AMENDING THE PHILIPPINES' LAWS GOVERNING FOREIGN PROPERTY OWNERSHIP: THE EXTENT TO WHICH MEXICAN LAW CAN SERVE AS A WORKABLE TEMPLATE?

Joanna Smith*

TABLE OF CONTENTS

I. INTRODUCTION ........................................... 614

II. THE PHILIPPINES' LAWS ON FOREIGN INVESTMENT AND FOREIGN PROPERTY OWNERSHIP ........................................... 616
   A. The Philippines' Foreign Investment Laws ................ 616
      1. The Philippine Constitution .......................... 617
      2. Omnibus Investments Code .......................... 617
      3. Foreign Investments Act ............................ 619
      4. Special Economic Zone Act .......................... 620
   B. The Philippines' Foreign Property Ownership Laws ....... 621

III. MEXICO'S FOREIGN INVESTMENT AND FOREIGN PROPERTY LAWS ................................................ 625
   A. Mexico's Foreign Investment Laws ...................... 626
      1. 1973 Foreign Investment Law ........................ 627
      2. 1989 Foreign Investment Regulations .................. 628
      3. 1993 Foreign Investment Law ........................ 630
   B. Mexico's Foreign Property Ownership Laws ............... 631
      1. The Mexican Constitution ........................... 631
      2. 1993 Foreign Investment Act ........................ 632
   C. Present Day Mexico .................................. 634

IV. MEXICO AS A TEMPLATE FOR THE PHILIPPINES ................. 635
   A. Similarities Between Mexico's and the Philippines' Laws 636
   B. Differences Between Mexico's and the Philippines' Laws 639
   C. A Proposed Solution .................................. 641

V. CONCLUSION ........................................... 642

* J.D., University of Georgia, School of Law, 2007; B.A., Wake Forest University, 2003.
In August 2004, the Philippine government faced a self-proclaimed fiscal crisis that was largely attributed to the country's failure to attract foreign direct investments. Foreign direct investment involves "whole or partial ownership of a business entity in one country (the host country) by residents of, or a firm located in, another country (the home country). . . ." Foreign investment is indispensable to the Philippine economy as it provides employment opportunities, reduces the country's debt, and allows the Philippines to remain competitive with other nations. Facing competition from other countries, notably China and Vietnam, the Philippines' net foreign investments declined from a peak of $2.2 billion in 1998 to a mere $318 million in 2003. While the numbers have started to increase somewhat over the past two years, clearly the Philippines must do more to address this problem.

This is not the first time that this Southeast Asian nation has been concerned over its foreign investment numbers. In 1991, the Congress of the Philippines passed the Foreign Investment Act, designed to make the regime more foreign investor-friendly. While this law has helped liberalize the entry of foreign investment into more areas of the Philippine economy, other Philippine laws still deter investors. In particular, the Philippine Constitution bans foreigners from acquiring direct ownership of real property. Although the Investors' Lease Act allows companies to lease land for fifty years (renewable once for a maximum period of seventy-five years), the inability to obtain a fee simple title undoubtedly dissuades foreign investment.

---

2 Roman Laure et al., Foreign Direct Investment in the Philippines, in BUSINESS OPPORTUNITIES IN THE PHILIPPINES 137, 140 (Tan Teck Meng et al. eds., 1996).
4 U.S. Dep't of State, supra note 1.
8 Id. § 4(1).
Foreign property laws can effectively stimulate investment into a country, as an analysis of Mexico’s foreign property laws will reveal. The Mexican Constitution prohibits foreigners from directly owning land and waters within the “restricted zone.” The restricted zone includes fifty kilometers along the beaches and all land within one hundred kilometers of the Mexican border. Given the country’s geography, a substantial portion of Mexico falls within this zone. In 1996, in an effort to compete with the developing countries of Central and South America for foreign investment, Mexico amended its 1993 foreign investment law to allow foreigners to “acquire ownership of real property located in the restricted zone intended to carry out non-residential activities.” While not the only contributing factor to the increase in foreign investment which soon followed, this amendment provided additional opportunities and incentives to invest foreign capital in Mexico.

This Note will argue that in order to lure investors away from the country’s Southeast Asian competitors and to the Philippines, the Philippine laws governing foreign property ownership must be amended to eliminate the barriers that prevent foreign individuals and corporations from purchasing Philippine property. Part II will trace the history of the Philippine laws governing foreign investments and foreign property ownership. Part III will then examine Mexico’s innovative approach to stimulating foreign investment, while Part IV will analyze the extent to which the Mexican system can serve as a template for the Philippine government. Finally, Part V will offer some concluding remarks.

9 Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 27, para. I., Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).
10 Manuel F. Pasero & Héctor Torres, Foreign Investment in Mexico's Real Estate: An Introduction to Legal Aspects of Real Estate Transactions, 35 SAN DIEGO L. REV. 783, 786 (1998) (explaining how the restricted zone was created in an effort to protect national territorial rights).
12 Ley de Inversión Extranjera [L.I.E.] [Foreign Investment Law], as amended, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.), translated in 1 MEXICAN LAW LIBRARY COMMERCIAL CODES 123, 135 (West Publishing Co. 1997).
II. THE PHILIPPINES’ LAWS ON FOREIGN INVESTMENT AND
FOREIGN PROPERTY OWNERSHIP

Unlike its neighbors, the Philippines has not experienced a sustained period of growth since the 1970s. The development of the Philippine economy has been a slow and disappointing process as its real per capita Gross Domestic Product (GDP) in 2000 was nearly the same as it was in 1980. The decline of foreign investment in the country has significantly contributed to this economic depression. The problem must be addressed, and foreign investment must be stimulated in order for the country to rebound economically.

Foreign investment contributes to a country’s development, as it “allow[s] host economies to invest in productive activities beyond what could be achieved by domestic savings alone.” While foreign investment entails some loss of a nation’s sovereignty, no developing or struggling country can hope to prosper without it. An examination of the recent Philippine foreign investment laws will demonstrate that the country is aware of this reality.

A. The Philippines’ Foreign Investment Laws

In 1986, the People’s Power Revolution (EDSA Revolution) forced President Ferdinand E. Marcos to flee the country, and selected Corazon Aquino as his successor. Focused on reconstruction and modernization, the new Philippine government sought to attract foreign investments by liberalizing its foreign investment regime. The legal developments in this area can best be seen through an analysis of the 1987 constitution, the

---

13 THE PHILIPPINE ECONOMY: DEVELOPMENT, POLICIES, AND CHALLENGES 4 (Arsenio M. Balisacan & Hal Hill eds., 2003) (stating that the Philippines’ per capita income was overtaken by Korea and Taiwan in the 1950s, followed by Thailand in the 1970s, Indonesia in the 1980s, and finally by China in the 1990s).
14 Id.
17 Laure et al., supra note 2, at 137.
18 Mejia, supra note 5, at 467.
19 Id. (noting that the government sought to adopt a new approach to foreign investment that would be consistent with economic globalization and cooperation).

