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Swiss Parliament approves Investment Screening Act

On 19 December 2025, the Swiss Parliament has approved the Investment Screening Act ("ISA"). The purpose of the ISA is to prevent the acquisition of Swiss undertakings by foreign state "controlled" investors if this would threaten the public order or security in Switzerland. Acquisitions of Swiss companies operating in particularly critical sectors by foreign state-controlled investors are subject to approval. Critical sectors include *inter alia* military equipment and goods for civil and military use, electricity grids and production, water supply, pharma and health more generally, telecommunications as well as transport and financial market infrastructure. The scope of the ISA is relatively lenient by international standards and only a few transactions per year are expected to be subjected to it.

1 INTRODUCTION

On 19 December 2025, the Swiss Parliament has approved the Investment Screening Act (*Investitionsprüfgesetz*; "ISA"). With this vote, a process that started in February 2018 with a parliamentary motion (*Motion Rieder*) has come to an end. The first draft of the ISA was published by the Federal Council in December 2023, with the first preliminary draft dating back to May 2022.

Compared to international standards, the ISA has a relatively limited scope due to its focus on foreign state-controlled investors only. This point was intensely debated in the process of enacting the ISA and represents a middle-ground solution found between the leaving the status quo, i.e. no ISA enactment, a position held *inter alia* by the Federal

Council, and the more restrictive view taken by certain members of the Swiss Parliament.

2 APPROVAL REQUIREMENT

2.1 Basic principle

The ISA establishes a requirement to seek approval in case a foreign state-controlled investor (see 2.2) assumes control through a takeover (see 2.3) of a Swiss target undertaking (see 2.4) which operates in a critical sector (see 2.5).

2.2 Foreign State Controlled Investor

The following persons or entities fall under this definition:

- a. a foreign government body; this would include a government agency

- or the central bank. It also encompasses natural persons such as the head of a state or member of the government.
- b. an undertaking (*Unternehmen; entreprise*) with its head office outside Switzerland that is directly or indirectly controlled by a foreign government body.
 - c. a company (*Gesellschaft; société*) with legal capacity, that is directly or indirectly controlled by a foreign governmental body. This is intended to capture entities that do not operate a business and hence are not considered an "undertaking". While not entirely clear, this language probably also captures trusts, funds and similar structures such as e.g. sovereign wealth funds.
 - d. a natural or legal person acting on behalf of a foreign governmental body. This language is intended as an anti-avoidance rule against potential circumvention by using a fiduciary or other agent.

Whilst the above wording of the statute remains somewhat unclear, the legislative materials reveal (Legislative Message [*Botschaft* dated 15 Dec. 2023] p. 40) a rather broad scope with respect to the aspect of foreign control. Even cases where the government provides the funding for a takeover or where its prior approval is needed for an acquisition abroad could qualify. The latter introduces a "negative control" element and is particularly relevant for China, which subjects its companies to foreign investment approval. Guidance of the relevant Swiss agency SECO will be needed to clarify the scope in this respect.

2.3 Takeover

A takeover is linked to a change of control where one or several investors gain control over an entity that was previously independent from the person acquiring control. The definition of "control" is

borrowed from merger control concepts in antitrust law as set out in the Swiss Cartel Act.

Under this concept, control is generally understood as the ability to exert significant influence on the business affairs and management of a target undertaking, whether or not such influence is actually exercised. The usual method of acquiring control is through the acquisition of a participation of more than 50% of the shares or other voting securities of the target, whether directly or indirectly by acquiring a parent company. However, the legislative materials also clarify that in case of a widely held share ownership, for example in a public company, control may already be deemed to be given with share ownership of 20 or 30 percent.

The method of acquiring control, e.g. by share purchase agreement, statutory merger or simply by contract, is not relevant. Neither is it relevant whether shares of a legal entity (share deal) or a bundle of assets (asset deal) is acquired.

2.4 Swiss Target Undertaking

The notion of "undertaking" is again a concept from antitrust law focusing on economic rather than legal characteristics. It is meant to capture a participant in the economic process of supply or demand of goods or services. Its legal form or status (incorporated or not) is irrelevant.

An undertaking is "domestic" or Swiss if it is registered in a Swiss commercial register. Swiss beneficial ownership is neither required nor relevant. In fact, also foreign owned undertakings are subject to the new approval regime if they are registered in a Swiss commercial register. Hence, Swiss subsidiaries of foreign groups of companies will also be subject to the new ISA, even if the change of control occurs at parent level.

2.5 Critical Sectors

2.5.1 First category

The first category comprises the most sensitive sectors, in which target undertakings must reach, during the two business years prior to the filing of the respective request, a threshold of 50 full-time employees or a worldwide average annual turnover of at least CHF 10 million.

