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Foreign Direct Investment Regimes 2025

Sixth Edition

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1 Foreign Investment Policy

1.1 What is the national policy with regard to the review of foreign investments (including transactions) on national security and public order grounds?

Switzerland is one of the world's largest recipients of foreign investments and one of the world's largest investors abroad. Accordingly, Switzerland has so far maintained a policy of openness towards foreign investment. Currently, there is no generally applicable law regarding the screening of foreign investments. There are, however, sectoral laws regulating or restricting foreign investments, particularly in the banking and real estate sectors, and in telecommunications, nuclear energy, radio and television, and aviation. Under Swiss competition law, the merger of independent undertakings or the acquisition of direct or indirect control over an undertaking is subject to control by the Swiss Competition Commission ("ComCo") if certain thresholds are reached.

1.2 Are there any particular strategic considerations that the State will apply during foreign investment reviews? Is there any law or guidance in place that explains the concept of national security and public order?

Since there is currently no general law regulating foreign investments, strategic considerations that the State will apply during foreign investment reviews are sector-related – e.g., with regard to foreign investments in real estate, the State, among other things, takes into consideration the general situation in the real estate market in a given location and the purpose and circumstances of the real estate purchase. When licensing and supervising a bank or financial institutions, the Swiss Financial Market Supervisory Authority ("FINMA") takes into account "qualified" foreign participation when granting licences to operate.

In Switzerland, the notion of national security is not defined by law. The Swiss Constitution and sectorial laws generally use the term "internal and external security". This most notably includes the defence against threats posed by terrorism, violent extremism, foreign intelligence services and organised crime, but also any other acts or endeavours that seriously endanger Switzerland's current relations with other States or aim at undermining the constitutional order or peace. The defence against these threats coincides with the notion of national security.

Under Swiss law, the term "public order" includes all rules that are indispensable for the orderly existence of private individuals, whereas the term "public security" means the inviolability of the law, the legal interests of the individuals (life, health, freedom, property, etc.) and the institutions of the State.

1.3 Are there any current proposals to change the foreign investment review policy or the current laws?

In 2018, Parliament mandated the Federal Council to create the legal basis for the screening of foreign direct investments. In response to this mandate, the Federal Council referred a draft bill for a Foreign Investment Screening Act ("FISA") to Parliament in December 2023.

The aim of the FISA is to prevent threats to public order and security originating from the acquisition of domestic companies by foreign investors. The Federal Council assumes that the main threats to public order and security originate from investors under the direct or indirect control of a foreign state. The Federal Council has therefore proposed in its draft bill to only subject investments by state investors in certain critical economic sectors, such as the armaments, electricity or telecommunications sectors, to the FISA. Such investments would have to be notified and approved by the Federal Administration or the Federal Council.

The Economic Affairs and Taxation Committee of the National Council, which is one of the two chambers of Parliament, has largely agreed with the general direction of the draft bill but proposes to extend its personal scope of application not only to state foreign investors but also to non-state foreign investors.

In the second half of 2024 and in 2025, the draft bill is expected to be debated in both chambers of Parliament – first in the National Council, then in the Council of States.

2 Law and Scope of Application

2.1 What laws apply to the control of foreign investments (including transactions) on grounds of national security and public order? Does the law also extend to domestic-to-domestic transactions? Are there any notable developments in the last year?

There is currently no law that provides for a screening of foreign investments in general.

Laws that address foreign investments in specific sectors include the following:

- the Federal Law on the Acquisition of Real Estate by Persons Abroad (so-called "Lex Koller");
- the Federal Banking Act ("Swiss Banking Act") and Federal Act on Financial Institutions ("FinIA");

- the Federal Telecommunications Act;
- the Federal Nuclear Energy Act;
- the Federal Act on Radio and Television; and
- the Federal Aviation Act.

The Swiss Federal Act on Cartels and Other Restraints of Competition and the Ordinance on the Control of Concentrations of Undertakings generally regulate the merger of undertakings or the change of direct or indirect control of an undertaking. Competition law regulates domestic-to-domestic as well as international-to-domestic transactions.

The most important development at the time of writing is the ongoing parliamentary debate on the FISA (see question 1.3 above).

