A judgment [that] declares the unconstitutionality of a norm shall be immediately enforceable, and shall have general effect and shall therefore repeal the unconstitutional norm. . . . The judgment shall not affect the legal situations that have already been resolved and executed.”) (emphasis added).

⁷⁶¹ Cosenza ¶ 147.

incomprehensible and deepened Claimants’ legal uncertainty as to their rights because it was based on a description of the legal framework that bears little or no resemblance to reality. Notably, the Court professed to protect the rights of “companies constituted in good faith that intended to become ZEDEs,”⁷⁶² although such thing does not exist and could never have existed under the ZEDE Legal Framework which did not allow for companies to become ZEDEs.⁷⁶³ ZEDEs instead are political subdivisions that are part and parcel and an inalienable part of the State of Honduras according to both the ZEDE Constitutional Provisions and the ZEDE Law.⁷⁶⁴ To make things worse, although the Court stated that investments and property rights under the ZEDE Legal Framework are protected, the Court’s remedy for such companies was for them to be subject to the ordinary legal framework of Honduras, which was no remedy at all as it would deprive them of the benefits conferred by the ZEDE Legal Framework.⁷⁶⁵

312. *Fourth*, the Supreme Court’s decision had no regard for Claimant’s right to due process. As Mr. Cosenza explains:

the fact that the Supreme Court issued a decision with general and retroactive effects seems to affect the rights of individuals who were not represented in the proceedings and who did not have an opportunity to adequately exercise their right to defense. In this case, insofar as they are deprived of their vested rights, ZEDE investors were not afforded an opportunity to take part in the proceedings and

⁷⁶² Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 59-60.

⁷⁶³ ZEDEs are not private entities. Private companies may incorporate land into ZEDEs, be promoters and organizers of ZEDEs, operate significant aspects of ZEDEs under a public-private partnership, or invest in ZEDEs; but under no circumstances are they or could they be ZEDEs. The ZEDE Framework is a jurisdictional overlay having the effect of identifying areas that are (under Article 39 of the Organic Law) or could be (under Article 38 of the Organic Law) eligible for the formation of special economic zones with decentralized governance; and ZEDEs themselves are political subdivisions of Honduras with legal personality. *See supra* § II.B; ZEDE Organic Law (C-6).

⁷⁶⁴ Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 294 (“Without prejudice to that established in the previous paragraphs [about the departmental and municipal system], the National Congress may create zones subject to special regimes in accordance with Article 329 of this Constitution”), 329 (“[ZEDEs] shall enjoy functional and administrative autonomy that shall include the functions, abilities, and obligations that the Constitution and the laws confer on municipalities”); ZEDE Law (C-6) Art. 1 (“[ZEDEs] are an inalienable part of the State of Honduras”), Art. 3 (“[ZEDEs] enjoy operational and administrative autonomy that includes the functions, powers and obligations that the Constitution of the Republic and the laws confer upon the municipalities.”). *See also supra* § II.B.3.

⁷⁶⁵ *See* Decision of the Supreme Court of Honduras published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559).

safeguard their rights. There is no mention in the Judgment as to whether they were served prior notice by the State or whether they were summoned to appear; neither were they granted a term to prepare and defend their cases. In short, the adversarial principle was not respected”⁷⁶⁶

7. Following the 2024 Supreme Court Decision, Honduras doubles down on its harassment and interference with Claimants’ investments but still stops short of forcing Claimants or Próspera ZEDE to stop operating

313. Following the 2024 Supreme Court decision, legal uncertainty escalated. Honduras doubled down on its anti-ZEDE rhetoric, harassment, and interference with Claimants’ investments but still stopped short of forcing the closure of Próspera ZEDE or taking legal action to prevent its operations.
314. In the run up to the Supreme Court’s decision, the rumors that the ZEDE Legal Framework would be ruled unconstitutional with retroactive effect had raised red flags with opposition lawmakers, who warned of an effort by the ruling LIBRE party to use such a ruling to disqualify the opposition from the next elections following the example of President Castro’s political ally, Venezuelan President Nicolás Maduro.⁷⁶⁷ Such concerns proved to be justified, as the day after the Supreme Court’s press release announcing its decision, Speaker Redondo revealed that he was keeping a list of officials that previously were in favor of the ZEDEs and demanded that they be “persecute[d], tr[ie]d, and condemn[ed].”⁷⁶⁸ On 24 September 2024, a Congress member from the LIBRE party filed a criminal complaint for treason before the Office of the Public Prosecutor against members of Congress that voted in favor of ZEDEs.⁷⁶⁹

⁷⁶⁶ Cosenza ¶ 152.

⁷⁶⁷ *See Libre is denounced for seeking to endorse political amnesty and disqualify opponents*, LA PRENSA (18 Sep. 2024) (C-139).

⁷⁶⁸ Luis Redondo, X @LREDONDO dated 20 Sep. 2024 (C-143). On 4 August 2025, Speaker Redondo reiterated his demands. *See Redondo demands to prosecute and condemn those who approved the ZEDE: “We have the names”* PRENSA HONDURAS (4 Aug. 2025) (C-810).

⁷⁶⁹ *See Dixon accuses deputies of treason for voting in favor of the ZEDEs*, EL HERALDO (23 Sep. 2024) (C-148). *See also* Decree No. 130-2017, enacting the Criminal Code of Honduras, published on 10 May 2019 (C-26) Arts. 555, 562 (providing that individuals guilty of treason shall be sentenced to up to twenty years of imprisonment, be disqualified to take public office for twice the length of their imprisonment, and lose their citizenship if Honduran nationals).

315. Although these criminal prosecutions appear not to have progressed, Honduras has grown more hostile towards Próspera ZEDE, including through institutions that had previously supported ZEDEs and Claimants investments.

- The Property Institute issued a statement qualifying the Supreme Court decision as a historic resolution that marked a breakthrough in the defense of national sovereignty and the protection of resources and territories that belong to the Honduran people.⁷⁷⁰ The Property Institute had previously collaborated with Claimants.⁷⁷¹
- In October 2024, a dozen police officers and several police vehicles tried to force their entry into a private property (named “Johnson Building”) located in Próspera ZEDE. This was an arbitrary action carried out by the Municipality of Roatán and the National Police. Eventually, they placed chains and locks on gates and demanded payment to allow the company to continue operating.⁷⁷² The Mayor of Roatán openly demanded payment of local taxes and permits and rejected Próspera ZEDE.⁷⁷³ As Mr. Brimen explains, “[t]his was not law enforcement – it was intimidation through state force.”⁷⁷⁴ Roatán authorities, including the Mayor of the Municipality, had previously welcomed and induced Claimants investments.⁷⁷⁵



⁷⁷⁰ See Property Institute Statement celebrating the declaration of unconstitutionality of articles 294, 303, and 329 of the Honduran Constitution dated 20 Sep. 2024 (C-811).

⁷⁷¹ See *supra* §§ II.C.1, 3.d.

⁷⁷² See Próspera ZEDE, *Confiscation of investments on the island of Roatán?* dated 14 Oct. 2024 (C-360).

⁷⁷³ See *For not paying taxes, mayor of Roatán orders the closure of the gates of Próspera ZEDE*, CONFIDENCIAL (15 Oct. 2024) <https://confidencialhn.com/por-no-pagar-impuestos-alcaldia-de-roatan-ordena-el-cierre-de-los-portones-de-la-zede-prospera/> (C-568).

⁷⁷⁴ Brimen ¶ 113.

⁷⁷⁵ See *supra* § II.C.3.e.



Pictures of police activity during the “Johnson Building incident”

316. On the other hand, the Technical Secretary of Próspera ZEDE, the highest authority of the ZEDE and a State official, said that the Supreme Court’s decision was contrary to Honduras’s guarantees of legal stability and unenforceable. Mr. Jorge Colindres (a lawyer) stated that the Supreme Court did not have the power to declare a law unconstitutional with retroactive effect, that it was the first time in Honduran history that this happened, and that the ruling violated due process and was illegal, void, and inapplicable under Honduran law.⁷⁷⁶ In a radio interview, he further stated:

[t]he problem is that [the Supreme Court is] committing an illegal act when they want to make [the law] retroactive; when the Constitution says that laws can be

⁷⁷⁶ See *Honduran Supreme Court Declares ZEDEs Unconstitutional*, CHARTER CITIES INSTITUTE (25 Sep. 2024), (C-361); Radio America, Episode 16 (C-362) minute 19:50 onwards. See also Brimen ¶ 114.

repealed, and laws can be declared unconstitutional but only with effect to the future, and it cannot harm the rights we have. . . The State cannot give a right and then take it away. . . that is the problem we are in. . . . The Law on Constitutional Justice . . . he said that judgments of unconstitutionality would not affect legal situations that were already definitively resolved and enforced. So, this ruling cannot affect any of the three ZEDEs that are operating, it cannot affect the employment contracts of the more than 3000 people who are working, it cannot affect the more than 235 companies that have been formed, it cannot affect the more than 150 million dollars of investment that has been deployed in the country. . . . And this is what generates legal insecurity, because we do not know what the policy of the State will be.⁷⁷⁷

317. In parallel, local communities continued to support Próspera ZEDE. In October 2024, more than 250 Hondurans (including workers and residents of the Crawfish Rock and La Ceiba communities) signed an open letter requesting the protection of their jobs and expressing their concern for the impact of the Supreme Court decision on the operations of Próspera ZEDE:

[f]or many of us, Próspera is not just a project or a place; it represents a lifeline, a turning point for our communities Thanks to Próspera, our children no longer have to walk long distances to receive an education. Transportation services ensure they can attend school and focus on learning, not surviving

Mothers who once struggled to make it to the end of the month now have jobs, wages, and pride in being able to provide for their families. Families who never imagined having a steady income can now buy food, pay their bills, and give their children a chance for a better future

Próspera has brought investment, education and development to places that were previously ignored. It has created jobs where there weren't, offered training where it didn't exist, and given hope where it was lost

[T]oday our work and our future are in danger. Removing Próspera is not just closing. . . businesses; is to taking away hope and opportunities that have been so difficult for us to gain.⁷⁷⁸

318. On 7 October 2024, Hondurans supporting Próspera ZEDE and the other ZEDEs held a peaceful protest before the Supreme Court, calling for the continuation of ZEDEs and asserting their right

⁷⁷⁷ Radio America, Episode 16 (C-362) minute 22:40

⁷⁷⁸ *More than 250 Hondurans seek protection of their jobs in Próspera*, LA PRENSA (1 Oct. 2024) (C-813).

to work and the opportunity that the ZEDEs provide.⁷⁷⁹

319. However, the hostile conduct from Honduran authorities towards Próspera ZEDE continued. On 15 May 2025, a LIBRE Party Congressman stated that he had submitted a criminal complaint to the National Prosecutor's Office for treason against those who "intended to sell the national territory," and called on the National Congress and on the Executive branch to stop the "irregular operations" of Próspera ZEDE.⁷⁸⁰ But despite the various calls for shutting down Próspera ZEDE, Honduras has taken no steps to do so (at least none that Claimants are aware of), and Claimants have continued to operate relying on their acquired rights and belief that they remain entitled to legal stability.⁷⁸¹ Nevertheless, the state of legal uncertainty has been highly prejudicial.⁷⁸²
320. Honduras's actions also have created a cloud on the title of Claimants' real property. In addition to being impacted by the state of uncertainty created by Honduras regarding the legal status of Próspera ZEDE as a general matter, the status of real estate transferred out of the Property Institute and into the ZEDE is specifically impacted by Honduras's efforts to undermine the ZEDE Legal Framework. For example, Honduras's decrees purporting to repeal the ZEDE Legal Framework

⁷⁷⁹ See *Group of people sit-in at the CSJ requesting that the ZEDEs operate*, PROCESO DIGITAL (7 Oct. 2024) (C-814).

⁷⁸⁰ Fabiana Ordoñez, *Congressman Dixon condemns medical experiment and parallel power in Próspera ZEDE*, MI NOTA (15 May 2025) (C-815).

⁷⁸¹ Reputable local lawyers confirm the correctness of Claimants' position. See Dentons, *The zones of employment and economic development remain in force under Honduran law* dated 4 Sep. 2025 (C-817) (article from the head of Dentons' Honduras office highlighting, among other things, that foreign investors enjoy legal stability by virtue of the Kuwait-Honduras BIT and CAFTA-DR, that their acquired rights enjoy legal protection under Honduran law, and that the Supreme Court's decision lacked language directing existing ZEDEs to stop operating); *Edmundo Orellana warns about retroactive consequences of decision against the ZEDE*, LA TRIBUNA (9 Aug. 2024) (C-816) (former Minister and Attorney General warns that declaring the ZEDE Law unconstitutional retroactively "has devastating consequences for legal certainty.").

⁷⁸² The events surrounding and following Honduras's repeal of the ZEDE Legal Framework have affected not only investors in ZEDEs but any foreign investors in Honduras. See U.S. Department of State, 2025 Honduras Investment Climate Statement (1 Sep. 2025) (C-398) p. 2 ("Investors report that significant uncertainty over government policies has driven reluctance to expand new operations in Honduras" and that "[i]ssues driving this uncertainty include: . . . uncertainty over legal stability stemming from the Supreme Court of Justice's ruling against the special economic 'ZEDE' zone law."), p. 4 ("Investors report that the government's decision to declare the country's special economic 'ZEDE' zones unconstitutional on September 20, 2024, has contributed to uncertainty in the government's commitment to investment protections.").

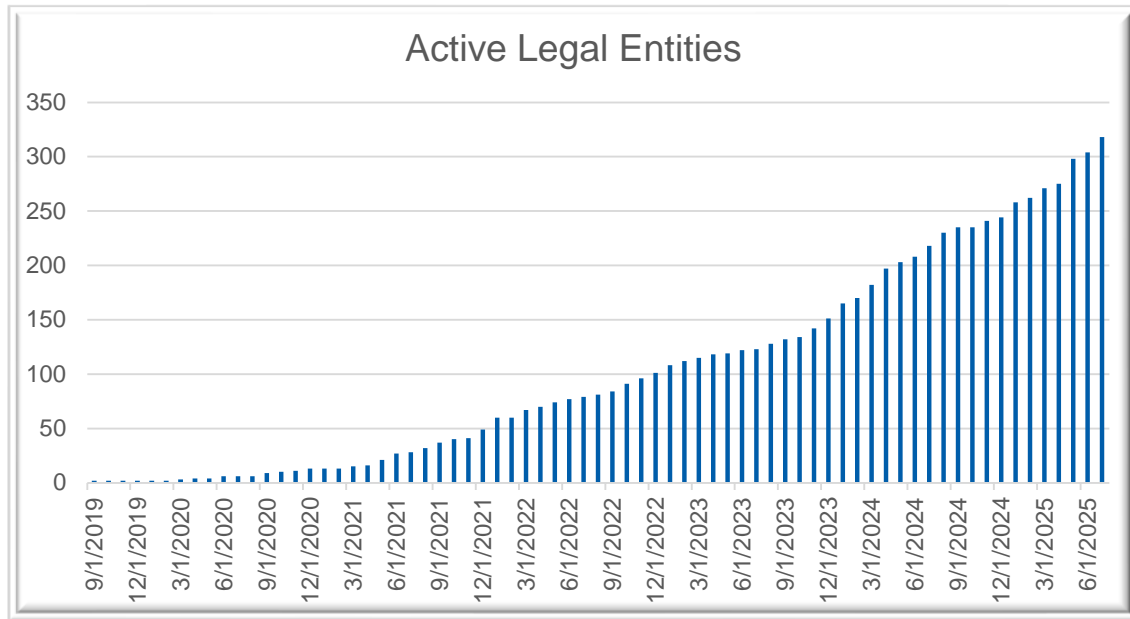
also provide that all norms of any kind deriving from the ZEDE Legal Framework are void,⁷⁸³ without any sort of transition regime. This would include, among other things, the Property Institute's regulation on the transfer of title from the National Property Register to the ZEDE register (which also does not provide for the transfer of title back into the National Property Register).⁷⁸⁴ This creates complete uncertainty as to the status of past transactions and a gaping void as to the current status of title.

E. DESPITE THE SEVERE HARM CAUSED BY HONDURAS'S ACTIONS, CLAIMANTS HAVE USED BEST EFFORTS TO MITIGATE THEIR DAMAGES

321. Despite Honduras's unprecedented measures, Próspera ZEDE continues to operate, Claimants' innovative, rule-of law governance model for Próspera ZEDE continues to deliver, and Próspera ZEDE remains an attractive hub within Honduras, albeit at much lower levels than would have been the case without the measures.
322. As of July 2025, the number of active legal entities in Próspera ZEDE had shown continued growth and was at an all-time high with over 300 entities:

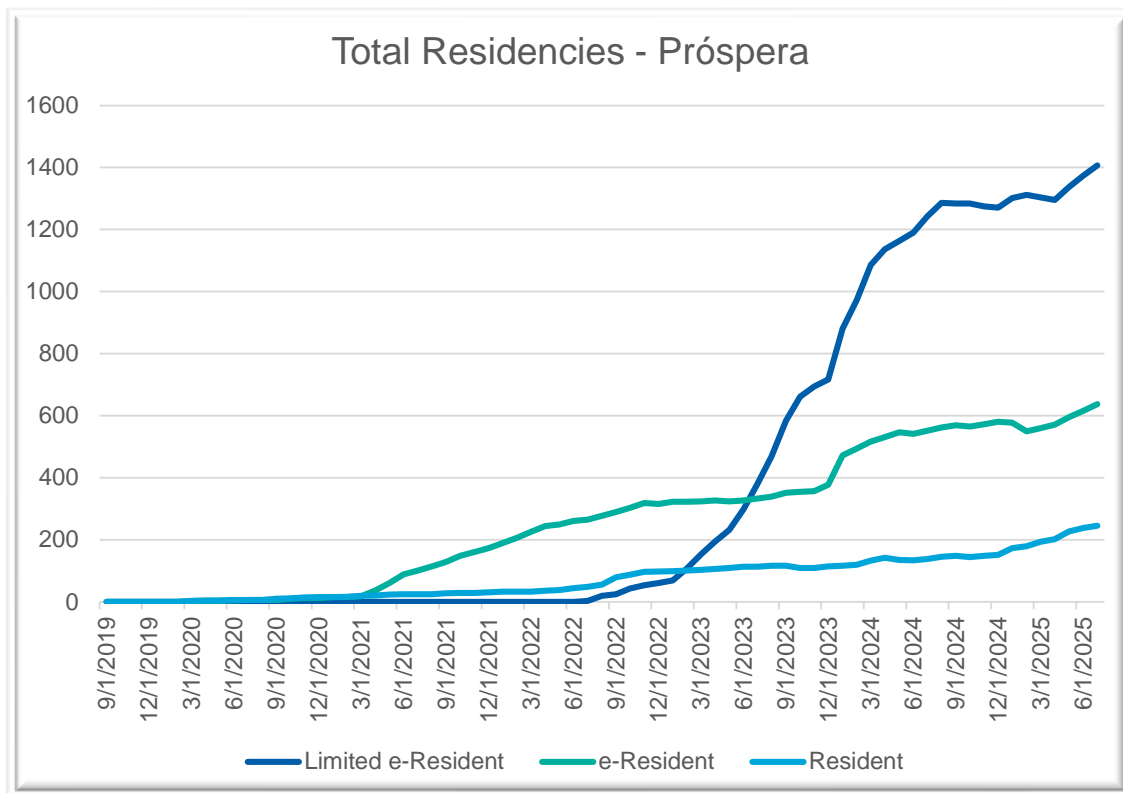
⁷⁸³ See Decree No. 32-2022, published on 21 Apr. 2022 (C-57) Art. 1; Decree No. 33-2022, published on 26 Apr. 2022 (C-60) Arts. 1, 3.

⁷⁸⁴ See Certification of the Agreement No. CD-IP-008-2019 issued by the Property Institute dated 10 Jun. 2019 (C-325).



Source: information exported from ePróspera

323. The numbers of physical and e-Residents also show continuous growth through the years:



Source: information exported from ePróspera

324. By mid-July 2025, Claimants had incorporated and registered into the ZEDE a total of 1,027

acres.⁷⁸⁵

325. Claimants have held out hope that Honduras will observe its legal stability commitments (if not under President Castro, then perhaps under a new administration as there is a general election in Honduras at the end of 2025),⁷⁸⁶ and attempted as best they can to mitigate their damages and protect their investments, employees, and the local communities that depend on Próspera ZEDE. Claimants are committed to preserving as much value as possible for their investors and stakeholders, and to continue delivering economic and social benefits to Honduras. Claimants have made substantial efforts to continue raising private capital, developing governance services, building physical assets, retaining tenants, creating skilled employment, broadening Honduras's tax base, and promoting social welfare and education:

- In June 2022, Próspera ZEDE launched ePróspera, a cutting-edge, modern, fast and efficient online digital platform for government services, to facilitate the creation of legal entities, obtain permits, pay taxes, buy property and create value with minimal bureaucratic friction.⁷⁸⁷ The platform was developed by Ott Vatter, who built Estonia's digital governance system.⁷⁸⁸
- The Circular Factory opened in 2023,⁷⁸⁹ but is unable to operate fully because of customs restrictions that make it impossible for it to import some raw materials and to sell its output internationally. Accordingly, it works primarily with local materials and in the local market.⁷⁹⁰ HPI has been purchasing its output (*e.g.*, cabins for hotel inventory) to keep it afloat despite customs and import/export restrictions, which has prevented its closure and allowed it to maintain some level of economic activity.⁷⁹¹

⁷⁸⁵ Real Property List dated 15 Oct. 2025 (C-491).

⁷⁸⁶ See Brimen ¶¶ 111, 125; Delgado ¶ 63.

⁷⁸⁷ See ePróspera, our digital platform built by Estonian e-gov experts, is now live! dated 10 June 2022 (C-613).

⁷⁸⁸ See NeWAY, *Meet the Team* (C-300).

⁷⁸⁹ The Circular Factory, *About us* (C-643) ("The Circular Factory first micro-factory opened in 2023 working with local materials and upskilling local trades, looking at technology for social innovation."); *Trey Goff – Próspera: Building the Future of Governance*, Free Cities Foundation, YOUTUBE dated 4 Nov. 2022 (C-505) minute 17:21-19:13; Circular Factory web site (C-507).

⁷⁹⁰ See Brimen ¶ 106(a).

⁷⁹¹ See Brimen ¶ 106(a).

- In mid-2023, Claimants completed one Duna Tower in Roatán (out of the several envisioned before Honduras upended the ZEDE regime), albeit at a considerably slower pace and higher cost than initially envisioned.⁷⁹²



Photograph of the first Duna Residencies

- Even as larger projects stalled, smaller-scale developments continued. For example, two new construction projects were launched in Próspera ZEDE: (i) Darien Village (a US\$ 3.5 million investment), and (ii) Nomad Nation (a US\$ 1.5 million investment targeting digital nomads).⁷⁹³ Darien Village is a complex of small apartments for short-term rental spearheaded by Mr. Delgado as a development targeting “global citizens” who want a village-style and eco-friendly home in Próspera ZEDE.⁷⁹⁴
- HPI worked to maintain access to financial services for registered entities, successfully convincing some fintech companies (such as OneSafe, a subsidiary of Coinbase Ventures (described below) to provide banking services to ZEDE-registered companies, even as traditional banks became more reluctant under the adverse legal and regulatory environment.⁷⁹⁵
- In November 2024, HPI secured a partnership with Mission Roatán, a U.S.-based charity that is dedicated to improving healthcare conditions and contributing to education expenses

⁷⁹² See *supra* § II.D.5.

⁷⁹³ See Brimen ¶ 118(b); Citadel Jump, Darien Village, (C-366); NOMAD Homes website (C-367).

⁷⁹⁴ Delgado ¶ 60.

⁷⁹⁵ See Brimen ¶ 118(c).

in Roatán, and committed to fund a full year of quality education for 50 local children in 2025.⁷⁹⁶

- In January 2025, HPI announced a strategic investment from Coinbase Ventures, the venture capital arm of Coinbase, a leading cryptocurrency exchange platform “whose mission is to create an open financial system for the world.”⁷⁹⁷ Coinbase and Próspera “have a shared mission of creating more economic freedom in the world,” and “seek to unleash the full potential of millions of entrepreneurs building the next generation of world-changing businesses and technologies.”⁷⁹⁸ As Mr. Brimen confirms, “[m]any people still believe in HPI’s vision and, despite the challenging context, we have managed to raise funds from sophisticated investors.”⁷⁹⁹
- Also, by January 2025, HPI brought high-speed internet connectivity to the Luz y Vida remote community in Roatán, connecting nine areas within the community to free, high-speed WiFi.⁸⁰⁰
- In February 2025, HPI hosted the US\$ 1 million startup competition “Meet the Drapers” in partnership with world-renowned venture capitalist Tim Draper and his venture capitalist son Matt Draper to connect Honduran entrepreneurs with global investors and resources.⁸⁰¹ The competition gave thirteen promising startups from across Honduras the opportunity to pitch their ideas directly to the Drapers.⁸⁰² As explained by Erick Brimen, “HPI has been able to attract international capital into third party entities in Honduras through Próspera ZEDE – for example, when Tim Draper, the renowned venture capitalist, and his son Adam visited Próspera ZEDE in March 2025 to film their US\$ 1 million startup competition ‘Meet the Drapers,’ they provided Honduran entrepreneurs the opportunity to pitch directly for investment and deemed several companies worthy of capitalization.”⁸⁰³
- In recent months, Próspera ZEDE has attracted international attention as a center for cutting-edge genetic therapy. Thanks to Próspera ZEDE’s optimal regulatory environment, Unlimited Bio, a biotechnology company operating out of the ZEDE, developed a

⁷⁹⁶ See Próspera, *Próspera partners with Mission Roatán to support local education* (20 Nov. 2024) (C-368).

⁷⁹⁷ See Próspera, *Próspera announces strategic investment by Coinbase Ventures and other investors to increase economic freedom worldwide* (21 Jan. 2025) (C-370); Brimen ¶ 120; Coinbase, *About*, (C-764); Coinbase, *Overview* (C-765); Brian Armstrong, X @BRIAN_ARMSTRONG dated 21 Jan. 2025 (C-371).

⁷⁹⁸ Próspera, *Próspera Announces Strategic Investment by Coinbase Ventures and Other Investors to Increase Economic Freedom Worldwide* (21 Jan. 2025) (C-370); Brian Armstrong, X @BRIAN_ARMSTRONG dated 21 Jan. 2025 (C-371).

⁷⁹⁹ Brimen ¶ 120.

⁸⁰⁰ See Próspera, *Próspera brings internet connectivity to Roatán’s Luz y Vida Community* dated 12 Jan. 2025 (C-369).

⁸⁰¹ See Próspera, *Próspera & Tim Draper Launch \$1M Startup Competition in Roatán* dated 17 Feb. 2025 (C-372).

⁸⁰² See Próspera, *Próspera & Tim Draper Launch \$1M Startup Competition in Roatán* dated 17 Feb. 2025 (C-372).

⁸⁰³ Brimen ¶ 122.

groundbreaking genetic therapy in Roatán.⁸⁰⁴ Unlimited Bio's products, developed in Próspera ZEDE, are being exported and being used by global celebrities interested in advanced solutions for health, longevity, and wellness.⁸⁰⁵ Among others, U.S. media personality Khloé Kardashian received Unlimited Bio's pioneering genetic therapy and commented on social media on its groundbreaking effects.⁸⁰⁶

- Overall, Claimants have raised and committed massive financial and other resources over multiple years to develop Próspera ZEDE into a transformative platform for economic growth and development, including investments exceeding US\$ 166.3 million.⁸⁰⁷ A summary of Claimants' capital raise enabling the investments is set out below:⁸⁰⁸

HPI Capitalization			
Founders	2017-2019	Cash	US\$ 2,575,335.16
	2017-2019	in kind	437,175.99
Series A	2019-2020	Cash	8,960,000.00
		cash equivalent (property)	4,949,458.62
		cash equivalent (debt cancelation)	621,985.98
Series B-1	2021	Cash	2,100,000.00
	2021-2024	Cash	34,280,436.66
Series B-2	2025	Cash	32,526,999.35
Total:			US\$ 86,451,391.76

⁸⁰⁴ *Khloe Kardashian Receives Cutting-Edge Genetic Therapy developed in Próspera ZEDE*, ROATÁN TOURISM BUREAU (1 Sep. 2025) (C-766).

⁸⁰⁵ *Id.*

⁸⁰⁶ *Id.*

⁸⁰⁷ *See* BRG ¶ 74; Honduras Próspera Inc., Unaudited Consolidated Financial Statements 2022 and 2023 (C-620) p. 4; Honduras Próspera Inc., Unaudited Consolidated Financial Statements 2024 and 2023 (C-621) p. 4; Honduras Próspera Inc., Unaudited Interim Financial Statements Three Months Ended March 31, 2025 and 2024 (C-584) p. 4.

⁸⁰⁸ Brimen ¶ 121.

SJBDC Capitalization			
HPI	2022	in kind	US\$ 42,850,000.00
Series B-1	2021-2024	Cash	79,899,025.82
Total:			US\$ 122,749,025.82

326. The evidence from both public opinion surveys and direct testimonials cited above⁸⁰⁹ demonstrates that Próspera ZEDE continues to enjoy strong local support and continues to deliver benefits to the Honduran community. Próspera ZEDE is still seen as a key driver of economic development and opportunity. It is creating jobs,⁸¹⁰ and thus reducing the incentive for migration and improving the quality of life for residents.

327. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸⁰⁹ See *supra* §§ I, II.D.4; Presentation “Public Opinion Study CID Gallup” (C-593); MacroDato, *Opinion Study: Citizenship and independent candidates* (C-740) pp. 13, 17; Testimonial by Josue, Próspera, X @PROSPERAGLOBAL dated 14 Jun. 2023 (C-762) (“The positive impact that it has had on my professional career has been opening the door of opportunities to work with companies like Todo Servicio Romero, which is one of those that is leading the construction of such important projects as Dunas Residence in Próspera, Roatán, creating job opportunities for many people, elevating their work experience.”); Testimonial by Rosaly Kerington, Próspera , X @PROSPERAGLOBAL dated 29 Jun. 2023 (C-375) (“Thanks to Próspera. Economically it has helped me a lot. And I am happy because I have my daughter in school here, who is learning English, is learning about computers. I am happy, thanks to God and to Próspera for giving us another opportunity to succeed, like providing us with work. And I have no complaints about the salary because it’s very good and the work schedule is also comfortable. Thank you.”); Al Pecho y Sin Censura, X @ALPECHO dated 7 Oct. 2024 (C-760) minute 0-0:40 (Video of ZEDE employees protesting at the Supreme Court, with a person interviewed stating that “[t]he ZEDES have come to clear a path for use . . . given that the government does not have jobs [for us], the ZEDE has come to provide employment to many of us. . . . [T]his has cleared a path for our Honduras . . .”).

⁸¹⁰ See Labor Inspectorate of the Office of Technical Secretary of Próspera ZEDE, *Employment and Monthly Wage Study* (9 Oct. 2025) (C-759).

[REDACTED]

328. Claimants' performance under these extreme circumstances shows the scale of what could have been and the scale of the damage Respondent has inflicted: absent the measures, the pipeline evidenced by the pre-Castro master plans would already have yielded multiple large-scale infrastructure projects and exponentially greater economic activity and social development. Even after President Castro took office, Claimants have managed to mitigate damages and even attract some further investments. But those were not the level or quality of investments that Claimants sought to attract and would have attracted. Próspera ZEDE should be thriving by now; the only reason it is not, are President Castro's and Honduras's measures.
329. Claimants have not given up, however, and hold out hope that an amicable resolution can even now be found (perhaps after the upcoming elections in November). As Mr. Brimen explains:

[d]espite everything, I would still very much like to partner with Honduras to deliver on the promise of Próspera ZEDE, if the government is willing to reaffirm its legal stability commitments. Given the opportunity and despite the damage done, I have no doubt that HPI would succeed in making Próspera ZEDE a huge platform for investment in Honduras, delivering the multi-billion-dollar profits that we projected to HPI, SJBDC and PAC as well as jobs and prosperity to the people of Honduras.⁸¹²

III. THE TRIBUNAL HAS JURISDICTION OVER CLAIMANTS' CLAIMS AND CLAIMANTS HAVE COMPLIED WITH CAFTA-DR'S ADMISSIBILITY REQUIREMENTS

330. The Tribunal has jurisdiction over Claimants' claims because this dispute satisfies the applicable jurisdictional requirements under CAFTA-DR, the LSA, and the ICSID Convention, as well as all

811

[REDACTED]

812 Brimen ¶ 125.

admissibility requirements under CAFTA-DR: as explained below, Claimants and Respondent have consented in writing to ICSID arbitration of Claimants' CAFTA-DR claims pursuant to Section B of Chapter 10 of CAFTA-DR, and HPI and Respondent have consented in writing in the LSA to ICSID arbitration of HPI's claims under the LSA (Section III.A); Claimants satisfy all requirements under the ICSID Convention and, respectively, CAFTA-DR and the LSA, to submit their claims under, respectively, CAFTA-DR and the LSA, to ICSID arbitration (Section III.B); and (C) with regards to their claims under CAFTA-DR, Claimants have complied with the applicable notice and waiver requirements, and their claims are timely (Section III.C).

A. THE PARTIES HAVE CONSENTED IN WRITING TO THE PRESENT ARBITRATION

331. Article 25(1) of the ICSID Convention provides that “[t]he jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.”⁸¹³ The consent-in writing requirement is satisfied with respect to Claimants' claims under both CAFTA-DR (Section III.A.1) and the LSA (Section III.A.2).

1. Claimants and Honduras have consented in writing to ICSID arbitration of Claimants' CAFTA-DR claims

332. Honduras consented in writing to ICSID arbitration of Claimants' CAFTA-DR claims in CAFTA-DR, Article 10.17 of which provides that “[e]ach Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement” and that this consent “shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) . . . for written consent of the parties to the dispute.”
333. Pursuant to Article 10.16(1)(a) of CAFTA-DR, Honduras's consent to arbitration encompasses the following claims that may be brought to arbitration:

the claimant, on its own behalf, may submit to arbitration under this Section a claim

⁸¹³ ICSID Convention Art. 25(1) (emphasis added).

- (i) that the respondent has breached
 - (A) an obligation under Section A,
 - (B) an investment authorization, or
 - (C) an investment agreement; and
- (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach.

334. Claimants, for their part, consented in writing to ICSID arbitration of their claims under CAFTA-DR in their Request for Arbitration, which they submitted to ICSID on 19 December 2022. Specifically, Claimants submitted claims pursuant to Article 10.16(1)(a)(i)(A), (B), and (C) of CAFTA-DR that Honduras has breached various obligations under Section A of Chapter 10 of CAFTA-DR, an investment authorization, and an investment agreement, and that Claimants have incurred damage as a result of those breaches. Claimants' claims are detailed in Section IV below.

2. HPI and Honduras have consented in writing to ICSID arbitration of HPI's contractual claims for breach of the LSA

335. HPI and Honduras consented in writing in the LSA to ICSID arbitration of HPI's claims under the LSA. Specifically, Article 2.2 of the LSA provides that "[c]laims for monetary damages by the Parties arising under or in any way related to this Agreement shall be arbitrated pursuant to the rules and procedures set forth by the International Centre for the Settlement of Investment Disputes (ICSID) as stated under the CAFTA-DR."⁸¹⁴

B. CLAIMANTS ARE ENTITLED TO SUBMIT THEIR CLAIMS UNDER CAFTA-DR AND THE LSA TO ICSID ARBITRATION

336. Claimants also comply with the other jurisdictional requirements in the ICSID Convention, as well as the jurisdictional requirements under CAFTA-DR.

337. As for the ICSID jurisdictional requirements, Article 25(1) of the ICSID Convention provides that "[t]he jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the

⁸¹⁴ Initial LSA (CLA-6) Art. 2.2.

parties to the dispute consent in writing to submit to the Centre.”⁸¹⁵

338. Article 25(2)(a) in turn defines “national of another Contracting State” to include “any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to . . . arbitration as well as the date on which the request was registered pursuant to . . . paragraph (3) of Article 36”

339. Turning to CAFTA-DR, Article 10.16 of the Treaty authorizes a “claimant” to submit on its own behalf claims to ICSID arbitration that a Party has breached an obligation under Section A of Chapter Ten, an investment authorization, or an investment agreement.⁸¹⁶ Article 10.28 of CAFTA-DR defines “claimant” as “an investor of a Party that is a party to an investment dispute with another Party,” further defines the term “investor of a Party” to include an “enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party . . . ,” and in turn defines the term “enterprise of a Party” as “an enterprise constituted or organized under the law of a Party.”

340. Article 10.28 further defines “investment” as follows:

every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitments of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stocks, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;
- . . .
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;

⁸¹⁵ ICSID Convention Art. 25(1) (emphasis added).

⁸¹⁶ CAFTA-DR (CLA-2) Arts. 10.16(1)(a)(i)(A)-(C), 10.16.3(a).

- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges.

341. Article 2.1, which contains the Treaty’s general definitions, in turn defines “covered investment” as “with respect to a Party, an investment, as defined in Article 10.28 (Definitions), in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter.”

342. As shown below, Claimants satisfy the above-described ICSID Convention requirements with respect to both their claims under CAFTA-DR and the LSA, as well as CAFTA-DR requirements with respect to their claims under CAFTA-DR.

1. Claimants satisfy the nationality requirement under the ICSID Convention for purposes of their claims under both CAFTA-DR and the LSA, as well as the nationality requirement under CAFTA-DR for purposes of their claims under CAFTA-DR

343. Claimant HPI is a corporation incorporated in the State of Delaware, U.S.,⁸¹⁷ Claimant SJBDC is a limited liability company organized under the laws of Delaware, U.S.,⁸¹⁸ and Claimant PAC is a limited liability company organized under the laws of Texas, U.S.⁸¹⁹

⁸¹⁷ HPI was originally incorporated as Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, and its name was changed to HPI on 31 December 2018. *See* Certificate of Formation of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, State of Delaware, Secretary of State, Division of Corporations, dated 28 Aug. 2017 (C-14); Limited Liability Company Operating Agreement of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC dated 30 Jun. 2018 (C-19); Resolution of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, Written Consent of Board of Directors dated 31 Dec. 2018 (C-23); Certificate of Amendment of the Name of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, State of Delaware, Secretary of State, Division of Corporations dated 17 Jul. 2019 (C-29).

⁸¹⁸ *See* Certificate of Formation of Próspera Land SPV 1 LLC, State of Delaware, Department of State, Division of Corporation dated Oct. 2016 (C-12); Amended and Restated Operating Agreement for St. John’s Bay Development Company LLC dated 10 Sep. 2021 (C-40) p. 7 (noting that on 2 July 2021 Próspera Land SPV 1 LLC’s name was changed to SJBDC); Apostille Certificate by the Secretary of State, Delaware Department of State for St. John’s Bay Development Company LLC dated 25 Nov. 2024 (C-761); Apostille Certificate by the Secretary of State, Delaware Department of State for St. John’s Bay Development Company LLC dated 2 Dec. 2024 (C-763).

⁸¹⁹ *See* Certificate of Filing of PAC, Office of the Secretary of State, State of Texas dated 4 Nov. 2019 (C-32); Limited Liability Company Operating Agreement of Próspera Arbitration Center LLC dated 31 Dec. 2019 (C-33).

344. Both Honduras and the U.S. were ICSID Contracting States on the date on which Claimants submitted their claims to arbitration in their Request for Arbitration as well as the date on which Claimants' Request for Arbitration was registered pursuant to paragraph (3) of Article 36.⁸²⁰ Claimants are therefore "nationals of another Contracting State" within the meaning of Article 25 of the ICSID Convention and satisfy the nationality requirement in Article 25 of the ICSID Convention.
345. Further, each Claimant is a "claimant" as that term is defined under CAFTA-DR, as each Claimant is an "investor of Party that is a party to an investment dispute with another Party."⁸²¹ Indeed, each Claimant is an "enterprise of a Party," that is, an enterprise constituted or organized under the law of the U.S., which is a Party to CAFTA-DR. Further, as demonstrated in the next section, all Claimants have made investments in the territory of Honduras, which is another Party to CAFTA-DR.

2. Claimants made investments in Honduras, which qualify as covered investments under CAFTA-DR and as investments under the ICSID Convention

346. Claimants have made investments in Honduras, which qualify as covered investments under CAFTA-DR and as investments under Article 25 of the ICSID Convention.
347. HPI's investments in Honduras include (i) direct and indirect ownership of shares in enterprises incorporated under the laws of Honduras and of Próspera ZEDE, through which it operates the

⁸²⁰ Claimants' Request for Arbitration was filed on 19 December 2022, and registered by ICSID's Secretary-General on 3 February 2023, while Honduras and the U.S. were parties to the ICSID Convention. *See* ICSID, Database of ICSID Member States dated 19 Dec. 2022 (C-83) (indicating that the U.S. signed the ICSID Convention on 27 August 1965, with the Convention entering into force for the U.S. on 14 October 1966); ICSID List of Contracting States and Other Signatories of the Convention (as of August 25, 2024), ICSID (CLA-45) (indicating that Honduras signed the ICSID Convention on 28 May 1986, with the Convention entering into force for Honduras on 16 March 1989). Honduras later denounced the ICSID Convention through a written notice on 24 February 2024. *See* ICSID News Release, *Honduras Denounces the ICSID Convention*, ICSID (29 Feb. 2024) (C-92) (indicating that the World Bank received Honduras's written notice denouncing the ICSID Convention, which would take effect on 25 August 2024).

⁸²¹ The term "investment dispute" is not defined in CAFTA-DR. There can be no doubt that Claimants' claims that Honduras has harmed their investments in Honduras as a result of breaches of (i) Section A of Chapter 10 of CAFTA-DR, (ii) the Charter, an investment authorization, and (iii) the LSA, an investment agreement, qualify as an investment dispute with Honduras.

various branches of its business, and its indirect interests in the assets of these companies; (ii) capital contributions to fund acquisitions, operations, and the development of its businesses in Próspera ZEDE; (iii) contributions to and development of Próspera ZEDE's governance services, including its regulatory framework, ePróspera system, and registries; (iv) contracts with affiliates and third-parties for the operation of Próspera ZEDE and for real estate development; (v) intellectual property rights with respect to Próspera ZEDE; (vi) licenses, authorizations, permits, and other rights conferred by Honduras under its domestic law to HPI, including its right to act as Promoter and Organizer of Próspera ZEDE, authorizations to incorporate land into the ZEDE, and its corresponding rights under the Charter; (vii) assets located in Honduras, including real property; (viii) loans and other forms of debt instruments extended for the purposes of developing its business in Próspera ZEDE; and (ix) other intangible property rights, including, without limitation, acquired rights under the ZEDE Legal Framework.

348. SJBDC's investments in Honduras include (i) shares in enterprises incorporated under the laws of Próspera ZEDE through which SJBDC operates part of its real estate business; (ii) contracts with related entities and third parties for the development of real estate projects in Honduras; (iii) licenses, authorizations, permits and other rights conferred under the laws of Honduras and of Próspera ZEDE for its real estate projects; (iv) assets located in Honduras, including real property; (v) loans and other forms of debt instruments extended for the purposes of developing its business in Próspera ZEDE; (vi) capital contributions to fund operations, land acquisitions, and development in Próspera ZEDE; and (vii) other intangible property rights, including, without limitation, acquired rights under the ZEDE Legal Framework.

