

# Switzerland

Francis Nordmann and Johannes A Bürgi  
Walder Wyss & Partners Ltd

[www.practicallaw.com/6-503-0895](http://www.practicallaw.com/6-503-0895)

## THE CORPORATE REAL ESTATE MARKET

### 1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

Switzerland's real estate market has proved strong and displayed low volatility compared to neighbouring countries. Real estate transactions were attractive to investors because of historically low interest rates. Consequently, the volume of real estate deals was substantial and some transactions exceeded CHF100 million (as at 1 September 2010, US\$1 was about CHF1.02) in transaction volume. Some landlords that previously financed their acquisitions using highly leveraged financing successfully managed to refinance with traditional Swiss banks such as UBS, Credit Suisse or the cantonal banks. There were a number of restructuring transactions, particularly in the hotel financing market. Swiss banks used the domestic Pfandbrief market for refinancing purposes and UBS initiated a covered bond programme through its UK branch drawing on the European market.

## REAL ESTATE INVESTMENT

### 2. Please briefly outline the opportunities for investing in real estate in your jurisdiction. In particular, consider:

- The structures commonly used (for example, property companies and partnerships).
- Are real estate investment trusts (REITs) available? If so, are they commonly used?
- Institutional investors.
- Private investors.

#### Common structures

Depending on the corporate structure of the buyer including the ultimate beneficial owner or sponsor, newly established Swiss or foreign special purpose vehicles (SPVs) are used. Foreign SPVs are primarily domiciled in countries that have entered into double taxation treaties with Switzerland, to:

- Avoid withholding tax.
- Ease an exit by share deals.

Foreign SPVs domiciled in offshore jurisdictions are also used. Real estate investment funds are also common investors in Swiss real estate.

## REITs

REITs and real estate derivatives are not used as buying entities. These structures do not provide tax advantages in Switzerland.

## Institutional investors

Institutional investors (such as real estate investment funds and pension funds) have become more active because of the need to invest available cash (see *Question 1*).

## Private investors

Swiss and international private investors are primarily interested in yield-generating properties and generally buy properties on a non-recourse basis using corporate structures.

## REAL ESTATE LEGISLATION

### 3. Please briefly set out the main real estate legislation that applies in your jurisdiction.

Switzerland is a civil law jurisdiction. Therefore the main real estate legislation is codified law, including the:

- Code of Obligations.
- Civil Code.
- Bankruptcy Act.

In addition, there are public law rules, including rules concerning:

- Zoning.
- Planning.
- Procurement.

## TITLE

### 4. Please briefly state what constitutes real estate in your jurisdiction. Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Title to land is registered at the relevant land registry in the federal land register. It usually includes title to any building on the land owned by the same owner. There are different titles registered at the land registry for groundleases (*Baurechte*) or storey ownership units (*Stockwerkeigentum*). The groundlandlord (*Baurechtsgeber*) has the right of first refusal if and when the groundlease property is being sold.

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**5. How is title to real estate evidenced, for example by registration in a public register of title? Which authorities manage the public title register?**

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All cantons are required to set up land registry offices (*see below*). Title relating to all real estate is registered at the relevant land registry in the federal land register (where available) or the relevant cantonal registry. There is a legal presumption that federal land register entries (but not entries in cantonal registries where the federal land register is not yet available) are true and correct, and parties relying in good faith on an entry are fully protected.

The land registries manage the federal land register. The land registries are organised on a cantonal basis and cantonal officers manage them. There is no centrally managed property register. Some cantons have only one land registry, while others have several land registries which manage the public title register for a certain region of the canton. All cantons are responsible for:

- Setting up land registry offices.
- Defining the administrative districts.
- Appointing and remunerating officers.
- Ensuring cantonal supervision.

The cantons are liable for all damages resulting from gross negligence or intentional behaviour.

The Office for Land Registry and Real Estate Law (*Eidgenössisches Amt für Grundbuch- und Bodenrecht*) has overall supervision of land registration.

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**6. Please briefly set out the information and documents registered in the public register of title, for example a description of the real estate, the owner, matters affecting the title and any relevant documents.**

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All information relating to the property is registered, including details of:

- The owner, size and description of real estate.
- The latest insurance value (only in some Swiss cantons).
- Servitudes.
- Charges, annotations and mortgage certificates.
- Any options relating to the property.

