



# III Acquisition and Construction of Real Estate in Switzerland



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Foreign investors are free to acquire and build real estate in Switzerland provided the real estate serves a commercial purpose, however, there are still significant obstacles to the acquisition of residential property. We will discuss below the rules that apply when planning, building and letting property.

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### Acquisition of Real Estate by Foreigners and Foreign-Controlled Companies

#### 1 Restrictions on Acquisition of Real Estate

Real estate can be acquired in Switzerland by signing a notarized acquisition agreement. By acquiring shares in real estate companies, real estate can also be indirectly acquired without any formal requirements. However, the acquisition of real estate in Switzerland by foreigners or foreign-controlled companies is subject to certain limitations, particularly where residential property is concerned. In

contrast, the acquisition of real estate properties for commercial purposes (manufacturing facilities, offices) does not generally pose any problem.

The real estate industry for foreigners has been greatly liberalized over the last few years and the federal government (Federal Council) intends to remove the remaining limitations by repealing the "Lex Koller". However, the Swiss parliament made any repeal dependent on the prior enactment of more effective measures to limit the construction of second homes in tourist areas. Although such measures were already agreed at the end of 2010 and a public initiative to limit second residencies was accepted on 11 March 2012 the parliament does not seem to be in a hurry to reopen the file. Therefore, the purchase of property by foreigners remains restricted.

The repealing of these limitations is somewhat controversial. The arrival of foreign residential real estate companies will probably push up prices, which is already apparent in metropolitan areas where real estate bubbles are gradually emerging. The returns traditionally seen in Switzerland in residential real estate, and which compare favorably internationally, could come under pressure. Despite the measures intended to keep them in check, real estate investments, particularly in attractive tourist regions, are likely to increase.

<b>Yields</b>	Residential property Rental apartments	Commercial real estate Office space	Retail Space
Net cash flow yields (2010)	4.3 %	4.7 %	4.5 %
Change (2009 – 2010)	↘	↘	↘
Revaluation return (2010)	1.4 %	1.6 %	2.1 %
Change (2009 – 2010)	↗	↗	↗
Overall return (2010)	5.8 %	6.3 %	6.7 %
Change (2009 – 2010)	↗	↗	↗

Source: IPD Investment Property Database, Wüest & Partner, Immo-Monitoring 2011, issue 2



## **2 Acquisition of Real Estate for Commercial Purposes**

The acquisition of real estate for commercial purposes is possible without a permit for both domestic and foreign or foreign-controlled undertakings. Commercial real estate includes factory buildings, warehouses and storage areas, offices, shopping centers, shops, hotels, restaurants, workshops or doctors' offices. Such properties can be used by the owner or be let solely as a capital investment.

The acquisition of undeveloped land or land reserves in the vicinity of a factory building, on the other hand, is only possible subject to certain limitations. Undeveloped land can only be acquired by foreigners if it is developed within a period of one year. Land reserves should not make up more than a third (or at most half) of the acquired surface area. One way around this restriction is to create a commercial purpose for undeveloped land. Is it possible for the undeveloped land to be used as a storage area? Can a field be leased (for a nominal fee) to a local football club?

The construction and letting of homes does not qualify as a commercial activity and is therefore subject to restrictions for foreigners or foreign-owned undertakings. Can a foreign property developer acquire real estate in Switzerland and build apartments on the acquired land even if he intends to immediately sell them to Swiss buyers? It can be difficult to know how to classify individual cases: What, for example, still qualifies as a hotel (and does not require a permit) and what constitutes a vacation home property (requiring a permit)?

## **3 Acquisition of Residential Real Estate by Undertakings**

The acquisition of residential real estate by foreign or foreign-controlled undertakings ("residential real estate companies") is something the Lex Koller aims to prevent.

Both direct investments in real estate and the acquisition of even a single (!) share in a residential real estate company are generally not allowed. Investments in real estate property by foreigners are therefore only possible to a lesser degree and result in reduced control over such investments, increased costs arising from possible structural changes to investments and relatively cumbersome administrative procedures.

An investment in residential real estate can, however, be achieved relatively easily where shares are acquired in an undertaking which holds residential property in addition to commercial real estate. Generally the residential real estate only constitutes a fraction of the surface area owned. A residential surface area of approximately 20 % is tolerated, even extending to 33% of the surface area, depending on the specifics of the case and the practice of the competent authorities. The authorities tend to be more lenient in cases of real estate portfolios that have grown over time, in cases involving e.g. employee apartments which belonged to a factory, or residential property which was part of a restaurant or hotel, apartments located at the center of a factory site, or in a multi-story commercial property.

