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TECHNOLOGY M&A

Switzerland



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Technology M&A

Contributing Editors

Arlene Arin Hahn and Neeta Sahadev

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Contents

Technology M&A

STRUCTURING AND LEGAL CONSIDERATIONS

Key laws and regulations
Government rights
Legal title

DUE DILIGENCE

Typical areas
Customary searches
Registrable intellectual property
Liens
Employees and contractors
Transferring licensed intellectual property
Software due diligence
Special or emerging technologies

PURCHASE AGREEMENT

Representations and warranties
Customary ancillary agreements
Conditions and covenants
Survival period
Liabilities for breach
Indemnities
Walk rights

UPDATES AND TRENDS

Key developments of the past year

Contributors

Switzerland

Walder Wyss Ltd

walderwyss

Alexandre Both alexandre.both@walderwyss.com
Hugh Reeves hugh.reeves@walderwyss.com

STRUCTURING AND LEGAL CONSIDERATIONS

Key laws and regulations

What are the key laws and regulations implicated in technology M&A transactions that may not be relevant to other types of M&A transactions? Are there particular government approvals required, and how are those addressed in the definitive documentation?

Switzerland has been in the process of introducing a dedicated investment screening regime via the Investment Control Act (IPG). The IPG was adopted by the Federal Assembly on 19 December 2025. It is targeted at takeovers by foreign state investors and is aimed at risks to Swiss public order and security. The entry into force is to be set by the Swiss Federal Council, likely during 2027. The focus will be on domestic companies active in particularly critical areas, including defence goods, telecom infrastructure and other critical infrastructure (energy, water, transport and health). There are, in addition, sectoral laws regulating or restricting foreign investments, particularly in the banking and real estate sectors and in the fields of telecommunications, nuclear energy, radio and television and aviation.

Law stated - 31 August 2026

Government rights

Are there government march-in or step-in rights with respect to certain categories of technologies?

At the time of writing, there are no statutory government march-in or step-in rights applicable in Swiss technology M&A transactions generally.

Law stated - 31 August 2026

Legal title

How is legal title to each type of technology and intellectual property asset conveyed in your jurisdiction? What types of formalities are required to effect transfer?

In general, transfer of title over the various categories of IP rights is relatively simple and not subject to burdensome requirements or limitations.

Transfer of title is a causal act, necessitating not only the transferring act, but also a valid cause to that effect. This process often takes the form of an assignment declaration or agreement.

The written form is recommended in any case for any acts of disposition over IP rights; however, the written form is a mandatory legal requirement for patents, trademarks and designs, but not for copyrights. In the case of registered rights, namely patents, trademarks and designs, the written act is sufficient to transfer title, though a change of ownership cannot be opposed to bona fide third parties until it has been recorded in the relevant register

(respectively, the patent, trademark or design register) and the prior – namely, still-registered – owner remains subject to third-party claims.

As trademarks are frequently registered for several different goods or services, their transfer can be limited to specific goods or services. Similarly, it is also possible to transfer only certain rights under a copyright. Such specificities call for clear and complete wording in the act of disposition.

Certain other events can cause a transfer of title, such as inheritance or in certain cases the transfer of an entire business.

Finally, contracting parties cannot transfer "moral rights" (frequently referred to as ***droits moraux***). Such rights exist in copyright and patent law and, for instance, protect the originator (author or inventor) from being mentioned in this role.

Law stated - 31 August 2026

DUE DILIGENCE

Typical areas

What are the typical areas of due diligence undertaken in your jurisdiction with respect to technology and intellectual property assets in technology M&A transactions? How is due diligence different for mergers or share acquisitions as compared to carveouts or asset purchases?

Typically, the due diligence effort from an IP standpoint looks to ascertain the extent of the target company's IP portfolio, its legal nature and its current and near-future status. This latter point is in particular relevant for those IP rights, such as patents and trademarks, which require regular action to maintain their validity.

As it is generally accepted that the core value of most companies today resides in their intangible assets, the IP due diligence plays a central role in informing the parties to the M&A transaction on the legal strengths and weaknesses of the target company's IP portfolio. This concern applies equally in situations of contemplated share acquisitions as it does for asset purchases. In this respect, the legal IP due diligence frequently goes hand-in-hand with a prior or parallel technical due diligence of the target's intellectual property, especially in tech-driven industries.

