

**FEDERAL OFFICE
OF JUSTICE**

**Acquisition
of real estate
by persons
abroad**

Guidelines

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These Guidelines are available in German, French, Italian and English at <http://www.bj.admin.ch/bj/en/home/themen/wirtschaft/grundstueckerwerb.html>.

The federal law and the relevant ordinance are also available on the internet in German, French and Italian at http://www.admin.ch/ch/d/sr/c211_412_41.html and http://www.admin.ch/ch/d/sr/c211_412_411.html respectively.

Questions on specific cases should be addressed to the authorities in the canton in question. Their postal and e-mail addresses, as well as telephone and fax numbers, are listed in the Appendix to these Guidelines (p. 13 et seq.).

1 Purpose of these Guidelines

These Guidelines provide an overview of the federal law and ordinance, as well as of the complementary cantonal and communal provisions, that restrict the acquisition of real estate in Switzerland by persons abroad. The Guidelines are merely for information purposes and are not legally binding.

2 Legal basis

Federal law and ordinance:

Federal law of 16 December 1983 on the acquisition of real estate by persons abroad (*Bundesgesetz über den Erwerb von Grundstücken durch Personen im Ausland*) (FL, SR 211.412.41).

Ordinance of 1 October 1984 on the acquisition of real estate by persons abroad (*Verordnung über den Erwerb von Grundstücken durch Personen im Ausland*) (OFL, SR 211.412.411).

Cantonal provisions:

Mandatory enacting provisions concerning cantonal authorities, as well as optional legal provisions about the introduction of additional cantonal grounds for authorising or restrictions for the acquisition of holiday homes and serviced flats (art. 3, para 2, art. 9 and art. 13, para 1, FL).

Communal provisions:

Optional legal restrictions on the acquisition of holiday homes and serviced flats (art. 13, para 2, FL).

3 Purpose of federal law and principles

Federal law restricts the acquisition of real estate in Switzerland by persons abroad (art. 1 FL). To acquire real estate for which prior authorisation is required, authorisation must be obtained from the appropriate cantonal authority (art. 2, para 1, FL). Consequently, the canton where the real estate is located bears primary responsibility for enforcing this law. The authority designated by the canton (art. 15, para 1, subpara a, FL; see the Appendix, p. 13 et seq., for postal and e-mail addresses as well as telephone and fax numbers) decides whether a transaction requires authorisation and whether an authorisation is granted. Authorisations may be granted only in the cases provided by the FL and, if applicable, by cantonal law (arts. 3, 8 and 9, FL).

In terms of the authorisation requirement and granting of an authorisation, the fact that the real estate may already be in foreign hands and the legal basis of the acquisition (purchase, barter, gift, inheritance, legacy, acquisition of assets and liabilities or a business, merger, demerger, conversion of companies or asset transfer) are, in principle, immaterial. It must be stressed, however, that ownership of real estate in Switzerland does not entitle a foreign national in any way to a residence permit.

4 Conditions for transactions subject to the authorisation requirement

A legal transaction is subject to the authorisation requirement, if three conditions are met cumulatively:

- The person acquiring the real estate must be a person abroad within the meaning of the FL (subjective authorisation requirement, see section 5).
- The object of the transaction must be real estate for which authorisation is required (objective authorisation requirement depending on the purpose for which the real estate is used, see section 6).
- The legal right which is acquired must be considered an acquisition of real estate within the meaning of the FL (objective authorisation requirement depending on the type of right, see section 7).

Even if these three conditions are met, there still exist so called “further exemptions” from the authorisation requirement (see section 8).

A transaction requiring authorisation to which no further exemptions applies can be entered in the Land Register only after the buyer has obtained authorisation. The same applies to the completion of a purchase transaction requiring authorisation which does not involve entry in the Land Register, e.g. transfer of shares of a real estate company. Permission may be given for a purchase requiring authorisation under certain circumstances and subject to particular conditions, however (see section 10). The law provides for authorisation grounds for banks and insurance companies, for pension funds and for charitable purposes, beneficiaries under wills as well as in so called cases of hardship. Cantonal law may contain authorisation grounds for purchasing holiday homes and serviced flats, secondary residences and low-rent apartments (subsidized accommodation).

