

THE REAL ESTATE
LAW REVIEW

TENTH EDITION

Editor
John Nevin

THE LAWREVIEWS

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John Nevin

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PUBLISHER

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PREFACE

Just as the ninth edition of *The Real Estate Law Review* was being published, the world was thrown into total confusion by the rapid spread of a deadly new disease. Covid-19 has affected the global economy like nothing this generation has experienced, with every major jurisdiction forced into a series of lockdowns. However, it must not be forgotten that the pandemic is primarily a human tragedy with more than 93 million cases globally and 2 million deaths. As we begin to see light at the end of the tunnel, the global health crisis will undoubtedly complete its transition into an economic one, with significant global debt and widespread unemployment. Covid-19 will leave its mark on all aspects of how we live and work, including each and every sector of the global real estate market.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012, but nothing more significant than the covid-19 pandemic, a truly global crisis. This tenth edition of *The Real Estate Law Review* will continue to prove its worth by providing readers with an invaluable overview of how key markets across the globe operate and how they react to major world events. Covid-19 has served as a stark reminder that it is no longer possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 27 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effect on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

In the year that the UK finally left the EU and Joe Biden became president of the United States, the significance of Brexit and American politics have been put into perspective by the covid-19 pandemic. Covid-19 is a truly global issue affecting every jurisdiction and, of course, its real estate market. In the background, and almost forgotten, Brexit and the associated economic and political fallout has continued to be a concern for the UK economy and its real estate markets. Although investment volumes fell off a cliff in the first half of the year, we have started to see interest from both overseas and domestic investors, underlining the continued importance of UK real estate as an investment asset. The world's cache of investment capital is likely to prompt a surge in investment activity once some degree of confidence returns. The UK, and London in particular, seem certain to remain attractive to overseas investors looking for a safe haven for their funds. The next few years will undoubtedly

be challenging as we begin the road to recovery, but opportunities will arise, and real estate will remain a key part of investment strategies.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this tenth edition of *The Real Estate Law Review*. I would also like to thank the members of the Law Review team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2021 and beyond.

John Nevin

Slaughter and May

London

February 2021

SWITZERLAND

Andreas F Vögeli, Oliver Zbinden, Annina Fey and Anne Huber¹

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

Under Swiss law, different types of real estate ownership exist. The most common forms of ownership are sole ownership² and co-ownership. A special – and in Switzerland predominant – form of co-ownership is the condominium-principled co-ownership. Its main characteristic is that different persons own separate units in a common property or, as the law puts it, condominium is a form of co-ownership of immovable property that gives the co-owner the exclusive right to make sole use of specific parts of a building thereon and design the interior of such parts. Condominium owners can manage, use and design the structure of their units as they wish but must not obstruct any other condominium owners in the exercise of their own rights or damage the common parts of the property. Importantly, each unit has its own folio in the land register and may be sold separately without the consent of the other co-owners, who have no statutory right of pre-emption.

Further property rights include:

- a* usufructuary rights – a contractual arrangement where the owner confers complete enjoyment of the object on the usufructuary;
- b* right of residence – the right to live in all or parts of a building; and
- c* building rights³ – the ownership of the ground is dissociated from the ownership of the constructions.

One major difference between a usufructuary right and the right of residence is that the latter can only be granted to individuals but not to legal entities.

A lease contract, if entered in the land register, provides a similar legal position to the beneficiary as the aforementioned rights *in rem*. The effect of this entry is that every future owner, in principle, must allow the property to be used in accordance with the lease.

1 Andreas F Vögeli is a partner, Oliver Zbinden is a senior associate, Annina Fey and Anne Huber are associates at Niederer Kraft Frey.

2 Often also referred to as freehold or land ownership as the sole owner usually owns the land and its integral parts and everything built on it.

3 Compared to the freehold, the owner of a building right is not owner of the land but only the holder of a leasehold right encumbering that land. He or she is granted a right to erect and maintain a building on the underlying lot.

ii System of registration

Every (privately owned) piece of land, including individual condominium units, has its own folio in the land register, where title information (ownership, size and description of the property), easements, usufructs and other servitudes, charges, lien and mortgages, notes (typically public law restrictions) and priority notices (e.g., contractual pre-emption rights, lease agreements) are recorded.

