

Data Centre Financing 2027

First Edition

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Market overview

Switzerland has developed into one of Europe's most attractive jurisdictions for data centre investment and financing, driven by political and legal stability, strong data protection, a business-friendly regulatory environment, a central European location, and sustained demand from the financial, technology and cloud sectors.

In the Swiss market, both colocation and hyperscale models are implemented. In a colocation model, the operator leases the space, connectivity, power, etc. to multiple tenants, which then equip the space with their own infrastructure; in a hyperscale model, a single major customer typically takes the whole facility under a long-term arrangement. From a financing perspective, hyperscale projects are often particularly attractive because they can offer long-term contracted revenues with strong credit counterparties and more predictable cash flows.

Financing structures

Data centre projects, in particular at an early stage and in connection with the acquiring of land and where customer contracts are not yet in place, are often assessed from a real estate finance perspective, placing primary emphasis on the value of the underlying land and physical structures, rather than on operational performance. Funding in these scenarios often places more emphasis on sponsors providing equity to bridge the gap to secure initial customer commitments and unlocking the ability to increase leverage at a later stage.

Once the facility is operational and generating stable revenues, refinancing becomes more attractive. It may be used to lower funding costs, return capital to sponsors or support further expansion. In Switzerland, platform growth is increasingly financed through holding company facilities that can accommodate additional sites or technical upgrades without requiring a full redocumentation.

Debt financing in Switzerland for data centre projects is typically provided by banks on a syndicated basis, depending on the size and ownership structure of the project. Security is usually granted by the project company and, where relevant, other group entities, often alongside guarantees and sponsor support commitments. Overall, Swiss law offers a flexible and reliable framework for tailoring these financing structures to the parties' needs.

Real estate considerations

Real estate is a central value driver in Swiss data centre projects because the viability of the asset depends not only on the land itself, but also on whether the site can be lawfully developed, reliably powered, and connected at scale. In practice, the most relevant real estate issues are site selection, zoning and permitting, ownership and access rights, environmental and neighbourhood constraints, and the ability to structure the property in a financeable and exit-ready manner.

Site selection, zoning, and permitting

At the site selection stage, legal and technical diligence must run in parallel. From a Swiss real estate perspective, developers need to verify that the intended use is permissible under the applicable zoning regime and that the site can obtain the required planning and building approvals within a commercially acceptable timeframe. Where the existing zoning does not clearly accommodate the project, amendments, exceptions or project-specific planning instruments may be required, which can materially affect the delivery schedule. Zoning compliance, land acquisition and permitting are among the most significant early legal issues for data centre projects, and approvals may take many months or longer, particularly where environmental concerns arise.

Because Swiss planning and building law is heavily cantonal and municipal, data centre developers must also assess local rules on building mass, height, design integration, access roads, technical installations and operating emissions. In addition, energy regulation affecting buildings remains largely cantonal, so requirements relevant to energy efficiency and building systems can differ by location. For that reason, local permitting analysis cannot be standardised across Switzerland and must be carried out on a site-by-site basis.

Ownership structures and land tenure

Swiss data centre projects may be implemented through direct freehold acquisition, long-term lease structures or building rights (*Baurechte*), depending on the location, sponsor profile and landowner. A building right can be particularly useful where public sector or institutional owners wish to retain ownership of the land while allowing a third party to construct and operate the facility. Under Swiss law, a *Baurecht* is a distinct right allowing the separation of ownership of the land from ownership of the building; if structured as an independent and permanent right, it can itself be registered in the land register and treated similarly to a property interest. A *Baurecht* allows the landowner to remain owner of the land while the building-right holder owns the structures erected on it, and provides that independent and permanent building rights may be entered in the land register as their own real estate object. Such rights are regarded as "permanent" if granted for at least 30 years and may be established for up to 100 years. That said, the suitability of a *Baurecht* for financing depends heavily on term, transferability, mortgageability, rent-adjustment mechanics and end-of-term compensation.

Cross-border investment aspects should also be checked at an early stage. As a matter of principle, Swiss real estate restrictions for persons abroad under the Federal Act on the Acquisition of Real Estate by Persons Abroad ("Lex Koller") are less problematic where the property is used for genuine commercial purposes. Real estate used for commercial purposes can generally be acquired without authorisation by foreign investors. However, Lex Koller analysis can become more complex where a project includes reserve land, mixed use elements, future change-of-use scenarios or development timing issues. Authorisation questions may arise in development projects involving a later shift from commercial to mixed or residential use. For a pure data centre asset, the commercial use exemption will often be the starting point, but the position should still be verified against the concrete ownership and use structure.