5 Persons abroad within the meaning of Swiss federal legislation

a Natural persons

The following natural persons are regarded as persons abroad (art. 5, para 1, subpara a and a^{bis} FL, art. 2 OFL):

- foreigners domiciled abroad;
- foreigners domiciled in Switzerland, who are nationals of neither a European Community (EC) nor European Free Trade Association (EFTA) Member State and who do not hold a valid C settlement permit.

Therefore, the following natural persons are not subject to the FL:

- Swiss nationals domiciled in Switzerland or abroad, including those who have dual nationality;
- Nationals of an EC or a EFTA Member State who are legally and actually domiciled in Switzerland, generally holding a B EC/EFTA permit (resident foreign nationals) or a C EC/EFTA permit (settled foreign nationals), eventually an L EC/EFTA permit (short-term residents); they may also be persons working for embassies, consulates and international organisation who hold an identification card from the Federal Department of Foreign Affairs or persons with a service certificate who work for foreign railway, post and customs' administrations based in Switzerland).

- Nationals of other countries who hold a valid C settlement permit and who are actually domiciled in Switzerland; persons working for embassies, consulates and international organisations or for foreign railway, post and customs administrations based in Switzerland are not considered as persons abroad if they can prove a stay in Switzerland corresponding to the requirements for a settlement entitlement (5 or 10 years, depending on their nationality).

According to art. 23 et seq. of the Swiss Civil Code, "domicile" is defined as the place where a person lives with the intention of remaining permanently, where their personal relationships are focused, where they regularly spend their non-working hours, where they foster friendships and family ties, and where they take part in the social life of the community. Foreign nationals who claim exemption from the prior authorisation requirement on the grounds of their actual domicile in Switzerland must provide relevant proof. A residence permit from the immigration authorities and confirmation of registration from the local authority are not regarded in themselves as sufficient proof. One indication of actual domicile is cohabitation with a spouse or partner and minor children. Other indications include the person's employment relationship, whether or not they have registered a vehicle, their tax status and their regular involvement in a club or association in Switzerland.

Whether or not the acquirer's spouse has Swiss nationality is immaterial.

b Legal entities and companies without legal personality but capable to own property

Companies which have their registered office abroad (even if they are Swiss-owned and are, financially speaking, Swiss companies, art. 5, para 1, subpara b, FL) are regarded as persons abroad, as are legal entities (joint stock companies, partnerships limited by shares, limited liability companies, cooperatives, associations, foundations) or companies without legal personality but capable to own property (general and limited partnerships) which, while having their registered office in Switzerland, are controlled by persons abroad (art. 5, para 1, subpara c, FL). Control by persons abroad is in particular presumed when more than one third of a company's capital or more than one third of the voting rights are in their hands or if they have granted substantial loans to the company (art. 6 FL).

c Fiduciary transactions, trusts

Persons who are not, in principle, subject to the FL are nevertheless considered as persons abroad if they acquire real estate on behalf of persons abroad (fiduciary transaction, art. 5, para 1, subpara d, FL).

The transfer of a property to a trust is in principle subject to the authorisation requirement of the FL, if any of the trustees or any of the beneficiaries qualifies as a person abroad. According to current practice an authorisation requirement can be ruled out if the trustees and the beneficiaries are not regarded as persons abroad and no additional beneficiaries can be appointed under the trust deed in the future. Also, an authorisation requirement can arguably be ruled out if (foreign) beneficiaries are direct descendents of the settlor, if the settlor is the sole beneficiary or if the beneficiaries do not acquire interests in the property that are comparable to ownership rights. However, no settled and undisputed legal practice exists as yet in this field.

6 Authorisation requirements by type of real estate use

a Dwellings

The acquisition by persons abroad of single-family dwellings or apartment houses, owner-occupied flats and building land intended for constructing such accommodation is subject in principle to FL authorisation requirements. Exceptions to this are main residences (see 6b), secondary residences for cross-border commuters from EC or EFTA Member States (see 6c) and dwellings that may be purchased in exceptional circumstances in conjunction with commercial real estate (see 6d).

b Main residences

Foreigners domiciled in Switzerland who do not hold a C settlement permit (see 7a) may purchase a dwelling (single-family house or owner-occupied) in their actual place of residence (main residence, art. 2, para 2, subpara b FL, art. 5 and 18a, para 2 OFL; see the second-last section of 5a for a definition of actual domicile) without having to obtain authorisation. The same applies to building land provided construction work on the accommodation commences within one year. As nationals of EC and EFTA Member States domiciled in Switzerland are not considered as persons abroad (see 5a), the articles on main residences do not apply to them. They apply only to nationals of other foreign countries who are domiciled in Switzerland (in general with a B residence permit, eventually also persons working for embassies, consulates or international organisations and holding an identification card from the Swiss Department of Foreign Affairs, or persons with a service certificate establishing them as an employee of a foreign rail, postal or customs administration service based in Switzerland). The buyer must occupy the dwelling himself. He cannot rent it out even in part.

