

SWITZERLAND

Bär & Karrer



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Real estate acquisition restrictions

On March 10 2017, the Federal Council of Switzerland opened a hearing procedure for the amendment of the Lex Koller, the law restricting the acquisition of real estate by persons abroad. The Federal Council proposes in part very severe restrictions. For this reason, the Federal Council is not formally proposing to implement the most controversial changes relating to commercial properties and listed real estate companies, but rather is putting them up for discussion only.

Commercial properties

The most far reaching proposal relates to commercial properties, specifically, properties used for commercial or business purposes (offices, production, logistics, retail, hotels, and so on). It is proposed that these commercial properties would again be subject to the Lex Koller. Persons abroad would thus be excluded from acquiring commercial properties in Switzerland in the future. The only exception would be where an owner uses the property for his own business activities and does not lease the property to third parties.

This change would repeal a liberalisation of the Lex Koller that was enacted in 1997. As a consequence, foreigners would be almost completely excluded from the acquisition of real estate properties in Switzerland for investment purposes. The acquisition of non-commercial properties, in particular residential properties, is already inadmissible today.

Listed real estate companies

Since 2005, foreigners have been permitted

to acquire shares in listed real estate companies even if they invest in residential properties. The Federal Council is again putting this up for discussion, proposing that persons abroad would no longer be permitted to acquire shares or other equity securities in listed real estate companies. As stock exchange trading does not allow determining the nationality of a buyer, this change could result in listed real estate companies having to delist their shares from the stock exchange – with all the corresponding negative consequences for shareholders.

Real estate investment funds

Under current law, foreigners may acquire shares in Swiss real estate investment funds if the shares are regularly traded on the market. In its bill, the Federal Council proposes to limit the acquisition of shares in real estate investment funds to shares listed on a Swiss stock exchange. As many of the Swiss real estate investment funds are not listed on a stock exchange, residential real estate funds would have to list in order to remain open for foreigners as investors.

Foreclosure by foreign banks and insurance companies

Foreign banks and insurance companies do not face any Lex Koller restrictions when financing Swiss real estate if the financing follows usual commercial terms. The law even allows for foreign banks and insurance companies to acquire the real estate property they have financed through foreclosure proceedings. The Federal Council now proposes that the right to acquire the property in a foreclosure will only apply to foreign controlled banks and insurance companies that have their head office (corporate seat) in Switzerland, and not to foreign banks and insurance companies that are based abroad. In the future, real estate financings by foreign banks and insurance companies would therefore have to be carried out by a Swiss subsidiary if the lenders want to retain the right to acquire the financed property in foreclosure proceedings.

Primary residence

EU-national residents in Switzerland are

treated like Swiss citizens under the current law and therefore are not subject to any restrictions when acquiring Swiss real estate. Nothing will change in this respect. Nationals from third states, that is, nationals from countries other than EU countries or Switzerland, are only treated like Swiss citizens if they hold a Swiss resident permit C.

Before acquiring a resident permit C, however, those third state nationals may acquire an apartment or house at their place of domicile as their primary residence. Today, no permit is required for such an acquisition. The Federal Council now proposes to subject the acquisition of a primary residence to a permit requirement, thus complicating the acquisition process.

In addition, the Federal Council proposes that third state nationals must sell their primary residences within two years after they leave Switzerland or stop using the property as primary residence.

Transitional law

The proposed rules will apply to transactions that are signed or closed after the new law enters into force. The new rules will therefore not apply retroactively. In particular, owners will not have to sell properties that they legally acquired before the enactment of the revision.

Legislative procedure

The hearing proceedings will end on June 30 2017. Opposition to the revision is already building. Based on the results of the hearing, the Federal Council will decide whether and what changes to propose to parliament.

Consequently, we do not expect any amendments to enter into force within the next two to three years.

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