

Real estate in Switzerland

www.real-estate-in-switzerland.ch
www.property-in-switzerland.ch
www.schweizerische-immobilien.ch

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Introduction

Switzerland's real estate market has increasingly become the focus of foreign investors and people moving to this country.

Switzerland's central location, its desirability as a corporate headquarters location and country of residence, has caused a rise in the demand for real estate.

The reliability of the country's Land Register is instrumental in maintaining and increasing property values.

A well-performing economy and stable currency further add to the long-term viability of real estate investments.

Advantages of locating in Switzerland:

- low production costs¹⁾ , liberal employment laws²⁾
- skilled workforce, top-rated universities³⁾
- favorable legal forms for businesses (corporate law⁴⁾; distribution rights⁵⁾)
- excellent purchasing power
- outstanding payment ethics, effective payment enforcement⁶⁾
- moderate taxation⁷⁾
- a healthy economy
- a stable currency
- first-class, internationally connected banks⁸⁾

reference

¹⁾ <http://www.arbeitsproduktivitaet.ch>

²⁾ <http://www.arbeits-recht.ch>

³⁾ <http://www.forschungsstandort.ch>

⁴⁾ <http://www.rechtsformwahl.ch>; <http://www.joint-ventures.ch>

⁵⁾ <http://www.vertriebsrecht.ch>

⁶⁾ vgl. www.forderungseinzug.ch; www.exequatur.ch; www.zivilprozess.ch

⁷⁾ vgl. www.steuersstandort.ch

⁸⁾ vgl. www.wirtschafts-foerderung.ch; www.finanzstandort.ch

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Switzerland's spatial concept

(urban and rural planning)

Because in Switzerland land is a precious commodity, the Federal Government, the cantons, cities and townships share in a concept of the economical use of land, specifically:

- residential development limited to built-up areas
- preservation of green zones and open spaces to increase quality of life
- coordination of built-up areas with the transport network
- retaining and increasing the value of open spaces
- raising competitiveness
- innovation and adding value through ...

a network of metropolitan areas

- Zurich
- Basel
- Geneva region
- Bern region
- Lucerne
- built-up areas of the canton of Ticino
- Jura arc
- Aare river region
- north-eastern Switzerland

supra-regional rural and tourist centers

- Gotthard
- south-western Switzerland
- south-eastern Switzerland

- supra-regional expansion of living space.

A draft plan for the canton of Zurich

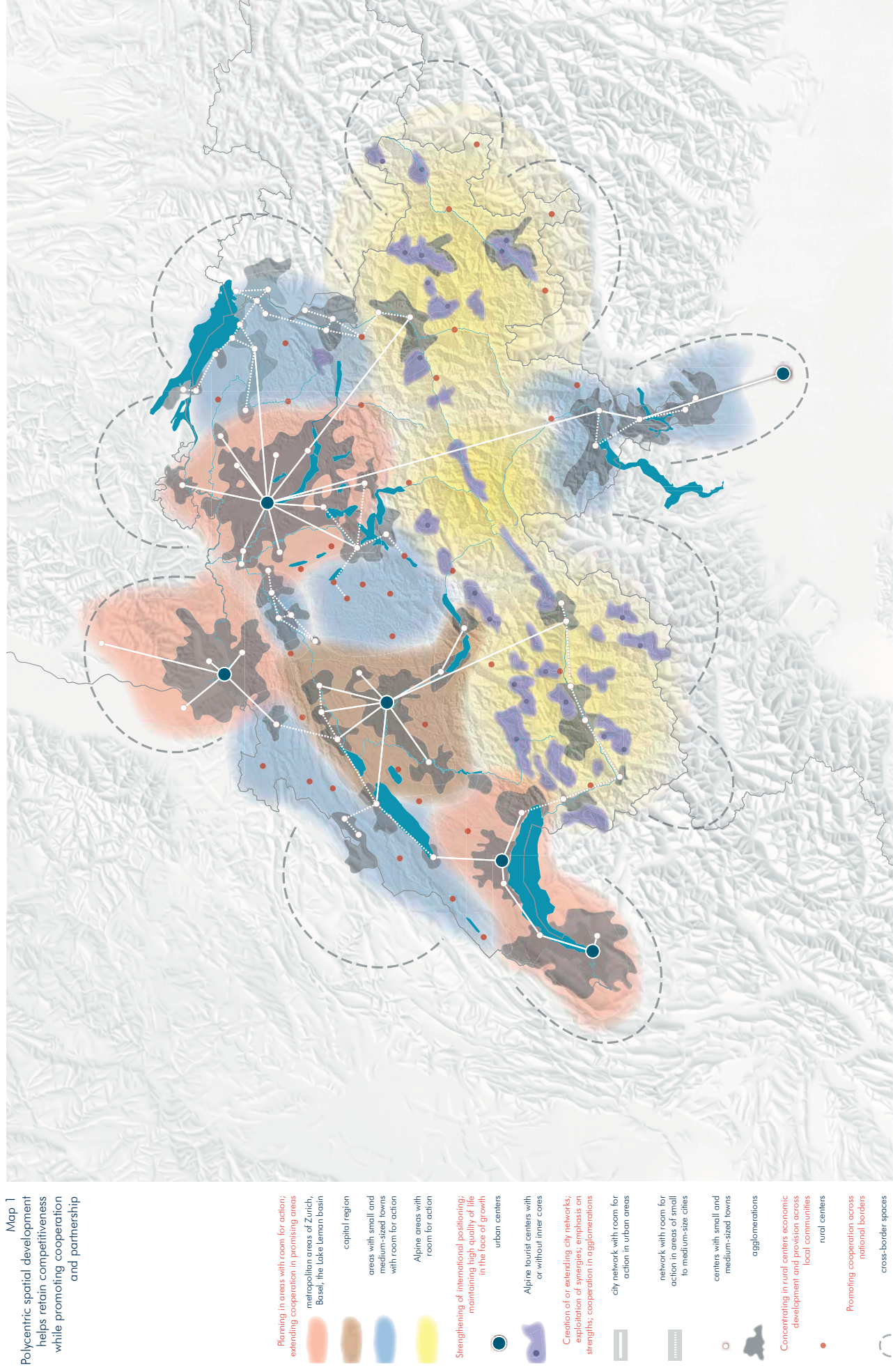
- limits built-up areas
- promotes projects of greater density.

Regions are encouraged to

- create space for major trades and industries
- promote highrises.

These facts affect real estate investment and real estate's appearance, density and market value, not to mention the value of location.

Map 1
Polycentric spatial development
helps retain competitiveness
while promoting cooperation
and partnership



Switzerland's real estate market

Introduction

Switzerland's real estate market is no longer static, due to

- low interest rates
- attractive real estate financing
- a strong Swiss franc
- uncertainty in financial markets and stock exchanges
- a return, due to low interest rates, to real estate investments
- growing numbers of businesses and individuals moving to Switzerland
- improved local and international rail infrastructure.