The purchase of a main residence is exempted from the authorisation requirement only if bought in the buyer's own name (art. 8 OFL). The living area may be of any size, but only one residential unit may be acquired. There are no restrictions on the real estate surface area in itself, but it cannot be so large for the real estate acquisition or even part of it to be regarded as being purely for investment purposes. This is why the Land Registry does not usually enter a transaction concerning an area of over 3,000 m² in the Register immediately but refers the buyer to the authorisation body. This body must then decide whether the acquisition can still be considered as exempt from authorisation or whether it cannot be allowed on the grounds that it is purely for investment purposes.

If the buyer changes his place of domicile, he need not sell the dwelling and can dispose of it as he sees fit. He may continue to use it as a secondary or holiday residence or rent it to third parties. He may also purchase another home in his new place of domicile without having to sell the first one. However, a buyer who had no intention of living in that home permanently is in violation of the law, especially when he changes his place of domicile for the sole purpose of being able to purchase several dwellings without requiring authorisation. In such cases, the appropriate authorities can invoke authorisation requirements retroactively (art. 25, para 1^{bis}, FL) and can order the reinstatement of the original legal situation (art. 27 FL).

c Secondary residences

The national of an EC or EFTA Member State who commutes cross-border to work in Switzerland holding a G EC/EFTA permit (cross-border commuters) can acquire a second-

dary residence in the area of his or her place of work without authorisation (art. 7, para j FL, art. 18a, para 3 OFL). The buyer must occupy the residence himself for as long as he works in the area as a cross-border commuter. He cannot rent it out, even in part. The statements concerning main residences in 6b, para 2 and 3 above (purchase in the buyer's own name, living area, real estate surface area, proceedings, violation of the law) also apply to purchases by cross-border commuters who are nationals of EC or EFTA Member States that do not require an authorisation. However, in this case, the Land Registry will not, as a rule, enter a transaction in the Register immediately if the real estate surface area exceeds 1,000 m² (article 18a, para 3, subpara c OFL), but will refer the purchaser to the appropriate authorisation body instead.

Purchases of secondary residences by non-cross-border commuters are dealt with under 10g.

d Real estate for permanent business establishment purposes

Real estate which is used for commercial purposes (permanent business establishments, e.g. manufacturing premises, warehouse facilities, offices, shopping centres, retail premises, hotels, restaurants, workshops, doctors' surgeries) can be acquired without authorisation (art. 2, para 2, subpara a, FL). In this case, it is immaterial whether the real estate is used for the buyer's business or rented/leased by a third party in order to pursue a commercial activity. Such real estate properties may also be purchased solely as an investment. In addition to there being no prior authorisation requirement for the purchase, the buyer may also acquire other rights in the real estate such as building, purchasing, first refusal or repurchase rights, the financing of the real estate purchase or the purchase of a mortgage note.

The constructions, rental or leasing of housing is not recognized as a permanent business activity within the meaning of art. 2, para 2, subpara a FL, neither is trading in such housing (art. 3, OFL). The acquisition of real estate for such purposes requires prior authorisation and is prohibited because there are no grounds for granting authorisation (with the exception of subsidized housing, see 10h). Living accommodation run on a hotel basis is considered as a permanent business establishment and can be acquired or built without an authorisation.

In exceptional circumstances, living accommodation may be acquired without prior authorisation as part of a permanent business establishment when it is necessary for the business (e.g. for a caretaker or technician when permanent or almost permanent on-site presence is essential). Living accommodation may also be acquired as part of the purchase of a permanent business establishment if they are required to fulfil residential quotas under planning or zoning regulations (art. 2 para. 3 FL). The consistent practice is also that living accommodation may also be acquired as part of such transactions if it is impossible in practical terms and unreasonable to separate this accommodation from the business site (e.g. house in the middle of a factory site or individual flats in a factory or a multi-storey commercial building, especially when the flat can only be accessed through the commercial premises). In cases of doubt, an official declaration must be obtained from the appropriate cantonal authorisation body to the effect that no prior authorisation is required for purchase.

