

## FDI Guide Switzerland

### Contact

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**Foreword:** A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Switzerland
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>There is no general Swiss act that prohibits or requires specific screening of foreign investment in Switzerland on the basis of national interest regardless of the industry sector. However, foreign investment in companies engaged in certain regulated industries and sectors in Switzerland might require governmental permission or approval.</p> <p>In certain state-licensed undertakings and services, such as the telecoms or nuclear energy sector, granting a <i>federal licence</i> to a foreign undertaking (or to an undertaking with foreign investors) may, among other things, depend on whether reciprocal rights are granted in the country of the respective undertaking or investor.</p> <p>Certain permissions and authorisations are issued on a <i>cantonal (state) level</i>. Whether the grant of a cantonal licence in a given sector might depend on the nationality or foreign residence or domicile of the applicant needs to be assessed on a case-by-case basis.</p> <p>Business sectors with specific licensing/approval requirements for foreign investors include real estate, banking, aviation, telecoms, radio and television, and nuclear energy. Business sectors subject to licensing/approval without explicit licensing</p>

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			<p>requirements for foreign investors include financial industry and insurance, casinos and gambling, defence, postal services, commercial shipping vessels, power and gas installation, and railways.</p> <p>In addition, a number of significant companies that provide key critical infrastructure are <i>owned or controlled by federal, cantonal or local authorities</i>. The authorities may, accordingly, exercise a de facto (foreign and domestic) investment control in respect of these companies. These companies include SBB (Swiss federal railways), Swiss Post, Swisscom (telecom), roads, Swissgrid, power plants (nuclear), public utility companies, Zurich and Geneva airports, Rhine ports, RUAG (defence), Skyguide (air traffic control), public hospitals and universities.</p>
2.	<p><b>Legal regime</b></p> <p><b>Authority(ies) in charge</b></p>	<p>Describe source(s).</p> <p>Name of authority in charge of applying the FDI rules (Minister/Agency/...).</p>	<ul style="list-style-type: none"> <li>• Banking Act;</li> <li>• Federal Act on the Acquisition of Real Estate by Persons outside of Switzerland;</li> <li>• Aviation Act;</li> <li>• Nuclear Act;</li> <li>• Telecommunications Act;</li> <li>• Radio-TV Act;</li> <li>• Federal Act on War Material; and</li> <li>• Federal Act on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods</li> </ul> <p>As Switzerland does not have a general FDI act, there is no single authority in charge. Various authorities on the cantonal and federal level are in charge, depending on the regulated sector.</p>
3.	<p><b>Transactions that may be subject to FDI</b></p> <ul style="list-style-type: none"> <li>• Type</li> </ul>	<p>Describe the nature of the transactions that may be subject to FDI rules.</p>	<p>As a rule, foreign investment controls in the sectors set out above <i>cover all transaction types</i> (asset deal, share deal, financing and other transactions granting control). There are no specific thresholds (except regarding the definition of control, see below). In general, the sector-specific foreign investment regime can also catch</p>

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		<p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>internal reorganisation or intra-company transfers of a local entity, pursuant to which the direct parent company changes, but not the ultimate parent company, for example, in the case of real estate. Swiss law does not provide for any exceptions to this rule for certain types of internal reorganisation. The establishment of a newly incorporated local entity (eg, a greenfield entity or joint venture (JV)) by a foreign investor can trigger a foreign investment filing, for example, in the case of real estate or banking.</p> <p><i>Specific filing triggers</i> apply in certain sectors:</p> <ul style="list-style-type: none"> <li>• real estate: the acquisition of residential, non-developed and agricultural real estate (whether for rent or own use) in Switzerland by foreign investors or foreign-controlled Swiss companies;</li> <li>• banking law: if foreign nationals directly or indirectly hold more than half of the voting rights of, or have, otherwise, a controlling influence on, a bank incorporated under the laws of Switzerland;</li> <li>• Nuclear Act/Telecommunications Act/Radio-TV Act: any undertaking incorporated under foreign law and requesting a licence to be active in Switzerland; and</li> <li>• Aviation Act: any undertaking active in the professional transport of passengers or goods has to request a licence to operate. The competent authorities will grant the licence if a sufficient degree of ownership/control remains with a Swiss citizen or within a Swiss controlled company.</li> </ul> <p><i>Control</i> has a sector-specific definition, for example:</p> <ul style="list-style-type: none"> <li>• real estate: more than one-third of the capital or the voting rights, the majority of the members of the board or the beneficiaries of a foundation, and defined levels of financing; however, the acquisition of one share, not only the control, of a real estate company pursuant to the sector-specific regulation is generally not allowed – the definition of control is only relevant for the question on whether an investor is considered as a foreign investor because companies based in Switzerland that are controlled by foreigners are also considered as foreign investors; and</li> </ul>