1. The Philippine Constitution

The 1987 Philippine Constitution authorizes the government to regulate foreign investments in accordance with its national goals and policies. The goals of the national economy include: "[A] more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the under-privileged." The constitution further authorizes Congress, when necessary, to set minimum Philippine ownership requirements in certain investment areas. For example, Congress stated that the government may enter into joint ventures or production-sharing agreements with Philippine citizens or entities whose capital is at least 60% Philippine-owned. In this way, Congress set an ownership requirement in which an entity involved in this arrangement can be no more than 40% foreign-owned. This 60%/40% requirement became a central feature of the 1987 Omnibus Investments Code.

2. Omnibus Investments Code

The Omnibus Investments Code is the country's seminal, modern investment law that extends to both foreign and domestic investments. The Omnibus Investments Code focuses on "registered enterprises," defined as "individual, partnership, cooperative, corporation or other entity incorporated and/or organized and existing under Philippine laws; and registered with the Board [of Investments]." Some of the most noteworthy features of the Code are the incentives it offers to registered enterprises,

20 Id. at 471.
21 CONST. (1987), Art. XII, § 1, (Phil.).
22 Mejia, supra note 5, at 471.
23 CONST. (1987), Art. XII, § 2, (Phil.).
24 See Mejia, supra note 5, at 472.
consisting primarily of significant tax deductions and simplified customs procedures.\textsuperscript{26}

In order to qualify as a registered enterprise and reap the incentives accorded to such entities, a corporation cannot be more than 40\% foreign-owned.\textsuperscript{27} In other words, domestic entities must own 60\% of the capital stock, and Philippine citizens should make up 60\% of the Board of Directors in order for the corporation to be eligible.\textsuperscript{28} Consequently, foreign corporations have to form joint ventures in order to obtain the incentives offered under the Investments Code.\textsuperscript{29}

There is, however, a statutory exception to the 60\% requirement provided to pioneer projects.\textsuperscript{30} A "pioneer-enterprise" is one whose activities include either:

1) [T]he manufacture, processing or production, . . . of goods . . . or raw materials . . . not [presently] being produced in the [country] on a commercial scale;
2) [The] use[ ] [of] a design, formula, . . . process or system of production . . . which is new and untried in the Philippines;
3) [T]he pursuit of agricultural, . . . mining . . . or . . . industrial aspects of food processing . . . [which are] highly essential . . . to a declared specific national . . . program for self sufficiency; or
4) [The] produc[tion] . . . [and/]or use[ ] . . . [of] non-conventional fuels. . .\textsuperscript{31}

Put simply, multinational corporations could avoid the 60\% requirement so long as they could demonstrate they were bringing something new into the country.\textsuperscript{32}

\textsuperscript{26} See id.
\textsuperscript{27} Id. art. 15.
\textsuperscript{28} Id.
\textsuperscript{29} Mejia, \textit{supra} note 5, at 473.
\textsuperscript{30} Id.
\textsuperscript{32} Mejia, \textit{supra} note 5, at 473.
3. Foreign Investments Act

While the Omnibus Investments Code's tax deductions and pioneer project exception provide meaningful incentives to foreign investors, the Philippines still needed greater foreign equity participation. In response, the Philippine government enacted the Foreign Investments Act of 1991 (1991 FIA) that eliminated the 40% restriction and finally allowed for 100% foreign equity participation in most enterprises.33

The 1991 FIA supplements and amends, but does not replace, the Omnibus Investments Code. Unlike the Omnibus Investments Code, however, the 1991 FIA is solely applicable to foreign investments.34 The Act was passed in order to promote foreign investment "in activities which significantly contribute to national industrialization and socio-economic development to the extent that foreign investment is allowed in such activity by the Constitution and relevant laws."35 The law seeks to encourage investments that will provide employment opportunities for Philippine citizens.36 The Act is limited, however, by the Foreign Investments Negative List (Negative List) included in Section 8 of the Act.37

The Negative List is divided into two components that place restrictions on foreign investment in certain economic activities.38 List A "consist[s] of areas reserved for Philippine nationals by both the Constitution and Existing Laws," and List B contains reserved "areas of economic activity that are defense-related or that have implications on public health and morals."39 The foreign ownership limits contained in the Negative List are frequently modified, as amendments may be issued every two years.40 For example, List A of the 2002 Negative List limited foreign equity participation in, among other things, the ownership of private lands.41 Foreign corporations cannot own private land


34 See Mejia, supra note 5, at 484.


36 Id.

37 Id. § 8; see also Mejia, supra note 5, at 484.


39 Mejia, supra note 5, at 485.

40 Id. at 484.

unless 60% of the corporation's capital is Philippine-owned.\footnote{Id.} Therefore, Philippine corporations that are wholly (or close to wholly) foreign-owned are denied the ability to own a fee simple title to land. This law clearly presents a significant disincentive to foreign investors who can direct their capital elsewhere—most likely into countries that do not erect such financial barriers.\footnote{For example, Malaysia allows foreigners to acquire direct title to land so long as they receive approval from state authorities. \textit{See} Thomsen, \textit{supra} note 15, at 21.} Consequently, while the 1991 FIA has liberated foreign equity participation in a variety of economic activities that were previously restricted, many analysts cite the Negative List as a significant contributing factor to the Philippines’ poor record in attracting foreign investment.\footnote{U.S. Dep’t of State, \textit{supra} note 1.}

4. \textit{Special Economic Zone Act}

In 1995, in an effort to further eliminate some of the burdensome restrictions to foreign investment, the Philippine government passed The Special Economic Zone Act (Ecozone Act).\footnote{The Special Economic Zone Act of 1995, Rep. Act No. 7916, \textit{as amended by} Rep. Act No. 8748, (Feb. 21, 1995) (Phil.), available at http://www.chanrobles.com/specialeconomiczoneact.htm.} The Philippines contains miles of beaches in which there exists the potential for development, promotion, and conservation of resources through the attraction of private capital.\footnote{Mejia, \textit{supra} note 5, at 495.} One way to obtain this much-needed capital is through the creation of ecozones.\footnote{Ecozones are wholly separate customs territories that exempt the importation of raw materials, capital, and equipment from taxes or duties. \textit{Id.}} Following the United States’ withdrawal from the Philippines in 1992, the Philippines converted two former U.S. military bases into economic zones.\footnote{Id. at 489.} Due to the success of these zones, the 1995 Ecozone Act was passed, which expanded the use of ecozones as a method for developing selected areas of the country into “agro-industrial, industrial tourist/recreational, commercial, banking, investment and financial centers.”\footnote{Rep. Act No. 7916, § 4(a).}

The Ecozone Act targets the areas that can bring desired capital into the country.

Perhaps the most important incentive offered under the Ecozone Act is the exemption from both local and national taxes offered to businesses located
within one of these areas. While these exemptions are an attractive feature to foreign and local investors alike, foreign investors are still denied the ability to acquire fee simple title, even within these designated regions. These investors must either lease the land or form an entity that is no more than 40% foreign-owned in order to own the land outright. Thus, while the tax exemption provided by the Ecozone Act is beneficial to foreign investors who operate a business within these zones, these investors may only lease the land or are forced to form joint ventures or partnerships to obtain fee simple title. The Philippines could attract greater foreign participation if it simply offered foreign investors the ability to own the land without having to overcome such hurdles.

