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## Switzerland follows the trend and introduces an FDI regime

With the adoption of the Investment Screening Act (ISA) on 19 December 2025, Switzerland is introducing, for the first time, a systematic governmental screening regime for certain foreign direct investments ("FDI"). Switzerland is thus aligning itself with an international trend, as around 80% of OECD member states already have cross-sector investment screening mechanisms in place. At the same time, the Swiss foreign direct investment control regime remains comparatively moderate: Parliament ultimately adopted the streamlined version proposed by the Council of States, designed to preserve Switzerland's openness to foreign investment and to maintain its attractiveness as an investment destination.

### Purpose of the Investment Screening Act:

The purpose of the Investment Screening Act is to protect public order and security from security-relevant acquisitions of domestic undertakings by foreign state investors. As foreign investments in Switzerland are generally regarded as economically beneficial and conducive to overall welfare, Parliament deliberately opted for a minimally interventionist, targeted, and streamlined investment screening regime. Federal intervention is envisaged only for transactions where an "ex ante"-risk assessment gives rise to concerns that the transaction may endanger or threaten public order or security. In such cases, the Confederation may approve the transaction subject to conditions or obligations or prohibit it altogether. These open-ended criteria afford the authorities considerable discretion on a case-by-case basis, resulting in a degree of legal uncertainty for transactions falling within the scope of the Act. However, given the narrowly defined scope of application of the legislation, this drawback remains limited.

### Scope of Application of the Investment Screening Act:

The Act applies to, and therefore subject to authorisation are, (i) acquisitions (ii) of domestic undertakings (iii) by foreign state investors (iv) in a security-critical sector (v) exceeding the relevant turnover thresholds.

(i): In determining when an acquisition exists, the ISA refers to the concept of control under the Cartel Act. By aligning itself with established criteria, the Act enhances legal certainty. Accordingly, only acquisitions resulting in sole or joint control are covered. Minority shareholdings without control rights fall outside the scope of the new screening regime. The Act covers only acquisitions after its entry into force; existing controlling shareholdings are excluded from its scope and remain unaffected.

(ii): An undertaking qualifies as a domestic undertaking if it is registered in the Swiss Commercial Register. The definition of an undertaking follows the functional approach established under antitrust law. An undertaking is therefore any entity acting as a supplier or purchaser of goods or services in the economic process, irrespective of its legal form or organisational structure. The formal criterion of registration in the Commercial Register is clear and practical. In particular, it entails that Swiss branches of foreign corporate groups may also qualify as domestic undertakings within the meaning of the ISA.

(iii): During the legislative process, it was the subject of considerable debate whether the investment screening regime should apply exclusively to acquisitions by foreign state-controlled investors or also to those by private foreign investors. Ultimately, the former position prevailed. Foreign state investors are thus defined as foreign state bodies, entities under the direct or indirect control of a foreign state body, as well as

persons acting on behalf of such a body. The practical application of the Act is likely to prove challenging, particularly with regard to the identification of foreign state investors, especially where ownership or control structures are opaque. This is of particular relevance for totalitarian states, which are the primary focus of the legislation and in which the boundary between state influence and private economic activity is often blurred. To address such risk of concealed state influence, the Act expressly also covers persons acting on behalf of a foreign state body.

The Federal Council may further exempt acquisitions by foreign state investors from certain states from the approval requirement, provided that sufficient cooperation exists to prevent threats or risks to public order and security. It is expected that the Federal Council will make use of this authority and at least exempt investors from EU and EFTA member states from the approval requirement.

(iv): Only acquisitions in the sectors defined by the ISA are subject to approval. The Act distinguishes between sectors that are particularly critical to public order and security and therefore become relevant at lower turnover levels (the "de minimis – threshold"), and less critical sectors subject to higher turnover thresholds.

The most sensitive sectors, for which the ISA provides for a lower de minimis - threshold – specifically, an average of at least 50 full-time equivalent employees worldwide or worldwide annual turnover of at least CHF 10 million for the two preceding financial years – include, in particular:

- undertakings that manufacture goods or transfer intellectual property that are of crucial importance for the operational capability of the Swiss Armed Forces, federal security institutions and space programs, provided that the export of such goods or rights is subject to authorisation under the War Materiel Act (WMA; armaments) or the Goods Control Act (GCA; in particular dual-use goods);
- operators of critical infrastructure in the energy and water supply sectors; and
- providers of core security-relevant information technology services.

Undertakings operating in security-critical sectors subject to a higher turnover threshold (worldwide annual turnover of the target undertaking of at least CHF 100 million for the two preceding financial years) include:

- hospitals;

- undertakings active in the pharmaceutical, medical devices, vaccines and personal protective equipment sectors;
- operators of important domestic hubs (ports, airports, transshipment facilities for combined transport);
- operators of domestic railway infrastructure;
- operators of important domestic food distribution centers;
- operators of domestic telecommunications networks;
- operators of systemically important financial market infrastructures; and
- systemically important banks.

In contrast to other international investment screening regimes, the Swiss ISA does not cover a number of potentially critical areas, such as technologies relating to artificial intelligence, robotics, semiconductors, as well as quantum and nuclear technologies.

#### **Approval Procedure:**

The approval procedure is modelled on the merger control regime. Accordingly, the foreign investor must notify the SECO of any notifiable acquisition prior to its completion. Until approval is granted, a standstill obligation applies, which may be enforced by administrative measures and sanctioned by administrative fines of up to 10% of the worldwide annual turnover of the domestic undertaking.

In line with merger control law, the approval procedure is divided into two phases:

Phase I: Within one month of receipt of a complete notification, SECO, in coordination with the competent administrative units and after consulting the Federal Intelligence Service, decides whether the acquisition can be approved without further review or whether an in-depth review procedure is to be initiated.

Phase II: In the event that an in-depth review is initiated, SECO generally decides within three months whether to approve the acquisition, again in coordination with the competent administrative units and after consulting the Federal Intelligence Service. If no decision refusing approval is taken within this period, the acquisition is deemed approved, although SECO may extend the review period. Where SECO or any competent administrative unit objects to the approval, or where the

acquisition is of particular political relevance, decision-making authority is transferred to the Federal Council. A refusal to approve an acquisition may therefore be issued exclusively by the Federal Council.

A notifiable acquisition will generally be approved if, based on an *ex ante* assessment, there are no grounds to assume that it poses a risk or threat to public order or security. The approval criteria afford the authorities considerable discretion. Approval may also be made subject to conditions or obligations, provided that such measures eliminate the identified risks or threats to public order or security.

Decisions taken during the approval procedure may be challenged before the Federal Administrative Court. The foreign investor and the domestic undertaking both are entitled to appeal.

#### **Outlook:**

By limiting investment screening to acquisitions by foreign state investors, Switzerland has opted for a restrained approach. Private foreign investors remain outside the scope of the approval requirement, with the result that only a very limited number of acquisitions are expected to be subject to review each year. Switzerland therefore remains generally open to foreign direct investment, and the existing sector-specific regulatory regimes continue to apply to private investors.

The Act is subject to a facultative referendum. In addition, the Federal Council will issue an implementing ordinance setting out the practical provisions for the application of the ISA. The Swiss investment screening regime is therefore not expected to enter into force before 2027 at the earliest.

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