

EY LAW Flash / Amendment of article 27 of Mexico's Constitution

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On April 23, 2013, the Chamber of Deputies of Mexico's Legislative Power approved a draft of constitutional amendment with respect to the first paragraph of section I of article 27 of the Political Constitution of the United Mexican States Constitution (hereinafter the "Draft of Amendment") in order to eliminate the prohibition contemplated by such article, pursuant to which foreigners are prevented from acquiring real property located within one hundred kilometers from the borders and fifty kilometers from the coast (the "Restricted Area").

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Current regulation

Pursuant to section I of constitutional article 27, foreigners may not acquire title to waters and land located within the Restricted Area.

In order to allow foreign investment in real property located within the Restricted Area, it is currently possible, as set forth in section 11 of Mexico's Foreign Investment Act (Ley de Inversión Extranjera), for the Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores) to grant permits to allow financial institutions, acting as trustees, to acquire in favor of foreign individuals or entities or in favor of Mexican entities that do not include foreign investment restrictions in their constituent documents, rights over real properties located within the Restricted Area. The foregoing, for purposes of allowing the respective trust beneficiaries to use and enjoy the real property in question, without creating in their favor title to the corresponding real property.

Proposal

In the event the Draft of Amendment is approved and eventually enacted, foreigners could directly acquire title to land located within the Restricted Area, so long as the same is used exclusively for residential purposes, in the understanding that the ability to carry out any acquisition for commercial, industrial or agricultural purposes or otherwise involving economic exploitation will continue to be prohibited. In this regard, it is important to note that the third transitory article of the Draft of Amendment contemplates the inclusion of certain legal procedures in secondary laws, under which foreigner may forfeit any properties so acquired, in case the same are used in an unauthorized manner.

Below is a transcript of the current language of section I of constitutional article 27, and language approved by the Chamber of Deputies:

Text currently in effect: Reform proposal Article 27...

I. Only natural born Mexicans, Mexicans by naturalization and Mexican entities are entitled to acquiring title to land, waters and their accessories, or to obtain licenses for mining or water exploitation. The State may grant the same right to foreigners, provided that they agree before the Ministry of Foreign Relations to consider themselves as nationals with respect to such property and to not invoke the protection of their governments in respect thereof; under penalty, in case of noncompliance with this agreement, of forfeiting the properties acquired by them for the benefit of the Nation. Within one hundred kilometers from the borders and fifty kilometers from the coast, under no circumstance may foreigners acquire direct title to land and waters. Article 27...

I. Only natural born Mexicans, Mexicans by naturalization and Mexican entities are entitled to acquiring title to land, waters and their accessories, or to obtain licenses for mining or water exploitation. The State may grant the same right to foreigners, provided that they agree before the Ministry of Foreign Relations to consider themselves as nationals with respect to such property and to not invoke the protection of their governments in respect thereof; under penalty, in case of noncompliance with this agreement, of forfeiting the properties acquired by them for the benefit of the Nation. Within one hundred kilometers from the borders and fifty kilometers from the coast, under no circumstance may foreigners acquire direct title; in the case of land, foreigners may acquire title so long as it is exclusively for non-commercial residential purposes, in which case they must agree with the Ministry of Foreign Affairs in the terms described in this Section.

In accordance with the constitutional provision in question, foreigners are currently allowed to acquire title to land not located within the Restricted Area, as long as they agree before the Ministry of Foreign Relations to consider themselves as nationals with respect to such property and to not invoke the protection of their governments in respect thereof, under penalty, in case of noncompliance with this agreement, of forfeiting such property (agreement known as Cláusula Calvo). In this regard, it is important to note that the Draft of Amendment contemplates that foreigners wishing to acquire the ownership of land located within the Restricted Area will be subject to the same covenant.

Status of the legislative process

As mentioned above, the Draft of Amendment has already been approved by the Chamber of Deputies of the Legislative Power. Since this amendment refers to a constitutional provision, in accordance with constitutional article 135, it is necessary that the Draft of Amendment be sent to the revising chamber (in this case, the Senate) and, once approved by both chambers, be sent for consideration of the local Congresses. In order for the President to enact the corresponding amendment, it is necessary that at least two thirds of the local legislatures approve the Draft of Amendment.

Conclusion

In the event the first paragraph of section I of constitutional article 27 is enacted as described above, the amendment would have positive economic implications in regions of the country that are located close to the borders and, especially, in coastal areas, since it would simplify the process of acquisition of real property for residential purposes by foreigners, which at the same time would stimulate this type of foreign investment.

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