

# PROPOSED LAW FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

## PART I PROTECTION OF THE RIGHTS OF INVESTORS

### Title I Aims and Principles

#### Chapter I Preliminary Statements

**Article 1.** The attraction, promotion and protection of both foreign and domestic investment is considered a primary interest of the State and as such, it shall be granted all facilities and guarantees to promote its growth and development.

All those individuals or corporations, domestic or foreign that acquire assets in Honduras, whether tangible or intangible in order to make a profit by lawful means may benefit from this law, except in those cases in which, by its nature a provision could apply only to foreign investors.

#### Chapter II Definitions

**Article 2.** For purposes of this Act, the following terms shall be construed in accordance with the definitions set forth herein as follows:

- a. Asset:** Any tangible or intangible heritage which forms part of a natural or legal person that has been acquired with the sole purpose of generating a profit or gain to its owner. Understood within the concept of "asset" are capital contributions, financial instruments, shares, intellectual property, securities or anything else that involves a transfer of resources from one party to another in order to generate future profits.
- b. Arbitrator or Arbitral Tribunal:** one or more people whom without being judges are mandated by the parties to resolve a conflict or dispute by way of an arbitration process.
- c. National Investment Council:** An entity created under article 46 of this law.
- d. Investment:** The legitimate acquisition by a natural or juridical person or persons of any asset that constitutes tangible or intangible property to an investor or that is controlled by it directly or indirectly, that has the characteristics of an investment, including features such as commitment capital or other resources, the expectation of gain or profit or the assumption of risk for the holder or holders. The form that an investment may take includes an enterprise, shares, capital and other forms of equity participation in a business, turnkey contracts, construction, management, production, concession, revenue sharing, Public-Private Partnership and the like, as well as other intellectual property tangible or intangible, movable or immovable property and rights such as leases, mortgages, liens and pledges.



- e. **Investor:** The holder of an investment, whether natural or legal person, foreign or domestic, regardless of their legal domicile.
- f. **Foreign Investment:** Any kind of transfer of capital into the country, from abroad, carried out by individuals or legal entities, for the production of goods or services or the creation of a legitimate use for those who made the transfer.
- g. **Research and Development:** Company Activity aimed at the discovery and subsequent development of new technologies or new applications for existing technologies for marketing purposes.
- h. **Expropriation:** Any unilateral act carried on by the State which, by action or omission would undermine the value of an investment or make its economic return impossible. It can be direct, when an investment is nationalized or otherwise directly expropriated through formal transfer of title or ownership rights, or indirect when an act or series of acts by the state has an effect equivalent to direct expropriation without formal transfer of title or ownership rights. The specific conditions under which whether or not there was an indirect expropriation shall be determined are those specified in the regulations.
- i. **Currency of Free Usage:** Freely usable currency means a currency that: i) is used widely, in fact, to make payments for international transactions, and ii) is widely traded in the principal exchange markets.
- j. **Technical Secretariat of the National Investment Council:** Technical organ for the assistance and advice of the National Investment Council.
- k. **Technology Transfer:** Systematic transfer of knowledge developed by a natural or legal person (supplier) another or others (receiver) for the development of a product, the implementation of a process or providing a service.

### **Chapter III** **Restricted areas**

**Article 3.** The following sectors are excluded from this act:

- a. Disposition and management of toxic, hazardous or radioactive waste.
- b. Activities that affect public health.
- c. Petty trade and industry in accordance with the provisions of Article 337 of the Constitution of the Republic.
- d. Manufacture, importation, distribution and sale of weapons, ammunition and the like in accordance with Article 292 of the Constitution of the Republic.

### **Chapter IV** **Principles**

**Article 4.** In accordance with objective four (4) of the vision and spirit of development of the National Plan, this Act is founded on the principles of good faith by the investor, efficiency, administrative simplicity, openness and non-discrimination.



The principle of good faith shall mean that statements made by the investor are deemed true unless proven otherwise. If proof of a false statement is produced, the sanctions established in the regulations of this Law shall apply.

## **Title II Guarantees, Obligations and Benefits**

### **Chapter I Of the Guarantees**

**Article 5.** The individuals or corporations or foreign nationals who invest in the country have the following guarantees:

- a. Unlimited access to foreign freely usable currency for importation of supplies, payments to foreign suppliers and payment of claims against foreign investment originated in Honduras.
- b. Right to open bank accounts in the financial system in freely usable currency without any requirements other than those imposed on national persons or firms. This warranty includes the right of investors to withdraw their deposits in whole or in part, in freely usable currency.
- c. Protection of intellectual property rights within the limits established by the laws regarding the matter in Honduras and the international treaties signed by Honduras.
- d. Guarantee on the ownership and possession of real property that may be part of their assets within the limits established by the Constitution. In that sense, the right not to be expropriated save for the reasons set out in Article 106 of the Constitution of the Republic and after compensation for the market value of the investment and in accordance with the procedures set out in enforceable legislation is guaranteed.
- e. In case of direct expropriation justified in accordance with the provisions of the Constitution of the Republic or indirectly declared by arbitration, it guarantees the investor the right of repatriation of one hundred percent (100%) of the amount of compensation paid in freely usable currency.
- f. Freedom of production and marketing of goods and services in general, except those prohibited by this Act
- g. The free pricing of products or services offered.
- h. Non application of any restrictions on the number of suppliers, whether in the form of numerical quotas, monopolies or exclusive service suppliers or the requirement of an economic needs test;
- i. The non-imposition of limits on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test, and
- j. The non-imposition of limits on the number of transactions or total amount of production, expressed in numerical units in the form of quotas or the requirement of an economic needs test.