349. PAC's investments in Honduras include (i) contracts with related entities and third parties necessary to provide dispute resolution services in Próspera ZEDE; (ii) licenses, authorizations, permits, and similar rights conferred under the laws of Honduras and/or of Próspera ZEDE to operate as an arbitration center; (iii) capital contributions extended for the purposes of developing its business and operations; and (iv) other intangible property rights, including, without limitation,

acquired rights under the ZEDE Legal Framework.

350. All of these assets qualify as an “investment” as that term is defined in Article 10.28 of CAFTA-DR,⁸²² as they are assets that Claimants own or control, directly or indirectly, that have the characteristics of an investment, including the commitment of (substantial) capital and other resources in Honduras to establish Próspera ZEDE and develop it into a transformative platform for economic growth and development with world-class governance institutions and infrastructure, and to develop their governance-as-a-service and property development businesses, with the expectation of gaining profits from the cash flows that these businesses were designed to generate, and the assumption of risk as the first ZEDE in Honduras. Further, while this is not necessary,⁸²³ they all take one of the forms that, according to the definition of “investment” in Article 10.28 of CAFTA-DR, an asset may take. They also all qualify as a “covered investment” under Article 2.1 of CAFTA-DR, as they have all been established, acquired or expanded in the territory of Honduras after CAFTA-DR entered into force for Honduras.⁸²⁴
351. For these same reasons, all of these assets qualify as an “investment” under Article 25(1) of the ICSID Convention.

3. The dispute between Claimants and Honduras is a legal dispute arising directly out of Claimants’ investment, as required by the ICSID Convention

352. Pursuant to Article 25(1) of the ICSID Convention, “[t]he jurisdiction of the Centre shall extend to

⁸²² CAFTA-DR (CLA-2) Art. 10.28 (“**investment** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.”).

⁸²³ CAFTA-DR (CLA-2) Art. 10.28 (“**investment** means every asset Forms that an investment may take include:” (emphasis added)). See also *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 Dec. 2023) (CLA-208) ¶¶ 364, 533 (“This provision also gives examples of several forms that an investment may take.”) (emphasis added); *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. The Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award (6 Dec. 2022) (“**Gramercy**”) (CLA-164) ¶¶ 217-218 (agreeing that “the enumeration of a type of asset in Art. 10.28 is not dispositive as to whether a particular asset, owned or controlled by an investor, meets the definition of investment.”)).

⁸²⁴ CAFTA-DR entered into force with respect to Honduras on 1 April 2006. See Office of the United States Trade Representative, Executive Office of the President, *Free Trade Agreements, Central American/Dominican Republic FTA (CAFTA/DR)* (C-86) p. 2.

any legal dispute arising directly out of an investment”

353. The term “legal dispute” is not defined in the ICSID Convention. The World Bank’s Executive Directors stated in their report on the Convention that “[t]he dispute must concern the existence or scope of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.”⁸²⁵ The dispute between Claimants and Honduras is (i) a legal dispute, as it relates to Honduras’ obligations under CAFTA-DR (under Section A of Chapter Ten, an investment authorization, and an investment agreement) and the LSA, that (ii) arises directly out of Claimants’ investments, as Claimants’ claims concern Claimants’ rights under and investments made pursuant to the ZEDE Legal Framework.

4. CAMP’s authorization of Claimants’ investment and the LSA qualify, respectively, as an investment authorization and an investment agreement under CAFTA-DR, for the breach of which Claimants are entitled to submit a claim to arbitration under Article 10.16 of CAFTA-DR

354. As noted above, under Article 10.16(1)(a) of CAFTA-DR, Claimants are entitled to submit to ICSID arbitration claims on their own behalf that Honduras has breached an investment authorization or an investment agreement.⁸²⁶

355. Article 10.28 of CAFTA-DR defines an *investment authorization* as follows:

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party.

356. CAMP is the relevant foreign investment authority for the purposes of ZEDEs pursuant to the ZEDE Law. As addressed above, CAMP is the highest authority under the ZEDE Legal Framework, and is responsible for key aspects of ZEDE governance and oversight on behalf of Honduras, including the incorporation of land into the ZEDE regime.⁸²⁷

⁸²⁵ *Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT dated 18 Mar. 1965 (CLA-8) ¶ 26.

⁸²⁶ CAFTA-DR (CLA-2) Arts. 10.16(1)(a)(i)(B)-(C), 10.16.3(a).

⁸²⁷ *See supra* § II.B.2.a; ZEDE Law (C-6) Art. 11 (outlining CAMP’s governance functions), Art. 39 (setting out the ZEDE regime for areas with low population density in municipalities located in departments adjoining the Gulf

357. As explained above, on 29 December 2017, CAMP authorized Claimants’ investment when it “decided to grant [Próspera ZEDE] authorization,” and certified the incorporation of the first parcel of land by Claimants into Próspera ZEDE.⁸²⁸ CAMP ultimately certified the incorporation of 1,027 acres into Próspera ZEDE.⁸²⁹ In addition, on 23 August 2018 and 12 September 2019, CAMP approved the Charter and the Amended Charter, whereby it confirmed that Próspera ZEDE “possesses all the rights, privileges, and duties of a ZEDE in the Republic of Honduras,” and authorized the expansion of Próspera ZEDE through the incorporation of additional lands, confirmed HPI’s status as Promoter and Organizer of Próspera ZEDE, established the governance rules for Próspera ZEDE (including the procedures for the promulgation of regulations), and cemented HPI’s rights with respect to the constitution of the Council and the delivery of governance services, among other things.⁸³⁰ These authorizations – which according to the ZEDE Legal Framework only CAMP could provide – constitute an investment authorization for the purposes of CAFTA-DR.

358. Article 10.28 of CAFTA-DR further defines an *investment agreement* as follows:

investment agreement means a written agreement¹² that takes effect on or after the date of entry into force of this Agreement between a national authority¹³ of a

of Fonseca and the Caribbean Sea (where Próspera ZEDE is located), including the procedure for incorporating property into the regime, and providing that CAMP “shall determine the procedure to comply with the provisions of this Article.”); ZEDE Regulation No. 001-2018 dated 30 Jan. 2018 (C-456) (regulating the incorporation of properties located in low-population-density areas within municipalities situated in departments adjacent to the Gulf of Fonseca and the Caribbean Sea into the ZEDE regime).

⁸²⁸ See *supra* § II.C.3; Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay dated 29 Dec. 2017 (C-16); Letter from CAMP to Mayor of Municipality of Roatán dated 13 July 2020 (C-773) p. 1 (confirming that “since December 29th 2017, the Committee for the Adoption of Best Practices of the [ZEDE], pursuant to articles 294.303 and 329 of the Constitution of the Republic and in accordance with the provisions of articles 38 and 39 of the ZEDE Organic Law . . . the project known as ZEDE Prospera was authorized (formerly ZEDE Village of Northbay), so that it could operate under this special regime. . . . We officially recognize that ZEDE Prospera is an entity duly authorized to operate with all the functions and powers that correspond to the municipalities and that, therefore, it is within the competencies of said ZEDE to issue all types of permits, licensing and record management for persons or legal entities operating within your jurisdiction.”).

⁸²⁹ See Real Property List dated 15 Oct. 2025 (C-491).

⁸³⁰ See *supra* § II.C.3; Brimen ¶¶ 47-49; Charter and Bylaws of ZEDE Village of North Bay dated 23 Aug. 2018 (CLA-4) § 1.02(k); Charter of Próspera ZEDE dated 12 Sep. 2019 (CLA-5) §§ 1.02, 2.01.

Party and a covered investment or an investor of another Party that grants the covered investment or investor rights:

(a) with respect to natural resources or other assets that a national authority controls; and

(b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself.

¹² “Written agreement” refers to an agreement in writing, executed by both parties, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity or a decree, order, or judgment; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

¹³ For purposes of this definition, “national authority” means an authority at the central level of government.

359. Under this definition, an investment agreement is (i) a written agreement between a national authority of a Party and a covered investment or an investor of another Party; (ii) that takes effect on or after the date of entry into force of CAFTA-DR; (iii) that grants the covered investment or investor rights with respect to natural resources or other assets that the national authority controls; and (iv) upon which an investor relies in establishing or acquiring a covered investment, beyond the agreement itself.

360. The LSA satisfies CAFTA-DR’s definition of an investment agreement.

361. *First*, as addressed above in Section II.C.5, the LSA is a written agreement between the Technical Secretary of Próspera ZEDE, a national authority of Honduras, and HPI, an investor of another Party.⁸³¹ Honduras expressly empowered the Technical Secretary to conclude legal stability agreements binding on Honduras in Article 12(2) and 45 of the ZEDE Law.⁸³² Honduras then

⁸³¹ Claimants demonstrate in Section IV.B. below that HPI is an “investor of another Party” within the meaning of that definition in CAFTA-DR.

⁸³² ZEDE Law (C-6) Art. 12 (“The Technical Secretary of the Zones of Economic Development and Employment (ZEDE) is the highest executive officer and its legal representative; . . . He/she will be responsible for his/her actions before the Committee for the Adoption of Best Practices. . . . His/her functions are: 1. Exercise the

expressly confirmed to Claimants that the Technical Secretary was empowered to conclude legal stability agreements binding on Honduras.⁸³³ The LSA itself additionally confirms that the Technical Secretary acts “as agent and authorized representative for the Republic of Honduras . . . and [is] authorized to enter into binding legal stability agreements, such as this Agreement, by the Comité para la Adopción de Mejores Prácticas . . . pursuant to the ZEDE Law.”⁸³⁴ Thus, the Technical Secretary is a national authority of Honduras with power to bind the State to legal stability agreements with investors.

362. *Second*, the LSA took effect after the date of entry into force of CAFTA-DR.⁸³⁵

363. *Third*, the LSA granted HPI and its affiliates rights with respect to natural resources or other assets that a national authority controls. As outlined in Sections II.C.5 and IV.B, the LSA granted HPI and its affiliates legal stability⁸³⁶ with respect to the rights that Honduras conferred on Próspera

Representation of the Zone of Economic Development and Employment (ZEDE); 2. Subscribe to legal stability agreements for matters deemed necessary.” (emphasis added)), Art. 45 (“Should this Organic Law be repealed, it shall remain in effect for the term indicated in the legal stability clause or contract signed with individuals or corporations residing or investing in the Zones of Economic Development and Employment (ZEDE).”).

⁸³³ See *supra* § II.C.5; Brimen ¶ 82; Notes of Discussion with CAMP dated 8 Nov. 2017 (C-462) (confirming that the Technical Secretary “is entitled by the ZEDE law to sign Legal Stability Agreements . . . acting as public officer and representative of Honduras.”).

⁸³⁴ Initial LSA (CLA-6) p. 1 (“WHEREAS, the Technical Secretary may subscribe to legal stability agreements on behalf of the Republic of Honduras under Articles 12(2) and 45 of the ZEDE Law; . . . WHEREAS, the authority of the Technical Secretary to enter into this Agreement on behalf of the Republic of Honduras is consistent with the Próspera ZEDE Charter, including sections 1.02(c), 2.04(3), 3.09(2), 3.09(d), 4.01(2)(b), 4.02(2), and 11.02 thereof, pursuant to Articles 11(3), 11(5), 12(4), 12(7), 12(11) and 45 of the ZEDE law.”); Amendment to the LSA (CLA-7) p. 1 (“WHEREAS, the Technical Secretary may subscribe to legal stability agreements on behalf of the Republic of Honduras under Articles 12(2) and 45 of the ZEDE Law; WHEREAS, the authority of the Technical Secretary to enter into this Agreement on behalf of the Republic of Honduras is consistent with the Próspera ZEDE Charter, including sections 1.02(c), 2.04(3), 3.09(2), 3.09(d), 4.01(2)(b), 4.02(2), and 11.02 thereof, pursuant to Articles 11(3), 11(5), 12(4), 12(7), 12(11) and 45 of the ZEDE law.”).

⁸³⁵ See Initial LSA (CLA-6); CAFTA-DR (CLA-2); Office of the United States Trade Representative, Executive Office of the President, *Free Trade Agreements, Central American/Dominican Republic FTA (CAFTA/DR)* dated 19 Dec. 2022 (C-86) (showing that CAFTA-DR entered into force with respect to Honduras on 1 April 2006).

⁸³⁶ See, e.g., Initial LSA (CLA-6) § 1.4 (granting general stabilization of law and policy, including the provisions of the ZEDE Legal Framework).

ZEDE under the ZEDE Legal Framework in relation to governance,⁸³⁷ land and property,⁸³⁸ sea and air navigation,⁸³⁹ and the environment,⁸⁴⁰ which all are “natural resources or other assets” that the Technical Secretary, a national authority as shown above, controlled in his capacity as Technical Secretary of Próspera ZEDE.

364. *Fourth*, as explained above in Section II.C.5, and below in Section IV.B, HPI relied upon these rights and the LSA in establishing or acquiring a covered investment other than the written agreement itself.⁸⁴¹
365. Accordingly, the LSA qualifies as an investment agreement under CAFTA-DR.
366. For the avoidance of doubt, even if the Tribunal were to determine that the LSA does not constitute an investment agreement within the meaning of Article 10.16(1)(a)(i)(C) of CAFTA-DR (which it

⁸³⁷ ZEDE Law (C-6) Art. 1 (“The [ZEDEs], have legal status, are authorized to establish their own policy and regulations”), Art. 3 (granting the ZEDEs “operational and administrative autonomy that includes the functions, powers and obligations that the Constitution of the Republic and the laws confer upon the municipalities”), Art. 4 (granting ZEDEs a special tax regime, and authority to create their own budget and collect and manage taxes and fees for services), Art. 23 (providing that ZEDEs “have an independent financial regime, are authorized to use their financial income exclusively for their own purposes”), Art. 32 (stating that ZEDEs are extra-territorial fiscal and customs zones), Art. 33 (authorizing ZEDEs “to establish their own systems of education, health, social security and promotion of science; as well as to guarantee freedom of conscience, religion, labor protection and freedom of association. The regulations of the [ZEDEs] will regulate these matters.”).

⁸³⁸ ZEDE Law (C-6) Art. 6 (“Only the real estate included within [ZEDEs’] spatial area of competence will be subject to a special regime of inclusion therein.”), Art. 27 (providing that ZEDEs administer land within their jurisdiction, including State-owned land, and may enter into lease agreements, subdivide, or otherwise manage property for lawful purposes), Art. 31 (providing that ZEDEs may regulate their own ports and airports, setting fees as they deem appropriate).

⁸³⁹ ZEDE Law (C-6) Art. 31 (“The free entry of air or sea vessels to the [ZEDEs] is guaranteed. The regulation of sea and air navigation, as well as the control of ports and airports in the jurisdiction of the ZEDE will be under its responsibility, and it may establish the fees that the ZEDE considers appropriate.”).

⁸⁴⁰ ZEDE Law (C-6) Art. 37 (“The [ZEDE] must adopt policies aimed at protecting and preserving the environment.”).

⁸⁴¹ See Initial LSA (CLA-6) pp. 1-2 (“WHEREAS, in view of pending proposals to register and incorporate title to more than 500 additional acres of land, the Parties desire to enhance the protections currently available under international law, by stabilizing the legal regime established by the ZEDE Law and Próspera Charter, protecting reasonable investment-backed expectations, preventing expropriation, and making dispute resolution more efficient and effective; NOW THEREFORE, in consideration of the rights and duties contained herein, and other good and valuable consideration, including the ongoing investments being made by Honduras Próspera and its majority-owned or controlled affiliates in the promotion and organization of Próspera ZEDE in reliance upon the stability of the ZEDE Law and Próspera Charter, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto represent, promise, agree and covenant with each other as follows.”).

should not), the Tribunal nonetheless has jurisdiction over HPI's contractual claim that Honduras has breached the LSA, for which the LSA itself designates ICSID as the exclusive mandatory jurisdiction⁸⁴² and for which, as shown above, the ICSID jurisdictional requirements are satisfied.⁸⁴³ Additionally, as explained in Section IV.A.2 below, the Tribunal also has jurisdiction over Honduras's failure to comply with its obligations in the LSA by virtue of the MFN provision in Article 10.4 of CAFTA-DR, pursuant to which Honduras is required to apply to Claimants the more favorable umbrella clause treatment provided to investors in, for instance, the Switzerland-Honduras BIT and Germany-Honduras-BIT and, accordingly, has an international law obligation under CAFTA-DR to observe all commitments or obligations entered into with Claimants, including the LSA.⁸⁴⁴

C. WITH REGARDS TO THEIR CLAIMS UNDER CAFTA-DR, CLAIMANTS HAVE COMPLIED WITH THE APPLICABLE NOTICE AND WAIVER REQUIREMENTS, AND THEIR CLAIMS ARE TIMELY

367. Finally, as regards the claims under CAFTA-DR, Claimants have complied with all notice, waiver, and temporal requirements set out in Chapter 10 of the Treaty.
368. Claimants satisfied the consultation and notice requirements of CAFTA-DR.⁸⁴⁵ On 3 June 2022, Claimants delivered a formal request for consultations and negotiations to Honduras, in accordance

⁸⁴² See Initial LSA (CLA-6) Art. 2.2.

⁸⁴³ See *supra* §§ III.A.2, III.B.1-3.

⁸⁴⁴ Agreement Concerning the Promotion and Reciprocal Protection of Investments between the Swiss Confederation and the Republic of Honduras, signed 14 Oct. 1993, entered into force on 31 Aug. 1994 ("**Switzerland-Honduras BIT**") (CLA-130) Art. 11 ("Each Contracting Party shall at all times ensure compliance with the commitments assumed by it in respect of investments of investors of the other Contracting Party."); Agreement between the Federal Republic of Germany and the Republic of Honduras on the Promotion and Reciprocal Protection of Investments, signed 21 Mar. 1995, entered into force on 27 May 1998 ("**Germany-Honduras BIT**") (CLA-131) Art. 8(2) ("Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Party.").

⁸⁴⁵ CAFTA-DR (CLA-2) Art. 10.15 ("In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation"), Art. 10.16.2 ("At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration"), Art. 10.16.3 ("Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim").

with Article 10.15.⁸⁴⁶ When Honduras failed to respond, Claimants served a Notice of Intent to Submit Claims to Arbitration on 16 September 2022, in accordance with Article 10.16.2.⁸⁴⁷ Claimants submitted the Request for Arbitration on 19 December 2022, over 90 days thereafter, duly complying with Article 10.16.2. Claimants also complied with Article 10.16.3, as the Request for Arbitration was filed over six months after the events giving rise to the claims, *i.e.*, Honduras's enactment of Decree No. 32-2022, which started the process to eliminate the ZEDE Constitutional Provisions, and Decree No. 33-2022 repealing the ZEDE Law in April 2022.⁸⁴⁸

369. In addition, Article 10.18.2 requires a claimant to provide written waiver of the right to initiate or continue any other proceedings concerning the measures alleged to constitute a breach.⁸⁴⁹ Each Claimant executed and submitted such waiver.⁸⁵⁰ Claimants further confirm that they have not initiated any proceeding with respect to the measures challenged in this arbitration before an administrative tribunal, a court of Honduras, or any other binding dispute settlement body.
370. Finally, Claimants' claims are timely under Article 10.18.1, which bars claims submitted more than three years after the claimant first acquired, or should have acquired, knowledge of the breach and loss.⁸⁵¹ Honduras enacted Decree No. 33-2022 repealing the ZEDE Law in April 2022, and subsequently adopted additional measures in violation of Claimants' rights.⁸⁵² Claimants filed their claims soon after the repeal of the ZEDE Law, which was well within three-year limitation period.

⁸⁴⁶ See Letter from Claimants to Honduras's Dirección General de Integración Económica y Política Comercial, dated 3 Jun. 2022 (C-64).

⁸⁴⁷ See Letter from Claimants to Honduras's Dirección General de Integración Económica y Política Comercial, dated 16 Sep. 2022 (C-67).

⁸⁴⁸ Decree No. 32-2022, published on 21 Apr. 2022 (C-57); Decree No. 33-2022, published on 26 Apr. 2022 (C-60).

⁸⁴⁹ CAFTA-DR (CLA-2) Art. 10.18.2.

⁸⁵⁰ Honduras Próspera's Waiver Pursuant to Article 10.18 of the CAFTA-DR dated 19 Dec. 2022 (C-84); SJBDC's Waiver Pursuant to Article 10.18 of the CAFTA-DR dated 19 Dec. 2022 (C-85); PAC's Waiver Pursuant to Article 10.18 of CAFTA-DR dated 15 Dec. 2022 (C-76).

⁸⁵¹ CAFTA-DR (CLA-2) Art. 10.18.1 ("No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a) . . . has incurred loss or damage.").

⁸⁵² Decree No. 33-2022, repealing the ZEDE Organic Law dated 26 Apr. 2022 (C-60).

371. Accordingly, Claimants' CAFTA-DR claims fully comply with the Treaty's notice and waiver requirements, and are timely.

IV. HONDURAS HAS BREACHED ITS OBLIGATIONS UNDER SECTION A OF CHAPTER TEN OF CAFTA-DR, THE LSA, AND THE CHARTER OF PRÓSPERA ZEDE

372. Honduras's acts and omissions described in Section II above plainly violate its obligations to Claimants under CAFTA-DR (Section IV.A), under the LSA (Section IV.B), and under the Charter of Próspera ZEDE (Section IV.C).

A. HONDURAS HAS VIOLATED ITS OBLIGATIONS UNDER SECTION A OF CHAPTER TEN OF CAFTA-DR

373. Honduras's acts and omissions constitute breaches of the substantive investment protection standards set forth in Section A of Chapter Ten of CAFTA-DR, including (1) failure to accord Claimants' investments fair and equitable treatment ("**FET**") in breach of Article 10.5 (Section IV.A.1); (2) failure to accord MFN treatment by reneging on its commitment to provide Claimants the same 50 years of legal stability as afforded to Kuwaiti investors in the Honduras-Kuwait BIT in breach of Article 10.4 (Section IV.A.2); and (3) if Honduras takes the position that Claimants' rights under the ZEDE Legal Framework no longer exist, unlawfully expropriating Claimants' investment in breach of Article 10.7 (Section IV.A.3).⁸⁵³

1. Honduras has failed to accord Claimants' investments fair and equitable treatment

374. Article 10.5 of CAFTA-DR requires that Honduras accord covered U.S. investments treatment in accordance with customary international law, including fair and equitable treatment (Section IV.A.1.a). Honduras did not do so. It frustrated Claimants' legitimate expectations (Section

⁸⁵³ With respect to claims arising from a breach of Section A of Chapter Ten of the Treaty, the Tribunal is mandated to apply the provisions of CAFTA-DR and the applicable rules of international law. *See* CAFTA-DR (CLA-2) Art. 10.22.1 ("Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law."); ICSID Convention Art. 42(1) ("The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable."); Honduras-Kuwait BIT (CLA-3) Art. 16(4).

IV.A.1.b) and engaged in measures that are arbitrary and unreasonable, discriminatory, non-transparent and inconsistent, and harassing with respect to Claimants' investments (Section IV.A.1.c). Taken alone or cumulatively, these measures violate Article 10.5 of CAFTA-DR.

(a) Article 10.5 of CAFTA-DR requires Honduras to accord fair and equitable treatment to covered investments

375. Article 10.5 of the Treaty obligates Honduras to provide covered investments the customary international law minimum standard of treatment (“**MST**”), including FET. Article 10.5 provides in relevant part:⁸⁵⁴

(1) Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment . . .

(2) For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of ‘fair and equitable treatment’ and ‘full protection and security’ do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) ‘fair and equitable treatment’ includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and . . .

(3) A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

376. Article 10.5 provides that it “shall be interpreted in accordance with Annex 10-B [of CAFTA-DR],” which in turn confirms that the customary international law MST “refers to all customary international law principles that protect the economic rights and interests of aliens.”⁸⁵⁵

377. As recently observed in *Telefónica v. Colombia*, FET is considered to be one of the most important and broadest standards of protection, and is intended to prohibit States from frustrating investors’

⁸⁵⁴ CAFTA-DR (CLA-2) Art. 10.5.

⁸⁵⁵ CAFTA-DR (CLA-2) Art. 10.5.

legitimate expectations, acting without transparency, and taking measures that are irrational, arbitrary or otherwise affect investments negatively.⁸⁵⁶ In particular the stability of the legal framework is critical. As the tribunal in *Telefonica* explained, “[i]t is evident that transparency, predictability, and the stability of the regulatory framework are fundamental for the conformity and adjustments to business plans,” and, therefore, FET “is not just about providing a scenario that is transparent and predictable, but also one that is stable, which requires the State to adhere to it.”⁸⁵⁷

378. The substantive content of the FET standard is well established and has been recognized by numerous investment tribunals.⁸⁵⁸ According to the tribunal in *Rusoro Mining v. Venezuela*:

⁸⁵⁶ See *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (12 Nov. 2024) (“*Telefonica*”) (CLA-118) ¶ 407 (“The FET is considered by many [to be] the most important of all the standards of protection, and also the broadest . . .”), ¶ 409 (“[A]s has been accepted by the majority of investment arbitral tribunals, the FET serves to prevent the State from engaging in conduct or adopting measures that: (i) frustrate the investor’s legitimate expectations; (ii) show a lack of transparency or are contradictory; (iii) are irrational or arbitrary; or (iv) impact the investment negatively or disproportionately.”).

⁸⁵⁷ *Telefónica* (CLA-118) ¶ 446 (“It is evident that transparency, predictability, and the stability of the regulatory framework are fundamental for the conformity and adjustments to business plans, including the strategies pursued when investing. On the other hand, the absence of these conditions creates an unstable and uncertain environment that is reflected, in addition, in an increased risk aversion coefficient. This not only impacts the investor’s decision to invest, but it also affects the costs associated with the granting loans and structured financing operations (e.g. Project Finance, financing with corporate collateral or collateral in the form of liens on real property or contractual assets), all hypotheses in which the dimension of risk can affect interest rates and the dimension of commitments borne by investors. It is to avoid or mitigate those problems that the host State guarantees transparency, predictability and stability of the regulatory framework. It should be noted that it is not just about providing a scenario that is transparent and predictable, but also one that is stable, which requires the State to adhere to it. From that point of view, it is the duty of the State to be consistent with the investor and its investments.”).

⁸⁵⁸ See, e.g., *Waste Management v. The United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3, Award (30 Apr. 2014) (“*Waste Management II*”) (CLA-119) ¶ 98 (“[T]he minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety—as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process. In applying [the minimum] standard [of treatment] it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.”); *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (29 May 2003) (“*Tecmed*”) (CLA-120) ¶ 154 (“The Arbitral Tribunal considers that this provision of the Agreement, in light of the good faith principle established by international law, requires the Contracting Parties to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment.”); *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability (3 Oct. 2006) (“*LG&E*”) (CLA-121) ¶ 131 (“[T]he fair and equitable standard consists of the host State’s consistent and transparent behavior, free of ambiguity that involves the obligation to grant and maintain a stable and predictable legal framework necessary to fulfill the justified expectations of the foreign investor.”); *Saluka Investments BV (The Netherlands) v. Czech Republic*, UNCITRAL, Partial Award (17 Mar. 2006) (“*Saluka*”) (CLA-122) ¶ 309

it is generally accepted that this undefined legal concept requires States to adopt a minimum standard of conduct vis-à-vis aliens. A State breaches such minimum standard if actions (or in certain circumstances omissions) occur, for which the State must assume responsibility, and which violate certain thresholds of propriety or contravene basic requirements of the rule of law, causing harm to the investor. The obligation to provide FET binds all branches of government, and can be disavowed

- by administrative acts, adopted by the government or its agencies, targeting the investor or its investment directly,
- by judicial decisions, approved by the State's judicial system, which are directed directly against the investor or the investment personally and which amount to a denial of justice,
- or finally by legislation, approved by the legislative power, or regulation, adopted by government (or by another authority with regulatory powers), affecting citizens in general, and the protected investor and investment in particular.⁸⁵⁹

379. The *Rusoro Mining* tribunal went on to outline a number of factors to be considered when assessing whether a State has breached the FET standard:

[t]he required threshold of propriety must be defined by the tribunal after a careful analysis of facts and circumstances, and taking into consideration a number of factors, including among others the following:

- whether there has been harassment, coercion, abuse of power or other bad faith conduct by the host State;
- whether the State had made specific representations to the investor, prior to the investment;
- whether the State's actions or omissions can be labelled as arbitrary, discriminatory or inconsistent;

("The 'fair and equitable treatment' standard . . . is an autonomous Treaty standard and must be interpreted, in light of the object and purpose of the Treaty, so as to avoid conduct . . . that clearly provides disincentives to foreign investors . . . A foreign investor whose interests are protected under the Treaty is entitled to expect that the Czech Republic will not act in a way that is manifestly inconsistent, non-transparent, unreasonable (i.e. unrelated to some rational policy), or discriminatory (i.e. based on unjustifiable distinctions).").

⁸⁵⁹ *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 Aug. 2016) ("*Rusoro Mining*") (CLA-123) ¶ 523.

- whether the State has respected the principles of due process and transparency when adopting the offending measures;
- whether the State has failed to offer a stable and predictable legal framework, breaching the investor’s legitimate expectations.⁸⁶⁰

380. The reference in Article 10.5 of CAFTA-DR to the customary international law MST confirms the broad scope of the FET protections thereunder. While States have on occasion sought to argue that the content of the MST should be restricted to what it was a century ago, this approach has been rejected by investment tribunals for over 20 years, in the context of both Article 1105 of NAFTA,⁸⁶¹ and its direct descendent, Article 10.5 of CAFTA-DR.⁸⁶² The view of investment tribunals is near unanimous. As the tribunal in *Rusoro Mining* explained:

the CIS [customary international law] standard has developed and today is indistinguishable from the FET standard and grants investors an equivalent level of protection as the latter. The whole discussion of whether Art. II.2 of the BIT incorporates or fails to incorporate the CIS Standard when defining FET has become dogmatic: there is no substantive difference in the level of protection afforded by both standards.⁸⁶³

⁸⁶⁰ *Rusoro Mining* (CLA-123) ¶ 524. While alert to the power of States to legislate, the tribunal in *Rusoro Mining* also emphasized that “[t]he right to regulate, however, does not authorize States to act in an arbitrary or discriminatory manner, or to disguise measures targeted against a protected investor under the cloak of general legislation.” *Rusoro Mining* (CLA-123) ¶ 525.

⁸⁶¹ See, e.g., *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award (11 Oct. 2002) (“*Mondev*”) (CLA-124) ¶ 123 (“[T]he content of the minimum standard today cannot be limited to the content of customary international law as recognised in arbitral decisions in the 1920s.”); *ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1, Award (9 Jan. 2003) (CLA-125) ¶ 179 (“[T]he customary international law referred to in [NAFTA’s MST/FET provision] . . . refers to customary international law ‘as it exists today.’”); *Merrill & Ring Forestry L. P. v. Government of Canada*, ICSID Case No. UNCT/07/1, Award (31 Mar. 2010) (“*Merrill*”) (CLA-126) ¶¶ 193, 210 (same); *Int’l Thunderbird Gaming Corp. v. The United Mexican States*, UNCITRAL, Arbitral Award (English) (26 Jan. 2006) (“*Thunderbird*”) (CLA-127) ¶ 194 (same).

⁸⁶² *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award (29 Jun. 2012) (“*RDC*”) (CLA-128) ¶ 218 (stating in a case under CAFTA-DR that “[t]he Tribunal refers positively in particular to the *ADF* award [rendered in a case under NAFTA] which accepts the evolution of customary international law noted in *Mondev* [also a case under NAFTA] The Tribunal adopts this reasoning in *ADF* and shares the conclusion that the minimum standard of treatment is ‘constantly in a process of development,’ including since *Neer*’s formulation.”).

⁸⁶³ *Rusoro Mining* (CLA-123) ¶ 520. See also *SAUR International S.A. v. Argentine Republic*, ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability (6 Jun. 2012) (“*SAUR*”) (CLA-132) ¶ 494 (“At present, it is practically unanimous the interpretation that a reinforced volitional element is not required in the conduct of the offending State. Consequently, it has become indifferent whether the concept of FET is interpreted in accordance with its ‘ordinary sense’ – as required by the Vienna Convention – or in accordance with customary international

381. In any event, if, for whatever reason, the Tribunal were to consider that Article 10.5 of the Treaty obliges Honduras to accord U.S. investors an FET standard that is less favorable than Honduras accords to investors under other treaties, under the MFN guarantee in Article 10.4 of CAFTA-DR, Honduras is obliged to accord Claimants the more favorable standard set forth in such other treaties,⁸⁶⁴ *e.g.*, the Switzerland-Honduras BIT and the Germany-Honduras-BIT.⁸⁶⁵
382. Finally, arbitral tribunals have consistently held that a violation of the FET standard does not need to be based on a single unlawful act. Rather, a breach may also occur as part of a process extending over time and comprising “a succession or [an] accumulation of measures which, taken separately, would not [breach the FET standard] but, when viewed as a whole, do lead to that result.”⁸⁶⁶

(i) CAFTA-DR protects Claimants’ legitimate expectations

383. Article 10.5 of CAFTA-DR requires Honduras to respect and not frustrate Claimants’ legitimate

law – in both cases the standard of conduct enforceable to the State is the same, and it does not require a reinforced volitional element.”).

⁸⁶⁴ See *infra* § IV.A.2.a (detailing Article 10.4 of CAFTA-DR); *Clorox Spain S.L. v. Bolivarian Republic of Venezuela*, PCA Case No. 2015-30, Final Award (9 Aug. 2023) (“**Clorox**”) (CLA-129) ¶ 362 (noting as part of the tribunal’s analysis of the scope of an FET clause that, “in any event,” the MFN provision in the Spain–Venezuela BIT entitled the claimant to benefit from the autonomous FET standard contained in Venezuela’s treaties with Belarus, Iran, Italy, and Vietnam, even though the basic treaty only provided FET “*in accordance with international law*.”).

⁸⁶⁵ See Agreement Concerning the Promotion and Reciprocal Protection of Investments between the Swiss Confederation and the Republic of Honduras (14 Oct. 1993) (“**Switzerland-Honduras BIT**”) (CLA-130) Art. 3(2) (“Each Contracting Party shall ensure on its territory fair and equitable treatment to the investments of the other Contracting Party.”); Agreement Concerning the Promotion and Reciprocal Protection of Capital Investments between the Federal Republic of Germany and the Republic of Honduras (“**Germany-Honduras BIT**”) (CLA-131) Art. 2(1) (“It [each contract party] will, in every case, treat capital investments fair and equitably.”).

⁸⁶⁶ See *GAMI Investments, Inc. v. The United Mexican States*, UNCITRAL, Final Award (15 Nov. 2004) (“**GAMI**”) (CLA-133) ¶ 97 (referring to *Waste Management II*) (“[t]he record as a whole – not isolated events – determines whether there has been a breach of international law.”). See also *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CLA-134) ¶ 566 (“[E]ven if a measure or conduct by the State, taken in isolation, does not rise to the level of a breach of the FET, such a breach may result from a series of circumstances or a combination of measures.”); *Flemingo Duty Free Shop Private Ltd. v. Poland*, UNCITRAL, Award (12 Aug. 2016) (CLA-135) ¶ 536 (“[A] succession of acts – whether or not individually significant – can build up to unfair and inequitable treatment . . .”).

expectations.⁸⁶⁷ The protection of legitimate expectations is indisputably a hallmark of FET;⁸⁶⁸ leading commentators have called it the “dominant element,”⁸⁶⁹ and “the central pillar in the understanding and application of the FET standard.”⁸⁷⁰ As Professor Dolzer has explained, the State must protect the investor’s legitimate expectation based on “any undertakings and representations made explicitly or implicitly by the host state.”⁸⁷¹

384. Specifically, the FET standard prohibits a State from “affect[ing] the basic expectations that were taken into account by the foreign investor to make the investment.”⁸⁷² As the *Int’l Thunderbird Gaming Corp. v. Mexico* tribunal explained:

the concept of ‘legitimate expectations’ relates . . . to a situation where a [State’s] conduct creates reasonable and justifiable expectations on the part of an investor (or investment) to act in reliance on said conduct, such that a failure by the [State] to honour those expectations could cause the investor (or investment) to suffer damages.⁸⁷³

385. In case after case, arbitral tribunals have consistently found that States create legitimate expectations that they are bound to respect through representations to investors. Among other things, legitimate expectations may arise from a State’s promises, guarantees, commitments or

⁸⁶⁷ See, e.g., *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award (1 Mar. 2023) (“*Lopez-Goyne*”) (CLA-136) ¶ 423 (“[T]he standard of treatment under Article 10.5 of [CAFTA-DR] includes an obligation for the host State not to frustrate the investor’s legitimate expectations, provided they are reasonable and objective in light of the circumstances and the State’s conduct.”).

⁸⁶⁸ *Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic*, ICSID Case No. ARB/04/16, Decision on Jurisdiction and Liability (10 Apr. 2013) (CLA-137) ¶ 914 (“The Tribunal agrees with the general description given by Claimant in its Memorial in the following citation: ‘It has become clear that the basic touchstone of fair and equitable is to be found in the legitimate expectations of the parties.’”).

⁸⁶⁹ Nigel Blackaby, Constantine Partasides et al., REDFERN & HUNTER ON INTERNATIONAL ARBITRATION (6th ed. 2016) (CLA-138) p. 477 (citing *Saluka* (CLA-122) ¶ 302).

⁸⁷⁰ Rudolf Dolzer, *Fair and Equitable Treatment: Today’s Contours*, 12 SANTA CLARA J. INT’L L. 7 (2014) (CLA-139) p. 17.

⁸⁷¹ Rudolf Dolzer & Christoph Schreuer, Standards of Protection, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW, Oxford University Press (2nd ed. 2012) (“*Dolzer & Schreuer*”) (CLA-140) p. 145.

⁸⁷² *Tecmed* (CLA-120) ¶ 154.

⁸⁷³ *Thunderbird* (CLA-127) ¶ 147.

assurances (which may be explicit or implicit),⁸⁷⁴ as well as repeated statements,⁸⁷⁵ general

⁸⁷⁴ See, e.g., *Parkerings-Compagniet AS v. Lithuania*, ICSID Case No. ARB/05/8, Award (11 Sep. 2007) (CLA-142) ¶ 331 (“The expectation is legitimate if the investor received an explicit promise or guaranty from the host-State, or if implicitly, the host-State made assurances or representation that the investor took into account in making the investment.”); *Total S.A. v. The Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability (27 Dec. 2010) (“*Total*”) (CLA-143) ¶¶ 117-118 (“The expectation of the investor is undoubtedly ‘legitimate’, and hence subject to protection under the fair and equitable treatment clause, if the host State has explicitly assumed a specific legal obligation for the future, such as by contracts, concessions or stabilisation clauses on which the investor is therefore entitled to rely as a matter of law. The situation is similar when public authorities of the host country have made the private investor believe that such an obligation existed through conduct or by a declaration. Authorities may also have announced officially their intent to pursue a certain conduct in the future, on which, in turn, the investor relied in making investments or incurring costs.”); *Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania*, ICSID Case No. ARB/05/20, Award (11 Dec. 2013) (“*Micula*”) (CLA-144) ¶ 669 (“There must be a promise, assurance or representation attributable to a competent organ or representative of the state, which may be explicit or implicit. The crucial point is whether the state, through statements or conduct, has contributed to the creation of a reasonable expectation, in this case, a representation of regulatory stability.”).

⁸⁷⁵ See, e.g., *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award (31 Oct. 2011) (“*El Paso*”) (CLA-145) ¶ 377 (“[A] reiteration of the same type of commitment in different types of general statements could, considering the circumstances, amount to a specific behaviour of the State, the object and purpose of which is to give the investor a guarantee on which it can justifiably rely.”).

legislation or regulations,⁸⁷⁶ the general investment context,⁸⁷⁷ or other State conduct.⁸⁷⁸ Specific assurances by the host State are not indispensable to generate legitimate expectations.⁸⁷⁹ Ultimately, whether a State has created a legitimate expectation is a factual question. As the tribunal in *Micula* explained, “[i]t is irrelevant whether the state in fact wished to commit itself; it

⁸⁷⁶ See, e.g., *Mathias Kruck et al v. Spain*, ICSID Case No. ARB/15/23, Decision on Jurisdiction, Liability and Principles of Quantum (14 Sep. 2022) (CLA-146) ¶ 189 (“[I]n circumstances where the explicitly declared purpose of legislation is to invite investors to commit capital to projects in reliance upon guarantees of stability in a regulatory regime, specific commitments can be made by provisions in general legislation. This is particularly the case in circumstances where, as here, the great majority of capital costs in an investment are incurred right at the beginning of the project and are to be recouped over the operating lifetime of the project.”); *Murphy Exploration & Production Company – International v. The Republic of Ecuador (II)*, PCA Case No. 2012-16, Partial Final Award (6 May 2016) (“*Murphy*”) (CLA-147) ¶ 248 (“An investor’s legitimate expectations are based upon an objective understanding of the legal framework within which the investor has made its investment. The legal framework on which the investor is entitled to rely consists of the host State’s international law obligations, its domestic legislation and regulations, as well as the contractual arrangements concluded between the investor and the State. Specific representations or undertakings made by the State to an investor also play an important role in creating legitimate expectations on the part of the investor but they are not necessary for legitimate expectations to exist. An investor may hold legitimate expectations based on an objective assessment of the legal framework absent specific representations or promises made by the State to the investor.”); *Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V. (formerly Antin Infrastructure Services Luxembourg S.A.R.L. and Antin Energia Termosolar B.V.) v. Kingdom of Spain*, ICSID Case No. ARB/13/31, Award (15 Jun. 2018) (“*Antin*”) (CLA-148) ¶ 538 (noting that expectations can arise from “representations made by the host State . . . with respect to certain features of a regulation aimed at encouraging investments in a specific sector.”).

⁸⁷⁷ See, e.g., *Micula* (CLA-144) ¶ 677 (“After a review of all of the facts and circumstances surrounding the Claimants’ investment and Romania’s enactment of EGO 24 and related legislation, the Tribunal (again by majority) . . . finds that, even from an objective standpoint the legislative framework in Romania between the years 1998-2002 (taking into consideration EU law, as it applied to Romania at the time), together with the PICs, instilled in the Claimants a legitimate expectation that they would be entitled to the EGO 24 incentives, in substantially the same form as when they received their PICs, until 1 April 2009. Specifically, the Tribunal finds that, through an interplay of the purpose behind the EGO 24 regime, the legal norms, the PICs, and Romania’s conduct, Romania made a representation that created a legitimate expectation that the EGO 24 incentives would be available substantially in the same form as they were initially offered.”); *Watkins Spain S.À.R.L., Watkins (Ned) B.V. and others v. The Kingdom of Spain*, ICSID Case No. ARB/15/44, Award (21 Jan. 2020) (“*Watkins*”) (CLA-149) ¶ 527 (“The Tribunal finds that the Claimants’ expectations on the continued application of the economic regime to the Project Companies were legitimate and reasonable . . .”); *Antaris GMBH, et al v. Czech Republic*, PCA Case No. 2014-01, Award (2 May 2018) (CLA-150) ¶ 366 (accepting that “promises or representations to investors may be inferred from domestic legislation in the context of its background, including official statements.”).

