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CHINESE INVESTMENTS IN
SWITZERLAND
中国企业在瑞士的投资

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Recent China Deals in Switzerland

近期中国企业在瑞士
的投资

Recent China Deals in Switzerland 近期交易

BALLY

Bally, a footwear and apparel company, has belonged to the Shandong-Ruyi Group, China's largest textile producer.

2018
price is unknown

山东如意集团收购奢侈品品牌Bally

LISTA

Lista Holding, a workplace systems company, was acquired by the Chinese tool manufacturer Hangzhou Great Star Industrial.

June 2018
USD 200 million

杭州巨星科技斥资12亿元收购Lista公司



The Swiss Education Group, was sold to the Chinese investment company Summer Capital.

June 2018
price is unknown

夏焱资本收购瑞士教育集团

syngenta

The Syngenta Group was acquired by Chem China (this was the largest Chinese acquisition of a western company till now)

2016
CHF 43 billion

中国化工430亿瑞士法郎收购先正达，迄今为止中国企业最大规模的海外收购

Recent China Deals in Switzerland 近期交易



Sigg, a manufacturer of drinking bottles was acquired by Haers Vacuum Containers.

2016
CHF 16.1 million

哈尔斯真空器皿收购饮料包装企业Sigg



The airline operator Gategroup was purchased by the HNA Group. SR Technics and Swissport are also controlled by this Group.

2016
CHF 1.4 billion

海航集团收购航空业企业Gategroup, SR Technics和Swissport也受海航集团控制



Glencore Storage & Logistics was acquired by Hainan Province Cihang and its subsidiary HNA for \$775 million

2017
USD 775 million

海南省慈航基金会和海航集团以77.5千万美元共同收购嘉能可仓储物流



Bartholet Maschinenbau and Montratex AG were acquired by the Chinese company Cedarlake Capital Partners

2017
price is unknown

运柏资本收购瑞士高端索道缆车制造商巴特莱索道公司

Typical Investment Structures 典型的投资结构

Typical Investment Structures 典型的投资结构

- Sale of company (Share Deal): Objects of purchase are shares or GmbH ordinary shares
股权收购（购买或认购股份公司或有限责任公司的股权）
- Business purchase (asset deal): Objects of purchase are assets, liabilities, contracts and personnel of a company
资产收购：收购标的工资实际资产负债合同、承接标的公司人员
- Statutory merger
公司合并
- Establishment of branches
开设分支机构
- Subscription or purchase of debt securities issued by local issuers
认购或购买当地发行人发行的债务证券
- Joint ventures
设立合资企业



Investment Requirements 投资要求

Investment Requirements 投资要求

- **General Rule:** There are generally no restrictions on foreign investment in Switzerland
原则：对外商投资不设限制
- **Exceptions:** 例外
 - **Financial markets laws:** If foreign nationals have a controlling influence over a bank, a securities trader or certain other prudentially-supervised entities active in the financial sector (finance company), the granting of a licence by the Swiss Financial Market Supervisory Authority (FINMA) is subject to additional requirements.
金融市场监管相关规定：受外国人控制的银行、券商和其他受监管的金融机构的执照审批将附加额外条件
 - **Acquisition of real estate:** Acquisition of residential (but not commercial) real estate in Switzerland by foreign or foreign-controlled persons is subject to strict limitations under the Lex Koller. Such properties can only be acquired if an authorization is granted by the competent cantonal and federal authorities.
外国人购买居住用不动产（非商用）受严格限制，需要取得州及联邦等不同行政层级的审批
 - In certain **regulated industries** such as maritime shipping or nuclear power generation, restrictions on foreign ownership apply
某些受监管的行业，例如海运或核能，对外资有限制

Regulated Industries

受监管的行业

Regulated Industries 受监管行业

- Air transportation (1) 航空运输
- Public transport (railway, cable cars, shipping) 公共交通（如铁路，电车，航运）
- Radio and TV 广播和电视
- Post and telecommunications 邮政和通讯
- Energy (especially nuclear energy) 能源（尤其是核能）
- Specific professions (university medical profession, lawyers etc.) 特殊专业行业（大学、医护行业、律师等法律职业）
- Banking, insurance and financial services 银行、保险和金融行业
- Minerals and raw materials, mining 矿物、原材料、采矿业
- Health services and products 健康服务和产品
- Casinos and money games 博彩业
- Private security services 私人安全服务
- Weapons and war material 武器和军需物资等

(1) in case of aviation companies, it is required that a company headquartered in Switzerland be under the actual control of Swiss citizens. 航空业特殊要求：总部设在瑞士的航空运输企业的实际控制人须为瑞士公民。