The recent Philippine foreign investment laws indicate that the country has overcome a nationalistic stance and is now amenable to opening up the country to increased foreign investment. These laws have endured through several presidential administrations, serving as a testament to their support. Nevertheless, the 2004 fiscal crisis the country faced, and still faces, demonstrates that the Philippine government must do more to attract these investments that are indispensable to a thriving economy. In particular, the government must address and amend its longstanding laws banning foreign ownership of private land. The 40% restriction on foreign ownership of private lands presents a disincentive to foreign investors who can divert their capital elsewhere, most often into nearby countries that afford foreigners the option of purchasing fee simple title to land. Of course, amending the property laws is much easier said than done, as a glance at the history of the Philippine property system will show.

B. The Philippines' Foreign Property Ownership Laws

Since the ratification of the Philippine Constitution in 1935, the government has imposed significant restrictions on foreign property ownership. Before looking at the series of constitutions that the Philippines has ratified during the twentieth century, it is important to note the distinction between public and private land. Public land is categorized into agricultural, industrial, commercial, residential, resettlement, mineral, timber or forest, and grazing lands. The rest of the land not subsumed in one of these categories

50 See Mejia, supra note 5, at 493.
51 Id.
52 Pedro, supra note 3, at 320.
is considered private land. Since the end of World War II, the agricultural and private lands have received a great deal of attention as the country has focused on agrarian reform.

As World War II came to an end, the Philippine nation faced problems of widespread poverty, as well as a drastic income inequality between the “landed and the landless” in the rural sector.\(^5\) Like many other newly independent nations at that time, the Philippines sought to initiate a land reform program aimed at reducing poverty and eradicating this income inequality.\(^4\) When President Marcos ascended to power, however, these efforts were put on hold, and it was not until Marcos was forced to flee the country that reform was given new life.\(^5\)

In 1986, President Corazon Aquino, Marcos’ successor, headed a new government and brought a revitalizing force to agrarian reform.\(^6\) Within a short time a new constitution (the present constitution) was ratified. The 1987 Constitution authorized the state to undertake an agrarian reform,\(^7\) which formed the basis of the present Comprehensive Agrarian Reform Program (CARP).\(^8\) CARP defines agrarian reform as the:

\[
\text{[R]edistribution of lands, regardless of crops or fruits produced, to farmers and regular farm workers who are landless, irrespective of tenurial arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other arrangements alternative to the physical redistribution of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stock...}.\quad 59
\]

The ten-year program, launched in 1988, was deemed “comprehensive” because unlike previous reforms that restricted its coverage to rice and corn lands, CARP covered both private and agricultural lands, and recognized both

\(^{53}\) Id.
\(^{54}\) Id.
\(^{55}\) Id. at 327.
\(^{56}\) Id.
\(^{57}\) See Const. (1987), Art. XIII, § 4, (Phil.).
\(^{59}\) Id. § 3(a).
agricultural tenants and agricultural workers as qualified beneficiaries.\(^6^0\) In 1998, President Fidel Ramos signed a bill extending CARP until 2008.\(^6^1\) Horacio Morales, the Secretary of the Department of Agrarian Reform, stated that most of the land distributed thus far had been public, and consequently, the next phase of CARP will be the most contentious as it involves private agricultural estates.\(^6^2\) The primary concern with CARP is that there will not be enough land available for redistribution, "particularly in a country where 'land is an important source of power, prestige and privilege.’”\(^6^3\)

This concern over the scarcity of land, while not the only reason, is certainly a contributing factor to the country’s present restrictions on foreign property ownership. While some restrictions existed before World War II, the 60% rule was not implemented until the 1973 Constitution came into existence.\(^6^4\) In Article XIV, Section 8, the Philippine Constitution declares that all lands of the public domain and other natural resources of the Philippines belong to the State.\(^6^5\) Section 9 further states that "[t]he disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital which is owned by such citizens.”\(^6^6\) Similarly, in Section 14 of the same article, the transfer or conveyance of private lands is restricted to the "individuals, corporations, or associations qualified to acquire or hold lands of the public domain.”\(^6^7\) Therefore, similar to the 60% requirement that was later seen in the Omnibus Investments Code, only Philippine citizens or corporations that are 60% Philippine-owned are capable of acquiring and holding public or private lands.

Fourteen years later, the 1987 Constitution reiterated this 60% rule at the same time CARP was being launched.\(^6^8\) In Article XII, Section 2, the constitution stipulates that the state shall supervise the exploration,

---

\(^6^0\) Pedro, supra note 3, at 320.
\(^6^1\) Id. at 337.
\(^6^2\) Id. at 339.
\(^6^3\) Id. at 340.
\(^6^5\) Id. § 8.
\(^6^6\) Id. § 9.
\(^6^7\) Id. § 14.
\(^6^8\) See CONST. (1987), Art. XII, § 2, (Phil.).
development, and utilization of natural resources. Unlike the 1973 Constitution, however, the present constitution provides the state with the ability to enter into joint ventures or production-sharing agreements with Philippine nationals or corporations that are 60% Philippine-owned. As for private lands, Section 7 states that “no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.” Consequently, since 1973 nothing has changed. To this day, only Philippine citizens and 60% Philippine-owned corporations are accorded the right to directly own public or private land.

Though the basic premise remains fundamentally the same, some exceptions to this rule should be noted. The constitution provides exceptions for people who have acquired land before the 1935 Constitution or through hereditary succession. Additionally, Philippine citizens who are married to aliens and natural-born Philippine citizens retain their citizenship and can purchase property (subject to certain other limitations prescribed). These exceptions are very narrow and retain the basic rule that foreigners may not acquire direct ownership of real property. Perhaps realizing the disincentive to foreign investors such a law creates, the Philippine government passed the Investors’ Lease Act in 1993.

The Investors’ Lease Act allows foreign investors to lease land, but these individuals are still prohibited from owning fee simple title. The purpose of the Act is to “encourage foreign investments consistent with the constitutional mandate to conserve and develop our own patrimony.” The leases are granted not for residential uses, but rather for non-residential purposes only. Lease contracts are valid for fifty years and renewable once for a period of not

---

69 Id.
70 Id.
71 Id. § 7.
72 Id.
73 Id. § 8.
75 Id.
76 Id. § 2.
77 For example, they might be used for “industrial estates, factories, assembly or processing plants, agro-industrial enterprises, land development for industrial, or commercial use, tourism, and other similar priority productive endeavors.” Id.
more than twenty-five years. Additionally, a leased area must be of a reasonable amount in order to conform to the CARP.

While it is clear the Philippine nation is trying to increase foreign investment and promote industrialization, the country's agrarian reform program (CARP) and Investors' Lease Act send foreign investors a mixed message. Although the Philippine government now allows 100% foreign equity participation in most enterprises, these multinational corporations and entities are still denied the right to own fee simple title to real property. With the downturn in the economy at the turn of the century, and with increasing competition from other Southeast Asian nations, it is imperative that the Philippines liberalize its foreign property ownership laws in order to increase the incentives already provided by its liberalized foreign investment laws.

