

SWISS INVESTMENT REPORT* 13

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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.

FAQs on immigration and purchase of real estate in Switzerland

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FAQs on immigration and purchase of real estate in Switzerland by Chinese nationals

I. What are the different visa categories for business purposes?

If you wish to go to Switzerland for a business trip, professional training or other professional purpose for a duration of no more than 90 days, you must apply for a Schengen Business Visa (Visa C). The following documents are required:

- National passport or official travel document valid for more than 3 months beyond the validity of the requested visa (original and copy)
- Visa Application Form (Visa C)
- 2x coloured passport photos undamaged and of recent date, white background, size 3.5cm x 4.5cm
- proof of insurance covering medical fees and repatriation costs for the duration of your stay (original and copy)
- proof round-trip flight ticket reservation (copy)
- proof of accommodation
- invitation letter from a company in Switzerland detailing the duration and purpose of your visit (original)
- working certificate by your employer or self-written if self-employed (original and copy, with English translation)
- copy of the business license of your employer
- personal bank statement or bank statement of employer covering the last 3 to 6 months (original)

The Schengen visa allows for a stay not exceeding 90 days within a period of 180 days.

If you plan to go to Switzerland for work or an internship of more than 90 days, you must apply for a Long Stay Visa (Visa D). (Note that since 5 April 2010, type C and type D visas were given parity of treatment as far as freedom to travel within the Schengen area for up to ninety days is concerned). The following documents are needed for the application:

- National passport or official travel document valid for more than 3 months beyond the validity of the requested visa (original)
- 2x copies of the passport including the signature page and if existing, copies of past Schengen visas
- 3x Visa D application form
- 4x coloured passport photos undamaged and of recent date, white background, size 3.5cm x 4.5cm
- 2x employment contract of the Swiss-based company / invitation letters and program of the stay (1 original and 1 copy each)
- visa and transmission fee

Simultaneously, your employer must apply for a work permit at the Cantonal Employment Service in Switzerland (see question 3 below for further details). **The Long Stay Visa will only be granted after the work permit has been obtained.**

Chinese citizens studying in Switzerland on a student visa are permitted to accept part-time employment for a maximum of 15 hours per week, but only after residing in Switzerland for a minimum of 6 months. Students must maintain full-time student status and show regular progress in their studies. Master students with a Bachelor degree from a university abroad working for their Swiss university/institute do not have to wait 6 months.

II. How do I apply for a Swiss visa?

Chinese nationals applying for a visa to Switzerland shall do so by filling out an application form on the online visa platform of the Embassy of Switzerland in Beijing (<https://cn.tlscontact.com>). After registration, you will be able to fill out the Schengen application form and receive a customized list of required documents adjusted to your personal situation.

You can then make an appointment at the local visa application center to submit your documents and pay the visa and service fees. Residents of Shanghai, Jiangsu, Anhui and Zhejiang shall apply at the Consulate General of Switzerland or visa application center in Shanghai; residents of Guangdong, Fujian, Guangxi, Hainan, Jiangxi and Hunan shall apply in

Guangzhou; residents of Hong Kong and Macau shall apply in Hong Kong; all others residents of China, Mongolia and Democratic People's Republic of Korea (DPRK) shall apply at the Embassy of Switzerland in Beijing.

When your passport is ready to be collected, you will be notified by e-mail or phone call.

III. What is the procedure for obtaining a work permit in Switzerland?

Your prospective employer in Switzerland must apply for a work permit at the Cantonal Employment Service. Self-employed investors shall do so themselves. The Cantonal Employment Service screens the application and makes a preliminary decision. Applications approved by the Canton are subject to a final approval by the Federal Office for Migration (“FOM”). If final approval is granted, the Cantonal Migration Office instructs the diplomatic representation in China, where the prospective employee made his visa request, to issue the Long Stay Visa. After entering Switzerland, the employee must register himself with the residents’ registration office within 14 days of entry.

The work permit can either be issued for a short period of up to one year, extendable to two years (L permit), or for a period one year, extendable by several years (B permit). Normally, the applicants will receive the L permit for the first two years, before a B permit can be granted. After the exhaustion of the maximal extendable duration of two years, the short term permit can only be re-applied for after a reasonable time interval, i.e. a string of several short term work permits is not permissible. An open-ended permanent residence permit (C permit), may be granted after an uninterrupted legal stay in Switzerland of at least 10 years. For important reasons, such as a successful cultural integration or national economic interests, exceptions can be made to grant permanent residence at an earlier stage after an uninterrupted legal stay in Switzerland of at least 5 years.

IV. What are the requirements for self-employed work in Switzerland?

An individual engaging establishing and working for his or her own company in Switzerland or engaging in individual business activities is considered self-employed. Foreign nationals from outside the European Union can only be admitted to work as self-employed individuals in Switzerland if:

- (a) their activity is in line with the general economic interests of Switzerland

An investment is in line with Swiss economic interests if it offers a service or product for which there is sufficient demand and if the relevant market sector has a strategic importance for the country. A further important criteria is the creation of long-term employment.

