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Reference

Real Estate 2014 – Mexico

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1 Are foreigners and entities controlled by foreigners permitted to own real estate directly, or are there specific license requirements or restrictions in place that must be complied with for a non-citizen to own real estate? Are there restrictions on ownership of beachfront or coastal land, or land near beachfront?

In Mexico, foreigners may acquire title to real estate properties located outside the restricted zone (a strip of land of 50km along the beaches and 100km along the borders) (the Restricted Zone) with a permit issued by the Secretaría de Relaciones Exteriores (Ministry of Foreign Affairs, the Ministry). With respect to acquisitions of real estate within the Restricted Zone, the following needs to be considered:

- Foreign individuals may not acquire direct ownership over real estate located within the Restricted Zone.
- Mexican entities with foreign investment may not acquire direct ownership over real estate intended for residential purposes; however, if the intended purpose of the property is not residential (among others, timeshare, industrial, commercial and tourism activities are excluded from what Mexican law considers as residential purposes), the acquisition is permitted and only a notice thereof should be filed with the Ministry of Foreign Affairs.

A Mexican trust may be used as a vehicle by foreigners and Mexican entities with foreign investment to indirectly acquire real estate properties. In a trust structure, title to the property is conveyed (pursuant to a trust agreement formalised before a Notary Public) to the trustee, who holds 'fiduciary title' for the benefit of the trust beneficiary (the foreign individual or entity), in which case the trustee would require a permit from the Ministry. Under the trust, the beneficiary thereof will have the right to use, enjoy, occupy and obtain proceeds from the property and even require the trustee to transfer title on the property or create an encumbrance in connection thereto. Mexican trusts for foreigners and for Mexican corporations with foreign investment participation, which acquire real estate for residential purposes, may not exceed 50 years, which term may be extended upon obtaining a permit from the Ministry.

2 Is all real estate capable of being owned as fee/freehold, or is the land owned by a government or monarch with only the ability to acquire leasehold rights? What other forms of real property ownership exist other than fee/freehold or leasehold?

Mexico is a civil law country composed of 31 states and the Federal District (Mexico City). As such, Mexico is regulated by federal and local statutes (ie, codes, laws and regulations). Main statutes that govern real estate practice in Mexico include (i) at the federal level the Constitution, the Civil Code, the Civil Procedures Code, the Agrarian Law, the General Law on Federal Property, and other federal environmental laws; and (ii) at the local level: State Civil Codes and Civil Procedures Codes, urban development legislation, construction regulations, and local environmental legislation.

Article 27 of the Federal Constitution provides the general basis for the acquisition of real estate by Mexicans or foreigners.

Mexicans may acquire direct ownership over any kind of real estate within Mexico, and foreigners may also acquire such direct ownership, except for real estate located within the Restricted Zone which is subject to certain rules briefly outlined in the answer to question 1 above. Accordingly, real estate tenure is based on either: in rem rights or in personam rights, as further described below:

- Rights in rem, including:
- fee simple rights over real estate (ie, land held in perpetuity); and
- rights which limit ownership of real estate (eg, mortgages, easements or usufruct).
- Rights in personam including:
- leases; and
- bailment agreements known as commodatums.

Ownership, possession and management of land used for agriculture, cattle breeding or forestry (known as agrarian land) is regulated by the Agrarian Law. Even if such agrarian land is not part of an *ejido*, it is regulated by the Agrarian Law. Pursuant to the Agrarian Law, ownership or possession of such agrarian land by business organisations is subject to the compliance of certain requirements that need to be kept in mind. If agrarian land is to be owned or possessed by business organisations for industrial, commercial or residential purposes, such organisations need only comply with local zoning laws but the owner or possessor must also notify the National Agrarian Registry (NAR) that the land has a purpose other thanagriculture, cattle breeding or forestry, and provide a copy of the zoning certificate (*certificado de uso de suelo*) issued by the competent local authority.

3 What overriding rights of the public exist that may affect land, such as inalienable rights to access certain natural resources or the use of beaches? Who owns mineral or riparian rights?

Our Constitution provides that the Nation has, at all times, the right to impose on private property such restrictions as the public interest may demand, as well as to regulate, for social benefit, the use of those natural resources that are susceptible of appropriation in order to make an equitable distribution of public wealth, to conserve them to achieve a balanced development of the country and to improve the living conditions of the rural and urban population. In consequence, measures shall be issued by the competent governmental authorities to, among others, (i) order human settlements and to establish adequate provisions, uses, reserves and allocations of lands, waters and forests, (ii) to carry out public works and to plan and regulate the creation, maintenance, improvement and growth of population centers; (iii) to divide large land estates (in excess of what is known and defined by our Constitution as 'Individual Property'; (iv) to preserve and restore environmental balance; and (v) to prevent the destruction of natural resources and damages that property may suffer to the detriment of society.