Swiss and foreign investors such as high net worth individuals (HNWI), family offices and institutional investors such as life insurance companies and pension funds, increasingly invest in real estate at favored locations.

Is a focus on fully rented, recently built properties at good locations in population centers enough? It is not.

Further information:

see Investor strategy

see Real estate investment decision



Real estate categories

Property

The Land Register records:

- buildings
- mines
- individual and permanent rights
- property with development rights
- property co-ownership
- apartment/condominium ownerships.

Regarding property with development rights
See Use of real estate/Development rights

Regarding apartment or condominium ownership (A/CO)

Ownership of apartments/condominiums, often entire floors, is defined differently in Switzerland.

Apartment/condominium ownership is governed by a specific co-ownership formula that includes special rights of exclusive use and interior finish of parts of a building.

Further information

www.stockwerk-eigentum.ch

www.baurechte.ch

Property categories

General

Apart from culturally and esthetically outstanding buildings, any property design is possible provided spatial use and environmental compatibility rules are observed. Building categories are the same throughout the country:

- Residential
 - multi-family dwellings
 - single-family dwellings
 - duplexes
 - owner-occupied apartments/condos
 - vacation apartments, second homes

- Commercial
 - office buildings
 - commercial buildings
- Dedicated buildings (operational)
 - hotels
 - restaurants
 - leisure centers
 - shopping malls, trading centers
 - factory outlets
 - building supplies stores
 - multi-storey car parks
 - highrises
 - hospitals
 - care homes
 - retirement homes
 - logistics centers
 - industrial buildings.

Big buildings

The population is conflicted – they are in favor of the jobs and tax revenue of big buildings but hate their environmental impact. Generally, big buildings are subject to the same regulations as other buildings and facilities. Special regulations or permit processes apply in cases of:

- incompatibility with existing city planning
- incompatibility with existing zoning
- permit requirements for special use
- waiver of site or development regulations in cases of mixed use
- mandatory environmental compatibility studies and coordination obligations.

Investor strategy

Real estate portfolio success hinges on:

owner's strategy

- investment category
- investment strategy
- investment type
 - core investment
 - value-added investment
 - opportunistic investment

timing

- market cycle of the moment, expectations - the real estate clock, in other words
- length of ownership period

real estate characteristics

- open spectrum, undesirable types of use
- exploitation of special circumstances
 - low-quality properties in need of good management
 - vacant properties
 - auction properties
 - point in building life cycle
 - use-change properties
 - from rental apartments into owner-occupied apartments/condos
 - change from office to residential space
 - change from hotels to other uses
- conversion to multi-usage
- demand analysis
- benchmarking
- performance index

location

- city/suburban
- preferred locations
 - A locations
 - B locations
- diversified locations
 - regional
 - national

specifications

- investment per property
 - minimum
 - maximum
- minimum area
- minimum yield

ratio of equity capital to debt

- equity capital
 - high (investment-driven)
 - low
- debt financing
 - high (leverage-driven)
 - low
- long or short-term financing
- return on capital
- depreciation level and amount
- interest-rate and currency hedges
- private equity
- multiple banks or other lenders

use strategy

- tenant target group/quality
- occupancy rate
- tenancy profile – current, potential
- rental agreement optimization
- rental risks

management strategy

- self-managed or outsourced facility management
- self-managed or outsourced to property management company

period of ownership

- limited or unlimited
- exit strategies

fiscal strategy

- legal entity
- property
- property tax, period of ownership

exit strategies.

Real estate agents

Introduction

To improve its image, the real estate industry offers various vocational training models, including for agents. Swiss real estate agents do not require a license, except rental agents and agricultural property agents. Agents' contracts are subject to OR 412 ff., Swiss Code of Obligations. Certain regulations and cantonal law must also be observed.

Basics

The following principles apply:

- two kinds of commission:
 - directing a client to a property
 - complete transaction
- agents insist on an exclusive contract
- more than one agent is possible in cases of merely directing a client to a given property and disclosure of this fact to the client.

Commission

Agency commission is subject to negotiation.

major properties:	< 1 %
multi-family dwellings	1 – 2 %
single-family dwellings	2,5 % – 3 %
owner-occupied apartments/condos	3 %

Next to commission, marketing costs such as documentation, copies of situational plans and blueprints, advertising and web portal entries, etc., are billed at cost.

Further information:

www.immobilienmaklerrecht.ch

Foreign real estate agencies

Because cross-border real estate activity raises certain legal and taxation issues, these should be clarified before commissioning an agent.

Further information:

www.auslaendischer-immobilienmakler.ch

Land Register, information systems

Land Register

Two basic principles govern the Land Register:

- entry
- publication.

The Land Register lists properties and owners, special provisions and liens. The area a property occupies is recorded in Land Register plans which, in turn, are based on land surveys.

Other information systems

Next to the Land Register, buyers may consult the national geodata infrastructure (NGDI) which consists of:

- survey data
- Land Register plans (cadaster plans) based on official surveys
- national geological data (information on composition, properties and processes of substrate)
- cadaster of ownership limitations under public law (OLPL cadaster)
(new directory of ownership limitations as per public cantonal and communal ownership limitation laws)
- cadaster of contaminated locations

Regarding the Cadaster of contaminated locations (CCL)

The CCL is based on the legacy liability cadaster (LLC) dating from the 1990s.

Following examination and reassessment of LLC data, the CCL now lists:

- waste deposit locations
- factory locations
- incident locations.

The publicly accessible CCL contains information on:

- whether a site is contaminated (without damaging or potential environmental impact)
 - anticipated detrimental effects of a site that warrant examination
 - anticipated detrimental effects of a site that warrant monitoring or rehabilitation
- suspect sites requiring rehabilitation are legally considered contaminated.

Information access

Before undertaking property transactions, a detailed determination is recommended of the state of a given property and possible liabilities by means of the:

- Land Register
- Land Register plans
- cadaster of ownership limitations under public law. Should such a cadaster not exist or be incomplete, resort to construction documents available from building permit authorities
- cadaster of contaminated locations.

In topographically questionable locations, we recommend consulting national geological data.



Due diligence in real estate

Introduction

Due diligence applied to capital investment, as well as commercial and industrial properties, is now fully established in Switzerland.

Investor due diligence

As a rule, investor due diligence comprises:

- a decision-making basis for real estate transactions
- systematic real estate assessment prior to purchase
- establishing a purchase price
- identification of risks and opportunities
- determining transaction conditions
- customary warranty waivers require due diligence (see Real estate purchase, Warranty)
- risk associated with site contamination born by buyer
- determining whether parties to the contract negotiations are in positions of strength or weakness.