The purchase of reasonable land reserves (approximately one third, and in special cases up to half, of the total surface area) for the expansion in the medium term of an existing or planned business establishment does not require prior authorisation either. This means, however, that about two thirds of the surface area must be already built upon or should be

built upon in the near future, i.e. within a one year period, and that about one third can be kept undeveloped and unused as reserve land for a possible extension in the medium term. If the proportion of undeveloped and unused land exceeds one third, a ruling must generally be obtained from the appropriate cantonal authorisation body.

e *Undeveloped land zoned for construction*

In principle, prior authorisation is required for the acquisition of undeveloped land in residential, industrial or commercial zones, except when work on a building for which no such authorisation is needed (main residence, secondary residence, permanent business establishment) is begun within approximately one year, when it is used as a permanent business site in some other way (e.g. storage, parking, access) or can be regarded as permissible land reserves (see 6d). Vacant buildings which are no longer used for business activity in the medium term should be regarded as undeveloped land. Land hoarding – even of land zoned for industrial or commercial rather than residential use – also counts as an inadmissible investment.

7 Acquisition of real estate within the meaning of Swiss federal legislation

The FL's authorisation requirements apply not only to Land Register entries of real estate ownership but to any transaction that gives a non-resident actual control – from a financial viewpoint – of real estate for which prior authorisation is required. Consequently, acquisition of real estate is defined as:

- The acquisition of property (sole, joint ownership or co-ownership incl. condominium ownership), or of leasehold, occupancy or usufruct rights to real estate (art. 4, para 1, subpara a, FL);
- The acquisition of shares in a legal entity (joint stock companies, partnerships limited by shares, limited liability companies, cooperatives), the real purpose of which is the acquisition of real estate, except where these shares are listed on a stock exchange in Switzerland (art. 4, para 1, subpara e, FL); see also art. 1, para 1, subpara a, OFL.

Consequently, the purchase of just one share in an unlisted company involved solely or substantially in acquiring residential property or dealing therein requires prior authorisation under the FL. This also applies to the acquisition of a participation certificate (non-voting shares).

- Participation in a company capable to own property but having no legal personality (general and limited partnerships), the real purpose of which is the acquisition of real estate (art. 4, para 1, subpara b, FL);
- Acquisition of a share in a real-estate investment fund, the shares of which are not traded regularly on the market (art. 4, para 1, subpara c, FL).

Consequently, the acquisition of fund units that are regularly traded on the off-exchange market is not subject to prior authorisation. The definition of investment funds under the FL excludes investment companies with variable capital (SICAVs), investment companies with fixed capital (SICAFs) and limited partnerships for collective capital investments under the Collective Investment Schemes Act;

- Granting and exercise of a right of purchase, first refusal or repurchase in respect of real estate (art. 4, para 1, subpara f, FL);
- The acquisition of other rights which might put the buyer on the same footing as the owner of a property (art. 4, para 1, subpara g, FL; cf. art. 1, para 2, OFL);

For instance, a long-term lease agreement with unusual contractual terms such as the one off-payment of the rent in advance or the waiving of consent to fundamental architectural alterations, the linking of a rental contract to a loan agreement with offsetting of rent against interest on the loan, the financing of the purchase or development of the real estate in excess of the usual lending limit applied by Swiss banks (generally 80% of the market value), a construction ban and similar ownership restrictions on neighbouring land may be subject to the authorisation requirement under the FL. In such cases, the criterion is not the subjective intention of the parties but solely the objective facts, i.e. (objective judgement of the potential results obtainable with the procedure adopted by the parties);

- Transfer abroad of a company's headquarters if it retains rights in a property even when all company shares remain solely in Swiss hands; art. 4, para 2, FL).

8 Other exemptions from prior authorisation requirements

No prior authorisation is required for, in particular (art. 7 FL):

- Legal heirs under Swiss law, if they acquire real estate as part of an estate (as joint owners or through the division of the estate, subpara a).

"Legal heirs" refers not only to those who inherit through legal succession (generally children, the spouse or the registered partner) but also beneficiaries under wills who, as relatives of the decedent, may possibly qualify as legal heirs, should all closer relatives of the decedent predecease him, for instance a nephew;

- Relatives in line of ascent or descent from the person disposing of the property (grandparents - parents - children) and their spouse or registered partner (subpara b).