The Mexican Government, at a federal, state and local level will implement these provisions of the Constitution pursuant to applicable law or regulation. For example, federal or local environmental authorities may declare certain extensions of land, which may include private property, as natural protected areas. This declaration will result in the imposition of certain protective measures that restrict owners' use or exploitation of their property. Likewise, certain environmental-urban development regulations may impose restrictions to use and exploit private property through the issuance of territorial and environmental ordinance programs.

Pursuant to the Constitution, Mexico has direct ownership of all natural resources. Unless otherwise exclusively reserved for exploitation by the state, the exploration and exploitation of minerals, substances and waters (including waters of the territorial sea, lagoons and estuaries connecting with the sea and internal waters (rivers, lakes, and underground waters)) may be carried out by private individuals, by companies incorporated in accordance with Mexican laws or by agrarian and indigenous communities by means of a concession granted by the competent authority. The space located over national land territory in the extension and under the terms provided by international law is owned by the nation.

Further to what is set forth above, any individual within the Mexican territory has a right to access all beaches and maritime-land federal zones (which are public domain real estate properties); therefore, the owners of properties with boundaries to restricted access beaches and maritime-land federal zones are bound to offer public access to such public property. In case the owners are not willing to permit access, law enforcement agencies may guarantee such access and request, before the corresponding authority, the execution of a permanent easement to access the beaches and maritime-land federal zones. Concessions and permits granted for specific uses of maritime-land federal zones do not allow the holders of such concessions or permits to impede access to the public in general.

4 Is title insurance available and customary to obtain in connection with a purchase or a loan?

Title insurance is available to buyers and lenders and it's a growing industry in Mexico, mostly as a result of requirements for title insurance made by foreign investors. Although title insurance agreements are not specifically regulated under Mexican law, title insurance companies are regulated under the Insurance Companies Law. Policies of title insurance in Mexico are gaining ground and companies that offer such policies have already made certain changes to their standard forms used abroad to recognise the differences inherent in the Mexican civil law system; however, Mexican parties are still sometimes unwilling to accept any economic effect derived from the issuance of title insurance policies (including added costs or price adjustments).

5 Are boundary or others surveys typically completed delineating particular property boundaries, or is reliance placed on registered maps? How are boundary disputes customarily resolved?

As in any jurisdiction, to gain certainty as to the boundaries of a real estate property it is always prudent to obtain a map from a surveyor with the physical boundaries of the property and to compare such physical boundary with those set forth in the legal title. Furthermore, it's also common practice to review the boundaries described in the current legal title against those set forth in other instruments that constitute the chain of title of the real estate property. Finally, it's always advisable to review the surface area and boundaries recorded with the cadaster to ascertain that there are no differences or encroachments among the diligence sources mentioned above with respect to the total surface area of the property (including total surface area of land and total surface area of constructions) and its boundaries.

Boundary disputes are generally resolved through a rectification process of metes and bounds before the competent authority. Such process varies from state to state and is generally of two kinds: (i) an administrative procedure or (ii) a judicial boundary action. Subject to certain requirements having been met, the administrative procedure is carried out by the interested party with the Public Registry of Property (PRP) and the local cadaster through a rectification deed executed before a notary public.

On the other hand, the judicial boundary action takes place: (i) in the event the boundaries that separate one lot from its neighboring properties have not been established; or (ii) in the event that such boundaries have been established, but there is a motive or reason to believe such boundaries are not accurate, whether the boundaries changed due to natural phenomena or the signs that marked the boundaries have been destroyed or were established in a different place from the original. Generally, a judicial boundary action may be initiated by the owner, the possessor with a sufficient title to transfer domain or the usufructuary.

In principle, the resolution should be favorable to the extent the neighbors adjacent to the Property cooperate, do not have an objection and agree with the metes and bounds proposed by the claimant based on its searches and surveys.

6 What taxes or other fees are payable in connection with the purchase or sale of real property (eg, notary fees, recording, alien licensing), and what are the amounts of such taxes and other fees?

Costs involved in the acquisition of real estate usually include: (i) fees for services rendered by real estate brokers, the notary public, the appraiser and the surveyor; and (ii) taxes and duties payable in connection with income tax (flat tax), transfer tax, value added tax (if applicable) and registration duties. The description of applicable taxes below considers the tax effects applicable to the transfer of real property where (i) such property is not used for residential purposes and (ii) the seller is a business entity or a person that is registered as a business taxpayer.