⁸⁷⁸ See *Novenergia II – Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. Kingdom of Spain*, SCC Arbitration (2015/063), Award (15 Feb. 2018) (“*Novenergia*”) (CLA-151) ¶ 651 (“[T]he Tribunal agrees with the Claimant’s statements that an expectation that the regulatory framework will be stable can arise from, or be strengthened by, state conduct or statements.”).

⁸⁷⁹ *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability (30 Nov. 2012) (CLA-152) ¶ 7.78 (“While specific assurances given by the host State may reinforce the investor’s expectations, such an assurance is not always indispensable Specific assurances will simply make a difference in the assessment of the investor’s knowledge and of the reasonability and legitimacy of its expectations.”).

is sufficient that it acted in a manner that would reasonably be understood to create such an appearance.”⁸⁸⁰

386. In addition, the obligation to respect investors’ legitimate expectations includes the requirement to maintain a stable and predictable regulatory environment, which tribunals have held to bear a close relationship to the principles of good faith and the prohibition on arbitrariness,⁸⁸¹ and to be part of the FET standard.⁸⁸² As the *LG&E* tribunal observed, “the stability of the legal and business framework in the State party is an essential element in the standard of [FET],” and States have an “obligation to grant and maintain a stable and predictable legal framework necessary to fulfill the justified expectations of the foreign investor.”⁸⁸³ FET prohibits States from abruptly changing the regulatory regime on which an investor relied in making long-term investments.⁸⁸⁴

⁸⁸⁰ *Micula* (CLA-144) ¶ 669.

⁸⁸¹ *See Merrill* (CLA-126) ¶ 187 (“Good faith and the prohibition of arbitrariness are no doubt an expression of such general principles and no tribunal today could be asked to ignore these basic obligations of international law. The availability of a secure legal environment has a close connection too to such principles and transparency . . .”).

⁸⁸² *See Merrill* (CLA-126) ¶ 232 (“The stability of the legal environment is also an issue to be considered in respect of fair and equitable treatment. State practice and jurisprudence have consistently supported such a requirement in order to avoid sudden and arbitrary alterations of the legal framework governing the investment.”); *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/08, Award (12 May 2005) (“*CMS*”) (CLA-153) ¶ 276 (“[T]he significant number of treaties, both bilateral and multilateral, that have dealt with this standard also unequivocally shows that fair and equitable treatment is inseparable from stability and predictability. Many arbitral decisions and scholarly writings point in the same direction.”); *Occidental Exploration and Production Company v. The Republic of Ecuador*, LCIA Case No. UN3467, Award (1 Jul. 2004) (CLA-154) ¶ 183 (“The stability of the legal and business framework is thus an essential element of fair and equitable treatment.”); *Masdar Solar & Wind Cooperatief U.A. v. Spain*, ICSID Case No. ARB/14/1, Award (16 May 2018) (CLA-155) ¶ 484 (“[T]he FET constitutes a standard the purpose of which is to ensure that an investor may be confident that . . . the legal framework in which the investment has been made will not be subject to unreasonable or unjustified modification”); *Total* (CLA-143) ¶ 114 (“[S]tability, predictability and consistency of legislation and regulation are important for investors in order to plan their investments, especially if their business plans extend over a number of years. Competent authorities of States entering into BITs in order to promote foreign investment in their economy should be aware of the importance for the investors that a legal environment favourable to the carrying out of their business activities be maintained.”).

⁸⁸³ *LG&E* (CLA-121) ¶¶ 125, 131. *See also id.* ¶¶ 124, 127.

⁸⁸⁴ *Antin* (CLA-148) ¶ 532 (“[T]he obligation under [the FET provision] of the ECT to provide FET to protected investments comprises an obligation to afford fundamental stability in the essential characteristics of the legal regime relied upon by the investors in making long-term investments. This does not mean that the legal framework cannot evolve or that a State Party to the ECT is precluded from exercising its regulatory powers to adapt the regime to the changing circumstances in the public interest. It rather means that a regulatory regime specifically created to induce investments in the energy sector cannot be radically altered —*i.e.*, stripped of its key features— as applied to existing investments in ways that affect investors who invested in reliance on those regimes.”); *Novenergia* (CLA-151) ¶ 654 (explaining that the FET standard “protect[s] investors from a radical

387. Professor Dolzer has explained the significance of the stability and predictability of the legal framework in the context of investors' legitimate expectations:

It is well-known that major investments are concluded with a long-term perspective, often for more than twenty years. The willingness of foreigners to invest is linked to the degree of stability in a host state, and stability is one factor for an investor to determine the location of its investment. BITs are meant to contribute to stability for these very reasons. The FET standard with its focus on legitimate expectations appropriately reflects the connection between the flow of investments and legal stability.⁸⁸⁵

388. Stability is of particular importance in the context of CAFTA-DR. As is apparent from the Treaty's preamble, which is relevant for the Treaty's interpretation under Article 31 of the Vienna Convention on the Law of Treaties,⁸⁸⁶ one of CAFTA-DR's primary objectives is to "ensure a predictable commercial framework for business planning and investment."⁸⁸⁷ Supplementarily, this is likewise apparent from the circumstances of the Treaty's conclusion,⁸⁸⁸ during which the U.S. Government repeatedly underscored the importance of CAFTA-DR to ensuring stability for U.S. investors in Central American countries.⁸⁸⁹

or fundamental change to legislation or other relevant assurances by a state that do not adequately consider the interests of existing investments already made on the basis of such legislation."); *CMS* (CLA-153) ¶¶ 136-137, 275-276; *Enron Co. and Ponderosa Assets L.P. v. Argentina*, ICSID Case No. ARB/01/3, Award (22 May 2007) ("*Enron*") (CLA-156) ¶¶ 264-266.

⁸⁸⁵ Rudolf Dolzer, *Fair and Equitable Treatment: Today's Contours*, 12 SANTA CLARA J. INT'L L. 7 (2014) (CLA-139) p. 23.

⁸⁸⁶ See Vienna Convention on the Law of Treaties, 1155 U.N. Treaty Series, p. 332, concluded at Vienna on 23 May 1969, entered into force on 27 Jan. 1980 ("**VCLT**") (CLA-1) Art. 31 ("1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble . . .").

⁸⁸⁷ CAFTA-DR (CLA-2) Preamble.

⁸⁸⁸ See VCLT (CLA-1) Art. 32 ("Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31 . . .").

⁸⁸⁹ See, e.g., Office of the US Trade Representative, CAFTA Policy Brief dated May 2005 (CLA-157) ("Finally, we must not forget the significant benefits that U.S. companies investing abroad will derive from CAFTA's investment chapter. These provisions level the playing field for U.S. investors by giving them legal protections in Central America comparable to the protections that foreign investors already receive in the United States."); President Bush's Letter to Congress dated 23 Jun. 2005 (CLA-158) ("A stable, democratic, and growing Central America and Dominican Republic strengthens the United States economically and provides greater security for our citizens."); J. F. Hornbeck, *The Dominican Republic-Central America-United States Free Trade Agreement*

(ii) CAFTA-DR prohibits measures that are arbitrary or unreasonable, discriminatory, non-transparent or inconsistent, or harassing

389. Article 10.5 of CAFTA-DR prohibits Honduras from taking actions that are arbitrary or unreasonable, discriminatory, non-transparent or inconsistent, or harassing. These various articulations of the FET standard’s protections are related and intertwined and are all manifestations of the same principle: that States should not treat investors unfairly and inequitably. According to the *Waste Management II* tribunal:

the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety⁸⁹⁰

390. This has been endorsed by numerous tribunals, including those established under CAFTA-DR. In *Railroad Development Corporation v. Guatemala*, the tribunal found that “*Waste Management II* persuasively integrates the accumulated analysis of prior NAFTA tribunals and reflects a balanced description of the minimum standard of treatment.”⁸⁹¹ In *TECO v. Guatemala*, the tribunal largely reiterated that FET can be infringed “by conduct attributed to the State and harmful to the investor if the conduct is arbitrary, grossly unfair or idiosyncratic [or] is discriminatory.”⁸⁹² Notably, numerous tribunals have confirmed that grossly unjust conduct for the purposes of FET does not mean that a State’s conduct must be outrageous or egregious or in bad faith,⁸⁹³ though these may

(CAFTA-DR), Congressional Research Service Report RL31870 dated 8 Jan. 2009 (CLA-159) p. 12 (“The CAFTA-DR is intended to build on these trends, support export diversification, and provide a long-term stable trade environment that will increase U.S. foreign investment in the region.”).

⁸⁹⁰ *Waste Management II* (CLA-119) ¶ 98.

⁸⁹¹ *RDC* (CLA-128) ¶ 219.

⁸⁹² *TECO Guatemala Holdings LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17. Award (19 Dec. 2013) (CLA-160) ¶ 454.

⁸⁹³ See, e.g., *Mondev* (CLA-124) ¶ 116 (“To the modern eye, what is unfair or inequitable need not equate with the outrageous or the egregious. In particular, a State may treat foreign investment unfairly and inequitably without necessarily acting in bad faith.”); *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 Apr. 2016) (“*Crystallex*”) (CLA-161) ¶ 543 (“The Tribunal believes that the state’s conduct need not be outrageous or amount to bad faith to breach the fair and equitable treatment

be aggravating factors.⁸⁹⁴

391. While different definitions have been used by various tribunals, it is well established that the FET standard accords investors a very strong protection, and tribunals have found that it prohibits diverse forms of unjust conduct by the State.

392. **FET prohibits arbitrary or unreasonable measures.** States may not adopt measures that are arbitrary or unreasonable. As explained by the *Gramercy v. Peru* tribunal, “[i]f an investment has been subject to arbitrary or unreasonable treatment by the host State, the necessary consequence is that the MST under customary international law, including FET, have [*sic*] been violated.”⁸⁹⁵ Various types of conduct are considered arbitrary. Professor Schreuer’s articulation, which has been endorsed by several arbitral tribunals,⁸⁹⁶ includes the following examples:

a measure that inflicts damage on the investor without serving any apparent legitimate purpose . . . ;

a measure that is not based on legal standards but on discretion, prejudice, or personal preference;

a measure taken for reasons that are different from those put forward by the decision-maker . . . ;

a measure taken in willful disregard of due process and proper procedure.⁸⁹⁷

standard.”); *Micula* (CLA-144) ¶ 524 (“[I]t is well established that the state’s conduct need not be outrageous to breach the fair and equitable treatment standard.”); *Total* (CLA-143) ¶ 110 (“Awards have found a breach in cases of discrimination against foreigners and ‘improper and discreditable’ or ‘unreasonable’ conduct. This does not mean that bad faith is necessarily required in order to find a breach”); *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award (26 Jun. 2003) (CLA-162) ¶ 132; *LG&E* (CLA-121) ¶ 129.

⁸⁹⁴ See *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 Feb. 2007) (“*Siemens*”) (CLA-163) ¶ 299 (“Of course, such intention and bad faith can aggravate the situation but are not an essential element of the standard.”).

⁸⁹⁵ *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. The Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award (6 Dec. 2022) (CLA-164) ¶ 833.

⁸⁹⁶ See, e.g., *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award (8 Oct. 2009) (“*EDF*”) (CLA-165) ¶ 303; *Gramercy* (CLA-164) ¶¶ 828, 831; *SAUR* (CLA-132) ¶ 488.

⁸⁹⁷ Christoph Schreuer, *Protection against Arbitrary or Discriminatory Measures, The Future of Investment Arbitration* (published online by Cambridge University Press on 13 Jul. 2020) (CLA-166) p. 188.

393. Similarly, the tribunal in *Plama v. Bulgaria* defined “[u]nreasonable” measures as “those which are not founded in reason or fact but on caprice, prejudice or personal preference.”⁸⁹⁸ The tribunal in *Pawłowski v. Czech Republic* reasoned that “[a]ny unreasonable ... measure may, by definition, also be said to be unfair and inequitable.”⁸⁹⁹
394. **FET prohibits discrimination.** States may not discriminate against investors. Arbitral tribunals have held that discriminatory measures are *per se* unfair and inequitable.⁹⁰⁰ Discrimination may arise either from the intent behind a measure or from its practical effects.⁹⁰¹ As the tribunal in *Ulysseas v. Ecuador* explained, “for a measure to be discriminatory it is sufficient that, objectively, two similar situations are treated differently.”⁹⁰²
395. **FET requires transparency and consistency.** States must act transparently and consistently. Transparency refers to the absence of administrative ambiguity or opacity.⁹⁰³ As explained in *Tecmed*, the transparency requirement under the FET standard means that the State must ensure that the investor knows “beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations.”⁹⁰⁴ According to the tribunal in *Metalclad v. Mexico*, transparency means that all of the legal requirements relevant to the successful operation of an investment should be capable of being readily known and there must be

⁸⁹⁸ *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award (27 Aug. 2008) (“*Plama*”) (CLA-167) ¶ 184.

⁸⁹⁹ *Pawłowski AG and Project Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award (1 Nov. 2021) (“*Pawłowski*”) (CLA-168) ¶ 295.

⁹⁰⁰ *See Pawłowski* (CLA-168) ¶ 295.

⁹⁰¹ *LG&E* (CLA-121) ¶ 146 (“In the context of investment treaties, and the obligation thereunder not to discriminate against foreign investors, a measure is considered discriminatory if the intent of the measure is to discriminate or if the measure has a discriminatory effect.”).

⁹⁰² *Ulysseas, Inc. v. The Republic of Ecuador*, PCA Case No. 2009-19, Final Award (12 Jun. 2012) (CLA-169) ¶ 293.

⁹⁰³ *See* Christopher Dugan & Don Wallace, et al., *INVESTOR STATE ARBITRATION* (2008) (CLA-170) p. 519.

⁹⁰⁴ *Tecmed* (CLA-120) ¶ 154.

“no room for doubt” in this regard.⁹⁰⁵ Correspondingly, “[l]inked to the notion of transparency is the concept of consistency,” as the *Crystallex v. Venezuela* tribunal explained, and “[o]ne arm of the State cannot finally affirm what another arm denies to the detriment of the foreign investor.”⁹⁰⁶ The *Novenergia v. Spain* tribunal affirmed that transparency is “a significant element for ‘the protection of both the legitimate expectations of the Investor and the stability of the legal framework.’”⁹⁰⁷ The State also has an affirmative obligation to cure any ambiguity, and may not, through its silence, allow an investor to remain in a state of misunderstanding or confusion.⁹⁰⁸

396. **FET prohibits harassment.** States may not harass or seek to intimidate investors.⁹⁰⁹ As various tribunals have explained, impermissible harassment or coercion can take different forms, including: investigations conducted by a regulatory authority in a combative manner against the investor;⁹¹⁰

⁹⁰⁵ See *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1. Award (30 Aug. 2000) (“***Metalclad***”) (CLA-171) ¶ 76.

⁹⁰⁶ *Crystallex* (CLA-161) ¶ 579 (internal citations omitted). See *Telefónica* (CLA-118) ¶ 447 (“Another important element is the State’s obligation to not act in a contradictory manner.”).

⁹⁰⁷ *Novenergia* (CLA-151) ¶ 659 (“With respect to the element of transparency, and in line with the tribunal in *Plama*, the Tribunal considers this condition to be a significant element for ‘the protection of both the legitimate expectations of the Investor and the stability of the legal framework.’”) (quoting *Plama* (CLA-167) ¶ 178).

⁹⁰⁸ See *Metalclad* (CLA-171) ¶ 76 (“Once the authorities of the central government of any Party (whose international responsibility in such matters has been identified in the preceding section) become aware of any scope for misunderstanding or confusion in this connection, it is their duty to ensure that the correct position is promptly determined and clearly stated so that investors can proceed with all appropriate expedition in the confident belief that they are acting in accordance with all relevant laws.”).

⁹⁰⁹ See *Mohammad Ammar Al-Bahloul v. Republic of Tajikistan*, SCC Case No. V064/2008, Partial Award on Jurisdiction and Liability (2 Sep. 2009) (“***Al-Bahloul***”) (CLA-172) ¶ 221 (“[FET includes t]he obligation not to exercise unreasonable pressure on an investor to reach certain goals.”); *Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic*, ICSID Case No. ARB/04/16, Decision on Jurisdiction and Liability (10 Apr. 2013) (CLA-137) ¶ 938 (“There is some authority that the FET standard may also apply in situations of harassment and coercion directed at the investor.”); *Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Trading Ltd v. Kazakhstan (I) v. Republic of Kazakhstan*, SCC Case No. V 116/2010, Award (19 Dec. 2013) (“***Stati***”) (CLA-173) ¶ 1095 (“Respondent’s measures . . . constituted a string of measures of coordinated harassment by various institutions of Respondent. These measures must be considered as a breach of the obligation to treat investors fairly and equitably”); *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award (7 Feb. 2017) (CLA-174) ¶¶ 171–172 (“[O]ther tribunals have considered that such harassment violated the fair and equitable treatment or minimum standards of treatment more generally Here, the record shows that Ecuador’s takeover of the Blocks was the final step in a series of acts of harassment directed against Burlington in order to force it to renegotiate the PSCs.”).

⁹¹⁰ See *Pope & Talbot Inc. v. Government of Canada*, NAFTA, Award on the Merits of Phase 2 (10 Apr. 2001) (CLA-175) ¶ 181.

threats and physical attacks against the investor or its investment;⁹¹¹ and pressure against the investor or its investment such as denying the renewal of an operational permit to force the investor to relocate to another site.⁹¹²

(b) Honduras has breached Claimants' legitimate expectations that they would be able to develop Próspera ZEDE and reap the corresponding benefits for at least 50 years

397. Honduras's measures frustrated Claimants' legitimate expectations protected by Article 10.5 of CAFTA-DR in breach of that provision.
398. Investment treaty jurisprudence establishes, in essence, a three-step approach to determine whether a host State has unlawfully frustrated an investor's legitimate expectations: (i) whether the host State induced legitimate expectations on the part of the investor; (ii) whether the investor relied on those expectations when deciding to invest; and (iii) whether the host State subsequently failed to honor the expectations it created.⁹¹³ Each of these elements is satisfied in this case.

⁹¹¹ See *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award (6 Feb. 2008) ("**Desert Line**") (CLA-176) ¶ 179.

⁹¹² See *Tecmed* (CLA-120) ¶ 163.

⁹¹³ See *Thunderbird* (CLA-127) ¶ 147; *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012) (CLA-177) ¶ 152 ("[I]n determining whether the [FET] standard has been violated it will be a relevant factor if the treatment is made against the background of (i) clear and explicit representations made by or attributable to the NAFTA host State in order to induce the investment, and (ii) were, by reference to an objective standard, reasonably relied on by the investor, and (iii) were subsequently repudiated by the NAFTA host State."); *Al-Bahloul* (CLA-172) ¶ 200 ("To establish a failure to meet legitimate expectations, several factors must be demonstrated – the nature of the expectation, the reliance on the expectation and the legitimacy of that reliance."); *Waste Management II* (CLA-119) ¶ 98; Rudolph Dolzer, *Fair and Equitable Treatment: Today's Contours*, 12 SANTA CLARA J. OF INT'L L. 7 (2014) (CLA-139) p. 20 ("In the light of the arbitral jurisprudence, the details of the current state of the law will be summarized by way of five components, the existence of which determines whether the FET standard will protect the expectations of the investor in a given case: - The objective conduct of the host state inducing legitimate expectations on the part of the foreign investor; - reliance on that conduct on the part of the foreign investors; - frustration of investor's expectation by subsequent conduct of the host state; - unilateralism of conduct of the host state, *i.e.*, absence of meaningful communication and/or consent with investors; and - damages for the investor.").

- (i) **By enacting the ZEDE Legal Framework, promoting it to foreign investors, inviting and authorizing Claimants to invest, and expressly guaranteeing legal stability in multiple ways, Honduras created a legitimate expectation in Claimants that they would be able to develop Próspera ZEDE and reap the corresponding benefits for at least 50 years**

399. As Claimants have established, Honduras built the ZEDE Legal Framework to last and guaranteed that it would last, in order to induce investment from foreign investors generally and Claimants specifically.⁹¹⁴ Through repeated express representations, guarantees, commitments and assurances, both in the general legislation and directly to Claimants, Honduras created the legitimate expectation that the ZEDE Legal Framework would remain stable and continue to apply to Claimants for at least fifty years, during which time they would be able to develop Próspera ZEDE, offer a world-class governance service and develop real estate within the ZEDE, and reap the corresponding benefits.
400. *First*, Honduras made legal stability part of the very architecture of the ZEDE Legal Framework by enshrining it in the Constitution and ZEDE Organic Law, simultaneously giving the ZEDEs special legitimacy in the eyes of any investor and, as a practical matter, ensuring that the framework would be difficult to repeal.⁹¹⁵
401. In addition, Honduras added additional layers of legal stability protections to the ZEDE Legal Framework to give investors comfort that their investments would remain protected even if a repeal did occur. In particular, the ZEDE Law empowered the Technical Secretary of each ZEDE to enter into legal stability agreements binding on Honduras,⁹¹⁶ and provided that, in the event of a repeal,

⁹¹⁴ See *supra* §§ II.B, II.C.1.

⁹¹⁵ See *supra* §§ II.B.1.b-c; Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Arts. 294, 303, 329, 373 (requiring a two-third majority in Congress during two successive legislative sessions for any amendment to the Constitution); ZEDE Law (C-6) Art. 45 (requiring a two-third majority in Congress and, for ZEDEs with a population exceeding 100,000 inhabitants, a plebiscite for any repeal); Chaisse ¶ 37 (“At the statutory level, stability and predictability is ensured structurally and through direct guarantees. By embedding the ZEDE Regime in the Constitution, Honduras both granted it increased legitimacy and ensured that it would be much more difficult to eliminate than through simple legislation . . .”).

⁹¹⁶ See *supra* § II.B.1.c; ZEDE Law (C-6) Art. 12; Cosenza ¶ 89 (“[The Technical Secretary] is the highest-ranking executive officer of each ZEDE, and acts as its legal representative . . . and is responsible for the following main

there would be a transition period for the term established in the legal stability agreements but, in any event, “not be less than ten (10) years.”⁹¹⁷

402. Honduras’s design of the ZEDE Legal Framework with strong legal stability protections was not coincidental: it is well-known that legal stability is critical to attract foreign investment in SEZs given their nature.⁹¹⁸ As Professor Chaisse explains:

[a hallmark of] modern SEZ regimes is the **presence of legal structures and mechanisms intended to provide stability and predictability**. States may accomplish this in a variety of ways, including through stability guarantees or instruments that expressly protect investor reliance interests. These may take the form of stabilization clauses in the organic laws of the zone, long-term guarantees enacted by national legislatures, or contractual commitments ratified by the host State.⁹¹⁹

403. Further, Professor Chaisse compares the stability guarantees in other successful SEZ regimes, and

duties To execute agreements for legal stability on any matters deemed necessary”), ¶ 90 (“The Organic Law vests certain acts performed by Technical Secretary’s Offices with legal relevance, vis-à-vis the State, for instance, agreements for legal stability which . . . are binding on the State.”).

⁹¹⁷ See *supra* § II.B.1.c; ZEDE Law (C-6) Art. 45; Cosenza ¶ 103 (“Additionally, the Organic Law contains one final provision, under Article 45, which confirmed that even in the event that the law was repealed, the effective term agreed upon under the relevant agreements for legal stability would be upheld, with the addition that under no circumstance could the transition period be less than ten (10) years as from such repeal.”).

⁹¹⁸ Chaisse ¶ 10 (explaining that SEZs are “deliberate legal creations, embedded in constitutional, statutory, or executive instruments, designed to give investors enforceable assurances of regulatory stability.”). See also Teresa Cheng, *Special Economic Zones: A Catalyst for International Trade and Investment in Unsettling Times?*, JOURNAL OF WORLD INVESTMENT & TRADE 20, 32 (2019) (C-241) p. 10 (“A well-designed legal infrastructure is vital to the success of an SEZ Generally speaking, a well-designed legal infrastructure of an SEZ would be composed of SEZ laws that are sufficiently stable to ensure consistent, transparent and predictable implementation of the SEZ policy, and SEZs regulations and SEZ operating procedures that are practical, flexible and responsive to the needs of investors.”); Douglas Z. Zeng, *The Past, Present, and Future of Special Economic Zones and Their Impact*, JOURNAL OF INTERNATIONAL ECONOMIC LAW p. 273 (“[A] predictable and transparent legal and regulatory framework can help ensure clarity of roles and responsibilities of various parties and provide protection and certainty to developers and investors. Such a framework also helps to ensure that the zones attract the right investments and are established with high business, social, and environmental standards. A solid legal framework will also buffer zones from unpredictable risks, such as political setbacks or interference and land speculation, as well as health crisis, such as COVID-19, among other factors. In addition, strong and long-term government commitment provides additional support for a zone’s success by ensuring policy continuity and adequate provision of various public goods and services.”).

⁹¹⁹ Chaisse ¶ 26 (emphasis in original) (further elaborating that “[f]or example, Law No. 41 of 2004 establishing Panamá-Pacífico explicitly extends the protections of Panama’s Legal Stability of Investments Law to companies registered in the zone. Alternatively, States may mandate the use of established and predictable rules within the SEZ. For example, in financial free zones such as ADGM, the AIFC, the DIFC, and the QFC, legal predictability is grounded in statutory instruments that adopt or anchor common law frameworks. The objective of these mechanisms is to ensure predictability and protect against volatility, while preserving the ability of the State to exercise core sovereign functions.”).

concludes that “the stability Honduras guaranteed to investors under the ZEDE Legal Framework is particularly robust.”⁹²⁰ Honduras’s legal stability guarantee told investors that they could invest with the assurance that their investments would be protected. An investor seeing this and the underpinnings for the ZEDEs in Honduras’s Constitution and the ZEDE Law could legitimately expect that the framework would be stable and long-lasting. This was further reinforced by Honduras’s Supreme Court’s repeated rejections of constitutional challenges to the ZEDE Legal Framework shortly after its adoption.⁹²¹

404. *Second*, Honduras took additional steps on the international plane to guarantee legal stability to all investors in ZEDEs. The Honduras-Kuwait BIT expressly guaranteed Kuwaiti investors fifty years of legal stability in relation to the ZEDE Legal Framework. Article 16(4) of the treaty provides that Articles 294, 303, and 329 of the Constitution of Honduras, the ZEDE Law, and all rights, conditions, procedures, and protections “either explicit or implicit included therein” shall “remain as guarantees . . . for a timeframe of not less than fifty (50) years.”⁹²² Pursuant to the ZEDE Law’s MFN clause, this provision was automatically applicable to all ZEDE investors.⁹²³ Honduras expressly confirmed this to Claimants to induce their investment.⁹²⁴
405. Separately, Claimants were also entitled to rely on the 50-year legal stability guarantee in the Honduras-Kuwait BIT under the MFN clause in Article 10.4 of CAFTA-DR, which makes it

⁹²⁰ Chaisse ¶ 39, Annex B (Comparative Table of SEZ Attributes comparing, *inter alia*, predictability mechanisms).

⁹²¹ *See supra* § II.B.3. *See also* Cosenza ¶ 54 (“[I]n 2014, three (3) Judgments were entered by the Constitutional Chamber of the Supreme Court of Justice, which resolved three unconstitutionality actions brought against the ZEDEs, and in which the Constitutional Court ruled that the contested legislation did not violate the supreme law of the Nation.”), § 3.3.1.

⁹²² *See supra* § II.B.2.b.ii; Honduras-Kuwait BIT (CLA-3) Art. 16(4). *See also* Cosenza ¶ 104.

⁹²³ *See supra* § II.B.2.b.ii; ZEDE Law (C-6) Art. 32 (providing that natural and legal persons within the ZEDE are automatically entitled to “any better treatment that is granted or has been granted to the other parties to an international trade agreement signed by the State of Honduras.”). *See also* Chaisse ¶ 37; Cosenza ¶¶ 105-107.

⁹²⁴ *See supra* § II.C.2; Brimen ¶ 23; Letter from CAMP responding to Erick Brimen’s ZEDE Law interpretation request dated 11 Mar. 2017 (C-459) p. 4 (“[A] 50 year LSA was included in a Bilateral Investment Treaty (BIT) with Kuwait. By extent, article 6 of the ZEDE’s Organic Law makes that provision enforceable by any investor in a ZEDE.”).

applicable to Claimants.⁹²⁵ In the LSA, Honduras acknowledged that “Article 16(4) of the Kuwait-Honduras BIT [is] incorporated pursuant to the most favored nation clauses of Article 10.4 of the CAFTA-DR.”⁹²⁶

406. *Third*, Honduras actively induced foreign investment in ZEDEs under the ZEDE Legal Framework, both generally and specifically vis-à-vis Claimants, through public statements touting the ZEDE regime and its legal stability.⁹²⁷ Honduras created a program specifically aimed at promoting ZEDEs to foreign investors and actively promoted ZEDEs as investment opportunities around the world, specifically touting its guarantees of legal stability.⁹²⁸ Starting in 2016, Honduras directly induced Claimants to invest and made and direct representations that Honduras would support Claimants’ investments and guarantee legal stability.⁹²⁹
407. *Fourth*, Honduras created and reinforced the expectation that Claimants would be allowed to develop Próspera ZEDE in accordance with the ZEDE Legal Framework. Honduran authorities – including CAMP and other official bodies – were aware of Claimants’ plans from the start, worked closely with Claimants, and repeatedly authorized, acknowledged, and supported Claimants’ development of Próspera ZEDE. Among other things, CAMP issued the Certificate incorporating

⁹²⁵ As explained in Section III.A.2 above, Honduras’s breach of Article 10.4 of CAFTA-DR gives rise to a separate claim in this arbitration.

⁹²⁶ See Initial LSA (CLA-6) § 1.3.

⁹²⁷ See *supra* §§ II.B.4, II.C.1.

⁹²⁸ See *supra* § II.B.4. See also, e.g., Speech of the President of Honduras to the UN General Assembly (24 Sep. 2014) (C-10) (touting ZEDEs as “one of the best platforms in the world for investment and employment,” emphasizing that “in order to attract long-term investments and ensure good jobs, we guarantee political stability and transparency based on international treaties and agreements.”); Decree No. 153-2013, published on Aug. 5, 2013 (C-5) Art. 1 (creating the “Program for the Establishment of ZEDEs to disseminate information about the ZEDEs “to domestic and foreign investors” and “[e]xecute the necessary promotion activities to attract the capital required for the construction and development of the ZEDEs.”) (emphasis added); Strategic Government Plan 2014-2018: Plan for Everyone for a Better Life, Presidency of the Republic of Honduras (Dec. 2015) (C-438) p. 31 (calling for the promotion of ZEDEs as a means to attract new investment).

⁹²⁹ See *supra* §§ II.C.1-4; Brimen ¶¶ 16, 23; Delgado ¶¶ 12, 18; Notes of Discussion with CAMP dated 8 Nov. 2017 (C-462); Letter from CAMP responding to Erick Brimen’s ZEDE Law interpretation request dated 11 Mar. 2017 (C-459) p. 4; Letter from the Mayor of La Ceiba to Erick Brimen dated 14 August 2018 (C-20); Letter from Congressman Bader Dip to Erick Brimen dated 10 Oct. 2018 (C-22); Letter from the Mayor of Roatán to Erick Brimen dated 22 Mar. 2019 (C-24); Letter from the Governor of the Bay Islands to Erick Brimen dated 1 Apr. 2019 (C-25).

Próspera ZEDE and authorizing its development.⁹³⁰ CAMP likewise approved the Charter of Próspera ZEDE, whereby it authorized the governance rules for Próspera ZEDE (including the procedures for the promulgation of regulations) and cemented HPI's rights to provide governance as a service, among other things.⁹³¹

408. Other authorities further expressed their support for Próspera ZEDE and actively encouraged HPI's decision to develop Próspera ZEDE on both Roatán and La Ceiba. The evidence shows a multi-level State effort to welcome the investment: letters of support were issued; express governmental commitments were articulated regarding infrastructure, security, and energy; and the surrounding communities signaled enthusiastic endorsement.⁹³² Claimants enjoyed, and were encouraged to rely upon, the sustained backing of Honduras.
409. Meanwhile, CAMP continued to certify the incorporation of land into Próspera ZEDE, including the expansion into La Ceiba,⁹³³ showing Honduras's continuing recognition of Próspera ZEDE, and reinforcing Claimants' expectations as to their rights thereto.
410. *Finally*, Honduras further created and reinforced the legitimate expectation of legal stability and the continued application of the ZEDE Legal Framework by authorizing and entering into the LSA.⁹³⁴ Among other things, the LSA guaranteed to HPI and its "affiliates by majority ownership or control," legal stability "until the latter of (a) January 15, 2064; or (b) TEN (10) years after the last of any amendment, reformation, interpretation or repeal of all or any portion of the ZEDE law."⁹³⁵

⁹³⁰ See *supra* § II.C.3.b; Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay dated 29 Dec. 2017 (C-16).

⁹³¹ See *supra* § II.C.3.b; Brimen ¶¶ 47-50; Charter and Bylaws of ZEDE Village of North Bay, dated 23 Aug. 2018 (CLA-4); Charter of Próspera ZEDE, dated 12 Sep. 2019 (CLA-5).

⁹³² See *supra* § II.C.3.e.

⁹³³ See *supra* § II.C.6.a; Certificate of Registration and Incorporation of Parcels to Próspera ZEDE dated 29 Mar. 2021 (C-331).

⁹³⁴ See *supra* § II.C.5; ZEDE Organic Law (C-6) Art. 12, 45; Initial LSA (CLA-6); Amendment to the LSA (CLA-7).

⁹³⁵ See *supra* § II.C.5; Initial LSA (CLA-6) §§ 1.1, 1.4.

411. Honduras's myriad representations of long-term stability of the ZEDE Legal Framework both generally and with respect to Claimants specifically undoubtedly meet and exceed the threshold for establishing legitimate expectations, described above.⁹³⁶ As summarized by UNCTAD:

an investor may derive legitimate expectations either from (a) specific commitments addressed to it personally, for example, in the form of a stabilisation clause, or (b) rules that are not specifically addressed to a particular investor but which are put in place with a specific aim to induce foreign investments and on which the foreign investor relied in making his investment.⁹³⁷

412. The *Total v. Argentina* and *Vivendi v. Argentina* cases are particularly illustrative, as the tribunals in both cases confirmed that legitimate expectations could arise from both direct guarantees and the broader legal framework.⁹³⁸ Notably, the *Total* tribunal found that legitimate expectations could arise “if the host State has explicitly assumed a specific legal obligation for the future, such as by contracts, concessions or stabilisation clauses on which the investor is therefore entitled to rely as a matter of law,”⁹³⁹ and the *Vivendi* tribunal stated that the expectations of the claimants in that case:

did not suddenly and surprisingly [come] into their minds the way Athena sprang from the head of Zeus. Argentina through its laws, the treaties it signed, its government statements, and especially the elaborate legal framework which the Province designed and enacted, deliberately and actively sought to create those expectations in the Claimants and other potential investors in order to obtain the capital and technology that it needed⁹⁴⁰

413. Moreover, tribunals have noted that legitimate expectations are generated by “an express stability commitment that served its purpose of inducing investment in part by shielding investors in

⁹³⁶ See *supra* § IV.A.1.a.i.

⁹³⁷ United Nations Conference on Trade and Development (UNCTAD), *Fair and Equitable Treatment* (2012) (C-553) p. 69.

⁹³⁸ *Total* (CLA-143) ¶¶ 117; *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability (3 Jul. 2010) (“**Vivendi Liability**”) (CLA-179) ¶¶ 227-231.

⁹³⁹ *Total* (CLA-143) ¶ 117.

⁹⁴⁰ See *Vivendi Liability* (CLA-179) ¶ 227.

Claimants' position from legislative or regulatory changes.”⁹⁴¹ Indeed, as shown above, arbitral tribunals have often found legitimate expectations based on far less than Honduras's representations.⁹⁴²

414. Honduras's representations and commitments were both general (through the ZEDE Legal Framework set out in both the Constitution and the ZEDE Law, the Kuwait-Honduras BIT, Honduras's investment promotion program, etc.) and direct (through CAMP, diverse other officials including the President himself, the Charter, the LSA, etc.). They demonstrate a deliberate effort by Honduras to induce foreign investors generally and Claimants specifically to invest, by creating a legal framework at the highest level that it guaranteed would remain stable for at least five decades and by welcoming and authorizing Claimants' development of Próspera ZEDE, thereby confirming that Claimants would be entitled to develop and organize a semi-autonomous ZEDE in accordance with the ZEDE Legal Framework and reap the benefits from their investment. Such representations clearly meet (and exceed) the threshold for creating legitimate expectations.

⁹⁴¹ *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain*, ICSID Case No. ARB/15/36, Award (6 Sep. 2019) (“**OperaFund**”) (CLA-180) ¶ 485. See also *Novenergia* (CLA-151) ¶ 665 (“The Tribunal considers that Law 54/1997 and RD 661/2007 were clearly enacted with the objective of ensuring that the Kingdom of Spain achieved its emissions and RE targets. In order to achieve that objective the Kingdom of Spain created a very favourable investment climate for RE investors, and the nucleus of such investment climate was the Special Regime. The requirements placed on the PV plants to qualify for the Special Regime were limited to registration with the RAIPRE, a requirement which all of the PV Plants had met within the prescribed cut-off date.”); *Antin* (CLA-148) ¶ 552 (“Given the precision and detail exhibited in the royal decrees, particularly the contemplation that the treatment would be accorded for a defined period of time, the Tribunal has no difficulty in concluding that this falls squarely into the type of State conduct that was intended to, and did, give rise to legitimate expectations of the Claimants.”); *Watkins* (CLA-149) ¶¶ 526-528 (“The Tribunal is of the view that Spain had promised explicitly that the economic regime for the qualifying Special Regime installation would remain stable under RD 661/2007 which contained the stabilisation commitment in Article 44(3) and reiterated in RD 1614/2010 that any revisions to the fixed tariff and premium pursuant to Article 44(3) of RD 661/2007, would not affect duly registered existing installations.”).

⁹⁴² See *supra* § IV.A.1.a.i (showing that tribunals have considered that (i) specific assurances by the host State are not indispensable to generate legitimate expectations (*Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability (30 Nov. 2012) (CLA-152) ¶ 7.78); (ii) assurances may be implicit, irrespective of whether the State wished to commit itself, it being sufficient that the State acted in a manner that would reasonably be understood to create such an appearance (*Micula* (CLA-144) ¶ 669); and (iii) expectations may arise out of an objective understanding of the applicable legal framework (*Murphy* (CLA-147) ¶ 248), particularly with respect to regulations aimed at encouraging investments in a specific sector (*Antin* (CLA-148) ¶ 538)).

(ii) Claimants invested in Honduras in reliance on those legitimate expectations

415. Relying on Honduras's assurances, Claimants committed substantial capital, resources, and expertise to develop and operate Próspera ZEDE and their own business lines anchored on the ZEDE platform, structuring their investment on the understanding that the ZEDE Legal Framework provided a high degree of autonomy and governance rights to the ZEDes, and that the promised legal and regulatory stability would be upheld for the full duration of the 50-year guarantee. As a result of Honduras's representations, Claimants invested more than US\$ 166 million and substantial other resources over multiple years, investments that Claimants would have not made without Honduras's commitment to maintain the stability of the ZEDE Legal Framework.⁹⁴³ As detailed above, such investments included, among other things:

- The creation of Próspera ZEDE and the development of Claimants' government-as-a-service and land value creation business lines.
- The identification, securing and acquisition of land for incorporation into Próspera ZEDE,⁹⁴⁴ and the establishment of companies necessary to operate the ZEDE and Claimants' various profit centers.⁹⁴⁵
- The creation of Próspera ZEDE's world-class governance institutions and infrastructure (e.g., the Charter, a modern and innovative regulatory framework with over 4,000 pages of regulations, trusts and the GSP to provide governance services and manage taxes and residents fees, an eGovernance platform, the ZEDE Property Registry, etc.).⁹⁴⁶
- The retention of a team experienced in the development of similar zones around the world (e.g., Shanker Singham, a renowned expert and advisor to governments on trade and SEZs; Jeff Singer, the former CEO of NASDAQ Dubai and former CEO of the DIFC; Chirag Shah, a former senior DIFC executive and financial expert; Oliver Porter, the architect behind the private city of Sandy Springs; Tom Murcott, a real estate expert who played a leading role in the development of Songdo, South Korea; and Ott Vatter, who built

⁹⁴³ See *supra* § II.E; Brimen ¶¶ 82, 85-86, 117.

⁹⁴⁴ See *supra* § II.C.6.a.

⁹⁴⁵ See *supra* § II.C.4.d.

⁹⁴⁶ See *supra* §§ II.C.3.c, II.C.4.b.

Estonia's digital governance infrastructure and was brought on to design the ePróspera platform.⁹⁴⁷

- The retention of world renowned consultants, architects, urban planners, developers, and other experts (*e.g.*, EY, Deloitte, Zaha Hadid Architects, Jacobs Engineering, Strato Urbanismo, etc.).⁹⁴⁸
- The design, construction and/or refurbishment of numerous real estate projects (*e.g.*, the Beta Building, the Beta Offices, Duna Tower, the Pristine Bay Resort, Las Verandas Hotel & Villas, Beyabu luxury condominium, and the LEAF Residences).⁹⁴⁹
- The implementation of community outreach and social development programs, including, for example through the Próspera Foundation (*e.g.*, the provision of running water to homes in the Crawfish Rock, an after school program, a high-school transportation program, financing and mentorship to local entrepreneurs, an arts and crafts program, and other training programs).⁹⁵⁰
- The creation by PAC of a world-class arbitration center, which, in addition to being the default arbitration center for all contractual and patrimonial disputes in the ZEDE, was intended to provide hearing and meeting facilities, assist with the appointment of arbitrators and experts, and provide a platform for professional training and consulting services.⁹⁵¹
- Significant marketing and investor efforts to attract companies to invest in Próspera ZEDE, along with substantial fundraising efforts to secure the funds necessary to develop the project.⁹⁵²

416. But for Honduras's express commitments under the ZEDE Legal Framework (including the ZEDE Constitutional Provisions and the ZEDE Law), the Charter, the LSA, and the protection offered by the Honduras-Kuwait BIT, Claimants would not have made these investments.

417. Claimants were not the only investors relying on Honduras's representations under the ZEDE Legal Framework. Claimants used legal stability as a selling point to attract investors to Próspera ZEDE. Indeed, EY's 2019 report recommended that "the first potential legal issue to address [with

⁹⁴⁷ See *supra* §§ II.C.4.b, II.E; NeWAY, *Meet the Team* (C-300); Brimen ¶ 58; Shah ¶ 10; Murcott ¶ 6.

⁹⁴⁸ See *supra* §§ II.C.4.a, II.C.6.a, II.C.6.c-d.

⁹⁴⁹ See *supra* §§ II.C.4.c, II.C.6.a, II.E.

⁹⁵⁰ See *supra* § II.C.4.e.

⁹⁵¹ See *supra* § II.C.4.a.

