



The Legal 500 Country Comparative Guides

Switzerland

INVESTING IN

Contributor

Bär & Karrer Ltd.



Dr. Christoph Neeracher

Partner | christoph.neeracher@baerkarrer.ch

Dr. Philippe Seiler

Partner | philippe.seiler@baerkarrer.ch

Raphael Annasohn

Partner | raphael.annasohn@baerkarrer.ch

This country-specific Q&A provides an overview of investing in laws and regulations applicable in Switzerland.

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SWITZERLAND INVESTING IN



1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

International investments, both, inbound and outbound, are a key factor of Switzerland's economic prosperity. According to the Swiss National Bank outbound investments in 2022 amount to CHF 1,400 billion, involving both large corporations and small and medium enterprises (SMEs), employing 2.2 million people outside Switzerland and generating CHF 100 billion in income. Conversely, Switzerland attracted around USD 1'000 billion in inbound investments in 2022, supporting about 1.5 million jobs and producing over CHF 80 billion in income. Relative to its GDP, Switzerland's foreign investment levels are notably high, with investments quadrupling since 2000 and doubling since 2010. Switzerland has consistently been an attractive destination for foreign direct investments (FDIs) due to various reasons, including its:

- **Stable Political Environment:** Switzerland's history of political stability and strong rule of law make it an attractive destination for foreign investors.
- **Economic Resilience:** The Swiss economy is one of the most competitive and innovative in the world.
- **Taxation:** Attractive tax rates and tax treaties with multiple countries encourage FDIs.
- **Quality of Life:** High living standards, safety, and infrastructure quality.
- **Financial Sector:** A robust banking and financial sector which is conducive for investments.
- **Strategic Location:** Centrally located in Europe, it serves as a strategic hub for European operations for many companies.

2. What are the typical forms of Foreign

Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

The typical forms of FDI in Switzerland include:

- **Equity Capital Investments:** These constitute a major portion of FDI, involving acquiring shares or equity stakes in Swiss companies;
- **Reinvested Earnings:** Profits from existing investments in Switzerland that are reinvested back into the business;
- **Intragroup Lending:** Loans provided by foreign parent companies to their Swiss subsidiaries or vice versa;
- **Debt Instruments:** Investment through debt securities, such as bonds or debentures, issued by Swiss entities.

These forms of FDI reflect Switzerland's diverse investment landscape, attracting a range of international investors.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

There are currently no general foreign investment controls in Switzerland; foreign investment control only applies to certain industries and sectors, in particular banking/securities and real estate, where prior government approval may be required. Activities in the fields of aviation; telecommunication; nuclear energy and radio/television are further subject to licenses which may include requirements regarding foreign investors.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Compared to its geographical neighbors, Switzerland stands very liberal towards foreign investments. There are no general reporting or authorization obligations for foreign investors holding shares or acquiring Swiss companies. Under Swiss competition law, the merger of independent undertakings or the acquisition of direct or indirect control may be subject to the Swiss Competition Commission (ComCo) if certain thresholds are reached.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

In Switzerland, the organization and management of local businesses primarily occur through domestic companies. This preference is largely due to the country's strong legal framework and the global reputation of Swiss companies. The Swiss legal system provided a consistent and reliable environment, ensuring clear corporate governance. This, along with the global prestige associated with Swiss businesses, makes local companies the preferred choice for business operations in Switzerland. These factors foster to a business environment that favors domestic company structures over offshore entities. Although some Swiss companies may use offshore entities for specific purposes, the general trend is towards using domestic companies for business operations within Switzerland. The country's efforts to maintain a transparent and compliant financial environment has made it less attractive as a hub for offshore operations.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Sole Proprietorship (Einzelfirma)

- Description: Business owned and operated by an individual.
- Liability: Sole property of the company owner. Company owner becomes party to contracts.

The company owner has unlimited personal liability for all debts.

- Minimum Capital/Contribution: None.

General Partnership (Kollektivgesellschaft, KIG)

- Description: Partnership of two or more individuals/entities.
- Liability: Partners have unlimited joint liability.
- Minimum Capital/Contribution: None.

