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Switzerland: Parliament Passes New FDI Law

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In brief

The Swiss Parliament recently adopted the new Swiss Federal Investment Screening Act (ISA), introducing a new mandatory foreign direct investment (FDI) review and approval regime for acquisitions of certain Swiss companies by state-controlled foreign investors. The law reflects Switzerland's traditionally liberal approach by applying only to state-controlled foreign investors and closely defined targets. It sets high filing thresholds to preserve openness to foreign investments in times of international trade disruptions. The new regime is expected to enter into force by early 2027, following the issuance of implementing ordinances and conclusion of a potential popular referendum process.

1. Background

On 19 December 2025, the Swiss Parliament decided to introduce a foreign direct investment (FDI) regime in Switzerland and approved the ISA in its final vote.

The idea of reviewing foreign takeovers of Swiss companies has been on the Swiss Parliament's agenda for five years. In March 2020, the Swiss Parliament adopted motion no. 18.3021, "Protection of the Swiss economy through investment controls," also known as the "Rieder" motion, instructing the Federal Council — the Swiss government — to create the legal basis for controlling FDI in Swiss companies. Following consultations with the Swiss cantons, political parties, concerned national organizations and other interested parties, the Federal Council fulfilled the parliamentary mandate by submitting an initial draft of the ISA to the Swiss Parliament on 15 December 2023.

Following the first Chamber of Parliament's initial review, which significantly broadened the scope of the draft law, parliamentary deliberations ultimately narrowed it down again, and both chambers of Parliament reached a compromise closely aligned with the Federal Council's original proposal. This outcome is in line with the Swiss government's consistent opposition to introducing an extensive investment screening regime, citing an unfavorable cost-benefit ratio of hampering foreign investments and considering the existing (sector-specific) regulatory framework largely sufficient. Consequently, both the Federal Council's initial draft and the now-adopted ISA maintain a narrow, targeted scope designed to produce the desired effects without becoming overly restrictive.

2. Key takeaways

- The limited scope of the Federal Council's initial draft that was strongly advocated for by the Swiss business community ultimately prevailed.
- The scope of the ISA is limited to acquisitions by foreign state investors, as well as private individuals and entities acting on behalf of, or directly or indirectly controlled by, foreign state bodies.
- De minimis and sector-specific thresholds reflect a balanced approach, limiting the approval requirement to sensitive sectors and system-relevant companies.
- The ISA procedurally relies on and adopts concepts tested in merger control proceedings under the Swiss Cartel Act ("**CartA**"), thereby facilitating the planning and implementation process for transactions potentially triggering both merger and foreign investment controls.

- The substantive test under the ISA focuses on whether foreign takeovers could endanger or threaten Swiss public order or security. It thus differs fundamentally from the merger control test. The ISA will hence be implemented and enforced by the State Secretariat for Economic Affairs (SECO), which is generally responsible for Switzerland's international trade and investment relations.

3. Scope of the ISA

Under the ISA, transactions that meet the following **cumulative** requirements will be reviewed:

(i) **Takeovers …**

"Takeovers" are defined as "any transaction whereby one or more investors acquire, directly or indirectly, control of one or more previously independent companies or parts thereof, namely through a merger, the acquisition of a stake or the conclusion of a contract" (Art. 2 let. a ISA). The conclusion of a contract primarily refers to shareholder agreements or management contracts. The definition of a takeover is based on the definition of the concentration of undertakings set out in Art. 4 para. 3 CartA, as well as the concept of control used therein. This allows to assess the "control" requirement based on established Swiss merger control practice. "Control" covers all types and means of establishing decisive influence over a company's activities, essential management issues and general business policy. The number of shares required to qualify as control cannot be determined in absolute terms. It depends on the form of the corporation, as well as other legal and factual circumstances. In the case of a public company, a share of 20% or 30% of the voting rights could be considered sufficient to acquire control, provided that small investors were weak or widely dispersed at the shareholder meetings (Federal Council, Botschaft zum Investitionsprüfgesetz, 15 December 2023, p. 37, with reference to the established merger control practice under the Swiss Cartel Act). The requirement for control indicates that notification is not required when acquiring a pure minority interest, provided that sole or joint control is not acquired.

Acquisitions of foreign parent companies with Swiss subsidiaries are also covered, extending the coverage to indirect control scenarios as well.

