

"Lex Koller"

Purchase of property in Switzerland by legal entities

Introduction

Since 1985, the Federal Law on the Acquisition of Real Estate by Persons Abroad ("BewG", commonly also known as "**Lex Koller**") has been controlling the purchase of property by foreign individuals and legal entities.

The information below refers only to the purchase of property by legal entities.

Foreign legal entities

Companies or corporations that have individual legal entities are considered foreign legal entities if they either have their head office in a foreign country, are controlled by foreign individuals or purchase property via trustees.

Control of a legal entity by foreign individuals is deemed to be the case if the foreign individuals alone or jointly with other foreign individuals can decisively influence the administration or management due to their financial participation, their vote, or for other reasons. The controlling position is presumed if the foreign individual (a) owns more than a third of the company capital, (b) directly or indirectly controls more than one third of the votes or (c) provides the legal entity with refundable outside capital (loan, current account, etc.) which exceeds a certain ratio.

Acquisition of real estate

Not only the legal Land Register transfer of property but also any legal transaction giving a foreign individual the actual power of disposition over a property which is subject to authorization is deemed an acquisition of property.

The term "acquisition of real estate" includes both the direct purchase of a property, the acquisition of rights in rem of a property and the purchase of a part of the property or usufruct belonging to a legal entity whose actual purpose is the acquisition of real estate.

Mandatory authorization

Policy

Basically, foreign individuals have to apply for authorization by the competent Cantonal and Federal authorities before they may purchase real estate in Switzerland.

Exceptions

Purchase of a property which serves as permanent establishment for a trade, manufacturing or other commercial purpose, a craftsman's establishment or as premises for a freelance profession. The permanent establishment can also constitute a pure capital investment.

Provided no controlling position is involved, a foreign legal entity can also participate in other enterprises. Such participation is possible also when these enterprises own a considerable number of commercial units.

The participation in, or the operation of a real estate company with activities in Switzerland by foreign individuals is excluded. Under Lex Koller, no reason for authorization exists for foreign individuals intending to buy real estate for the purpose of building, letting, leasing or trading in living accommodation.

Conclusion

Purchase of real estate in Switzerland by foreign individuals should be carefully considered and prepared.



RECHTSANWÄLTE

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