

中瑞双边贸易、直接投资与并购

Trade, Investment and M&A  
in Switzerland –  
Key Factors for Chinese Enterprises

# 非谢尔律师事务所

中瑞双边贸易、直接投资与并购

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## 前言

中国公司寻找在欧洲进行直接投资, 亦或设立欧洲总部、研发中心, 亦或收购欧洲高精尖技术, 往往会首要考虑瑞士。在过去十年中, 中国投资者在瑞士设立的初具规模的子公司和分公司的数量已翻了十倍。

我们将在本刊中为您详细介绍瑞士成为中国对外直接投资首选地之一的八大主要因素:

- (1) 在经济层面上, 瑞士和欧盟已实现一体化;
- (2) 瑞士是第一个也是迄今为止唯一的一个与中国签订自由贸易协定的欧陆国家;
- (3) 瑞士拥有领先的高科技产业;
- (4) 瑞士拥有得天独厚的条件, 便于中国企业在此设立欧洲总部;
- (5) 瑞士对待国外投资者几乎与国内投资者一视同仁;
- (6) 瑞士对于跨境资本流动不设限制;
- (7) 瑞士是欧洲低税率国家;
- (8) 新中瑞避免双重征税协定和瑞士香港避免双重征税协定为来自中国或香港的投资者在瑞士的投资提供优惠条件。

另外, 本刊还讲为您简要介绍中国投资者在瑞士并购方案和瑞士公司法。

楚珞珈 (顾问, 中国业务主管)、Christopher Niederer (合伙人, 税务业务主管)

## 1 因素之一：在经济层面上，瑞士和欧盟已实现一体化

即使瑞士不是欧盟成员国，在经济层面上，瑞士和欧盟已实现一体化，瑞士与欧盟之间的贸易往来也没有负面影响。因此，从自由贸易的角度看，瑞士是否为欧盟成员国根本没有任何区别。

### 1.1 瑞士与欧盟的自贸协定以及欧洲自贸联盟自贸条约

早在1973年，瑞士与欧盟的自由贸易协定就已经生效。在更早的1960年，瑞士就已经是欧洲自由贸易联盟（EFTA）协定的成员（其他成员国为挪威、冰岛和列支敦士登国）。

因此，瑞士原产的工业品，在出口欧盟或欧洲自由贸易联盟国家时得以免征关税；瑞士的工业品经自由贸易在欧盟和欧洲自由贸易联盟市场流通，如同它们是在欧盟或欧洲自由贸易联盟成员国生产的一样。

### 1.2 瑞士与欧盟的相互承认协定

2002年6月1日，瑞士和欧盟之间的排除技术性贸易壁垒协定生效（“瑞士/欧盟MRA”）。它适用于大多数工业产品，并为互相承认对方为市场准入设置的产品安全检查提供了法律基础。同样的规则也适用于欧洲自由贸易联盟成员国挪威、冰岛和列支敦士登。

从技术上讲，对于瑞士/欧盟MRA标识的产品种类，瑞士和欧盟的安检标准被认为是等同的，因此，在任何情况下只要有其中一个证书就足够了。目前，瑞士/欧盟MRA涵盖了大多数工业产品，如机械、个人防护设备、玩具、医疗器械、燃气设备、锅炉、压力容器、电信系统终端设备、设备和爆炸性气体环境中使用的防护系统、电气设备的电磁兼容性、建筑工地及设备、测量仪器和预包装、汽车、农业和林业拖拉机、良好实验室规范（GLP）、药品、GMP检查和批量认证、建筑产品、电梯、生物农药产品和缆车。

因此，任何通过瑞士的合格性检查的相关产品都可以打上EC标记，并出口到欧盟，无需根据欧盟的有关安全标准再度检测或进一步检查。在上述几个产品类别中，仅有少数产品，瑞士和欧盟的安全标准未达到完全一致，但即便是这些产品，瑞士检测机构也有权提供一站式服务，即同时为其提供欧盟和瑞士安全标准的检测并发放证书。

无需重复进行产品安全检测，为瑞士/欧盟贸易排除了技术壁垒。因此，瑞士的工业产品在欧盟享受非歧视性的市场准入。

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注：瑞士/欧盟MRA的好处是独立的产品原产地。中国制造商意欲在欧洲市场推广其工业品，瑞士是一个有效的欧洲测试市场：小而开放，由德语、法语和意大利语区组成，它几乎是欧洲的缩影，并且，瑞士准入的工业产品基本上意味着欧盟的准入。

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### 1.3 瑞士-欧盟政府采购协议

2002年6月1日，瑞士和欧盟的政府采购协议生效。该协议扩展了瑞士和欧盟1979/87年和1994年世界贸易组织政府采购惯例规定的义务的债权债务关系。据此，不仅中央级政府采购项目需要国际公开招标，地方和市政当局的重大采购项目，政府国有电信运营商，铁路运营商，除电力之外的其他能源（如天然气和取暖用品）和持有运营许可（如供水、供电等公用事业领域、城市交通，机场、河流和海洋运输等）的特许供应商，都须进行国际公开招标。

该协议大大改善了瑞士供应商和服务供应商进入欧盟市场（价值数十亿美元）的透明度和非歧视性，甚至使他们更具竞争力。

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注：中国投资者在评估收购瑞士的制造商时，应该意识到瑞士公司享有不受歧视地获得欧盟最重要的采购市场这一优势。

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### 1.4 瑞士-欧盟人员自由流动协议

瑞士和欧盟之间的人员自由流动协议于2002年生效，为瑞士国民与欧盟17国<sup>1</sup>、欧盟8国<sup>2</sup>、欧盟2国<sup>3</sup>及欧洲自由贸易联盟（EFTA）<sup>4</sup>国家的国民自由流动提供保障<sup>5</sup>。只要他们具备医疗保险，合适的住宿条件和足够的资金（储蓄或收入）来养活他们自己和他们的家庭，该协议即授予那些国民居留和工作许可。

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注：欧盟17国、欧盟8国、欧洲自由贸易联盟国家的公民移居到瑞士或者在瑞士找到工作的，他们需要做的仅仅是在入境14天内到有关部门登记注册，在就职8天前提供有效的劳动协议、房屋租赁或购买协议以及填写完整的申请表，便可取得外国居民身份证。

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然而，由于瑞士在欧洲就业市场上的吸引力，自2008年以来，大量欧盟公民涌入瑞士，每年新增欧盟移民总数达到瑞士总人口的1%，相当于卢塞恩市的总人口，以至于截至2014年，瑞士人口中外国人比例高达24.3%，其中约66%来自欧盟国家，主要由意大利人（23.2%）、德国人（22.5%）和葡萄牙人（19.8%）组成。瑞士公众于是发起了一项关于单边自主制定移民政策并对所有外国人（包括欧盟公民）一律适用移民限额制度的宪法修正提案。2014年2月9日，瑞士公民和州省多数投票通过了此项宪法提案（“宪法的大规模移民条款”）。

瑞士议会对此却只是半心半意之举，并没有就欧盟公民移民到瑞士设定上限。相反，它引入了一个概念，即在某些失业率很高的行业，雇主在雇佣来自欧盟的员工之前应首先尝试雇佣瑞士居民以填补空缺职位。事实上，实施法案不会对欧盟和瑞士之间公民自由流动的现状带来实质性改变。

<sup>1</sup> 奥地利、比利时、塞浦路斯、丹麦、德国、芬兰、法国、希腊、冰岛、爱尔兰、意大利、卢森堡、马耳他、荷兰、葡萄牙、瑞典、西班牙、英国

<sup>2</sup> 爱沙尼亚、立陶宛、拉脱维亚、波兰、捷克、斯洛伐克、斯洛文尼亚、匈牙利

<sup>3</sup> 保加利亚和罗马尼亚

<sup>4</sup> 冰岛、挪威、列支敦士登

<sup>5</sup> 2013年7月1日加入欧盟的克罗地亚自2017年1月1日起适用瑞士-欧盟人员自由流动协议，此后的10年内克罗地亚公民的自由流动有可能被附加一些限制。

## 2 因素之二：瑞士是第一个也是迄今为止唯一的一个与中国签订自由贸易协定的欧陆国家

### 2.1 要点概览

2013年7月6日，中国和瑞士签订了自由贸易协定（“中瑞自贸协定”）此协定，已于2014年7月1日生效。中瑞自贸协定是中国与世界20强经济体的第一个自贸协定，也是第一个与欧陆国家签订的自贸协定。

对瑞士来讲，中瑞自贸协定是继与香港特别行政区的自贸协定<sup>6</sup>（于2012年10月1日生效）之后对近年来日益重要的双边贸易关系的又一积极回应。瑞士是李克强总理上任后访问的第一个欧洲国家，在他访瑞期间，他专门强调，中国是瑞士最大的亚洲贸易伙伴。

瑞士政府的2015年进出口统计数字再次表明中国是瑞士的第三大出口目的地（147亿瑞郎，其中中国大陆占90亿瑞郎，中国香港占57亿瑞郎），在欧盟（1090亿瑞郎）和美国（274亿瑞郎）之后。上述数据不包括金条等贵金属、钱币、稀有宝石和珠宝，艺术品和古董作品。如果将其纳入统计，则中国是瑞士的第二大出口目的地（435亿瑞郎，其中中国大陆占193亿瑞郎，中国香港占242亿瑞郎），仅次于欧洲（1209亿瑞郎）。

根据2015年瑞士国际银行直接投资统计数据（2016年数据尚未公布）表明，2015年瑞士在中国大陆的直接投资额为16亿瑞郎，在中国香港的直接投资额为9亿瑞郎。截止至2015年末，瑞士在中国香港的投资额总计为69亿瑞郎，在中国大陆的投资额总计为200亿瑞郎，中国大陆是瑞士在亚洲直接投资的首要目的地，在全球排第四位（仅次于欧盟、美国和拉丁美洲离岸金融中心）。

### 2.2 中国出口商和投资商的机遇

#### 2.2.1 货物出口

在中瑞自贸协定生效以前，瑞士从中国大陆进口除了履行世贸组织的关税与贸易总协定（“关贸总协定”）对中国不适用高于最惠国待遇关税税率（“最惠国待遇”）之外，并无其他责任与义务<sup>7</sup>。不过，瑞士相应1979年世贸组织关贸总协定中的“授能条款”<sup>8</sup>，瑞士主动地，即不承担任何责任地，采取了“原则优惠发展中国家进口系统”，该系统也完全或部分废除了某些中国商品的关税。因此，瑞士事实上单方面取消了针对几乎所有的原产中国的工业品和其他非农业、畜牧业和渔业产品的关税，仅纺织品和鞋类除外。中瑞自贸协定生效后，将这种单方面的优惠（中国一旦失去了发展中国家地位就会失去该优惠）转换成有约束力的承诺，并废除其它几乎所有的关税（包括纺织品和鞋类）。

<sup>6</sup> 由欧洲贸易联盟与香港签署，瑞士是欧洲贸易联盟的成员国。

<sup>7</sup> 对于来自香港的进口，适用欧洲自贸联盟与香港的自贸协定。该协定对瑞士已经于2012年10月1日生效。

<sup>8</sup> 东京回合“关于差别和更优惠待遇，互惠以及发展中国家更全面参与的决定”。由瑞士国会于1979年12月12日批准。



注：因此，自从中瑞自贸协定生效后，瑞士对来自中国的、列入瑞士特殊偏好表9的货物（对于来自香港的进口货物，适用欧洲自贸联盟与香港的自贸协定）：

- 取消了所有适用于工业品和其他非农业/养殖/渔业产品，包括纺织品和鞋类的关税<sup>10</sup>；
- 减少或取消了众多适用于的农业/养殖/渔业产品的关税<sup>11</sup>。

大致上，对那些不与瑞士同类产品产生竞争或不明显竞争的产品（如，热带产品，鱼类和贝壳类产品），关税得到了取消；与瑞士同类产品明显竞争的产品，除了极少数个例之外，关税也得到了取消或降低，不过仅在瑞士收获期之外，世贸组织的关税配额之内<sup>12</sup>。至于中国的农业加工品（尤其是糖，面包，面食制品，花生酱）瑞士承诺去除其国内产业的保护，降低了相关的关税。

以上只是对中瑞自贸协定400多页“瑞士特定偏好表”的粗略总结。任何可靠的建议必须基于对特定情况（特定货物的税则号）的详细分析之上。

最后，为免存疑，自贸协定给予的关税优惠不涉及对进口货物征收的增值税。瑞士适用的增值税税率参见7.3.2节，下同）。瑞士的安全、卫生和标签规则也将继续适用于来自中国的产品。

## 2.2.2 在瑞士制造产品

中国制造商可以考虑结合中瑞自贸协定、瑞士与欧盟、欧洲自贸联盟（见以上第1节）以及与其他38国家的27个自贸协定的优势（见以下第3.3节），将瑞士作为通向所有这些国家的贸易通道。

不过，“门户”并不意味着中国公司可以轻而易举地将瑞士当作货物出口欧盟或其他与瑞士签订贸易协定的国家的中转站或通道，享受零关税。难易程度取决于瑞士与目的国贸易协定中的原产地规则，这需要由国际贸易法律专家进行具体分析。

一般来说，原产地规则对在贸易协定成员国境内创造的附加值有最低规定。中国公司可以以低关税或零关税向瑞士出口零部件和半成品，以满足中瑞自由贸易协定中的原产地规则，并在瑞士境内处理或加工这些零部件和半成品，或者将其与瑞士生产的零部件进行组装，以符合瑞士与最终出口目的国在贸易协定中对“原产于瑞士”的要求。这些产品将被视为瑞士制造，拥有积极的形象和效应，并在出口最终目的国时可以享受有关贸易协定的优惠税率。

<sup>9</sup> 根据中瑞自贸协定的定义

<sup>10</sup> 中瑞自贸协定附件一附表二。其结果是，几乎所有在第5部分从第21或25章到97章的所列的（名称及编码协调制度）都将被豁免瑞士海关的进口关税。

<sup>11</sup> 涵盖所有在第一部分第1至24章罗列的商品（商品名称及编码协调制度）。

<sup>12</sup> 比如某些肉类产品，鲜花，蔬菜，水果和果汁。

### 2.2.3 服务出口

在中瑞自贸协定生效以后，瑞士从中国大陆进口服务除了履行世贸组织的服务贸易总协定（“关贸总协定”）之外<sup>13</sup>，并无其他责任与义务。通过中瑞自贸协定中国和瑞士事实上继承和部分改善了其在水贸组织服务贸易协定框架内的相互承诺，给予对方最惠国待遇，以及各自具体的、在特定服务领域内的跨境服务的市场准入和国民待遇，包括境外服务消费、在对方境内设立旨在提供服务的商业存在以及个人不以进入对方劳务市场为目的存在。