Merger Control 反垄断审查

Merger Control 反垄断审查

- The Swiss Competition Commission (ComCo) must be notified of business combinations (including statutory mergers and the acquisition of control) before the closing of the transaction if:
符合以下条件的企业合并和收购行为必须在交割之前通报瑞士反垄断委员会：
 - the enterprises involved had in the last business year prior to the transaction an aggregate worldwide turnover of at least CHF 2 billion or an aggregate turnover in Switzerland of at least CHF 500 million; and 交易所涉及企业在交易前上一年度内世界范围总营业额超过20亿瑞士法郎的，或在瑞士境内总营业额超过五亿瑞士法郎；且
 - at least two of the enterprises involved had in the last business year prior to the transaction an individual turnover in Switzerland of at least CHF 100 million.
至少两个交易所涉及企业在交易前上一年度内各自在瑞士境内有超过一亿瑞士法郎的营业额
- Specific rules are applicable to banks and insurance companies. 银行、保险公司有特殊反垄断审查规则

Merger Control 反垄断审查

- If the ComCo does not initiate an in-depth investigation within one month after receipt of the notification, the business combination may be completed. In case an in-depth investigation is initiated, it must be completed within another four months. The ComCo may either:
如果瑞士反垄断委员会在收到交易通知的一个月内未启动详细调查，则该交易可以进行交割。瑞士反垄断委员会的详细调查在启动之后必须在四个月内完成，根据调查结果，反垄断委员会可能裁决：
 - (i) clear the transaction unconditionally;
无条件批准交易
 - (ii) permit the transaction subject to certain conditions; or
有附加条件的情况下批准交易，或
 - (iii) prohibit the transaction.
禁止交易

Dispute Resolution

争议解决

Dispute Resolution 争议解决

- **Civil law jurisdictions**
大陆法系国家
- **Three-tier civil and commercial court system**
民商事法院系统有三个审级
- The court system in Switzerland is **relatively efficient** (in the World Bank's rating for contract enforcement, Switzerland is ranked 45th out 190 countries)
瑞士法院系统相对高效，在世界银行合同履行效率排名中在190个国家里排在45名。
- Foreign claimants should note that they may be required to **provide security for costs** upon request of the counterparty in state court proceedings.
外国当事人有可能被法院或对方当事人要求提供诉讼费用担保
- Parties may agree to submit **disputes to arbitration** (adhered to 1958 New York Convention)
当事人可以选择将争议提交仲裁解决（需遵守1958年《纽约公约》和1961年《欧盟国际商事仲裁公约》）
- Since there are no agreements on the enforcement of court judgments between Switzerland and China, it is advisable to subject M&A transactions to **arbitration** in order to facilitate enforcement in the best possible way.
由于中国和瑞士之间并不存在执行法院判决相关双边协定，因此建议并购交易双方选择仲裁作为纠纷解决途径，以便获得更高效的执行。

Tax Considerations

稅收考慮因素

Tax Considerations 税收考虑因素

- **Double taxation agreement (DTA-PRC) between Switzerland and China (in force since 2014):**
中瑞避免双重征税协定（2014年起执行）
 - It provides for rather beneficial residual tax rates for withholding taxes on dividends and interest payments (while there are no withholding taxes at all for royalty payments in Switzerland). 协定规定了相对优惠的股息和利息预提所得税的溢出税率（瑞士针对知识产权特许使用费不征收预提所得税）
 - In the case of a participation of 25% or more in a Swiss company, the Swiss dividend withholding tax is reduced from 35% to 5%.
针对持股比例为25% 以上的股份股息瑞士的股息预提所得税标准税率由原来的35%减为5%
 - For interest payments, the residual withholding tax is 10%.
针对利息的最大预提所得税为10%
 - Due to this beneficial DTA, the use of intermediary tax jurisdictions is not necessary.
鉴于有此税收协定的存在，没有必要为税收优惠而使用中间地

Tax Considerations 税收考虑因素

- Applicable rates of **corporate tax** and **withholding tax on dividends**:

针对利息的企业所得税税率和预提所得税税率

- The Swiss tax system is based on three levels where taxes are levied: the federal, cantonal and municipal level.

瑞士有以下三个征税级别：联邦、州、以及城镇

- The federal corporate income tax provides for a proportional tax rate of 7.83% of the profit after taxes.

联邦企业所得税率为企业税后利润的7.83%

- The tax rates in the 26 cantons of Switzerland vary from 12.32% in the Canton of Lucerne to 24.16% in the Canton of Geneva.