Transfer Tax

Customarily paid by the purchaser (whether or not he is a Mexican resident for tax purposes), real estate transfer tax is imposed on anyone who acquires, by any means, real estate in Mexico (ie, business, gifts and estate transfers). Transfer tax is municipal, accordingly it varies depending on the location of the property; however, it ranges from 1.5 per cent to 3.5 per cent of the highest of: (i) the purchase price; (ii) the recorded value in the local tax authority (cadastral value); and (iii) the market value as determined by an authorised appraiser.

Income Tax (or Flat Tax)

Income tax is paid by the seller on the gain received on the sale of the property at a rate of 30 per cent, although the income tax rate on the gain for 2013 is currently set at 29 per cent and for 2014 at 28 per cent.

If the seller is a Mexican entity and resident for tax purposes it would pay the higher of the aforementioned income tax or the flat tax at a rate of 17.5 per cent. The flat tax works as an alternative minimum income tax. Even when both taxes – income and flat tax – are computed on the gain (income less authorised deductions), there are certain expenses not recognised as an authorised deduction for flat tax which are deductible for income tax (eg, payments of salary to employees or royalties paid to a related party).

If the seller is not a Mexican resident for tax purposes, the applicable income tax rate would be 25 per cent of the gross amount or 30 per cent of the gain received by the foreign resident. The income tax of a non-resident is generally collected by a withholding agent (ie, the notary public which formalises the transfer of real property). No flat tax is triggered when the seller is a non-Mexican resident for tax purposes.

Value Added Tax

This tax is triggered over the value of constructions and improvements at the rate of 16 per cent. Transfer of land is exempted from VAT. This tax is charged and collected by the seller to the purchaser and remitted to the Mexican tax authorities. Generally, a buyer whose recorded business purpose is related to real estate development that is subject to VAT would be entitled to credit all the VAT paid on any given acquisition against the VAT collected from his customers.

Registration Duties

Registration duties are customarily paid by the purchaser (whether or not he is a Mexican resident for tax purposes) to the local tax authorities for the relevant PRP to record the deed of transfer or other public instrument related to real estate property rights (ie, a mortgage or security trust on real property). Reg-

istration duties generally equal a percentage of the real estate asset's purchase price (or, in the case of the registration of a security interest on real property, the value of the loan being secured), subject to a cap.

Notary Public Fees

Notary public fees to formalise the real estate transaction vary from state to state. Generally speaking, the notary public charges services fees based on a fixed progressive quota calculated as a percentage of the total transaction value (as the value increases, the quota for services rendered by the Notary decreases).

Appraiser Fees

Appraiser fees to obtain the market value of the real estate property also vary from state to state. Generally speaking, the appraiser charges a nominal amount.

Incentive Programs

In some states, certain incentive programs allow buyers or developers of land to obtain reductions of up to 100 per cent of the real estate transfer tax or property tax. With respect to property tax, although it is not triggered in the sale of a property, it is payable by the owners of real estate and is determined based on the registered value of the property with the municipal tax authority.

7 Which party customarily pays taxes and fees in connection with a purchase/sale of real property- the purchaser or the seller? What is the allocation of responsibility between a purchaser and seller of all taxes and fees payable to consummate a conveyance of real property?

Except for income tax (or flat tax, if applicable) and any applicable value added tax (which the seller is obligated to collect), the purchaser pays all of the taxes and fees listed above. Although many state Civil Codes allow a 50:50 split between the buyer and seller with respect to the fees that result from the transfer (ie, Notary Public, Appraiser, Surveyor), parties in Mexico seldom negotiate such statutorily permitted arrangement, because it may give rise to in the future to questions by the tax authorities in relation to the application of future tax deductions that may be available to the selling party.

The only tax payable by seller is income tax or the flat tax, as applicable.

8 Can real estate be indirectly conveyed by purchasing the shares or ownership interests of a corporation or other entity that owns real estate? What taxes and fees would be payable upon a purchase of shares of a company that owns real estate as compared to a purchase of the real estate directly?

The vehicles most commonly used by private investors to own real estate are: corporations (*sociedades anónimas*), investment promotion corporations (*sociedad anónima promotora de inversión*), limited liability companies (*sociedades de responsabilidad limitada*) and trust agreements. Thus, real estate is sometimes conveyed indirectly to the purchaser through the sale of an equity interest in the relevant investment vehicle or an assignment of all beneficiary rights and obligations under the relevant trust. In any event, notwithstanding that Mexican real estate investors generally hold ownership of real estate property or a real estate portfolio through any such vehicles, an indirect sale of real estate through the transfer of the equity interest or beneficiary rights in any such vehicle is not common, unless the seller is transferring the whole portfolio.

