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Switzerland
Technology M&A

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This country-specific Q&A provides an overview of technology m&a laws and regulations applicable in Switzerland.

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Switzerland: Technology M&A

1. Describe the typical organizational form (e.g., corporations, limited liability companies, etc.) and typical capitalization structure for a VC-backed Start-up in your jurisdiction (e.g., use of SAFEs, convertible notes, preferred stock, etc.). To what extent does it follow U.S. "NVCA" practice? If so, describe any major variations in practice from NVCA in your market. If not, describe whether there are any market terms for such financing VC-backed Start-ups. If venture capital is not common, then describe typical structure for a startup with investors.

Commonly, Swiss startups select either a corporation (SA/AG) or a limited liability company (Sàrl/GmbH) as their legal entity form. Both offer separate legal personality and provide investors with limited liability. A limited liability company requires a lower minimum capital at incorporation (CHF 20,000.-). A corporation requires a minimum capital of CHF 100,000.-, of which CHF 50,000 needs to be paid in). Corporations are usually preferred as shareholders' identities and share transfers do not require disclosure and registration with companies' house (this is mandatory for a limited liability company), therefore providing further confidentiality to investors. The limited liability company may be chosen by smaller or very early-stage ventures but corporations generally remain the norm.

The shareholders elect the board of directors. The board can delegate operational duties and day-to-day operations to management in accordance with the articles of association and organisational regulations (i.e. the Swiss Code of Obligations).

There are no rules pushing startups to adopt a specific equity structure. Common shares are often held by the founders and preferred shares (with favourable exit rights and/or preferential voting rights for instance) sometimes held by investors. Cash, debt and equity, and/or a combination are commonly used in terms of capitalisation.

The Swiss equivalent to the U.S. standardised NVCA model is The Swiss Private Equity & Corporate Finance Association (SECA). SECA provides key model documentation including templates for term sheets, investment agreements, shareholders' agreements, articles of association, convertible loans, and board regulations [1].

1 https://www.seca.ch/en/our-activities/model-documentation/ (last consulted on November 5, 2025);

2. Describe the typical acquisition structures for a VC-backed Start-up. As between the various main structures (including an equity purchase and an asset purchase), highlight any main corporate-law and tax-law considerations.

Share deals and asset deals are the two main acquisition structures in Switzerland.

A share deal is the most common choice and is where the buyer acquires shares (usually 100% or a majority) of the target company. The buyer consequently takes control of all assets and liabilities of the target company. A share deal is simpler since only shares (and not individual assets) are purchased, avoiding having to simultaneously transfer existing contracts, employment agreements (the employees remain in the target company), or IP. Thorough due diligence and robust representations and warranties are necessary considering the buyer also takes over all liabilities. The seller may benefit from tax-exempt capital gains on the sale of privately held participations, unless the sale is considered as an indirect partial liquidation (i.e. a requalification of the tax-exempt capital gain into taxable income) or in case the sales price is partially requalified into income from employment. These tax consequences can be avoided if the transaction is properly structured. If the shares are held by a corporate shareholder, participation relief may apply.

With an asset deal, all or some specific assets owned by the seller (such as contracts, IP, customer lists) and liabilities are transferred to the buyer. Each asset and liability must therefore be identified and transferred. This usually adds a degree of complexity to asset deals in comparison to share deals. Third-party contracts and employment agreements may impose consent from such parties to allow for such transfer. Statutory asset transfers under the Swiss Merger Act[2] allow to transfer assets collectively, require following a formal process and to notify creditors.

[2] https://www.fedlex.admin.ch/eli/cc/2004/320/fr (last consulted on November 5, 2025)

3. Describe whether letters of intent / term sheets are common in your jurisdiction. Are they typically non-binding or binding? Is exclusivity common? Are deposits / break-up fees common?

Letters of intent, term sheets, memorandum of understanding, or heads of terms are standard practice in Swiss M&A transactions. They are used to outline key commercial terms before the final agreements are signed. They help to structure the negotiation and due diligence phase, offering clarity for both sides, and they push the parties to negotiate in good faith. These documents are generally non-binding.

Exclusivity clauses are common and provide the buyer with a right to negotiate exclusively for a set period of time. Granting exclusivity is up to the parties.

