New attempt to tighten rules on foreign real property investments fails in Parliament

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Proposed tightening and previous developments

In January 2021 the Legal Affairs Committee of the National Council submitted an initiative (Parliamentary Initiative 21.400) to temporarily prohibit the acquisition of business premises by persons abroad by amending the Federal Act on the Acquisition of Real Estate by Persons Abroad (the so-called 'Lex Koller' / Federal Act on the Acquisition of Real Property by Non-Swiss Residents, SR 211.412.41).

In February 2021 the Economic Affairs and Taxation Committee of the National Council surprisingly decided to include this initiative in the revised urgent COVID-19 Act instead of amending the Lex Koller through the ordinary legislative process.

The initiative proposed to temporarily prohibit the acquisition of business premises by persons abroad during a 'special' or 'extraordinary' situation according to Articles 6 and 7 of the Epidemics Act and for two years following such a situation.

The proposed temporary ban aimed to prevent Swiss businesses which have been financially affected by the COVID-19 crisis from being pressured to sell their business premises to foreign buyers at unfavourable terms and low land prices (for further details please see "New attempt to tighten rules on foreign real property investments").

Parliamentary debates

On 8 March 2021 the National Council surprisingly accepted the proposal to include the temporary ban in the urgent COVID-19 Act with a relatively clear majority.

On 10 March 2021 the Council of States rejected such proposal unanimously, mainly based on the arguments that, to date, the COVID-19 situation had not led to increased foreign demand for the acquisition of Swiss business premises and that the proposed temporary ban would have led to considerable legal uncertainty.

On 11 March 2021 the National Council followed the Council of States and rejected the proposal as well.

Despite this pleasing result of the discussion about including the temporary ban in the urgent COVID-19 Act, the topic remains on the agenda. Parliament must still discuss the initial initiative submitted earlier in 2021 to amend the Lex Koller through the ordinary legislative process and is expected to do so in the coming months.

Comment

The concerns regarding the recently rejected proposal continue to apply to the initial initiative. Acquisitions of Swiss business premises by persons abroad are important for the Swiss economy in various sectors, such as industrial production, hospitality in general and resorts in particular. Prohibiting such investments, even only on a temporary basis, would severely harm the Swiss economy and endanger numerous jobs.

Against this background, it seems clear that Parliament should not deviate from its recent decision not to strengthen the rules for foreign property (for further details please see "Stricter rules for foreign investments in Swiss real property?" and "Federal government drops plan to tighten rules on foreign real property investments").

This article has been published by Michael Lips (Partner) and Larissa Rickenbacher (Associate) on 26 March 2021 at International Law Office (ILO), London.

No legal or tax advice

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