

September 16, 2022

Dirección General de Integración Económica y Política Comercial  
 Secretaría de Estado en el Despacho de Desarrollo Económico  
 Centro Cívico Gubernamental  
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*Formerly:*

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 Tegucigalpa, Honduras

**Notice of Intent to Submit Claims to Arbitration Pursuant to Article 10.16 of the CAFTA-DR**

Dear Sir/Madam,

In accordance with Article 10.16 of the Dominican Republic–Central America–United States Free Trade Agreement (“**CAFTA-DR**”), Honduras Próspera Inc. (“**Honduras Próspera**”) and its affiliates St. John’s Bay Development Company LLC (“**SJBDC**”) and Próspera Arbitration Center LLC (“**PAC**”) and, jointly with Honduras Próspera and SJBDC, the “**Próspera Group**” or “**Claimants**”), respectfully submit to the Republic of Honduras (“**Honduras**”) this written notice of their intention to submit claims to arbitration. This notice is delivered pursuant to Annex 10-G of the CAFTA-DR.

The Próspera Group previously delivered a Request for Consultation and Negotiation dated June 3, 2022 to Honduras pursuant to Article 10.15 of the CAFTA-DR, to which Honduras has not responded. This letter followed letters dated April 26 and May 11, 2022 to President Castro and various other Honduran officials, which also sought constructive dialogue and also remain unanswered.

The Próspera Group remains willing to pursue a constructive dialogue seeking to resolve the dispute amicably and hereby reiterates its commitment to working with Honduras to find a mutually advantageous solution that, in addition to resolving this international dispute, would also be an opportunity for Honduras to enhance competitiveness, foster creativity and innovation, create opportunities for economic and social development, and enhance worker’s rights, among other goals of the CAFTA-DR, and which would send a positive message to other international investors and institutions. The next 90 days present an opening for settling this investment dispute and avoiding the commencement of an international arbitration proceeding. Claimants sincerely hope that consultation and negotiation in good faith will take place.

In the event that the investment dispute still cannot be settled within 90 days, Claimants intend to submit their claims to international arbitration pursuant the CAFTA-DR and Honduras will be required to compensate the Próspera Group for the full value of their losses in accordance with international law.

**The Claimants**

The Próspera Group consists of the following enterprises of the United States:

- **Honduras Próspera Inc.** (f/k/a Honduras Próspera LLC and Sociedad para el Desarrollo Socioeconómico de Honduras, LLC) is a corporation constituted under the laws of the state of Delaware. Honduras Próspera’s address in the United States of America is PMB 1093, 4301 50th Street NW, Suite 300, Washington DC 20016.
- **St. John’s Bay Development Company LLC** (f/k/a Próspera Land SPV 1 LLC) is a limited liability company organized under the laws of Delaware. Honduras Próspera is the sole member of SJBDC. SJBDC’s address in the United States of America is PMB 1154, 4301 50th Street NW, Suite 300, Washington DC 20016.
- **Próspera Arbitration Center LLC** is a limited liability company organized under the laws of Texas. PAC’s members are Honduras Próspera and certain retired United States judges and legal experts. PAC’s address in the United States of America is 1999 Bryan St. Suite 900, Dallas, TX, USA 75201-3136.

For the purpose of this dispute, Claimants are represented by White & Case LLP:

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All communications with Claimants in connection with this matter should be addressed to their counsel.

**Factual Basis for the Claims**

Honduras Próspera is the promoter and organizer of Próspera ZEDE, a special employment and economic development zone (“ZEDE”) with locations in the Bay Islands and Atlántida Departments in Honduras.

Since 2018, the Próspera Group has made significant investments in Honduras directly and through various enterprises in Honduras that the Próspera Group owns or controls directly or indirectly, and thereby made Próspera ZEDE a strong platform for economic development. Among other things, Próspera ZEDE has an innovative regulatory environment, a minimum wage that is 10% to 25% higher than the national minimum wage, and conditions for Hondurans to start businesses more easily than elsewhere in Honduras. Already, hundreds of construction, maintenance, and knowledge economy jobs have been created, nearly 100 businesses have been formed or registered to do business within Próspera ZEDE, and over 500 individuals have become (e)Residents. The Próspera Group has acquired or optioned rights to over 1000 acres for Próspera ZEDE and is in the process of modernizing and renovating a luxury resort, while modern affordable mixed-use tower buildings, remote work offices, and a light robotic manufacturing building are under construction. The Próspera Group has also incorporated subsidiary entities in Honduras, acquired contractual, intellectual property and other rights, and made other investments to further the development of Próspera ZEDE. The Próspera Group is also providing and plans to provide infrastructure needed for an international financial center, light manufacturing, high-skill remote work, medical tourism, and advanced energy projects, as part of a plan to invest US\$ 500 million in Honduras by 2025.