Corporation (Aktiengesellschaft, AG)

- Description: Common for larger businesses. Incorporates shareholders.
- Liability: Company's liability is to the extent of its assets. Shareholders' liability is limited to their share capital.
- Minimum Capital/Contribution: CHF 100,000 (with at least CHF 50,000 paid up).

Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH)

- Description: Suitable for small to medium-sized businesses. Incorporates partners.
- Liability: Liability limited to the company's assets. No personal liability for members.
- Minimum Capital/Contribution: CHF 20,000 (fully paid up).

Limited Partnership (Kommanditgesellschaft, KG)

- Description: Partnership with general and limited partners.
- Liability: General partners have unlimited liability. Limited partners' liability is up to their agreed contribution.
- Minimum Capital/Contribution: None.

Cooperative (Genossenschaft, Gen)

- Description: Association of persons or commercial entities aiming to promote or secure specific needs.
- Liability: Limited to the cooperative's assets unless otherwise specified in the statutes.
- Minimum Capital/Contribution: None (unless statutes specify).

Cooperative (Verein)

- Description: Suitable for non-commercial purposes like sports clubs or charities.
- Liability: No personal liability for members.
- Minimum Capital/Contribution: None.

The choice between these forms depends on factors like

the size of the business, the desired liability structure, the nature of the business, and the capital available for starting the company.

Which form is preferred by domestic shareholders?

Around half of all companies in Switzerland are sole proprietorships (Einzelfirmen). The Corporation (AG) and the Limited Liability Company (GmbH) are each used in about 20% of all cases. The other forms make up for the final 10%. The sole proprietorship model is popular among owners of small businesses due to the minimal capital requirements, straightforward tax system, relatively low administrative costs, and ease of establishment. However, this form of company comes with significant drawbacks, notably the unlimited liability that places both business and personal assets at risk. Despite these concerns, the appeal of operational freedom makes the sole proprietorship a popular choice among Swiss business owners. In Switzerland, local shareholders favor two types of business entities: the Corporation (AG) and Limited Liability Company (GmbH). These preferences are shaped by several key factors:

Corporation (Aktiengesellschaft, AG)

- **Limited Liability:** Shareholders' liability is limited to their investment in the company, which is a significant factor for risk management.
- **Transferability of Shares:** Shares in an AG are easily transferable, making it more attractive for investors looking for liquidity and flexibility.
- **Capital Raising:** AGs are ideal for raising capital, especially for larger investments, as they can issue shares and are often seen as more credible by banks and financial institutions.
- **Corporate Governance:** AGs are subject to strict governance rules, which can be reassuring for investors concerned about transparency and accountability.
- **Market Perception:** AGs often have a more prestigious image, which can be important for branding and business relationships.

Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH)

- **Lower Capital Requirement:** Compared to an AG, a GmbH can be founded with less capital, making it accessible for smaller investors or startups.
- **Management Control:** In a GmbH, the shareholders have more direct control over

the company's management, which can be appealing for those who want closer involvement in business operations.

- **Tax Considerations:** Depending on the specific circumstances, GmbHs can offer certain tax advantages for shareholders.

Both forms offer limited liability protection, but the choice between AG and GmbH often depends on the size of the business, the goals of the shareholders, and the level of control and flexibility they desire. AGs are typically preferred for larger investments and businesses that require significant capital or plan to go public, while GmbHs are more common among small to medium-sized enterprises (SMEs) and family-owned businesses.

Which form is preferred by foreign investors/shareholders?

Foreign investors in Switzerland also predominantly favor the Corporation (AG) and the Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH) for their ventures. However, their choice is further influenced by factors pertaining to international considerations (in particular tax considerations).

What are the reasons for foreign shareholders preferring one form over the other?

Foreign shareholders' preference between the Corporation (AG) and the Limited Liability Company (GmbH) in Switzerland is influenced by several factors:

- **Credibility and Capital:** Traditionally, the Corporation is perceived as a more reputable and secure form, especially by creditors and investors. It requires a minimum capital of CHF 100,000, demonstrating substantial financial commitment, whereas a Limited Liability Company can be established with a minimum of CHF 20,000.
- **Flexibility and Anonymity:** The Corporation offers more flexibility for shareholders. They can remain anonymous and can easily transfer or sell their shares. This structure is beneficial for companies aiming to attract talents as they can remunerate in the form of easily transferable shares.
- **Management Involvement:** The Limited Liability Company mandates greater involvement of quota holders in the company's management. Companies wishing for more quota holders engagement in daily operations and management decisions might lean towards this form.
- **Protection and Liability:** The Limited Liability Company has become more

attractive since the removal of its capital upper limit in 2008. Quota holders can agree to pay additional amounts in case of insolvency, thus instilling confidence in external creditors and investors.