Title to real estate is transferred to the new owner exclusively by way of entry in the land register. The ownership cannot be transferred as long as the purchaser is not entered into the land register. The prerequisite for registration is a notarised purchase contract constituting the legal ground for acquisition of ownership or any other rights *in rem* on real property. Only notarised contracts can be entered into the land register.⁴

There is a legal presumption that federal land register entries (but not entries in cantonal registries in the few locations where the federal land register is not yet fully introduced) are true and correct. Every person that relies on the land register in good faith is, therefore, fully protected. The content of the land register prevails over the factual circumstances as long as good faith is given. Furthermore, the land register establishes the presumption that the registered rights exist. Therefore, title insurance is neither needed nor known.

iii Choice of law

Rights *in rem* on real property are exclusively subject to the law of the place where the real property is located. In principle, contracts concerning real property or its use are also governed by the law at situs; however, a choice of law by the parties is permitted. In any case, the form of the contract is governed by Swiss law if real estate in Switzerland is concerned.

Because of the notarisation requirement, Swiss law is generally chosen by the parties to a real estate transaction as governing law.

II OVERVIEW OF REAL ESTATE ACTIVITY

The covid-19 pandemic has so far not been able to dampen the interest of private and institutional investors in direct real estate investments in Switzerland. After the lockdown in March and April 2020, it was uncertain in which direction the real estate market would develop, but the latest figures on the transaction market confirm that the willingness to pay for investment properties remains very high. As far as residential properties are concerned, the momentum has even increased recently. The main reason for the sustained momentum in the real estate market continues to be the central banks' low interest rate policy, which only leaves small scope for the Swiss National Bank (SNB) to deviate from its currently very expansive monetary policy. Due to the continued strong demand for investment properties, gross initial yields continue to fall. The average yields of all observed transactions currently amount to 3.3 per cent.⁵

4 Notary law is cantonal; therefore, the notarisation process may differ from canton to canton. Generally, only notaries at the place of the property are competent to notarise real estate purchase contracts. An exception to this is the special case of a transfer of assets under the Swiss Federal Act on Mergers. Under this Act, for certain forms of restructuring of legal entities, all assets, including real estate, are transferred by entry of the corresponding contract in the Commercial Register.

5 See wüestpartner, Immo-Monitoring 2021 | 1, pp. 74–75.

In contrast to direct real estate investments, the uncertainties in the financial markets have caused noticeable turbulence in indirect real estate investments in Switzerland. The shares of real estate public limited companies have heavily dropped for the first time in years. Uncertainty was high due to potential loss of rent as a result of tenants with limited operations; in addition, a decline in demand for office space was and is expected due to an increase of personnel working out of home. In contrast to real estate public limited companies, listed Swiss real estate funds have recovered much better from the turmoil on the financial markets. The decline in value of the fund shares in the course of the year was only 2.2 per cent. Real estate funds, which are mainly invested in properties with residential use, confirm once again that they are relatively stable, especially in times of crisis.⁶

III FOREIGN INVESTMENT

The purchase of real estate by foreign investors, in particular of residential properties, as well as foreign mortgage financing of residential properties is restricted by the Swiss Federal Act on the Acquisition of Real Estate by Persons Abroad (the *Lex Koller*) and the respective ordinance. The *Lex Koller* requires that foreign investors – EU/EFTA nationals without permanent residence in Switzerland and nationals of other countries without a C permit – must apply for authorisation when acquiring residential properties in Switzerland. In practice, authorisations for residential properties are difficult to obtain. They may be granted, for example, for the purchase of a holiday home based on a yearly defined quota in touristic (alpine) regions.

No authorisation is required if the property is used for commercial purposes (e.g., offices, shopping centres, retail, hotels and restaurants). If this is the case, it is irrelevant whether the property is used for the buyer's business or rented or leased by a third party to pursue a commercial activity. The property may also have land reserves if they – as a rule – do not exceed one-third of the total surface of the land.