2.2 What kinds of foreign investments, foreign investors and transactions are caught? Is the acquisition of minority interests caught? Is internal re-organisation within a corporate group covered? Does the law extend to asset purchases?

Given that there is currently no law that provides for a screening of foreign investments in general, regulation on foreign investment is sector-specific. The most important sector-specific regulations are listed below.

a. Real estate (Lex Koller)

In principle, the direct or indirect **acquisition of real estate or rights to real estate which give owner-type control rights** in Switzerland by persons abroad (non-Swiss citizens) is prohibited, unless an exception applies. Major exceptions are:

1. EU citizens having residence in Switzerland and UK citizens having residence in Switzerland prior to 1 January 2021 with a so-called "B-permit" or non-EU citizens with a so-called "C-domicile permit".
2. Non-EU citizens with a so-called "B-residence permit" if the object of the transaction is **real estate for personal residential use** or persons abroad in case of holiday apartments (limited in size of the apartment, to certain cantons and subject to certain quotas).
3. The real estate is used for a commercial purpose.
4. Acquisition of real estate by legal heirs as part of an estate, or acquisition from relatives in line of ascent or descent.
5. Residential premises are a minor part of a commercial property and cannot reasonably be separated or acquisition of a company, with a minor share of the assets being residential or excessive land reserves.
6. Acquisition of shares (including a majority) of listed real estate companies.

The **direct acquisition of minority interests in real estate** is also caught by the Lex Koller. Furthermore, in case of a real estate company in the sense of the Lex Koller, even the acquisition of one share is prohibited.

Internal re-organisation within a corporate group is subject to regulation by the Lex Koller if it results in control by persons abroad within the meaning of the law as defined above.

b. Banking

Banks require a licence from FINMA to commence banking activities in Switzerland. This is also applicable to *foreign banks* that establish a Swiss branch or appoint a permanent representative in Switzerland.

The **establishment of a controlling foreign influence** in *Swiss banks* is also subject to regulation by the Swiss Banking Act. If there is a **controlling foreign influence**, FINMA may make the granting of a licence subject to the additional condition that the countries in which the foreigners that exercise a controlling foreign influence are domiciled or headquartered grant reciprocity (provided that there are no international obligations to the contrary). FINMA may also require the use of a company name that does not indicate or suggest a Swiss character of the bank.

The **acquisition of minority interests** is considered a controlling foreign influence if a plurality of foreigners with qualified shareholdings jointly exercises a controlling influence. Also, any individual or legal entity that directly or indirectly hold equity interest in a Swiss bank of at least 10% of the capital or voting rights or whose business activities are otherwise such that they may influence the Swiss bank in a significant manner deemed to have a qualified participation. Such individuals or legal entities must notify FINMA prior to directly or indirectly acquiring or selling their qualified participation in a Swiss bank. A notification obligation to FINMA also exists in cases where a qualified participation is increased or reduced in such a way as to reach, exceed or fall below the thresholds of 20%, 33% and 50% of the capital or voting rights, respectively.

Internal re-organisation within a corporate group is also covered, subject to the following condition: if a Swiss bank becomes foreign-controlled after its establishment or if there is a change in a pre-existing controlling foreign influence, additional authorisation is required.

A Swiss bank's board members and management must notify FINMA of all matters that could imply that the Swiss bank is under foreign control or that there has been a change in foreign shareholders with qualified equity interest.

If a Swiss bank belongs to a financial group or a financial conglomerate, FINMA may make the licence conditional on the approval of the relevant foreign supervisory authorities.

Any Swiss bank with controlling foreign influence must provide the Swiss National Bank with information on its scope of business activities and its relationships abroad.

c. Financial institutions

Foreign financial institutions that have their registered office abroad and that wish to establish a branch in Switzerland that employs persons who perform any of the below listed activities in the name of the foreign financial institution on a permanent commercial basis in or from Switzerland require authorisation from FINMA:

- asset management or trustee activities;
- portfolio management for collective investment schemes or occupational pension schemes;
- securities trading;
- conclusion of transactions; or
- client account management.