In this effort, the Philippines should look to and learn from other countries, most notably Mexico. While the Philippines and Mexico differ in many ways, the two countries greatly depend upon foreign investment as a "catalyst to ignite and fuel economic growth." Unlike the Philippines, however, Mexico amended its foreign property ownership laws to complement a simultaneous amendment to its foreign investment laws. An analysis of these laws and the increased foreign investment that has resulted will show that Mexico's approach to this problem should serve, at least in part, as a template for the Philippine government.

III. MEXICO'S FOREIGN INVESTMENT AND FOREIGN PROPERTY LAWS

Throughout the nineteenth century, Mexico experienced political and economic instability that was reflected in its inability to establish a unified political or economic direction. In 1876, Porfirio Diaz ascended to power and launched a successful program aimed at economic growth. The stability of the Diaz era, combined with Mexico's vast resources, helped to attract foreign investment. While foreign investment increased and contributed to
the growth of the Mexican economy, a nationalistic sentiment emerged during Diaz's administration. The Mexican people began to feel threatened by foreign investors and feared foreign investment would lead to the exploitation of Mexico's natural resources and labor.

Diaz's reign ended with the Mexican Revolution of 1910, which only intensified the nationalistic sentiment the country had previously expressed. Following the cessation of the Revolution, Mexico ratified its constitution in 1917. The constitution reflects the country's protectionist policy at the time, incorporating significant restraints on foreign economic activities and ownership of Mexican land. Additionally, the constitution sets forth an economic scheme in which the state is defined as the "rector" of the economy. The Mexican government retains significant control over foreign investment as the constitution vests it with enormous power to establish and administer effective investment policies.

A. Mexico's Foreign Investment Laws

An examination of Mexico's foreign investment laws will demonstrate the government's control over this area, as well as its recent desire to liberalize these laws (within the confines of the restrictive 1917 Constitution) in order to stimulate investment. This analysis will reveal Mexico's evolving attitude towards foreign investment, as it has progressed from a nationalistic country comprised of state interventionist policies, to a more competitive and global system focused on promoting economic liberalism and foreign investment.

---

84 Id.; see also J. Hayden Kepner, Jr., Mexico's New Foreign Investment Regulations: A Legal Analysis, 18 SYRACUSE J. INT'L L. & COM. 41, 43 (1992) (noting that Mexican presidents and legislatures have endeavored to eliminate foreign investment involvement in the Mexican economy, perceiving it as a domination of their economy).
85 Camp et al., supra note 81, at 781.
86 See Pasero & Torres, supra note 10, at 784 (providing a brief historical background to the ratification of the United Mexican States' Political Constitution); see also Camp et al., supra note 81, at 781 (emphasizing that the Diaz program and the Mexican Revolution inspired a fear that foreigners would exploit Mexico's natural resources and labor).
87 Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).
88 Camp et al., supra note 81, at 782.
89 Id. at 783.
90 Id. at 777.
1. 1973 Foreign Investment Law

Prior to 1973, Mexican presidents and legislatures had endeavored to reduce foreign involvement in the Mexican economy. While Mexico sought to increase exports to other countries, it remained vigilant in protecting domestic industries from investors abroad. Nevertheless, there was no general body of law structuring foreign investments. Consequently, investments from abroad quadrupled between 1940 and 1965, and by 1969 they exceeded $2 billion. The resulting attitude towards foreign investment was one of cautious acceptance. However, in 1973, Mexico decided it was time to begin regulating foreign investments through legislation. On December 27, 1973, Congress passed the Law to Promote Mexican Investment and Regulate Foreign Investment (1973 FIL).

The 1973 FIL restricted foreign investment to 49% ownership of most businesses. While this law was designed to promote foreign investment, in many ways it reflected the country’s restrictive foreign investment policy and its desire to keep investors out of the Mexican economy. The new law also created the National Foreign Investment Commission (FIC) that would administer the law and regulate foreign investment. The FIC was granted an enormous amount of discretionary authority as it possessed the power to approve or disapprove foreign investment, and could alter percentage limitations for foreign ownership in specified areas. Given the boom of the Mexican economy throughout the 1970s, however, foreign investment was

---

91 Kepner, supra note 84, at 43; see generally Ewell E. Murphy, The Echeverrian Wall: Two Perspectives on Foreign Investment and Licensing in Mexico, 17 TEX. INT'L L.J. 135 (1982) (providing a discussion of Mexico's foreign investment restrictions).
92 See, e.g., Camp et al., supra note 81, at 784 (explaining that after World War II and until 1973, Mexico's approach to foreign investment was “characterized by an emphasis on increasing exports and protecting existing national industries” from foreign exploitation).
93 Id.
94 Id.
95 Ley de Inversión Extranjera [L.I.E] [Foreign Investment Law], as amended, Diario Oficial de la Federación [D.O.], 9 de Marzo de 1973 (Mex.).
96 Jorge Cervantes Trejo, Special Commentary: Mexico's Foreign Investment Laws and Regulations, in MEXICAN LAW LIBRARY COMMERCIAL CODES, supra note 12, at 239.
97 Id.
98 Kepner, supra note 84, at 43–44.
99 Id. at 44.
neither needed nor desired. Consequently, the FIC permitted very few foreign investments during this time.\textsuperscript{100}

Furthermore, the 1973 FIL "changed the rules of the game for foreign investors," forcing them to register, and requiring them to negotiate in all cases involving majority ownership.\textsuperscript{101} This resulted in less investment as the Mexican economy was thriving and the country saw no reason to share its wealth with foreigners.\textsuperscript{102}

2. 1989 Foreign Investment Regulations

In 1981 Mexico’s "economic bubble burst"\textsuperscript{103} and the country experienced an economic crisis largely attributable to the sudden drop in world oil prices.\textsuperscript{104} The early 1980s were subsequently marked by soaring inflation rates and a growing external debt.\textsuperscript{105} This economic depression largely contributed to the change in the government's foreign investment policy, which is reflected in the legislation that emerged in the 1980s and has carried over to the present day.

When the economic bubble burst in 1981, Mexico could no longer shun foreign investors. President Miguel de la Madrid realized that these investments were now indispensable to the Mexican economy.\textsuperscript{106} In response, de la Madrid issued a series of general resolutions in 1984 (1984 Guidelines)\textsuperscript{107} to promote foreign investment in specific activities deemed essential to the growth of the Mexican economy.\textsuperscript{108} The FIC's discretion was substantially reduced as the requirements for approval became considerably liberalized.\textsuperscript{109}

\begin{itemize}
\item \textsuperscript{100} See id. at 45.
\item \textsuperscript{102} See id.; Kepner, supra note 84, at 45–46.
\item \textsuperscript{103} Kepner, supra note 84, at 46.
\item \textsuperscript{104} Id.
\item \textsuperscript{105} Camp et al., supra note 81, at 787.
\item \textsuperscript{106} See Kepner, supra note 84, at 46 (noting that Mexico had accumulated $107 billion of external debt by 1989).
\item \textsuperscript{108} Kepner, supra note 84, at 46–47.
\item \textsuperscript{109} Id. at 47.
\end{itemize}
The FIC began to approve higher percentages of foreign investment while smaller investments were allowed to circumvent the FIC altogether, thus gaining automatic approval. While the 1984 Guidelines signaled a major change in Mexico’s foreign policy, these regulations “were not of a binding, legal nature, but [were] rather mere policy determinations. . . .” Consequently, more reform was needed to entice foreigners to invest their money into the country.