A sound due diligence method calls for, as a preliminary step, a high-level but clear understanding of the technology at stake. Indeed, this understanding is necessary to determine what IP rights may and should exist. As a reminder, a single technology may be protected by several IP rights, each covering the multiple facets of the same technology. Following this initial step, an overview of the IP rights constituting the company's portfolio also requires understanding what IP strategy the company follows to protect the technology, and questioning its resilience through time. For instance, many businesses may choose to forsake (wholly or partially) patent protection in favour of trade secret practices. This second step can best be described as a "high-low" approach, in which a detailed analysis of the various IP rights is juxtaposed against a more general understanding of the company's overarching IP strategy. With that information in hand, a third step involves a review of the various licences on the technology, as well as any past, present or upcoming litigation or

claims involving the technology; in this context, depending on the practice area, a more or less extensive regulatory analysis may prove essential (eg, in the medtech area).

The above process may lead to the identification of various issues, such as shortcomings with the registration of IP rights, ill-adapted IP strategies, ownership issues (such as third-party or joint ownership), unfavourable or weak contracts, potentially adverse litigation outcomes and regulatory risks.

As mentioned above, the IP due diligence is not radically different in share deals as it is in asset deals. Given that asset deals might only involve the transfer of certain, but not all, technology assets, the scope of the due diligence may, however, vary.

Law stated - 31 August 2026

Customary searches

What types of public searches are customarily performed when conducting technology M&A due diligence? What other types of publicly available information can be collected or reviewed in the conduct of technology M&A due diligence?

It is customary to cross-check the lists of registered IP rights that the target company provides against the information in the matching public registers. This applies in particular to trademarks and patents, but also to designs and (to a limited extent) domain names. As copyright is not a registered right in Switzerland, public search possibilities are limited and the due diligence rather looks to ensure the chain of title is clear and unproblematic.

Though they can rarely be extensive and comprehensive, more general internet searches occasionally help to identify certain issues, such as third-party attempts to duplicate a protected technology, or the unauthorised use of company names or trademarks.

Law stated - 31 August 2026

Registrable intellectual property

What types of intellectual property are registrable, what types of intellectual property are not, and what due diligence is typically undertaken with respect to each?

Registered rights are patents, trademarks and designs. Domain names are sometimes regarded as registered rights given that they appear in publicly accessible registries. Copyrights are not a Swiss registered IP right, nor are – by definition – trade secrets.

The due diligence effort for registered rights must confirm that the rights are, indeed, properly registered and active, held by the company (eg, not by ex-employers, co-founders, etc), and are not facing short-term obligations such as renewal duties, annuity payments and so forth, which may jeopardise their existence. Occasionally, liens and licences may be publicly recorded on registered IP rights.

As regards unregistered rights, it is important to determine ownership and the measures in place to protect such IP, such as confidentiality duties and practices regarding trade secrets, and non-disclosure of computer source code.

Law stated - 31 August 2026

Liens

Can liens or security interests be granted on intellectual property or technology assets, and if so, how do acquirers conduct due diligence on them?

Liens can be granted on most IP assets and the underlying mechanisms are primarily set out in general civil law, being specified that specific IP legislation, such as the Federal Trademark Act, occasionally contain additional provisions.

In the case of registered IP rights, the best practice is to register the lien in the relevant registry. This fully mitigates, under Swiss law, risks associated with potential third-party bona fide acquirers of the IP rights at stake. In addition, the process to register liens over registered IP rights in Switzerland is informal, simple and fast. The registration of the lien is, however, not a condition for the lien's validity.

As liens typically result in the performance of a written pledge agreement, the due diligence process should identify any such agreements. In the case of registered IP rights, a consultation of the relevant registry should also identify those liens that the parties recorded.

Law stated - 31 August 2026

Employees and contractors

What due diligence is typically undertaken with respect to employee-created and contractor-created intellectual property and technology?

The due diligence involves reviewing the employment agreements as well as any work-for-hire, service, consultancy or other "freelancer" agreements to identify the existence of any employee or contractor-generated intellectual property and technology. The due diligence must then ascertain the ownership rights over such intangible assets.