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			<ul style="list-style-type: none"> <li>banking law: holding more than 50 per cent of the voting rights or having otherwise a controlling influence.</li> </ul>
	<ul style="list-style-type: none"> <li>Materiality thresholds</li> </ul>	<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>In principle, sector-specific foreign investment regimes also catch indirect acquisitions of domestic entities through a foreign entity or a Swiss entity or greenfield investments (eg, in the case of real estate). In principle, group company internal restructuring might also be covered by the sector-specific foreign investment regimes (ie, no general exemption for group internal restructuring). A filing cannot be ruled out because the target does not have a locally registered/incorporated entity, does not hold any local assets or does not have any contracts with a government entity. However, if the entity does not have any local turnover/operation in Switzerland, a filing can be ruled out.</p> <p><b>Real estate</b></p> <p>The acquisition of residential, non-developed (with the exception of certain permitted reserves) and agricultural real estate (whether for rent or own use) in Switzerland by foreign investors or foreign-controlled Swiss companies is subject to rather strict restrictions under the Swiss Federal Law on Acquisition of Real Estate by Persons Abroad ('Lex Koller'). Both direct investment in real estate and the acquisition of even a single share in a real estate company are generally not allowed. A company qualifies as a real estate company for the purpose of the Lex Koller if the main purpose of the company is to hold real estate covered by the Lex Koller and, therefore, subject to approval. There is no uniform jurisprudence or doctrine regarding the question of when a company is considered to be a real estate company in the sense of Lex Koller. While some take a rather strict approach and consider a company holding non-commercial real estate with a value of more than 20 per cent of the total assets of the company a real estate company in the sense of Lex Koller, others set a higher threshold – 30 per cent or even up to 50 per cent. In general, authorities are not bound in this regard and decide on a case-by-case basis. Certain authorities consider a company with substantially less than 20 per cent residential/non-developed real estate as a real estate company. The request for approval needs to be obtained prior to closing. Even if real estate is already owned by</p>

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			<p>a foreign investor, the sale and purchase of such real estate by a new foreign investor is subject to a new filing.</p> <p>The concept of an ‘acquisition’ under the Lex Koller is defined broadly and can also extend to financing granted by foreign investors and banks to the extent that such financing exceeds standard Swiss bank practice, to long-term leasing or granting of other rights giving control over real estate. An acquisition can be prohibited if it endangers the national policy interest. The acquisition of a holiday home might be permitted if a canton has implemented this possibility in the cantonal regulations and the yearly allocated quota is not exceeded. In limited cases, approval or confirmation that no approval is required can be obtained (eg, the acquisition of non-developed land in the case of the clear and short-term intention to develop a commercial building on such non-developed land). However, in most cases, per se prohibition applies.</p> <p><b>Banking</b></p> <p>If foreign nationals directly or indirectly hold more than half of the voting rights of, or have, otherwise, a controlling influence on, a bank incorporated under the laws of Switzerland, then the granting of a banking licence is subject to additional requirements. In particular:</p> <ol style="list-style-type: none"> <li>1. the corporate name of a foreign-controlled Swiss bank must not indicate or suggest that the bank is controlled by Swiss individuals or entities; and</li> <li>2. the countries in which the owners of a qualified participation (ten per cent or more of the capital or voting rights of the bank or if the holder of the participation is otherwise in a position to significantly influence the business activities of the bank) in a bank have their registered office or their domicile must grant reciprocity (ie, Swiss residents must have the possibility to operate a bank in the respective country).</li> </ol> <p>If the foreign holders of a direct or indirect qualified participation in the Swiss bank change, a new special licence for foreign-controlled banks must be obtained prior to such an event.</p> <p>The reciprocal requirement is subject to any obligations to the contrary in governmental treaties and it is thus, in particular, not applicable to the member states</p>

