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Real Estate, Infrastructure and Hospitality Practice and Litigation and Alternative Dispute Resolution Practice Group Joint Newsletter



Initiative to Amend the National Law of Termination of Ownership

On July 21, 2021, Representative Silvia Lorena Villavicencio Ayala of the Morena Parliamentary Group, Representatives Dulce María Sauri Riancho and Ma. Sara Rocha Medina of the Institutional Revolutionary Party Parliamentary Group, Representative Juan Carlos Romero Hicks of the National Action Party Parliamentary Group, Representative Martha Tagle Martínez of the Movimiento Ciudadano Parliamentary Group and Representatives Verónica Beatriz Juárez Piña and Abril Alcalá Padilla of the Democratic Revolution Party Parliamentary Group, presented an initiative (the "Initiative") to amend the National Law of Termination of Ownership (the "Law"), with the purpose of clarifying or completing legal assumptions not provided for in such Law, as well as to comply with the decision of the Mexican Federal Supreme Court of Justice in the Action for Constitutional Review 100/2019, which was resolved this June 2021.

From the Initiative can be highlighted the amendment to Article 2 of the Law that introduces the term "provisional use", which conceptually reproduces the previous term "anticipated disposition", which is defined as the allocation of assets during the ownership termination proceeding, prior to the issuance of the final resolution.

Likewise, the Initiative aims to clarify which authorities will participate in the preparatory stage of the ownership termination action. The Initiative specifies that the

Specialized Public Prosecutor's Office assigned to the Specialized Unit for Termination of Ownership will be in charge of the investigation and exercise of the Ownership Termination action.

Among the authorities granted to such Specialized Public Prosecutor's Office, it is worth noting the authority to request information of clients from banking institutions and other entities of the financial system, with prior judicial authorization. Therefore, banking, exchange, stock exchange or tax secrecy cannot be opposed, and access to information contained in databases will not be prevented in proceedings for ownership termination.

Once the information has been gathered by the Specialized Public Prosecutor's Office to exercise the ownership termination action, the owner of the asset will be summoned so that he/she may appear to justify the legitimate origin of the asset ownership, within a term that shall not exceed twenty business days.

In addition to the foregoing, it is proposed to amend Article 9°, which sets forth the conditions for the ownership termination action proceeding, to read as follows:

- Existence of an investigation for the alleged commission of an illicit act;
- Existence of any property of illicit origin;

- The nexus of the two previous items; and
- The link between the holder of the assets rights and the invoked cause of ownership termination.

Additionally, it is proposed to establish a ten-year statute of limitations from the day after the Public Prosecutor's Office in charge of a criminal proceeding informs the administrative unit of the Prosecutor's Office responsible for exercising the ownership termination action, of the existence of Assets subject to the application of the provisions in the Law. Therefore, if such amendment was to be approved, a ten-year statute of limitations period would be established to initiate such action, contrary to what is currently provided, since the Law sets forth that the action is not subject to any statute of limitations.

Likewise, the mentioned reform establishes that when the restitution of the property that has been sold in advance is judicially ordered by a final judgment, the person subject to the proceeding will receive the proceeds of the sale, plus the yields, earnings and accessories, without the administration expenses being born by him/her. On the other hand, the reform also seeks to clarify the process of determining the retribution percentage to private individuals as a consequence of their collaboration during the preparation stage of the action carried out by the Specialized Public Prosecutor's Office.

It is proposed that this initiative enters into force the day after its publication in the Federal Official Gazette, and the Executive Branch will be granted a term of 180 days after its entry into force to make the necessary regulatory amendments for the implementation of such decree.

For more information regarding the issuance of the National Law of Ownership Termination, please see the prior Bulletin published by this firm on October 3, 2019 available at: <https://sanchezdevanny.com/en/litigation-and-alternative-dispute-resolution-practice-group-newsletter-october-03-2019/>.

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Our firm's multidisciplinary profile includes corporate, compliance, tax, regulatory and dispute resolution counsel. We remain available for any question and/or clarification in connection with the foregoing.

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