Exit and regulatory developments

The real estate documentation should be prepared with financing and exit in mind. In Swiss data centre

transactions, lenders and future buyers will often focus on clean title, enforceable access rights, planning compliance, the durability of utility arrangements, and whether the property documents allow future expansion. Given growing sensitivity around strategic infrastructure, sponsors should also monitor future regulatory developments, even though Switzerland has historically remained relatively investor-friendly in this regard.

Regulatory approvals

In Switzerland, data centre transactions do not usually trigger a single dedicated "data centre approval" regime. Rather, the regulatory analysis is fragmented and depends on the structure of the transaction, the nature of the asset, the identity of the investor, and whether the target's activities touch regulated sectors such as telecommunications, energy or critical digital infrastructure. In addition to planning, building and environmental permits, parties should in particular assess Lex Koller, potential future foreign investment screening, and any sector-specific approvals relating to telecoms or energy infrastructure.

Lex Koller

Lex Koller becomes relevant where the transaction includes Swiss real estate. Even though a data centre is typically a commercial asset, foreign acquisitions of Swiss real estate or the granting of security over non-commercial real estate can require specific analysis. Where a project involves the acquisition of, or security over, non-commercial real estate in Switzerland by a foreigner, the specific restrictions and requirements of Lex Koller may apply and a permit from the competent authorities may be required. For a data centre deal, this issue may usually become relevant if the land reserve, mixed use character, ancillary residential components, or future redevelopment options make the asset less clearly purely commercial. It is also relevant on the financing side, because real estate security packages in cross-border structures may require careful clearance analysis.

Merger control

Swiss merger control is transaction-driven rather than sector-specific, so acquisitions or joint ventures involving data centre assets are assessed under the ordinary rules of the Cartel Act rather than under a special digital infrastructure regime. In practical terms, a filing to the Swiss Competition Commission (WEKO) may be required where the relevant turnover thresholds are met or where a party is already dominant in a market and the statutory trigger applies. This is particularly relevant for acquisitions of data centre operators, connectivity-heavy platforms, or joint ventures especially if the parties already have material positions in Swiss telecoms or adjacent infrastructure markets.

Telecom

Telecoms-related approvals may arise if the platform extends beyond a passive real estate or hosting function into regulated telecom infrastructure. A standard colocation or hyperscale data centre with customer IT hosting functions will typically not require telecom licensing merely by virtue of being a data centre, but a case-by-case analysis will be required if the transaction also involves ownership or operation of telecom network infrastructure, carrier services, or interconnection assets that fall within Swiss telecom regulation.

Finance documentation

Finally, from a project finance perspective, it is important to remember that Swiss law generally does not require financing documents to be filed merely to be admissible in court, but project documents and transaction steps may still need to be submitted to authorities where the project implicates regulated assets or public law approvals. Depending on the project, documents and information may need to be submitted to competent authorities for information and/or approval, particularly for real estate projects, and notarial formalities are often necessary in real estate transactions.

Taking and enforcing security

Overview

In Switzerland, it is customary to secure data centre financing by combining security interests over various asset classes. Lenders generally benefit from a pledge over the shares of the Swiss operational company as well as security interests over the relevant real estate assets. The security package is then typically supplemented by additional collateral provided by the Swiss operational company and, where applicable, by other group entities. Such additional security may consist of security over (i) intra-group receivables, (ii) trade receivables and/or receivables from leases – particularly tenant leases or colocation agreements, (iii) insurance claims, (iv) bank accounts, and/or (v) intellectual property (IP).

The type of security generally reflects the class of the underlying asset: a pledge is ordinarily used for shares, bank accounts and IP; a transfer of full legal title for security purposes (e.g., over mortgage notes); and an assignment for security purposes in the case of receivables.

Under Swiss law, a pledge confers a limited right *in rem* upon the pledgee. Pledges are characterised as accessory security interests, meaning, among other requirements, that their validity is contingent upon the continued existence of the secured obligations, and that the creditor of the secured obligations must also be the holder of the pledge.

Conversely, transfers of legal title and security assignments are regarded as non-accessory security interests. This means the rights created are independent of the (continued) validity of the secured obligations, and the holder of the security interest does not need to be identical to the creditor of the obligations.

As a result, in financing structures with multiple secured parties, the security agent will act as a direct representative (*direkter Stellvertreter*) in the name and for the account of the secured parties where accessory security interests are created, whereas, in the case of non-accessory security interests, the security agent acts as a fiduciary in its own name but for the account of the secured parties.

Unlike some other jurisdictions, Swiss law does not recognise the concept of a floating charge or any other form of non-possessory security interest over movable assets.