This greater reform came in 1988 when Carlos Salinas took over the presidency and subsequently enacted the 1989 Foreign Investment Regulations (1989 Regulations). These regulations were similar to the 1984 Guidelines as they strived to deregulate foreign investment and sought to implement the 1973 FIL. The 1989 Regulations, however, marked a significant change in the Mexican attitude. The 1989 Regulations liberalized many economic activities and allowed foreign investors to acquire interest in the stock of Mexican business enterprises without having to receive the approval of the FIC. Perhaps most importantly, the law provided for 100% equity participation where it was previously limited to 49%.

Other notable provisions of the 1989 Regulations allowed foreign individuals to hold real estate through a trust (if it was within the restricted zone) and provided for neutral investment. Additionally, the 1989

---

110 For example, “the F.I.C. granted 100% foreign ownership to investments made by several foreign companies, including IBM, Hewlett-Packard and Honda,” which was unheard of under previous Mexican law. *Id.* at 47–48; see also Rosemary R. Williams, *Note, Has Mexico Kept the Promise of 1984? A Look at Foreign Investment Under Mexico’s Recent Guidelines*, 23 Tex. Int’l L.J. 417, 437–38 (1988).

111 *Id.* at 48.

112 *Id.* supra note 84, at 47.


114 MEXICAN LAW LIBRARY COMMERCIAL CODES, supra note 12, at 243.

115 Camp et al., supra note 81, at 788 (noting that this was contingent upon each investor complying with six basic requirements).

116 *Id.* at 789.

117 The restricted zone is described in Section 1, Article 27 of the Mexican Constitution. It states: “Under no circumstances may foreigners acquire direct ownership of lands or waters within a zone of one hundred kilometers [sixty-four miles] along the [international] frontiers and of fifty kilometers [thirty-two miles] along the shores of the country.” Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 27, para. 1., Diario Oficial de la
Regulations helped clarify the powers and authority of the FIC. The FIC's discretion was further curtailed as the regulations included specific criteria the FIC had to follow when analyzing foreign investment applications. By the end of the 1980s, it was evident that Mexico was dedicated to liberalizing its foreign investment regime to stimulate more investment from abroad.

3. 1993 Foreign Investment Law

Mexico's efforts to develop a flexible legal regime favoring foreign investments continued into the 1990s and culminated with the enactment of the 1993 Foreign Investment Law (1993 FIL). The 1993 FIL replaced the former 1973 Law to Promote Mexican Investment and to Regulate Foreign Investment, and permitted all foreign investment except as specified in Articles 5–8. While the 1993 FIL demonstrated Mexico's continuing desire to attract foreign investment, the biggest change appeared in Title II of the law, which dealt with foreign ownership of real property. The 1993 FIL was subsequently amended in 1996, and was followed by the enactment of the Foreign Investment Regulations in 1998. These regulations, which replaced the 1989 Regulations, were designed to interpret the rules of the 1993 FIL and to limit the discretion of the Mexican federal authorities.

Since 1973, Mexico has remained dedicated to its effort to "ease and expedite foreign investment" into the country. In order to fully embrace this new commitment, however, the country has found it necessary not only to

---

118 "Neutral investment" is a peculiar concept [that] ... authorizes a foreign investor to contribute through a fiduciary institution or an international development institution ... [that] is not included [in] the calculations to determine the foreign ownership interests in a Mexican business entity." Vargas, supra note 11, at 38.
119 MEXICAN LAW LIBRARY COMMERCIAL CODES, supra note 12, at 245.
120 Id.
121 Ley de Inversión Extranjera [L.I.E.] [Foreign Investment Law], as amended, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.), translated in MEXICAN LAW LIBRARY COMMERCIAL CODES, supra note 12, at 123, 135.
122 MEXICAN LAW LIBRARY COMMERCIAL CODES, supra note 12, at 117.
123 Id.
124 See discussion infra Part III.B.
125 Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras [1998 Foreign Investment Regulations], Diario Oficial de la Federación [D.O.], 8 de Septiembre de 1998 (Mex.).
126 Vargas, supra note 11, at 3–4.
127 Id. at 46.
amend the laws governing foreign investment, but also to amend the laws governing foreign property ownership.

B. Mexico's Foreign Property Ownership Laws

Real estate investments in Mexico have increased considerably over the last ten to fifteen years as the country has begun offering a variety of investment opportunities in this area.\textsuperscript{128} The real estate sector is an important source of foreign investment, and Mexico has realized that in order to increase foreign participation, it must eliminate barriers and restrictions to investment in Mexican real estate.\textsuperscript{129} An analysis of the evolution of the Mexican laws governing foreign property ownership will make this apparent.

1. The Mexican Constitution

The Mexican Constitution explicitly states in Section 1 of Article 27 that only Mexicans and Mexican corporations may acquire fee simple title to real estate.\textsuperscript{130} Within the same article, however, there is an exception for foreigners provided that they 1) commit to being considered Mexican nationals with respect to such real estate, and 2) are not allowed to invoke the protection of their government if an issue arises in connection with the property.\textsuperscript{131} This foreigner exception has come to be referred to as the “Calvo Clause.”\textsuperscript{132} While this provision seems quite harsh, in reality it has never been enforced.\textsuperscript{133} Furthermore, if a foreigner agrees to be considered a Mexican national with respect to the property, and promises not to invoke the protection of his/her government if an issue arises, then the Ministry of Foreign Affairs (the Ministry) cannot deny the fulfillment of that foreigner’s real estate purchase.\textsuperscript{134}

\textsuperscript{128} Pasero & Torres, \textit{supra} note 10, at 783.
\textsuperscript{129} \textit{Id.} at 802–03.
\textsuperscript{130} Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 27, para. I., Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).
\textsuperscript{131} Roberto Cannizzo, \textit{Ownership and Financing of Real Estate in Mexico, in \textit{DOING BUSINESS WITH MEXICO: RECENT DEVELOPMENTS AND INNOVATIONS} 1–2 (1994).}
\textsuperscript{132} \textit{Id.} at 2. The “Calvo Clause” name honors its author, Professor Carlos Calvo from Argentina, “whose thesis maintained that intervention of diplomatic representatives or armed forces of a country to support claims of their nationals against another Country is a flagrant violation of the principles of International Law.” Pasero & Torres, \textit{supra} note 10, at 785 n.6 (referencing LEONEL PEREZNIETO CASTRO, DERECHO INTERNACIONAL PRIVADO 461 (1989)).
\textsuperscript{133} Pasero & Torres, \textit{supra} note 10, at 785.
\textsuperscript{134} \textit{Id.} at 786–87.
Thus, by waiving these rights, a foreign individual or entity may acquire a fee simple title to Mexican land.

