

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

MR. FERNANDO PAIZ AND MS. ANABELLA SCHLOESSER DE PAIZ

Claimants

v.

THE REPUBLIC OF HONDURAS

Respondent

ICSID Case No. ARB/23/___

NOTICE OF ARBITRATION

24 August 2023

WHITE & CASE
Counsel for Claimant

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***Mr. Fernando Paiz and
Ms. Anabella Schloesser de Paiz v. Republic of Honduras***

CLAIMANTS' NOTICE OF ARBITRATION

1. Mr. Fernando Paiz Andrade (“**Mr. Paiz**”) and Ms. Anabella Schloesser de Leon de Paiz (“**Ms. Schloesser de Paiz**”) (together, the “**Paizes**,” the “**Investors**,” or “**Claimants**”), nationals of Guatemala, on their own behalf and on behalf of Pacific Solar Energy, S.A. de C.V. (“**Pacific Solar**” or the “**Enterprise**”), hereby submit this Notice of Arbitration of the legal dispute described herein with the Republic of Honduras (“**Honduras**,” “**Respondent**,” or the “**State**”) in accordance with Chapter Ten of the Central America - Dominican Republic - United States Free Trade Agreement (“**CAFTA-DR**” or the “**Treaty**”).¹

2. Consistent with CAFTA-DR’s Article 10.16.3, Claimants hereby elect to proceed with this Arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”) and the ICSID Rules of Procedure for Arbitration Proceedings (“**ICSID Arbitration Rules**”). Claimants also respectfully request that the Secretary General of ICSID register this Notice of Arbitration in accordance with Article 36 of the ICSID Convention. Claimants further propose that the Arbitration be conducted in accordance with Chapter XII of the ICSID Arbitration Rules (“**ICSID’s Expedited Arbitration Rules**”) to facilitate an efficient and prompt resolution to this dispute.

I. INTRODUCTION

3. Honduras has violated its obligations under CAFTA-DR. It has breached critical, specific commitments to Mr. Paiz and Ms. Schloesser de Paiz, and their Enterprise, after benefitting from the Paizes’ investments.

4. Honduras enacted a legal framework providing for a series of incentives to attract investment in the renewable energy sector. Honduras further implemented that framework through long-term power purchase agreements between the State-owned National Company of Electric Energy (*Empresa Nacional de Energía Eléctrica*) (“**ENEE**”) and power generators, for

¹ Dominican Republic – Central America – United States Free Trade Agreement (“**CAFTA-DR**”) (**CL-1**), Chapter Ten, § B, Arts. 10.16(1)(a), 10.16(1)(b). CAFTA-DR was signed on 5 August 2004 and entered into force in Guatemala on 1 July 2006 and in Honduras on 1 April 2006.

which the Honduran State confirmed that it is jointly and severally liable. This included Agreement No. 002-2014 with Pacific Solar dated 16 January 2014, the Power Purchase Agreement (the “**PPA**”)² and the State guarantee agreement ratified on 28 November 2014 where the Honduran State – represented by the Attorney General and the Ministry of Finance – confirmed to Pacific Solar that the State is jointly and severally liable for ENEE’s obligations under the PPA (the “**State Guarantee**”).³

5. Against this backdrop, in December 2014, the Paizes acquired a 100% interest in Pacific Solar. The Paizes made this investment based on Honduras’s assurances that it would honor its specific commitments, including as set forth in the PPA and the State Guarantee. Honduras’s commitments guaranteed long-term revenue streams that made the significant upfront investments and financing feasible. Following the Paizes’ investment, Pacific Solar built, and operates since 2016 and maintains a photovoltaic (“**PV**”) plant in Nacaome Valley, Honduras (the “**Nacaome I Plant**” or the “**Plant**”). Since the Plant commenced operations, Honduras has received clean energy from it, thereby benefitting from the Paizes’ investment.

6. But Honduras has disregarded its own legal framework and specific commitments. Honduras has harmed the Paizes’ Enterprise and put Pacific Solar in a precarious financial situation. In particular, Honduras has repudiated Pacific Solar’s compensation rights and improperly curtailed the Plant’s energy dispatch without proper compensation, in contravention of the PPA and the State Guarantee. Moreover, escalating the pressure on power generators like Pacific Solar, Honduras implemented a law that imposed a “renegotiation” of its power purchase agreements, including the PPA, (the “**New Energy Law**”) in May 2022.⁴ The New Energy Law mandates that “termination” and “State acquisition” will follow for those generators that do not agree to the imposed terms.

7. As Honduras’s conduct since then has confirmed, the purported “renegotiation” is nothing more than Honduras’s attempt to forcibly take away Pacific Solar’s rights under the

² Contract No. 002-2014, Power Purchase Agreement between Empresa Nacional de Energía Eléctrica and Pacific Solar Energy, S.A. de C.V. dated 16 Jan. 2014 (the “**PPA**”) (Exh. C-1).

³ Support Agreement and Guarantee of Solidarity of the State of Honduras for the fulfillment of the Contract of Supply, between Empresa Nacional de Energía Eléctrica and Pacific Solar Energy Contract No. 002-2014 (Decree No. 113-2014 dated 19 Nov. 2014 and published in the Official Gazette on 28 Nov. 2014) dated 1 Oct. 2014 (the “**State Guarantee**”) (Exh. C-2), Art. 1.

⁴ Special Law to Guarantee the Service of Electric Energy as a Public Good of National Security and an Economic and Social Human Right (Decree 46-2022 dated 16 May 2022), published in the Official Gazette dated 16 May 2022 (the “**New Energy Law**”) (Exh. C-10), Art. 5.

PPA. While failing to compensate Pacific Solar for the energy it delivers and curtailing Pacific Solar's energy dispatch without compensation, Honduras strung it along through a series of non-transparent meetings to "renegotiate" the PPA, which simply confirmed its intention to reduce the generator's revenues without any technical and legal basis.

8. Confronted with the significant consequences of rejecting the Government's terms, certain generators entered into Memorandums of Understanding (the "**MOUs**") with ENEE to modify the power purchase agreements subject to certain conditions. The Government initially compensated the generators who entered into the MOUs, while refusing to compensate those like Pacific Solar who had not. Subsequently, however, the Government has failed to comply with its commitments in the MOUs. The Government's decision to prioritize the payment of outstanding compensation to certain generators over others, only to later refuse to stand by its words, further underscores Honduras's arbitrary conduct in disregard of its commitments towards generators.

9. Through the misconduct summarized above, Honduras has breached its obligations towards the Paizes and Pacific Solar under the Treaty and caused them hundreds of millions of dollars in damages. The Paizes notified Honduras of the existence of a dispute and invited it to engage in good-faith negotiations more than 90 days ago.⁵ Despite Pacific Solar's best faith efforts to settle this dispute amicably, its attempts at negotiations have been unfruitful. As a result, the Paizes file for arbitration on their own behalf and on behalf of Pacific Solar, as it is time an arbitral tribunal award damages to remedy the Treaty violations that Honduras has committed and continues to commit.