Taxes payable by the buyer under an equity transaction are significantly reduced, since transfer tax and registration duties payable to local tax authorities are not triggered in an equity transaction. The same applies to fees, because an equity interest acquisition does not have to be evidenced through a notary public and does not require the involvement of an authorised appraiser. If the real estate is held under a trust, the assignment of the beneficiary's interests thereunder would need to be formalised before a Notary Public and it would result in the payment of local transfer tax and registration duties, as if the transfer of the property were made directly, in which case the parties would have to cover the taxes and fees mentioned in the answer to question 7 above.

Income tax payable by the seller as a result of the sale of its equity interest in any of the aforementioned vehicles would not vary significantly from the sale of the asset. In this respect, it should be noted that if the seller is a Mexican tax resident, it would pay 30 per cent on the gain received on the sale of the property, although the income tax rate on the gain for 2013 is currently set at 29 per cent and for 2014 at 28 per cent. Moreover, if the seller is not a Mexican resident for tax purposes, the applicable income tax rate could be 25 per cent of the gross amount or, in certain cases and subject to the compliance of certain formalities, the seller may elect to pay income tax at the rate of 30 per cent of the gain received by the foreign resident. The income tax of a non-resident is generally collected by a withholding agent.

No flat tax is triggered in the sale of an equity interest.

9 What taxes and fees are paid on the conveyance of personal property accompanying a conveyance of real property, and in what amounts? Is it more favourable to allocate purchase price towards personal property or real property for tax purposes?

For Mexican tax purposes, the seller will have to allocate, from the agreed upon purchase price, the amount which corresponds to personal property and the balance that would be allocated to the real property. Such allocation of the value to personal and real property necessarily must total to market value; otherwise, the Mexican tax authorities are entitled to determine a deemed income in transactions which value does not match such parameter. As discussed above, in addition to income tax, personal property also causes value added tax at a rate of 16 per cent (please refer to question 7 above).

In practice, and depending on the difference between the tax basis of personal property (eg, the acquisition value of the shares or a partnership interest) and the tax basis of the real property, sellers may have an inclination to sell personal property over the direct sale of real property. Naturally, such a structure may bring about other diligence issues for the purchaser that may increase transaction costs.

10 What recurring annual fees or real estate taxes are payable in connection with the ownership of real property?

As briefly mentioned in the answer to question 7 above, the real estate tax is payable by the owners of real estate (or when ownership is unknown or controverted, by the possessors). As a local tax, it varies from state to state. However, in most locations, the real estate tax is referenced to the value of the property and in some states it varies depending on the location of the property. For example, in the Federal District (Mexico City), the property tax ranges from 0.7 per cent to one per cent over the cadastral value of the real estate.

11 Are memorandums of understanding or other concession agreements typically negotiated between purchasers/developers of real property and the government? What types of matters are incorporated into such memorandums of understanding or concession agreements?

No, memorandums of understanding or other concession agreements are not typically negotiated between developers and the government. At the local level, and varying between state and state or between cities within a state, certain local governments offer developers not only the tax incentive programs described in the answer to question 7 above, but also certain obligations to carry out certain urban improvements and relief measures based on the urban impact studies and reports of the project being developed.

12 What rights of first refusal or other rights exist by law in favour of third parties or tenants of real property?

In Mexico, each state and the Federal District have local statutes that regulate rights of first refusal or rights granted to tenants over the relevant leased property. In general terms:

- Tenants (i) will have a preferential right in connection with a new lease over the leased property; and (ii) will be granted a right of first refusal to acquire the leased property under the same terms and conditions offered by a third party, solely with respect to real properties which (1) are not regulated by the Agrarian Law, (2) are leased for a longer term of existence than that established in the Civil Code applicable to the respective state where the property is located, and (3) so long as the tenant is up to date in the payment of rent.
- With respect to real properties regulated by the Agrarian Law known as

*ejido*s, (i) seller's spouse and children have a right of first refusal to become holders of the relevant parcel (ie, piece of land within the *ejido*, subject to individual exploitation by a particular *ejido* member); and (ii) in the event of a first sale of a property which has been converted from parcel to private property, seller's relatives, the individuals who have worked that piece of land for more than a year, the other *ejido* members and the *ejido* as a whole, in that order, have a right of first refusal to acquire the newly converted private property.

13 How is real property conveyed- by deed or other instrument of conveyance? What is the procedural process for completing a conveyance- is there a registration or recording process?

Title to land and buildings is generally evidenced by a public deed, granted before a notary public and registered before the PRP of the jurisdiction where the real property is located; however, it can also be evidenced by judicial resolutions, administrative decrees and, in the case of *ejido* land, agrarian property certificates.