- **Transition and Costs:** Transitioning from a Limited Liability Company to a Corporation involves higher costs, including notary and registrar fees, and the challenge of raising the necessary minimum capital.
- **Share Transferability:** Current regulations around equity-quota transferability in the Limited Liability Company makes it less appealing to those entrepreneurs who want unrestricted freedom in transferring their equity-quotas without unanimous consent from all parties.

Additional to the above-mentioned advantages, foreign investors often consider additional factors like tax structuring which needs to be reviewed in detail of the specific case.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

Which governmental entities have to give approvals?

- Primary entity: Swiss Commercial Register.
- Additional approvals from specific regulatory or licensing bodies might be needed based on the business activity.

What is the process for forming/incorporating a domestic company?

- **Firm Name Check:** Verify the availability of the desired company name.
- **Capital Deposit:** Deposit the required capital at a bank in a capital payment account. For a Corporation, it is CHF 100,000, and for a Limited Liability Company, it is CHF 20,000. The bank then provides a certificate confirming the deposit.

- **Notarization:** The founder(s) sign a public deed in front of a notary, declaring the intention to establish a Corporation or Limited Liability Company, and approve the text of the chosen statutes (or Articles of Association).
- **Appointment of Officials:**
 - For a Corporation: Apart from the board of directors, an auditor must be elected. However, under certain conditions and with the consent of all shareholders, a company can forgo a standard or limited audit.
 - For a Limited Liability Company: It is mandatory to appoint the managing partner or manager and the audit office. Just as with a Corporation, an "Opting-out" is feasible.
- **Registration with the Commercial Register:** An application for registration has to be filed to Commercial Register. Upon registration, the company attains its legal personality.
- **Capital Utilization:** Once the extract from the Commercial Register is received, the company can access and utilize its deposited capital for various expenses like rent, salaries, fees, etc.

What is a required capitalization for forming/incorporating a company?

- Corporation (AG): Minimum CHF 100,000 (with at least CHF 50,000 paid-up).
- Limited Liability Company (GmbH): CHF 20,000, fully paid up.

How long does it take to form a domestic company?

- A few days to a few weeks, depending on company type, possible licenses or approvals of regulatory bodies and the responsible commercial register.

How many shareholders is the company required to have?

- Corporation & Limited Liability Company: At least one shareholder.

Is the list of shareholders publicly available?

- Corporation (AG): The incorporation details – and thus the information who the founding shareholders are – are publicly available.
- Limited Liability Company (GmbH): Yes, in the Commercial Register.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

For a foreign investor acquiring shares in a private company in Switzerland, the requirements and necessary governmental approvals vary depending on the nature of the acquisition – below is a high level (non-exhaustive) overview of certain aspects which may become relevant:

- **General Regulation:** There's no specific regime controlling foreign investments in private companies in Switzerland, with minimal investment restrictions.
- **Public Takeovers:** If the acquisition falls under the category of a public takeover, it is governed by the Financial Markets Infrastructure Act (FMIA). This includes cash or exchange offers, or a combination of both. The SIX Swiss Exchange (SIX) regulates the admission and ongoing listing requirements of securities.
- **Compliance with Takeover Regulations:** The Federal Takeover Board (TOB) and the Swiss Financial Market Supervisory Authority (FINMA) oversee the adherence to Swiss takeover rules. Decisions by the TOB can be appealed to FINMA and then to the Swiss Federal Administrative Court.
- **Real Estate Considerations:** If the private company owns real estate, the Federal Law on Acquisition of Real Estate in Switzerland by Non-Residents (Lex Koller) applies. Foreign investors need a special permit from cantonal authorities to purchase real property or shares in companies owning real property, unless used for a permanent business establishment.
- **Thresholds for Competition Law:** If the transaction impacts the Swiss market and exceeds certain turnover thresholds, it falls under the Federal Act on Cartels and other Restraints of Competition. The involved parties must meet combined turnovers of at least CHF 2 billion globally or CHF 500 million in Switzerland, and at least two must each have a Swiss turnover of CHF 100 million. In addition, specific lower thresholds or requirements may apply.
- **Notification to Competition Commission (ComCo):** Businesses must notify ComCo before closing the transaction if they meet the

specified turnover thresholds or if a market-dominant party in Switzerland is involved. ComCo can prohibit or authorize the concentration under specific conditions. Its decisions can be challenged up to the Swiss Supreme Court.