II. THE PARTIES

A. CLAIMANTS

10. Claimants in this Arbitration are Mr. Fernando Paiz Andrade and Ms. Anabella Schloesser de Leon de Paiz. Mr. Paiz is a Guatemalan citizen and a well-respected business leader in Central America with projects and assets across a variety of sectors and jurisdictions,

⁵ Notices and Communications from the Paizes to Honduras under CAFTA-DR dated 10 Oct. 2022, 11 Nov. 2022, 10 Jan. 2023, 13 Feb. 2023, and 24 Mar. 2023 (**Exh. C-12**).

including renewable energy. Ms. Schloesser de Paiz, Mr. Paiz's wife, is a national of Guatemala. One of their investments is a 100% participation in Pacific Solar.⁶

11. In this Arbitration, Claimants submit claims on their own behalf and on behalf of Pacific Solar pursuant to Articles 10.16(1)(a) and 10.16(1)(b) of the Treaty, respectively.⁷ The Paizes are each an investor of a Party, in accordance with Article 10.28 of the Treaty.⁸ As required by Rule 2(2)(c) of the ICSID Institution Rules, the Paizes hereby submit copies of their Guatemalan passports.⁹ The Paizes further confirm that they have never been Honduran citizens.

12. The Paizes' address is as follows:

Mr. Fernando Paiz Andrade
Ms. Anabella Schloesser de Paiz

[REDACTED]

13. Pacific Solar, in turn, is a company incorporated in Honduras¹⁰ that built, and now maintains and operates the Plant, and is an Enterprise of Honduras as defined by Chapter Ten of the Treaty.¹¹ As noted above, the Paizes wholly own and control Pacific Solar, whose address is as follows:

Pacific Solar Energy, S.A. de C.V.
Centro Comercial Los Próceres,
2do Nivel, Local 204 A
Tegucigalpa, Honduras

⁶ Ownership Structure Chart for Pacific Solar Energy, S.A. de C.V. dated 13 July 2023 (**Exh. C-27**).

⁷ CAFTA-DR (**CL-1**), Chapter Ten, § B, Arts. 10.16(1)(a), 10.16(1)(b).

⁸ *See infra* § VI.B; Treaty (**CL-1**), Chapter Ten, § C, Art. 10.28 (defining "investor of a Party" as "a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality").

⁹ Mr Paiz's passport confirms that he is a Guatemalan citizen by birth. Passport of Mr. Fernando Paiz Andrade [REDACTED] (**Exh. C-18**). Ms. Schloesser de Paiz's passport confirms that she is a Guatemalan citizen by birth. Passport of Ms. Anabella Schloesser de Paiz [REDACTED] (**Exh. C-19**).

¹⁰ Government of Honduras, Chamber of Commerce and Industry of Tegucigalpa, Commercial Registration for Pacific Solar Energy, S.A. de C.V. dated 8 Aug. 2023 (**Exh. C-24**).

¹¹ CAFTA-DR (**CL-1**), Chapter Ten, § C, Art. 28 (defining "enterprise of a Party" as "an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there"); *see also id.*, Chapter Two, Art. 2.1 (defining "enterprise" as "any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association." Also, defining "enterprise of a Party" as "an enterprise constituted or organized under the law of Party").

14. The law firm White & Case LLP represents the Paizes in this Arbitration, and all required notifications should be addressed to:

Silvia M. Marchili (silvia.marchili@whitecase.com)
Estefanía San Juan (estefania.sanjuan@whitecase.com)
White & Case LLP
200 South Biscayne Boulevard, Suite 4900
Miami, FL 33131
United States of America
Tel.: +1 305 371 2700

15. In accordance with Rule 2(1)(e) of the ICSID Institution Rules, Claimants attach Powers of Attorney to White & Case LLP.¹²

B. RESPONDENT

16. The Respondent in this Arbitration is Honduras, a sovereign State. Communications concerning this Arbitration should be addressed to:

Ms. Karla Ninoska Pérez (karla.perez@sde.gob.hn)
Dirección General de Integración Económica y Política Comercial¹³
Secretaría de Estado en el Despacho de Desarrollo Económico
Centro Cívico Gubernamental
Torre 1, Piso 9
Boulevard Juan Pablo II
Tegucigalpa, Honduras

Attorney General of Honduras (*Procuraduría General de la Republica de Honduras*)
Residencial Altos de Trapiche, Calle Principal, Edificio PGR
Tegucigalpa, M.D.C., Honduras
Attn: Sr. Nelson Gerado Molina Flores

¹² Power of Attorney from Mr. Fernando Paiz Andrade to White & Case LLP dated 22 Aug. 2023 (**Exh. C-40**); Power of Attorney from Ms. Anabella Schloesser de Paiz to White & Case LLP dated 22 Aug. 2023 (**Exh. C-41**).

¹³ CAFTA-DR (CL-1), Chapter Ten, Annex 10-G. After CAFTA-DR entered into force, the General Directorate of Economic Integration and Trade Policy (*Dirección General de Integración Económica y Política Comercial*) mentioned in Annex 10-G became part of the Ministry of Economic Development [*Secretaría de Desarrollo Económico*] and, it now uses the address set forth above. Official website of the Secretariat of Economic Development, General Directorate of Economic Integration and Commercial Policy available at <http://sde.gob.hn/integracion-economica-y-politica-comercial> (**Exh. C-7**).

III. FACTUAL BACKGROUND

A. HONDURAS IMPLEMENTED A FRAMEWORK GUARANTEEING RIGHTS TO INVESTORS IN THE RENEWABLE ENERGY SECTOR

17. Honduras's electricity infrastructure and generation capacity was inadequate to satisfy the growing needs of the Honduran market in the mid-2000s.¹⁴ As a result, as explained below, Honduras implemented a series of reforms to attract the investments needed to expand the country's renewable energy capacity beginning in 2007.¹⁵ The State implemented its energy policies through several agencies, including the Ministry of Energy, Ministry of Finance, Ministry of Natural Resources and Environment, and ENEE, a State-owned entity whose functions include "being in charge of the generation, transmission, distribution, and commercialization of electric energy."¹⁶

18. In 2007, Honduras enacted the Law Promoting the Generation of Electricity with Renewable Resources (the "**Renewables Law (2007)**").¹⁷ To incentivize investments, the Renewables Law granted investors, *inter alia*, the following benefits: (i) certain tax exemptions; (ii) an economic incentive in the form of a 10% payment over the energy base price for the initial 15 years of operation; (iii) annual inflation adjustments to the energy base price (according to changes in the U.S. Consumer Price Index); (iv) the possibility of extending power purchase agreements for a plant's useful life; and (v) authorizing the Central Government to back ENEE's obligations under its power purchase agreements with generators.¹⁸

19. The State adopted additional laws to further its policy to attract private investment. These laws included the Law for the Promotion of Public-Private Partnerships in September 2010 ("**Public-Private Partnerships Law**") and the Law for the Promotion and Protection of Investments in July 2011 ("**Investment Law**").¹⁹ The Public-Private Partnerships

¹⁴ *In 2007, It Was Advised That Power Outages Were Imminent in Honduras*, AMÉRICA ECONOMÍA dated 5 Sept. 2011 (**Exh. C-9**).

¹⁵ Presentation by the Honduran Government, *Renewable Energy in Honduras* dated July 2019 (**Exh. C-17**), at 5-6 (illustrating the process of legislative reforms to incentivize investments in renewable energy in the mid-2000s).