Transfer to collateral relatives, e.g. brothers/sisters, is not exempt from prior authorisation requirements. Consequently, the sale of real estate by a child to its parents is in violation of the law and requires authorisation if the latter sell it to another child shortly afterwards, although the individual transactions in themselves do not require authorisation. The first conveyance too might be aimed at evading the law if the child acquired the real estate shortly before selling it to his parents;

- Buyers who already hold an interest in the real estate in joint ownership or co-ownership (subpara. c).

Condominium owners nonetheless require authorisation to purchase further condominium units, as condominiums constitute a particular form of co-ownership;

- Condominium owners exchanging their units in the same building or housing development (subpara d).

A smaller unit may be exchanged for a slightly larger one, against payment of the difference, provided that the authorised surface area is not exceeded (art. 10, para 2 and 5, OFL.);

- The buyer who acquires a small area to complement the real estate he already owns (subpara g).

This covers the addition of a parking space, an access road or a garden seating area up to 100 m² and the additional acquisition of residential or storage space or covered parking that increases his condominium ownership share by less than 20%;

- Cross-border EC and EFTA commuters for the acquisition of a secondary residence in the area of their workplace (subpara j, see also 6c).

Under the terms of art. 7a FL, in conjunction with articles 16 and 17 of the Guest Country Act (*Gaststaatgesetz*), exemption from the prior authorisation requirement also extends to foreign states and international organisations, as well as other beneficiaries under this act, who acquire real estate for official purposes.

9 Procedure for establishing authorisation requirements

If the purchaser cannot immediately rule out the possibility of the transaction requiring prior authorisation, he must apply to the appropriate authority for authorisation or for a declaration that no authorisation is required (art. 17, para 1, FL, art. 15, para 1, OFL). In the case of a transaction requiring prior authorisation, no Land Register entry or any purchase not requiring a Land Register entry (e.g. by share transfer) can take place without legal authorisation.

The cantonal authority within whose jurisdiction the real estate or the portion of the real estate with the highest value is located is responsible for establishing whether or not prior authorisation is required (art. 2, para 1 as well as art. 15, para 1, subpara a and para 2, FL). The Appendix to these Guidelines (p. 16 et seq.) contains the postal and e-mail addresses and telephone and fax numbers of the cantonal authorising bodies of first instance and, in the case of cantons with several authorising bodies, of the cantonal supervisory body.

If the Land Registry, the Commercial Registry Office or the Auctioneers' Office cannot immediately rule out the possibility of a transaction requiring prior authorisation, they refer the buyer to the authorising body to which he must apply for a declaration that no such authorisation is required or for the granting of an authorisation within 30 days and within 10 days in auction cases (arts. 18 and 19 FL, art. 15, para 3, subpara a, OFL). This referral is not a ruling which can be challenged in itself.

The authorising body also takes a decision when so requested by a cantonal authority entitled to appeal, the Federal Office of Justice, civil judges, criminal-court judges or some other authority (art. 15, para 3, subparas b and c OFL).

Rulings become legally valid only when the cantonal authority entitled to appeal, the Federal Office of Justice and the municipality in which the real estate is located have waived in writing the right to appeal or if the 30-day appeal time limit has expired without being used and provided no appeal has been made from another quarter.

The contractual partners (buyer and vendor) and other persons with a valid interest in the lifting or amendment of a ruling by the cantonal authorising bodies of the first instance can appeal against it to the cantonal appeals body and lodge an appeal against the latter's ruling with the Swiss Federal Supreme Court. The cantonal authorising body, the Federal

Office of Justice and the municipality in which the real estate is located have the same right (arts. 20 and 21 FL).

10 Grounds for authorisation and authorisation procedures

The acquisition of real estate for which prior authorisation is required may be authorised only on grounds provided for in the FL and, as appropriate, in cantonal legislation (art. 3 FL). Grounds for authorisation under Swiss federal law are listed in article 8 FL (see a to e below). Grounds for authorisation under the terms of cantonal implementation legislation, if authorisation is to be given on that basis, are regulated in article 9 FL (see f to h below).

