BEACHFRONT PROPERTY IN ARIZONA?: LOOSENING RESTRICTIONS ON FOREIGN ACQUISITION OF MEXICAN REAL ESTATE AND THE IMPLICATIONS FOR ARIZONA INVESTORS

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I. INTRODUCTION

The state of Arizona appeals to investors because it presents a wealth of resources, both natural and economic. However, due to Arizona's landlocked status, there is no ocean coastline. Beachfront property is attractive to leisure-seekers as well as to investors, and Southern California and Mexico are the nearest and most logical places for an Arizona investor to look for beachfront property. Given the over-development and high prices present in California, Mexico is a natural alternative for those seeking reasonably priced beach property.[1]

Traditionally, however, Mexico's restrictive policies towards foreign investment have prevented confident purchases of Mexican real estate.[2] Yet since the implementation of the North American Free Trade Agreement (NAFTA),[3] the Mexican government has made great strides in opening up its economy to foreign investment and creating a more appealing environment for the foreign investor.[4]

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1. Mark Raven, *Real Estate Transactions in Mexico*, 2001 ST. BAR OF ARIZ. CONTINUING LEGAL EDUC.: ADVANCED REAL EST. 43.

2. *Id.*

3. Pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves--(1) the North American Free Trade Agreement entered into on December 17, 1992, with the Governments of Canada and Mexico and submitted to the Congress on November 4, 1993; and (2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on November 4, 1993. North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (1993).

4. Douglas A. Dodds, *Making a Non-Residential Real Estate Investment in Mexico*, L. A. LAWYER, Sept. 1998, at 15, 15-16;

Arizona investors are ideally situated to take advantage of the modern, less-restrictive Mexican real estate regulations. If Mexico ultimately allows foreigners to own coastal real estate for residential purposes, Arizona might have the next best thing to beachfront property. As it stands, the current state of loosened real property regulations provide investors, especially those from Arizona, with attractive leisure options as well as lucrative business opportunities that can also be beneficial for Mexico's people and economy.

This note reviews and analyzes these recent changes to Mexican real estate law, as well as provides an overview of the procedure through which foreigners can acquire Mexican real estate. Additionally, this note will examine the current legal relationships, constitutional intricacies, and business transactions between Arizona real estate investors and Mexico, as well as the possible effect of future loosened regulations.

II. MEXICAN REAL ESTATE LAW AS IT RELATES TO FOREIGN INVESTMENT

A. Fideicomiso Is Your Friend: A Look At The Current State Of Mexican Real Estate Law

Although Mexico has surpassed Japan and rivals Canada as America's most prolific trading partner,[5] an American citizen cannot simply purchase Mexican beachfront property for a retirement home.[6] A complicated, and at times confusing, series of transactions are required to take place before a foreigner can acquire property in Mexico, and even then, Mexican law prohibits outright ownership in certain circumstances.[7]

> What many people do not realize is that Mexico had to make many systemic changes before it could even be considered for NAFTA. This has resulted in moving Mexico from a highly centralized government with a propensity for protectionism in the 1970's to today's competitive democracy with a bent toward capitalism. As a precondition for NAFTA membership, Mexico had to revamp its foreign investment, corporate and intellectual property laws to make them suitable to the global business community.

Lawrence Koslow, *Globally Speaking – Mexico More Businesslike, Lags in Areas*, TUCSON CITIZEN, May 27, 2003, at 2B.

5. Raven, *supra* note 1, at 44.

6. Dennis John Peyton, *Negotiating the Tricky Real Estate Market*, BUS. MEX., Feb. 1, 2003, at 46.

7. Edward T. Canuel, *Cross Border Real Estate Issues: Investing in Canada and Mexico*, REAL EST. ISSUES, Jan. 1, 2003, at 22, 22.

Article 27 of the Mexican Constitution prohibits foreigners from owning property in Mexico,[8] within 100 kilometers of a border or within 50 kilometers of a coastline.[9] This prohibited area, known as the "Restricted Zone,"[10] is quite large, encompassing over 40 percent of the total land area of Mexico.[11] Outside of the "Restricted Zone," foreigners can own property in fee simple,[12] an "estate . . . in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate."[13]

Within the "Restricted Zone," there are differing rules regarding the acquisition of residential and non-residential property. For both types of property inside the "Restricted Zone," foreigners must enter into a trust contract known as a fideicomiso with a Mexican bank to acquire property for residential purposes.[14] The Spanish word fideicomiso translates to the Latin term fidei-commissum, which is defined in American jurisprudence as "a species of trust; being a gift of property to a person, accompanied by a request or direction of the donor that the recipient will transfer the property to another, the latter being a person not capable of taking directly under the will or gift."[15] In a fideicomiso transaction, the seller functions as the donor, the bank as the recipient, and the foreign buyer as the person unable to take.[16]

1. <u>Residential Property</u>

A fideicomiso is the Mexican equivalent of the type of trust utilized in the United States when a minor inherits property.[17] As with a minor in the United States, a foreigner in Mexico cannot contract for residential real estate in the

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8. Article 27, part I provides that "under no circumstances may foreigners acquire ownership of lands and waters within a strip of one hundred kilometers along the borders and fifty kilometers along the coastline." CONSTITUCIÓN POLITÍCA DE LOS ESTADOS UNIDOS MEXICANOS [Constitution] art. 27, § I (Mex.).

9. *Id.*

10. Jorge A. Vargas, *Mexico's Foreign Investment Regulations of 1998*, 23 HOUS. J. INT'L L. 1, 22 (2000).

11. *Id.* at n.95.

12. DENNIS JOHN PEYTON, HOW TO BUY REAL ESTATE IN MEXICO 27 (1994). Although nearly eleven years old, this source still presents a reliable and accurate illustration of the procedural requirements for acquiring real estate in Mexico. The 1998 Regulations clarified some legal elements of the 1993 FIA, but the procedural elements are unchanged.

13. HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 742 (4th ed. 1968).

14. Vargas, *supra* note 10, at 30.

15. BLACK, *supra* note 13, at 752.

16. Peyton, *supra* note 6, at 46.

17. *Id.*

"Restricted Zone."[18] Such real estate is property that an owner or a third party uses exclusively as a dwelling.[19] Through the fideicomiso, the foreign purchaser can acquire beneficiary rights to residential property within the restricted zone for 50 years.[20]

In the fideicomiso, the Mexican government has created a shortcut around the constitutional prohibition on foreigners owning property.[21] The foreign purchaser pays the Mexican seller for the "beneficiary rights" to the property.[22] The bank is the trustee and actual title holder of the property.[23] The purchaser is the beneficiary of the trust and is allowed unrestricted use.[24] This type of transaction always requires approval and a permit from the Mexican Ministry of Foreign Affairs.[25]

2. Non-residential Property

The procedure for acquiring property for non-residential purposes is more streamlined.[26] Non-residential property generally includes property used for commercial, industrial, agricultural, livestock, fishing, forestry, and rendering of services.[27] Foreigners can actually own property used for non-residential purposes in the "Restricted Zone" if foreign investors adhere to an agreement known as the Calvo Clause.[28] The Calvo Clause requires treating foreigners as Mexican nationals regarding the property and prohibits foreigners from invoking the protections of their home governments, or face forfeiture of the property.[29] The Calvo Clause, a common device in Latin American countries, is named for Argentinean professor Carlos Calvo who espoused the theory that it is a violation of the principles of international law to have diplomatic representatives or armed forces from one nation intervene to support claims of its citizens in another

18. *Id.*
19. Vargas, *supra* note 10, at 24; *see also*, REGLAMENTO DE LA LEY DE INVERSIÓN EXTRANJERA Y DEL REGISTRO NACIONAL DE INVERSIONES EXTRANJERAS [L.I.E.], art. 5 (Mex.).
20. Vargas, *supra* note 10, at 30.
21. *See* discussion *infra* Part II.B.2.
22. Vargas, *supra* note 10, at 30.
23. PEYTON, *supra* note 12, at 9.
24. *Id.*
25. Raven, *supra* note 1, at 46.
26. Koslow, *supra* note 4, at 2B.
27. Vargas, *supra* note 10, at 26; *see also*, L.I.E. art. 5.
28. Vargas, *supra* note 10, at 22 n.78.
29. MEX. CONST. art. 27, § I.

country.[30] The acquisition of non-residential property by a foreigner is still subject to the Calvo Clause agreement and must be reported to the Ministry of Foreign Affairs but does not require express approval.[31]

The Mexican government's desire to promote investment in Mexico is the rationale behind allowing foreigners to own non-residential property while limiting residential property to a trust relationship.[32] In many instances, from the viewpoint of Mexican officials, the future of several Mexican states lies in American land investment.[33] Foreign direct investment is viewed as the only reliable source of economic growth, which explains the Mexican government's advocacy of such investment.[34] Additionally, the government had to address concerns of both investors reluctant to invest millions of dollars in commercial projects and residential buyers wary of entering the Mexican market without the ability to acquire title to the property in fee simple.[35]

B. <u>From Revolution To Restricted Zones: The Evolution Of Foreign Ownership Of Property In Mexico</u>

1. <u>¡Viva La Revolucion!</u>

A thorough understanding of the current state of Mexican real estate law requires an understanding of the history that shaped the Mexican Constitution. The new Mexican government adopted the Mexican Constitution in 1917 after the

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30. Manuel F. Pasero & Hector Torres, *Foreign Investment in Mexico's Real Estate: An Introduction to Legal Aspects of Real Estate Transactions*, 35 SAN DIEGO L. REV. 783, 785 n.6 (1998).

31. Vargas, *supra* note 10, at 20-22; *see also* WILLIAM E. MOOZ, JR., AN INTRODUCTION TO DOING BUSINESS IN MEXICO (1994).

32. Canuel, *supra* note 7, at 22.

33. Tim Weiner, *Americans Stake Claims in a Baja Land Rush*, N.Y. TIMES, at A1, Oct. 26, 2003, *available at* http://www.nytimes.com.

34. *Id*.;

> For decades, Mexico has relied upon the modernization and streamlining of its applicable legal regime as a means of attracting foreign investment. However, given the intense international competition encountered by developing countries to receive steady flows of international capital, Mexico is currently engaged in a new and vigorous diplomatic effort designed to attract foreign investments by signing free trade agreements and, more recently, by entering into specific bilateral agreements which promote and protect foreign investments.

Vargas, *supra* note 10, at 10.

35. Vargas, *supra* note 10, at 20-21.

seven-year Mexican Revolution.[36] Prior to the Revolution, the resources of Mexico and the stability of the administration of President Porfirio Diaz attracted a large number of foreign investors.[37] Diaz held office from 1876 to 1911 with only one four-year interruption.[38] His regime attracted investors mainly from the United States, Great Britain and France, who bought up a large percentage of the land and exploited natural resources such as oil, gas, and minerals.[39] The increasing amounts of foreign investment greatly stimulated the Mexican economy.[40] However, the new prosperity facilitated by the Diaz government did not reach most of the Mexican people.[41] The situation became so drastically skewed in favor of wealthy investors that by the start of the revolution in 1910, one percent of the landowners in Mexico controlled ninety-seven percent of the land.[42] Mexicans grew increasingly concerned that the foreign presence would "exploit Mexico's natural resources and labor."[43] In fact, much exploitation did occur, leading to a revolt of textile workers in Puebla on November 20, 1910; the starting point for the Mexican Revolution.[44]

Essentially, the Mexican Revolution was a reaction by peasants and workers against the Diaz regime, which held power for a long period of time and facilitated the foreign exploitation of Mexico's people, labor, and resources.[45] Naturally, the public sentiment towards the foreign investment that had financed and facilitated the Diaz regime was negative.[46] The victorious revolutionaries aimed to embody the principles of their rebellion in the new Constitution.[47] In addition to ending worker exploitation, one of the goals of the revolution was to return the economic destiny of Mexico to the hands of Mexicans.[48] Consequently,

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36. Pablo J. Davila Armenta, Foreign Investment in Mexico: The Mexican Real Estate Trust in the Constitutional Restricted Zone (2000) (unpublished L.L.M. thesis, University of Arizona, James E. Rogers College of Law) (on file with the University of Arizona, James E. Rogers College of Law Library); *see also* Hope H. Camp, Jr., Jaime Alvarez Garibay & C. Lee Cusenbary, Jr., *Foreign Investment in Mexico from the Perspective of the Foreign Investor*, 24 ST. MARY'S L. J. 775, 781-82 (1993).

37. Camp et al., *supra* note 36, at 780-81.

38. *Id.* at 781.

39. Armenta, *supra* note 36.

40. Pasero & Torres, *supra* note 30, at 784; *see also* Camp et al., *supra* note 36, at 781.

41. Pasero & Torres, *supra* note 30, at 784.

42. Rebecca Bryant, *Where Water Meets the Land*, MOTHER EARTH NEWS, Apr. 1, 2000, at 3037.

43. Camp et al., *supra* note 36, at 781.

44. JORGE A. VARGAS, MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS, § 2.4 (1998).

45. Camp et al., *supra* note 36, at 781.

46. Pasero & Torres, *supra* note 30, at 784.

47. VARGAS, *supra* note 44, § 2.4.

48. Camp et al., *supra* note 36, at 781-82.

Mexicans were reluctant to open their nation to investment and acquisition by foreign entities that many felt contributed to the pre-Revolution state of affairs.[49]

Another factor that fueled the anti-foreign feeling in Mexico after the revolution is directly attributable to the turbulent relationship between Mexico and foreign nations before the Diaz regime. Mexico gained its independence from Spain in 1821.[50] At the time, Mexico was a much larger country in area than it is today. Then, in 1836, Texas declared and gained its independence from Mexico and in March of 1845, United States President John Tyler invited Texas to join the Union.[51]

