



## ISSUES RELATING TO FOREIGN INVESTMENT

### SWITZERLAND

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#### **1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

In Switzerland, the type of real estate use determines whether or not non-resident aliens require a permission to acquire local real estate: whereas the acquisition of real estate that is used for residential purposes needs a permission (see below section 1.1), the acquisition of real estate that is used for business purposes is allowed without permission, even for sole investments purposes (see below section 1.2).

- 1.1. The acquisition of the following real estate by non-resident aliens requires permission: residential premises (one-family houses and apartment buildings) and condominiums as well as building land for residential premises. To acquire residential real estate, non-resident aliens, both individuals and legal entities, must obtain permission from the competent Cantonal authorities, granted in accordance with the Federal Act on the Acquisition of Real Estate by Non-resident Aliens. Permissions, however, are only granted for a limited number of specific reasons. Therefore, the acquisition of residential real estate by non-resident aliens is restricted to a large extent. Also, permissions are only granted on the condition that

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the real estate is permanently used for its stated purpose. Modifications of any kind require prior approval by the competent authority.

Under the above-mentioned Act, the term "acquisition" is defined broadly. It includes the ownership, building rights, rights of abode and the beneficial use of a building and of land. The term "non-resident aliens" includes (i) non-Swiss citizens residing outside of Switzerland, (ii) non-Swiss citizens without EU or EFTA citizenship residing in Switzerland and without right of domicile in Switzerland (so called "C Permit"), (iii) companies domiciled outside of Switzerland (also if controlled by Swiss citizens or by EU or EFTA citizens residing in Switzerland), (iv) companies domiciled in Switzerland being controlled by non-Swiss residents, and (v) fiduciaries, which basically do not require an approval, but which acquire real estate for non-Swiss residents on a trust basis.

Without valid permission, the acquisition of residential real estate by non-resident aliens is not valid, and the transfer of the real estate may not be registered. In the case of an unlawful acquisition, the authorities must revoke the concerned permission and confiscate any profits derived from the real estate.

- 1.2. In contrast to the above, the acquisition of business premises by non-resident aliens does not require a special permission. This major exception applies also to building land for business establishments, if construction starts within one year after the acquisition. Business premises may further include an adequate amount of land reserve as well as residential premises which are essential for the particular business. The exception applies to both, the acquisition of business premises for the own use by the acquirer and the acquisition of business premises as investments. The exception does not apply to the trade with or the renting out of residential premises. Therefore, these activities do require permission (which, as mentioned above, is only granted for a limited number of specific reasons).

**2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Besides the above-mentioned Federal Act on the Acquisition of Real Estate by Non-resident Aliens, no other state restrictions apply to the ownership of real estate by foreign investors.

The acquisition of interests in Swiss legal entities is subject to the above-mentioned restrictions, if the actual purpose of a legal entity is to acquire real estate. Also, if any Swiss legal entity is controlled by non-resident aliens, then such entity itself is considered to be a non-resident alien. As such, the legal entity is subject to the principles outlined above: To the extent that it acquires business premises, no permission is required. To the extent that it acquires residential real estate, permission is required.

A dominant position exists whenever a non-resident alien can, either alone or together with other non-resident aliens, decisively influence the management of the concerned entity - either financially, through voting power, or otherwise. In particular, a dominant position of non-resident aliens is presumed in either of the following cases (i) the ownership of more than one third of the capital of a corporation or of a limited liability company or of a cooperative and, if any, of the participation certificates, (ii) the control over more than one third of the votes (either in the shareholders' or the partners' meeting), (iii) the right to appoint the majority of the members of the board of a foundation or of the foundation's beneficiaries, or (iv) the grant of repayable loans equal to more than half of the difference between the assets of the corporate body and its debts toward persons who are not subject to permission.

**3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

There is no mandatory legal requirement to invest with a local partner.

Investment with a local partner might be helpful to become familiar with local business practice and to get access to the local market.

**4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no Federal or Cantonal taxes levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate. Taxes like income and property taxes, real estate tax, real estate gains tax, real estate transfer tax etc. are levied on everybody regardless of the nationality and regardless of the place of domicile.

However, many double taxation treaties that Switzerland entered into with other countries do not have a provision similar to article 13 paragraph 4 of the OECD model tax convention (e.g. the treaties with Argentina, Austria, Germany, Italy, Japan, Luxembourg, and New Zealand; but not e.g. Canada, France, Mexico, UK, and USA). Thus, individuals or entities domiciled in these countries cannot be subjected to taxes levied on the transfer of indirect ownership in Swiss real estate.

**5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.**

To acquire direct or indirect ownership in residential real estate, a non-resident alien must obtain permission from the authority of first instance, i.e. a Cantonal authority.



In certain cases, for instance to grant a permission for national-political reasons, a federal authority is competent to decide. In these (rare) cases, the acquirer must file the application with the Cantonal authority of first instance for the attention of the federal authority. The competent Cantonal authority is the authority at the place where the concerned real estate is situated. For the acquisition of shares of a legal entity and for the participation in a partnership, the competent authority is determined according to where the largest part (based on the value) of the concerned real estate is situated.

Land registrars, registrars of commerce and auction authorities leave a closer examination of the requirement of permission and, if necessary, the taking of evidence, to the authority of first instance and refer the acquirer to the said authority. Upon final decision permitting the acquisition of real estate, the land registrars proceed with the entry into the land register in cases where such entry is required by the law.