

Federal government drops plan to tighten rules on foreign real property investments

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Introduction

In March 2017 the federal government submitted to public consultation several proposals to amend the legal regime governing foreign investments in Swiss real property. The vast majority of the comments received rejected the proposed amendments. Consequently, the government dropped its plan to amend a federal law concerning the acquisition of real estate by non-Swiss residents (known as the '*Lex Koller*')⁽¹⁾ and a related ordinance.⁽²⁾

Proposed amendments

The proposed amendments aimed to:

- modernise the *Lex Koller* by closing loopholes and improving law enforcement; and
- substantially tighten the legal regime on foreign property investments in Switzerland.⁽³⁾

In particular, additional restrictions were considered for the following areas:

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

Negative feedback

The public consultation resulted in nearly 200 comments from political parties, cantons, industry players and organisations representing municipalities, cities and alpine regions.

The vast majority of respondents were firmly against the planned amendments and argued that there was generally no need to change the law after Parliament had recently rejected motions to tighten the relevant legal regime. Respondents also feared increased administrative work and a negative impact on the industry and national economy. Conversely, however, a few cantons partially

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supported the federal government's proposals.

Considering the overall result of the public consultation, on 20 June 2018 the federal government decided to drop its plan to amend the law.

Current regime

The current legal regime will not be changed for the time being. Accordingly, the acquisition of Swiss business premises by non-Swiss residents will not be subject to the *Lex Koller* restrictions and the focus of the law remains on residential real property.

However, under the current regime, *Lex Koller* issues may arise (in practice) if transactions involve Swiss real property and aim to:

- acquire business premises with residential parts;
- acquire business premises with substantial land reserves;
- acquire shares in property companies;
- grant loans for acquiring residential real property;
- grant mortgage-backed loans on non-market terms for acquiring residential real property;
- realise mortgages over residential real property; and
- emigrate companies abroad.(4)

Outlook

The following pending parliamentary motions may affect the *Lex Koller* regime in the medium term:

- the potential extension of the *Lex Koller* restrictions to strategic infrastructure in the energy sector, particularly water power plants, power supply grids and gas supply grids;(5)
- foreign investments in key industry companies and critical infrastructure;(6) and
- foreign investments in Swiss companies in general and with regard to infrastructure, know-how transfer and state security.(7)

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Endnotes

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

(2) The Federal Ordinance on the Acquisition of Real Property by Non-Swiss Residents, SR 211.412.411.

(3) For further details please see "[Stricter rules for foreign investments in Swiss real property?](#)".

(4) For further details please see "[Latest developments in foreign real property investments](#)".

(5) Parliamentary initiative 16.498 Badran.

(6) Postulate 18.3233 Stöckli.

(7) Postulate 18.3376 Bischof.

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