

IN-DEPTH

Foreign Investment Regulation

EDITION 14

Contributing editors

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Freshfields, The Law Office of Calvin Goldman, KC

LEXOLOGY

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In-Depth: Foreign Investment Regulation (formerly The Foreign Investment Regulation Review) is an insightful guide to the laws, regulations, policies and practices governing foreign investment in key international jurisdictions. With an eye towards recent developments, it focuses on practical and strategic considerations – including the key steps for foreign investors planning a major acquisition, or otherwise seeking to do business in a particular jurisdiction.

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Introduction

On 19 December 2025, the Swiss Federal Parliament adopted the Federal Investment Screening Act (ISA), introducing for the first time a statutory foreign direct investment screening mechanism under Swiss law. Entry into force is currently expected for mid-2027.

The ISA establishes a targeted and narrowly framed screening regime rather than a general economy-wide FDI control system. Its scope is strictly limited to acquisitions of domestic undertakings by foreign state investors where such transactions may pose a risk to public order or national security. Private foreign investors fall entirely outside the scope of the regime. The Act defines "acquisitions" as any transaction by which one or more investors directly or indirectly acquire control over one or more previously independent undertakings, or parts thereof, in particular by way of a merger, the acquisition of an equity interest, or the conclusion of a contractual arrangement. Only undertakings registered in the Swiss Commercial Register (or parts thereof) qualify as Swiss targets.

A mandatory filing obligation is triggered where a foreign state body, an undertaking with its head office outside of Switzerland that is directly or indirectly controlled by a foreign state body, an asset-holding entity without legal personality directly or indirectly controlled by a foreign state body, or an individual or undertaking acting on behalf of a foreign state body acquires control over a Swiss target operating in a critical sector and where applicable *de minimis* or turnover thresholds are met. The critical sectors concerned include, *inter alia*, defence-critical goods and controlled technologies, electricity and gas infrastructure, water supply, security-critical IT systems for public authorities, hospitals of central importance, pharmaceuticals and medical products, transport hubs and rail infrastructure, telecommunications networks, food distribution centres, and systemically important financial market infrastructures and banks.

The competent authority for the screening is the State Secretariat for Economic Affairs (SECO), acting in coordination with other federal authorities and the Federal Intelligence Service. The substantive standard of review is whether there are grounds to assume that the transaction threatens or endangers public order or national security. Transactions may be approved unconditionally, approved subject to conditions or obligations, or prohibited. The regime is suspensory.

In addition to the ISA, sector-specific investment control regimes continue to apply independently under existing Swiss law, notably in areas such as banking and financial markets, insurance, residential real estate, aviation, telecommunications, nuclear energy, media, defence, gambling, postal services, railways and certain critical infrastructure.

Year in review

The most significant development over the past year is the adoption of the ISA, introducing Switzerland's first dedicated and targeted foreign investment control regime. The legislation follows several years of extensive political debate dating all the way back to 2017, when discussions on introducing a foreign investment screening regime in Switzerland first gained momentum following the acquisition of Syngenta by the Chinese

state-owned enterprise ChemChina, and evolved through a number of legislative proposals before Parliament ultimately adopted the ISA on 19 December 2025. The entry into force of the ISA is currently expected for mid-2027.

Foreign investment regime

Policy

The ISA seeks to address potential security risks arising from foreign state influence over critical Swiss undertakings and services. Sectors considered critical include, inter alia, armaments and dual-use goods, electricity grids and production, water supply, and health, communication and transport infrastructure. The ISA's deliberately narrow scope is intended to protect public order and security while preserving Switzerland's attractiveness for foreign investments.

Laws and regulations

The relevant Swiss legal act is the ISA, which is likely to enter into force in mid-2027.

The provisions of the ISA are further specified in the investment screening ordinance. It sets out the details of the approval requirement and the approval procedure under the ISA. It specifies, inter alia, which states are exempt from the approval requirement and which information and documents must accompany the application. The ordinance further regulates data protection requirements and the applicable fee schedule.