Mexico has a system of land registration which is administered through a PRP at each state. The PRP has the purpose of giving publicity to the ownership and possession of real estate, the liens and encumbrances created thereon as well as any other limitations of title/ownership. In order for any transfer of title or lien on real estate to be effective against third parties, such transfer or lien needs to be executed before a Notary Public and the public deed granted by the latter must be recorded before the PRP. The Notary Public before whom the purchase and sale was granted is responsible for recording the public deed containing the transfer agreement with the PRP. Only the registered owner of the property or a real estate lien holder can make an entry on the registry or a note on the title. All documents subject to registration in the corresponding public registry are available to the public. Depending on the state, public registry records can be reviewed through a real estate file number or a certificate of background information recorded for the property. Few public registries have computerised information.

As to the process for the conveyance of land (other than *ejido* land), title to land and all improvements built thereon is transferred by the execution of the agreement between one or more parties that affects the real property rights (including a transfer or the creation of a lien thereunder) before a Notary Public. Note that, prior to the execution of the public deed, the Notary Public must obtain a certificate of no liens and a certificate of non-indebtedness of property tax or other local contributions before the PRP and the local tax authorities. If at the request of the parties these certificates are not obtained, completion can still take place in some jurisdictions, but not in others because cadastral authorities require such non-indebtedness certificates to accept payment of duties and transfer taxes that are payable by the parties upon perfection of the transfer. Consequently, from a transactional point of view, it is advisable for the parties to always make sure that they will have all certificates or payment receipts required by the local authorities to avoid any delay or denial by the competent PRP in recording the conveyance documents (eg, if the PRP becomes aware that local property taxes and contributions related to the real property have not been fully and duly paid).

Finally, it should be noted that the execution of the transfer deed may require authorisation from the Mexican antitrust authority if certain monetary thresholds are met. Even if none of the thresholds are met, the antitrust authority can investigate and challenge the transfer agreement if it deems that it is anti-competitive. The antitrust can start an investigation up to one year from completion of the transaction (that is, when the public deed has been registered in the PRP).

For the transfer of agrarian land, a different conveyance process applies. In general terms, the agrarian lands that may be subject to transfer to third parties are those which have been duly parceled and over which full domain has been granted to the *ejido* member. Careful review of the acquisition structure and due diligence of the necessary steps applicable to convey agrarian land should be considered by any party interested in purchasing agrarian land. It is of particular importance in the case of the first transfer of agrarian lands over which full domain has been adopted to take care of the right of first refusal of third parties to acquire such lands; the acquiring party must make sure that all those who have a right of first refusal have been notified of the possible sale. In case that none of such parties exercise their right of first refusal within a 30 day term, the transferor may sell the relevant parcel(s) to a third party.

14 When is title actually and officially conveyed to a purchaser- upon execution of a deed or other instrument of conveyance, upon submission of the instrument of conveyance to a recording office or registrar, upon acceptance of such instrument of conveyance for registration or recording, or upon the happening of some other event?

While promise of sale contracts and private conveyance agreements that are subject to conditions precedent are binding and enforceable documents between the parties, title generally passes when the parties execute the final transfer agreement before a Notary Public, unless the transfer evidenced in the relevant public deed is subject to the completion of certain previously agreed upon conditions or to a retention of title. The final agreement is the same document as the sale contract, but in the form of a public deed and is granted before a notary public for its recordation before the PRP.

As opposed to other jurisdictions, the recordation of the conveyance document before the PRP declares the legal condition of the real estate to any interested person, that is, it announces the rights and obligations affecting the real property, but the recordation does not create or constitute any such rights over the real property for the benefit of the title holder. In Mexico, only the state of Quintana Roo currently requires that sale and purchase agreements be registered at the PRP before becoming a valid and enforceable document between the parties and against third parties.

Notwithstanding the foregoing, depending on the structure of the transaction, the conveyance document can be executed in different ways, for example, with a retention of title (*Reserva de Dominio*) whereby title is not transferred until the purchase price is paid in full or certain installments have been paid, or where the property is immediately transferred upon its execution but the contract can be rescinded if default in payment occurs.

15 What types of governmental liens or encumbrances on title could result in a forfeiture of the land? Real estate taxes, governmental owned utilities?

A compulsory sale can occur to cover the tax debt resulting from tax evasion (such sale could occur with any other creditor, this is not a right given exclusively to the government). The relevant authorities must follow the applicable legal procedure, which includes placing an attachment over the real property and concludes with a bid and an auction sale.

As explained in the answer to question 2 above, ownership, possession and management of land used for agriculture, cattle breeding or forestry by business organisations is subject to the compliance of certain requirements set forth in the Agrarian Law. Among other requirements, ownership by business organisations of such land may not exceed 25 times the limits of 'Individual Property' provided that the number of such organisation's equity holders shall be in proportion to the number of times that the land owned (or to be owned) by the organisation exceeds the limits of the 'Individual Property'. If a company exceeds the above mentioned ownership limits, the Ministry of the Agrarian Reform, prior hearing, is empowered to order the sale of the land within a term of one year.

