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The International Comparative Legal Guide To Real Estate 2010

A practical cross-border insight
into real estate law



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1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in Switzerland. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.

The Federal Constitution guarantees ownership of immovable property.

Real estate law in Switzerland is governed by the Swiss Civil Code (CC), which addresses general conditions of property law, real estate property, the acquisition and loss of real estate and pre-emption rights, servitudes, mortgages, including other liens, and the land register.

The Swiss Code of Obligations (CO) governs transactions involving real property, namely the owner's liability for building defects, options and pre-emption rights. The CC and the CO are main federal laws on real estate. The states (i.e. the Cantons) have retained only very limited legislative power in this area.

Specific federal laws govern particular aspects of real estate law, such as the acquisition of Swiss real estate by non-residents (so-called "Lex Koller"), the acquisition of agricultural land and the land register.

Tax aspects are addressed in response to questions in section 9.

1.2 What is the impact (if any) on real estate of local common law in Switzerland?

There is no common law in Switzerland. The federal statutes mentioned in question 1.1 apply in all Cantons. While all courts (i.e. district, cantonal and federal courts) apply the statutory laws, only decisions of the Swiss Supreme Court are binding on all district and cantonal courts. Local customary law is only relevant for the taxation of real estate transactions as well as for public law (zoning and environmental law; see sections 9 and 11 below).

1.3 Are international laws relevant to real estate in Switzerland? Please ignore EU legislation enacted locally in EU countries.

No international laws are relevant to real estate itself in Switzerland. Exemptions apply for double taxation treaties and The Hague Trust Convention of July 1, 1985.

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

The Lex Koller (see question 1.1) is the most important restriction on ownership of real property.

The Lex Koller restricts the acquisition of real estate by non-residents. Non-residents include foreigners domiciled abroad and foreigners domiciled in Switzerland but without being EU/EFTA nationals and without having a valid settlement permit (so-called "C Permit"). Legal entities include non-residents if they are either domiciled abroad or if persons abroad hold a dominant position within that legal entity (e.g. if such persons hold more than one-third of the capital or of the voting rights).

The restrictions of the Lex Koller do not apply to nationals of EU/EFTA Member States being actually and legally domiciled in Switzerland nor to non-EU/EFTA nationals holding a valid C Permit and being actually domiciled in Switzerland.

The Lex Koller requires non-residents to obtain a permit from the appropriate cantonal and federal authorities to acquire real estate in Switzerland. No permit is required if the real estate serves as a permanent business establishment.

The Lex Koller covers not only the direct purchase of real estate but also any transaction that gives non-residents actual control of real estate for which a permit is required (e.g. the acquisition of property rights (rights *in rem*) or usufruct rights in real estate).

3 Real Estate Rights

3.1 What are the types of rights over land recognised in Switzerland? Are any of them purely contractual between the parties?

Under Swiss law, the following rights *in rem* exist:

- Ownership in the narrow sense. Types:
 - i. Sole ownership (individual ownership; *Alleineigentum*) is the most comprehensive form of legal title in land. It provides one person or legal entity with complete control over a property, subject to restrictions imposed by law or third party rights. To a certain extent the ownership right includes the space below and above the surface of the owned land.
 - ii. Joint ownership (*Gesamteigentum*) is ownership by several persons based on an underlying personal relationship such as marriage or the community among heirs. Safe for any

regulation to the contrary, the joint owners may only dispose of the property unanimously.

- iii. Co-ownership (*Miteigentum*) is the ownership in all other instances where property is owned by more than one person. Absent specific provisions, all co-owners own equal shares. Specific regulations govern condominium rights (*Stockwerkeigentum*).
- Servitudes and easements (*Dienstbarkeiten*): A property owner may agree on servitudes or easements in favour of a third party or property.
- i. The usufruct (*Nutzniessung*) entitles the beneficiary to possess and use the property, but not to dispose of it in such a manner that could adversely affect the owner's property rights.
- ii. The right of residence (*Wohnrecht*) gives an individual the right to inhabit a certain building or apartment as a resident.
- iii. The right to build on a tract of land (*Baurecht*) grants the right to exploit land, in particular by constructing a building on a piece of land owned by a different person.
- Mortgage of land (*Hypothek*): The CC provides for two types, namely the mortgage (*Grundpfandverschreibung*) and the mortgage note (*Schuldbrief*). Under both types, the debtor remains personally liable for the debt. Mortgage notes are securities representing both the repayment claim and the mortgage. They are negotiable instruments (bearer or registered) which may be transferred upon delivery. Actual mortgages may only be transferred upon written assignment. The Swiss mortgage market is stable, with low interest rates and usually mild amortisation requirements. The current provisions on mortgages are under revision. The new provisions shall allow for paperless mortgage notes generated upon registration in the land register.
- Rights of first refusal (*Vorkaufsrechte*) and option rights to buy or repurchase real property (*Kaufrecht, Rückkaufrecht*) are similar to rights *in rem* if they are annotated in the land register (maximum registration term: 25 years for rights of first refusal and option rights to repurchase; 10 years for option rights to buy).
- Rental (*Miete*) and leasehold (*Pacht*) agreements are also similar to rights *in rem* if they are annotated in the land register.

