

Stricter rules for foreign investments in Swiss real property?

April 07 2017 | Contributed by [Pestalozzi Attorneys at Law](#)

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Foreign investments in Swiss real estate are governed by a federal law known as the '*Lex Koller*'⁽¹⁾ and additional cantonal rules. The law restricts the acquisition of certain real property by non-Swiss residents.⁽²⁾

Latest developments

Even though the federal Parliament recently rejected two motions to tighten the legal regime governing foreign investments in Swiss real estate, the federal government has now submitted a number of proposals that head in the same direction.

The proposals are in public consultation until June 30 2017. Any interested individual or organisation may submit comments and suggestions. Based on the result of the public consultation, the government will either drop its plans or submit draft legislation to Parliament. It is likely that the entire legislative process will take a few years.

Considering that in the past 10 years Parliament has discussed a wide range of proposals – from completely abolishing the *Lex Koller* to substantially tightening it – the outcome of the latest initiative appears open. The first reactions of a number of industry organisations have been sceptical.

Proposed amendments

Under the guise of closing loopholes and improving law enforcement, a substantial tightening of the legal regime governing foreign investments is under discussion. Additional limitations for the acquisition of Swiss real estate by non-Swiss residents are being considered, especially in the following application areas:

- acquisition of business premises as capital investments, particularly for renting out such premises;
- acquisition of business premises that include residential units required by zoning law;
- acquisition of real properties by non-Swiss lenders within foreclosure sales and liquidation settlements;
- acquisition of main residences by citizens of states other than EU and European Free Trade Association member states;
- acquisition of shares in real estate companies listed on a Swiss stock exchange;
- acquisition of shares in real estate funds not listed on a Swiss stock exchange;
- settling real properties into trusts; and
- acquisition of real properties by non-Swiss fund managers investing pension funds of Swiss companies.

In addition, a number of technical and procedural obstacles are proposed for non-Swiss residents to

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acquire Swiss real estate, particularly the consideration board members (besides shareholders and other criteria) to determine whether Swiss domiciled companies are dominated by non-Swiss residents.

Comment

Even though the federal government announced an initiative to modernise the *Lex Koller* some time ago, the reasons invoked to justify the proposals appear questionable:

- The proposals sidestep the fact that Parliament recently rejected motions to tighten the relevant legal regime;
- Some of the proposals aim at reintroducing a past regime and thus cannot be qualified as a modernisation;
- Some of the proposals claim to return to the purpose of the law – the responsibility for defining the purpose of the law, however, lies not with the government, but with the legislature and, in case of disputes, with the judicial authorities; and
- The proposals indicate a one-sided view of the Swiss property market and the effect of foreign investors.

Experts agree that excessive tightening of the legal regime, as proposed, is likely to substantially harm the industry and the national economy.

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Endnotes

(1) The Federal Act on the Acquisition of Real Property by Non-Swiss Residents, SR 211.412.41.

(2) For further details please see:

- "[Latest developments in foreign real property investments](#)";
- "[Non-Swiss residents can own several holiday homes in exceptional cases](#)"; and
- "[Brexit vote: time to buy Swiss real estate?](#)"

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