

Developments South of the Border

Ticoz
Lambda Alpha International Breakfast
June 20, 2008

Presenter

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Doing Business In Mexico

Introduction

- NAFTA and US-Mexico history of trade and investment
- Increased profile, growth in foreign direct investment
- Tourism and Manufacturing
- Small to medium sized businesses and individual participation

Real Estate: Issues Unique to Mexico

Ownership of Real Property in Mexico

- In Mexico's interior: similar to ownership in the United States
- In restricted zone: constitutional restrictions on non-Mexicans
- Historic conflicts between Mexico and the United States

Restricted Zone



Real Estate: Issues Unique to Mexico

- Times have changed, no longer a need for these restrictions
- Mexico now needs and desires foreign investment
- The Mexican bank trust, or *fideicomiso*
- Non-Mexicans can effectively acquire land in the restricted zone

Real Estate: Issues Unique to Mexico

- Use of a Mexican company for commercial ownership and development
- Non-Mexican developers and resort owners have acquired in this fashion
- Others opt for the Mexican bank trust to structure financing, etc

Other Differences: From Brokers to Due Diligence to Financing

- Real estate acquisitions are documented and managed differently
- Differences have been decreasing
- Many U.S. practices have become increasingly common in Mexico
- Noteworthy differences persist

The Role of Brokers and Agents

- Much more regulated in the United States than in Mexico



Regulation of Resort Developments

- U.S. State regulation
- Mexican regulation



The Purchase and Sale: Financing and the Role of Escrow

- Difficulty of obtaining financing in Mexico
- Self financing and use of “pre-sales”
- Use of independent escrow agent
- Current trend

The Purchase and Sale: Financing and the Role of Escrow

- Mexican equivalent of an escrow, or *depósito condicional*
- Use of U.S. escrows for Mexican transactions
- Advantages and trends

Due Diligence: Chain of Ownership, Ejido Land and Title Insurance

- Covers much the same basic items as a review in the United States
- Mexico-specific issues: chain of title and “ejidos”

Title Insurance

- Traditional role in the Mexican system of land ownership
- U.S. title insurance companies in Mexico
- Persistent resistance
- Recommendation and current trend

Role of Notary Public

- The Mexican legal system is based on the civil law
- The common law prevails in the United States
- Notary publics in Civil Law system
- “Public” documents
- “Public faith” and presumed authenticity and enforceability

Role of Notary Public

- Duty to correctly calculate, withhold and pay taxes
- Purchase agreement as “deed”



Role of Attorney

- Licensed Mexican attorney for Mexican transactions
- Mexico's unique legal system and regulatory environment
- Attorney's role in bridging culture, custom and language barriers

Typical Development Issues

- ZFMT (“Zona Federal Marítimo Terrestre”)
- Permitting Generally (States and Municipalities)
- MIA and the SEMARNAT

Structuring the Project

- Condominium Regimes, Master Planned Communities
- Condo Hotels, fractional ownership, timeshares and rental pools
- US Securities Issues



Joint Ventures

- Partnering with locals
- Structuring and documenting the partnership
- Mexico-specific business considerations