(ii) **… of Swiss private and public companies**

The scope further covers any buyer or supplier of goods or services, regardless of their legal or organizational form (by analogy to Art. 2 para. 1bis CartA), provided they are registered in the Swiss commercial register (Art. 2 let. b, c ISA). This means that a domestic subsidiary of a foreign group of companies is also considered a domestic company and is therefore covered by the scope of the ISA. It is irrelevant whether the Swiss subsidiary is already under foreign control, as the perceived danger to public order and security may change depending on who actually exercises control.

(iii) **… by foreign state investors**

The ISA will only apply to takeovers by foreign state investors, whether they are natural or legal persons. "Foreign state investors" are defined as follows:

1. A foreign state body;
2. A company with its head office outside Switzerland that is directly or indirectly controlled by a foreign state body;
3. A company with capacity to acquire property that is directly or indirectly controlled by a foreign state body; or
4. A natural or legal person acting on behalf of a foreign state body (Art. 2(d) ISA).

"Head office" is defined as the actual location where central business and operational activities are conducted. For companies that are part of a group, the location of the group's head office is used as a basis.

As the Federal Council's representative noted during the parliamentary debates, the Federal Council's proposed definition of a state-controlled investor should be interpreted broadly. It also covers cases where a person acts on behalf of a state through instruction or by receiving financial resources, including subsidies or loans, from that state. This broad definition will prevent attempts to circumvent the applicability of the ISA by acting via shell entities or straw men.

(iv) **… that endanger or threaten public order or security in Switzerland**

The ISA primarily pursues a security policy objective, which is underlined in this wording. However, in response to concerns over gaps brought up in the parliamentary debate, the Federal Council assured that this requirement will be understood as implicitly also covering the security of supply of essential goods and services, thereby applying a slightly broader scope than this initial wording implies.

4. Thresholds

In addition to the scope set out above, Art. 3 ISA sets out thresholds for subjecting the abovementioned takeovers to prior authorization under the ISA. The threshold for notifications is set lower if the activity is considered particularly critical from the perspective of public order and security.

	De minimis threshold	Sector-specific threshold
Art. 3 para. 1 ISA	Target company (i) With an average of at least 50 full-time employees worldwide, or (ii) Which has generated an average annual turnover of at least CHF 10 million worldwide in the last two financial years	Companies that: • Manufacture goods or transfer intellectual property, which (i) are of critical importance for the operational capability of the Swiss Armed Forces, other federal institutions responsible for state security, or space programs in which Switzerland participates under international agreements and (ii) whose export or transfer abroad requires authorization under the War Material Act, • Operate/control domestic electricity transmission grid or distribution grid, grid level 3 or lower, selling at least 450 GWh/year, • Operate/control domestic power plants for electricity production with a minimum capacity of 10 megawatts, • Operate/control domestic high-pressure natural gas pipelines, • Domestically supply water to more than 100,000 residents, or • Supply central security-related IT systems or provide central security-related IT services to domestic authorities
Art. 3 para. 2 ISA	Target company with an average annual turnover worldwide or, in the case of banks, gross income of at least CHF 100 million in the last two financial years	Companies that: • Are domestic university hospitals and general hospitals, • Are systematically relevant banks, • Are active in the field of pharmaceuticals, medical devices, vaccines or personal medical protective equipment, • Operate/control significant domestic hubs for the transport of goods or passengers, namely ports, airports, or transshipment facilities for combined transport, • Operate/control domestic railway infrastructure, • Operate/control major domestic food distribution centers, • Operate/control domestic telecommunication networks, or • Operate/control systematically important financial market infrastructures
Art. 3 para. 3 ISA	Other categories of domestic companies, if so decided by the Federal Council, for a maximum of 24 months	

In accordance with Art. 3 para. 4 ISA, the Federal Council may also exempt acquisitions by foreign state investors from certain countries from the approval requirement if there is sufficient cooperation with those countries to avert dangers and threats to public order and security. This concept is known in other areas of Swiss trade regulations. The Federal Council has not yet published a list of exempted countries.

5. Criteria for authorizing foreign takeovers

As provided for in Art. 4 ISA, a foreign takeover shall be approved, subject to conditions where necessary, if there is no reason to believe that it would endanger or threaten public order or security. Special consideration shall be given as to whether:

(i) The foreign state-controlled investor engages or has engaged in **activities that adversely affect public order or security** in Switzerland or other states.

(ii) The foreign state-controlled investor or its home state seeks or has sought to obtain information about the domestic company through **espionage**.

(iii) The foreign state-controlled investor engages or has engaged in **espionage**.

(iv) The foreign state-controlled investor is directly or indirectly subject to **sanctions**.

(v) The services, products or infrastructure of the domestic company can be **replaced within a reasonable period**.

