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FOREIGN LAND OWNERSHIP ON MEXICO'S COASTS: THE PROPOSED AMENDMENT TO ARTICLE 27 OF THE MEXICAN CONSTITUTION

Jeff Veteto*

POPULARIZED by British real estate developer Lord Harold Samuel, the age-old real estate adage, “[t]here are three things you need in property, these are: location, location, and location,” lent colloquial phrasing to what man has known for centuries: location is everything.¹ Certainly highly regarded under this maxim is beachfront property.² The picturesque views, coupled with the sand and the surf, deliver the pinnacle of every warm-weather aficionado’s dreams. But the demand for such parcels of land outruns the supply and the resulting value, relative to inland parcels, demonstrates this truth. That said, if large swaths of coastal real estate previously insulated from free-market pricing became available, a modern land run would almost certainly occur.

At least that is the hope of pending legislation championed by Senator Manlio Fabio Beltrones of Mexico. Senator Beltrones recently presented a piece of legislation to the Chamber of Deputies to amend Section I, Article 27 of the Mexican Constitution, which currently restricts coastal and border adjacent land ownership in the country.³ Currently the Con-

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1. C. Christopher Post & Stephen Woodrow, Location is Everything: Balancing Innovation, Convenience, and Privacy in Location-based Technologies iii (Dec. 10, 2008) (unpublished student paper, Mass. Inst. of Tech.) (on file with MIT Computer Sci. and Artificial Intelligence Lab.); William Safire, *Location, Location, Location*, N.Y. TIMES, June 28, 2009, at MM14 (noting that Lord Harold Samuel is not the origin of the substance of the phrase).
2. In a 2012 ABC News/Washington Post poll, 72 percent of Americans surveyed expressed a favorable opinion of vacationing at the beach, with 48 percent strongly favoring such a vacation. Gary Langer, *Summer Vacation Perennial: The Mountains or the Beach?*, ABC News (June 20, 2012, 6:00AM), <http://abcnews.go.com/blogs/politics/2012/06/summer-vacation-perennial-the-mountains-or-the-beach/>.
3. *Dictamen en Sentido Positivo a la Inicitiva con Proyecto de Decreto por el que Se Reforma el Artículo 27 de la Constitución Política de los Estados Unidos Mexicanos, en Materia de Propiedad para Extranjeros [Opinion on the Positive Direction Initiative with Draft Decree Reform of Article 27 of the Constitution of Mexico, in Matter of Property to Foreigners]* 16 GACETA PARLAMENTARIA 3751-X, 3, 18 de

stitution dictates that:

Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership of lands, waters, and their appurtenances The State may grant the same right to foreigners, provided they agree before the Ministry of Foreign Relations to consider themselves as nationals in respect to such property, and bind themselves not to invoke the protection of their governments in matters relating thereto Under no circumstances may foreigners acquire direct ownership of lands or waters within a zone of one hundred kilometers along the frontiers and of fifty kilometers along the shores of the country.⁴

The proposed amendment, after vetting and revision by the Commission on Constitutional Issues, would replace the last line with the following:

In a zone of one hundred kilometers along the frontiers and of fifty on the beaches, foreigners for any reason may acquire direct ownership on the waters, in the case of land, when they can acquire housing exclusively for non-commercial purposes for which shall agree with the Ministry of Foreign Affairs on the terms described in this faction.⁵

This easing of the regulation allows for direct private ownership of these restricted lands by foreign nationals.⁶ Said ownership would be restricted to residential use only, leaving the status of commercial development procedures unaffected.⁷

Senator Beltrones' legislation passed the Chamber of Deputies on April 23, 2013, with 356 votes in favor, 119 against and 2 abstentions.⁸ The bill now awaits further government action. It still must pass the Senate by a two-thirds majority vote and receive approval from a majority of the state legislatures before the President can sign it into law.⁹ Mexico's two main political parties, Partido Acción Nacional (PAN) and Partido Revolucionario Institucional (PRI), back the bill and allege passage is imminent.¹⁰ Mexico's President Enrique Peña Nieto also supports the

abril de 2013 (Mex.), available at <http://gaceta.diputados.gob.mx/PDF/62/2013/abr/20130418-X.pdf> [hereinafter Reform].

4. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, sección I, artículo 27, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

5. Reform, *supra* note 3, at 6.

6. *Id.*

7. *Id.*

8. SERVICIO DE LA GACETA PARLAMENTARIA, CÁMARA DE DIPUTADOS [GAZETTE PARLIAMENTARY SERVICE, HOUSE OF REPRESENTATIVES], *Votaciones de los dictámenes del segundo periodo ordinario del primer año de la LXII Legislatura* [Feedback on the Opinions of the Second Regular Period of the First Year of the 62nd Legislature], 30 de abril de 2013 (Mex), http://gaceta.diputados.gob.mx/Gaceta/Votaciones/62/vot_a1segundo.html.

9. James F. Smith, *Symposium: Confronting Differences in the United States and Mexican Legal Systems in the Era of NAFTA*, 1 U.S.-MEX. L.J. 85, 94-96 (1993).

10. Laurence Iliff, *Mexico Weighs Opening Up Wider to Foreign Property Buyers*, WALL ST. J. (July 9, 2013, 7:03 PM), <http://online.wsj.com/news/articles/SB10001424127887324867904578593683203485660>.

initiative.¹¹

With that in mind, passage of the amendment would certainly ease restrictions and could spur much needed foreign investment. Still, failure of the legislation might also bring dramatic changes. This article assesses Mexico's foreign land ownership structure, for either outcome of this bill, against the backdrop of the nation's heritage, emergent economy, and property law framework. A comparative analysis of Mexico's policies and those of other nations is also included.

I. THE HISTORICAL SIGNIFICANCE OF SECTION I, ARTICLE 27

Foreign occupations and interventions dot the landscape of Mexican history. Spain, France, and the United States all exercised control over Mexican lands at one time.¹² The Spanish conquest cost Mexico sovereignty for 300 years, while the French occupation under Napoleon III lasted fewer than five years.¹³ But the acts of the United States might incite the most fear regarding control over land. The United States claimed large portions of former Mexican territory through the annexation of Texas and the Mexican cession of land included in the Treaty of Guadalupe Hidalgo, which ended the Mexican-American War.¹⁴ This persistent threat and loss of control over their lands had a strong influence over the formation of the modern Mexican nation. Hence, when the draftsmen wrote the Constitution of 1917, many of the property related clauses targeted at protecting against similar losses of land or control were retained.¹⁵ This included Article 27, aimed at protecting Mexico from occupation by invading armies.¹⁶

But it has been well over a century since Mexico last lost control of land to a foreign nation.¹⁷ Likewise, the threat of invasion or occupation by another nation has greatly decreased since that time, leaving the clause adrift as to its original purpose. Still, Section I, Article 27 has stood for nearly 100 years without amendment, a reminder of Mexico's troubled past regarding control of land.¹⁸

11. *Id.*

12. Ramírez Martínez Álvaro, *The Mexican Constitution and its Safeguards against Foreign Investments*, 7–9 (2009) (Cornell Law School Inter-University Graduate Student Conference Paper 39), available at http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1068&context=lps_clacp.

13. FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, MEXICO: A COUNTRY STUDY (Tim L. Merrill and Ramón Miroí eds., 4th ed. 1997), available at <http://lcweb2.loc.gov/frd/cs/mxtoc.html>.

14. *Id.*

15. See William D. Signet, *Grading a Revolution: 100 Years of Mexican Land Reform*, 16 L. & BUS. REV. AM. 481, 504–506 (2010).

16. Reform, *supra* note 3, at 3.

17. Álvaro, *supra* note 12, at 8.

18. *Id.* at 10.