Also, when a permit of acquisition of land has to be obtained from the Ministry of Foreign Affairs (eg, when a foreign company wants to acquire direct title to land located outside the Restricted Zone), the acquirer agrees before the Mexican Government to be considered as Mexican with regard to such property under the penalty, in the event of breach, of losing the property in favor of the Mexican Nation.

16 Upon a sale of real property, would any portion of profits or proceeds be required to be paid to any third party? For example, are employees entitled to a share of profits?

The profits or proceeds resulting from a sale of real property would be considered as income of the seller for all legal purposes.

The Mexican Federal Labor Law imposes an obligation on employers to distribute and pay employees 10 per cent of their after-tax profits. Thus, statutory profit sharing is mandatory for all businesses, with the exception of newly formed businesses (i) during their first year of operations, (ii) dedicated to the production of a new product during their first two years of operation, and (iii) dedicated to an extractive industry during the period of exploration. The proceeds received by the seller as purchase price for any real estate asset must be taken into account for purposes of the statutory profit sharing to seller's employees in Mexico.

17 Upon a sale of real property, what taxes must be paid in connection with any gain, and are there withholding taxes?

Please refer to our answer to question 6 above.

18 Are there any environmental regulations, and are environmental assessments customarily performed prior to acquiring real property?

During the last two decades, Mexico has been keen on issuing and reviewing environmental legislation for the overall protection of the environment, its natural resources and the preservation and restoration of the ecological balance. Thus, Mexico has a complex legal framework for environmental matters which, depending on the characteristics of the sale, should be taken into consideration by the buyer, such as taking care to:

- Conduct a search of contaminated sites that are registered with the PRP. Once a site is deemed contaminated, the relevant authority can record this in the PRP, although there are still many states that are unwilling to make such registrations. These searches have been introduced by the Waste Law and its regulations, but are not yet fully implemented.
- Conduct a legal environmental due diligence process of the real property in question, which includes, among other documents, a review of all environmental permits, licences, concession titles and authorisations. Please note that environmental liabilities associated to the operation of the asset in question to be acquired tend to remain with the person/entity that owns and operates such asset.
- Conduct an environmental site assessment (either Phase I or Phase II surface investigation studies). Although these assessments are not legally required and are therefore not specifically defined they are very common in Mexico. If soil contamination is detected through these, risk assessments and other studies may follow.
- Negotiate a sale or lease agreement that contains comprehensive environmental representations, warranties and indemnities, including associated to contamination pre-existing the acquisition. Any claims relating to the breach of representations and warranties are only enforceable against the seller of a contaminated site.
- For leased premises, unless otherwise agreed, an assignee of a lease must remedy defaults of the previous tenant (for example, for repair of the property). The transfer of a lease implies the assignment of the rights and obligations of the previous tenant.

With respect to the purchase or sale of real property, parties should keep in mind that an individual or entity may be held liable from an environmental standpoint if it carried out actions or omissions in breach of Mexican environmental laws, regulations or standards, or that generated damages to the environment, natural resources or human health. Such liability may be of a civil, administrative or criminal nature, depending on a variety of factors. Additionally, a party causing contamination beyond legally permissible standards (or which may represent a risk to human health or the environment, as determined by a risk based study) is responsible for carrying out and/or paying for its remediation (ie, 'polluter pays principle').

Notwithstanding the foregoing, owners and possessors of real estate properties which soils are affected with soil contamination are jointly and severally liable for their remediation, regardless of any actions such owners and possessors may have against the contaminating party and aside of any liability the contaminating party may have. Additionally, the transfer of contaminated sites is also subject to certain restrictions, and requires approval from SEMARNAT. Such authorisation cannot unwind the sale, but aims to determine a party responsible for remediation of the site.

19 Are there building, land use and zoning codes?

The General Law on Human Settlements contains provisions concerning planning control. Similar rules and principles apply to the planning regime of each state. Each state and the Federal District (Mexico City) have local statutes that regulate planning, covering use of land, zoning and construction. For example, in Mexico City the following rules and regulations apply:

- Urban Development Law;
- Urban Development Law Regulations;
- Environmental Law for the Federal District; and
- Construction Regulations for the Federal District.

Detailed planning rules, based on the Urban Development Law and the Urban Development Regulations mentioned above are contained in urban development programmes such as the General Urban Development Programme, the National Development Plan, the National Urban Development Programme; and the General Development Programme of the Federal District. In addition, given that the Federal District is divided into departments each department has department programmes (programas delegacionales) and partial programmes, for specific areas that, due to their rapid growth and urban development, require special attention and regulation.