4 System of Registration

4.1 Is all land in Switzerland required to be registered? What land (or rights) are unregistered?

Generally, each privately held real estate is registered in the land register. Also, all rights *in rem* mentioned in question 3.1 are registered in the land register.

4.2 Is there a state guarantee of title? What does it guarantee?

There is no state guarantee of title.

4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

In order to be valid, ownership, servitudes or easements and mortgages are generally required to be registered. If these rights are not registered, they do not come into existence and are not enforceable against an acquirer acting in good faith.

4.4 What rights in land are not required to be registered?

Rental and leasehold agreements, unless provided for by a special statutory provision, are not required to be registered. Neither are rights of first refusal and option rights. They may be annotated in the register (see question 3.1), but are valid without annotation as well.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

A probationary period does not exist.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

With the exception of circumstances specifically mentioned in the CC, any transfer of rights *in rem* passes to the buyer upon his registration as new owner in the cantonal land register. The registration requires a valid contract in the form of a public deed.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

A chronological ranking as registered in the land register based on the journal entries governs the priority of some rights over other rights. Rights registered at an earlier date defeat the rights registered later on.

5 The Registry / Registries

5.1 How many real estate registries operate in Switzerland? If more than one please specify their differing rules and requirements.

There is no central land register in Switzerland. Each of Switzerland's 26 Cantons has its own land registers, usually one in each district. The Cantons are responsible for maintaining the land registers; they are supervised by the Federal Land Register and Real Estate Law Office.

5.2 Does the Land Registry issue a physical title document to the owners of registered real estate? Can any transactions relating to registered real estate be completed electronically? Can information on ownership of registered real estate be accessed electronically?

On demand the land registry issues an extract of the land register containing information as to the ownership rights relating to the registered real estate (see question 5.4).

Transactions relating to registered real estate cannot be completed electronically.

Even though most land registers are kept in electronic form, only partial information on real estate ownership can be accessed online, and only in a few Cantons.

5.3 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Cantons are liable for errors in registration. An affected party may claim damages against the public body responsible for the respective land register. There is no liability for errors based on incorrect information in the documents submitted to the land register. The registrars have no obligation to verify the content of submitted documents. Nevertheless, they must refuse registration in case of non-compliance with formalities.

5.4 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

The access to the following information is unrestricted: the description of the property, the name of its owner, the type of ownership, the date of acquisition and the servitudes. To obtain additional information, a particular legal interest must be demonstrated.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Switzerland? Please briefly describe their roles and/or duties.

a) Selling and purchasing agents (or realtors)

Frequently, either the seller or the buyer engage a real estate broker but this is not a legal requirement. The finder's fee of the broker usually is borne by the party engaging the broker. The contract among the broker and the seller or buyer, respectively, is subject to special provisions in the CO.

b) Lawyers

There is no legal requirement to involve lawyers in real estate transactions. Nevertheless, lawyers frequently advise in drafting and negotiating contracts and in legally structuring the financing of transactions. Furthermore, they conduct legal due diligence reviews and advise foreign buyers in obtaining authorisations to acquire Swiss real estate.

c) Notaries

Property purchase agreements must be duly notarised in accordance with strict formal requirements. The notary public must explain to both parties the content and impact of the contract. In some Cantons, the notaries are public officials, whereas in other Cantons private persons, often lawyers, with a special licence act as notaries.

6.2 How and on what basis are these persons remunerated?

a) Selling and purchasing agents (or realtors)

Their remuneration is usually based on a fixed percentage of the purchase price. In the Swiss market, the remuneration commonly paid varies between 1% and 5% of the purchase price.

b) Lawyers

Usually, lawyers are paid on a time spent basis.

c) Notaries

Notaries are remunerated according to cantonal statutory law, usually either with percentage of the market value of the property or with a flat fee.