The purchase of undeveloped land needs an authorisation even if it is in a commercial or industrial zone except when work on a building that will be used for commercial purposes has already started or will start within a short time.

At the latest after the conclusion of the real estate purchase contract, the foreign investor must request authorisation for the transaction or determination that no authorisation is required for the respective acquisition. The authorisation may be granted with conditions and restrictions to ensure that the property is used in accordance with the purpose stated by the foreign acquirer.

IV STRUCTURING THE INVESTMENT

Traditionally, investments in real estate were made by acquiring specific properties directly or through a legal entity established for that purpose. Given the recent growth of the market for real estate investment products, a general trend towards indirect investments can be observed. The advantages of indirect investments are low transaction costs, high liquidity, broad diversification and a lower entry level compared to direct investments.

6 See wüestpartner, *Immo-Monitoring 2021* | 1, pp. 76–77.

The main types of indirect real estate investment vehicles are real estate funds,⁷ non-regulated investment companies limited by shares, which must be either listed or only accessible to qualified investors, Swiss real estate investment foundations, and special purpose vehicles (SPVs). Real estate funds may be established in the form of contractual investment funds, SICAVs (investment company with variable capital), KGKs (limited partnership for collective capital investments) or SICAFs (investment company with fixed capital).

Contractual investment funds, SICAVs and standard SPVs are the most common investment vehicles. In addition, real estate investment companies and real estate investment foundations have become quite popular in recent years. Depending on the investor's corporate structure, SPVs may offer a number of advantages. Real estate investment trusts (REITs) and real estate derivatives are typically not set up in Switzerland and may be subject to regulatory requirements and restrictions if distributed in Switzerland.

The contractual investment fund is a contract based on a collective investment agreement under which the fund management company commits itself to investors in accordance with the number and type of units which they have acquired in the investment fund, and to manage the fund's assets in accordance with the provisions of the fund contract at its own discretion and for its own account. The fund management company draws up the fund contract and, with the consent of the custodian bank, submits it to the Swiss Financial Market Supervisory Authority (FINMA) for approval. The fund management company's share capital must be at least 1 million Swiss francs (paid up in cash), and the investment fund must have net assets of a minimum of 5 million Swiss francs.

SICAVs are, in principle, established under the provisions of the Swiss Code of Obligations (CO). A SICAV must be authorised by FINMA prior to beginning its operations. FINMA's approval must also be obtained for its constituting documents. Specific authorisation and approval requirements are: assets of at least 5 million Swiss francs one year after launch; the company's name must contain a description of its legal form or the abbreviation 'SICAV'; the ratio of company shareholder deposits to total assets must be appropriate; company and investor shares that do not have a nominal value and are freely transferable must be fully paid up in cash; investment regulations must be defined; a custodian bank must be designated; the SICAV must choose to be either self-managed or externally managed; its sole object must be to manage its funds and sub-funds; and it must hold a defined quantity of equity capital. SICAVs are usually listed on the Swiss stock exchange, which alleviates certain *Lex Koller* burdens.

KGKs are limited partnerships with the sole object of collective investment. They must be authorised as an institution by FINMA and their constitutive documents require approval as well. At least one member (the general partner) bears unlimited liability. The other partners (limited partners) are liable only up to a specified amount. General partners must have paid-in capital of a minimum of 100,000 Swiss francs and limited partners must be qualified investors.

A SICAF is a company limited by shares with the sole object of collective investment. It must be authorised by FINMA and have its constituting documents approved as well. Its shareholders are not required to be qualified investors and it is not listed on a Swiss stock exchange. Essential features of a SICAF are that it only manages its own assets and generates returns or capital gains without engaging in business activities as such. The minimum deposit on foundation must be at least 500,000 Swiss francs in shares, fully paid up.

⁷ See the SXI Real Estate Funds Broad Index for the real estate funds listed on the SIX Swiss Exchange.