与瑞士“服务贸易总协定”最惠国待遇的承诺相比，瑞士减少了最惠国待遇关于视听服务，计算机预订系统和航空运输服务的销售和营销方面的例外。

值得注意的是，自贸协定给予的关税优惠不涉及对进口服务征收的增值税。瑞士适用的增值税税率参见7.3.2节，下同)。瑞士的安全和卫生规则也将继续适用于来自中国的服务。

### 2.2.4 世界贸易组织的技术性贸易壁垒协定（“TBT 协定”）和卫生与植物卫生措施协定（“SPS 协定”）

中瑞自贸协定的相关条款及其附属协议（通讯设备、认证/认可、SPS、测量设备和仪器）将使中国出口商在TBT和SPS协定内容范围内享受优惠。中瑞自贸协定的相关条款及其附属协议旨在增强双方的合作，而紧密合作正是务实解决TBT协定和SPS协定相关纠纷的关键。

<sup>13</sup> 对于来自香港的服务，适用欧洲自由贸易联盟与香港的自贸协定，该协定自2012年10月1日对瑞士生效。

### 3 因素之三：瑞士拥有领先的高科技产业

瑞士位于欧洲的心脏地带，分别与德国、法国、意大利以及奥地利接壤，除了空气与水源之外再无其他自然资源，但却是高科技制造业的重镇。

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注：众多国际知名生产商和跨国生物制药公司<sup>14</sup>不仅将其总部设在瑞士，而且在此建有重要的生产和研发设施，因为他们发现，这个国家能够提供世界最高品质的生活，这里拥有无与伦比的安全环境、高质量的学校，多语种的文化环境中英语被广泛使用，种种条件使这个国家对人才产生强烈的吸引力。

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除了位居人才吸引力榜首，瑞士还具有若干其他非常重要的优势，中国的投资者却知之不多，而在评估投向欧洲的直接投资时，必须考虑到这些因素：

#### 3.1 众多高等学府位于科技前沿，并且面向工业界开展研发合作

瑞士拥有多所欧洲领先的理工科院校，例如瑞士联邦理工学院苏黎世分院（ETH）和洛桑联邦高等工业学院（EPFL）。长期以来，这些院校已经形成了与高科技企业携手合作，共同开展应用类研发项目的优良传统。

瑞士的高科技生产商不仅得益于瑞士高水准的理工院校，而且得益于瑞士独特的双轨教育体系。在所有的中学毕业生中，约有80%的学生不愿意或者不具备必要的技能进入大学学习，这些人可以在官方认可的200家企业中度过3-4年的职业培训生活。他们通过学习正式的课程，从雇主那里学习到实用的技能，同时在州立职业学校里掌握理论知识，在通过了相关技能与专业技术的测试之后，他们就会获得瑞士的职业培训证书。双轨执业教育体系为瑞士工业提供了源源不断的训练有素的工人。

#### 3.2 对于对外技术转让不设限制，但是受技术出口法规限制的军用物资以及军民两用产品除外

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注：瑞士对于对外技术转让不设任何限制，但是受技术出口法规限制的军用物资以及军民两用产品除外。

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根据《军用物资法》的规定，在国际法、国际义务以及瑞士的外交政策得以遵守的基础上，武器、军火以及防务装备的出口、进口与转口生产以及相关技术的出口均需获得政府批准。

根据《货物控制法》的规定，政府有权（但并非有义务）对民用以及军用产品（“军民两用产品”）的出口加以管制。该法律的主要目的是确保政府不仅能够执行其外交政策，而且能够实施国际协议（例如《化学武器公约》）项下有约束力的控制措施以及国际出口管制体制项下无约束力的控制措施。

最后一点，如同任何其他国家一样，瑞士保留有特殊性强制措施，其中包括对技术出口的限制措施，以便保护国家利益。《对外商业关系法》授权政府可以采取必要措施抵御贸易战或者类似损害瑞士经济的行为，同时，《禁运法案》也授权政府可以如此行事，主要目的是在国际法遭到违背的时候，执行联合国、经济合作与发展组织（OECD）或者瑞士重要贸易伙伴所实施的制裁措施。

<sup>14</sup> 例如：ABB, Geberit, Georg Fischer, Givaudan, Glencore, Holcim, Logitech, Lonza, Micronas, Nestlé, Nobel Biocare, Novartis, Oerlikon, Rieter, Roche, Schindler, Schweiter, Syngenta, Straumann, Sulzer, Swatch, Tyco, 等等

### 3.3 全球自贸协定网络

瑞士置身于一个全球性的自贸协定网络之中,它包括了瑞士与欧盟、欧洲自贸联盟(详见以上1节)以及与中国(详见以上第2节)等39个国家的28个主要以欧洲自贸联盟名义签订的自由贸易协定<sup>15</sup>,这一全球性的网络仍在持续扩张中<sup>16</sup>。

在欧洲以外,瑞士与加拿大签署了相互承认协议(MRA)以取消贸易技术壁垒,该协议已于1999年5月1日开始生效。与欧盟/欧洲自由贸易区(EFTA)签署的相互承认协议(MRA)不同,瑞士与加拿大签署的相互承认协议(MRA)未能认可瑞士与加拿大技术标准的等同性,而是仅限于提供了一张瑞士与加拿大认证机构名单,这些机构被批准有资格根据对方国家技术标准颁布合格证书。

瑞士所实施的相互承认协议(MRA)战略,其目的在于将相互承认协议(MRA)的范围拓展至欧洲之外,优先拓展至已经与欧盟签署相互承认协议(MRA)的国家,例如美国、澳大利亚、新西兰以及日本。

### 3.4 与中国签署了投资保护协定

瑞士已经与中国签署了一份投资保护协定,最近更新的协定于2010年4月13日起正式生效。该协定要求瑞士公平、平等地对待中国投资并且信守针对特定投资项目的承诺(如有)。此外,该协定还保护中国投资免于遭受非商业风险,例如政府的歧视、没有法律依据或无补偿的征收、或者为直接投资或资本转移设置障碍等。一旦发生违约情形,被侵权的中国投资者人可向ICSID<sup>17</sup>仲裁庭或者临时仲裁庭对瑞士提起诉讼。

<sup>15</sup> 阿尔巴尼亚、法罗群岛、波黑、马其顿、蒙特内格罗、塞尔维亚、乌克兰、埃及、以色列、约旦、黎巴嫩、摩洛哥、巴勒斯坦、突尼斯、土耳其、智利、中美洲国家(目前是哥斯达黎加和巴拿马)、海湾阿拉伯国家合作委员会(沙特阿拉伯、巴林、阿联酋、卡塔尔、科威特和阿曼)、香港、日本、新加坡、韩国、加拿大、哥伦比亚、墨西哥、秘鲁、南部非洲关税同盟(博茨瓦纳、莱索托、纳米比亚、南非和斯威士兰)

<sup>16</sup> 目前(2016年2月)正在与阿尔及利亚、俄罗斯、白俄罗斯与哈萨克斯坦海关联盟、印度、印度尼西亚、马来西亚、菲律宾、泰国和越南进行自由贸易谈判

<sup>17</sup> 国际投资争端解决中心

## 4 因素之四：瑞士拥有得天独厚的条件，便于中国企业在此设立欧洲总部

中国企业设立欧洲总部或者分销中心，瑞士是首选地。

我们已经提到瑞士与欧盟的经济一体化（详见以上第1节）、中瑞自贸协定（详见以上第2节）、中瑞投资保护协定（详见以上第3.4节）以及瑞士的全球自贸协议网络（详见以上第3.3节）。但是，设立欧洲总部以及分销中心，瑞士还具有更多优势，现简述如下：

### 4.1 高素质、多元文化背景的雇员

瑞士拥有优质的中小学校、知名的高等院校、特有的双轨教育体系以及世界最高品质的生活环境，对于国外人才具有强烈的吸引力。瑞士通过其卓越的产品和服务在国际人才市场上胜出，将大量尖端人才吸引入它高素质的高技能的劳动力大军。

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注：在欧洲范围内，瑞士的劳动力堪称最富有多元文化背景并且可使用最多种语言。瑞士的外国人比例约为24.3%，在欧洲国家中排名第三，仅次于卢森堡和列支敦士登。在苏黎世、巴塞尔和日内瓦的大都会区域均为多元文化和多种语言社区，在那里英语几乎随处可闻，并且对于几乎所有国际性的瑞士公司而言，英语已经成为其标准的企业语言

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尽管瑞士是由德语、法语和意大利语人群所组成，但是在跨语种情境中，人们更喜欢使用英语交流。

### 4.2 开明的劳动法，高水平的劳动生产率，合理的工会组织，历来不存在罢工行为

瑞士拥有欧洲最开明的劳动法，工会化程度低，工会温和，所有这些都鼓励用工，成为瑞士低失业率（3.5%/2016年12月）<sup>18</sup>的主要原因。与欧盟28国平均8.5%的失业率，或奥地利的6%、德国的4.1%（所有数据于2016年12月）<sup>19</sup>相比，都是非常低的。下面对这些特点做出具体说明。

#### 4.2.1 工会代表无权参与管理决定

瑞士公司没有设立员工委员会的法定义务，但是在拥有50名以上员工的公司中，员工可以选举员工代表。员工及员工代表（若有）拥有法定的知情权。雇主应当及时告知雇员履行其工作的须知事宜，并且必须每年一次告知雇员公司业绩对其岗位可能产生的影响。此外，在以下情形中，雇员及雇员代表（若有）拥有某些特定的法定知情权和咨询权：

- 公司将被以资产转让或兼并的方式出售；
- 雇主计划进行大规模裁员；以及
- 与选择退休基金管理人以及某些职业健康和安全问题相关的事宜。

不过，除了公司不能在未征得员工及员工代表（若有）同意的情况下更换退休基金管理人之外，员工及员工代表（若有）在公司的管理工作方面（即使影响其工作环境）都没有法定的话语权。

<sup>18</sup> 来源：瑞士联邦经济署

<sup>19</sup> 来源：欧盟统计局

#### 4.2.2 无法定最低工资无遣散费

不同于欧盟大部分成员国，瑞士没有法定最低工资（不过，集体劳动协议可以约定最低工资）。2014年5月18日，瑞士以77%的绝大多数票否决了一项关于设定最低月工资为4000瑞郎（相当于每小时22瑞郎）的公众提案。否决的原因是这一法案有可能影响瑞士一贯的低失业率（截止到2016年12月底仅为3.5%）。

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注：只要遵守有关的通知期，劳动合同可以随时终止，不需要理由，也不需要支付遣散费。但是滥用性解雇和法定解雇保护的情形除外（见下4.2.4）。

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#### 4.2.3 通知期短

在第一个工作年内，法定通知期为一个月<sup>20</sup>；从第二起至第九个工作年内，通知期为二个月；自第十个工作年起，通知期为三个月。

劳资双方可约定变更以上法定通知期，但不得少于一个月，条件是对劳资双方必须适用相同的通知期。通常，与非管理层雇员约定的通知期为一个月或两个月，基层管理人员的通知期为三个月，较高层管理人员的通知期为六至十二个月，最高层管理人员的通知期为十二至二十四个月。在整个通知期限内，雇主有权要求雇员带薪休假。对于雇员获得的或者意图避免获得的经济效益可观的工作任务而产生的任何收入，雇主可以将其从带薪休假的薪水扣除。

#### 4.2.4 温和的解雇保护

法定解雇保护限于以下情形：

- 雇员怀孕期间至分娩后16周内；
- 雇员正在服兵役，以及服兵役时间超过11天的，在服兵役之前或之后的4周内；
- 在工作第一年内，雇员生病和发生意外事故请假的前30天（总计）内；
- 在工作第二年起至第五年内，雇员生病和发生意外事故请假的前90天（总计）内；或
- 自工作第六年起，雇员生病和发生意外事故请假的前180天（总计）内。

在解雇保护期内，雇主必须要继续支付雇员一段时间工资，时间长短由法院决定，通常略短于解雇保护期。但是，兵役与怀孕两项，社会保险会视工资高低，承担全部或部分工资的续付义务。

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注：在900天病假或意外事故休假中，疾病和意外事故保险通常最多覆盖720天的80%工资；保险费通常由雇主和雇员等额承担。

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<sup>20</sup> 开始工作后第一个月为试用期，经双方协议将试用期可延长到3个月，当事人也可以协议放弃试用期。

#### 4.2.5 工会化程度低

瑞士工会代表员工利益进行集体劳动协议谈判，要求改善法定工作时间、带薪休假权、通知期及退休事宜，并要求引进最低工资制度。不过，由于工会的谈判力有限，谈判结果通常十分温和。2016年，仅有14.6%的就业人员加入了工会（数据来源：瑞士联邦数据统计局）；根据最新统计数字表明（2014年3月）只有少于46%的就业人员加入了集体劳动协议（数据来源：瑞士工会联合会）。

#### 4.2.6 生产效率高

瑞士不仅拥有欧洲最开明的劳动法之一，还拥有欧洲最高的劳动生产率，这是由于法定休假通常仅有四周时间（20岁以下的雇员可享受五周的休假。50岁以上并加入了集体劳动协议的雇员以及签订了个人劳动协议的管理人员通常可享有每年五周或六周的休假）；并且瑞士没有罢工的传统。

不存在罢工行为这一优势起源于1937年金属与机械行业关税合作伙伴所签署的“和平”承诺协议，该协议宣布放弃罢工与停业行为以有利于开展诚信谈判。近期公布的2005年至2014年期间关于瑞士和欧盟成员国的统计数字表明，瑞士以每1000名雇员中仅有1天罢工日的记录胜出了所有欧盟成员国，比较而言法国为132、丹麦为124、比利时为84、芬兰为71、西班牙为63、挪威为55、爱尔兰为28、英国为23、马耳他为16、德国为15（德国经济和社会科学研究所）、荷兰为8、瑞典为5、波兰为5、德国为4（德国政府的统计数据，部分参考了德国经济和社会科学研究所的数据）、奥地利为2<sup>21</sup>。

### 4.3 位于西欧的地理中心

瑞士处于欧洲的心脏地带，分别于德国、法国、意大利和奥地利接壤。

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注：苏黎世的洲际机场是瑞士以及德国南部地区的国内与国际交通枢纽，通达世界所有主要城市，其中包括北京、上海和香港。其他规模稍小的国际机场位于巴塞尔和日内瓦。从苏黎世机场起飞，欧洲所有国家的首都均可以在1-2小时之内抵达。

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国内与国际公路与铁路运输极为便利，因为业已建立了覆盖面广泛的公路与公共交通网络，城际铁路至少每小时发一班车，而地区性的火车发车速度则更为频繁。瑞士耗费了巨资建设铁路和公路，使其穿越阿尔卑斯山脉，建成了创纪录的最长隧道并将欧洲北部与南部联结在一起。

虽然瑞士没有滨海区域，但是她的三处巴塞尔-莱茵港口与集装箱装卸设施使得进出瑞士的海运运输成为现实。莱茵河自巴塞尔至鹿特丹全程通航，航程830公里，耗时3-4天，反向则耗时一周。中古时期，莱茵河港口就使巴塞尔成为北海与地中海之间的重要枢纽。