¹⁶ New Energy Law (**Exh. C-10**), Art. 2; Decree No. 48-1957 dated Feb. 1957, published in the Official Gazette dated 27 Feb. 1957 (**Exh. C-6**), Art. 3.

¹⁷ Law Promoting the Generation of Electricity with Renewable Resources (Decree No. 70-2007 dated 29 June 2007), published in the Official Gazette dated 2 Oct. 2007 (the "**Renewables Law (2007)**") (**Exh. C-4**).

¹⁸ *Id.*, Arts. 2-4.

¹⁹ Law for the Promotion of Public-Private Partnerships (Decree No. 143-2010 dated 17 Aug. 2010) published in the Official Gazette dated 16 Sept. 2010 (the "**Public-Private Partnerships Law**") (**Exh. C-29**); Law

Law affirmed that it is the “duty of the State to seek” external investment and “to provide sufficient and necessary guarantees in its investments.”²⁰ Moreover, in the Investment Law, Honduras declared that the “generation of private investment” was a “national priority” and an “inescapable duty of the State,” and provided a series of substantive rights including, *inter alia*, the national treatment standard, the non-expropriation without compensation standard, and the investors’ right to access markets.²¹

20. In furtherance of Honduras’s strategy of developing its renewable energy sector, Honduras amended the Renewables Law in 2013 (the “**Renewables Law**”) to bolster the incentives offered to new solar energy projects.²² Shortly thereafter, in May 2014, Honduras further enacted a new General Law of the Electric Industry (the “**Electric Power Industry Law**”) to, among other aims, allow private investment into the generation, transmission, and distribution of electric energy, thereby ending the State’s monopoly.²³ Honduras acknowledged the need to rely on investments by the private sector. The Preamble of this law expressly indicated that Honduras was seeking to develop its renewable energy capacity “with the support of the private sector.”²⁴

21. Implementing the above-described framework, in 2014, Honduras, through ENEE, began signing a series of power purchase agreements with private generators, including with Pacific Solar.²⁵ Moreover, the Honduran State, represented by its Attorney General and the Minister of Finance, entered into a State Guarantee with Pacific Solar, under which the Honduran State confirmed it is jointly and severally liable for ENEE’s obligations under the

for the Promotion and Protection of Investments (Decree No. 51-2011 dated 27 May 2011), published in the Official Gazette dated 15 July 2011 (the “**Investment Law**”) (Exh. C-30). *See also* Government of Honduras, Ministry of Foreign Relations, *Honduras is Open for Business* dated 5-6 May 2011 (Exh. C-25).

²⁰ Public-Private Partnerships Law (Exh. C-29), Preamble.

²¹ Investment Law (Exh. C-30), Preamble, Arts. 1, 4.

²² These incentives, known as “Renewable Energy Incentives,” included, *inter alia*: (i) a new beneficial procedure to calculate payments for power during a project’s initial ten years of operation and (ii) a special incentive for PV projects of an additional three cents per dollar for each kWh produced reflected in the base price. Those incentives applied to solar projects that were: (i) installed within two years of the entry into force of the Renewables Law reform (*i.e.*, prior to 1 August 2015), or (ii) until the Honduran power grid reached a maximum installed capacity of 300 MW. Law Promoting the Generation of Electricity with Renewable Resources (Decree No. 138-2018 dated 31 July 2013), published in the Official Gazette dated 1 Aug. 2013 (the “**Renewables Law**”) (Exh. C-5), Arts. 2, 6.

²³ General Law of the Electric Industry (Decree No. 404-2013 dated 11 Apr. 2014), published in the Official Gazette dated 20 May 2014 (the “**Electric Power Industry Law**”) (Exh. C-8), Preamble, Arts. 4, 5, 29.

²⁴ *Id.*, Preamble.

²⁵ *See generally* PPA (Exh. C-1).

PPA.²⁶ In particular, under the State Guarantee, the Honduran State undertook to “comply with the due and timely observance and fulfillment of ENEE’s payment obligations contained in and derived from the PPA.”²⁷ This obligation originates, and may be required with, “the sole failure of the same payment by ENEE to [Pacific Solar] on the dates on which it corresponds according to the PPA or as established by a competent court.”²⁸

22. Under the PPA, Pacific Solar undertook to build, operate, and maintain a PV plant, and to sell the entirety of the energy that the plant produced to ENEE. In turn, ENEE agreed to several obligations, including to buy and dispatch all the energy that the Plant produces and delivered as specified in the agreements. The obligations in Pacific Solar’s PPA were in line with, and reinforced, the legal framework established for the development of renewable energy capacity in Honduras:

- **Take-or-pay:** ENEE undertook to purchase all the capacity and energy that the Plant produces and delivers at the Delivery Point (as defined in the PPA).²⁹
- **Dispatch all energy:** ENEE agreed to dispatch all the energy that the Plant generates and delivers at the Delivery Point³⁰ consistent with the Renewables Law.³¹
- **Pacific Solar’s right to receive compensation for energy it could not deliver for reasons not attributable to Pacific Solar:** ENEE undertook to compensate Pacific Solar in the event that it is unable to deliver energy for more than six hours in a month.³²
- **Payment of renewable energy incentives:** ENEE agreed to pay Pacific Solar the incentives contained in the Renewables Law. The PPA’s formula for the payment of produced energy and power contains a variable that represents the energy incentives.³³
- **Entitlement to exemptions:** ENEE undertook to recognize the exonerations further to the Renewables Law (2007) and the Renewables Law.³⁴

²⁶ State Guarantee (**Exh. C-2**), Art. 1.

²⁷ *Id.*, Art. 4.2.

²⁸ *Id.*, Art.4.2.

²⁹ PPA (**Exh. C-1**), § 2, Cls. 2.3, 9.1.

³⁰ *Id.*, § 2, Cl. 2.4.

³¹ Renewables Law (**Exh. C-5**), Art. 9 (“The National Electric Energy Company (ENEE), through its dispatch center, will obligatorily dispatch and receive all the energy that generation projects with national renewable resources produce and deliver at the agreed point of interconnection or delivery, throughout the lifetime of its electric power supply contracts, giving priority over any other type of generation or power purchase, except for the power produced by electric power generation plants with Renewable resources directly owned by ENEE.”).

³² PPA (**Exh. C-1**), § 2, Cl. 9.5.1.

³³ *Id.*, § 1, G.; § 2, Cl. 9.2.