The purchase price paid for the property is not generally registered.

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**7. Can confidential information or documents be protected from disclosure in the public register of title?**

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Sale and purchase agreements relating to properties are not generally disclosed, which therefore, to some extent, protects confidential information or documents from disclosure.

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**8. Is there a state guarantee of title? Is title insurance available? If so, is it commonly used?**

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There is no need for title insurance as buyers acting in good faith are legally protected and can rely on the registration of title in the land registry (to the extent that a federal land registry has been introduced in the property's area, which is generally the case (*see Question 5*)).

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**9. How can real estate be held (that is, what types of tenure exist)?**

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Individuals and entities can hold real estate as:

- Freehold or leasehold.
- Single owners.
- Co-owners. Co-owned real estate can be sold without the consent of all co-owners.
- Joint owners. Real estate can only be sold with the consent of all joint owners.

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## SALE AND PURCHASE OF REAL ESTATE

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**10. What are the main stages and documents in the sale and purchase of real estate? In particular:**

- How is real estate marketed, when does commercial negotiation occur and what pre-contractual arrangements are used?
- When is the sale contract negotiated and executed?
- When are the parties legally bound?
- When is the change of title registered?
- When does title transfer and what are the formal legal requirements to transfer real estate (for example, in writing and signed by the parties)? Is notarisation required?

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### Marketing

The marketing of corporate real estate involves bidding processes managed by a large real estate broker (such as CBRE, Jones Lang LaSalle and Colliers), or by local brokers granting exclusivity for due diligence and negotiations for a limited period, subject to customary non-disclosure agreements.

In a bidding process, potential buyers provide a mark-up of the draft sale and purchase agreement disclosed in the data room. Following selection of the preferred buyer, final negotiations take place.

### Commercial negotiation

Negotiations concerning the purchase price differ commercially depending on various factors, such as the:

- Conditions of existing leases, for example:
  - duration;

- amount of rent;
- cost distribution between tenant and landlord.
- Servitudes encumbering the property.
- Extent of the seller's representations and warranties.
- Allocation of costs, expenses and transfer tax.

### Pre-contractual arrangements

Except for legally non-binding letters of intent, it is unusual to have pre-contractual agreements. In an asset deal, these agreements must be notarised.

### Sale contract

In an asset deal, a notary public must notarise the sale and purchase agreement. Registration of the sale contract at the relevant land registry triggers ownership transfer. In a share deal, notarisation and registration of the agreement are not required.

### When legally binding

In an asset deal, the sale contract becomes legally valid and binding on execution by the parties and notarisation by the notary public. The buyer must usually make a deposit on notarisation of 5% to 10% of the total price.

In a share deal, bearer shares must be physically handed over (and also endorsed, if they are registered shares), for the sale to be legally binding. No further registration is required.

### Registration

The duly signed and notarised sale and purchase agreement must be filed with the competent land registry for registration in the land register. Registration transfers property ownership. The entire purchase price usually becomes payable when the transaction is registered at the land registry.

### When title transfers

In an asset deal, the sale and purchase agreement is immediately registered in the daily journal on filing with the land registry. Subject to the definitive registration of the journal entry in the main register, registration in the daily journal determines the point in time when legal title transfers.

The main legal document is the sale and purchase agreement, which both:

- States the mutual rights and obligations of the parties.
- Constitutes the legal transfer of ownership of the real estate.

In an asset deal, the contract must be duly signed by the parties and notarised.

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### 11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate, for example to disclose real estate information, or in relation to title?

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Buyers can rely on the real estate's registration of title in the land registry (see *Question 5*). The law also protects the buyer against the seller's intentional or grossly negligent non-disclosure of relevant information.

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### 12. Please briefly outline the real estate due diligence that is typically carried out before an acquisition (including title investigation and searches of public authorities).

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As registration is conclusive, legal due diligence involves analysing the land register extract, which shows all relevant property information. In addition, any existing leases must be examined, since these transfer to the buyer as the new landlord on purchase of the property.

Another aspect of due diligence relates to environmental law, since the legal owner of the property is partly liable for contamination of the real estate, even if contamination took place pre-ownership (see *Question 14*).