To be checked:

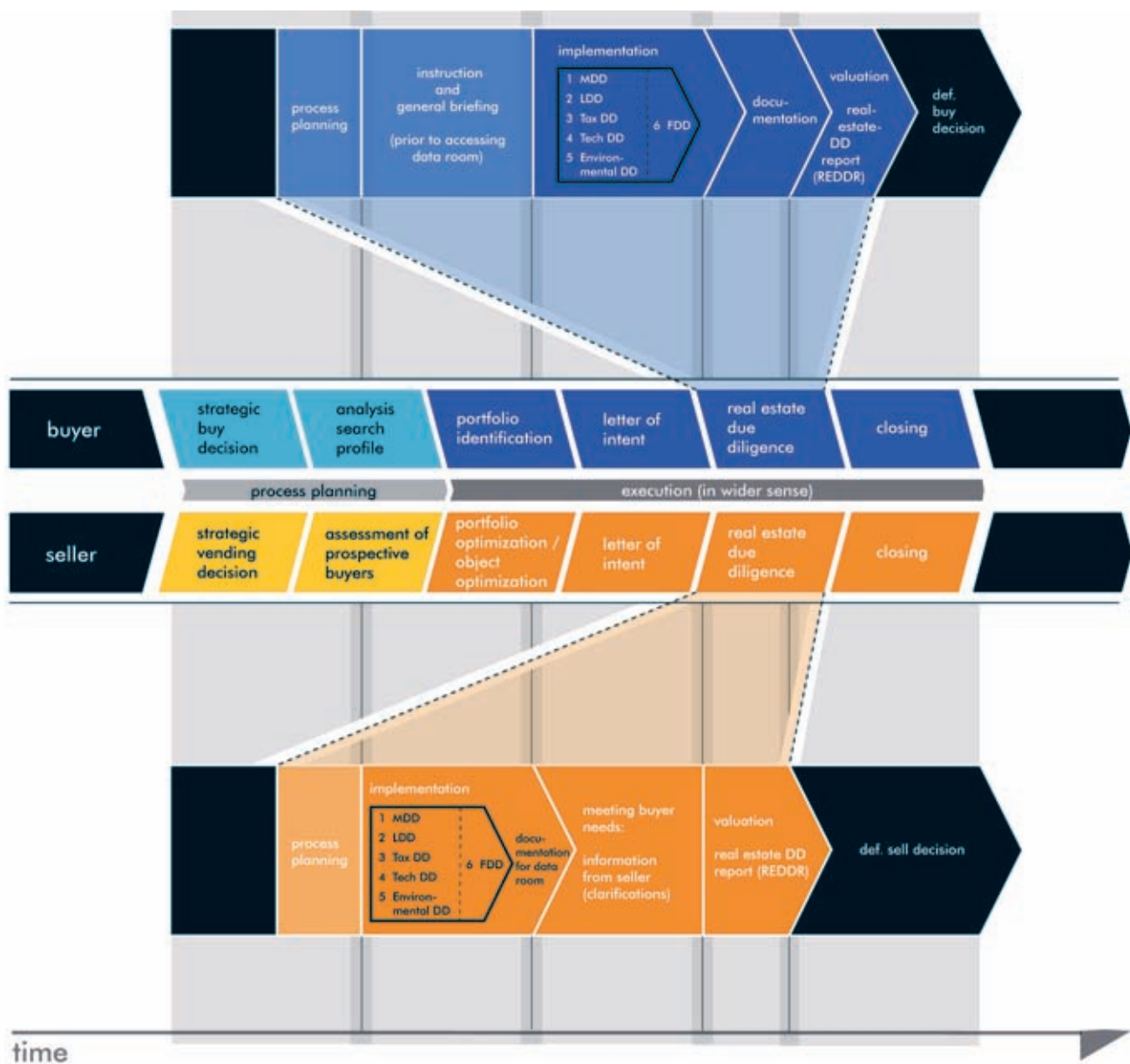
1. Market due diligence
2. Legal due diligence
3. Taxation due diligence
4. Technical due diligence
5. Environmental due diligence
6. Financial due diligence

Further information:

www.real-estate-due-diligence.ch

Summary

Schematic of real estate due diligence:



Real estate valuation

Valuation

Traditionally in Switzerland, a calculation combining actual value and earning power was used to value real estate for capital investment.

General	Average of earning power x 2 and actual value
Commercial buildings	Average of earning power and actual value

As is the case in English-speaking areas and the world's stock markets, in Switzerland the value of properties is increasingly linked with asset management or buying and selling rather than them being viewed as status symbols. This has put the earning-power method of valuation in the foreground. To calculate the asset value, the sum of all future annual rental instalments is added and this figure, in turn, is relativized by the capitalization interest rate (CIR).

Capitalization interest rate (CIR)

In calculating the earning-power value, the CIR functions:

- as a qualitative cost and risk figure in real estate appraisals
- as a factor in ad-hoc valuations (rental income p.a. : CIR x 100).

Earning-power-based real estate valuation puts the capitalization interest rate at the center:

- The CIR should be determined in every case.
- As a rule the CIR consists of:
 - the base interest rate on capital
 - individual surcharges.

Capitalization interest rate factors

Cost item	Purpose	as percentage of investment costs	or: one-time surcharge on mortgage interest, 1st mortgage
Base interest rate	return on capital	4,5 %	-
Surcharges	maintenance, repairs	0,50 %	0,7 – 2,0 %
	operating costs	0,25 %	0,1 – 0,5 %
	administration costs	0,30 %	0,1 – 0,3 %
	rental risk	0,10 %	0,0 – 0,4 %
	reserves	0,85 %	0,5 – 1,0 %
Total	Capitalization interest rate	6,5 %	...

cf. Daniel Conca. Die Kapitalisierung. Forum für Schätzungsexperten. September 26/27, 2003. p. 12 f.
[“Capitalization”, available in German only]

Adequate valuation is based on use-based capitalization interest rates:

- residential: 6,5 % - 8,5 % (multi-family dwellings)
- office/business: 7,5 %
- commercial/industrial: 8,5 %

The capitalization interest rate should be adjusted depending on the individual property and risk.

Rules of thumb

- The higher the CIR, the lower the real estate value.
- The lower the CIR, the higher the real estate value.
- The CIR should be at least as high as the cost-covering yield.

Further information
www.immobilien-bewerten.ch

Regarding Germany's multiplier method

German usage is based on multipliers or coefficients to assess value for real estate investments:

- knowing the coefficient helps to infer yield
- knowing the purchase price and annual rental helps to infer both coefficient and yield.

Multiplier method

In Germany, real estate performance is measured by means of the multiplier method in which the multiplier is the purchase price divided by rent, minus heating costs.