6.3 What are the main observable consequences on the real estate market in Switzerland arising out of the global credit crunch and worldwide recession in 2008/9? Please include both local and international investors in your answer.

The global developments have some consequences also on the Swiss real estate market. In particular, the financing of new building projects and the extension of existing building credits has become more difficult. Also, the price increases on the office, retail and residential markets have started to slow down. However, compared to other countries, the Swiss real estate market has remained and is expected to remain stable. Thus, it is still attractive for local and foreign investors.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

A property purchase contract must be duly notarised. It has to include the names of the parties, the real property to be purchased and the purchase price. Statutory law regulates the rights and obligations of the parties under the contract unless deviations are agreed upon. The transaction becomes only effective upon registration with the land register. For this, the notarised public deed (purchase contract) must be submitted.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

The seller must disclose all facts relating to the object of purchase, which are not obvious or very easily discoverable and which obviously are relevant for the buyer. The seller can be liable if he intentionally withholds such facts or provides misleading or wrong information to the buyer.

7.3 Can the seller be liable to the buyer for misrepresentation?

The seller can be liable to the buyer if he intentionally violates his duty of disclosure, gives false information or withholds relevant information.

7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

Most contracts contain a comprehensive waiver of warranties: the immovable property is purchased "as seen". In the absence of such a waiver, the seller is liable to the buyer for express representations made and that the object of purchase has no physical or legal defects which eliminate or substantially reduce its value or fitness for use. The warranties' function is to apportion the risk, but should not substitute the buyer's due diligence review.

7.5 Does the seller warrant its ownership in any way? Please give details.

The seller warrants its ownership under statutory law.

Nevertheless, this is not required since the buyer may rely on the land register. Provided that the seller is the registered owner and the buyer acts in good faith, he acquires ownership in any case and is protected against any third party claims. This applies even if the seller were not the legal owner (which virtually never happens).

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

The buyer has the obligation of accepting the transfer of title. Other liabilities may be contractually agreed upon in the purchase contract; it is common that the purchaser pays a certain percentage of the purchase price prior to closing the transaction. In addition, the buyer usually pays at least half of the property transfer tax.

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

Swiss law does not contain any specific provision to enter into loan agreements concerning real estate. The general loan provisions apply. No distinction is made between individual persons and corporate entities. Foreign banks may finance Swiss real estate, provided that they do not obtain a position similar to that of an owner in which case the transaction qualifies as an acquisition by a non-resident and the Lex Koller applies (see question 2.1).

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

Mortgages are the main form of security for real estate lenders. They give the lenders the right to execution against the mortgaged property upon default of the borrower. The proceeding is governed by the Federal Statute on Debt Collection and Bankruptcy. The creditor may publicly sell the property if a payment order has been issued and, six months later, the debtor is still in default. The creditor who is secured by a mortgage has a preferred claim over other creditors. Beside mortgages, lenders obtain protection by pledges of rental income, bank accounts and other assets.

8.3 What minimum formalities are required for real estate lending?

Loan agreements, which do not require the written form, need to identify the parties, the amount of the loan and the interest rate on it.

To create new securities such as mortgages, there must be a title in the real property and an obligation to create the mortgage (usually in a loan agreement). The creation of mortgage certificates requires a notarised agreement that is filed with the land register. A written contract is required to pledge rental income and bank accounts.

8.4 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

Mortgages give priority when a specific asset is realised. The real estate lender obtains preferred treatment over other creditors with regard to the proceeds of the realisation of the security. The priority of several mortgages is determined by their rank as listed in the land

register. Pursuant to mandatory law, however, certain claims (e.g. tax claims) rank prior to claims of mortgage holders, regardless of their chronological order according to the land register.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

There is no federal provision on property transfer taxes. Most Cantons charge cantonal or communal transfer taxes of up to 3.3% of the purchase price or of the real property's tax value. Usually it is the buyer who bears transfer taxes. Many Cantons provide for joint and several liabilities of both parties or allow that the parties agree upon a different allocation. In most Cantons, certain transfers are exempt from the transfer tax, for instance transfers in connection with marriage and divorce, transfers by virtue of succession and gift, transfers as a consequence of zoning activities as well as transfers in connection with reorganisations.