If a foreign person buys property that includes real estate that is not commercial property or provides for relevant land reserves, it must be verified that there is no infringement of the Federal Law on the Acquisition of Real Estate by Persons Abroad (*Lex Koller*). This type of purchase can be deemed void, since *Lex Koller* restricts foreign persons from buying residential and other non-commercial real estate in Switzerland. Financing transactions should be examined on a case-by-case basis.

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### 13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover?

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The warranties typically given by a seller include corporate warranties relating to the:

- Correct organisation and valid existence of the company.
- Correct presentation of the financial statements.
- Title to shares.

Other important warranties relate to:

- The accuracy of rent records.
- The due diligence information being:
  - accurate;
  - complete;
  - up to date.
- Specific tax representations.

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### 14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it? For example, environmental liability, or liability under a lease.

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An owner or occupier can inherit liability, particularly concerning environmental issues. If a property is polluted, the polluter must bear the majority of the decontamination costs (*Federal Environmental Protection Act*). If the polluter no longer exists or is insolvent, the relevant canton bears the polluter's share. If the property's purchase agreement does not include a specific liability clause, the new owner must bear 10% to 20% of costs, even if it is

not responsible for contamination. Generally, the new owner must pay for excavations and decontamination during development.

In addition, legal liens encumbering the real estate securing certain claims, irrespective of the relationship between the debtor and the legal owner, can lead to additional liability for the owner. Examples include the claims of:

- Tax authorities for unpaid real estate transfer or capital gain taxes.
- Craftsmen and contractors for construction or other work on the real estate, where they have provided materials and work (or just work), and their invoices are unpaid by the former landlord or main contractor.

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**15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it? For example, environmental liability, defects in the real estate, and contractual liability to the buyer.**

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A seller can retain liability to some extent for environmental issues. Further, the seller is liable for all defects of the real estate that existed when the property was sold. The seller can contractually exclude this liability (unless it fraudulently concealed these defects; it is disputed whether exclusion of liability is further restricted).

The seller is also liable for all tax relating to real estate ownership, and its share of the tax and fees relating to the sale.

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**16. What costs are usually paid by the buyer? What costs are usually paid by the seller?**

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Cost allocation is negotiated between the buyer and seller, and agreed in the sale and purchase agreement. For all other taxes and fees, the payment of costs depends on the canton involved and how these costs are shared between seller and buyer.

**Buyer's costs**

Generally, the buyer bears the costs of any new mortgage certificates. The relevant costs vary from canton to canton, but can be substantial. Existing mortgage certificates can be used by the buyer for financing purposes and do not trigger any substantial additional costs.

**Seller's costs**

The seller is liable to pay any real estate capital gains tax.

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**REAL ESTATE TAX**

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**17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?**

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The sale of real estate is generally exempt from VAT without credit of input VAT. However, the seller can opt for VAT to apply to the sale, provided the buyer is a taxable person for Swiss VAT purposes. In this case, the standard rate of 7.6% applies.

For large portfolio deals, and provided the seller has opted for VAT to apply, a notification procedure can be applied for, so that VAT liability is satisfied by reporting the taxable transaction, rather than by effectively paying the VAT due.

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**18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase? Who pays? What are the rates? Are there any exemptions?**

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In most cantons, cantonal and/or municipal real estate transfer taxes apply to the transfer of real estate. Generally, the buyer pays the tax, but the seller is jointly and severally liable for payment. The rates range between 1% and 3.3%. It is not uncommon for the parties to contractually agree to share the transfer tax.

In share deals in some cantons, there is no real estate transfer tax. Also, corporate restructurings (including of real estate companies) generally no longer trigger transfer taxes and similar charges. Most cantons that impose real estate transfer tax can secure their corresponding tax receivables by a first ranking legal lien on the real estate.

In addition, the transfer of real estate is subject to cantonal and/or municipal land registry and notary fees.

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**19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios?**

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There are no methods commonly used to mitigate real estate transfer tax on the acquisition of large real estate portfolios. However, if the real estate portfolio is part of a whole business group, the indirect transfer of the properties by a share deal should not trigger real estate transfer taxes, provided the whole group does not constitute a real estate rich company. In share deals in some cantons, there is no real estate transfer tax.

