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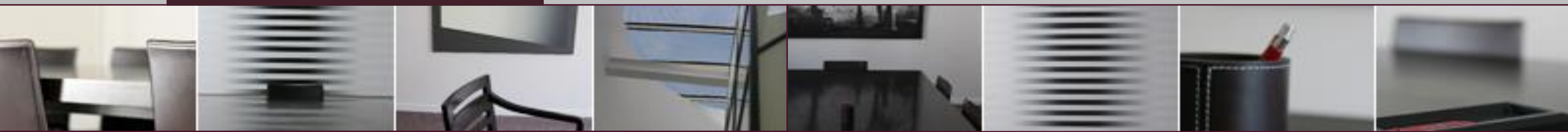

International Investors - Switzerland

Union Internationale des Avocats (UIA) – Opportunities Arising from the Reactivation of the Real Estate Market

Valencia, 9-10 May 2014

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I. BARRIERS TO FOREIGN INVESTMENT
1. Lex Koller – 1983-1997

- A little bit of history:
- Federal Act of 16 December 1983 on acquisition of real estate by foreigners (**LFAIE**, aka "**Lex Koller**")

1) 1983 – 1998: Dark ages.

→ Foreigners are only authorized to purchase real estate in limited instances:

(i) as main residence, subject to strict conditions;

(ii) as vacation home in limited touristic areas, subject to quotas; and

(iii) for commercial purpose, for personal use (NO RENTAL).

Adoption of the LFAIE prompted by important foreign demand, especially for vacation homes, but goes far beyond this concern.

I. Barriers to foreign investment
1. Lex Koller – 1983-1997

- **But from the outset, one main exception:**

acquisition of interests in **funds** (only contractual at the time), if **publicly traded** (and provided it owns less than 20% residential). Otherwise, acquisition of even on share in company investing in real estate is assimilated to acquisition of real estate (and forbidden).

I. Barriers to foreign investment
2. Lex Koller – 1997-2002

2) <u>Commercial without limitation: 1st boom:</u>

Economical turmoil (1990-1999). Necessity to attract foreign investments. Lex Koller modified in 1997 so as to remove all barriers regarding investment in commercial/industrial real estate (RENTAL: YES).

No more limitation for main residence as well.

I. Barriers to foreign investment
3. Lex Koller – 2002-2005, the Swiss/EU 2002 Bilateral Agreement

3) <u>1st June 2002</u>: entry into force of the 2002 Bilateral Agreements between Switzerland and the EU, extending, among others, the EU principle of **free movement of persons** to Switzerland.

→ Consequence for Swiss domestic law: Within the meaning of the Lex Koller, EU citizens are assimilated to Swiss citizens provided that they reside in Switzerland (B Permit), which they have the right to do as soon as hired by a Swiss employer.

→ Consequence on the economy: new boom, massive investments in Lake Geneva Region, real estate price for housing surging (+ 80% in 10 years in Geneva), offset 2008 Financial crisis. Prices still high (bubble?).

I. Barriers to foreign investment
3. Lex Koller – 2002-2005, the Swiss/EU 2002 Bilateral Agreement

<u>CAVEAT</u>: Federal vote of **9 February 2014**

Switzerland vote the (re)introduction of **quotas** for immigration matters. Free movement of persons jeopardized. Relationships with the EU currently tense. Unclear at this time how Switzerland will implement the result of this vote. Termination of the 2002 Bilateral Agreements looming as a possible consequence.

→ Worst case scenario: Switzerland declares that EU citizens are no longer assimilated to Swiss citizens;

→ More plausible scenario: Switzerland does not amend Lex Koller, but UE investment de facto slowed down as a result of the increased difficulty to obtain a B Permit (if quotas reintroduced).

4. Lex Koller – 2005-2013, the stock exchange / OTC rule for regular SPV

4) <u>1st April 2005</u>:

- Acquisition of share of companies investing in real estate: no more restriction if publicly traded. The idea was to open foreign investment in residential, ease it in commercial and thus bring business in the construction sector.