Authorisation is given by the cantonal authority within whose jurisdiction the real estate is located (see section 9, para 2). The authorisation is issued subject to conditions that ensure that the real estate is used for the purpose cited by the purchaser (art. 14 FL, art. 11 OFL). The preconditions mentioned at the end of section 9 for appeals against a ruling establishing an authorisation requirement also apply to appeals against authorisation rulings. Authorisations lapse if the real estate is not purchased within three years. In exceptional cases and on important grounds, the authorising body may extend this period if the purchaser applies for an extension before this time limit expires (art. 12, paras 1 and 2, OFL).

a Banks and insurance companies

A bank or insurance company with a permit to operate in Switzerland may be granted authorisation if the real estate is encumbered in its favour with a real estate mortgage and if the purchase is part of a foreclosure or a liquidation settlement (art. 8, para 1, subpara d FL). Furthermore, an insurance company may be authorised to make the acquisition on the grounds of actuarial reserves for domestic business (art. 8, para 1, subpara b FL).

b Pension schemes

An authorisation may be issued if acquisition of the real estate is used by a Swiss business for pension scheme operations benefiting personnel employed in Switzerland (art. 8, para 1, subpara c FL). It should be pointed out in this connection that foundations subject to occupational pension scheme legislation (*Berufsvorsorgegesetz, BVG*) are not, in practice, considered to be foreign-controlled companies, even if the company setting up the foundation is foreign-controlled.

c Charitable purposes

A purchase will be authorised if the real estate is intended for charitable purposes (art. 8, para 1, subpara c, FL). The real estate must be used directly for this purpose. It is not sufficient for revenue from renting or leasing it to be used for charitable purposes.

d Beneficiaries under wills

Beneficiaries under wills who are not statutory heirs exempt from prior authorisation (see beginning of section 8) and cannot claim any other grounds for authorisation are granted authorisation on condition that they sell the real estate within two years (art. 8, para 2, FL).

Authorisation without this condition attached may be granted should the beneficiary be able to prove a close relationship worthy of protection with the real estate, however. Examples

of such relationships would be where the beneficiary lived in the testator's house permanently or regularly spent weekends there over a long period, regularly spent holidays with the testator in that house over a number of years, or lived there permanently as a tenant for many years.

e *Hardship cases*

A person abroad who requires authorisation may acquire a holiday apartment or serviced flat (see 10f) in a present or former holiday resort even if no authorisation could be granted following a cantonal or municipal authorisation freeze or the removal of the location from the cantonal list of holiday resorts, but where this would involve hardship for the vendor and provided the following conditions are met (art. 8, para 3 FL, art. 4 OFL). The vendor (Swiss or foreigner) must be in financial difficulties and the dwelling must have been offered for sale unsuccessfully at cost plus appropriate interest to persons who do not require authorisation. The vendor himself must also have used the dwelling as his main, secondary or holiday residence or as a serviced flat.

f *Holiday homes and serviced flats*

A person abroad who requires authorisation may acquire a holiday home or serviced flat (art. 9, paras 2 and 3 and art. 10 FL). The dwelling must be in a place designated by the cantonal authorities as a holiday resort. Moreover, every authorisation must be deducted from the annual quota assigned to the cantons by the Confederation for holiday homes and serviced flats (art. 11 FL, art. 9 OFL and Appendix 1 OFL), except where the vendor has already received an authorisation in the past for the acquisition of this dwelling or flat. Quota units may not be assigned to persons not requiring authorisation for the sale of such flats to persons abroad (known as authorisation by principle) whereby individual purchases by foreigners still require authorisation but are no longer counted as part of the quota. The cantons and tourist municipalities may make their own restrictions. For instance, they may decide on a total ban on authorisations for a specific location, or permit acquisitions of condominiums only and only up to a certain quota. Alternatively, they may limit the annual number of authorisations or only permit the purchase of residences that are already foreign-owned (art. 13 FL).

Grounds for authorisation for the acquisition of holiday apartments or serviced flats are required in the following cantons: Appenzell Ausserrhoden, Bern, Fribourg, Glarus, Grisons, Jura, Lucerne, Neuchâtel, Nidwalden, Obwalden, St Gallen, Schaffhausen (for serviced flats only), Schwyz, Ticino, Uri, Vaud and Valais.

Holiday homes may not be let on an annual basis but at most only periodically. The purchaser must be able to use them at any time for their alleged purpose.

