

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

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中瑞双边贸易，直接投资与并购
中国企业选择瑞士的主要因素

目录

前言	4
1 因素之一：在经济层面上，瑞士和欧盟已实现一体化	5
1.1 瑞士与欧盟的自贸协定以及欧洲自贸联盟自贸条约	5
1.2 瑞士与欧盟的相互承认协定	5
1.3 瑞士-欧盟政府采购协议	6
1.4 瑞士-欧盟人员自由流动协议	6
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	7
2.1 要点概览	7
2.2 中国出口商和投资商的机遇	7
3 因素之三：瑞士拥有领先的高科技产业	9
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	9
3.2 职业培训培养了训练有素的工人	9
3.3 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	10
3.4 全球自贸协定网络	10
3.5 与中国签署了投资保护协定	10
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	11
4.1 高素质、多元文化背景的雇员	11
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	11
4.3 位于西欧的地理中心	13
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	14
5.1 对外商直接投资无特殊规定	14
5.2 瑞士公司的授权签字人的住所地要求	14
5.3 收购瑞士房地产	14
5.4 在某些监管领域需要公司或者分支机构持有牌照	15
5.5 外国人及外国服务提供商的工作与居住许可及签证	16

6	因素之六：瑞士公司的注册手续简洁明了	19
6.1	两种主要公司形式：股份有限公司 (Aktiengesellschaft) 和有限责任公司 (GmbH)	19
6.2	注册资本要求	19
6.3	注册地址	19
6.4	公司名称	19
6.5	审计	19
6.6	创立程序	19
6.7	货币出资和实物出资	20
7	因素之七：瑞士提供灵活的并购选择	21
7.1	瑞士的并购程序	21
7.2	收购金融机构	21
7.3	收购上市公司	21
7.4	合资企业	21
8	因素之八：瑞士对于跨境资本流动不设限制	22
9	要素之九：瑞士提供比其他欧洲国家更具优势的税率	23
9.1	联邦政府与各州企业所得税税率低	23
9.2	红利/资本收益大于10%的税收减免	23
9.3	特别低税模式	23
10	因素十：	
	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	25
10.1	瑞士香港避免双重征税协定关于所得税的有关规定	25
10.2	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	25
	联系人	27

简介

中国公司寻找在欧洲进行直接投资,亦或设立欧洲总部、配送中心、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十大主要因素:

- (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) 瑞士公司的注册手续简洁明了;
- (7) 瑞士提供灵活的并购选择;
- (8) 瑞士对于跨境资本流动不设限制;
- (9) 瑞士是欧洲低税率国家;
- (10) 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。

我们希望通过本刊带您一同探索瑞士的机遇。

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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、冰岛和列支敦士登公国）。

注：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¹。

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。

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：瑞士准入的工业产品基本上意味着欧盟的准入。

¹ 例如机械、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、生物农药产品和电缆车。

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。

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。

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²、欧盟8国³、欧盟2国⁴及欧洲自由贸易联盟（EFTA）⁵国家的国民自由流动提供保障⁶。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。

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。

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。

² 奥地利、比利时、塞浦路斯、丹麦、德国、芬兰、法国、希腊、爱尔兰、意大利、卢森堡、马耳他、荷兰、葡萄牙、瑞典、西班牙、英国

³ 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

⁴ 保加利亚和罗马尼亚

⁵ 冰岛、挪威、列支敦士登

⁶ 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⁷（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。

瑞士政府的2017年进出口统计数字表明中国在全球范围内是瑞士的第三大出口目的地（167亿瑞郎，其中中国大陆占114亿瑞郎，中国香港占53亿瑞郎），在德国（416亿瑞郎）和美国（338亿瑞郎）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，则中国将跃居成为瑞士的第二大出口目的地（397亿瑞郎，其中中国大陆占240亿瑞郎，中国香港占157亿瑞郎），仅次于德国（451亿瑞郎）。

根据2017年瑞士国际银行直接投资统计数据（2018年数据尚未公布）表明，2017年瑞士在中国大陆的直接投资额为31亿瑞郎，在中国香港的直接投资额为12亿瑞郎。截止至2017年末，瑞士在中国香港的投资额总计为77亿瑞郎，在中国大陆的投资额总计为222亿瑞郎，中国大陆是瑞士在亚洲直接投资的首要目的地国，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⁸。不过，瑞士响应1979年世贸组织关贸总协定中的“授能条款”，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。自中瑞自贸协定生效之日起，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）。

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¹⁰；
 - 减少或取消了众多适用于的农业/养殖/渔业产品的关税¹¹。
-

⁷ 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。

⁸ 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。

⁹ 根据中瑞自贸协定的定义。

¹⁰ 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。

¹¹ 涵盖所有在第一部分到第四部分第1至24章罗列的商品（商品名称及编码协调制度）。

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9.3.2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