These actions led directly to the Mexican-American War, which ended on March 10, 1848, with the signing of the treaty of Guadalupe Hidalgo.[52] As a result of the treaty, Mexico ceded nearly half its territory to the United States, including all of California, most of Arizona, and parts of New Mexico, Nevada, Colorado, and Utah.[53] Furthermore, in 1853 with the Gadsden Purchase, the United States purchased present-day southern Arizona and a small part of southern New Mexico.[54] Finally in 1861, the French arrived in Mexico and installed Maximilian as emperor.[55] The French remained in control of Mexico until their expulsion in 1867.[56]

The repeated threats to Mexico's sovereignty, combined with the heavy foreign exploitation under the Diaz regime, made the Mexican citizenry wary of foreigners. This distrust and reticence towards foreigners led directly to the heavy foreign investment restrictions present in the 1917 Constitution,[57] including the "Restricted Zone" provision. The restricted zones are the natural reaction of a nation following such a period of conflict.[58] Countries such as Mexico, after repeated attacks on their sovereignty, wish to protect their territories from potential future invasions, and look to the restricted zone provision as a mechanism to achieve that goal.[59]

Thus the language of Article 27 of the Mexican Constitution came into being, limiting ownership of land to Mexican nationals unless a Calvo clause was signed, and completely eliminating the right own land in what is now termed the

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49. *Id.*
50. Pasero & Torres, *supra* note 30, at 784.
51. *Id.* at 103.
52. *Id.* at 103-104; *see also* Pasero & Torres, *supra* note 30, at 784 n.1
53. REBECCA NELSON, THE HANDY HISTORY ANSWER BOOK 104 (Visible Ink Press 2000); *see also* Pasero & Torres, *supra* note 30, at 784 n.1.
54. NELSON, *supra* note 53, at 104; *see also* Pasero & Torres, *supra* note 30, at 784 n.1.
55. NELSON, *supra* note 53, at 105.
56. *Id.* at 105.
57. Camp et al., *supra* note 36, at 781-82.
58. Pasero & Torres, *supra* note 30, at 786 n.8.
59. *Id.* Peru, Argentina, and Brazil have also used Calvo Clauses and Restricted Zones.

Restricted Zone.[60] By the early 1970s; however, Mexico was becoming increasingly desperate for foreign, especially United States, investment dollars to resuscitate a struggling economy.[61] Yet the Mexican Constitution prevented foreigners from owning property in the "Restricted Zone," which arguably contains many of the most appealing locations to foreign real estate investors.[62] The Mexican government realized that something had to be done to allow and encourage more foreign investment, especially in the attractive and potentially lucrative "Restricted Zone."

2. Legislative Changes From 1970 to 1990: The Dam Begins To Break

In 1971, in order to constitutionally allow foreign investment within the "Restricted Zone," the Mexican government expanded the concept of the fideicomisos.[63] The concept of the fideicomiso first appeared in Mexican law in 1926 as part of the General Law of Credit Institutions and Banking Establishments.[64] The scope of the fideicomiso was limited and was not applied to real estate transactions.[65] The General Law of Negotiable Instruments and Credit Operation in 1932 laid out the major components of the trusts and addressed their function and application, but the modern concept of fideicomiso as it relates to real estate in the "Restricted Zone" was not mentioned.[66]

Recessions and economic downturns left Mexico without a stable internal source of revenue. The government focused on the concept of the fideicomiso as a way out of the stagnant economic situation. On April 29, 1971, President Luis Echeverria authorized Mexican banks to acquire property in the

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60. Only Mexicans by birth or naturalization and Mexican commercial societies have the right to acquire ownership of lands, waters, and their accessions, or to obtain concessions for the exploitation of mines and waters. The State may grant the same right to foreigners, provided they agree before the Secretariat of Foreign Affairs to consider themselves as nationals with respect to said properties and not to invoke the protection of their governments in matter relating thereto; under penalty, in case of violation of the agreement, of forfeiting to the benefit of the Nation the properties they had acquired by virtue of said agreement. Under no circumstances may foreigners acquire ownership of lands and waters within a strip of one hundred kilometers along the borders and fifty kilometers along the coastline.

MEX. CONST. art. 27, § I; *see also* VARGAS, *supra* note 44, § 2.4.

61. Vargas, *supra* note 44, § 10.1.

62. *See* Canuel, *supra* note 7, at 22; Ernie Heltsley, *Mexican Land is Hot; Buyers Must Keep Cool*, ARIZ. DAILY STAR, June 1, 1997, at 1F.

63. VARGAS, *supra* note 44, § 10.1.

64. Armenta, *supra* note 36.

65. *Id.*

66. *Id.*

"Restricted Zone" in trust for the benefit of foreigners.[67] The agreement, influenced as it was by the desire to promote foreign investment into Mexico's economy and tourism industry, was still mindful of lingering doubts about the presence of foreigners in the "Restricted Zone", which explains why the arrangement only benefited commercial transactions.[68]

President Echeverria's proclamation was not as wide-ranging as was necessary to rescue the Mexican economy. This led the Mexican legislature to ratify the *Act to Promote Mexican Investment and Regulate Foreign Investment of 1973* (hereinafter 1973 FIA).[69] The 1973 FIA officially incorporated the concept of the fideicomiso as a legal loophole around the constitutional prohibition on foreign acquisition of property. This provided foreign investors with a legal means to acquire property within the "Restricted Zone."[70] Facially, it appears that the authorization of foreign acquisition of property was unconstitutional under Article 27 of the Mexican Constitution.[71] The 1973 FIA avoided unconstitutionality, however, because Article 27 gives some latitude to the government to grant real-estate rights to foreigners provided they sign a Calvo Clause.[72] Additionally, the technical language of a Fideicomiso does not grant foreigners the constitutionally prohibited ownership right over land in the Restricted Zone.[73]

This is not to say that the idea of liberalizing foreign investment restrictions was met with open arms. There was intense debate on both sides, and a division in the Mexican House of Representatives over the legality of such acts impeded smooth adoption of the new proposals.[74] In the end, the faction favoring foreign investment prevailed, primarily because the act did not directly promote investment by offering incentives or tax breaks to foreigners; rather it merely allowed general foreign investment as well as fideicomisos in the "Restricted Zone".[75] Despite the new law, however, foreign investors still had lingering concerns because the 1973 FIA limited fideicomisos to thirty years and did not indicate what would happen once the thirty-year period expired.[76]

67. VARGAS, *supra* note 44, § 10.1.
68. Armenta, *supra* note 36.
69. REGLAMENTO DE LA LEY DE INVERSION EXTRANJERA Y DEL REGISTRO NACIONAL DE INVERSIONES EXTRANJERAS (1973) (Mex.); *see also* VARGAS, *supra* note 44, § 10.22.
70. VARGAS, *supra* note 44, § 10.1.
71. MEX. CONST. art. 27, § I.
72. *Id.*; *see also* Juan F. Moreno, *Closing the Deal: Buying Residential Land in Mexico's "Restricted Zone,"* ARIZ. ATT'Y, Mar. 2002, at 30, 30-31.
73. Moreno, *supra* note 72, at 31.
74. Camp et al., *supra* note 36, at 787.
75. *Id.* at 788.
76. VARGAS, *supra* note 44, § 10.22.

