



## Editorial

The "Law on regional development (LAT) of 01.05.2014", ... the "Law on second homes (LRS) of 01.01.2016"... The legislator's ingenuity knows no bounds and the situation has moved on a lot since our first newsletter on the subject (No. 5), which focused on the conditions under which a person regarded as foreign (generally and put in simple terms, usually a national from a country outside the European Union) may acquire a second home in Switzerland, in accordance with the Federal Law on the acquisition of real estate by persons domiciled abroad (LFAIE). Although the two laws mentioned above pursue different goals from those of the LFAIE of 1983, they are superimposed on it.

It is true that, during this period, Switzerland experienced substantial growth in the economy and in real estate within a limited territory, so much so that popular opinion called for restrictions in order to avoid "sprawling" development.

This also means that it is not "foreigners" who are the target of this new legislation, but rather the pressures of uncontrolled urbanisation that Switzerland would like to channel and regulate better. As a result, certain municipalities, which are already considered to have an ample supply of second homes, find themselves, for example, barred from acquiring new ones (subject to certain exceptions outlined below, which are quite restrictive). Coming back to the LFAIE, the quota of permits for the purchase of second homes by foreigners is limited to 1500 for the whole of Switzerland, to be divided among only the cantons identified as being "tourism-oriented" (which does not include, for example, the two urban cantons of Geneva or Zurich – as opposed to the canton of Vaud).

In summary: it is not impossible for a foreigner to buy a holiday property in Switzerland, but there are considerable restrictions and each individual case requires specialist advice in order to stand the best chance of a successful outcome.

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Chief Executive Officer

## THE ACQUISITION OF HOLIDAY HOMES IN SWITZERLAND BY FOREIGNERS FROM OUTSIDE THE EU AND EFTA, WITHOUT A PERMANENT RESIDENCE PERMIT (C PERMIT)

### 1 Introduction

The advantage of having one of the best qualities of life in the world has made Switzerland an attractive country in which to acquire property. Given the environment, its economic stability, security and tax advantages, Switzerland is a very advantageous place in which to live and go on holiday.

However, since the beginning of the 1960s, the Swiss authorities have progressively put measures in place to restrict access to property by foreigners in Switzerland, particularly to preserve certain highly tourism-based regions from foreign control.

The Federal Law of 16 December 1983 on the acquisition of real estate by persons abroad (the LFAIE - also known as "Lex Friedrich" or "Lex Koller") and its implementing ordinance (Ordinance on the acquisition of real estate by persons abroad – OAIE) regulate access to property in Switzerland by foreigners.

Swiss law has recently evolved further in this domain, since the Law on Second Homes came into force on 1 January 2016; it bars new second homes from being built in municipalities where they already constitute more than 20% of residences. In addition, the cantons are currently in the phase of implementing the requirements of the revised Law on Regional Development (LAT), which came into force on 1 May 2014, requiring future urban development to be concentrated primarily in the existing construction zones, in order to curb urban sprawl.

### 2 Acquisition of a holiday home

#### Federal regulation of the acquisition of real estate by persons abroad (LFAIE)

To determine whether or not you are subject to the LFAIE and the OAIE, you should take into consideration (1) your country of origin and (2), if relevant, your category of Swiss residence permit. As a general rule, the LFAIE is applied according to the following principles:

Origin	With	Without a Swiss residence permit	With an L <sup>1</sup> residence permit	With a B <sup>2</sup> residence permit	With a C <sup>3</sup> residence permit
EU or EFTA nationals, except those from Croatia <sup>4</sup>		Subject to the LFAIE/OAIE	Same treatment as a Swiss citizen	Same treatment as a Swiss citizen	Same treatment as a Swiss citizen
Nationals from third countries <sup>5</sup> and Croatia		Subject to the LFAIE/OAIE	Subject to the LFAIE/OAIE	Subject to the LFAIE/OAIE	Same treatment as a Swiss citizen

If you are a person affected by the restrictions of the LFAIE/OAIE (we designate such persons hereinafter as "foreigners"), in order to acquire a holiday home, this possibility must be provided in the law of the canton where the property in question is situated. Currently, this is the case in the following cantons: **Appenzell Ausserrhoden (AR), Bern (BE), Fribourg (FR), Glaris (GL), Graubünden (GR), Jura (JU), Lucerne (LU), Neuchâtel (NE), Nidwald (NW), Obwald (OW), St. Gallen (SG), Schwyz (SZ), Schaffhausen (SH), Ticino (TI), Uri (UR), Vaud (VD) and Valais (VS)**. It is therefore not possible, for example, to acquire a holiday property in Geneva or Zurich. In 2015, the cantons where the majority of foreign-owned holiday accommodation was located were Valais, Ticino, Vaud, Graubünden and Bern.

