

THE REAL ESTATE
LAW REVIEW

ELEVENTH EDITION

Editor
John Nevin

THE LAWREVIEWS

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PREFACE

Since a mystery disease, then known as 2019-nCoV, first appeared in Wuhan back in December 2019, coronavirus (covid-19) has continued to be the dominant global issue. The covid-19 pandemic has affected the economy like nothing this generation has previously experienced. Every major jurisdiction has been forced into a series of lockdowns, with the very real possibility of more to come. Fundamentally, the pandemic has been a terrible human tragedy with, at the time of writing, more than 250 million cases globally and over 5 million deaths. Although there is still some way to go, we are starting to see light at the end of the tunnel. The covid-19 pandemic will undoubtedly affect the global economy for some time to come. It will also leave its mark on how we live, work and play, including on each and every aspect of the global real estate market.

Another global event saw the great and the good, as well as a healthy number of protestors, converge on Glasgow for COP26. Despite the absence of some key world leaders and criticism that more could have been achieved, key pledges have been made to fight the climate change emergency. The year 2021 may be remembered as the year the world finally acknowledged that something needs to be done and now. The built environment accounts for more than its fair share of carbon emissions and the property industry is beginning to wake up to the fact that significant changes are necessary. How we design, build and use buildings is an important part of the transition towards net zero carbon. Environmental, social and governance (ESG) has finally become a very real issue with all parties, from governments through landlords, tenants and funders to individual workers, having a vested interest.

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 eleventh 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. The covid-19 pandemic and COP26 have served as reminders that it is not 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 24 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.

The covid-19 pandemic is a truly global issue affecting every jurisdiction and, of course, its real estate market. Although it has been overshadowed by the covid-19 pandemic, Brexit and

the associated economic and political fallout from leaving the European Union has continued to be a concern for the UK economy and its property industry. Rising costs, a critical shortage of labour and materials as well as crippling supply chain issues have threatened to destabilise the post-pandemic recovery. On a positive note, investment volumes have bounced back and we are seeing increased interest from both overseas and domestic investors, underlining the continued importance of UK real estate as an investment asset. Although global real estate investment has picked up, the recovery has been uneven across countries, markets and sectors. The United Kingdom will be anxious to maintain its position at the top of global shopping lists. The world's growing cache of investment capital is likely to prompt a surge in investment activity once international travel and business confidence stabilises. The United Kingdom seems 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 continue on the journey to recovery, but opportunities will arise, and real estate will remain a key part of global investment strategies.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this eleventh 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 2022 and beyond.

John Nevin

Slaughter and May

London

February 2022

SWITZERLAND

Andreas F Vögeli, Oliver Zbinden and Annina Fey¹

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

Under Swiss law, different types of real estate ownerships exist. The most common forms 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 and Annina Fey is an associate 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 and 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 who 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

Interest in direct investments in Swiss real estate remains strong. This is reflected, among other things, in the transaction volume, which was 17 per cent higher in the first eight months of 2021 than in the same period of the previous year. Residential properties in particular remain the focus of investors. Because demand for investment properties on the Swiss market continues to outstrip supply, prices have risen once again and have reached new highs: between the second quarter of 2020 and the second quarter of 2021, an increase in transaction prices of 4.7 per cent was registered for residential properties. As a direct consequence, initial yields declined once again. Willingness to pay also increased again for commercial properties, after prices had previously fallen. However, at 0.5 per cent, the price increase here is significantly weaker than for residential properties.⁵

The often desperate search for investment opportunities in the real estate market, due to the lack of investment alternatives that are considered low-risk, also manifests itself in

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 Cf. wüestpartner, Immo-Monitoring 2022| 1, p. 76.

indirect forms of investment. The real estate stock corporations, which had to record heavy price losses in 2020, show a performance of 9.0 per cent on average in 2021 (from January to August) (according to WUPIX-A). The strong restraint on the part of investors in real estate companies has given way to a certain confidence. The development of listed real estate funds is even more impressive. They had already put in a strong performance in 2019 and 2020 (2019: +21.7 per cent; 2020: +11.7 per cent according to WUPIX-F), which was followed by further increases in 2021 (+5.4 per cent), so that many of them reached new price highs. As a result, the premiums (surcharge compared to the estimated net asset value) also continued to increase, averaging 46 per cent (weighted by market capitalisation) at the end of August 2021. Even though extraordinarily high annual performances have been achieved time and again since the introduction of negative interest rates in 2015, the current level of premiums shows that the unit prices in the real estate funds are far above the net asset value (value of the property less borrowed capital). This makes them inherently vulnerable to noticeable setbacks in the event of international turbulence on the capital markets.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 – European Union/European Free Trade Association 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.

6 Cf. wüestpartner, Immo-Monitoring 2022| 1, pp. 78–79.

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.

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 that 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 as follows:

- a* assets of at least 5 million Swiss francs one year after launch;
- b* the company's name must contain a description of its legal form or the abbreviation 'SICAV';
- c* the ratio of company shareholder deposits to total assets must be appropriate;
- d* company and investor shares that do not have a nominal value and are freely transferable must be fully paid up in cash;
- e* investment regulations must be defined;
- f* a custodian bank must be designated;
- g* the SICAV must choose to be either self-managed or externally managed;
- h* its sole object must be to manage its funds and sub-funds; and
- i* it must hold a defined quantity of equity capital.

