

NEWSFLASH

The Letter of Intent for Real Estate Projects

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As a result of the effects caused by nearshoring in Mexico, the industrial real estate market has seen an increase in the demand for the acquisition and leasing of industrial space, thus creating a “sellers and landlords’ market”.


The limited availability of ideal conditions for certain projects has caused a significant increase in the cost per square meter of land, as well as in existing and in progress industrial buildings, which has caused changes in both the negotiating dynamics of new real estate purchase projects and in lease renewals.

A Letter of Intent (also known as LOI) should be a useful tool for the subsequent legal implementation of a transaction in a more agile and functional process. It is therefore important to better understand the legal nature of the Letter of Intent in Mexico.

The Letter of Intent comes from the Anglo-Saxon legal system, in which it is used as a way of establishing a series of previous economic and business understandings for the negotiation of a specific agreement, granting the parties a level of certainty regarding the essential terms of the transaction to be implemented, including details such as the location and asking price for negotiating a lease or purchase and sale of real property. Generally, in Anglo-Saxon law the Letter of Intent is not binding on the parties, but it implies a good faith set of principles for the negotiation to be based on the preliminary understandings contained therein.

In Mexico, in general, the Letter of Intent is not regulated specifically by civil law; however, considering the rules of interpretation of contracts, it is established that the general rules for the most similar contract would apply.

It is important to clearly establish which parts of the Letter of Intent are binding and which are not, precisely in order to prevent a Letter of Intent from being construed as a promise to make an agreement, by which the parties agree to the terms of the final intended agreement to be executed in a certain time, or construed as a definitive agreement, due to assumed agreed definitive terms therein contained.



For the above reasons, it is common to establish in the Letter of Intent that it is not binding except for certain specific sections, such as confidentiality, the exclusivity period for negotiation, and to establish in good faith a period for negotiations between the parties to reach an agreement and execute the intended definitive and binding contract.

Some provisions that are commonly included in a Letter of Intent for real estate transactions include the following:

- a. Term;
- b. Simple identification of the real property;
- c. Intended price;
- d. Expectations, availability and access to utilities (Water, sewer, electricity, gas, etc.);
- e. Intended use of the property;
- f. Legal “Due Diligence” Period for the buyer or tenant to carry out their own research on the real property;
- g. Confidentiality for the information provided by the parties and the confidentiality term;
- h. Exclusivity period for negotiation, with the temporary withdrawal of the real property from the market during the term of Letter Of Intent;
- i. Binding and non-binding provisions or clauses; and
- j. Applicable law and jurisdiction for disputes, specifically for binding provisions.

The Letter of Intent grants a good opportunity to establish the essential business aspects for the parties to enter into formal negotiations and which promotes progress in the expectation of reaching a commercial and legal agreement. However, in Mexico, it is essential to precisely establish the binding and non-binding provisions to avoid it being construed as a promise to make an agreement or the intended final agreement itself.

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