瑞士26个州的税率各不相同，例如琉森州税率为12.32%，日内瓦州税率为24.16%

Tax Considerations 税收考虑因素

— FDI tax incentive schemes

外国直接投资税收鼓励计划

- Since July 2016, Switzerland has applied revised regulations regarding the Swiss federal tax holidays scheme.
自2016年七月起，瑞士推行了一套联邦税收优惠计划
- The revised legislation provides for relief from federal corporate income tax for a maximum period of 10 years for industrial enterprises and production-related service providers.
此优惠计划为工业企业和产品相关的服务行业企业提供了最高为10年的联邦企业所得税免除期间
- The federal tax incentives are linked to the number of newly created or maintained jobs by an enterprise domiciled in selected regional areas in Switzerland (it can lead to an annual tax credit of up to CHF 95'000 for each newly created job and CHF 47'500 for each maintained job).
此计划提供的税收优惠和在指定区域设立的企业创造、维持的就业岗位相关。创造的每一就业岗位最高可获得95000瑞士法郎的税收优惠，维持的每一就业岗位最高可获得47500瑞士法郎的税收优惠。

Corporate Governance

公司治理

Corporate Governance 公司治理

- **Main governing bodies:** General Shareholders' Meeting and Board of Directors
主要治理机构：股东大会和董事会
- **The Board of Directors:** It has appointed inalienable and non-transferable main tasks. However, it may delegate management tasks to a delegate or a separate executive management.
董事会有若干无法转嫁的义务，但日常经营管理可委托给公司管理人员。
- **Other typical Board Committees:** Audit Committee, Nominations and Remunerations Committee (Remunerations Committee required for listed companies)
其他典型的董事会专门委员会：审计委员会和提名与薪酬委员会（上市公司则必须有薪酬委员会）
- **Director's fiduciary duties:** duty of care, duty of loyalty and duty to avoid conflicts of interest
董事的信托义务：注意义务，忠实义务，避免利益冲突的义务
- **Composition of the Board/Management:** No restrictions as to nationality of directors and executives. However, the company must be represented by a person domiciled in Switzerland. That representative requirement can be fulfilled by a member of the management, e.g. a director (it does not have to be a member of the Board of Directors).
不限制董事及管理人士的国籍不受限制。但一个公司必须至少有一名起对外代表作用的人员是瑞士居民。此对外代表人员不需要是董事会成员。

Corporate Governance 公司治理

- **External Auditor:** Swiss listed companies need to have an External Auditor
外部（独立）审计：瑞士上市公司需任命外部（独立）审计
- **Legislation regarding remuneration** (required for public limited companies domiciled in Switzerland, whose shares are listed on a domestic or foreign stock exchange): For the limitation of excessive remuneration for the highest corporate management (members of the board of directors, members of the management and advisory boards) control mechanisms have been introduced and certain forms of remuneration are prohibited. The general meeting's vote on the before-mentioned remuneration is one of these control mechanisms.

为了限制企业董事和高管人员的过高薪酬，**设立在瑞士的上市企业（不论在瑞士或海外上市）需要遵守的薪酬方面一些限制性规定，其中包括前述上市公司董事会必须设置薪酬委员会。**

Minority Shareholders' Rights 中小股东权利

Minority Shareholders' Rights 中小股东权利

— Irrevocable rights for shareholders (= well acquired rights)

股东不可被剥夺的权利有：

- Right to participate in the AGM 参加股东大会
- minimum voting right 最低投票权
- Right to sue (for example: prospectus liability claims, responsibility claim, voting rights claim etc.)
诉权，例如在招股说明书责任、董事责任、投票权的行使等方面
- Entitlement to the publication of the annual report 要求公布年报的权利
- Right of inspection and information 知情权
- Right to appoint a special auditor (If the proposal to appoint a special auditor may be rejected at the AGM, shareholders who hold at least 10% of the shared capital together or who hold shares with a nominal value of CHF 2 million, can get to the Court within three months.
指定特殊审计、启动特殊审计程序的权利。如相关提案被股东大会否决，至少持股10%的股东或持股价值超过二百万瑞士法郎的股东可以在股东大会之后三个月内向法院提出申请。

Minority Shareholders' Rights 中小股东权利

- **Qualified quorum for decisions** (= formal protection of minorities)

会议/决议法定人数

- Double quorums for important AGM decisions 股东大会的重大决议需要特定多数表决制

- **Minority rights**

少数股东权利

- Right of shareholders representing a nominal value of CHF 1 million to place items on the agenda at the AGM
单独或集体持股股份面值一百万瑞士法郎以上的股可在股东大会议程中放置提案
- Right of shareholders representing 10% of the share capital to convene and place items on the agenda at the AGM
单独或集体持股10%以上的股东可发起股东大会或在股东大会议程中放置提案
- Shareholders who hold together at least 10% of the share capital, can demand for the execution of an ordinary audit, if the company only performs a limited audit. If the AGM has waived the limited audit, every shareholder has the right to demand a limited audit prior to the AGM
集体持股不低于10%的股东可要求通常只进行有限审计的公司进行全面审计。若股东大会决议略过有限审计，每一股东均有权要求公司在下一届股东大会前进行有限审计。