In summary, while Switzerland offers a relatively open environment for foreign investments in private companies, certain acquisitions, especially those involving real estate or affecting the Swiss market significantly, require adherence to specific regulations and might necessitate governmental approvals.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

In addition to the approvals outlined above, specific regulations may become relevant in case of public takeovers. In particular, the investors who reaches, exceeds or falls below the threshold of 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66⅔ percent of the voting rights in a company is subject to reporting requirements (see also No. 10).

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

According to Art. 135 of the Financial Market Infrastructure Act (FinMIA), anyone who directly, indirectly or acting in concert with third parties acquires equity securities which, added to the equity securities already owned, exceed the threshold of 33⅓% of the voting rights of a target company, whether exercisable or not, must make an offer to acquire all listed equity securities of the company. In this context, it is noteworthy that Switzerland is one of the few countries to allow companies to opt-up and raise this threshold to 49% (art. 135 para. 1 FinMIA) or opt-out (Art. 125 para. 3 and 4 FinMIA) in their articles of association.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

The approval process for building a new facility in

Switzerland, whether in a greenfield (undeveloped land) or brownfield (previously developed land) project, involves several key steps and adherence to various regulatory requirements. The process typically includes:

Initial Assessment and Planning:

- **Site Selection:** Identify and assess potential sites, considering factors like location, accessibility, environmental impact, and local zoning regulations.
- **Feasibility Study:** Conduct a comprehensive study to evaluate the viability of the project, including economic, environmental, and social impacts.

Local Zoning and Land Use Regulations:

- **Zoning Compliance:** Ensure the selected site complies with local zoning and land use regulations. This may involve consultations with local authorities.
- **Change in Land Use:** If the project requires a change in land use, especially for greenfield sites, seek necessary approvals from local municipal authorities.

Environmental Considerations:

- **Environmental Impact Assessment (EIA):** For projects that could significantly impact the environment, an EIA may be required. This assesses the potential environmental effects and proposes mitigation measures.
- **Permits and Approvals:** Obtain environmental permits and approvals as dictated by cantonal and federal regulations. This can include air and water quality, waste management, and protection of natural habitats.

Building Permits and Approvals:

- **Submission of Plans:** Submit detailed construction plans to local authorities for approval. These plans should comply with Swiss building codes and standards.
- **Public Notice and Objections:** Most cantons require public notice of construction projects. This period allows for public comment and objections, which must be addressed.

Construction Phase:

- **Compliance with Regulations:** Adhere to health and safety regulations, labor laws, and construction standards during the construction phase.

- **Regular Inspections:** Undergo regular inspections by local authorities to ensure compliance with building codes and permit conditions.

Completion and Final Approvals:

- **Final Inspection:** Upon completion, a final inspection by local authorities is typically required to ensure the facility meets all regulations and permit requirements.
- **Certificate of Occupancy:** Obtain a certificate of occupancy or a similar document indicating the facility is compliant and safe for use.

Ongoing Compliance:

- **Environmental Monitoring:** For some projects, ongoing environmental monitoring may be required.
- **Compliance with Operational Regulations:** Ensure continuous compliance with operational regulations, including environmental, health, and safety standards.

It is important to note that the process can vary depending on the canton and municipality where the facility is being built. Cooperation with local authorities, understanding regional specificities, and engaging with local communities are crucial for the smooth progression of the project.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country

to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to paying an acquisition, or to pay to contractors, or to pay salaries of employees?