Knowledge of Coefficient

Coefficient	10	11	12	13	14	15	16	17	18	19	20
Yield	10%	9,09%	8,33%	7,7%	7,14%	6,66%	6,25%	5,88%	5,55%	5,26%	5%

Knowledge of purchase price and annual rent (purchase price : annual rent)

Yield	4%	5%	5,5%	6%	6,5%	7%	7,5%	8%	8,5%	9%	9,5%
Coefficient	25	20	18,8	16,7	15,4	14,3	13,3	12,5	11,8	11,1	10,5

Determining actual yield

Acquisition costs and non-chargeable costs make coefficient method results somewhat inaccurate.

Additional calculation steps:

1. Adding acquisition costs to purchase price.
2. Deducting non-rechargeable maintenance and administration costs from rent excluding heating.

Real estate investment decision

An investor's decision to buy should, among other things, be based on:

real estate research

- seller (including reason for sale)
- macro location
 - master plan and usage plan
 - centers
 - supra-regional transport infrastructure
 - availability of workforce
 - the location's tax situation
- micro location
 - location of property
 - type of property
 - extent of property
 - topography
 - views
 - sun exposure
 - slope
 - neighbors (and their real estate objectives)
 - complete Land Register extract, cadaster plan and geological information
 - accessibility to
 - public transport
 - schools
 - shopping
 - local and general access
 - emissions of noise, dust, smells, electrosmog (high-voltage power lines)
 - attractiveness of location and image of district
- new construction:
 - suitability for development
 - terrain
 - geology
 - hydrology
 - contamination or legacy liabilities?
 - archeological risk during excavation
- existing properties:
 - plans (building permit and alteration plans)
 - description
 - historic building
 - tenancy profiles, rental contracts including documents stating conditions and tenant solvency
 - rental calculations and rental increase provisos
 - suitability for alterations, conversion and extensions pursuant to SIA Standard 469

analysis

- analysis of real estate market
- location analysis (see real estate research, above)
- analysis of usage (including marketing concept)
- profitability analysis

synthesis

fiscal planning

exit scenarios.

Latest factors

land:

- location, location, location
- location beats condition of building every time

buildings:

- **general**
 - advantages of architect-designed buildings
 - real estate designed by famous architects is more easily rented or sold
 - mass developments lack a sense of exceptionalism, much valued today professionally or in private life
 - facades of timeless design to be preferred over trendy exteriors
 - flexible spatial division allows adjustments to different future use without major structural changes – it may even prevent a change of tenant
- **office buildings**
 - sustainable, ecologically sound construction and management are advantages
 - spatial flexibility to accommodate usage changes
 - building structure that can accommodate
 - cubicle offices
 - open-plan offices
 - group offices
 - combined offices
 - job sharing
 - desk sharing / desk at home / telecommuting
- **multi-family dwellings**
 - large windows
 - open-plan living (kitchen-living room combination)
 - flexibility to accommodate changes to, say, living and work space
- **owner-occupied apartments/condos**
 - horizontal separation evoking rental apartments
 - vertical separation saves on fire walls, conveys the sense of an owner-occupied home, relatively free of disputes with neighbors.

Good advice isn't expensive

Investors often want a second opinion before making a preliminary decision, or they seek a location recommendation.

Other than the above-mentioned Latest factors (see box, above), no generalizations are possible because each location and property is unique and should be judged as such.

Feel free to ask us. Our real estate specialists and architects are ready to act as your consultants on real estate purchases, project developments and sales.

Real estate financing

Construction loans

Swiss banks provide builder-owners with a mortgage-secured overdraft facility to finance new construction or convert existing properties only under certain circumstances (supplying a portion of equity capital, a partial real estate sale safeguard or rental, or a possible amortization). This involves a line of credit, available according to construction progress of the project. In the past, banks granted construction loans only through mortgage assignments (maximum mortgage). This necessitated a renewal of the construction credit claim as a claim on the mortgage deed after completion of construction or when the definitive outside financing need was known, and required a costly consolidation of mortgage assignment by means of a mortgage deed. Today, banks provide financing through loans as well as mortgages. As a rule, loans are granted through fixed advances paid in stages. This requires coordination with construction progress and/or pro-rata contractor's fees. Bank interest rates vary, depending on the general contractor's solvency.

Mortgage financing

Financing through mortgage loans is the conventional way of financing real estate purchases. The loan claim is renewed as a claim on the mortgage deed. The mortgage consists of personal liability and material liability of the property. If the real estate loan, or a business loan or lombard credit, is secured by means of pledged collateral, then either the actual mortgage deed, or the right of attachment on the claim resulting from the document, serves as collateral. Unlike mortgage loans, where the real estate is converted into cash if payment difficulties arise, with mortgage pledges the paper itself is auctioned. If no successful bidder emerges, the issuing bank assumes liability, and subsequently sells the property. The high cost of such a "double realization" inspired former bank lawyer Prof. RA Dr. Dieter Zobl to be creative. He created the "assignment as security", in which the advantages of a mortgage (single realization) and a loan against a pledge (possibility of securing multiple claims with different titles) are combined (see below).

Collateral security

Rights of lien

Swiss law recognizes the following rights of lien:

- mortgage deed
- mortgage assignment.

Further information:

www.schuldbrief.ch

www.grundpfandverschreibung.ch

Additional security

Next to mortgage deeds, mortgage assignments and pledged collateral, banks also demand personal securities (guarantees, sureties) for their credits.

Further information:
www.sicherheiten.ch

Security agreements

Conventional security arrangements

Real estate financing is conventionally secured by means of:

1. Mortgages where the bank becomes the owner of the mortgage deed, and
2. other mortgages in the form of pledged collateral
(where the bank holds the owner's mortgage deed as collateral).

Assignment as security

On the Swiss real estate financing market, assignment as security – although not covered by law – has evolved as the most flexible security for mortgage-secured loans. Assignment as security means that the property owner provides collateral to the crediting bank by transferring ownership on trust of the pledged mortgage deed. In cases of default, the creditor converts the trust asset into cash, to be used as credit against capital, interest and expenses, free of the legal limitations governing allocation and use.

Deeds of pledge, general conditions

In most cases, banks secure the credit relationship by means of their General Conditions and General Deeds of Pledge, which include all of a debtor's assets and which give them the right to offset, retain, convert into cash and assume title.

Exclusivity and rental assignment

Credit conditions often stipulate that the debtor agrees to use the bank for all of his payment transactions, or at least those in connection with the loan. In Switzerland as in neighboring countries, rent assignment is increasingly a part of property financing. Tenants are notified thereof only in cases of debtor default and/or violation of transaction exclusivity arrangements.