The Próspera Group invested in Honduras in reliance on the ZEDE legal framework and commitments made by Honduras under Honduran law, international treaties, and agreements, among others, guarantees of legal stability of the ZEDE legal framework for at least fifty (50) years. This includes, but is not limited to, the following:

- In 2004, Honduras and the United States executed the CAFTA-DR, which came into force as to Honduras on April 1, 2006. Among other things, Section A of Chapter 10 of the CAFTA-DR establishes obligations on Honduras with respect to its treatment of investors of the United States and covered investments.
- In 2013, Honduras established a legal framework for ZEDEs, including by amending Articles 294, 303 and 329 of the Honduras Constitution and enacting the Organic Law of the Employment and Economic Development Zones (“**ZEDE Organic Law**”).<sup>1</sup> Among other things:
  - The ZEDE Organic Law establishes the governance structure of a ZEDE, including its authorities, the Committee for the Adoption of Best Practices (“**CAMP**”), which it endows with broad approval and oversight functions over all ZEDEs in Honduras, and the function of Technical Secretary, who is appointed by CAMP and serves as Honduras’ authority for each ZEDE and is competent to “subscribe to legal stability agreements for matters deemed necessary,” among other functions (Arts. 11-12).
  - The ZEDE Organic Law guarantees the legal stability of the legal framework, providing that “[s]hould 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.” (Art. 45)
  - The ZEDE Organic Law guarantees Most Favored Nation (“**MFN**”) treatment, providing that “[n]atural and legal persons operating within the Employment and Economic Development Zones (ZEDE) will receive treatment based on the Most Favored Nation (MFN) principle, for which they will obtain the automatic extension of any better treatment that is granted or has been granted to other parties in an international trade agreement entered into by the State of Honduras.” (Art. 32).

The constitutionality of Articles 294, 303 and 329 of the Honduras Constitution and the ZEDE Organic Law was subsequently confirmed by Honduras, including, *inter alia* by the Constitutional Chamber of the Supreme Court.

- In 2014, Honduras entered into the Agreement between the Government of the State of Kuwait and the Government of the Republic of Honduras for the Encouragement and Reciprocal Protection of Investments (“**Kuwait BIT**”). Article 16(4) of the Kuwait BIT provides that “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

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<sup>1</sup> Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) (Decree No. 120-2013), published on September 6, 2013.

should be guaranteed to the investments and the investors of the State of Kuwait for a timeframe of not less than fifty (50) years.” This legal stability guarantee automatically extended to investors of the United States such as the Próspera Group pursuant to the MFN provision of the ZEDE Organic Law described above, as was subsequently confirmed by Honduras, as well as the MFN provision in the CAFTA-DR.

- In 2017, CAMP authorized the establishment of Próspera ZEDE (f/k/a ZEDE Village of North Bay and ZEDE of North Bay). Subsequently, on or about September 12, 2019, CAMP authorized and agreed to its stated obligations under the Amended and Restated Charter and Bylaws of Próspera ZEDE (the “**Charter**”), which provides, *inter alia*, that Próspera ZEDE “possesses all the rights, privileges, and duties of a ZEDE in the Republic of Honduras and has its own legal personality with special regime zone status under the ZEDE Organic Law and Constitution of the Republic of Honduras Articles 294, 303, 329” (Art. 11.02) and that Honduras Próspera is the promoter and organizer of Próspera ZEDE and “is therefore entitled to all rights and duties conferred under the [ZEDE Organic Law]” (Art. 1.02).
- In 2021, Honduras (through the Technical Secretary of Próspera ZEDE) and Honduras Próspera entered into the Agreement for Legal Stability and Investor Protection effective as of March 9, 2021 and as amended (the “**Legal Stability Agreement**”). Among other things:
  - The Legal Stability Agreement provides that “pursuant to Article 45 of the ZEDE Law” the agreement “shall be legally binding and enforceable ... 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 ... .” (Art. 1.1).
  - The Legal Stability Agreement includes general and specific legal stability guarantees, including, *inter alia*, the stabilization of non-discrimination rights, the stabilization of treaty rights, and the general stabilization of law and policy, which specifically includes the ZEDE legal framework. (Arts. 1.2-1.4).
  - The Legal Stability Agreement includes provisions for dispute resolution through arbitration, including, *inter alia*, that claims for monetary damages shall be resolved before the International Centre for Settlement of Investment Disputes (“**ICSID**”), and that Honduras Próspera “may elect to seek an award of liquidated damages ... plus any reasonable attorney’s fees, litigation/arbitration expenses, and court costs/arbitration fees.” (Arts. 2, 3.8).

