



Legal Alert

Legal Status of the Zones for Employment and Economic Development (ZEDE) in Honduras

Background

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

Currently, this ZEDE regime has at least one ZEDE approved and in force with residents and investors operating under the rights granted by the Government of the Republic of Honduras, under the legal framework that governs matters related to that regime.

In April 2022, the National Congress of Honduras approved Decree Number 32-2022, which provides for the repeal of the constitutional reforms regulating the Zones for Employment and Economic Development (ZEDE). However, it had to be ratified by the subsequent ordinary legislature, which closed on October 31, 2023, without having ratified it for entry into force. Likewise, it approved Decree Number 33-2022, which provided for the repeal of the ZEDE Organic Law and other related regulations, provisions, and legal precepts.

On September 20, 2024, by means of a judgment of the Constitutional Chamber of the Supreme Court of Justice issued in case file number SCO-0738-2021 (hereinafter, the “Unconstitutionality Judgement”), the Court declared unconstitutional Decree 236-2012, which amends Articles 294, 303, and 329 of the Constitution of the Republic of Honduras, as well as Decree 120-2013, which contains the Organic Law of the Special Zones for Economic Development.

According to the Unconstitutionality Judgment, the declaration of unconstitutionality has *ex tunc* effects—that is, it has voiding effects from its origin—because “entrenched provisions were violated related to the structuring of the national territory, the justice system, and matters related to economic planning.”

On the Current Status of the ZEDes

Although the situation related to the unconstitutionality of the rules that gave life to the Zones for Employment and Economic Development (ZEDes) is complex and States have the power to revisit and redesign the laws in force and applicable in their jurisdiction, the protection of investors’ investment and economic rights must remain intact, in accordance with international doctrine and case law existing in this context and, irrefutably, by the very constitutional principles that Honduran legislation imposes through Article 96 of the Constitution of the Republic of Honduras, which guarantees the non-retroactivity of the law.

By failing to recognize rights acquired during the period in which the now-unconstitutional rules were in force, the fair and equitable treatment recognized and accepted as principles of application in the Republic of Honduras is being violated through various international-law instruments of which said Republic is a part. Seeking to violate rights acquired under valid and existing legal rules generates legal instability with respect to foreign investment.

There are indications of a violation of the ZEDes’ legitimate expectations, given that the constitutional and regulatory framework and context at the outset were decisive in making economic investment decisions in that jurisdiction. The Honduran State, although it has every power and right to modify its ordinary and constitutional rules in the public interest, under the principle of non-retroactivity of the law must protect the acquired rights of investors.

International case law has recognized investors’ legitimate expectations as a crucial element in the protection of investments, since the lack of a reasonable justification for the abrogation or repeal of normative precepts, or the absence of adequate compensatory measures, strengthens arguments that this principle has been violated.

Likewise, Article 94 of the Law on Constitutional Justice establishes that the unconstitutionality of a law cannot affect legal situations definitively resolved and executed—that is, have *ex tunc* effects—except in criminal matters when it is to the benefit of the defendant or convicted person. In all other cases, by the principle of legal certainty and stability, unconstitutionality cannot affect consolidated legal situations. In this sense, the Supreme Court of Justice, in issuing the ruling with *ex tunc* effects, incurs a violation of the first paragraph of Article 94 of the Law on Constitutional Justice by giving annulatory effects to said judgments. In any case, it is noted that the unconstitutionality rulings issued cannot affect acquired rights and consolidated legal situations under the second paragraph of the aforementioned Article 94.

Lastly, since DR-CAFTA and the BIT with Kuwait are fully in force, ZEDE investors are protected by that guarantee of legal stability, given that at the time of making their respective investments, they enjoyed the acquired right to protection regulated in those treaties.

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