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Hot Topics and Recent Developments in Construction and Real Estate law in Switzerland

By Wolfgang Muller & Christian Eichenberger

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This article highlights the topics featured prominently in Switzerland's real estate and construction law during 2014 and which will continue to be on the agenda in 2015:

Lex Koller

A standard hot topic in Switzerland for many years is the Swiss Federal Act on Acquisition of Real Estate by Persons Abroad (the so-called Lex Koller) which restricts the acquisition of Swiss residential and other non-commercial real estate by foreign (i.e. non-Swiss) persons. In recent years it has been heavily debated whether the Lex Koller should be abolished altogether on the one hand, or made even stricter on the other. It is widely recognised today that the Lex Koller is the only effective measure to reduce demand for Swiss residential properties.

As a result of the latest debates in Swiss Parliament the acquisition of residential premises by non-Swiss

persons remains restricted while the acquisition of business premises is, as a rule, unrestricted under the Lex Koller. However, the debate regarding the Lex Koller is expected to continue and it is possible that the Swiss Federal Council will launch a proposal to tighten the enforcement of the law and the corresponding ordinance.

Amended Environmental Protection Act



According to a recent amendment to the federal Environmental Protection Act, polluters may be required to provide appropriate security for the costs of cleaning up a contaminated site. In addition, the recent amendment stipulates that a sale or parcelling of a site that is listed in the Register of Contaminated Sites is subject to approval by the competent authority. Without this approval, the new owner or the parcelled lots may not be registered in the Land Register.

The obligation to provide security for

probable clean-up costs applies to any polluter, not only the current owner of the property. The amount of security is determined by the extent, nature and intensity of the pollution.

It is important to know that the new approval requirement for the sale or parcelling of a contaminated site can considerably delay a transaction.

If a transaction is planned, it is therefore advisable to take into consideration the amendments provided by the new law at an early stage and check the publicly available Register of Contaminated Sites in due course. Also, the competent authority is to be involved as soon as possible. Buyers should pay attention to the seller's obligation to provide security for probable clean-up costs.

Planning and zoning law

An amendment to the Land Use Planning Law has been adopted recently. The new law aims to ensure compact settlement development, the improved use of uncultivated areas and the reduction of outsize building zones. Against the backdrop that land is

scarce in Switzerland the key concept is densification (*"Verdichtung"*). The technical implementation of this densification is quite complicated and will cause many a headache in the future.

Lex Weber

On 11 March 2012, the Swiss population voted in favour of an initiative promoted by Mr Franz Weber aiming at freezing further development of second homes or secondary residences in municipalities where these residences already exceed 20% of all residences. At the moment, a draft Lex Weber to implement the details of the initiative is debated in the Swiss Parliament.

The draft Lex Weber generally prohibits the construction of new secondary residences in Swiss municipalities where the portion of secondary homes already exceeds 20%. In municipalities where secondary residences exceed 20% of all existing residences, new housing properties may be built only if (i) this property will be used as a main residence or (ii) if the property is to be used for tourist accommodation, i.e. hotels and guest

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houses. The draft law also sets out to what extent existing secondary and main residences may be modified.

However, the core of the draft Lex Weber will be its exceptions, for example exceptions regarding the construction of new secondary residences on protected sites or monuments, the construction of new secondary residences for rent through “organised housing companies” or the conversion of a hotel or similar tourist resort into secondary residences.

The draft law tries to protect the tourist regions’ interest in remaining attractive and prosperous while complying with the essence of the Weber initiative. However, the draft law has been heavily criticized by the promoters of the initiative.

It is still unclear whether major changes will be requested by the Swiss Parliament before the law will be finally enacted. Also, depending on the final text of the law, the promot-

ers of the Weber initiative may still decide to challenge the implementation and enactment of the Lex Weber with a referendum, which requires a minimum of 50,000 signatures. On 27 January 2015, a commission of the Swiss National Council, one of the two chambers of the Swiss Parliament, published its motions to have the draft Lex Weber further relaxed and to have the law declared an urgent bill, i.e. it should enter into force immediately following its acceptance by the Swiss Parliament and prior to a possible referendum.

Countercyclical capital buffer (CCB) and mortgage loans

For a couple of years a potential bubble risk in the real estate market has been discussed in Switzerland. Pursuant to the observations of the Swiss National Bank (SNB), the CCB and other measures did not provide sufficient relief with regard to the risks associated with the existing imbalances in the mortgage and real estate mar-

ket. The SNB was particularly concerned about the continued growth of residential property prices and mortgage loans during 2013. In order to further strengthen the resistance capacity of the Swiss banks and the whole Swiss economy to risks arising from the aforementioned market imbalances, the Swiss Federal Council, upon request of the SNB, decided to increase the CCB from 1% to 2% as from 30 June 2014.

As a consequence, domestic banks had to increase until the end of June 2014 the additional capital buffer to 2% of their direct or indirect mortgage-backed risk-weighted assets where the mortgaged property is Swiss residential real estate. This applies to both owner-occupied and investment properties, but only insofar as the mortgages are backed by residential real estate. It does not apply if the mortgaged property is a commercial property.

In addition, the Swiss Bankers Association’s guidelines on the minimum

requirements for mortgage financing for owner-occupied residential property entered into force on 1 September 2014. Under these guidelines, a deposit of at least 10% of the loan value must be paid (with funds that do not come from the second pillar of the Swiss pension system) for new purchases and mortgage increases. If the purchase price is higher than the loan value, the difference must be paid in full with own funds that do not come from the second pillar. The mortgage debt must be reduced to 2/3 of the loan value of the property within a maximum period of 15 years, with repayments made on a straight-line basis starting at the latest 12 months from the date on which the deposit was paid. These stricter regulations concerning own financing should help put a halt to the increase in real estate prices.

It will be interesting to see what impact the new rules regarding the CCB implemented in 2014 will have on the real estate transaction market in 2015.

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Christian Eichenberger graduated from the University of Fribourg, Switzerland in 2001. He was admitted to the bar and licensed as a notary public in Switzerland in 2004. In 2008, Christian Eichenberger was conferred a doctoral degree by the University of Berne (Dr.iur.). He holds an LL.M. from the University of Hawai'i at Mānoa, William S. Richardson School of Law (2009) and a Master of Advanced Studies in Real Estate from the University of Zurich (2012). He joined Meyerlustenberger Lachenal in 2009. His professional languages are German and English. He is a member of the Royal Institution of Chartered Surveyors (RICS).