- (b) the investment meets certain financial and operational requirements

The financial preconditions of a self-employed activity are met if the activity is expected to generate enough income to cover the operational costs of the business as well as the living costs of the applicant. In addition, the investment capital must be sufficient to cover the initial costs, such as the establishment of the company, renting of the premises, production facilities etc. The authorities may ask the applicant to submit business plans, bank excerpts or accounts as evidence.

- (c) the applicant meets certain personal qualifications

As a matter of principle, only cadre, specialists and other qualified employees (people with higher education degrees as well as several years of professional experience) will be admitted. Besides professional qualifications, the applicant is also required to fulfill certain other criteria facilitating his long-term professional and social integration; these include professional and social adaptability, relevant language skills and age. The Swiss authorities examine the person's qualifications on the basis of their curriculum vitae, their education certificates and references. Exceptions are allowed in particular for

investors who preserve or create new jobs. The applicant must further show that he has suitable accommodation in Switzerland.

- (d) the yearly national and cantonal immigration quota for Chinese nationals is not exceeded.

V. Do I have to live and work in Switzerland to stay there for extended periods of time or are there alternative options?

The Schengen visa allows for a stay not exceeding 90 days within a period of 180 days. It is available for various other purposes besides business, such as family or friend visits.

For stays exceeding 3 months, a Long Stay Visa application must be made (Visa D). Besides for work, the Visa D is also available for family reunions, for example. Among other documents, an invitation letter from the spouse/parent requesting for a residence permit for the applicant, and copies of the marriage certificate or the birth certificate of the dependent child (if any) must be submitted with the application.

VI. Are there limitations for Chinese citizens to purchase real estate in Switzerland?

The Swiss Federal Law on the Acquisition of Real Estate by Persons Abroad (usually called “Lex Koller”) restricts the purchase of real estate in Switzerland by foreigners. The general rule is that the acquisition of real estate by foreigners is subject to a special authorization by the authorities if the three following conditions are fulfilled:

- a. The person acquiring real estate is a “person abroad” within the meaning of the law
 - (i) All foreigners domiciled abroad and (ii) foreigners domiciled in Switzerland who are not nationals of a European Union (“EU”) or European Free Trade Association (“EFTA”) member state and who do not hold a valid residence permit “C” (“Niederlassungsbewilligung”) in Switzerland are deemed to be “persons abroad” in the sense of the Lex Koller. This means that a Chinese national will be considered a person abroad if he or she is not domiciled in Switzerland with a

residence permit “C”. Swiss citizens are regarded as persons abroad if they acquire real estate on behalf of a person abroad (fiduciary transactions).

A legal entity is considered a person abroad if it has its registered office abroad or, in the case of a Swiss company, if it is controlled by persons abroad (more than one third of voting rights or capital in the hands of persons abroad or substantial loan by persons abroad). Thus, purchasing real estate through a company is also limited.

- b. The type of real estate to be purchased requires an authorization
The general rule is that the acquisition of family houses, apartments and building land intended for construction of accommodation is subject to an authorization. Undeveloped building land may be acquired by persons abroad if construction work of a building starts within approximately one year, provided it is a type of building which would not require an authorization under the Lex Koller either. In practice, it also means that the necessary authorizations for building on that land according to local regulations will have to be obtained quickly after the authorization according the Lex Koller has been obtained.
- c. The legal right to be acquired is considered an acquisition within the meaning of the law

Besides ownership as entered into the Land Registry, the following rights are subject to authorization: occupancy or usufruct; acquisition of share in a company if the real purpose is to acquire real estate; acquisition of shares in a real estate investment fund; transfer of a company’s seat abroad if the company holds real estate; acquisition of other rights which might put the acquirer into a similar position as the owner of real estate.

There are two exceptions in which an authorization is not required:

- (i) Real estate used as a permanent establishment for business purposes can be acquired by persons abroad without authorization (see question 7 below).
- (ii) If the real estate is used by a natural person as his main apartment at the place of his legal and real domicile, no authorization is needed (see question 8 below).

If an authorization is needed, it is granted by the cantonal authorities only on very specific grounds provided by the Lex Koller. Amongst these, two are of particular interests: authorization of the purchase of a secondary residence because of “close ties” with the place where it is located (question 9); and authorization of the purchase of a holiday apartment or serviced flat in a holiday resort (question 10).

VII. In which cases can my property be understood as a « permanent establishment » for which no authorization is needed?

Under the Lex Koller, no authorization is necessary for the purchase of real estate by persons abroad if it is used as a permanent establishment to do business, run a factory, or practice a traditional or self-employed activity.

A “permanent establishment” is a fixed place of business in which activities of an organization are wholly or partially carried on, that is to say a place where an economic activity is carried out. This fixed place can be used as the place of business of the foreigner purchaser itself or, under a lease, of a third party. It can be an office, a factory, a management seat, a branch, a workshop, etc. The authorities will then control that the purchase is not only a capital investment and that the surface of the real estate does not exceed the surface limits fixed by the law.