瑞士鼓励中国制造商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40个国家的30个自贸协定的优势（见以下第3.4节），将瑞士作为通向所有这些国家的“门户”。

“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，拥有积极的形象含义和效应，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。

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¹²，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9.3.2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。

¹² 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，但却是高科技工业的重镇，如制药、化学制品、信息与通信技术、金融科技、生物技术、生命科学、医疗技术，以及机械、电力和金属工业。

注：众多国际知名生产商和跨国生物制药公司¹³不仅将其总部设在瑞士，而且在此建有重要的生产和研发场所，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。

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

瑞士拥有众多欧洲领先的理工科院校，例如苏黎世联邦理工学院（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。

3.2 职业培训培养了训练有素的工人

瑞士的高科技企业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。

¹³ 例如：ABB, Geberit, Georg Fischer, Givaudan, Glencore, Holcim, Logitech, Lonza, Micronas, Nestlé, Nobel Bio-care, Novartis, Oerlikon, Rieter, Roche, Schindler, Schweiter, Syngenta, Straumann, Sulzer, Swatch, Tyco, 等等

3.3 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

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。

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。

3.4 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41个国家的31个主要以欧洲自贸联盟名义签订的自由贸易协定¹⁴，这一全球性的网络仍在持续扩张中¹⁵。

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。

3.5 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，最新的协定已于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ICSID¹⁶仲裁庭或者临时仲裁庭对瑞士提起诉讼。

¹⁴ 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）、中国、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）、菲律宾、格鲁吉亚、印度尼西亚（已签署）。

¹⁵ 目前（2019年5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、马来西亚、泰国、越南和南美国家阿根廷、巴西、巴拉圭和乌拉圭进行自由贸易谈判。

¹⁶ 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：

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。

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25.1%，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。

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（2.7%/2018年12月）¹⁷的主要原因。与欧盟28国平均6.6%的失业率，或奥地利的4.7%、德国的3.3%（所有数据于2018年12月）¹⁸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；或
- 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。

¹⁷ 来源：瑞士联邦经济署

¹⁸ 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。

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）。

4.2.3 通知期短

在第一个工作年内，法定通知期为一个月¹⁹；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，条件是针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。

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。

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。

¹⁹ 开始工作后第一个月为试用期，经双方协议试用期可延长到3个月，当事人也可协议放弃试用期。试用期内的通知期为7天。

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2007年至2016年期间关于瑞士和欧盟的统计数字表明，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，比较而言丹麦为119、法国为117、比利时为79、芬兰为40、西班牙为59、挪威为55、爱尔兰为33、英国为22、德国为16、荷兰为8、瑞典为5、波兰为5、奥地利为22⁰。

4.3 位于西欧的地理中心

瑞士处于欧洲的心脏地带，分别与德国、法国、意大利和奥地利接壤。

注：苏黎世的州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。

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。

²⁰ 数据来源：WSI劳动争议记录2017，WSI经济与社会研究所汉斯·Böckler基金会，发表于2018年3月

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。

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。

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

一家瑞士公司或分公司应当至少有一名无权利限制的瑞士居民作为授权签字人。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，但是不包括建造和出租公寓和其他住宅。

注：外国投资者可以购买商业房地产且不需要获得许可；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。

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²¹。

²¹ 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²²，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。
- (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²³。

²² 被定义为至少33%以上的投票权

²³ 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厂。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可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，即使在这些领域，瑞士方面在中瑞自由贸易协定中对服务提供者作出了以下超出“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²⁴。
- 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²⁵。
- 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。

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。

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证。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。

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。

²⁴ 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

²⁵ 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²⁶。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²⁷。

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。

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。近亲应当说或学习一种瑞士官方语言，并且在首次更新许可证时，应当证明其已达到基础口语能力（A1级别）。

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其他申根国时，不再需要单独的签证，因为他们的许可证件也同样是申根签证。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。

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”，以下各类外国人都有权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²⁸。

— 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。

— 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。

²⁶ 2019年，L类许可的总配额为4000个，B类许可的总配额为4500个。一般来讲，配额到秋季就会用完，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。

²⁷ 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。

²⁸ 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。

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(不包括向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：瑞士公司的注册手续简洁明了

6.1 两种主要公司形式：股份有限公司 (Aktiengesellschaft) 和有限责任公司 (GmbH)

股份有限公司是瑞士公司的经典形式：责任有限，股份便于交易，股份转让仅受公司章程的限制，股东不会被商业登记处披露，并且通常情况下股东不可能被排除于公司外（例外：在上市公司以及公司合并时，极少数股东可以被排除 (squeeze-out)）。股份有限公司由股东大会和董事会管理，受外部审计的约束，在满足特定条件下，审计可能被限制或豁免（见以下第6.5节）。

