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Acquisition of real estate in Switzerland by foreign citizens

Preamble

Since the early sixties, the acquisition of real estate properties located in Switzerland has been restricted and subject to official authorization for foreign persons, especially when they live abroad.

This note is intended to expose the conditions under which foreign citizens may acquire real estate properties located in Switzerland.

1. Transactions subject to authorizations

Whether or not a real estate transactions will be subject to authorization¹ by the appropriate cantonal authority depends on **three cumulative conditions**²:

- a) the person acquiring the real estate is a foreign person;
- b) the object of the transaction is real estate for which authorization is required;
- c) the transaction is an "acquisition".

You will find hereafter additional details regarding the three cumulative conditions listed above:

a) "Foreign persons" within the meaning of Swiss federal law

Foreign citizens who do not hold a valid Swiss residence permit (the so-called B or C permit) are regarded as "foreign people" and thus required to obtain an authorization before acquiring any private³ real estate property located in Switzerland.

¹ A transaction relating to real estate for which authorization is required can only be registered at the Land Register if the buyer has obtained prior permission from the cantonal authorities.

² As listed in the Swiss Federal Law on the Acquisition of Real Estate by Foreign Persons dated 16 December 1983, better known as the "Lex Friederich/Lex Koller".

³ The acquisition of commercial properties is not subject to authorization.

However, EU⁴ or EFTA citizens domiciled in Switzerland are not subject to any restriction and thus have exactly the same rights as Swiss nationals regarding any acquisition of real estate in Switzerland.

In summary, the following persons are not concerned by the restriction on acquisition of real estate:

- Swiss citizens, including those who have double nationality, residing in Switzerland or abroad;
- Nationals of a country which is an EU or a EFTA member who have a residence in Switzerland (i.e. a temporary residence (B-Permit) or a permanent residence permit (C-Permit));
- Nationals of other countries who hold a valid settlement authorization (C-Permit) and are actually residing in Switzerland who want to acquire a residence for their own use only. In this respect, please note that even if there is no limitation regarding the allowed surface area of a main residence, when the surface size exceeds certain limits, the authorities may qualify the acquisition of a main residence as a pure capital investment (i.e. as opposed to a purchase for private use) which is not permitted excepted for Swiss/EU nationals. As a general rule, the authorities have a closer look at a planned acquisition if the surface face of the property exceeds 3'000 m².

Whether or not the buyer's spouse has Swiss nationality is immaterial. Furthermore, persons who are not, in principle, restricted from acquiring properties are nevertheless considered as "persons residing abroad" if they acquire real estate on behalf of a person domiciled abroad (fiduciary transactions).

Companies which have their registered office abroad as well as legal entities or companies having no legal personality or controlled by persons abroad are also regarded as "persons residing abroad. Control by persons abroad is specifically presumed when more than one third of a company's capital or over one third of the voting rights is in the hands of shareholders residing abroad or if the latter have lent substantial sums to the company (economic control).

b) Real estate properties subject to authorization

The purchase of any kind of single-family houses, blocks of apartments, isolated apartments and land intended for constructing such accommodation is, in principle, subject to authorization requirements.

⁴ EU Members: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, The United Kingdom ; EFTA Members: Iceland, Liechtenstein, Norway (and Switzerland).

Properties which are used for commercial, industrial or trading activities are however considered to be business properties and are therefore exempt from the requirement to apply for authorization.

c) Acquisition of real estate within the meaning of Swiss federal law

The notion of "acquisition" encompasses not only entries of real estate ownership at the Land Register but also any transaction that grants to a non resident actual control over Swiss real estate for which prior authorization is required..

2. Exemptions from prior authorization

The following cases are specifically exempted from prior authorization requirements:

- legal heirs, including foreign citizen, under Swiss law, if they acquire real estate as part of an estate;
- relatives in line of ascent or descent of the person disposing of the property;
- brother or sisters of the person disposing of the property who are already co-owners or joint owners of the real estate;
- condominium owners for the exchange of their apartments in the same building or housing development;
- the buyer who acquires a small area to complement the real estate he already owns;
- foreign countries and international organizations that acquire real estate for their representations;
- EU and EFTA commuters across borders for the acquisition of a secondary residence in the region of their workplace.

3. Authorization procedure and Grounds for "green-light" authorization

The acquisition of real estate for which prior permission is required may be authorized only on grounds provided for in the Swiss legislation and, as appropriate, in cantonal legislation.

The main grounds to obtain an authorization concern notably secondary residences, holiday homes and hotel condominium units located in the cantons of Berne, Fribourg, Glarus, Grisons, Jura, Lucerne, Neuchâtel, Nidwalden, Obwalden, St-Gall, Schaffhausen (for condominium units only), Schwyz, Ticino, Uri, Vaud and Valais.

A person residing abroad can request thus the authorization to acquire a holiday dwelling or hotel condominium unit in the above-mentioned regions.

This acquisition may however only be made by individuals in their own name and under no circumstances through a company. Moreover, the dwelling must be in a place designated by the cantonal authorities as a holiday resort. Finally, each and every authorization must be deducted from the annual quota assigned to the cantons by the Swiss Confederation for holiday apartments and hotel condominium units, excepted when the vendor has already received an authorization in the past for the acquisition of this dwelling or apartment.

As a general rule, the net floor space and the surface area of a holiday home or a flat in an apartment hotel must not exceed 200 m² and 1'000 m² respectively. In accordance with the consistent practice, larger areas are authorised automatically on proof of additional need up to 250 m² and 1'500 m² respectively. In exceptional cases, the limits may even be higher.

Authorization is given by the cantonal authority of the region where the real estate is located. The authorization is issued subject to the satisfaction of the above-mentioned conditions. Note that the cantons and tourism-oriented municipalities may add their own restrictions/conditions to ensure that the real estate is indeed used for the purpose cited by the buyer (e.g. the authority may specify a prohibition to resell the acquired real property within a certain period of time).

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For further information and/or study of your specific situation, we kindly invite you to contact:

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