



# TERRUM

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Foreigners to Acquire Property  
within The "Restricted Zone".

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

# New Rights Conferred on Foreigners to Acquire Property within The “Restricted Zone”.

by Viridiana Barquín.

On April 23, 2013 the House of Representatives (“Cámara de Diputados”) approved the project to modify Article 27 of the Mexican Constitution. This amendment implies that the foreigners will be able to buy, and therefore acquire full title to real estate within the “restricted zone” (“zona restringida”) which encompass the Mexican seashore and borders comprising an area with a depth of 50 km from the coast and 100 Km from the border<sup>1</sup>. This proposal implies the allowance to foreigners to buy a property within the restricted zone, subject to the following limitations:

- That such territory will be used for residential purposes only, with no commercial or other use of direct or indirect economic exploitation.
- The acquisition has to be agreed with the Ministry of Foreign Affairs (“Secretaría de Relaciones Exteriores”), in terms of the specified by Article 27, paragraph 9, of the Mexican Constitution and in the event that the property is used for a purpose other than residential, the law will establish the procedures pursuant to which the property rights will revert to the Mexican State and the foreigner’s title will be null and void.

“...the “restricted zone” which encompass the Mexican seashore and borders comprising an area with a depth of 50 km from the coast and 100 Km from the border.”

## How an acquisition within the restricted zone is accomplished today?

Currently, Article 10 of the Foreign Investment Law (“LIE” by its acronym in Spanish)<sup>2</sup> allows Mexican companies with foreigner’s exclusion clause<sup>3</sup> to acquire title over the restricted zone for development of non residential activities, provided that notice to the Ministry of Foreign Affairs must be filed within sixty (60) days from the date of the acquisition. On the other hand, with respect to the acquisition of property for residential purposes (including if it is the case, any profit arising therefrom), Article 11 of the LIE specifies that a permit from the Ministry of Foreign Affairs is required to give authorization for the acquisition within the restricted zone to Mexican financial institutions acting as owner trustees,

1.- The original purpose of the concept of “restricted zone” was to create a national security area to protect the integrity of the country and to defend the sovereignty of the Mexican State with military strategic purposes.

2.- “Ley de Inversión Extranjera”. Published in the Official Gazette of the Federation (“DOF” for its acronym in Spanish) on December 27, 1993, most recent amendment on April 9, 2012.

3.- Section I of Article 27 of the Mexican Constitution states that only Mexicans have the right to acquire or to obtain concessions over the land, waters, and other natural resources, and the State may grant the same right to foreigners, as long as they agree before the Ministry of Foreign Affairs to be considered as nationals for such purpose, which must be included in the by-laws of the company constituted for such purposes (“foreigners exclusion clause”).

when the purpose of the trust is the utilization of such property without constituting rights “in-rem”.<sup>4</sup> In that sense, to offset this limitation over the restricted zone, the Mexican Congress implemented a system by which the Mexican banks (although paradoxically it is known that the majority of the banks in Mexico are controlled by foreign bank institutions) acquire the property by means of a trust for the “use and enjoyment” by a beneficiary (a foreigner individual or company). This right includes the capacity to re-sell the property at market value at any time during the term of the trust. Therefore the Trusts will continue prevailing, moreover, although doctrine defines the direct domain as the sovereign legal authority of the Mexican State over its assets; the certificates of interest on real estate (“*certificados de participación inmobiliaria*”) that result from these trusts, technically do not grant the direct domain to the foreigners, but comprise an administrative figure in order that the foreign investment flows into the restricted zone. Notwithstanding, it is important to emphasize that, pursuant to Article 13 of the LIE, the term of these trusts is for fifty (50) years, and that can be renewed without limit at the end of each term, so this title can be perpetual. According to the information generated by the Ministry of Foreign Affairs, 48,559 permits were conferred to constitute trusts in the restricted zone between years 2000 to 2012<sup>5</sup>.

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On the other hand, on having approved this reform, the House of Representatives, have ignored certain crucial implications, for instance: i) an issue frequently faced in the restricted zone is the access to the beaches. The General Law of National Assets (“LGBN” by its acronym in Spanish)<sup>6</sup> states in article 29, section IV, that the beaches are territory of common use and therefore of public domain, in addition, Article 8 specifies that such territory of common use can be (as indicated by the intrinsic meaning of the term) used by all the inhabitants without more restrictions than those established by law and administrative regulations. Notwithstanding, this last sentence opens the possibility to establish limits to the right of use, causing, as happens in most of the Mexican beaches, that the hotels or the owners block the access to the beaches. This although the Ministry of Environment and Natural Resources is required to grant such access or even to provide an easement pursuant to the Regulation for the Use and Development of the Territorial Sea, Waterways, Beaches, Federal Maritime Zone and Land Gained to the Sea<sup>7</sup>, establishes in Article 17 that the owners of any property adjacent to the federal maritime zone, land gained to the sea or any other deposit or maritime waters shall allow free

4.- (In Rem: Latin, all legal rights are either in personam or in rem. In rem rights are proprietary in nature; related to the ownership of property not based on any personal relationship, as it is the case of in personam rights). For further reading regarding rights in-rem: “Convenience of entering into mortgages regulated by the law of the place where the asset is located”, *Coelum* June 15, 2008 by Viridiana Barquín.