The Calvo Clause exception, however, does not mean that foreigners are allowed to purchase any Mexican property they desire. The Mexican Constitution further describes a strip of land known as the "restricted zone" in which foreigners are expressly forbidden from acquiring fee simple title. Consequently, the Calvo Clause only applies to real estate located outside of this prohibited area.

Until 1989, foreigners were prohibited from owning any rights to property located within the proscribed area. This restriction was partially liberalized with the passage of the 1989 Foreign Investment Regulations, which included a provision allowing foreigners to hold real estate in this area through the creation of a trust, or a "fideicomiso." Designed to allow investors to obtain real estate without granting them fee simple title (since this is prohibited by the Mexican Constitution), the fideicomiso is a trust arrangement whereby the Mexican bank serves as the trustee for the foreign beneficiary. The trusts usually last thirty years with optional renewal periods of an additional thirty years. While foreigners were still denied the right to own fee simple title, this was the first step in opening Mexican real estate to foreign investment.

2. 1993 Foreign Investment Act

Four years later, the Mexican government took another leap towards liberalizing its foreign property laws with the passage of the 1993 Foreign Investment Act (1993 FIA). One of the most important methods of foreign investment is through the acquisition of real estate. With foreigners still being denied the ability to acquire fee simple title to property within a significant portion of the country, much needed capital was being directed elsewhere and change was inevitable.

---

135 Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 27, para. 1., Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).
136 See Cannizzo, supra note 131, at 2.
137 FEDOROWICZ ET AL., supra note 80, at 95.
138 Id.
139 Id.
Consequently, on December 27, 1993, a new foreign investment law was issued that stated:

Mexican companies with majority or minority foreign investment may now directly acquire real estate located within the restricted zone . . . as long as (i) such real estate is not for residential purposes (i.e., industrial, commercial and/or tourism activities in general), and (ii) that said acquisition is registered before the Ministry of Foreign Relations [“SRE”].

Accordingly, foreigners could now own 100% of the capital stock of a Mexican corporation that owned such real estate without needing to establish a trust to own the fee for their benefit.

The changes did not stop there though as the 1993 law was soon amended in 1996. Investors undoubtedly felt uneasy about investing millions of dollars into real estate from which they could only derive a beneficiary use. In an effort to deal with this problem, one of the most striking amendments finally gave foreign investors the ability to acquire direct title of nonresidential land and waters within the restricted zone, provided they enter into a “Convenio,” referred to in Article 27, Section I of the Mexican Constitution. The Convenio is an agreement whereby the foreigner agrees: (1) to be considered as a Mexican national regarding the property in question; (2) not to invoke the protection of his/her government . . . ; [and] (3) [in addition to what the constitution states, is] under penalty of forfeiting to the government of Mexico the property object of the agreement if the agreement is violated.

Since 1996, no further amendments to the 1993 law have been made.

---

141 MEXICAN LAW LIBRARY COMMERCIAL CODES, supra note 12, at 257.
142 See id. at 247.
143 See Vargas, supra note 11, at 20–21; see also Thomsen, supra note 15, at 20 (commenting that without the ability to own real property, foreign investors face considerable insecurity and are unable to use the land as collateral for local borrowing).
144 Vargas, supra note 11, at 21.
145 Id. at 21–22.
C. Present Day Mexico

So, where does the country stand today? How do Mexico’s recent foreign investment laws resonate with foreign investors looking to buy real estate in Mexico? Essentially, the foreign investment laws, and most notably the 1996 amendments to the 1993 FIL, have interpreted Article 27 of the Mexican Constitution very liberally. In fact, it could be argued that these laws completely ignore the constitutional provision by allowing foreigners to purchase land in areas that are expressly prohibited in the constitution. Nevertheless, Mexico has seemed to turn its head to this contradiction because an attack on the 1993 FIL’s constitutionality would bring disastrous consequences. While in the days when the constitution was enacted the prohibitions on foreign property ownership seemed justified, now that we have entered into an era of globalization, the constitution is “more of an obstacle to foreign investment than a protective provision.”

Therefore, as it stands today, the amended Mexican laws provide foreign individuals and corporations with many new and enticing opportunities to invest in Mexican real estate. First, they may acquire direct ownership of fee simple title to Mexican property anywhere outside the restricted zone so long as they consent to the Calvo Clause. Second, if the land is located within the restricted zone, there are two options available to foreigners—one for investors seeking nonresidential use of the property and another for those investors simply looking to reside on the Mexican property. This framework raises the issue of what is a residential versus a nonresidential use of the property.

Article 5 of the 1998 Regulations helps define these activities. While a residential purpose is one in which the property is used exclusively as a dwelling (i.e., foreign persons who retire in or have a second home in Mexico), a nonresidential activity includes a commercial or industrial use involving the investment of millions of dollars. In short, nonresidential activities include those which generate permanent employment for Mexican

146 Id. at 22.
147 Id. at 22–23.
148 Pasero & Torres, supra note 10, at 793.
149 See id. at 787.
150 Vargas, supra note 11, at 24.
151 Id. at 24–25.
152 For example, investment into industrial parks, hotels, shopping centers, ports, warehouses, commercial centers, etc. Id. at 6.
nationals.\textsuperscript{153} Instituted under the 1989 Regulations and reinforced by the 1998 Regulations, if the foreign investor plans to treat the property as a residence, he or she may not directly acquire a fee simple title, but must establish a trust (or a fideicomiso).\textsuperscript{154} The fideicomiso is a novel legal innovation that finally provides foreign individuals with at least a beneficiary right to Mexican property, where previously foreigners were entitled to no property rights whatsoever. Applications for a trust must be submitted and approved by the Secretaria de Relaciones Exteriores or SRE (Secretariat of Foreign Affairs).\textsuperscript{155} On the other hand, if the property is used for nonresidential purposes, the foreign investor finally has the ability to acquire fee simple title to the land.