The acquisition of large real estate portfolios mostly involves an escrow agent handling the closing of the transaction. The relevant escrow agreement often contains a mandate of the escrow agent to pay transfer taxes during closing or after it, and the escrow agent secures these tax payments.

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**HOLDING BUSINESS PREMISES**

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**20. Are there targets to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria? If yes, please give brief details.**

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Environmental protection is an important issue in Switzerland. There is a target to reduce carbon dioxide emissions by 20% by 2020 (compared with 1990 levels) (*Federal Law concerning the Reduction of Carbon Dioxide Emissions (Bundesgesetz über die Reduktion der CO<sub>2</sub>-Emissionen)*).

The reduction target will primarily be realised through voluntary measures, one of these being the Minergie quality standard for new residential buildings. Facilities built in accordance with

the Minergie standard are characterised by high-grade, air-tight building envelopes (that is, the separation between the interior and the exterior environments of a building) and the continuous renewal of air in the building using an energy efficient ventilation system. Specific energy consumption is the main indicator of the required building quality.

The Federal Council (*Bundesrat*) can charge a tax if the voluntary measures are insufficient to reach the reduction target. This provides an incentive to build in accordance with the Minergie standard. Additionally, some banks provide special incentives for financing concerning houses fulfilling Minergie standards.

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**21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties, for example through outsourcing transactions? If yes, please give brief details.**

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It is standard practice to outsource these activities to a property management company, as investment banks financing the buyer generally require SPVs not to employ individuals themselves. In addition, companies financed by traditional banks often outsource these services to specialised property managers, as this can lead to more efficient and professional property management.

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**22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?**

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Foreign ownership of residential real estate is restricted (see *Question 12*). Typically, the granting of security in a standard real estate financing should not be critical, provided that lending by a foreign bank in leveraged transactions does not lead to the foreign bank obtaining a controlling influence. This must be assessed on a case-by-case basis, and rulings from the competent *Lex Koller* authorities are sought for additional confirmation. In any event, rulings are recommended if more than 80% loan-to-value is being financed.

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**23. Does change of control of a company affect its holdings of real estate?**

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Change of control does not affect the holding of real estate from a civil law aspect. However, under *Lex Koller* rules (see *Question 12*), change of control is considered a purchase of real estate, and may require authorisation if the relevant company holds residential properties or properties with mixed commercial/residential use.

In some cantons, a seller's capital gains on the transfer of real estate held as a business asset are subject to a special real estate gains tax. In addition, the transfer of real estate in certain cantons is subject to real estate transfer tax (see *Question 18*). This can apply to the sale of the shares of an entity holding property, as this can be considered an economic sale or transfer of the underlying property.

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**24. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?**

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**Local authorities**

The right of local authorities to compulsorily purchase premises is subject to cantonal law (there are 26 cantons and therefore different regulations). Expropriation requires an overriding public interest, such as the:

- Development of infrastructure.
- Widening of roads.
- Construction of highways.

Indemnification must reflect the land's market value.

**Federal authorities**

The federal authorities can only compulsorily purchase premises for projects in the interest of the entire state or a major part of it. The purchase price must be equivalent to the property's market value. The property owner can challenge expropriation through legal proceedings, and has the right for an independent court to decide on the:

- Suitability of the expropriation.
- Compensation offered.

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**25. Are municipal taxes paid on the occupation of business premises, for example business rates? Are there any exemptions?**

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Some cantons or municipalities levy special object taxes on the value of real estate in their territory, paid by the property owner.

For example, in Geneva, the renting of commercial properties is subject to a municipal tax at 0.5% of the annual rental income.

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**REAL ESTATE FINANCE**

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**26. How are acquisitions of large real estate portfolios or companies holding real estate generally financed?**

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Generally, senior bank loans of up to about 80% of the market value or the property's purchase price are used to finance acquisitions of large commercial real estate portfolios.

The remaining part of the purchase price is usually paid with funds from a subordinated loan and share capital. In a Swiss SPV, share capital is usually CHF100,000, which is the minimum legally required share capital.