<sup>21</sup> 数据来源：WSI劳动争议记录2015，WSI经济与社会研究所汉斯·Böckler基金会，发表于2016年3月3日

## 5 因素之五:瑞士对待国外投资者几乎与国内投资者一视同仁

### 5.1 对外商直接投资无特殊规定

关于直接投资,瑞士的法律对于投资者非常具有吸引力,其法律框架清晰明了。

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注:对于来自国外的直接投资,瑞士法律没有特殊规定。通常情况下,瑞士对于外商投资无特殊审批要求,对于由内资或者外资所控制的瑞士公司也不会施行不同的法律法规。

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因此,在通常情况下,外国投资者在瑞士设立或者收购公司不会受到有别于本地投资者的差异性对待。原则上只有以下几各方面例外:

### 5.2 瑞士公司的授权签字人的住所地要求

至少有一名瑞士居民必须具备法定资格,可以不受任何限制而代表一家外资子公司或者分公司。该人士必须获得正式授权,成为该子公司或者分支机构的签字人,但是他并不一定必须在公司任职(例如董事、经理或者总监等类似职务)。除了授予一名瑞士居民单独签字权之外,也可采用授予两名瑞士居民行使联合签字权。

### 5.3 收购瑞士房地产

在过去几年中,外国人购置房地产的政策一直在宽松化。

在购买商业房地产(与住宅相反)时,外国投资者已经不再受到有别于本地投资者的差异性对待。商业房地产包括工厂建筑、仓库和储存设施、办公用房、购物中心、商店、酒店、饭店、车间或者医生诊所,但是不包括建设和出租民用住宅。

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注:外国投资者可以购买商业房地产且不需要获得许可,也不会受到任何其他歧视性待遇;商业房地产可以由所有者自行使用、出租或者完全作为资本投资而持有。

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对于自贸协定界定的中国服务商(见以上2.2.3节),在购置的商业房地产牵涉到相关服务的情形,中瑞自贸协定将之前瑞士单方面的国民待遇承诺改变成对中国的条约承诺。

但是,如果一家企业拥有附属未开发土地的商业房地产,则通常情况下,只有满足下列条件,外国投资者方可购买,即:这片未开发的土地占该房地产土地总面积不足三分之一,或者不足二分之一但是将在一年之内进行开发。如果企业既拥有商业房地产,也拥有住宅房地产,则只有满足下列条件,外国投资者方可购买,即:住宅不超过该房地产土地总面积的20%-33%(该比例的界定因个案以及主管当局的实践而异)。

外国企业或者外国控股企业如果要投资或买卖住宅房地产(其中包括购买民用住宅房地产公司的控股权)通常仍属于禁止之列。迄今为止,出于国家利益,外国企业或者外国控股企业投资于住宅房地产,几乎从未获得过瑞士政府的批准<sup>22</sup>。

<sup>22</sup> 有一个非常罕见的案例,就是埃及控股的奥斯康开发控股有限公司在基础设施薄弱的安德马特地区收购未开发的土地用于住宅项目建设。



不过,以下情形视为例外:

- (1) 允许收购在证券交易所上市的住宅房地产公司股份甚至控股权<sup>23</sup>,但在收购控股权的情况下,目标公司必须剥离其住宅房地产。
- (2) 允许合法居住在瑞士的外国非欧盟和欧洲自由贸易联盟的个人与家庭购置住宅房地产作为他们的主要居所。
- (3) 允许非欧盟和欧洲自由贸易联盟的个人(即使住所地在外国)购置度假或二套房(无论是公寓或别墅)以满足个人居住需求(而非纯粹的财务投资需求),由州政府颁发许可。瑞士联邦法律规定地方政府必须将用于度假屋和二套房的住宅房地产限制在该地区住宅房地产总量的20%以下。
- (4) 允许外国和外国控制的银行和保险公司在其抵押贷款借款人破产、被清算或被破产保护时收购抵押贷款借款人的住宅房地产。
- (5) 允许外商或外资控股的保险公司购买一定量的住宅房地产,如果他们持有的瑞士住宅房地产总价值不超过技术上为其在瑞士的金融活动所需的储备。

对中国的服务提供商,只要其服务内容涉及中瑞自贸协定中列举的服务项目,中瑞自贸协定将上述例外转变为瑞士方面的承诺。允许中国相关服务提供商收购住宅房地产。以上第4和第5点事实上已经在服务贸易总协定(GATS)框架下有效,而以上1-3点则超出了“服务贸易总协定”的承诺。

允许居住在瑞士的欧盟/欧洲自由贸易区国家公民自由购买瑞士的房地产,如同瑞士国民一样不受任何限制。

#### 5.4 在某些监管领域需要公司或者分支机构持有牌照

在某些监管领域,例如金融服务、公共交通、能源、广播电视、电信,外国投资者必须通过一家获得此类业务牌照的瑞士公司或者分支机构加以运作,其前提条件是,该牌照或许可的颁发对象是外国公司或者外国控股的公司<sup>24</sup>。

<sup>23</sup> 被定义为至少33%以上的投票权

<sup>24</sup> 出于政策原因,瑞士不允许向外国人颁发水电站的建设与经营许可证,而天然气的勘测与勘探许可只允许颁发给瑞士持有75%大多数股权的公司。至于核电站,外国公司只有通过瑞士注册分公司,才有资格申请运营许可。即便如此,瑞士政府也不一定颁发此类许可。在日本福岛核灾难后,瑞士政府宣布不允许任何外国公司在瑞士建立核电站。悬挂瑞士国旗的海上航行的船舶,必须为瑞士国籍且住所地在瑞士的个人、瑞士控制的公司所拥有。所谓瑞士控制的公司,即为公司的合格大多数股东为瑞士公民且住所地在瑞士。悬挂瑞士国旗的莱茵河航行船必须由居住地在瑞士或曼海姆公约国家的个人,或合格大多数股东为居住地在瑞士或曼海姆公约国家的个人的公司所拥有或控制,且该业主必须在瑞士有自己的管理代理机构。中国个人只有在具有瑞士永久居民或长期居住证的前提下才能注册瑞士国籍的飞机,并使用飞机主要来自瑞士,或通过瑞士公司,瑞士的合伙企业或在瑞士工商业注册登记的合作社。

然而,即使在這些领域,瑞士方面在中瑞自由贸易协定中对中国服务提供商作出了以下超出“服务贸易总协定”之外的承诺:

- 中国保险公司跨境承保飞机责任保险、中国银行和证券交易公司牵头发行以瑞士法郎计价的证券获得市场准入。
- 中国货运公司获得在瑞士设立商业存在以提供公路货运(不包括瑞士国内公路运输)的市场准入和国民待遇<sup>25</sup>。
- 中国海运代理商及海上货运代理商在瑞士设立商业存在以及提供跨境海上运输服务(无需拥有或操作悬挂瑞士国旗的船只),提供海轮保养及维修服务(瑞士国旗下航行与否)以及其他海事辅助服务获得市场准入和国民待遇<sup>26</sup>。
- 以下涉及航空运输服务的市场准入和国民待遇
  - 为飞机维护和修理服务、机场管理服务设立商业存在及其跨境提供;
  - 为销售和市场营销航空运输服务和计算机订座系统服务设立商业存在及其跨境提供,但国民待遇并不延伸至计算机订座系统归属航空公司在这些领域的服务;
  - 为地勤服务设立商业存在。

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注:瑞士的任何银行(包括外国银行的瑞士分行)在开始经营活动之前必须获得瑞士金融市场监管局(FINMA)颁发的许可证,而外资控股的银行还需要获得一些其他许可。

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## 5.5 外国人及外国服务提供商的工作与居住许可及签证

### 5.5.1 意欲进入瑞士劳务市场的外国人

已经提到过,瑞士的移民法有一个显著的特征,那就是欧盟/欧洲自由贸易区国家的国民可以自由移民至瑞士(见上第1.4节)。与之相反,其对于所有其他外国人(即第三国)的移民则实施严格控制,仅在没有瑞士或欧盟/欧洲自由贸易联盟国家国民可胜任某个职位的前提下,在有可能将工作许可授予高资质的第三国国民。根据法律规定,在瑞士的26个州中,每个州均仅享有有限的配额,可以在限额内向最合格的第三国专业人才颁发工作许可。因此,除非另外说明,以下仅适用于第三国国民。

标准的工作与居留许可称为“B类许可”,颁发的对象是与瑞士公司或分公司签订有无期限或期限高于一年劳动合同的外国雇员。对于欧盟或欧洲自贸联盟国公民,“B类许可”的有效期为五年(可延长),而对于非欧盟或欧洲自贸联盟国公民,“B类许可”的有效期为若干年(可延长)或不定期,每年一签,一年结束后可申请延长一年。在居住十年之后,非欧盟或欧洲自贸联盟国公民“B类许可”持有人可以申请永久居住许可证(也称之为“C类许可”),获批之后他们则可以在瑞士无期限居住和工作。欧盟或欧洲自贸联盟国公民5年后即可更换为“C类许可”。

如果无法获得“B类许可”,则可以争取短期许可(也称之为“L类许可”)。通常情况下,所颁发的“L类许可”有效期最多为一年,并且最多可以申请延期12个月。

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注:“L类许可”通常颁发的对象为拥有固定期限(最多为一年)劳动合同的第三国雇员和在瑞士新成立初创公司的外国人。

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<sup>25</sup> 瑞士境内的公路运输是指相对于瑞士境外的、或从瑞士出发或目的地为瑞士的公路运输

<sup>26</sup> 包括:海运货物装卸服务,仓储及仓储服务,报关服务,集装箱站和堆场服务,海运代理服务及海上货运代理服务

在实践中，只有在无法找到欧盟或者欧洲自由贸易区公民来任职的情况下，且“B类许可”与“L类许可”的年度配额仍有富余（一年中逗留期超过4个月），第三国的高级管理人员以及有资质的专家与专业人才方能获得工作许可<sup>27</sup>。通常而言，此类人员需要至少具备大学硕士学历、丰富的专业经验以及与其职位相称的薪酬<sup>28</sup>。

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注：虽然申请者对于获得工作许可证没有请求权，但是移民当局不会滥用其自由裁量权，只要限额没有耗尽，工作许可将会颁发给申请理由充分的合格人士。

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在境外公司直接投资瑞士子公司或者分公司的情况下，境外母公司通常需要外派其管理人员和专业人士，以此确保瑞士公司的管理并顺利地实施与集团的整合。通常情况下，针对此类集团内部的外派，“B类许可”能够非常迅速地得以批复，并且不需要考虑瑞士或者欧盟/欧洲自由贸易区国家的国民的优先权（很明显，后者可能缺乏必要的技能，也不熟悉外国直接投资者的管理模式与业务模式）。

“B类许可”持有人的近亲（例如配偶与未成年的儿童）可以同时获得“B类许可”。授予家庭成员的许可，其有效期不得超过主要“B类许可”持有人的许可期限。

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注：瑞士加入《申根协定》，为中国国民的旅游也提供了极大的便利，因为他们的瑞士签证将同时是申根签证，反之亦然。中国的C类、B类和L类许可的持有人在进入申根时，不再需要单独的签证，因为他们的许可证件也同样为申根签证。这使得中国的C类、B类和L类许可持有人能够在申根协定区域自由旅行，在每180天里最长可以停留90天。

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### 5.5.2 提供跨境服务（不进入瑞士劳务市场）的外国人

根据世贸组织“服务贸易总协定，以下各类外国人都获得入境瑞士且在瑞士短期停留的许可，只要他们入境和停留的目的是作为其中国大陆的雇主的雇员在瑞士境内提供“世贸组织”服务贸易总协定“所列举的服务种类，无论是否能找到瑞士或欧盟/欧洲自由贸易联盟国家国民来优先任职。但是，该服务仍然受到瑞士所有其他法律的约束，包括移民，入境，居留，工作和社会保障<sup>29</sup>。

— 三年期的公司内部调动，最多可延长至4年。

公司内部调动被定义为执行董事及高级管理人员或高素质的技术人员，至少在申请瑞士签证之前一年就受雇于中国母公司，将在瑞士子公司、分公司或关联公司提供世贸组织”服务贸易总协定“所列举的服务。

<sup>27</sup> 2017年，L类许可的总配额为4500个，B类许可的总配额为3000个。一般来讲，配额到秋季就会用尽，至少在经济强州如苏黎世州会如此。所以，建议在上半年提出申请，并事先咨询劳动管理部门配额情况。

<sup>28</sup> 劳动管理部门一般要求最低年薪10万瑞士法郎。但视具体情况，低于上述年薪也有可能被接受。

<sup>29</sup> 特别包括联邦和州政府对于短期停留的限额限制，对瑞士境内的专业和地域流动性的限制，以及对工作条件-报酬，工作时间，安全等的强制性要求。

- 商务访客、服务销售人员和合同服务人员一年之内可获得一期为三个月的签证。次年可再次申请，但在国外的间隔期至少为两个月。

商务访客被定义尚未在瑞士设立商业存在的中国公司的执行董事及高级管理人员，至少在申请瑞士签证之前一年就受雇于中国母公司，为在瑞士设立商业存在而入境瑞士并在瑞士停留。

服务销售人员被定义为受雇于或受某企业委托，以代表该企业签订“服务贸易总协定”中所列举的服务合同（不包括想公众直销服务或提供服务本身）的为目的，暂时在瑞士停留。

合同服务人员被定义为受雇于一家中国大陆的企业（不在人力资源领域）的高素质专家，至少有五年的工作经验，虽然该中国大陆企业在瑞士没有商业存在，但它和一家在瑞士有实质性业务的公司签有以下服务行业的合同，该专家以履行该合同为目的入境瑞士并短暂停留：

- 工程技术服务
- 计算机硬件装配服务
- 计算机软件实施服务

中瑞自贸协定 承袭了瑞士上述“服务贸易总协定”的承诺并有以下改进：

- 适用范围：不只是采取“服务贸易总协定”中所列举的服务，还对他们做了补充（见上文第2.2.3节）
- 公司内部调动：3年临时许可证可以延长至5年（“服务贸易总协定”为4年）
- 只要求合同服务人员有3年专业工作经验，而“服务贸易总协定”规定为5年，且服务领域扩大至：
  - 建筑设计服务
  - 继承工程服务
  - 城市规划服务
  - 工商管理咨询服务
  - 技术检测和分析服务
  - 涉及中国语言文字的翻译和口译服务

此外，与“服务贸易总协定”不同，中瑞自贸协定要求雇佣合同服务人员的中国大陆企业必须有法人资格

- 安装和维护工作人员也可申请3个月的临时许可证（一年内3个月有效）。在至少两个月的境外间隔期后，次年可再次申请。

合同服务人员被定义为受雇于一家中国大陆的企业（不在人力资源领域）的合格专家，虽然该中国大陆企业在瑞士没有商业存在，但它提供机械和工业设施的安装和维护有偿服务，或和该机械或工业设施的制造商或拥有人签有合同。

