

REAL ESTATE LAW COMMISSION

Acquiring property, portfolio and infrastructures: a comparative approach

Valencia, 31 October 2015

1. Does your country accept direct acquisition of property by foreign-based individuals or corporations?

United States	Czech Republic	Switzerland	Spain	Italy	Germany	England and Wales
Yes	Yes, without specific limitations	Yes, but multiple requirements must be met. Most relevant are the restrictions applying to the acquisition of real estate by persons residing abroad for private purposes.	Yes, only subject to meeting certain formalities.	Yes, in principle there are no restrictions on foreign nationals or overseas companies buying property, subject only to the “condition of reciprocity” - pursuant to art. 16 of the Civil Code provisions on the law in general (Royal Decree n. 262 of March 16, 1942)	Yes. No general limitations to direct acquisition of property by foreign-based individuals or corporations.	Yes

2. Are there any specific requirement or restrictions for acquisition by foreigners? Is it usual to have foreigners directly acquire property or otherwise use a local vehicle?

United States	Czech Republic	Switzerland	Spain	Italy	Germany	England and Wales
Yes to both, including selling implications under FIRPTA	No, there are no specific requirements or restrictions regarding foreigners since July 2011	<p>Foreigners (unless meeting very specific requirements) will need an authorization by the cantonal authorities to acquire a real estate in Switzerland.</p> <p>Each Canton can decide on the conditions for granting an authorization. The Lex Koller explicitly states that its restrictions cannot be circumvented with a special purpose vehicle (SPV). A company incorporated under Swiss law with its seat in Switzerland but controlled by a person abroad would be considered a foreign acquirer</p>	<p>Yes, both are usual and yes there are restrictions.</p> <p>A direct acquisition above 3,000,000 EUR will need be reported as a foreign investment and obtaining a tax identification number will be required.</p>	Yes, it is quite usual to have foreigners acquire residential property directly as individuals; the alternatives of using a non-resident vehicle or a resident (Italian company) vehicle are considered in more sophisticated situations taking into account the tax aspects	No legal restrictions for acquisition by foreigners, but some (tax) reasons might lead to use of a local SPV.	No requirements or restrictions. The structure of the purchase will depend on tax advice.

3 How does your legal system protect the acquirer? Registries? Title insurance?

United States	Czech Republic	Switzerland	Spain	Italy	Germany	England and Wales
Usual protections are available to foreign buyers: surveys prior to execution of the deed and title insurance.	<p>Cadastre of Real Estate: registration in favour of a particular person, it is considered (and presumed) to exist.</p> <p>Title insurance exists but is uncommon.</p>	<p>Notary and Registry.</p> <p>All relevant information relating to a real estate property has to be registered in the land register.</p> <p>Reliance in good faith on the details of a real estate registration is fully protected and one can assume that all registered elements correspond to the truth</p>	<p>Notary and registry.</p> <p>Public documents do not ensure the protection of the purchaser's ownership title with regard to any third party. For an ownership title to be enforceable against a third party, the acquiror must register its ownership right with the Land Registry, which extends protection to any <i>bona fide</i> purchaser</p>	<p>In the Italian system purchase transactions are effective vis-à-vis third parties only once a transaction has been recorded in the public land registry.</p> <p>The real property publicity system is based on the rule of <u>continuity of transcriptions</u>, which means that title is based on a continued series of “transcriptions” going back in time in respect of the same property</p>	Well-ried and reliable land registration system provides safety for purchasers.	Land Registry title guarantee is a public register.

4. Can you please share what the usual process in acquiring a property would be in your jurisdiction?

United States	Czech Republic	Switzerland	Spain	Italy	Germany	England and Wales
Due diligence + contract of sale + financing + transfer	Due diligence + contract + transfer	Due diligence + contract + transfer + registration. As a highlight in due diligence, foreign purchaser will need to assess whether the transfer of the relevant real estate is subject to authorization pursuant to the Lex Koller, taking into consideration any possible land reserves. The transfer of property is not completed until the new owner has been registered in the main book of the land register.	Due diligence + contract + transfer- Registration is voluntary but renders title opposable.	Due diligence, + offer + preliminary contract + contract + notarial deed + registration	Due diligence + contract + transfer and registration. Transfer is only deemed complete upon registration. Pollution of soil is a highlight in due diligence. German law, authorities might hold the owner of land responsible for the decontamination of its property, even if the contamination was not caused by the owner.	Caveat Emptor applies. The seller supplies a contract and sales pack but the buyer must rely on their own due diligence, searches and survey.

5. Now, getting down to contracts, does your jurisdiction allow limitation of liability by the seller of a real estate property?

United States	Czech Republic	Switzerland	Spain	Italy	Germany	England and Wales
Yes, limitation of liability is permitted in several respects	Not until 1 January 2014, Now it is possible to waive future claims.	Exclusions or limitations of liability are valid under Swiss law, unless the seller has fraudulently concealed a defect	Contractual limitation of seller's liability is now more common even if initially deemed as opposed to general principle of unlimited liability.	The seller has the duty to give certain warranties and representations as laid down by special statutes (rather than by the civil code), which cannot be renounced or derogated and are therefore essential for a valid and effective sale Besides, always are two situations which limit the exclusion of the warranty and that cannot be excluded by agreement between the parties:	Contractual limitation of seller's liability is common and widely used.	Yes but not for fraud or misrepresentation.

6. Sometimes we are very fond of US and UK practice, what is the treatment of representations and warranties in your country? Are they valid? Are they pro forma only or actually useful and necessary in practice?

United States	Czech Republic	Switzerland	Spain	Italy	Germany	England and Wales
Many real estate sales in New York City can be termed “as-is” sales, but sellers are required to make certain disclosures with respect to the condition of the premises including lead paint disclosures and other similar routine disclosures	the use of representations and warranties in contracts on the sale of real estate is very common in the Czech Republic. A buyer has no rights arising from defective performance in the event of a defect which he ought to have discovered at the time that the contract was concluded had he been paying reasonable attention	The seller is liable to the acquirer for all warranties and representations which he has given. They are anything but mere rhetorical empty phrases. The seller can be held liable for breach of warranties in a real estate transaction the same way he would be liable in a M&A transaction.	Reps and warranties are usual and have become standard. Nevertheless, to render them as enforceable as possible you need to link them to an obligation to identify or, if essential, to consent, as otherwise you would run the risk that they become pure rhetorics.	There are effectively certain standard R&W enforceable on the seller but case-law has actually put on certain “boilerplate” representations and warranties that, being too generic, are acknowledged no value.	Reps and warranties in contracts are also widely used.	Again caveat emptor prevails. Some limited warranties may be given particularly in construction contracts.