⁹⁵² See *supra* §§ II.C.4.a, II.C.4.d, II.D.5.b.

investors] is assuring that if a potential investment happens in the zone, there is an assurance for over 30+ years.”⁹⁵³ In addition, Honduras approved two additional ZEDEs that were created in reliance on the ZEDE Legal Framework, ZEDE Orquídea and ZEDE Morazán.⁹⁵⁴

(iii) Honduras breached Claimants’ legitimate expectations

418. After having created legitimate expectations on the part of Claimants that the ZEDE Legal Framework would apply to them for at least fifty years, in reliance on which Claimants made substantial monetary and other investments in Honduras over the course of multiple years, Honduras frustrated Claimants’ legitimate expectations by dismantling the ZEDE Legal Framework and frustrating Claimants’ ability to develop Próspera ZEDE and reaping the multi-billion dollar benefits that were expected to flow from their years of hard labor and monetary investments.

419. As Claimants have established, Honduras issued two decrees for the repeal of the ZEDE Legal Framework, creating uncertainty as to the status of existing ZEDEs and the legal stability rights of existing investors, which Honduras subsequently made worse by through inconsistent statements and conduct. For example:

- Pursuant to Decree No. 32, Honduras took the first step of the process to repeal the Constitutional ZEDE Provisions and declare any legal norms stemming from the ZEDE Constitutional Provisions not legally valid.⁹⁵⁵
- Pursuant to Decree No. 33, Honduras repealed the ZEDE Organic Law, as well as any other laws, rules or provisions approved by Congress related to the ZEDE Organic Law, with immediate effect.⁹⁵⁶
- Decree No. 33 did not include any provisions as to the post-repeal legal status of existing ZEDEs or mention any transitory regime that would account for the legal stability rights

⁹⁵³ See EY, Project Oasis Final Report (Jul. 2019) (C-322) p. 115.

⁹⁵⁴ See *supra* § II.C.5.

⁹⁵⁵ See *supra* § II.D.3; Decree No. 32-2022, published on 21 Apr. 2022 (C-57). See also Cosenza § 6.2.1.

⁹⁵⁶ See *supra* § II.D.3; Decree No. 33-2022, published on 26 Apr. 2022 (C-60). See also Cosenza § 6.3.

of existing investors, which created uncertainty as to the status of Claimants' investments.⁹⁵⁷

- Honduras aggravated the uncertainty. When confronted directly as to the legal status of Próspera ZEDE, Honduras refused to answer.⁹⁵⁸ When asked point-blank what the Government's position was as to the legal status of the existing ZEDEs, Honduras's Minister of Economy stated that he could not answer.⁹⁵⁹ Meanwhile, Honduran officials contradicted each other, with some professing that that ZEDE investors were criminals,⁹⁶⁰ while others anticipated a transition period or recognized that the ZEDEs were entitled to legal stability.⁹⁶¹ Likewise, authorities either acted as though Próspera ZEDE was no-more, or continued with business as usual.⁹⁶²
- Having lost legislative support, the Castro administration was not able to ratify the repeal of the ZEDE Constitutional Provisions in 2013, and so these remained part of the Constitution.⁹⁶³ Instead the government turned to the Supreme Court, which it had taken steps to stack with anti-ZEDE justices picked in a blatantly political process.⁹⁶⁴ In 2024, in an unprecedented and highly-questionable decision, the Supreme Court of Honduras declared the ZEDE Legal Framework unconstitutional with retroactive (*ex tunc*) effect.⁹⁶⁵ This was in clear violation of Article 94 of the Law on Constitutional Justice which explicitly prohibits decisions on constitutionality affecting legal situations that have already been definitively resolved and executed.⁹⁶⁶ Perhaps mindful of this, the Court paid lip service to the rights of investors, albeit in a nonsensical way, by asserting that the rights of "companies constituted in good faith that intended to become ZEDEs" would be protected.⁹⁶⁷

420. Honduras's measures and the uncertainty caused thereby are a clear violation of Claimants'

⁹⁵⁷ See *supra* § II.D.4; Decree No. 33-2022, published on 26 Apr. 2022 (C-60). See also Cosenza ¶¶ 124-125.

⁹⁵⁸ See *supra* § II.D.4.

⁹⁵⁹ See *supra* § II.D.4.

⁹⁶⁰ See *supra* § II.D.4.

⁹⁶¹ See *supra* § II.D.4.

⁹⁶² See *supra* § II.D.4. Notably, CAMP and Honduran customs continued to issue invoices to Próspera ZEDE and accept payments. See, e.g., Próspera ZEDE payment to CAMP for supervision fees dated 20 Dec. 2022 (C-557) (effecting payment of CAMP supervision fees for December 2022); CAMP Invoice to Próspera ZEDE for supervision fees dated 8 Aug. 2024 (C-556); Próspera ZEDE payment to Honduran Customs Administration for 2024-25 customs fee dated 22 Mar. 2024 (C-359).

⁹⁶³ See *supra* § II.D.6. See also Cosenza ¶ 119(f) ("Given that the decree involves an amendment in the form of a repeal of a prior Constitutional Reform, such ratification was an inescapable formal requirement, pursuant to Article 373 of the Constitution. However, such ratification never took place All of the foregoing means that the constitutional reform procedure (in the form of a repeal) was not perfected.").

⁹⁶⁴ See *supra* § II.D.6.

⁹⁶⁵ See *supra* § II.D.6. See also Cosenza § 7.

⁹⁶⁶ See *supra* §§ II.D.6-7. See also Cosenza ¶ 148.

⁹⁶⁷ See *supra* § II.D.6. See also Cosenza § 7.7.

legitimate expectations, based on the ZEDE Legal Framework, the Próspera ZEDE Authorization the Charter, and subsequent confirmations and encouragements by State officials, that they would be permitted to develop Próspera ZEDE and reap the associated benefits – billions of dollars in profits stemming from their two main business lines: delivering governance as a service and reaping the upside of the multifold increase in value of land incorporated in the ZEDE.

421. While Claimants have attempted to use their best efforts to mitigate the harm caused by Honduras’s measures, their impact is undeniable: Claimants have been unable to develop Próspera ZEDE on the scale that it would have evolved to if Honduras had not abruptly reversed course.⁹⁶⁸
422. Honduras’s abrupt reversal of the ZEDE Legal Framework and interference with Claimants’ rights and capacity to develop Próspera ZEDE and reap the corresponding expected benefits, including billions of dollars in profit for decades, constitute breaches of Honduras’s FET obligations under CAFTA-DR. As explained above, tribunals have consistently found that a breach of FET occurs when a host State radically alters its regulatory framework and reneges on its representations, thereby frustrating investors’ legitimate expectations.⁹⁶⁹ Honduras’s conduct more than meets this test.
423. Numerous tribunals have held that a State’s radical alteration of a regulatory framework breaches FET.⁹⁷⁰ As explained by the *Watkins v. Spain* tribunal:

⁹⁶⁸ See *supra* §§ II.D.5 and II.E.

⁹⁶⁹ See *supra* § IV.A.1.

⁹⁷⁰ This has been held by several tribunals in relation to Spain’s radical alteration of its legal framework in relation to renewable energy. See, e.g., *ergia* (CLA-151) ¶ 674, ¶ 681 (“the Tribunal concludes that the Claimant had a legitimate and reasonable expectation that there would not be any radical or fundamental changes to the Special Regime as set out in RD 661/2007.”) ¶ 695 (“Taking into account the Kingdom of Spain’s statements and assurances prior to and in connection with the implementation of RD 661/2007, the legitimate expectations of the Claimant, and the changes introduced through RDL 9/2013, the Tribunal considers these challenged measures as radical and unexpected. The manner in which the Kingdom of Spain adopted the measures including and subsequent to RDL 9/2013 fell ‘outside the acceptable range of legislative and regulatory behaviour’ and ‘entirely transform[ed] and alter[ed] the legal and business environment under which the investment was decided and made.’”) (internal citations omitted), ¶ 697 (“Consequently, the Tribunal finds that the radical changes enacted by the Kingdom of Spain in 2013 and 2014 have definitely abolished the fixed long-term FIT and have done so retroactively. The Tribunal concludes that the legislation introduced . . . amount to a breach by the Kingdom of Spain of its obligation to accord to the investor FET”); *Antin* (CLA-148) ¶ 560 (“RDL 9/2013,

there are limitation[s] on [the State's] powers to alter the regulatory framework and it should not do so if such fundamental and radical changes would be unfair, unreasonable and inequitable, which would undermine an investor's legitimate expectation.

An important element of legitimate expectation is the protection from State action that threatens the stability of the legal and business framework upon which an investor reasonably relied on, in making its investment and this concept has been endorsed by a number of tribunals.⁹⁷¹

424. Changes to the legal regime in violation of FET need not be solely legislative in nature. In *Telefónica*, the tribunal held that Colombia had breached its FET obligations because, among other things, it changed the regulatory framework through a decision by its highest Court as to the constitutionality of the applicable legal framework, which frustrated the claimant's legitimate expectations.⁹⁷² Notably, the tribunal did not accept Colombia's argument that the court's constitutional control could not constitute a radical change in the legal framework.⁹⁷³ In this case, Claimants have faced a far more comprehensive effort by Honduras to dismantle the ZEDE Legal Framework, including through the Supreme Court declaration that it is unconstitutional *ex tunc*.
425. More generally, tribunals have found that a State cannot create legitimate expectations that the investor will be able to develop its project, only to then prevent the project from going forward. In *Bilcon v. Canada*, for example, the tribunal held that it was "unjust" for Canada to promote a

Law 24/2013 and Ministerial Order IET/1045/2014 dismantled all the regime and therefore all the features of the regime provided for under RD 661/2007."), ¶ 572 (finding that Spain "eliminat[ed] . . . the key features of the RD 661/2007 regime and [replaced it with] . . . a wholly new regime, not based on any identifiable criteria."); *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. The Kingdom of Spain*, ICSID Case No. ARB/14/11, Decision on Jurisdiction, Liability and Quantum Principles (12 Mar. 2019) (CLA-181) ¶¶ 598-599 (finding that the economic regime "was fundamentally and radically altered" in ways which "went beyond anything that might have been reasonably expected by Claimants when they undertook their investment."); *OperaFund* (CLA-180) ¶ 512-513 ("Through its regulatory offer, Respondent assumed an obligation of regulatory stability, which resulted in the boosting of renewable investments in Spain and gave rise to legitimate expectations of stability under the ECT. These expectations were clearly and fundamentally changed by the Disputed Measures . . . which breached the stable conditions promised by RD 661/2007."). Tribunals in other cases have reached similar conclusions. See, e.g., *CMS* (CLA-153) ¶¶ 136-137, 275-276; *Enron* (CLA-156) ¶¶ 264-266.

⁹⁷¹ *Watkins* (CLA-149) ¶¶ 521-522.

⁹⁷² See *Telefónica* (CLA-118) ¶¶ 410 *et seq.*

⁹⁷³ See *Telefónica* (CLA-118) ¶¶ 421-425.

project, only to later reject it:⁹⁷⁴

Viewing the actions of Canada as a whole, it was unjust for officials to encourage coastal mining projects in general and specifically encourage the pursuit of the project at the Whites point site, and then, after a massive expenditure of effort and resources by Bilcon on that basis, have other officials effectively determine that the area was a “no go” zone for this kind of development rather than carrying out the lawfully prescribed evaluation of its individual environmental merits.⁹⁷⁵

426. Honduras’s conduct falls comfortably into these templates: the State deliberately sought to induce foreign investment with a regulatory regime guaranteeing rights and benefits to investors, including autonomy and specific commitments of legal stability, on which Claimants relied when deciding to invest and making a massive expenditure of effort and resources in Honduras. Honduras subsequently breached its specific commitments that these rights and benefits would continue to apply to Claimants for fifty years, by implementing a series of measures that sought to dismantle the ZEDE Legal Framework without upholding Claimants’ legal stability rights, in breach of Claimants’ legitimate expectations. Honduras thus “radically altered the essential characteristics of the legislation in a manner that violates the FET standard”⁹⁷⁶ This is a clear breach of Honduras’s obligation under Article 10.5 of CAFTA-DR to provide FET, for which Claimants are entitled to full reparation.

(c) Honduras’s measures are arbitrary and unreasonable, discriminatory, non-transparent and inconsistent, and harassing

427. Honduras’s measures are arbitrary and unreasonable, discriminatory, non-transparent and inconsistent, and harassing. In particular, Honduras has acted unfairly and inequitably by: its politically motivated efforts to dismantle the ZEDE Legal Framework and disregard for its prior repeated legal stability undertakings (Section IV.A.1.c.i); its unprecedented and retroactive declaration that the entire ZEDE Legal Framework is unconstitutional *ex tunc* (Section IV.A.1.c.ii);

⁹⁷⁴ William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada, UNCITRAL, Award on Jurisdiction and Liability (17 Mar. 2015) (“*Bilcon*”) (CLA-182) ¶ 589.

⁹⁷⁵ *Bilcon* (CLA-182) ¶ 592.

⁹⁷⁶ *Novenergia* (CLA-151) ¶ 656.

and its campaign of intimidation, obstruction, and inconsistent enforcement aimed at Claimants and their investments (Section IV.A.1.c.iii). Alone or together, these measures constitute breaches of Article 10.5 of CAFTA-DR.

(i) **Honduras's steps to repeal the ZEDE Legal Framework and its refusal to acknowledge Claimants' legal stability rights were arbitrary and unreasonable, discriminatory, and non-transparent and inconsistent**

428. Honduras's efforts to dismantle the ZEDE Legal Framework and refusal to acknowledge or make effective Claimants' right to legal stability were unjust and inequitable, in violation of CAFTA-DR.

429. *First*, Honduras's measures were manifestly **arbitrary and unreasonable**. It is well established that arbitrary and unreasonable conduct is that which "inflicts damage on the investor without serving any apparent legitimate purpose . . . [and is] not based on legal standards but on discretion, prejudice or personal preference."⁹⁷⁷ Honduras manifestly failed this basic requirement.

430. As tribunals have held, state acts are arbitrary and unreasonable when they are motivated by "political predisposition rather than considerations of public or regulatory policy,"⁹⁷⁸ "not founded in reason or fact but on caprice, prejudice or personal preference."⁹⁷⁹ In this case, it is apparent that the nucleus of Honduras's efforts to dismantle the ZEDE Legal Framework were a partisan vendetta by the Castro administration rather than driven by any legitimate public policy objectives. As explained above:

- Revanchism is at the heart of much, if not all, of the Castro-Zelaya political project, which aims to undo all the laws and initiatives (including the ZEDE Legal Framework) originating after Mr. Zelaya's removal from power in 2009, which the LIBRE Party

⁹⁷⁷ Rudolf Dolzer & Christoph Schreuer, Standards of Protection, *Principles of International Investment Law*, OXFORD UNIVERSITY PRESS (2012) (CLA-166) p. 193. *See also* *EDF* (CLA-165) ¶ 303; *Gramercy* (CLA-164) ¶ 831; *Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/19, Award (18 November 2014) ("*Flughafen Zürich*") (CLA-183) ¶ 585; *SAUR* (CLA-132) ¶ 488.

⁹⁷⁸ *B-Mex, LLC Deana Anthone, Neil Ayervais, Douglas Black and others v. The United Mexican States*, ICSID Case No. ARB(AF)/16/3, Final Award (21 Jun. 2024) ("*B-Mex*") (CLA-184) ¶ 119.

⁹⁷⁹ *Plama* (CLA-167) ¶ 184.

considers *per se* illegitimate. The ZEDEs were a convenient political target to link to LIBRE's political rivals.⁹⁸⁰

- Rather than making a reasoned and informed policy argument, the attacks on the ZEDEs were based on invective. Instead of engaging with the ZEDE Legal Framework, which was well enshrined in Honduran law and which Honduras had promoted for the better part of a decade, Ms. Castro denounced the ZEDEs as criminal, akin to death squads and drug-dealing, and Próspera ZEDE as “an enemy of the Honduran people.”⁹⁸¹ This was policymaking by bullhorn, not the product of reasonable consideration.
- Partisanship also marked the first efforts to repeal the ZEDE Legal Framework during the initial period of total chaos in which there were two rival sittings of Congress split over who should be the new Speaker. Mr. Redondo (Ms. Castro's preferred candidate) pushed a bill repealing the ZEDE Law through the rump legislature. Despite its apparent passage, the bill was never published and never became law, and has since been quietly forgotten by Honduras.⁹⁸²

431. Such origins tainted Honduras's anti-ZEDE conduct from the start. Being based on political animus, Honduras's measures are necessarily arbitrary and unreasonable. In this respect, Honduras's measures can be likened to those found to be arbitrary and unreasonable in *B-Mex v. Mexico* because they were motivated by political aims. That tribunal found that the State's termination of the claimant's business was arbitrary because a State agency had “acted on the predisposition of its new political leadership . . . rather than public or regulatory policy concerns,”⁹⁸³ and took into account that the termination occurred “within two months from granting an assurances-clad permit (crucial for the continuity of a business that had been trading for several years).”⁹⁸⁴ As in the *B-Mex* case, Honduras's measures are the result of an “extraordinary change of heart,”⁹⁸⁵ and are the result of Honduras's change of political leadership and the new Government's own predispositions.

⁹⁸⁰ See *supra* § II.D.1.

⁹⁸¹ See *supra* § II.D.1.

⁹⁸² See *supra* § II.D.2.

⁹⁸³ *B-Mex* (CLA-184) ¶ 92.

⁹⁸⁴ *B-Mex* (CLA-184) ¶ 78.

⁹⁸⁵ *B-Mex* (CLA-184) ¶ 119.

432. In addition, Honduras's subsequent conduct confirmed the original arbitrariness. To be considered reasonable, Honduras's conduct would have had to "bear[] a reasonable relationship to some rational policy"⁹⁸⁶ and be "appropriately tailored to the pursuit of that rational policy with due regard for the consequences imposed on investors."⁹⁸⁷ On the contrary, Honduras's anti-ZEDE measures have been driven by invective and political posturing, without any apparent consideration for the consequences its conduct on foreign investors.

- Decrees Nos. 32 and 33 were a *fait accompli*. The "debate" on the repeal in Congress was a display of nationalism and inanity, without genuine deliberation, consideration of pros and cons or costs and benefits of the ZEDE Legal Framework, testimony from the affected parties or experts, or other serious discussion of policy. The text of the Decrees never appears to have been in doubt, and the Decrees were adopted without any modification. The "unanimous" vote was by acclamation and not objectively verified.⁹⁸⁸
- At the same time, Decrees Nos. 32 and 33 entirely failed to address the status of existing ZEDes and the rights of investors thereunder who previously had been guaranteed decades of legal stability. At no point during the hours-long session of Congress were Honduras's prior legal stability undertakings addressed, much less was any policy (rational or otherwise) articulated as to how the State would deal with its continuing obligations thereunder.⁹⁸⁹
- The lack of a rational policy is highlighted by Honduras's choice to allow Claimants to remain in a state of legal uncertainty as to the status of Próspera ZEDE and whether the State would honor its legal stability undertakings.⁹⁹⁰ Such deliberate cultivation of ambiguity would be inexplicable if Honduras were acting in furtherance of a rational policy.
- The lack of rational policy is further highlighted by the subsequent inconsistent positions taken by Honduran officials as to the implications of the repeal for existing ZEDes. As previously established, CAMP continued operating,⁹⁹¹ some officials stated that ZEDes could remain in existence for fifty years,⁹⁹² others stated that there would be a transition

⁹⁸⁶ *Saluka* (CLA-122) ¶ 460.

⁹⁸⁷ *Micula* (CLA-144) ¶ 525.

⁹⁸⁸ *See supra* § II.D.3.

⁹⁸⁹ *See supra* § II.D.3.

⁹⁹⁰ *See supra* §§ II.D.4, II.D.5.a, II.D.6-7.

⁹⁹¹ *See supra* § II.D.4.

⁹⁹² *See supra* § II.D.4; Alex Baquis, Roberto Ramos and Jose Carlo Bermúdez, ZEDE: Tax policy implications and their impact on income tax, TAX ADMINISTRATION SERVICE (Apr. 2022) (C-358).

period for existing ZEDEs,⁹⁹³ and others denounced the ZEDEs as illegal and called on the National Congress and on the Executive Branch to stop the “irregular operations” of Próspera ZEDE.⁹⁹⁴ On the one hand, Honduras is effectively preventing Claimants from developing the ZEDE, on the other it has not taken steps to shut down Próspera ZEDE.⁹⁹⁵

433. In this context, it is apparent that any attempt by Honduras to justify its efforts to dismantle the ZEDE Legal Framework and refusal to abide by its legal stability undertakings would at most be *post hoc* rationalization. Notably, various officials have advanced different explanations, including the assertion that the ZEDE Legal Framework was illegal *ab initio*⁹⁹⁶ or vacuous appeals to sovereignty.⁹⁹⁷ In fact, there is no reason to believe that such assertions actually serve as the foundation for Honduras’s measures. Honduras’s own Minister of Economy stated that such public statements were “political position” (*i.e.*, not legal ones).⁹⁹⁸
434. Honduras’s retreat into such arguments merely highlights the arbitrariness of its conduct insofar as Honduras’s measures would still “deviate from the applicable law and are abusive, discretionary and lack motivation or legal motivation in such a way as to be capricious, are grossly unfair, openly inconsistent or contradictory with previous conduct and all this in a manner that defies the very

⁹⁹³ See *supra* § II.D.4; *ZEDEs will be ruled by the law of free zones*, CANAL 8 HONDURAS - YOUTUBE (11 Jun. 2022), <https://www.youtube.com/watch?v=kATMI-3RsaQ> (C-65).

⁹⁹⁴ See *supra* §§ II.D.4, II.D.7; Fabiana Ordonez, *Deputy Dixon denounces medical experiments and parallel power in ZEDE*, Próspera, MI NOTA (15 May 2025) (C-566). See also ISD\$ Platform, *ZEDE Próspera prepares millionaire lawsuit against Honduras*, ISD\$ PLATFORM (3 Nov. 2022) (C-591); Perdomo, Maria, *Customs does not recognize privileges of the ZEDE regime to Prospera, says entity holder*, CRITERIO (16 Nov. 2023) (C-567); *For not paying taxes, mayor of Roatán orders the closure of the gates of the ZEDE “Prospera,”* CONFIDENCIAL HN (15 Oct. 2024) (C-568).

⁹⁹⁵ See *supra* §§ II.D.4-5.

⁹⁹⁶ See *supra* § II.D.6. In November 2022, Speaker Redondo declared that the ZEDEs “have always been unconstitutional.” See “*The Zede cannot claim rights because they are illicit*” *Insists Luis Redondo*, EL MUNDO (7 Nov. 2022), <https://elmundo.hn/las-zede-no-pueden-reclamar-derechos-porque-son-ilicitas-insiste-luis-redondo/> (C-72).

⁹⁹⁷ See, e.g., *Próspera ZEDE Prepares Claim for Millions Against Honduras*, BILATERALS.ORG (3 Nov. 2022), <https://www.bilaterals.org/?zede-prospera-prepara-millonaria> (C-70). The Minister of Economy Pedro Barquero stated: “[w]e have been clear that the Law was repealed, but even so the Law was illegal, because it violated the Constitution from its origin and national sovereignty.”

⁹⁹⁸ See *supra* § II.D.4; Minutes of meeting between representatives of Claimants and the Secretary of Economic Development dated 4 Nov. 2022 (C-555).

notion of legal correctness.”⁹⁹⁹ For example, Honduras’s measures cannot be validly motivated by a conviction that the ZEDE Legal Framework was illegal: Honduras previously touted the legality of the framework for years, and its constitutionality was upheld three times by the Supreme Court of Honduras.¹⁰⁰⁰ While the current government might disagree with the framework on the grounds of some yet to be identified policy, it could not simply disregard the States’ prior actions on which investors had relied.

435. The same is true of any sovereignty-based arguments. Honduran officials have taken to using the concept of “sovereignty” as a convenient nostrum in a wide variety of arguments, which makes it inherently suspect.¹⁰⁰¹ In any event, an appeal to sovereignty is itself arbitrary and unreasonable because it is legally baseless. As Mr. Cosenza and Professor Chaisse explain, the ZEDE Legal Framework is an expression of Honduran sovereignty, not inconsistent with it.¹⁰⁰² Likewise, Mr.

⁹⁹⁹ See *South32 SA Investments Limited v. Republic of Colombia (I)*, ICSID Case No. ARB/20/9, Award (21 Jun. 2024) (“*South32*”) (CLA-185) ¶ 706.

¹⁰⁰⁰ See *supra* §§ II.B.3, II.C.5, II.D.1. See also Cosenza ¶ 54 (“[I]n 2014, three (3) Judgments were entered by the Constitutional Chamber of the Supreme Court of Justice, which resolved three unconstitutionality actions brought against the ZEDEs, and in which the Constitutional Court ruled that the contested legislation did not violate the supreme law of the Nation.”), § 3.3.1.

¹⁰⁰¹ For instance, in 2022 while advocating for reform of Honduras’s renewable energy regime, a Congressmen for the LIBRE Party stated that Hondurans had the right to seek “energy sovereignty.” Radio America, “*We Hondurans have the right to fight and seek energy sovereignty: chief of Libre bench*,” Radio America (4 May 2022) (C-569). In November 2023, when faced with international criticism by the Interamerican Commission for Human Rights and the U.S. Government for the controversial appointment of the National Prosecutor by the 9-member Permanent Commission of Congress, the Honduran Chancellor dismissed allegations by declaring it a “sovereign matter.” See CIDH-IACHR, X @CIDH (2 Nov. 2023) (C-570); Aimée Cárcamo and Sharon Ardon, *Honduran Congress deepens institutional crisis by appointing prosecutors loyal to Libre*, EXPEDIENTE PÚBLICO (1 Nov. 2023) (C-291); EFE Agency, *The Honduran Foreign Minister rejects the US “meddling” in the appointment of the attorney general*, Yahoo! (4 Nov. 2023) (C-596).

¹⁰⁰² See *supra* §§ II.B.2.a, II.B.2.b.i, II.B.3; Cosenza ¶ 82 (“[T]he new regulation indeed vests the ZEDEs with functional and administrative autonomy . . . without undermining national sovereignty.”), ¶ 84 (“In the legal framework that made up the ZEDE Regime, at both its levels, the National Congress made observations on the fact that the functional and administrative autonomy to be vested in the new entities could not infringe upon the basic constitutional precepts related to national sovereignty and territory.”), ¶ 99 (“All in all . . . the very notion of sovereignty turns out to be compatible with the existence of subdivisions within the national territory that are afforded various degrees of autonomy.”); Chaisse ¶¶ 35-36 (“Although the ZEDE Regime grants ZEDEs significant autonomy, it does so without detracting from State sovereignty. . . . the Constitution and the ZEDE Organic Law confirm that the ZEDEs are inalienable components of the Honduran State and subjects them to the Constitution and the central government in matters concerning sovereignty . . . In addition, Honduras established CAMP as the mechanism through which the State exercised direct legal supervision over the ZEDEs. Its authority to appoint or remove Technical Secretaries, approve or disapprove ZEDE rules, and oversee annual audits ensured

Cosenza calls the notion that sovereignty impedes Honduras from creating ZEDEs “unreasonable.”¹⁰⁰³ Moreover, this was the official position of Honduras for years, and was confirmed by the National Prosecutor’s Office and the Supreme Court of Honduras.¹⁰⁰⁴ That Honduras may now have a different position is merely the result of political turnover and is patently arbitrary and unreasonable.

436. Honduras’s *volte face* with respect to the ZEDE Legal Framework is inherently unfair and inequitable because a State cannot simply disavow a prior legal structure used to induce investment. In *RDC*, for example, the tribunal found that Guatemala’s determination that a railway contract was harmful after years of encouraging and supporting the investment and for reasons unrelated to the investor’s performance was arbitrary and a breach of FET under CAFTA-DR.¹⁰⁰⁵ The fact that in this case Honduras sought to repudiate an entire legal framework that was even enshrined in its Constitution compounds the breach.
437. Finally, whatever purported justifications Honduras may or may not have had for its efforts to repeal the ZEDE Legal Framework, Honduras cannot justify its failure to make good on its stability guarantees. Indeed, reneging on such undertakings is *per se* arbitrary and unreasonable and any attempt at justification would be bound to fail. As the *BG v. Argentina* tribunal explained,

that ZEDE autonomy remained a form of conditional delegation, not an abdication of State sovereignty. The Technical Secretary, although functioning as the highest executive officer within each ZEDE, was a CAMP appointee who served at its discretion. Such institutional arrangements ensured that all internal governance structures remained ultimately embedded in, and accountable to, the legal and political institutions of the Honduran State. International practice confirms that autonomy within SEZs is a policy tool, not something anomalous. Honduras’s approach to the ZEDE Regime parallels models in other jurisdictions where zones operate with degrees of autonomy under defined State oversight.”) (emphasis added).

¹⁰⁰³ Cosenza ¶ 100 (“In the name of sovereignty, it is unreasonable to consider that the State is limited in its capacity to implement management models which, by adopting national and international best practices, foster adequate social, economic, and legal conditions enabling growth and competitiveness at the international level. Precisely, models such as the ZEDEs have been acknowledged as forming part of the State capacity to fulfill its purpose.”)

¹⁰⁰⁴ See *supra* § II.B.3; Opinion of the National Prosecutor of Honduras dated 20 Feb. 2014 (C-433); Decision of the Supreme Court of Honduras, Case No. RI 0030-13 dated 26 May 2014 (C-558).

¹⁰⁰⁵ See *RDC* (CLA-128) ¶ 235 (“In the Tribunal’s view, the manner in which and the grounds on which Respondent applied the *lesivo* remedy in the circumstances of this case constituted a breach of the minimum standard of treatment in Article 10.5 of CAFTA by being, in the words of Waste Management II, “arbitrary, grossly unfair, [and] unjust.”).

“withdrawal of undertakings and assurances given in good faith to investors as an inducement to their making an investment is by definition unreasonable and a breach of the treaty.”¹⁰⁰⁶

438. *Second*, Honduras measures were **discriminatory** because neither Decree No. 33-2022 nor the 2024 Supreme Court decision made any provision for a transition regime during which the rights of existing investors would be respected, in stark contrast to Honduras’s repeal of prior special regimes such as the ZOLTs, the ZADEs, and the ZOLITURs, when Honduras expressly provided that the rights acquired under those regimes would remain in force.¹⁰⁰⁷ Unlike investors in the other regimes, only ZEDE investors were denied a transition period.¹⁰⁰⁸

439. *Third*, Honduras has breached its **transparency and consistency** obligations towards Claimants. As Claimants have established, Honduras’s conduct has been deliberately opaque, evasive and obstructive, depriving Claimants of any clarity regarding the status of Próspera ZEDE and the legal framework applicable to their investments, which is unjust and inequitable conduct in violation of Honduras’s obligation to extend FET to Claimants under Article 10.5 of CAFTA-DR.¹⁰⁰⁹

- Unlike its prior practice when repealing other SEZ regimes, in Decree No. 33 Honduras made no provision for a transition or otherwise provided for the status of existing ZEDES and the rights of investors thereunder, thereby creating legal uncertainty.¹⁰¹⁰
- Honduras knew that certainty as to the status of Próspera ZEDE was critical to Claimants, yet repeatedly refused to resolve the legal uncertainty. Honduras never responded to Claimants’ letters in 2022 seeking confirmation that Honduras would respect its legal stability commitments and that the ZEDE Legal Framework remained in full effect as to their investments in Próspera ZEDE.¹⁰¹¹ When asked point-blank what the Government’s

¹⁰⁰⁶ *BG Group v. Argentina*, UNCITRAL, Final Award (24 Dec. 2007) (CLA-186) ¶¶ 343, 346.

¹⁰⁰⁷ *See supra* §§ II.A.2.b, II.D.3-4. *See also* Cosenza § 2.3.2.

¹⁰⁰⁸ *See supra* §§ II.A.2.b, II.D.3-4.

¹⁰⁰⁹ *See, e.g., Metalclad* (CLA-171) ¶ 76 (“The Tribunal understands this to include the idea that all relevant legal requirements for the purpose of initiating, completing and successfully operating investments made, or intended to be made, under the Agreement should be capable of being readily known to all affected investors of another Party. There should be no room for doubt or uncertainty on such matters.”).

¹⁰¹⁰ *See supra* § II.D.4; Cosenza § 6.4.

¹⁰¹¹ *See* Letter from Honduras Próspera to President Castro dated 26 Apr. 2022 (C-61); Letter from Honduras Próspera to President Castro, dated 11 May 2022 (C-63).

position was as to the legal status of the existing ZEDEs, Honduras's Minister of Economy stated that he could not answer.¹⁰¹²

- Meanwhile, as shown above, the statements and actions of Honduran officials and authorities as to the status of existing ZEDEs throughout the years were highly contradictory.
 - According to Speaker Redondo, ZEDEs were “illegal companies” that had ceased to exist. This was endorsed by Mr. Zelaya and the Anti-ZEDE Commissioner.¹⁰¹³
 - The Secretary of State for the Office of the President announced that Honduras would explore a possible negotiated agreement that would allow investors to protect their investments under a new legal framework.¹⁰¹⁴
 - The Tax Authority acknowledged that investors in ZEDEs were entitled to legal stability for fifty years.¹⁰¹⁵
 - The Honduran Customs Administration stated that there would be a transition period for existing ZEDEs, which would become ZOLIs.¹⁰¹⁶ Likewise the Anti-ZEDE Commissioner anticipated that companies established in the ZEDEs would transition into another form of SEZ.¹⁰¹⁷
- Likewise, the conduct of the Honduran State was contradictory. On the one hand, CAMP continued to operate, register incorporations into the ZEDE, and charge its regular fees to Claimants.¹⁰¹⁸ On the other hand, other Honduran authorities took ambiguous or anti-ZEDE positions.¹⁰¹⁹ In 2023, after Congress failed to repeal the ZEDE Constitutional Provisions, the Permanent Commission of the Congress (without any power to do so) declared that the ZEDEs were not entitled to operate and called for criminal charges to be brought.¹⁰²⁰ In 2024, police tried to force entry into Próspera ZEDE and demanded payments from a company in Próspera ZEDE to allow it to operate.¹⁰²¹

¹⁰¹² See *supra* § II.D.4; Minutes of meeting between representatives of Claimants and the Secretary of Economic Development dated 4 Nov. 2022 (C-555).

¹⁰¹³ See *supra* § II.D.4.

¹⁰¹⁴ See *supra* § II.D.4.

¹⁰¹⁵ See *supra* § II.D.4.

¹⁰¹⁶ See *supra* § II.D.4.

¹⁰¹⁷ See *supra* § II.D.4.

¹⁰¹⁸ See *supra* § II.D.4.

¹⁰¹⁹ See *supra* §§ II.D.4-5.

¹⁰²⁰ See *supra* § II.D.6.

¹⁰²¹ See *supra* § II.D.7.

- Despite the various calls for shutting down Próspera ZEDE, Honduras does not appear to have taken steps to do so, and Claimants have continued to operate relying on their acquired rights and belief that they remain entitled to legal stability.¹⁰²² Nevertheless, the state of legal uncertainty has been highly prejudicial.¹⁰²³

440. Honduras's refusal to provide transparency or act consistently is flagrantly unjust and inequitable in violation of Honduras's FET obligation under CAFTA-DR. Honduras's conduct fits squarely within the standard of transparency articulated in *Metalclad*, where the tribunal found a breach of FET because:

Mexico failed to ensure a transparent and predictable framework for Metalclad's business planning and investment. The totality of these circumstances demonstrates a lack of orderly process and timely disposition in relation to an investor of a Party acting in the expectation that it would be treated fairly and justly in accordance with the NAFTA.¹⁰²⁴

441. Similarly, in *Telefónica*, the tribunal found a lack of consistency because "it cannot be said that the conduct . . . was coherent; on the contrary, it was at times fluctuating and inconsistent," and "contradictory on numerous occasions."¹⁰²⁵

(ii) The Supreme Court's decision declaring the ZEDE Legal Framework unconstitutional *ex tunc* was arbitrary and unreasonable, as well as non-transparent and inconsistent

442. Honduras continued and compounded the above-mentioned unjust conduct through the 2024 decision of the Supreme Court that declared the entire ZEDE Legal Framework unconstitutional and – in a first for Honduras – gave the ruling *ex tunc* effect. The circumstances of this decision as well as its content were arbitrary and unreasonable, as well as non-transparent and inconsistent.

443. As shown above:

- Honduras first sought to repeal the ZEDE Legal Framework through legislative means, the first step being Decrees Nos. 32 and 33 that, respectively, began the process of amending the Constitution to remove the ZEDE Constitutional Provisions and repealed the ZEDE

¹⁰²² See *supra* § II.D.7.

¹⁰²³ See *supra* § II.D.7.

¹⁰²⁴ *Metalclad* (CLA-171) ¶ 99.

¹⁰²⁵ See *Telefónica* (CLA-118) ¶ 447.

Organic Law.¹⁰²⁶ Despite this initial success, the Castro administration ultimately failed in its efforts to repeal the ZEDE Constitutional Provisions, as it was not able to gather the necessary support during the next legislative session for the required ratification by a vote of two-thirds of Congress.¹⁰²⁷

- Even as it was losing power in Congress, the Castro administration sought to bolster its power by stacking the Supreme Court. As detailed above, the government changed the requirements for the appointment of Supreme Court justices and dispensed with the established procedure for selecting justices such that political quotas replaced merit-based appointments, and the LIBRE Party was able to hand pick a plurality of the Supreme Court justices.¹⁰²⁸ The appointment process was nakedly political, with candidates' positions on the ZEDE Legal Framework being a critical factor throughout the process.¹⁰²⁹ To top it all off, Raquel Obando, the aunt of President Castro's son-in-law and a member of the LIBRE Party, was appointed as Presiding Justice of the Supreme Court.¹⁰³⁰ Notably, Ms. Castro's husband, former President Zelaya, took credit for shaping the Court and called upon it to rule the ZEDE Legal Framework unconstitutional.¹⁰³¹
- By mid-August, newly-appointed Presiding Justice of the Supreme Court Raquel Obando (a member of the LIBRE Party and the aunt of President Castro's son-in-law) found herself under investigation and facing calls for her resignation after her husband was implicated in bribe-taking.¹⁰³²
- On Tuesday, 17 September 2024, Ms. Obando issued a summons for a plenary session of the Court to consider the constitutionality of the ZEDE Legal Framework three days later, on Friday, 20 September 2024.¹⁰³³ The circumstances of the summons were immediately questioned, as several sitting justices were unavailable, and the session would therefore require using substitute justices, a position not contemplated in the Honduran Constitution but that had been created under the Castro Administration in 2023.¹⁰³⁴
- On 20 September 2024, the Supreme Court issued a press release announcing its decision to declare the entire ZEDE Legal Framework unconstitutional *ex tunc*.¹⁰³⁵ On 14

¹⁰²⁶ See *supra* § II.D.2-3.

¹⁰²⁷ See *supra* § II.D.6.

¹⁰²⁸ See *supra* § II.D.6.

¹⁰²⁹ See *supra* § II.D.6.

¹⁰³⁰ See *supra* § II.D.6.

¹⁰³¹ See *supra* § II.D.6; “Mel” Zelaya thinks that new Supreme Court should reverse re-election and ZEDEs, HONDUDIARIO (21 Feb. 2023) (C-115).

¹⁰³² See *supra* § II.D.6.

¹⁰³³ See *supra* § II.D.6; Judicial Branch of Honduras, Summons to Plenary Session (17 Sep. 2024) (C-137); *Call for SC plenary session to address ZEDE and amnesty raises suspicion among the opposition*, EL HERALDO (18 Sep. 2024) (C-138).

¹⁰³⁴ See *supra* § II.D.6.

¹⁰³⁵ See *supra* § II.D.6; *Press Release*, PODER JUDICIAL (20 Sept. 2024) (C-145).

November 2024, the Honduran press published what reportedly was a copy of the decision, which was indeed dated 20 September 2024 but was only partially signed.¹⁰³⁶ The Supreme Court’s “X” account tweeted that the opinion was being notified to the National Congress on 21 November 2024, with the press reporting that magistrates had signed the decision that same week.¹⁰³⁷

- On 25 November 2024, an official version of the decision of the Supreme Court’s decision was published.¹⁰³⁸ While similar to the partially-signed copy that previously had been leaked to the press, the official decision was not identical, further calling into question how and when the decision came to be.¹⁰³⁹
- The decision itself was in complete contradiction to the Supreme Court’s prior repeated position on the ZEDE Legal Framework, overreaching in scope, and unprecedented. Not only did the Supreme Court disavow its own 2014 decisions that the ZEDE Legal Framework was constitutional,¹⁰⁴⁰ it now declared the entire regime unconstitutional *ex tunc* on the basis of a *sua sponte* decision to consider the constitutionality of the entire regime in a case that specifically challenged only a single article of the ZEDE Law, which by then had already been repealed.¹⁰⁴¹ The Supreme Court itself recognized that the *ex tunc* effect of its decision was unprecedented: “the unconstitutionality that applies to the creation and establishment of the [ZEDes] produces retroactive or *ex tunc* effects, an exceptional and until now, unique case in the judicial history of Honduras.”¹⁰⁴²
- Critically, the Supreme Court’s position with respect to investors in existing ZEDes and the decision’s effects on their rights was unintelligible and merely deepened Claimants’ legal uncertainty. Specifically, the Court’s professed protection of the rights of “companies constituted in good faith that intended to become ZEDes”¹⁰⁴³ demonstrates a total lack of understanding of the ZEDE Legal Framework, as it conflates the ZEDE itself with its developers and the investors therein. Likewise, the Court’s remedy for such companies was for them to be subject to the ordinary legal framework of Honduras, which was really

¹⁰³⁶ See *supra* § II.D.6; Unofficial Decision of the Supreme Court of Honduras, Case No. RI 0738-2021 ruling on the unconstitutionality of ZEDE Legal Framework dated 20 Sep. 2024, published by Honduran press on 14 Nov. 2024 (C-172).

¹⁰³⁷ See *supra* § II.D.6; M. Torres, *Notificada la Sentencia que declara Inconstitucionalidad de las ZEDE; certificación va al CN*, HCH (21 Nov. 2024) (C-178).

¹⁰³⁸ See *supra* § II.D.6; *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559).

¹⁰³⁹ See *supra* § II.D.6.

¹⁰⁴⁰ See *supra* § II.D.6; *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 52-57. See also Cosenza § 7.2.

¹⁰⁴¹ See *supra* § II.D.6; *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 16-17. See also Cosenza § 7.1.

¹⁰⁴² See *supra* § II.D.6; *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 18 (emphasis added).