A **foreign financial institution** is any entity organised under foreign law that:

- possesses authorisation abroad as a financial institution;
- in the company name, in the description of its business purpose or in commercial documents uses terms such as portfolio manager, trustee, manager of collective assets, fund management company or securities firm or terms of similar meaning; or
- operates a financial institution acting as portfolio manager, trustee, manager of collective assets, fund management company or securities firm.

FINMA may additionally make the authorisation conditional upon the granting of a **reciprocal right** in the State in which the foreign financial institution is domiciled.

Foreign fund management companies are prohibited from establishing branches in Switzerland.

The **acquisition of minority interests, internal reorganisation or asset purchases** by foreign financial institutions are not specifically regulated by the FinIA. However, it should be noted that persons who directly or indirectly acquire a qualified participation (i.e., hold at least 10% of the share capital or votes or who can significantly influence the business activities of the Swiss financial institution) in a Swiss financial institution must notify FINMA. This notification obligation also exists where a qualified participation is increased or reduced in such a way as to reach, exceed or fall below the thresholds of 20%, 33% or 50% of the share capital or votes. In addition, in case of changes in facts that call into question prudent and sound business activity on the part of the Swiss financial institution owing to the influence of owners or qualified participation, the Swiss financial institution must obtain prior authorisation from FINMA in order to proceed with its activity. In this context, FINMA states that changes in qualified participation in foreign-controlled Swiss financial institutions require authorisation.

d. Telecommunications

The Telecommunications Act restricts access to the telecommunications market for foreign service providers. The competent authority may:

- prohibit foreign service providers from using radio frequencies or addressing resources unless reciprocal rights are granted by a foreign service provider's country of domicile; and
- refuse to grant a radiocommunications licence to foreign service providers unless reciprocal rights are granted by a foreign service provider's country of domicile.

Foreign service providers are defined as telecommunications providers that are organised under foreign law.

The **acquisition of minority interests, internal reorganisation** or **asset purchases** by foreign financial institutions are not specifically regulated by the Telecommunications Act.

2.3 What are the sectors and activities that are particularly under scrutiny? Are there any sector-specific review mechanisms in place?

There are sectoral laws regulating or restricting foreign investments, particularly in the banking and real estate sectors, telecommunications, nuclear energy, radio and television and aviation (see questions 2.1 and 2.2 above).

2.4 Are terms such as 'foreign investor' and 'foreign investment' defined in the law?

Terms such as "foreign investor" and "foreign investment" are defined in various statutes, e.g. the Lex Koller, the Swiss Banking Act, the FinIA and the Telecommunications Act.

a. Real estate

Foreign investors (the legal term used in the Lex Koller is "person abroad") are defined as: foreigners domiciled abroad; foreigners domiciled in Switzerland, who are nationals of neither an EU nor an EFTA Member State and who do not hold a valid C settlement permit, citizens of the UK who took residence in Switzerland after 1 January 2021; companies that have their registered office abroad (even if they are Swiss-owned); and Swiss legal entities or companies with or without legal personality but capable of owning property and which are controlled by persons abroad.

A **foreign investment** (the term is not used by the law) is any direct or indirect acquisition of real estate or rights that give owner-type control rights over real estate in Switzerland (including the financing of the acquisition of real estate under certain conditions; see question 2.2 above).

b. Banking

A **foreign investor** is:

a. any person who has neither Swiss citizenship nor a Swiss residence permit; or
b. any legal entities and partnerships domiciled abroad or, if they are domiciled in Switzerland, controlled by a person pursuant to letter a.

A **foreign investment** (the term used is "controlling foreign influence") in a Swiss bank occurs when a foreign investor directly or indirectly holds more than half of the voting rights or exercises a controlling influence by other means.

c. Financial institutions

A **foreign investor** (the term used is "foreign financial institution") is any entity organised under foreign law that is active in the regulated financial industry fulfilling the criteria pursuant to Article 76 Federal Ordinance on Financial Institutions (see question 2.2 above).

Foreign investment is not a relevant term in this area of regulation. However, note that in relation to changes in qualified participations in a foreign-controlled Swiss financial institution, FINMA states that such changes require authorisation (see question 2.2 above).

d. Telecommunications

A **foreign investor** (the term used is "foreign service provider") is defined as an undertaking organised under foreign law.