Swiss real estate investment foundations are used for the joint investment and management of pension assets. The group of investors of an investment foundation is generally limited to pension funds and to persons supervised by FINMA who manage the collective investments of pension funds. The launch of a Swiss real estate investment foundation requires a broad range of documents, such as foundation regulations, articles and a prospectus. It is subject to (pre-)approval and direct supervision by the Occupational Pension Supervisory Commission.

In general, the costs for each type of entity used to invest in real estate vary depending on the volume and the structure of the vehicle. How a foreign investment is structured in a particular case is usually determined by tax considerations.

V REAL ESTATE OWNERSHIP

i Planning

Zoning laws are based on a federal Act, but the implementation is on the cantonal and communal level. Building regulations are mainly enacted by the cantons and implemented by the municipal building authorities, which leads to significant regional differences. Change of use, particularly of residential premises into commercial ones and vice versa, is heavily regulated and increasingly restricted.

In general, new buildings or any changes to existing buildings require a permit by the competent local authority. They must be planned and designed in a way that they render a harmonious overall impression, both individually and taking into account the surrounding area. Special building regulations may help to facilitate the planning of major projects. Additionally, dimensions and distances stipulated in the regulations must be observed. Furthermore, a variety of special regulations (e.g., on fire and earthquake safety) need to be complied with.

Once the planning application is submitted to the competent municipal authority, it publishes the project in the local official gazette. All parties affected by the project, primarily owners of neighbouring buildings, have the right to raise objections against it. If the municipal building commission finds that the project is in accordance with all applicable regulations and all objections are settled, a building permit is issued. It is key that the finalisation of the project does not deviate from the specifications set out in the building permit, otherwise the authority may order the removal of the illegal structures of the construction.

Buildings and land under cultural heritage protection as well as nature conservation or agricultural areas underlie strict regulations; new constructions and renovations must therefore be carefully planned.

ii Environment

Swiss environmental law differentiates between the polluter who actually caused the pollution and the owner of the property. Primarily, the person causing the pollution must bear the costs of remediation. If the polluter cannot be called upon to bear the costs, the remediation costs remain with the cantons and partly with the owner of the land. Hence, the buyer of real estate may also be held responsible for environmental issues, particularly soil pollutions.

Polluted real estate is registered in the cadastre of contaminated sites and may only be transferred with the approval of the competent cantonal authority, which may order that potential future costs of remediation be secured.

iii Tax

The transfer of real estate is subject to land registry and notary fees. Additionally, property transfer taxes may apply depending on the canton (e.g., Zurich and Zug do not levy property transfer taxes). The rates range between 1 and 3.3 per cent of the purchase price. It is common practice for the parties to a real estate purchase contract to agree to pay the real estate transfer taxes as well as the land registry and notary fees in equal parts; even though most cantonal regulations provide that these must be borne by the buyer.

Furthermore, any profits made on selling the property are subject to capital gains tax, which must be paid by the seller. Capital gains tax largely depends on the duration of the ownership and differs from canton to canton. The range of applicable rates is, therefore, wide and may vary between zero (in the canton of Geneva after a duration of ownership exceeding 25 years) and 60 per cent (for short-term capital gains in the cantons of Zurich, Zug and Basel City). In most cantons, the payment of the tax is secured by a statutory mortgage on the property. Hence, it is of the buyer's interest that the seller pays the capital gains tax and this should be taken into account when drafting a property purchase contract.

Additionally, an individual using a property as his or her own residence is subject to an annual tax on a deemed rental income (known as imputed rental value). However, maintenance and financing costs relating to the property may be deducted, which may even outweigh the imputed rental value.

iv Finance and security

Swiss real estate is usually financed by a mix of equity and loans. The standards applying to investment property financing by Swiss banks were tightened as of 1 January 2020 and provide a maximum loan to value (LTV) ratio of 75 per cent. Thus, 25 per cent of the property, as valued by the bank, must be covered by equity as well as any difference between the value and the actual (usually substantially higher) purchase price. Borrowers must further amortise their mortgage debt down to two-thirds of the property's lending value within 10 years.

