



REAL ESTATE BRIEFING

PURCHASING REAL ESTATE IN SWITZERLAND

Dimitri Rotter

1. Introduction

A property acquisition of value depends primarily on location; and real estate in Switzerland is among the most coveted in the world. Situated in the heart of Europe, Switzerland is distinguished by political and social stability. It has a sound economy, high standard of living, superb infrastructure, comparably low crime rate, and relatively low tax rates. The country's schools and universities are world renowned and the alpine landscape is of extraordinary beauty.

The value of real estate in Switzerland is not likely to diminish. Furthermore, Switzerland has a strong rental market. The total volume of the Swiss housing market is currently estimated to be 2.3 Trillion Swiss Francs, a quarter of which (approx. CHF 622 Bio.) is made up of rented apartments only.

2. Limitations on the Swiss Real Estate Market

In order to avoid a sell-off abroad, the Swiss real estate market has been limited since the 1980s by the **Federal Law on the Acquisition of Real Estate by Persons Abroad**, also known as **Lex Koller**. According to this law, Swiss real estate can only be purchased by foreign nationals if they are domiciled in Switzerland. Acquisition of real estate by foreign nationals living outside of Switzerland requires prior authorization, which is only granted in cases provided for by the law.

The Swiss electorate's approval of the **Second Homes Initiative** (that limits construction of secondary residences) and the revision of the **Spatial Planning Act** (that tightens legislation regarding the use of land for construction) demonstrate a general trend towards limiting the possibilities for acquiring Swiss real estate.

However, in spite of the existing complexities there are possibilities that can be made use of. In the first place, the law foresees exceptions, and secondly, obtaining residence in Switzerland reduces or even lifts the limitations on acquiring Swiss real estate.

3. Exceptions to the Law

Lex Koller is a comprehensive set of rules which cannot be circumvented. Accordingly, it also applies to transactions that give a non-resident indirect control over Swiss real estate, i.e. by acquiring property through an entity, such as a partnership, a limited liability company, or through the use of a trust, etc. The purchase of shares of a Swiss real estate company is subject to authorization as well. Failure to obtain authorization as prescribed in the law leads to a transaction being rendered null and void.

At the same time, the law foresees exceptions. These exceptions can be divided into cases of exemption from the law, which are valid throughout Switzerland, and cases with grounds for authorization, which can vary from canton to canton:

Main Exemption Cases:

1. Primary Residence (Home): EU/EFTA citizens residing in Switzerland and holding a settlement permit (C permit), a long-term permit (B permit) or a short-stay permit (L permit) as well as non EU/EFTA citizens with a settlement permit (C permit) are not subject to Lex Koller and thereby not restricted in acquiring real estate in Switzerland. Non-EU/EFTA citizens with a long-term permit (B permit), however, are only entitled to purchase real estate serving as their primary residence (unless other exemptions or authorization grounds do apply).

The property must be occupied by the purchaser. Renting out property, even in part, is not permitted.

2. Cross-border Commuter: Authorization is also not necessary for an EU/EFTA citizen who is a cross-border commuter working in Switzerland, and who wants to purchase a secondary residence in the vicinity of his or her place of work. The term cross-border commuter refers to an individual who is an EU/EFTA citizen, pursues an employed or self-employed activity within Switzerland, has his residence in any EU/EFTA country, and returns to his place of residence at least once a week. The main residence of the EU/EFTA citizen therefore does not have to be within a defined radius around Switzerland (citizens of Bulgaria and Romania remain subject to restrictions). Although not subject to authorization the land registry will often require a confirmation of the authority that the planned purchase is not subject to the Lex Koller under the Cross-border Commuter exemption.

3. Real Estate Used for Commercial Purposes: Real estate used for commercial purposes can be acquired without authorization. This includes premises where a foreign national buyer exercises commercial activity, as well as premises purchased by a foreign national and rented out for commercial activity (e.g. office space).

4. Further exemption cases requiring no prior authorization include:

- legal heirs as defined by Swiss law;
- acquisitions by ancestors, descendants, a spouse, or a registered partner of the person disposing of a property;
- acquisitions that are in the national interest of Switzerland.

The latter exception is of course extremely rare. However, in 2006 the Swiss Federal Council granted exemption from the Lex Koller on this basis for a resort village in the Swiss Alps, known as **Andermatt Swiss Alps**, thereby allowing foreign nationals to acquire residential property there without legal restrictions or any requirements whatsoever until 2030.