Foreign investment is not a relevant term in this area of regulation.

2.5 Are there specific rules for certain foreign investors (e.g. non-EU/non-WTO), including state-owned enterprises (SOEs)?

a. Real estate

For **natural** persons, the applicable law distinguishes **between nationals of an EU or an EFTA Member State, nationals of the UK and Northern Ireland, and nationals of other countries**. Nationals of an EU or EFTA Member State and of the UK and Northern Ireland who have taken residence in Switzerland prior to 1 January 2021 that have residence in Switzerland with the so-called "B-residence permit" and other non-Swiss nationals domiciled in Switzerland with the so-called "C-domicile permit" are exempt from the Lex Koller. Other nationals having residence in Switzerland with the so-called "B-residence permit" may acquire residential real estate, but only for their own personal use.

For **legal entities**, the applicable law distinguishes between Swiss companies, which are controlled by Swiss nationals, companies that have their registered office abroad and Swiss companies that are controlled by persons abroad. No distinction is made between companies domiciled or controlled by persons that are EU/WTO or non-EU/non-WTO members.

The applicable law does not distinguish between **private and State-owned enterprises**.

b. Banking

For persons residing in Switzerland, the applicable law distinguishes between **foreigners with a Swiss residence permit** and those without. Only foreign influences by non-Swiss nationals **without a Swiss residence permit** are subject to the applicable restrictions. In relation to legal entities and partnerships, the applicable law distinguishes between legal entities and partnerships domiciled in Switzerland and those that are domiciled abroad or domiciled in Switzerland but controlled by a foreign individual (see questions 2.2 and 2.4 above). No distinction is made between individuals or legal entities and partnerships that come from countries with EU/WTO and non-EU/non-WTO membership.

The applicable law does not distinguish between **private and State-owned enterprises**.

c. Financial institutions

There are no specific rules distinguishing between foreign investors from EU/WTO and non-EU/non-WTO countries.

The applicable law does not distinguish between **private and State-owned enterprises**.

d. Telecommunications

The Telecommunications Act does not contain any distinctions between foreign undertakings from EU/WTO and non-EU/non-WTO members.

2.6 Is there a local nexus requirement for an acquisition or investment? If so, what is the nature of such requirement (sales, existence of subsidiaries, assets, etc.)?

Generally speaking, the above-mentioned authorisation and licensing requirements only apply to business activities in Switzerland. However, the applicable law should be assessed for each individual case.

2.7 In cases where local presence is required to trigger the review, are outward investments and/or indirect acquisitions of local subsidiaries and/or other assets also caught (e.g. where a parent company outside of the jurisdiction is acquired which has a local subsidiary in the jurisdiction)?

The above-mentioned authorisation and licensing requirements generally cover both the direct and indirect acquisition of local subsidiaries and/or other assets. Outward investments are generally not covered; however, the applicable law should be assessed for each individual case.

3 Jurisdiction and Procedure

3.1 What conditions must be met for the law to apply? Are there any financial or market share-based thresholds?

For the requirements set out by the above-mentioned laws, see question 2.2 above.

The above-mentioned laws do not contain any thresholds. The only exception is the Cartel Act, where the obligation to notify a transaction for the purpose of merger control is dependent on reaching certain threshold values. However, Swiss merger control applies to both domestic and foreign investors.

3.2 Do the relevant authorities have discretion to review transactions that do not meet the prescribed thresholds?

There are no prescribed thresholds that apply to any of the above-mentioned authorisation and licensing procedures.

3.3 Is there a mandatory notification requirement? Is it possible to make a notification voluntarily? Are there specific notification forms? Are there any filing fees?

Notification is mandatory if the above-mentioned requirements are met (see question 2.2 above). Further obligations to notify may apply depending on the relevant industry sector and the individual circumstances of the investor; for example, under the Swiss Banking Act, a Swiss bank's board members and management must notify all matters that could imply that the Swiss bank is under foreign control or that there has been a change in foreign shareholders with qualified equity interest to FINMA. Furthermore, any Swiss bank with controlling foreign influence must inform the Swiss National Bank of the scope of its business activities and its relationships abroad.

Furthermore, for both Swiss banks and Swiss financial institutions, changes in qualified participations must be notified to FINMA (see question 2.2 above).

