



## MEXICO CITY: MODERNIZING REAL ESTATE TRANSACTIONS Rollout of Working Group Results

On May 6, the *Tribunal Superior*, the highest court of Mexico's Federal District (*Distrito Federal* – D.F), hosted an important evening event to highlight ongoing efforts to introduce to Mexico best practices and model contracts in real estate law. The audience of nearly 150 included judges, businesspersons, law clerks, notaries, academics, and law students. The event was organized in conjunction with the Court's Judicial Training Institute (*Instituto de Estudios Judiciales* – IEJ) and with the National Law Center for Inter-

American Free Trade (NLCIFT) in its capacity as a partner of the Global Development Alliance (GDA) of the U.S. Agency for International Development (USAID).

The Court established a working group comprised of judges, notaries, real estate professionals, merchants and law professors who, over a period of more than half a year, reviewed existing real estate practices in the light of Mexican case law and code provisions

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*Two views of the May 6 presentations. Left photo shows Teresa Perez, a diplomat at the U.S. Embassy, Mexico; and Amb. Charles S. Shapiro, Senior Coordinator of the U.S. Department of State's Western Hemisphere Trade Task Force*



## HONDURAS: PRACTICAL TRAINING FOR THE NEW SECURED TRANSACTIONS LAW



*(L. to R.) Banker Dennis Bourgeois, AHIBA Executive Director Lic. María Lydia Solano, bank regulatory expert Avery Belka, Esq. and NLCIFT attorneys Dr. Marek Dubovec and Cristina Castañeda*

With Honduras' new law on secured transactions scheduled to take effect in mid-2010, the National Law Center for Inter-American Free Trade (NLCIFT) in cooperation with the Honduran Association of Banking Institutions (*Asociación Hondureña de Instituciones Bancarias* – AHIBA) and the Millennium Challenge Account for Honduras (MCA-H) organized practical training sessions for bankers, lawyers, business leaders, bank regulators and others on the implementation of the new law. The training program in March drew more than sixty participants and in May more than eighty. Sessions on March 12-13 focused on the application process and loan documentation, while the May 13-15 sessions covered regulations and loan monitoring. *continued on page 3*

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## MEXICO CITY: MODERNIZING REAL ESTATE TRANSACTIONS

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and prepared a series of recommendations, including many that can be implemented without legislative action. The working group's suggestions, for use in approaching real estate dealings, included: a set of model contracts, including a simple purchase-sale agreement (*contrato privado de compraventa*), a promise of sale (*contrato privado de promesa de compraventa*) and a guarantee trust for an option to purchase real property to be set up by the buyer and seller with a bank named as trustee (*contrato de fideicomiso irrevocable de garantía*)—it is the practice in Mexico to use such a trust to handle large commercial transactions of real estate where the trustee acts as the equivalent of a US escrow agent. The working group also presented a guide to best commercial practices related to the model contracts and some recommendations to reform provisions of the Civil and Commercial Codes of Mexico.

Noteworthy was the inclusion of an alternative dispute resolution (ADR) clause in the model contracts as a means to resolve controversies related to or arising from these real estate agreements. The parties must first try to solve any dispute via the free mediation service available at the Center for Alternative Justice (CAJ), an institution which operates under the *Tribunal Superior*. If no agreement is reached under mediation, the parties may then take the dispute to arbitration.

Chief Magistrate of the *Tribunal Superior*, Edgar Elías Azar, who has been deeply involved in this effort from the beginning, made the opening remarks followed by NLCIFT Founder and President Dr. Boris Kozolchyk, who provided background on the workshops and working sessions that had led to this moment. Presenting the working group recommendations were: Judge Judith Cova Castillo on the trajectory of the working group; Lic. Héctor M. Cárdenas Villarreal, Lic. Adrián Iturbide Galindo and Judge Fernando Aparicio on significant characteristics of the proposed model contracts; Lic. Enrique Gómez Monroy and Judge Juan Bruno Ubiarco Maldonado on the best practices guide; and Dr. Vicente Fernández Fernández on suggestions for legislative reform. This was immediately followed by a presentation on the ADR clause in the model contracts by two members of the NAFTA 2022 Committee on Private Commercial Disputes: Lic. Cecilia Azar (Mexico) and Philip A. Robbins, Esq. (US). The participants in this effort all recognized that contract “uncertainty” is a main reason why Mexico lags in international competitiveness. Several of the speakers noted that this project was a historic process, because, for the first time, this Court was taking a proactive stance to introduce best practices and develop model contracts. A new law of commercial contracts will emerge from the best commercial and professional practices and judicial interpretations of them and not only from statutory or code provisions.

### OTHER MEXICO CITY MEETINGS

Leading up to the evening meeting on May 6, NLCIFT attorneys Boris Kozolchyk, Phil Robbins, Kevin O’Shea and Cristina Castañeda met for a working session with members of the working group and CAJ mediators. In the afternoon at the U.S. Embassy, NLCIFT attorneys briefed U.S. Ambassador to Mexico Carlos Pascual and leading members of his staff on the outcome of the working group deliberations as well as on recent developments in the area of secured transactions. Among Embassy staff present was Elizabeth Bauch of the USAID office in Mexico. Also present was Senior Coordinator of the U.S. Department of State Western Hemisphere Trade Task Force Amb. Charles S. Shapiro, who also attended the evening event (see photo on the preceding page).

