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Introduction of Foreign Investment Control – Swiss Federal Council publishes draft legislation and disptach for parliament

Switzerland does not yet have an overarching regime for the screening of foreign direct investments in place. The draft legislation published on 15 December 2023 seeks to introduce a targeted sector-specific foreign investment control regime in Switzerland and aims to regulate acquisitions of domestic companies operating in particularly critical sectors by foreign state-controlled investors. The "state-controlled" criterion is intended to include private investors, provided they are directly or indirectly controlled by a state. The legislation is not expected to enter into force before 2025/2026.

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Acquisitions subject to investment control

A *sector-specific review* is proposed to be introduced, on the one hand, for acquisitions of domestic companies active in particularly critical sectors such as the defence industry or dual-use goods, the operation of energy infrastructure or water supply as well as security-related IT services. A general exemption (*de minimis*) is foreseen for acquisitions of small domestic companies (with less than 50 full-time employees and worldwide annual turnover of less than CHF 10 million in the past two business years).

On the other hand, investment screening should also enocompass companies in sectors in which risks to public order or security cannot be completely ruled out. This second category includes, for example, university hospitals, companies in the field of research, development, production and distribution of pharamceutical products, medical devices and vaccines as well as in the area of central transport, distribution, telecommunications or financial market infrastructures. For this category of companies, only acquisitions exceeding a turnover threshold of CHF 100 million have to be notified, according to the proposal.

Approval Procedure

The draft legislation provides that the State Secretariat for Economic Affairs (SECO) shall be responsible for carrying out the investment screening. The SECO has to decide within one month whether the acquisition can be authorised directly or whether a review procedure needs to be initiated.

If there is disagreement between the administrative units involved in the investment screening procedure regarding a prohibition or if the decision is of considerable political significance, the Federal Council shall decide.

Substantive Test

Transactions under review will be approved if there are no indications that they endanger or threaten public order or security. According to the draft legislation, an authorisation could be refused if the foreign state investor was or is involved in activities that have a detrimental effect on public order or security in Switzerland or other states, or if the takeover gives the foreign state investor access to important security-relevant information.

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