Perfection of security interests

Real estate

Under Swiss law, security interests in real estate are generally established through the use of mortgage certificates. A mortgage certificate is a negotiable instrument that can be issued either in bearer or in registered form. Alternatively, a mortgage certificate may also be created in dematerialised form by an entry in the relevant land register. A mortgage certificate embodies a personal, non-accessory claim against the debtor, secured by a lien on the specified real property. The issuance of new mortgage certificates requires a notarised deed and registration in the land register. Notarisation and registration fees vary between cantons and are typically calculated based on the nominal value of the mortgage certificate.

The security interest over the mortgage certificate is established by (i) entering into a written security transfer agreement, and (ii) transferring the mortgage certificate to the lender or the security agent – that is, for physical certificates, by delivery of possession, and for registered certificates, by endorsement. Except for dematerialised (paperless) mortgage certificates, such security transfers do not require additional notarisation or further registration in the land register.

Additional requirements may apply in the context of cross-border transactions. In such cases, parties are typically advised to seek confirmation from the competent authorities regarding compliance with Lex Koller. Furthermore, interest payments to non-Swiss resident lenders on loans secured by Swiss real estate are generally subject to Swiss withholding tax at source, unless the lender is based in a country that

benefits from a double tax treaty with Switzerland that provides for a zero rate and the lender qualifies for such treaty protection.

Share pledge

Under Swiss law, shares in stock corporations (AG) and limited liability companies (GmbH) may be pledged by means of (i) a written pledge agreement, and (ii) if physical share certificates have been issued, delivery of those certificates to the secured party, security agent, or a person acting on their behalf. For registered shares, such certificates must also be duly endorsed in blank. A pledge over shares may also be perfected even in the absence of issued certificates. Nevertheless, having the certificates issued and delivered generally puts the pledgee in a factually stronger position in enforcement scenarios. Furthermore, it is standard practice to remove any transfer restrictions contained in the company's articles of association. Limitations on shareholder representation at general meetings (e.g., restricting proxies to other shareholders) will typically also be eliminated to guarantee full flexibility once control of the pledged shares has been obtained.

Bank accounts

Security interests in Swiss bank accounts are commonly taken by pledging the account holder's claims against the account bank using a written bank account pledge agreement. Swiss banks typically have pre-existing rights of set-off and pledge, or other preferential rights, according to their general terms and conditions. Accordingly, unless the bank waives these rights, the pledge will be second-ranking. For this reason, notification of the account bank is mandatory to perfect the pledge over the bank accounts.

Receivables

Security over receivables (such as claims under intra-group loans, lease agreements, or insurance claims) is effected through a written security assignment agreement. This agreement must clearly specify the receivables being assigned and may also encompass future receivables, provided that the description is sufficiently precise to allow identification as the receivables arise. It is important to note that receivables arising after the commencement of bankruptcy proceedings against a Swiss assignor are no longer validly assigned, and will fall into the assignor's bankruptcy estate. The underlying contract should not contain transfer restrictions; any prohibition on assignment would render the security assignment ineffective. In Switzerland, notification to the third-party debtor is not required for perfection; however, as long as the debtor has not been notified, it may discharge its debt by paying the assignor.

Intellectual property

Security over IP is typically created by means of a written pledge agreement specifying the relevant IP rights. Swiss law does not require registration for perfection of a pledge over IP. However, if the pledge is unregistered, *bona fide* third parties may acquire the IP to the detriment of the pledgee. Although a pledge governed by Swiss law over foreign IP is valid under Swiss law, it must be confirmed whether the pledge is recognised and perfected under the relevant foreign jurisdiction (e.g., whether registration is required). Where foreign IP is of particular significance, it is advisable to register the pledge in the relevant register. Security documentation often requires registration of liens over important IP at inception and for other IP upon the occurrence of an event of default.

Movable property

Security over movable assets is generally created either by pledge or by security transfer of full legal title under Swiss law. It should be stressed that Swiss law adheres to the possessory pledge system: physical possession of the asset must be transferred to the pledgee (or to a third party holding on the pledgee's behalf). As long as the pledgor retains exclusive control, the security is not perfected. This possessory requirement poses structuring challenges for security over movable assets generally, which must be assessed on a case-by-case basis.

The role of the security agent

Where syndicated lending or multi-lien financing is involved, a creditor or third party is typically appointed as security agent to hold the security on behalf of the project lenders. For non-accessory security interests (e.g., assignments of receivables), the security agent generally acts as a fiduciary in its own name, but for the benefit of the secured parties. For accessory securities (e.g., pledges), the security agent acts as a direct representative in the name and for the account of the secured parties (and for itself, if applicable). In principle, no licensing requirement applies for acting as a security agent.