Deposits and break-up fees are uncommon in Swiss M&A deals.

4. How common is it to use buyer equity as consideration in purchasing a VC-backed Start-up? Please describe any considerations or constraints within the securities laws of your jurisdiction for using such buyer equity.

Using buyer equity as consideration (share-for-share transactions) is possible but relatively uncommon compared to cash deals. However, such structures have become more frequent in larger and cross-border deals, or when the buyer is a listed company for instance. It may allow to preserve buyer's liquidity. It may also occur in the event of a high share price of the buyer's stock or as an alternative for traditional debt financing.

Such structuring adds complexity in terms of formalities, shareholder approvals, public disclosure obligations and prospectus requirements (for listed companies), and tax consequences such as taxable capital gains for sellers.

5. How common are earn-outs in your jurisdiction? Describe common earn-out structures, and prevalence of earn-out related disputes post-closing.

Earn-outs are a regular feature in Swiss M&A transactions, especially where there are valuation gaps (diverging price expectations for instance) between buyers and sellers, for instance in the event of a company that has only been operating for a few years therefore with limited available financial information, or when the seller remains an employee of the target company post-closing where the earn-out secures the seller's motivation and commitment to increase the performance of the business during the earn-out period.

The parties are free to define the conditions for an earn-out. Earn-outs structures usually link a portion of the purchase price to the target's future financial performance, most often to revenue, EBITDA, EBIT, net income or other clearly measurable financial performance indicators over a period of 1–3 years after closing in order to limit post-deal issues. Non-financial markers such as reaching operational targets, or the successful launch of a new product can also serve as performance indicators for earn-outs. Payments are typically made in cash but, less frequently, can be made in shares.

Disputes regarding earn-outs are not uncommon post-closing and often include (i) disagreement over the interpretation of performance metrics, (ii) buyer actions that may affect the ability of the company to achieve its objectives, or (iii) accounting issues or unexpected events impacting the company's performance and results.

Earn-out clauses therefore require detailed and thorough drafting to precisely define the relevant performance indicators and timeframe. The SPA should set the calculation principles of the earn-out.

6. Describe any common purchase price adjustment mechanisms in purchasing a VC-backed Startup and/or are lock-box structures more common.

The most common purchase price adjustment mechanisms are the "locked box" and "closing accounts" structures, sometimes resulting in a hybrid form. The locked-box structure (i.e. price is "locked" at the time of signing the SPA) is predominant and often preferred by sellers since it offers a certain degree of certainty and reduces post-closing disputes.

Locked box structures ideally call for recent accounts (not older than 3-6 months) to increase visibility of the buyer. They are often audited considering the locked box accounts are crucial for determining the purchase price.

Unless signing the SPA and closing occur simultaneously, the seller will continue the business of the company between signing and closing. The SPA should contain restrictions to make sure the seller conducts the business consistent with past practice and to refrain the seller from taking actions that could significantly affect and alter the business.

With the closing accounts' structure, the purchase price is calculated after closing based on the target company's actual accounts, including adjustment parameters such as cash and cash equivalent, debt, trade receivables, inventories and working capital.

7. Describe how employee equity is typically granted in your jurisdiction within VC-backed Start-up's (e.g., options, restricted stock, RSUs, etc.). Describe how such equity is typically handled in a sale transaction.

Often used as a means of incentive for employees and management, different forms of employee participation plans can be implemented. The most common employee equity-based instruments are:

1. employee shares where the employees receive a direct participation in the company;
2. employee stock options (ESOPs), where given employees receive the right (or option) to acquire shares in the company at a set price, and subject to vesting principles;
3. restricted shares, which are actual shares of the company often subject to a vesting period and/or a lock-up period during which the employee may not sell or pledge them until this period has expired;
4. phantom (or virtual) shares (VSOPs), which is merely a cash payment tied to the value of company shares, avoiding formal shareholder status and therefore limited to economic participation. This type of incentive is the easiest to implement as no share issuances or transfers and no adherence to a shareholders' agreement are required.