- **Payment of interest:** ENEE undertook to pay interest over invoices it failed to pay after 45 days of their receipt.³⁵ Interest accrues at the average interest rate prevailing the month prior to the actual date of payment as defined in the PPA.³⁶
- **Currency/exchange rate:** ENEE agreed to pay in Honduran currency invoices issued in U.S. Dollars. For currency conversion, ENEE agreed to use the valid exchange rate from three business days prior to the payment date.³⁷ The PPA also defines the exchange rate.³⁸
- **Updating the energy price according to U.S. inflation rates:** ENEE undertook to adjust the energy base price at the end of each contractual year, during the first ten years of the Plant's commercial operation based on U.S. inflation rates up to a certain rate.³⁹
- **Sell to Third Parties:** The PPA also authorizes Pacific Solar to sell "any amount of energy the plant produces" to third parties if, after four consecutive months, ENEE does not fully pay the charges invoiced by Pacific Solar.⁴⁰

23. In addition to the PPA and the State Guarantee, Honduras's Ministry of Natural Resources and Environment and Pacific Solar entered into an agreement to govern the operations of the Plant (the "**Operations Agreement**").⁴¹ Among other provisions, the Operations Agreement ratified that Pacific Solar is entitled to the "incentives and benefits" that Honduras enacted in its legal framework.⁴² Moreover, the Operations Agreement confirmed that Pacific Solar must be compensated for the energy it generates as set forth in the PPA and the State Guarantee.⁴³

³⁴ *Id.*, § 2, Cl. 14.1 ("THE SELLER shall enjoy the tax incentives in force in accordance with Decrees No. 70-2007 and its reform contained in Decree No. 138-2013.").

³⁵ *Id.*, § 2, Cl. 9.6.3.

³⁶ *Id.*, § 2, Cl. 1.1, No. 68.

³⁷ *Id.*, § 2, Cl. 9.6.1.

³⁸ *Id.*, § 2, Cl. 1.1, No. 67.

³⁹ *Id.*, § 2, Cl. 9.2.

⁴⁰ *Id.*, § 2, Cl. 2.5.

⁴¹ Operations Contract between Pacific Solar and the Ministry of Natural Resources and Environment of Honduras (Decree No. 109-2015 dated 26 Oct. 2015 and published in the Official Gazette on 27 Nov. 2015) dated 23 Feb. 2014 (the "**Operations Agreement**") (Exh. C-3).

⁴² *Id.*, § 1.4.7.

⁴³ *Id.*, Cl. 9.

B. THE PAIZES INVESTED IN THE PLANT BASED ON HONDURAS'S LEGAL FRAMEWORK AND SPECIFIC COMMITMENTS

24. Based on Honduras's specific commitments, including as set forth in the PPA, the State Guarantee and the Operations Agreement, the Paizes – nationals of Guatemala – made significant investments in Pacific Solar with the reasonable expectation of enjoying its expected benefits.⁴⁴ Pacific Solar built the Nacaome I Plant, a state-of-the-art PV plant consisting of 104,700 solar modules and covering a total of 136 hectares, located in Nacaome Valley, Honduras.



⁴⁴ See Ownership Structure Chart for Pacific Solar Energy, S.A. de C.V. dated 13 July 2023 (**Exh. C-27**); Letter from Pacific Solar to ENEE dated 12 Aug. 2015 (**Exh. C-13**) (informing ENEE of the change in the legal representative of Pacific Solar in light of a transfer of shares from the initial shareholders, [REDACTED] to Cidco Honduras S.A de C.V. and Mr. Paiz); Honduran Tourism Institute Certification dated 13 Sept. 2016 (**Exh. C-14**) (acknowledging that on 15 January 2016, Pacific Solar filed a document listing Pacific Solar's foreign shareholders). Honduran nationals had previously constituted Pacific Solar shortly before on 20 September 2013.



25. In November 2016, the Plant connected to the National Interconnected System, in direct response to the Government's endeavors to diversify the energy matrix and improve the reliability of the power grid.⁴⁵ The Paizes' investments promptly delivered results to Honduras: a PV Plant, which has uninterruptedly produced clean energy for the Honduran people since 2016, helping to further Honduras's goal of reversing its energy matrix.⁴⁶

C. WHILE BENEFITTING FROM THE PAIZES' INVESTMENTS, HONDURAS HAS VIOLATED ITS OBLIGATIONS TOWARDS THE PAIZES AND THEIR ENTERPRISE, HARMING THEM

26. While the Plant has been delivering clean energy, the Honduran State, on the other hand, has disregarded its obligations toward the Paizes and their Enterprise. In particular, the Government has failed to compensate Pacific Solar, including for energy delivered, and all payments related to the interests and curtailments to which Pacific Solar is entitled, and is

⁴⁵ PPA (Exh. C-1), § 1, C.; ENEE Achievement Report to Nov. 2016 dated Dec. 2016 (Exh. C-35), at 5.

⁴⁶ The Plant became operational on 18 November 2016. Commercial Operating Certificate for Pacific Solar's First Phase dated 18 Nov. 2016 (Exh. C-15). See also *Honduras Reverses Its Energy Matrix*, DIARIO EL HERALDO dated 21 Feb. 2017 (Exh. C-31).

forcing a “renegotiation” to further erode Pacific Solar’s rights. These State actions have put Pacific Solar in a precarious financial situation and caused significant harm.

27. The Government’s repudiation of generators’ compensation rights is consistent with the current administration’s agenda. During her campaign in 2021, Honduran President Xiomara Castro advocated for policies that stood in sharp contrast to Honduras’s prior efforts to promote investment, particularly with respect to the renewable energy sector. This included, for example, announcing that her administration would modify existing agreements with power generators.⁴⁷

28. After taking office in January 2022, President Castro swiftly began acting upon her campaign representations, adopting a hostile attitude towards investment generally and taking further State action in detriment of investors in the renewable energy sector in particular.⁴⁸ Specifically, in late April 2022, President Castro submitted a Draft Legislative Decree titled “Special Law to Guarantee the Service of Electric Energy as a Public Good of National Security and an Economic and Social Human Right” (the “**Bill**”) with the stated goal of increasing the State’s participation in energy generation.⁴⁹ Moreover, the Bill sought to cement the State pressure to modify power purchase agreements to the detriment of private investors.

29. The Honduran Congress swiftly approved the Bill (the “**New Energy Law**”). Among other provisions, the New Energy Law ordered ENEE to renegotiate the terms of the agreements signed with power generators, including the PPA, under threats of “termination . . . and State acquisition,” if no new agreement was reached within 60 days.⁵⁰

30. Following the enactment of the New Energy Law, Pacific Solar participated in meetings with Government officials, including at the Presidential Palace, in a good-faith attempt

⁴⁷ See Presidential Candidate Xiomara Castro, *Government Plan to Relaunch Honduras 2022-2026* dated 5 Sept. 2021 (**Exh. C-33**), at 38 (proposing the revision and termination of power purchase agreements signed during previous administrations).

⁴⁸ See President Xiomara Castro’s Inaugural 2022 Presidential Speech dated 22 Jan. 2022 (**Exh. C-34**), at 3-4 (noting that international organizations had offered her future administration funds to compensate power generators – which she rejected – and that dozens of contracts had been awarded against Honduras’s interests).

⁴⁹ Draft Legislative Decree, Special Law to Guarantee the Service of Electric Energy as a Public Good of National Security and an Economic and Social Human Right dated 29 Apr. 2022 (the “**Bill**”) (**Exh. C-22**), Preamble, at 3; Statement of Motives, at 1 (“We express our commitment to . . . diversify the sources of energy generation to reach a 60% state share by seeking a ratio of the energy matrix to 70% renewable energy to reduce dependence on fossil fuel imports.”).

