

SWISS INVESTMENT REPORT* 5

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* The Swiss Investment Report is provided by Wenfei Attorneys-at-Law Ltd. (“Wenfei”), a Swiss law firm with its seat in Zurich, which has gained extensive experience in providing services in Greater China.

The Swiss Investment Report is especially designed for Chinese Investors, who are intending to extend their business to Switzerland or Europe or are already doing business in Switzerland.

Of course, the Swiss Investment Report is also addressed to any other person who is interested in obtaining background information on the Swiss investment-related legal framework as well as information on current developments in the Swiss legislation from a foreign investor’s perspective.

Acquisition of Real Estate in Switzerland by persons abroad

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Acquisition of Real Estate in Switzerland by persons abroad

1. Introduction

Are Chinese allowed to acquire real estate in Switzerland? Swiss Federal Law restricts the acquisition of real estate for residency purposes in Switzerland by persons abroad. Generally, persons abroad are only entitled to acquire Swiss real estate if they have obtained prior authorization by the cantonal authority of the canton, where the real estate is situated. Such authorization is only granted on specific grounds.

This Swiss Investment Report informs on the requirements, which must be met by persons abroad, who want to acquire real estate in Switzerland. The following text is based on the guidelines on the acquisition of real estate by persons abroad, issued by the Federal Office of Justice, dated July 1, 2009.

The acquisition of real estate is subject to authorization, if the three conditions are cumulatively met:

- a. The person acquiring real estate is a person abroad within the meaning of the law (see below paragraph 2).
- b. The object of the transaction is of such type of real estate, for which authorization is required (see below paragraph 3)
- c. The legal right, which is acquired, is considered an acquisition of real estate within the meaning of the law (see below paragraph 4)

In case all three conditions are cumulatively met, the acquisition must only be granted if one of the grounds provided in the federal or cantonal law on the acquisition of real estate by persons abroad are given (see below paragraph 5).

2. Who requires an authorization for the acquisition of real estate?

A. Natural persons

Foreigners domiciled abroad and foreigners domiciled in Switzerland, who are not a national of a European Union (“EU”) or European Free Trade Association (“EFTA”) member state and who do not hold a valid settlement permit “C” in Switzerland are considered as persons abroad.

B. Legal entities and companies without legal personality

Companies which have their registered office abroad – irrespective whether they are Swiss-owned or controlled – are considered as persons abroad. Furthermore, legal entities (joint stock companies, limited liability companies, cooperatives, associations, foundations) or companies without legal personality (general and limited partnerships) which have their seat in Switzerland but are controlled by persons abroad are also regarded as persons abroad. An entity is controlled by persons abroad, when more than one third of the entity's capital or more than one third of the voting rights are in their hand or if the entity has taken a substantial loan by those persons abroad.

C. Fiduciary transactions

Persons who are principally not subject to the restrictions, i.e. Swiss citizens, are nevertheless regarded as persons abroad, if they acquire real estate on behalf of a person abroad (fiduciary transactions).

3. What kind of real estate acquisition requires an authorization?

Generally, the acquisition of single-family and apartment houses, apartments and building land intended for constructing such as accommodation is subject to the authorization requirements.

Exceptionally, foreigners with a domicile in Switzerland who do not hold a valid settlement permit "C" may acquire a single-family house or apartment in their actual place of residence without having to obtain the authorization. The same rule applies to building land, if it is intended to start with the construction work within one year. The buyer is obliged to occupy the accommodation by himself and is not entitled to rent it out, neither fully nor partially.

A national of an EU or EFTA member state, who commutes cross-boarder to work in Switzerland is entitled to purchase a secondary residence in the area of his/her place of work without having to obtain an authorization.

Furthermore, real estate which is used for business purposes (so-called permanent business establishments, i.e. manufacturing premises, warehouses, offices, shopping centers, hotels, restaurants, retail premises) can be acquired by persons abroad without authorization. However, no permanent business activity is recognized, if residential property is constructed, leased or traded. The acquisition of real estate for such purposes is prohibited. Nonetheless, as an exception a residential property may for instance be acquired if it is situated on a large manufacturing premise.

Finally, undeveloped building land may be acquired by persons abroad if construction work of a building for which no prior authorization is needed (i.e. main residence, secondary residence, permanent business establishment) starts within approximately one year.

4. What is considered as acquisition of real estate?

Not only the entry of ownership into the Land Registry requires the prior authorization, but also any other transaction that gives the acquirer the possibility to control the real estate. Thus, acquisition of real estate is particularly:

- The acquisition of property or of occupancy or usufruct rights to real estate.
- The acquisition of shares in a legal entity, whereas the real purpose of it is the acquisition of real estate. Exceptionally, no authorization is needed if such entity is listed on a stock exchange in Switzerland.
- Participation in a company without legal personality, but being capable of owning property, whereas the real purpose of it is the acquisition of real estate.
- Acquisition of a share in a real estate investment fund, the shares of which are not traded regularly on the market.
- Granting and exercising of a right of purchase, first refusal or repurchase in respect of real estate.
- The acquisition of other rights, which might put the acquirer into a similar position as an owner of real estate has.
- Transfer of a company's seat abroad if it holds its rights to a real estate.