Buyers and owners of real estate in Switzerland are free to raise external financing from lenders abroad. The granting of a security over a mortgage note does not entail problems under the Lex Koller as long as the terms of the security are at arm's length and do not aim to circumvent the provisions of the Lex Koller. In practice, institutional investors often hold significant real estate portfolios that are financed without external funding. However, a mix of equity and debt in the form of a secured term loan and a revolving credit facility is also common.

External real estate financings are primarily secured by security interest (in the form of an ownership transfer for security purposes or a mortgage) of mortgage notes. The creation of a (registered or bearer) mortgage note provides an independent claim in the mortgage note's amount and is separate from the claim under the credit documentation (i.e., the loan). The mortgage loan claim is secured by the underlying property.

VI LEASES OF BUSINESS PREMISES

Two main types of purely contractual lease arrangements exist: the traditional lease and the usufructuary lease. Both types are governed by the CO. The traditional lease is more common in Switzerland, both for residential and business premises in the retail, hotel, office and industrial sector. Usufructuary lease is typical in the agricultural and the gastronomy sector.

The law only sporadically differentiates between the lease of commercial and residential properties. Notable differences are the minimum notice periods (three months for residential and six months for commercial premises) and the security furnished by the tenant (in a residential lease, the landlord may not ask for more than three months' rent by way of security; in a commercial lease, there is no such restriction). A large number of Swiss tenancy law provisions are mandatory to protect the tenant, who is *per se* considered to be the weaker party, which is obviously often not the case with commercial tenants. However, commercial lease contracts may also only be negotiated within the limits of mandatory tenancy law.

Lease contracts may be limited or open-ended. Parties to open-ended lease contracts usually agree that they can terminate the contract subject to a six or 12-month notice period. Yet, typically, commercial leases are concluded for a term of five to 10 years, with the option to extend the lease for one or more similar terms. Landlords usually seek five-year lease terms because it offers the possibility to adapt the rent to the Swiss consumer price index. An agreement to link rent to the Swiss consumer price index is not valid where the lease is contracted for less than five years. In addition, banks financing commercial real estate often require that part of the mortgage or loan is repaid before the lease terminates. At the same time, long-term lease is particularly attractive for tenants developing the property for their specific needs (at their own expense), as it is common not to claim reimbursement for the investments from the landlord at the end of the lease.

Extension options can be designed in different ways. Usually tenants favour options where the conditions of the rent, in particular the rental price, remain, while landlords prefer options that offer the possibility to adapt the rent at the end of the lease term to the new market price.

In both limited and open-ended leases, the parties are free to choose a certain lease model. Typically, the rent is fixed and will only be revised if the contractually agreed rent calculation basis changes (e.g., the Swiss consumer price index, reference interest rate) or if the landlord provides additional services. The parties may agree on a staggered rent or a turnover or sales-based rent instead – usually combined with a guaranteed minimum rent. The law only forbids clearly excessive rents, which is not the case if the rent falls, for example, within the range of rents customary in the district, if it is justified by increases in costs or by additional services provided by the landlord or if it does not exceed the range of gross pre-tax yield required to cover costs in the case of a recently constructed property. However, in certain circumstances, the rent amount can also be challenged by the tenant after the conclusion of the rental agreement.

While the rent for residential leases is almost always paid monthly in advance, it is not uncommon for parties to commercial leases to agree on quarterly payments. Most commonly, the rent is secured by a security deposit, which is paid by the tenant before the lease starts. The deposit provided in the form of cash or negotiable securities is deposited on a bank account in the tenant's name. The bank can release such security only with the consent of both parties or in compliance with final payment or final court decision. Alternatively, bank guarantees can also serve as a security. If the tenant neglects to pay the rent, the landlord is allowed to terminate the lease contract after having set the tenant a final deadline for payment.

A security of tenure does not exist in Switzerland. Nonetheless, the tenant may request the extension of a fixed-term or open-ended lease where termination of the lease would cause a degree of hardship that cannot be justified by the interests of the landlord. The lease may be extended by up to six years for commercial premises. In practice, extensions of more than two years are rarely granted in the greater Zurich area.

VII DEVELOPMENTS IN PRACTICE

There have been a number of developments to the regulatory framework and in jurisprudence impacting the real estate market.

Two important developments concern tenancy law.