5.- <http://www.sre.qob.mx/index.php/estadisticas-de-los-servicios>. Secretaría de Relaciones Exteriores, estadísticas de permisos artículo 27 Constitutional (fideicomisos en zona restringida) 2000-2012.

6.- Published in the DOF on May 20, 2000, most recent amendment on January 16, 2012.

7.- “Reglamento para el Uso y Aprovechamiento del Mar Territorial, Vías Navegables, Playas, Zona Federal Marítimo Terrestre y Terrenos Ganados al Mar” as it is named in Spanish.

access; ii) how will the correct territorial planning be developed and which will be the legal instruments and procedures for carrying out the modification of the authorized use of the land<sup>8</sup> from “non-residential to “residential”, (iii) how they suggest that this growth in infrastructure should increase the economic local, regional and national competitiveness without damaging the conditions of life of the inhabitants, among others.

While this proposal is being analyzed as objectively as possible<sup>9</sup>, very limited reference has been made to the applicable legal and regulatory framework, let alone nationalism, no particular benefit has been noted other than the impact in terms of tax revenues that could be obtained for municipalities, considering that these authorities will be entitled to collect the contributions established in Article 115, section IV of the Mexican Constitution related to real property taxes. In addition, however, no economical projection at least approximate is mentioned and besides there are issues that should have been considered, such as environmental planning, evaluation of the environmental impact, mechanisms to prevent loss of natural resources, how to ensure the sources of employment on a permanent basis, considering that different from what happens with the hotels and resorts that maintain a certain average of seasonal employees, these projects will not have this feature because they will be only for residential purposes.

This proposal has been approved by the House of Representatives, but before its enactment and entry into force, it still must be approved by the Senate by the vote of two thirds of the members “present” in session (**regardless** of the quorum), and thereafter it has to be approved by a majority of the legislatures of the States. Therefore, to the extent that this project is supported by a true and complete analysis of the economic and social benefits that will bring to Mexico, it will be possible to take advantage of the geographical location of Mexico and its extensive coastline, towards a correct and healthy management of foreign investment in the “restricted zone”.

8.- “Uso de Suelo” as its is named in Spanish.

9.- Can be consulted at <http://gaceta.diputados.gob.mx/PDF/62/2013/abr/20130423-IV.pdf>

# Terrum News | August 2013

## **Olivares and Molina join Sierra y Vazquez.**

Next Wednesday, the incorporation of two new partners will become official. The influential firm which specialized in aviation was founded by Carlos Sierra and Antonio Vazquez. The new partners are the former general counsel of Aero-mexico, Edmundo Olivares Dufoó, and a specialist in agribusiness and real estate, Mario Molina. With almost 20 years in the market, the firm is now considered as the most influential in these matters. Moreover, the British publication, Chamber's and Partners, has recognized the firm as the highest ranking firm for three consecutive years. With the addition of Olivares, the firm aims to get a total of 20 lawyers to respond to the expansion that the aviation market has shown in the past two years. With the arrival of Molina, the firm looks to new diversification into other areas. The firm, now called Sierra, Vazquez, Olivares, Molina will launch a new image, that will be presented to their clients next week. *El Universal. 23/08/2013.*

## **Spain and Mexico exchange points of view about trains.**

The secretary of the Ministry of Communications and Transportation (SCT for its acronym in Spanish), Gerardo Ruiz Esparza, exchange points of views with his Spain counterpart about the Mexican passenger train projects being undertaken during the present administration of President Enrique Peña Nieto. The secretary stated that Ruiz Esparza was received, with his companions, by the Secretary of State, Infrastructure, Transportation and Housing, of the Government of Spain, Rafael Catalá Polo. During the meeting Mr. Ruiz Esparza, reviewed the details of the new system of passenger trains in Spain, as this network is one of the biggest and most important in the world. *The Economist. 04/08/2013*

## **Energetic Reform will attract 70 billion dollars annually.**

The Center of Economic Studies of the Private Sector maintains his estimate that the Mexican economy will reach the 3.0% at the end of 2013, as the economic data recently show a recovery in the second half of the year. The energetic reform of the President is a proposal very interesting and intelligent that could attract between 50 and 70 billion dollars annually, this estimated by the Center of Economics Studies of the Private Sector. (CEESP for his acronym in Spanish). *El Universal. 14/08/2013.*

## **Mexico's newly proposed oil Law would cement the Americas as the world's most important source of supply.**

Mexico recently announced it would probably begin opening its oil fields to private foreign investment for the first time in 75 years. A proposed change to Mexico's constitution would upend the country's defacto nationalization of its fossil fuel reserves. UBS analyst Jon Rigby thinks this only adds to the bullish oil story that continues to develop in the Americas. The bill will have to be approved by Mexico's senate, but it is believed President Enrique Peña Nieto has enough votes to push it through. *Business Insider. 16/08/2013.*

## **Mexico is focusing on Asia-Pacific for trade and investment.**

President Enrique Peña Nieto plans to consolidate the strategy of moving closer to countries in the Asia-Pacific region before completing his first year in office, allowing Mexico to expand trade and investment. Peña Nieto will strengthen Mexico's relations with the region in a "brief period," following up on his visits to China and Japan, with upcoming trips planned to Turkey, Singapore and Indonesia. "The Asia-Pacific region offers opportunities for greater trade that can translate into investment and job creation in Mexico" Chancellor José Antonio Meade stated. *Global Post. 18/08/2013.*

*In this month extract was prepared by Vera García, Mauricio Castillo and Diego García.*

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