Real estate purchase

Legal entity

A buyer may be:

- an individual
- a legal entity (AG or GmbH – two Swiss legal forms)
- an investment trust pursuant to capital investment law
 - limited partnership for collective capital investments
 - SicaF (investment company with variable capital)
 - Sicav (investment company with fixed capital)
- a foreign legal entity.

Further information:

www.steueroptimiertes-immobilien-investment.ch

www.real-estate-private-equity.ch

www.immobilien-transaktionen.ch/immobilieninvestitionen and the revision of the capital investment law

Forms of purchase

Traditionally, real estate is held by a sole owner or joint ownership:

- sole ownership
- joint ownership
 - co-ownership
 - apartment/condominium ownership
 - joint ownership (community of property; simple partnership; KollG, KommG - both Swiss legal forms; etc.).

Types of purchase

Real estate may be purchased by:

- sole succession
 - property purchase agreement
 - donation/gift agreement
 - exchange agreement
 - inheritance agreement and/or will
- universal succession
 - corporate merger
 - corporate division
 - asset transfer pursuant to merger law
 - inheritance.

Transfer of a real estate portfolio

Further information:

www.immobilienpaket.ch / www.property-package.ch

www.vermoegensuebertragung.ch

Purchase limitations

In Switzerland real estate purchases are subject to two limitations:

- agricultural properties
- foreign ownership.

Agricultural properties

For social and agrarian policy reasons, there are limitations on the purchase of agricultural property. Agricultural properties may only be purchased by qualified owner-operators.

Real estate purchases by foreign nationals

Introduction

In 1961, the perceived threat of the country being overwhelmed by foreigners and foreign real estate ownership resulted in special permit conditions. In 1983, these federal decisions of limited duration became federal law (Swiss Approval Act, SAA, SR 211.412.41, better known by the name of the legislators concerned.

Examples are Lex Friedrich [Lex F.] and Lex Koller).

These laws have been amended multiple times to render them more liberal. According to current consensus, the danger of overwhelming foreign land ownership is non-existent, and the Swiss Approval Act should be repealed and replaced by urban and rural planning restrictions that prevent an undesirable increase in vacation and second homes. Two initiatives, one allowing the sale of any property to foreign nationals and the other increasing the contingent for vacation apartments, while approved by Switzerland's National Council, were rejected by its Council of States. Further liberalization, or a repeal of the Swiss Approval Act, has stalled due to an influx of wealthy foreign nationals in recent years which drove up land prices in low-taxation townships.

Geographic, personal and material scope

To fall under the Swiss Approval Act, real estate purchases must be within the Act's geographic, personal and material purview.

Property purchases

In Switzerland property purchases (asset deals) are subject to special regulations.

Form

To confer validity, property transactions, including purchase, right of purchase and repurchase, require notarization by a notary public except for preliminary contracts, which are merely rendered in writing.

Transfer of ownership

Ownership transfers to the purchaser on transaction entry in the Land Register.

Transfer of risk and benefit

Unless otherwise agreed, risk and benefit go to the purchaser at contract signing. A transfer of possession date is customarily agreed in the purchase contract, at which date rights and obligations, as well as risk and benefit, go to the buyer (frequently at the transfer of ownership date or end of the current quarter).

Warranty

The law limits building-defect warranties to five years from the date of assumption of ownership. In the case of existing properties warranties are normally annulled, while with new constructions, warranties originally granted to the seller by the building contractor are passed on to the purchaser.

Further information: [in German, except for the bottom link]

www.immobilien-transaktionen.ch

www.immobilien-ab-plan.ch

www.immobilien-schluesselfertig.ch

www.hotelimmobilien.ch/hotelimmobilien-transaktionen/gewaehrleistung

Urs Bürgi, Gewährleistung beim Immobilienkauf –

eine Übersicht unter Berücksichtigung der „Altlasten“ Problematik

[Warranties in real estate purchase – an overview, taking account of the “contamination” problem],

Schweizer Treuhänder, Ausgabe 5/2005, S. 392 ff.

www.real-estate-due-diligence.ch

Value-added tax (VAT)

In the case of commercial properties subject to value-added tax according to law or seller's option, a change of ownership may involve taxation of supplies. It should therefore be determined whether the seller's VAT status applies or not.

Property taxes, surety

The property serves as collateral for the seller's capital gains tax. The tax authorities have right of lien on the property for property taxes, whether owed by the present or the previous owner.

The investor should ...

- ensure all previous changes of ownership were assessed and the property taxes paid;
- determine the amount of taxes and charges arising from the transaction;
- demand that previously unpaid property taxes, including those arising from the upcoming transaction, are held in trust.

Notary and Land Register fees

Investors should be aware that both parties are jointly and severally liable for notarization and Land Register registration fees and expenditures.

Real estate development

Introduction

The high-yield properties in good locations sought by Swiss and foreign investors are unlikely to come on the market at reasonable prices, with the consequence that investors are interested in new projects, rather than existing properties in need of renovation.

Until now this area was mainly the province of local architects, as well as general and specialized contractors. As a rule they offer new projects to Swiss institutional investors at an all-inclusive price, set completion date, specifications and yield, the latter at times with rental income guarantees attached.

As is increasingly evident at international real estate fairs such as MIPIM in Cannes and ExpoReal in Munich, foreign investors develop their own projects, know what they are looking for and are well versed in project development and construction.

CIL law limits investment opportunities

As regards ownership, CIL, the federal law on collective capital investment (Collective Investment Schemes, CISA), in particular Art. 86 para. 4 of the Collective Investment Schemes Ordinance (CISO), put severe limitations on project development: Undeveloped land without infrastructure and not immediately open to development may not be purchased.

Foreign project developers

Project organization and great knowledge of project management notwithstanding, most foreign project developers or direct investors lack:

- local market and construction industry know-how
- knowledge of Swiss law
- familiarity with the Swiss way of thinking, doing things and negotiating.

Change monitoring

Project developers seeking development opportunities keep a close watch on zoning and population situations.

Initiating a project

This document addresses:

- (foreign) investors who seek property investment opportunities
- (foreign) developers seeking to buy land for new projects.

A project may also have an external trigger (see box Ideal and less-than-ideal scenarios, below).

Ideal and less-than-ideal scenarios

- Ideally, a project developer has an end-user seeking land.
The user's existence opens the door to outside financing.
- The second-best scenario is a project developer with an institutional investor lined up who is intent on making an investment.
This raises two questions:
 - lack of end-users
 - facilitation of a closing by means of a rental income guarantee issued to the investor
 - limited yield potential as a rule.
- Projects for which the developer has to secure capital and end-user are accordingly more demanding and costly.