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			<p>of the World Trade Organization (WTO). Furthermore, the Swiss Financial Market Supervisory Authority (FINMA) may request that the bank is subject to adequate consolidated supervision by a foreign supervisory authority if the bank forms part of a group active in the financial sector. Each individual or legal entity must notify FINMA prior to acquiring or selling a direct or indirect ‘qualified participation’ in a bank organised under the laws of Switzerland. Further, in the case of a foreign-controlled bank, prior to any change of a foreign holder of a qualified participation, the bank must apply to FINMA for a special licence.</p> <p><b>Nuclear Act/Telecommunications Act/Radio-TV Act</b></p> <p>In these sectors, the licensing authority may refuse to grant licences to companies incorporated under foreign law unless reciprocal rights are granted to Swiss citizens or Swiss companies by the respective foreign states.</p> <p><b>Aviation Act</b></p> <p>The licensing authority may refuse to grant licences for the professional transport of passengers or goods to companies incorporated under foreign law unless reciprocal rights are granted to Swiss citizens or Swiss companies by the respective foreign states. Further, regarding the licence to operate an undertaking headquartered in Switzerland and engaged in the aviation business for the professional transportation of passengers and goods, the Swiss Federal Council may determine to what extent such an undertaking needs to be under the control of Swiss citizens. Where an aviation undertaking organised in the form of a Swiss stock corporation is concerned, more than half the share capital has to exist in the form of registered shares, of which the majority is owned by Swiss citizens or by other Swiss-controlled trading companies or cooperatives.</p>
	<ul style="list-style-type: none"> <li>Rights of evocation</li> </ul>	<p>Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.</p>	<p>In general, governmental authorities <i>do not have a power of evocation/ex officio/call-in powers</i>. In the case of real estate transactions in the form of asset deals, the land registers check compliance with the regulations before registering a sale and purchase.</p>

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4.	<b>Sectors falling under the FDI scope</b>	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<p>Business sectors with specific licensing/approval requirements for foreign investors include <i>real estate, aviation, telecoms, radio and television, and nuclear energy</i>. There is no flexibility regarding whether sector-specific FDI applies. However, there is certain flexibility or room for interpretation regarding how the sector-specific regulations are applied.</p> <p>There are no generally applicable Swiss acts (eg, catch-all rules in foreign trade legislation) that prohibit or require specific screening of foreign investment in Switzerland on the basis of national interest, regardless of the industry sector.</p> <p>There are no sector limits on foreign investment and no sectors for which no foreign investment is possible. Foreign investment in residential real estate and non-developed land is only possible in limited cases (listed real estate company, permitted amount of land reserves together with developed land, companies with a minor share of residential properties and holiday apartment for own use). There is an annual quota for the sale of holiday apartments to foreigners. Direct investment in residential real estate (other than holiday apartments) is not possible.</p>
5.	<b>Qualified investors</b>	<p>Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).</p>	<p><b>Real estate</b></p> <p>Foreigners (individuals as well as companies) resident or based abroad, or companies based in Switzerland controlled by foreigners, are considered as foreign investors. EU citizens with a residence B or C permit and non-EU citizens with a residence C permit are not considered as foreigners if they actually live in Switzerland and may acquire Swiss real estate without restrictions. Non-EU citizens with a residence B permit may acquire, in their own name, their main residence. Individuals as well as companies acting on a fiduciary basis on account of persons abroad are also considered as foreigners. Swiss nationals residing outside of Switzerland are not considered foreigner investors.</p> <p><b>Banking</b></p> <p>An individual who is not a Swiss citizen and has no permanent residence permit for Switzerland is considered ‘foreign’. A legal entity or partnership is considered ‘foreign’ if its registered office is outside of Switzerland or if its registered office is within Switzerland but is controlled by individuals as defined above.</p>

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6.	<p><b>Procedure</b></p> <p>6.1 Before or post-closing filing</p>		<p>In general, the filing and approval of a transaction subject to foreign investment control has to be completed and obtained <i>prior to the closing of the transaction</i>.</p> <p><b>Real estate</b></p> <p>The buyer is responsible for securing the approval of the acquisition by the competent authority.</p> <p><b>Banking</b></p> <p>The individual or legal entity acquiring or selling a direct or indirect ‘qualified participation’ in a bank organised under the laws of Switzerland must notify FINMA prior to such an acquisition or sale. The bank itself is also required to notify FINMA of any changes triggering the notification duty of the shareholders once it becomes aware of such a change. In the case of a foreign-controlled bank, prior to any change of a foreign holder of a qualified participation, the bank must apply to FINMA for a special licence.</p>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	The filings in the above-mentioned sectors are mandatory.
8.	6.3 In the case of post-closing, what are the powers of the authority?		There are no post-closing filings.
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p><b>In general</b></p> <p>While formal guidance is, in most cases, not available, typically, Swiss authorities <i>are responsive to requests for informal guidance</i>, in particular in cases in which the foreign investor already has an existing relationship with the authority in question. There is no duty or requirement of pre-filing consultation of authorities. However, in complex transactions, early information is appreciated by authorities.</p>



