

## 中国买家投资瑞士房地产 Swiss real estate for Chinese investors



**ROLAND MUELLER**  
菲谢尔律师事务所  
合伙人  
Partner  
VISCHER



**ERIC FLUECKIGER**  
菲谢尔律师事务所  
高级律师  
Senior Associate  
VISCHER

**T**he acquisition of Swiss real estate by non-Swiss residents is regulated by the Swiss Federal Act on the Acquisition of Real Estate by Persons Abroad, commonly referred to as Lex Koller (Arnold Koller was the Swiss federal councillor of justice at the time of the most recent amendment of the act).

While Swiss legislation is very liberal regarding the acquisition of commercial real estate by foreign investors, Lex Koller imposes significant restrictions on acquisitions of residential real estate. This applies in essence to both asset and share deals concerning real estate.

**Asset or share deal.** Like domestic acquirers, foreign investors can purchase Swiss real estate either directly (asset deal) or indirectly by acquiring shares in a real estate company (share deal). The asset deal agreement must be authenticated by a Swiss notary public, and be filed and – to complete transfer of the ownership – registered in the land register of the district or state where the real estate is located. The share transfer agreement is typically in writing (no notarial involvement required) and will be closed by endorsing and/or handing over the respective share certificates, or by the execution of a transfer deed.

**Acquisition of commercial real estate.** A foreign investor may acquire Swiss real estate, which serves a commercial purpose such as a manufacturing site, warehouse, office or retail space. The commercial activities do not need to be carried out by the foreign investor. He or she can, for instance, acquire and rent out commercial properties to tenants who carry out their commercial activities. No permit is required

**非**瑞士居民购买瑞士房地产受到《瑞士联邦外国人士房地产收购法》的管辖，该法通常被称为Koller法案（因为Arnold Koller先生在该法案最近一次修订时担任瑞士联邦委员会司法部长）。

虽然瑞士法律对于外国投资者购买商业房地产的规定非常宽松，但Koller法案对住宅房地产的购买施加了重大限制。这些限制在本质上同时适用于有关房地产的资产和股权交易。

**资产或股权交易。**和瑞士本国的购买者一样，外国投资者可以直接购买瑞士房地产（资产交易），或通过收购房地产公司的股权（股权交易）间接购买瑞士房地产。资产交易协议必须经瑞士的公证处认证并备案，同时，为了完成所有权的转移手续，该协议还必须在房地产所在的区或州的土地登记簿中进行登记。另一方面，股份转让协议通常为书面形式（无需公证），以背书和/或移交相应的股票证书或执行转让契据而完成对该协议的履行。

**收购商业房地产。**外国投资者可以收购用于商业目的的瑞士房地产（如作为工厂车间、仓库、办公或零售场所等）。外国投资者无需亲自开展商业活动。因此，该投资者可以收购商业房地产，随后将其出租给将在那里进行商业活动的租户。购买商业房地产无需获得Koller法案有关部门签发的许可证。在资产交易的情况下，外国投资者只需以书面形式向土地登记处申报其已收购了商用的房地产。同样，通过股权交易收购商业房地产也无需获得Koller法案有关部门的许可。但是，外国投资者必须以书面形式向商业登记处申报其已获得对该公司的控制权并（间接取得了）用于商业目的的房地产。

然而，购买空地或附着即将被拆除的建筑物的地块则通常需要向房地产所在地的区或州的Koller法案有关部门进行备案。如果确定区划法律允许该地块作商业用途，且该地块对于拟定目的的商业用途和

from Lex Koller authorities to purchase such commercial properties. In the case of an asset deal, the foreign investor only has to declare to the land register, in writing, that he or she has acquired the property for commercial use. Likewise, no Lex Koller permit is required for the acquisition of commercial real estate by means of a share deal. The foreign investor, however, has to declare to the Commercial Registry, in writing, that he or she has acquired control over the company and (indirectly acquired) real estate for commercial use.

The acquisition of vacant land parcels or parcels with buildings to be demolished, however, typically requires a filing with the Lex Koller authority of the district or canton where the real estate is located. Such authority will issue a declaratory order to the land register or the Commercial Registry if it is established that the zoning laws permit the commercial use, and that the lot is not over-sized for the intended commercial use and building project.

The order typically also includes a duty to start the commercial use and building project within a specified time, and imposes the duty to sell the property, if such development does not occur within the time limit set.