Project trigger

new project

<u>end-user</u>	land plot	financing	realisation	buyer	>
<u>capital</u>	land plot	realisation	end-user		>
<u>land plot</u>	financing + end-user		realisation	buyer	>

existing properties

<u>building, with user</u>				buyer	>
<u>building, empty</u>	end-user			buyer	>

given:

- the owner is not the user
- development by a developer

Project concept, intrinsic value

To give intrinsic value to a project, the investor or developer must be able to:

- have a project concept
- find the required land
- have end-users
- secure the capital (equity and/or outside capital).

Checklist

The project developer collects, processes and evaluates data, assesses plausibility (project analysis) and interprets the results (synthesis).

These tests apply:

- Can the project be realized as planned?
- Is it viable financially now as well as long term?
- Can financing be secured?

Overview

Project development from purchase to sale is different for existing properties and for new projects:

Existing properties project development:



New project development:



Real estate project

The real estate development process consists of:

Kinds of development

- existing buildings (conversion, extension)
- new constructions

Alterations of existing buildings (pursuant to SIA Standard 469)

- conversion
 - to improve comfort level
 - to meet new regulations
 - to raise load-bearing capacity
- to meet changed requirements
- extension
 - by means of an addition
 - adding another floor
 - enlargement

Further information:

www.immobilien-renovieren.ch

Development process

In Switzerland real estate development ideally proceeds as follows:

- strategic planning
- project organization
- preliminary studies
 - project definition
 - floorspace
 - gross leasable (rent and revenue generating) area (GLA)
 - floor space (FS) as per building regulations
 - ratio of GLA to FS
 - projected yield
 - long-term yield on investment
 - IMPORTANT:**
 - different expressions of yield
 - valuation
 - static yield
 - dynamic yields
 - discounted cash flow method
 - economic value-added method
 - internal rate of return method
 - payback method
 - rental law
 - net return (OR 269, Swiss Code of Obligations)
 - cost-covering gross yield (OR 269a lit. c, Swiss Code of Obligations)
 - terms differ from country to country
(see Real estate valuation, above)
- feasibility study
- selection process
- project planning
 - preliminary project
 - construction project
 - building permit application (the required paperwork)
- bidding process (bid submission and award)
- implementation
 - execution planning
 - execution
 - taking over property and commissioning
 - correcting defects
 - final account

Property acquisition (Land or land plus buildings)

Unless the project developer, or active investor, secures a property he runs the risk of project planning becoming redundant should the site be sold to someone else. Securing property in advance is an imperative.

- reservation agreement
- purchase right
- purchase contract

Property acquisition has tax implications, even if the real estate developer only concludes a property purchase agreement with a right to contract on behalf a third party, and after the contract comes into force the third party subsequently acquires the development site.

Contract of sale

Development projects usually entail great material, economic and financial risks, which makes foresight and in-depth examination of the contract doubly important:

- property purchase agreement
 - including a rescinding or resolutive condition
 - building permit
 - partially rented
 - financing
 - etc.
 - warranty
 - inclusion of real estate due diligence results
 - environmental aspects
 - assurances regarding projected use
- architectural and planning contract
 - performance specifications
 - budgeting liability
- contracts for services
 - performance guarantee
 - mandatory warnings
 - soil and subsoil risks
 - performance-linked, flat-rate payments
 - performance guarantees and security provision
- rental agreements with end-users

Further information

www.praeventionsberatung.ch
www.immobilien-bewerten.ch
www.reservationsvereinbarung.ch
www.kaufsrecht.ch
www.grundstückkaufvertrag.ch
www.industriebrache.ch
www.altlastenrecht.ch
www.zwischennutzungen.ch

Project financing

These criteria determine availability of financing:

- developer-owned project
 - site owner
 - project financing assured with property as security
 - project financing can usually be secured when project details are promising
 - lack of site
 - project helps sell a contractor's or general contractor's contract and serves as investor decision-making basis based on development criteria such as surface area and yield
 - if the project itself offers no security in and of itself, financing is doubtful
- commissioned project
 - An owner's pre-payments, down or partial payments have security potential in the form of security assignment, right of attachment, etc., which makes them relevant to outside financing.
 - Swiss banks approach project financing very conservatively.

Further information:

www.immobilien-entwickeln.ch / www.real-estate-development.ch

www.projekt-finanzierung.ch

Construction

Construction law

Spatial (urban and rural) planning

Basics

Laws and regulations applicable to all construction projects:

- Federal Law on Spatial Planning (SPL)
- SPL regulations
- construction law of a given canton
- township construction regulations.

The aims of Swiss spatial planning are:

- economical land use
- orderly expansion
- sensitivity to population and commercial needs
- appropriate separation between residential, commercial and industrial areas.

Decision-making process

Spatial planning proceeds in three steps:

- master planning
deals with cantonal spatial development plans
- utilization planning
binding to owner, it limits purpose, location and degree of land use for a given plot of land
- building permit application process
examination of a building project as to compatibility with master and utilization plans and applicable regulations.

Utilization planning

Utilization planning, together with spatial planning and township zoning laws, determines the permissible extent of land use. There are three zones:

- building zones
- agricultural zones
- protected zones (including open and recreational zones).

Special building regulations

In certain regions, following uniform design principles of special building regulations may facilitate development.

Design plans

Design plans can aid in realizing major projects such as shopping malls, residential developments, revitalization of city or village centers and fallow areas.

Private design plans comprise:

- dispensation of a given area from existing construction and zoning regulations
- creation of special construction regulations
 - specifying
 - number of buildings
 - location
 - outside dimensions
 - purpose
 - use
 - to ensure
 - urban development requirements
 - residential hygiene
 - building esthetics.

Building permit application

New constructions, conversions or changes of use call for building permits.
Only very small projects are excepted.

Conditions:

- conformation with zoning law
- adherence to local building regulations
- site infrastructure
 - adequate access
 - accessibility to public services
 - utilities
 - fresh water
 - power
 - sewage
 - snow clearance
- number of parking spaces, including for visitors.

Further information:

www.baubewilligungsverfahren.ch

www.baueinsprache.ch

www.baurekurs.ch

Private construction law

Introduction

Three organizational forms exist:

- individual contracts awarded by builder-owner, construction with construction management
- concerted contracting
 - through general contractor (GC) who subcontracts in turn
 - through sole contractor (SC) who subcontracts in turn.

Main aspects of the most commonly used contracts:

Legal or design standards

In subcontracting, SIA standards (Standards of the Swiss Association of Engineers and Architects) have largely superseded building regulations. If problems arise, owners would often find the law's subcontracting regulations more helpful because SIA standards only allow for subsequent fault correction and do not allow for withdrawal from the agreement or compensation in the case of problems in performance. SIA standards (cf. for instance, SIA standard 118 Art. 181) are preferable only with regard to honoring sellers' warranties.