The *1989 Regulations to the Act to Promote Mexican Investment and Regulate Foreign Investment* (hereinafter 1989 Regulations)[77] provided answers to nagging questions left by the 1973 FIA. The 1989 Regulations allowed for a renewal of the fideicomiso for another thirty-year period as long as a renewal application was filed one year before the expiration of the fideicomiso, and the beneficiary, property, and intended purpose remained the same.[78] The Regulations provided for a mandatory automatic approval of a renewal application if the above requirements were met.[79] Mexico's attitude towards foreign investment continued to become more favorable.[80] Economically, it made sense for Mexicans to make their country as appealing as possible for foreign investors.[81]

3. <u>Recent Legislative Changes: Come On In, The Water's Fine!</u>

In 1993, with the *Foreign Investment Act of 1993* (hereinafter 1993 FIA), the Mexican government again enhanced the favorable status of foreign investors.[82] The 1993 FIA was the most substantial and drastic change since the 1973 FIA, allowing foreigners more latitude than ever to make investments within the "Restricted Zone."[83] In perhaps the most striking change, the Mexican government authorized wholly foreign-owned Mexican corporations to directly own property for non-residential purposes within the "Restricted Zone."[84] Additionally, the 1993 FIA, with its loosened regulations on foreign investment, created a much more favorable economic climate, which made the passage of NAFTA more likely.[85] The 1993 FIA and the Mexican government's increased desire for foreign investment were prime examples of a new national policy of fostering economic development and taking a more active role in the world economy.[86] This was a boon to foreign companies wishing to operate a tourist resort or factory within the "Restricted Zone."[87] The rationale behind the change in attitude was based on the fact that commercial foreign investment in the

77. REGLAMENTO DE LA LEY DE INVERSION EXTRANJERA Y DEL REGISTRO NACIONAL DE INVERSIONES EXTRANJERAS (1989) (Mex.).
78. VARGAS, *supra* note 44, § 10.23.
79. Armenta, *supra* note 36.
80. Camp et al., *supra* note 36, at 776.
81. *Id.* at 787.
82. Vargas, *supra* note 10, at 7 ("Mexico has continued to make considerable progress toward the formulation of a modern, flexible and open legal regime that favors foreign investment and promotes international trade."); *see also* Heltsley, *supra* note 52, at 1F.
83. Dodds, *supra* note 4, at 15.
84. Vargas, *supra* note 44, at 108.
85. *See* Dodds, *supra* note 4, at 15.
86. Armenta, *supra* note 36.
87. Vargas, *supra* note 10, at 9.

"Restricted Zone" had the capacity to create hundreds of thousands of jobs for Mexicans and provide a much-needed spark to the economy.[88]

The 1993 FIA also extended the length of a fideicomiso for a private investor to fifty years.[89] The extension granted to purchasers of real estate for residential purposes was a great step towards easing the concerns of prospective investors.[90] For the first time, an investor looking for residential beachfront property could ensure the rights of use for a lifetime. The automatic renewal carried over from the 1973 FIA was also an enticing aspect.

The reason the changes were so heavily skewed to benefit non-residential investors was simple. The 1993 FIA reflects the residual attitude of the 1917 Constitution; foreign investment should benefit Mexico as much as the foreign investor.[91] A residential real estate purchase by a foreign investor benefits mainly the investor, whereas, a real estate purchase for the purpose of establishing a hotel or tourist attraction benefits not only the investor but also the thousands of Mexicans that could be employed.[92] Additionally, granting purchase rights to non-residential investors helps establish and solidify a feeling of stability that encourages long-term investment and ensures long-term employment for Mexican workers.[93]

In 1996, Mexican President Ernesto Zedillo amended the 1993 FIA to allow foreign investors outside of a Mexican corporation to acquire title to land in the Restricted Zone for non-residential purposes.[94] The amendment conformed to Mexico's increasing desire to attract foreign investment as a means to provide employment for Mexicans in the "Restricted Zone."[95] Wealthy investors from California, Arizona, and Texas were (and still are) obvious targets of the Mexican government's loosened restrictions.[96] However, there were lingering concerns that the Mexican government was proceeding too quickly in loosening restrictions on foreign investment.[97] This sentiment led to the adoption of new regulations in 1998.[98]

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88. *Id.* at 6.
89. VARGAS, *supra* note 44, § 4.2.
90. Gregory J. Wilcox, *South of the Border Looks Good to Lenders; Companies Offer Funding to Acquire Mexico Real Estate*, L.A. DAILY NEWS, Dec. 5, 1997, at B1.
91. Robin G. Hammond, *Real Estate Transactions in Mexico*, in DOING BUSINESS IN MEXICO, part VI, § 5.02[2] (2002).
92. Jeannine Relly, *Mexico Hopes Boaters Will Fuel Tourism Boom*, ARIZ. DAILY STAR, July 21, 2001, at A1.
93. Ernie Heltsley, *Tourism and its Money Remaking Rocky Point*, ARIZ. DAILY STAR, Mar. 14, 1999, at 1D.
94. VARGAS, *supra* note 44, § 4.2.
95. Relly, *supra* note 92, at A1.
96. *See* Jeff Herr, *Free Trade Opportunities are "Endless": Plan Expected to Have Huge Impact in Arizona*, ARIZ. DAILY STAR, Nov. 13, 1991, at 4B.
97. *See* Vargas, *supra* note 44.
98. *Id.*

The *1998 Foreign Investment Regulations* (hereinafter 1998 Regulations)[99] clarified and provided a working legal structure for the 1993 FIA and the 1996 amendment, much as the 1989 Regulations did for the 1973 FIA. The Mexican government uses administrative regulations to "curb, limit, and define . . . the exercise of discretionary powers by federal agencies and authorities."[100] Indeed, foreigners were finally able to acquire *title* in the "Restricted Zone," subject to two limitations: (1) the property must be destined for a non-residential use; and (2) the foreigner must agree to the Calvo Clause in Article 27, paragraph I of the Mexican Constitution.[101]

When compared to the 1917 Constitution, the 1998 regulations seem unconstitutional because for the first time actual ownership of land in the "Restricted Zone" was available to foreigners without a fideicomiso. It is unlikely, however, that the constitutionality of the 1998 Regulations will be questioned—to invalidate the previous enactments would have catastrophic consequences for Mexico's economy and would mean the loss of thousands of jobs.[102] Administrative regulations are not supposed to contradict or oppose the basic foundations of the statute that they interpret, which is why the 1998 Regulations do not retreat from the liberal positions of the 1993 FIA or the 1996 regulations.[103] The modern attitude and economic vision of the recent changes were well-noted in former president Ernesto Zedillo's State of the Union Address in 1999:

> [a]dvancements have been made in eliminating barriers and unnecessary regulations to direct foreign investment, through the adjustment of the applicable legal framework. In particular, the [1998 Regulations] promulgated on September 8, 1998, facilitate the application of the corresponding Act, to provide more legal safety, certainty and transparency in the transactions conducted by national and foreign investors.[104]

The 1998 Regulations also redefined the concepts of residential and non-residential activities.[105] Residential activities consist of dwellings used by the owner or a third party (such as rental or leased property).[106] Non-residential activities include, but are not limited to, time shares, industrial uses, commercial uses, tourism enterprises, and service-related industries.[107]

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99. L.I.E. art. 5.
100. Vargas, *supra* note 10, at 8.
101. *Id.* at 20-21.
102. Vargas, *supra* note 10, at 6.
103. *Id.* at 8.
104. *Id.* at 9.
105. *Id.* at 24.
106. *Id.*
107. Vargas, *supra* note 10, at 25-26.

There were no substantive changes in the 1998 Regulations to the requirements of a foreigner wishing to acquire residential property inside the "Restricted Zone."[108] A fideicomiso is still required, and acquiring direct title is still prohibited for this type of intended use.[109] The structure remained the same: the term of a fideicomiso is fifty years and can be renewed at the request of the beneficiary within ninety days of the expiration of the fideicomiso agreement.[110] Approval is automatically granted as long as the original conditions remain the same and have been complied with.[111] Thus, it is much easier for the non-residential investor to acquire use rights, and those rights are much more secure than before, but the residential investor has not yet been granted the extensive benefits afforded to the commercial or industrial developer.

Outside of the "Restricted Zone," the 1998 Regulations have made foreign acquisition of property even easier.[112] The 1998 Regulations allowed foreigners to own property of both types, residential and non-residential, subject to few restrictions.[113] A Calvo Clause agreement is needed, as is a permit certifying that the requirements have been met.[114] The permit is deemed granted if no action is taken within five days of the submittal of the application.[115]

The legislative changes in the last decade reflect the increasing desire of the Mexican government to take advantage of the prosperity of its northern neighbors.[116] By streamlining and simplifying the procedure for acquiring property in Mexico, the government has taken great steps towards attracting foreign investment.[117] By retaining the Calvo Clause requirement and limiting the rights of residential purchasers inside the "Restricted Zone," Mexico has retained

108. *Id.* at 24.
109. *Id.* at 25.
110. *Id.* at 25.
111. *Id.*
112. Peyton, *supra* note 6, at 46.
113. Peyton, *supra* note 6, at 46.
114. Vargas, *supra* note 10, at 27-28.
115. *Id.* at 29.
116. Macario Juarez, Jr., *Smoother Land Sales in Rocky Point*, ARIZ. DAILY STAR, Sept. 16, 2001, at D1;

> From a legal perspective, it should be evident that the 1998 Regulations continue to advance the policy of modernizing Mexico's foreign investment regime by liberalizing the access to and the participation of, foreign investment in recently opened areas of the Mexican economy. The policy attempts to place the Mexican regulatory regime in closer symmetry with the latest trends that prevail in the international legal and financial arenas today.

Vargas, *supra* note 10, at 13.
117. Vargas, *supra* note 10, at 19-23.

a level of control over foreign investment while, at the same time, ensuring that growth is channeled into the areas that will help Mexicans most.[118]

III. HOW DOES A FOREIGNER ACQUIRE MEXICAN REAL ESTATE?

Property in the "Restricted Zone" presents unique challenges and pitfalls for the foreign investor.[119] Regardless of whether the acquisition is for a modest vacation home or a multi-million dollar tourist resort, the less restrictive state of Mexican real estate law presents benefits to the investor while retaining some traps for the unwary.[120]

A. You've Found A Beach House, Now What?: The Process And Legal Requirements

At first glance, the concept of investing in the Mexican real estate market seems like quite a risky proposition.[121] There are myriad restrictions on foreign investment, confusing and often contradictory information, and differing foreclosure laws.[122] However, with a thorough understanding of the procedures, requirements, and restrictions demanded of the foreign investor, a Mexican real estate transaction can be accomplished just as smoothly as a transaction north of the border.

1. Acquiring Residential Property In The "Restricted Zone"

As discussed above, acquiring real property in the "Restricted Zone" requires the use of a fideicomiso.[123] Much like in the United States, the process begins with an offer and an acceptance.[124] Once the parties have agreed to the conditions of the sale, the next step is to execute a promissory agreement.[125] In the "Restricted Zone," promissory agreements usually take the form of a "promise to execute a real estate trust" or a "promise to execute an assignment of the beneficial rights of a real estate trust."[126] Legally, the promissory agreement creates an "obligation to execute a future agreement."[127] The promise to execute a

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118. Relly, *supra* note 92, at A1.
119. *See* Peyton, *supra* note 6, at 46.
120. *See id.*
121. Heltsley, *supra* note 62, at 1F.
122. Dodds, *supra* note 4, at 15.
123. Richard Warren, *Sun and Sea Fuel Rush on Mexican Villas*, S. CHINA MORNING POST, Nov. 12, 2003, at 5.
124. PEYTON, *supra* note 12, at 95.
125. Pasero & Torres, *supra* note 30, at 791.
126. PEYTON, *supra* note 12, at 108.
127. *Id.* at 110.

real estate trust applies to a seller with title to the land, while the promise to assign the beneficiary rights to a trust applies to the seller who is a party to an existing fideicomiso. Certain legal requirements constitute a valid promissory agreement: (1) it must be in writing; (2) the parties must have legal capacity to enter into contracts; (3) it must include the principle elements of the future agreement; and (4) it must contain a specific term within which the future agreement must be executed.[128] The promissory agreement does not actually transfer any right to the property; it merely establishes the future obligation to do so.[129]

The next, and possibly the most important, step in executing a real estate transaction in Mexico is the title search.[130] The title history of property in Mexico is often not as clear cut and straightforward as in the United States.[131] This is an area where Mexico still lags behind the United States and is a cause for concern for investors.[132] A Mexican attorney is perhaps the most qualified to perform the title search, [illegible] command of Spanish and thorough understanding of the title history is necessary.[133]

Once the title history has been determined, the next step is to acquire a certificate of no encumbrance and certificate of no tax liability.[134] The seller is obligated to acquire these documents.[135] The certificate of no encumbrances is obtained from the public registry and contains useful information such as a legal description of the property, the owner's name, the date of acquisition, and the zoning classification.[136] From a buyer's point of view, it is important that the information given by the seller matches that listed on the certificate.[137] The certificate of no tax liability is relatively self-explanatory; it is proof that the property taxes are up to date and paid in full.[138] It also states that the buyer will not be responsible for any pending tax payments.[139] The certificate is obtained from the property tax department of the treasury office in the municipality where the property is located.[140]