⁵⁰ New Energy Law (**Exh. C-10**), Art. 5, 15.

to identify solutions to the detrimental effects caused by Honduras's actions and the terms of the New Energy Law.⁵¹ At one of these meetings, Government officials handed Pacific Solar a one-pager Government "proposal," which sought to eliminate key rights and lower compensation owed to Pacific Solar under the PPA.⁵²

31. Pacific Solar participated in further meetings with the Government in an effort to collaborate with ENEE and the rest of the Honduran State regarding the Plant, and to seek negotiated solutions under applicable frameworks. While willing to explore certain concessions, Pacific Solar explained that it could not agree to lower the energy price under the PPA due to the significant financial impact it would cause Pacific Solar, which would only compound the harm it already had suffered due to the Government's failure to fully compensate Pacific Solar for energy and capacity, as well as its decision to increase the level of curtailments.

32. In July 2022, the Government published a report summarizing the renegotiation of the power purchase agreements, including the PPA, in the context of the New Energy Law.⁵³ In this report, the Government made baseless allegations with respect to its obligations under its various power purchase agreements, and indicated that an audit commission established pursuant to the New Energy Law would examine the power companies' financial and internal records.⁵⁴

33. Likewise, the audit commission that the New Energy Law established has requested sensitive financial information from generators like Pacific Solar, which Pacific Solar has provided, notwithstanding a lack of transparency on the part of the Commission. Government officials and Pacific Solar met subsequently, but the Government continued acting erratically and in a non-transparent manner, and ultimately simply continued pushing a unilateral offer that would be significantly detrimental to the Paizes' investment.

34. Since then, rather than seeking to resolve this dispute and respect generators' rights, Honduras has further aggravated the dispute by revealing its intention to repeal other existing rights belonging to generators like Pacific Solar. Recently, the Government published a

⁵¹ Since February 2022, Honduras's Minister of Energy, Mr. Erick Tejada, serves as ENEE's Interim General Manager. *See Erick Tejada Carbajal Sworn In as Minister of Energy*, EL PROCESO dated 14 Feb. 2022 (**Exh. C-20**); *Erick Tejada is Appointed as Interim Manager of ENEE*, EL HERALDO dated 23 Feb. 2022 (**Exh. C-21**).

⁵² Government's "Renegotiation" Offer dated 12 May 2022 (**Exh. C-23**).

⁵³ Government of Honduras, Report Outlining the Government's Plan for Reforming the Electricity Sector Under the New Energy Law (**Exh. C-11**).

⁵⁴ *Id.*

draft law called the “Law of Tax Justice” (the “**Bill Against Existing Incentives Regimes**”).⁵⁵ Disguised as a tax reform, the Bill Against Existing Incentives Regimes seeks to take away key rights given to private actors by, among others, aiming to repeal “tax exemptions, exonerations, and incentives” in various laws, including, *inter alia*, the Renewables Law (2007) and its reforms and interpretations; and the Renewables Law for any investor that “develops and operates energy projects with national renewable resources” and that has a PPA with ENEE.⁵⁶

35. In an attempt to avoid the significant consequences of rejecting the Government’s unilateral offers, certain generators have entered into MOUs with ENEE, forcing them to accept new terms to their power purchase agreements. While these generators have received a portion of their overdue payments, Pacific Solar, which has not accepted the terms that Honduras seeks to impose, has not. But even for those generators, the Government has suspended payments and subsequently failed to comply with its commitments in the MOUs. As a result, Pacific Solar continues to face a situation of complete uncertainty and lack of compensation, as well as unjustified curtailments.

36. Through this conduct, Honduras has strung the Paizes and Pacific Solar along through a series of non-transparent and arbitrary actions and measures. The Government’s conduct leaves no doubt that it simply intends to coercively take away Pacific Solar’s rights, without relying on any technical, economic, or legal support, including by starving it of compensation for which it is entitled under the PPA and the State Guarantee, and threatening the viability of the Paizes’ investments.

37. The Paizes formally notified Honduras of the existence of a dispute and invited it to engage in good-faith negotiations. Claimants repeatedly invited Honduras to participate in consultations and negotiations under CAFTA-DR, to which Honduras has not responded.⁵⁷ Despite Claimants’ reiterated good-faith efforts to reach a negotiated solution and for Respondent to revert its conduct, Honduras has failed to meaningfully engage in negotiations or offer any solutions. Instead, the Government continues to renege on Pacific Solar’s rights, all

⁵⁵ Government of Honduras, “Tax Fairness Law,” Draft Bill published by the Executive on 9 Mar. 2023, available at <https://criterio.hn/wp-content/uploads/2023/03/Ley-de-Justicia-Tributaria-Consolidada-2.pdf> (the “**Bill Against Existing Incentives Regime**”) (Exh. C-32).

⁵⁶ *Id.*, Art. 16. Additionally, the Bill Against Existing Incentives Regime aims to repeal other pro-investment laws in their entirety, including the Public-Private Partnership Law and the Investment Law. *Id.*, Art. 17.

⁵⁷ Notices and Communications from the Paizes to Honduras under CAFTA-DR dated 10 Oct. 2022, 11 Nov. 2022, 10 Jan. 2023, 13 Feb. 2023, and 24 Mar. 2023 (Exh. C-12).

while threatening to take the Plant.⁵⁸ As recently as June 2023, the Minister of Energy and General Manager of ENEE, Mr. Erick Tejada, warned that “the government of the Republic in these 15 months has marked the horizon of the electricity subsector through the new Special Energy Law, which empowers and authorizes us to intervene and acquire the plants if necessary.”⁵⁹ Accordingly, Pacific Solar is exercising its rights to hold Honduras accountable for breaching its obligations under CAFTA-DR.

IV. HONDURAS BREACHED CAFTA-DR

38. The Treaty affords investors and their investments a series of protections, which State Parties to the Treaty are bound to enforce. Chief amongst these protections are: (i) the minimum standard of treatment, including fair and equitable treatment (“FET”);⁶⁰ (ii) the obligation not to expropriate investments unlawfully;⁶¹ (iii) the obligation to abide by investment agreements; and (iv) the obligation to accord investors and enterprises national treatment and most-favored nation treatment.⁶² While Claimants reserve the right to further develop its claims under CAFTA-DR throughout the course of its arbitration, it summarizes below Honduras’s breaches of the aforementioned protections.

A. HONDURAS FAILED TO ACCORD FAIR AND EQUITABLE TREATMENT TO THE PAIZES AND THEIR ENTERPRISE IN HONDURAS

39. Article 10.5 of CAFTA-DR provides that “[e]ach Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.”⁶³ Annex 10-B specifies that, “[w]ith regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.”⁶⁴

⁵⁸ See *ENEE owes L 18, 495 million to private power generators*, EL HERALDO dated 12 June 2023 (**Exh. C-36**); *Government Warns It Will Intervene and Acquire Power Plants*, PROCESO DIGITAL dated 13 June 2023 (**Exh. C-28**).

⁵⁹ *Government Warns It Will Intervene and Acquire Power Plants*, PROCESO DIGITAL dated 13 June 2023 (**Exh. C-28**).

⁶⁰ CAFTA-DR (**CL-1**), Chapter Ten, § A, Art. 10.5.

⁶¹ CAFTA-DR (**CL-1**), Chapter Ten, § A, Art. 10.7; Annex 10-C.

⁶² CAFTA-DR (**CL-1**), Chapter Ten, § A, Arts. 10.4, 10.5.

