

International **Comparative** Legal Guides



Real Estate **2020**

A practical cross-border insight to real estate law

15th Edition

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International **Comparative** Legal Guides

Real Estate **2020**

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Norton Rose Fulbright LLP

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From the Publisher

Dear Reader,

Welcome to the 15th edition of *The International Comparative Legal Guide to: Real Estate*, published by Global Legal Group.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to real estate laws and regulations around the world, and is also available at www.iclg.com.

This year, one expert chapter focuses on the use of technology and artificial intelligence in real estate legal services.

The question and answer chapters, which in this edition cover 28 jurisdictions, provide detailed answers to common questions raised by professionals dealing with real estate laws and regulations.

As always, this publication has been written by leading real estate lawyers and industry specialists, for whose invaluable contributions the editors and publishers are extremely grateful.

Global Legal Group would also like to extend special thanks to contributing editor Dan Wagerfield of Norton Rose Fulbright LLP for his leadership, support and expertise in bringing this project to fruition.

Rory Smith
Group Publisher
Global Legal Group

Preface

It is a great pleasure to have been asked to be contributing editor of this, the 15th edition of *The International Comparative Guide to: Real Estate 2020*.

Can I start this short introduction to the Guide by thanking Iain Morpeth of Ropes & Gray LLP for his years as contributing editor, his insightful articles and his team's contributions to the chapters on England and Wales. It is clear I have some big shoes to fill.

Today's real estate investment market is an increasingly international one. As investors look beyond their domestic markets, they must grapple with a range of issues, including property market transparency risk, political risk and currency risk. Central to their success in any given jurisdiction, however, is an understanding of local real estate laws and how real estate transactions are structured. The aim of the Guide is to provide that understanding.

Covering 28 countries, we hope you find the Guide a useful reference point when considering cross-border real estate transactions and we encourage you to contact us with any suggestions you may have as to how we might improve future editions.

Dan Wagerfield
Partner & Global Co-Head of Real Estate
Norton Rose Fulbright LLP

Switzerland

Meyerlustenberger Lachenal AG



Wolfgang Müller



Denise Läubli

1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 12.1. Those relating to tax should be listed in response to questions in Section 9.

Switzerland is a civil law country. Real estate is mainly governed by written laws on a federal level, such as the Swiss Civil Code, the Swiss Code of Obligations, the Act on the Acquisition of Real Estate by Persons Abroad (the so-called Lex Koller), the Debt Enforcement and Bankruptcy Act and the Ordinance on the Land Register.

1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?

As mentioned above, Switzerland is a civil law country. Hence, there is, in principle, no common law in Switzerland. Nevertheless, there is case law which offers guidance on the interpretation of written laws. In particular, such case law has an impact in the field of landlord-tenant law, where a lot of cases are produced, in particular in the Western (French-speaking) part of Switzerland.

1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.

International laws do not play an important role with respect to real estate in Switzerland. The Agreement on the Free Movement of Persons, however, has an impact on the Lex Koller mentioned above.

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

The Lex Koller (see the answers to questions 1.1 and 1.3 above) restricts the acquisition of Swiss residential and other non-commercial real estate by foreign (i.e. non-Swiss) persons while the acquisition of business premises is, as a rule, unrestricted under

the Lex Koller. In recent years, it has been debated whether the Lex Koller should be abolished altogether on the one hand, or made even stricter on the other. Swiss Parliament decided to maintain the Lex Koller since it is widely recognised that the Lex Koller is the only effective measure to reduce the demand for Swiss residential properties and thus to reduce the risk of “over-heating” residential real estate markets.

3 Real Estate Rights

3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?

The most important types of rights over land are ownership, co-ownership (in particular, in the form of the condominium-principled co-ownership), building rights and usufructuary rights on the one hand. On the other hand, lease contracts play a major role, with both residential and commercial properties. The latter are purely contractual between the parties unless they are annotated in the land register.