Employee equity is not necessarily affected by the change in ownership of the company and employees keep their equity rights and options. Acceleration clauses and trigger events can be provided in employee equity schemes, in case of a sale or exit event. Careful planning is necessary since accelerated vesting can negatively influence the valuation of the company and certain employees might "cash out" at exit and may no longer work for the company which is a risk a buyer will want to avoid taking.

8. Describe whether there are any common practices for retaining employees post-acquisition (e.g., equity grants, re-vesting of employee equity, cash bonuses, etc.).

Significant research shows that people and people-related issues play a critical role in the success of a transaction[3]. It is necessary to identify key talents and negotiate packages, including minimum retention periods, performance criteria, equity awards (ESOPs, phantom shares), new vesting schedules for existing unvested employees, cash bonuses paid over time in multiple instalments, or a combination of the above.

3 https://kpmg.com/ch/en/insights/deals/hr-mergers-acquisitions.html; https://www.pwc.ch/en/insights/hr/people-in-deals.html

9. How common are works councils / unions in your jurisdiction, among VC-backed Startups or technology companies generally?

Switzerland's labour market is notably liberal and trade union activity is generally low in the tech/start-up ecosystem and in M&A transactions. Collective negotiating agreements are rare, except in highly regulated industries or large multinational subsidiaries. In the event of an asset deal resulting in a business transfer, or in statutory regulated transactions under the Swiss Merger Act, employees (or their representative body) must be informed about the reason and all consequences resulting from the transaction. Employees may therefore comment and discuss any measures that may affect them. They also may oppose the transfer of their individual employment agreement, resulting in its termination. Employees do not however hold any say in the transaction itself. The seller and buyer are jointly and severally liable for pre-transfer employee claims for a defined period.

10. Describe Tax treatment of founder / key people holdbacks. Are there mechanisms for obtaining capital gains or equivalent more preferable tax treatment even if continued service is a requirement for the holdback to be paid out?

Tax-free capital gains usually occur for privately held shares that are sold to a third-party buyer. Founder and key-people holdbacks (i.e. commonly a portion of the purchase price in a business acquisition that is withheld from the sellers at closing and held by the buyer or in escrow to cover potential post-closing risks) paid out only if continued service requirements are met are generally taxed as employment income in Switzerland, not as capital gains, at ordinary income rates and subject to social security contributions for the founder.

The Swiss tax authorities closely examine conditional payouts linked to ongoing work, viewing them as compensation.

11. Describe whether non-competes / non-solicits for key employees / founders are common. Describe any legal constraints around such non-competes / non-solicits.

Non-compete and non-solicitation provisions for Founders and senior management are common and are typically found in the shareholders' agreement and/or employment agreements, and they must be carefully drafted and follow certain conditions[4]. Such provisions must be appropriately restricted regarding geographical scope, time and activity such that it does not unfairly compromise the employee's future economic activity, and they need to be in writing and commercially justified to demonstrate the company's need to protect its trade secrets or client list. Such prohibition may exceed three years only in special circumstances.

Non-solicit undertakings generally prohibit the active solicitation of the company's employees and customers, and non-compete undertakings cover the company's current products or services. Geographically, the company's current markets (or imminent ones) are usually covered by non-compete/non-solicitation provisions. To ensure compliance, non-compete/non-solicitation provisions are frequently backed by contractual penalties to facilitate enforcement.

[4] Sections 340 and following of the Swiss Code of Obligations;

12. What are typical closing conditions for the acquisition of a VC-backed Startup? How common is a "material adverse effect" concept as a closing condition?

Fairly rare in deals relating to privately held companies, the objective of a material adverse effect clause is to protect the buyer from adverse changes between signing and closing that make the target company substantially less attractive and therefore significantly amending the conditions of the deal that was negotiated by the parties.

The parties need to carefully describe and detail what constitutes a material adverse effect event. The non-occurrence of a material adverse effect event is often set as a closing condition (i.e. if such an event arises between signing and closing, the respective closing condition is not met, and the buyer could decide not to complete).