The consultation period for the implementing ordinance and the accompanying explanations, which are expected to clarify a number of practical questions surrounding the ISA, is ongoing and will last until 5 October 2026.

In Switzerland, the competent authority for the screening is the SECO, acting in coordination with other federal authorities and the Federal Intelligence Service.

Scope

Jurisdictional reach of the ISA

The jurisdictional reach of the ISA covers acquisitions by foreign state investors of Swiss-registered undertakings operating in relevant sensitive sectors.

Foreign state investor

Only acquisitions by foreign state investors fall within the scope of the ISA. Domestic acquirers and private foreign investors are excluded. Under the ISA, a "foreign state investor" is defined as any of the following persons or entities that intend to acquire a Swiss-registered undertaking:

- a foreign state body;

- an undertaking having its registered office outside Switzerland that is directly or indirectly controlled by a foreign state body;
- a legal entity (asset holding entity such as a fund company) that is directly or indirectly controlled by a foreign state body;
- a natural or legal person acting on behalf of a foreign state body.

Additionally, the ISA provides for the possibility of exempt (or preferred) investors on a country-specific basis. In particular, the Federal Council may exempt acquisitions by foreign state investors from certain jurisdictions from the prior approval requirement, provided that sufficient cooperation exists with those jurisdictions to prevent or mitigate risks to public order or national security. Currently, the investment screening ordinance foresees all 30 European Economic Area member states to benefit from such exemption.

Swiss-registered target undertaking

The ISA applies to acquisitions of Swiss undertakings or part thereof. A target qualifies as a Swiss undertaking if it is registered in the Swiss commercial register, regardless of whether it generates Swiss sales

Having employees in Switzerland alone is not sufficient to trigger jurisdiction. However, for certain infrastructure and defence sectors, mandatory approval applies already if the target has an average worldwide workforce of at least 50 full-time equivalents or an average worldwide annual turnover of at least 10 million Swiss francs (approximately €10.5 million), as outlined below.

Sensitive sectors

A domestic undertaking's activity in the following sensitive sectors triggers mandatory filing obligations:

- the manufacture of defence-critical goods or the transfer of intangible assets essential to the operational capability of the Swiss armed forces, other federal security authorities, or international space programmes, where export or transfer is subject to authorisation under Swiss export control laws;
- electricity transmission networks and electricity distribution networks (grid level 3 or below);
- electricity generation facilities;
- high-pressure gas transmission pipelines;
- water supply serving more than 100,000 inhabitants in Switzerland;
- the provision of central security-critical IT systems or services for Swiss public authorities;
- university hospitals and general hospitals with central care functions;
- research, development, production or distribution of pharmaceuticals, medical devices, vaccines or personal medical protective equipment;
-

major domestic transport hubs and infrastructures, including ports, airports, intermodal freight terminals and railway infrastructure;

- significant domestic food distribution centres;
- domestic telecommunications networks;
- systemically important financial market infrastructures; and
- systemically important banks.

Besides, the Federal Council may also temporarily extend the approval requirement to additional sectors for a period of up to 12 months, renewable once for a further 12 months, where this is necessary to safeguard public order or national security.

Acquisition of control

The ISA does not prescribe a minimum shareholding or voting rights threshold. Rather, jurisdiction is triggered by the direct or indirect acquisition of sole or joint control over a previously independent undertaking (or part thereof), with control being the ability to exercise decisive influence over the undertaking's business activities and strategic decisions, irrespective of whether such influence is actually exercised.

Control may be acquired by various means, including shareholdings, contractual arrangements (such as shareholders' agreements or management contracts), or mergers, and may be sole or joint, direct or indirect. Although control is often presumed at around 50% of the voting rights, it may arise at significantly lower levels.

Options and other contingent rights, such as conversion rights under convertible loans or bonds, generally do not confer control and therefore do not trigger a filing obligation. Jurisdiction arises only upon exercise of the relevant rights, unless a legally binding arrangement makes their exercise imminent (eg, a mandatory convertible bond).

