## Commercial Property - Switzerland

Register-based mortgage note and electronic real estate information system

Contributed by Suter Howald Attorneys at Law

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Register-based mortgage note
Integrated clearing of transactions
Comment

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The revised Civil Code has been in force since the beginning of 2012. The revision introduced a register-based mortgage note and launched an integrated clearing system for the settlement of real estate transactions. This update briefly outlines the nature and practical aspects of the register-based mortgage note and the functioning of the integrated clearing system.

**Register-based mortgage note**

A register-based mortgage note is a pure non-certificated right. A public deed is required for its creation. A mortgage note comes into existence when a creditor is entered in the Land Register. The formation costs are lower than those for the creation of a paper-based mortgage note, because no physical title is issued. However, in contrast to the paper-based version, a register-based mortgage note can be registered only in a specific name and, because no physical title is issued, it cannot take the form of a bearer security. A register-based mortgage note is transferred simply through the entry of the new creditor in the Land Register. The note can be pledged or be the subject of a usufruct. Furthermore, ownership can be transferred by way of security by entering the name of the fiduciary owner in the Land Register. To delete a register-based mortgage note, a common declaration by the creditor and the debtor is required for the attention of the Land Registry. Paper-based mortgage notes which were created before January 1 2012 can be converted into register-based mortgage notes by a simple written request. However, conversion of paper-based mortgage notes created after January 1 2012 requires a public deed, which incurs additional costs.

**Integrated clearing of transactions**

The handling of real property transactions will be facilitated by the 'Terravis' electronic platform, which came into operation at the end of January 2012. Terravis facilitates electronic access to information contained in the Land Register, retrieval of official topographical survey data and electronic processing of real property transactions. Parties engaged in a transaction (eg, notaries, banks and land registries) can all process business automatically through a single medium; this will standardise processes and increase efficiency. Currently, land registries in four out of 26 cantons are connected to Terravis; it is expected that within two years, almost all land registries in Switzerland will be accessible via Terravis.

The National Bank granted Terravis direct access to the automatic payment settlement system – Swiss Interbank Clearing (SIC). As a result, real property transactions can be fully settled through Terravis in connection with the SIC: the transfer of the respective property and the creation of a register-based mortgage note can take place by way of access to the Land Register via Terravis and payment settlement between banks can be effected by way of direct access to SIC, provided that the respective land registry and both banks are connected to Terravis. Banks not connected to Terravis cannot take part in the electronic settlement of a real property transaction. Such banks must conduct business in the classic paper-based and postal manner. Despite the introduction of Terravis, paper-based transactions will still be possible in future.

Terravis will initially provide an online portal (www.terravis.ch) for access by parties involved in real property transactions (eg, credit institutions, land registries, notaries, debt prosecution and bankruptcy offices), through which all processes can be managed without having to integrate Terravis into the parties' own IT systems. However, in order to take full advantage of Terravis, it will be necessary to implement the Terravis

gateway into IT systems. All documents used in Terravis are standardised in PDF format. These documents must be signed electronically in a valid way. Therefore, besides access to the Terravis online portal, an electronic authentication and a qualified electronic signature are required in order to use Terravis.

**Comment**

With a register-based mortgage note, the creditor will be registered in the Land Register, which enhances transparency. Additionally, costs for secure custody, circulation of a physical title and the risk of loss and a subsequent protracted and expensive invalidation process are eliminated. As a result of a partial revision to real estate laws, no immediate action by owners and banks is required. However, it is recommended (due to the advantages outlined above) that new mortgage notes in the form of register-based mortgage notes be created and paper-based mortgage notes be converted into register-based mortgage notes in case of a change in circumstances (eg, sale of property or increased mortgage).

Due to the obvious advantages of Terravis (eg, cost reductions, faster transaction speeds and facilitated management) for banks, insurance companies and pension funds dealing with real property, it will be essential to have access to this integrated electronic platform in the future.

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