It is also possible to invest in residential properties in collaboration with one or more Swiss partners, e.g. in the context of a joint venture or by acquiring shares in the partner company. Such investments generally require the Swiss partner to retain effective control over the joint investment. Where shares of a residential property company are listed on a Swiss stock exchange, the shares can be acquired by foreigners without a permit. A listing on a smaller stock exchange (e.g., BX Berne eXchange) for this purpose is relatively inexpensive. Also tolerated by some authorities is the acquisition of non-voting shares (e.g. participation certificates). However, where foreigners hold more than 33% of the voting capital or the capital of a company, the company is considered to be foreign-controlled and can therefore acquire no further residential property. It is therefore important to ensure that even in group corporate structures overall effective control remains in Swiss hands. Because of the inevitable loss of control for the foreign investor it is advisable that several partners should be involved to ensure shifting majorities. The usual safeguard measures adopted in the context of significant investments (such as a preemptive right to acquire the stake owned by the Swiss partner, shareholder agreements with a qualified majority for important decisions) can be almost impossible to implement because of the legal restrictions. Another effective possibility is an agreement establishing a right to sell which forces the Swiss partner to acquire his or her own stake in the real estate company at market value.

So far, only in very rare cases have investments in real estate property been approved by the Federal Council on grounds of overriding "interests of the State". This occurred, for example, when the Egyptian undertaking Orascom Hotels and Development invested in the structurally weak region of Ander-

matt, and when international organizations such as the International Athletics Association and FIFA acquired real estate.

**4 Acquisition of Residential Property by Management or Employees**

EU/EFTA nationals with residence in Switzerland can acquire residential property without restriction. This includes the acquisition of several apartments for investment purposes. EU/EFTA nationals who are merely cross-border commuters can also acquire a second apartment in the area of their place of work. Third-country nationals who are legally resident in Switzerland (as a rule holders of B permits) can only acquire one apartment (or a detached house) at their place of residence. Nevertheless, if they change their place of residence they are not required to sell the principal apartment but can keep it.

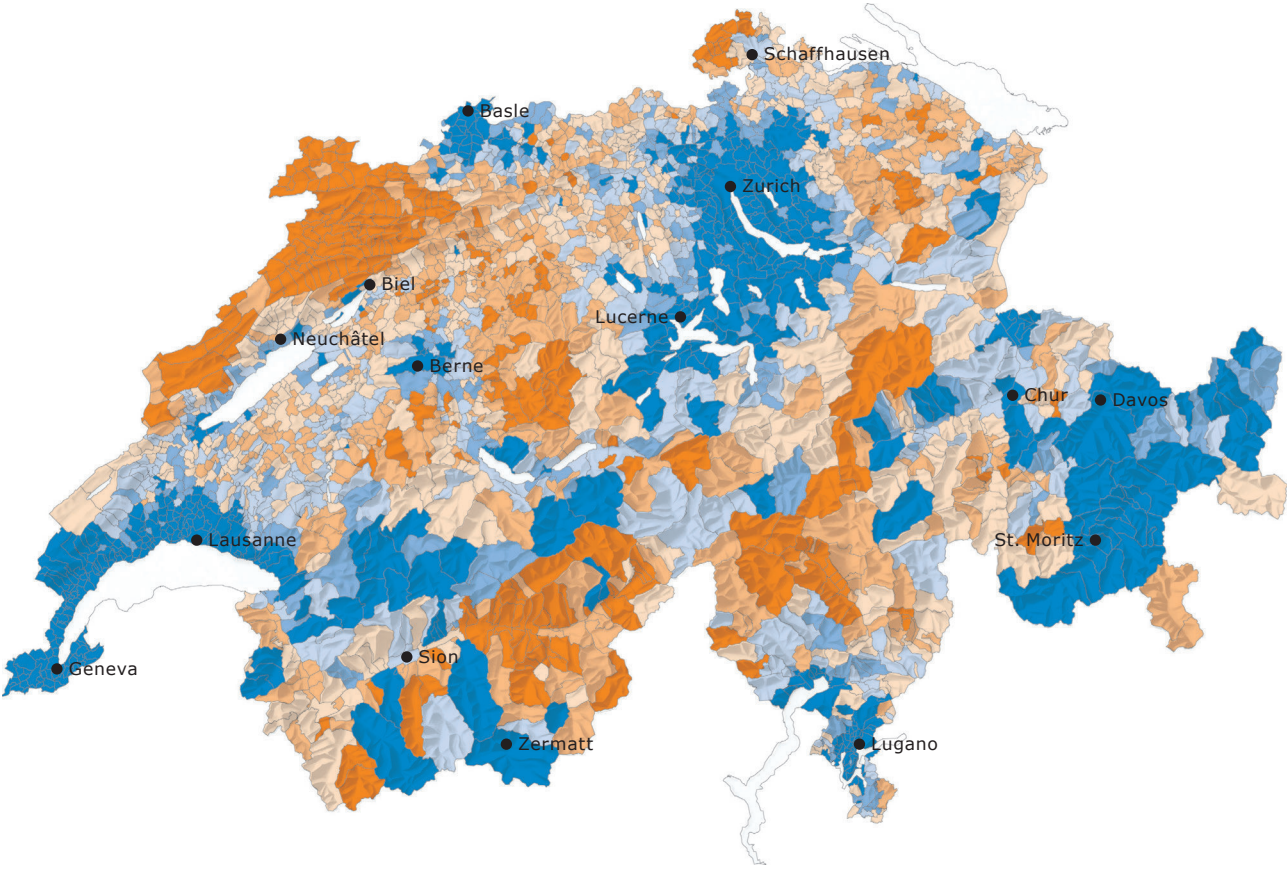
Foreigners whose place of residence is abroad are generally not permitted to acquire residential