9.2 When is the transfer tax paid?

The transfer tax arises upon the registration of the purchase with the land register and usually has to be paid within 30 days. Seller and buyer frequently agree to deduct the estimated tax amount from the purchase price and to pay it directly to the tax authorities.

9.3 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

Generally, transfers of real estate and rights to which real estate is subject are exempt from VAT. However, the seller who is subject to VAT has the possibility to opt for the taxation of the sale, provided that the buyer is also subject to VAT and uses the transferred real estate for business purposes. The seller is liable to VAT and the buyer is entitled to input VAT refund. The VAT amounts to 7.6% of the sales price (without the value of the land). Instead of paying VAT and obtaining a VAT refund, the parties may apply for the notification procedure.

9.4 What tax or taxes (if any) are payable by the seller on the disposal of a property?

In Switzerland, there are taxes on the federal level as well as on the cantonal and on the communal level.

On the federal level, any capital gain (i.e. the difference between the initial purchase price including costs of improvements and the sale price) realised by individuals on private assets are exempt from income taxation. Capital gains realised by real estate brokers as well as book profits realised by individuals on business assets are subject to income tax. Companies have to pay profit tax on their book profits.

On the cantonal and communal level, capital gains on private real property are subject to a special real property gains tax once such gains have been realised. The real property gains taxes vary considerably from one Canton to another. Generally, the rate depends on the amount gained and the duration of ownership. The tax may exceed 50% for short-term capital gains. In certain cases, the real property gains tax is postponed. This applies for instance to transfers in connection with marriage and divorce, transfers by virtue of succession and gift, transfers as a consequence of zoning activities as well as transfers in connection with reorganisations.

Reinvesting the proceeds in another real estate located in Switzerland within an adequate period of time may also lead to a postponement of gains tax.

In some Cantons, book profits realised by individuals or companies on business real property are entirely subject to income or profit tax. Other Cantons split the book profit and levy the income or profit tax only on the recovery of the former depreciation whereas the capital gain is subject to the capital gains tax.

9.5 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

The transfer of a dominant participation in a company owning real estate (economical transfer of ownership) is subject to the special real property gains tax as well as to the transfer tax, provided that the real property is located in a Canton that applies such tax. In many Cantons the real property gains tax also arises upon the transfer of any participation in a real estate company. Save a double tax treaty should prohibit such taxation (see article 13 paragraph 4 OECD Model Tax Convention), the alienator of such participation has to pay gains tax even if he is domiciled abroad.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

The lease of business premises in Switzerland is regulated mainly in the CO. In addition, the Ordinance regarding the Lease and Usufructuary Lease of Residential and Business Premises also applies. While the parties may deviate from most of these provisions in their lease agreement, some of the provisions are mandatory law in favour of tenants.

10.2 What types of business lease exist?

In general, Swiss law distinguishes between leases and usufructuary leases, whereby this is not a classification limited to business leases. The law does not treat business leases differently than other types of leases.

10.3 What are the typical provisions for leases of business premises in Switzerland regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

(a) Length of term

Lease agreements are entered into either for an indefinite period of time or for a fixed term. In the case of indefinite lease agreements, the termination period is usually three months or longer. Fixed term leases are usually concluded for five to ten years, frequently with one or several optional renewal periods of usually five years. At the end of the fixed term and of the renewal periods, such lease agreements automatically expire without any further formality, unless both parties continue to fulfill the contract.

(b) Rent increases

An increase in rent is possible if it becomes effective after the next possible termination date and if the landlord demonstrates that the increase does not result in an excessive rent. The landlord must inform the tenant of rent increases at least ten days before the

beginning of the next notice period.

In addition, the rent may be increased if it is contractually linked to the official Swiss Index of Consumer Prices or if the agreement contains an explicit reservation of a rent increase. To link the rent to the said index is very common. It requires that the agreement has entered into for at least five years. A contractual reservation of a rent increase is made if the original amount of rent lies below market value. The reservation must explicitly state the amount of the possible increase, either in Swiss francs or as percentage of the rent.

Also possible, but seldom in practice, is to agree on a staggered rent.

More frequent are turnover rents, i.e. rents that are linked to the turnover of the business in the leased object, combined with a minimum rent. This mechanism can also result in rent increases.

(c) Tenant's right to sell or sub-lease

Sub-leases are subject to the landlord's approval, which may only be withheld if the tenant refuses to declare the terms of the sub-lease, if the terms of the sub-lease are abusive compared to the main lease, or if the sub-lease results in major disadvantages to the landlord. A lease may not be sold, but may be transferred to a third party upon approval of the landlord, which may only be withheld for important reasons.