3.2 Are there any scenarios where the right to land diverges from the right to a building constructed thereon?

Yes, in the case of a building right, the right to real estate diverges from the right to a building constructed thereon. In such a scenario, there are two owners: one that owns the soil; and the other that owns the building built thereon.

3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split? Are there any proposals to change this?

Beneficial ownership cannot be based on property law provisions, because Swiss law does not know a legal principle comparable to the common law concept of trust (even if trusts under foreign law are, under certain conditions, recognised under Swiss law – in the case of assets under a trust established abroad that are entered in the name of the trustees in the land register in Switzerland, reference shall be made to the trust relationship by means of an annotation; a trust relationship that is not annotated in the land register in such a way may be considered invalid against *bona fide* third parties). Any beneficial ownership is therefore of a purely contractual nature under Swiss law, which means, in particular, that the right of the beneficiary

is not based on an *in rem* title to the property, but only on a contractual claim against the holder of the property rights. If that holder disposes of the property in violation of the contractual provisions, the beneficiary is limited to a claim for damages. Although a purchase of property on a fiduciary basis is considered to be valid, such fiduciary purchase is void where the parties intended to circumvent legal provisions; this may especially be the case if a non-resident foreigner or a company with a registered office abroad, respectively, intends to acquire a Swiss property in breach of the Lex Koller without disposing of the necessary permit (see question 2.1 above). A common method of acquiring a beneficial interest in land is by purchasing shares or the majority of shares in a real estate company; the ownership of the property in an economical sense is transferred simply by conveying the shares of the company owning the property. However, also in such a case the restrictions of the Lex Koller apply. See question 2.1 above regarding the failed attempt to amend Lex Koller.

4 System of Registration

4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

In principle, all privately-owned land is registered in the land register. However, no rights of private ownership apply to public waters or to land not suitable for cultivation, such as rocks and scree, fern and glaciers, or springs rising therefrom, unless proof to the contrary is produced. Immovable property which is not privately owned and is in public use will be recorded in the land register only if rights *in rem* attaching to such property are to be registered or if cantonal law provides for its registration.

4.2 Is there a state guarantee of title? What does it guarantee?

There is no explicit state guarantee of title. However, the land register is assumed to be complete and correct and everyone may, in good faith, rely on it. Therefore, the state (i.e. the respective canton) is liable for any losses arising from the undue maintenance of the land register.

4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

All acquisition of land ownership must be recorded in the land register. The consequence of non-registration is that the title remains with the seller – hence, the respective transaction is not yet closed. In addition, all rights relating to the property and relevant to everyone (not just to a contractual party) must be registered in the land register.

4.4 What rights in land are not required to be registered?

Emption rights, pre-emption rights, repurchase rights and lease agreements, for example, are rights in land that are not required to be registered.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

No, there is no such probationary period following first registration under Swiss law.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

Transfer of title occurs upon the respective entry into the “journal” of the land register, provided, however, that the application is later registered in the “main register” of the land register.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

Except for mortgages, which have an assigned rank among each other, irrespective of the time of registration, registered rights obtain priority over other rights in accordance with the “rule of seniority”, which means, in principle, “first in time, first in right”. Such rule, however, can be contracted away.

5 The Registry / Registries

5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

For land register purposes, the cantons are divided into districts. Hence, the 26 cantons are responsible for setting up the land registries, the demarcation of the districts, the appointment and remuneration of officials and supervision arrangements.

5.2 How do the owners of registered real estate prove their title?

The owner is shown in the land register, which is deemed to be correct and complete (“public faith”, see question 4.2 above). No further proof is necessary.

5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

The cantons can allow their land registries to communicate and conduct transactions electronically. The transferor of real estate (e.g. the seller) has to file to the land register an application for the registration of the new owner (e.g. the buyer) and furnish supporting documents (e.g. the purchase and sale deed).