## 6 因素之六：瑞士对于跨境资本流动不设限制

瑞士拥有欧洲第二大金融中心，诸多世界最大的金融服务提供商<sup>30</sup>已经选择在这里建立他们的欧洲总部。

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注：瑞士对于跨境（汇出和汇入）支付转账或者资本流动没有设置任何限制。

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在上文中已经提到过（见以上第3.2节最后一段），如同任何其他国家一样，瑞士保留特殊强制措施，其中包括针对个案的支付转账及资本转移限制措施，以便保护国家利益。

<sup>30</sup> 瑞士瑞信银行、瑞士联合银行（UBS）、瑞士再保险公司、苏黎世金融服务集团等

## 7 要素之七：瑞士是欧洲低税率国家

在欧洲范围内，瑞士是一个低税率国家。较之大多数其它欧洲国家，瑞士普通企业所得税税率很低。

### 7.1 联邦政府与各州企业所得税税率低

公司所得税为三级税制，即联邦、州和乡镇。

通常，瑞士联邦政府征收的7.8%的企业所得税税负（见脚注42）占按正常标准缴税公司的全部企业所得税比例一般不到50%，而大多数州政府与市政府征收的企业所得税则超过了按正常标准缴税公司50%。

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注：由于瑞士26个州和各个城市市政府均有权自主决定其所征收的所得税税率<sup>31</sup>，因此，26个州都竞相压低其税率（且各州内的每个市政府之间也如此）。

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因此，瑞士各州之间总体企业所得税税负<sup>32</sup>介于12%到24%之间，公司在选择其住所地时值得比较候选地的企业所得税税率。举例说明：2017年总体企业所得税税负如下：

- 卢塞恩市的企业所得税率为12.4%
- 楚格市的企业所得税率为14.2%
- 沙夫豪森市的企业所得税率为16.1%
- 苏黎世市企业的税率为21.2%
- 巴塞爾市的企业税率最高为22.2%

瑞士26个州当中有些州政府对股本及储备金征收最高不超过0.5%的净值税或资本税，而联邦政府则不征收净值税或资本税。

### 7.2 红利/资本收益大于10%的税收减免

对持股超过股本10%或价值超过一百万瑞士法郎部分股权取得的红利，以及对持股超过10%而取得的资本收益，联邦政府免收企业所得税。

<sup>31</sup> 市政府在其所在州征收的企业所得税基础上乘以一个系数，以此确定市政府征收的税率。

<sup>32</sup> 相对于“税率”而已，这里特意使用“税负”一词，意在说明瑞士缴纳的税款属于可扣成本。

### 7.3 特别低税模式

目前有几种特别低税模式：过去下瓦尔登州的许可收入专用类别模式、有限风险分销税务模式、混合公司模式、控股公司和金融分公司模式。在欧盟的主导下，瑞士目前受到来自经合组织施加的压力，即将在未来几年内取消上述税务模式，然而许可收入专用类别模式已经按经合组织规定的“专利盒子”标准进行了调整。瑞士全境范围内将引入符合经合组织标准的“专利盒子”（具体见7.3.1）。2017年2月12日，瑞士选民在全民公投中否决企业税制改革的法案，但是瑞士联邦议会计划在2017年夏季向瑞士国会提交修改后的法案（“17年税收法案”）。在新法的立法进程中，各州将目前他们的普通企业所得税率从15%–24%降低到12%–20%。瑞士特色的对纳税人友好的额外的好处可能会通过修订法例来实现，诸如对研发费用的额外减税或税收抵免，在修订的法例生效时以任何隐藏的股权进行免税，和各州有权决定哪些知识产权相关的权益可以排除在资本税基以外。在任何情况下，尽管近年内前述的现行相关低税模式可能被取消，它们将被旨在保持瑞士税收优势而规划有吸引力的17年税收法案所代替。新法案预计将于2020或2021年1月1日生效。在此之前，现有的低税率模式仍然适用于新设公司。

#### 7.3.1 富有吸引力的“专利盒子”税收模式

下瓦尔登州——瑞士26个州之一，位于苏黎世东南部，离苏黎世车程不足一个小时——吸引了众多知识产权公司以及其他拥有可观的专利收入的公司，在其专利有关的收入是基于其自身的研发费用的范围内该州对这些企业的所得税总额限定为8.8%（其中包括7.8%的联邦所得税）。

如前所述，被否决的税改法案和17年税收法案都设想瑞士各州都将适用经合组织“专利盒子”税收模式。前预期的调整后的税率将略高于10%。瑞士“专利盒子”将适用于源于符合条件的专利和“类似权利”的收入。根据经合组织的标准，“类似权利”可能包括补充保护证书（SPC）和软件著作权收入。预计公司符合条件的权利和“类似权利”的研发费用必须主要产生在瑞士才能符合“专利盒子”模式的税收优惠（经合组织的改良关联法允许30%的费用来自收购或外包的知识产权或研发）。

#### 7.3.2 税务裁定

瑞士达成有约束力的税务裁定的做法很可能是独一无二的。瑞士税务裁定的实践做法不是受到经合组织和欧盟调查的一类特殊税收安排，而是主管税务机关与纳税人就特定事项的税务影响而达成的有约束力的共识，如合并计划、公司重组或其他活动。税务的裁定可以在几周内获得（加急案件可以更快），它给纳税人提供了更好的确定性和舒适性。

相比于欧盟15%最低增值税标准，瑞士仅为8%的增值税是极低的，欧盟大多数成员国的增值税税率高达20%甚至更高。在瑞士，特别增值税税率适用于食品、种子、农产品、医药与平面媒体（2.5%），以及酒店服务业（3.8%）。

值得注意的是2010年瑞士增值税税改允许控股公司直接索赔其投入的增值税，这使得瑞士对控股公司来说更具吸引力。

## 8 因素八：中瑞避免双重征税协定和瑞士香港避免双重征税协定为来自中国或香港的投资者在瑞士的投资提供优惠条件

### 8.1 瑞士香港避免双重征税协定关于所得税的有关规定

瑞士和香港之间的避免双重征税协定(“瑞港DTA”)于2012年10月15日生效,在信息交流方面它实行国际经济合作与发展组织的标准。瑞港DTA在瑞士于2013年1月1日、在香港于2013年4月1日开始实施。在此之前,香港和瑞士之间不存在DTA。

#### 8.1.1 股息

根据瑞港DTA,股息所得税最高税率为10%,但支付给在另一方缔约国持有派息人至少10%股权资本的关联公司(合伙企业或个人除外)的股息免税。同样的规则也分别适用于对养老基金或退休金计划、香港金融管理局和瑞士国家银行的支付。然而,根据香港本地税法,香港的实体所支付的股息免征任何预扣税。因此,瑞港DTA的规定主要有利于香港投资者投资于瑞士。

#### 8.1.2 利息

仅在受益人居住国对利息征税。由于香港利息支付不征收任何预扣税,这一规定的受益人是居住在香港而投资瑞士债券以及定期借款给瑞士公司的债权人。

#### 8.1.3 特许使用费

根据瑞港DTA,这两个国家的税务机关对特许使用费征收的预扣税最高税率为3%。香港本地税法规定对非居民支付的特许使用费的实际税率,公司为4.95%或16.5%,个人为4.5%或15%——根据无形资产的受益人和原所有人的不同而定。因此,瑞港DTA显著减少了从香港支付到瑞士的特许使用费的预扣税。

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注:瑞士不征收特许使用费预扣税。

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### 8.2 瑞中避免双重征税协定关于避免双重征收所得税的有关规定

瑞中于2013年9月25日签署了新的避免双重征税协定(“瑞中DTA”)。它取代了既有的1991年协定,已于2015年1月1日生效。



### 8.2.1 信息交换

瑞中DTA的关键点之一，是财税信息交换执行国际经济合作与发展组织（OECD）标准。这一重要进步将提高跨国财政事务的透明度，并使两国得以请求对方为评估本国境内纳税人提供所需的信息，如来自银行、政府机构或公司的信息。

### 8.2.2 股息

根据瑞中DTA，如果股息受益人是公司（出于财政透明考虑，合伙企业和个人除外）、居住于缔约国另一方并且直接持有派息公司至少25%的资本，那么股息的最高预扣税将是5%。这项措施旨在进一步减少对跨国公司成员的双重征税。在所有其他情况下，对股息的最高税率为10%，这与1991年前版双重征税协定一样。

如果股息的受益人是另一方缔约国本身、其行政区、中央银行或地方当局以及缔约国双方共同认定的机构和基金，缔约国一方应对该项股息完全免税。就中国而言，这类机构包括：中国投资公司和全国社会保障基金理事会。

### 8.2.3 特许使用费

在中国，中国公司向瑞士个人或公司支付的特许使用费的税率为9%，而对无协定国家，此项税率为个人20%，公司10%。因此，瑞中DTA特许使用费的税率从10%降到了9%。由于瑞士对特许使用费不征收预扣税，该协定主要使从中国向瑞士支付特许使用费受益。

### 8.2.4 利息

与1991年协定相比，瑞中DTA没有降低利息支付的预扣税，最高税率仍维持在10%。

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注：瑞士对一般贷款不征收利息预扣税，只对银行利息或债券利息按35%的标准征收预扣税（在不存在避免双重征税协定的情况下）。

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利息支付的受益人如果是另一方缔约国、其行政区或国有机构，是不征收预扣所得税的。

### 8.2.5 国际运输服务

瑞中DTA免除瑞士从事船舶或飞机运输的国际运营商在中国的营业税和增值税，并且它们提供的这类服务可得到与中国公司同等程度的进项税抵免。反之亦然，这个规则同样适用于中国的船运公司和航空公司。我们预计这个重要的税收减免将进一步增加中瑞双边旅游及商业活动。

### 8.2.6 总结

综上所述，就像瑞港DTA一样，瑞中DTA已经提高了双边投资的税务效率。

## 9 中国投资者在瑞士的并购方案和瑞士公司法简介

### 9.1 在瑞士并购方案

原则上,中国投资商可以采用以上第5节内介绍内容之外的任何可能的形式在瑞士进行并购。他们可通过股权交易或资产交易的方式,获取私营企业或上市公司的控股权。从理论上讲,即使是从瑞士法律的角度来看,跨境合并也是可能的。不过,从目前的中国法律角度来看,这一并购方案不可行,故跨境合并不适用于中国投资者在瑞士进行的并购交易。因此,最简便的方式就是收购瑞士未上市控股公司的股权或其资产与债务。

收购或出售银行10%或更多股权的银行股东,或增加、减少其持股超过或低于20%、33%或50%的,必须在完成交易之前上报监管当局(FINMA),该监管当局可以禁止此交易或给此交易设置条件。

(再) 保险公司也须遵守同样规定:(再) 保险公司股东达到、增加或减少其目标企业资本或投票权超过或低于5% 10%、20%、33 1/3%、50%或66 2/3%的,都必须上报监管当局(FINMA),由当局决定是否禁止上述持股行为或为其设置条件。

获得上市公司的控股权就意味着依据《股票交易和证券买卖联邦法案》(SESTA)及其实施细则发出了一份公开收购要约。如果目标是要100%股权控股,只要大股东持有目标公司98%的表决权,则SESTA就允许其买断剩余小股东。

如果并购并非或者至少初始并非以控股为目的,则中国投资商在开始时仅需通过订立合资协议向一家瑞士企业投资,并获得瑞士公司的股权。合资协议通常规定股权转让的条件、约定董事会构成以及合资各方承诺的资金投入。协议中也可以约定股东大会的表决方式。

### 9.2 在瑞士设立分公司

设立分支就意味着根据中国母公司权力机构关于同意在瑞士设立分支机构以及任命瑞士首席代表的决议,到商业管理部门办理登记手续。需要提供中国母公司的章程副本,以及工商登记处的登记证明(中国法律下等效材料是营业执照)。

另外,申请登记时应提供经公证(个别情形下还要经认证)的分支机构所有签字人的签字。

分支机构名称必须包含中国公司的全称,后面跟着“分公司 XY”,XY表示分支机构所在城市的名称。所有中文文件均需随附经过公证的翻译成瑞士任一官方语言(如适用,英语)的译文。

### 9.3 在瑞士设立公司

成立有限责任公司最低注册资本为2万瑞士法郎，股份有限公司为10万瑞士法郎。有限责任公司在设立时注册资本金应全额缴清。股份有限公司在设立时，实际注资额不得低于注册资本金的20%，在任何情形下，现金出资总额不得低于5万瑞士法郎。

不论哪种情况，法律并不强制要求公司聘请审计师，只要公司全职雇员不超过10人，且全体股东均选择不请审计师。但是，如果日后某股东要求聘请审计师，或者当公司全职雇员超过10人时，则必须选择聘请审计师。只要公司连续两年内不超过以下门槛中的两个，则审计内容为有限审计：资产负债表总额为2千万瑞士法郎，年售额4千万瑞士法郎，和每年平均拥有250名全职雇员。当然，股东任何时候都可选择进行全面审计。

设立公司需要经过公证的成立文件，包括公司的章程，并确定所有签字人。注册资本必须存入即将成立的该公司名下的一家银行帐户，在公司于工商管理部门完成设立登记手续之前，该账户将一直被冻结。如果以实物而非现金注资，则在实物认购协议中应以足够详细的方式说明该实物相关细节，创立人必须书面报告认购实物的特征和状态，及其合理估价。最后，必须由特许审计师审核创立人的报告并确认其是否完整、正确。公司名称方面没有限制，但不得与已经在瑞士登记的其它公司名称相似，也不得误导性或仅以描述性文字取名。

## 联系人



楚珞珈, 中国/新加坡法学硕士  
律师, 中国业务主管  
顾问  
电话:+41 58 211 34 35  
lzuest@vischer.com



高悦, 美国法学硕士  
美国纽约州注册律师  
(非瑞士律师)  
律师  
电话:+41 58 211 32 05  
fgao@vischer.com

VISCHER

Trade, Investment and M&A  
in Switzerland –  
Key Factors for Chinese Enterprises

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## Introduction

Switzerland has become a major jurisdiction for Chinese enterprises that are looking for Direct Investments in Europe, establishing European Headquarters and R&D-Centers, and acquiring European high-class know-how.

The number of Chinese-controlled, considerably sized companies or branches in Switzerland have increased tenfold in the last decade.

We have identified eight key factors which we believe make Switzerland a prime choice for Chinese Foreign Direct Investment in Europe that we are going to introduce to you in this brochure:

(I) Switzerland is economically integrated in the EU; (II) Switzerland is the first and only Continental European country that has concluded a free trade agreement with China; (III) Switzerland has excellent high-technology industries; (IV) Switzerland has excellent conditions for Chinese European headquarters; (V) Switzerland treats foreign investors almost as domestic investors; (VI) Switzerland imposes no restrictions on cross-border movement of capital; (VII) Switzerland offers very competitive tax rates in Europe; and (VIII) the New Sino-Swiss and the Hong Kong-Swiss double taxation treaties offer preferable conditions for investments into Switzerland from China and Hong Kong.