有限责任公司，同样施行责任有限但更关注公司成员组成。公司成员由商业登记处向公众披露，股份转让须经股东会议同意。原则上，公司由全体股东管理（而非董事会），受外部审计的约束，该审计可能被限制或豁免（与股份有限公司条件相同）。有正当理由时，可以排除股东。与股份有限公司不同，在有限责任公司的章程中可以引入竞业禁止义务、额外的货币出资以及实物出资。

6.2 注册资本要求

有限责任公司的最低注册资本为20,000瑞士法郎，股份有限公司为100,000瑞士法郎。公司成立时，有限责任公司的注册资本应当全额支付。而对于股份有限公司，在成立时则应当支付至少20%且不少于50,000瑞士法郎的注册资本。

6.3 注册地址

公司必须拥有一个注册地址，在此地址自有或者租用办公室，抑或将公司住所登记在第三方。

6.4 公司名称

公司名称没有任何限制，但是该名称不能与其他已注册的公司名称相同，且不能具有误导性或仅为描述性文字。此外，公司名称必须注明法律形式（有限责任公司为“LLC”，股份有限公司为“Ltd”或者“Inc”）。

6.5 审计

只要公司的全职员工不足10人且所有股东选择不需审计，则审计就不是强制性的。但是，如果有股东事后再次要求引入审计，或者公司全职员工多于10人，则必须审计。当公司连续两年的资产负债表总额不超过200万瑞士法郎，年销售额不超过40亿瑞士法郎，且全职员工年均不超过250名，公司审计将会被限制。但是，公司股东可以随时选择进行全面审计。

6.6 创立程序

瑞士公司的创立遵循简洁明了的规则。在涉外情境下，通常可以在四到六周内创建一家瑞士公司，该期间包含准备所需文件，有时还须在国外进行公证认证。

创建公司要求一份经公证的公司契约, 包括公司章程以及确定所有签字人。一旦公司登入州商业登记处, 则公司创立完成。

6.7 货币出资和实物出资

注册股本应当在公司创立之前存入以公司名义持有的银行账户中。该账户将被冻结, 直到公司在商业登记处注册完成。

如果注册股本以实物而非现金支付, 则需要在实物出资协议中充分详细地描述相关实物出资。发起人应当以书面形式报告该实物出资的性质和状态以及其估值的合理性。最终, 由一名持证审计师审查发起人的报告, 并确认其完整性和正确性。

7 因素之七：瑞士提供灵活的并购选择

7.1 瑞士的并购程序

通常，除上文第5节所述领域外，中国投资者可以选择所有可能的并购方式，在瑞士直接投资。

瑞士的并购市场十分规范，不仅是大型并购项目，即使是对中小型目标公司的收购一般也遵循标准化程序。通常，在并购项目初期，相关方就其将要交换的机密信息签署保密协议。于是，潜在买家要对目标公司进行尽职调查。其中法律、税务、财务和环境尽职调查由专业服务提供者来完成，而业务和技术尽职调查由买方完成。

注：近期，卖家经常要求买家购买并购保证保险（W&I保险），以弥补违反陈述和保证条款或索赔产生的损失。该保险仅涵盖买方在尽职调查中已经核实的事项的陈述和保证。如果保险公司认为被保险人的尽职调查报告在特定事项上不够全面具体，保险范围将受限或完全排除。因此，即使投保并购保证保险，买方仍然需要对目标公司进行到位的尽职调查。

多年来，瑞士并购市场一直是卖方市场。因此，通常由卖方来确定关键的商业和法律条款，特别是在拍卖环境下。为提高竞标成功率，买方不仅要提供有竞争力的竞价，还应满足卖方正式的报价要求以及时间线。

中国投资商还应考虑到在中国对外投资审批备案主管部门备案审批所需时间和规范，如果买方是上市公司并且涉及重大资产重组（MAR），还要考虑证监会备案审批的时间和规范。

7.2 收购金融机构

银行股东收购或者出售银行10%或以上的股权，或者增加或减少超出或低于20%、30%或50%的股权，应当在交割前通知监管机构（FINMA），监管机构可能会禁止持有此类股权或使其受限某些条件。

在（再）保险公司也适用类似的规定：（再）保险公司的股东之持股达到、增加或减少超出或低于目标公司资本或表决权的5%、10%、20%、33 1/3%、50%或66 2/3%，应当通知监管机构（FINMA），监管机构可能会禁止持有此类股权或使其受限某些条件。

7.3 收购上市公司

取得对上市公司的控制权意味着要根据“联邦证券交易所和证券交易法案（SESTA法案）”及其实施条例进行公开收购。如果追求100%控股权，只有当大股东持有目标公司98%的发行在外的表决权时，SESTA法案才允许挤出剩余的少数股东。