5.4 Can compensation be claimed from the registry/registries if it/they make a mistake?

Yes, the state (i.e. the respective canton) is liable for any losses arising from the undue maintenance of the land register.

5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate and is this achieved by a search of the register? If not, what additional information/process is required?

Any person is entitled to obtain the following information from the register without showing a legitimate interest:

- 1. the name and description of the immovable property;
- 2. the name and identity of the owner;
- 3. the form of ownership and the date of acquisition;
- 4. the charges and mortgages; and
- 5. the notifications (subject to exceptions).

A person showing a legitimate interest is entitled to consult the full land register or to be provided with an extract. Hence, a buyer could also directly obtain from the land register all the information it might reasonably need regarding encumbrances and other rights affecting real estate. Furnishing evidence to establish a legitimate interest, however, takes time. In practice, it is thus more convenient for the buyer to get an extract from the land register via the seller or, in certain cantons, via the notary public. Accordingly, the land register cannot simply be searched without reason; a legitimate interest needs to be proven for a particular property in order to get a full land register extract.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

Lawyers who assist the seller and/or the buyer in: conducting a due diligence; and drafting and/or reviewing the contract documents, are often involved. In addition, notaries public draft and notarise the purchase and sale deed. Other parties involved are, for example, banks, realtors, technical/environmental consultants and appraisers.

6.2 How and on what basis are these persons remunerated?

The fees of the notaries public are subject to the respective laws of the cantons. Realtors normally receive a certain percentage of the purchase price for their brokerage services. Lawyers, consultants and appraisers are normally remunerated on an hourly basis.

6.3 Is there any change in the sources or the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

In Switzerland, it has always been possible to access reasonable finance for real estate transactions, even following the 2008 financial crisis. While real estate as an asset class is still

attractive to insurance companies and pension funds, new standards put in place by the Swiss National Bank and the Swiss Bankers Association have meant that banks have been forced to be more prudent when lending money to private individuals (see the answer to question 8.1 below).

6.4 What is the appetite for investors and/or developers to invest in your region compared to last year and what are the sectors/areas of most interest? Please give examples.

As long as interest rates remain low, real estate remains an attractive asset class and there is a lack of alternatives with a comparable risk/return ratio. This applies also to the current year, in which no turn away from negative interest rates is to be expected. Since vacancies in residential properties are slowly rising and market participants expect stable but slowly decreasing prices for condominium, single-family homes and rented apartments, for example in Zurich, demand for office space, especially in business hubs such as Zurich City, is increasing. Investors are also looking at special real estate such as city hotels and logistics properties.

6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

With respect to the slight cooling-down in the residential property market, see question 6.4 above. Although construction activity has slowed down slightly in Q2/2019, applications for new construction projects remain at a high level and the general economic prospects for Switzerland and the construction industry remain promising. Therefore, developers continue to profit from high demand from investors.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

The purchase and sale deed needs to be notarised by a notary public, and the seller (or the notary public, respectively) has to file to the land register an application for the registration of the new owner (i.e. the buyer).

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

There is no formal duty of disclosure. However, the seller is under a duty to act in good faith which implies, for example, that it has to answer questions of the buyer relating to the transaction truly and accurately.

7.3 Can the seller be liable to the buyer for misrepresentation?

Yes; if the seller does not disclose important information or gives false information, it may be liable for misrepresentation.

7.4 Do sellers usually give any form of title “guarantee” or contractual warranties to the buyer? What would be the scope of these? What is the function of any such guarantee or warranties (e.g. to apportion risk, to give information)? Would any such guarantee or warranties act as a substitute for the buyer carrying out his own diligence?

According to the Swiss Code of Obligations, the seller is liable to the buyer for any breach of warranty and for any defects that would materially or legally negate or substantially reduce the value of the purchase object or its fitness for the designated purpose. Such warranty is, however, in practice, often contracted away (at least to some extent) in real estate asset transactions. However, any agreement to exclude or limit the warranty obligation is void if the seller has fraudulently concealed the failure to comply with the warranty. Other than that, any additional warranty is a result of the negotiations and depends on the type of property that is sold (e.g. rent, soil contamination, etc.).