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

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.

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 tax, which must be paid by the seller. Taxation of capital gains derived from Swiss real estate varies from canton to canton and even from municipality to municipality. Capital gains tax rates may be progressive and may also depend on the duration of ownership. Different capital gains tax rates may apply to corporate and individual owners. 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 (owner-occupied residential properties are exempt). 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 almost exclusively secured by mortgage notes. Mortgage notes can be created as register mortgage notes or as mortgage notes in paper form. The creation of a 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 sectors.

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.

During the second wave of the covid-19 pandemic in winter 2020 to 2021, the Federal Council ordered a second lockdown for the period from 18 January 2021 to 28 February 2021, which included the closure of shops that do not sell essential everyday goods. Higher courts have not yet decided, and it is still 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(b). 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, on the basis of 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. The tenancy courts of Zurich and Geneva, which have so far been the only courts of first instance to deal with the aforementioned questions, both came to the conclusion that in the case of officially ordered closures, subject to corresponding assurances in the lease agreement, there is no defect in the rented property that entitles the tenant to a rent reduction based on Article 259d CO. Moreover, both courts have emphasised the strict requirements for the applicability of the *clausula rebus sic stantibus*. In particular, the tenant had to explain based on his business records how the official measures had specifically affected his business operations, which operational measures he had taken and with what success, which state aid he had taken advantage of and why he had waived possible countermeasures. Both court decisions were challenged by the tenants and are pending in cantonal courts of second instance. A final decision by the Swiss Federal Supreme Court is not expected until 2023 at the earliest.

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. Following the lifting of the ban on the canton of Zurich due to its enactment of such rules on the levy by 1 January 2021, this no longer applies to any canton. The regulations vary in each canton.

As of 1 January 2021, the revised Swiss Federal Law on Public Procurement as well as the revised Federal Ordinance on Public Procurement entered into 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 implements international standards, such as online auctions, as well as 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 are no longer 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 of 1 January 2021, the revised Federal Law on Expropriation entered 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 the 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 was expected to come into force on 1 January 2022. However, after a referendum was taken, the revised Federal Act on Reduction of Greenhouse Gas Emissions was rejected by popular vote on 13 June 2021. The Federal Council has announced that a second legislative proposal will be relaunched. The timing and content of this proposal is not yet clear. However, some cantons, such as Zurich and Glarus, are implementing respective cantonal regulations (e.g., in the canton of Zurich with the amendment of the Energy Act, accepted by popular vote on 28 November 2021).

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 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. On 1 September 2021, the report (Botschaft) regarding the Federal Popular Initiative against the Destruction of the Landscape was issued by the Federal Council.

In March 2021, the Swiss Federal Supreme Court changed its practice with regard to exemption permits in the event of noise limits being exceeded. The Court clarified that exemption permits are only granted *ultima ratio*; first, all other possible constructional and structural measures must be examined; even then, an exemption permit is only granted if the noise limits are not significantly exceeded. The threshold for obtaining an exemption permit for excessive noise limits is therefore extremely high, if this practice is upheld.

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, the Swiss parliament aims to introduce regulations with regard to the abolishment of the taxation of the imputed rental value for self-occupied premises. In September 2021, a narrow majority of the Council of States supported such an abolishment, which, however, does not go as far as the Federal Council’s proposal because, among other things, the imputed rental value of second homes will continue to be taxed. After the Council of States, the matter will now go to the National Council. In the end, it will probably come down to a popular vote. Thus far, all attempts to abolish the taxation of the imputed rental value have failed. It is impossible to predict whether things will be different this time.

The parliament also aims to introduce a nationwide earthquake insurance by means of a contingent liability system. According to this system, all homeowners would be obliged to pay a premium after a severe earthquake has occurred. If there were no severe earthquakes, the earthquake insurance would not incur any costs. The Federal Council is currently reviewing the proposal.

In September 2021, the National Council adopted a motion instructing the Federal Council to submit the same tightening of the Lex Koller to the Swiss parliament in the form of a draft law that it had submitted in the form of a preliminary draft for consultation in March 2017. At that time, no draft law was prepared because the preliminary draft faced heavy opposition from many political parties, organisations and from the real estate industry.⁸ Now the Federal Council is nevertheless to draft a law if the Council of States approves of the motion.

Furthermore, in November 2021, the Committee for the Environment, Spatial Planning and Energy of the National Council has opened the consultation on an amendment to the Lex Koller, which it prepared as part of a parliamentary initiative. The amendment is intended to protect strategic infrastructures of the energy industry, such as hydroelectric power plants, gas pipes, the electricity grid and nuclear power plants, from acquisition by persons abroad.

VIII OUTLOOK AND CONCLUSIONS

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

⁸ See *The Real Estate Law Review*, seventh edition, p. 353.

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. The demand for commercial properties, in particular for logistic use, 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.

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