Due to financial assistance issues under Swiss law, cross-colateralisation by Swiss SPVs is not feasible, so large real estate portfolios are generally bought by one Swiss or foreign SPV, or by several foreign SPVs.

A foreign person under the *Lex Koller* rules (see *Question 12*) can participate in the acquisition of residential or mixed real estate

by providing participating capital (non-voting shares), which can amount to double the SPV's share capital, provided he acquires no other element of control relating to the SPV.

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### 27. How is real estate commonly used to raise finance?

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Real estate is often used to raise finance by:

- Secured lending (that is, mortgage certificates, lease receivables and so on).
- Sale and leasebacks. The legal owner sells the real estate and leases it back, using the purchase price for its operations.
- Other financing, such as real estate securitisation, Swiss *Pfandbriefe* and covered bond structures.

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### 28. What are the most common forms of security granted over real estate to raise finance? How are they created and perfected (that is, made valid and enforceable)?

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Mortgages are the most common form of security granted over real estate. In secured lending, the legal owner pledges or assigns mortgage certificates relating to real estate to the lender, as security for a loan enabling him to conduct the business or allowing the purchase of real estate.

To perfect the pledge or assignment, the mortgage certificates must be physically handed over to the pledgee, assignee, or a third party acting on their behalf. For registered mortgage certificates, the assignor or pledgor must also duly endorse the mortgage notes. Generally, the assignment or pledge does not require registration at the land registry.

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### 29. Is real estate securitisation common in your jurisdiction? If yes, please give brief details.

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Previously, some Swiss banks securitised their loan portfolios. More recently, given the collapse of international securitisation markets, Swiss banks have actively been using the Swiss *Pfandbrief* market. In addition, UBS has successfully launched a covered bond programme through its UK branch as an alternative refinancing tool.

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## REAL ESTATE LEASES

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### 30. Are contractual lease provisions regulated or freely negotiable?

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Rent or lease terms are broadly negotiable within legal limits, which generally favour tenants' interests. Excessive returns on rents are prohibited, even if they are based on an obviously excessive purchase price.

Lease terms must comply with the mandatory legal regulations concerning leases, relating to the:

- Maximum duration of the fixed term tenancy.

- Notice period.
- Termination date.

For a lease term of at least five years, rent can be partially or fully indexed to the Consumer Price Index. In addition, staggered rent is possible for a term of at least three years. However, staggered rent cannot be combined with indexed rent.

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### 31. How are rent levels usually reviewed and are there restrictions on this? Is VAT (or equivalent) payable on rent?

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When rent is reviewed, it is not allowed to be abusive. Rent is considered abusive if it either:

- Results in excessive returns from the rental object.
- Is based on an obviously excessive purchase price.

Generally, rent is not regarded as abusive if any of the following apply:

- It is within the range of rents usual within the neighbourhood.
- It is based on increased costs or additional benefits that the landlord provides for.
- In relation to relatively new buildings, it is within the range of a cost-covering gross return.
- It is both:
  - intended to merely compensate for a previously granted lower rent based on deferred market-conformed financing costs. That is, lower rent at the beginning of the lease with higher rent at the end of the lease is allowed, if the landlord's interest payments under the mortgaged-back loan are increasing at the same time;
  - set out in a payment plan disclosed to the tenant in advance.
- It merely compensates for a cost increase in relation to the risk-carrying capital. That is, if the landlord's equity costs are increasing, it can partially shift such increased costs (40% of the increase of the consumer price index) to the tenant by increasing the rent.
- It is not greater than the amount recommended by landlord and tenant associations, or organisations safeguarding similar interests, in their general terms and conditions.

The leasing of real estate is generally exempt from VAT without credit of input tax. However, this exemption specifically excludes:

- Providing accommodation in the hotel sector (a reduced rate of 3.6% applies).
- The renting of:
  - premises and sites for parking vehicles;
  - permanently installed equipment and machinery;
  - safes.

In addition, the landlord can opt for VAT to apply, provided the tenant is a taxable person established in Switzerland. In this

case, the standard rate of 7.6% applies (which will be increased to 8% as of 1 January 2011).