7.5 Does the seller retain any liabilities in respect of the property post sale? Please give details.

The seller retains no connection with the property after sale. However, if the property gains tax has not been secured in the contract, the seller must make sure to pay the relevant taxes. Otherwise, a liability may only arise from the warranties given as described in question 7.4 above or from post-closing obligations agreed upon in the sale contract.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

In addition to paying the purchase price, the buyer has to pay the fees and taxes, as provided for by law and/or contract.

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

The measures against the continued increase of residential property prices and the amount of mortgage loans introduced by the Swiss National Bank (SNB) and the Swiss Bankers Association (SBA) in 2014 are, in principle, still in place today. These measures have shown effects and – despite the persisting low interest rate environment, including negative interest rates – a certain slow down (fewer transactions, decreasing prices) resulted in some areas and some segments of the residential and commercial real estate market (see also the answers to questions 6.3 and 6.5 above). Recently, more and more players in the market, including pension funds, have raised the question as to whether the time has come to mitigate such measures. As a result, the SNB did not further increase negative interest rates despite a respective move by the European Central Bank in September 2019. The pressure of the Swiss economy prompted the SNB to announce that the costs for the market participants relating to the negative interest rates will be substantially reduced. However, negative interest rates (currently at -0.75%) continue to make investments in real estate attractive and imbalances in the mortgage and real estate markets persist.

The countercyclical capital buffer remains at 2% of the risk-weighted positions secured by residential property situated in Switzerland. The SNB rules apply to both resident and non-resident persons.

In August 2019, the Swiss Financial Market Supervisory Authority (FINMA) recognised the adjusted self-regulation by the SBA in the area of mortgage lending for investment properties as a binding minimum standard. This self-regulation now requires borrowers to provide a minimum down payment of at least a quarter of the loan-to-value ratio, instead of the current 10%. The lower of cost of market principle continues to apply, whereby any difference between a higher acquisition price and lower loan-to-value ratio is to be financed entirely with the borrower's own funds. In addition, the mortgage is now to be amortised to two-thirds of the loan-to-value ratio of the property within a maximum of 10 years (currently 15 years). The tightened rules only apply to new borrowers, but not to existing loans or to the existing standards relating to owner-occupied residential property. The rules will come into force on 1 January 2020.

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

In Switzerland, the main method by which a real estate lender seeks to protect itself from default by the borrower is the mortgage.

8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

If the creditor's debt is secured by a mortgage, the pledged property is seized and sold at auction by the debt enforcement office (the respective foreclosure proceedings are governed by the Debt Enforcement and Bankruptcy Act and its respective ordinances). In a security agreement, the lender and borrower may, however, also agree on the private realisation of the collateral. In the latter case, there are no court proceedings to be initiated to realise the mortgaged property.

8.4 What minimum formalities are required for real estate lending?

The establishment of a new mortgage certificate is to be notarised, and a respective application is to be filed with the land register. At the same time, there are no formalities in place regarding entering into a credit facility.

8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

Mortgages have a certain assigned rank among each other. In general, the claims based on mortgage certificates prevail over unsecured or unprivileged claims.

8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

Under the Swiss Debt Enforcement and Bankruptcy Act, the following acts that disadvantage certain creditors, carried out by

the debtor or security provider before the opening of bankruptcy proceedings, can be voidable (*anfechtbar*):

- The debtor or security provider disposes of assets against no consideration or against inadequate consideration in the year before the adjudication of bankruptcy or an equivalent event.
- The debtor or security provider carries out certain acts within one year from the opening of bankruptcy proceedings, while it is over-indebted, including, *inter alia*, the granting of collateral for previously unsecured debt.