⁶³ CAFTA-DR (**CL-1**), Chapter Ten, § A, Art. 10.5.

⁶⁴ CAFTA-DR (**CL-1**), Chapter Ten, Annex 10-B.

40. By agreeing to provide investors with the customary international law minimum standard of treatment, including FET, Honduras agreed to refrain from treating protected investments in a manner that is arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory, lacking in due process, lacking in transparency or candor, or in breach of representations made by the State, which were reasonably relied on by the investor.⁶⁵

41. Honduras breached its obligation to accord the Paizes' investments FET by, among other things: (i) reneging the legal framework and its specific commitments vis-à-vis the Paizes' investments; (ii) arbitrarily repudiating compensation obligations to which Pacific Solar is entitled to under the PPA, the State Guarantee, and Honduran law; (iii) unilaterally imposing a renegotiation of the terms of the PPA under threats of expropriation or State acquisition; and (iv) failing to afford due process and transparency in the purported renegotiations of the PPA.

B. HONDURAS HAS EXPROPRIATED THE PAIZES' INVESTMENTS AND PACIFIC SOLAR'S CASHFLOWS AND VALUE IN BREACH OF ARTICLE 10.7 OF CAFTA-DR

42. Article 10.7 of CAFTA-DR provides that "[n]o party may expropriate . . . a covered investment either directly or indirectly through measures equivalent to expropriation . . . , except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate, and effective compensation . . . ; and (d) in accordance with due process of law [.]"⁶⁶

43. Annex 10-C (Expropriation) of CAFTA-DR further addresses direct and indirect expropriation. Specifically, in accordance with Article 10.7.1, direct expropriation occurs "where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure," and indirect expropriation occurs "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."⁶⁷

⁶⁵ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, 19 Dec. 2013 (CL-3) ¶ 454 (holding that a State breaches CAFTA-DR's minimum standard of FET "if the conduct is arbitrary, grossly unfair or idiosyncratic, is discriminatory or involves a lack of due process leading to an outcome which offends judicial propriety"); *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, 29 June 2012 (CL-2) ¶ 235 (finding a breach of Article 10.5 due to conduct that was "arbitrary, grossly unfair, [and] unjust.").

⁶⁶ CAFTA-DR (CL-1), Chapter Ten, § A, Art. 10.7.1.

⁶⁷ CAFTA-DR (CL-1), Chapter Ten, Annex 10-C.

44. Honduras has expropriated the Paizes' investments and Pacific Solar's cashflows and value under Article 10.7 of CAFTA-DR by repudiating Pacific Solar's legal and contractual rights and withholding its corresponding revenues. This puts Pacific Solar in a precarious financial situation and threatens the viability of the Paizes' Enterprise. This taking has substantially deprived Claimants of the enjoyment of their Enterprise, including its reasonable-to-be expected economic benefit. Honduras has failed to observe the requirements for an expropriation to be lawful under CAFTA-DR, and thus breached it.

C. HONDURAS HAS VIOLATED ITS INVESTMENT AGREEMENTS WITH PACIFIC SOLAR

45. Honduras's acts and omissions constitute violations of the terms of the PPA and the State Guarantee. In these instruments, organs of the Honduran State agreed in writing with Pacific Solar a series of rights and incentives as summarized above.⁶⁸ They moreover, confirmed Honduras's legal framework and ensured the viability of the Paizes' investment. The PPA, Operations Agreement, and State Guarantee are "investment agreements" under CAFTA-DR and the Paizes, on behalf of Pacific Solar, are entitled to bring claims for their breaches pursuant to Article 10.16.1(b)(i)(C).

D. HONDURAS'S ADDITIONAL BREACHES

46. Under Articles 10.3 and 10.4 of CAFTA-DR, Honduras is obliged to accord treatment to Guatemalan investors and their investments that is no less favorable than the treatment that Honduras accords to its own nationals and nationals of third States and their investments.⁶⁹ Here, Honduras breached these standards by according more favorable treatment to investors from third States and their investments, as well as to national investors and their investments, as compared to the treatment accorded to the Paizes and Pacific Solar.

V. THE PAIZES AND PACIFIC SOLAR HAVE INCURRED SUBSTANTIAL LOSSES FOR WHICH THEY ARE ENTITLED TO COMPENSATION

47. Honduras's measures in breach of CAFTA-DR have caused substantial losses and damages to the Paizes and Pacific Solar. Claimants estimate their losses exceed US\$ 160 million. Claimants fully reserve their right to update their damages valuation and to submit expert evidence in this Arbitration regarding the amount of the losses.

⁶⁸ See *supra* § III.A.

⁶⁹ CAFTA-DR (CL-1), Chapter Ten, § A, Art. 10.3, 10.4.

VI. THE PAIZES HAVE MET THE REQUIREMENTS FOR SUBMITTING THIS INVESTMENT DISPUTE TO ICSID ARBITRATION

A. THE PAIZES AND HONDURAS HAVE CONSENTED TO SUBMIT THIS DISPUTE TO ICSID ARBITRATION

48. Honduras and the Paizes have consented to submit this dispute to ICSID arbitration in accordance with the procedures set forth in Chapter Ten of CAFTA-DR and the ICSID Convention.

49. Specifically, Honduras has consented to arbitration pursuant to Article 10.17.1 of CAFTA-DR, which provides that “[e]ach Party,” which includes Honduras, “consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.”⁷⁰ By virtue of submitting this Notice of Arbitration, the Paizes have consented to arbitration.

50. In particular, Articles 10.18.2 and 10.18.3 of CAFTA-DR provide:

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant’s written waiver,

(ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant’s and the enterprise’s written waivers of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant’s or the

⁷⁰ CAFTA-DR (CL-1), Chapter Ten, § A, Art. 10.7.

enterprise's rights and interests during the pendency of the arbitration.⁷¹

51. Pursuant to CAFTA-DR's waiver requirement, the Paizes and Pacific Solar have waived their right to initiate or continue administrative or judicial proceedings seeking redress with respect to measures alleged to be a breach of CAFTA-DR.⁷² The Paizes' and Pacific Solar's written waivers are attached to this submission.⁷³

52. Likewise, ICSID has jurisdiction under Article 25 of the ICSID Convention and ICSID Rule 2(2)(a). Guatemala and Honduras are both Parties to the ICSID Convention. Consistent with CAFTA-DR's Article 10.16.3, Claimants hereby elect to proceed with this Arbitration under the ICSID Convention and the ICSID Rules. Article 10.16.3 of CAFTA-DR provides the option of conducting the arbitration under the ICSID Convention and the ICSID Rules in the following terms:

... a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention[.]⁷⁴

B. PURSUANT TO CAFTA-DR, CLAIMANTS HAVE STANDING TO BRING CLAIMS ON THEIR OWN BEHALF AND ON BEHALF OF PACIFIC SOLAR, THE ENTERPRISE

53. CAFTA-DR authorizes nationals of one of the contracting States, who have made a protected investment, to bring claims against another contracting State for violations of Chapter Ten of CAFTA-DR. It further authorizes such nationals to bring claims on behalf of an Enterprise that they own or control.

