



Legal Alert

Validity of the Employment and Economic Development Zones (ZEDE) in Honduras for investment

Background



The Employment and Economic Development Zones (ZEDE) were created through the constitutional amendments to articles 294, 303, 304 and 329 of the Constitution of the Republic of Honduras, contained in Decree 236-2012 of the National Congress, which were duly ratified by such body. In addition to the current constitutional framework that creates and establishes the basis for the ZEDE, the specific regulation for the ZEDE was subsequently developed through the Organic Law of the ZEDE.

Currently, this ZEDE Regime has at least one ZEDE approved and in effect with residents and investors with operations, based on the rights granted by the Government of the Republic of Honduras, under the protection of the law regulating that concerning this regime.

Regarding the validity of the ZEDE



In April 2022, the National Congress of Honduras approved Decree 32-2022 that stipulates the repeal of the constitutional reforms regulating the Employment and Economic Development Zones (ZEDE); however, it had to be ratified by the subsequent ordinary legislature, which was closed on October 31, 2023, without having been ratified for its entry into force. Furthermore, the National Congress also approved Decree 33-2022 that stipulated the repeal of the Organic Law of the ZEDE and other related regulations, provisions, or legal precepts.

Moreover, despite the decrees mentioned above, there is at least one ZEDE established based on the constitutional provisions and the Organic Law of the ZEDE which are protected under the principle of non-retroactivity of the law regulated in article 96 of the Constitution of the Republic of Honduras, which grants protection to rights vested during the effective term of the law, and are also protected by the foreign investment protection standards considered in the bilateral and multilateral agreements ratified by the Republic of Honduras, among which are the Free Trade Agreement between the Dominican Republic – Central America and the United States, entitled “DR-CAFTA”.

It is important to notice that the Technical Secretary of each ZEDE was authorized by the National Congress of Honduras under Articles 12.2 and 45 of the Organic Law of the ZEDE to enter into legal stability agreements, which guarantee a transition period of no less than 10 years after any repeal of the Organic Law of the ZEDE. In addition, a request for international arbitration has been filed before the International Centre for Settlement of Investment Disputes (ICSID), in which the Technical Secretary of Próspera ZEDE argued that based on the authorizations granted by the National Congress, a legal stability agreement was subscribed, guaranteeing investments made under the ZEDE regime for up to 50 years, which corresponds to the legal stability guarantee made in the Agreement for the Promotion and Reciprocal Protection of Investments between the Government of the State of Kuwait and the Government of the Republic of Honduras. Therefore, it can be noted that the purpose of the legal stability agreements is to maintain the validity of the Organic Law of the ZEDE in the event of any derogation that may be implemented, thus protecting the investments made under the ZEDE regime.



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