The debtor or security provider carries out any act during the five years before the opening of bankruptcy proceedings that has the purpose of disadvantaging creditors or preferring certain creditors to the detriment of others (that is, avoidance is the intent).

8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

According to Art. 17 of the Swiss Debt Enforcement and Bankruptcy Act, an appeal on the grounds of incorrect application of the law or inappropriate exercise of discretion is, in principle, possible against any order made by a debt enforcement or a bankruptcy office. No charge is made for the respective appeal proceedings (Art. 20a of the Debt Enforcement Act). A party which, however, appeals in temerity or in bad faith, or its legal representative, can be fined up to 1,500 Swiss francs. Against this backdrop, some borrowers seek every opportunity to appeal (without taking a big financial risk) in order to hold up the enforcement action by the lender. We have seen cases in which it took the lender up to five years to enforce a mortgage.

8.8 What is the impact of an insolvency process or a corporate rehabilitation process on the position of a real estate lender?

If insolvency proceedings are initiated, all debts are due with the exception of those secured by the borrower's real estate by collateral. In addition to the principal debt, the creditor can claim the interest up to the opening date and the collection costs. A real estate lender generally secures its credit with a mortgage; those debts are paid in advance (hence prior to all other creditors) and thus treated preferably.

8.9 What is the process for enforcing security over shares? Does a lender have a right to appropriate shares in a borrower given as collateral? If so, can shares be appropriated when a borrower is in administration or has entered another insolvency or reorganisation procedure?

Lending money is a risky business as the only obligation of the borrower by law is the repayment of the money in the same amount. In commercial relations, the borrower has to pay interest as well. It is not common in Switzerland to give shares as collateral; in connection with real estate, the credit is generally secured by mortgage.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The acquisition of real estate or the majority (in certain cantons even a minority stake) of the shares in a Swiss real estate

company may be subject to real estate transfer tax of between 1% and 3%, depending on the canton where the property is located. Certain cantons do not apply a real estate transfer tax, such as Zurich, which abolished real estate transfer tax a few years ago. The tax is normally payable by the buyer. Often, the buyer and seller are jointly and severally liable for the real estate transfer tax. Contractual agreements are possible with respect to the internal allocation of the tax burden between buyer and seller. In certain cantons, tax laws may foresee a lien on the property to secure the transfer taxes. Also, registration fees of the land register may depend on the value of the property.

9.2 When is the transfer tax paid?

It depends on the regulations of the respective canton. In an asset deal, the transfer tax is sometimes paid through the notary public. In some cantons, the notary is personally liable for the payment of the transfer tax.

9.3 Are transfers of real estate by individuals subject to income tax?

Yes, the gain realised through the real estate transfer is subject to tax either as a special real estate income tax or – in exceptional cases – as normal income tax.

9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

Transfers of real estate are, as a rule, exempt from VAT. However, a waiver of exemption and option for VAT on the purchase price of the building(s) is possible, provided that the real estate is not used for private purposes. As a result, the investor will be able to reclaim Swiss input VAT on the purchase price (the current VAT rate is 7.7%). A careful analysis regarding VAT in connection with Swiss real estate transactions is required as VAT consequences can be very relevant in economic terms.

9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

There are no other taxes. It should be noted, however, that the buyer and seller are jointly liable for Swiss income tax on brokerage fees paid to a foreign (non-Swiss) broker involved in the transaction. The tax liability is limited to 3% of the purchase price of the property.

9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

The real estate transfer tax, if any, is owed in case of an asset or share deal (see the answer to question 9.1 above). It may, however, be possible to reduce or eliminate taxes on capital gains if a company holding a property instead of the property itself is sold.

9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

Real estate transactions regularly require an in-depth analysis with regard to income tax, VAT and tax-optimised financing and structuring. The relevant issues depend on the specific case.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

The laws that regulate leases of business premises are, on one hand, the Swiss Code of Obligations (Arts 253 to 301) and, on the other hand, the Ordinance regarding the Lease of Residential and Business Premises. There is no separate Swiss act that deals with the leases of business premises only.