II. CURRENT OWNERSHIP STRUCTURE

In 1973, the “fideicomiso” intertwined with foreign land ownership law in Mexico.¹⁹ The first Foreign Investment Act incorporated *fideicomisos*, which directly translates to “trusts,” as a loophole to foreign ownership in the otherwise constitutional restricted areas.²⁰ The current text of the Foreign Investment Act dictates that a real estate trust in the restricted area

Requires a permit from the Ministry of Foreign Affairs for institutions [to] acquire credit as trustees . . . when the object of the trust is to allow the use and development of such without constituting real property rights over them, and the trustees are . . . [f]oreign natural and legal persons.²¹

Hence, most investors acquire *fideicomisos* through Mexican banks, which hold title to the property on the foreigner’s behalf.²² Typically, the fideicomiso names the foreign “owner” as the sole beneficiary of the trust and as a trustee, so that the foreigner may exercise control over the property.²³ The *fideicomisos* must be renewed every fifty years to remain active, or the foreigner risks losing title to the property.²⁴ Although the fideicomiso provides virtual land ownership, the process for obtaining one is cumbersome and adds additional expense to the process.²⁵

Another viable option to obtain coastal land rights is to form a Mexican corporation to purchase the property. Corporations chartered in Mexico can purchase within the restricted areas for both residential and commercial usage.²⁶ The alienability of property through either fideicomiso or corporate ownership allows free transfer of property. Even still, it underscores the outdated nature of Section I, Article 27.

III. INTERNATIONAL RULE OF LAW

Foreign ownership of land throughout the world is a contentious legal subject, one pressed further to the forefront with the expansion of globalization. Most countries address the matter to some extent. In the United

19. Jorge A. Vargas, *Mexico’s Legal Revolution: An Appraisal of Its Recent Constitutional Changes*, 25 GA. J. INT’L & COMP. L. 497, 533 (1996).

20. *Id.*

21. Ley de Inversión Extranjera [Foreign Investment Law], *as amended*, Capítulo II, Artículo 11, Diario Oficial de la Federación [DO], 27 de Diciembre de 1993 (Mex.).

22. Vargas, *supra* note 19, at 533.

23. *Id.*

24. *Id.*

25. *See generally* Overseas Buyers Increase Interest in Mexican Property Ahead of Rule Change, PROPERTYWIRE (Aug. 28, 2013), <http://www.propertywire.com/news/latin-america/mexico-property-buying-change-201308288167.html> (“Searches for luxury coastal property in Mexico by overseas buyers have increased by 27% since it was revealed that a 100 year restriction on foreigners buying by the sea is to be revised.”).

26. *See generally* David W. Connell, CONNELL & ASSOCIATES, *Buying Property in Mexico’s Restricted Zone* (Apr. 28, 2013, 1:10 PM), <http://www.mexicolaw.com.mx/articles/buying-property-mexicos-restricted-zone>.

States, several states maintain restrictions on foreign ownership of farmland.²⁷ Brazil and Argentina recently adopted similar laws aimed at curbing foreign farm ownership by setting caps on the total acreage of land that foreign individuals and corporations may own.²⁸ Most notably though, many maintain coastal and border restrictions similar to that of Mexico.

Ecuador restricts foreign ownership within fifty kilometers of its coast; however, as in Mexico there is a work-around.²⁹ With the government's express permission, foreigners may own land in this area and such practice is routine.³⁰ Several Asian countries also restrict their coastlines and Canada does not permit, without express permission, the purchase of more than five acres of land on Prince Edward Island by non-citizens.³¹

Thailand's Land Code Act might be the strictest, establishing a general prohibition against foreign ownership of land.³² In fact, Thailand makes it a criminal offense for Thai citizens to hold land on behalf of foreigners,³³ in a fashion similar to the Mexican *fideicomisos*. A person caught aiding a foreigner in the acquisition of land is subject to quite strict punishment: a fine of 20,000 Baht (\$640) or two years in prison.³⁴

Honduras allows for the purchase of small tracts of land by foreigners; however, it too restricts ownership along its coasts.³⁵ But an investor may overcome this with a permit from the Tourism Institute.³⁶ Then there are countries like Nicaragua that place no restrictions on ownership by foreigners.³⁷

Vietnam, though, stands out as moving in a similar direction as Mexico.