- No more restriction whatsoever for Participation certificates (share without vote): money OK, control not OK.

II. Collective Investment Schemes Act (CISA)

1. The adoption of the 2007 Act

1) <u>2007: Collective Investment Schemes Act (CISA)</u>

Finally, funds can be organized as SICAV, that is as companies whose share capital will be increased each time a new investor takes interests in the funds (previously: only contractual form possible).

But the Swiss Congress forgot to extend the funds exception of the Lex Koller (OK if publicly traded) to the new SICAV form… ..→ important barrier to foreign investment maintained.

Between 2007 and 2014, FINMA only authorised 2 real estate SICAV: partly because this was still a new form of investment, but mostly because of the barrier set forth by Lex Koller. This needed to be changed.

II. COLLECTIVE INVESTMENT SCHEMES ACT (CISA)
2. The adaptation of the Lex Koller

2) **1st March 2013**

Lex Koller finally modified so as to extend the funds exception to SICAV. Now:

→ Foreigners may invest without limitation in real estate SICAV if publicly traded or if subject to regular market (OTC).

Switzerland therefore expects a boost of foreign investment through the instrument of SICAV.

II. Collective Investment Schemes Act (CISA)
3. Role of SICAV for RE foreign investment

3) the importance of SICAV for RE foreign investment

- Pros:

- Separate legal entity;
- No limitation as to the type of investment (residential, brownfield, commercial, industrial, etc.);
- Tax friendly: reduced rate under federal income tax, no capital gain tax when share sold by investor;
- No need for a fund management company: investors have a larger influence over the management of the fund;
- More likely to be listed than regular SPV;
- Better corporate governance.

II. Collective Investment Schemes Act (CISA)
3. Role of SICAV for RE foreign investment

- Cons:

- Authorization FINMA
- Min 5 mio equity (within 1 year)
- Registered shares (no bearer shares)
- Limitations as to the type of investments (in particular, control over real estate necessary).
- Investment in minimum 10 properties.
- More costly to operate than traditional real estate companies; but average yield still very good and even possibly better (5.56% in 2013).

III. Other relevant legislative changes

1) <u>Lex Weber</u>

Since 11 March 2012, maximum 20% of vacation housing authorized in each district (Lex Weber). Lead to a important decrease of investment (especially foreign) in this sector.

2) <u>Lump-sum tax</u>

Current trend is to abolish lump-sum tax, whose effect was among others to attract foreign investment in luxury residential real estate. Prices may go down in the luxury residential segment.

IV. Status of the RE Market in Switzerland

Last but not least: what is the status of the RE market in Switzerland?

- Vacancy rate for office areas: historically high, especially in Geneva (but still quite low: 4.5%). Since 2011, net decrease in office demand. Rents only now start to adjust (-15-20% or 3-6 months free rent when moving, but this could also be related to the low mortgage rate). Average office rent in downtown Geneva: average of EUR 500.-/m2. Good market for tenants, but also good market for investors as prospects are good.
- Still a good time for investor to negotiate price down, even though confidence seems to grow again.
- Additional restrictions regarding financing of purchase of residential lead to decrease of price of residential (which was however historically high). Most experts believe that no more risk of bubble. Good time also to invest in residential.
- Only question mark: consequences of the 9 February 2014 vote. But things are moving in the right direction.

V. CONCLUSION

- Barriers to foreign investments have been reduced to the lowest level ever.
- Since 2013/2014 (revision CISA), instruments for investments have been increased/improved to the highest international standard (protection of investors, etc.).
- After years of steady increase, market price has been going down for the past couple of years but is not expected to go further down.
- Notwithstanding the February 9 2014 vote, Switzerland remains a very stable market in a politically stable environment.
- Foreign investment therefore expected to increase in the coming years.

Thank you for your attention!

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