⁷¹ CAFTA-DR (CL-1), Chapter Ten, § B, Art. 10.18.2, 10.18.3; *see also* CAFTA-DR (CL-1), Chapter Ten, § B, Art. 10.18 (containing provisions related to resorting to international arbitration, none of which include the exhaustion of local remedies prior to submitting a claim to arbitration); *David Aven v. Republic of Costa Rica*, ICSID No. UNCT/15/3, Final Award dated 18 Sept. 2018 (CL-6) ("DR-CAFTA does not require prior exhaustion of internal remedies as a requirement of admissibility to access international investment arbitration.").

⁷² CAFTA-DR (CL-1), Chapter Ten, § B, Art. 10.18.2, 10.18.3.

⁷³ Mr. Fernando Paiz Andrade's Waiver Pursuant to CAFTA-DR Article 10.18 dated 22 Aug. 2023 (Exh. C-37); Ms. Anabella Schloesser de Paiz's Waiver Pursuant to CAFTA Article 10.18 dated 22 Aug. 2023 (Exh. C-38); Pacific Solar Energy S.A. de C.V.'s Waiver Pursuant to CAFTA-DR Article 10.18 dated 22 Aug. 2023 (Exh. C-39). Consistent with the terms of CAFTA-DR, the Paizes and Pacific Solar reserve their right to initiate or continue any action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of Honduras, provided that the action is brought for the sole purpose of preserving the Paizes' and Pacific Solar's rights and interest during the pendency of this Arbitration.

⁷⁴ CAFTA-DR (CL-1), Chapter Ten, § B, Art. 10.16.3.

54. Specifically, Articles 10.16.1(a) and 10.16.1(b) allow a “claimant” to submit claims “on its own behalf” and “on behalf of an enterprise” it “owns or controls directly or indirectly” for violations of obligations under Chapter Ten, Section A of CAFTA-DR.⁷⁵

55. In turn, CAFTA-DR includes the following relevant definitions:

- “Claimant” is “an investor of a Party that is a party to an investment dispute with another Party.”⁷⁶ This definition includes “a national . . . of a Party, that makes attempts to make, is making, or has made an investment in the territory of another Party[.]”⁷⁷
- “Enterprise” is “any entity constituted or organized under [the law of a Party], whether or not for profit . . . including any corporation . . . or other association.”⁷⁸
- “Investment” is “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. Forms that an investment may take include: (a) an enterprise; (b) shares, stock, and other forms of equity participation in an enterprise . . .”⁷⁹

56. Pursuant to the terms of CAFTA-DR, the Paizes are qualified to commence this Arbitration against Honduras—on their own behalf and on behalf of Pacific Solar—to seek redress for the damages resulting from Honduras’s Treaty violations.⁸⁰ Indeed, as set forth above, the Paizes are nationals of Guatemala and Pacific Solar is a company incorporated in Honduras that the Paizes wholly own and control. The Paizes therefore, are each an “investor of a Party,” which also can act on behalf of Pacific Solar, an “enterprise.”

57. The Paizes further have made significant protected investments. Claimants’ investments, including its interest in Pacific Solar, meet the characteristics of an investment, including the commitment of capital, the expectation of gain or profit, and the assumption of risk. Thus, the Paizes have standing to bring claims on their own behalf, and on behalf of the Enterprise, for violations of CAFTA-DR Chapter Ten.

⁷⁵ CAFTA-DR (CL-1), Chapter Ten, § B, Art. 10.16.1(a), 10.16(1)(b).

⁷⁶ CAFTA-DR (CL-1), Chapter Ten, § C, Art. 10.28.

⁷⁷ CAFTA-DR (CL-1), Chapter Ten, § C, Art. 10.28.

⁷⁸ CAFTA-DR (CL-1), Chapter Two, Art. 2.1.

⁷⁹ CAFTA-DR (CL-1), Chapter Ten, § C, Art. 10.28.

⁸⁰ The Paizes and Pacific Solar are not investors of the United States and therefore Annex 10-E of CAFTA-DR concerning the submission of a claim to arbitration does not apply to them. CAFTA-DR, Chapter Ten (CL-1), Annex 10-E.

58. Finally, Article 10.16.1(b) authorizes claimants, acting “on behalf of an enterprise,” to “submit to arbitration . . . a claim that the respondent has breached . . . an investment agreement.”⁸¹ Article 10.28 in turn, defines an investment agreement as “a written agreement . . . between a national authority . . . and a covered investment . . . that grants the covered investment . . . rights . . . upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself.”⁸²

59. The PPA, Operations Agreement, and State Guarantee are investments agreements. They are written agreements that Pacific Solar, the Enterprise, and the organs of the Honduran State entered into. Moreover, these instruments were instrumental to the Paizes’ investment. Therefore, the Paizes have standing to bring claims on behalf of the Enterprise for violations of its investment agreements, as defined under CAFTA-DR.

C. THE PAIZES HAVE COMPLIED WITH CAFTA-DR’S NOTICE AND TIMING REQUIREMENTS

60. For a claimant to submit a claim to arbitration under CAFTA-DR:

- At least “six months must have elapsed since the events giving rise to the claim”;⁸³
- No “more than three years [may] 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 . . . has incurred loss or damage”;⁸⁴ and
- “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 (‘notice of intent’).”⁸⁵

61. The Paizes also satisfy these three requirements:

- As detailed above, the events giving rise to the Paizes’ claims arose more than six months ago;

⁸¹ CAFTA-DR (CL-1), Chapter Ten, § B, Art. 10.16.1(b).

⁸² CAFTA-DR (CL-1), Chapter Ten, § C, Art. 10.28 (“investment agreement means a written agreement that takes effect on or after the date of entry into force of this Agreement between a national authority of a 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”).

⁸³ CAFTA-DR, Chapter Ten, § B, Art. 10.16.3 (CL-1).

⁸⁴ CAFTA-DR, Chapter Ten, § B, Art. 10.18.1 (CL-1).

⁸⁵ CAFTA-DR, Chapter Ten, § B, Art. 10.16.2 (CL-1).

- As detailed above, the events giving rise to the Paizes' claims arose less than three years before the submission of this Notice of Arbitration;
- More than 90 calendar days have elapsed since the Paizes delivered their notice of intent to Honduras.⁸⁶ Of note, the communications invited Honduras to "engage in consultations and negotiations with a view to achieve an amicable, mutually acceptable resolution" of the dispute.⁸⁷ Claimants followed up, reiterating the invitation to initiate consultations and negotiations under the Treaty.⁸⁸ To date however, Honduras has failed to provide any response to these communications. Thus, the Paizes' efforts to resolve the dispute through amicable discussions have been unfruitful. There is no indication that Honduras is willing to remedy the situation and to compensate the Paizes and Pacific Solar for their losses.

62. Thus, the Paizes met the aforementioned requirements.

VII. PROCEDURAL MATTERS

A. CLAIMANTS REQUEST THAT THE ARBITRATION BE CONDUCTED UNDER ICSID'S EXPEDITED ARBITRATION RULES

63. Article 44 of the ICSID Convention provides that "any arbitration proceeding shall be conducted in accordance with . . . the Arbitration Rules in effect on the date on which the parties consented to arbitration" unless the parties agree otherwise.⁸⁹ The ICSID Arbitration Rules that are currently in effect are the 2022 version.⁹⁰ Accordingly, the 2022 version of the ICSID Arbitration Rules apply.