**Article 6.** In addition to the guarantees established in the previous article, foreign investors are guaranteed the following:



- a. The national treatment standard to the limitations set out in Article 58 of this Act
- b. The right to unconditional repatriation of capital raised as profits earned as a result of their investment as well as those resulting from the lease or sale of assets owned, in freely usable currency.
- c. The right to transfer abroad in freely usable currency, the whole of their capital from the investments made and / or full of dividends or net profits from their investments and royalties and consideration for the use and transfer of proprietary technology.
- d. The right of access to credit in the financial system on an equal footing with domestic natural or legal persons.
- e. The right to repatriation of foreign exchange and capital gains.
- f. The non-imposition of limitations on the participation of foreign capital in terms of maximum percentage limit of foreign shareholding or the total value of individual or aggregate foreign investment;
- g. The non-imposition of measures which restrict or require specific types of establishment (subsidiary, branch, representative office) or joint ventures (joint ventures) through which a foreign investor can make an economic activity safe those required by the Law for the Promotion of Public-Private Alliance.

**Article 7.** Individuals or companies set up their investments in Honduras are guaranteed that no restrictions on access to markets in relation to the following shall be applied:

- a. The number of services and facilities either in the form of numerical quotas, monopolies or the requirement of an economic needs test;
- b. Limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- c. Limitations on the number of transactions or total amount of production, expressed in numerical units in the form of quotas or the requirement of an economic needs test;
- d. Limitations on the participation of foreign capital in terms of maximum percentage limit of foreign shareholding or the total value of individual or aggregate foreign investment, and
- e. Measures which restrict or require specific types of establishment (subsidiary, branch, representative office) or joint ventures (joint ventures) through which an investor of the other Party may carry out an economic activity "

**Article 8.** Foreign investors participating in a Public Private Partnership or qualifying for the special tax benefits regime established by this Act may apply for a residence permit for himself, his family and executive level employees before the Technical Secretariat of the National Investment Council Investment, which shall be automatically granted once the documents and requirements that the Secretary determines have been credited. Similarly the resident card held by residents included under the categories set out in this article may be requested in the same manner. For the extension of said permits no more requirements than the formal request accompanied by the necessary documents shall be requested. Therefore not necessary opinions or views of other entities shall be necessary. The resolution granting a residence permit under the investor category, relative or



executive level employee of confidence will be communicated to the Secretary of State for Interior and Justice and the Directorate of Immigration for the respective control and monitoring.

The rules of this law will determine who can be considered executive level employee and how they must prove that condition as well as the limits in the number of permits that may be granted.

## **Chapter II** **Insurance of Private Investment**

**Article 9.** Investors may contract without restrictions, investments, insurance cover against commercial and noncommercial risks in and outside the country.

They may also contract risk insurance with domestic or foreign companies without restrictions in the following categories:

- a. Shipping
- b. Commercial Aviation
- c. On goods being transported to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom.
- d. Goods in transit
- e. Reinsurance and retrocession

## **Chapter III** **Insurance or warranty on the Title Deed**

**Article 10.** The State, through the Technical Secretariat of the National Investment Board will provide assistance to investors so they can get coverage of their investments by the Multilateral Investment Guarantee Agency (MIGA) World Bank or other similar entities which Honduras is a party.

**Article 11.** Natural or legal persons intending to invest or who have invested in acquiring real rights on real estate can buy insurance or guarantees to protect them from potential risks arising from their property title.

The title insurance or guarantee must be issued by corporations, domestic or foreign, professionally engaged in this activity.

The acquisition of this insurance or guarantee for the title precludes the right to reparation in case of eviction and is enforceable by the terms or conditions to be stipulated in the contract.

**Article 12.** Three additional protections to investors in real estate are recognized:

- a. Insurance or guarantee on the title;
- b. Conflict prevention regime;
- c. Guarantee regime of recovery on investments on improvements and of



continuity of an ongoing project on a real estate dispute.

The procedures to be followed to qualify for any of these protective mechanisms shall be determined by the rules of this law.

### **Title III** **Protection of Investment of Real Property**

#### **Chapter I** **Conflict Prevention Regime**

**Article 13.** Natural or legal persons interested in developing real estate projects, acquiring property for residential purposes or investing in them may benefit from this regime to prevent future conflicts over property by extinguishing any rights of ownership of persons who are not in possession of the property.

There is no minimum order to accommodate for the scheme.

**Article 14.** This regime shall benefit only those who:

- a. Are holding in their still, peaceful and uninterrupted possession real property for themselves or on behalf of a third party, by taking positive actions amongst of those for which only the domain shall entitle them, such as cutting wood, construction of buildings, lifting fences, planting crops and others of equal significance executed without the consent of third parties who may have claims of ownership of that property;
- b. Those can demonstrate a intent of ownership by crediting the payment of property taxes, carrying out acts of strict ownership or similar ones, and
- c. Hold a property with a registered title.