7.4 合资企业

如果不追求控股，中国投资商最初可能仅通过签订合资协议和收购瑞士合资企业股权的方式投资瑞士合资企业。合资协议通常包含股权转让限制，有关董事会代表的规定以及合资伙伴的融资承诺。他们还可以在股东大会上安排投票。

8 因素之八：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²⁹已经选择在这里建立他们的欧洲总部。另外，中国建设银行和中国工商银行在苏黎世已设有分行。

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。

在上文中已经提到过（见以上第3.3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。

²⁹ 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

9 因素之九：瑞士提供比其他欧洲国家更具优势的税率

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。

9.1 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³⁰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%。

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³¹，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）。

因此，瑞士各州之间总体企业所得税税负介于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：2018年总体企业所得税税负如下：

- 卢塞恩市的企业所得税率为12.3%
- 楚格市的企业所得税率为14.6%
- 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。

9.2 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³²，联邦政府免收企业所得税。

9.3 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。然而，在欧盟的主导下，这些所谓的资产隔离计划已经受到来自经合组织施加的压力。

因此，瑞士民众于2019年5月19日批准了新瑞士公司法，部分税收模式将被废除。新法将于2020年1月1日生效。目前享受税收优惠的公司可以采用两种类型的过渡性规则（或者这两者的混合形式），以避免“财政危机”，并在未来5年内将其实际税率尽可能保持与目前一样低的水平。在实施新法的过程中，各州将把普通企业所得税税率

³⁰ 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。

³¹ 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

³² 出售前至少应持股一年。

从目前的12%-24%下调至12%-20%。从竞争力、吸引力和可靠的新税收框架的意义上来看,修订后的法律将提供格外的福利。这些主要有对研发费用的额外减税或税收抵免,经合组织的“专利盒子”税收模式(见第9.3.1节),向瑞士转移业务时对任何隐藏的股权或商誉进行免税,以及各州有权降低与参股、专利或公司间贷款相关的资本税。在新法生效前,现有的低税率模式仍适用于新公司。

9.3.1 富有吸引力的“专利盒子”税收模式

如前所述,被否决的税改法案和新瑞士公司税法在瑞士各州都提供经合组织“专利盒子”税收模式。目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)和受保护的软件著作权收入。预计公司符合条件的专利和“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)。

9.3.2 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。

9.3.3 7.7%的低增值税

相比于欧盟15%最低增值税标准,瑞士仅为7.7%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(3.7%)。

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。

10 因素十: 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

10.1 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(经合组织)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。

10.1.1 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。

10.1.2 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。

10.1.3 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。

注: 瑞士不征收特许使用费预扣税。

10.2 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。

10.2.1 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。

10.2.2 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。

10.2.3 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。

10.2.4 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%。

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)。

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。

10.2.5 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航运公司和航空公司。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。

10.2.6 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。

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VISCHER

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

Content

Introduction	32
1 Factor 1: Switzerland is economically integrated in the European Union	33
1.1 Swiss/EU Free Trade Agreement and EFTA Free Trade Agreement	33
1.2 Swiss/EU Mutual Recognition Agreement	33
1.3 Swiss/EU Agreement on Public Procurement	34
1.4 Swiss/EU Free Movement of Persons	34
2 Factor 2: Switzerland is the first and so far only continental European country that has concluded a free trade agreement with China	36
2.1 Importance in general	36
2.2 How Chinese exporters and investors benefit	36
3 Factor 3: Switzerland has excellent high tech industries	39
3.1 Leading universities in technology and science, open to industrial R&D co-operations	39
3.2 No restrictions on outbound technology transfers, except for technology export control regulations relating to war material and dual use goods	39
3.3 World-wide network of free trade agreements	40
3.4 Investment Protection Treaty with China	40
3.5 Investment Protection Treaty with China	41
4 Factor 4: Switzerland has excellent conditions for Chinese European headquarters	42
4.1 Highly qualified, multicultural employees	42
4.2 Liberal labor law, high labor productivity, reasonable labor unions and traditional absence of strike actions	42
4.3 Situated in the geographical center of Europe	45
5 Factor 5: Switzerland treats foreign investors almost as domestic investors	46
5.1 No special rules on foreign direct investment	46
5.2 Residence requirement for signatories of a Swiss company	46
5.3 Acquisition of Swiss real estate	46
5.4 Licensed company or branch required in some regulated fields	48
5.5 Work and residence permits and visa for foreigners and foreign service providers	49

