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Land of the Alps - Non-Swiss nationals wishing to purchase real estate in Switzerland should be aware of some peculiarities of Swiss law

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Non-Swiss nationals wishing to purchase real estate in Switzerland should be aware of some peculiarities of Swiss law.

In a small country real estate is a restricted commodity. Swiss law therefore restricts the purchase of real estate by foreign nationals (Federal Law on the Acquisition of Real Estate Property in Switzerland, 'Lex Koller'). In December 2012 the Swiss Parliament unanimously voted against abolishing the Lex Koller. In addition, in a recent referendum the Swiss population has voted for a limit on holiday homes: no more than 20% of all in each commune must be holiday homes. Once this quota has been reached, there is a ban on purchases for the purpose of using a property as a holiday home.

1. Lex Koller

The Lex Koller limits the sale of land to certain foreigners in order to safeguard Switzerland from an alienation of its land.

For the purposes of the Lex Koller, foreigners are (i) individuals who do not hold a Swiss or EU passport, (ii) individuals holding an EU passport who are not legally and actually domiciled in Switzerland, (iii) individuals without a permanent residence permit (C permit) and no diplomatic status and (iv) foreign (controlled). Foreigners acquiring real estate for use as their primary residence are exempt from the Lex Koller. In addition, certain types of real estate are also exempt, e.g. commercial units.

A US citizen is for example allowed to buy an apartment for use as his or her primary residence without obtaining a special permit, however he or she cannot buy an apartment house in Switzerland, use one apartment for his or her own purposes and rent out the others to third parties, not even to Swiss citizens. On the other hand, a French citizen is allowed to do this if he or she is legally and de facto domiciled in Switzerland. This French citizen can also buy a holiday home in the Swiss Alps without restrictions and is not forced to sell it, should he or she move out of Switzerland at a later stage. A French citizen domiciled in Paris, however, is not allowed to buy any real estate in Switzerland without a – difficult to obtain – special permit.

The Lex Koller restrictions also apply when real estate is purchased indirectly by foreigners. It is therefore also necessary to analyse the legal situation for the sale of shares in companies which are not listed. If the company whose shares are sold

holds non-industrial real estate and the purchasers are foreigners or companies controlled by foreigners, the transaction might be declared void retrospectively.

2. The purchase agreement

The purchase agreement is only valid if concluded in Switzerland in the form of a public deed in the presence of a Swiss notary competent to notarize in the canton or region the real estate property is located. The notary is usually chosen by the purchaser, but is by law neutrally representing the interests of both parties. The same form requirements apply to pre-sales and reservation agreements which are not binding if they are merely concluded in writing.

It is customary for sellers in Switzerland not to grant any guarantees for or accept any liability for potential damage arising from older buildings. Buyers must carry out their own due diligence. A prudent buyer will always consult a specialist of local, cantonal and Swiss law familiar with the area. Many aspects of real estate law are governed by cantonal law, including construction laws, taxes regarding the transfer of ownership. A professional in Geneva might therefore not know the details in St Gallen and vice versa.

An extract from the land register is a prerequisite for the legal due diligence since it shows title, liens and collaterals and benefits from increased authenticity.

Many sellers request a substantial down payment of approx. 10% when signing the agreement. Down payments are usually made to the notary's client account or an escrow account.

3. Transfer of title

The ownership in real estate is transferred at the moment when the purchaser is registered as the new owner in the land register. The remainder of the purchase price often becomes due upon registration in the registry. Notaries therefore often only register the transfer of title of ownership with the land registry after receiving payment of the purchase price or a confirmation from a bank that the payment to the seller will be made as soon as the notary confirms the registration in the land registrar's journal.

4. Summary

Before entering into a purchase contract for Swiss real estate, it is important to clarify whether the purchase is possible under the restrictions of the "Lex Koller". Real

estate purchase agreements are only valid when notarised by a competent Swiss notary and the transfer of ownership only takes place upon registration in the land register. In any case it is highly recommended to seek advice from a local professional before entering into a purchase agreement.