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**32. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term? If yes, please give details.**

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The length of lease term depends on the market situation and the interests of the parties involved. The parties generally choose long-term lease agreements (five to 12 years, or in some cases, up to 20 years). This particularly applies if the tenant wants to develop the property for its specific needs, since there is no mandatory reimbursement claim for investment by the landlord. In addition, if the landlord wants to achieve strong leverage to finance its real estate, banks financing these purchases generally require leases that do not end until after repayment of the loan. Tenants wishing to secure their position at the end of the lease often agree options with the landlord which allow them to extend the lease on expiry of the original lease term.

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**33. What provisions or restrictions typically apply to the disposal of the lease by the tenant (for example, can the tenant assign or sublet the lease with the landlord's consent)?**

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If the landlord sells the rental premises, the tenancy passes to the new landlord and continues on the same terms.

Leases can usually be assigned or sublet in whole or part by a tenant, provided the landlord does not object for valid reasons.

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**34. Can tenants usually share their business premises with companies in the same corporate group? If yes, on what terms?**

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The parties can agree terms allowing several parties to use the leased premises. In this case, the landlord commonly insists that all parties using the leased premises enter into the lease, to make them jointly liable for all obligations arising from the lease. However, this type of tenancy sharing is rare.

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**35. Who is usually responsible for keeping the leased premises in good repair?**

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According to conventional practice:

- The tenant is responsible for ordinary (smaller) maintenance expenses.
- The landlord is responsible for extraordinary (larger) maintenance expenses relating to the premises.

However, in relation to large commercial leases over whole buildings, "triple-net leases" are sometimes granted, shifting the entire maintenance duty to the tenant. These leases are enforceable, if structured properly.

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**36. Who is usually responsible for insuring the leased premises?**

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The landlord must insure the building. For example, the landlord must pay for a suitable fire insurance policy. However, in triple-net leases (see Question 35), this obligation shifts to the tenant. Additionally, it is in the tenant's interest to have liability insurance (*Haftpflichtversicherung*).

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**37. On what grounds can the landlord usually terminate the lease? Please briefly outline any restrictions or procedure that applies. Can the tenant terminate the lease in certain circumstances?**

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Under general contract law, a party that has entered into an agreement (including a lease) based on wilful deception by the other party is not bound by it. The same applies in case of material error, particularly if the error related to certain facts that the party suffering from the error, according to the rules of good faith in business, considered to be a necessary basis of the contract.

Extraordinary termination of the lease by the landlord is possible if the tenant:

- Does not pay the rent.
- Becomes bankrupt and the landlord does not acquire security for future rent payments (see Question 38).

The tenant can terminate the lease if the landlord does not transfer the leased premises at the agreed time, or with defects that exclude or significantly impair its suitability for the predetermined use. In addition, the tenant can give notice of termination with immediate effect during the lease if both:

- The landlord is aware of a defect and does not remedy it within an adequate period of time.
- The defect prevents or significantly impairs the agreed use of the premises.

The tenant can terminate the lease at any time if both:

- It provides the landlord with a suitable new tenant.
- The leased premises remain subject to the same terms and conditions.

The landlord and tenant can also terminate the lease for valid reasons that make performing the lease impossible.

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**38. What is the effect of the tenant's insolvency (under general contract terms and insolvency legislation)?**

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If the tenant becomes insolvent, the landlord can request security for payment of future rents. If no security is granted following a grace period, the landlord can give notice to immediately terminate the lease.

## PLANNING LAW/ZONING

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### 39. What authorities regulate planning control and which legislation applies?

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Swiss authorities at federal, cantonal and communal level have various regulatory responsibilities relating to zoning and building law.

The Federal Zoning Act defines the respective responsibilities at federal, cantonal and communal level, and sets out certain key principles, such as the:

- Conservative use of land.
- Limits on expansion of housing development.

Building law at federal level only focuses on selected matters. Generally, zoning and building regulations are enacted by the cantons and implemented by communal building authorities. Consequently, Switzerland has 26 different cantonal zoning regimes.

Communal building laws are also important. Municipalities enact these under their right of communal autonomy.

### 40. What planning consents (for example, planning permission or building permits) are required and for which types of development?

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Planning permission is required for a new building or any change to an existing building or construction. Planning permission is also required to change the function of an existing building (for example, from commercial to residential premises).