During the first wave of the covid-19 pandemic in spring 2020, the Federal Council ordered – with a few exceptions only – the closure of facilities open to the public. These closures affected in particular shops, restaurants, entertainment and leisure facilities as well as establishments providing body-related services, such as hair salons and physical therapy clinics. The Federal Council temporarily relieved the burden on affected business tenants by extending the statutory minimum payment period for rents, after the expiry of which a lease can be extraordinarily terminated from 30 to 90 days; for usufructuary leases this was extended from 60 days to 120 days.

However, higher courts have not yet decided, and it is highly controversial among tenancy law specialists, whether officially ordered closures constitute a defect in the rental property, which entitles the tenant or leaseholder to an appropriate reduction or a corresponding retention of a part of the rent in accordance with Article 259d CO and Article 288 Paragraph 1 lit. b CO. It is also controversial whether a tenant or leaseholder can enforce an amendment of the lease or usufructuary lease due to the changed circumstances (rent reduction; early termination option) based on the legal institution of the ‘*clausula rebus sic stantibus*’ created by the Swiss Federal Supreme Court. According to this legal institution, based on Article 2 Paragraph 2 of the Swiss Civil Code a judge must amend or cancel a contract if, due to subsequent, unforeseeable circumstances, such a manifest imbalance between performance and consideration has occurred that the insistence of a party on its claim appears to be abusive. Several years are likely to elapse before the Swiss Federal Supreme Court clarifies the legal situation in this respect.

According to a survey conducted on behalf of the Federal Council, by summer 2020, only a minority of contract parties to leases or fructuary leases concerned had agreed to an extrajudicial rent reduction.⁸ Some cantons have encouraged such solutions with incentive systems.⁹ At the beginning of December 2020, the Swiss parliament rejected a law, which would have implemented nationwide regulations entitling business tenants or leaseholders affected by officially ordered closures with monthly rents of up to 15,000 Swiss francs to reduced rent payments during the lockdown of 40 per cent of the ordinary rent. Therefore, in our view, a wave of lawsuits is not unlikely. In the second wave of the covid-19 pandemic in autumn and winter 2020, the Federal Council did not order a lockdown.¹⁰ However, some cantons, particularly in the western parts of Switzerland, have ordered partial lockdowns.

An agreed initial rent for residential or business premises can be challenged if it is abusive. If the property in question was built or purchased less than 30 years ago, the maximum permissible initial rent is based on the maximum permissible net yield. In October 2020, the Swiss Federal Court changed its long-standing practice during several decades in this regard in two points: First, a net yield that exceeds the reference interest rate for mortgages by 2 per cent (previously: 0.5 per cent) is now permissible. Second, 100 per cent of

8 See Federal Department of Economic Affairs, Education and Research, Report Monitoring Commercial Rents of 7 October 2020, p. 16.

9 Cantons of Geneva, Vaud, Fribourg, Neuchâtel, Basel-City and Solothurn.

10 The Federal Council ordered a second lockdown on 13 January 2021 for the period from 18 January to 28 February 2021, which includes the closure of shops that do not sell essential everyday goods.

equity capital (previously: maximum 40 per cent of property costs) must now be adjusted to inflation. Both changes apply as long as the reference interest rate for mortgages (December 2020: 1.25 per cent) does not exceed 2 per cent.¹¹ As a result, this allows landlords to set significantly higher initial rents for residential and commercial premises.

Further important developments include the following subjects.

As a consequence of the first stage of the partial revision of the Spatial Planning Act, the cantons were obliged to introduce a levy by 30 April 2019, which is imposed on planning advantages gained by landowners through the determination of new building zones and given the possibility to impose such levy in case of rezoning or upgrading of zones. The cantons that did not respect the deadline (namely Geneva, Lucerne, Schwyz, Zug and Zurich) were subjected to a ban on creating new building zones until the implementation of the rules on the levy by the Federal Council. By 1 January 2021, all cantons will have introduced respective cantonal regulations and all bans will be lifted accordingly. The regulations vary in each canton.