6	Factor 6: Switzerland has clear and simple company establishment requirements and procedures	53
6.1	Introduction of the two major company forms: The corporation (Aktiengesellschaft) and limited liability company (GmbH).	53
6.2	Registered capital requirements	53
6.3	Registered address	53
6.4	Company name	53
6.5	Auditor	54
6.6	Establishment procedure	54
6.7	Cash and in kind contribution	54
7	Factor 7: Switzerland offers flexible M&A options	55
7.1	M&A procedures in Switzerland	55
7.2	Acquisition of financial institutions	55
7.3	Acquisition of listed companies	56
7.4	Joint Ventures	56
8	Factor 8: Switzerland imposes no restrictions on cross boarder movements of capital	57
9	Factor 9: Switzerland offers competitive tax rates compared to rest of Europe	58
9.1	Low federal and state corporate income tax rates	58
9.2	Dividends/ capital gains of more than 10 % are tax-exempt	58
9.3	Special low tax models	59
10	Factor 10: The Sino-Swiss and the Hong Kong-Swiss double taxation treaties (DTA) offer preferable conditions for investments into Switzerland	61
10.1	The treaty between Switzerland and Hong Kong for the avoidance of double taxation with respect to income taxes	61
10.2	The Sino-Swiss double taxation treaty for the avoidance of double taxation with respect to income taxes	62
	Contacts	64

Introduction

Switzerland has become a major jurisdiction for Chinese enterprises that are looking for direct investments in Europe, establishing European headquarters, distribution centers, 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 **ten key factors which we believe make Switzerland a prime choice for Chinese Foreign Direct Investment in Europe** and we would like to introduce them 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 has clear and simple company establishment procedures, (vii) Switzerland offers flexible M&A options, (viii) Switzerland imposes no restrictions on cross-border movement of capital; (ix) Switzerland offers very competitive tax rates compared to the rest of Europe; and (x) the Sino-Swiss and the Hong Kong-Swiss double taxation treaties offer preferable conditions for investments into Switzerland from China and Hong Kong.

We hope you enjoy reading and discovering what Switzerland has to offer!

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, it is well integrated economically 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 has been a member of EFTA (European Free Trade Area, today consisting of the Principality of Liechtenstein, Iceland, Norway and Switzerland) since 1960.

Note: 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 produced 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 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.¹

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 even 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.

¹ For instance 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.

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.

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: Swiss admission of industrial products includes, as a rule, EU admission.

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.

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.

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-17², EU-8³ and EU-2⁴, and EFTA⁵ countries⁶. The Agreement grants those nationals a right to obtain a residence

² Austria, Belgium, Cyprus, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal, Sweden, Spain, United Kingdom

³ Estonia, Lithuania, Latvia, Poland, Czech Republic, Slovakia, Slovenia, Hungary

⁴ Bulgaria and Rumania

⁵ Iceland, Norway, Principality of Liechtenstein

⁶ 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.

and work permit if they have medical insurance, suitable living accommodation and sufficient financial means (savings or income) to feed themselves and their family.

Note: Nationals of the EU-17 and EU-8/EFTA countries moving to Switzerland or taking up 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 the employment, showing a residential lease or deed of purchase as well as an employment contract and a completed application form for a foreign resident ID card.

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 the proportion of foreigners reaching 24.3 % in 2014. Of these, 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.

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 Kong⁷ (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.

The Swiss government's import/export statistics for 2017 feature China as Switzerland's third largest export market worldwide (CHF 16.7 bn, whereof CHF 11.4 bn to Mainland China and CHF 5.3 bn to Hong Kong) behind Germany (CHF 41.6 bn) and the US (CHF 33.8 bn). These figures do not include gold bars and other precious metals, coins, precious stones and gems, works of art and antiques. If these are all included, China would then move up to rank as Switzerland's second largest export market (CHF 39.7 bn, whereof CHF 24 bn to Mainland China and CHF 15.7 bn to Hong Kong) behind Germany (CHF 45.1 bn).

According to the Swiss National Bank's direct investments statistics 2017 (2018 not yet being available), Swiss direct investment transactions to Mainland China totalled CHF 3.1 bn in 2017 and those to Hong Kong CHF 1.2 bn. At the end of 2017, Swiss controlled direct investments of CHF 7.7 bn in Hong Kong and CHF 22.2 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).

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 China⁸ 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 Ena-

⁷ Concluded between Hong Kong and the European Free Trade Association (EFTA) of which Switzerland is a member.

⁸ With respect to imports from Hong Kong, the EFTA free trade agreement with Hong Kong, in force for Switzerland since October 1, 2012, applies.

bling 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 it no longer qualified as a developing country) into binding commitments and fully or partly dismantled the vast majority of the remaining tariffs (including those for textiles and footwear) as of date of the FTA's entry into force.

Note: As a result, Switzerland has, with respect to goods listed in Switzerland's specific preference schedule⁹ 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 footwear¹⁰; and
 - reduced or abolished the tariffs applied to numerous agricultural/farming/fishing products¹¹.
-

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 9.3.2, 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 are encouraged 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 30 free trade agreements with 40 other partners (featured in Section 3.4, below), using Switzerland as its "Gateway" to all these countries.