Following the passage of these laws, Mexico's foreign investment has dramatically increased. In 1989, Mexico received merely $6.6 billion in foreign investment; however, by 1992 it increased by an impressive 10.6\%, bringing the total investment to $37.5 billion.\textsuperscript{156} In 1996, the numbers declined slightly, amounting to $22.6 billion.\textsuperscript{157} Nevertheless, the new laws have clearly made it easier and more attractive for foreign investors to acquire and develop Mexican real estate.\textsuperscript{158} Consequently, investors are being lured away from Mexico's competitors and are directing their capital into the Mexican economy. While Mexico's property regime is not flawless, it certainly has become more modern, flexible, and "in closer symmetry with global economic trends."\textsuperscript{159}

\section*{IV. Mexico as a Template for the Philippines}

While Mexico and the Philippines are unique countries facing very different problems, both are committed to the same goal of stimulating foreign investment in order to boost their national economies. Therefore, the success of Mexico's approach should serve as a template for a similar amendment to the Philippines' laws. An analysis of the similarities between these two countries will make this apparent.

\begin{flushleft}
\textsuperscript{153} Id. at 6.  \\
\textsuperscript{154} Id. at 30.  \\
\textsuperscript{155} Vargas, supra note 11, at 30–31.  \\
\textsuperscript{156} FEDOROWICZ ET AL., supra note 80, at 41.  \\
\textsuperscript{157} Vargas, supra note 11, at 9.  \\
\textsuperscript{158} Cannizzo, supra note 131, at 2.  \\
\textsuperscript{159} Vargas, supra note 11, at 46. 
\end{flushleft}
A. Similarities Between Mexico’s and the Philippines’ Laws

In this era of globalization, countries are constantly placed in competition with one another, and the race to gain foreign investment dollars is no exception. Like many other countries, both Mexico and the Philippines have overcome a nationalistic attitude and have begun to focus their efforts on stimulating foreign investment in order to remain competitive with other nations. The Philippines, however, must recognize that in order to stimulate foreign investment, it must amend its foreign property laws in a way similar to Mexico.

A glance at the Philippine and Mexican foreign investment laws reveals a similar history and progression. The constitutions of both countries grant the government significant control over foreign ownership requirements. Initially, each country used this power to limit foreign investment and promote a nationalistic policy. The 1987 Omnibus Investments Code stipulated that entities could not be more than 40% foreign-owned, in the same way that the 1973 FIL limited foreign participation to 49%. Gradually, each country removed these investment obstacles and provided for 100% equity participation.

The nationalistic policy both countries initially shared is also reflected in each country’s constitutional provisions governing foreign property ownership. The Philippine Constitution explicitly denies foreign individuals and corporations (that are more than 40% foreign-owned) the right to directly own public or private land, while the Mexican Constitution similarly prevents foreigners from occupying land within the restricted zone. Realizing the

---

160 See Vargas, supra note 11, at 10.
161 Compare Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 27, para. I., Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), with CONST. (1987), Art. XII, §§ 2–9, (Phil.).
163 Ley de Inversión Extranjera [L.I.E.] [Foreign Investment Law], as amended, Diario Oficial de la Federación [D.O.], 9 de Marzo de 1973 (Mex).
disincentive this posed to investors, however, Mexico liberalized its restrictions while the Philippines' foreign property laws have remained unchanged. Nevertheless, change is inevitable if the Philippines hopes to remain competitive with its nearby neighbors.

In addition to their comparable approaches to foreign investment and foreign property ownership, both Mexico and the Philippines contain miles of beaches that carry great potential for development and promotion. Over time, each country has found ways to exploit these areas to its own benefit. Realizing the attraction of coastal land and desiring more foreign capital, Mexico, to some extent, ignored its own constitution by opening up the "restricted zone" to foreign real estate investment. By giving foreign individuals a beneficiary residential use of the land and fee simple title for nonresidential use, Mexico created a new pipeline for the flow of foreign funds.

The Philippine government similarly recognized the potential for development in certain areas of the country and in 1995 expanded the establishment and use of ecozones to develop and modernize the country. With the passage of The Special Economic Zone Act of 1995, seven categories of ecozones were created. These areas were created by the government to be independent communities that administered their own economic and financial development with minimum government interference. By creating tax exemptions for businesses located within the ecozones and by providing other appealing incentives, the Ecozone Act has successfully lured foreigners to invest in the country.

Unlike Mexico, however, the Philippines have not yet tapped all their available resources. While the country has provided important investment incentives through the use of ecozones, foreigners are still deprived of the right

169 The "ecozones authorized under the Act are: industrial estates; export processing zones; free trade zones; tourist/recreational centers; agro-industrial economic zones; information technology parks; and . . . financial centers." Mejia, supra note 5, at 492.
171 In 2003, there were "436 firms located in publicly-developed ecozones, and 441 firms in privately-developed ecozones." Mejia, supra note 5, at 493.
to own land. In the same way that this restriction dissuaded investment in Mexico, foreigners would certainly be nervous about investing in the Philippines when they are only guaranteed a lease of the land. Admittedly, there are some foreign investors who do not wish to own land and would not be dissuaded by the current state of the Philippine laws. Nevertheless, in order to truly open up the country to increased foreign investment and to stop sending investors a mixed message, the Philippines must provide foreign corporations with at least the option of acquiring a permanent title to Philippine land.

This is not to say that the Philippines has not made strides within the past few years. The country took its first step by enacting the Investors' Lease Act in 1993. The Act is similar to the Mexican fideicomiso, as each attempts to grant possessory rights to foreigners—just not permanent fee simple legal rights. The trust gives the foreign investor a beneficiary use of the residence, while the Philippine government provides a comparable right to lease land. In each situation, investors have access to land, but are not assured this right will go on forever. While the two countries' approaches are not identical, their goals are essentially the same. Both laws convey each country's desire to protect its homeland from foreign exploitation.

The similarities between the two countries should make Mexico's recent property law amendments attractive to the Philippine government. Each country has followed a similar progression, evolving from a nationalistic country protective of domestic markets, to one that now realizes the significance of foreign investment. Unlike the Philippines though, Mexico has found a way to expose its real estate to foreign investors while still imposing limits and maintaining a sense of national sovereignty. The country has shown how a nationalistic policy toward foreign investment can be congruent with conditions that favor global liberalism. However, the Mexican approach will not serve as a perfect template for the Philippines because of inherent differences between the two countries. Nevertheless, by highlighting and recognizing these differences, the Philippines can build upon the Mexican

172 See CONST. (1987), Art. XII, § 2, (Phil.).
174 See id.; Vargas, supra note 11, at 25.
175 Vargas, supra note 11, at 25.
AMENDING THE PHILIPPINES' LAWS

approach and arrive at a workable solution uniquely tailored to fit their own country.

B. Differences Between Mexico's and the Philippines' Laws

Perhaps the most important difference involves the Philippines’ Comprehensive Agrarian Reform Program (CARP). Seeking to prevent land concentration and to reduce the widespread poverty among landless peasants, the Philippine government created CARP, a program dedicated to distributing agricultural land to small farmers. Unlike past agrarian reform programs, CARP affects both public and private lands. The program, in its third and most contentious phase, has created growing concern over the scarcity of land, and allowing foreign individuals and businesses to purchase real property certainly will not improve the situation or alleviate this concern.

Notably, CARP offers several exemptions extended to landowners, multinational corporations, and agribusinesses. Corporate stock distributions and lease back arrangements are two alternative procedures that allow these individuals/entities to avoid parceling and a redistribution of the land. While these exemptions benefit foreign-owned companies, the foreign corporations are still being denied the ability to directly own land and are consequently being sent mixed messages. As a result, the Philippine government must clarify its laws “to avoid disputes that have the potential of encouraging domestic unrest and discouraging foreign investment particularly in industrial and real estate development.” Foreign investors need assurances that the lands they acquire will not be subject to a later dispute. The Mexican approach may not serve as a perfect template because Mexico did not have a similar agrarian reform program to take into consideration.