In addition, you should check whether the holiday home that you plan to purchase is actually located in one of the municipalities designated as a "holiday resort"; those municipalities are designated in the internal legislation of each of the cantons cited above.

Before purchasing a holiday home, you must apply for a permit. This will only be granted within the quota of permits, currently set by the Federal Council at 1500 units per year for the whole of Switzerland; this is in order to guard against uncontrolled increase of second homes and holiday properties in tourist areas and to counter the proliferation of "unoccupied beds". The Federal Council allocates the quota units among the cantons according to their importance for tourism and the proportion of land on their territory which is owned by foreigners: for example, in 2016 there were 175 units in the canton of Vaud, 330 in Valais and 195 in Ticino.

It should be noted that you will not need to obtain a permit from the quota if the property in question is being sold by a person who is also a foreigner and who was granted a permit to buy said holiday home.

There are, in addition, certain restrictions on the acquisition of a holiday home by a foreigner:

- The total surface area of the plot must not exceed **1000 m<sup>2</sup>** and the net floor area must not exceed **200 m<sup>2</sup>**. In actual fact, in line with normal practice, if an additional need can be duly proved, a permit can be granted for a net floor area of up to 250 m<sup>2</sup> and a plot size of up to 1500 m<sup>2</sup>.

- In the event that you want to acquire a building plot, construction must start within a **reasonable time frame** (which in practice is within a maximum of one to two years).

- The holiday home may **be rented out for short periods**, but year-long rental is not allowed.

- It is not possible to acquire a holiday home if you, your spouse or your child aged under 18 years, are already the owner of a second home or a holiday home in Switzerland, unless you sell your first property.

### **Federal regulation relating to second homes (LRS)**

The LRS, which came into force on 1 January 2016, introduces the rule whereby **no new second home can be permitted in municipalities where the proportion of second homes already exceeds 20% of housing stock** (for example, Montreux, Châteaud'Ex, Saanen, Saint-Moritz, etc). In other words, in principle, it is **no longer possible to build a holiday home** (which by definition is a second home) in these municipalities, with certain exceptions (see below).

It should be stressed that, unlike the LFAIE, which is designed to limit the ability of foreigners to acquire property, the LRS places Swiss nationals and foreigners under the same constraints.

It is also important to state that the cantons and municipalities may impose even stricter conditions than those set out in the LFAIE and the LRS, as we will see later on.

The exceptions to the ban on new second homes include the following:

### **Properties linked to structured accommodation establishments**

**Structured accommodation establishments<sup>6</sup> may build new second homes** (which may be put up for sale), subject to the following conditions:

- The establishment may only be operated profitably by using the income generated by building such homes.

- The owner or operator is able to prove that the income earned by such properties is invested in the construction or operation of the establishment.

- The main usable areas of these properties do not exceed 20% of all the main usable areas of the bedrooms and the properties (33% if the properties remain owned by the establishment and are rented out by the latter).

- There is an architectural and functional

unity between these homes and the establishment.

A structured accommodation establishment that existed prior to 11 March 2012 may be **reassigned as homes without restriction on their use**, for up to 50% of its usable surface area, on certain conditions (in operation for at least 25 years, and no further potential for profitable operation).

### **New properties in protected buildings**

New second homes can be built in **protected buildings** in the construction zone if the external appearance and the original architectural structure remain unchanged, if the long-term preservation of the building cannot be achieved in any other way and if there is no conflicting predominant interest.

### **Properties built under the previous law**

If the property already existed (or if a construction permit had been granted) **before 11 March 2012**, it can be used freely as a main or second residence, no matter what its previous use was. Such a property may also be renovated, converted and rebuilt. Where additional properties result from this, they may be used without any restriction on their use.

A property built under the previous law in a construction zone may be enlarged, but up to a maximum of 30% of the main usable area that existed before 11 March 2012, provided that it does not result in any additional home.