¹⁰⁴³ *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 59-60.

no remedy at all as it would deprive them of the benefits conferred by the ZEDE Legal Framework.¹⁰⁴⁴

444. The circumstances of the Supreme Court decision plainly demonstrate that it was arbitrary and unreasonable. It was clearly motivated by predisposition, and “not based on legal standards but on discretion, prejudice or personal preference.”¹⁰⁴⁵ Likewise, as with the State’s conduct in *Metalclad*, Honduras has “failed to ensure a transparent and predictable framework for [Claimants’] business planning and investment. The totality of these circumstances demonstrates a lack of orderly process and timely disposition in relation to an investor . . . acting in the expectation that it would be treated fairly and justly.”¹⁰⁴⁶
445. Moreover, as tribunals have held, State acts violate FET if they “deviate from the applicable law and are abusive, discretionary and lack motivation or legal motivation in such a way as to be capricious, are grossly unfair, openly inconsistent or contradictory with previous conduct and all this in a manner that defies the very notion of legal correctness.”¹⁰⁴⁷ It is plain that the Supreme Court’s decision did so. As Mr. Cosenza explains:

a thorough analysis of the judgment and the circumstances surrounding it reveals several aspects or issues that warrant further comment, such as: (i) the reversal of the legal views that had previously been adopted by the Constitutional Chamber on the same matter; (ii) the extensive effect of the ruling issued by the Chamber in connection with the subject matter of the action it purported to resolve; (iii) the retroactive effect attributed to the Judgment; (iv) the declaration holding unconstitutional certain rules which had already been repealed by the Legislative Branch; (v) the disregard for due process; (vi) the inclusion of other rulings in

¹⁰⁴⁴ See *supra* § II.D.6; *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 59-60. See also Cosenza § 7.7.

¹⁰⁴⁵ Christoph Schreuer, *Protection against Arbitrary or Discriminatory Measures, The Future of Investment Arbitration* (published online by Cambridge University Press on 13 Jul. 2020) (CLA-166) p. 188; Rudolf Dolzer & Christoph Schreuer, *PRINCIPLES OF INTERNATIONAL INVESTMENT LAW*, Oxford University Press (2nd ed. 2012) (CLA-140) p. 193. See also *EDF* (CLA-165) ¶ 303; *Gramercy* (CLA-164) ¶ 831; *Flughafen Zürich* (CLA-183) ¶ 585; *SAUR* (CLA-132) ¶ 488 (all citing Prof. Schreuer’s quote on arbitrariness). See also *Plama* (CLA-167) ¶ 184 (“[U]nreasonable or arbitrary measures . . . are those which are not founded in reason or fact but on caprice, prejudice or personal preference . . .”).

¹⁰⁴⁶ *Metalclad* (CLA-171) ¶ 99.

¹⁰⁴⁷ See *South32* (CLA-185) ¶ 706.

addition to the declaration of unconstitutionality; and (vii) the articulation of arguments and rulings that are unintelligible.¹⁰⁴⁸

446. Beyond the plethora of defects as a matter of Honduran law that render the Court's decision arbitrary and unreasonable, its retroactive effect is particularly problematic as it creates significant legal uncertainty. As the *South32* tribunal explained in finding that retroactive measures by Colombia were arbitrary:

[t]he retroactive application of the law is not only unlawful conduct, but also creates absolute uncertainty as to which legal framework was applicable, resulting in total defenselessness; the state applies a law that did not exist to legal situations or relationships already developed under a different law – thus affecting basic notions of legal certainty;

Blatantly inconsistent reasoning is tantamount to an absence of reasoning and a decision lacking reasoning exposes the subjects affected by that decision to arbitrary outcomes;

Contradictory decisions create a sense of deviation from the law, subjectivism and of capricious elements in decision-making by public authorities who, judging the same alleged irregularities, arrive at different conclusions;¹⁰⁴⁹

447. Each of these elements is facially apparent in the case of Honduras's Supreme Court decision, as detailed above.

448. In sum, the Supreme Court's 2024 decision declaring the ZEDE Legal Framework unconstitutional *ex tunc* – a first in Honduras according to the Supreme Court itself¹⁰⁵⁰ – was arbitrary, unreasonable, non-transparent, and inconsistent. It contradicted the Court's own prior rulings on the ZEDE Legal Framework, disregarded the acquired rights and legitimate expectations of investors, and was issued in a manner that undermined the rule of law and legal certainty in Honduras. The decision was not the product of a fair and impartial judicial process, but rather the result of a politically motivated campaign to dismantle the ZEDE regime, in clear violation of Honduras's FET

¹⁰⁴⁸ Cosenza ¶ 129.

¹⁰⁴⁹ *South32* (CLA-185) ¶ 753.

¹⁰⁵⁰ *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559) pp. 18, 57.

obligations.

(iii) From the moment President Castro came to power through to today, Honduras has harassed Claimants

449. Since President Castro assumed office, Honduras has engaged in a sustained campaign of harassment and vilification against Claimants, in violation of its obligation under Article 10.5 of CAFTA-DR to treat Claimants fairly and equitably.

450. As shown above, Honduras has harassed Claimants as follows:¹⁰⁵¹

- President Castro and numerous Honduran officials have called Próspera ZEDE illegal, called investors in the ZEDE criminals, and threatened criminal prosecutions.¹⁰⁵²
- Support for the ZEDE has been called treason, which in Honduras is punishable by imprisonment for 15 to 20 years and loss of citizenship, among other sanctions.¹⁰⁵³ Honduras's very first effort to repeal the ZEDE Law provided for treason charges to be brought against Hondurans involved with the ZEDEs.¹⁰⁵⁴ Following the Supreme Court's decision in 2024, numerous officials threatened to call for treason charges to be brought against political opponents.¹⁰⁵⁵
- National and local police have mounted operations against businesses in Próspera ZEDE, demanding un-owed and never-before requested payments. Police forced their way into the Johnson Building in Próspera ZEDE, chaining the entrances, and demanding that a company operating there pay hundreds of thousands of dollars in never-before notified

¹⁰⁵¹ See *supra* §§ II.D.2, II.D.4, II.D.6-7.

¹⁰⁵² See *supra* §§ II.D.2, II.D.4, II.D.6; Presidential Inauguration of 2022, *The President of the Republic, Xiomara Castro, sends a message to Honduras*, dated 27 Jan. 2022 (C-47) (“During the first month of legislative activity, we must undo the abhorrent constitutional and legal reforms introduced through contracts of the Executive illegally endorsed by the National Congress that undermine the people’s sovereignty, such as the ZEDEs”); *They are not business people, they are criminals*” states the speaker of the Congress of Honduras about the owners of ZEDEs, CRITERIO (22 Apr. 2022) (C-58); Fernando Emilio García Rodríguez’ radio interview, RADIO GLOBO (9 Jan. 2023) (C-560) (reporting that the Anti-ZEDE Commissioner publicly threatened criminal prosecutions for treason and claimed to have a list of 100 people who were under investigation for their links to the ZEDEs).

¹⁰⁵³ See *supra* §§ II.D.4, II.D.6-7; Decree No. 130-2017, enacting the Criminal Code of Honduras, published on 10 May 2019 (C-26) Arts. 555, 562.

¹⁰⁵⁴ See *supra* § II.D.2; Decree No. 46-2022, published on 12 May 2022 (C-561), Index of Decrees of the National Congress of Honduras, dated 3 Feb. 2022 (C-54) Art. 3.

¹⁰⁵⁵ See *supra* § II.D.7; Luis Redondo, X @LREDONDO (20 Sep. 2024) (C-143); *Dixon accuses deputies of treason for voting in favor of the ZEDEs*, EL HERALDO (23 Sep. 2024) (C-148).

fees.¹⁰⁵⁶ Another business was closed for alleged non-payment of taxes or failure to obtain municipal permits.¹⁰⁵⁷

- Honduran authorities have sought to prejudice Claimants and other investors by interfering with operations of Próspera ZEDE. Banking authorities have pressured local financial institutions to deny services to Claimant affiliates, preventing the free transfer of funds and interfering with normal banking activities.¹⁰⁵⁸ Tax authorities have refused to issue taxpayer identification numbers to companies registered in Próspera ZEDE.¹⁰⁵⁹ Customs authorities have refused to comply with their contractual obligation to provide customs services in Próspera ZEDE, even while continuing to collect their fee thereunder.¹⁰⁶⁰

451. Honduras's public vilification of Próspera ZEDE and actions against those associated with Próspera ZEDE evidently are a deliberate attempt to drive Claimants and investors away through intimidation. Sadly, in Honduras, such treats have to be taken very seriously: the Castro administration's deliberate or reckless rhetoric does more than simply agitate. Ms. Castro's public attacks on members of Congress in early 2022 resulted in shootings against their homes.¹⁰⁶¹ The first Technical Secretary of Próspera ZEDE resigned in fear after an encounter with a would-be assassin.¹⁰⁶² As Mr. Brimen explains, these incidents have caused him real fear for himself and anyone associated with Próspera ZEDE.¹⁰⁶³

452. Honduras's conduct has also interfered with Claimants' presentation of its claims in the instant case. Time and time again, potential witnesses and experts refused to collaborate publicly with Claimants out of fear of loss of citizenship and other forms of retaliation. Honduras's own

¹⁰⁵⁶ See *supra* § II.D.7; Brimen ¶ 113; Próspera ZEDE, *Confiscation of investments on the island of Roatán?* dated 14 Oct. 2024 (C-360).

¹⁰⁵⁷ See *supra* § II.D.5.a; Brimen ¶ 106.d; Roatán Infoinsular Post on Municipal Closure of Café dated 20 Mar. 2023, FACEBOOK (C-562).

¹⁰⁵⁸ See Brimen ¶¶ 106.b, 107.

¹⁰⁵⁹ See *supra* § II.D.5.a; Brimen ¶ 106(c).

¹⁰⁶⁰ See *supra* § II.D.5.a; Email from Próspera ZEDE Trust to CAMP (C-563); Próspera ZEDE payment to Honduran Customs Administration for 2022-23 customs fee dated 22 Apr. 2022 (C-481); Próspera ZEDE payment to Honduran Customs Administration for 2024-25 customs fee dated 22 Mar. 2024 (C-359).

¹⁰⁶¹ See *supra* § II.D.2; Brimen ¶ 98.

¹⁰⁶² See *supra* § II.D.2; Brimen ¶ 99.

¹⁰⁶³ See Brimen ¶¶ 100, 104-105, 124.

Constitution acts as a strong discouragement because it makes aiding in claims against Honduras before international tribunals punishable by revocation of citizenship.¹⁰⁶⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

453. Thus, in addition to all its other actions in violation of FET, Honduras has harassed Claimants in violation of its undertaking in Article 10.5 of CAFTA-DR not to do so. The tribunal in *Stati v Kazakhstan* found that it did not “need to find that there was a ‘playbook’ [*i.e.*, a plan to coerce investors] . . . to find that the conduct presented . . . constituted a violation of the FET,” and that a breach of FET resulted from “a string of measures of coordinated harassment by various institutions of Respondent.”¹⁰⁶⁶ The same is true here.

454. Accordingly, Honduras has violated its FET obligation under Article 10.5 of the Treaty.

2. Honduras has failed to accord Claimants legal stability guaranteed under the Honduras-Kuwait BIT in breach of the Most Favored Nation guarantee in Article 10.4 of CAFTA-DR

455. As explained in Sections IV.A.1.b.i and IV.A.1.c.i above, the 50 years of legal stability accorded to Kuwaiti investors in the Kuwait-Honduras BIT was automatically extended to all investors in ZEDEs through the MFN clause in Article 32 of the ZEDE Law, and Honduras’s failure to provide Claimants 50 years of legal stability constitutes a failure to accord FET in breach of Article 10.5 of CAFTA-DR because it breached Claimants’ legitimate expectations and was arbitrary. Separately, and in addition, Honduras’s conduct also constitutes a breach of the MFN provision in Article 10.4 of CAFTA-DR, which also makes Article 16 of the Honduras-Kuwait BIT applicable to U.S. investors, as explained below.

¹⁰⁶⁴ Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 42(2) (“Citizenship is lost . . . For aiding, against the State of Honduras, a foreigner or foreign government in any diplomatic claim or before an international tribunal.”).

¹⁰⁶⁵ [REDACTED]

¹⁰⁶⁶ *Stati* (CLA-173) ¶ 1095.

(a) Article 10.4 of CAFTA-DR requires Honduras to accord covered investors and investments treatment no less favorable than that accorded to investors of other States and their investments under other treaties, including the Honduras-Kuwait BIT

456. Article 10.4 of CAFTA-DR requires Honduras to treat Claimants in the same manner as it treats investors of any non-Party State. In particular, Article 10.4 provides that Honduras:

shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

shall accord to investments of another Party treatment no less favorable than that it accords, in like circumstances, to investments of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

457. Article 10.4 is worded broadly and pertains to any form of “treatment” relating to covered investors and their covered investments in Honduras’s territory (establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition) including any more favorable substantive protections available to investors from other countries and their investments. Accordingly, Claimants and their investments are entitled to the protections of the Honduras-Kuwait BIT that are more favorable than those contained in CAFTA-DR, including, specifically, the 50-year legal stability guarantee for ZEDE investments.

458. It is well established that MFN clauses allow investors to invoke more favorable substantive protections contained in treaties that the host State has concluded with third countries. As Professors Dolzer and Schreuer explain in their treatise on *Principles of International Investment Law*, “[t]he weight of authority clearly supports the view that an MFN rule grants a claimant the right to benefit from substantive guarantees contained in third treaties.”¹⁰⁶⁷ MFN treatment ensures equality among foreign investors and prevents the host State from granting certain substantive benefits to investors from one State while denying them to others. As explained by the tribunal in

¹⁰⁶⁷ Rudolf Dolzer & Christoph Schreuer, *PRINCIPLES OF INTERNATIONAL INVESTMENT LAW*, Oxford University Press (2nd ed. 2012) (CLA-140) p. 211.

White Industries v. India, importing a more favorable substantive provision from another investment treaty “achieves exactly the result which the parties intended by the incorporation in the BIT of an MFN clause.”¹⁰⁶⁸

459. Tribunals in various cases have found that MFN clauses import substantive protections granted in other treaties concluded by the host State. For example, in *Al-Warraq v. Indonesia*, the tribunal found that, although the applicable treaty contained no FET clause, the claimant was nonetheless entitled to FET protection by virtue of the MFN clause, noting that “the most-favoured-nation clause has been applied to . . . substantive treaty guarantees.”¹⁰⁶⁹
460. Likewise, various tribunals have recognized that MFN clauses entitle investors to rely on umbrella clauses from other treaties. In a dispute involving an MFN clause, the *Arif v. Moldova* tribunal found that the claimant could rely on the umbrella clause in a third-party BIT.¹⁰⁷⁰ The tribunal noted that MFN clauses apply to substantive treaty obligations, and it was therefore possible to “extend[] the more favorable standard of protection granted by the ‘umbrella’ clause in either [the

¹⁰⁶⁸ *White Industries Australia Ltd. v. The Republic of India*, UNCITRAL, Final Award (30 Nov. 2011) (CLA-188) ¶¶ 11.2.3-11.2.4 (“White . . . is instead availing itself to the right to rely on more favourable substantive provisions in the third-party treaty. This does not ‘subvert’ the negotiated balance of the BIT. Instead, it achieves exactly the result which the parties intended by the incorporation in the BIT of an MFN clause.”); J. Romesh Weeramantry, *Treaty Interpretation in Investment Arbitration* (2012) (CLA-189) p. 177 (“A generally accepted position is that once arbitral jurisdiction has been established in relation to a claim, an MFN clause gives covered home State investors and investments the benefit of more favourable *substantive* protections contained in other investment treaties between the host State and third States.”); Scott Vesel, *Clearing a Path Through a Tangled Jurisprudence: Most-Favored-Nation Clauses and Dispute Settlement Provisions in Bilateral Investment Treaties*, 32 YALE J. INT’L L. 125 (2007) (CLA-190) p. 163 (“[T]he application of the MFN principle to substantive provisions has never been seen as problematic. The core purpose of the MFN clause is to ensure substantive equality in the treatment of investors of different nationalities . . .”).

¹⁰⁶⁹ *Hesham Talaat M. Al-Warraq v. The Republic of Indonesia*, Award (15 Dec. 2014) (CLA-191) ¶¶ 540-555 (interpreting Article 8 of the OIC Agreement, which provides that “[t]he Investors of any contracting party shall enjoy, within the context of economic activity in which they have employed their investments in the territories of another contracting party, a treatment not less favourable than the treatment accorded to investors belonging to another State not party to this Agreement, in the context of that activity and in respect of rights and privileges accorded to those investors.”).

¹⁰⁷⁰ *Mr. Franck Charles Arif v. Moldova*, ICSID Case No. ARB/11/23, Award (8 Apr. 2013) (“*Arif*”) (CLA-192) ¶¶ 385-396 (agreeing to import an umbrella clause from the Moldova-UK or the Moldova-US BIT pursuant to Article 9 of the Moldova-France BIT, which provides that: “Investments having been the subject of a particular [the] specific commitment of one of the Contracting Parties towards the nationals and companies of the other Contracting Party, are regulated, without prejudice to the dispositions of the present Agreement, by the provisions of such commitment as far as it contains more favourable provisions than those provided for in the present Agreement.”).

UK-Moldova BIT or the US-Moldova BIT] into the BIT at hand.”¹⁰⁷¹

461. The *EDF v. Argentina* tribunal likewise found that the claimant could rely on the umbrella clause in a third-party BIT through application of the MFN clause in the France-Argentina BIT.¹⁰⁷² The tribunal noted that to “ignore[] the MFN clause in [that] case would permit more favorable treatment to investors under [*sic*] third countries, which is exactly what the MFN clause is intended to prevent” and that to rule otherwise, “would effectively read the MFN language out of the treaty.”¹⁰⁷³

(b) Honduras has breached its obligation under Article 10.4 of CAFTA-DR to accord Claimants the same 50 years of legal stability that it accorded Kuwaiti investors under Article 16 of the Honduras-Kuwait BIT

462. As explained above, in the Honduras-Kuwait BIT, Honduras expressly guaranteed to preserve the ZEDE Legal Framework with respect to Kuwaiti investors and their investments for a minimum of fifty years, a treatment it has failed to accord to Claimants.¹⁰⁷⁴ In particular, Article 16(4) of the Honduras-Kuwait treaty provides in full:

In the case of investments made under the regime of ZEDE or located in an area of the territory of the Republic of Honduras that has been designated as a ZEDE, the Republic of Honduras declares that all the provisions under Articles 294, 303 and 329 of the Constitution of the Republic of Honduras; the ZEDE Organic Law; and all rights, conditions, procedures and protections either explicit or implicit included therein respectively, shall remain as guarantees and should be guaranteed to the investments and the investors of the State of Kuwait for a timeframe of not less than fifty (50) years.¹⁰⁷⁵

¹⁰⁷¹ *Arif* (CLA-192) ¶ 396.

¹⁰⁷² *EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic*, ICSID Case No. ARB/03/23, Award (11 Jun. 2012) (CLA-141) ¶¶ 921-934 (interpreting Article 4 of the France-Argentina BIT, which provides that “each Contracting Party shall provide to the investors of the other Party, with respect to their investments and activities associated with such investments, —a treatment no less favorable than that accorded to . . . investors of the most favored Nation.”).

¹⁰⁷³ *Id.* ¶¶ 932-933. The EDF tribunal further observed that while there was some “divergence of opinion . . . with respect to application of MFN clauses,” such divergence only concerned the extent to which an MFN clause reached the jurisdictional and procedural provisions of third-country treaties. *Id.* ¶¶ 935-936.

¹⁰⁷⁴ *See supra* §§ II.B.2.b, IV.A.1.b.

¹⁰⁷⁵ Honduras-Kuwait BIT (CLA-3) Art. 16(4) (emphasis added).

463. While, as explained in Section IV.A.1.a.i above, the FET standard in Article 10.5 of CAFTA-DR protects investors' legitimate expectations and the stability of regulatory regimes relied on by investors, CAFTA-DR does not include an explicit guarantee that the ZEDE Legal Framework will remain in force for a period of fifty years, entitling investors to rely on all rights, conditions, procedures and protections either explicitly or implicitly included therein.
464. Thus, the Honduras-Kuwait BIT provides an express legal stability guarantee with respect to ZEDE investors and their investments that Claimants are not expressly afforded by the CAFTA-DR. To the extent that Honduras is not otherwise required by CAFTA-DR to accord legal stability to Claimants for 50 years (which as noted above, it is, under the FET standard), Article 16 of the Honduras-Kuwait BIT qualifies as a more favorable treatment for purposes of the MFN clause in Article 10.4 of CAFTA-DR, and applies to Claimants pursuant to that provision.
465. Thus, Honduras is obligated to accord Claimants and their investments the same legal stability provided to Kuwaiti investors and investments pursuant to Article 10.4 of CAFTA-DR, and its failure to do so constitutes a breach of that provision.
466. Because Honduras has refused to extend the same fifty-year guarantee to Claimants and their investments, it has denied them the benefit of the more favorable legal stability treatment available to Kuwaiti investors and has, accordingly, breached its obligations under Article 10.4 of CAFTA-DR.

3. If Honduras takes the position that Claimants' rights under the ZEDE Legal Framework no longer exist, Honduras has unlawfully expropriated Claimants' investments in breach of Article 10.7 of CAFTA-DR

467. It is a basic tenet of international investment law that a State may not expropriate foreign investments unless certain conditions are met, including the requirement to pay prompt, adequate, and effective compensation. International law recognizes that expropriation can occur in two ways: either as a direct taking, or indirectly through measures that effectively deprive an investor of the use or reasonably expected economic benefits of its property. In each case, a State's failure to comply with the requirements of international law with respect to expropriation renders its

measures unlawful.

468. The international law standard for expropriation is set forth in Article 10.7 of CAFTA-DR, which, together with Annex 10-C, expressly prohibits Honduras from expropriating U.S. investments, directly or indirectly, absent strict compliance with the conditions set forth therein.
469. As explained above, various Honduran authorities have taken conflicting positions, and Honduras has refused to answer Claimants directly, as to the status of Claimants' rights under the ZEDE Legal Framework. While Claimants consider that there are strong arguments that HPI's rights are protected by the legal stability guarantees that Honduras provided under the ZEDE Legal Framework and still exist, Honduras may take a different position. If Honduras takes the position that Claimants' rights under the ZEDE Legal Framework no longer exist, Honduras has unlawfully expropriated Claimants' investment, either directly or indirectly, in breach of Article 10.7 of CAFTA-DR.

(a) Article 10.7 of CAFTA-DR regulates direct and indirect expropriation of tangible and intangible property rights or interests in an investment

470. CAFTA-DR expressly prohibits the direct and indirect expropriation of covered investments except in accordance with specified conditions. Specifically, Article 10.7.1 of the Treaty provides:

No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ('expropriation'), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
- (d) in accordance with due process of law and Article 10.5 [which, as detailed above, sets out the guarantee of MST, including FET].

471. With respect to the requirement of prompt, adequate, and effective compensation, Article 10.7.2 provides:

Compensation shall:

- (a) be paid without delay;
- (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“the date of expropriation”);
- (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
- (d) be fully realizable and freely transferable.¹⁰⁷⁶

472. Article 10.7 provides that it must be interpreted in accordance with Annex 10-C of CAFTA-DR,¹⁰⁷⁷ which confirms certain shared understandings of the treaty parties as to expropriation. To start, Annex 10-C confirms that “Article 10.7.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.”¹⁰⁷⁸

473. In addition, Annex 10-C addresses the nature of expropriatory measures and what can be subject to expropriation:

An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.¹⁰⁷⁹

474. The reference to “tangible or intangible property right or property interest in an investment” reflects the well-established rule that a State can expropriate both tangible and intangible assets,¹⁰⁸⁰ and is

¹⁰⁷⁶ CAFTA-DR (CLA-2) Art. 10.7.

¹⁰⁷⁷ CAFTA-DR (CLA-2) Art. 10.7, n. 3 (“Article 10.7 shall be interpreted in accordance with Annexes 10-B and 10-C.”). As detailed above, Annex 10-B contains the treaty parties’ shared understanding of “customary international law.”

¹⁰⁷⁸ CAFTA-DR (CLA-2), Annex 10-C ¶ 1.

¹⁰⁷⁹ CAFTA-DR (CLA-2), Annex 10-C ¶ 2.

¹⁰⁸⁰ George C. Christie, *What Constitutes a Taking of Property Under International Law?*, in 38 BRIT. Y.B. INT’L L. 307-338 (1962) (CLA-193) pp. 318-319 (“contract and many other so-called intangible rights can, under certain circumstances, be expropriated, even by indirect interference”); Thomas Wälde & Abba Kolo, *Environmental Regulation, Investment Protection and ‘Regulatory Taking’ in International Law*, in 50 INT’L AND COMP. L. Q. 811 (2001) (CLA-194) p. 835 (the modern rules on investment protection recognize and protect the value of property derived from “the capability of a combination of rights in a commercial and corporate setting and under

in line with the Treaty's broad definition of protected investments, which encompasses every asset with the characteristics of an investment (including, among other things, authorizations and similar rights conferred pursuant to domestic law, tangible or intangible property rights, and intellectual property rights).¹⁰⁸¹

475. Moreover, by confirming that expropriation encompasses the "interference" with such protected rights, the Treaty is in line with the well-established rule of international law that expropriation includes State interference with an investor's use of its rights. Tribunals have recognized that interference with use is a core component of expropriation. As the Iran-US Claims Tribunal observed, "[a] deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected."¹⁰⁸² Likewise, in *Middle East Cement v. Egypt*, the tribunal found that there is an expropriation "[w]hen measures are taken by a State the effect of which is to deprive the investor of the use and benefit of his investment even though he may retain nominal

a regulatory regime to earn a commercial rate of return."); *Libyan American Oil Company v. The Government of the Libyan Arab Republic*, Award (12 Apr. 1977) (CLA-195) p. 189 ("[I]ncorporeal property comprises all interests and rights which, though incapable of immediate material composition, may produce corporeal things or may be evaluated in financial and economic terms. In other words, incorporeal property includes those rights that have a pecuniary or monetary value."); *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award (2 Oct. 2006) ("ADC") (CLA-217) ¶ 318 (summarizing the claimants' argument that management fees qualified as "property rights" and were a protected investment under the treaty at issue), ¶ 325 ("As for the argument relating to the Management Fees, the Tribunal is satisfied, on the evidence it has heard and on the law, that the income stream derived from the Management Services Agreement was protected by the BIT and also falls within the ICSID Convention.").

¹⁰⁸¹ CAFTA-DR (CLA-2) Art. 10.28 (definition of "investment"). The existence and scope of rights is generally determined by reference to domestic law, whereas the question of whether there has been a violation of the Treaty is decided based on the treaty itself and the other applicable rules of international law. See, e.g., *El Paso* (CLA-145) ¶ 135 ("The fact that the BIT and international law govern the issue of Argentina's responsibility for violation of the treaty does not exclude that the domestic law of Argentina has a role to play too. The Tribunal agrees with the Claimant that this role is to inform the content of those commitments made by Argentina to Claimant that the latter alleges to have been violated. Thus, in order to establish which rights have been recognised by Argentina to the Claimant as a foreign investor, resort will have to be had to Argentina's law. However, whether a modification or cancellation of such rights, even if legally valid under Argentina's law, constitutes a violation of a protection guaranteed by the BIT is a matter to be decided solely on the basis of the BIT itself and the other applicable rules of international law.").

¹⁰⁸² *Tippetts, Abbott, McCarthy, Stratton v. TAMS-AFFA*, Iran Claims Tribunal, Award (29 Jun. 1984) (CLA-201) p. 5.

ownership of the respective rights being the investment.”¹⁰⁸³

476. Annex 10-C expressly confirms that Article 10.7 protects against both direct and indirect expropriation:

Article 10.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.¹⁰⁸⁴

477. Irrespective of the type of expropriation, a State’s failure to meet any one of the legality requirements in Article 10.7.1 – for a public purpose, non-discriminatory, accompanied by the payment of prompt, adequate, and effective compensation, and in accordance with due process of law and Article 10.5 of the Treaty – is unlawful and in breach of the Treaty. The scope of these requirements is well established.

- *For a public purpose* means that there must be a genuine public interest and that the expropriatory measure must be, in fact, “for” the public purpose, *i.e.*, capable of furthering the stated purpose.¹⁰⁸⁵

¹⁰⁸³ *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award (12 Apr. 2002) (“*Middle East*”) (CLA-202) ¶ 107.

¹⁰⁸⁴ CAFTA-DR (CLA-2), Annex 10-C ¶¶ 3-4.

¹⁰⁸⁵ *See, e.g., Nachingwea U.K. Limited (UK), Ntaka Nickel Holdings Limited (UK) and Nachingwea Nickel Limited (Tanzania) v. United Republic of Tanzania*, ICSID Case No. ARB/20/38, Award (14 Jul. 2023) (CLA-196) ¶¶ 274-275 (“[A] tribunal must also assess whether the impugned expropriatory measure was “for” the public purpose expressed. In so doing, all the relevant circumstances, including the government’s post-expropriation conduct, will have to be considered. In this regard, ‘the idea is to determine whether the measure had a reasonable nexus with the declared public purpose or in other words, was at least capable of furthering that purpose’. Further, there must also be some genuine public interest at hand in order for the ‘public purpose’ requirement to be satisfied.”). *See also ADC* (CLA-217) ¶¶ 222, 304, 429-433.

- *Non-discrimination* means the same thing in the context of expropriation as under the FET standard,¹⁰⁸⁶ i.e., that the State may not subject the investor to different treatment to others in similar circumstances.¹⁰⁸⁷
- *Payment of prompt, adequate, and effective compensation* means that the State is obligated to provide, at the moment of the taking, a sum equal to the fair market value of the investment immediately before the expropriatory measure occurred, and to do so in a freely usable and transferable currency.¹⁰⁸⁸ Absent compliance, the expropriation is unlawful regardless of how otherwise laudable a measure may be, as the tribunal in *Santa Elena v. Costa Rica* underscored:

the purpose of protecting the environment for which the Property was taken does not alter the legal character of the taking for which adequate compensation must be paid. The international source of the obligation to protect the environment makes no difference. Expropriatory environmental measures—no matter how laudable and beneficial to society as a whole—are, in this respect, similar to any other expropriatory measures that a state may take in order to implement its policies: where property is expropriated, even for environmental purposes, whether domestic or international, the state's obligation to pay compensation remains.¹⁰⁸⁹

- *In accordance with due process of law and Article 10.5* means that the State's measures must follow fair, transparent, and non-arbitrary procedures, and comply with the MST standard, including FET. This involves providing "an actual and substantive legal procedure" through which the investor can "raise its claims against the depriving actions already taken or about to be taken against it"¹⁰⁹⁰ and "basic legal mechanisms, such as reasonable advance notice . . . and an unbiased and impartial adjudicator to assess the actions in dispute."¹⁰⁹¹ The investor must also be afforded "a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard."¹⁰⁹²

¹⁰⁸⁶ See *Crystallex* (CLA-161) ¶ 715 ("With regard to discrimination, the Tribunal similarly refers to its earlier findings on discrimination under FET which it considers relevant, *mutatis mutandis*, for its examination of the fulfilment of this particular requirement under expropriation.").

¹⁰⁸⁷ See *supra* § IV.A.1.(a)(ii); *Crystallex* (CLA-161) ¶ 715 ("The Tribunal recalls that to show discrimination the investor must prove that it was subjected to different treatment in similar circumstances without reasonable justification, typically on the basis of its nationality or similar characteristics.").

¹⁰⁸⁸ CAFTA-DR (CLA-2) Art. 10.7.

¹⁰⁸⁹ *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award (17 Feb. 2000) ("*Santa Elena*") (CLA-187) ¶¶ 71-72 (emphasis added).

¹⁰⁹⁰ *ADC* (CLA-217) ¶ 435.

¹⁰⁹¹ *Id.* ¶ 435.

¹⁰⁹² *Id.* ¶ 435.

(i) The Treaty regulates direct expropriation

478. Annex 10-C of CAFTA-DR provides that a direct expropriation occurs when “an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.”¹⁰⁹³ The critical factor that distinguishes a direct expropriation from an indirect expropriation is that in the former, in the words of the tribunal in *Flughafen Zürich*, the investor’s “rights . . . have passed entirely from the applicants to the [State], without the expropriated ones retaining even a nominal right over the investment.”¹⁰⁹⁴
479. It is well established that the taking of a right previously granted by the State may constitute a direct expropriation. In *Flughafen Zürich*, the tribunal found that there was a direct expropriation where Venezuela had entirely deprived the claimants of their rights to manage and operate an airport under a concession.¹⁰⁹⁵ In *Kardassopoulos v. Georgia*, the tribunal found that the cancellation of the investors’ right to operate an oil pipeline constituted a direct expropriation.¹⁰⁹⁶ Likewise, in *Quiborax*, the tribunal found a direct expropriation through a presidential decree revoking the investor’s mining concessions,¹⁰⁹⁷ even though the investor’s local subsidiary remained intact and

¹⁰⁹³ CAFTA-DR (CLA-2) Annex 10-C: Expropriation ¶ 3. See also Andrew Newcombe & Lluís Paradell, LAW AND PRACTICE OF INVESTMENT TREATIES: STANDARDS OF TREATMENT (2009) (CLA-197) p. 323 (stating that a direct expropriation occurs when a State “openly and deliberately seizes property, and/or transfers title to private property to itself or a state-mandated third party.”); Expropriation, UNCTAD Series on Issues in International Investment Agreements II (2012) (CLA-198) p. 6 (“Direct expropriation means a mandatory legal transfer of the title to the property or its outright physical seizure. Normally, the expropriation benefits the State itself or a State-mandated third party. In cases of direct expropriation, there is an open, deliberate and unequivocal intent, as reflected in a formal law or decree or physical act, to deprive the owner of his or her property through the transfer of title or outright seizure.”).

¹⁰⁹⁴ See *Flughafen Zürich* (CLA-183) ¶ 498.

¹⁰⁹⁵ See *Flughafen Zürich* (CLA-183) ¶¶ 503-509.

¹⁰⁹⁶ See *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award (3 Mar. 2010) (“*Kardassopoulos*”) (CLA-199) ¶ 387 (“The Tribunal finds that the circumstances of Mr. Kardassopoulos’ claim present a classic case of direct expropriation, Decree No. 178 having deprived GTI of its rights in the early oil pipeline and Mr. Kardassopoulos’ interest therein. The Tribunal also finds that this deprivation was not an exercise of the State’s *bona fide* police powers.”).

¹⁰⁹⁷ See *Quiborax S.A. and Non Metallic Minerals S.A. v. Bolivia*, ICSID Case No. ARB/06/2, Award (16 Sep. 2015) (“*Quiborax*”) (CLA-200) ¶¶ 27, 228-231, 233-234 (finding that the local subsidiary claimant’s investment was directly expropriated pursuant to a presidential decree, which required it to transfer its mining concessions to the State).

continued operating for several months, as “[w]hat gave value to the investment were the concessions; without them, the investment was lost in its entirety.”¹⁰⁹⁸

(ii) The Treaty regulates indirect expropriation

480. Article 10.7.1 also protects against indirect expropriation, *i.e.*, “where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.”¹⁰⁹⁹ As explained above, Annex 10-C confirms that expropriation includes “interference” with the use of protected rights and interests, which is in line with well-established law.¹¹⁰⁰ In addition, Annex 10-C provides the following guidance with respect to the existence of an indirect expropriation:

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.¹¹⁰¹

¹⁰⁹⁸ *Quiborax* (CLA-200) ¶¶ 228-231.

¹⁰⁹⁹ CAFTA-DR (CLA-2) Annex 10-C ¶ 4.

¹¹⁰⁰ *See supra* § IV.A.3.a.i; CAFTA-DR (CLA-2) Annex 10-C ¶ 4. *See also* *Tippetts, Abbott, McCarthy, Stratton v. TAMS-AFFA*, Iran Claims Tribunal, Award (29 Jun 1984) (CLA-201) p. 5; Louis B. Sohn & R.R. Baxter, *Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens*, Draft No. 12, Art. (10)(3)(a), in 55 AM. J. INT’L L. 545 (1961) (CL-10) p. 553 (“A ‘taking of property’ includes not only an outright taking of property but also any such unreasonable interference with the use, enjoyment, or disposal of property as to justify an inference that the owner thereof will not be able to use, enjoy, or dispose of the property within a reasonable period of time after the inception of such interference.”); UNCTAD *Taking of Property* (CL-29) p. 4 (“[M]easures short of physical takings may amount to takings in that they result in the effective loss of management, use or control, or a significant depreciation of the value, of the assets of a foreign investor[] . Some particular types of such takings have been called ‘creeping expropriations’, while others may be termed ‘regulatory takings.’”).

¹¹⁰¹ CAFTA-DR (CLA-2) Annex 10-C(a).

481. The *first* guideline in Annex 10-C requires that the Tribunal consider the “economic impact of the government action.”¹¹⁰² Tribunals have routinely found that indirect expropriation occurs where State measures substantially deprive the investor of the use, enjoyment, or economic benefit of its investment.¹¹⁰³ As confirmed by the *Metalclad* tribunal:
- expropriation can occur through covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.¹¹⁰⁴
482. In *Middle East*, the tribunal noted that “[w]hen measures are taken by a State the effect of which is to deprive the investor of the use and benefit of his investment even though he may retain nominal ownership of the respective rights being the investment, the measures are often referred to as ‘creeping’ or ‘indirect’ expropriation.”¹¹⁰⁵
483. In *Goetz*, the tribunal found that the State’s withdrawal of a bank’s free-zone status certificate caused an indirect expropriation as it “deprived [the claimants’] investments . . . of all utility and deprived the claimant investors of the benefit which they could have expected from their investments.”¹¹⁰⁶
484. State measures that render rights ineffective need not destroy the entire investment for a finding of indirect expropriation if those rights constitute a fundamental part of the economic structure of the investment.¹¹⁰⁷ The tribunal in *Ampal-American*, for instance, found that a law cancelling the local

¹¹⁰² See CAFTA-DR (CLA-2) Annex 10-C ¶ 4(a)(i).

¹¹⁰³ See, e.g., *Santa Elena* (CLA-187) ¶ 77 (finding that “[t]here is ample authority for the proposition that a property has been expropriated when the effect of the measures taken by the state has been to deprive the owner of the title, possession or access to the benefit and economic use of his property[.]”); *Crystallex* (CLA-161) ¶ 667 (recognizing that an expropriation can impact the “enjoyment or benefit of [an] investment . . .”).

¹¹⁰⁴ *Metalclad* (CLA-171) ¶ 103.

¹¹⁰⁵ *Middle East* (CLA-202) ¶ 107.

¹¹⁰⁶ *Antoine Goetz and others v. Republic of Burundi*, ICSID Case No. ARB/95/3, Award (10 Feb. 1999) (“*Goetz*”) (CLA-117) ¶ 124.

¹¹⁰⁷ For instance, in *Eureko v. Poland* (“*Eureko*”), the tribunal held that the lost opportunity to acquire additional shares in an investment, as provided for under an agreement, amounted to an expropriation – even where the investor at all times retained possession of its initial shares and continued to receive dividends on those shares.

entity's license to operate as a "free zone" company with a tax-free status was tantamount to expropriation, because it took "away a defined and valuable interest that had been validly conferred according to [domestic] law at the time that the investment was made and that had been guaranteed by the State for a defined period," despite the fact that the license cancellation did not destroy the underlying pipeline project.¹¹⁰⁸ The tribunal observed "that the inclusion of [an investment] within the tax-free zone system in Egypt was a fundamental part of the economic structure of the investment, which the Respondent knew and accepted from the outset at the highest level of Government, and which it confirmed by the issue of the specific license to [the investor], conferring tax-free status under the free zones system until 2025."¹¹⁰⁹

485. The *second* guideline in Annex 10-C requires that the Tribunal consider "the extent to which the government action interferes with distinct, reasonable investment-backed expectations,"¹¹¹⁰ a factor often considered by tribunals when finding expropriation.¹¹¹¹ In *Metalclad*, the investor relied on State assurances that it had all necessary permits, which were frustrated when the municipality refused to grant a construction permit and denied the investor's "right to operate [its investment], notwithstanding the fact that the project was fully approved and endorsed by the federal

See Eureko B.V. v. Poland, UNCITRAL, Partial Award (19 Aug. 2005) (CLA-203) ¶¶ 239-243. *See also Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentina*, ICSID Case No. ARB/97/3, Award (20 Aug. 2007) ("**Vivendi Award**") (CLA-215) ¶¶ 7.5.26, 7.5.28-29, 7.5.33-34 (holding that State measures leading to a decline in the rate of recovery on a concession agreement from 90% to 20% "had a devastating effect on the economic viability of the concession," and rendered its contractual rights "worthless" while the "losses would only continue to mount," and, as such, constituted an expropriation).

¹¹⁰⁸ *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss (21 Feb. 2017) ("**Ampal-American**") (CLA-204) ¶¶ 179-180, 183.

¹¹⁰⁹ *Ampal-American* (CLA-204) ¶ 182.

¹¹¹⁰ CAFTA-DR (CLA-2) Annex 10-C ¶ 4(a)(ii).

¹¹¹¹ *See, e.g., Tecmed* (CLA-120) ¶¶ 122, 150 (finding that the revocation of an operating permit for a landfill amounted to indirect expropriation because the investor could no longer operate the landfill profitably, thereby frustrating its legitimate expectations and substantially depriving it of the investment's value); *Fireman's Fund Insurance Company v. The United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award (17 Jul. 2006) (CLA-205) ¶ 176(k) ("The investor's reasonable 'investment-backed expectations' may be a relevant factor whether (indirect) expropriation has occurred").

government.”¹¹¹² The “measures, taken together with the representations of the . . . federal government, on which the [investor] relied, and the absence of a timely, orderly or substantive basis for the denial . . . amounted to an indirect expropriation.”¹¹¹³

486. The *third* guideline in Annex 10-C requires that the Tribunal consider the “character of the government action.”¹¹¹⁴ In *Omega v. Panama*, the only case in which this factor has been analyzed by a tribunal according to Claimants’ research, the tribunal equated this factor with whether the state “acted in its sovereign rather than commercial capacity.”¹¹¹⁵
487. Finally, Annex 10-C twice states that indirect expropriation may be accomplished by “an action or series of actions,” the latter sometimes being called a “creeping expropriation.”¹¹¹⁶ This is consistent with international practice, and commentators have explained that a measure may be an expropriation if it “has the effect, often degree-by-degree, of depriving an owner of fundamental rights of property.”¹¹¹⁷ In *Vivendi v. Argentina*, the tribunal found that the State’s measures “taken cumulatively, rendered the concession valueless and forced [claimants] to incur unsustainable losses,”¹¹¹⁸ radically depriving them “of the economic use and enjoyment of their concessionary

¹¹¹² *Metalclad* (CLA-171) ¶¶ 104, 106-107.

¹¹¹³ *Metalclad* (CLA-171) ¶ 107.

¹¹¹⁴ CAFTA-DR (CLA-2) Annex 10-C ¶ 4(a)(iii).

¹¹¹⁵ *Omega Engineering LLC and Oscar Rivera v. Republic of Panama*, ICSID Case No. ARB/16/42, Award (14 Oct. 2022) (CLA-206) ¶ 389 (analyzing the United States – Panama Trade Promotion Agreement).

¹¹¹⁶ CAFTA-DR (CLA-2) Annex 10-C ¶ 4(a)(i). *See also Siemens* (CLA-163) ¶ 263 (explaining that “[b]y definition, creeping expropriation refers to a process, to steps that eventually have the effect of an expropriation. If the process stops before it reaches that point, then expropriation would not occur. This does not necessarily mean that no adverse effects would have occurred. Obviously, each step must have an adverse effect but by itself may not be significant or considered an illegal act. The last step in a creeping expropriation that tilts the balance is similar to the straw that breaks the camel’s back. The preceding straws may not have had a perceptible effect but are part of the process that led to the break”).