The by-default position of Swiss statutory employment law is that inventions, designs and (though a scholarly debate exists) computer programs created by an employee in the course of their work and in the performance of their duties belong to the employer. In the case of inventions and designs created by an employee in the course of their work but not in performance of contractual obligations, the employer may contractually reserve acquisition rights, against appropriate consideration.

In the case of contractor-generated intellectual property, Switzerland – contrary to other jurisdictions – does not have a dedicated work-for-hire doctrine under which the client necessarily acquires the intellectual property rights resulting from contract performance. The due diligence must therefore identify the nature of such contractor agreements and carefully assess their impact on IP and technology ownership.

Law stated - 31 August 2026

Transferring licensed intellectual property

Are there any requirements to enable the transfer or assignment of licensed intellectual property and technology? Are exclusive and non-exclusive licences treated differently?

For the most part and irrespective of their exclusive or non-exclusive nature, the transfer of licences is not subject to dedicated statutory requirements, though contractual limitations may apply. Sector-specific regulations, such as in the financial sector, may, however, come into play and in effect hinder the transfer of certain licences.

In addition, certain licences, such as those over patents and trademarks, can be recorded in the respective register, and are consequently opposable to third-party bona fide acquirers.

Law stated - 31 August 2026

Software due diligence

What types of software due diligence is typically undertaken in your jurisdiction? Do targets customarily provide code scans for third-party or open source code?

The due diligence must identify the software belonging to the target company as well as software that it uses, either in conjunction with its own software, or for its business operations. That being done, the due diligence serves to confirm ownership of the target's claimed software, review any licences in and out and, where applicable, assess the legal viability of the target's software commercialisation efforts by reviewing the target's service or product offering documentation.

Targets do not customarily provide code scans for legal due diligence, though a technical due diligence may result in a careful analysis of the target's code as well as its AI use practices. Moreover, it is customary for the target to precisely list all open-source software (OSS) that it uses with an indication of the relevant OSS licences; this is an important step that permits identification of possible copyleft exposure.

Law stated - 31 August 2026

Special or emerging technologies

What are the additional areas of due diligence undertaken or unique legal considerations in your jurisdiction with respect to special or emerging technologies?

New technologies come with new questions regarding their legal qualification and legal treatment. Evolving regulatory landscapes also mean that new due diligence avenues have opened. This is notably the case with big data for instance, where increased focus on data protection, data security and trade secrecy practices has occurred. Other technologies not

only face more precise regulations, but also frequently overlap various layers of intellectual property rights. This is the case for autonomous driving technologies, and to a certain extent internet of things, which frequently combine patent-protected inventions, trade secrets and copyrighted software components, while at the same time necessitating a careful telecommunications and (in the case of autonomous driving) road use regulatory review.

The most important technological development in recent years, AI (broadly-defined), calls for a multi-layered legal analysis. Indeed, in a due diligence context, one must be able to identify how the target uses artificial intelligence, to what ends (eg, software development, core technology implementation, or simple business processes) and what kind of results the artificial intelligence generates. In particular, as AI is fast becoming a tool that many use for computer programming purposes, there is a potential impact on the applicability of copyright protection over the resulting software; conversely, copyright protection of software seems to be losing some of its relevance in due diligence exercises. The topic of "AI distillation" has also recently come to the forefront as it may represent a liability in technology transactions given the legal grey area currently surrounding such practices.

Law stated - 31 August 2026

PURCHASE AGREEMENT

Representations and warranties

In technology M&A transactions, is it customary to include representations and warranties for intellectual property, technology, cybersecurity or data privacy?

Representations and warranties in connection with IP, technology, cybersecurity and data privacy matters are customary and highly recommended in Swiss M&A technology transactions (either share deals or asset deals).

According to the Federal Supreme Court of Switzerland, the regime applicable by law under the Swiss Code of Obligations only covers defects of the shares (in the case of a share deal) or the transferred assets and liabilities (in the case of an asset deal), but not of the underlying business, which makes the regime inappropriate for the sale of a company or a business.

It is therefore important, in this context, that the share or asset purchase agreement sets forth a detailed catalogue of representations and warranties as well as indemnification mechanisms to protect the buyer against possible damage and liabilities.