27. Angelo Young, *State Laws in US Against Foreign Land Ownership Could Affect How China's Shuanghui Manages Agricultural Land in Wake of Smithfield Foods (SFD) Purchase*, INT'L BUS. TIMES (June 10, 2013, 2:13 PM), <http://www.ibtimes.com/state-laws-us-against-foreign-land-ownership-could-affect-how-chinas-shuanghui-manages-agricultural>.

28. Kennon Pearce, *How Much Is Too Much? Foreign Land Ownership in Latin America*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (June 15, 2011), <http://csis.org/blog/how-much-too-much-foreign-landownership-latin-america>.

29. *Foreign Ownership Issues in Ecuador*, INT'L LIVING, <http://internationalliving.com/real-estate/countries/ecuador/ownership-issues/> (last visited Apr. 16, 2014).

30. *Id.*

31. *See Condominium Conundrum: Reform and Clarification on Foreign Ownership Remain Pressing Needs*, OXFORD BUSINESS GROUP, <http://www.oxfordbusinessgroup.com/news/condominium-conundrum-reform-and-clarification-foreign-ownership-remain-pressing-needs> (last visited Apr. 16, 2014); Craig D. Young, *Foreign Ownership in Canada*, VELLETTA & COMPANY, <http://www.claudedelmaire.com/Foreign%20Ownership%20in%20Canada.pdf> (last visited Apr. 16, 2014).

32. LAND CODE PROMULGATING ACT, B.E. 2497, ch. 8 (1954), as amended (Thai).

33. *Id.* § 96.

34. *Id.* § 113.

35. *Ownership Issues and Title Insurance in Honduras*, INT'L LIVING, <http://internationalliving.com/real-estate/countries/honduras/ownership-issues/> (last visited Apr. 16, 2014).

36. *Id.*

37. *Ownership Issues in Nicaragua*, INT'L LIVING, <http://internationalliving.com/real-estate/countries/nicaragua/ownership-issues/> (last visited Apr. 16, 2014).

For many years, the country maintained strict ownership restrictions.³⁸ Presently, Vietnam is looking into a proposal to ease some of its constraints.³⁹ That said, Mexico is miles ahead of the proposed changes in Vietnam. The Vietnamese discussion only concerns whether foreigners and foreign organizations should be allowed to purchase apartments, whereas Mexico aims at a much more progressive goal.⁴⁰

IV. UNDERSTANDING THE CHANGED STRUCTURE

Modern Mexico is a narrowly drawn country, bordered to its north and south by only three countries: Belize, Guatemala, and the United States.⁴¹ Given this formation, Mexico retains ample eastern and western coastlines stretching into tropical beaches. In total, there is 9,330 km (5,797 miles) of coast and 4,353 km (2,704 miles) of border.⁴² Approximately 48 percent of Mexico is restricted from foreign ownership, including the entirety of the Baja Peninsula.⁴³

The breadth of Mexico's foreign land ownership prohibition drives the proposed legislation, much as it has driven previous bills. Senator Beltrones and the rest of those supporting this measure understand that merely loosening the restrictions would place Mexico in a stronger position to compete for regional tourism and investment dollars. The proposal's supporters estimate that each foreign owner spends \$3,200–\$4,300 every month while living in the country.⁴⁴ With the expansive coastline in Mexico, this spending could be a huge boost to the growing economy. Early reports indicate that Internet searches for Mexican coastal property have increased dramatically since the bill passed the Chamber of Deputies.⁴⁵ Even a small positive upswing could provide a needed image boost for a country currently fighting a major drug war.⁴⁶

Not only that, but as discussed earlier, Section I, Article 27 is archaic. The cumbersome methods that foreigners must currently use to purchase Mexican land are not only convoluted but also ineffective at achieving the clause's original goal: preventing invaders from being able to gain a foothold on Mexico's outer edges. Supporters of this bill recognize the double standard created by this clause and the Foreign Investment Act.

38. *Vietnam Looks to Relax Foreign Property Laws*, VIETNAM BRIEFING (Aug. 13, 2013) <http://www.vietnam-briefing.com/news/vietnam-looks-to-relax-foreign-property-ownership-laws.html/>.

39. *Id.*

40. *Id.*

41. CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACTBOOK: MEXICO* (2013), <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>.