Further information

www.sia-normen.ch

Awarding a contract

A contractual relationship obligates the authorized agent to provide contract-specified performance. The objective is to obtain careful work, rather than procure a pre-defined success.

Further information

www.auftrags-recht.ch

Architectural and engineering contract

Architectural contracts allow the architect or engineer to exercise various functions to various legal effect:

- performance-related contract
 - planning
 - budget
 - expert opinion
 - etc.
- performance with due care clause
 - awarding work
 - construction management
- mixed transactions
 - annulment of contract pursuant to OR 404, Swiss Code of Obligations.

Further information

www.architektenrecht.ch

www.architekturvertrag.ch

Construction contracts

The contract for services [Werkvertrag] is an undertaking specifying compensation for the completion of a piece of work (building shell or the like). The contractor undertakes to deliver specified work (construction and delivery of a physical object, according to previously agreed specification, such as a flat roof, or a non-physical service such as generating construction plans, or works of art to decorate a building).

In case of a contract for work done and materials supplied [Werklieferungsvertrag], the contractor supplies work as well as movable objects, to be manufactured or created.

Further information:

www.werk-vertrag.ch

General and sole contractor agreements

In general contractor agreements [Generalunternehmensvertrag], the general contractor (GC) builds one or several buildings according to the owner's project, usually at a predetermined price (package, global or unit price), by a predetermined date, to predetermined specifications, subcontracting for individual parts and paying the subcontractors, all in coordination with other construction processes.

Under a sole contractor agreement [Totalunternehmervertrag] the sole contractor (SC) also takes care of planning and project work on behalf of the owner.

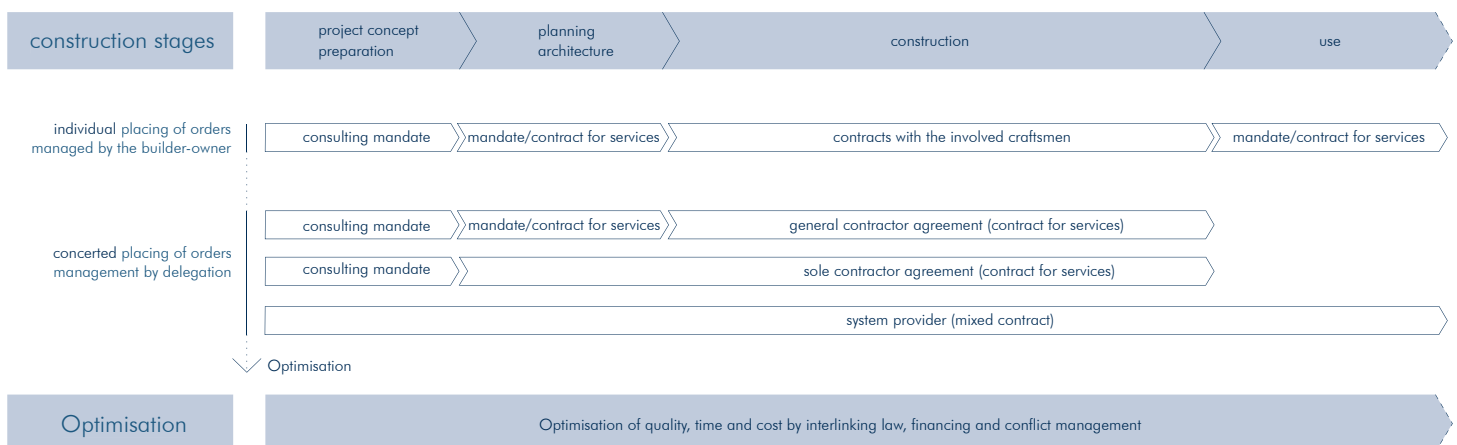
Further information:

www.gu-vertrag.ch

www.tu-vertrag.ch

Construction stages

In Switzerland, construction stages are as follows:



Exceeding the construction budget

Years ago we courageously headlined our website www.baukostenueberschreitung.ch thus:

On-budget construction is the aim of all parties to a project.

Sadly, reality is often different: The builder-owner and the architect confronted with increased liability might share this objective. But the bidding process and portals favor awards to the lowest bidder. Price is all that matters because quality and on-time performance are taken for granted. A price-driven process such as this tempts some contractors to exploit rather than draw attention to deficient specifications, only to get away with exceeding the budget later on by suggesting improvements and getting paid for them thanks to writing the contract in a certain way. Owners are advised to check the reputation and construction management competence of the lowest bidder and to sign a watertight contract.

Further information:

www.baukostenueberschreitung.ch

Value-added tax option

In the case of real estate for current or projected commercial use, value-added tax liability may be chosen voluntarily while claiming tax deductions on supplies.

Your real estate or tax adviser can determine whether this makes sense in your specific case.



Use of real estate

Rental law

In Switzerland all rental arrangements are governed by its rental law (OR 253 ff., Swiss Code of Obligations). Rental agreements differ depending on type and purpose of the rental object:

Office and business rentals

- today, most of these properties are rented unfinished (interior finish by tenant)
- rental agreements are of no less than five years' duration, with one or multiple extensions possible
- indexed rent
- value-added tax option to be considered.

Residential rental objects

- finished interiors, such as kitchens
- rental agreement without time limit
- fixed rent, adjustments subject to restrictions
- conditions of use do not apply or apply only in part to certain rental objects such as luxury dwellings, subsidized lodgings, and vacation apartments rented for less than three months.

Further information:

www.miet-recht.ch

www.rohmiete.ch

www.indexmiete.ch

www.mieterausbau.ch

Tenancy

General

A tenancy agreement [Pachtvertrag] details usable rights of an object against payment of the rent.

Agricultural tenancy agreement [Landwirtschaftliche Pacht]

Concerns rented working farms or land. Rent may also be paid in kind; examples are produce or milk.

Further information:

www.pacht.ch

www.landwirtschaftliche-pacht.ch

Time sharing

Time sharing arrangements cover several individuals using a property or exercising rights in connection with regular or vacation real estate, to be occupied in turn, at predetermined or to-be-determined times of the year. In Switzerland there is no such thing as time-limited ownership. Time sharing agreements involve several individuals owning a property together or being shareholders in a property-owners limited company. An agreement on user and management regulations specifies the property's use.

Further information:
www.timesharing.ch

Leasing / sale and lease back

Real estate leasing covers an object (land and buildings) for use during a limited period of time, against payment. Sale and lease back means that the property seller subsequently becomes the rent-paying tenant. In Switzerland leasing contracts are not legally regulated. They are considered innominate contracts.

Further information:
www.immobilien-leasen.ch / www.property-leasing.ch

Right of abode / Right of usufruct

The right of abode gives individuals the right to dwell in a given building or a part thereof.

The right of usufruct gives the beneficiary the use and benefit of a property.