A property appraisal is the next step in the transaction process.[141] A specially licensed Mexican attorney often does appraisals; however, banks can

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128. *Id.* at 112-13.
129. *Id.* at 124.
130. *See* Dodds, *supra* note 4, at 15-16.
131. *Id.* at 16.
132. *See* discussion *infra* Part IV.A.
133. Armenta, *supra* note 36.
134. Moreno, *supra* note 72, at 32.
135. PEYTON, *supra* note 12, at 127.
136. *Id.* at 128.
137. *Id.* at 128.
138. Pasero & Torres, *supra* note 30, at 798.
139. Armenta, *supra* note 36.
140. PEYTON, *supra* note 12, at 129.
141. *Id.* at 131-32.

also provide appraisals.[142] The appraisal must include a topographic survey of the property.[143]

Following the property appraisal, a purchase-sales agreement ("compraventa") is required.[144] Unlike the promissory agreement, this document actually transfers title or rights to the property.[145] For a compraventa to be valid, the parties must have legal capacity to contract, and the contract must be in writing and recorded with the public registry.[146] In the "Restricted Zone," compraventas take one of two forms.[147] First, the irrevocable real estate trust agreement is the document that actually creates a fideicomiso.[148] The bank involved must obtain a trust permit from the Ministry of Foreign Affairs.[149] Once the permit is granted, a public notary must draw up the agreement.[150] The notary requires that certain documents be in place before the agreement can be enacted: (1) title documents; (2) a certificate of no tax liability; (3) a certificate of no encumbrances; (4) a topographic survey of the property; and (5) an appraisal of the property.[151] The "buyer" or beneficiary of the fideicomiso takes no part in the agreement.[152] The fideicomiso is solely between the seller and the bank as trustee for the beneficiary.[153] The agreement does, however, contain the rights and obligations of the beneficiary; therefore, the buyer must be aware of the terms and conditions of the agreement.[154]

The alternate method in the "Restricted Zone" is an assignment rights agreement.[155] This is used to acquire the rights to property already held under an existing fideicomiso.[156] For an assignment to be valid, it must be executed in the presence of a public notary, follow the terms and conditions of the original trust agreement, and be registered with the Ministry of Foreign Affairs.[157] The bank, as trustee, must be notified of a change in the beneficiary.[158]

Once the above steps have been carried out, the title transfer and closing can take place.[159] The closing occurs when the transaction is recorded with the

142. Armenta, *supra* note 36.
143. PEYTON, *supra* note 12, at 131.
144. *Id.* at 133, 135.
145. *Id.*
146. *Id.* at 137-38.
147. *See generally* PEYTON, *supra* note 12.
148. *Id.* at 152.
149. *Id.*
150. Pasero & Torres, *supra* note 30, at 792.
151. Moreno, *supra* note 72, at 33-34.
152. *Id.* at 33.
153. Dodds, *supra* note 4, at 15.
154. PEYTON, *supra* note 12, at 157.
155. *Id.* at 173.
156. *Id.*
157. Pasero & Torres, *supra* note 30, at 799.
158. PEYTON, *supra* note 12, at 174.
159. *Id.* at 177.

public registry.[160] In the "Restricted Zone," because title is passing to the bank as trustee, the beneficiary is not involved with the closing.[161] Once registered with the public registry, title transfers to the bank, and the buyer must pay the purchase price of the property.[162]

2. Acquiring Non-Residential Property In The "Restricted Zone"

The process for acquiring property for non-residential purposes is relatively straightforward.[163] An individual or a Mexican corporation, which can be wholly owned by a foreign parent company, must own the property.[164] Additionally, the individual or corporate entity must agree to, or contain in its bylaws, a Calvo clause, in which the foreigner agrees to be subject to Mexican laws regarding the property and agrees not to invoke the protection of its home country in connection with the property.[165] After acquisition of the property, the transfer must be reported to the Ministry of Foreign Affairs within sixty working days.[166] The report must indicate the location of the property, a description of the intended uses of the property, and a copy of the public instrument governing the transaction.[167] To prevent a violation of the 1998 Regulations, if the investor is unsure whether an intended purpose will qualify as non-residential, a request for a determination can be made to the Ministry of Foreign Affairs.[168] If an opinion is not rendered within ten working days, the intended use is deemed to be a non-residential use.[169] The Mexican government intentionally set up the acquisition system to be much easier and involve less governmental control and regulation to encourage foreign investment that benefits Mexicans in the form of jobs and an influx of capital.[170]

3. Acquiring Residential And Non-Residential Property Outside The "Restricted Zone"

The Mexican government places the fewest restrictions on the acquisition of property outside the "Restricted Zone." Foreigners must apply to the Ministry

160. *Id.*
161. *See* Peyton, *supra* note 6, at 46.
162. PEYTON, *supra* note 12, at 178.
163. *See id.* at 89-189.
164. Vargas, *supra* note 44, at 108.
165. Vargas, *supra* note 10, at 21-22; *see also* Dodds, *supra* note 4, at 16.
166. Vargas, *supra* note 10, at 26-27.
167. *Id.* at 27.
168. *Id.* at 26.
169. *Id.*
170. *Id.* at 21.

of Foreign Affairs before purchasing property.[171] One application is required, which must include: (1) a Calvo clause agreement; (2) proof of legal capacity to participate in the transaction; (3) translation of all documents into Spanish by a certified translator; (4) a survey of the real property; and (5) payment of applicable taxes.[172] In order for the Ministry to deny an application, notice must be published within five working days if the property is wholly outside the "Restricted Zone" or within thirty working days if the property is partially within the "Restricted Zone."[173] Once the application has been approved, the transaction may proceed. The Ministry must be notified of the acquisition of the property within sixty days.[174]

IV. ANALYSIS OF THE CROSS-BORDER RELATIONSHIP BETWEEN ARIZONA AND MEXICO, INCLUDING LINGERING PROBLEMS AND CHALLENGES FOR REAL ESTATE INVESTORS

A. The Current Situation: More Than Just Border Towns

Arizona and Mexico share more than a border. The economies and populations of Arizona and Mexico are thoroughly intertwined. It has been said that "Arizona's geography and economy is coterminous with Mexico."[175] The Mexican government views Arizona as a potential goldmine; it has a relatively affluent population which, due to geography, lacks an outlet for ocean-related leisure and business activities.[176] Mexico draws Arizonans because of its proximity, value, and newfound willingness to cater to Arizona's leisure and business desires.[177] Indeed, eighty-five percent of visitors to Sonora, Mexico are from Arizona.[178] Already, several developments and resorts, many funded by Arizona investors, have been established or proposed along the Sea of Cortez, the nearest body of water to Arizona.[179]