The exact content of the representations and warranties will mainly depend on the specifics of the transaction at hand, the findings made by the buyer during the due diligence and the negotiations between the buyer and the seller.

That being said, the following representations and warranties are often seen in practice:

- ownership or proper licensing of the IT systems;
- proper licensing of the third-party software under the IT systems;
- absence of failures, viruses, bugs or equivalent issues affecting the IT systems;
- existence of adequate back-up and disaster recovery procedures in relation to the IT systems;

- ownership of the IP rights and absence of any encumbrances thereon;
- proper filing and maintenance of the IP rights (including due payment of all registration and renewal fees or annuities);
- absence of claims or judgements challenging, restricting or affecting the use, validity, existence or enforceability of the IP rights;
- ownership of the software developed by the company;
- absence of claims or judgments challenging, restricting or affecting the ownership or use of the software owned by the company;
- absence of agreements limiting or restricting the ability of the company to use, exploit, assert or enforce any of its intellectual property rights;
- absence of delivery, licence or disclosure of the source code for the software to any third party;
- absence of specific requirements or restrictions related to any open source code contained in the software;
- absence of infringement of the IP rights or software of the company;
- absence of infringement of any third party intellectual rights by the company;
- compliance with all good business practices and relevant legal requirements with respect to data protection and data security; and
- absence of any claims or inquiries of any kind by a third party (including a data protection supervisory authority) of any breach by the company of any legal requirements with respect to data protection and data security.

AI is bringing with it a package of warranties that, while not yet standardised, includes elements such as:

- regulatory compliance in AI development, use and commercialisation;
- absence of infringement of third-party rights in the creation and use of (training) datasets;
- security, accuracy and resilience of the company's AI systems, and related governance thereof.

In addition, the buyer often requests a confirmation from the seller that the company (in the case of a share deal) or the transferred business (in the case of an asset deal) complies with certain specific regulations, practices or standards, applying to certain technologies or business, such as the fintech or medtech fields.

The parties are also free to negotiate the definitions of "IT systems", "IP rights" and "software" in the share or asset purchase agreement. Traditionally, the definition of "IP rights" covers a relatively broad range of elements, such as patents (whether registered or not), trade names, trademarks, designs, logos, copyrights, domain names, trade secrets and know-how.

Law stated - 31 August 2026

Customary ancillary agreements

What types of ancillary agreements are customary in a carveout or asset sale?

The agreements listed hereunder are relatively frequent in Swiss carve-out and asset deals:

- transitional services agreements (eg, appointment of the seller as agent of the buyer in connection with certain limited services);
- licence agreements, in cases where the seller only grants a licence to the buyer, without transferring the underlying intellectual property rights; and
- IP rights assignment and licence-back agreements, in cases where certain intellectual property rights are transferred to the buyer and immediately licensed to the seller.

Law stated - 31 August 2026

Conditions and covenants

What kinds of intellectual property or tech-related pre- or post-closing conditions or covenants do acquirers typically require?

The following topics are often addressed either in the form of pre-closing conditions or closing actions:

- remediation actions regarding the ownership or chain of title of IP, including assignment of IP rights from current or former employees, consultants, etc;
- signing of new employment agreements with strengthened IP clauses in favour of the employer;
- signing of ancillary agreements such as transitional licence agreements, services agreements and cooperation agreements, etc;
- third-party consents, in cases where material agreements contain change of control or non-transfer clauses;
- confirmation that all representations and warranties are true and correct (at least in all material aspects); and
- specific covenants from the seller (eg, prohibition to dispose of specific assets without the buyer's consent).

In the context of asset and carve-out deals (less often in the case of share deals), the parties often also agree on certain post-closing actions or undertakings addressing the consequences of the transfer in relation to IP rights. The buyer may, for instance, undertake to announce and document the transfer with the relevant IP registries, in order to update the various IP registrations affected by the transfer.

Law stated - 31 August 2026

Survival period

Are intellectual property representations and warranties typically subject to longer survival periods than other representations and warranties?

In share deals, intellectual property representations and warranties are generally treated as standard representations and warranties and not as fundamental ones, such as title to the company's shares, for instance.

The duration of such representations and warranties will mainly depend on the negotiations between the parties, but typically between 18 and 24 months (with, more rarely, a possibility to go down to 12 months or, on the contrary, to extend the duration to 36 months).

