

Brexit: changes for UK citizens on Swiss property market

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Introduction

While it remains unclear when and on what terms the United Kingdom will withdraw from the European Union, the United Kingdom is currently regulating its relationship with other states for the post-Brexit period.

Following the United Kingdom's withdrawal from the European Union, the bilateral agreements between Switzerland and the European Union will no longer apply to the United Kingdom.

In this context, the United Kingdom and Switzerland recently signed a number of agreements, including one on citizens' rights after Brexit, **(1)** which shall safeguard the rights acquired under the bilateral Free Movement of Persons Agreement (FMOPA). **(2)** Among other topics, this agreement covers the purchase and retention of real estate by UK citizens in Switzerland and *vice versa*.

Foreign investments in Swiss real estate

Foreign investments in Swiss real estate are governed by the *Lex Koller*, **(3)** a federal ordinance and cantonal rules. The law only restricts the acquisition of residential real estate by persons abroad, whereby they remain free to invest in any type of business premise.

The *Lex Koller* considers 'persons abroad' to include:

- citizens of EU and European Free Trade Association (EFTA) member states with no legal and actual Swiss residence; and
- citizens of other states with no legal and actual Swiss residence or with a legal and actual Swiss residence but no permanent Swiss residence permit (C permit).

Such persons abroad are subject to the *Lex Koller* restrictions. For example, they may acquire Swiss residential properties only in limited cases and on formal approval by the competent authority. However, they cannot acquire Swiss residential properties as pure capital investments.

Situation before Brexit

Until Brexit takes legal effect, UK citizens are citizens of an EU member state. Therefore, if they have a legal and actual Swiss residence, they are not considered to be persons abroad for the purpose of acquiring Swiss residential property and may acquire Swiss residential property without any restriction, including main residences, holiday homes and pure capital investments in residential properties (for further details please see "[Brexit vote: time to buy Swiss real estate?](#)").

Situation after Brexit

Once Brexit takes legal effect, UK citizens will no longer be citizens of an EU or EFTA member state. Having a legal and actual residence in Switzerland would no longer disqualify UK citizens from being considered persons abroad. UK citizens with a legal and actual Swiss residence will require a permanent Swiss residence permit (C permit). Otherwise, they will be considered persons abroad and will be subject to the *Lex Koller* restrictions.

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Grandfathering earlier rights

In addition to the above, the agreement between the United Kingdom and Switzerland safeguarding the rights of the FMOPA provides for a grandfathering of the following specific situations, if certain requirements are met:

- Swiss residential real estate legally acquired by UK citizens before Brexit will not be affected post-Brexit.
- UK citizens with a legal and actual Swiss residence when Brexit takes legal effect will, for the purpose of acquiring Swiss residential property, keep their status after Brexit. They will be entitled to acquire Swiss residential real estate, even if they do not possess a C permit.
- UK citizens who are cross-border commuters when Brexit takes legal effect will, for the purpose of acquiring Swiss residential property, keep their status after Brexit. They will be entitled to acquire a secondary home in the region of their workplace.

UK citizens who take up new legal and actual residence in Switzerland post-Brexit are not covered by the grandfathering and the post-Brexit situation described above will apply.

Application

The agreement will apply once the United Kingdom has withdrawn from the European Union.

Depending on whether or not a withdrawal agreement is, based on the current planning, signed before 29 March 2019, the agreement safeguarding citizens' rights will enter into force on 30 March 2019 (without a withdrawal agreement) or at the end of the transition period (withdrawal with agreement). Based on the current draft of the withdrawal agreement, the transition period is expected to run until 31 December 2020.

The Swiss Parliament must approve the agreement and it is subject to an optional referendum. Because this is impossible in a no-deal scenario, Parliament's foreign policy commissions have approved the provisional application of the treaty when Brexit takes legal effect as of 29 March 2019.

It can be assumed that the treaty is self-executing. Therefore, no amendment of existing Swiss laws is required for its application. The relevant legal provisions might be updated at a later stage.

Comment

The agreement between the United Kingdom and Switzerland on citizens' rights post-Brexit removes uncertainties regarding future real estate purchases and retentions by UK citizens.

In addition, the agreement implements the grandfathering clause of the FMOPA that will be triggered by Brexit.

Even if the agreement is self-executing, the relevant legal provisions should be updated at least at the ordinance level in order to avoid confusion and misunderstanding.

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Endnotes

(1) Agreement between the United Kingdom and the Swiss Confederation on Citizens' Rights Following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons, signed on 25 February 2019.

(2) Agreement between the European Community and its Member States and the Swiss Confederation on the Free Movement of Persons, SR 0.142.112.681.

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

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