The explosion of Arizona investment in Mexico, due in large part to the Mexican government's recent policy changes, has led to closer scrutiny of home and land deals in Mexico by both the State of Arizona and the Mexican government.[180] Officials from the State of Arizona and Sonora, Mexico have

171. Dodds, *supra* note 4, at 15.
172. Vargas, *supra* note 10, at 28.
173. Dodds, *supra* note 4, at 16.
174. *Id.*
175. Tim Hull, *Lawyers Form Cross-Border Partnership*, INSIDE TUCSON BUSINESS, June 8, 2001, http://www.azbiz.com/articles/2001/06/08/export4587.txt.
176. Juarez, *supra* note 121, at 1D.
177. *See* Heltsley, *supra* note 93, at 1D; Relly, *supra* note 92, at A1.
178. Relly, *supra* note 92, at A1.
179. Heltsley, *supra* note 93, at 1D.
180. Juarez, *supra* note 116, at 1D.

collaborated on a joint task force to analyze and find solutions to problems associated with Mexican investments.[181] Keeping land deals as simple and straightforward as possible is in the mutual best interest of both Arizona and Mexico.[182] Future collaborations with Arizona could mean billions of dollars to the Mexican economy.[183]

While the Mexican government has made great efforts to attract foreign investors, many of the old concerns about doing business in Mexico remain.[184] One of the main concerns involving cross-border investing stems from the fact that Mexican real estate agents are unlicensed.[185] A joint-task force has been formed between Arizona and Sonora officials to analyze and understand many of the problems related to acquiring Mexican real estate, including: corruption, invalid titles, and land scams. One of the major issues is the push for a licensing framework for Mexican real estate agents.[186] There has been an initiative in the Sonoran Congress to enact legislation aimed at governing real estate agents.[187]

An additional critical issue that has delayed several of the major resort developments[188], is the lack of proper title to property.[189] There are often patchy records regarding titles as well as poor topographical surveys of property in the "Restricted Zone."[190] Overlapping property lines, owners unsure of property boundaries, title to the wrong property, and squatters are some of the issues which can arise as a result of inaccurate topographical surveys and inconclusive title searches.

Corruption in Mexico presents an additional concern to the Arizona investor.[191] Although still a factor in a Mexican real estate transaction, the recent changes in law, coupled with the Mexican government's desire to portray Mexico as favorable place to do business, have made corruption far less of an issue than it

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181. Moreno, *supra* note 72, at 35.
182. Juarez, *supra* note 116, at 1D.
183. Relly, *supra* note 92, at A1.
184. Koslow, *supra* note 4, at 2B.
185. Peyton, *supra* note 6, at 46.
186. Juarez, *supra* note 116, at 1D.
187. Moreno, *supra* note 72, at 35.
188. Ernie Heltsley, *Huge Cholla Bay Development May Face Delay*, ARIZ. DAILY STAR, Mar. 1, 1998, at 1E. A Mexican restaurant owner claimed that he received legal title to 1600 of the 3200 acres in a development from the Mexican government in 1958. *Id.* The restaurateur came forward only after ground had been broken on the project and caused the developers to be mired in courtrooms. *Id.* It is still unknown whose title is valid. *Id.*
189. Wilcox, *supra* note 90, at B1.
190. Heltsley, *supra* note 188, at 1E; *see also* Moreno, *supra* note 72, at 35 (stating that "[t]here have been many cases of fraudulent conveyances in places like Rocky Point and other 'hot spots' in Mexico's beaches. That is why federal, state, and local authorities have been working hard to regulate this industry, which is one of the most important sources of income to Mexico's economy.").
191. Koslow, *supra* note 4, at 2B.

would have been a decade ago.[192] This does not mean that corruption is not unimportant to the potential investor. While the Mexican government is working hard to combat and erase long-held perceptions about doing business in Mexico, there are still pockets of corruption, especially at the local government level. There are often stories of paperwork being "lost" or requiring some sort of "extra" assistance to gain approval.[193] These types of underhanded dealings keep many investors from making an initial purchase in Mexico. Deep-set negative perceptions, whether valid or not, are difficult to overcome. It may take a generation before American investors enter into a Mexican transaction with the same confidence as a transaction north of the border.

The climate for international investing has improved, however. This is evidenced by the new willingness on the part of American lenders to loan money to investors planning a Mexican real estate purchase.[194] This increased desire of lenders to secure loans based on Mexican properties can be attributed to the emergence of American title companies willing to guarantee the titles of Mexican properties within the "Restricted Zone."[195] A guarantee of title history assures lenders/lien holders that their security interest will not be eliminated or held worthless due to successful title contests.

Joint efforts, like the taskforce between Arizona and Sonora authorities, have helped the situation by scrutinizing real estate deals more closely.[196] Arizona authorities are charged with protecting the interests of Arizona residents investing abroad, while Mexican authorities are tremendously concerned with preventing the image of the Mexican investment climate from regressing and being seen as too risky.[197]

Lawyers are also helping to make land deals possible and facilitate cross-border transactions between Arizona and Mexico.[198] Indeed, some Arizona law firms have established Mexican offices to represent Arizona clients in Mexico.[199]

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192. *Id.*

193. *Id.*

194. Wilcox, *supra* note 90, at B1; Sheila Muto, *Banks Make it Easier to Buy Mexican House*, WALL ST. J., July 30, 1997, at CA2. American investors are now able to acquire dollar-denominated loans from certain U.S. banks to purchase property in Mexico. *Id.* Additionally, these investors are able to take of advantage of favorable U.S. interest rates. *Id.* Otherwise, American investors would have had no choice but to pay cash or find a seller willing to finance the sale, as peso-denominated loans from Mexican banks are hard to come by and are subject to much higher interest rates. *Id.*

195. Heltsley, *supra* note 188, at 1E.

196. Juarez, *supra* note 116, at 1D.

197. *See id.*; Luci Scott, *Translating Law, Culture Firm Helps Americans Buy in Mexico*, ARIZ. REPUBLIC, May 1, 2003, at 1.

198. *See* Tim Hull, *supra* note 175; Moreno, *supra* note 72; Scott, *supra* note 197, at 1.

199. Raven, *supra* note 1, at 44.

At least one Mexican law firm has opened an Arizona office to deal with the growing number of international transactions.[200]

V. WHERE DO WE GO FROM HERE?

With increasing cross border transactions and proposed legislation[201] aimed at blurring the line between the United States and Mexico, the relationship between the two nations grows ever closer. There are large numbers of American expatriates currently living in Mexico, and the number is projected to rise.[202] Roughly 600,000 Americans are legal, permanent residents of Mexico.[203] Many more are believed to be residing in Mexico illegally.[204] New developments aimed at attracting American tourists[205] have also helped attract permanent residents.[206] The recent legislative changes loosening restrictions on investment within the "Restricted Zone," coupled with exorbitant costs of living in Southern California, have led to huge residential developments, and entire Mexican towns dominated by American residents.[207] Often these residents are not simply retirees, but many now reside in Mexico and commute to work in the United States to take advantage of the low cost of living in Mexico.[208] Additionally, management-level employees of American companies often live in the United States and commute into Mexico.[209] This occurs mostly in the maquiladora-based industries that are located along the border between Arizona and Sonora.[210]

The trend in Mexico seems to be towards eliminating as many of the restrictions as possible to encourage more foreign investment.[211] Arizona investors have been very influential in financing projects in Mexico, which due to

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200. Scott, *supra* note 197, at 1.