Planning permissions include, among others, zoning certificates, urban impact studies, environmental impact studies, land use licenses and construction licenses.

20 Are there laws permitting or contemplating condominiums or otherwise subdividing air rights, or creating multiple ownership and freeholds existing on one plot of land?

In Mexico, there are several states and the Federal District that have enacted condominium laws and regulations. Under the Civil Code and the Condominium Law for the Federal District, a condominium exists when a real property includes (i) private units over which individuals and/or entities have exclusive ownership rights and (ii) common use areas which are co-owned by all the individuals and/or entities being part of the condominium.

21 Are there any restrictions on, or specific legislation relating to, subsurface rights and air rights?

Pursuant to the Mexican Federal Constitution, the direct ownership of all minerals and water of the subsoil corresponds to the Mexican Nation. The exploitation of both minerals and water is regulated by the Mining Law and the National Waters Law, respectively. Each one of such ordinances establishes that minerals and water can only be exploited through concessions granted by the Mexican government to Mexican individuals or companies.

22 Are there any laws relating to the preservation of views or light?

Generally speaking, the Federal Civil Code (as the Civil Code for the Federal District) sets forth general rules with respect to preserve third parties rights to a view and to construct windows or holes in a building to protect or preserve rights to light. In such respect: (i) regarding the preservation of views, by statute the planting of trees within a strip of two meters and bushes within a strip of one meter from any property boundary is prohibited; and, (ii) regarding rights to light, the owner of a wall adjacent to a third party property is allowed to construct windows or open holes in its property to receive daylight; notwithstanding the foregoing, such person cannot construct windows, balconies or similar improvements over the adjacent property of a third party, nor can such person open a view over such third party property unless there is one meter between the window, balcony or similar and the adjoining property.

In any event, it is highly advisable to review the applicable civil codes of each jurisdiction where the property in question is located together with other local regulations to ascertain the treatment given to the preservation of right of view and light in each location.

23 Is a lender for a real estate project in your jurisdiction required to register or be licensed in such jurisdiction?

Under Mexican law, there are no formal legal requirements for a lender to be registered or licensed with the relevant banking authorities in order to perform lending activities, unless such lender performs other regulated activities, like taking deposits.

24 What determines the priority of a mortgage or charge- the date of the loan, the date of execution of the mortgage or charge, the date such mortgage or charge is actually recorded or registered, or some other factor?

Secured financing of real estate in Mexico may, in general terms, be achieved through common forms: the security trust agreement (*fideicomiso de garantía*) or the mortgage (*hipoteca*). Both securities are created by the execution in a public deed granted before a Notary Public. In both forms, the security is perfected and enforceable against third parties by its registration before the PRP of the jurisdiction where the real estate is located.

25 What taxes or fees are payable by a borrower or by a lender in connection with a loan and mortgage in your jurisdiction?

Interest paid to a non-Mexican resident derived from loan placed in Mexico or paid by a Mexican resident is subject to Mexican withholding income tax at a rate that varies from 4.9 per cent (on interest paid to foreign financial institutions registered before the Mexican tax authorities) up to 40 per cent (on interest paid to entities subject to preferential regime which are related parties of the borrower). Generally, payment of interest to lenders that reside in countries with which Mexico has executed a tax treaty to avoid double taxation are subject to 15 per cent withholding income tax.

No registration or other fees are payable by a borrower or a lender from loans placed in Mexico. The only exception would be registration of duties payable to record a security in real property (a mortgage or a security trust) in the PRP. Such registration duties vary from state to state so they depend on the location of the real property. Please refer to our answer to question 6 above.

26 What typical remedies does a mortgage lender in your jurisdiction have in the event of a default by its borrower?

Generally, a mortgage agreement must be enforced through a special judicial foreclosure proceeding (*juicio especial hipotecario*). The 'private power of sale' remedy traditionally available in certain jurisdictions in the United States is not available in Mexico. Though this special judicial proceeding is designed to move rather quickly, in practice it can be time-consuming (if the foreclosure is opposed and then appealed, completion of the proceeding could take a few years).

27 Is there judicial or non-judicial foreclosure in your jurisdiction, and what is the foreclosure process generally?

As mentioned above, secured financing is commonly raised by granting real estate as collateral through a security trust agreement (*fideicomiso de garantía*) or a mortgage (*hipoteca*). As opposed to the judicial foreclosure process mentioned in the answer to question 26 above, under a security trust agreement, the settlor (borrower or guarantor) (fideicomitente) transfers title to real property in favor of a trustee (typically a Mexican banking institution), to secure payment of secured obligations in favour of the lender as beneficiary and the parties have the ability to agree and provide for an extra-judicial foreclosure procedure.