177 Pedro, supra note 3, at 351.
178 The third phase targets private lands and seeks to distribute twenty-four to fifty hectares to landless farmers. Id. at 330.
179 Id. at 340.
180 Corporate landowners are given the option of distributing their agricultural lands to the government or to qualified beneficiaries, or to give the beneficiaries the opportunity to purchase a proportion of the corporation’s capital stock that the land bears in comparison to the company’s total assets. Id. at 332.
181 While CARP stipulates that the beneficiaries may not sell, transfer, or convey the land for a period of ten years (except through hereditary succession, to the government, or to other qualified beneficiaries), qualified beneficiaries are entitled the right to form cooperatives and lease the land. Id. at 333.
182 Id. at 351.
Therefore, when looking to Mexico for guidance, the Philippines must consider the effects an amendment could have on CARP.

Secondly, the Philippines must realize that it does not share the same trade relationship with the United States that Mexico enjoys. In December of 1992, the United States, Canada, and Mexico signed the North American Free Trade Agreement (NAFTA), which eliminated trade and investment barriers among the three countries. Taking the form of a treaty, this agreement supersedes Mexico’s internal legislation (i.e., foreign investment laws) and “injects more transparency into the rules that govern foreign investment in Mexico.”

Unlike Mexico’s liberal foreign investment laws, NAFTA cannot be modified unilaterally, as all three countries must consent to any amendments. Consequently, rather than having to rely on liberal domestic regulations that frequently change, or on the discretion of government officials to apply the law in a liberal manner, “NAFTA essentially requires the parties . . . to permit foreign investment in their respective countries based on economic decisions made by investors.” Thus, the United States, Mexico, and Canada now have a common purpose in avoiding unilateral restrictions on foreign investment.

There are some reservations to NAFTA, however, that potentially limit its liberalizing effect. In particular, foreign investment in real estate is excepted from NAFTA’s treatment, as restrictions are still placed on foreigners seeking to purchase real estate within the restricted zone. Foreigners may not acquire “direct dominion” over land or water in the restricted zone, but may acquire a Certificate of Ordinary Participation (COP) which permits the individual to control real estate located within these prohibited areas. In this way, NAFTA does not affect Mexico’s internal laws governing foreign property ownership. Nevertheless, the trade agreement between the countries has helped facilitate foreign trade and stimulate foreign investment.

As the Philippines evaluates the success of the Mexican approach, it should consider Mexico’s unique trade relationship with the United States and Canada. The Philippines receives roughly 30% of its foreign investment from the United States. While an amendment to the foreign property laws would certainly promote additional investment, the Philippines must realize that

---

183 Fedorowicz et al., supra note 80, at 72.
184 Camp et al., supra note 81, at 792.
185 Id.
186 Id. at 792–93.
187 Id. at 796.
188 Id.
189 Thomsen, supra note 15, at 10.
Mexico’s amended laws are certainly not the only reason the country’s foreign investment numbers have increased. NAFTA has further removed foreign investment obstacles and has created a trade relationship between the three countries that the Philippines does not possess.

Finally, the differing strengths of the two countries must also be noted. Mexico is a strong state with not only economic resources, but political ones as well.190 While still described as a developing country, Mexico exhibits characteristics typical of developed, industrialized economies.191 The Philippines, in contrast, has struggled over the past few decades and has been taken off the radar screen of many international investors.192 Consequently, the Philippines has much more ground to make up with less resources at its disposal. Despite these differences, Mexico’s innovative approach provides a workable template that can be tweaked to accommodate the Philippine nation.

C. A Proposed Solution

While there is obviously not one clear-cut solution to the Philippines’ current economic situation, amending the Philippine foreign property laws is a necessary first step in the right direction. The harder task is devising an approach that can coexist with the country’s agrarian reform program. How can the country’s real estate market be opened up to foreign investors when property is already scarce? The best approach is to limit change to targeted areas where increased investment is guaranteed, but where there is not the threat of foreign investors buying too much land.

In this effort, the Philippines should treat its ecozones like Mexico’s restricted zone and allow foreign investors to obtain a fee simple title so long as they engage in nonresidential activities. Unlike residential uses of land that do not bring in much foreign capital, nonresidential uses bring increased investment and generate permanent jobs for Philippine nationals—both of which would contribute to the Philippine economy. Furthermore, it is unlikely this will result in foreign investors running to the Philippines to purchase all of the land. The Philippine corporations already own the land in the industrial areas. This amendment would simply give foreign investors the right to obtain a fee simple title to this land rather than a mere beneficiary use. While this

190 See WHITING, supra note 101, at 24.
191 FEDOROWICZ ET AL., supra note 80, at 9.
192 See THE PHILIPPINE ECONOMY, supra note 13, at 5.
amendment will lure foreigners to invest in Philippine companies, the change of property ownership will not adversely affect CARP—which is targeted at agrarian reform. So long as the property amendments are limited to industrial areas, the two laws could coexist harmoniously.

As for residential property, the Mexican trust is not as attractive a feature for the Philippine government. Allowing foreign individuals to purchase a vacation or second home in the Philippines is just not feasible given the shortage of land. This type of amendment would further perpetuate the land problem while not bringing in appreciable investment (as compared to investment related to nonresidential uses of land). Thus, the Philippines should limit its focus to amending its property laws to allow foreigners to directly acquire nonresidential land in specific industrial areas or ecozones.

Of course, a proposed amendment such as this would run into constitutional barriers, as the Philippine Constitution expressly prohibits foreign individuals and corporations (that are more than 40% foreign-owned) from acquiring fee simple title to land. Mexico faced a similar problem, but it ignored the restrictive constitutional provisions and amended its property laws nevertheless. Thus, the Philippine government must similarly interpret its restrictive constitution liberally and amend its foreign property laws in order to boost a threatened economy.

V. CONCLUSION

As the Philippines now faces a self-proclaimed economic crisis, it is imperative that the country reexamine and amend its laws governing foreign property ownership. Foreign property ownership is a significant source of foreign investment, and foreign investment is an integral part of the Philippine economy. Currently, the Philippine government prohibits foreign corporations from acquiring a fee simple title to land unless the corporation is at least 60% Philippine-owned. This protective law must be changed or investors will be lured away by the Philippines’ nearby neighbors who do not erect such investment obstacles.

As the Philippines grapples with this reality, it should look to Mexican law for guidance in amending its laws. Mexico has similarly had to evolve from a strongly nationalistic country to one that embraces and encourages foreign investment. While there are many differences between the two countries, Mexico’s unique approach to this problem should serve as a template

193 CONST. (1987), Art. XII, § 2, (Phil.).
nonetheless. More specifically, Mexico's innovative laws governing ownership of land within its restricted zone can, and should, be applied to the Philippines' ecozones. The Philippines must allow foreign-owned companies to purchase real estate within these industrial areas in order to increase foreign investment, generate employment opportunities, and remain competitive with other nations. While this is clearly not the only solution to the Philippines' current economic situation, it is a first and necessary step in the right direction.