(vi) Through the acquisition, the foreign state-controlled investor would gain access to significant security-relevant information or to particularly sensitive personal data.

6. Authorization procedure

The procedure, subject to the general provisions of the Administrative Procedure Act, is structured similarly to the merger control procedure set out in the CartA, and the decision rendered by SECO may be appealed before the Federal Administrative Court. The following paragraphs briefly present its phases:

Binding preliminary ruling (Art. 5 ISA)

- **Request for ruling**: A domestic company may apply to SECO for a binding preliminary ruling on whether its acquisition requires prior approval under the ISA.
- **Timeline**: SECO generally issues its ruling within **two months** of receiving a complete application.
- **Validity**: The SECO ruling is valid for 12 months and can be extended once for an additional 12 months upon request.
- **Notification obligation**: The domestic company must notify SECO of any material changes, especially regarding its business activities, size and the like.
- **Revocation**: SECO may revoke its ruling if (i) material changes occur, (ii) the notification obligation is breached or (iii) its ruling was based on incorrect information.

Application and applicable procedure (Arts. 6 and 7 ISA)

- **Application**: The foreign state-controlled investor must apply to SECO before completing the takeover.
- **Timeline**: SECO decides within **one month** of receiving a complete application whether to approve the acquisition directly or initiate a review procedure.
- **Consultation**: SECO's decision is made in coordination with relevant federal authorities and upon consulting the Federal Intelligence Service (FIS), again highlighting the security policy interest at stake.
- **Consensus**: A review procedure is initiated if consensus cannot be reached between the consulted authorities.
- **Notification**: Both the foreign investor and the domestic company are notified thereof by SECO in writing, whereby notice of initiation of the review procedure does not constitute a formal ruling.

Review procedure and implicit approval (Arts. 8 and 9 ISA)

- **Decision timeline**: SECO must decide within **three months** of initiating a review procedure whether to approve the acquisition, in coordination and agreement with relevant federal authorities and again upon consulting the FIS.
- **Federal Council involvement**: The Federal Council renders the decision if SECO or any involved authority opposes approval or if the matter is of significant national political importance.
- **Notification**: The final decision is communicated in writing to both parties. The legal effectiveness of an acquisition requiring approval is suspended until approval is granted.
- **Implicit approval**: If no decision is made within the prescribed time limits, the acquisition is deemed approved.
- **Deadline extensions**: SECO may extend deadlines if (i) delays are caused by the parties, (ii) information from foreign authorities is pending, or (iii) the Federal Council is responsible for the decision. Any extension is communicated in writing to both parties.

Other provisions (Arts. 10-13 ISA)

- **Involved administrative units**: SECO designates the relevant administrative units on a case-by-case basis. Only units of the central federal administration may be considered. Always involved are the State Secretariat of the Federal Department of Foreign Affairs and the State Secretariat for Security Policy.
- **Urgent procedure**: The Federal Council may directly approve an acquisition requiring authorization if necessary to protect public order or security.
- **Ex officio procedure**: SECO has the power to initiate the approval process ex officio if there is suspicion of non-compliance or circumvention.
- **Duty to provide information**: The foreign state-controlled investor, the domestic company, and all other parties involved must provide SECO with all information and documents necessary for a comprehensive review.

7. Outlook

Switzerland has been under pressure by the USA, in particular, to introduce a foreign investment review mechanism, not least in the overall context of aligning Swiss foreign trade and investment rules to Western concepts in place against (certain) foreign investors.

With the ISA, Switzerland has opted for a minimally interventionist approach in introducing a foreign investment review regime by limiting investment screening to foreign state-controlled investors, leaving private investors unaffected. As a result, only a very small number of transactions are expected to fall under the new regime each year. While this preserves Switzerland's openness to foreign direct investment, state-controlled investors planning acquisitions in critical sectors should anticipate possible approval requirements and consider contractual safeguards for extended review periods or even non-approval scenarios.

Under the ISA, transactions face an additional regulatory layer alongside potential merger control requirements. Also, the ISA introduces additional coordination challenges for complex international transactions where Swiss subsidiaries are involved. A coordinated regulatory assessment and processing for both investment screening and merger control is required. Key assessment factors will include the substitutability of the target company's goods, services and infrastructure, as well as access to security-relevant infrastructure, information or sensitive data.

The law is subject to an optional popular referendum, and the Federal Council will have to issue implementing ordinances. Entry into force is expected no earlier than **January 2027**, but companies planning transactions involving Swiss entities should already factor the new approval regime into their investment and M&A planning.

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