201. *See* Tessie Borden, *New Bipartisan Idea for Migrants Cheered in Mexico; Daschle-Hagel Bill may get no Action this Year,* ARIZ. REPUBLIC, Jan. 25, 2004, at A22; Wayne Washington & Marion Lloyd, *Mexico Warms to Bush Proposal; President Fox Supports the Plan for 'Guest Workers'*, BOSTON GLOBE, Jan. 13, 2004, at A12; Richard Benedetto, *Mexican President Praises Bush's Immigration Plan at Summit*, USA TODAY, Jan. 13, 2004, at A6.

202. Weiner, *supra* note 33, at A1.

203. *Id.*

204. *Id.*

205. Relly, *supra* note 92, at A1.

206. Weiner, *supra* note 33. at A1.

207. *Id*. These towns include Rocky Point, near southern Arizona, and Rosarita, near San Diego.

208. *Id*. This is increasingly prevalent in southern California, especially in the San Diego area.

209. *See* Armenta, *supra* note 36.

210. *Id.* "Maquiladora" is the term for a Mexican factory near the U.S. border that is owned and operated by an American company but utilizes Mexican labor.

211. Pasero & Torres, *supra* note 30, at 802.

the large number of Mexican jobs created, the Mexican government has been reluctant to impede.[212] The proposed legislation and task forces are evidence of an ever increasing desire for collaboration on both sides of the border.[213] The increase in American investment, both with maquiladoras along the border[214] and settlements along the beaches[215] magnifies, from the Mexican government's point of view, the benefits of amending the Constitution to allow outright foreign ownership while at the same time foreshadows increasing assimilation and blurring of cross-border distinctions. It is unclear whether Mexico is contemplating such legislation, but it is not an unlikely scenario in the near future.

Many of the current and proposed development projects involve billions of dollars. This is in stark contrast to the relatively small sums spent in sleepy villages colonized by tourists only a few decades ago.[216] The Mexican tourism agency, Fonatur, has aggressively promoted increased foreign investment and development.[217] There is little reason to think that the pace of investment in Mexico will slow down in the near future. As long as the amount of capital investment remains in the billions of dollars and thousands of jobs are created for the Mexican people, it is increasingly likely that Mexico will initiate further legislation to take advantage of the favorable economic environment.[218]

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212. *See* discussion *supra* Part II.B.2;

> During the past ten years, and since the deregulation in most sectors of the Mexican economy, real estate investments increased considerably. Possibly, one of the reasons why people's interest has turned to Mexico is the thousands of miles along the border and seashores that still have not been developed. Whatever the interest of a foreign individual or corporation might be, Mexico is now offering a variety of investment opportunities in the real estate field. Touristry [sic], recreational, industrial, commercial, and even residential purposes are attracting foreign investment in the Mexican real estate market, representing a substantial portion of the foreign capital flow into the country.

Pasero & Torres, *supra* note 30, at 783-84.

213. *See* discussion *supra* Part II.A.

214. Armenta, *supra* note 36.

215. Weiner, *supra* note 33, at A1.

216. *Id.*; Relly, *supra* note 92, at A1.

217. Weiner, *supra* note 33, at A1.

218. [W]ith the enactment of NAFTA, the Mexican federal government[,] in conjunction with state and local authorities has been implementing better laws and policies related to human settlements, urban development, zoning and environmental issues in order to address a sustainable economic growth and international integration. The above policy has resulted in a complex body of law that requires continuous attention when dealing with a real estate transaction . . . .

Pasero & Torres, *supra* note 30, at 784.

VI. CONCLUSION

The days of Mexican apprehension and fear of a United States invasion and other threats to their sovereignty are long gone. In their place is a desire to compete on a first world level and be recognized as a powerful participant in the world economy. The desires have led to the loosening of restrictions on foreign investment, which are a vestige of the post-revolutionary suspicion towards foreigners. Mexico has begun to welcome foreign investment as a means of economic stability and has altered the legal framework to facilitate increasing investment.

It is unclear whether the Mexican government might eventually eliminate the restrictions on foreigners in order to provide a stable future for its citizens. Just as Mexico adopted the anti-foreign restrictions in the 1917 Constitution with an eye towards protecting their people from outside influence and exploitation, the new loosening of restrictions has been undertaken with the goal of providing a stable future for Mexico's citizens. It remains to be seen whether history will repeat itself and whether the desire for foreign investment will lead to a political atmosphere that was present under the regime of Porfirio Diaz. However, the Mexican government has shown that it is capable of allowing more foreign investment while retaining a modicum of control in order to protect its citizens.

The willingness and ability of the Mexican government to retain certain aspects of the restrictions on foreign investment present in the 1917 Constitution are vital, not only to maintaining a check on foreign investment, but also to ensuring operation within the legal framework established by the Constitution. As easy as it would be to allow foreign investors to acquire residential property outright and to eliminate the fideicomiso system entirely, it is necessary for the Mexican government to keep some restrictions in order to maintain an air of constitutionality and legitimacy with the Mexican people. Otherwise, the government might be viewed as completely sacrificing the revolutionary ideals and gutting the Constitution in exchange for foreign investment dollars. It seems unlikely that any Mexican president or legislature would be willing to do that.

Mexico has been operating under the regime of its current Constitution for less than one hundred years. It appears, from a real estate perspective that the nation is still struggling to find a co-existence between a desire to compete on an international level and a desire to conform to the constraints of the constitutional framework. The fideicomiso has so far been an effective legal vehicle for allowing foreign investment without abandoning the constitutional restrictions completely. Those restrictions were conceived during a complicated period in Mexico's history and were implemented for what seemed to be vital reasons. A foreign investor looking at the real estate situation in Mexico would probably not appreciate the rationale for the restrictions, nor see the need for such restrictions in the current international market. The restrictions seem like an inconvenience and an unnecessary hindrance on property acquisition. From the standpoint of a Mexican citizen however, those provisions are important, if only symbolically, and it is unlikely that the Mexican government would eradicate them completely.

Keeping in mind the short period of time that Mexico has had its current constitution, the changes in the attitudes and legal framework towards foreign investors seems less like a nation subverting its legal framework for foreign money and more like the legal evolution of a nation struggling to feel comfortable both in its constitutional skin and with its place in the world economy.