¹¹¹⁷ L. Yves Fortier and Stephen L. Drymer, *Indirect Expropriation in the Law of International Investment: I Know It When I See It, or Caveat Investor*, in 19(2) ICSID REV. FOREIGN INV. L. J. 293 (2004) (CLA-207) p. 294. *See also* Rudolf Dolzer & Christoph Schreuer, *PRINCIPLES OF INTERNATIONAL INVESTMENT LAW*, Oxford University Press (2nd ed. 2012) (CLA-140) p. 125 (explaining that “an expropriation may occur ‘outright or in stages.’ Thus, the term ‘creeping expropriation’ describes a taking through a series of acts”) (internal citations removed).

¹¹¹⁸ *Vivendi* Award (CLA-215) ¶ 7.5.28.

rights,”¹¹¹⁹ amounting to an indirect expropriation.

(b) If Honduras takes the position that Claimants’ rights under the ZEDE Legal Framework no longer exist, Honduras has unlawfully expropriated Claimants’ investments

488. As detailed above, Honduras made the ZEDEs semi-autonomous (*e.g.*, ZEDEs had the “authori[ty] to establish their own policy and regulations,” “operational and administrative autonomy,” and their own “special tax regime,” and only specified national laws would apply),¹¹²⁰ and Honduras expressly anticipated that investors would develop “Autonomous Cities,” among other models.¹¹²¹ Professor Chaisse explains that Honduras’s design of the ZEDE Legal Framework, and the delegated autonomy granted to Próspera ZEDE, “is in line with the high degrees of autonomy typical of other modern SEZs,” is in certain respects “narrower and more conditional than the leading high-autonomy SEZs.”¹¹²²
489. Honduras further declared the areas with low population density in the municipalities located in departments adjoining the Gulf of Fonseca and the Caribbean Sea subject to the ZEDE regime, and gave investors the right to incorporate land into ZEDEs therein.¹¹²³ Honduras then specifically induced Claimants’ investment in Próspera ZEDE. It invited Claimants to invest,¹¹²⁴ created Próspera ZEDE, and certified the incorporation of Claimants’ property therein.¹¹²⁵ In this context, Honduras gave HPI the right to act as Promoter and Organizer of Próspera ZEDE, including the

¹¹¹⁹ *Id.* ¶ 7.5.29.

¹¹²⁰ *See supra* § II.B.2.a; ZEDE Law (C-6) Arts. 1, 3, 4, 41.

¹¹²¹ *See supra* § II.B.2.b.i; ZEDE Law (C-6) Art. 2.

¹¹²² Chaisse ¶¶ 46, 54. *See also id.* ¶ 41 (“Próspera ZEDE . . . is a case of institutional differentiation within the accepted bounds of SEZ design. Its regulatory autonomy is extensive, but it does not exceed comparative models. What distinguishes Próspera ZEDE is its innovative structure. . . The result is legal sophistication, not legal exception.”), ¶ 45 (“This reflects an architecture of bounded autonomy, confirming that the model operates within the framework of delegated authority, not outside of it.”); *supra* § II.C.3.f.

¹¹²³ *See supra* § II.B.1.c; ZEDE Law (C-6) Art. 39. *See also* Cosenza ¶ 68.

¹¹²⁴ *See supra* § II.C.1.

¹¹²⁵ *See supra* § II.C.3.b; Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay, dated 29 Dec. 2017 (C-16).

right to propose the Technical Secretary, control what land is incorporated into Próspera ZEDE, appoint members to the rulemaking Council, and provide governance services (directly or through a subsidiary) for at least 50 years.¹¹²⁶ Critically, Honduras granted Claimants valuable legal stability, which was the most valuable right of all and the *sine qua non* of Claimants' investment as it ensured them that their other rights would remain in effect for at least 50 years.¹¹²⁷

490. Pursuant to these rights, HPI developed the regulatory infrastructure for Próspera ZEDE to become a world-class governance system, including an innovation-friendly legal and regulatory environment, its cutting-edge e-Governance systems, simplified tax rules, dispute resolution rules, digital compliance services, import and export capabilities, a marketplace for third-party business services, and an independent property registry.¹¹²⁸ This was designed to take advantage of the ZEDE Legal Framework and turn Próspera ZEDE into an economic powerhouse, with the expectation that HPI would collect a share of the corresponding revenue streams (*e.g.*, a share of the taxes collected by Próspera ZEDE, service fees paid by resident individuals and companies incorporated in and conducting business within Próspera ZEDE, land value appreciation, and developer fees). HPI, SJBDC, and their affiliates acquired and incorporated land into Próspera ZEDE, transferring the title from the national land registry to the ZEDE registry, for the purpose of developing Próspera ZEDE and with the expectation of dramatic increases in land value.¹¹²⁹ PAC established an arbitration center to be the default arbitration for all contractual and patrimonial disputes in the ZEDE, entitled to set, charge and retain reasonable service fees to users of its services.¹¹³⁰ In addition to administering arbitrations, PAC planned to provide complementary

¹¹²⁶ See *supra* §§ II.C.3.c, II.C.6.a; ZEDE Law (C-6) Art. 11.3.b.; Charter and Bylaws of ZEDE Village of North Bay, dated Aug. 23, 2018 (CLA-4); Charter of Próspera ZEDE (CLA-5).

¹¹²⁷ See *supra* §§ II.B, II.C.5, IV.A.b.i.

¹¹²⁸ See *supra* §§ II.C.4.a, II.C.6, II.E; Brimen ¶¶ 21, 37, 72, 75, 83, 85.

¹¹²⁹ See *supra* §§ II.C.4.a, II.C.6.a.

¹¹³⁰ See *supra* § II.C.4.a; Subcontracting Agreement by and between PAC and North Bay GSP, Inc. (the GSP of Próspera ZEDE) dated 4 Nov. 2019 (C-565) §3.

services, including hearing and meeting facilities, appointment of arbitrators, and appointment of experts in arbitral proceedings, as well as providing professional training, consulting services and digital platforms.¹¹³¹ PAC was developed to become a world-class arbitration center not just for Próspera ZEDE but for the broader region.¹¹³²

491. Claimants’ rights under the ZEDE Legal Framework constitute vested rights under Honduran law and are protected by the constitutional right to private property.¹¹³³ As Mr. Cosenza explains:

Any rights which have been recognized to an investor under the ZEDE Regime, including those rights granted under the agreements for legal stability contemplated under the Organic Law, are not mere expectations about future rights or benefits, but they are, in and of themselves, a *vested right* which has become part of the property of such investor. They are, therefore, the *private property* owned by the investor in the ZEDE and, as such, they are afforded recognition and protection pursuant to Article 103 of the Constitution to that end.¹¹³⁴

492. These rights also constitute an investment for the purposes of CAFTA-DR, *i.e.*, “[an] asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.”¹¹³⁵ In each case, Claimants’ rights are (i) Claimants’ assets, which they hold directly (and, in the case of SJBDC’s and PAC’s right to legal stability under the LSA, either directly as a third-party beneficiary or indirectly through HPI), (ii) for which they have committed capital, (iii) in the expectation of profit, and (iv) on the assumption of risk. Moreover, these rights have the form of investments expressly mentioned under CAFTA-DR

¹¹³¹ See *supra* § II.C.4.a; Business Plan for Próspera Arbitration Center dated 2020 (C-477) pp. 7-9.

¹¹³² See *supra* § II.C.4.a; Business Plan for Próspera Arbitration Center dated 2020 (C-477) p. 6.

¹¹³³ See Constitution of Honduras of 1982 with Amendments through 2013 (C-4) Art. 106 (“No one may be deprived of his property except by reason of public need or interest defined by law or a decision based on law, and shall not take place without assessed prior compensation.”).

¹¹³⁴ Cosenza ¶ 109. See also *id.* ¶ 114 (“[T]he benefits arising from the ZEDE Organic Law and the regulations enacted pursuant thereto — including, by way of example, its stability regime, tax and regulatory regime, exemptions, and others — qualify as vested rights for investors in a ZEDE and are protected by the Constitution and the doctrine established by the Constitutional Chamber of the Supreme Court of Justice of Honduras.”)

¹¹³⁵ CAFTA-DR (CLA-2) Art. 10.28 (definition of “investment”).

(which, in any case, is not required¹¹³⁶), including because they are “licenses, authorizations, permits, and similar rights conferred pursuant to domestic law,” “intangible ... property rights” and/or “intellectual property rights.”¹¹³⁷

493. As detailed above, Honduras’s Decree No. 33 repealed the ZEDE Law, together with any other laws, rules or provisions approved by Congress related to the ZEDE Law, and expressly declared that “[r]evocation of any provision, agreement, concession, etc. related to or issued in favor of the ZEDEs shall not give rise to any compensation for any individual or legal entity, nor for any investor.”¹¹³⁸ The effects of this measure on Claimants’ rights are unclear, as Honduras guaranteed that Claimants’ rights under the ZEDE Law would remain in effect for 50 years, even in the event of a repeal of the ZEDE Law in that time period. The implications of Honduras’s Supreme Court’s unprecedented and confusing 2024 decision declaring the entire ZEDE Legal Framework unconstitutional *ex tunc* on Claimants likewise are unclear, with some authorities stating that it means that the ZEDEs never existed as a matter of Honduran law, and others that it is contrary to Honduran law and unenforceable.¹¹³⁹ Honduras has refused to answer Claimants directly as to the status of Claimants’ rights under the ZEDE Legal Framework and whether Honduras will honor its legal stability guarantees vis-à-vis Claimants.¹¹⁴⁰

494. If Honduras takes the position that Claimants no longer have the rights under the ZEDE Legal Framework that they had prior to Honduras’s measures, Honduras has either (i) directly expropriated Claimants’ investments, or (ii) expropriated them indirectly, and (iii) in either case, has done so unlawfully and in violation of Article 10.7 of CAFTA-DR.

¹¹³⁶ See *supra* n. 349.

¹¹³⁷ See CAFTA-DR (CLA-2). Art. 10.28 (“Forms that an investment may take include: . . . (f) intellectual property rights; (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.”).

¹¹³⁸ See *supra* § II.D.4; Decree No. 33-2022, published on 26 Apr. 2022 (C-60).

¹¹³⁹ See *supra* §§ II.D.4, II.D.6-7.

¹¹⁴⁰ See *supra* § II.D.4.

(i) If Honduras takes the position that Claimants’ right under the ZEDE Legal Framework no longer exist, Honduras has directly expropriated Claimants’ investments

495. If Honduras takes the position that Claimants’ rights under the ZEDE Legal Framework no longer exist, Honduras has directly expropriated Claimants’ investments because Claimants have been deprived of their investments without “retaining even a nominal right over the investment[s].”¹¹⁴¹
496. As noted above, tribunals have frequently recognized that rights granted by the State – be it through concessions, permits or other authorizations – are intangible property rights subject to expropriation.¹¹⁴² In this case, the rights at issue are Claimants’ valuable rights under the ZEDE Legal Framework, including, without limitation, the right to incorporate land into Próspera ZEDE (and reap the economic benefit thereof) and the right to develop the ZEDE in partnership with Honduras and according to their business model, for example by establishing best practices regulations (together with the Technical Secretary and subject to oversight by CAMP) and providing governance services (and collect a share of the corresponding revenue stream, derived from taxes and fees paid by resident individuals and companies incorporated in and conducting business within Próspera ZEDE).
497. If Honduras takes the position that Claimants’ rights under the ZEDE Legal Framework no longer exist, Honduras has directly deprived Claimants of their rights in their entirety, without leaving Claimants even a nominal right with respect to Próspera ZEDE. Moreover, Honduras will have retaken to itself rights that it previously consigned to Claimants under the ZEDE Legal Framework, including the right to deliver governance services, create regulations, and administer dispute resolution, and the right to tax revenues, among other rights that Claimants enjoy under the ZEDE

¹¹⁴¹ See *Flughafen Zürich* (CLA-183) ¶ 498.

¹¹⁴² See *Flughafen Zürich* (CLA-183) ¶¶ 457, 498, 503-505, 509 (the investor’s rights in an airport concession were a protected asset); *Kardassopoulos* (CLA-199) ¶ 387 (the investor’s rights in an oil pipeline were a protected asset); *Quiborax* (CLA-200) ¶¶ 228-231 (the investor’s rights in a mining concession were a protected asset); *Tecmed* (CLA-120) ¶ 91 (the investor’s rights under a municipal waste management permit were a protected asset).

Legal Framework.

498. Tribunals have found that State conduct like Honduras's constitutes a direct expropriation.

- In *Flughafen Zürich*, the tribunal held that a series of measures culminating in a Supreme Court ruling that took away a concession to manage an airport constituted a direct expropriation.¹¹⁴³ Likewise, if Claimants no longer have the right to manage Próspera ZEDE, Honduras has directly expropriated these rights.
- In *Kardassopoulos*, the cancellation of rights to operate an oil pipeline by government decree was deemed a direct expropriation.¹¹⁴⁴ Likewise, if Claimants' rights related to Próspera ZEDE have been canceled, this was a direct expropriation.
- In *Quiborax*, the tribunal found a direct expropriation of mining concessions despite the continued operation of the investor's local subsidiary. The decisive factor was the removal of the legal rights that gave the investment its value.¹¹⁴⁵ Here too, while Claimants' physical assets in Próspera ZEDE may remain, the extinction of the core rights guaranteed under the ZEDE Legal Framework has stripped the investment of its substance.

(ii) Alternatively, Honduras has indirectly expropriated Claimants' investments

499. Alternatively, if Honduras takes the position that Claimants' rights under the ZEDE Legal Framework no longer exist, to the extent that Honduras's measures did not constitute a direct expropriation, they effected an indirect expropriation of the bundle of rights granted to Claimants pursuant to the ZEDE Legal Framework.

500. Claimants' rights have significant economic value. As BRG explains:

[Claimants'] intangible assets consist of the rights and authorizations granted under the ZEDE legal framework, including the ability to develop and operate a semi-autonomous zone with its own governance, regulatory, and fiscal systems (*inter alia*). These rights and legal stability guarantees, which form the institutional foundation of Claimants' investment in Honduras, are central to the Claimants' business model.

¹¹⁴³ See, e.g., *Flughafen Zürich* (CLA-183) ¶ 503. This is in line with the established principle that a State is responsible for expropriatory acts of its judiciary. See, e.g., *Deutsche Bank v. Sri Lanka*, ICSID Case No. ARB/09/2, Award (31 Oct. 2012) (CLA-209) ¶ 521 (“[T]he coordinated actions of the Supreme Court and the Central Bank prevented Deutsche Bank from receiving payment under the Hedging Agreement An expropriation of Deutsche Bank's rights consequently took place . . .”).

¹¹⁴⁴ See *Kardassopoulos* (CLA-199) ¶ 387.

¹¹⁴⁵ See *Quiborax* (CLA-200) ¶¶ 27, 228-231, 233-234.

Economic literature explains that intangible assets are among the principal drivers of productivity, competitiveness, and firm value.¹¹⁴⁶

501. The enormous value of these rights to Claimants is reflective of what Próspera ZEDE would have become and the significant economic benefits that Honduras itself would have reaped, had Respondent not aborted the project in early 2022. Had they been allowed to continue developing Próspera ZEDE, Claimants would have developed the next Dubai or Singapore in Honduras, with the consequent enormous economic growth, business activity, and revenues that Claimants expected to generate from such a long-term development project.
502. If Claimants' rights under the ZEDE Legal Framework no longer exist, Honduras has deprived Claimants of the ability to execute the full scale of their project and planned investment, depriving Claimants of the expected use, benefit, and economic value of their investment. Absent the measures, Claimants would have developed large-scale infrastructure projects and exponentially increased economic activity in Roatán and La Ceiba, generating massive employment opportunities for Hondurans as well as massive profits for themselves.¹¹⁴⁷
503. If Claimants' rights under the ZEDE Legal Framework no longer exist, Claimants have been deprived of the entirety – 100% – of the value of those rights. Even from the perspective of the entirety of Claimants' venture in Honduras, Claimants' loss is near total. This is because absent the rights under the ZEDE Legal Framework, all Claimants would be left with is real estate that cannot generate anywhere near the returns possible as part of Próspera ZEDE and is even further reduced in value as a result of the cloud on title.¹¹⁴⁸ The loss of Claimants' ZEDE rights represents

¹¹⁴⁶ BRG ¶¶ 66-67. *See also id.* ¶ 175 (“[Claimants’] intangible assets are the result of the rights and authorizations granted by Honduras to create and develop Próspera ZEDE, which constitute the grounds for the development and value creation of Claimants’ investment in Honduras. Absent these intangible rights, the value of Claimants’ core business model is substantially eroded.”).

¹¹⁴⁷ *See supra* §§ II.C.6, II.E; Brimen ¶¶ 38, 88, 108, 117.

¹¹⁴⁸ *See supra* § II.D.7; *infra* § V.B.1.b.iii.

a loss of over 96% of the total value of the business.¹¹⁴⁹

504. In other words, from any perspective, Honduras's dismantling of the ZEDE Legal Framework and extinguishing Claimants' rights thereunder would be a substantial interference with Claimants' use and enjoyment of the bundle of rights that gave their investment value and total or near total deprivation of the value of their investments.
505. Notably, various tribunals have found that the revocation of SEZ rights constitutes an indirect expropriation. In *Ampal-American*, the State passed a law which revoked the license to operate in a tax free-zone. The tribunal found that the license was an investment, and the removal of the guaranteed tax-free status was found to be a measure tantamount to an expropriation of the valuable right.¹¹⁵⁰ Similarly, in *Middle East*, the tribunal found that the State indirectly expropriated the investor's rights by cancelling a license to operate a free zone, thereby preventing the investor from exercising those rights and depriving it of their use and benefit.¹¹⁵¹

(iii) Honduras has failed to comply with the requirements of Article 10.7, rendering any expropriation unlawful

506. To the extent that there has been a direct or indirect expropriation by Honduras, it is unlawful

¹¹⁴⁹ See *infra* § V.B.1.b.iv. The loss in value is likely even lower. Although 96% represents the difference between the expected *but-for* and *actual* value of Claimants' business or investments, it does not take into account the cloud on the title of Claimants' land. As explained above, there is uncertainty with respect to the land currently incorporated into Próspera ZEDE, which puts a cloud the title of Claimants' real property. With this cloud on title, it is very likely that the value of Claimants' assets in the *actual* scenario is zero, which represents a total loss of Claimants' investment. See *supra* § II.D.7; *infra* §§ V.B.1.b.iii-iv.

¹¹⁵⁰ *Ampal-American* (CLA-204) ¶¶ 182-183 ("The Tribunal finds that the inclusion of EMG within the tax-free zone system in Egypt was a fundamental part of the economic structure of the investment, which the Respondent knew and accepted from the outset at the highest level of Government, and which it confirmed by the issue of the specific licence to EMG, conferring tax-free status under the free zones system until 2025. . . . Respondent's decision to remove EMG's tax-free status took away a defined and valuable interest that had been validly conferred according to Egyptian law at the time that the investment was made and that had been guaranteed by the State for a defined period. It was not to be subject to the vicissitudes of changes in State tax policy over that time period. For this reason, the taking is tantamount to expropriation.").

¹¹⁵¹ See *Middle East* (CLA-202) ¶¶ 107 ("When measures are taken by a State the effect of which is to deprive the investor of the use and benefit of his investment even though he may retain nominal ownership of the respective rights being the investment, the measures are often referred to as a 'creeping' or 'indirect' expropriation or, as in the BIT, as measures 'the effect of which is tantamount to expropriation.'"). See also Rudolf Dolzer & Christoph Schreuer, *PRINCIPLES OF INTERNATIONAL INVESTMENT LAW*, Oxford University Press (2nd ed. 2012) (CLA-140) p. 118 (stating that the tribunal in *Middle East* "found that the license qualified as an investment and that the measures that prevented the exercise of the rights under it amounted to an expropriation . . .").

because Honduras has failed to meet the conditions under Article 10.7 of CAFTA-DR.

- ***Honduras measures do not serve a valid public purpose.*** As explained above in Section IV.A.1.c, the measures served no genuine public purpose and were driven by a targeted political agenda to destroy the ZEDEs in general and Próspera ZEDE in particular.¹¹⁵² There were no studies, consultations, or impact assessments, and no consultation with anyone involved in the ZEDE framework (whether CAMP, the Technical Secretary, or investors in ZEDE like Claimants).¹¹⁵³ Investment tribunals have held that the asserted public purpose must be genuine and not, as in *Hulley*, merely a pretext.¹¹⁵⁴ Moreover, the measure must actually further the stated purpose.¹¹⁵⁵ Not only are Honduras's measures driven by political motives rather than any genuine purpose, Honduras is directly prejudicing the public interest by depriving its citizens of the benefits of the ZEDEs.
- ***Honduras measures were discriminatory.*** Honduras's repeal of the ZEDE Legal Framework is also discriminatory. When repealing the legal frameworks of other special regimes – such as the ZADEs¹¹⁵⁶ and the ZOLITURs¹¹⁵⁷ – Honduras expressly provided that the rights acquired under those regimes would remain in force.¹¹⁵⁸ In contrast, Decree No. 33-2022 and the 2024 Supreme Court decision contained no such provision.¹¹⁵⁹ In each case, the relevant investments were made in reliance on specific legal frameworks expressly designed to attract and protect investment. Yet only ZEDE investors – most notably Claimants – will have been stripped of their rights.¹¹⁶⁰
- ***Honduras has failed to pay Claimants any compensation.*** As Honduras has never officially taken a position with respect to whether Claimants' rights continue to exist, it is unsurprising that it has paid no compensation. Notably, Decree No. 33 expressly provides that investors will not receive compensation for the repeal and the revocation of any provision, agreement, or concession.¹¹⁶¹ The 2024 Supreme Court ruling also does not provide any compensation for investors losing rights under the ZEDE Legal

¹¹⁵² See *supra* §§ II.D.1-3.

¹¹⁵³ See *supra* § II.D.3.

¹¹⁵⁴ *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226, Award (18 Jul. 2014) (CLA-210) ¶¶ 756, 759.

¹¹⁵⁵ See *supra* § IV.A.3.a.

¹¹⁵⁶ See Decree No. 51-2003 published on 10 Apr. 2003 (C-420) Art. 54.

¹¹⁵⁷ See Decree No. 68-2017 published on 17 Aug. 2017 (C-421) Art. 25.

¹¹⁵⁸ See *supra* §§ II.A.2.b, II.D.4.

¹¹⁵⁹ See *supra* §§ II.D.4, II.D.6; Decree No. 33-2022 (C-60); *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559).

¹¹⁶⁰ See *supra* §§ II.D.1-2, II.D.4.

¹¹⁶¹ Decree No. 33-2022 (C-60) p. 3.

Framework.¹¹⁶² Honduras's failure to compensate Claimants renders the expropriation unlawful.¹¹⁶³

- **Honduras violated due process of law.** The dismantling of the ZEDE Legal Framework (both through the repeal of the ZEDE Organic Law and the Supreme Court's retroactive decision that the ZEDE regime was unconstitutional *ex tunc*) fell grossly short of the "in accordance with due process of law" in Article 10.7(c) of CAFTA-DR. The legislative and judicial measures were adopted through procedures that were irregular, opaque, and politically predetermined, and without seeking any input from existing ZEDE investors.¹¹⁶⁴ In the case of the Supreme Court decision, investors could not even have known the risk to the ZEDE Legal Framework until it was too late given that, as detailed above, the issue giving rise to the case was a single provision of the ZEDE Law, which the Court used as occasion to pass judgment on the entire regime.¹¹⁶⁵ As the tribunal in *ADC* explained, the due process requirement in the context of expropriation requires "an actual and substantive legal procedure" through which an investor can challenge depriving actions before an unbiased and impartial adjudicator, with reasonable advance notice and a genuine opportunity to be heard.¹¹⁶⁶ No such legal procedure was afforded here.

507. Thus, Honduras's taking of Claimants' investments is unlawful.

B. HONDURAS HAS BREACHED ITS LEGAL STABILITY OBLIGATION UNDER THE LSA

508. Honduras's acts and omissions also plainly constitute breaches of the LSA.¹¹⁶⁷ By implementing

¹¹⁶² *Decision of the Supreme Court of Honduras* published in Gazette No. 36,698 dated 25 Nov. 2024 (C-559).

¹¹⁶³ *See, e.g., Santa Elena* (CLA-187) ¶¶ 71-72; *Rusoro Mining* (CLA-123) ¶¶ 407-409.

¹¹⁶⁴ *See supra* §§ II.D.2-3, II.D.6.

¹¹⁶⁵ *See supra* § II.D.6.

¹¹⁶⁶ *ADC* (CLA-217) ¶ 435.

¹¹⁶⁷ With respect to claims arising from a breach of the LSA, the Tribunal is mandated to apply the rules of law specified therein, and such rules of international law as may be applicable. *See* ICSID Convention Art. 42(1) ("[t]he Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable."); CAFTA-DR (CLA-2) Art. 10.22.2 ("Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply: (a) the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree; or (b) if the rules of law have not been specified or otherwise agreed: (i) the law of the respondent, including its rules on the conflict of laws; (the 'law of the respondent' means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case) and (ii) such rules of international law as may be applicable."). The parties' agreement is reflected in Articles 3.7 and 3.9 of the LSA. *See* Initial LSA (CLA-6) Art. 3.7 ("[t]his Agreement shall be governed by and construed in accordance with the Roatan Common Law Code . . . of Próspera ZEDE . . . without regard to conflict of laws principles."); Art. 3.9 ("[w]herever appropriate, provisions of this Agreement will be interpreted in view of the CAFTA-DR and customary international law, including awards issued by properly constituted tribunals. In the process of that interpretation, state responsibility and attribution will be construed as liberally as possible to protect the investments and legitimate investment-backed expectations of HPI in a manner consistent with this Agreement, the CAFTA-DR, and customary international law.").

the measures described in Section II.D, and failing to accord Claimants legal stability, Honduras has violated its express commitments in the LSA.

509. The LSA includes a number of express legal stability guarantees. Articles 1.1 provides:

Pursuant to Article 45 of the ZEDE Law, the period during which this Agreement shall be legally binding and enforceable shall begin on the Effective Date and continue until the latter of (a) January 15, 2064; or (b) TEN (10) years after the last of any amendment, reformation, interpretation or repeal of all or any portion of the ZEDE law by any national or local governing body, unit, political subdivision, branch, department, agency, instrumentality or public official of the Republic of Honduras (“Agreement Term”)¹¹⁶⁸

510. Articles 1.4 includes a “General Stabilization of Law and Policy”, which includes the following guarantee of the legal stability of the ZEDE Legal Framework as to HPI and its affiliates:

For the duration of the Agreement Term, all of the provisions under Articles 294, 303, and 329 of the Constitution of the Republic of Honduras . . . , the ZEDE Law . . . Decreto Legislativo No. 368-2013 . . . Property Institute Acuerdo No. CD-IP-008-2019, CAMP Normativa ZEDE No. 001-2018 (30 Jan. 2018), and all rights, conditions, procedures and protections either explicit or implicit included therein respectively, shall remain as guarantees and shall be guaranteed by the Republic of Honduras as applied to HPI, its agents, officers, board members, shareholders, and affiliates by majority ownership or control, and all other investors and lawful inhabitants of Próspera ZEDE.

511. Articles 1.4 goes on to provide a non-exhaustive list of specific guarantees encompassed by the general legal stability guarantee, including, without limitation:

Accordingly, for the Agreement Term, neither HPI, nor any of its . . . affiliates by majority ownership . . . shall ever be governed by any new or amended treaty, constitutional provision, law, administrative regulation, rule or enforceable policy, or any enforceable interpretation thereof . . .

[a] that in any way or to any extent or degree alters, restricts, prejudices or infringes upon the plain public meaning and legal effect of Articles 294, 303, and 329 of the Constitution of the Republic of Honduras . . .

[b] that in any way or to any extent or degree alters, restricts, prejudices or infringes upon the plain public meaning and legal effect of the ZEDE Law . . .

¹¹⁶⁸ Initial LSA (CLA-6) § 1.1 (emphasis added).

[c] that in any way or to any extent or degree alters, restricts, prejudices or infringes upon the plain public meaning and legal effect of the Próspera Charter . . .

[h] damages, impairs, restricts or diminishes or causes the damaging, impairment, restriction or diminishment of any legal right to real property . . .

[i] damages, impairs, restricts or diminishes or causes the damaging, impairment, restriction or diminishment of any investment or the value of any investment related to the promotion and organization of Próspera ZEDE by HPI or its majority-owned or controlled affiliates . . .

[j] damages, impairs, restricts or diminishes or causes the damaging, impairment, restriction or diminishment of any other vested legal right of HPI or its affiliates by majority ownership or control . . .¹¹⁶⁹

512. Accordingly, Honduras has guaranteed the legal stability of the ZEDE Legal Framework for Próspera ZEDE, HPI, and its affiliates (including SJBDC and PAC) until the later of 15 January 2064 or ten years from the enactment of the repeal of the ZEDE Legal Framework, and has further guaranteed that neither HPI nor its affiliates may ever be governed by any legal regime that diminishes the value of their investment.
513. As explained above,¹¹⁷⁰ the viability of Claimants' investment is dependent upon the continued application of the ZEDE Legal Framework and its distinctive features, without which Claimants would never have invested in Honduras. All of Claimants' profit centers, particularly its governance services and real estate businesses, were anchored on the unique policy and regulatory autonomy granted under the ZEDE Legal Framework which enabled Claimants to implement a world-class governance offering critical to attracting investment to Próspera ZEDE.
514. Despite Claimants' unambiguous rights, Honduras has disregarded its obligations under the LSA. As explained above,¹¹⁷¹ while seeking to dismantle the ZEDE Legal Framework, Honduras refused to clarify the legal status of Próspera ZEDE or acknowledge Claimants' rights to legal stability.

¹¹⁶⁹ Initial LSA, (CLA-6) § 1.4 (emphasis added).

¹¹⁷⁰ See *supra* § II.C.2.

¹¹⁷¹ See *supra* § II.D.3-4.

This ambiguity remains today. Thus, neither the ZEDE Legal Framework nor “all rights, conditions, procedures and protections either explicit or implicit included therein,” now “remain as guarantees and [are] guaranteed by the Republic of Honduras,” as required by Article 1.4 of the LSA.

515. In addition, Honduras has failed to comply with its specific undertakings insofar as Decree No. 33 and the Supreme Court decision of 2024 (as well as various acts of Honduran officials and agencies) dismantle the ZEDE Legal Framework, which constitutes an alteration, restriction, prejudice or infringement on “the plain public meaning and legal effect of Articles 294, 303, and 329 of the Constitution of the Republic of Honduras as of the Effective Date,” “the plain public meaning and legal effect of the ZEDE Law as of the Effective Date,” “the plain public meaning and legal effect of the Próspera Charter as of the Effective Date;” and, moreover damages, impairs, restricts or diminishes Claimants’ “legal right to real property” and “the value of [Claimants’] investment.”
516. Honduras has attempted to disavow the LSA, arguing that it is not a party thereto and that its provisions are therefore inapplicable.¹¹⁷² This is legally and factually incorrect. As Claimants have shown, Honduras is bound by the LSA pursuant to Articles 12 and 45 of the ZEDE Organic Law, which expressly authorized the Technical Secretary to enter into legal stability agreements on behalf of Honduras and bind Honduras to maintain legal stability for the entire term established therein.¹¹⁷³
517. Honduras’s breaches of the LSA are contractual breaches for which Honduras is liable as a matter of contract law. Further, because, as explained above, the LSA qualifies as an “investment agreement” within the meaning of CAFTA-DR, they also are breaches of an “investment

¹¹⁷² See Honduras’s Reply to the Preliminary Objection § IV.C.2.

¹¹⁷³ See *supra* §§ II.B.1.c, II.C.5; ZEDE Law (C-6) Art. 12 (“The Technical Secretary of the [ZEDE] is the highest executive officer thereof and its legal representative His/her functions are . . . [s]ubscribe to legal stability agreements for matters deemed necessary”), Art. 45 (“Should this Organic Law be repealed, it shall remain in effect for the term indicated in the legal stability clause of the contract signed with individuals or corporations residing or investing in the [ZEDE].”).

agreement” for which Honduras is liable under CAFTA-DR.¹¹⁷⁴ Alternatively, in the unlikely event that the Tribunal were to find that the LSA does not qualify as an “investment agreement” under CAFTA-DR (which it should not), Honduras is liable for its breaches under Article 10.4 of CAFTA-DR.

518. Specifically, under Article 10.4 of CAFTA-DR, the MFN provision, Honduras is bound to observe its LSA obligations pursuant to the umbrella clauses in other treaties to which Honduras is a party that oblige Honduras to observe all commitments or obligations into which it has entered with respect to Claimants.

519. For example, Article 11 of the Switzerland-Honduras BIT provides:

Each Contracting Party shall at all times ensure compliance with the commitments assumed by it in respect of investments of investors of the other Contracting Party.¹¹⁷⁵

520. Likewise, Article 8(2) of the Germany-Honduras-BIT provides:

Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Party.¹¹⁷⁶

521. In addition, Honduras has entered into other bilateral investment treaties that also include umbrella clauses.¹¹⁷⁷ To the extent that the terms of these umbrella clauses are more favorable than those of CAFTA-DR (for example, insofar as they apply to a broader range of undertakings than Article 10.16.1(a)(i)(B)), they would likewise apply by virtue of Article 10.4 of CAFTA-DR which, as detailed above, guarantees MFN treatment to Claimants and their investments.¹¹⁷⁸

¹¹⁷⁴ See *supra* § III.B.4; CAFTA-DR (CLA-2) Arts. 10.16.1(a)(i)(B), 10.28.

¹¹⁷⁵ Switzerland-Honduras BIT (CLA-130) Art. 11.

¹¹⁷⁶ Germany-Honduras BIT (CLA-131) Art. 8(2).

¹¹⁷⁷ See, e.g., Agreement on Encouragement and Reciprocal Protection of Investments Between the Republic of Honduras and the Kingdom of the Netherlands, signed 15 Jan. 2001, entered into force on 1 Sep. 2002 (CLA-211) Art. 3(4); Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Honduras for the Promotion and Protection of Investments, signed 7 Dec. 1993, entered into force on 8 Mar. 1995 (CLA-212) Art. 2(2).

¹¹⁷⁸ See *supra* § IV.A.2.

522. It is well established that such umbrella clauses elevate contractual obligations under municipal law to international treaty obligations.¹¹⁷⁹ In this way, a violation of a contractual obligation in respect of an investment becomes a violation of the relevant treaty.¹¹⁸⁰
523. As addressed above in Section IV.A.2, tribunals have confirmed that MFN clauses may be used to import treaty standards including umbrella clauses from third-party treaties where these offer more favorable protection to the investor.¹¹⁸¹
524. Accordingly, by virtue of the more favorable treatment accorded to investors in the Switzerland-Honduras BIT and Germany-Honduras-BIT, Honduras has an obligation to “at all times ensure compliance with the commitments assumed by it in respect of [Claimants’] investments,”¹¹⁸² and, in addition, to “comply with any other obligation which it has assumed in respect of [Claimants’] investments in its territory.”¹¹⁸³ This includes the legal stability commitments that Honduras undertook with respect to Claimants’ investments in the LSA. Honduras’s breaches of these commitments constitutes a breach of Article 10.4 of CAFTA-DR.
525. In sum, by failing to accord legal stability to Claimants, Honduras has breached the legal stability guarantees it provided to Claimants and their investments in the LSA, for which it is liable to HPI and its affiliates.

¹¹⁷⁹ See, e.g., *SGS Société Générale de Surveillance S.A. v. Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction (29 Jan. 2004) (CLA-213) ¶ 115 (interpreting a similar umbrella clause in the Philippines-Switzerland BIT and stating that it “includes commitments or obligations arising under contracts entered into by the host State.”).

¹¹⁸⁰ See, e.g., J.P. Gaffney and James L. Loftis, *The “Effective Ordinary Meaning” of BITs and the Jurisdiction of Treaty-based Tribunals to Hear Contract Claims*, J. OF WORLD INV. & TRADE 8 (2007) (CLA-214) p. 17 (“[I]t is precisely the purpose of ‘umbrella clauses’ to create a link between commitments taken by States in national / municipal legal instruments and to elevate those in the international sphere so as to create international State responsibility.”).

¹¹⁸¹ See *supra* § IV.A.2.a; *EDF* (CLA- 165) ¶¶ 929-934 (holding that claimant was entitled to import an umbrella clause because “to ignore[] the MFN clause in [that] case would permit more favorable treatment to investors under third countries, which is exactly what the MFN clause is intended to prevent” and that to rule otherwise, “would effectively read the MFN language out of the treaty.”); *Arif* (CLA-192) ¶ 396 (holding that claimant was entitled to import an umbrella clause through the MFN provision).

¹¹⁸² Switzerland-Honduras BIT (CLA-130) Art. 11.

¹¹⁸³ Germany-Honduras BIT (CLA-131) Art. 8(2).

C. HONDURAS HAS BREACHED ITS COMMITMENTS UNDER THE CHARTER OF PRÓSPERA ZEDE

526. Honduras's acts and omissions also constitute breaches of the terms of the Charter and related instruments whereby CAMP authorized Claimants' investments in Próspera ZEDE.¹¹⁸⁴
527. As explained above, Honduras granted a number of related authorizations pursuant to which HPI had the right to develop and promote Próspera ZEDE.¹¹⁸⁵ In particular, CAMP authorized Claimants' investment on 29 December 2017 when it "decided to grant [Próspera ZEDE] authorization" and certified the incorporation of Claimants' land therein.¹¹⁸⁶ Subsequently, on 23 August 2018 and 12 September 2019, CAMP authorized and amended the Charter of Próspera ZEDE, whereby Honduras confirmed that Próspera ZEDE "possesses all the rights, privileges, and duties of a ZEDE in the Republic of Honduras," authorized the expansion of Próspera ZEDE through the incorporation of additional lands, confirmed HPI's status as Promoter and Organizer of Próspera ZEDE, established the governance rules for Próspera ZEDE (including the procedures for the promulgation of regulations), and cemented HPI's rights with respect to the constitution of

¹¹⁸⁴ With respect to claims arising from a breach of the Charter, the Tribunal is mandated to apply the Applicable Law, as defined therein and such rules of international law as may be applicable. *See* ICSID Convention Art. 42(1) ("[t]he Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable."); CAFTA-DR (CLA-2) Art. 10.22.2 ("Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply: (a) the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree; or (b) if the rules of law have not been specified or otherwise agreed: (i) the law of the respondent, including its rules on the conflict of laws;(the 'law of the respondent' means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case) and (ii) such rules of international law as may be applicable."); Charter of Próspera ZEDE (CLA-5) § 1.02 (defining "applicable law" as "those laws that apply in Próspera, including: (a) laws applicable to ZEDes as defined in Articles 294, 303 and 329 of the Constitution of the Republic, and Articles 8 and 41 of the ZEDE Organic Law; (b) this Charter and the Rules adopted by Próspera in strict accordance with this Charter; (c) contracts, including Agreements of Coexistence and legal stability agreements, formed by Próspera; and (d) binding decisions of judges or arbitrator with jurisdiction over the matter in question.").

¹¹⁸⁵ *See supra* §§ II.C.3.b, II.C.3.d, II.C.6.a.

¹¹⁸⁶ Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay, dated 29 Dec. 2017 (C-16) p. 6.

the Council and the delivery of governance services.¹¹⁸⁷ Notably, the Charter specifically reaffirms that HPI and other landowners are protected by CAFTA-DR and the Honduras Kuwait BIT.¹¹⁸⁸

528. Following these authorizations, HPI and SJBDC (directly and through their subsidiaries) acquired land rights as part of their real estate business, and HPI made significant investments for its governance as a service business. Among other things, this included developing the regulations and infrastructure of Próspera ZEDE, including, for example, its cutting-edge e-Governance systems, innovation-friendly regulatory environment, clear commercial rules, simplified tax rules, dispute resolution rules, digital compliance services, import and export capabilities, a marketplace for third-party business services, and an independent property registry.¹¹⁸⁹ This was designed to take advantage of the ZEDE Legal Framework and turn Próspera ZEDE into an economic powerhouse, with the expectation that HPI would collect a share of the corresponding revenue streams (*e.g.*, a share of the taxes collected by Próspera ZEDE and fees paid by resident individuals and companies incorporated in and conducting business within Próspera ZEDE). Meanwhile, PAC established a world-class arbitration center to be the default service provider for all contractual and patrimonial disputes in the ZEDE and a choice provider for the broader region.¹¹⁹⁰

529. Insofar as it has deprived Próspera ZEDE of its legal status as a ZEDE, Honduras has breached the Charter and deprived Claimants of their rights to develop Próspera ZEDE in accordance with the rule of law, best policy practices, and the principles of cooperative governance, including, without limitation: (i) HPI has been deprived of its rights to act as the Promoter and Organizer of Próspera ZEDE, to shape regulations and drive development, to propose the Technical Secretary, to control

¹¹⁸⁷ See *supra* §§ II.C.3.c, II.C.3.f, II.C.6.a; Brimen ¶¶ 48-49, 74; Charter and Bylaws of ZEDE Village of North Bay, dated 23 Aug. 2018 (CLA-4); Charter of Próspera ZEDE (CLA-5) §§ 1.02, 2.01.

¹¹⁸⁸ See Charter of Próspera ZEDE (CLA-5) § 11.02.(2) (“Both CAMP and Próspera reaffirm being subject to the protections of [CAFTA-DR] and other investment treaties signed by Honduras, including but not limited to [Honduras-Kuwait BIT] under which the Promoter and Organizer as well as other Landowners and Residents are entitled to protection, including any waivers of immunity by the Republic of Honduras”).

¹¹⁸⁹ See *supra* §§ II.C.4.a, II.C.6, II.E; Brimen ¶¶ 21, 37, 72, 75, 83, 85.

¹¹⁹⁰ See *supra* § II.C.4.a.

what land is incorporated into Próspera ZEDE, to appoint members to the rulemaking Council, to provide governance services (directly or through a subsidiary) for at least 50 years, and, critically, to share in the revenues of Próspera ZEDE through a share of taxes and fees; (ii) HPI and SJBDC have been deprived of their right to incorporate land into Próspera ZEDE and take advantage of the land appreciation resulting therefrom; and (iii) PAC has been deprived of its right to be the default arbitration center for all contractual and patrimonial disputes in the ZEDE as the Arbitration Service Provider and all associated revenues.¹¹⁹¹

530. Because, as explained above, the Charter of Próspera ZEDE qualifies as an “investment agreement” under CAFTA-DR, Honduras’s breaches of the Charter are breaches of an “investment agreement” for which Honduras is liable under CAFTA-DR.¹¹⁹²

V. CLAIMANTS ARE ENTITLED TO FULL REPARATION IN THE FORM OF RESTITUTION OR, ALTERNATIVELY, COMPENSATION IN THE AMOUNT NEEDED TO WIPE OUT ALL THE CONSEQUENCES OF HONDURAS’S TREATY BREACHES

531. As a result of Honduras’s unlawful conduct, Claimants have been deprived of the opportunity to develop Próspera ZEDE into the transformative platform it was meant to be, and, correspondingly, all of the economic benefits that would have accrued to Claimants from their GaaS (also referred to as governance service provider (“GSP”) in the BRG Report) and real estate value accretion business lines.
532. As Claimants have explained, their preferred resolution to this dispute is a settlement with Honduras that enables them to continue developing Próspera ZEDE. If Honduras continues to refuse to come to an agreed resolution, Claimants seek the complete restitution of their rights under the ZEDE Legal Framework, in accordance with Article 10.26(b) of CAFTA-DR, to the extent that this remains practical at the time of the award. These solutions would allow Claimants to continue their project, the intrinsic value of which BRG calculates to be US\$ 10.6 billion on average.¹¹⁹³

¹¹⁹¹ See *supra* §§ II.C.3.c-d, II.C.4.a, II.C.6.