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			<p><b>Real estate</b></p> <p>It is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules.</p>
10.	<p>6.5 Timing of various steps</p> <p>(i) Filing</p>	How much lead time is required?	<p>In general: The length depends on the case.</p> <p><b>Real estate</b></p> <p>The duration of the review process varies from canton to canton and largely depends on the complexity of the matter, possibly between <i>three and six months</i>.</p> <p><b>Banking</b></p> <p>The timing of the approvals or statements by FINMA, in principle, largely depends on the workload of FINMA. The process for a special banking licence in the case of a foreign-controlled bank may take <i>three months</i>. If, however, the country of domicile or residence of the foreigner is not a member state of the WTO, the process may take much longer. In such a case, FINMA will have to assess whether the respective country grants the right of reciprocity.</p>
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	There is <i>no mandatory timeframe</i> for the authorities.
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	The process is interactive with the relevant authorities and there is room for the applicants and their lawyers to discuss both the content and the drafting of the formal communication.
		Are there any guidelines issued by the authority	There are no general guidelines, but sector-specific guidelines in certain industries (eg. real estate and banking).

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13.	(iv) Filing fees	Is there a filing fee?	There is a filing fee. <i>Filing fees may vary from canton to canton and sector to sector.</i> Filing fees also depend on the complexity of the matter. Hence, no general statement regarding fees is possible.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	The required information is very sector- and case-specific.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	There is no requirement to issue a final decision within a certain timeframe.
16.	<b>Conditionality of approval</b> (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	Approval is usually not conditional or subject to commitments.
17.	(ii) Level of discretion discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	This information is not public.
18.	(iii) Risk of veto	Describe a topical case.  Statistics	There is no public information on vetoes by the authorities. Hence, no topical case can be described and there are no statistics.

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19.	<b>Role of other national authorities</b>	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	Only sector-specific authorities on the cantonal and federal level are involved.
20.	<b>Sanctions</b>	Describe the type of sanctions that may be imposed by the authority in the case of:	
		<ul style="list-style-type: none"> <li>breach of conditions and/or commitments attached to the approval; and</li> </ul>	Not applicable.
		<ul style="list-style-type: none"> <li>investment carried out without prior approval.</li> </ul>	<p><b>In general</b></p> <p>The enforcement risk is substantial if a transaction is not filed. However, there is no data available regarding the fines and sanctions imposed. As set out above, even the liquidation of the acquisition company (if Swiss) might be a possibility. The risk of fines for buyers and sellers is different. In general, the buyer needs to comply with the requirement rather than the seller. There are no public statements of the authorities regarding enforcement priorities/increased enforcement activity.</p> <p><b>Real estate</b></p> <p><i>Failure to notify</i></p> <p>The filing of an application for authorisation is mandatory. Failure to file an application and to obtain authorisation for the acquisition may, among other things, lead to the acquisition being declared null and void and the unwinding of the transaction. Even the liquidation of a legal entity (acquisition entity) might be ordered. Furthermore, criminal liability can occur.</p> <p><i>Implementation ahead of local clearance</i></p> <p>Fines for the implementation ahead of the local regulatory clearance can be imposed. The review of an acquisition must be completed before the parties can consummate the transaction; an acquisition without the necessary authorisation becomes null and void. The person who acts negligently without having received prior clearance can be</p>

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			<p>punished with a fine up to CHF 50,000. Higher fines will be imposed if a person acts intentionally or even for commercial reasons. Financial penalties and imprisonment are possible. The person who acts intentionally without having received prior clearance can be punished with imprisonment of up to three years for negligent as well intentional implementation before clearance.</p> <p><b>Banking</b></p> <p><i>Failure to notify</i></p> <p>The potential penalties and consequences for non-compliance can be severe; if, for example, the required notification to FINMA is intentionally not made, the person who should have filed can be punished with a monetary fine of up to CHF 500,000.</p>
21.	<b>Covid – special regime</b>	<ul style="list-style-type: none"> <li>• Please describe specific rules applicable as a result of the Covid-19 pandemic.</li> </ul>	There are no specific rules applicable as a result of the Covid-19 pandemic.

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