As per 1 January 2021, the revised Swiss Federal Law on Public Procurement as well as the revised Federal Ordinance on Public Procurement will enter in force. The objective was to reflect the multilateral agreement on public procurement between the member states of the World Trade Organization, as well as to harmonise the procurement regulations of the Swiss Confederation and the cantons. The revised law seeks to implement international standards, such as the introduction of online auctions, as well as to take over instruments, which were formerly only regulated on the level of ordinances (e.g., dialogues, study contracts and competitions). One of the main amendments concerns the turning away from a 'price competition' towards a 'quality competition'. The award is no longer to be given to the best economic offer, but to the most advantageous offer. Regarding contract award negotiations, pure price negotiations will no longer be possible (ban of bidding rounds). Technical negotiations in connection with necessary changes or clarifications regarding the scope of an offer remain possible, as long as the character of the offered services or the scope of potential bidders does not change.

As per 1 January 2021, the revised Federal Law on Expropriation will come into force. The main objective of the revision was the adaptation of the procedural rules to the changed factual and legal framework and developments, for example, the rules on the organisation of the Federal Appraisal Committee. Furthermore, the revision provides for the possibility of higher compensations for expropriation of cultivated land.

On 25 September 2020, the Swiss parliament passed the revised Federal Act on the Reduction of Greenhouse Gas Emissions (the CO₂ Act), which is expected to come into force on 1 January 2022. The deadline for a referendum ended on 14 January 2021. Switzerland aims to reduce greenhouse gas emissions by up to 50 per cent by the end of 2030. Primary focus of the revised CO₂ Act will be on the establishment of a climate fund, financed by various CO₂ taxes. Important for the real estate sector will be the introduction of a threshold for CO₂ emissions of a maximum of 20kg per square metre of energy reference area for the replacement of oil heating systems, which will decrease by 5 per cent every five years. For the year 2021, interim regulations will be in force.

In October 2018, the Federal Council passed the draft for the second stage of the partial revision of the Spatial Planning Act for the attention of parliament. With the second stage

11 The reference interest rate for mortgages is published quarterly by the Federal Department of Economic Affairs, Education and Research.

of the partial revision of the Spatial Planning Act, construction outside the building zones was to be newly regulated, although the fundamental principle of separating building areas from non-building areas would be maintained. On 3 December 2019, however, the National Council declared non-admissibility of the draft. The Commission on the Environment, Spatial Planning and Energy is currently reviewing the draft, and a Federal Popular Initiative against the Destruction of the Landscape was submitted on 8 September 2020, demanding stricter rules for constructions outside the building zones. At the moment, the outcome of the revision of the Spatial Planning Act remains open.

In August 2020, the Federal Council sent a preliminary draft for the partial revision of the CO for consultation. The preliminary draft provides, among other things, that the period for the notification of defects to the seller is 60 days, unless the parties agree otherwise in the property purchase contract. According to current law, the buyer has to notify defects 'immediately', namely usually within one week, unless the parties have agreed otherwise in the property purchase contract.

Furthermore, parliament aims to introduce regulations with regard to the abolishment of the taxation of the imputed rental value for self-occupied premises.

VIII OUTLOOK AND CONCLUSIONS

As outlined above, real estate investors and developers must deal with a number of laws governing real estate transactions: civil law, environmental law, tax law, etc. In the area of tenancy law, it is key that the parties negotiate lease contracts only within the limits of the mandatory provisions.

Due of the fact that the Swiss parliament rejected a federal law that would have led to reduced rent payments, the discussions on the cantonal level have restarted to support the tenants that suffered the most from the covid-19 pandemic.

Despite high real estate prices, investments remain attractive, particularly for institutional investors. The Swiss real estate market is still attractive for foreign investors even if the initial yields are low. Therefore, the demand for commercial properties is still strong, and it is rather unlikely that prices will drop significantly in the near future, except for the classic retail market, which has suffered the most due to the increase in digital orders and deliveries by parcel post, to which consumers have become even more accustomed due to good experiences in the lockdown periods.