Grounds for Authorization:

If a transaction is not exempt from the requirement for prior authorization, there are nevertheless grounds for

authorization which can be invoked. Following are some grounds for authorization that are subject to cantonal legislation:

1. Holiday Homes and Serviced Flats: Foreigners without domicile in Switzerland can acquire holiday homes and serviced flats if they are in a place designated by the cantonal authorities as a holiday resort.

2. Secondary Residences in Combination With Close Ties: EU/EFTA citizens without Swiss nationality residing outside of Switzerland and non-EU/EFTA nationals in Switzerland without a settlement permit (C permit) can acquire secondary residences if they have close ties to the place in question, i.e. a continuous and regular connection which they must maintain in order to safeguard mainly economic, scientific or cultural interests. Relationships by blood or marriage, studies in Switzerland, regular vacation destinations, etc., do not constitute close ties in the aforementioned sense.

3. Subsidized Housing: Authorization can be granted for the acquisition of real estate in order to offer subsidized housing, that is, accommodation with low and reasonable rent compared to similar premises in the same locality.

4. Obtaining a Residence Permit in Switzerland

One way of acquiring Swiss real estate without the need for authorization is to use it as primary residence. Therefore, the question arises as to how to obtain a residence permit.

EU/EFTA citizens benefit from the **Free Movement of Persons Agreement** between Switzerland and the EU. According to this agreement, citizens of EU/EFTA countries principally have the right to work and reside in Switzerland, and vice versa. There may be restrictions for Citizens of Bulgaria and Romania till the end of May 2016 at latest. Furthermore with regard to the ballot measure of February 9, 2014 it is unclear if the Free Movement of Persons Agreement can be extended to Citizens of Croatia. This right is substantiated by the issuance of a residence permit that also serves as a work permit.

Obtaining residence for **non-EU/EFTA nationals** is a more complex matter and is regulated by the Swiss Federal Act on Foreign Nationals. This law distinguishes between

residence with gainful employment and residence without gainful employment. Generally speaking, the law allows for residence in the following cases:

1. Employment by a Swiss Company as a „Manager“, „Specialist“ or „Other Qualified Worker“: The aforementioned positions or capacities are not defined in the law and, depending on the branch of industry, imply that the applicant has a university degree, or has undergone special training with several years of work experience, or has certain extraordinary and indispensable skills and expertise, etc. Note that an individual can also be employed by a self-owned company.

2. Self-Employment: Normally a residence permit for employment is only issued if it is proven that no suitable individual already residing in Switzerland with a work permit can be found for the open position, and if the salary and employment conditions are based on what is customary for the location, profession and sector. Permits for self-employment, however, are not dependent on these requirements. Nonetheless, whether an activity is considered an employed or self-employed occupation depends on several factors and may prove to be a delicate distinction.

3. Investors: Investors refers to individuals who presumably would have a positive impact on the Swiss economy by maintaining existing jobs or creating new long-term jobs. Such individuals have a privileged position in Swiss migration law. The requirement of special skills or expertise in the aforementioned sense does not apply here, and there is no requirement to demonstrate good prospects for a continuous integration in the Swiss job market and social environment as in point 1 above.

4. Persons from the Fields of Science, Culture or Sport: An additional category that meets the personal requirements for obtaining work and residence permits in Switzerland is that of prominent persons from the world of science, culture or sport. The aforementioned privileges in regard to labor market status and integration prospects also apply here.

5. Residence without Gainful Activity: There is also the possibility of obtaining residence without gainful activity. In this category there are various exceptions to the rules and different types of permits. A common resident permit application is the so-called „pensioner's permit“. A „pensioner's permit“ can be granted if an applicant is

older than 55 years; has close ties to Switzerland (e.g. has family, has had educational training in Switzerland for a longer period of time, etc.); has no gainful activity (neither in Switzerland nor abroad); and has sufficient financial resources for residing in Switzerland.

6. Residence Permits on the Basis of the Fiscal Interests of the Canton of Residence: The law provides foreign nationals – regardless of age – the possibility of obtaining a resident permit if it is in the fiscal interest of the canton of residence. The foreign national must agree to pay a certain yearly minimum in net annual taxes. This special taxation arrangement must be negotiated individually with the cantonal authorities and the conditions vary from canton to canton. Gainful activity is possible.

Categories 3, 5, and 6 are often combined with the attractive **lump-sum taxation**. Lump-sum taxation is a possibility for wealthy foreign nationals to be taxed on the basis of expenditure in Switzerland rather than the usual worldwide income and net wealth basis.