64. Rule 75(1) of the ICSID Arbitration Rules provides that "[a]t any time, the parties to an arbitration conducted under the Convention may consent to expedite the arbitration in accordance with" ICSID's Expedited Arbitration Rules.

65. Explaining the reasoning behind the inclusion of expedited arbitration into ICSID's 2022 Arbitration Rules, the Centre has observed in its Working Papers that expedited arbitration "could significantly reduce the time and cost of proceedings."⁹¹ ICSID further has noted that this "could be a good alternative for parties who want a speedy and lower cost process

⁸⁶ Notices and Communications from the Paizes to Honduras under CAFTA-DR dated 10 Oct. 2022, 11 Nov. 2022, 10 Jan. 2023, 13 Feb. 2023, and 24 Mar. 2023 (**Exh. C-12**).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ ICSID Convention, Art. 44.

⁹⁰ The 2022 Rules came into effect on 1 July 2022. See ICSID News Release, *ICSID Releases 2022 Versions of its Rules and Regulations* dated 22 June 2022 (**Exh. C-26**).

⁹¹ ICSID, Working Paper #5, Proposals for Amendment of the ICSID Rules, dated June 2021 (**CL-5**), at 264.

under arbitration rules that take into account the special characteristics of investment disputes.”⁹² In the Working Papers moreover, ICSID has stated that expedited arbitration offers “a simple and expedited process, with clear expectations on the time it takes for each step from the Registration of the Request for arbitration, to rendering the Award and any post-Award remedies.”⁹³

66. Here, both Parties would benefit from the efficiency and cost related advantages of applying ICSID’s Expedited Arbitration Rules for the resolution of this dispute. Accordingly, Claimants request their use and respectfully request Honduras to confirm its views on this issue within 10 calendar days of the registration of this Notice for Arbitration. If Honduras fails to provide an answer in this regard, Claimants ask that this matter be discussed during the Arbitration’s First Procedural Conference.

B. CONSTITUTION OF THE ARBITRAL TRIBUNAL

67. CAFTA-DR provides that “[u]nless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.”⁹⁴ The Parties have not reached any agreement as to the method of appointment of the arbitrators. Accordingly, CAFTA-DR’s default provisions remain applicable.

68. Further, Article 10.16.6 of CAFTA-DR provides that “[t]he claimant shall provide with the notice of arbitration: (a) the name of the arbitrator that the claimant appoints; or (b) the claimant’s written consent for the Secretary General to appoint such arbitrator.”⁹⁵ Claimants hereby appoint Stephen L. Drymer to the arbitral tribunal. All communications to Stephen L. Drymer should be addressed to:

Stephen L. Drymer
Woods LLP
200 McGill College Ave, Suite 1700
Montreal, Quebec H3A 3H3
sdrymer@woods.qc.ca

⁹² ICSID, Working Paper #1, Proposals for Amendment of the ICSID Rules, dated Aug. 2018 (CL-4) Schedule 9, ¶ 43.

⁹³ ICSID, Working Paper #1, Proposals for Amendment of the ICSID Rules, dated Aug. 2018 (CL-4) Schedule 9, ¶ 45.

⁹⁴ CAFTA-DR (CL-1), Chapter Ten, § B, Art. 10.19.

⁹⁵ CAFTA-DR (CL-1), Chapter Ten, § B, Art. 10.16.6.

69. Should Honduras accept Claimants' request to conduct this Arbitration under ICSID's Expedited Arbitration Rules, the default provisions set forth therein concerning the appointment of arbitrators shall apply.

C. LANGUAGE OF THE ARBITRATION

70. Pursuant to Rule 3(a)(ii) of the Institution Rules, it is recommended that the Notice for Arbitration "contain any procedural proposals or agreements reached by the parties, including with respect to . . . (ii) the procedural languages[.]"⁹⁶ In accordance with Rule 7(1) of the Arbitration Rules, "[t]he parties may agree to use one or two procedural languages in the proceeding." Claimants propose that English be the language of this Arbitration.

D. PLACE OF THE ARBITRATION

71. Pursuant to Article 62 of the ICSID Convention, "arbitration proceedings shall be held at the seat of the Centre," except when otherwise agreed by the parties.⁹⁷ Accordingly, Claimants propose that the place of arbitration be Washington, D.C.

E. INSTITUTIONAL REQUIREMENTS AND LODGING FEE

72. In accordance with Rule 4 of the ICSID Institution Rules⁹⁸ and paragraph 1 of ICSID's Schedules of Fees effective as of 1 July 2022,⁹⁹ Claimants submit this Notice of Arbitration and its supporting documentation electronically, together with proof of payment of the non-refundable lodging fee of US\$ 25,000.¹⁰⁰

⁹⁶ Institution Rules, Rule 3(a)(ii).

⁹⁷ ICSID Convention, Art. 62.

⁹⁸ Institution Rules, Rule 4: Filing of the Request and Supporting Documents ("(1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.").

⁹⁹ ICSID's Schedules of Fees effective as of 1 July 2022 ¶ 1 ("Subject to paragraphs 2 and 3 below, the fee for lodging requests prescribed by the applicable Administrative and Financial Regulations is US\$25,000. This non-refundable fee is payable to the Centre by a party: (a) requesting the institution of conciliation or arbitration proceedings under the ICSID Convention or the ICSID Additional Facility Rules; or (b) applying for annulment of an arbitral award rendered pursuant to the Convention.").

¹⁰⁰ Wire Transfer Confirmation for ICSID Lodging Fee dated 23 Aug. 2023 (**Exh. C-42**).


IX. REQUEST FOR RELIEF

73. For the foregoing reasons, Claimants respectfully request the following relief:

- (i) declare that the Republic of Honduras has breached its obligations under the Treaty, including its obligations under:
 - a. Article 10.5 to accord Claimants and their investments the minimum standard of care, including fair and equitable treatment;
 - b. Article 10.7 not to expropriate Claimants' investment except if made for a public purpose, in no case discriminatory, on payment of prompt, adequate and effective compensation, and in accordance with due process;
 - c. Article 10.16 to abide by its investment agreements; and
 - d. Articles 10.3 and 10.4 to accord national treatment and most-favored treatment to investors and investments.
- (ii) order the Republic of Honduras to:
 - a. compensate Claimants for the losses arising from Honduras's breaches of the Treaty in an amount of approximately US\$ 160 million (to be further quantified and updated in these proceedings);
 - b. refrain from aggravating the dispute;
 - c. pay pre- and post-award interest of any damages awarded in this Arbitration at a rate to be established during its course; and
 - d. pay all costs of this Arbitration, including without limitation, Claimants' legal costs, expert fees, and in-house costs, the fees and expenses of the Tribunal, and ICSID's costs.
- (iii) grant any other relief that the Tribunal may deem just and proper.

74. Claimants reserve their rights to amend or modify the claims and requests for relief in this Notice for Arbitration, including to update its damages calculation, and to present further submissions, claims, arguments, and evidence, including in light of further actions on the part of Honduras, as more information becomes available.

Respectfully submitted,


White & Case LLP
Counsel for Claimants
24 August 2023