Serviced flats must be made available to the relevant hotel owner for hotel operations especially during the high season (art. 10, subpara b FL). This also applies to a person not requiring authorisation who purchases a serviced flat from a person abroad. The operational condition is tied to the object, (art. 7, para 2, OFL). Holiday homes and serviced flats may be acquired only by natural persons under their own name. Indirect acquisition via a company is not permitted (art. 8 OFL).

As a general rule, the net floor space (which includes all liveable rooms such as the kitchen, hall, toilet, indoor swimming pool, sauna and hobbies room, but not balconies, the stairwell, cellar and attic) and the surface area of the real estate must not exceed 200 m² and 1,000 m² respectively (art. 10, paras 2 and 3, OFL). In accordance with consistent

practice, larger areas are authorised automatically on proof of additional need up to 250 m² and to 1,500 m² respectively. In exceptional cases the limits may even be higher.

If the purchaser or a holiday home or serviced flat, their spouse, registered partner or child under 18 already own such a dwelling or secondary dwelling in Switzerland, authorisation may only be granted provided that the latter dwelling is sold before the new purchase transaction is entered in the Land Register (art. 11, para 1 OFL).

g Secondary residences

A foreigner who is not domiciled in Switzerland may be authorised to acquire a secondary residence in a place with which they have exceptionally close ties worthy of protection (art. 9, para 1, subpara c, FL). Regular ties which the purchaser must maintain to safeguard mainly economic, scientific or cultural interests are regarded as "close ties" in this connection. Relationship by blood or marriage with persons in Switzerland and holiday, spa/recuperative, study or other temporary stays do not constitute close ties worthy of protection (art. 6 OFL).

The following cantons have introduced this justification for authorisation: Appenzell Ausser-rhoden, Basel-Stadt, Fribourg, Grisons, Jura, Lucerne, Neuchâtel, St Gallen, Solothurn, Ticino, Uri, Valais, Vaud and Zurich.

A secondary residence may not be rented to third parties and must be sold within two years if the purchaser no longer uses it as such. Secondary residences may only be acquired by natural persons under their own name, and not through a company (art. 8 OFL).

The same restrictions as for holiday homes apply to the real estate surface area and net floor area of secondary residences (see 10f). If the purchaser, their spouse, registered partner or child under 18 already own a secondary residence, holiday home or serviced flat in Switzerland, authorisation may be granted only if the latter dwelling is sold before the new purchase transaction is entered in the Land Register (art. 11, para 1 OFL).

Cross-border EC or EFTA commuters do not need authorisation to acquire a secondary residence in the area of their workplace (see 6c).

h Subsidised housing

A person abroad may be authorised to acquire real estate for the construction of subsidized housing, i.e. for the building of accommodation with a rent which is low and reasonable compared with similar premises in the same locality, or to acquire newly built housing of the same type when there is a local housing shortage (art. 9, para 1, subpara a FL). This reason for authorisation applies only in cantons Fribourg, Geneva, Grisons, Jura, Neuchâtel, Ticino, Valais and Vaud.

11 Administrative, civil and penal consequences of violations

A transaction requiring authorisation is invalid until legal authorisation has been obtained (art. 26, para 1 FL), although the contractual partners are still bound by the undertaking. The transaction becomes null and void with the refusal or revocation of an authorisation or rejection of the Land Register entry. Moreover, it is also null and void if the transaction is completed (e.g. by transferring the shares of a real estate company) without applying for authorisation or before the authorisation comes into force (art. 26, para 2, FL). Authorisation may be revoked if conditions are not complied with, despite a reminder, or if authori-

sation has been obtained under false pretences with incorrect information. The authorisation requirement may also be determined after the event, if the purchaser provided incorrect or incomplete information about facts of significance for authorisation requirements (art. 25 FL).

In the event of nullity, promised performance cannot be claimed but performance received can be reclaimed within one year (art. 26, para 4 FL). If the parties do not act of their own accord, the cantonal authority which is entitled to appeal or the Federal Office of Justice can initiate proceedings to restore the original situation or for the forced disposal of the real estate (art. 27 FL).

The circumvention of authorisation requirements and providing incorrect or incomplete information in establishing the need for authorisation or the granting of authorisation in respect of the appropriate authority, Land or Commercial Registry, as well as failure to comply with conditions and refusal to provide information or hand over evidence are punishable with a prison sentence or fine (arts. 28-31 FL).

Appendix: Cantonal authorities