This category includes undertakings active in:

- manufacturing goods or transferring intellectual property that are of critical importance for the operational capability of the Swiss Armed Forces, other institutions responsible for governmental security, space programs, whose exports abroad are subject to authorization under the War Material Act or the Goods Control Act;
- operating or controlling the Swiss electric transmission grids, large power plants or gas pipelines;
- supplying more than 100,000 Swiss inhabitants with water; or
- providing important security-relevant IT services for Swiss authorities.

2.5.2 Second category

The second category is subject to a higher threshold of an average worldwide turnover (for banks: gross profit) of at least CHF 100 million during the two business years prior to the filing of the respective request.

This category includes:

- hospitals;
- undertakings active in the areas of pharmaceutical and medical devices, vaccinations or personal medical protective equipment;
- undertakings operating or controlling domestic (i) harbors, airports or hubs for the transportation of goods and people, (ii) railway infrastructure, (iii) food distribution centers, (iv) telecommunication networks or (v)

important financial market infrastructures; or

- systemically important banks.

In addition, the Federal Council may add additional criteria for a maximum of twelve months if this is required to ensure public safety.

2.5.3 Assessment

While the numerical thresholds, in particular for the first category, may appear low, it should be noted that the principal undertakings of many of those critical sectors are state-owned in Switzerland. Hence, these sectors will in any event be closed to foreign investors for the time being and the ISA will not be relevant for the lack of suitable targets. This applies in particular to electric transmission grids, large power plants, water supply utilities, commercial harbors and airports, the railway and its infrastructure as well as hospitals.

Certain sectors like telecommunications and food distribution centers are privately owned but highly concentrated with only a few players that could be relevant as target undertakings. Others, however, like IT security, pharmaceuticals and medical devices and equipment, are much more fragmented and quite a few target undertakings could potentially fall within the scope of the new statute in case of a takeover by a foreign controlled investor. The same applies to companies producing so called "dual use" goods, i.e. goods that can be used for both military and civil purposes. Further guidance by the Swiss Federal Government or SECO (see below) will be needed to clarify the scope of the new ISA in this respect.

3 PROCEDURE

3.1 Preliminary Request

The ISA provides for the possibility of requesting a preliminary decision whether a takeover falls under the notification duty from

the State Secretariat for Economic Affairs ("**SECO**").

SECO will decide within two months and the preliminary decision is valid for twelve months (with the possibility of an extension for another twelve months upon request).

3.2 Approval Procedure

The request for approval must be filed with SECO prior to completion of the relevant takeover.

The procedure is separated into two stages:

- In phase I, SECO will decide within one month whether (i) the takeover will be approved or (ii) a full review phase (phase II) will be initiated.
- If the procedure moves to phase II, SECO will decide within three months whether the takeover will be approved.

If no decision is rendered within these deadlines, the respective takeover is approved.

If required for public safety, the Federal Council can directly approve a takeover that would otherwise be subject to the procedure under the ISA.

Decisions by SECO in connection with the approval procedure under the ISA are subject to appeal to the Federal Administrative Court by either the foreign investor and the target of the intended takeover.

3.3 Approval Criteria

As a principle, SECO will approve a takeover of a foreign controlled investor if it does not pose a threat to the public order or security in Switzerland. To this end, SECO will also scrutinize the past conduct of the foreign investor in Switzerland and abroad and look in particular also into whether the relevant investor or its controlling state has a history of industrial espionage or has participated in

activities detrimental to public order and security.

4 SANCTIONS REGIME

First and foremost, the ISA provides that until the approval is granted, the effectiveness of the takeover is suspended.

In addition, the Federal Council may order the necessary measures if a takeover was completed without authorization. Such measures explicitly include the disposal of the respective target.

Further, in such a case, the combined entity may be fined with up to 10 percent of the worldwide annual turnover of the domestic target.

5 ENTRY INTO FORCE AND RELEVANCE IN PRACTICE

The ISA is, like any statute enacted by the Swiss parliament, subject to popular referendum if sufficient people so demand. However, it is not expected that the topic is so controversial as to become subject to a popular vote.

In addition, the Federal Council will draft and issue an ordinance implementing the new statute. Therefore, the ISA is expected to come into force at the earliest in 2027.

According to a regulatory impact assessment commissioned by SECO analyzing foreign direct investment figures in Switzerland for the years 2016-2020 only five or even fewer transactions would have been subject to an approval procedure with the rather narrow focus on state controlled foreign investors in the final version of the ISA (Meyer / Braun (2023), RFA zum Entwurf des Investitionsprüfgesetzes, p. 8). However, as the amount of takeovers occurring outside Switzerland may not have been adequately reflected in these statistics and as lawyers working on transactions tend to err on the cautious side, the actual numbers might be (slightly) higher once the ISA is in force.

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