Mandatory screening

Not every transaction within the jurisdictional reach of the ISA warrants a mandatory filing. Rather, mandatory filing applies only to acquisitions within the following *de minimis* thresholds:

- For undertakings active in sectors listed as the first six items above, mandatory filing is required if, in the two financial years preceding the submission of the application, the undertaking employed on average at least 50 full-time equivalents worldwide or generated an average worldwide annual turnover of at least 10 million Swiss Francs (approximately €10.5 million).
- For undertakings active in sectors listed as in the remaining seven items above, mandatory filing is required if, in the two financial years preceding the submission of the application, the undertaking generated an average worldwide annual turnover, or, in the case of banks, gross income, of at least 100 million Swiss Francs (approximately €105 million).

Voluntary screening

The ISA does not provide for voluntary filings. However, a Swiss-registered undertaking may request a binding advance ruling (preliminary decision) to determine whether it is subject to mandatory filing. Beyond this mechanism, the ISA does not provide for voluntary filings for transactions falling outside its mandatory filing requirements.

Procedures

Where the filing requirements are met, the civil-law effectiveness of an acquisition is suspended until approval is granted.

The responsibility for filing the application to SECO lies with the foreign state investor. Conversely, SECO also has *ex officio* powers to initiate a review where there is a suspicion of non-compliance with or circumvention of the mandatory filing requirement. In such cases, SECO opens an approval procedure on its own initiative. The statutory Phase I review period begins only once SECO is in possession of the information required for a complete filing. Once a procedure is initiated, the ordinary statutory review periods apply.

Regarding the standard of review, under the ISA, a transaction must be approved unless it threatens or endangers Switzerland's public order or national security. The ISA provides for the following indicative assessment factors:

- the security-relevant track record of the foreign investor;
- espionage activities or attempts;
- sanctions imposed under Swiss embargo or trade legislation;
- the substitutability, within a reasonable time frame, of the target's services, products or infrastructures; and
- access to security-relevant information or particularly sensitive personal data.

The approval may be subject to conditions or require divestments where this eliminates the threat to Switzerland's public order or national security.

The relevant review periods and possible outcomes are the following:

- Preliminary decision: SECO issues a binding preliminary decision on whether a target company is subject to the law within two months of receipt of a complete application. The preliminary decision is valid for 12 months and may be extended once by a further 12 months.
- Phase I (initial review): Following submission of a complete application, SECO decides within one month whether the transaction can be approved directly or whether a formal review (Phase II) must be initiated.
- Phase II (formal review): In case of a formal review, SECO must decide within three months from the initiation of the review whether to approve the transaction.
- If SECO or a participating authority opposes approval, or if the case is of significant political importance, the Federal Council decides; in such cases, the review periods may be extended.
-

Deemed approval: If no decision is issued within the applicable statutory deadlines of one month in Phase I and three months in Phase II (see above), the transaction is deemed approved.

- Extensions: SECO may extend the review periods where delays are attributable to the parties, where information from foreign authorities is pending, or where the Federal Council decides on the approval.

Failure to comply with the regime may result in significant administrative sanctions. In particular, the undertaking resulting from the acquisition may be fined up to 10% of the average worldwide annual turnover generated by the domestic undertaking in the two financial years preceding the acquisition if a transaction subject to mandatory filing is completed without approval, approved on the basis of incorrect information, if remedial measures are not implemented, or if conditions or obligations are breached.

Moreover, foreign state investors and domestic undertakings that fail to comply, or only partially comply, with their information obligations may be fined up to 100,000 Swiss francs (approximately €105,000).

Finally, decisions issued under the approval procedure may be appealed to the Swiss Federal Administrative Court. Standing to appeal is limited to the foreign state investor and the domestic undertaking.

Prohibition and mitigation

Not applicable, as the ISA is not yet in force.