**Article 15.** The application for joining the scheme must be submitted to the Technical Secretariat of the National Investment Council.

The submission of the application must be advertised through the use of notifications in mass media and outdoor advertising on sites to be protected by the deadline specified in the regulations of this law. The publications should indicate that the end of this procedure is to prevent conflicts over estate extinguishing any rights of third parties do not possess property may have on that property.

**Article 16.** If within the period specified in the regulations no opposition is filed, all possible property rights that non possessing third parties may have on that property shall be deemed extinguished.

**Article 17.** If opposition to this procedure arises, the dispute must be resolved by the parties through the use of binding arbitration before an arbitration center located in one of the Chambers of Commerce, and under its rules and regulations.



In no case, precautionary measures shall be taken to prevent the continued development of the investment.

**Article 18.** Upon termination of property rights that third parties may have on the property itself, no third party claiming to have property rights over that property may file actions claiming dominion over it or plead or acquire any real right over it.

**Article 19.** in the event that property rights of third parties that may affect the property affected by this guarantee are registered , the property registrar must cancel them at the request of the person protected by this benefit. If the registrar refuses to do so, the aggrieved party shall proceed against him through a criminal action.

**Article 20.** The Technical Secretariat of the National Investment Council must certify that compliance with this procedure was made and that there was no opposition to it. This certification is registrable in the registry of property.

## **Chapter II**

### **Completion Guarantee Regime of Real Estate Projects**

**Article 21.** The conclusion of real estate projects developed on property in dispute is of the State's interest. To qualify for the scheme is necessary that the following circumstances arise:

- a. That the developer has the permits and licenses required for their development;
- b. The developer has the capital to finance it;
- c. That the developer has started construction work of the same, and
- d. That having begun the construction of the project a third party not in possession of the property initiates a judicial or administrative action to claim ownership of the property on which to develop it.

**Article 22.** Where there are such circumstances, the property developer can:

- a. Request it to constitute a trust on the project to ensure:
  - i. The continuity of the building project;
  - ii. The recovery of his investments;
  - iii. The sale, rental of the units built.
- b. Request that the judicial or administrative action by the third party to settle its claim on the property be settled by binding arbitration before an arbitration center in any of the chambers of commerce of the country and under its rules and regulations. If the third party ownership of the property dispute to binding arbitration to be developed loses its claim, it must compensate the developer for the damages it has caused.

## **Title IV**

### **Of the Special Warrants and Dispute Resolution Mechanisms**



## **Chapter I**

### **Of the Legal Stability Agreements**

**Article 23.** Investors who invest more than the sum of One Million Dollars U.S. (\$ 1,000,000.00) in any of the following May request the signing of legal stability contracts:

- a. Make capital contributions to an enterprise established or to be established formally in Honduras;
- b. Acquire shares in direct or indirect ownership of the State (over 50% of total shares) and
- c. Make capital contributions to the company of a Public Private Partnership.

Contracts guarantee legal stability for investors in the following:

- a. Stability of the right to non-discrimination within the limits laid down in this law.
- b. Stability of the tax system of income tax in effect at the time of signing the contract.
- c. Stability of the free availability of foreign exchange and remittance of profits, dividends and royalties in the case of foreign capital.

The provisions of this chapter may also apply to investments established in the country that receive or are formed with investments (new capital contributions) made prior to the effective date thereof.

**Article 24.** The maximum legal stability contracts will be fifteen (15) years, except for investments under Public Private Alliance mode, in which the legal stability contracts may take the form of clauses within the Public-Private Partnership contract and will have the same duration as the contract of the Alliance.

**Article 25.** The request for approval of a legal stability contract must be submitted to the Technical Secretariat of the National Investment Council, which will make a justified recommendation as appropriate.

The National Investment Council shall approve, modify or reject the recommendation of the Technical Secretariat of the National Investment Council, which if approved will be forwarded to the President, who will sign and submit for Cabinet approval the respective contract .

If The President of the Republic so wishes he may delegate this function by executive accord to the officer or officers of his choice

**Article 26.** Contracts for legal stability have the force of law between the parties and their content cannot be modified or revised unless such amendment or modification is made by mutual agreement at the request of the investor.





In this regard, they must be approved by the National Congress of the Republic, in regular session and no later than thirty days after receipt of the request by the executive branch.

Should conditions arise in the future which may prove most beneficial to the investor that they are embodied in the contract legal and fiscal stability, it may request early termination thereof and submit to the conditions set for all investors , so that these benefits are applicable.

**Article 27.** Legal stability contracts signed by the Executive and approved by the National Congress of the Republic shall be published on the Web site of the Technical Secretariat of the National Investment Council after signing for which a readily accessible database must be created.

**Article 28.** The Technical Secretariat of the National Investment Board must take control and registration of legal stability contracts and will be responsible for managing them.

## **Chapter II** **Dispute Resolution Relating to Investment**

**Article 29.** Investors are guaranteed full recognition of international arbitration awards and those issued under the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the Inter-American Convention on International Commercial Arbitration (Panama Convention) and Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Agreement).

**Article 30.** Agreement to submit to foreign jurisdiction in Honduras in contracts signed between foreign and domestic investors or between the first and the State is declared legal.