In summary, the outlook for the real estate market remains stable as investors continue to rely on Switzerland's political and financial stability as well as on continuous economic growth and a robust legal system. However, it is likely to become increasingly difficult to maintain the good performance of previous years as further capital will be fed into the comparatively high-yielding real estate market that is consistently putting yields under pressure.

ABOUT THE AUTHORS

ANDREAS F VÖGELI

Niederer Kraft Frey

Andreas F Vögeli heads the real estate team at Niederer Kraft Frey that deals with a variety of highly complex real estate transactions. He specialises in large and complex domestic real estate transactions, with a particular focus on enterprises that are involved in project development, hotel or leisure projects. His expertise covers the full life cycle of real estate, providing a comprehensive and commercially pragmatic approach for the clients.

Mr Vögeli is an expert at the University of Zurich at the MAS Real Estate, a lecturer at the Institute of Financial Services Zug IFZ, Lucerne University of Applied Sciences and Arts and regularly holds seminars in real estate matters. He is a council member of the Real Estate Management programme of the Institute of Financial Services Zug IFZ, Lucerne University of Applied Sciences and Arts.

Mr Vögeli is highly reputed among clients throughout Switzerland and abroad. He is distinguished as a leading real estate lawyer by *Chambers Europe* and *The Legal 500* and won the ILO Client Choice Award 2017 and 2018 in the category Real Estate for Switzerland.

OLIVER ZBINDEN

Niederer Kraft Frey

Oliver Zbinden is a senior associate in the real estate team at Niederer Kraft Frey. He advises and represents domestic and international investors, financial institutions, companies and private clients on all aspects of real estate law, particularly real estate transactions, tenancy law, private construction law, public construction and zoning law, environmental law and Lex Koller issues. In addition, Oliver Zbinden's practice includes general commercial and contract law.

After graduating from the University of Lucerne and working as a junior associate with a major law firm in Zurich, Oliver Zbinden initially worked as a research associate with the Business Law Institute (BLI) at the University of Lucerne, as a research and teaching assistant to Prof Dr iur Jörg Schmid in the fields of contract law, property law and notarisation law at the University of Lucerne and as an extraordinary clerk at the Cantonal Court of Lucerne before being admitted to the bar in Zurich and joining Niederer Kraft Frey in 2017 as an associate.

ANNINA FEY

Niederer Kraft Frey

Annina Fey has been a member of NKF's real estate team since 2020. Her practice has focused on real estate matters since her admission to the bar in Zurich in 2016. She advises and represents domestic and international investors, financial institutions, companies and private clients in all aspects of public law, construction and zoning law, environmental and energy law, private construction law, tenancy law, real estate transactions and general contract law, including employment law. Her practice includes both advisory and litigation matters, which she handles in German, English and French.

Annina Fey is a graduate of the University of Fribourg, where she obtained a *summa cum laude* bilingual law degree. During her studies, an internship took her to New York where she gained unique insights into the US common law system. She completed her junior associate year with a major Zurich law firm and worked as junior judicial clerk at the District Court of Horgen prior to her bar admission. She is a lecturer at the Lucerne University of Applied Sciences and Arts in a postgraduate programme. She is a member of the Swiss Bar, Zurich Bar Association and the construction law specialist group of the Zurich Bar Association.

ANNE HUBER

Niederer Kraft Frey

Anne Huber is a member of NKF's real estate team. She advises and represents domestic and international investors, financial institutions, companies and private clients on all aspects of corporate law and real estate.

Anne Huber graduated from the University of Zurich with a bachelor's degree in law and obtained a master's degree in law from the University of St Gallen. After her studies, she completed an internship with a global private equity company and worked as law clerk with the Cantonal Court of Zug. She joined Niederer Kraft Frey as an associate in 2019. Anne Huber is admitted to the bar and is a notary public of the Canton of Zug.

NIEDERER KRAFT FREY

Bahnhofstrasse 53
8001 Zurich
Switzerland
Tel: +41 58 800 8000
Fax: +41 58 800 8080
andreas.f.voegeli@nkf.ch
oliver.zbinden@nkf.ch
annina.fey@nkf.ch
anne.huber@nkf.ch
www.nkf.ch

an LBR business

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