Sector-specific requirements

Prohibited sectors

The ISA does not impose sector-wide prohibitions on foreign investment. Rather, it establishes a range of sensitive sectors in which acquisitions of foreign state investors may require approval.

Restricted sectors

The 13 restricted sectors in which the ISA may mandate filing obligations are outlined above.

In addition to the ISA, Switzerland maintains several sector-specific foreign investment control rules that continue to apply alongside the ISA.

Lex Koller

The acquisition of Swiss real estate by foreign investors is subject to the restrictions of the *Lex Koller*, particularly where residential or other non-commercial property is concerned. The decisive factor is whether the property qualifies as commercial or

residential. Commercial real estate (eg, offices, manufacturing facilities, warehouses, retail premises, hotels and restaurants) can generally be acquired without prior approval, whereas residential property typically requires an authorisation, which is granted only in limited circumstances. Restrictions may also apply to commercial properties containing residential components, undeveloped building land, vacant premises or land acquired for future expansion without sufficiently concrete development plans.

Federal Banking Act

Foreign-controlled Swiss banks are subject to additional licensing requirements. A bank is considered foreign-controlled where foreign investors directly or indirectly hold a majority of the voting rights or otherwise exercise a controlling influence.

In such cases, the bank's corporate name must not suggest Swiss control. In addition, the country of domicile of the qualifying shareholders must generally grant reciprocal market access to Swiss banks and refrain from imposing more restrictive conditions than those applicable in Switzerland. This reciprocity requirement does not apply to World Trade Organization member states. The Swiss Financial Market Supervisory Authority may also require adequate consolidated supervision by a foreign supervisory authority where the bank forms part of an international financial group.

Telecommunications Act

Subject to applicable international obligations, foreign telecommunications providers may be denied access to radio frequencies, numbering resources or spectrum licences if their home jurisdiction does not grant equivalent rights to Swiss operators

Nuclear Energy Act

Foreign-controlled companies may be denied a licence to construct or operate nuclear installations where their home state does not grant reciprocal rights. Foreign applicants must also maintain a Swiss branch registered in the commercial register.

Radio and Television Act

The competent authority may refuse to grant broadcasting licences to foreign-controlled entities or non-Swiss applicants where the relevant foreign jurisdiction does not afford equivalent rights to Swiss broadcasters, subject to applicable international obligations.

Aviation Act

Commercial air transport to and from Switzerland requires an operating licence from the Federal Office of Civil Aviation (FOCA). Foreign carriers are generally granted a licence only where no material Swiss interests are adversely affected and the carrier's home state grants Swiss airlines equivalent market access. In justified cases, the reciprocity requirement may be waived.

Typical transactional structures

Foreign investors establishing new operations in Switzerland or pursuing M&A transactions involving Swiss undertakings will have to assess at an early stage whether the contemplated structure falls within the ISA's approval requirement. In this respect, the following additional legal considerations may also be relevant:

- While the ISA's definition of acquisition of control is modelled on the control concept under Swiss merger control law, it departs from that framework in one significant respect: the ISA applies to joint ventures irrespective of whether they perform all functions of an autonomous economic entity (ie, full functionality). This may result in unexpected divergence between the two regimes in relation to the notifiability of joint ventures.
- Neither internal reorganisations nor greenfield investments fall within the scope of the ISA.
- Likewise, acquisitions of real estate are outside of the scope of the ISA but may be subject to tight restrictions under the *Lex Koller* regime (see above).

Other strategic considerations

None yet, as the ISA is not yet in force.

Special considerations

None yet, as the ISA is not yet in force.

Outlook and conclusions

The ISA is expected to enter into force in mid-2027, following the adoption of the implementing ordinance, which is currently under consultation. In future Swiss transaction practice, the screening analysis will therefore need to be conducted at an early stage and coordinated with merger control and sector-specific approvals. However, given the ISA's focus on acquisitions by foreign state investors in narrowly defined sectors, its impact should remain concentrated on a limited category of transactions rather than materially restricting foreign investment more generally.



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