Capital Markets

资本市场

Capital Markets 资本市场

— SIX Swiss Exchange:

- SIX Swiss Exchange (SIX) is the principal stock exchange in Switzerland
SIX瑞士股票交易所是瑞士最主要的股票交易市场
- SIX allows the listing of equity (shares), debt (bonds) and derivatives
在SIX交易的产品主要有股票、债券以及衍生产品
- Swiss companies and foreign companies (subject to certain conditions) can list their equity and debt capital market instruments on SIX
瑞士或外国企业均可在SIX上市
- SIX is one of the largest stock exchanges in Europe. Large listed companies include Nestle, Novartis, Roche, UBS, Credit Suisse, SwissRe etc.
SIX是欧洲最大的股票交易市场之一，知名上市企业有雀巢、诺华、罗氏、瑞银、瑞信、瑞士再保险等。
- Also several foreign companies have listed their shares (equity) on SIX
SIX上市企业中也有一定数量的非瑞士外国企业
- Many foreign companies have listed their debt instruments (bonds) on SIX
也有外国企业选择SIX作为债券发行场所

Capital Markets 资本市场

— Initial Public Offerings (IPO) and listing of shares on SIX: 开幕股及在SIX上市

首次公

- The process for listing of equity on SIX is less complicated and time consuming than in the US, the UK and most (other) EU countries. 在SIX上市的
程序相对来说比在英美和大多数欧洲国家上市更加直接
- A listing application consisting of the prospectus and certain other documents must be approved by SIX. 上
市申请，其中包括招股说明书和其他相关材料，需要经过SIX的批准
- For a listing on SIX according to the International Reporting Standard of SIX the following requirements must be met : 上市需要满足以下条件（以国际财务报告准则为准）
 - 3 years audited financial statements (IFRS or US GAAP) - certain exceptions possible 三年审计报告，根据国际财务报告准则或美国GAAP准则制作
 - Recognized auditors 公司需要指派受承认的审计师
 - 2.5 million minimum equity at the time of listing 上市时至少需要有二百五十万瑞士法郎的股本
 - Free float at listing at least 20% (of all shares listed) and market capitalization of free float at least CHF 25 million 上市时至少募集价值两千五百万瑞士法郎的公众股份，上市股份的20%应为自由浮动公众股
 - Issuer's formation, articles of association must comply with national law, to which the issuer is subject 上市公司形制、章程等必须符合当地法律
 - Reporting: semi-annually 报告频率：半年报
 - Foreign issuers: SIX allows the IPO and listing of foreign companies subject to certain conditions 外国企业也可在满足一定条件的前提下在SIX进行IPO

Labour Matters

劳动法相关事项

Labour Matters 劳动法相关事项

- **Main regulations:** The Federal Act on the Amendment of the Swiss Civil Code (CO) and the Federal Act on Employment in Business, Trade and Industry (EmpA)
主要法律渊源：联邦债法典、联邦工商业雇佣法
- **Contracts:** Wide variety of employment contracts (fixed term contracts, indefinite contracts, training contracts,...)
劳动合同种类繁多（固定期限合同、无固定期限合同、培训合同等）
- **Employees' representative bodies:** Where the employer transfers the company or a part thereof to a third party, he must inform the organization that represents the employees or, where there is none, the employees themselves in good time before the transfer takes place.
员工代表机构：出售公司部分或公司整体资产时需要提前及时通知员工所属工会组织，在没有工会组织的前提下必须通知全体员工个人

Labour Matters 劳动法相关事项

General Employment Conditions	Switzerland
一般性的劳动条件	瑞士
Maximum working time	50 hours per week
最长工作时间	每周50小时
Minimum monthly salary for 2018	None
2018年最低月工资	
Minimum vacations (per year)	4 weeks
每年最少假期（带薪休假）	个日历日（外加14天公共假期） The employer pays the employee's salary for a limited period of time. The subsequent payments are covered by social insurance.
Employees' sick payment	
员工疾病费用	病休期间雇主会继续支付一段时间的工资。之后将由社保系统负责。
Retirement age	65 for men and 64 for women
法定退休年龄	男性65岁，女性64岁