In asset deals, particularly where registered intellectual property rights (eg, patents) are transferred, the duration of specific representations and warranties such as the title to or the right to use the relevant intellectual property rights can sometimes be extended to longer periods between five and 10 years, depending on the negotiations and the circumstances of the case at hand.

Law stated - 31 August 2026

Liabilities for breach

Are liabilities for breach of intellectual property representations and warranties typically subject to a cap that is higher than the liability cap for breach of other representations and warranties?

Intellectual property representations and warranties are generally subject to a global liability cap, which applies to all representations and warranties given by the seller, subject to some (very) limited exceptions (the "fundamental" representations and warranties, which include, for instance, the title to the company's shares).

The global liability cap for standard representations and warranties is typically between 10% and 20% on an auction process and between 20% and 35% of the purchase price on a bilateral process, while the cap for fundamental representations and warranties is very often set at 100% of the purchase price.

Law stated - 31 August 2026

Liabilities for breach

Are liabilities for breach of intellectual property representations subject to, or carved out from, de minimis thresholds, baskets, or deductibles or other limitations on recovery?

Liabilities for breach of intellectual property representations and warranties are generally subject to the de minimis thresholds, baskets and deductibles negotiated between the parties. It is rare that a specific regime is negotiated for breaches of intellectual property representations and warranties.

Law stated - 31 August 2026

Indemnities

Does the definitive agreement customarily include specific indemnities related to intellectual property, data security or privacy matters?

Specific indemnities are not granted in all cases by the seller. They are usually negotiated by the buyer to be protected against specific or material issues identified during the due diligence. The rest of the risks related to the acquired company or business is addressed through representations and warranties, which, contrary to the specific indemnities, are generally subject to various contractual limitations and caps.

The subject matter of the specific indemnities is not standardised and mainly depends on the nature of the risks identified by the buyer (eg, identified data breach). In any case, the seller generally undertakes to fully indemnify the buyer against any damage and liability the buyer may suffer in the event that the identified risks would materialise (including, for example, court costs and reasonable lawyers' fees).

As mentioned above, the specific indemnities are generally not limited or qualified (including, in particular, by the buyer's knowledge). It is also relatively rare that the specific indemnities are subject to the de minimis limitations negotiated among the parties. Prudent sellers, however, request often a specific cap in relation to given indemnities.

Law stated - 31 August 2026

Walk rights
As a closing condition, are intellectual property representations and warranties required to be true in all respects, in all material respects, or except as would not cause a material adverse effect?

The answer to this question depends primarily on the outcome of the negotiations between the parties. In general, IP representations and warranties (as the rest of the representations and warranties) are given by the seller both at the date of signing and at the date of closing, with the same materiality threshold. The representations and warranties must, in principle, be accurate in all respects, subject to certain specific limitations or qualifications applying to a limited number of representations and warranties. In an auction context, a significant part of the representations and warranties are generally subject to a general materiality qualification.

In the current environment, sellers very often resist with success the inclusion of bring down closing conditions. In certain deals, they may succeed in getting a closing condition according to which no event shall have occurred up to the closing date that materially affects the given representations and warranties.

Law stated - 31 August 2026

UPDATES AND TRENDS

Key developments of the past year
What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The Swiss Federal Council has been discussing a regulatory framework for digital platforms such as Google, Facebook, TikTok and YouTube. This framework was intended to draw inspiration from the European Union's Digital Services Act, aiming in particular to incorporate the principles of transparency, security and accountability established by European law into Swiss legislation. In April 2025, Parliament in effect put this legislative effort on hold, but efforts resumed on a much narrower scale. This resulted, in October 2025, in a draft bill for a Federal Act on Communication Platforms and Search Engines. This draft would target large communication platform operators and search engines (ie, not online sales platforms) and aim for enhanced transparency (especially regarding targeted advertising), enhanced consumer protection, content reporting and dispute resolution. This draft remains under discussion.

In parallel to this, the Swiss government has been envisaging drafting an overarching legislation on AI, akin to the European Union's AI Act. It, however, reached the conclusion that such overarching AI rules are not (yet) advisable and, rather, that specific topics of AI regulation (eg, protection of human rights) should be prioritised.

Law stated - 31 August 2026