



STRUCTURING CROSS-BORDER REAL ESTATE DEVELOPMENT TRANSACTIONS

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OVERVIEW

- Structuring the cross-border transaction
- Choosing the vehicle
- Papering the deal – the Buy-Sell
 - Representations and warranties
 - Reservation agreements
 - Promissory agreements
 - Definitive Agreements
 - “Dominion” reservation/reversion clauses



STRUCTURING THE X-BORDER TRANSACTION

- Drivers on the US side of the Border:
 - Create vehicle(s) to attract debt and equity partners
 - Provide legal security
 - Tax
- Key considerations:
 - Operations, ROIs, management and decision-making



STRUCTURING THE X-BORDER TRANSACTION

- Drivers on the Mexican side of the Border:
 - Art. 27 and Foreign Investment Law
 - Title situation – is seller ready to transfer?
 - Cash transaction? Or Seller financing/JV?
 - Tax - Buyer and Seller!
- Key considerations
 - Land as Cost/Immediate deductibility
 - Watch out for asset tax
 - Debt-equity ratios
 - X-border service agreements
 - Ability to “check the box”



CHOOSING THE VEHICLE

US LLC



Mexican **SRL**

US Entity



Mexican **Development Trust**

US Entity



Mexican **SA**

US Entity



Mexican **REIT, SAPI**



DEVELOPMENT/ GUARANTEE TRUSTS

- Same concept as RZ Trusts but different purposes, e.g.:
 - Create devel vehicle while avoiding Capital Gains and Transfer Taxes
 - Disregarded if no business purposes – key!
 - Establish JV Vehicle (P1 = landowner; P2 = developer/builder)
 - Allows seller to retain rights (e.g., payment)
 - Multi-purpose (development + guarantee)
 - Master trust = ease of transfer to create RZ trusts
 - Reversion clauses
 - Separate land ownership from development



DEVELOPMENT/ GUARANTEE TRUSTS

- Alternative to JV entities or other forms of Seller financing
- Dual purpose: Seller financing/JV + bank guarantee
- Use of Technical Committees and partial release mechanisms
- Reversion clauses



PAPERING THE BUY-SELL

- You've decided on the structure, so now you need to paper the agreement between Buyer, Seller and lenders
- Up to four phases:
 - LOI/Offer
 - Option/Promise
 - Definitive
 - Release of Guarantees/Liens



SELLER REPS & WARRANTIES

- 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!



RESERVING THE PROPERTY

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PROMISSORY & OPTION CONTRACTS

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DEFINITIVE AGREEMENT

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REMOVING GUARANTEES

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FOLLOW-UP QUESTIONS?

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