¹¹⁹² See *supra* § III.B.4; CAFTA-DR (CLA-2) Arts. 10.16.1(a)(i)(C), 10.28.

¹¹⁹³ BRG ¶ 171.

Absent these solutions, which would result in significant benefits for Honduras and its people, Claimants are entitled to full monetary reparation under international law, including compensation for the damage to their investments, which BRG calculates conservatively as US\$ 1.63 billion as of 30 September 2025, and moral damages in the amount of US\$ 1 million.¹¹⁹⁴

A. HONDURAS IS UNDER AN OBLIGATION TO MAKE FULL REPARATION, WHICH IN THIS CASE IS RESTITUTION OR, IN LIEU THEREOF, MONETARY DAMAGES IN AN AMOUNT TO COMPENSATE CLAIMANTS FOR THE VALUE OF THEIR INVESTMENTS AND FOR THEIR MORAL DAMAGES

533. Under well-established principles of international law, a State has the obligation to make full reparation for the injuries caused by its wrongful acts. This principle is reflected in Article 31(1) of the ILC Articles on State Responsibility (“**ILC Articles**”), which provides that “[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”¹¹⁹⁵ The ILC Articles further explain that under international law, “[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination”¹¹⁹⁶ In the words of the Permanent Court of International Justice’s widely accepted decision in the *Chorzów Factory* case, the purpose of reparation is to “wipe out all of the consequences of the illegal act, and reestablish the situation which would, in all probability, have existed if that act had not been committed.”¹¹⁹⁷

¹¹⁹⁴ Although Claimants have the option to seek compensation under the liquidated damages provision of the LSA, this is Claimants’ choice and does not supersede Claimants’ right to seek remedies in accordance with the standard of full reparation under international law. Claimants do not elect to exercise their right under the LSA in this instance. See (CLA-6) Art. 3.8 (“Honduras Próspera may elect to seek an award of liquidated damages against the national government of the Republic of Honduras.”) (emphasis added); Amendment to the LSA (CLA-7) Art. 3.8 (same).

¹¹⁹⁵ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (“**ILC Articles**”) (CLA-216) Art. 31(1) (“It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself”).

¹¹⁹⁶ ILC Articles (CLA-216) Art. 34.

¹¹⁹⁷ *Case Concerning The Factory at Chorzów*, PCJ, Claim for Indemnity Merits (13 Sep. 1928) (CLA-218) p. 47. See also ADC (CLA-217) ¶¶ 493, 496-495 (“[T]here can be no doubt about the present vitality of the *Chorzów Factory* principle, its full current vigor having been repeatedly attested to by the International Court of Justice.”).

Under CAFTA-DR, reparation may take the form of either restitution or monetary damages, or a combination thereof.¹¹⁹⁸

534. The principles of restitution are enshrined in Article 35 of the ILC Articles, which provides:

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;
- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.¹¹⁹⁹

535. Restitution may take many forms, including (i) material restitution (physical return of property); (ii) judicial restitution (modifying the legal situation, including by rescinding unlawfully adopted administrative or judicial measures); or “restitution in another form” (“any action that needs to be taken by the responsible State to restore the situation resulting from its internationally wrongful act.”).¹²⁰⁰ Tribunals have awarded restitution in various forms, for example by ordering States to withdraw or desist from measures or restore property rights.¹²⁰¹ CAFTA-DR empowers tribunals

¹¹⁹⁸ CAFTA-DR (CLA-2) Art. 10.26(1) (“Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only: (a) monetary damages and any applicable interest; (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.”).

¹¹⁹⁹ ILC Articles (CLA-216) Art. 35.

¹²⁰⁰ ILC Articles (CLA-216) Art. 35, cmt. (5); *Border Timbers Limited, Timber Products International (Private) Limited, and Hangan Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (28 July 2015) (CLA-219) ¶ 686 (“Generally, restitution is demarcated between material restitution and juridical restitution. The former usually involves the returning of property, whereas the latter involves modifying the legal situation. They are not exclusive; both may be awarded if the situation requires it.”).

¹²⁰¹ *Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Republic of India (I)*, PCA Case No. 2016-7, Award (23 Dec. 2020) (CLA-220) ¶ 1877 (finding that the respondent’s “tax demand against the Claimants . . . is inconsistent with the BIT” and “order[ing] the Respondent to withdraw the Demand permanently and refrain from seeking to recover the alleged tax liability or any interest and/or penalties arising from the Demand”); *Timbers Limited, Timber Products International (Private) Limited, and Hangan Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (28 July 2015) (CLA-219) ¶ 743 (“[T]he Tribunal finds that restitution of the Zimbabwean Properties expropriated in 2005 . . . should be ordered in favor of the Claimants.”); *The Peter Pázmány University v. Czechoslovakia*, PCJ, Appeal from a Judgment of the Hungaro/Czechoslovak Mixed Arbitral Tribunal (15 Dec. 1933) (CLA-221) p. 249 (holding that “the Czechoslovak Government is bound to restore to the Royal Hungarian Peter Pázmány University of Budapest the immovable property claimed by it”).

to award restitution, while allowing States the option to choose to “pay monetary damages and any applicable interest in lieu of restitution.”¹²⁰²

536. It is well established that monetary compensation is an alternative to restitution under international law. Article 36 of the ILC Articles provides that “[t]he State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution,”¹²⁰³ which must include “payment of a sum corresponding to the value which a restitution in kind would bear.”¹²⁰⁴ The ILC Articles confirm that “compensation shall cover any financially assessable damage including lost profits.”¹²⁰⁵ Thus, international law requires compensation in an amount corresponding to (i) the value that would re-establish the *status quo ante*, *i.e.*, the situation that existed prior to the occurrence of the wrongful act, and (ii) any additional damage caused. Numerous tribunals have recognized that these principles of customary international law apply in the context of investor-State disputes.¹²⁰⁶
537. In valuing such monetary damages, tribunals acknowledge that quantum “[v]aluation is not an exact science,” and that “the calculation of damages . . . inevitably requires a certain amount of conjecture as to how things would have evolved ‘but for’ the actual behavior of the parties.”¹²⁰⁷
- This “difficulty in calculation, cannot, however, deprive an investor, who has suffered injury, from

¹²⁰² CAFTA-DR (CLA-2) Art. 10.26(1)(b).

¹²⁰³ ILC Articles (CLA-216) Art. 36(1).

¹²⁰⁴ *Case Concerning The Factory at Chorzów*, PCJ, Claim for Indemnity Merits (13 Sep. 1928) (CLA-218) p. 47.

¹²⁰⁵ ILC Articles (CLA-216) Art. 36(2) (emphasis added).

¹²⁰⁶ See, e.g., *Gold Reserve Inc. v. Venezuela*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CLA-134) ¶¶ 678-681 (noting that “reparation should wipe-out the consequences of the breach and re-establish the situation as it is likely to have been absent the breach,” which is “well accepted in international investment law” and “represent[s] customary international law”); *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 Apr. 2016) (CLA-161) ¶¶ 846-850; *Rusoro Mining (CLA-123) ¶ 640*; *Siemens (CLA-163) ¶ 352*; *Waguhi Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award (1 Jun. 2009) (CLA-223) ¶ 582; *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 Jul. 2008) (CLA-224) ¶ 774; *EL Paso (CLA-145) ¶¶ 700-701* (“In the absence of an agreed criterion, the appropriate standard of reparation under international law is compensation for the losses suffered by the party affected.”).

¹²⁰⁷ *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (28 Mar. 2011) (CLA-225) ¶¶ 248-249.

his fundamental right to see his losses redressed.”¹²⁰⁸ On this basis, the applicable legal standard requires claimants only to provide a “reasonable basis” for valuing their damages.¹²⁰⁹ This naturally “involve[s] some degree of estimation,”¹²¹⁰ and Claimants meet the applicable standard provided that their valuation “provide[s] a basis upon which the Tribunal can, with reasonable confidence, estimate the extent of the loss.”¹²¹¹

538. Additionally, the principle of full reparation requires that Claimants be compensated for their moral damages, which encompass the harms resulting from threats, harassment, intimidation tactics, and assault on reputation.¹²¹² Tribunals accept that moral damages are available under the principle of

¹²⁰⁸ *Lemire* (CLA-225) ¶ 249. See also *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Award (24 Apr. 2019) (“**Hydro**”) (CLA-226) ¶ 844 (“Proving the amount of damages in investment cases is a notoriously difficult task and it cannot be right that, once liability has been established, the Claimants should be deprived of compensation or that the Respondent should escape practical liability for its wrongful acts.”).

¹²⁰⁹ *Hydro* (CLA-226) ¶ 845; see also *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Award (8 Mar. 2019) (CLA-227) ¶ 273 (“When the occurrence of certain facts is demonstrated with certainty, their quantification may be assessed when the Tribunal has received information sufficient to show their reliability with reasonable certainty.”); *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Award of the Tribunal (18 Apr. 2017) (CLA-228) ¶ 121 (“Tribunals have traditionally resolved such difficulties applying a rule of reason, rather than a rule requiring absolute certainty in calculating compensation.”); *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award (9 Sep. 2009) (CLA-229) ¶ 155 (“[T]he Tribunal has sought to arrive at a rational and fair estimate, in accordance with the BIT, of the loss sustained by the Claimant rather than to engage in a search for the chimera of a sum that is a uniquely and indisputably correct determination of the value of what that Claimant lost.”).

¹²¹⁰ *Khan Resources Inc., Khan Resources B.V., and Cauc Holding Company Ltd. v. The Government of Mongolia*, PCA Case No. 2011-09, Award on Merits (2 Mar. 2015) (CLA-230) ¶ 375.

¹²¹¹ *Lemire* (CLA-225) ¶ 246. See also *Crystallex* (CLA-161) ¶ 869 (discussing *Lemire v. Ukraine* and noting that “[t]he tribunal is of the view that the emphasis should be put on the phrase ‘with reasonable confidence’ which seems to strike a wholesome and pragmatic approach, prone to satisfy common law and civil law minds”); *Tecmed* (CLA-120) ¶ 190 (“any difficulty in determining the compensation does not prevent the assessment of such compensation where the existence of damages is certain.”).

¹²¹² See Simon Weber, *Demistifying Moral Damages in International Investment Arbitration*, 19 LAW AND PRACTICE OF INTERNATIONAL COURTS AND TRIBUNALS 417 (“**Weber**”) (CLA-232) p. 420; Patrick Dumbergy, *Moral Damages*, CONTEMPORARY AND EMERGING ISSUES ON THE LAW OF DAMAGES AND VALUATION IN INTERNATIONAL INVESTMENT ARBITRATION, 142 (2018) (“**Dumbergy**”) (CLA-233) p. 145 (citing Stephan Wittich, *Non-Material Damage and Monetary Reparation in International Law*, 15 FINNISH Y.B. INT’L L. 321, (2004) pp. 329–30). See also *Desert Line* (CLA-176) ¶¶ 289–91 (awarding the claimant, a legal entity, US\$ 1 million in moral damages for the harm to the health of the claimant’s executives and harm to the claimant’s credit and reputation); *Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (28 July 2015) (“**Border Timbers**”) (CLA-219) ¶¶ 914–18 (awarding the claimant, a legal entity, US\$ 1 million in moral damages to reflect the gravity of the suffering endured by its employees as a result of the State’s failure to protect the claimant’s employees from threats and physical violence).

full reparation,¹²¹³ to individuals and legal entities alike.¹²¹⁴

539. Both economic and moral damages may be awarded under CAFTA-DR as forms of “monetary damages” under Article 10.26.1(a).¹²¹⁵ As the ILC Articles explain, monetary damages are “intended to offset, as far as may be, the damage suffered by the injured State as a result of the breach,”¹²¹⁶ and may be provided for “any damage [caused], whether material or moral”¹²¹⁷ Thus, customary international law and tribunal jurisprudence confirm that “monetary compensation is the proper remedy for moral damages affecting an individual or a corporation” including Claimants.¹²¹⁸

B. CLAIMANTS’ CLAIM FOR RESTITUTION

540. Claimants first and foremost seek restitution in accordance with Article 10.26(b) of CAFTA-DR, to the extent this remedy remains practical at the time of the award.

541. As elaborated above in Section IV, Honduras has violated its obligations under (i) Articles 10.4, 10.5 and, if Honduras takes the position that Claimants’ rights under the ZEDE Legal Framework no longer exist, 10.7 of CAFTA-DR, (ii) the LSA, and (iii) the Charter (the “**Breaches**”). As a result of these Breaches, Honduras has prevented Claimants from developing Próspera ZEDE. For example, as Mr. Brimen explains, Honduras’s targeted attacks against Próspera ZEDE and

¹²¹³ See WEBER (CLA-232) p. 439.

¹²¹⁴ See *Desert Line* (CLA-176) ¶ 289 (“It is also generally recognized that a legal person (as opposed to a natural one) may be awarded moral damages, including loss of reputation, in specific circumstances only”). See also *Border Timbers* (CLA-219) ¶ 913 (reasoning that staff members of a company should have “recourse to competent, fair tribunals that can reflect the consequences of their poor treatment in an award of moral damages in favour of their employer.”).

¹²¹⁵ CAFTA-DR (CLA-2) Art. 10.26(1)(a).

¹²¹⁶ ILC Articles (CLA-216) Art. 36 Commentary (4).

¹²¹⁷ ILC Articles (CLA-216) Art. 31(2). See also ILC Articles (CLA-216) Art. 36 Commentary (16) (“Compensable personal injury encompasses . . . non-material damage suffered by the individual (sometimes, though not universally, referred to as ‘moral damage’”) (emphasis added). See *Lusitania Cases*, UNRIAA Vol. VII, 32 (1 Nov. 1923) (“*Lusitania Cases*”) (CLA-234) p. 40 (“That one injured is, under the rules of international law, entitled to be compensated for an injury inflicted resulting in mental suffering, injury to his feelings, humiliation, shame, degradation, loss of social position or injury to his credit or reputation, there can be no doubt, and such compensation should be commensurate to the injury.”) (emphasis added).

¹²¹⁸ Dumberry (CLA-233) p. 160.

environment of legal uncertainty “fundamentally altered how [Claimants] could operate,” including, *inter alia*, by impeding Claimants’ financing capacity, stifling fundraising efforts, and preventing completion of planned construction and anticipated projects.¹²¹⁹ If Honduras does not recognize Claimants’ rights under the ZEDE Legal Framework, these difficulties will only continue and get worse. Consequently, Claimants have been prevented and will be prevented from reaping the benefits of their years of hard work and investments, the intrinsic value of which BRG calculates, based on the various scenarios in Claimants’ financial models (*i.e.*, the 30-year Financial Plan and the Real Estate Financial Model (both defined above¹²²⁰), as, on average, US\$ 10.6 billion as of 30 September 2025.¹²²¹

542. Under the principles of restitution, should restitution remain a practical remedy at the time of the award, Claimants request that the Tribunal order Honduras to “wipe out the legal and material consequences of its wrongful act”¹²²² by taking such measures as may be necessary to restore Claimants’ business to its full operating and development potential, including, without limitation, (i) to explicitly recognize Claimants’ rights under the ZEDE Legal Framework and ensure that they shall remain in effect for the entire period of legal stability guaranteed by Honduras, (ii) to the extent Honduras take the position that Claimants have no longer have these rights under the ZEDE Legal Framework, to take the measures necessary to restore these rights in their entirety, and (iii) to allow Claimants’ exercise of such rights and cease and desist from all interference therewith as well as from the harassment and vilification of Claimants.¹²²³

¹²¹⁹ Brimen ¶ 100.

¹²²⁰ *See supra* § II.C.4.a.

¹²²¹ *See infra* § V.C.1.a; BRG ¶ 171.

¹²²² ILC Articles (CLA-216) Art. 35, cmt. (3); *Case Concerning The Factory at Chorzów*, PCJ, Claim for Indemnity Merits (CLA-218) p. 47 (holding that restitution requires the State to “wipe out all of the consequences of the illegal act, and reestablish the situation which would, in all probability, have existed if that act had not been committed”).

¹²²³ *See* ILC Articles (CLA-216) Art. 35, cmt. (5) (“[A]n international court or tribunal can, by determining the legal position with binding force, award what amounts to restitution under another form. The term ‘restitution’ in article 35 thus has a broad meaning, encompassing any action that needs to be taken by the responsible State to

543. Claimants note that such restitution does not by itself constitute full reparation because it does not make Claimants whole for the impacts that they will have suffered as a result of Honduras's Breaches through the effective date of restitution, including delaying the development of Próspera ZEDE by several years. As a result of the ongoing nature of Honduras's Breaches, the quantum of such additional loss will need to be quantified closer to the date of the award taking into account developments over the course of this arbitration. In due course, should restitution remain a viable remedy, Claimants will supplement their request for restitution with a request for monetary damages to be made whole for the losses incurred before and during the pendency of this arbitration as well as otherwise supplement their request for restitution depending on how circumstances in Honduras evolve.

C. CLAIMANTS' CLAIM FOR COMPENSATION FOR THE HARM TO CLAIMANTS' INVESTMENTS

544. Should Honduras choose to pay monetary damages and any applicable interest under Article 10.26(b) of CAFTA-DR, Claimants are entitled to monetary damages in lieu of restitution, including compensatory and moral damages in accordance with the principle of full reparation.

545. Claimants' damages assessment was prepared by Dr. Manuel A. Abdala and Santiago Dellepiane of BRG, a renowned firm for economic and financial expert evidence. Dr. Abdala, who holds a PhD degree in Economics and a Master's degree in political economy from Boston University, has participated as an expert and/or advisor in more than 200 international arbitration matters and has published extensively on, among other things, regulatory economics, privatization, and damages valuation.¹²²⁴ Mr. Dellepiane, who holds a Bachelor's degree in Economics and a Master's degree

restore the situation resulting from its internationally wrongful act." (emphasis added)). *See also* ILC Articles (CLA-216) Art. 35, cmt. (5) ("The term 'juridical restitution' is sometimes used where restitution requires or involves the modification of a legal situation either within the legal system of the responsible State or in its legal relations with the injured State. Such cases include the revocation, annulment or amendment of a constitutional or legislative provision enacted in violation of a rule of international law, the rescinding or reconsideration of an administrative or judicial measure unlawfully adopted in respect of the person or property of a foreigner or a requirement that steps be taken (to the extent allowed by international law) for the termination of a treaty.").

¹²²⁴ BRG § II.1.

in Media Studies and Sociology, has participated as an expert and/or advisor in more than 65 cases before international tribunals and Canadian courts, and he has published research on contractual and treaty damages with the Oxford University Press.¹²²⁵

546. BRG calculates (a) the intrinsic value of Claimants' Financial Plan, which encompasses the value that Claimants expected to obtain from their business and investment absent Honduras's Breaches; and (b) damages suffered by Claimants, as reflected in the losses to Claimants' business and investment resulting from the Honduras's Breaches as of the date of the award ("**Date of Valuation**" **Date of Valuation**" or "**Valuation Date**").

1. Intrinsic value of Claimants' Financial Plan

547. As explained above, in the course of their business in March 2020, Claimants developed their Financial Plan, which provides detailed projections for the anticipated growth of Próspera ZEDE, including, among other things, land incorporation, population growth, economic output, and land values in Próspera ZEDE.¹²²⁶ As Mr. Brimen explains:

[t]he model has dynamic scenario analysis capabilities, including dedicated modules for land valuation, infrastructure costs, tax revenue projections, population modeling, GDP projections, and utility revenue. The model projected Próspera ZEDE's positive effect on land values within the ZEDE, which we calculated would increase from US\$ 39,517 per acre in 2019 to US\$ 316,134 per acre by 2022, representing an 8x value multiplication. The model projected various scenarios, ranging between conservative (978 acres and a population of 80,047 by 2049), expected (4,058 acres and a population of 332,111 by 2049), optimistic (10,058 acres and a population of 823,145 by 2049), and full upside (30,058 acres and a population of 1,646,939 by 2049).¹²²⁷

548. BRG calculates the intrinsic value of this Financial Plan and discounts it back to derive the net present value as of the Date of Valuation.¹²²⁸ BRG calculates the value to be US\$ 26.4 billion in the Full Upside Scenario; US\$ 9.9 billion in the Optimistic Scenario; US\$ 4.7 billion in the

¹²²⁵ *Id.* § II.2.

¹²²⁶ Financial Plan dated 2020 (C-326).

¹²²⁷ Brimen ¶ 79.

¹²²⁸ *See infra* § V.C.1.b.i.

Expected Scenario; and US\$ 1.4 in the Conservative Scenario.¹²²⁹ Averaging these scenarios together results in an intrinsic value of US\$ 10.6 billion as of the Date of Valuation.¹²³⁰

549. Claimants accordingly were working for years to create and develop Próspera ZEDE and their associated business with the expectation that they would reap billions of dollars, US\$ 10.6 billion on average and potentially as high as US\$ 26.4 billion if they were able to realize their business to its full upside potential.

2. BRG's assessment of damages

550. In light thereof, BRG's damages assessment, which assesses Claimants' total damages stemming from Honduras's Breaches to be **US\$ 1.63 billion**,¹²³¹ is clearly highly conservative. BRG reaches this number by taking the differential between the (i) value of Claimants' business in the *but-for* scenario, utilizing an income approach and probabilistic valuation analysis (US\$ 1.69 billion); and the (ii) value of Claimants' business in the *actual* scenario, which is the 'residual' value to Claimants plus the historical losses/gains from the historical period April 2022 to September 2025 (US\$ 63.7 million). As demonstrated below, this method is appropriate both from a jurisprudence and economic perspective, and properly takes into account the appropriate risks and market benchmarks to ensure its reliability for use by this Tribunal.

(a) Applicable principles

551. BRG calculates the losses to Claimants by valuing Claimants' business (*i.e.*, Claimants' GSP and real estate lines of business).¹²³² From an economic perspective, this is equivalent to valuing the loss of Claimants' intangible assets and their compounding effects on value (*i.e.*, Claimants' rights under the ZEDE Legal Framework, including, without limitation, the right to develop and operate

¹²²⁹ BRG ¶ 171.

¹²³⁰ *Id.* ¶ 171.

¹²³¹ *Id.* ¶ 225.

¹²³² *Id.* ¶¶ 13, 173-175, 191.

Próspera ZEDE and the right to legal stability).¹²³³ This is a natural consequence of Honduras's Breaches, which substantially eroded Claimants' entire core business model by frustrating Claimants' rights under the ZEDE Legal Framework. Therefore, Claimants' loss of their business is equivalent to the loss in value of their intangible rights.¹²³⁴ And the calculation of damages to Claimants' investments is the same regardless of the specific type of breach.

552. Claimants are entitled to recover for the difference between the expected *but-for* value of their business and investments (*i.e.*, the value of their business or investments had Honduras not committed its Breaches), and the *actual* value of their business or investments (*i.e.*, the value of their business or investments in the present circumstances under Honduras's Breaches). The differential between these *but-for* and *actual* values constitutes the damages to Claimants due to the Breaches' impact on their business and their intangible rights.¹²³⁵
553. In claiming compensation, Claimants are entitled to choose the valuation date that will result in the higher quantum of damages: either the date of breach (*i.e.*, *ex ante* valuation date) or the date of award (*i.e.*, *ex post* valuation date). This principle derives from the principle of full reparation and has been recognized by numerous tribunals assessing the appropriate measure of damages for unlawful State conduct.¹²³⁶ Assessing damages as of the date of award is also reasonable because

¹²³³ *Id.* ¶ 175.

¹²³⁴ *Id.* ¶ 175.

¹²³⁵ *See id.* ¶ 174.

¹²³⁶ *See Yukos Universal Limited (Isle of Man) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Final Award (18 Jul. 2014) (CLA-235) ¶ 1763 (“[I]n the case of an unlawful expropriation, as in the present case, Claimants are entitled to select either the date of expropriation or the date of the award as the date of valuation.”); *Eurus Energy Holdings Corporation v. Kingdom of Spain*, ICSID Case No. ARB/16/4, Award (14 Nov. 2022) (“*Eurus*”) (CLA-236) ¶¶ 105-117 (applying an *ex post* valuation date for an FET breach because “there is a considerable increase between the compensation calculated as of [date of breach] and that calculated as of [date of award],” so “choosing the [date of breach] valuation date . . . would not result in full reparation of the damages suffered.”); *Hydro* (CLA-226) ¶ 829-836 (applying an *ex post* valuation date for an unlawful expropriation because “the value of [the investment] would have grown between the date of expropriation, when [the business] was just a start-up with potential, and the date this Award”); *Siemens* (CLA-163) ¶ 352 (holding that “[u]nder customary international law, Siemens is entitled not just to the value of its enterprise as of May 18, 2001, the date of expropriation, but also to any greater value that enterprise has gained up to the date of this Award, plus any consequential damages”); *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 Jul. 2015) (CLA-237) ¶ 763 (applying an *ex post* valuation date because “the value of the

it allows for the consideration of more historical data, which reduces the speculative nature of the assessment of the value of the investment.¹²³⁷ To ensure full reparation of Claimants' harm, Claimants' damages are calculated as of the closest possible date to the Report (30 September 2025), as a proxy for the Date of Award.¹²³⁸ Claimants reserve the right to update their calculation and to adjust the Valuation Date if more information comes to light that impacts Claimants' damages under the full reparation standard.¹²³⁹

(b) But-for scenario

554. As noted, the *but-for* scenario measures the value of Claimants' business and investment absent Honduras's Breaches. BRG calculates this value by utilizing an income approach and probabilistic valuation analysis.

(i) The income approach is the appropriate valuation method for the *but-for* value

555. BRG calculates the *but-for* value of Claimants' business by using the income approach. The income approach entails conducting a DCF analysis that projects future cash flows that are expected as of the valuation date and discounts these cash flows for risk and the time value of money to represent the value of the expected cash flows at the valuation date, plus updating historical

unlawfully expropriated assets has increased from the time of the unlawful expropriation"); *AES Corporation v. Argentine Republic*, ICSID Case No. ARB/02/17, Award (30 May 2025) (CLA-238) ¶¶ 439-442 (applying date of award valuation date to an FET breach because "the cumulative nature of Argentina's breaches which have spanned a significant period of time by virtue of a series of measures . . . affecting several aspects of the electricity generation sector over a prolonged period.").

¹²³⁷ *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Award (8 Mar. 2019) (CLA-227) ¶ 260 ("This is precisely what an *ex post* valuation allows: taking account of the actual facts that improve the assessment of those retained at the time before the expropriation when they represented mere projections towards a not yet known future."); *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award (5 Jun. 1990) (CLA-239) ¶ 186 ("[I]f Amco is to be placed as if the contract had remained in effect, then subsequent known factors bearing on that performance are to be reflected in the valuation technique.").

¹²³⁸ See BRG ¶ 12.

¹²³⁹ See *Eurus* (CLA-236) ¶ 106 (permitting the claimant to change its valuation date because "it is in principle legitimate for a party to amend its position and legal arguments throughout the proceedings, including after the hearing, as long as no new evidence is being submitted and the other side is given a chance to respond to these new arguments").

expected *but-for* cash flows from the date that the Breaches began (*i.e.*, April 2022) to the Valuation Date (*i.e.*, 30 September 2025).¹²⁴⁰

556. DCF is a widely accepted valuation method in investor-state arbitration,¹²⁴¹ and tribunals have found that it is appropriate in diverse circumstances.¹²⁴² As one example, the tribunal in *Rusoro Mining v. Venezuela* considered DCF valuations appropriate where “at least a significant part[] of the following criteria are met”: (1) established historical record of financial performance; (2) reliable projections of future cash flow in the form of business plans developed *in tempore non suspecto*; (3) reasonable certainty in determining the price at which products can be sold; (4) the business can be financed with self-generated cash or financing is certain; (5) WACC can be calculated meaningfully, including by providing a reasonable country risk premium; and (6) the enterprise exists in a sector with low regulatory pressure, or otherwise the scope and effects of the regulatory pressure are predictable.¹²⁴³
557. Tribunals also recognize that DCF is considered an accepted method of valuation for early-stage investments in situations where the “project would have gone forward and become operational and profitable in due course” absent Respondent’s breaches.¹²⁴⁴ For example, in *Tethyan v. Pakistan*, the tribunal accepted the DCF methodology for an early-stage investment, relying on a feasibility study prepared by the claimant. The tribunal reasoned that the feasibility study, which “itself was

¹²⁴⁰ See *supra* § V.C.1.b.i.

¹²⁴¹ *OI European Group B.V. (OIEG) v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Award (10 Mar. 2015) (CLA-240) ¶ 658 (noting that “[t]he most widely accepted formula for calculating the market value of a functioning company is unquestionably the DCF methodology.”); *Rusoro Mining* (CLA-123) ¶ 758 (“Valuations based on the DCF method have become usual in investment arbitrations, whenever the fair market value of an enterprise must be established.”).

¹²⁴² See, e.g., *Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic*, ICSID Case No. ARB/17/14, Award (23 Aug. 2022) (CLA-241) ¶ 283 (applying DCF to value an investment that was “not a going concern” based on a separate DCF valuation conducted prior to the investment’s acquisition); *Hydro* (CLA-226) ¶¶ 848-849 (applying a DCF valuation method to value “businesses [that] have only been operating for a short period of time” and for which the “Business Plan is not particularly detailed,” because “the DCF method is a widely-accepted valuation method that can address the uncertainties that arise”).

¹²⁴³ *Rusoro Mining* (CLA-123) ¶ 759.

¹²⁴⁴ *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Award (12 Jul. 2019) (“*Tethyan*”) (CLA-242) ¶ 331.

the result of intensive work on the ground,” was “produced at a time when Claimant and its owners were determined to proceed with the project” and “were willing to contribute large further amounts of equity into the project” – all of which the tribunal deemed “very strong indications that they believed that this project would become operational and profitable.”¹²⁴⁵ The tribunal in *Devas v. India* likewise accepted the DCF methodology for an early-stage investment. The tribunal held that “there [were] a number [of] factors showing that the DCF method is more dependable in this case,” including, *inter alia*, that Deutsche Telekom, a “sophisticated, international enterprise,” was willing to purchase shares in Devas, and that the government was willing to provide Devas with an “experimental license,” indicating that “Indian authorities were not opposed to Devas’ project.”¹²⁴⁶

558. An income analysis is appropriate to value the *but-for* value of Claimants’ business and investment in the present circumstances because Próspera ZEDE would have been operational and profitable, absent Honduras’s Breaches.

559. *First*, Claimants’ business already had been successfully operating for several years prior to when Honduras’s Breaches began.¹²⁴⁷ By April 2022, when Honduras enacted Decree Nos. 32 and 33 repealing the ZEDE Legal Framework, Claimants already had active operations, ongoing real estate projections, and developed urban infrastructure, including through the incorporation of more than 1,000 acres of land into Próspera ZEDE, and the construction of several buildings, including the Beta Building, Beta Offices, and Johnson Building.¹²⁴⁸ Nevertheless, BRG’s valuation approach assumes that Claimants’ investment is at an early stage and calculates the business’s probability of success, as described in further detail below.¹²⁴⁹ This additional measure ensures the conservative

¹²⁴⁵ *Tethyan* (CLA-242) ¶ 332 (awarding US\$ 4.087 billion in damages).

¹²⁴⁶ *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India (I)*, PCA Case No. 2013-09, Award on Quantum (13 Oct. 2020) (CLA-243) ¶ 539 (awarding US\$ 740 million in damages).

¹²⁴⁷ *See Rusoro Mining* (CLA-123) ¶ 759.

¹²⁴⁸ BRG ¶¶ 80-83.

¹²⁴⁹ *See infra* § V.C.1.b.ii.2.

nature of BRG's valuation.

560. *Second*, Claimants had “reliable projections of future cash flows,” as demonstrated through “detailed business plan[s] adopted *in tempore insuspecto*,”¹²⁵⁰ which were “the result of intensive work on the ground,” and generated at a time when Claimants “were determined to proceed with the project.”¹²⁵¹ These include:

- “The City of Roatán” presentation that was provided to CAMP in September 2017, outlining anticipated job and population growth, as well as plans for social impact and community involvement.¹²⁵²
- Master Plan for the Village of North Bay, which included a phased development plan for scaling up via capacity building, as well as dedicated urban layouts.¹²⁵³
- Project Oasis Business Plan, which developed a phased approach towards building out Próspera ZEDE in Roatán and La Ceiba, and provided legal, financial, and taxation general validation of Próspera ZEDE.¹²⁵⁴
- La Ceiba Master Plan, which provided a phased plan for the development of infrastructure and industrial activity, including a power supply plant and water distribution plant.¹²⁵⁵
- Numerous reports from Deloitte confirming the market demand, competitive advantages, projected financial performance, and regulatory incentives underpinning the projects contemplated for Próspera ZEDE, including for Puerto La Ceiba, medical tourism, and financial, holistic, rehabilitation, and specialty clinic centers.¹²⁵⁶
- Claimants’ Financial Plan, as elaborated above.¹²⁵⁷

¹²⁵⁰ *Rusoro Mining* (CLA-123) ¶ 759.

¹²⁵¹ *Tethyan* (CLA-242) ¶ 332.

¹²⁵² *See supra* § II.C.3.a; Presentation The City of Roatán: A Zone for Economic Development and Employment dated 22 Sep. 2017 (C-307) pp. 2, 4-11.

¹²⁵³ *See supra* § II.C.3.a ; ZEDE Application Packet for: Village of North Bay, A Zone for Economic Development and Employment, by Sociedad para el Desarrollo Socio-Económico de Honduras, LLC (C-17) p. 13.

¹²⁵⁴ *See supra* § II.C.4.a; EY, Project Oasis: Final Report (Jul. 2019) (C-322) pp. 112-114; EY, Project Oasis II: Phase I Final Report dated 2 Jul. 2020 (C-492) pp. 18, 41.

¹²⁵⁵ BRG ¶¶ 148-152; La Ceiba Masterplan Draft dated 16 Jun. 2021 (C-578) pp. 5, 11-12; La Ceiba Masterplan (C-631).

¹²⁵⁶ *See supra* § II.C.6.c.

¹²⁵⁷ Financial Plan dated 2020 (C-326); *see also* BRG § VI.1.

- The Real Estate Financial Model, which outlines catalyst investments, details projected construction costs and sales prices, and anticipated sales revenues from the development rights granted to third party developers.¹²⁵⁸

561. *Third*, the price of Claimants’ services “can be determined with reasonable certainty.”¹²⁵⁹ For Claimants’ GSP business, the GSP would collect taxes, residency fees, and service fees, the prices for which all are set in accordance with the Charter.¹²⁶⁰ For Claimants’ real estate business, the prices in Claimants’ financial projections are supported by market evidence, including the sales data from actual property sales in Próspera ZEDE, as well as values from sales of comparable developments.¹²⁶¹

562. *Fourth*, “there was no uncertainty regarding the availability of financing” for Claimants’ business.¹²⁶² HPI successfully raised millions of dollars from sophisticated investors through a series of equity financing rounds. Even during the height of the COVID-19 pandemic, HPI successfully raised approximately US\$ 14.5 million during the Series A round, 290% of its target.¹²⁶³ Even after Honduras began to implement its unlawful measures and Próspera ZEDE and Claimants’ associated business entered into a period of uncertainty, HPI was able to raise a further US\$ 148.8 million during the Series B round.¹²⁶⁴ These include top institutional investors such as North Island Ventures, Boost VC, Draper Associates, and Winklevoss Capital.¹²⁶⁵ As recently as

¹²⁵⁸ Próspera, *St. John's Bay Development Company, Pristine Bay Golf Resort conversion into City of St. John's Bay (a Próspera City)* dated 30 August 2021 (C-482); *see also* BRG § VI.2.

¹²⁵⁹ *Rusoro Mining* (CLA-123) ¶ 759.

¹²⁶⁰ BRG ¶ 236(a); Charter and Bylaws of Próspera ZEDE (CLA-5) Arts. 8, 5.03.

¹²⁶¹ BRG ¶ 237(a).

¹²⁶² *See Rusoro Mining* (CLA-123) ¶ 759; *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India (I)*, PCA Case No. 2013-09, Award on Quantum (13 Oct. 2020) (CLA-243) ¶ 539 (identifying the willingness of high-profile companies to invest in a project as a factor in favor of utilizing a DCF valuation).

¹²⁶³ *Brimen* ¶ 77.

¹²⁶⁴ *See supra* § II.D.5.b; *Brimen* ¶ 91.

¹²⁶⁵ *See Brimen* ¶¶ 121-22; *Próspera Announces Strategic Investment by Coinbase Ventures and Other Investors to Increase Economic Freedom Worldwide*, Próspera Connect (1 Jan. 2025) (C-590); U.S. SEC Form D for Honduras Próspera Inc. (Reg. D 506(b)) dated 24 Jan. 2025 (C-576); U.S. SEC Form D for Honduras Próspera

January 2025, Claimants were able to secure a strategic investment from Coinbase Ventures.¹²⁶⁶ While Claimants’ ability to raise funds has undoubtedly been seriously impacted as a result of Honduras’s Breaches, this extensive fundraising, even under circumstances of extreme adversity, demonstrates Claimants’ impressive capacity to raise capital and engender confidence from sophisticated investors.¹²⁶⁷ Likewise, HPI successfully attracted several high-profile, reputable partners for the project to develop Próspera ZEDE.¹²⁶⁸ Given this demonstrated success, even in the face of Honduras’s measures, there is no question that Claimants could have continued to be able to raise the necessary financing for the business, absent Honduras’s Breaches. Indeed, as Mr. Brimen confirms, Claimants continue to seek to contribute further equity into the project by obtaining additional investors and financing, as evidenced by the recent investment of Coinbase.¹²⁶⁹

Inc. (Reg. D 506(b)) dated 2 Sept. 2021 (C-587); Coinbase Ventures, X @CBVENTURES dated 21 Jan. 2025 (C-574); Brian Armstrong, X @BRIAN_ARMSTRONG dated 21 Jan. 2025 (C-371); *A Libertarian Island Dream in Honduras Is Now an \$11 Billion Nightmare*, Bloomberg (13 Feb. 2025) (C-583); Our Portfolio, WINKLEVOSS CAPITAL (C-581); BigTechEnergy – Startup Cities – Próspera, Stemuli Studios post, LinkedIn (C-572) (video clip featuring Tim Draper stating “We invested in a new country... It’s called Prospera, and it’s all about freedom.”).

These investors are highly experienced. *See* North Island Ventures, *Homepage* (C-607) (stating that North Island Ventures “provide[s] visionary founders with capital, conviction, and lasting support.”); Gilion, *North Island Ventures* (25 Apr. 2025) (last accessed 13 Oct. 2025) (C-580) (showing “\$300 million” as “Total Funds Raised”); BOOST VC, *Homepage* (C-573) (stating that Boost VC is “the most active Deep Tech investor”); Everything Startups, *Boost VC* (C-573) (stating that “[i]n September 2025, Boost VC announced the close of its fourth fund at \$87,654,321, bringing total assets under management to more than \$300 million.”); Draper Associates, *Homepage* (C-575) (stating that Draper Associates “fund[s] ideas, technologies, and industries that will define the next century” for “40+ years” and showing “AUM [assets under management]” to be “\$2.00 B[illion]”); Winklevoss Capital, *Homepage* (C-577) (stating that Winklevoss Capital “backs determined builders working on hard problems in critical domains.”); Gilion, *Winklevoss Capital* (25 Apr. 2025) (C-581) (showing “[o]ver \$200 million in assets under management”).

¹²⁶⁶ *See* Próspera, *Próspera announces strategic investment by Coinbase Ventures and other investors to increase economic freedom worldwide* dated 21 Jan. 2025 (C-582); Brimen ¶ 121.

¹²⁶⁷ As BRG explains, to date Claimants have invested in excess of US\$ 166.3 million in their business. *See supra* § II.E; BRG ¶ 74. At minimum, Claimants are entitled to recover these investments. *See Idris Yamantürk, Teyfik Yamantürk, Musfik Hamdi Yamantürk, and Gürış İnşaat ve Mühendislik A.Ş. (Gürış Construction and Engineering Inc.) v. Syrian Arab Republic*, ICC Case No. 21845/ZF/AYZ, Award (31 Aug. 2020) (CLA-249) ¶ 346 (noting that “recovery of capital invested is the minimum a rational investor expects to receive from a commercial venture that is expected to be successful”).

¹²⁶⁸ *See supra* § II.C.4.d, II.C.6.d.

¹²⁶⁹ *See Tethyan* (CLA-242) ¶ 332 (identifying a claimant’s willingness to invest further funds into a project as a criterion in favor of utilizing a DCF valuation).

563. Additionally, absent Honduras's Breaches, Claimants' "business plan can be financed with self-generated cash."¹²⁷⁰ Claimants' business plans envisioned consolidating the cash flows resulting from the GSP and real estate businesses to address the general financing needs of Claimants. These internal cash flows would then be used to finance future expansions of Próspera ZEDE. Thus, by its very design, Claimants' business was intended to be self-sustaining.¹²⁷¹
564. *Fifth*, it is possible to calculate the discount rate "meaningfully," including a "reasonable country risk premium" to "fairly represent[] the political risk in the host country."¹²⁷² BRG utilizes the traditional international Capital Asset Pricing Model ("CAPM") to estimate Claimants' Cost of Equity ("CoE").¹²⁷³ As BRG explains, this framework takes into account "key parameters," including the risk-free rate, market risk premium, beta, and capital structure, by utilizing market data and comparable benchmarks to ensure that the resulting CoE meaningfully represents the business's overall risk profile.¹²⁷⁴ BRG concludes that the country risk premium for operating in Honduras ranged from 3.83% to 5.51% between 2021-2025.¹²⁷⁵ However, because of the semi-autonomous governance framework allowing investors into the ZEDE regime to establish their own regulatory, administrative, and judicial institutions, they are substantially insulated from the risks of the national economy. Accordingly, BRG concludes that the country risk premium should be adjusted downwards based on a 0.5 lambda factor.¹²⁷⁶
565. *Sixth*, before the Castro government came to power and engaged in the Breaches, Claimants' businesses "exist[ed] in a sector with low regulatory pressure" and "the scope and effects of the

¹²⁷⁰ *Rusoro Mining* (CLA-123) ¶ 759.

¹²⁷¹ BRG ¶ 202.

¹²⁷² *Rusoro Mining* (CLA-123) ¶ 759.

¹²⁷³ BRG App. C.2. As BRG explains, they are calculating free cash flows to equity holders rather than to the firm and when doing so, "one uses the cost of equity rather than a weighted average cost of capital. The latter is used when calculating free cash flows to the firm as it accounts for both equity and debt holders." *Id.* n. 172.

¹²⁷⁴ BRG ¶ App. C.2.

¹²⁷⁵ BRG App. C.2.iv.