The LRS provides for the option of suspending, for a period of two years (extendable), the requirement to designate a property as the main residence if the owner can prove that the property has been offered for sale on the market at a reasonable price, but has not been sold. In this context, it should be noted that the Federal Supreme Court (TF) has recently blocked two real estate projects concerning a total of 44 apartments in Ovronnaz (VS). The permits granted stipulated that these apartments would be used as main residences, but the TF considered that checks should be carried out, in view of the absence of evidence that there was a real need for such a number of new main-residence properties in this municipality. In other words, there was a real risk that these properties were simply disguised second homes. This decision is a strong signal of the rigorous stance adopted both towards tourism-based municipalities and the builders.

### **Procedure**

The procedure for granting a permit for buying a holiday home is carried out in

your own name and not through a company. It is processed via the competent cantonal authority in the location where the property that you are interested in is situated.

In practice, you are advised to consult with a notary or a lawyer and/or with the competent cantonal authority in the place where the property is situated, as the permit procedure can vary noticeably from one place to another. It is also necessary to check that there is no restriction on use mentioned in the land register for the property in question.

When it comes to the acquisition itself, it will generally be a notary who, having drawn up the deed of sale, collected a percentage of the purchase price when the parties sign the deed and, depending on the case, formalised a mortgage loan – will then carry out the necessary steps with the competent cantonal authority so that you obtain the required permit to purchase the property. The outstanding amount must be paid at the time the acquisition becomes definitive.

It is not possible to indicate exactly how long the process for acquiring a permit to purchase will take on average; moreover, this varies between cantons: it may take anything from a few weeks to several months. During this time, it is possible to enter into a lease agreement for the property with the vendor, subject to the payment of rent. However, do not forget to anticipate the possible consequences of your application being refused.

### Cantonal situation

We outline below the situation in a few of the cantons that are most concerned by holiday homes.

#### The Canton of Valais

The State Council of Valais has identified more than **100 tourist locations** in which the acquisition of holiday homes is deemed necessary for the development of tourism.

In 2016, the number of units in the quota for holiday homes stood at **330**.

The allocation of individual permits is carried out by the legal and administrative office of the **Land Registry and Geomatic Service**, which is the competent first-instance authority:

- on the basis of the applications submitted,
- with priority being given to property sales which, through the way they operate, guarantee a higher rate of occupancy (for example operation or rental contracts),

- whilst maintaining a reasonable ratio between existing and new holiday homes,
- and a balanced ratio between Swiss and foreign property owners.

The procedure is as follows:

- File an application with a declaration of intent with the Land Registry Service;
- Obtain a guarantee that a unit has been allocated under the quota (providing the decision is positive); then
- Sign the deed of sale (after having obtained the guarantee).

Note that you must own the property for a **minimum of five years** before you can resell it to a foreigner (but no minimum period if you resell to a Swiss purchaser).

In addition, some municipalities within the canton have adopted even more restrictive measures.

It should be stressed that it is no longer possible for a foreigner to acquire a holiday home in Zermatt, as this municipality is no longer included in the list of holiday resorts. Currently it is not even possible for a foreigner who obtained a permit to purchase a holiday home before the municipality was withdrawn from the list of holiday resorts to resell it to another foreigner. However, this could change soon. You are therefore advised to make full enquiries before committing to any step involving the acquisition of a holiday home in Valais.

#### Canton of Vaud

The Vaud government has drawn up a list of **29 municipalities** on the territory of which it is permitted to acquire a holiday home. This concerns in particular Château-d'Éx, Rougemont, Lausanne (only for apartments in serviced apart-hotels), Leysin, Montreux or Vevey.

The 2016 quota for holiday home permits is **175 units**. The quota is allocated within the canton in particular in the light of the regional development programmes and the state of the housing market.

The first-instance cantonal authority in charge of granting permits is the **Land Commission, Section II**.

#### Canton of Bern (Saanen – Gstaad)

In this canton, foreign demand is focused primarily on a few highly tourism-based areas.

A list of **holiday resorts** in which it is possible to acquire a holiday home, has

been drawn up by the Bern Directorate of Public Economic Affairs. Note that certain municipalities have introduced a **provisional block** on permits, as in Bienne and Grindelwald, for example.

The 2016 annual quota for the canton stands at **140 units**.

The competent first-instance authority for granting permits is **the prefecture of the administrative district in which the property is located**.

The allocation criteria in the canton are as follows:

- Financing must be guaranteed,
- priority is given to projects that are best adapted to regional tourism development,
- projects to build, extend or renovate hotels take precedence over projects to build holiday apartments, and projects with a valid building permit take priority.

#### Canton of Fribourg

The State Council in Fribourg has drawn up a list of **20 municipalities** where it is possible for foreigners to acquire holiday homes, including Bulle, Gruyères and Charmey.