**Article 31.** The State may not undertake unilateral acts that unreasonably or arbitrarily cause a change in market conditions that disproportionately reduces the value of an investment or its profitability. Such acts are considered as indirect expropriation pursuant to the definition of expropriation in Article 2 paragraph h of this Act

In such cases the investor is guaranteed the right to repatriation of capital raised integrated as a result of compensation under the conditions laid down in Article 6 paragraph b of this Act

**Article 32.** Disputes arising in connection with the implementation of this Law between individuals or corporations, domestic or foreign investment holding and the State shall be settled as far as possible through negotiation and, having failed at such, through conciliation.

If no agreement is reached by means of negotiation and conciliation, foreign



investors whose nationality by a State which has signed and ratified the Agreement Establishing the International Centre for Settlement of Investment Disputes (ICSID) or having acceded to it subsequently may use one of the following mechanisms of conflict resolution:

- a. International arbitration before the International Centre for Settlement of Investment Disputes (ICSID) in accordance with its charter and internal rules.
- b. National or international arbitration before one of the Conciliation and Arbitration Centre National
- c. Ordinary Courts

Investors from countries not party to the Agreement Establishing the International Centre for Settlement of Investment Disputes (ICSID), in cases where no agreement has been reached through the means of negotiation and conciliation, they may use a the following mechanisms of conflict resolution:

- a. International Arbitration using the ICSID Additional Facility
- b. National or international arbitration before one of the Conciliation and Arbitration Centre National
- c. Ordinary Courts

Once the action filed by any of the options set in the previous paragraphs, the mechanism chosen may not be changed safe by agreement between the investor and the state.

If arbitration is a national, it will be understood that claims submitted to a specific centre obliges parties to abide by the centre's norms and rules.

**Article 33.** The national natural or legal persons holding an investment that do not reach agreement by negotiation or conciliation may resolve their differences with the state related to the rights and obligations under this Act by national arbitration before any of the arbitration centers authorized in the country, or opt for the regular courts whenever they see fit. It is understood that those claims submitted to a specific centre obliges parties to abide by the centre's norms and rules..

Once the action is filed using any of the options set in the previous paragraph, the mechanism chosen may not be changed safe by agreement between the investor and the state.

**Article 34.** For disputes that arise between investors, they may agree a settlement by means of arbitration under the provisions of the Conciliation and Arbitration Act.

In order to guarantee investors greater legal stability, the conflicts related to the following disputes, will be resolved via arbitration whether or not an arbitration agreement has been negotiated between the parties:

- a. Disputes between shareholders.



- b. Investor disputes among them.
- c. Disputes over Intellectual Property.
- d. Disputes relating to contracts of representation, agency or distribution.
- e. Disputes relating to anti-competitive practices and / or unfair competition.
- f. Disputes over Real Estate Properties

It will be understood in these cases that arbitration is the primitive way of solution; therefore, the celebration of an arbitration agreement will not be required to carry out the process in the cases mentioned above. Nevertheless, if the parties agree on it, they can give up this right and go to regular court.

**Article 35.** Unless otherwise agreed, the arbitrators in disputes related to investments, will be randomly selected from among the arbitrators accredited before the respective center.

When it has been freely agreed on a different procedure of selecting arbitrators, both in investor-state arbitration, as in arbitration between investors, whether domestic or foreign, the parties may, if they wish, and bearing their own cost appoint foreigner arbitrators to solve their conflicts.

In the case of naming foreign arbitrators, they may only be admitted if they are persons of recognized integrity, academic capacity and experience that can be duly accredited with the Conciliation and Arbitration Centre and shall also be accredited as arbitrators before a center of alternative solution of disputes of international prestige. In any case, if the dispute requires interpretation of matters relating to Honduran law, at least one of the arbitrators must be Honduran.

Also, the parties may, by mutual agreement, determine freely the language in which the arbitration process will be carried out. In case there is no agreement regarding this matter, it will be understood that the language to be used will be Spanish. In the arbitration of investments, the participation of foreign lawyers not collegiate is legal.

Article 36. Unless otherwise agreed, it is understood that the arbitration process initiated before a conciliation and arbitration center is subject to its regulations and internal rules, as well as what the Conciliation and Arbitration Act of Honduras establishes.

The arbitration processes related to investments will always be by law.

## **PART II** **TAX BENEFITS**

### **Title I**



## Chapter I Tax Benefits

**Article 37.** Juridical persons executing new investments in activities where they develop their operations or in regions where they develop activities and which are declared a priority by the Executive Branch may enjoy the benefits specified in this chapter, according to the provisions of this Law.

It will correspond to the Executive Branch to declare priority in interests the investment projects, activities and regions under consideration. Companies planning to make investments destined to their operations may apply for the benefits of the declaration of priority interest presenting them for this purpose before the Technical Secretariat of the National Investment Council.

**Article 38.** Capital goods imported or acquired in the domestic market, to be used in any productive activity or sector of the economy, will be free of sales tax or in any case, shall have the right to tax credit or refund, when the tax has been applied to such goods.