¹²⁷⁶ BRG App. C.2.v.

regulatory pressure [we]re predictable.”¹²⁷⁷ As elaborated above in Section II.B, the entire premise of the ZEDE regime was to offer a high degree of autonomy to private businesses seeking to establish ZEDEs, including functional, administrative, regulatory, economic, and fiscal autonomy.¹²⁷⁸ The regime also ensured legal stability to such investors, through both the ZEDE Organic Law and the fifty-year legal stability guarantee afforded under the Honduras-Kuwait BIT (automatically applicable to all investors in the ZEDEs pursuant to Article 32 of the ZEDE Organic Law).¹²⁷⁹ Beyond the regime’s general stability guarantees, HPI and Honduras also entered into the LSA, which provided additional explicit legal stability guarantees for HPI and its affiliates.¹²⁸⁰ In brief, the ZEDE regime was expressly designed to provide a predictable environment of low regulatory pressure to induce foreign investors to come to Honduras and invest in it.

566. Taken together, these elements demonstrate that utilizing the income approach to value the *but-for* scenario for Claimants’ business is consistent with international investment jurisprudence and therefore is appropriate in this case.

567. BRG further explains why from an economic perspective an income approach provides a reasonable basis – in fact, the only reasonable basis – upon which to value Claimants’ damages.

As BRG explains:

the income approach is the most suitable method to determine the but-for intrinsic value of the Claimants’ business, because it is the only approach that allows for replicating the business model as envisioned, anticipated, and partially executed by the Claimants. The income approach evaluates the future income-generating potential of Claimants’ business, allowing for a comprehensive assessment of the project’s cash flow generation. This methodology captures not only the value of tangible assets, such as land and infrastructure, but also the value of intangible assets, from where a significant portion of the project’s cash flow stems.¹²⁸¹

¹²⁷⁷ *Rusoro Mining* (CLA-123) ¶ 759.

¹²⁷⁸ *See supra* § II.B.2.b.i.

¹²⁷⁹ *See supra* § II.B.2.b.ii; ZEDE Law (C-6) Arts. 32, 45; Honduras-Kuwait BIT (CLA-3) Art. 16(4).

¹²⁸⁰ *See supra* § II.C.5; Initial LSA (CLA-6) §1.1; *see also* Amendment to the LSA (CLA-7).

¹²⁸¹ BRG ¶ 178.

568. This income approach is more suitable than other valuation methods, such as the “cost approach,” which estimates the replacement cost value of the asset, and the “market approach,” which derives a value from looking at comparator companies. As BRG explains, neither approach would achieve full reparation for Claimants, because the cost approach “fail[s] to capture the future income-generating potential and prospective value of both [Claimants’] tangible and intangible assets” and there is no proper sample of market comparables.¹²⁸² By contrast, the DCF methodology is specifically designed to forecast the expected cash flows and discount them back to the present date.

(ii) BRG’s Income Approach calculation

569. BRG’s income approach valuation is particularly conservative. BRG relies on Claimants’ business plans and financial models which, as explained above, hold an intrinsic value of on average US\$ 10.6 billion.¹²⁸³ For the purposes of generating a damages calculation consistent with international arbitral practice, BRG conducts its own independent assessment of the assumption within these models and adjusts them based on relevant benchmarks and comparators.¹²⁸⁴

570. Moreover, BRG recognizes the early-stage nature of Claimants’ business at the time that the Breaches began in 2022. Accordingly, BRG applies a “probabilistic approach” to damages by adjusting its calculation to account for the risk that the business may not have succeeded, by averaging two possible outcomes:

- The “Success Scenario,” in which Claimants successfully develop the business as a going concern.¹²⁸⁵
- The “Failure Scenario,” in which Claimants do not successfully develop the business, even without the Breaches.¹²⁸⁶

¹²⁸² BRG ¶¶ 177(b)(i); 177(c)(ii).

¹²⁸³ See *supra* § V.C.1.a.

¹²⁸⁴ BRG ¶ 189.

¹²⁸⁵ BRG ¶¶ 184, 188.

¹²⁸⁶ BRG ¶¶ 184, 205.

571. The methodology analyzes market data for comparable industries to determine the business's probability of success, and weighs the values under the Success Scenario and Failure Scenario in accordance with the business's probability of success.
572. Incorporating the business's chance of success into the valuation methodology makes the calculations even more conservative, and provides an additional layer of security as to the reasonableness of the valuation. In other words, it addresses the uncertainty that arises with early-stage investments by offering a means of discounting the valuation based on the probability that the investment would have survived in the *but-for* scenario.
573. This approach is recognized in economic literature.¹²⁸⁷ For example, Professor Damodaran, preeminent research economist and professor at the New York University Stern School of Business whose work is relied upon in virtually every investment treaty case, recommends this "two-step approach" for early-stage investments:

Many young firms succumb to the competitive pressures of the market place and don't make it. Rather than try to adjust the discount rate for this likelihood, a difficult exercise, we would suggest a two-step approach. In the first step, we would value the firm on the assumption that it survives and makes it to financial health. This, in effect, is what we are assuming when we [calculate] a terminal value and discount cash flows back to today at a risk-adjusted discount rate. In the second step, we would bring in the likelihood that the firm will not survive.¹²⁸⁸

574. Probabilistic approaches to DCF calculations also have been accepted in international investment jurisprudence. For instance, the tribunal in *Tethyan v. Pakistan* adopted the "modern DCF method," which "accounts for asymmetric risks by adjusting the cash flow components affected by these risks such that they reflect the statistically expected outcome."¹²⁸⁹
575. BRG's analysis of the Success Scenario, Failure Scenario, and respective probability of each are

¹²⁸⁷ See Sheridan Titman and John Martin, VALUATION: THE ART AND SCIENCE OF CORPORATE INVESTMENT DECISIONS (2d ed., 2011) (C-588) pp. 58-75.

¹²⁸⁸ Aswath Damodaran, Valuing Young, Start-up and Growth Companies: Estimation Issues and Valuation Challenges (May 2009) (C-589) p. 41. See also BRG ¶¶ 182-184.

¹²⁸⁹ *Tethyan* (CLA-242) ¶¶ 346, 361.

summarized below.

1. Success Scenario

576. Under the Success Scenario, BRG conducts an income approach analysis and discounts future cash flows back to the Valuation Date at a rate reflecting industry risk for the future period, and updates historical cash flows to the Valuation Date.

577. In order to calculate Claimants' *but-for* cashflows, BRG relies on several documents prepared contemporaneously by Claimants in the regular course of their business as part of typical planning and operations for Próspera ZEDE's expectation:

- The Financial Plan, covering the period from 2019 to 2049;¹²⁹⁰
- The Real Estate Financial Model, covering the period from 2021 to 2028;¹²⁹¹ and
- Numerous master plans and other preparatory documents, prepared contemporaneously and in the course of Claimants' business, which set out detailed plans for Próspera ZEDE's operations.¹²⁹²

578. BRG then takes the assumptions within these documents and benchmarks them according to relevant market comparables, including initial GDP per capita, GDP per capita growth, and population density.¹²⁹³ To do so, BRG analyzes the economic and demographic indicators of comparable SEZs and special jurisdictions that carry similar regulatory, fiscal, and operational features. BRG selected six comparable jurisdictions with characteristics similar to those of Próspera ZEDE:

- Shenzhen. Enjoys a high level of governance discretion and has developed business and administrative facilities.¹²⁹⁴

¹²⁹⁰ BRG ¶ 192; Financial Plan dated 2020 (C-326).

¹²⁹¹ BRG ¶ 198; Real Estate Financial Model (C-743).

¹²⁹² *See generally* BRG § V.

¹²⁹³ *Id.* ¶ 189.

¹²⁹⁴ *Id.* ¶¶ 104-08.

- Singapore. Economic development is driven by private agents, and it targets similar industries as Próspera ZEDE.¹²⁹⁵
- Hong Kong. Enjoys economic, administrative, and judicial autonomy, and targets similar industries as Próspera ZEDE.¹²⁹⁶
- DIFC. Enjoys an autonomous legislative and financial framework, and promotes a business-friendly environment.¹²⁹⁷
- Gu'an, China. Utilizes private administration and promotion, as well as private city planning and design.¹²⁹⁸
- Jiaolong, China. Employs a private administrator for planning and promotion.¹²⁹⁹

579. In line with Claimants' core business model, as explained above,¹³⁰⁰ there are two components to Claimants' cashflows in the but-for analysis: government service provider ("GSP") and real estate development ("RE") services.

- BRG calculates Claimants' GSP cashflows by first identifying Claimants' share of Próspera ZEDE's revenue streams from taxes and fees paid by resident individuals and companies incorporated in and conducting business within Próspera ZEDE, based on expected population and GDP per capita growth rates, and then deducting the expected expenses and operating costs.¹³⁰¹
- BRG calculates Claimants' RE cashflows by differentiating between land intended for catalyst projects undertaken by Claimants and other lands mainly developed by third-party developers.¹³⁰² For catalyst projects, BRG calculates revenues by identifying first the sale revenues of developed lands and then deducting associated sale and construction costs, land taxes, and capital expenditures related to acquisition of the land. For the remaining

¹²⁹⁵ *Id.* ¶¶ 109-114.

¹²⁹⁶ *Id.* ¶¶ 115-118.

¹²⁹⁷ *Id.* ¶¶ 119-122.

¹²⁹⁸ *Id.* ¶¶ 123-129.

¹²⁹⁹ *Id.* 130-132.

¹³⁰⁰ *See supra* § II.C.4.a.

¹³⁰¹ BRG ¶ 196.

¹³⁰² Catalyst projects are the projects that Claimants themselves would develop at the outset of a phase, in order to drive further investment and development. By contrast, for third-party development projects, Claimants would sell development rights for third-party developers to execute the projects contemplated in Claimants' master plans. *See* BRG ¶ 72.

land, where Claimants planned to sell a majority of the land as development rights for third-party developers, BRG calculates revenues from selling these development rights.¹³⁰³

580. BRG then calculates a terminal value “that reflects the additional cash flows Claimants are expected to generate beyond 2049” (the end date of Claimants’ Financial Model) for both GSP and RE services, assuming a 2.2% growth rate based on long-term U.S. inflation projections from the International Monetary Fund (“IMF”).¹³⁰⁴ Finally, BRG consolidates the cashflows from the GSP and RE businesses and discounts them to the Valuation Date using Claimants’ CoE of 9.37%.¹³⁰⁵

581. Based on Claimants’ contemporaneous planning documents, BRG assumes that Claimants would have successfully developed Próspera ZEDE in three phases.

- *Roatán Initial Phase.* Absent Honduras’s breaches, Claimants would have developed 750 acres of Roatán into the initial development of Roatán, to be known as “Próspera City.” Claimants’ Master Plans indicate that Claimants sought to develop Próspera City into a fully-developed urban settlement housing 60,000 inhabitants, with sustainable infrastructure, a financial district, educational and healthcare institutions, and hospitality developments.¹³⁰⁶ BRG values the *but-for* success value of Próspera City at US\$ 1.1 billion.¹³⁰⁷
- *La Ceiba.* Absent Honduras’s breaches, Claimants would have developed 385 acres of La Ceiba into an industrial park and logistics hub. This hub would have been the “Shenzhen to Roatán’s Hong Kong,” by operating as a nearshoring and logistics platform to assist in reallocating the industrial supply chain from Asia to the Americas. The hub would have included Port of Satuyé, which was projected to employ 75,000-100,000 workers and host 25,000 residents.¹³⁰⁸ BRG values the *but-for* success value of La Ceiba at US\$ 296.8 million.¹³⁰⁹
- *Roatán Expansion.* Absent Honduras’s breaches, Claimants would have further developed Roatán in accordance with its Financial Plan. To maintain a conservative model, BRG assumes that this expansion would be limited to an additional 2,865 acres incorporated into

¹³⁰³ *Id.* ¶¶ 198-199.

¹³⁰⁴ *Id.* ¶ 197. BRG utilizes U.S. inflation projections because their “projections and discount rate are denominated in U.S. dollars.” *Id.*

¹³⁰⁵ *Id.* ¶ 203.

¹³⁰⁶ BRG § V.1; HS Urbanismo & Próspera, Próspera Village Masterplan dated Feb. 2021 (C-586) pp. 29, 46, 57-66, 72-86, 98, 107-108; Próspera White Paper dated 8 Jun. 2020 (C-751) pp. 48, 64.

¹³⁰⁷ BRG Table 12.

¹³⁰⁸ BRG § V.2; La Ceiba Masterplan Draft (C-578) pp. 5, 11-12.

¹³⁰⁹ BRG Table 12.

Próspera ZEDE.¹³¹⁰ BRG also assumes that development of the Roatán Expansion would have begun in 2029, once Próspera City reached success. BRG values the *but-for* success value of the Roatán Expansion at US\$ 1.3 billion.¹³¹¹

582. In sum, Claimants' total expected *but-for* success value is US\$ 2.7 billion.¹³¹²

2. Failure Scenario

583. As noted above, in the *but-for* Failure Scenario, BRG assumes that Claimants were unsuccessful in developing the business for reasons other than the Breaches. Accordingly, BRG assumes that Claimants recover only for the “distress value” of their assets, or the value that Claimants could have recovered for selling their assets in the marketplace as is, in their current state of development, assuming that the ZEDE regime remains in place.¹³¹³

584. BRG determines that the distress value, or failure value, of Claimants' investment is US\$ 354.3 million, which is equivalent to the book value of the land and properties held by Claimants, according to their most recent financial statement of March 2025.¹³¹⁴ This value is derived by appraisals conducted by Arquitectos y Asociados in February 2024, valuing land owned by Claimants in Roatán.

3. Probability of success

585. BRG calculates the business's probability of success by looking at company survival rate information published by the U.S. Bureau of Labor Statistics (“BLS”), adjusted by the percentage

¹³¹⁰ *Id.* § V.3. This again is a conservative assumption. As explained, Claimants envisioned developing the next Dubai or Singapore, and envisioned Roatán to be comparable to Hong Kong (10,156 acres), and La Ceiba as comparable to Shenzhen (257,283 acres). *See supra* § II.C.3.d; Brimen ¶¶ 20,79. As Próspera ZEDE grew (and opportunities for growth were enormous given that Honduras made huge portions of the country available for the development of ZEDes and the process for incorporation of land into a ZEDE was by law ministerial), Claimants would have obtained even more opportunities for development, which they would have seized, and which would have further accelerated significant development. *See supra* §§ II.B.1, II.C.4-6; Brimen ¶¶ 65-68.

¹³¹¹ BRG Table 12.

¹³¹² *Id.* ¶ 204.

¹³¹³ *Id.* ¶ 205.

¹³¹⁴ *Id.* ¶ 206; Honduras Próspera Inc., Unaudited Interim Financial Statements Three Months Ended March 31, 2025 and 2024 (C-584) p. 15.

of voluntary closures published by the U.S. Census Bureau.¹³¹⁵ This is appropriate, because Próspera ZEDE has a high degree of stability, like the U.S.¹³¹⁶ Because Próspera ZEDE has been in operation for five years to date, BRG analyzes the survival rate of companies after five years.

- *GSP services.* There is no direct comparator to Claimants' GSP services business arm, which consists of providing governance as a service in a special jurisdiction. However, BRG endeavored to find the closest possible comparator. Thus, to establish a comparator to Claimants' GSP business, BRG analyses the survival rate in the Management of Companies and Enterprises sector, which comprises companies that "administer, oversee, and manage establishments of the company or enterprise and that normally undertake the strategic or organizational planning and decision making role of the company or enterprise."¹³¹⁷ If anything, this is conservative, as companies providing governance as a service in a special jurisdiction will have a greater likelihood of survival than management companies. BRG concludes that, after five years and adjusting for voluntary closures, there is a 71% probability that companies in this sector survive.¹³¹⁸
- *Real estate services.* To establish a comparator to Claimants' RE business, BRG analyses the survival rate in the Real Estate and Rental and Leasing sector, which comprises companies that are "engaged in renting, leasing, or otherwise allowing the use of tangible or intangible assets."¹³¹⁹ BRG concludes that, after five years and adjusting for voluntary closures, there is a 68.6% probability that companies in this sector survive.¹³²⁰
- Averaged together, BRG calculates Claimants' joint survival probability of success in the real estate and GSP businesses to be 69.8%.¹³²¹

586. BRG then applies this survival rate to Claimants' business. Since the Roatán Initial Phase and La Ceiba are components of the business that are ongoing simultaneously, BRG applies a 69.8% chance of success, and 30.2% chance of failure, to both.¹³²² By contrast, BRG assumes that

¹³¹⁵ BRG ¶¶ 208-215.

¹³¹⁶ See *id.* ¶¶ 47-49, 66-69.

¹³¹⁷ BRG ¶ 209(a); U.S. Bureau Of Labor Statistics, Industries at a Glance: Management of Companies and Enterprises: NAICS 55 (1 Oct. 2025) (C-579).

¹³¹⁸ BRG excludes the percentage of voluntary closures, which comprises 9.5% of companies after five years. See BRG ¶ 214.

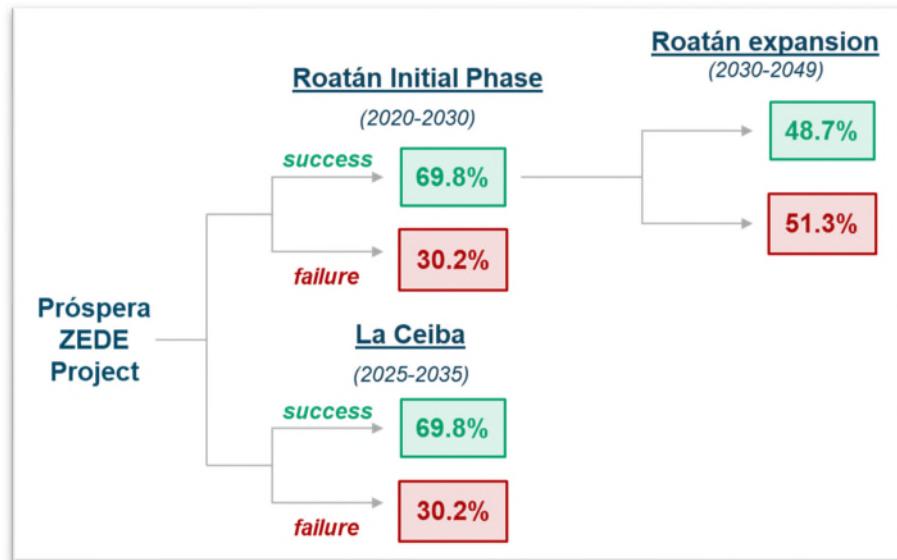
¹³¹⁹ *Id.* ¶ 209(b); U.S. Bureau of Labor Statistics, Industries at a Glance: Real Estate and Rental and Leasing: NAICS 53 (01 Oct. 2025) (C-585).

¹³²⁰ BRG excludes the percentage of voluntary closures, which comprises 8.9% of companies after five years. See BRG ¶ 215.

¹³²¹ *Id.* ¶ 216.

¹³²² *Id.* ¶ 217.

Claimants would only begin to develop the Roatán Expansion if the Roatán Initial Phase was successful. Thus, the Roatán Expansion is contingent on the success of the Roatán Initial Phase.¹³²³ BRG reasons that there is a 69.8% chance of the success of the Roatán Expansion, contingent on the 69.8% chance of success of Próspera City. Cumulatively, BRG calculates the chance of success for the Roatán Expansion to be 48.7%, and the chance of failure to be 51.3%.¹³²⁴



587. After taking into consideration the business’s probability of success, and thereby the risk inherent with early-stage investments, BRG calculates the expected but-for value of Claimants’ business to be US\$ 1.7 billion.¹³²⁵

(c) *Actual scenario*

588. In the actual scenario, the only value Claimants hold is in their real property. Thus, to determine the value of Claimants’ asset in the actual scenario, BRG first calculates the liquidation value of Claimants’ real property, or the value that Claimants could obtain if they were to sell the property without the ZEDE Legal Framework in place. BRG calculates the liquidation value by taking the

¹³²³ *Id.* ¶ 217. This again further confirms the conservative nature of BRG’s assessment.

¹³²⁴ *Id.* ¶ 217.

¹³²⁵ *Id.* ¶ 219.

properties' acquisition prices and adjusting them for inflation to the Valuation Date.¹³²⁶ This results in a total value of US\$ 65.4 million: US\$ 49.8 million for the property in Pristine Bay; US\$ 2.9 million for the property of the original 58 acres; US\$ 10.5 million for the remaining unsold units in the Duna Tower building; and US\$ 2.2 million for the Beta Buildings, Circular Factory, and Johnson Buildings.¹³²⁷

589. Finally, to offset the gains/losses actually realized by Claimants since Honduras's Breaches began, BRG includes the present value of the cash flows received by HPI's equity holders from 2022 to 2025, based on HPI's unaudited financial statements. BRG calculates this to be US\$ -1.7 million.¹³²⁸

590. Cumulatively, the valuation of Claimants' business in the actual scenario is US\$ 63.7 million.¹³²⁹

591. Additionally, Honduras's Breaches have placed a cloud on the title of Claimants' property, significantly driving down its value. As explained above, the land incorporated into Próspera ZEDE has been removed from the National Property Register. Although Honduras purports to have canceled everything under the ZEDE Legal Framework, it has have not provided for any transition framework.¹³³⁰ Consequently, there is uncertainty with respect to the land currently incorporated into Próspera ZEDE. This uncertainty creates a cloud on title for this land, so the value of Claimants' assets in the *actual* scenario may be much less, including even potentially zero, depending on what Honduras does, if anything, regarding the legal status of land incorporated into the ZEDE.

(d) Damages sustained by Claimants

592. Claimants' damages are the differential between the expected *but-for* value of Claimants' business

¹³²⁶ *Id.* ¶ 223.

¹³²⁷ *Id.* ¶ 223(b).

¹³²⁸ *Id.* ¶ 223(c).

¹³²⁹ *Id.* ¶ 224.

¹³³⁰ *See supra* § II.D.7.

(US\$ 1.69 billion) and the *actual* value (US\$ 63.7 million), Accordingly, Claimants’ total damages stemming from Honduras’s Breaches as of the Date of Valuation total **US\$ 1.63 billion**, or even higher, given the cloud on title impacting Claimants’ assets.¹³³¹

593. BRG further apportions the damages between each Claimant based on their proportion of the losses sustained. BRG estimates HPI’s damages to be **US\$ 1.3 billion**, and SJBDC’s damages to be **US\$ 298.6 million**, reflecting the expected value of Claimants’ respective businesses minus the actual value attributable to each.¹³³²

D. CLAIMANTS’ CLAIM FOR MORAL DAMAGES

594. Claimants are also entitled to moral damages for Honduras’s conduct. For the past three years, the Honduran government has sought to vilify Claimants and disseminate dangerous rhetoric, including that Claimants are “criminals” and the “enemy” of Honduras and calling on the Honduran people to “fight” to defeat them.¹³³³ Such virulent attacks, endorsed by the most prominent figures in the Honduran government,¹³³⁴ have escalated to arbitrary and forced police entry into Claimants’ private property¹³³⁵ and public threats of criminal prosecutions of individuals related to

¹³³¹ BRG ¶ 225.

¹³³² *Id.* ¶ 226. Claimants do not seek compensatory relief for PAC. Instead, Claimants seek restitution of their rights in their entirety, including, without limitation, PAC’s right to operate an arbitration center and be the default arbitration service provider for all contractual and patrimonial disputes in Próspera ZEDE (in accordance with Article 20 of the ZEDE Law). Further, all Claimants seek declarations that Honduras has breached CAFTA-DR, the LSA, and the Charters. *See infra* § VII; ILC Articles (CLA-216) Art. 37 cmt. (6) (“while the making of a declaration . . . may be treated as a form of satisfaction . . . such declarations are not intrinsically associated with the remedy of satisfaction. Any court or tribunal which has jurisdiction over a dispute has the authority to determine the lawfulness of the conduct in question and to make a declaration of its findings, as a necessary part of the process of determining the case.”) (emphasis added).

¹³³³ *See, e.g.*, Xiomara Castro’s Speech in Roatán, Xiomara Castro de Zelaya Post, FACEBOOK dated 7 Aug. 2021 (C-551); [REDACTED]

¹³³⁴ *See supra* §§ II.D.1, II.D.4; CICESCT, *Xiomara Castro’s Plan for Government*, CICESCT (5 Sep. 2021) (C-571) pp. 5, 29; Jorge Burgos, *After repealing the ZEDE, the next step is prosecuting their promoters for treason*, CRITERIO HN (21 Apr. 2022) (C-349) (“In recent statements, Manuel Zelaya, former president, general coordinator of the Partido Libre and advisor to the president and his wife Xiomara Castro, expressed that ‘the ZEDEs are an act of treason’ and those who promoted them ‘should be brought to justice’. . . The presidential designate against the ZEDE, Fernando García, has the same assessment, who highlights that those who participated in the creation of the regimes ‘have committed the crime of treason to the country’.”).

¹³³⁵ *See supra* § II.D.7; Próspera ZEDE, *Confiscation of investments on the island of Roatán?* dated 14 Oct. 2024 (C-360). *See also* Brimen ¶ 113 (“After this raid, I had to seriously consider whether traveling to Honduras would

Claimants.¹³³⁶ By perpetuating a climate of political violence and intimidation, Honduras has not only harmed Claimants' investments, but also damaged its credibility and reputation, forcing Claimants to change how they operated.¹³³⁷ Honduras's actions have also had significant and direct consequences on the Claimants' corporate officers, including Mr. Brimen, who has experienced severe stress over reputational harm, fear for his freedom and safety and that of his family and anyone associated with Claimants' venture,¹³³⁸ and has been forced to put in place measures to protect his personal security and that of others and even had to leave Honduras.¹³³⁹ The situation in which the Claimants and these employees find themselves is a direct consequences of the Respondent's unlawful acts.

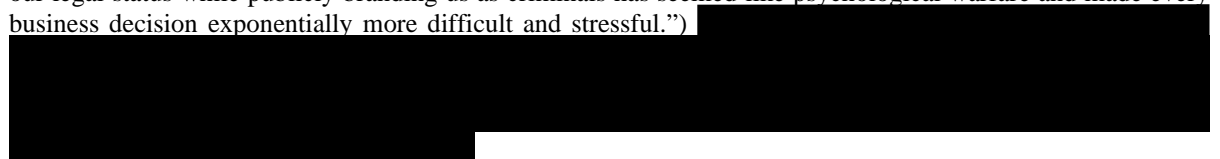
595. Given the foregoing, and as a consequence Honduras's threats, harassment, humiliation, and

result in my arrest on fabricated charges. Although I was afraid, I decided to stay in Roatán despite the risk, trusting that I would be protected from unfair and unlawful arrest as a U.S. citizen.”).

¹³³⁶ See *supra* § II.D.4. See also Fernando Emilio García Rodríguez' radio interview, RADIO GLOBO (9 Jan. 2023) (C-560); Brimen ¶ 105 (“The Anti-ZEDE Commissioner, Fernando García, warned that anyone involved in creating or operating a ZEDE had ‘committed the crime of treason.’ My team and I heard these things and feared we might be facing criminal prosecution simply for pursuing a government-approved development project.”).

¹³³⁷ See Brimen ¶ 123 (“[T]he damage done by the government made it impossible to reach our original goal to raise \$500 million in funding by 2025, which I had regarded as a reasonable target in 2020-21. But now our reputation is associated with controversy, criminality allegations, and sovereign disputes. As CEO, my professional reputation built over decades has been severely damaged.”).

¹³³⁸ See *id.* ¶ 124 (“The government’s systematic hostility has taken a profound personal toll beyond the business impacts. The entire HPI team has been rocked to its core by the vicious attacks, with our Honduran team members called traitors, and those of us that came to Honduras to build something new accused of trying to plunder the country. . . . Since 2022, I have lived under the cloud of potential criminal prosecution simply for developing a project explicitly authorized by Honduran law. I have been insulted and abused in the press and in public. I have been physically assaulted, threatened with lynching (by a Government official), and have been in fear of my life and for my family. The stress of wondering whether I would be arrested in Honduras, whether our Honduran staff would be prosecuted for ‘illegal’ work, whether a mob might attack our facilities, or whether police would seize our assets has been constant and exhausting. Honduras’s strategy of maintaining deliberate uncertainty about our legal status while publicly branding us as criminals has seemed like psychological warfare and made every business decision exponentially more difficult and stressful.”)



¹³³⁹ See Brimen ¶ 100 (“This climate of political violence fundamentally altered how I could operate. While I believed it was critical for me to remain in Roatán, I was forced to enhance personal security to protect myself and my family and, subsequently, we stayed outside the country for prolonged periods when there were heightened tensions.”).

intimidation tactics directed at Claimants' employees as well as its arbitrary attacks on Claimants' private property and reputation,¹³⁴⁰ moral compensation is appropriate as a matter of international law.¹³⁴¹ Accordingly, an award of monetary compensation in reparation of moral harm in the amount of US\$ 1 million is appropriate.¹³⁴²

E. NO DILUTION THROUGH TAXATION

596. It is well established that the obligation to provide Claimants with full reparation for their harm may not be circumvented or diluted by way of burdening the corresponding award with taxes.¹³⁴³ Here, BRG calculates Claimants' damages on a post-tax basis, *i.e.*, after the payment of the corporate income tax in applicable in Próspera ZEDE.¹³⁴⁴ Accordingly, no further tax may be assessed by Honduras on any award of damages that the Tribunal may make based on BRG's damages assessment, because doing so would constitute double taxation, thereby reducing Claimants' compensation below the level necessary to provide full reparation for the harm caused by Honduras's Breaches. Claimants reserve the right, depending on Honduras's response in its Counter-Memorial on the Merits, to request appropriate relief from the Tribunal to ensure full reparation for Claimants' losses.¹³⁴⁵

¹³⁴⁰ See *Desert Line* (CLA-176) ¶¶ 289-91; *Border Timbers* (CLA-219) ¶¶ 914-18.

¹³⁴¹ See ILC Articles (CLA-216) Art. 31(2); *Lusitania Cases* (CLA-234) p. 40 ("That one injured is, under the rules of international law, entitled to be compensated for an injury inflicted resulting in mental suffering, injury to his feelings, humiliation, shame, degradation, loss of social position or injury to his credit or reputation, there can be no doubt . . .") (emphasis added).

¹³⁴² See *Desert Line* (CLA-176) ¶¶ 289-91 (awarding US\$ 1 million in moral damages); *Border Timbers* (CLA-219) ¶¶ 914-18 (awarding US\$ 1 million in moral damages).

¹³⁴³ *Rusoro Mining* (CLA-123) ¶ 853 ("If [Venezuela] were to impose a tax on Rusoro's award, Venezuela could reduce the compensation "effectively" received by Rusoro. A reductio ad absurdum proves the point: Venezuela could practically avoid the obligation to pay Rusoro the compensation awarded by fixing a 99% tax rate on income derived from compensations issued by international tribunals, thereby ensuring that Rusoro would only effectively receive a compensation of 1% of the amount granted.").

¹³⁴⁴ As Claimants' business is located within Próspera ZEDE, it is subject to the ZEDE tax regulations. BRG ¶ 237(c).

¹³⁴⁵ Such relief may include a request for an award net of taxes, calculating damages gross of tax, a tax gross-up in the award, an order that Honduras indemnify Claimants for any tax that it may apply to the award, or a combination thereof or some other appropriate relief in view of the circumstances. See, e.g., *Rusoro Mining* (CLA-123) ¶ 904(9) ("the tribunal unanimously ... [d]eclares that the compensation, damages and interest granted in this Award are net of any taxes imposed by the Bolivarian Republic and orders the Bolivarian Republic to

F. HONDURAS MUST PAY POST-AWARD INTEREST ON ALL AMOUNTS AWARDED

597. As Claimants presently seek compensatory damages as of the date of the award as well as moral damages, they do not seek an award of pre-award interest at this time.¹³⁴⁶ However, Claimants seek post-award interest on all amounts awarded. Tribunals recognize that awarding post-award interest is appropriate to ensure full reparation.¹³⁴⁷ Accordingly, an award of post-award interest is necessary to compensate Claimants in full.
598. Historically, the London Interbank Offered Rate (“**LIBOR**”) plus an uplift was considered an appropriate interest rate for post-award interest in investor-state arbitration.¹³⁴⁸ An uplift of 4% has been considered appropriate.¹³⁴⁹ With the discontinuation of LIBOR, the secured overnight financing rate (“**SOFR**”), which represents the “broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities in the repurchase agreement (repo) market,” has been accepted as an appropriate replacement by both the U.S. Federal Reserve Board and the

indemnify Rusoro with respect to any Venezuelan taxes imposed on such amounts.”); *Siemens* (CLA-163) ¶ 403(11) (ordering Argentina to pay “any funds to be paid pursuant to this decision [] in dollars and into an account outside Argentina indicated by the Claimant and net of any taxes and costs”); *Burlington* (CLA-174) ¶ 635 (declaring that “the Award is net of income and labor participation taxes and that Ecuador may not impose or attempt to impose income and labor participation taxes on the Award”); *Micula* (CLA-144) ¶¶ 1180-1181 (entertaining the possibility of a tax gross-up but ultimately finding such a gross-up not warranted in that case because *inter alia* the damage calculations on which the tribunal’s award was based “used gross profit margins” (*i.e.* the damage calculation was not in fact net of tax)).

¹³⁴⁶ As noted above, Claimants reserve the right to update their calculation and to adjust the Valuation Date if more information comes to light that impacts Claimants’ damages under the full reparation standard. To the extent an award of pre-award interest becomes necessary to provide full reparation to Claimants, Claimants reserve the right to request such interest.

¹³⁴⁷ See, e.g., *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Award (8 Mar. 2019) (CLA-227) (“In the instant case, post-award interest represents compensation for the loss of the money awarded. Such interest will not serve to increase the amounts of dividends to which the Claimants are entitled in a but-for scenario. Post-award interest serves to compensate the Claimants for the lack of revenue represented by the amounts awarded and the profit that the Claimants would most probably derive from it in the usual course of its business.”); *Rusoro Mining* (CLA-123) ¶ 879(j); *Tethyan* (CLA-242) ¶ 1809.

¹³⁴⁸ *Flughafen* (CLA-183) ¶ 963 (noting that LIBOR “is universally accepted as a reference for setting interest rates for loans, deposits and other financial instruments”).

¹³⁴⁹ See, e.g., *Rusoro Mining* (CLA-123) ¶¶ 837 (applying LIBOR +4% as the appropriate interest rate); *JSC Tashkent Mechanical Plant, JSCB Asaka, JSCB Uzbek Industrial and Construction Bank, and National Bank for Foreign Economic Activity of the Republic of Uzbekistan v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/16/4, Award (17 May 2023) (CLA-244) ¶¶ 785-787 (applying LIBOR +4% as the appropriate interest rate).

Federal Reserve Bank of New York.¹³⁵⁰ Arbitral tribunals also have accepted SOFR as an appropriate replacement to LIBOR.¹³⁵¹ Accordingly, Claimants are entitled to SOFR +4% as a post-award interest rate.

599. This interest should be computed on an annual compound basis, because this is “the international standard” and “reflects the majority of commercial realities in that a loss of value incurred by a company, active in normal trading operations, implies the loss of use of that value.”¹³⁵² This principle has been widely accepted in investment arbitration jurisprudence.¹³⁵³

VI. HONDURAS SHOULD BEAR THE COSTS OF THIS PROCEEDING

600. Honduras’s conduct has caused Claimants substantial damage, including the need to devote significant resources to present their claims in this arbitration. Claimants request that the Tribunal, in accordance with CAFTA-DR, order Honduras to bear the costs incurred by Claimants in connection with this proceeding, including attorney’s fees, expert witness fees, the Tribunal members’ fees and expenses, and the costs of the Centre. Article 10.26(1)(b) of CAFTA-DR gives

¹³⁵⁰ See Alternative Reference Rates Committee, *Transition from LIBOR* (C-771) p. 2 (noting that SOFR is “the ARRC [of the Federal Reserve Bank of New York]’s preferred alternative to USD LIBOR” and “is a much more resilient rate than LIBOR” because it “better reflects the way financial institutions fund themselves today”); Board of Governors of the Federal Reserve System, *Federal Reserve Board adopts final rule that implements Adjustable Interest Rate (LIBOR) Act by identifying benchmark rates based on SOFR (Secured Overnight Financing Rate) that will replace LIBOR in certain financial contracts after June 30, 2023* dated 16 Dec. 2022 (C-752) (implementing a rule that “identifies replacement benchmark rates based on SOFR to replace overnight, one-month, three-month, six-month, and 12-month LIBOR in contracts subject to the Act.”); United States, LIBOR ACT of 2021, H.R. 4616, 117th Cong. (9 Dec. 2021) (C-753) (declaring SOFR to replace LIBOR as a benchmark in existing contracts).

¹³⁵¹ *Niko Resources (Bangladesh) Ltd. v. Bangladesh Oil Gas and Mineral Corporation (Petrobangla), Bangladesh Petroleum Exploration and Production Company Limited (Bapex)*, ICSID Case No. ARB/10/18, Award (24 Sep. 2021) (CLA-245) ¶¶ 254-257 (replacing a previously-decided LIBOR interest rate with SOFR because “the LIBOR will end”); *Refinería de Cartagena S.A. v. Chicago Bridge & Iron Company NV, CB&I UK Limited and CB&I Colombiana S.A.*, ICC Case No. 21747/RD/MK/PDP, Final Award (2 Jun. 2023) (CLA-246) ¶ 2356 (noting that “SOFR should be accepted as the alternative to LIBOR”).

¹³⁵² T. J. Sénéchal and J. Y. Gotanda, *Interest as Damages*, 47 COLUMBIA J. TRANSNATIONAL LAW 492 (2009) (C-755) p. 505.

¹³⁵³ See, e.g., *Rusoro Mining* (CLA-123) ¶¶ 842-843 (compounding a LIBOR +4% interest rate); *JSC Tashkent Mechanical Plant, JSCB Asaka, JSCB Uzbek Industrial and Construction Bank, and National Bank for Foreign Economic Activity of the Republic of Uzbekistan v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/16/4, Award (17 May 2023) (CLA-244) ¶¶ 785-787 (compounding a LIBOR +4% interest rate).

the Tribunal broad discretion to allocate costs between the parties.¹³⁵⁴

601. The principle that the losing party should pay costs has become common practice in investor-State disputes, as reflected in the decisions of many tribunals.¹³⁵⁵ The *ADC v. Hungary* tribunal underscored that an award of costs may be a necessary element of compensation:

In the present case, the Tribunal can find no reason to depart from the starting point that the successful party should receive reimbursement from the unsuccessful party. This was a complex, difficult, important and lengthy arbitration which clearly justified experienced and expert legal representation as well as the engagement of top quality experts on quantum. The Tribunal is not surprised at the total of the costs incurred by the Claimants. Members of the Tribunal have considerable experience of substantial ICSID cases as well as commercial cases and the amount expended is certainly within the expected range. Were the Claimants not to be reimbursed their costs in justifying what they alleged to be egregious conduct on the part of Hungary it could not be said that they were being made whole.¹³⁵⁶

602. As Claimants have demonstrated in this Memorial and will demonstrate in further submissions, an award of costs to Claimants is fully justified and necessary to make Claimants whole.

VII. REQUEST FOR RELIEF

603. For the foregoing reasons, Claimants respectfully request that the Tribunal:

- a) DECLARE, with respect to HPI, SJBDC, and PAC, that Honduras has breached Chapter 10, Section A of CAFTA-DR, including by breaching its obligations (i) to accord Claimants and their investments the minimum standard of treatment, including fair and equitable treatment (Article 10.5); (ii) to accord Claimants and their investments most favored nation treatment (Article 10.4) by failing to accord Claimants the same 50 years of legal stability accorded to Kuwaiti investors in the Honduras-Kuwait BIT; and (iii) insofar

¹³⁵⁴ CAFTA-DR (CLA-2) Art. 10.26(1)(b) (“A tribunal may also award costs and attorney’s fees in accordance with this Section and the applicable arbitration rules.”). *See also* ICSID Arbitration Rules, Rule 52 (“In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances.”).

¹³⁵⁵ *See, e.g., Kornikom EOOD v. Republic of Serbia*, ICSID Case No. ARB/19/12, Award (20 Sep. 2023) (CLA-247) ¶ 748 (indicating that the tribunal would apply the ‘costs follow the event’ or ‘loser pays’ principle “which has also been applied by other investment arbitration tribunals.”); *Staur Eiendom AS, EBO Invest AS and Rox Holding AS v. Republic of Latvia*, ICSID Case No. ARB/16/38, Award (28 Feb. 2020) (CLA-248) ¶ 526 (“From the above, it is evident that the Respondent has been the successful party. All of the Claimants’ claims have been rejected. It therefore follows that the Claimants should bear the costs reasonably incurred by the Respondent for the arbitration.”). *See also Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Republic of India (I)*, PCA Case No. 2016-7, Award (21 Dec. 2020) (CLA-220) ¶ 2020 (explaining that the rationale for the principle of “costs follow the event” is that “a party should not be forced to bear the costs of proceedings it was obliged to initiate to protect its investment (in the case of a prevailing claimant) or compelled to participate in (in the case of a respondent).”).

¹³⁵⁶ *ADC* (CLA-217) ¶ 533.

as Honduras takes the position that Claimants no longer have rights under the ZEDE Legal Framework, not to expropriate Claimants' investments except for a public purpose, in a non-discriminatory manner, on payment of prompt, adequate and effective compensation, and in accordance with due process of law and Article 10.5 (Article 10.7); and

- b) DECLARE, with respect to HPI, that Honduras also has breached (i) the LSA, which is a breach of that agreement as well as a breach of an investment agreement as defined in CAFTA-DR; and (ii) the Charter of Próspera ZEDE, which is a breach of an investment authorization as defined in CAFTA-DR; and either
 - c) ORDER, to the extent practical as of the date of the award, Honduras to (A) take such steps as may be necessary for the restitution of Claimants' property, including, without limitation, (i) explicitly recognizing Claimants' rights under the ZEDE Legal Framework and ensuring that they shall remain in effect for the entire period of legal stability guaranteed by Honduras, (ii) to the extent Honduras takes the position that Claimants no longer have these rights, restoring these rights in their entirety, and (iii) allowing Claimants' exercise of these rights and ceasing and desisting from all interference therewith as well as from the harassment and vilification of Claimants; and (B) pay monetary compensation to make Claimants whole for losses incurred as a result of Honduras's Breaches through the date of restitution, in an amount to be determined as of the date of award; or
 - d) ORDER Honduras to pay monetary damages to Claimants in the amount of US\$ 1.63 billion as compensation for the damage to their investments; and
 - e) ORDER Honduras to pay monetary damages to Claimants in the amount of US\$ 1 million for moral damages; and
 - f) ORDER Honduras to pay all Claimants' costs of this arbitration, including, without limitation, Claimants' legal costs, expert fees, in-house and other costs incurred in relation with their claims in this arbitration, the fees and expenses of the Tribunal, and ICSID's costs; and
 - g) ORDER Honduras to pay post-award interest on all sums awarded at a rate of SOFR +4% compounded annually; and
 - h) AWARD any further or other relief that the Tribunal considers just and appropriate.
604. Claimants reserve all of their rights, including their right to amend their claims and relief requested, including in light of further actions on the part of Honduras with respect to Claimants' investments.

Respectfully submitted,

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