

RUIZ DE LA PEÑA Y ASOCIADOS

Foreign Real State acquisition and the new option to acquire it (SAS Mexican one stockholder corporation).

Dear Friend and Client:

Many clients had asked us about how does the Foreign´s will be able to acquire a Real State in Mexico, it is important to mention that there are three ways by which a foreign individual will be able to acquire a Real State in Mexico.

In accordance with the Mexican Constitution a Mexican Individuals and Mexican Corporation can acquire a Real State near the 100 kilometers behind the beach and 50 kilometers behind the border (***Restricted Area***) and the foreign will be able to acquire real state in the Non-Restricted Area with the condition that foreign will not be able to request the protection of his government about such Real State (Calvo Clause). Nevertheless, the Foreign Investment Law, establish an exception of such rule, same that will be explained in this document.

ACQUIRE A REAL STATE IN A NON-RESTRICTED AREA

As we explain before, the Mexican Constitution establish that only Mexican Individuals and Mexican Corporation will be able to acquire a Real State in the Restricted Area, therefore a foreign individual and corporation will be able to acquire a real state in the non-restricted area if such foreign declares that he will not request the protection of his government about such Real State (Calvo Clause).

But is common that a foreign has interest to buy a real state near the beaches of Mexico for the beautiful view, weather, culture, business or many other factors that has the foreign considered to live or star a business in the non-restricted area.

TRUST

The Foreign Investment Law allow, as an exception to the Constitution, that a Foreign individual o corporation will be able to acquire a Real State in a Restricted Area with a Trust (Fideicomiso) in which will be integrated by a bank (In Mexico all the Trust must be administrated by a Bank) and the beneficiary (the Foreign).

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In Mexico all the Trust must administrated throw a bank (Trustee) and will be necessary to pay a fee to the trustee for the administration of such Trust.

The Foreign Investment Law establish that such trust will not last more than 50 years, but would be renewed without many issues.

This is the way that most or the Foreign Individual had had acquired a Real State in Mexico in the Restricted Area, due to the fact it was the only way since 2016 that just one Foreign Individual could acquire a real state in such place.

CORPORATION AND ONE STOCKHOLDER CORPORATION

Before 2016 amendment to the General Corporation Law, the only way that a Foreign Individual could acquire a Real State (including the Restricted Area in Mexico) was to incorporate a Company in Mexico, but such Corporation had had to be incorporated by at least two partners.

With the 2016 amendment of the aforementioned law, in Mexico are allow to incorporate corporation named Sociedades Anonimas Simplificadas **SAS**, with the limitation that those companies will not have more than 5,000,000 (260,000.00 dollars) million pesos of income year year, **note that income is different to contribute stocks**. It is important to mention that the regulation of the SAS does not restrict the Real State acquisition.

As we mention before, if a corporation incorporated by Foreign´ s, whether is a two stockholders corporation or a one stockholders corporation, shall estate in the Bylaws that the Foreign Stockholders will not request the help of their governments regarding the company assets and goods (Calvo Clause).

It could be attractive by the Foreign Individuals to acquire the Real State by a SAS instead that a Trust, because they will not have to pay the annual fee that a bank charges for the administration of the Trust.

Therefore, as a conclusion a Foreign Individual will be able to acquire a Real State in any place in Mexico, by a corporation of just one or more stockholders (the option of a corporation of one stockholder was incorporated in 2016).

FORMALIZATION

In other to formalize the acquisition of the Real State there are many steps that will need to be done that will be following explained:

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1. Is important to hire a lawyer or a company specialized of real state researches, in other to perform a due diligences of the Real State (This step is not necessary but is highly important in other to prevent future problems with the land).
2. Whether the Real State is acquiring by a Trust or a Corporation, it will be necessary that the Foreign Individual have the Immigration ID issued by the Immigration National Institute to be a party of the Trust or stockholder of the Corporation.
3. Obtain the **Certification of No-Tax Debt** or and a **Certificate of No-Encumbrance**, that will be issued by the State and County Authority, and the Public Registry of Property and Commerce.
4. It Must be obtained a Site Survey issued and a Property Appraisal that will need to be by the County Real State Authority (Catastro).
5. Pay the Real State Acquisition Tax (2% of the land value) and the Federal Income Tax, that shall have paid by the seller depend of his income. **(Our firm had won many cases to recover part or all the Real State Acquisition Tax).**
6. Once all the above document is completed, the buyer/beneficiary and the seller/trustor shall formalize the Real State acquisition in a Deed before a Notary Public or a Broker.
7. Finally, such transaction shall be registry before the Public Registry of Property and Commerce.

IRS NOTICE AND OTHERS COUNTRY NOTICE

It is important to mention that accordingly with the United Legislation, the American Citizens will have to notice to the IRS of all the assets that acquire outside the US, therefore American Citizen shall need to be advise by an Accountant or Tax Lawyer about the acquisition, and could applied to other countries.

If you have any doubt or question about do not hesitate to contact us.

Regards.

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