



THE LEGAL ASPECTS OF ACQUIRING REAL ESTATE IN MEXICO

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OVERVIEW

- Types of property ownership vehicles
 - Terms of the RZ Trust
 - Mexican companies
 - Business/Development trusts
- Acquiring stock instead of assets
- Closing documents and checklists
- Doing your Due Diligence



TERMS OF THE RZ TRUST

- **Seller (*fideicomitente*/trustor)** irrevocably transfers to
- **Bank (*fiduciario*/trustee),** title to Property so that
- **Foreigner (*fideicomisario*/ beneficiary)** can use and enjoy Property.
- Foreigner holds beneficial title
- Mexican bank holds legal title
- Permit from Foreign Affairs Dept. required
- Trust in force for 50 years and may be renewed
- Bank cannot restrict beneficiary's use as long as lawful
- Bank cannot encumber, securitize, or sell the property (exception: Guaranty Trust)



RZ TRUSTS—“FIDEICOMISO”

- Beneficiary may be **1 or more persons (companies or indivs)** permitted
- **Substitute beneficiaries** may be designated – avoids having to will the Property
- Authorization from Foreign Affairs required to **rent** Property
- Beneficiary can **sell** Property to another by:
 - **Assigning** rights to the trust
 - **Extinguishing** the trust and transferring title
- Trustees can be changed, but cumbersome process
- **Development clause:** Must invest in unimproved land larger than 2,000 m², or it may be taken away – Constitutional?



MEXICAN COMPANIES

- Alternative to RZ trust that allows direct ownership
- Cannot be used for residential purposes
- Effective if buyer sees property as an investment or will develop it
- Use of SPVs: usually tax driven
- Joint ventures – landowner & developer
- Booking land cost as debt vs. equity
- Types of entities



DEVELOPMENT/ADMIN TRUSTS

- Same concept as RZ Trusts but different purposes, e.g.:
 - Joint venture vehicle (P1 = land; P2 = development)
 - Payment guarantee (Trustor retains some control & rights, to ensure final payment)
 - Master trust = ease of transfer to create RZ trusts
 - Separate land ownership from development



DEVELOPMENT/ADMIN TRUSTS

- Alternative to JV entities or other forms of Seller financing
- Often tax driven
- Title transfers once beneficiary(s) named
- Use of Technical Committees
- Reversion clauses



STOCK VS. ASSET PURCHASES

- General rule is Buyer prefers assets b/c fewer surprises
- Stock purchase may be preferred when:
 - Seller is selling not only land but a business (e.g., hotel)
 - Entitlements are not easily transferred; have strategic value
 - Parties wish to avoid high Closing costs, transfer tax, public sale
 - Tax considerations (Seller has significant loss carry forwards)
 - Seller retains some ownership or control (JV or deferred payment)
- In either case, do your Due Diligence on the assets and liabilities
- Watch out for labor liability!
- Loophole allowing foreigner shareholders to sell shares to another foreigner to avoid MX cap gains has been closed!



DUE DILIGENCE

- **“Due Diligence”** refers to the **investigation** that Buyer conducts to ensure he is “getting what he is paying for” and to **avoid “unpleasant surprises”**.
- Legal due diligence related to real property acquisitions includes issues related to:
 - Clean & transferable title (“As is”)
 - Feasibility of future development



DUE DILIGENCE

- ❑ Clean and transferable title
 - Capacity or “personality” of the Seller
 - Powers of attorney and corporate consents
 - Corporate and tax obligations
 - Title (history and chain of title; current status)
 - Encroachments and surveys
 - Adverse possessory interests
 - Ejido (agrarian) matters
 - Environmental – pollution liability



DUE DILIGENCE

- ❑ Feasibility of development
 - Land use (permissible uses, density)
 - Environmental: EIS; flood zones and protected areas
 - Utilities and public infrastructure: water, power, roads