"Gateway" does not 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 tariffs. How easy or difficult this would be depends 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.

⁹ as defined by the Swiss-Sino FTA

¹⁰ 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.

¹¹ 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)

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 alternatively 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 would then be deemed Swiss made, with all the positive images connotations 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 China¹² 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. These are 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 9.3.2, 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 results 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.

¹² 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 industries, such as pharmaceutical, chemical, information and communication technology, fintech, biotech, life science, medtech, but also mechanical, electrical and metal industries.

Note: Many leading international manufacturers and life science multinationals¹³ are not only headquartered in Switzerland, but also have important manufacturing and R&D facilities located there 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.

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 collaborating in applied R&D with high tech enterprises in Switzerland.

3.2 **Vocational training generates well-trained workers**

Swiss high tech enterprises not only benefit from Switzerland's excellent universities for technology and science, but also from Switzerland's unique dual education system. It offers the approx. 80 % of all high school graduates, who do not 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 examinations of their acquired skills and know-how. The dual vocational education system is a constant source of well-trained workers for Swiss industry.

¹³ 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.

3.3 **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.

3.4 **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 31 further free trade agreements covering 41 other countries¹⁴, mostly concluded in the framework of EFTA, a network which is continuously expanding¹⁵.

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.

¹⁴ 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, Georgia, Indonesia (signed).

¹⁵ Currently (May 2019) free trade negotiations are being held with Algeria, the Customs Union for Russia, Belarus and Kazakhstan, India, Malaysia, Thailand, Vietnam, and the South American States Argentina, Brasil, Paraguay and Uruguay.

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.

3.5 **Investment Protection Treaty with China**

Switzerland has an investment protection treaty with China, the most recent treaty has been 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 discrimination, expropriations without legal basis or compensation and impediments to payment and capital transfers relating to such investments. In the case of breach, the aggrieved Chinese investor may file a claim against Switzerland in a Swiss court, before the ICSID¹⁶ arbitral tribunal or an ad hoc tribunal.

¹⁶ 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 3.5) and Switzerland's world-wide network of free trade agreements (see Section 3.4). However, there are numerous equally important features benefitting headquarters and distribution centers:

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.

Note: Switzerland's work force is one of the most multicultural and multilingual in Europe. Switzerland's proportion of foreigners is approx. 25.1 % 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.

Although Switzerland is made up of German, French and Italian speaking areas, 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 action

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 2.7 % (December 2018)¹⁷ which is exceptionally low compared to the European Union's average of 6.6 % (EU of 28), and even remarkably lower than the 4.7 % in Austria and 3.3 % in Germany (all December 2018)¹⁸. These features will be further explained below.

¹⁷ Source: Swiss State Secretariat for Economic Affairs (SECO)

¹⁸ 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 require 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; or
- 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 they affect 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.

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).

4.2.3 Short Notice Periods

Statutory notice periods are 1 month during the first year of service¹⁹, 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 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.

¹⁹ Subject to 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.

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).

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.

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.

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, only four weeks (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 (ii) 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 the right to strike and lock-out in favor of good faith negotiations. In one of the latest available statistics covering the period 2007–2016 for Switzerland and EU, Switzerland outperforms them all with 1 strike day per 1’000 employees, compared to 119 for Denmark, 117 for France, 79 for Belgium, 40 for Finland, 59 for Spain, 55 for Norway, 33 for Ireland, 22 for UK, 16 for Germany, 8 for the Netherlands, 5 for Sweden, 5 for Poland, and 2 for Austria²⁰.

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.

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 are only 1–2 hours flight away.

Domestic and cross border road and railway transportation is easy due to an extensive 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 record-breaking 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 mediaeval times, the Rhine harbors have made Basel an important terminal between the North Sea and the Mediterranean.

²⁰ Source: WSI Wirtschafts- und Sozialwissenschaftliches Institut der Hans-Böckler-Stiftung, WSI-Arbeitskampfbilanz 2017, published March, 2018

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.

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.

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

5.2 Residence requirement for signatories of a Swiss company

A Swiss company or branch must have at least one authorized signatory without any restrictions that has residence in Switzerland. 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 years.

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

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

For Chinese providers of FTA scheduled services (see Section 2.2.3, above) the Sino-Swiss FTA converted this autonomous national treatment into a commitment by Switzer-

land 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 interests²¹.

Nevertheless, the following exceptions apply:

- 1 The purchase of shares, even of a controlling stake²², in a stock exchange listed residential real estate company is allowed, but in the 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).
- 4 Foreign and foreign-controlled banks and insurance companies are granted permission to acquire Swiss residential real estate to secure their mortgage loans in the event 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 portfolio 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.