If the real estate you plan to purchase cannot be deemed a permanent establishment in the sense of the Lex Koller, you need to obtain an authorization by the Swiss authorities. But still, some exceptions can be

encountered. For example, it can be allowed that an apartment is acquired together with the premises permanent establishment if it is absolutely necessary for the exploitation of the enterprise that part of the staff (such as a technician or a guard) lives in or near the premises. An accommodation inside the permanent establishment can also be allowed if a quota of apartment surface is required by local laws of city planning.

VIII. My children are studying in Switzerland. Can I purchase a house there for them to live and me to visit them?

No, this is not possible, for the following reasons.

Your child will not be able to obtain a long-term residence permit “C” for his studies in Switzerland. Therefore, you as well as your child will be considered a person abroad under the Lex Koller, even if he or she stays in Switzerland durably for study purposes. However, an exception is granted by the Lex Koller: if the real estate to be purchased is used by a natural person as his main apartment at the place of his legal and real domicile, no authorization is needed.

This means that your child would be allowed to purchase real estate in his own name without authorization under the following conditions:

- Your child holds a residence permit (“Aufenthaltsbewilligung”) of more than one year under Art. 33 of the Swiss Federal Alien Act. If his title of residence does not comply with this condition, he will not be considered as having his “legal and real domicile” in Switzerland under the Lex Koller.
- Your child must actually live (and study) at the place where the real estate is purchased and must live durably in the house.

The problem here is that students are not entitled to a permanent residence permit of more than one year (students usually only receive a visa) and are not considered as having their legal and real domicile in Switzerland. Therefore, your child, as long as he is a student, will not be entitled to purchase real estate under the exception granted above. You as his parents are not entitled to such purchase either. However, if your child is able to work

and obtain a long-term residence permit in Switzerland after completing his studies, then he will be entitled to purchase real estate in his own name (you as his parent would still not be entitled to such purchase). Note that the fact that your child studies in Switzerland will also not be considered as exceptionally close ties which would entitle to an authorization (see question 9).

IX. If I keep my residence in China but I live up to 179 days per year in Switzerland, can I purchase a house or apartment here?

As you are keeping your main residence in China, your acquisition in Switzerland would be considered a secondary residence. Such purchase is subject to an authorization by the cantonal authority. The authorization will be granted if you have exceptionally close ties worthy of protection with the place where the real estate is situated.

Such exceptionally close ties are defined as a frequent and continuous connection which you must entertain with the place of the secondary residence in order to maintain preponderant economic, scientific, cultural or other important interests. You must go through the authorization process to reasonably prove that you entertain such close ties. On the other hand, 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 following cumulative conditions apply to your purchase in this case:

- The real estate must be durably used as a secondary residence (as being the reason why it has been purchased) ;
- You cannot purchase a secondary residence without authorization under the “close ties” rule if you, your wife or your child of less than 18 years old already own one.
- If you purchase undeveloped building land, you must begin the construction within a reasonable time limit and with the authorizations required by local land planning law;
- The maximal surface area of the property is regulated by the law;
- The secondary residence cannot be rented out to third parties; and

- In case you have not been using your secondary residence according to its original purpose for two years, it has to be sold.
- Special conditions apply to the purchase of real estate by a foreign insurance institution if used as an investment, if it affects public interest or if it is used as contingency for staff or as social housing.

Furthermore, this option does not apply to all of Switzerland. Currently, the possibility of purchasing a secondary residence under the “close ties” rule exists only in 14 cantons.

X. Can I purchase a holiday apartment? If yes, under which conditions?

As a person abroad, you can purchase a holiday apartment in Switzerland but you need to respect the strict Swiss legal framework in the matter. The cantonal authorities determine precise places as being “touristic places” where such apartments can be bought, and your purchase has to be situated in that area. In other words, you can only purchase holiday apartments in certain designated places. Not all cantons offer the possibility of purchasing holiday apartments on their territory. However, since Switzerland is a small country an apartment in such touristic places might easily [satisfy your needs](#) (i.e. close distance to school etc.).

Also, those conditions have to be taken in account:

- An annual quota fixes the amount of holiday accommodations that can be sold and this quota cannot be exceeded;
- The surface of the apartment is regulated by the law;
- The apartment can be rented temporarily but not yearly;
- You can own only one holiday accommodation in Switzerland. You are also not allowed to purchase one if your spouse or children of less than eighteen years old already own a holiday accommodation in Switzerland.

You have to note that the cantonal and communal authorities can add or modify the previous conditions, and that sometimes derogations are possible. For instance, an exception allows a foreigner to purchase a holiday apartment without previous authorization, if the seller is in financial difficulties and the real estate has been offered for sale unsuccessfully.

Finally, you must be patient as it may take from six months to two years to obtain the authorization to acquire your holiday apartment.

Should you have questions regarding the information provided in this document, please do not hesitate to contact Dr. Paul Thaler (paul.thaler@wenfei.com).

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