
Real estate: who can buy what in Switzerland?

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Legal Basis and Principle

- Federal law on the acquisition of real estate by persons abroad (“Lex Koller”, LK)
- Principle: acquisition of real estate by persons abroad is **subject to authorisation**
- However: the law provides for a significant list of **exemptions**

Who is a “person abroad”?

A. Natural persons

- Foreigners domiciled *abroad*
- Foreigners domiciled in Switzerland who are *not* nationals of a EC/EFTA Member State and do not hold a settlement permit C

Therefore: Italian nationals who are *legally and actually domiciled* in Switzerland (with a permit B or C) are **not** persons abroad and **not** subject to LK

Who is a “person abroad”?

Art. 23 Swiss Civil Code

Actual domicile = place where persons live with the intention of remaining permanently, where their personal relationships are focused, where they regularly spend their non-working hours, where they take part in the social life of the community

Residence permit is per se not sufficient

Who is a “person abroad”?

B. Legal entities

- Companies with registered office abroad
- Companies with registered office in Switzerland but controlled by persons abroad

Therefore: Swiss Companies with registered office in Switzerland but **controlled by Italian nationals** who are *not* legally and actually domiciled in Switzerland **are persons abroad**

Who is a “person abroad”?

Art. 6 Lex Koller

Control by persons abroad = more than 1/3 of the company's capital *or* more than 1/3 of voting rights are in the hands of persons abroad *or* in case they granted substantial loans to the company (presumption)

Commercial Real Estate

- Real estate permanently used for commercial purposes can be acquired **without authorisation**
- Commercial real estate can be acquired both for own use or for rent to a third party in order to pursue a commercial activity (i.e. **purchase as pure investment is allowed**)
- Examples: manufacturing premises, warehouse facilities, offices, shopping centres, retail premises, restaurants, hotels

Residential Real Estate

- Italian nationals who are *legally and actually domiciled* in Switzerland can **freely acquire** any residential real estate
- Italian nationals who *commutes cross-border* to work in Switzerland can **freely acquire** a *secondary residence* in the area of their place of work
- Italian nationals *living abroad* may acquire a *holiday home or serviced flat* **subject to authorisation** (surface may not exceed 200 m²)

Residential Real Estate

- Italian nationals domiciled in Italy
- Companies with registered office in Italy
- Companies with registered office in Switzerland but controlled by Italian nationals who are *not* legally and actually domiciled in Switzerland

cannot buy *residential* real estate (apart from holiday apartments) > **no pure investments allowed**

In a nutshell

Usage Purchaser	Commercial	Residential
Person abroad	Permitted	Not permitted
Swiss-like person	Permitted	Permitted

Excursus

- **Legacy issues** related to residential real estate purchased in the 60-70ies by Companies controlled by persons abroad (“red sector”)
- *Bad news:* Lex Koller provides for extremely severe consequences (purchase nil and void, administrative and criminal sanctions)
- *Good news:* Authorities are usually ready to negotiate and settle the issue in an amicable way

Thank you for your attention



Davide Jermini is a partner at Walder Wyss. He is mainly active in the fields of corporate and commercial law, M&A (in particular real estate transactions) as well as general banking & finance (including regulatory issues). Moreover, he advises on employment law issues and corporate succession planning. He regularly assists Swiss subsidiaries of international groups and banks, both in advisory and litigation matters.