The right of abode and right of usufruct are rare legal acts that benefit previous owners or heirs.

Further information:
www.wohnrecht.ch
www.nutzniessung.ch

Development rights

Development rights allow division of a property into land and buildings. Development rights, that is the right to build on the land of another and to leave the building standing, can be entered in the Land Register (property with development rights). Development rights are limited to no less than 30 and no more than 99 years (the latter considered permanent). Such properties may be sold at will.

Practical applications:

- Development rights are mainly sought for new constructions, particularly when little land is available.
- The long-term profitability of a piece of land depends largely on the solvency of the rights holder and the quality of the development rights contract.
- Swiss banks only finance properties with development rights that come with government-issued development rights.
- For those awarding development rights, a highly solvent recipient with a quality construction contract can be as lucrative as it can be financially disastrous if the recipient is or becomes insolvent or the building is too specialized.
- Problems may arise for holders of development rights involving older buildings (such as coordination of building maintenance or renovation with the duration of development rights, the building cannot be sold; renegotiation of conditions of a new duration of development rights; valuation at expiry of the rights; or loss and added costs of recreating the building's status quo ante).

Further information:

www.baurechte.ch



Real estate taxation

Property taxes

Property taxes comprise:

- capital gains tax
- ownership transfer tax
- property tax

Further information:

www.grundsteuern.ch

Capital gains tax

Introduction

Capital gains tax (CGT) is an object-related, or separate, tax. The tax authorities of the canton in which the property is located impose a tax on profit from the sale of a property or parts thereof.

Ownership transfer

Legally, change of ownership comprises

- the sale of a property (asset deal)
 - transfer or division of the property under private or public law
 - exchange
 - donation/gift
 - investment or takeover by a joint-stock company or cooperative
- commercial change of ownership (share deal)
 - sale of the legal owner
 - similar commercial transactions.

Capital gains

For taxation purposes, capital gain is defined as the difference between sales price and investment costs:

proceeds from sale
– original purchase price
+ value-increasing investments
– profit-associated costs as per tax law.

If ownership exceeds 20 years, profit is calculated from the statistically determined property value 20 years ago.

Tax assessment

Rates of taxation differ from canton to canton and are usually degressive, based on length of ownership.

Tax deferral

In the course of succession or for social reasons, tax liability may be deferred in cases of:

- change of ownership between spouses
- advance inheritance, including mixed gifts, so-called, or divided inheritance
- exchange and donation/gifts
- land rezoning and consolidation
- corporate restructuring
 - change of legal form
 - mergers
 - divisions
- owner-occupied homes or condominiums (not including second homes and vacation homes) being replaced
- similar.

Operating or real estate holding company?

As a rule, commercial changes of ownership of operating companies with business premises are tax exempt. Example: Share deal involving a company that owns and operates a hotel. The investor should determine the operating conditions precisely. For instance, if the hotel is leased to a hotel management company, a real estate holding company exists for the hotel premises – and enjoys no tax benefits. If during his period of ownership the investor sells the hotel's operation in favor of a management company, this change of purpose might lead to retroactive taxation. The purpose of real estate holding companies is to own and manage, rather than merely operate, objects as secure and profitable capital investments.

Fiscal planning

Property taxes influence investment yield, particularly for brief periods of ownership. Investors are advised to conduct fiscal planning at the time of purchase and examine all options (operating company; if and to what extent this is advisable under cantonal tax law: accreditation as real estate dealer, etc.).

Ownership transfer tax

Introduction

The cantons tax property transfers. Not all cantons levy ownership transfer tax; the canton of Zurich, for one, abolished it January 1, 2005.

Ownership transfer

Capital gains tax rules apply in equal measure.

Tax assessment

In absence of a market value, ownership transfer tax is based on the purchase price. Tax rates differ from canton to canton. They range from 0.5% to 3.0%.

Tax-free ownership transfers

Depending on the canton, changes of ownership may be exempt from transfer tax, in these cases:

- change of ownership between spouses
- advance inheritance, including mixed gifts, so-called, or divided inheritance
- exchange and donation/gifts
- land rezoning and consolidation
- corporate restructuring
 - change of legal form
 - mergers
 - divisions
- owner-occupied homes or condominiums (not including second homes and vacation homes) being replaced
- similar.

Real estate tax

Introduction

Some cantons still apply a real estate tax based on real estate ownership or use.

Tax assessment

Tax is based on the market value. Depending on canton, the tax rate is roughly 2/1000.

Value-added tax (VAT)

See Real estate purchase / Value-added tax (VAT)

General taxes

Corporate taxes

- federal tax on profits (8.5 % on profits after tax in the case of joint-stock companies and cooperatives)
- cantonal and local tax on profits (tax competition between cantons and townships: cantonal and local tax rates differ from tax authority to tax authority)
- tax on capital.

Depending on purpose, function and geographic area of activity, tax privileges are extended to companies with special tax status.

Further information:

www.unternehmensbesteuerung.ch

www.gesellschaft-mit-besonderem-steuerstatus.ch

Taxation of natural persons

The income of natural persons is subject to income tax, and assets to a marginal wealth tax. Employers levy a tax at source on wages paid to expatriates and cross-border commuters. Under certain conditions the federal government and most cantons apply lump-sum taxation for individuals.

Further information:

www.beststeuerung-privatpersonen.ch

www.quellensteuern.ch

www.pauschalsteuern.ch

Links

You may find further information at:

www.auslaendischer-immobilienmakler.ch
www.bauhandwerkerpfandrecht.ch
www.baupfandabwehr.ch
www.hotelimmobilien.ch / hotel-real-estates.ch / hotel-properties.ch / hotel-property.ch
www.immobilien-ab-plan.ch
www.immobilien-bauen.ch
www.immobilien-finanzieren.ch
www.immobilien-kaufen.ch / immobilien-verkaufen.ch
www.immobilien-nutzen.ch
www.immobilien-schluesselfertig.ch
www.immobilien-transaktionen.ch
www.immobilienmaklerrecht.ch
www.immobilienpaket.ch / immobilienpakete.ch / property-packages.ch
www.immokaufdurchauslaender.ch
www.maklerrecht.ch
www.nachbarrecht.ch / nachbarstreit.ch
www.nutznutzung.ch
www.real-estate-due-diligence.ch / immo-dd.ch / immo-due-diligence.ch
www.real-estate-private-equity.ch
www.real-estate-transactions.ch
www.realestate4foreigners.ch
www.reits.ch
www.reservationsvereinbarung.ch
www.steueroptimiertes-immobilien-investment.ch
www.stockwerk-eigentum.ch
www.strukturierte-immobilienfinanzierung.ch/
www.timesharing.ch
www.unternehmensimmobilien.ch / corporate-real-estate.ch
www.wohnrecht.ch
www.zugehör.ch

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