**Article 39.** Pre-operating expenses paid or incurred duly confirmed and granted to enterprises whose investment projects have been declared eligible, may be amortized over a period of up to five (5) years, pursuant to the Law of Income Tax and its regulation such as:

- a. The expenses incurred during research and development of marketable products and / or patents for commercial purposes on a national and international level.
- b. The amounts issued consisting of donations to Universities and Educational Institutions in Honduras with purposes of Investigation and product Development or specific technologies.
- c. Expenses incurred for registration of trademarks and patents in Honduras.
- d. The costs incurred in research and opening of new markets on a national and international level, and the promotion of their products during the first five (5) years and that can be accredited.

**Article 40.** Investors are guaranteed the accelerated depreciation of assets for which it is reduced by two thirds the time required by law to carry out such depreciation in books.

**Article 41.** Option packages for the acquisition of shares and other benefits that issue employees a share in the enterprise cannot be considered as part of the beneficiary employee's salary. Consequently, the same cannot be considered as income to be added to the estimate of the employees severance benefits.

## Title II Of the Special Schemes



## Chapter I Investment by Region

**Article 42.** For purposes of the investment regime by regions, the enterprises whose new investment projects have been declared eligible under this Act shall enjoy specific tax benefits to stimulate investment and production.

From the entry into force of this Law, companies that invest in amounts exceeding one million U.S. dollars (U.S. \$ 1, 000,000.00), may enjoy the benefit established above.

**Article 43.** Enterprises, whose investment projects have been declared eligible under this chapter, will enjoy a partial exemption of the income tax of juridical persons.

The granting of tax benefits on income tax may not exceed the following percentages of the actual amount invested in tangible and intangible assets, included in the promotional statement:

- a. 60% (sixty percent) of the amount invested in the case of the identified prioritized projects without considering the activities or regions as a restriction, will only be applied to the concept of increasing the investment.
- b. 70% (seventy percent) in the case of projects being developed in activities of priority interest or in regions of priority interest.
- c. 80% (eighty percent) in the case of projects that meet the three basic requirements: being of priority interest and to be executed concomitantly in activities and regions of priority interest.

The deadline for the application of the exemptions referred to in this Article would be up to five (25) years, which will vary according to the score issued to each project. To this end, the period of the exemption for each project will result from applying the ratio of points obtained by the project in relation to the total score possible in the matrix of indicators used, to the maximum deadline of exemption. The criteria for determining the period of application of the benefit will be established in the regulation of this Law.

The period will be calculated from the exercise in which fiscal income is obtained, including the latter in the calculation, noting that 4 exercises have not elapsed from the statement of primary interest. In this case, the mentioned deadline will be increased to four years and shall be computed from the exercise in which cited statement has been ordered.

**Article 44.** The regulation of this law shall establish the criteria for the development of an array indicators by objective to be developed by the Technical Secretariat of the National Investment Council for each of the types of projects, activities and / or regions by considering the participation of the objectives that are determined for each period, and assigning, from the array a score for the



projects, activities and / or regions based on the expected results. Under the score assigned for project, activity and / or the same region on the maximum attainable total score, the benefits to be granted will be determined, according to the general criteria previously established. The matrix identified above must be approved by the Board of the National Investment Council and published on the website of the agency.

During the first three years after the entry into force of this Act, the Executive Branch will especially consider employment creation as a priority criterion.

**Article 45.** For the purposes of the implementation and operation of the system of indicators and scores, the institutions of the state of Honduras will be required to provide the necessary information requested by the Technical Secretariat. In all of the cases, the provision of information is ensured by current regulations that protect the confidentiality of it.

New investments made by companies during the periods in which they are enjoying the benefits provided for in Article 43 of this Act, shall be evaluated as increases in a way that the recalculation of the matrix may lead to a reclassification and extension of deadlines in the conditions laid down in the same article.

### **PART III** **INSTITUTIONS FOR INVESTMENT PROMOTION**

#### **Single Title** **Chapter I** **National Investment Council**

**Article 46.** Creation of the National Investment Council as a public law entity with juridical standing and patrimony, whose main aims are:

- a) The promotion and development of private investment.
- b) The establishment of facilitation offices and assistance to investors.
- c) The formulation of public policy proposals aimed at creating a favorable climate for both national and foreign investment.

**Article 47.** The Board of the National Investment Council shall be composed as follows:

By the Public Sector:

- a. A representative of the Secretary of State of the Presidency of the Republic.
- b. A representative of the Secretary of State of Foreign Relations.
- c. A representative of the Secretary of State of Industry and Commerce.
- d. A representative of the Legislative Branch



The private sector will participate with five representatives that will be appointed by the President of the Republic proposed by the Honduran National Business Council (COHEP), which may also request its removal and change.

The Chairmanship of the Board shall always be executed by a member of the private sector and will be rotated annually. The election of the Chairman shall be held at the Council meeting in accordance with what is established in the regulation of this Law.