10.2 What types of business lease exist?

In practice, various types of business leases exist, such as fixed-term leases or leases that last for an indefinite period of time, ordinary leases or leases which come close to double or triple net lease agreements.

10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

- (a) Length of term: business leases typically last for five or 10 years, possibly with an option of one additional five-year period.
- (b) Rent increases: the parties often agree on indexed rents based on the Swiss consumer price index.
- (c) Tenant's right to sell or sub-lease: subject to the landlord's approval, the tenant is entitled to sublet the premises.
- (d) Insurance: we often see clauses according to which the tenant has to provide liability insurance.
- (e) (i) Change of control of the tenant: in principle, change of control does not affect the commercial lease agreement.
(ii) Transfer of lease as a result of corporate restructuring: in a merger, a lease agreement is transferred to the new (restructured) entity. The acquiring legal entity shall, however, secure claims of the creditors involved in the merger, if creditors so demand, within three months after the merger becomes legally effective.
- (f) Repairs: generally speaking, and as a basic rule, the landlord is responsible for major repairs; however, exceptions may apply with leases which come close to double and triple net lease agreements.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Under certain circumstances, and if opted for VAT, the rent to be paid for business leases may be subject to VAT (which is currently at 7.7%).

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

Depending on the circumstances of the case at hand, business leases can indeed be terminated at expiry, on default or by either

party giving notice. The tenant may request the extension of a fixed-term or open-ended lease where termination of the lease would cause a degree of hardship for it that cannot be justified by the interests of the landlord. A commercial lease may be extended by up to six years.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

As a basic rule, the lease passes to the acquirer together with ownership of the property sold. The new owner may, however, serve notice to terminate a lease on commercial premises as of the next legally admissible termination date if it claims an urgent need to use the premises itself. If the new owner terminates sooner than is permitted under the contract with the existing landlord, the latter is liable for all resulting losses.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

In Switzerland, there are commonly no such provisions in lease agreements.

10.8 Are there any trends in your market towards more flexible space for occupiers, such as shared short-term working spaces (co-working) or shared residential spaces with greater levels of facilities/activities for residents (co-living)? If so, please provide examples/details.

The trend towards co-working space has also arrived in Switzerland. There are increasingly more such places, especially in the business cities like Zurich and Geneva.

11 Leases of Residential Premises

11.1 Please briefly describe the main laws that regulate leases of residential premises.

The laws that regulate leases of business premises are, on one hand, the Swiss Code of Obligations (Arts 253 to 301) and, on the other hand, the Ordinance regarding the Lease of Residential and Business Premises. There is no separate Swiss act that deals with the leases of residential premises only.

11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?

No, they do not.

11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant's rights to remain in the premises at the end of the term; and (d) the tenant's contribution/obligation to the property "costs" e.g. insurance and repair?

The typical provisions are as follows: a) an indefinite term with a notice period of three months; b) official benchmark interest rate applies (specific laws can apply in the canton of Geneva); c) it is possible to extend the term for a maximum of four years; and d) insurance and repairs are to be paid by the tenant via net rent or ancillary costs, if agreed upon accordingly.

11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?

For valid reasons rendering the performance of the contract intolerable, the landlord may terminate any lease observing a notice period of three months. The landlord has to take court action (eviction proceedings) in order to achieve vacant possession if the circumstances exist for the right to be exercised.

12 Public Law Permits and Obligations

12.1 What are the main laws which govern zoning/permitting and related matters concerning the use, development and occupation of land? Please briefly describe them and include environmental laws.

The Swiss system of zoning and planning is performed on four levels (federal, cantonal, regional and local). On each level, respective laws exist. Environmental protection is mainly addressed on a federal level.

12.2 Can the state force land owners to sell land to it? If so please briefly describe including price/compensation mechanism.

