

2 Mexican ministries in tug-of-war over law. (Special Report: International Business)

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Foreign investment regulations for developers at issue

On Dec. 27, 1993, the Mexican Congress passed a new foreign investment law, and two government ministries are battling to retain control of its administration.

The new law extended the term of real estate trusts to 50 years and also allows foreign-owned Mexican corporations to hold property fee simple in the restricted zone, which is made up of any property 100 kilometers from the border or 50 kilometers from any coast.

Until the law was passed, the only way foreigners could hold title to property in the restricted zone was by having the property held in a real estate trust.

Article 10 of the new law states that foreign-owned Mexican companies, whose by-laws include an agreement that they will be treated as Mexican nationals, and not invoke the protection of their governments in matters related to their investments in Mexico, may acquire ownership of real property located in the restricted zone, intended for the carrying out of non-residential activities, duly registering the property with the Ministry of Foreign Relations.

The key term here is "non-residential activities." A high-level official at the Ministry of Foreign Relations said recently that "non-residential activities" refers to commercial, industrial and hotel activities; whereas "residential activities" refers to any activity in which the end use of the property is residential. This would include, he said, all residential tourist developments, condominiums, etc.

The official, who asked not to be identified, went on to explain that new foreign investment regulations are being drafted that will replace the present regulations, which were published in 1989. The new regulations will clarify the application of the new law.

However, until the new regulations are published, the 1989 regulations will continue in effect, inasmuch as they do not contradict the new law.

However, Mexico's Secretary of Commerce has given a different interpretation of the new Foreign Investment Law. An official there said the department understands that residential developments are not considered as such until people actually live there.

In other words, when a developer goes into Mexico to build and sell housing units, the activity is commercial in nature; he or she is producing something to be sold. The developer is not involved in a residential activity.

It is interesting to point out that the Secretary of Commerce and the Ministry of Foreign Relations have been battling over the new law since before it was first introduced to the Mexican Congress.

In March of last year, a high-level official at the Ministry of Commerce in Mexico City stated:

"The Mexican congress is currently in the process of trying to pass a new foreign investment law, and the Ministry of Foreign Affairs has been holding up trust permits as a bargaining chip to influencing the final content of that law."

What Foreign Affairs wanted was to maintain its position in the approval process for real estate trusts. And the new law grants them that.

But it appears that the Commerce Ministry may have pulled a fast one by including the provisions on corporate ownership of residential property.

If the interpretation of Commerce is correct, developers going into Mexico will have a much easier time because they will be able to purchase real estate in Mexico as any other Mexican would and not contend with the limitations required for real estate trusts.

Currently, a residential developer entering Mexico is limited to properties no larger than 55 acres.

Although this limitation may be overcome by obtaining authorization from the Mexican government, it is still a necessary inconvenience.

Additionally, often the Ministry of Foreign Relations will require that the foreigner invest a certain amount in developing the property or the trust permit will not be issued; the larger the property, the more you have to invest.

If the Ministry of Commerce has its way, and it is very likely that its officials will since they are writing the regulations for the Foreign Investment Law, residential development in Mexico could be entering a new era. Never before have so many possibilities existed.

Foreign developers would be able to purchase almost any size property and develop it at their own pace, instead of being required to meet investment and time requirements set by the Mexican government.

A Commerce Ministry representative said it is just starting to draft the regulations for the new Foreign Investment Law. He said the ministry wants to wait a few months to see if any particular problems arise from the application of the law in order to address them in the regulations. He seemed to think that the regulations would not be published until at least July or August and maybe not until the new administration takes office.

On July 12, I was invited to attend meetings in Mexico City with the Commerce Ministry, at which Secretary of Commerce Jaime Serra Puche was present. It was again reiterated that the new foreign investment regulations are in the works but there is still no date set for their publication.

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