Imminent amendment to the Mexican Constitution article 27

On Saturday April 20th, 2013 several national and local newspapers in Mexico published that the Constitutional Commission of the Federal Congress voted in favor of amending the Mexican Constitution, Article 27, in order to lift the outright prohibition that forbids foreigners to acquire real estate within what is called "prohibited zone." *(The expression "Prohibited Zone" refer to the strip of 100 kilometers along the international borders and 50 kilometers along the coastline, as described by Paragraph One of Article 27 of the Mexican Constitution).*

Article 27, paragraph I establishes that only Mexicans by birth or by naturalization and Mexican commercial companies have the right to acquire ownership of lands, waters and their accessions, or to obtain concessions for the exploitation of mines and waters.

Almost since its political emergence as an independent nation in 1821, Mexico was the victim of a number of foreign military interventions led at different times by Spain, France, the United Kingdom, and the United States. Mexico lost more than half of its territory to the United States during the tragic war of 1846-48 as a consequence of these invasions. This Mexican national sentiment had to find a number of avenues to be expressed especially through a series of legislative enactments and especially in the constitutional assembly of 1917.

Now and after almost 100 years Mexico is beginning a huge change which would potentially open the door to a big market of baby boomers to retire in its golden beaches. In the Constitutional Commission of Congress a proposal was approved by the governing political party (PRI), as well as the two other mayor parties (PAN and PRD), to be sent to Congress and voted on this year. Eventually the proposal would have to be ratified by the Senate and signed by the President. The proposal states four conditions:

1. Foreigners must agree with the federal government to consider themselves as Mexicans and to not seek aid from their countries in relation with the real estate they are acquiring under penalty of losing it in favor of the Mexican government.
2. The real estate must be used for residential purposes only.
3. The real estate could not be used for commercial purposes.
4. The foreign investment act would establish the process in which the real estate could be lost in favor of the nation, if the realty asset is used for a non-residential purpose.

Currently, in order to be able to cope with the need by foreigners to acquire property along the beaches, Mexico decided in 1971 to utilize the legal institution of the U.S. trust contract ("*Fideicomiso*"). The *fideicomiso*, has been providing foreign investors with a legal and practical avenue that allows them to acquire not the direct ownership but, instead, only the beneficiary use of real estate located within the Restricted Zone.

Under a *fideicomiso* scenario it should be emphasized that the fiduciary is considered to be the holder of the property rights, but not the direct owner. The power of the fiduciary over the real estate property is determined by the specific language of the Mexican trust contract or, in its absence, by the nature of the final objective the assets are destined to accomplish. The assets placed in a given *fideicomiso* become an autonomous patrimony directly dependent upon the *fideicomiso's* goals. These contracts are not generated at the sole discretion of the parties as a result of a mere contractual relationship. It is required that specific financial institutions conform these contracts with a strict regulatory federal legislative frame. *Fideicomisos* now have been applied in Mexico to a large number of commercial transactions including, but not limited to, as mortgage substitutes like warranty trusts, in housing development projects and to manage real estate.

The good news is that the proposed constitutional amendment is going to change the foreign investment dynamics in Mexico. Potentially *fideicomisos* are going to play a smaller role within the vibrant real estate market. It is our opinion that such reform will create a very positive impact in the Mexican economy and specifically in the real estate industry. The real estate transactions will be executed in a faster fashion and at a much lower cost. This is because a bank institution will no longer be required to formalize the closing of real estate purchases. Most importantly, foreigners will own directly their investments in Mexico as they do in their countries of origin. We predict that this proposal has a high possibility a passage because it has been endorsed by the three biggest political parties.

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