²¹ 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

²² 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 companies²³.

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 cabotage²⁴);
- 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 services²⁵;
- 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;

²³ 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 co-operative societies registered in the commercial register.

²⁴ “cabotage” means road freight transportation within Switzerland (as opposed to outside Switzerland or from and to Switzerland)

²⁵ 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

- 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.

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.

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, 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.

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.

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 exhausted²⁶. As a rule, a university masters degree, professional experience and a salary reasonable for the position²⁷ are required.

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.

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. Close relatives have to speak or learn one of the Swiss national languages, and when renewing the permit for the first time, they have to show that they have acquired at least basic oral language competencies (Level A1).

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 other Schengen countries as their permits also serve as Schengen visas. Consequently, Chinese C, B or L permit holders may freely travel within the Schengen area for up to 90 days within a 180 day period.

²⁶ In 2019, all quotas together allow 4000 L permits and 4500 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.

²⁷ 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 security²⁸:

- 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).

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:

²⁸ 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.

- 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 2.2.3)
- 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 from 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 has clear and simple company establishment requirements and procedures

6.1 Introduction of the two major company forms: The corporation (Aktiengesellschaft) and limited liability company (GmbH).

The corporation is the classic form of a Swiss company. It has limited liability. Its shares are generally easily tradeable. The transfer of shares is only subject to the restrictions stated in the articles of association. Its shareholders are not disclosed in the commercial registry. It is generally not possible to exclude a shareholder from the company. Exceptions only exist with listed companies and in merger situations, where a very small number of shareholders can be excluded (squeeze-out). The corporation is governed by the shareholders' general meetings and the board of directors. It is subject to an external audit, which under certain conditions may be limited or excluded (see below Section 6.5).

A limited liability company is a company with limited liability and a strong focus on the composition of its members. The members are disclosed to the public in the commercial registry. The transfer of shares is subject to the consent of the members meeting. In principle, its members (and not a board of directors) govern it. It is also subject to an external audit, which may be limited or excluded (same conditions as with the corporation). The exclusion of a member for good cause is possible. In contrast to the corporation, it is possible to introduce non-competition obligations, additional financial contribution and material contributions into the articles of association.

6.2 Registered capital requirements

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.

6.3 Registered address

A company must have a registered address, whereby the company may hold or rent its own offices or may be domiciled with a third party.

6.4 Company name

With respect to the company name there are no restrictions except that it must not be identical to a company name already registered in Switzerland and neither be misleading

nor merely descriptive. Furthermore, the company name must indicate the legal form ("LLC" for a limited liability company; "Ltd" or "Inc" for a corporation).

6.5 Auditor

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 CHF 20 Mio; annual sales of CHF 40 Mio; and 250 full time employees on a yearly average. The shareholders may, however, at any time opt for a full audit.

6.6 Establishment procedure

The establishment of a Swiss company follows clear and simple rules. In international situations, a Swiss company may usually be established within four to six weeks including the preparation of the required documents, which as the case may be have to be notarized and legalized abroad.

Establishing a company requires a notarized deed of establishment including the company's articles of incorporation and determining all signatories. The establishment of the company is completed with the entry into the Cantonal commercial registry.

6.7 Cash and in kind contribution

The nominal share capital must be paid into a bank account held in the name of the company before the establishment of the company. 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.

7 Factor 7: Switzerland offers flexible M&A options

7.1 M&A procedures in Switzerland

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.

The Swiss M&A market is sophisticated and not only large-scale M&A projects but also acquisitions of small and mid-sized target companies typically follow standardized procedures. Usually, at the beginning of an M&A project the involved parties sign a non-disclosure agreement with regard to the confidential information they will exchange. Consequently, the prospective buyer conducts a due diligence on the target company. Specialized service providers offer legal, tax, financial, and environmental due diligence services. The business and technical due diligence is usually done by the buyer.

Note: Recently, sellers have often demanded that buyers take out a warranty & indemnification insurance (W&I Insurance) to cover losses from breaches of representation and warranties, or claims for indemnities. The insurance only covers representations and warranties on matters that have been verified by the buyer in the due diligence process. If the insurer believes that the insured's due diligence report is not comprehensive and specific enough on a particular matter, the coverage will be excluded or limited. Hence, a W&I insurance does not release a buyer from making a thorough due diligence on the target company.

The Swiss M&A market has been a seller's market for many years. Hence, the sellers can often determine the key commercial and legal terms, particularly when the target is sold in an auction. In order to optimize its chances of successfully bidding for a target company, the interested buyer should not only offer a competitive price but also meet the seller's formal offer requirements and time line.