Labour Matters 劳动法相关事项

General Employment Conditions 一般性的劳动条件	Switzerland 瑞士
wrongful termination 不正当解雇	compensation taking due account of all the circumstances (maximum: 6 monthly salaries) 相关补偿最高不得超过六个月工资
Redundancy (individual or collective) 裁员 (个别裁员或集体裁员)	<p><u>Individual:</u> In the case of a regular dismissal, the wage continues to be paid until the end of the period of notice. In the event of an extraordinary termination, the wage payments can be stopped immediately. 正常裁员时工资需支付至通知期满。特殊情况下可以立刻中止工资支付。</p> <p><u>Collective:</u> If the employer intends to make mass redundancies, he must inform the employees' representatives or, if there are none, the employees. He must also inform the cantonal employment office and give employees the opportunity to make proposals on how to avoid redundancies. A social plan must be drawn up under certain conditions. 集体裁员计划需要通知工会或员工个人和州劳动办公室提。员工需有充分的机会避免被裁员。特殊情况下雇主需要设立社会福利计划。</p>
Termination of an open-ended employment relationship (statutory or contractual) 无固定期限的劳动合同的解除	<p><u>Statutory: 法定条件</u> Termination at one month's notice during the first year of service, at two months' notice in the second to ninth years of service and at three months' notice thereafter (after the probation period) 实习期满后第一年内：一个月通知期；第二年到第九年：两个月通知期；九年之后：三个月通知期</p> <p><u>Contractual:</u> 6-month notice periods for management employees. 管理层人员的劳动合同通常会规定六个月通知期</p>

Labour Matters 劳动法相关事项

— Transfer of the company: 公司转让相关：

- If the employer transfers the enterprise or part thereof to a third party, including transfers by way of a merger or through an asset deal, Swiss law provides that the employment relationship is automatically transferred to the acquiring party, unless the employee refuses the transfer. 公司转让后视为相应劳动关系自动转让到买方，除非员工拒绝。
- The employer must inform the organization that represents the employees or, where there is none, the employees themselves in good time before the transfer takes place of (consultation requirement only in the case of an asset deal, not in the case of a share deal).
出售公司部分或公司整体资产时需要提前及时通知员工所属工会组织，在没有工会组织的前提下必须通知全体员工个人。

— Effects on employees: 对员工的影响

- **Effects of a public takeover offer on employees:** In a public takeover offer, the employees of the target neither need to approve the takeover offer nor be informed or consulted on the offer. 公开要约收购时，无需通知标的公司员工或获得员工同意
- **Effects of a statutory merger on employees:** In a statutory merger, the employees of both the transferring and the acquiring legal entity must be informed and, under certain conditions, consulted prior to the shareholders' meeting resolving the merger. 公司合并时，双方员工均需要被提前通知，一定条件下需要在股东大会作出相应决议之前咨询员工意见

Why Swiss Companies
are Targets of Chinese
Buyers?

瑞士企业的吸引力

Why Swiss Companies are Targets of Chinese Buyers

瑞士企业的吸引力

- Switzerland offers **economic and political stability** and security;
瑞士提供经济和政治的稳定与保障
- Switzerland is rich in **human capital** and offers reliable and well educated employees;
瑞士拥有丰富的人力资本，提供可靠的高素质员工
- M&A transactions with Swiss companies allow for an efficient inroad to advanced **technical know-how**;
与瑞士公司的并购交易能够高效地获取先进的技术知识
- the acquisition of companies in Switzerland offers Chinese groups relatively **quick and easy access to the Swiss market**;
收购瑞士公司能够让中国集团相对快速轻松地进入瑞士市场
- it is a good way to acquire **recognized brands**, which may provide legitimacy in the Swiss, European, and even global markets;
瑞士的著名品牌（如科技或奢侈品领域）能够在瑞士、欧洲、甚至全球市场提供（较高的）市场接受度，
- **Swiss luxury goods** are very popular in the Chinese market. The Chinese are fascinated by Swiss technology and, particularly, by Swiss luxury goods;
瑞士奢侈品品牌在中国市场很受欢迎
- Chinese buyers have the potential to **increase the value of the acquired Swiss companies** and brands by their ability to facilitate a better and more direct access to the Chinese market. 中国买家有潜力提高所收购的瑞士公司的价值。也能使瑞士公司更加轻松和直接的进入中国市场。

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Philippe Weber specializes in large and complex corporate finance, capital market and M&A transactions with a particular focus on listed entities, financial institutions and other large enterprises. He is a recognised representative for listings on SIX and regularly advises clients on all aspects of takeover and securities law. He is distinguished as a leading Banking, Capital Markets and Corporate/M&A lawyer by Chambers and other directories.



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