It must be pointed out that, according to the „safeguard clause“ in Art. 10 para 4 in the **Free Movement of Persons Agreement**, in 2013 Switzerland re-introduced immigration quotas for EU citizens that will however last only until mid-2014. Furthermore, on February 9, 2014 Swiss voters approved a ballot measure that will introduce quotas for all types of residence and work permits (i.e. also for all EU and EFTA nationals). Between the end of 2014 and the beginning of 2015 an additional ballot measure may be held that will aim at further limiting immigration.

Conclusion

Investment in Swiss real-estate is very attractive, as is residence in Switzerland. Although Switzerland has put certain barriers and regulations in place, there are, nevertheless, possibilities for purchasing real estate with or without acquiring residence. Finding the right solution for the individual client is a matter of careful study, especially in the ever changing environment of immigration regulations. The expertise of an experienced counsellor is essential.

Brief (non-exhaustive) overview of the restrictions on the acquisition of Swiss real estate

ACQUISITION WITH DOMICILE IN SWITZERLAND			ACQUISITION WITHOUT DOMICILE IN SWITZERLAND		
WITH PRIOR AUTHORIZATION	EU/EFTA citizens with a short stay, long-term or permanent residence permit (L, B or C permit)	Non-EU/EFTA citizens with a settlement permit (C permit)	Non-EU/EFTA citizens without settlement permit (C permit)	EU/EFTA citizens	Non-EU/EFTA citizens
	WITHOUT PRIOR AUTHORIZATION	No restrictions			Authorization grounds: ■ banks ■ insurance companies ■ pension funds ■ charitable purposes ■ cases of inheritance ■ cases of hardship Possible authorization grounds subject to cantonal law: ■ holiday homes ■ serviced flats ■ secondary residences ■ subsidized housing
Primary residence for foreign non-EU/EFTA nationals who do not have a settlement permit (C permit), but a long term residence permit (B permit), and thereby, in principle, are not considered to be domiciled in Switzerland					
		Secondary residence for cross-border commuters (G permit)			
Real estate for purely commercial purposes					
			Legal heirs		
Transactions to a spouse, ancestor or descendant (transactions inter vivos)					
Buyers who already hold joint ownership or co-ownership					
Condominium owners exchanging their units					
Acquisitions in the national interest of Switzerland					
Non-monetary compensation in expropriation cases					

Dimitri Rotter

drotter@froriep.ch

Tel. +41 41 710 60 00



OUR REAL ESTATE SPECIALISTS

Dimitri Rotter, Zug

drotter@froriep.ch

Tel. +41 41 710 60 00

Raffaele Rossetti, Zurich

rrossetti@froriep.ch

Tel. +41 44 386 60 00

Nicolas Iynedjian, Lausanne

niynedjian@froriep.ch

Tel. +41 21 863 63 00

Nicolas Iynedjian, Geneva

niynedjian@froriep.ch

Tel. +41 22 839 63 00

WHO IS FRORIEP?

Founded in Zurich in 1966, Froriep is one of the leading law firms in Switzerland, with around 90 lawyers and offices in Zurich, Geneva, Lausanne and Zug, as well as foreign offices in both London and Madrid, serving clients seeking Swiss law advice.

We have grown a domestic and international client base ranging from large international corporations to private clients. Our unique, truly integrated, international structure mirrors our strong cross-border focus. We value and promote continuity and strong client relationships. Our teams are tailor-made, assembled from every practice area and across our network of offices.

Many of our lawyers are recognised as leaders in their practice areas, and our clients benefit from our in-depth knowledge and the rich diversity of talents, languages and cultures that makes our lawyers particularly versatile and adaptive.

ZUG
Grafenastrasse 5
CH-6304 Zug
Tel. +41 41 710 60 00
Fax +41 41 710 60 01
zug@froriep.ch

ZURICH
Bellerivestrasse 201
CH-8034 Zurich
Tel. +41 44 386 60 00
Fax +41 44 383 60 50
zurich@froriep.ch

GENEVA
4 Rue Charles-Bonnet
CH-1211 Geneva 12
Tel. +41 22 839 63 00
Fax +41 22 347 71 59
geneva@froriep.ch

LAUSANNE
9a Place de la Gare
CH-1003 Lausanne
Tel. +41 21 863 63 00
Fax +41 21 863 63 01
lausanne@froriep.ch

LONDON
17 Godliman Street
GB-London EC4V 5BD
Tel. +44 20 7236 6000
Fax +44 20 7248 0209
london@froriep.ch

MADRID
Antonio Maura 10
ES-28014 Madrid
Tel. +34 91 523 77 90
Fax +34 91 531 36 62
madrid@froriep.ch