**Acquisition of residential real estate.** Investors who are neither Swiss nor EU/EFTA (European Free Trade Association) citizens, such as Chinese investors, are only in exceptional cases permitted to acquire Swiss residential real estate. Most notably, a Chinese citizen with residence in Switzerland is entitled to purchase real estate for his or her dwelling without the need for a permit from Lex Koller. The foreign individual acquirer only has to declare to the land register, in writing,

建筑项目来说并不过大,则有关部门会向土地登记处或商业登记处颁发确认性命令。该命令通常包括要求购买者在规定时间内开始商业用途和建设项目的义务,且如果商业开发未在规定时间内开始,则购买者必须出售该房地产。

**收购住宅房地产。**如果投资者既不是瑞士公民,也非欧盟/欧洲自由贸易联盟国家的公民,如中国投资者,则他们只能在特殊情况下收购瑞士的住宅房地产。最值得注意的是,在瑞士有居住权的中国公民有权为本人的居住目的购买房产,无需取得Koller法案有关部门的许可。其只需以书面形式向土地登记处申明,其购买房地产的目的是将其作为自己的主要居所。此外,在瑞士的一些旅游地区,外国投资者可能可以获得购买“二套房”的许可。但是这种许可的数量有限,且自2012年以来,瑞士的许多旅游地区都限制了新的“二套房”建设。

购买在瑞士证券交易所上市的住宅房地产公司的股权一般来说无需取得许可,但是,一旦外国投资者持有该公司超过三分之一的投票权或资本,就不能再购买住宅房地产了。

**规避Koller法案。**规避Koller法案可能导致刑事起诉。一旦外国投资者被确定规避了Koller法案,则其收购瑞士房地产的行为通常是无效的。在一些著名案例中,瑞士最高法院曾判决为隐藏不允许的房地产收购而设立的瑞士公司是无效的,并且这些案件中所涉及的房地产均被国家没收(规避法案的例子有:缔结长期或其他异乎寻常的租赁

协议,通过异常的高息贷款为房地产融资,任命具有瑞士国籍的受托人等)。

**房地产出租。**正在出租的房地产被收购后,新的房屋所有者即作为新房东成为所有有效的租赁协议的一方当事人。通常,商业房地产的租赁协议存续期较长,如10年等,在约定期限届满之前提前终止租约必须有充分的理由。相反,提前解除住宅房地产租约的通知期一般为三至六个月。

需要注意的是,瑞士有关租赁的法规为租户的权益提供了有力保障。例如,租户有权要求有关部门检查租金的合理性或在房东滥用终止权时要求有关部门延长租期。

## 结论

瑞士相关政府部门普遍的服务意识,加之瑞士法律环境的确定性,为投资瑞士房地产行业创造了极具吸引力的商业环境。

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Roland Mueller博士是非谢尔律师事务所合伙人、瑞士律师协会建筑和房地产法认证专家。他的联系电话是 +41 58 211 33 50; 电邮是 rmueller@vischer.com  
Eric Flueckiger是非谢尔律师事务所高级律师。他的联系电话是 +41 58 211 39 05; 电邮是 eflueckiger@vischer.com

“ 在瑞士有居住权的中国公民有权为本人的居住目的购买房产, 无需取得 Koller 法案有关部门的许可

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that he or she has acquired the property for the purposes of his primary residence. Further, in some tourist areas of Switzerland, a foreign investor may be granted a permit to purchase a secondary residence. The number of such permits is limited, and since 2012 the construction of new secondary residences in many tourist areas of Switzerland is restricted.

The acquisition of a residential property company with shares listed on a Swiss stock exchange is not subject to a permit, however, once the foreign investors hold more than one-third of the voting or company capital no further residential property can be acquired.

**Circumvention of Lex Koller.** Circumventing Lex Koller can lead to criminal prosecution. Acquisitions of Swiss real estate are in general null and void if a circumvention of Lex Koller is established. There are notable cases where the Swiss Supreme Court has declared Swiss corporations, which were established to conceal non-permitted real estate acquisitions, null and void, and the respective real estate confiscated in favour of the state (examples for circumventions: the conclusion of perennial or otherwise unusual rental agreements, financing of real estate by unusually high loans, appointing a fiduciary with Swiss nationality, etc.).

**Letting of real estate.** When leased real estate is purchased, the new owner enters into all rental agreement(s) in force as the new landlord. Usually, commercial rental agreements run for an extended period such as 10 years, and termination before the agreed period is possible only for good cause. On the contrary, the general period of notice for residential property is three to six months.

It is important to note that the Swiss legal provisions governing tenancy provide strong protection of the tenant's rights and interests. For example, the tenant has the right to ask the competent authority to examine the rent or to extend the lease period because of abusive termination.

The general client-focus of the Swiss authorities in connection with the legal certainty in Switzerland creates an interesting business environment for investments in the Swiss real estate sector.

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Dr Roland Mueller is a partner at VISCHER and a Swiss Bar Association certified specialist in construction and real estate law. He can be contacted on +41 58 211 33 50 or by email at rmueller@vischer.com  
Eric Flueckiger is a senior associate at VISCHER. He can be contacted on +41 58 211 39 05 or by email at eflueckiger@vischer.com