Robust representations and warranties are essential in M&A transactions. It is crucial to detail them and set forth clear indemnification mechanisms to protect the buyer against potential damages and liabilities. The seller usually confirms that all representations and warranties remain accurate until closing. The content of representations and warranties depends on the specificities of the deal, due diligence results and the contents of the parties' negotiations. In addition to the usual representations and warranties (finances, tax obligations, legal status), we also commonly see the following (among others) :

- Ownership of IP rights, no encumbrances;
- Valid licensing of third-party software;
- Proper functioning of IT systems;
- Absence of claims, inquiries, infringement of IP rights;
- Compliance with applicable regulations and standards.

13. With respect to representations and warranties: (a) Is deemed disclosure of the dataroom common? (b) Are "knowledge" qualifiers common? Is it common to make representations that are "risk shifting" (e.g., where sellers cannot completely validate the accuracy of such representations)?

Representations and warranties are merely statements of fact given at a particular date (usually as of signing, closing or a certain reporting date) regarding the company's business, the contracting parties, the shares in a share deal, or the assets in an asset deal.

Sellers will generally insist that all documents and information in the dataroom are deemed disclosed for the purposes of exceptions to representations and warranties. The disclosure must however meet the "fair disclosure" standard. This means the disclosed information should be presented in a way that allows a reasonable buyer and its advisers to identify and assess the disclosed fact. Any hidden or obstructed facts do not generally qualify as being fairly disclosed.

Knowledge qualifiers would arise in areas where the seller cannot fully verify the facts and are often defined in order to refer to the actual knowledge of specified key persons, sometimes with a duty of reasonable enquiry or diligence (i.e. often referred to as "best knowledge").

Risk-shifting representations (i.e. where the buyer wishes to transfer certain risks to the seller, for example regarding undisclosed liabilities or regulatory matters) are regularly seen. Sellers naturally resist this as they want to limit liability, so compromise is often found with deemed disclosure or knowledge qualifiers.

14. Describe the typical parameters of seller indemnification, including: (a) Coverage (fundamental, specified, general reps, covenants, shareholder issues, pre-closing Tax, specific indemnities, employment classifications, etc.) (b) Liability limit (c) Survival periods

Indemnification coverage typically covers breaches of fundamental representations (title, authority, target company capitalisation), general and specific representations (tax, environmental, IP, employment), covenants, pre-closing tax liabilities, and specific indemnities for issues discovered during due diligence such as ongoing litigation, unresolved regulatory matters, among others.

Quantitative limitations are customary and include (i) de minimis amounts where only a claim or related claims having a minimum value will be recoverable (the idea behind this is to avoid spending time and money on a claim that is not worth it), (ii) a cap where the seller's aggregate liability for any business warranty claims will be limited to a percentage of the purchase price. A 10%-30% cap is common but can go up to 50% for specific representations and warranties.

The general survival is 12 to 36 months to allow the buyer to examine the target's business. Longer periods are common for title and tax issues. Parties can negotiate specific duration for other representations and warranties on a case-by-case basis.

15. Describe background law that might impact the negotiation of indemnification, including those that may constrain recoverability of losses (e.g., can lost profits or multiples be awarded as damages? Is mitigation required?).

Under Swiss law, recoverable damages include a decrease in assets, increase in liabilities, and loss of profit that naturally and foreseeably results from the breach, causality therefore being a key issue. Adequate causality means that compensation will be due only for losses which occur in the ordinary course of events and following general experience likely to result from the breach.

Parties often negotiate the concept of damage, for instance to exclude indirect damage that is not foreseeable by the parties. Parties will sometimes agree on a contractual definition of direct, indemnifiable damage including all damage that is the reasonably foreseeable result of a breach. Punitive damages are often excluded. Claims for loss of investment opportunities, goodwill, reputation, or internal management or administrative costs are generally excluded unless expressly allowed by agreement.

Swiss law requires the injured party to mitigate damages so only net losses after reasonable efforts to reduce harm are recoverable.

16. How common is Warranty & Indemnity (W&I) insurance / representations and warranties insurance (RWI)? Describe any common issues that arise in connection with obtaining such insurance for an acquisition of a VC-backed Startup. Is Tax coverage obtainable from RWI/W&I policies? Are there any common exclusions?

Not as common as in other jurisdictions, the use of warranty and indemnity insurance does occur in Switzerland. It enhances the transaction security and allows the seller a "clean exit" (no or limited liability from the sale of the company), allowing for distribution of the sale proceeds without having to retain funds for potential risks and claims from the buyer.