The Directors shall have the necessary powers for making decisions which must be certified at the time of their appointment with the relevant resolution or document for which they are empowered to make decisions on behalf of the entity they represent without the necessity of consultation or approval of any superior body. The office of Directors is not delegable. The Board shall meet at least once a month. The Board meetings may take place as long as the presence of at least half plus one of the Executives exists. The form of notice and management of meetings will be established in the regulation of this Law

**Article 48.** The Directors shall cease in the exercise of their functions for the following reasons:

- a. Committal or final imprisonment sentence,
- b. Physical or mental disability,
- c. At the request of the Honduran National Business Council to the President of the Republic,
- d. For repeated absences at board meetings, in this case due process being ensured to the Executive, and
- e. By resignation

**Article 49.** The functions of the National Investment Council are:

- a. Formulating the Policy, Strategy and National Investment Plan relying primarily on the territorial and statistical information collected for this purpose its Technical Secretariat of the National Investment Council, which shall be reviewed annually and updated every five years, and monitor its execution.
- b. Define and / or update annually in coordination with the Secretary of State for Planning and the state entities by sector, a list of priority sectors of investment in Honduras and design strategies to promote them.
- c. Develop, coordinate, stimulate and promote, through its Technical Secretariat the permanent program of the country's image as a major component of the efforts to maintain the competitive identity of Honduras abroad. State entities by sector must coordinate with the National Investment Council any international promotional effort they undertake in their respective fields.
- d. Internationally promote Honduras as an investment destination and may delegate this function in other national or foreign entities in accordance with the provisions set forth in the regulation.
- e. Continuously encourage the facilitation of the procedures required to open and



- close businesses, as well as obtaining permits and licenses required for operation.
- f. Work in coordination with the Secretary of State of Foreign Relations and in close relationship and harmony with Honduran diplomatic representations around the world, to provide them with updated information relative to changes in legislation or government policy that may stimulate or affect investment, as well as potential attractive areas for investment.
  - g. Coordinate with the chambers of commerce or other entities deemed appropriate, the management, administration and operation of a single point of contact (one stop shop) for the investors, authorizing such entities to make charges for services rendered.
  - h. Authorize in coordination with the Secretary of State of Finance the granting of tax incentives provided for in this Law.
  - i. Approve the recommendation for approval of the contracts of legal stability and forward them to the Ministry of the Presidency for its signing and approval in accordance with the provisions of Article 25 of this Act.
  - j. Be the responsible entity for managing and maintaining the membership of the State of Honduras in The United Nations Commission on International Trade Law (UNCITRAL), International Institute for the Unification of Private Law (UNIDROIT), and other related international organizations dedicated to the study of commercial law, international investment and other related disciplines.
  - k. All others that may be assigned by this Act or its regulation.

The National Investment Council is authorized when deemed necessary and within the limits of its budget to hire all or part of the services required to evaluate and optimize the quality performance of their duties. These contracts are not subject to state procurement rules.

**Article 50.** To carry out its activities, its services and its healthy management, The National Investment Council will be supported by a secretariat headed by a Technical Secretary who will be selected through contest. The requirements to be fulfilled by the coordinator will be determined in the regulation of this Law.

The Technical Secretariat of the National Investment Council will have the necessary staff to perform their functions which like the Technical Secretary, shall be selected by contest.

**Article 51.** The functions of the Technical Secretariat of the National Investment Council:

- a. Serve as initial point of contact for potential investors.
- b. Collect, systematize and make available upon request all necessary information about laws related with investment and opening of businesses in Honduras.
- c. Serve as an observatory of the Private Investment in Honduras carrying out duties of information, statistics and coordination regarding investment.
- d. Carry out geo-referenced measurements of impact of the investments.
- e. Maintain a website with up to date information of interest for the investors.
- f. Guide the investors as to what requirements they must fulfill to obtain permits and licenses required for operation.





- g. Supervise the services offered of the single point of contact from the Chambers of Commerce or entities in charge of the same, and conduct in coordination with these, necessary studies to simplify and automate the processes required for the insertion and monitoring of all investments.
- h. Manage existing special investment regimes
- i. Recommend when convenient the delegation of functions pertaining to the Counsel and to supervise the adequate installment of these.
- j. All others that may be assigned by this Act or its regulation.

**Article 52.** The functions of the Technical Secretary are:

- a. Receive, examine and report applications for subscription of contracts of legal stability and any other to be submitted for consideration by the Council;
- b. Act as an administrative officer of the Board, preparing background and studies required;
- c. Execute and expedite the proceedings before the various bodies that should inform or give prior authorization to approve various requests that the Council should resolve and for due materialization of contracts and resolutions;
- d. Research in Honduras or abroad on the adequacy and seriousness of the applicants or interested parties.
- e. Serve as the Clerk of the Council and participate in meetings with voice but with no vote.
- f. Others that this Act and its regulation assign.

**Article 53.** To ensure the retention and expansion of existing investments, the National Investment Board must also provide the services required by investors to facilitate the development and expansion of the same, for which it must maintain a database of investments and keep in permanent contact with directors of companies and government entities involved, in order to detect potential problems that may arise after the establishment of the investment and help solve them in the most efficient manner possible.

In this sense, the Technical Secretariat is authorized to create a specialized unit to provide post-investment services.

**Article 54.** The National Investment Council shall publish once a year a comprehensive report of its activities of which a copy shall be remitted to the Presidency of the Republic, enough copies to the Secretary of State of Foreign Relations to be distributed to the various diplomatic missions of Honduras worldwide and copies to the Secretary of State of Industry and Commerce, Chambers of Commerce and all entities related to the investment sector.

The National Investment Council will make a presentation of the mentioned report to the Council of Ministers during the month of June each year, which shall include proposals it deems convenient to improve the investment climate in the country the following year. This presentation will be made available through its Web portal.