There are also restrictions applying to historical buildings classified as protected monuments and listed in the land register. Changes cannot be made to these buildings without the authorities' approval (although internal changes can be made in some circumstances). The relevant authority should be consulted before changes to a historical building.

### 41. In relation to planning consents:

- Which body grants initial planning consents?
  - Do third parties have the right to object? If yes, please give brief details.
  - In what circumstances is there a public inquiry?
  - How long does an initial decision take after receipt of the application?
  - Is there a right of appeal against a planning decision? If yes, please give brief details.
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#### Initial consents

Planning applications should be made to the relevant communal authority.

## REAL ESTATE ORGANISATION

Federal Department of Justice, Office for the Acquisition of Real Estate (*Bundesamt für Justiz, Eidg. Amt für Grundbuch- und Bodenrecht*)

**Main activities.** This office deals with all questions relating to the acquisition of real estate by foreign persons.

**W** [www.ejpd.admin.ch/ejpd/en/home/themen/wirtschaft/ref\\_grundstueckerwerb.html](http://www.ejpd.admin.ch/ejpd/en/home/themen/wirtschaft/ref_grundstueckerwerb.html)

#### Third party rights

Generally, only neighbours to the project can object. In major construction projects, certain associations can submit a group objection.

#### Public inquiries

All parties can claim a public inquiry (and an independent court's judgment), because their civil rights are involved.

#### Initial decision

The time between the application to an initial decision depends on the project and the workload of the authority in charge. For minor projects, the initial decision can be obtained in two months. For major projects that may require a special zoning plan and an environmental assessment, it can take up to two years.

#### Appeals

There is a right of appeal to a superior administrative authority. There is also a right of appeal to an independent court against this decision.

## REFORM

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### 42. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

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Parliament is currently discussing:

- Abolishing the *Lex Koller* law, which is still currently in force.
- Changing the tenancy laws.
- Establishing rules restricting secondary holiday homes to reduce so-called "cold beds" in holiday resorts.
- Introducing potential incentives to reduce carbon dioxide emissions.
- Launching subsidies for energy efficient building restorations.
- Creating "register mortgage instruments", so that physical title is no longer needed, which will guarantee improved tradability.





## CONTRIBUTOR DETAILS



### FRANCIS NORDMANN

*Walder Wyss & Partners Ltd*  
T +41 44 498 95 96  
F +41 44 498 98 99  
E [fnordmann@wwp.ch](mailto:fnordmann@wwp.ch)  
W [www.wwp.ch](http://www.wwp.ch)



### JOHANNES A BÜRGI

*Walder Wyss & Partners Ltd*  
T +41 44 498 95 59  
F +41 44 498 98 99  
E [jbuergi@wwp.ch](mailto:jbuergi@wwp.ch)  
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**Qualified.** Switzerland, 1998

**Areas of practice.** Real estate; real estate finance; finance and banking.

#### Recent transactions

- Advising a Schrodgers fund in acquiring a large shopping centre in Winterthur.
- Advising on the refinancing of a large real estate portfolio of Fordgate.
- The acquisition of various yield producing properties for various national and international buyers (including listed real estate companies).
- Advising Deutsche Bank in the course of the refinancing of various properties in Switzerland.
- Advising a high net-worth individual in the sale of a hotel in St. Moritz.

**Qualified.** Switzerland, 1998

**Areas of practice.** Real estate finance; real estate; finance; capital markets; banking; and restructuring.

#### Recent transactions

- Acting on behalf of vendors in a variety of real estate sales mandates. Acting for a consortium of lenders in the rescue operation of a major German *Pfandbriefbank*.
- Advising UBS AG on its new covered bond programme backed by Swiss residential mortgages.
- Advising on the first public private partnership financing transaction in Switzerland.

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**Walder Wyss Ltd.**

Seefeldstrasse 123  
P.O. Box 1236  
8034 Zurich

Phone + 41 44 498 98 98  
Fax + 41 44 498 98 99  
reception@walderwyss.com  
www.walderwyss.com

Bubenbergplatz 8  
P.O. Box 8750  
3001 Berne

Phone + 41 44 498 98 98  
Fax + 41 44 498 98 99  
reception@walderwyss.com  
www.walderwyss.com