Generally, no specific form has to be used. This may vary depending on the applicable law and the relevant procedure.

The competent authorities usually charge administrative fees to cover their expenses.

3.4 Is there a 'standstill' provision, prohibiting implementation pending clearance by the authorities? What are the sanctions for breach of the standstill provision? Has this provision been enforced to date?

Pending authorisation or licensing, the regulated foreign investments mentioned above may generally not be executed.

Failure to comply is subject to punishment; for example, failure to comply with the Lex Koller is **punishable** with a fine of up to 50,000 Swiss Francs, with a monetary penalty or with imprisonment of up to three years. Similar or higher penalties apply in the financial sector and the telecommunications industry. Penalties, once issued, are usually enforced.

3.5 In the case of transactions, who is responsible for obtaining the necessary approval?

The seller or purchaser can obtain a ruling that the acquisition of a certain property is not subject to the Lex Koller. If an approval is required (e.g., in case of a holiday apartment), the purchaser of real estate is responsible for obtaining the necessary authorisation. The Land Registry and the Commercial Registry are responsible for refusing registration of transactions that violate the Lex Koller or for referring unclear transaction to the supervisory authority for the decision.

With regard to investments in the financial and the telecommunications sectors, the company that wants to engage in telecommunications or banking activities or provide financial services as a financial institution in Switzerland is responsible for obtaining the necessary licences.

3.6 Can the parties to the transaction engage in advance consultations with the authorities and ask for formal or informal guidance (e.g. whether a mandatory notification is required, or whether the authority would object to the transaction)?

It is usually possible to contact authorities in advance to ask for informal guidance as to whether the authorities would object to a transaction. Such guidance might be given orally or in writing depending on the authority and is not binding. Authorities do not have to provide such informal guidance and may also refuse to comment.

3.7 What type of information do parties to a transaction have to provide as part of their notification?

An investor, generally, must submit a complete application including supporting documentation to show that an investment is eligible for authorisation.

3.8 What are the risks of not notifying? Are there any sanctions for not notifying (fines, criminal liability, invalidity or unwinding of the transaction, etc.) and what is the current practice of the authorities?

Violation of the above-mentioned laws usually triggers severe administrative (e.g., fines) and penal sanctions (e.g., imprisonment; also see question 3.4 above). In some cases, licences can be revoked and transactions reversed (e.g., by forcing the sale of purchased real estate). The foreign investment provisions in the above-mentioned laws are usually enforced vigorously.

3.9 Is there a filing deadline, and what is the timeframe of review in order to obtain approval? Is there a two-stage investigation process for clearance? On what basis will the authorities open a second-stage investigation?

Investments must generally be notified before execution of a transaction. Apart from this, there are usually no filing deadlines.

The timeframe of review in order to obtain approval depends on the completeness and complexity of the application. There is generally no two-stage investigation process for clearance of a transaction.

3.10 Can expedition of review be requested and on what basis? How often has expedition been granted?

The above-mentioned laws generally do not provide for an expedition of review. Some cantonal and federal authorities are receptive to requests for expedition of review. They cannot, however, be forced to expedite the procedure.

3.11 Can third parties be involved in the review process? If so, what are the requirements, and do they have any particular rights during the procedure?

Under the Lex Koller, third parties with a legally valid interest in the authorisation or rejection of a real estate transaction can challenge the authorisation of the rejection of a real estate transaction or the ruling that a certain transaction is exempt from the approval requirement (i.e., exempt from the Lex Koller). Such third parties include the cantonal supervisory authority of the approval authority and the Federal Office of Justice.

Under the remaining sector-specific foreign investment provisions, third parties are usually not involved in the review process.

3.12 What publicity is given to the process and how is commercial information, including business secrets, protected from disclosure?

In principle, pending legal proceedings are not open to the public and the files cannot be consulted by the press or persons that are not a party to the proceedings.

First instance decisions are usually not published, but can be accessed upon request. Privacy and business secrets must be protected, which is why judgments are usually published or handed out anonymously.

In accordance with the principle of publicity, court rulings are either published or can be accessed by the public upon request.

The authorities collect statistical data on all authorisations under the Lex Koller and by FINMA.