5. What are the grounds for obtaining an authorization to acquire real estate?

If all three above mentioned conditions are met, a real estate may only be acquired upon prior authorization by the cantonal authorities. However, such authorization is only granted on grounds provided by the law.

Federal Law provides for the following situations a ground for authorizing the acquisition of real estate:

- Banks or insurance companies, which are allowed to operate in Switzerland, may be granted authorization if the real estate is encumbered in its favour with a real estate mortgage and if the purchase is part of a forced liquidation or liquidation settlement. Additionally, an insurance company may be entitled to acquire the real estate on the grounds of actuarial reserves for domestic business.
- An acquisition may be authorized if a Swiss business uses the acquisition of the real estate for pension scheme operations benefiting personnel employed in Switzerland.
- An acquisition may be authorized if the real estate is intended for charitable purposes. The real estate must be used directly for this purpose. It is therefore not sufficient if the leasing revenue is to be used for charitable purposes.
- A beneficiary under wills, who is not a statutory heir exempted from prior authorization and can not claim any other grounds for authorization, may be authorized, subject to the condition that the real estate is sold within two years.

The acquisition is authorized without the condition if the beneficiary is able to furnish the proof that a close relationship worthy of protection with the real estate exists. Such close relationship is given if the beneficiary lived in the testator's house permanently, regularly spent weekends in the house over a long time, regularly spent holidays with the testator in that house over many years, or lived there permanently as a tenant over many years.

- Cantonal law may provide that a holiday apartment or serviced flat in a present or former holiday resort may be acquired by a person abroad who requires an authorization, even if no authorization could be granted due to a cantonal or municipal authorization freeze or the removal of the location from the cantonal list of holiday resorts, but such refusal of authorization would involve hardship for the seller and provided the following conditions are met: The seller must be in financial difficulties and the real estate must have been offered for sale unsuccessfully at cost plus appropriate interest to persons who are not subject to authorization. The seller must have used the real estate as his main, secondary or holiday residence or as a serviced flat.
- A holiday home or serviced flat may be acquired by a person abroad who requires authorization subject to cantonal restrictions with regard to location and quota.

- A secondary residence may be acquired by a person abroad who requires authorization if such person has exceptionally close ties worthy of protection with the place where the real estate is situated. Safeguarding mainly economic, scientific or cultural interests are regarded as “close ties” in this sense. However, relationships by blood or marriage with persons in Switzerland or holidays, study or other temporary stays do not constitute close ties worthy of protection.
- The acquisition of real estate for the construction of subsidized housing or of newly built subsidized housing, when there is a local housing shortage, by a person abroad may be authorized by the cantons.

Additionally, there are a few exceptions from prior authorization for certain acquisition of real estate by inheritance, acquisition by relatives in line of ascent or descent from the person disposing of the property, exchanging apartments within the same building or compound or acquisition of a small area complement to the real estate the acquirer already owns.

6. Administrative, civil and penal consequences of violations

The authorization will be revoked if the acquirer has obtained it by providing false information to the authorities or – despite a reminder - does not comply with conditions imposed upon by the authorities. The authorization obligation may also be determined after the acquisition if the acquirer provided incorrect or incomplete information to the authorities about facts of significance for the authorization of the acquisition.

A transaction which requires authorization is invalid until a binding authorization has been obtained. Though, the contractual parties are still bound by the obligations. The transaction becomes null and void if the transaction is completed without having applied for authorization or before the authorization becomes into force. It, furthermore, becomes null and void if the authorization is refused or revoked by the competent authorities. In the event of nullity the promised performance may not be claimed, but performance received may be re-claimed within one year after the performer has obtained knowledge of his reclaim or a criminal procedure has been completed. The authorities shall initiate legal proceedings to restore the original situation.

The circumvention of authorization, provision of incorrect information to the authorities and the failure to comply with conditions may be punished with a prison sentence or fine.

7. Conclusion

Chinese natural persons with a valid settlement permit “C” are not required to apply for an authorization for the acquisition of real estate in Switzerland. For Chinese nationals who have a valid residence permit “B” in Switzerland are allowed to acquire a single-family house or apartment in their actual place of residence without having to obtain the authorization. A Chinese national, who does not meet these requirements and thus needs to obtain an authorization, may acquire a holiday home or service flat in certain cantons subject to cantonal restrictions with regard to location and quota. The acquisition of real estate through a Chinese-controlled Swiss company or acquisition by a fiduciary transaction is illegal. It, however, shall be pointed out that Chinese investors are entitled to acquire real estate in Switzerland which is used for business purposes.

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