42. *Id.*

43. Vargas, *supra* note 19, at 534.

44. *Mexico Wants Foreigners to Buy Beach Homes*, SAVEENE (July 9, 2013), <http://www.saveene.com/mexico/mexico-wants-foreigners-to-buy-beach-homes/>.

45. PROPERTYWIRE, *supra* note 25.

46. *See generally* Andrea Nill Sanchez, *Mexico's Drug "War": Drawing a Line Between Rhetoric and Reality*, 38 *YALE J. INT'L L.* 467 (2013).

Therefore, if the latter is favorable and worth retaining as law, then the former must be an unnecessary impediment.

One must also note that this is not the only bill under consideration as Mexico's leadership jockeys for foreign investors. Another proposed amendment to Article 27 is working its way through the legislative process as well. That amendment seeks to open Mexico for private investment in its oil and gas industry.⁴⁷ Right now, the state exercises full control over the energy industry in Mexico, much like it does with the coastal land.⁴⁸ Obviously, this amendment would cause a bigger economic splash than changes to the property laws, given the world's ongoing thirst for oil, but the sweeping push by Mexican leadership to cede state control over formerly guarded resources bodes well as an indicator of success for the amendment discussed herein.

V. OPPOSITION TO THE LEGISLATION

Contrary to the government actions taken thus far, the vocal opposition asserts that a vast majority of Mexicans are against opening the restricted areas to foreign ownership.⁴⁹ Reasons brought in opposition range broadly, but their synthesized thesis is that the amendment threatens to erode the heritage of Mexico through an inevitable sell-off of its most valuable land to foreigners.⁵⁰ The opposition implicitly acknowledges that there is a strong interest from outsiders to purchase Mexican land. One popular summarization focuses entirely on American interest, stating it would only take one in twenty American millionaires purchasing twenty-two meters of beachfront to put the entire Mexican coastline under private, foreign ownership.⁵¹ It further asserts that no Mexican would ever see the water front again.⁵² As of April 16, 2014, 107,188 people have signed a *Change.org* petition raising this exact concern.⁵³

47. Christopher Helman, *How Oil Reforms Could Trigger Mexico's Biggest Economic Boom In A Century*, FORBES (Oct. 1, 2013, 2:17 PM), <http://www.forbes.com/sites/christopherhelman/2013/10/01/mexicos-oil-reforms-set-to-trigger-biggest-economic-boom-in-100-years/>.

48. *Id.*

49. *Buying land in Restricted Zone for Foreigners in Hands of the Senate*, THE YUCATAN TIMES (July 12, 2013), <http://www.theyucatanimes.com/2013/07/buying-land-in-restricted-zone-for-foreigners-in-hands-of-the-senate/> ("Despite arguments about the restrictions on the sale of property in Mexican beaches to foreigners and the supposed benefits with the approval of the reform, 7 in 10 Mexicans are against the possibility that foreigners can buy land or property in the restricted zone.").

50. Enrique Mendez & Roberto Garduño, *Diputados aprueban reforma que permite a extranjeros comprar inmuebles en playas* [Deputies Approve Reform Allowing Foreigners to Buy Property on Beaches] LA JORNADA 20 (Apr. 24, 2013), available at <http://www.jornada.unam.mx/2013/04/24/politica/020n1pol>.

51. *Senadores de la República Mexicana: Que las playas mexicanas no se vendan a extranjeros* [Mexico Senators: Mexican Beaches that Are Not Sold to Foreigners], CHANGE.ORG, <http://www.change.org/es-LA/peticiones/senadores-de-la-rep%C3%BAblica-mexicana-que-las-playas-mexicanas-no-se-vendan-a-extranjeros-2> (last visited Apr. 16, 2014).