In addition, we introduce to you the Swiss M&A options for Chinese investors and company law in a nutshell.

We wish you much enjoyment in reading and discovering!

Lukas Zuest (Counsel, Head China Desk) and Christoph Niederer (Partner, Head Tax)



## 1 Factor 1: Switzerland is economically integrated in the European Union

Even though Switzerland is not a member of the EU, Switzerland is economically well integrated in the EU, and trade between Switzerland and the EU is not adversely affected. It is therefore from a free trade perspective irrelevant that Switzerland is not a member of the EU.

### 1.1 Swiss/EU Free Trade Agreement and EFTA Free Trade Agreement

Switzerland has, since 1973, a free trade agreement with the European Union and is since 1960 a member of EFTA (European Free Trade Area, today consisting of the Principality of Liechtenstein, Iceland, Norway and Switzerland).

As a result, industrial products of Swiss origin are exempt from customs when exported to EU or EFTA countries. Hence, Swiss industrial products enjoy free trade access to the EU and EFTA markets as if they had been manufactured in an EU or EFTA member state.

### 1.2 Swiss/EU Mutual Recognition Agreement

On June 1, 2002 the Agreement between Switzerland and the EU on the dismantling technical barriers to trade came into force (the "Swiss/EU MRA"). It applies to most industrial products and provides for mutual recognition of conformity tests required for market admission under applicable safety standards. The same rules also apply with respect to the EFTA members Norway, Iceland and Liechtenstein.

Technically, the Swiss/EU MRA identifies the product categories for which Swiss and EU safety standards are considered equivalent so that in each case a single conformity certificate is sufficient for both Switzerland and the EU. Currently the Swiss/EU MRA covers most industrial products, i.e. machinery, personal protective equipment, toys, medical devices, gas appliances and boilers, pressure vessels, telecommunications terminal equipment, equipment and protective systems intended for use in potentially explosive atmospheres, electrical equipment and electromagnetic compatibility, construction plant and equipment, measuring instruments and prepackages, motor vehicles, agricultural and forestry tractors, good laboratory practice (GLP), medicinal products, GMP inspection and batch certification, building products, elevators, biocidal products and cable cars.

As a result, any relevant product passing the Swiss conformity test may be labeled with the EC label and exported to the EU without double testing or further checks under the relevant EU safety standards. Only a few products within the said categories lack equality of standards but also with respect to these the relevant Swiss admission authority is allowed to act as one stop shop, i.e. to certify conformity under Swiss and EU standards.

This elimination of the need for double conformity tests removed technical barriers to Swiss/EU trade. As a result, Swiss industrial products enjoy non-discriminatory EU market access.

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**Note:** The benefits of the Swiss/EU MRA are independent of product origin. Accordingly, for Chinese manufacturers launching industrial quality products in Europe, **Switzerland is an attractive European test market:** Small, xenophile and made up of German, French and Italian speaking parts it is almost Europe in miniature – and Swiss admission of industrial products includes, as a rule, EU admission.

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### 1.3 Swiss/EU Agreement on Public Procurement

On June 1, 2002 the Agreement between Switzerland and the EU on public procurement came into force. It extended the obligations between Switzerland and the EU under the WTO public procurement conventions of 1979/87 and 1994, by requiring international public tender invitations not only for significant central government procurement projects, but also for significant procurement projects of regional and municipal authorities, government owned telecommunication operators, railway operators, entities active in the field of energy other than electricity (such as gas and heating supplies) and privately held licensed providers of public utilities such as, e.g., drinking water, electricity supply, urban transport, airports, river and sea transport.

Hence, the Agreement on public procurement considerably extended transparent and non-discriminatory access to these additional EU procurement markets (worth billions) for Swiss suppliers and service providers and made them even more competitive.

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**Note:** Chinese investors evaluating the acquisition of a Swiss manufacturer should be aware that Swiss companies enjoy non-discriminatory access to the most important EU procurement markets.

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#### 1.4 Swiss/EU Free Movement of Persons

The Agreement between Switzerland and the EU – in force since 2002 – on the Free Movement of Persons guarantees complete freedom of movement for Swiss nationals in the EU/EFTA countries with reciprocal rights for the nationals of the EU-17

<sup>1</sup>, EU-8<sup>2</sup> and EU-2<sup>3</sup>, and EFTA<sup>4</sup> countries<sup>5</sup>. The Agreement grants those nationals a right to obtain a residence and work permit if they have medical insurance, suitable living accommodation and sufficient financial means (savings or income) to feed themselves and their family.

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**Note:** Nationals of the EU-17 and EU-8 / EFTA countries moving to Switzerland or taking up gainful employment in Switzerland only need to register in person with the competent authorities within 14 days of entering Switzerland and at least 8 days prior to taking up gainful employment, producing a residential lease or deed of purchase as well as an employment contract and a completed application form for a foreign resident ID card.

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Due to Switzerland's attractiveness in the European employment market, massive immigration from the European Union (EU) started in 2008 and reached an annual net immigration of roughly 1 % of the entire Swiss population which meant every year a net immigration equal to the population of the city of Lucerne. It resulted in 2014 in a 24.3 % proportion of foreigners, of whom roughly 66 % were EU nationals, composed mainly of Italians (23.2 %), Germans (22.5 %) and Portuguese (19.8 %) and led to the success of a popular initiative requiring that "Switzerland autonomously steers the immigration of foreigners" and that "maximum numbers apply to all immigration law permits" including those for EU nationals. On February 9, 2014, the Swiss people and Cantons voted that popular initiative into constitutional law (the "Constitutional Mass-Immigration Provision").

The Swiss parliament implemented this initiative only half-heartedly, and did not introduce maximum numbers of immigration permits for EU nationals. Instead, it introduced a concept according to which in industries with a high unemployment rate, employers must first try to fill an open position with Swiss residents before an EU national may be hired. As a matter of fact, the implementation law will not implicate substantial changes to the status quo regarding the free movement of EU nationals into Switzerland.

<sup>1</sup> Austria, Belgium, Cyprus, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Luxemburg, Malta, Netherlands, Portugal, Sweden, Spain, United Kingdom

<sup>2</sup> Estonia, Lithuania, Latvia, Poland, Czech Republic, Slovakia, Slovenia, Hungary

<sup>3</sup> Bulgaria and Rumania

<sup>4</sup> Iceland, Norway, Principality of Liechtenstein

<sup>5</sup> With respect to Croatia – which joined the EU on July 1, 2013, the Swiss-EU Free Movement of Persons treaty has been extended as per January 1, 2017. During 10 years from the date of entering into force, the free movement from Croatian nationals may be subject to certain restrictions.

## 2 Factor 2: Switzerland is the first and so far only continental European country that has concluded a free trade agreement with China

### 2.1 Importance in general

On July 6, 2013 China and Switzerland signed the Sino-Swiss Free Trade Agreement ("Sino-Swiss FTA") which entered into force on July 1, 2014. The Sino-Swiss FTA is China's first free trade agreement with one of the world's top 20 economies and the first one with a continental European country.

After the Free Trade Agreement with Hong Kong<sup>6</sup> (in force since October 1, 2012), the Sino-Swiss FTA is the second answer to the increasing importance of bilateral trade between the two countries in the past few years. As China's premier Li emphasized when visiting Switzerland as the first European country after taking office, China is Switzerland's largest trade partner in Asia.

The Swiss government's import/export statistics for 2015 feature China again as Switzerland's third largest export market (CHF 14.7 bn, whereof CHF 9 bn to Mainland China and CHF 5.7 bn to Hong Kong) behind the European Union (CHF 109 bn) and the US (CHF 27.4 bn). These figures do not contain gold bars and other precious metals, coin, precious stones and gems, works of art and antiques. If they are included, China was even Switzerland's second largest export market (CHF 43.5 bn, whereof CHF 19.3 bn to Mainland China and CHF 24.2 bn to Hong Kong) behind the EU (CHF 120.9 bn).

According to the Swiss National Bank's direct investments statistics 2015 (2016 not yet being available), Swiss direct investment transactions to Mainland China totalled CHF 1.6 bn in 2015 and those to Hong Kong CHF 0.9 bn. At the end of 2015, Swiss controlled direct investments of CHF 6.9 bn in Hong Kong and CHF 20 bn in Mainland China, ranking Mainland China first in Asia for Swiss direct investments and fourth world-wide (behind the EU, the US and the latin-american off shore finance centres).

<sup>6</sup> Concluded between Hong Kong and the European Free Trade Association (EFTA) of which Switzerland is a member.

## 2.2 How Chinese exporters and investors benefit

### 2.2.1 Export of goods

Prior to the Sino-Swiss FTA Switzerland had no obligation with respect to imports from Mainland China<sup>7</sup> other than the obligation under the WTO General Agreement on Tariffs and Trade ("GATT") not to apply customs tariffs higher than Most Favoured Nation ("MFN") rates. Nevertheless, following WTO/GATT's 1979 adoption of the so-called Enabling Clause, Switzerland autonomously, i.e. without any obligation, adopted a Generalized System of Preferences for developing countries that also fully or partly dismantled tariffs for certain goods originating in China. Accordingly, Switzerland unilaterally abolished its tariffs for almost all industrial and other non – agricultural/farming/fishing products except for textiles and footwear originating in Mainland China. The Sino-Swiss FTA converted such unilateral preferences (which China would otherwise have lost as soon as no longer qualifying as a development country) into binding commitments and fully or partly dismantled the vast majority of the remaining tariffs (including those for textiles and footwear) as of the FTA's entry into force.

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**Note:** As a result, Switzerland has with respect to goods listed in Switzerland's specific preference schedule<sup>8</sup> and originating in Mainland China (imports from Hong Kong being governed by the EFTA – Hong Kong free trade agreement), since the entry into force of the Sino-Swiss FTA:

- abolished almost all remaining tariffs applied to industrial and other non – agricultural/farming/fishing products, including textiles and footwear<sup>9</sup>; and
  - reduced or abolished the tariffs applied to numerous agricultural/farming/fishing products<sup>10</sup>.
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As a very rough thumb rule, such tariffs were abolished for products which are not, or only insignificantly, competing with correspondent Swiss products (such as, e.g., tropical products, fish and crustaceans); for those significantly competing with Swiss products the Swiss tariffs were, subject to quite a few exceptions, abolished or reduced, sometimes, however, only outside Swiss harvest periods or within WTO tariff quotas<sup>11</sup>. For processed agricultural products of a primary export interest for China (i.e. in particular sugar, bakery, pasta products and peanut butter) Switzerland committed to reduce the relevant tariff beyond the removal of its domestic industry protection element.

<sup>7</sup> With respect to imports from Hong Kong, the EFTA free trade agreement with Hong Kong, in force for Switzerland since October 1, 2012, applies.

<sup>8</sup> as defined by the Swiss-Sino FTA

<sup>9</sup> Appendix 2 to Annex I of the Swiss-Sino FTA. As a result, virtually all Chinese goods described in Sections V through XXI resp. Chapters 25 through 97 of the Harmonized Commodity Description and Coding System (listed in Switzerland's specific preference schedule) are exempted from Swiss customs tariffs.

<sup>10</sup> covering all goods described in Sections I through IV resp. Chapters 01 through 24 of the Harmonized Commodity Description and Coding System, as listed in Switzerland's specific preference schedule (Appendix 2 to Annex I of the Sino-Swiss FTA)

<sup>11</sup> such as in case of, e.g., certain meat products, cut flowers, vegetables, fruit and fruit juices.

The above is only a rough summary of the 400 pages making up the FTA's Swiss specific preference schedule and any reliable advice in a particular case needs a detailed analysis based on the tariff numbers of the particular goods at issue.

Finally, and for the avoidance of doubt: The tariff preferences granted under the FTA do not cover value added tax (VAT) levied on imported goods (with respect to the applicable Swiss VAT rates see Section 7.3.2, below) and Swiss regulations on product safety, health and labelling will continue to apply also to goods imported from China.

### 2.2.2 Manufacture of goods in Switzerland

Chinese manufacturers would do well to consider combining the advantages of the Sino-Swiss FTA with those of Switzerland's free trade and mutual recognition agreements with the EU and EFTA (featured in Section 1, above) and, as the case may be, with any of Switzerland's other 27 free trade agreements with 38 other partners (featured in Section 3.3, below), using Switzerland as its gateway to all these countries.

"Gateway", does not, however, mean that a Chinese company may use Switzerland effortlessly as a transit or passage for its goods destined for the EU, or any other country with which Switzerland has an FTA, profiting from zero tariff. How easy or difficult it is would depend on the rules of origin (ROO) in the Swiss FTA with the relevant destination country and should be studied specifically by a legal expert specialising in international trade.

Generally, such ROO require a minimal value added created within Switzerland. Chinese companies could export parts and semi-finished products meeting the ROO of the Sino-Swiss FTA to Switzerland at reduced or zero tariff, and process or work on them in Switzerland, or assemble them with Swiss components in Switzerland to a sufficient extent to meet the ROO requirements for Swiss origin in the Swiss FTA with the final export destination country or countries. The product will then be deemed Swiss made, with all the positive images and effects that carries, and enjoy the preferential tariffs of the relevant FTA when exported to the final export destination country or countries.

### 2.2.3 Export of services / commercial presence related to services

Prior to the Sino-Swiss FTA Switzerland had no obligations with respect to service supplies from Mainland China<sup>12</sup> other than the obligations under the WTO General Agreement on Trade in Services ("GATS"). With the Sino-Swiss FTA, Switzerland and China basically adopted and partly improved their general GATS commitment to grant each other most favored nation ("MFN") treatment and their specific GATS commitments to grant each other for certain service sectors, reduced or no limitations on market access and national treatment for the cross-border supply of services, the consumption of services abroad, the establishment of a commercial presence for the supply of services and the presence of individuals not seeking access to the other party's labor market.

Switzerland's commitment to MFN treatment was, compared to GATS, improved by reducing the scope of its MFN exemptions with respect to audiovisual services, computer reservation systems and sales and marketing of air transport services.

Note that the Sino-Swiss FTA does not exempt services from value added tax (VAT) levied on imported services (with respect to the applicable Swiss VAT rates see Section 7.3.2, below) and Swiss regulations on safety and health will continue to apply with respect to services imported from China.

### 2.2.4 Technical Barriers to Trade ("TBT") and Sanitary and Phytosanitary Measures ("SPS")

With respect to TBT and SPS, the main benefit of the Sino-Swiss FTA for mainland Chinese exporters will result from its provisions and related additional agreements (in the areas of telecommunication equipment, certification/accreditation, SPS, measuring equipment and instruments), which aim to intensify the parties' co-operation which is key for resolving TBT and SPS problems on a pragmatic basis.

