

Commercial Property - Switzerland

Parliament amends Civil Code to facilitate real estate transactions

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In December 2009 the federal Parliament decided to revise aspects of the Swiss Civil Code on real estate. At the core of the revision is the introduction of a register-based mortgage note and an electronic real estate information system through which interested persons can obtain reliable and up-to-date information on real property online. The changes will facilitate real estate financing and transactions.

Amendments

The revision will bring about several amendments to the law.

Introduction of a register-based mortgage note

In Switzerland, paper-based mortgage notes are the most important securitization instruments in the real estate credit market. The mortgage note secures a personal debt under a mortgage and enables mobilization of the land value in the form of a note. However, today's legal arrangements with paper-based mortgage notes are complex and custody of the title requires the use of comprehensive safety systems. Where a title is lost – which often happens – time-consuming and expensive invalidation procedures must be undertaken. Hundreds of paper-based mortgage notes are physically moved between banks, notaries and land registry offices on a daily basis where a real property is to be sold or the amount of a mortgage is to be adjusted. Such paper-based procedures are cumbersome, inefficient and unsafe processes and entail high costs.

The introduction of the register-based mortgage note will significantly facilitate such transactions. The creation, increase, reduction, pledge and transfer of register-based mortgage notes will be effected solely by respective entries in the land register. Thus, the register-based mortgage note will constitute a register-based lien which will be defined solely through the entry in the land register.

The introduction of the register-based mortgage note is in line with current developments in certificated to non-certificated rights in Switzerland – the introduction of the Federal Act on Book-Entry Securities being another example. The register-based mortgage note represents a new kind of a non-certificated right. Non-certificated rights come into being upon registration and are rebooked in the event of transfer or pledge.

Technically, this will be enabled through the introduction of an electronic real estate information system.

Introduction of electronic real estate information system

The real estate information system will be established by a partnership between the SIX Group (the provider of the infrastructure of Switzerland's financial centre), the Swiss Federation, the cantons, the notaries public and the banks. The electronic system will allow users to:

- process business transactions through the land register;
- access information on the land register covering all cantons; and
- make enquiries regarding land register information (both public authorities and the private sector will make enquiries in this way).

The introduction of the system will considerably facilitate and standardize business processes between land register offices, notaries public and banks.

Property restrictions under public law

The revision provides that certain property restrictions under public law, which are

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decreed for a specific real property and which impose permanent restrictions or duties on the owner, must be recorded in the land register in order to be effective. This considerably increases legal certainty with respect to a specific real property, since under the existing rules public law restrictions may apply without being registered in the land register. In addition, in future public law property restrictions effective within a specified area may also be included in a special register for property restrictions under public law. (For further details please see "[Government to increase legal certainty in real estate sector](#)".)

Further amendments

The revision will also bring about the following amendments:

- All legal acts for the creation of servitudes will have to be taken in the form of a public deed – under existing legislation the written form may be sufficient;
- With respect to statutory mortgages for craftsmen and contractors, the deadline to request the registration of the lien in the land register will be extended from three to four months after completion of the work, and the law will expressly make provision for construction works which were mandated by a tenant; and
- The proceedings for correction of entries in the land register will be simplified.

Comment

The introduction of the register-based mortgage note is awaited with interest by the banking sector and businesses in general. The register-based mortgage note possesses all the advantages and characteristics that define today's mortgage instruments, but is designed as a pure, non-certificated right. In its new form the register-based mortgage note will solve existing problems of the paper-based mortgage note and have major practical advantages. It is expected that the introduction of the register-based mortgage note and the electronic real estate information system will considerably simplify business processes in real estate transactions and significantly improve efficiency.

The partial revision of the real estate law is expected to come into force on January 1 2012. The electronic real estate information system will commence operations on the same date.

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