The 2016 quota for this canton stands at **50 units** for holiday homes.

The competent authority for granting permits is the **Commission for the Acquisition of Property by Persons Domiciled Abroad**.

#### Canton of Jura

A cantonal decree lists **18 places** where the purchase of holiday homes may be authorised.

The 2016 quota for holiday homes in the canton of Jura stands at **20 units**.

The competent first-instance authority for receiving permit applications is the **Legal Service of the Canton of Jura**.

#### Canton of Neuchâtel

The government of Neuchâtel has designated **around thirty tourism-based municipalities** in the canton, including La Chaux-de-Fonds, Val-de-Travers and Neuchâtel.

The quota for holiday homes stands at **35 units**.

The competent first-instance authority for granting permits is the **Cantonal Commission for the Approval of Property Acquisition by Persons Domiciled Abroad**.

## Canton of Uri

The State Council of Uri has drawn up a list of **19 municipalities** in which the acquisition of holiday homes may be authorised. All the municipalities in the canton are included except Bauen. However, the municipality of Silenen has made use of its autonomy to prohibit the acquisition of holiday properties as well as units in apart-hotels.

The quota for the canton is **20 units**.

The competent first-instance authority for granting permits is the **Economic Affairs Directorate (Volkswirtschaftsdirektion)**.

Cantonal law states that the surface area of buildings acquired by persons domiciled abroad in a condominium or an apart-hotels must not exceed 50% of the living area of the said condominium or apart-hotels. Municipalities are free to impose additional restrictions. Bürglen, for example, limits the possibility of acquiring a holiday home to the purchase of a building plot on which a holiday home will be built, thereby prohibiting the acquisition of a holiday home within a condominium or an apart-hotels. Seelisberg has set a limit of 3 units per year.

The permit process usually takes around three weeks.

Finally, the *Andermatt Swiss Alps* project enjoys an exemption from the LFAIE, which

was granted by the Federal Council in December 2007, in the superior interests of the Confederation.

## Canton of Graubünden

The Graubünden government has designated **around one hundred municipalities** where it is permitted for foreigners to acquire a holiday home.

The 2016 quota stands at **290 units**.

The competent first instance authority for granting permits is the **Land Registry Inspectorate**.

It should be specified that in Saint-Moritz, the municipal law states that if a property was registered as a main residence with the Land Registry, even before 11 March 2012 - the deadline set by the LRS (see above) - it must be used exclusively for this purpose. This type of property cannot therefore be resold as a holiday property.

## 3 Conclusion

For many years, the Swiss government has been examining the merits of repealing the LFAIE: this law does not really make it possible to effectively combat the sprawling development caused by second homes. In addition, it is discriminatory because it only applies to foreigners. However, its repeal was rejected by the Swiss National Council (lower house of the Swiss Parliament) and is no longer on the agenda.

Note that in 2013 for the first time and then again in 2014, no canton has requested an additional quota, whereas previously, strongly tourism-oriented cantons (namely Vaud, Valais and Bern) could obtain units not used by another canton once their annual quota was used up. In addition, the proportion of the total quota used was 75% in 2011, 68% in 2012, 53% in 2013 and 44% in 2014; and we can therefore see that there has been an easing in terms of the number of units available since recently.

Although the quota situation may have improved, the entry into force of the LRS at the beginning of 2016 makes it much more difficult to build new holiday homes. The effects of this have been quickly felt: the number of applications for building permits is already falling.

In spite of the above, opportunities to acquire a holiday home do exist; your real estate advisers will help you to overcome the last hurdles to owning property in Switzerland, with the guidance of lawyers or notaries.

*N.B. The content of this article can only deal with general points and the details of each specific case should be carefully analysed.*

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<sup>1</sup> Short-term permits (generally less than a year).

<sup>2</sup> Residence permits (renewable annually).

<sup>3</sup> Permanent residence permit (may be granted after 10 years or, for citizens of many EU or EFTA countries, after 5 years of regular, uninterrupted residence).

<sup>4</sup> Croatian citizens will be treated the same as other EU citizens, once Protocol III, concerning the extension of the agreement on the free movement of persons to Croatia, comes into force. At the present time it is not known when this will enter into force.

<sup>5</sup> States outside the EU or EFTA.

<sup>6</sup> An establishment that includes standard hotel-type services and infrastructures used by the majority of clients, which is organised according to a hotel-type operating concept and run as a uniform business, in other words a hotel-type residence.

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