The following morning NLCIFT attorneys met with Chief Magistrate Edgar Elías Azar and IEJ Director Lic. Ángela Quiroga Quiroga to discuss future joint work on best practices for specific economic or industrial sectors, ADR and strategies for oral trials. NLCIFT will continue to support the work by the Mexico City judiciary to improve commercial adjudication, under the leadership of Chief Magistrate Elías Azar. Ongoing work with the judiciary is aimed at creating more effective and efficient justice processes to enhance Mexico’s competitiveness and promote greater economic development.

There were two more events to round out a very full schedule. On May 7, Amb. Charles Shapiro hosted a robust roundtable discussion on Mexico’s efforts to implement secured transaction reforms in Mexico. Kozolchyk, others from NLCIFT and Justice Juan Luis González Alcántara joined the dialogue along with representatives from Mexico’s Commerce and Foreign Relations Secretariats, the Mexican Bankers Association and other members of the financial sector, including credit cooperatives and microfinance professionals, and selected U.S. Embassy staff. Lastly, Kozolchyk was interviewed for a nightly Mexico City-nationwide radio program where he spoke about the likely effects of the real estate proposals as well as the need for modernization of laws and legal processes and, in particular, the competitive potential for Mexico with respect to reforms in the area of secured transactions.

## MEXICO CITY: REAL ESTATE

(Standing) NLCIFT Deputy Director Kevin J. O'Shea, Esq.; CAJ Mediators Lic. Sofia Victoria Quintal Ramírez and Lic. Enriqueta Bejarano Alfonso, Director for Civil-Commercial Mediation; Civil Court Judge Lic. Juan Bruno Ubiarco Maldonado; NLCIFT President Dr. Boris Kozolchyk; NLCIFT Chairman Philip A. Robbins, Esq.; ITESM Professor Dr. Vicente Fernández Fernández; (seated) Lic. Ariana E. Garcia of the IEJ, and Lic. Cecelia Azar



## HONDURAS: PRACTICAL TRAINING

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In discussing documentation for loans, the March session outlined the range of collateral that can be used in secured transactions and dealt with handling relations between a bank and a client, whether a new or existing client. For consumers, that range can include vehicles, domestic appliances, household goods, etc. Sessions on commercial loans covered loans secured by warehouse receipts, intellectual property, fixtures, accounts receivable, inventory, equipment, crops and livestock, or "the totality of the goods of the debtor." For each class of loan, presenters discussed the documentary information required prior to issuance, the legal and banking considerations, modalities for using the new secured transactions registry, and the relation to other registries

that may exist, e.g., as for patents, as well as any exceptions with respect to registration.

Presenters in March included banking consultant Jimena Valdés and three NLCIFT attorneys: NLCIFT Board member Prof. Dale B. Furnish, Project Coordinator Dr. Marek Dubovec and local Project Consultant Lic. Octavio Sánchez Barrientos. Valdés has extensive experience in the banking industry, serving high-profile clients and dealing with financing operations and audit compliance for major banks in the U.S. Furnish taught international and commercial law, including secured transactions and bankruptcy law, for many years at Arizona State University, has been visiting professor at two universities in Mexico (*Universidad Nacional Autónoma de México* – UNAM and the *Universidad de Sonora* – UNISON) and at the Catholic University (*Universidad Católica*) in Peru and

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now consults on legal reform in the area of secured transactions and has contributed to projects in Mexico, El Salvador and Tanzania as well as to this project in Honduras. Dubovec has represented NLCIFT in several international fora, including working groups of the United Nations Commission on International Trade Law (UNCITRAL) and the Organization of American States (OAS) and taught secured transactions law at the University of Arizona. Sánchez Barrientos was Honduras' Minister of Culture, Arts and Sports (2005-2006) and also has been recognized for his contribution to resolving long-standing land tenure problems in Honduras that affected thousands of people.

Dubovec and Sánchez Barrientos were also presenters at the May sessions where they were joined by Avery Belka, Dennis A. Bourgeois and NLCIFT Research Attorney Cristina Castañeda. Belka is an expert on banking regulation. Bourgeois is Sr. Vice President & SBA Lending Manager at Sunrise Bank of Arizona, a position that includes overseeing a portfolio of loans to small businesses. Bourgeois previously was at JPMorgan Chase for over 30 years and had particular responsibilities for building and managing relationships for middle market business credit as well as for special areas including Native American, agribusiness and construction. Castañeda previously practiced law in El Salvador and has worked on law reform projects in the areas of secured transactions, administration of justice, and others.

The May sessions covered the situations that can arise after the loan secured with personal property is made and outlined the nature of appropriate regulations under the law. The presenters spoke about: U.S. and international practice in monitoring such loans; reports, personnel and physical inspections for monitoring a loan; mechanisms for identifying problems (e.g., in the debtor's finances or in case of fraud) and, if appropriate, rendering assistance to a debtor who may be in temporary or more serious financial distress. The sessions then moved on to foreclosure of such loans in case of default. The presenters discussed the extra-judicial and judicial processes – practical steps, documents, warnings, time periods, etc. – for the creditor to gain possession of the collateral, its disposition and distribution of sale proceeds. Lastly, the sessions focused on: banking regulation at the international level – particularly in light of the international credit crisis; the current bank regulatory regime in Honduras; the effects of modern banking regulations on secured transactions; and general considerations concerning bank supervisory entities, regulation of risk, and bank capital adequacy. AHIBA Executive Director María Lydia Solano delivered closing remarks at the end of the session.

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