Upon the occurrence of an event of default of the borrower under the financing documentation or the security trust agreement, the beneficiary may request that the trustee sell the collateral. Upon receipt by the trustee of such sale request, the trustee must so notify the settlor. The settlor will then have the opportunity to challenge the foreclosure only by (i) payment of the secured obligations in full; (ii) presenting evidence as to the absence of a default; or (iii) presenting evidence of an extension or novation of the secured obligations. The trustee will continue with the foreclosure procedure only in the event that the objections of the settlor are unsatisfactory, in which case the trustee (acting upon instructions of the beneficiary) will sell the collateral or a portion thereof in a private auction pursuant to the foreclosure procedure set forth in the security trust agreement. The proceeds of any such sale would be applied by the trustee to the payment of the secured obligations, after covering expenses related to the sale of the collateral (for example, trustee's fees).

28 What rights does a tenant have by law that cannot be varied by agreement or a lease?

The tenant has the following statutory rights:

- if tenant is unable to use the leased property due to force majeure or any reason imputable to landlord, tenant shall have the right to a rent reduction during the time it is prevented to use all or part of the leased property and if the restoration process exceeds a certain period of time (which varies from state to state); tenant even has the right terminate the lease.
- residential properties have to comply with applicable regulations regarding hygiene, and in some states, the lease of these properties must be registered before the corresponding PRP in order for the agreement to produce legal effects against third parties.
- Tenants of agricultural land have the right to a rent reduction if they lose more than 50 per cent of their production due to force majeure.

Under the Civil Code for the Federal District and in leases for housing purposes, all tenant's rights cannot be waived.

29 How long can someone own property as leasehold? What statutory or legal rights does a long-term leasehold owner have with respect to its property?

The Civil Codes for each state and the Federal District establish their own statutory restrictions; however, in many states, leases for a real property to be used for housing purposes should not extend for a term that exceeds 10 years and leases for real properties to be used for commercial or industrial purposes should not exceed 20 years.

Subject to each state's statues and as long as tenants are up to date in the payment of the corresponding rent, in long-term leases tenants have the right (i) to be preferred for a new lease and (ii) of first refusal to acquire the leased property under the same terms and conditions offered by a third party.

Unless otherwise agreed, the tenant has no right to renew the lease without the landlord's consent. In most states, if a tenant continues to use a property after the lease term has expired, without opposition from the landlord, the lease is extended indefinitely, depending on if the property is rural or urban. Either party can terminate the lease in these circumstances, subject to the terms of the lease.

30 What are the most common reasons for a dispute or a conveyance of real property in your jurisdiction not to be completed?

Poor descriptions of the real property over metes and boundaries, poor book-keeping of recordable information by the competent PRP and real estate involved in complex inheritance procedures, would be the most common reasons for conveyance of real property not to be completed in Mexico. These matters result in lack of certainty for the buyer with respect to (i) the surface and boundaries of the property that it intends to acquire, and (ii) the rights of the seller to legally sell the property and validly convey the ownership rights over the real property.

It is common to find vague descriptions of the metes and boundaries of the property (more often in non-urban land), and consequently, when the property is depicted in a survey, if it encroaches on adjacent property, this could result in an open polygon or could result in an inconsistency between the physical boundaries of the property and the description of the land contained in the deed evidencing title, meaning that there is no certainty that the land being conveyed is free from encroachments and overlaps. The rectification procedures explained

above (please see question 5) take between six months to a year to be resolved, and this delay normally results in the buyer walking away from the deal.

The bookkeeping by the PRP is very relevant, because the buyer will have to rely on such information to determine whether the seller is the legitimate owner of the real property and whether the property has any liens or encroachments. On many occasions we have encountered that the information located in the PRP is incomplete or unavailable and the buyer is not able to confirm the chain of title related with the property.

31 Does your legal system incorporate or defer to the laws of another country?

No, as mentioned in the answer to question 2, the statutes that govern real estate practice in Mexico are the Constitution, the Civil Code, the Civil Procedures Code, the Agrarian Law, the General Law on Federal Property, and other federal environmental laws, and at the local level, the State Civil and Civil Procedures Codes, urban development legislation, construction regulations, and local environmental legislation.

32 Is there a standard schedule of legal fees for real estate transactions? If so, what is it, and is it based on a percentage of the transaction value or some other methodology?

There is no standard schedule of legal fees for real estate transactions in Mexico; the legal fees may vary depending on the criteria of each legal counsel and the agreement reached between legal counsel and the client. In our response, we are not considering notary public's fees as legal fees. As mentioned above, notary public's fees are based on a fixed progressive quota calculated as a percentage of the total transaction value (as the value increases, the quota for services rendered by the notary public decreases).

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