<sup>12</sup> With respect to services supplies from Hong Kong, the EFTA free trade agreement with Hong Kong, in force for Switzerland since October 1, 2012, applies.

### 3 Factor 3: Switzerland has excellent high tech industries

Located right in the heart of Europe, with borders to Germany, France, Italy and Austria, Switzerland has no natural resources other than air and water, but is a powerhouse for high tech manufacturing industries.

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**Note:** Many leading international manufacturers and life science multinationals<sup>13</sup> are not only headquartered in Switzerland, but also have important manufacturing and R&D facilities as they find it easy to attract talent in a country which offers one of the world's highest qualities of life including almost unrivalled safety, excellent schools and a widespread use of English due to a traditionally multilingual culture.

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On top of Switzerland's attractiveness for talent, there are some equally important, but less known, Swiss advantages which Chinese investors should be aware of when evaluating FDIs in Europe:

#### 3.1 Leading universities in technology and science, open to industrial R&D co-operations

The Swiss universities for technology and sciences – including European leaders such as the Swiss Federal Institute of Technology, Zurich (ETH) and the Ecole Polytechnique Fédérale de Lausanne (EPFL) – have a long tradition of actively teaming up and partnering in applied R&D with high tech enterprises in Switzerland.

Swiss high tech manufacturers not only benefit from Switzerland's excellent universities for technology and sciences, but also from Switzerland's unique dual education system. It offers the approx. 80% of all high school graduates, who do not wish or are not skilled enough to study at a university, a solid 3–4 years' vocational training in one of over 200 officially recognized trades. Obtaining the practical training from their employer based on an official curriculum and the theoretical education from specialized state trade schools, they obtain their Swiss vocational training certificate by passing thorough examinations of their acquired skills and know-how. The dual vocational education system is a constant source of well-trained workers for the Swiss industry.

<sup>13</sup> Example: ABB, Geberit, Georg Fischer, Givaudan, Glencore, Holcim, Logitech, Lonza, Micronas, Nestlé, Nobel Biocare, Novartis, Oerlikon, Rieter, Roche, Schindler, Schweiter, Syngenta, Straumann, Sulzer, Swatch, Tyco, etc.



### 3.2 No restrictions on outbound technology transfers, except for technology export control regulations relating to war material and dual use goods

Note: Switzerland imposes no restrictions on outbound technology transfers, except for technology export control regulations relating to war material and dual use goods, respectively.

Under the War Material Act, export, import, transit manufacture and trade of weapons, ammunition and defense equipment and export of relevant technology is, as a rule, subject to governmental permits granted if international law, international obligations and Swiss foreign policy are respected.

Under the Goods Control Act the government is authorized, but not obliged, to control the export of goods usable for both civil and military purposes ("dual use goods"). The act's main purpose is enabling the government to implement not only its foreign policy, but also binding control measures resolved under international agreements (such as the Chemical Weapons Convention) and non-binding control measures resolved by international export control regimes.

Finally, like other nations, Switzerland reserves extraordinary coercive measures including technology export restrictions to safeguard and defend its national interests. While the Foreign Commercial Relations Act authorizes the government to take such measures to repel trade wars or similar acts damaging the Swiss economy, the Embargo Act authorizes it to take them in order to enforce sanctions resolved by the United Nations, the OECD or important Swiss trade partners for breach of international law.

### 3.3 World-wide network of free trade agreements

On top of the free trade and mutual recognition agreements with the EU, EFTA (see Section 1, above) and China (see Section 2, above), Switzerland is embedded in a world-wide network of 28 further free trade agreements covering 39 other countries<sup>14</sup>, mostly concluded in the framework of EFTA, a network which is continuously expanding<sup>15</sup>.

<sup>14</sup> Albania, Faeroe-Islands, Bosnia-Herzegovina, Macedonia, Montenegro, Serbia, Ukraine, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Tunisia, Turkey, Chile, Central American States (currently Costa Rica and Panama), Cooperation Council for the Arab States of the Gulf (Saudi-Arabia, Bahrain, UAE, Qatar, Kuwait and Oman), People's Republic of China, Hong Kong, Japan, Singapore, South Korea, Canada, Columbia, Mexico, Peru, Southern African Custom Union (Botswana, Namibia, Lesotho, South Africa und Swaziland), Philippines (signed), Georgia (signed).

<sup>15</sup> Currently (February 2017) free trade negotiations are being held with Algeria, the Customs Union for Russia, Belarus and Kazakhstan, India, Indonesia, Malaysia, Thailand and Vietnam.

Further, Switzerland has mutual recognition agreements (MRA) dismantling technical barriers to trade not only with the EU and EFTA (see Section 1.2, above), but also with Canada, in force since May 1, 1999. In contrast to the EU/EFTA MRAs, the Swiss/Canadian MRA does not, as a rule, recognize equality of Swiss and Canadian technical standards, but is limited to a list of Swiss and Canadian certifiers recognized as qualified to issue conformity certificates under the other country's technical standards.

Switzerland's MRA strategy aims to expand the network of MRAs beyond Europe, preferably with countries that also have an MRA with the European Union such as the U.S., Australia, New Zealand and Japan.

### 3.4 Investment Protection Treaty with China

Switzerland has an investment protection treaty with China, the most updated treaty in force since April 13, 2010. It obliges Switzerland to fairly and equitably treat Chinese investments and to keep assurances made, if any, in connection with a particular investment. Furthermore, it protects Chinese investments from non-commercial risks such as governmental discriminations, expropriations without legal basis or compensation and impediments to payment and capital transfers relating to such investments. In case of breach, the aggrieved Chinese investor may file a claim against Switzerland in a Swiss court, before the ICSID<sup>16</sup> arbitral tribunal or an ad hoc tribunal.

<sup>16</sup> International Centre for Settlement of Investment Disputes

## 4 Factor 4: Switzerland has excellent conditions for Chinese European headquarters

Switzerland is an ideal place for establishing European headquarters or distribution centers of Chinese companies.

We have already mentioned Switzerland's economic integration in the EU and EFTA markets (see Section 1, above), the Sino-Swiss Free Trade Agreement (see Section 2), the Sino-Swiss Investment Protection Treaty (see Section 3.4) and Switzerland's world-wide network of free trade agreements (see Section 3.3). However, equally important features benefitting headquarters and distribution centers are the following:

### 4.1 Highly qualified, multicultural employees

Switzerland has excellent schools and leading universities, a unique dual education system and one of the world's highest qualities of life easily attracting talent from abroad. Powered by the pressure from global competition for the best quality of products and services it is the source of Switzerland's qualified and skilled work force.

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**Note:** Switzerland's work force is one of the **most multicultural and multilingual in Europe**. Switzerland's proportion of foreigners is approx. 24.3% which ranks third in Europe after Luxemburg and Liechtenstein. The metropolitan areas of Zurich, Basel and Geneva are multicultural and multilingual societies where English can be heard almost everywhere, and English has become the standard corporate language of almost all major international Swiss companies.

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Although Switzerland is made up of German, French and Italian speaking parts, English is more prevalent in each of them than the languages of the other linguistic areas.

### 4.2 Liberal labor law, high labor productivity, reasonable labor unions and traditional absence of strike actions

Switzerland has one of Europe's most liberal labor laws, a low degree of unionization and moderate unions, all of which encourage hiring and essentially contribute to Switzerland's unemployment rate of 3.5% (December 2016)<sup>17</sup> which is exceptionally low compared to the European Union's average of 8.5% (EU of 28), and even remarkably lower than the 6.0% in Austria and 4.1% in Germany (all December 2016)<sup>18</sup>. These features will be further explained below.

<sup>17</sup> Source: Swiss State Secretariat for Economic Affairs (SECO)

<sup>18</sup> Source: The European Communities' Statistical Office (EUROSTAT)

#### 4.2.1 No Workers' Councils with a Say on Managerial Decisions

There is no statutory duty for Swiss companies to have workers' councils. Though, in companies with more than 50 employees they may elect a workers' representation. Employees and workers' representation (if any) have a statutory general information right to be timely informed about matters that need to be known for the performance of their jobs, and once a year they must be informed of how the company's results may affect their jobs.

Further, they have some specific statutory information and consultation rights in the following cases:

- The employer company is about to be sold by way of an asset deal or merger;
- The employer plans large-scale layoffs; and
- The selection of pension fund carriers and certain matters of occupational health and safety.

Nevertheless, neither employees nor the workers' representation (if any) have a statutory right to have a say in management matters (even if affecting their work place environment) except that the employer company may not exchange a pension fund carrier without their consent.

#### 4.2.2 No Statutory Minimum Wages and no Severance Pay

There are, in contrast to most EU member states, no statutory minimum wages. A minimum wage may apply, however, based on collective bargaining agreements. On May 18, 2014 the Swiss people turned down a popular initiative aiming to introduce a constitutional minimum wage of CHF 4,000 per month (equaling CHF 22 per hour) by an overwhelming majority of 77%, realizing that such a minimal wage would have increased the traditionally low Swiss unemployment rate of currently 3.5% (December 2016).

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**Note:** Terminations, respecting the applicable notice period, may be given at any time, without giving reasons and without any severance pay, subject only to the stipulations on abusive termination and statutory dismissal protection (see below Section 4.2.4).

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#### 4.2.3 Short Notice Periods

Statutory notice periods are 1 month during the first year of service<sup>19</sup>, 2 months in the 2nd through 9th year of service and 3 months from (including) the 10th year of service.

Such statutory notice periods may be set aside by mutual agreement provided that the notice period is not less than one month and further provided that no different notice

<sup>19</sup> Subject 7 days during the probation period. The probation period is the 1st month of service, extendable by mutual agreement to the 3rd month of service, unless the parties waive the probation period by mutual agreement.

periods are agreed for notices given by the employee. Usually, agreed notice periods are 1 or 2 months for employees without management functions, 3 months for lower management, 6–12 months for higher management and 12–24 months for top level management. The employer is entitled to put the employee on garden leave during the entire notice period. The employer may deduct from the garden leave salary any income from other gainful activities which the employee obtains or intentionally avoids obtaining.

#### 4.2.4 Moderate Dismissal Protection and Continued Pay Obligations

- The statutory protection from dismissal is limited to the following events:
- The employee's pregnancy and 16 weeks after childbirth;
- The employee's military service and, if lasting more than 11 days, the four weeks preceding or following it;
- The first 30 days (in aggregate) of a sickness and accident leave during the 1st year of service;
- The first 90 days (in aggregate) of a sickness and accident leave during the 2nd – 5th year of service; or
- The first 180 days (in aggregate) of a sickness and accident leave after (including) the 6th year of service.

During these termination protection periods the employer is obliged to pay the salary for a limited period of time which has been determined by courts to range slightly below the length of the applicable termination protection period, but with respect to military service and pregnancy, social security has stepped in, covering the continued pay obligation in whole or in part (depending on the amount of the relevant salary).

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**Note:** Sickness and accident leave insurance covering 80 % of the salary during a maximum of 720 days within a period of 900 days of sickness or accident leave is customary; premiums are usually borne in equal shares by the employer and the employee.

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#### 4.2.5 Low Unionisation

Swiss unions negotiate collective employment agreements improving statutory matters to the benefit of the employee side, and introducing minimum wages. Nevertheless, the results are as a rule moderate, as the unions' bargaining power is limited.

In 2016, only 14.6 % of all employees were unionized<sup>20</sup> and according to the latest available statistics (March 2014) only 46 % of all employees are subjected to a collective bargaining agreement<sup>21</sup>.

<sup>20</sup> Source: Swiss Federal Office for Statistics

<sup>21</sup> Source: Swiss Association of Unions (SGB)

#### 4.2.6 High Productivity

Switzerland not only has one of Europe's most liberal labor laws, it also has **one of Europe's highest labor productivity rates**, which is due to: (I) statutory holiday leave entitlements of, as a rule, four weeks only (five weeks for those less than 20 years old. Employees over 50 under collective employment agreements, as well as managers under individual employment agreements, are usually granted five or six weeks annual holiday leave); and (III) a traditional absence of strike actions.

The absence of strike actions is rooted in the 1937 contractual "peace" commitment between the tariff partners of the metal and machinery industry renouncing on the right to strike and lock-outs in favor of good faith negotiations. In one of the latest available statistics covering the period 2005 – 2014 for Switzerland and EU members providing such statistics, Switzerland outperforms them all with 1 strike day per 1,000 employees, compared to 132 for France, 124 for Denmark, 84 for Belgium, 71 for Finland, 63 for Spain, 55 for Norway, 28 for Ireland, 23 for UK, 16 for Malta, 15 for Germany according to WSI, 8 for The Netherlands, 5 for Sweden, 5 for Poland, 4 for Germany according to governmental statistics (fragmentary according to WSI), and 2 for Austria <sup>22</sup>.

#### 4.3 Situated in the geographical center of Europe

Switzerland is located right in the heart of Europe, sharing borders with Germany, France, Italy and Austria.

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**Note:** Zurich's intercontinental airport operates as Switzerland's and southern Germany's national and international transport hub with excellent connections to all major cities of the world including Beijing, Shanghai and Hong Kong. Other, smaller, international airports are situated in Basel and Geneva. From Zurich airport almost all European capitals can be reached by a 1 - 2 hour flight.

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Domestic and cross border road and railway transportation is easy due to a wide network of highways and excellent public transportation networks with intercity trains departing at least hourly and regional trains departing even more frequently. Switzerland spent billions on railways and highways crossing the Alps in recordbreaking long tunnels connecting northern and southern Europe.

Although Switzerland has no sea front, its three Basel Rhine harbors and container handling facilities enable maritime transportation from and to Switzerland. The Rhine is navigable from Basel to its Rotterdam mouth, the passage taking about 3 – 4 days from Basel to Rotterdam (830 kilometers) and one week in the opposite direction. Ever since medieval times, the Rhine harbors have made Basel an important terminal between the North Sea and the Mediterranean.

<sup>22</sup> Source: WSI Wirtschafts- und Sozialwissenschaftliches Institut der Hans-Böckler-Stiftung, WSI-Arbeitskampfbilanz 2015, published March 3, 2016

## 5 Factor 5: Switzerland treats foreign investors almost as domestic investors

### 5.1 No special rules on foreign direct investment

Swiss law provides an investor-friendly, clear and straightforward legal framework for direct investments.

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**Note:** Switzerland does not have special rules on foreign direct investments. **As a general rule, Switzerland does not require approvals for foreign investments** or provide different rules and laws for Swiss companies under domestic or foreign control.

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Consequently, foreign investors establishing or acquiring a business in Switzerland are, as a rule, not discriminated against local investors. In essence, only the following few exceptions apply:

### 5.2 Residence requirement for signatories of a Swiss company

At least one person with residence in Switzerland must have legal capacity to act on behalf of a Swiss company or branch without any restrictions. This person must be duly empowered as a signatory of the company or branch, but need not necessarily be given a corporate function (such as board member, manager, director or the like). Instead of one Swiss resident having sole signature power, two Swiss residents with collective signature power would also be acceptable.