Also, the National Investment Council shall publish on its website once a year a complete report of its activities of which a copy shall be remitted to the Presidency of the Republic, sufficient copies to the Secretary of State of Foreign Relations to be distributed to the various diplomatic missions of Honduras worldwide and copies to the Secretary of State of Industry and Commerce, Chambers of Commerce and all entities related to the investment sector.

## **Chapter II** **Accelerated Procedure for major investments**

**Article 55.** The major investments in cases of national interest, whether purely of private nature or public-private may if they wish, apply to the National Investment Council the implementation of the Accelerated Procedure described in this chapter, which should freely determine cases in which this benefit should be issued. Such determination shall be made considering at least the following criteria:

- a. The technical and financial viability of the proposed investment project, as well as the technical and financial capacity of the investors applying to develop it within the proposed deadline.
- b. If it is within the priority areas defined by the Council.
- c. When necessary, the environmental impact that this may cause.
- d. Others established by the regulation of this law and internal rules of the National Investment Council.

The Technical Secretariat of the National Investment Council, documents and other requirements that must accompany the application to avail this benefit.

**Article 56.** After satisfying the requirements of the Technical Secretariat of the National Investment Council, it shall proceed to their analysis and may require one-time only, if deemed convenient, additional information to satisfy the questions and issues that may have.

Concluded this information, the Technical Secretariat shall remit the request to the National Investment Council with its recommendations, which should grant the applying investors an oral hearing, noting to this purpose the date and time it will take place. At that hearing, the investors must make a short presentation of their project, after which they must answer all the questions that the members of the Council could make.

Concluded this hearing, the National Investment Council at its next regular meeting shall submit for approval the presented application and approve or deny at its sole discretion. The Board's decision cannot be appealed and shall not be subject to an administrative appeal or judicial.

**Article 57.** If the application is approved, a certificate of these procedures will be issued to the investors as well as the communication to all instances of the



Central Government and / or Decentralized so that they automatically can proceed to the issuing of all permits to make possible the investment without further requirement than that of the certificate of placement referred to above.

Specific procedures and formalities necessary for the benefits of this mechanism, as well as the deadlines they should carry out shall be determined by the regulation of this Law.

## **PART IV** **FINAL AND TRANSITIONAL PROVISIONS**

### **Chapter I** **Final and Transitional Provisions**

**Article 58.** No authority is empowered to demand the designation of representatives of Honduran nationality or residents in Honduras for the issuance of documents, permits and registrations necessary to enable the investment. Exceptions to this provision are the companies subject to a special regulatory regime such as entities in the financial sector, rating agencies, money transfer companies, cooperatives, land transportation companies, companies engaged in fishing and customs agencies.

**Article 59.** The National Investment Board is authorized to make a charge equivalent to 0.25% of annual turnover from sales or services made to those investors who sign legal stability contracts with the State in respect of management fee and maintenance thereof. The proceeds of that collection will become part of a trust, whose funds will be distributed annually in equal parts between the National Investment Council and the Executive Directorate of Revenue.

The funds that will form part of the budget of the Executive Directorate of Revenue must be used for the creation of an office of the administration a monitoring of legal stability contracts. The investors who have signed contracts for Public-Private Partnership with the State are exempt from this charge.

**Article 60.** The President of the Republic is empowered with the purpose that he can make a statement during the Board of Ministers on cases that are determined in the regulation of this Law, that an investment project to be developed through a Public Private Partnership, is a primary interest for the state. This statement enables the President of the Republic to select in a direct manner the developer of the project having communicating this only to COALIANZA. In these cases, the executive decree justifying this statement, as well as the contract project to be signed, shall be published on the website of COALIANZA for a period not smaller than thirty (30) days before its signing and for a period not smaller than ninety (90) days after being signed.

The projects that are subject to the statement referred to in this article are subject of the accelerated process established in Chapter II of the only Title of Part III of



this Law. The signees of these contracts shall also pay COALIANZA the fee established in Article 29 of the Law for the Promotion of Public Private Partnership and are subject to the supervision and control of the Superintendence of the Public-Private Partnership.

**Article 61.** The deadlines to exhaust the processes of negotiation and conciliation laid down in Article 32 of this law shall be established in the regulation of it.

The state through the Attorney-General's Office, in coordination with the Secretary of State of Industry and Commerce and the Secretary of State of Foreign Relations, shall take the necessary provisions for a period not exceeding one year after the entry into force of this Act will possess the appropriate defense mechanisms, which may, when required, include the hiring of private legal services for defense. In any case, the private services for the defense of the state hired under this provision must always be hired with experts in the subject of arbitration, national or foreign, with proven ability in handling such disputes. The requirements for the hiring of these services shall be determined by the regulation of this Law.

**Article 62.** The central or decentralized government entities and autonomous entities including municipalities, must carry out the necessary steps in coordination with the Technical Secretariat of the National Investment Council, so that within a period not exceeding two years from the entry into force of this Act, all proceedings or applications can be submitted using electronic means. In this regard, the use of electronic signatures are authorized for carrying out transactions involving the individuals and the state or individuals among themselves, in accordance with safety standards required by the National Commission of Banking and Insurance.