property in Switzerland. Some cantons allow such persons to acquire holiday apartments, and set quotas for the number of holiday apartments which can be acquired per year and per municipality. In some cantons these quotas are never fully used up (e.g. in the canton of St. Gallen), but in other cantons it is more difficult to obtain a quota (e.g., in the canton of Graubünden). In cantons which do not have this quota system, the acquisition of residential property is only possible by moving one's (civil and tax law) domicile to Switzerland. The acquisition of second homes is further restricted due to the communal limit of 20% on all second homes.

**5 Circumvention of Restrictions and Sanctions**

Although real estate agents seem to be able in practice to facilitate the acquisition of real estate by foreigners, circumventing legal restrictions is not recommended. The law applies a purely economic analysis to every acquisition of real estate. Thus, the acquisition of residential property by in-

**Market prices for condominiums** (1st quarter 2011)  
In Swiss francs per square meter net internal area (median)



■ Over 5000 ■ 4500 bis 5000 ■ 4000 to 4500 ■ 3500 to 4000 ■ 3000 to 3500 ■ Below 3000  
Source: Wüest & Partner, Immo-Monitoring 2011/2

vesting in a real estate company with purportedly anonymous bearer shares, the appointment of a fiduciary with Swiss nationality, the creation of a corporate group entity with a convoluted ownership structure, the conclusion of perennial or otherwise unusual rental agreements, and the financing of real estate by means of unusually high loans are generally regarded as illegal. Even establishing a conditional pre-emptive purchase right, to be exercised only if and when the Lex Koller is repealed, appears to be inadmissible according to some authorities.

In addition to sanctions under criminal law, circumvention of the law results in any real estate sale and purchase agreement becoming null and void, which in turn results in the unwinding of the transaction (and the investment). In rare cases, it is even possible for the illegal real estate company to be wound up and have its assets confiscated by the State.

## **6 Accompanying and Securing an Investment**

Investments can be made quickly and efficiently where they conform to the letter and spirit of the law, and an early and well prepared contact is made to the competent authority with any necessary assurances. If there is any doubt about whether or not a permit is required, an application can be made to the relevant authority for prompt clarification in writing (with limited binding effect) or for a declaratory ruling (with binding effect). In such cases it is generally important that the first proposal for structuring an investment be perceived by the authorities as conforming to the law; subsequently submitted "improvements" generally give rise to suspicion of either an attempt to circumvent the law or an exploitation of any grey areas.

## **B Construction of Real Estate Properties**

The construction plans of investors and property developers must respect a number of regulations, which are the same for Swiss, foreigners and foreign-controlled companies.

Land use planning regulations specify which zone a property is in and what kinds of buildings can be built on it. The land use planning regulations for

example show where a shopping center may be built and where it may not.

How a building is to be constructed is set out in the construction regulations. These provide answers to questions such as, whether entire plots of land may be covered with buildings, the extent to which a building extension is possible, the permitted height of buildings and their internal layout.

How building permit procedures unfold, which authorities are involved and what deadlines are to be met, are questions all governed by procedural rules.

### **1 Land Use Planning Regulations**

Switzerland is organized as a federal State. Land use and planning regulations are found on all levels of the state, i. e. federal, cantonal, and municipal. The federal regulations only set out the basic principles and the relevant practical regulations are enacted by the cantons and the municipalities. Land use planning thus differs from one canton to another and from one municipality to the next and is liberal to varying degrees. This fact should be taken into account when planning an investment project.

Cantonal and municipal plans ("Richtplan") show how the territory of the canton or municipality is to be developed in general. The "Richtplan" is primarily a planning tool for the authorities and serves first and foremost the coordination of all activities relating to land use.

On the basis of the relatively general Richtplan, the cantons and municipalities have enacted zoning plans. These are much more detailed than the Richtplan and show the area in question divided into land use zones. This enables each plot of land to be identified together with its designated land use. In the industrial and commercial zones, generally only production, storage, and transport operations are allowed with residential zones reserved for residential properties. The diversity of zones in Switzerland is high. Thus, depending on the municipality, in addition to center zones and core zones, there are zones for holiday homes, office zones, beach zones etc. Some zones are further divided: industrial and commercial zones may be divided according to the permitted level of noise emissions, residential zones may be divided according to the maximum height of buildings.