The Chinese investor should also take into account the time and specifications required for approvals or filings with the competent Chinese outbound investment approval and filing authorities, and if the buyer is a listed company and a material asset restructuring (MAR) situation is involved, the China Security Regulatory Commission (SCRC).

7.2 Acquisition of financial institutions

Bank shareholders acquiring or selling a 10 % or more stake in the bank or increasing or decreasing their shareholding beyond or below the thresholds of 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 the

thresholds of 5 %, 10 %, 20 %, 33 $\frac{1}{3}$ %, 50 % or 66 $\frac{2}{3}$ % 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.

7.3 Acquisition of listed companies

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.

7.4 Joint Ventures

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 the 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.

8 Factor 8: Switzerland imposes no restrictions on cross boarder movements of capital

Switzerland hosts the second largest financial centre in Europe and some of the world's largest financial services providers²⁹ have chosen to locate their headquarters here. In addition, the Chinese banks CCB and ICBC established branch offices in Zurich.

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

As already mentioned (see above, last paragraph of 3.3), 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.

²⁹ Credit Suisse, UBS, Swiss Re, Zurich Financial Services, etc.

9 Factor 9: Switzerland offers competitive tax rates compared to rest of 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.

9.1 Low federal and state corporate income tax rates

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

As a rule, the Swiss confederation's federal 7.8 % corporate income tax charge³⁰ 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.

Note: As each of the 26 Swiss cantons (states) and each of their municipalities has the sovereign right to determine its own income tax rate³¹, there is competition for low tax rates among the 26 cantons (and within each of them, between the municipalities).

Hence, the Swiss overall corporate income tax charge 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 2018 overall corporate income tax charge amounts to:

- 12.3 % for companies domiciled in the city of Lucerne
- 14.6 % 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. At federal level, there is no net worth or capital tax.

9.2 Dividends / capital gains of more than 10 % are tax-exempt

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 capital³² are exempt from federal corporate income tax.

³⁰ The term "tax charge" as opposed to "tax rate" is used on purpose to reflect that in Switzerland tax payments are tax deductible expenses.

³¹ Municipalities determine their tax rate as a fraction or multiple of the income tax rate of the state to which they belong.

³² Provided the respective shares have been held for a minimum period of one year prior to sale.

9.3 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. However, these so called ring fencing schemes have come under pressure from the OECD (driven by the EU).

Hence, the Swiss people have approved a new Swiss corporate tax law on May 19, 2019, as part of which those models will be abolished. The new law will enter into force on January 1, 2020. Companies which currently have been benefitting of tax privileges can apply two types of transitional rules (or even a combination of them), allowing to avoid a 'fiscal shock' and allowing to keep their effective tax rates as nearly as low as they were until now for at least the next five years. In course of implementation of the new law, the Cantons will reduce ordinary corporate income tax rates from currently 12%–24% to 12%–20%. In the sense of a competitive, attractive and reliable new tax framework additional benefits will be available under the amended law. These are inter alia additional deductions or tax credits for R&D expenses, an OECD compliant patent box (see Section 9.3.1), a tax-free step up on hidden equity or goodwill when transferring business activities to Switzerland, and a right of Cantons to reduce capital taxes related to participations, patents or intragroup loans. Until the new law comes into force the existing low tax models still apply are available also for new companies.

9.3.1 Attractive "Patent Box" tax model

As mentioned, both the rejected proposal as well as new Swiss corporate tax law provides 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 protected software copyrights. It is expected that patents and comparable rights will only qualify for Patent Box benefits if and to the extent that they result from R&D expenses that were mainly generated in Switzerland (OECD Modified Nexus Approach, allowing for 30% acquired or outsourced IP/R&D expense).

9.3.2 Tax rulings

Switzerland's practice of obtaining 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 urgent cases even faster) and it provides high-level certainty and comfort for the taxpayers.

9.3.3 Low VAT of 7.7 %

At a mere 7.7 % 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 (3.7 %).

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.

10 Factor 10: The Sino-Swiss and the Hong Kong-Swiss double taxation treaties (DTA) offer preferable conditions for investments into Switzerland

10.1 **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.

10.1.1 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.

10.1.2 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.

10.1.3 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.

Note: Switzerland levies no withholding tax on royalty payments.

10.2 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 "Sino-Swiss DTA") was signed. It entered into effect on January 1, 2015, replacing the previous 1991 treaty.

10.2.1 Exchange of information

As one of the key points the 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.

10.2.2 Dividends

Under the Sino-Swiss DTA the maximum withholding tax on dividends is 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.

10.2.3 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 a treaty. Hence, the 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.

10.2.4 Interest payments

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

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 %).

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

10.2.5 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.

10.2.6 Summary

In summary, in the same way as the Swiss – Hong Kong DTA did for Hong Kong/Swiss investments, the Sino-Swiss DTA has improved tax efficiency of Sino /Swiss investments.

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