If the rules of expropriation are followed, the state can force landowners to sell land to it in order to achieve certain goals which are in the public's interest. The basic rules of expropriation are as follows: the state needs to establish that (i) there is a sufficient legal basis for the expropriation, (ii) the expropriation is in the public's interest, (iii) the expropriation is in accordance with the principle of proportionality, (iv) the goal of the state cannot be achieved by other reasonable measures, and (v) the landowner is fully compensated.

12.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Land/building use and/or occupation and environmental regulation are, in most cases, controlled by authorities determined by the cantons and the communities. In order to get reliable information on these matters, the respective authorities have to be contacted. More and more information is available online.

12.4 What main permits or licences are required for building works and/or the use of real estate?

In most cases, a permit is necessary to build, modify, demolish or change the use of a building.

12.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

It depends on the circumstances of the case at hand. Implied permission is hardly ever seen.

12.6 What is the typical cost of building/use permits and the time involved in obtaining them?

Time and costs vary from canton to canton and community to community. They range (depending on the project) from several hundred to several hundred thousand Swiss francs.

12.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate or development/change of use?

There are regulations on the protection of historic monuments on a federal, cantonal and community level. They do not directly affect the transfer of rights in real estate. The buyer should, however, be aware that certain modifications to a building may be impossible and/or subject to negotiations with the authorities. Hence a change of use – provided that the change has been permitted – is only possible without any affection as long as the buyer does not make any modifications to the protected property, which is not common in practice.

12.8 How can, e.g., a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

Yes, each canton has a public register of contaminated real estate. More and more of such registers are available online. However, the fact that a property is not entered into such register does not necessarily mean that the property is not contaminated or polluted.

12.9 In what circumstances (if any) is environmental clean-up ever mandatory?

A property must be cleaned up if it is listed in the public register of contaminated real estate as being polluted. When it comes to the sale or division of immovable property located on a site that is entered in the register of polluted sites, an authorisation of the competent authorities is to be obtained.

12.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

The assessment and management of the energy performance is regulated on a cantonal level. In general, it is not mandatory for the owners to perform respective tests.

13 Climate Change

13.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Under the heading “energy strategy 2050”, a comprehensive set of documents has been produced in recent years. As part of the energy strategy 2050, the CO₂ Act has been revised and came into force on 1 January 2013 (under the revised CO₂ Act, subsidies in the amount of 450 billion Swiss francs per year for the reduction of CO₂ from buildings will also be made available). The CO₂ Act sets out targets for emission reductions until 2020 and contains measures for buildings, transport and industry. Among others, a building programme has been established in order to promote energy efficient technologies for the renovation of buildings and the investment in renewable energies, waste heat recovery and the optimisation of building utilities. There is a plan to replace the existing concept of subsidies with a steering charge. The CO₂ Act shall be further revised in order to comply with the obligations of the Paris climate agreement for the period after 2020.

13.2 Are there any national greenhouse gas emissions reduction targets?

Based on the Kyoto protocol, the CO₂ Act aims at reducing greenhouse gas emissions by 2030 by 50% compared to 1990 levels. Over this period, the Federal Council intends to achieve a minimum of 30% in Switzerland and a maximum of 20% abroad with various actions.

13.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

The Energy Strategy 2050 is being implemented gradually. By approving the revision of the Energy Act in May 2017, Swiss voters gave the go-ahead to the first series of measures to restructure the country’s energy system. These are intended to reduce energy consumption, improve energy efficiency and promote the use of renewable energies. Furthermore, the construction of new nuclear power stations has been prohibited. The totally revised Energy Act came into force on 1 January 2018. By applying this strategy, Switzerland can reduce its dependency on imported fossil fuels and strengthen domestic renewable energies. It can also create jobs and boost investment in the country.

Moreover, the Environmental Protection Law also contains provisions relating to construction work and buildings and the Environmental Compatibility Assessment Law provides that any construction or building measures which materially influence the environment need to undergo an environmental compatibility assessment.



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