Enforcement of security

The primary forms of security interests in Switzerland are enforced either through private realisation or through official debt enforcement and bankruptcy proceedings pursuant to the Swiss Debt Enforcement and Bankruptcy Act (DEBA). The security documentation typically allows the secured party, at its discretion, to realise the collateral either by way of the official procedures under the DEBA or through private enforcement – i.e., outside the DEBA's formal processes and requirements – including the possibility for the secured party to acquire the collateral itself.

In private enforcement scenarios, the secured party is required to conduct the realisation in such a manner as to obtain a favourable price for the collateral given the prevailing circumstances. The value of the assets is therefore generally determined according to their market value (e.g., the stock market price, if available) or based on an appraisal carried out as of the date of sale. If the proceeds from enforcement exceed the amount of the secured obligations, any surplus must be returned to the security provider. While the parties may agree that a private enforcement be settled in a foreign currency, official enforcement proceedings in Switzerland will recognise and enforce claims in foreign currency only in Swiss francs.

Once bankruptcy proceedings have been opened against the security provider, any pledged assets automatically become part of the provider's bankruptcy estate. In such a case, private realisation of the collateral is no longer permitted; foreclosure must then proceed through the official debt enforcement and bankruptcy process governed by the DEBA.

Further considerations

Financial assistance and upstream and cross-stream security/guarantees

Under Swiss corporate law, the provision of guarantees, indemnities, or security interests by a Swiss company for the obligations of its direct or indirect shareholder (upstream) or for the obligations of affiliates or subsidiaries of such shareholders (cross-stream) is subject to mandatory financial assistance restrictions. Notably, where such upstream or cross-stream support is not provided on arm's length terms, the extent of the guarantee, indemnity, or security is limited to the company's freely distributable equity. These rules may substantially affect the effectiveness of security particularly in cases of financial distress. Nevertheless, with appropriate structuring and the implementation of available safeguards, these restrictions are generally acceptable to market participants, including investors and lenders.

Additionally, the granting of upstream or cross-stream guarantees, indemnities, or security interests must be approved by the relevant corporate bodies of the Swiss company, and the company's articles of association will typically expressly authorise such financial assistance within the scope of the corporate purpose clause.

Withholding tax at source applicable to cross-border transactions secured by Swiss real estate

For cross-border transactions secured by Swiss real estate, interest payments made to non-Swiss resident lenders are subject to withholding tax at source, unless the lender is domiciled in a country whose double tax treaty with Switzerland provides for a zero rate. Therefore, where Swiss real estate is used as

collateral, it is essential to ensure that only "Swiss treaty lenders" (as defined below) benefit from such security to avoid triggering withholding tax.

A Swiss treaty lender is a person (i) whose corporate seat is in Switzerland, or who is lending through a facility office that qualifies as a Swiss permanent establishment and is entitled to receive interest payments without any deduction under Swiss tax law, or (ii) who lends from a jurisdiction having a double tax treaty with Switzerland providing for a 0% withholding tax rate on interest payments.

Tax structuring

Withholding tax

Interest payments made by Swiss borrowers in connection with certain forms of collective debt financing (such as bonds and syndicated loans) may be subject to Swiss withholding tax at the current rate of 35%. This withholding tax is triggered if a Swiss obligor borrows from more than 10 non-bank lenders under a single instrument (10 Non-Bank Rule) or from more than 20 non-bank lenders in aggregate (20 Non-Bank Rule); together, these are referred to as the Swiss Non-Bank Rules. For the purposes of these rules, a "bank" is defined as a financial institution that (i) is licensed as a bank in Switzerland or in its home jurisdiction, and (ii) engages in genuine banking activity with its own infrastructure and dedicated staff. Any other entity or individual is considered a "non-bank".

Particular attention to the Swiss Non-Bank Rules is also required when Swiss entities act solely as guarantors (rather than as direct borrowers), especially if the financing proceeds will be used in Switzerland.

To mitigate the risk of withholding tax on interest payments, facility agreements involving a Swiss borrower or guarantor are generally structured to ensure compliance with these rules – usually through specific representations, warranties, and restrictions on transfers to non-banks.

Other taxes, duties, charges

The transfer of certain securities may be subject to Swiss federal securities transfer stamp duty. In addition, special withholding taxes may apply at both cantonal and federal level – subject to applicable double tax treaties – on interest payments relating to claims secured by Swiss real estate (see the "Withholding tax at source applicable to cross-border transactions secured by Swiss real estate" section above). Swiss dividend payments are also generally subject to a 35% withholding tax, which may be reclaimable depending on the provisions of relevant double tax treaties. Furthermore, a moderate issuance stamp duty is payable on the incorporation of a Swiss stock corporation with a share capital in excess of CHF 1 million.

The year ahead

Considering Switzerland's advantages, such as political and legal stability and its overall business-friendly regulatory environment, the trend of sustained demand for data centres in Switzerland is expected to continue in the year ahead.



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