52. *Id.*

53. *Id.*

Other concerns raised by opposition groups include: the potential construction of fences blocking entrance to the beaches, displacement of destitute Mexicans living off of the sea, and the lack of oversight to prevent residential owners from subletting their homes for profit.⁵⁴ The logic is that ultimately the land is valuable for visitation by both Mexican citizens and foreigners. Opposition leaders want to retain as much of the status quo and sovereignty of the land as possible when it comes to the coastal areas.⁵⁵

These sentiments were the driving force behind the inclusion of a commercial exception in the bill.⁵⁶ By failing to extend commercial usage to foreign individuals, some of the opposition concerns appear quelled. It is uncontroverted that the beaches and coastal land would have been worth exponentially more to foreign investors if the legislation permitted development of large resorts and hotels wherever desired. Still, the measure of control demonstrates a key tradeoff, potentially signaling a negotiated stance between supporters and opponents that might be enough to allow an amendment of this nature to finally pass.

VI. POTENTIAL LEGAL ISSUES

As with any legislative decision of this magnitude, significant legal issues will surface no matter the result. In fact, several unanswered questions beg discussion before voting commences. First, what will happen to the *fideicomisos* already in existence? Given the prominence of the *fideicomiso* and its inherent longevity, it could take half a century before the current system fully gives way to direct private ownership. It might be worth consideration for the legislature to incorporate a release period where beneficiaries under the *fideicomisos* could freely convert the title. Otherwise, the banks holding the *fideicomisos* do not maintain a vested interest as trustees to execute dissolutions of these guaranteed revenue streams. Ancillary to this first notion, the inevitably increased value of the properties will assuredly focus interest on the previously restricted lands. In much the same fashion as an oil boom, this added value lends potential for a bevy of new disputes over title. Likewise, investors must pay a great deal of attention and care to prevent a lapse in ownership during the transition from the *fideicomisos* to private direct ownership.

Even more significant is consideration of what sort of new-found influence foreign owners will gain in the region if the amendment passes. Although the commercial exclusion was an important withholding for those aiming to temper foreign influence, residential homes are not immune from commercial usage. Litigation of this matter is bound to arise if the government does not add enforcement mechanisms to prevent commercial usage. How will courts rule when foreigners decide to start renting

54. DEFENDAMOS NUESTRAS PLAYAS [DEFEND OUR BEACHES], <http://unionmexico.mx/> (last visited Apr. 16, 2014).

55. Mendez & Garduño, *supra* note 50.

56. *See* Reform, *supra* note 3.

out their beachfront estates? The opposition's concerns are certainly realistic. Allowing rental usage could add to the revenue stream that this legislation aims to attract, but it also is a slippery slope toward the commercial actions specifically excluded in this legislation. Are Mexican leaders willing to enforce a long-term foreclosure of particular uses of the coast in exchange for a measure of control that only citizens and domestic corporations profit? Only time will tell.

Equally interesting are the circumstances if the amendment does fail. The bill's failure, despite cross-political support for the legislation, failure would be a strong signal that the restrictions are destined to remain, even though many neighboring countries do not exercise such domain. Would it be a ringing endorsement of the current system of *fideicomisos*, or would it be a larger statement on Mexican foreign policy? Given the widespread use of the *fideicomisos* and their long-term nature mentioned above, it appears unlikely that the system would falter. But showing preference for this system would stand as an interesting juxtaposition in relation to not passing the amendment. Either way, the proposed amendment stands to challenge cemented historical norms within the country.

VII. CONCLUSION

In essence, the proposed amendment to Section I, Article 27 of the Constitution of Mexico is not a grand departure from the current governance of the restricted areas. The cumbersome *fideicomiso* system already provides many of the benefits found in the proposed amendment, and its mere existence acknowledges Mexico is no longer fearful of foreign occupation. Furthermore, the amendment falls neatly into line with both regional and global trends in land ownership. The only debate still remaining is whether the majority of Mexicans desires such a change; however, it appears unlikely opposition influence will increase enough to impede passage of the amendment. Mexico's leaders are presently seeking any means that might make their country more attractive to foreign investors, and so far this amendment appears to be doing just that. All that being said, most signs indicate that the Mexican government is prepared to ease the prohibition on foreign land ownership in the restricted areas. Now the impending discussion before Mexico regards how to manage the coming change. Foreign invasion may no longer be the issue, but a foreign infusion might soon be afoot.