3.13 Are there any other administrative approvals required (cross-sector or sector-specific) for foreign investments?

No additional administrative approvals are required specifically for foreign investments. However, foreign investors need to comply with the same laws as domestic investors; for example, a foreign investment that reaches the thresholds set out in the merger control regulation needs to be notified just like a domestic investment.

4 Substantive Assessment

4.1 Which authorities are responsible for conducting the review?

a. Real estate

The cantonal authority within whose jurisdiction the real estate or the portion of the real estate with the highest value is located is responsible for establishing whether prior authorisation is required. The cantons designate the competent authority.

b. Banking and financial sector

The competent authority for conducting the review is FINMA.

c. Telecommunications

The competent authority for conducting the review regarding the use of radio frequencies subject to licensing and administration at a national level is the Federal Office of Communication ("OFCOM").

Mobile radio licences are awarded by the Federal Communications Commission ("ComCom") by means of a call for tenders.

4.2 What is the applicable test and what is the burden of proof and who bears it?

The applicable test and the burden of proof differs depending on the applicable sectorial regulation.

In principle, the party applying for a licence or authorisation must show that the respective requirements are fulfilled. Applicants are obliged to cooperate throughout the proceedings by answering the authority's questions and by clarifying facts where necessary.

4.3 What are the main evaluation criteria and are there any guidelines available? Do the authorities publish decisions of approval or prohibition?

a. Real estate

Regarding the evaluation criteria see question 2.2 above. The Federal Office of Justice has published a guideline on the acquisition of real estate by persons abroad (downloadable here: https://www.bj.admin.ch/bj/en/home/wirtschaft/grundstueckerwerb.html).

b. Banking

A foreign bank can only obtain a licence if there are no doubts that all of the licensing requirements are met or can be met.

The most important requirements are the guarantee of irreproachable business activities by the foreign bank's qualified investors and executive management, appropriate supervision, adequate organisation, sufficient finances and staff, etc.

c. Financial institutions

A foreign financial institution can only receive authorisation if all of the requirements are met, notably proof of adequate supervision, no objections by the foreign supervisory authority, adequate organisation, adequate financial resources, management meets the requirements for proper business conduct, proof of compliance with the provisions of the Federal Act on Financial Services and proof of affiliation to a supervisory organisation if they operate as a portfolio manager or trustee.

4.4 In their assessment, do the authorities also take into account activities of foreign (non-local) subsidiaries in their jurisdiction?

The activities of foreign subsidiaries can be considered if this is necessary to assess whether the requirements for authorisation of a foreign investment set out by the respective law are met.

4.5 How much discretion and what powers do the authorities have to approve or reject transactions on national security and public order grounds? Can the authorities impose conditions on approval?

The authorities have a certain degree of discretion in assessing whether the legal requirements for the authorisation or licensing of a foreign investment are met. This discretion must be exercised in a reasonable manner. The above-mentioned laws do not provide for rejection of an application solely based on political grounds.

The authorities may approve an investment on condition that a requirement not met at the time of application is met at a later stage.

4.6 Is it possible to address the authorities' objections to a transaction by the parties providing remedies, such as by way of a mitigation agreement, other undertakings or arrangements? Are such settlement arrangements made public?

If the requirements for approval or licensing are not met at the time of application, the parties may demonstrate that they can meet the requirements at a later date. The authorities have some discretion in determining whether the parties meet the requirements. However, the requirements themselves can only be changed by the legislator.

4.7 Can a decision be challenged or appealed, including by third parties? On what basis can it be challenged? Is the relevant procedure administrative or judicial in character?

Any decision issued by a Swiss authority can be appealed before the competent appeal authority or court. The procedure must be determined separately for each regulated sector. Grounds for appeal are generally the violation of the law, the incorrect and/or incomplete determination of the facts and inadequacy. The appeal procedure is normally judicial in character.

4.8 Are there any other relevant considerations? What is the recent enforcement practice of the authorities and have there been any significant cases? Are there any notable trends emerging in the enforcement of the FDI screening regime?

Since there is no generally applicable Swiss law on foreign investment, the enforcement practice of the authorities must be assessed for each sector specifically.

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