### 5.3 Acquisition of Swiss real estate

The acquisition of real estate by foreigners has enjoyed a continuous liberalization over the last few years.

Foreign investors are not discriminated against local investors when acquiring commercial (as opposed to residential) real estate. Commercial real estate includes factory buildings, warehouses and storage areas, offices, shopping centres, shops, hotels, restaurants, workshops or doctors' offices, but excludes the construction and letting of homes.

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**Note:** The acquisition of commercial real estate by foreign investors is allowed and not subject to a permit or any other discriminatory restriction; commercial real estate can be used by the owner itself, let or held solely as a capital investment.

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For Chinese providers of FTA scheduled services (see Section 2.2.4, above) the Sino-Swiss FTA converted this autonomous national treatment into a commitment by Switzerland to China whenever the possible acquisition of commercial real estate affects the supply of the relevant services.

However, should a company own commercial real estate and undeveloped land, its acquisition by a foreign investor would only be tolerated if the undeveloped land accounts, as a rule, for less than a third and for no more than half of the real estate's total surface area and is developed within a year. Should the company own commercial and residential real estate, its acquisition would only be tolerated if the residential real estate accounts for not more than 20 % – 33 % of the real estate's total surface area (the range depends on the particularities of the case and the practice of the competent authorities).

Investments in and trade of residential real estate including purchases of a controlling stake in privately held residential real estate companies by foreign or foreign controlled companies are generally prohibited. To date, investments in residential real estate by foreign or foreign controlled companies have very rarely been permitted by the Swiss government on grounds of prevailing national interests<sup>23</sup>.

Nevertheless, the following exceptions apply:

- 1 The purchase of shares, even of a controlling stake<sup>24</sup>, in a stock exchange listed residential real estate company is allowed, but in case of a controlling stake the target company will arguably have to divest its residential real estate.
- 2 Foreign non-EU/EFTA individuals legally resident in Switzerland are allowed to acquire at their place of residence a home as their main residence.
- 3 Non-EU/EFTA individuals (even if domiciled abroad) may be allowed by one of the 26 Swiss cantons (states) to acquire a holiday or secondary home (whether apartment or house) for their personal housing needs (as opposed to purchases for purely financial investment purposes) subject, however, to the federal law restricting the share of secondary homes and space to 20 % of the total homes and residential space of the relevant municipality.
- 4 Foreign and foreign-controlled banks and insurance companies are granted permission to acquire Swiss residential real estate to secure their mortgage loans in case of the borrower's liquidation by bankruptcy or composition with creditors.
- 5 Foreign or foreign-controlled insurance companies are granted permission to invest in residential real estate if the value of their entire real estate does not exceed the technical reserves for their Swiss activities.

For Chinese providers of FTA scheduled services, the Sino-Swiss FTA converted the aforementioned exceptions into commitments by Switzerland to permit Chinese buyers to acquire the relevant residential real estate if affecting the supply of the FTA scheduled services. While exceptions 4 and 5 were already granted under the General Agreement on Trade in Services (GATS), Switzerland's FTA commitment to grant exceptions 1 – 3 exceeds its GATS commitments.

<sup>23</sup> One of the rare examples is the acquisition of undeveloped land for residential purposes in the structurally weak region of Andermatt by the Egyptian controlled Orascom Development Holding AG

<sup>24</sup> Defined as more than 33 % of the outstanding voting capital



EU/EFTA nationals resident in Switzerland are allowed to acquire Swiss real estate without restrictions, as if they were Swiss nationals.

#### 5.4 Licensed company or branch required in some regulated fields

In regulated fields such as financial services, public transportation, energy, radio and television, and telecommunication, foreign investors must operate through a Swiss company or branch licensed for such businesses provided that the relevant permits or licenses are granted to foreign or foreign controlled companies<sup>25</sup>.

Nevertheless, even in some of these fields the Sino-Swiss FTA committed Switzerland – other than GATS – to grant the benefits set out below to Chinese service providers:

- Market access is granted with respect to cross-border underwriting of aircraft liability insurance by Chinese insurers and cross-border lead-managing of Swiss franc denominated issues by Chinese banks and securities dealers;
- Market access and national treatment are granted with respect to the establishment of a commercial presence for the supply of road freight transportation (excluding cabotage<sup>26</sup>);
- Market access and national treatment are granted with respect to the cross-border supply of, and the establishment of a commercial presence for, maritime agency services and maritime freight forwarding services, and with respect to the establishment of a commercial presence for maritime transport services without ownership or operation of a vessel under the Swiss flag, for maintenance and repair services of seagoing vessels (whether sailing under the Swiss flag or not) and for other maritime auxiliary services<sup>27</sup>;

<sup>25</sup> Examples: Permits for the construction and operation of hydroelectric power plants may be refused to foreigners for policy reasons and permits for prospection and exploitation of natural gas are only granted to companies owned by a 75% Swiss majority. Foreign companies are eligible for permits for nuclear power plants only if operating through a registered Swiss branch, but neither domestic nor foreign applicants have a right to obtain a permit and after the nuclear catastrophe in Fukushima, Japan, the Swiss government announced no new nuclear power plants would be authorized in the future. Maritime vessels sailing under the Swiss flag must be owned and operated by Swiss companies or Swiss nationals domiciled in Switzerland and to qualify as Swiss a company must be owned and controlled by a qualified majority of Swiss nationals domiciled in Switzerland. Rhine vessels sailing under the Swiss flag must be owned and controlled by individuals domiciled in Switzerland or a Mannheim Convention country or by companies owned and controlled by a qualified majority of individuals domiciled in Switzerland or a Mannheim Convention country, and such owners must have an appropriate managing agency in Switzerland. Chinese nationals may only own aircrafts registered under the Swiss flag if permanently resident in Switzerland based on a long term residence permit and using the aircraft mainly from Switzerland, or – which also applies for Chinese companies – through Swiss companies, Swiss general partnerships or Swiss cooperative societies registered in the commercial register.

<sup>26</sup> "cabotage" means road freight transportation within Switzerland (as opposed to outside Switzerland or from and to Switzerland)

<sup>27</sup> Comprising: Maritime cargo-handling services, storage and warehouse services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services

- Market access and national treatment are granted in the field of air transport services with respect to:
  - the cross-border supply of, and the establishment of a commercial presence for, aircraft maintenance and repair services and airport management services;
  - the cross-border supply of, and the establishment of a commercial presence for, sales and marketing of air transport services and computer reservations system services, whereby national treatment in these areas does not extend to the distribution through computer reservation systems of air transport services provided by the relevant computer reservation system's parent carrier;
  - the establishment of a commercial presence for the supply of ground handling services.

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**Note:** While any bank in Switzerland, including a foreign bank's Swiss branch, needs to obtain a license from the supervisory authority (FINMA) before starting activities, foreign controlled banks and foreign banks' Swiss branches are subject to some additional license requirements.

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## 5.5 Work and residence permits and visa for foreigners and foreign service providers

### 5.5.1 For foreign individuals seeking access to the Swiss employment market

As already mentioned, immigration law in Switzerland is characterized by the freedom to immigrate for EU/EFTA nationals (see Section 1.4, above). In contrast, however, a strict immigration control applies to all other foreigners seeking access to the employment market, with work permits only being issued to qualified applicants for which no Swiss or EU/EFTA nationals are suitable or available and in the case of applications for stays exceeding four months in twelve only subject to limited quotas allocated to each of the 26 Swiss states. Accordingly, the following applies to non-EU/EFTA nationals only, unless explicitly stated otherwise.

The standard work and residence permit is the so called "B permit" for foreign employees having an employment contract with a Swiss company or branch for an indefinite term or a fixed term of more than one year. For EU/EFTA nationals «B permits» are valid for five years (renewable) while for non-EU/EFTA nationals «B permits» are valid for several years (renewable) or an undetermined period of time, issued for consecutive periods of one year, each time extended to the following year. After ten years of residence, non-EU/EFTA nationals holding a B permit may apply for a permanent residence permit (the so called «C permit») allowing them to reside and work in Switzerland for an unlimited time. For EU/EFTA nationals holding a B permit, C permits are already available after five years of residence.

If a B permit cannot be obtained, a short-term permit may be obtainable (the so called "L permit"). As a rule, L permits are issued for a period of up to one year and may be extended for a maximum period of 12 further months.

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**Note:** L permits generally tend to be issued to foreign employees with fixed-term employment contracts of up to one year as well as to foreign owners of newly established start-ups in Switzerland.

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In practice, only managers, qualified specialists and experts are admitted if no Swiss, EU or EFTA national is suitable or can be found to fill the vacancy and, if applying for a stay exceeding four months in twelve, further provided that the applicable yearly quota of B or L permits is not yet exhausted<sup>28</sup>. As a rule, a university masters degree, professional experience and a salary reasonable for the position<sup>29</sup> are required.

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**Note:** Although there is no legal right to be granted a permit, the immigration authorities do not abuse their discretion and usually endeavor to grant well prepared and reasoned applications as long as the relevant permit quota is not exhausted.

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In the context of foreign direct investments in Swiss companies or branches a need for intra-group transfers of foreign executives and specialists usually arises in order to ensure control and the smooth integration of the Swiss business in the group. For such intra-group transfers B permits are, as a rule, granted quite quickly and without the need to look for Swiss or EU/EFTA nationals first (as they would obviously lack the required skills of being familiar with the management and business of the foreign direct investor).

Close relatives such as spouses and under-age children may be allowed to join a B permit holder in Switzerland. The permission granted to accompanying family members is limited to the duration of the permit of the primary B permit-holder.

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**Note:** Switzerland's accession to the Schengen Treaty has considerably facilitated travel for Chinese nationals as their Swiss visa is always a Schengen visa and vice versa. Chinese C, B, or L permit holders no longer require a separate visa to enter Switzerland as their permits also serve as Schengen visa. Consequently, Chinese C, B or L permit holders may freely travel within the Schengen area for up to 90 within 180 days.

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<sup>28</sup> In 2017, all quotas together allow 4500 L permits and 3000 B permits. They are usually exhausted by autumn, at least in economically powerful cantons such as Zurich. It is thus recommended to submit applications in the first six months of the year and to inquire with the authorities in advance on the quota fill level.

<sup>29</sup> The labour market authorities tend to require an annual salary of at least CHF 100,000 gross. Though, depending on the specific circumstances, lower minimum annual salaries may be possible.

### 5.5.2 For foreign individuals supplying cross border services (i.e. without seeking access to the Swiss employment market)

By virtue of the WTO General Agreement on Trade in Services ("GATS") the categories of foreigners listed below currently have a right to be granted a permit to enter and temporarily stay in Switzerland for the purpose of supplying GATS scheduled services for their mainland Chinese employer during the periods set out below, irrespectively of whether Swiss or EU/EFTA nationals would be available for such work, but still subject to all other Swiss laws relating to immigration, entry, stay, work and social security<sup>30</sup>:

- Intra-Corporate Transferees ("ICT") for a period of three years, extendable to a maximum of four years.

ICT are defined as executive and senior managers or highly qualified specialists of a mainland Chinese enterprise who were employed by it for at least the year preceding their application for admission to Switzerland and who will supply the relevant GATS scheduled services through the Swiss branch, subsidiary or affiliate of their employer.

- Business Visitors ("BV"), Services Salespersons ("SS") and Contractual Service Suppliers ("CSS") for a period of three months within one year. Renewal in the following year is possible after a stay abroad of at least two months since the last stay in Switzerland.

BV are defined as Executives and senior managers of a mainland Chinese enterprise without a commercial presence in Switzerland who were employed by it for at least the year preceding their application for admission to Switzerland and who are responsible for, and enter and stay in Switzerland for the purpose of, establishing a Swiss commercial presence of their employer.

SS are defined as individuals employed or mandated by an enterprise staying temporarily in Switzerland for the purpose of concluding on behalf of such enterprise a contract for the sale of a GATS scheduled service (without selling services to the general public or supplying services themselves).

<sup>30</sup> Including in particular the limitation of short time stays by cantonal and federal quotas, measures restricting the professional and geographical mobility within Switzerland and the requirement to comply with working conditions – remuneration, working hours, safety etc. – compulsory or customary for the relevant work at the Swiss place of performance.

CSS are defined as highly qualified specialists employed by a mainland Chinese enterprise not providing placement and supply of personnel and not having a commercial presence in Switzerland, but having a contract for the supply of services to an enterprise doing substantial business in Switzerland, who enter and stay in Switzerland for the purpose of supplying the relevant services on behalf of their employer as professionals in one of the following service sectors in which they must have at least five years of experience:

- Engineering services
- Consultancy services related to the installation of computer hardware; and
- Software implementation services.

The Sino-Swiss FTA adopted Switzerland's aforementioned specific GATS commitments together with the following improvements:

- Scope: It not only adopts the GATS scheduled services, but supplements them with additional services (see above, Section 2.2.4)
- Intra-Corporate Transferees (ICT): The three years temporary permit is extendable to a maximum of five (GATS: four) years
- Contractual Service Suppliers (CSS) need only three (GATS: five) years of experience as a professional in the relevant service sector and the eligible service sectors have been supplemented by the following sectors:
  - Architectural services
  - Integrated engineering services
  - Urban planning services
  - Management consulting services
  - Technical testing and analysis services
  - Translation and interpretation services form or into a national language of China

Further, other than GATS, the Sino-Swiss FTA requests that the Mainland Chinese enterprise employing CSS must be a legal entity.

- Installers and Maintainers ("IM") are added as eligible applicants for temporary three months permits (three months within one year). Renewal in the following year is possible after a stay abroad of at least two months since the last stay in Switzerland.

IM are defined as qualified specialists employed by a mainland Chinese enterprise not providing services of placement and supply of personnel and not having a commercial presence in Switzerland, but supplying installation and maintenance services for machinery and industrial equipment for a fee or based on an installation or maintenance contract concluded between the enterprise that manufactured and the enterprise owning the equipment.

## 6 Factor 6: Switzerland imposes no restrictions on cross border movements of capital

Switzerland hosts the second largest financial centre in Europe and some of the world's largest financial services providers<sup>31</sup> have chosen to locate their headquarters here.

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**Note:** There are no restrictions on cross border payment transfers or movements of capital (inbound and outbound).

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As already mentioned (see above, last paragraph of 3.2), Switzerland reserves – as any other nation – any extraordinary coercive measures including payment and capital transfer restrictions to safeguard and defend national interests on a case by case basis.

<sup>31</sup> Credit Suisse, UBS, Swiss Re, Zurich Financial Services, etc.

## 7 Factor 7: Switzerland offers competitive tax rates in Europe

In the European context, Switzerland offers low tax rates and an investor friendly tax environment. Its ordinary corporate income tax rates are low, compared to most other European countries.

### 7.1 Low federal and state corporate income tax rates

Corporate income tax is levied on three levels: on the federal, the cantonal and the municipal level.