The subscribed contracts by electronic means shall be as valid as those that may be subscribed by the use of paper and written signature. The courts shall presume, unless proven otherwise, the good faith of the parties that have subscribed these and give these as validity as private contracts.

**Article 63.** In a period not exceeding one year after the appointment of the members of the Board of the National Investment Council and the appointment of its Executive Secretary, the management of special investment regimes in force shall be transferred to this authority prior to approval of this Act, including the budget for the units responsible for the authorization of them, files, and, if any, the administration of foreign cooperation funds dedicated to the support those units.

The National Congress of the Republic in consultation with the Ministry of Finance must approve the budget required for the initiation of operations of the National Investment Council for the current year. The National Investment Council shall prepare and submit for consideration its draft budget for subsequent years.



**Article 64.** The corporations established abroad may incorporate themselves in Honduras through the simple accreditation before the commercial registry of the corresponding jurisdiction of its existence in its country of origin, which can be made through apostilled copy of the certificate of the registry and, in its case, of the statutes or articles of incorporation of the same. The commercial registry shall proceed immediately to its inscription without the need of authorization or resolution of any other entity of the state.

If the statutes or articles of incorporation contained dispositions that were contrary to any Honduras laws, the registry could make the exception that these dispositions should not be considered valid for the operation of the company in Honduras, issuing the registry regarding the rest of the dispositions. This exception shall be made through the corresponding notation.

The following Articles are hereby repealed articles 308 and 309 of the Commercial Code and Decree 80-92 of May 29, 1992 of the Investment Law. The Article 310 of the Commercial Code is reformed which shall read as follows:

*Article 310 .- It is considered to be companies incorporated under foreign laws those that do not have their legal domicile in Honduras.*

*Companies incorporated under foreign laws that wish to perform acts of Commerce in Honduras must register with the Public Registry of Commerce in compliance with the provisions of Article 63 of the Law for the Promotion and Protection of Investment.*

*The domicile of the corporations will be deemed in the place where the registration was made.*

Amendments to Article 31 of the Immigration Act, Decree No. 208-2003 which henceforth shall read as follows:

*For the regulation on resident investors it will be provided in the Law for the Protection and Promotion of Investment*

Amends Sections 55, 60 of the Copyright Act which shall read as follows:

*ARTICLE 55. - Once the requirements of Articles 35.39, 45 and 54 of this Law, the Industrial Property Registry will proceed to publish notices which contain the overview of the invention, in a Web portal that will keep the Intellectual Property Register or otherwise, and insofar as web portal is created, the web portal of the Property Council for a period of ninety (90) days. After this term without opposition filed, will proceed to issue the relevant resolution of the patent grant shall be signed by the Secretary or the Secretary General, Director or sub-Director General, Intellectual Property or otherwise by registered Industrial Property or his legal substitute. The resolution also shall be published in the website of the Registry of Intellectual Property, or otherwise, and insofar as web portal is created, the web portal of the Property Council. Such publication shall be made at no cost.*

*ARTICLE 60. - Once the requirements and conditions mentioned in Article 61 of this Law are fulfilled, the Intellectual Property Register shall publish the notices on its website or*



*otherwise and as the web portal is created, the Council's web portal Property for a period of ninety (90) days.*

*After this term without any opposition made shall proceed to issue the decision in the patent grant which shall be signed by the Secretary or sub-Secretary-General or Director General of Industrial Property or otherwise by the Director. - General or his legal substitute.*

*This resolution should also be posted on the website of the Intellectual Property Register, or otherwise, and insofar as web portal is created, the web portal of the Property Council. Such publication shall be made at no cost.*

*If requested by the applicant, at any time before the publication is made, the Registry of Industrial Property will delay the publication for the period stated in the order, which shall not exceed twelve (12) months from the date of filing.*

**ARTICLE 61.** - *Any interested person may file with the Registry of Industrial Property opposition or observations in relation to the requested record within the period of the publications. The opposition shall state the grounds on which it is based and be supported by evidence that were relevant.*

*Once the period specified in the preceding paragraph expires, without any opposition been filed, and having complied with all requirements established by this Act the Register will register the industrial design, then proceed with the publication of a notice announcing the granting of the concession in the Intellectual Property Register web portal, or otherwise, and insofar as web portal is created, the web portal of the Secretariat of State for Trade and Industry and provide the applicant with the relevant registration certificate .. Such publication shall be made at no cost.*

Amendments to Article 21 of the Law of Representatives, Distributors and Agents of National and Foreign Companies which shall read as follows:

**Article 21 .-** *Any disputes that arise between licensors and licensees will be solved, first, by reconciliation. Failing such agreement, or if partially, the controversy over the party that cannot be resolved shall be referred to arbitration in accordance with the provisions of the Law for the Protection and Promotion of Investment.*

Hereby Articles 32, 33 and 34 of the Immigration Act contained in Legislative Decree 208-2003 are repealed.

**Article 65.** Investments established under Decree 80-92 repealed in this article, will maintain their benefits during a period of five years as from the date this law enters into force. Upon expiry of this period, the investor will automatically become part of the protection regime established by this Act.

The regulation of this law shall be approved no later than ninety (90) calendar days after its publication.

This Act shall come into force as from the date of its publication in the Official Gazette.





República de Honduras