In Switzerland, businesses are not subject to specific regulations or approval requirements by the Central Bank or other governmental agencies for using foreign currency in transactions such as acquisitions, paying contractors, or employee salaries. Swiss companies have the flexibility to keep their accounts in either Swiss Francs or a foreign currency necessary for their operations. This was further supported by the Revised Swiss Company Law, effective from 1 January 2023, which allows companies to set their share capital in certain foreign currencies like EUR, USD, GBP, or JPY if needed for their business activities.

For tax purposes, while companies may operate in a foreign currency, Swiss tax assessments and payments must be made in Swiss Francs, using binding conversion rates published by the Federal Tax Administration. Gains or losses from transactions in currencies different from a company's functional currency are recognized in the income statement for tax purposes. However, translation differences arising from converting items from the functional currency to Swiss Francs don't impact corporate income tax.

Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

In Switzerland, there are no specific limits on the amount of foreign currency that can be used in any transaction or series of related transactions. However, depending on the specific case, certain regulations (customs, anti-money laundering etc.) may apply.

Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

Generally not.

Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

Generally not.

Can an investor buy domestic currency outside of

the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Generally yes.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

In Switzerland, the transfer of domestic currency (Swiss Francs) or foreign currency out of the country by foreign investors is typically straightforward and does not necessitate specific approval from the Central Bank or other regulatory authorities. Switzerland is known for its liberal financial system and does not impose capital controls, allowing for the free movement of currency across its borders. This applies equally to both Swiss Francs and foreign currencies, facilitating international transactions and investments.

However, it is important to consider that while there are no restrictions on currency movement, such transfers are subject to Switzerland's stringent anti-money laundering (AML) regulations. Financial institutions in the country are required to adhere to these regulations, which include processes like client identification, understanding the nature and purpose of transactions, and reporting any suspicious activities to the relevant authorities. As a result, large or unusual transactions may undergo closer scrutiny to ensure they comply with AML guidelines.

Furthermore, banks in Switzerland may have their own internal reporting requirements for substantial transactions. These are part of the banks' due diligence processes and are aimed at preventing illegal activities, including money laundering and tax evasion. Although these are not governmental approval processes per se, they represent standard practices within the banking sector to uphold the integrity of financial transactions.

In addition to AML considerations, foreign investors must also be mindful of tax compliance. This includes adhering to tax laws in both Switzerland and their home countries, declaring income appropriately, and reporting foreign accounts as required. Compliance with tax laws

is crucial to avoid legal complications and ensure the legitimacy of cross-border money transfers.

Lastly, for certain international transactions, especially those involving countries with more stringent financial regulations or those under international sanctions, additional scrutiny or documentation might be necessary. This is to ensure compliance with international financial standards and regulations.

14. Is there a tax or duty on foreign currency conversion?

In Switzerland, there is no specific tax or duty imposed on the conversion of foreign currency. The Swiss financial system is known for its efficiency and openness, particularly in facilitating international business and financial transactions. This approach extends to currency exchange activities as well.

When converting currency in Switzerland, the primary costs involved are typically the exchange rate margins and any service fees charged by the financial institution or currency exchange service. These costs can vary depending on the bank, currency exchange service provider, and the amount and currencies involved in the transaction. However, these are service charges rather than a government-imposed tax or duty on the conversion itself.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

In Switzerland, there are generally from a tax perspective no restrictions on the amount of cash, foreign currency, or securities (such as shares, bonds, and cheques) that you can bring into, take through, or carry out of the country. There is no mandatory declaration to the Federal Office for Customs and Border Security (FOCBS) for carrying these financial assets.

However, during a check, if FOCBS staff inquire about your cash, you are required to provide accurate information. Specifically, if you are in possession of, or are suspected to be in possession of, an amount of CHF 10,000 or more, you must disclose your identity, the origin of the funds, the purpose of the funds, and the beneficiary. Should the cash amount be CHF 10,000 or higher, this information will be recorded in the FOCBS information system.

16. Is there a difference in tax treatment

between acquisition of assets or shares (e.g. a stamp duty)?

The tax ramifications for the seller and the buyer differ based on whether the acquisition is executed through the purchase of assets or shares. Buyers tend to lean towards asset purchases to minimize inherited risks and to obtain a higher book value for accounting purposes. Conversely, sellers usually prefer selling shares, as this method commonly results in capital gains that are eligible for beneficial tax treatment. The acquisition of shares in real estate companies might nevertheless qualify as transfer of the underlying real estates for real estate capital gains tax and real estate transfer stamp duty.