It is possible to change the zone of a lot of land. To this end, the affected land use plan and, where applicable, the master plan may have to be amended. Procedurally this can be very complicated. As a rule, any zoning changes have to be agreed by the municipal legislator and subsequently approved by the cantonal government.

In addition to general land use plans, special land use plans can also be enacted, which can deviate from the cantonal and municipal regulations and stipulate in a binding manner the number, location, sizes and type of use and purpose of buildings in specifically delineated areas. Special land use plans tend to be used most frequently in large development projects. Generally, special land use plans allow more intensive use of the land and thus greater returns, although they require concessions from the developer, in areas such as energy efficiency, architectural design or the building of low-income housing.

## 2 Building Regulations

Building regulations regulate questions such as what can or must be built, as well as how it has to be built. Given Switzerland's federal structure, building regulations at all levels of the state (federal, cantonal, municipal) must be complied with.

There are multitudes of building regulations. First and foremost, the rules governing building size (length, height, and depth), distances and orientation must be complied with. In addition, there are technical regulations concerning building structure, fire safety (emergency exits etc.), permitted air pollution, the power grid connection, insulation requirements and noise protection. Rules on hygiene must also be observed. These rules designate minimum room sizes, minimum ceiling heights, and connections to water treatment facilities. When constructing a building, there is also an obligation to eliminate or remove any contamination from previous activities. In addition, a building must meet certain aesthetic requirements. Renovations to buildings with historic value are subject to additional constraints. Historical building protection regulations often restrict the right to demolish or modify.

In addition to the aforementioned state regulations, regulations are enacted by private bodies (such as the Swiss Association of Engineers and Architects SIA) and these must also be complied with. Although these regulations are enacted by

private organizations, the law considers at least some of them as authoritative.

## 3 Procedural Rules

An (ordinary) building permit procedure begins with the submission of a building permit application to the building authority, which should be accompanied by all relevant documents (blueprints, excerpts from the land register, structural calculations etc.) dependent on the type of project planned. Building permit forms can often be downloaded from the internet.

After a preliminary review, the building authority notifies the public of the building permit application. The building authority publishes the application and makes the file accessible to the public. Generally the demarcation of the site takes place at the same time, with poles being erected to show the future cubage of the building. During a certain period of time (in the canton of Zurich: 20 days) affected persons, mostly neighbors, can raise any objections they might have with regard to the planned construction project. In the case of large-scale projects, environmental groups may also raise objections. Construction can only begin once all objections have been dealt with. In order to avoid building delays, it is certainly worth involving parties who are likely to raise objections, as well as the competent authority, in the construction project from the earliest possible stage.

In large-scale projects, the building authorities will consult internally with the agencies concerned (historical building protection authority, environmental protection agency, fire department etc.) and coordinate the proceedings. In construction projects which might significantly affect the environment (big garages, amusement parks, sports stadiums etc.), there is also an obligation to carry out an environmental impact assessment (EIA). The EIA is supposed to ensure that environmental protection needs are taken into account when planning the construction of buildings. After granting the applicant the right to be heard, the building authority concludes the permit procedure with a building decision. Where only minor requirements are not met, the building permit can still be issued subject to requirements or conditions. Under special circumstances, a so-called exceptional permit may be obtained. An exceptional permit is issued by the building authority in cases where requiring compliance with building regulations is deemed unreasonably burdensome and failure to comply

would not be prejudicial to the public interest or the interests of any neighbors.

A preliminary ruling can be obtained from the building authority prior to filing the building permit application. In a preliminary ruling the authority decides on the fundamental questions regarding the project. During the subsequent building permit procedure, items which have already been addressed in the preliminary ruling are generally no longer discussed.

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# Letting of Property

Where a rented property is sold, any rental contracts are generally transferred to the purchaser. The list of tenants provides an overview of the rental contracts currently in force. The precise details can be found in the relevant rental agreement(s). Rental agreements for commercial buildings generally run for an extended period (e.g. 10 years). In principle, these agreements cannot be terminated before the end of the agreed lease term. The tenant of commercial premises, however, has the possibility of transferring its lease to a third party, whereby the tenant continues to be liable for a maximum period of two years. The landlord is only allowed to prevent such a transfer when he has good cause to do so. It is also possible for the tenant to propose a reasonably acceptable and willing successor, thereby fully releasing himself from the rental agreement before the end of the lease term. The legal provisions governing tenancy also set out various rights intended to protect the interests of the tenant. Under certain circumstances, a tenant can contest abusively high rents and ask the competent authority to extend a lease that has been abusively terminated.