(d) Insurance

By law, the landlords must insure their buildings against damages caused to the property, such as fire or water damage.

Tenants have no legal obligation to insure their belongings or the leased properties. Nevertheless, some landlords contractually require that tenants take out insurance for their belongings.

(e) (i) Change of control of the tenant

A change of control of the tenant does not affect the lease agreement. In rare cases, a change of control requires the landlord's consent, e.g. if a landlord wants to prevent competitors from renting his properties.

(e) (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)

Corporate restructurings do not directly affect lease agreements. However, depending on the type of restructuring, the party to a lease agreement can change.

(f) Repairs

Tenants pay the costs of regular maintenance and small repairs, usually not exceeding one percent of the annual rent. The landlords bear the costs of any other repair.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Landlords have to pay ordinary income or profit tax on their gains from the business lease whereas tenants may deduct the costs as business expenses.

Generally, the rent of real estate is exempt from VAT. However, a landlord who is subject to VAT has the possibility to opt for the taxation of the rent, provided that the tenant is also subject to VAT and uses the rented real estate for business purposes. The landlord is liable to 7.6% VAT and the tenant is entitled to input VAT refund.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

Lease agreements with a fixed term expire without any further formality at the expiration of their term, unless both parties continue to fulfill the contract. In the latter case, the agreement is converted into a lease for an indefinite period of time. The notice period of indefinite business leases is six months; the notice period for indefinite residential leases is three months. Terminations usually are effective as per the end of a three-month rental period, subject to different local custom.

Tenants are entitled to extend a lease if its termination would result in an undue hardship that is not justified by the landlord's interests. The maximum extension amounts to six years (business leases) and four years (residential leases).

Landlords may terminate a lease agreement if tenants default on paying the rent. Such a termination requires a 30-day deadline combined with the threat of payment. Upon expiry of this deadline, a termination with 30 days' notice is possible.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?

If the landlord sells the leased property, the buyer becomes a party to the lease agreement by operation of law. Nevertheless, the buyer as the new landlord may terminate the agreement if he shows urgent personal needs and if the lease agreement is not annotated in the land register (see question 4.4).

Tenants may not sell lease agreements. If they assign a lease agreement to a third party (see question 10.3c), they remain jointly and severally liable until the date as per which the agreement could have been terminated, but not longer than for two years.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Although the so-called Minergie® building standard is becoming more widespread and is also supported by the Swiss Confederation, the Swiss Cantons along with trade and industry, "green obligations" are not yet commonly to be found in leases.

11 Zoning and Environmental Issues

11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws. Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

The Federal Statute on Land Use provides for a sustainable use of the land. For this purpose, it divides the land into three main types of zones and defines specific aims, basic procedures and instruments.

In addition to the federal rules, a variety of cantonal and local laws govern the details of land use. Usually, local authorities have wide discretion in the partitioning of the territory into different zones.

The Federal Environmental Protection Statute contains the basic provisions on air, soil and water pollution, excessive noise, waste, environmental impact assessments and dangerous substances. In addition, particular federal statutes contain detailed rules on air pollution control, water protection, waste treatment and the cleaning-up of brownfields.

The state may force land owners to sell land in accordance with the Federal Statute of Expropriation. Expropriation of real property must strictly comply with a number of requirements. In particular, an important public interest must require and justify the expropriation. Expropriated owners are entitled to compensation in the amount of the market value of the concerned property, including any foreseeable damage caused by the expropriation.

11.2 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Cantonal laws determine the authorities that are competent for land/building use and/or occupation as well as environmental matters. Building authorities grant building permits and building inspection departments control the compliance with the permits. These authorities do not provide buyers with information on the compliance of a particular property with building regulations. Nevertheless, in view of the control by the building inspectors, significant non-compliance with building permits is unusual.

As to soil contamination and brownfields, buyers consult the public register of contaminated sites. This register lists all known areas of contaminated land. It distinguishes between landfills, plants and places of accidents. Depending on the case, buyers also seek advice from legal and environmental experts.

11.3 What main permits or licences are required for building works and/or the use of real estate?

Construction permits are required to erect, amend and tear down buildings and to materially change their use. In addition, detailed environmental regulations apply on the construction and use of properties. Large projects require an environmental impact assessment. Industrial facilities must comply with safety regulations in order to obtain the required operating approvals.