17. When is a stamp duty required to be paid?

Stamp duties are levied on certain legal transactions, particularly capital contributions from direct shareholders and issuance of securities (1%), trading of securities by a securities dealer (0.15% for Swiss securities and 0.30% for foreign securities), and transfers of real estate (in general between 1.0% and 3.3% depending on the location of the real estate).

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

In a corporation, shareholders may in principle freely transfer the shares, provided there is no restriction on legal or statutory transferability ([Art. 685 CO](#)). The transfer of registered shares may be subject to the approval of the board of directors.

In a limited liability company, by default the transfer of equity quotas require the approval of the General Meeting.

Can the shares be held outside of the home jurisdiction?

Yes. However, potential tax impacts need to be assessed in the specific case.

What approval does a foreign investor need to transfer shares to another foreign or domestic

shareholder?

No specific. However, the above general comments may be relevant.

Are changes in shareholding publicly reported or publicly available?

Generally not with respect to a corporation. However, this is the case for limited liability companies and may be the case for publicly listed companies.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

There is currently no general foreign investment control regime in Switzerland. Foreign investment control currently only applies to certain industries/sectors. Particularly real estate, telecommunications, nuclear energy, and aviation and banking/securities. In these sectors prior government approval may be required.

In March 2020 however, the Swiss Parliament instructed the Government to create a legal basis for controlling foreign investments. In May 2022 the Federal Council initiated the consultation on legislation to screen foreign direct investments in Switzerland. The consultation ended in September 2022. In May 2023 the Federal Council took note in the results of the consultation. There is widespread skepticism about the proposal, especially as it reduces Switzerland's attractiveness as a business location. The Federal Department of Economic Affairs, Education and Research (EAER) has been instructed to draft legislation by the end of 2023. The draft should be limited to investments that are most critical to security. The Parliament's decision on the

draft, and thus the introduction of the law, will take place in 2024 at the earliest.

With which agency is it required to be made?

In Switzerland, mandatory filings for foreign direct investments in regulated sectors are typically made with the relevant regulatory authorities overseeing those specific industries. For example:

- In case the merger control thresholds are reached, a filing is required with the competition commission (WEKO).
- In the banking sector, filings would be made with the Swiss Financial Market Supervisory Authority (FINMA);
- For real estate transactions involving foreign investors, the filing is usually made with the cantonal authorities, as real estate regulations can vary by canton;
- In sectors like telecommunications, nuclear energy, and aviation, the respective federal regulatory bodies would be the appropriate agencies for filing.

How long does it take to obtain an FDI approval?

The duration to obtain an approval for FDI in Switzerland can vary depending on the sector and the complexity of the transaction. In regulated sectors such as banking, real estate, telecommunications, and others, the time frame can vary from a few weeks to several months. The process may be lengthier if the transaction is complex or if additional information is requested by the regulatory authority.

Under what circumstances is the mandatory FDI filing required to be made?

See above.

If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

In Switzerland, if a mandatory filing is not required for a FDI, it is generally unlikely for a transaction to be reviewed and blocked by a governmental authority. This is because Switzerland does not have a comprehensive framework for reviewing foreign investments based on national interest, except in certain regulated sectors. In unregulated sectors, where no specific filing is mandated, the scope for governmental review and blocking of transactions is significantly limited.

If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a

foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?

In Switzerland, the acquisition of a foreign parent company by another foreign entity, where the target has a subsidiary in Switzerland, could potentially trigger a mandatory FDI filing, but this largely depends on the specific sector and the nature of the subsidiary's activities in Switzerland. If the subsidiary operates in a regulated sector such as banking, real estate, or telecommunications, the transaction might require a filing or approval from the relevant Swiss regulatory authorities. However, for unregulated sectors or where the subsidiary's operations do not fall under specific Swiss regulatory requirements, such a global transaction is less likely to trigger a mandatory FDI filing in Switzerland.

Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Yes, a governmental authority in Switzerland can potentially prohibit the indirect transfer of control of a subsidiary in certain circumstances, especially if the subsidiary operates in a regulated sector. Thus, the potential applicable restrictions need to be reviewed in detail.

