Foreign Investment in Mexican Real Estate
Current Trends and Developments

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Buying Mexican Real Estate for the Foreign Investor

1.- Introduction;
   - Foreign Ownership of Real Property in Mexico;
   - Semi-industrialized country;
   - Subject to government control and regulations;
   - “Restricted Zone”; What is it? ;
   Prohibition
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2.- - Life after the 1993 Foreign Investment Law;

- Liberalization of regulations;
- only *Residential Property* subject to restrictions in Restricted Zone;
- *Non-Residential Property* (*commercial, industrial, partially or wholly*) subject to certain requirements;
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3.- Property in the Restricted Zone;

- Non-Residential Property:
  - owned by foreigners “in fee simple”
  - through a Mexican company
  - 100% foreign investment
  - Calvo clause (subject to Mexican laws, waiving protection of country of origin)
  - Notice: Department of Foreign Affairs (DFA)
  - industrial and commercial facilities, hotels, office buildings, retail, etc.
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3.- - Property in the Restricted Zone;

- Residential Property:
  - May *not* be owned by foreigners directly
  - May *not* be owned through a Mexican Company
  - May be owned through a Mexican Trust *(Fideicomiso)*
    - 50 years, extended for 50 more
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4.- Property outside the Restricted Zone;
   - Both Residential and Non-Residential (except rural property known as 🏆Ejido🏆) can be owned by foreigners
   - apply for permit with DFA
   - Calvo Clause
   - if not denied by publication (federal official gazette) within 5 days from filing; deemed approved (30 days if part of Restricted Zone)
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5.- Trust *(Fideicomiso)*;

- Residential property in the Restricted Zone (RZ) (a must)
- optional for:  
  a) Non-Residential in RZ  
  b) Residential and Non-Residential outside RZ
- Mexican Bank (trustee’s fees)
- Beneficiary of trust (foreigner) use, sell, collateral
- Permit from DFA; if not denied (publication) within 5 days; deemed approved (30 days if part of Restricted Zone)
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7.- - Mexican Notary Publics;

- Licensed Attorney with additional government permit to certify certain transactions;
- A must in all real estate transactions;
- Must verify the legality of the transaction (and supporting documents);
- Conduct the transfer notices and payment of taxes;
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8.- Real estate transfer costs;

- State Transfer taxes (2% - 3%)
- State Registration fees (.8% - 1%)
- Appraisal (.3% - .8%)
- Notary Public Fees (.5% - 1%) + VAT
- Value Added Taxes on buildings only (15% border; 15% interior of Mexico)
- Customarily all paid by Buyer, except for income tax (capital gains) paid by Seller
Current Trends
Title Insurance in Mexico

• Relatively new market
• Policies are issued or backed by U.S. title insurance companies.
• Policies and coverage are similar to U.S. forms of title insurance
• Insurance process work in conjunction with Notarial system
Forms of Title Insurance Policies

• Schedule A identifies
  – The owner of the estate or interest insured by the policy
  – The type of estate (legal title, beneficial owner under a fideicomiso, etc.)
  – The land covered by the policy
  – The insured mortgage, if a loan policy
Forms of Title Insurance Policies

• Schedule B
  – Contains exceptions to title that are particular to the property being insured
    • Easements
    • Liens
    • Lawsuits/Amparos
Forms of Title Insurance Policies

• Policy Jackets contain
  – Insuring provisions, describing the items that are covered by that policy
  – Exclusions from coverage
  – Terms and conditions of the policy
Title Insurance Covers

- Title to the insured land being vested other than as stated in the policy
- Liens or encumbrances affecting title not disclosed in Schedule B
- Claims by an *Ejido*, unless excepted to in Schedule B
- Priority of an insured mortgage
- Forgery and fraud in the current transaction and in the chain of title
- Corporate authority in the chain of title
Additional Coverage Available

- Affirmative coverage over known defects in title
- Survey coverage with an acceptable survey
- Gap coverage
- Endorsements which expand coverage over possible encroachments, access, survey matters, marketability, etc.
How Title Insurance Benefits a Real Estate Transaction

- Title research includes a 40 year chain of title to discover any unresolved interests in the chain of title.
- Certificado de Libertad de Gravamen should confirm findings of the title search.
- Title research and subsequent policy allows parties to see and cure any title defects before they get to the closing table.
- Policy discloses matters that are not covered, which may be negotiated with title company in many cases.
- Affirmative coverage offers insured additional comfort.
- Endorsements expand coverage.
How Title Insurance Benefits a Real Estate Transaction

• Policy is backed by reserves in the event of a claim
• Policy covers defense costs for covered claims
• Lenders may offer a reduction in basis points with the added security of a loan policy
• Purchasers will feel more comfortable purchasing land that has previously been insured
Owner’s Policies

• Insures owner’s interest in real property (holder of legal title of as beneficiary under a Mexican Fideicomiso)
• Insures owner that there are no other claims to that title
• Discloses all liens and easements recorded in the Public Registry affecting title
Loan Policies

- Insures lender as to the priority of their lien
- Verifies that borrower has interest in real property, as shown in the policy
- Insures validity of the insured security instrument
- Insures validity of any assignment of mortgage shown in the policy
- Discloses easements and other matters affecting title
Title Insurance Process

• 1. Application is made to title company for a specific transaction. Deed or other identifying information is presented.
• 2. Title search is performed
• 3. Title insurance commitment is issued, setting forth the following information
  – Parties to the transaction (i.e. purchaser, record title holder)
  – Description of the land as contained in the Public Records
  – Requirements to be complied with in order for title company to issue its policy
  – Exceptions from coverage.
Title Insurance Exceptions

- There are a few “standard exceptions” in a policy, such as Federal Maritime Zone matters, terms and conditions of Fideicomiso trust documents, etc.
- Other exceptions arise from the search of the records
  - Recorded Easements
  - Right of tenants under leases
  - Mortgages
  - Survey matters
Comparison of Mexican vs. U.S. Closing Process

- **Mexico**
  - Documents are signed before Notary Public
  - Documents are effective between parties at time of execution
  - Closing proceeds may be transferred directly between parties
  - Purchaser or lender receives assurances as to intervening matters by means of Aviso Preventivo

- **United States**
  - Documents are signed before a notary public, who verifies signatories identity
  - Documents are typically effective upon delivery
  - Title companies may hold documents in escrow pending funding and other closing details
  - Closing proceeds often are often disbursed by a title company as an impartial third party
  - Gap coverage (similar to that provided by the Aviso Preventivo is provided by a title policy
  - Title insurance is a standard requirement of purchasers and lenders
Expectation Gap

• In Mexico
  – Good faith deposit to be made to seller or listing agent
  – Funds to be held in Mexican financial institutions
  – Funds be disbursed as documents are being signed
  – Funds to be disbursed by Notario Publico or Mexican bank

• Expectation of U.S. parties
  – Good faith deposits made with title companies
  – Funds to be held in U.S. financial institutions
  – Closing statement or funds flow memo disclosing each disbursement
  – Title insurance policies effective as of funding, whether documents are recorded or not
CONCLUSIONS:

- Total understanding of Mexican legal system is essential.
- Prepare in advance, plan ahead.
- Get reliable Local Legal Assistance.
- Wear your “patience cap”