Honduras, through its acts and omissions, has violated its obligations with respect to the Próspera Group and its investments. On April 21 and 22, 2022, the National Congress of Honduras passed (i) Decree No. 32-2022, which began the process of amending Articles 294, 303 and 329 to the Constitution to remove the ZEDE legal framework and declare invalid all the legal norms derived therefrom, including the Organic ZEDE Law, laws, regulations, resolutions, and any other resolutions, acts, contracts, concessions or any other related norm in favor of the ZEDEs; and (ii) Decree No. 33-2022, which repealed the Organic ZEDE Law with immediate effect along with all other legislation, legal norms, dispositions or legal precepts derived from or relating to the Organic ZEDE Law. Neither Decree addresses the status of existing ZEDEs.

On April 26, 2022, Honduras Próspera sent a letter to the President of Honduras, copying various other Honduran officials, seeking confirmation of its understanding that, in view of the various guarantees of legal stability, the ZEDE legal framework remains in full effect for Próspera ZEDE, and communicating its

willingness to engage in discussions with the State. There was no response whatsoever from Honduras to this letter. Honduras also remained silent in response to a follow-up letter dated May 11, 2022 reiterating the same points and requesting a response. Accordingly, Claimants sent a formal request for consultations and negotiations under Article 10.15 of the CAFTA-DR on June 3, 2022. To the date of submission of this notice Honduras has not responded, even though it has reportedly entered into negotiations with other existing ZEDEs.

Meanwhile, Honduras appears to have taken steps to interfere with the Próspera Group's rights. This includes the Honduras Customs Administration Agency's refusal to recognize Próspera ZEDE's independent customs authority under the Organic ZEDE Law and to maintain enough resources to allow for efficient custom clearance, as well as interferences by the Honduras National Commission on Banks and Insurance with the Próspera Group's capacity to freely transfer funds both directly and through authorized intermediaries and financial institutions. At the same time, there are conflicting messages in the Honduran media, with some officials claiming that the ZEDEs no longer validly exist, while others have suggested that there is a one-year transition period but the purpose of this period and the status at the end of it remain entirely unclear. The result is a complete lack of clarity as to the future of Próspera ZEDE and the Próspera Group's investments therein.

### **Legal Basis for the Claims and Relief to be Sought**

As summarized above, an investment dispute exists between the Próspera Group and Honduras that has not been settled through consultation and negotiation as requested by Claimants. As of the date hereof, Honduras has already breached its obligations under Article 10.5 (*Minimum Standard of Treatment*) and Article 10.8 (*Transfers*) of the CAFTA-DR, including through conduct that is manifestly arbitrary, grossly unfair, unjust, idiosyncratic, and lacking in due process, and that has created serious uncertainty and doubts about the situation of Próspera ZEDE, as well as through its apparent interference with Claimants' right to freely transfer funds. In addition, if, as may now be reasonably inferred, Honduras does not respect its legal stability commitments and/or takes the position that Próspera ZEDE does not validly exist, it will have breached numerous obligations under Section A of Chapter 10 of the CAFTA-DR, the Charter, and the Legal Stability Agreement.