As a rule, the Swiss confederation's federal 7.8 % corporate income tax charge (for this term, see footnote 43, below) generally accounts for less than 50 % of an ordinarily taxed company's total corporate income tax charge while most cantonal and municipal corporate income tax account for more than 50 % of an ordinarily taxed company.

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**Note:** As each of the 26 Swiss cantons (states) and each of their municipalities has the sovereign right to determine its own income tax rate<sup>32</sup>, there is competition for low tax rates among the 26 cantons (and within each of them, between the municipalities).

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Hence, the Swiss overall corporate income tax charge<sup>33</sup> varies between 12 % and 24 % thus making it worth carefully bearing in mind cantonal and municipal corporate income tax charges when selecting a corporate domicile in Switzerland.

Example: The 2017 overall corporate income tax charge amounts to:

- 12.4 % for companies domiciled in the city of Lucerne
- 14.2 % for companies domiciled in the city of Zug
- 16.1 % for companies domiciled in the city of Schaffhausen
- 21.2 % for companies domiciled in the city of Zurich
- 22.2 % for companies domiciled in the city of Basel

In some of the 26 Swiss cantons a net worth or capital tax of up to 0.5 % is levied on share capital and reserves. On the federal level, there is no net worth or capital tax.

<sup>32</sup> Municipalities determine their tax rate as a fraction or multiple of the income tax rate of the state to which they belong.

<sup>33</sup> The term "tax charge" as opposed to "tax rate" is used on purpose to reflect that in Switzerland tax payments are tax deductible expenses.

## 7.2 Dividends / capital gains of more than 10 % are tax-exempted

Dividend income derived from shareholdings of more than 10 % of the share capital or exceeding CHF 1 million in value and capital gains derived from shareholdings of more than 10 % of the share capital<sup>34</sup> are exempt from federal corporate income tax.

## 7.3 Special low tax models

There are currently a number of special low tax models: Nidwalden Canton's former License box model, the Limited risk distribution tax model, the mixed company model, the holding company and the finance branch model. It should however be noted that Switzerland is under pressure from the OECD (driven by the EU) to, and is currently about, to abolish any of these models within the next few years, whereas the Canton of Nidwalden has already aligned its License box model to the Patent Box standards defined by the OECD. A similar OECD compliant Patent Box (for details see below, Section 7.3.1) will be introduced nation-wide. The proposal for the amended corporate tax law was rejected by the Swiss people in course of a public vote on February 12, 2017; however, the Swiss Federal Council is aiming to present an amended proposal ('Tax Proposal 17') to the Swiss parliament by summer 2017. In course of implementation of the new law, the Cantons will reduce ordinary corporate income tax rates from currently 15 % – 24 % to 12 % – 20 %. In the sense of a taxpayer-friendly Swiss finish additional benefits might be implemented in the amended legislation, such as additional deductions or tax credits for R&D expenses, a tax-free step up on any hidden equity at the time the amended law will enter into force and a right of Cantons with capital tax to allow the deduction of IP-related equity from the capital tax base. In any case we expect that although the aforementioned current low tax models may fall out within the next few years, they will be replaced by the attractive Tax Proposal 17 features designed to uphold Switzerland's tax attractiveness. The new law is expected to become effective on January 1, 2020 or 2021, according to the planned schedule. Until then the existing low tax models still apply are available also for new companies.

<sup>34</sup> Provided the respective shares have been held for a minimum period of one year prior to sale.



### 7.3.1 Attractive "Patent Box" tax model

The Nidwalden Canton – one of the 26 Swiss cantons, located less than an hour's car drive south-east of Zurich – attracts group IP companies and other companies with substantial income from patents by limiting their total income tax charge on patent income to 8.8% (including 7.8% federal income tax) if and to the extent that its patent-related income is based on its own R&D expense.

As mentioned, both the rejected proposal as well as the Tax Proposal 17 have and will have provided for an OECD compliant Patent Box in all Swiss cantons. Its currently contemplated reduced tax rate will be slightly over 10%. The Swiss Patent Box will apply to income generated from qualified patents and "comparable rights" while "comparable rights" may, according to OECD standards, include income from Supplementary Protection Certificates (SPC) and software copyrights. It is expected that patents and comparable rights only qualify for Patent Box benefits if and to the extent resulting from R&D expenses that were mainly generated in Switzerland (OECD Modified Nexus Approach, allowing for 30% acquired or outsourced IP/R&D expense).

### 7.3.2 Tax rulings

Switzerland's practice to obtain binding tax rulings is probably unique. A tax ruling as practiced in Switzerland is not a type of special tax arrangement under investigation from OECD and EU but is a binding consent of the competent tax authority to the taxpayer's understanding of the tax consequences of a particular undertaking, such as a planned merger, corporate restructuring or other activity. Tax rulings can be obtained within a few weeks (and in case of urgency even faster) and it provides high-level certainty and comfort for the taxpayers.

### 7.3.3 Low VAT of 8%

At a mere 8% standard rate, Swiss VAT is extremely low in comparison to the EU's 15% minimum VAT standard rate, topped by most EU members with VAT standard rates of 20% and more. In Switzerland, special VAT rates apply to food, seeds, agricultural products, medication and print media (2.5%) and to hotel services (3.8%).

It is noteworthy that Switzerland's VAT reform of 2010 allowed holding companies to forthwith claim input VAT which adds to the attractiveness of Switzerland for holding companies.

## 8 Factor 8: The Sino-Swiss and the Hong Kong-Swiss double taxation treaties (DTA) offer preferable conditions for investments into Switzerland

### 8.1 The treaty between Switzerland and Hong Kong for the avoidance of double taxation with respect to income taxes

The DTA between Switzerland and Hong Kong came into force on October 15, 2012 (the "Hong Kong – Swiss DTA") and also implemented the international OECD standards on exchange of information. The Hong Kong-Swiss DTA entered into effect for Switzerland on January 1, 2013 and for Hong Kong on April 1, 2013. No DTA between Hong Kong and Switzerland existed prior to the current treaty.

#### 8.1.1 Dividends

Under the Hong Kong – Swiss DTA dividends are taxed at a maximum rate of 10%, but dividends to affiliate companies (other than to partnerships or individuals) in the other Contracting Party holding at least 10% of the dividend payers are even exempt.

The same rule applies for payments to pension funds or pension schemes, to the Hong Kong Monetary Authority and to the Swiss National Bank, respectively. However, according to domestic tax law, dividends paid by a Hong Kong entity are exempt from any withholding tax. Therefore, the Hong Kong – Swiss DTA provision benefits mainly Hong Kong investors investing in Switzerland.

#### 8.1.2 Interest

Interest shall only be taxed in the country of residence of the beneficial owner. Since Hong Kong does not impose any withholding tax on interest payments, the beneficiaries of this provision are creditors resident in Hong Kong investing in Swiss bonds and giving regular loans to Swiss companies.

#### 8.1.3 Royalties

Under the Hong Kong – Swiss DTA the tax authorities of both countries may levy withholding tax on royalties at a maximum rate of 3%. As according to Hong Kong domestic tax law royalty payments to non-residents are taxable at an effective rate of 4.95% or 16.5% for companies and 4.5% or 15% for individuals (depending on the beneficiary and the original owner of the intangibles), the Hong Kong – Swiss DTA significantly reduces withholding taxation of royalties paid from Hong Kong to Switzerland.

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**Note:** Switzerland levies no withholding tax on royalty payments.

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## 8.2 The Sino-Swiss double taxation treaty for the avoidance of double taxation with respect to income taxes

On September 25, 2013 the Sino-Swiss double taxation treaty on income taxes (the "New Sino-Swiss DTA") was signed. It entered into effect on January 1, 2015, replacing the previous 1991 treaty.

### 8.2.1 Exchange of information

As one of the key points the New Sino-Swiss DTA implements the international OECD standard on exchange of fiscal information. This important step will improve transnational transparency with regard to fiscal matters and will allow both countries to request information (e.g. from banks, governmental bodies, or corporations) needed for the assessment of a taxpayer in the requesting state.

### 8.2.2 Dividends

Under the New Sino-Swiss DTA the maximum withholding tax on dividends are 5 % if the beneficiary of the dividends is a company – other than (due to fiscal transparency) a partnership or individual – resident in the other treaty state and directly holding at least 25 % of the capital of the dividend-paying company. This measure aims to further reduce the economic double taxation for transnational affiliate companies. In all other cases dividends shall be taxed at a maximum rate of 10 % as is the case under the previous DTA from 1991.

If the beneficial owner of the dividends is the other contracting state itself, a political subdivision, the central bank or a local authority including institutions and funds agreed on by the two contracting states, a full relief from withholding tax shall be provided. In the case of China, such institutions include the China Investment Corporation (CIC) and the National Council for Social Security Fund.

### 8.2.3 Royalties

In China, royalties paid by a Chinese company to a Swiss individual or company will be taxed at a rate of 9 % – versus 20 % for individuals and 10 % for companies domiciled in countries without treaty. Hence, the new Sino-Swiss DTA has reduced the royalty withholding tax rate from 10 % to 9 %.

As Switzerland levies no withholding tax on royalties the treaty benefits primarily the payment of royalties from China to Switzerland.

#### 8.2.4 Interest payments

The New Sino-Swiss DTA does not provide for lower withholding tax on interest payments as the previous treaty, the maximum withholding tax on interest payments remaining at 10 %.

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**Note:** Switzerland does not impose withholding tax on regular loans (other than on interest paid by a bank or interest on bonds, taxed at – without double tax treaty – 35 %).

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No withholding tax is imposable on interest paid to the contracting state, one of its subdivisions or a state owned agency.

#### 8.2.5 International transport services

The Sino-Swiss DTA exempts Swiss international operators of ships or aircraft from Chinese Business Tax and Value Added Tax and for them the input tax attributable to such supplies is creditable to the same extent as for Chinese companies. The same applies vice-versa for Chinese shipping companies and airlines. We expect that this important tax relief will further increase Sino-Swiss travel and business activities.

#### 8.2.6 Summary

8.2.7 In sum, as the Swiss – Hong Kong DTA did for Hong Kong / Swiss investments, the New Sino-Swiss DTA has improved tax efficiency of Sino /Swiss investments.

## 9 Swiss M&A options to Chinese investors and Swiss company law in a nutshell

### 9.1 Swiss M&A Options

As a rule, Chinese investors have, except in the fields featured in Section 5, above, all the possible M&A options open to them for their foreign direct investments in Switzerland.

They may either acquire a controlling stake in a private or listed company by a share deal or an asset deal. Theoretically, even a cross-border merger would be possible from a Swiss law perspective. However, since from a Chinese law perspective cross-border, as of today, is not possible, this theoretical option is not available for Chinese M&A deals in Switzerland.

The easiest way is acquiring shares in or assets and liabilities of a privately held Swiss company.

Bank shareholders acquiring or selling a 10 % or more stake in the bank or increasing or decreasing their shareholding beyond or below 20 %, 33 % or 50 % must notify the supervisory authority (FINMA) before closing the transaction which could thereupon prohibit such shareholdings or subject them to conditions.

Similar provisions apply with respect to (re)insurance companies: shareholders in (re)insurers reaching, increasing or decreasing their shareholding beyond or below 5 % 10 %, 20 %, 33<sup>1</sup>/<sub>3</sub> %, 50 % or 66<sup>2</sup>/<sub>3</sub> % of the capital or voting rights of the target must notify the supervisory authority (FINMA) which could thereupon prohibit such shareholdings or subject them to conditions.

Acquiring control of a listed company means making a public tender offer in accordance with the Federal Act on Stock Exchange and Securities Trading (SESTA) and its implementing regulations. If 100 % control is sought, the SESTA allows a squeeze-out of the remaining minority shareholders only if the majority shareholder holds 98 % of the target's outstanding voting rights.

If control is not, or at least not in a first stage, sought, the Chinese investor may initially invest in a Swiss joint venture only by entering into a joint venture agreement and acquiring shares in a Swiss joint venture company. Joint venture agreements usually contain share transfer restrictions, provisions about board representation and financing commitments of the joint venture partners. They may also provide for voting arrangements in the shareholders' meetings.

## 9.2 Establishing a branch in Switzerland

Establishing a branch means registering the branch in the commercial register based on a resolution of the Chinese company's competent corporate body resolving to establish the branch and determining the representative(s) domiciled in Switzerland.

This must be accompanied by a copy of the Chinese company's articles of association and an excerpt from the commercial register (the equivalent document under Chinese law is a copy of the Chinese business license).

Further, the application for registration will have to provide legalized and, as the case may be, super legalized signatures of all signatories of the branch.

The branch name must consist of the Chinese company's full name, supplemented by «Branch XY» whereby XY stands for the name of the city where the branch is located. All Chinese documents need to be accompanied by certified translations into one of the national languages, or as the case may be in English.

## 9.3 Establishing a company in Switzerland

The minimum nominal share capital is CHF 20,000 for a limited liability company and CHF 100,000 for a corporation. At the time of establishment the nominal share capital of a limited liability company must be fully paid in. With a corporation, at the time of establishment at least 20% of the nominal share capital must be paid in. In any case, at least CHF 50,000 must be paid in.

In either case, auditors are not legally required as long as the company has less than 10 full time employees and all shareholders opt out of the need for auditors. If, however, a shareholder later requests introducing auditors again or if the company has more than 10 full time employees, auditors must be elected. Their audit will be limited as long as the company does not exceed two of the following thresholds in two consecutive years: Balance sheet total of MCHF 20; annual sales of MCHF 40; and 250 full time employees on a yearly average. The shareholders may, however, at any time opt for a full audit.

Establishing a company requires a notarized deed of establishment including the company's articles of incorporation and determining all signatories. The nominal share capital must be paid into a bank account held in the name of the company to be established. This account is then blocked until the registration of the company in the commercial register is completed. If the nominal share capital is paid up in kind rather than in cash, the relevant contribution in kind needs to be described in sufficient detail in the contribution in kind agreement. The founder(s) must report in writing the nature and state of the contribution in kind as well as the reasonableness of its valuation. Finally, a licensed auditor must review the founder's report and confirm its completeness and correctness. With respect to the company name there are no restrictions except that it must not be identical with a company name already registered in Switzerland and neither be misleading nor merely descriptive.

## Contacts



Lukas Züst, LL.M.  
Attorney at Law  
Counsel and Head China Desk  
Phone: +41 58 211 34 35  
lzuest@vischer.com



Fiona Gao  
Attorney at Law (New York)  
Phone: +41 58 211 32 05  
fgao@vischer.com

VISCHER AG

Schützengasse 1 8021 Zurich Switzerland  
Phone +41 58 211 34 00 Fax +41 58 211 34 10

Aeschenvorstadt 4 4010 Basel Switzerland  
Phone +41 58 211 33 00 Fax +41 58 211 33 10

[www.vischer.com](http://www.vischer.com)