11.4 Are building/use permits and licences commonly obtained in Switzerland? Can implied permission be obtained in any way (e.g. by long use)?

It is necessary to obtain a building permit. Implied permissions are not known. Buildings without permits must be removed, in particular if they conflict with zoning laws.

11.5 What is the appropriate cost of building/use permits and the time involved in obtaining them?

The costs of building permits depend on the size and complexity of a particular building. They amount from a few hundred up to several thousand Swiss Francs. Permits for large buildings can take several months to be obtained. Third party objections can result in proceedings delaying a project.

11.6 In what circumstances (if any) is environmental clean up ever mandatory?

Environmental clean-up is mandatory if contaminations endanger persons, the environment or the general public, especially if the groundwater is affected.

11.7 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Switzerland.

The Federal Statute on Energy requires economical and efficient use of energy. The Cantons must enact appropriate regulations, especially with regard to usage-bound charging of ancillary costs in new buildings, such as costs of water supply and heating.

12 General

12.1 Are there any current proposals for significant reform of real estate law in Switzerland? Please give details.

The abolishment of the Lex Koller (see questions 1.1 and 2.1) has been proposed, but the federal parliament rejected the proposal. It decided to coordinate the abolishment of the Lex Koller with the planned revision of the Land Use Statute. Certain accompanying measures shall protect touristic regions in order to avoid second homes that are vacant most of the time.

12.2 Date at which law is stated.

January 1, 2010.

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Dr. Anne-C. Imhoff is a Partner in Zurich. She has a long experience in assisting foreign companies and private clients in real estate investments and divestments in Switzerland and relocation of their centre of activities into Switzerland including permits for the acquisition of real property. After graduation from University of Geneva and further studies in St. Gall and London, she held academic positions as a lecturer and research fellow of the Swiss National Fund for Scientific Research between 1981 and 1984. Until 1992 Anne-C. Imhoff was a member of the Swiss Committee on Unfair Advertising and of the Swiss Federal Commission on Consumer Matters. After being a lecturer at University of St. Gall, she joined Pestalozzi in 1990. Anne-C. Imhoff specialises in the fields of corporate/ commercial and residential real estate and international estate planning. Her fields of expertise cover structuring real estate transactions including public private partnerships, security interest in real properties, commercial and residential leases. Her native languages are German and French and she is fluent in English.

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Dr. Michael Lips is a Partner in Zurich. He was born 1970, graduated from Zurich University in 1997 (lic. iur.) and in 2003 (Dr. iur.) and from University of Virginia in 2004 (LL.M.). He served at the District Court of Meilen for two years, first as a law clerk and then as a secretary to the judge. Michael Lips was admitted to the bar in 2001 and joined Pestalozzi in 2002. He specialises in real estate and environment law as well as in corporate and commercial law. His fields of expertise cover commercial and residential leases, sales, pledges and encumbrances of real property, real estate transactions including public private partnerships, building and other work contracts as well as all types of environmental matters. Moreover, he has a long experience in corporate law, corporate restructuring and general contract and commercial law. His professional languages are German and English, and he has a good knowledge of French.



Pestalozzi Attorneys at Law is an independent multicultural and multilingual Swiss law firm dating from 1882, with a practice focusing on Swiss commercial law and international work. It is one of the country's largest law firms, with 33 partners and 69 other lawyers in Zurich, Geneva and Brussels.

Our lawyers are capable of leading complex transactions and are team players within interdisciplinary project groups. We are the *Martindale-Hubbell* reviser.

Our real estate and environment practice group provides advice on all legal issues relating to commercial and residential real estate. Our clients are banks, private equity funds and other investors as well as industrial companies and private individuals. We regularly assist foreign clients on real estate investments and divestments in Switzerland. We also advise and support our clients in relocating their centre of activities into Switzerland. To provide our services, we closely cooperate with our corporate, tax and private client specialists.

Our services cover the following areas:

- Real estate transactions regarding industrial buildings, office constructions, restaurants, hospitals, residential housing
- Portfolio transactions
- Due diligence reviews
- Commercial rent and leasing
- Sale and lease-back agreements
- Public private partnership transactions
- Construction agreements, general contractor agreements
- Facility management agreements, contract design and service description
- Financing and refinancing of real estate projects
- Security for warranty and contract fulfillment claims
- Environmental matters, e.g. legal aspects of hazardous waste or brownfields
- Permits for the acquisition of real property by foreign persons