Absent an amicable settlement of the investment dispute, which the Próspera Group hopes may still be possible, and if Honduras continues to fail to acknowledge its legal stability commitments and Próspera ZEDE's valid existence, Claimants intend to submit claims pursuant to Articles 10.16.1(a)(i) (A), (B), and (C) of the CAFTA-DR.<sup>2</sup> In particular:

- (A) Breaches of the following provisions of Chapter 10, Section A of the CAFTA-DR:
- **Article 10.4: Most-Favored-Nation-Treatment** (*e.g.*, by according more favorable treatment to Kuwaiti investors).
  - **Article 10.5: Minimum Standard of Treatment** (*e.g.*, by failing to accord fair and equitable treatment, including, without limitation, with respect to Claimants' legitimate expectations of legal stability, as well as through conduct with respect to the repeal of the ZEDE legal

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<sup>2</sup> In addition, Honduras Próspera may submit claims for monetary damages to arbitration before ICSID pursuant to Article 2.2 of the Legal Stability Agreement.

- framework and subsequent conduct with respect to Próspera ZEDE that has been arbitrary, grossly unfair, unjust, idiosyncratic, and involves a lack of due process).
- **Article 10.7: Expropriation and Compensation** (*e.g.*, by directly or indirectly through measures equivalent to expropriation or nationalization depriving Claimants of their investments and acquired rights with respect to Próspera ZEDE without any compensation).
  - **Article 10.8: Transfers** (*e.g.*, by interfering with the Próspera Group's ability to wire funds).
- (B) Breaches of the Charter, including Article 1.02, which provides that Honduras Próspera is entitled to all rights and duties conferred under the ZEDE Organic Law, and Article 11.02, which provides that Próspera ZEDE possesses all the rights, privileges, and duties of a ZEDE in the Republic of Honduras and has its own legal personality with special regime zone status under the ZEDE Organic Law and Constitution of the Republic of Honduras Articles 294, 303, 329.
- (C) Breaches of the Legal Stability Agreement, including Article 1.4 pursuant to which Próspera ZEDE is entitled to legal stability until the latter of January 15, 2064 or ten years after the last amendment, reformation, interpretation or repeal of the Organic ZEDE Law.

As the events are ongoing, these breaches are expected to continue and other further breaches may occur (*e.g.*, if Honduras provides more favorable treatment to Hondurans with investments in ZEDEs than it does to US investors, or takes further damaging legislative, regulatory, or executive action *vis-à-vis* Próspera ZEDE or Claimants' assets, executives or personnel), all of which would give rise to additional claims.

Honduras' conduct has already resulted in significant harm to Claimants, including the loss of economic opportunity as well as negative impacts on financing, operations and reputation. Moreover, if, as can be reasonably assumed from Honduras's conduct and silence in response to Claimants' correspondence, it is Honduras's position that Próspera ZEDE no longer validly exists, Claimants are entitled to compensation for the full value of their losses over the course of the remaining period of the guaranteed legal stability of the ZEDE legal framework with respect to Claimants and Próspera ZEDE. At this time, and depending on how Honduras chooses to proceed, Claimants anticipate that the approximate amount of damages will be at least several **billion** US dollars, and as high as US\$ 10.775 billion, which according to the valuation of an expert firm experienced in the quantification of damages in investment treaty arbitrations represents the net present value of Claimants' investment, plus appropriate interest and legal fees.

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The Próspera Group is delivering this notice in accordance with the CAFTA-DR in order to safeguard its rights thereunder, but reiterates its commitment to seeking to resolve the dispute amicably. As noted in our prior letters, the CAFTA-DR requires the parties initially to seek to resolve the dispute through consultation and negotiations. The Próspera Group respectfully invites Honduras to use the 90 day waiting period for the commencement of arbitration that the present notice commences under the CAFTA-DR to seek a good faith resolution that makes it unnecessary for Claimants to submit claims to arbitration. In particular, Claimants invite Honduras to follow international best practices and enter into a mutual confidentiality, without prejudice and non-disclosure agreement, as a sign of mutual good faith, so that the parties can meet and engage in an open and frank dialogue, as is customary in the resolution of investment disputes.

According to Annex 10-G of the CAFTA-DR, notices and other documents must be served on Honduras by delivery to the Dirección General de Integración Económica y Política Comercial. We understand that

the Dirección General de Integración Económica y Política Comercial has since become part of the Secretaría de Desarrollo Económico, which, among other things, was assigned the functions of Economic Integration, Investment and Foreign Trade in accordance with Executive Decree No. PCM-018-2014, published on June 6, 2014. This notice has been addressed accordingly.

Sincerely,

*White + Case LLP*

Ank Santens  
Francisco X. Jijón  
**WHITE & CASE LLP**

cc: Secretaría de Estado de La Presidencia  
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