20. What are typical exit transactions for foreign companies?

We see all types of exit transactions, including the following:

- Sale to a Strategic Buyer: Selling the company or its assets to another company in the same industry, often looking to expand its footprint or capabilities.
- Sale to a Financial Buyer: This involves selling to private equity firms, venture capitalists, or other financial entities that may seek to further develop the company and later sell it for a profit.
- Initial Public Offering (IPO): Going public by offering shares to the public, thus converting a private company into a publicly-traded one.
- Management Buyout (MBO): The company's management team buys the assets and operations, taking control from the current owners.
- Liquidation: Dissolving the company and

selling its assets to pay off debts, often used as a last resort when other exit strategies are not viable.

The choice among these options depends on factors like the company's financial health, market conditions, and the strategic goals of the foreign investors.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

The preferred exit route is a trade sale – to a strategic buyer or a financial investor. However, in recent years, dual track exit processes have increased.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

Both ordinary domestic courts as well as arbitration (often under the rules of the Swiss Rules of International Arbitration of the Swiss Arbitration Centre) is seen in such agreements. In international transactions there is a slight tendency to prefer international arbitration over domestic courts for dispute resolution. This preference is largely due to the international nature of such agreements, often involving partners from different countries. International arbitration is sometimes seen as a more neutral and effective forum for resolving disputes, especially when partners are hesitant to submit to the state courts of each other's home jurisdictions. Additionally, arbitration offers benefits such as the ability to choose arbitrators with specific experience and background, and the flexibility to tailor the procedure to the needs of the case.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

The length of legal proceedings is influenced by various factors, such as the complexity of the case in terms of facts and laws, as well as the competence and capacity of the court. Nevertheless, in many instances, parties can anticipate that the initial trial court will render a judgment in approximately one to three years. When cases are appealed, the higher courts generally make decisions within one to two years. The Federal Court resolves the majority of its cases in a timeframe of four to five months.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Swiss domestic courts are generally reliable in enforcing foreign investors' rights under agreements and under the law. The legal framework in Switzerland is conducive to foreign investment, with a transparent legal system and a stable political environment. This is further supported by Switzerland's positive overall investment climate, as recognized internationally. In 2019, the World Economic Forum rated Switzerland the world's fifth most competitive economy, reflecting the country's sound institutional environment, high levels of technological and scientific research, and strong overall intellectual property protection.

Switzerland is a signatory to several international conventions and treaties that facilitate the enforcement of foreign judgments. The most notable among these is the Lugano Convention, which applies to judgments in commercial and civil matters rendered in EU and EFTA member states.

In summary, Swiss domestic courts are considered reliable in enforcing the rights of foreign investors under agreements and the law, supported by a well-established legal framework and adherence to international conventions and treaties.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

Swiss Bilateral Investment Treaties (BITs) incorporate

two distinct mechanisms for resolving disputes. The first is the 'investor-state' dispute settlement mechanism, which addresses specific conflicts that may arise between an investor and the host country regarding an investment. The second is the 'state-state' dispute settlement mechanism, which deals with disputes related to the interpretation and application of the BIT itself. In cases where no consensus can be achieved through consultation, both dispute settlement mechanisms allow for the option of taking the matter to independent international arbitration. The incorporation of the investor-state dispute settlement mechanism into Swiss BITs, which has been a systematic practice since 1990, serves the purpose of depoliticizing investment disputes and avoiding investor abuse.

26. Are international arbitral awards recognized and enforced in your country?

International arbitral awards are recognized and enforced in Switzerland pursuant to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (Convention) as stated in Art. 194) of the Swiss Private International Law Act (PILA).

27. Are there foreign investment protection treaties in place between your country and major other countries?

In addition to being a member of the European Free Trade Association (EFTA) and to several Treaties with Investment Provisions (TIPs), Switzerland has also signed over 120 Bilateral Investment Promotion and Protection Agreements (BITs), most of which are currently in force. Switzerland has the third largest network of BITs in the world according to UNCTAD.

Contributors

Dr. Christoph Neeracher
Partner

christoph.neeracher@baerkarrer.ch



Dr. Philippe Seiler
Partner

philippe.seiler@baerkarrer.ch



Raphael Annasohn
Partner

raphael.annasohn@baerkarrer.ch

