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Federal Council opens consultation on Investment Screening Ordinance

On 12 June 2026, the Federal Council opened the consultation on the Investment Screening Ordinance ("**Preliminary Draft ISO**"), which sets out the implementing provisions for the Swiss Federal Act on the Review of Foreign Investments ("**ISA**"), adopted by the Parliament on 19 December 2025.¹ The consultation runs until 5 October 2026.

The ISA's primary objective is to prevent foreign takeovers of Swiss companies that could threaten public order or national security. The regime focuses on acquisitions by foreign state-controlled investors involving Swiss companies operating in critical sectors, including, defense and dual-use goods, energy infrastructure (electricity generation and grids), water supply, healthcare, telecommunications and transport infrastructure.

The Preliminary Draft ISO sets forth the details regarding the approval requirement and the approval procedure in accordance with the ISA. A transaction is subject to approval where a foreign state-controlled investor gains direct or indirect control. The definition of "control" is borrowed from merger control concepts in antitrust law as set out in the Federal Act on Cartels and other Restraints of Competition. In this context, article 2 of the Preliminary Draft ISO clarifies that control is defined broadly as the ability to exercise decisive influence over business activities, strategy, or critical assets, in particular through:

- Ownership or usage rights to all or part of the company's assets;
- Rights or contracts that grant a decisive influence over the composition, deliberations, or decisions of the company's governing bodies.

Control exists, for example, when an investor can exert a decisive influence over the company's strategic direction, business operations, access to critical data, or the use of key technologies. The

¹ Please refer to our Advestra Insight on the ISA of December 2025, <https://www.advestra.ch/docs/Publikationen/Advestra-Insights/Advestra_Insights_ISA.pdf?m=1773753163&>.

framework captures both legal and *de facto* control, regardless of whether control is actually exercised. The explanatory report on the Preliminary Draft ISO further clarifies that if the direct owner is, for example, a legal entity based abroad—such as a parent company located abroad—the review would not focus on the acquisition of that (foreign) parent company, but solely on the (indirect) acquisition of the Swiss domestic subsidiary. In that case, the application would have to be submitted by the foreign state-controlled investor acquiring the parent company. If the result of the review were that the acquisition of the domestic subsidiary may not proceed, this could have the consequence of calling into question the acquisition of the entire parent company. To avoid this, the explanatory report on the Preliminary Draft ISO provides for the option that in such a case, approval could be granted subject to the condition that the Swiss domestic subsidiary be sold within a certain time.

Furthermore, the requirement for a license generally depends on whether certain thresholds regarding revenue and number of employees of the Swiss company are met. The calculation of these thresholds is specified in the Preliminary Draft ISO.

The Preliminary Draft ISO sets forth the deadlines for submissions, specifies the information to be submitted with applications and clarifies that submissions must be made in an official language; supporting documents may be written in an official language or in English. Filings must include:

- Detailed ownership and control structures of the investor
- Information on the target company (including sensitive activities, IP, and infrastructure relevance)
- Transaction structure and financing
- Historical compliance, sanctions, and litigation data

SECO retains broad powers to request additional information at any stage.

In addition, it specifies which countries are exempt from the approval requirement. Certain investors are exempt from approval requirements if they originate from jurisdictions with sufficient cooperation with Switzerland to avert risks and threats to public order and security. Initially, this includes EU and EFTA member states. Exemptions are subject to:

- Objective criteria (e.g., rule of law, security cooperation, data protection)
- Periodic review (typically every two years)

Anti-circumvention rules in the Preliminary Draft ISO are designed to ensure that exemptions cannot be used via indirect structures involving non-exempt jurisdictions.

Furthermore, the Preliminary Draft ISO addresses data protection and establishes the fee schedule. The fees range from CHF 5,000 (for any “non-action” letter) up to CHF 60,000. In addition, it is provided that the fees may be increased to no more than double these amounts if extraordinary expenses are incurred.

However, the Preliminary Draft ISO omits several relevant aspects which are ambiguous in the ISA and, hence, may also be seen as a missed opportunity: It e.g. (i) does not clarify whether any foreign company whose investments are subject to a foreign governmental investment approval (as is particularly relevant for China) are automatically deemed “foreign state-controlled investors” pursuant to ISA and (ii) leaves open the question of whether sovereign wealth funds are captured by the new regime.

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