Cover limitations and policy period are key terms. Risks disclosed in the data room or identified during diligence, environmental liabilities, and fraud are usually excluded and the insurance commonly only covers breaches of warranties and indemnities unknown to both parties.

Parties must demonstrate strong legal, financial and tax diligence before obtaining a coverage.

Tax coverage can be set up at a cost. Specific and known matters (from the tax due diligence) are usually carved-out.

17. Briefly describe the antitrust regime in your jurisdiction, including the relevant thresholds for filing. Describe whether there has been any heightened scrutiny of technology companies.

Switzerland's antitrust regime is governed by the Federal Act on Cartels and other Restraints of Competition ("CartA"), enforced by the Swiss Competition Commission (ComCo). The merger control rules apply to acquisitions, mergers, and certain joint ventures.

A notification of a merger or a concentration to ComCo is mandatory, if certain thresholds are met (art. 9 CartA), as follows:

1. A joint turnover of the companies concerned of at least CHF 2 billion worldwide, or a combined turnover in Switzerland of at least CHF 500 million; and at least two of the companies concerned have an individual turnover in Switzerland of a minimum of CHF 100 million.
2. Irrespective of turnover, if a company has held a dominant position in Switzerland and the venture involves such market or and adjacent market.

A revision of the CartA is currently being debated before the Swiss parliament. The key aspects of the revision are to facilitate the enforcement of claims before the civil courts and to modernise merger control. The qualified market dominance test will be replaced by the internationally used SIEC-test ("Significant Impediment to Effective Competition"). The SIEC-test will allow regulatory intervention for lower thresholds.

18. Briefly describe the foreign direct investment regime in your jurisdiction, including the relevant thresholds for filing. Describe whether there has been any heightened scrutiny of technology companies.

There is currently no general FDI regime in Switzerland apart from limited sector-specific regulations such as banking, real estate, telecommunications or nuclear energy (see question 17 above for anti-trust rules and merger control by ComCo).

A draft FDI Act is currently being debated in the Swiss parliament. The final version of the FDI Act is expected to come into force in 2026 at the earliest. Screening will focus on state-controlled investors and domestic companies operating in particularly critical sectors (defence, healthcare, infrastructure, AI/Cybersecurity, energy) and transactions in these sectors would require notification and approval from the State Secretariat for Economic Affairs (SECO).

There is already scrutiny on tech firms involved in infrastructure, AI, health, or digital security, and increase of the scope of controls is widely expected for deals involving foreign state-backed or non-EU investors.

19. Briefly describe any other material regulatory regimes / approvals that may apply in the context of an acquisition of a technology company.

Several material regulatory regimes and approvals may apply to the acquisition of a Swiss technology company, depending on the business activities and sector.

As mentioned in question 17 above, ComCo must be involved in an M&A transaction whenever the relevant turnover thresholds are met.

In the financial sector, companies operating as banks, securities dealers, fintechs, insurances, or payment providers are regulated and supervised by the Swiss Financial Market Supervisory Authority (FINMA). Approval from FINMA is required for change of control within a financial institution.

Acquisitions in other industries requiring a permit or a licence (such as telecommunications, health sector, transport), may be subject to governmental approval.

Personal data processing involved in acquisitions need to comply with Swiss and EU GDPR data protection principles.

20. Briefly describe any common issues that arise with respect to intellectual property, in the context of an acquisition of a technology company.

The main IP issues revolve around ownership, assignment rights, licensing, data and AI-related rights and obligations.

Registered and unregistered rights need to be examined by the buyer who needs to establish a clear and clean chain of ownership. Employee-created inventions, such as software, need explicit assignment provisions in the employee's employment agreement. Third-party created intellectual property would also require assignment agreements in favour of the target company.

During due diligence, the buyer would be well advised to thoroughly examine all licensing agreements in place. Compliance with all applicable data protection regulations needs to be respected at all times.

Post-closing integration procedures need to be planned to guarantee a smooth transition.

21. Briefly describe the regulatory regime for data privacy in your jurisdiction and highlight any common issues that arise in the context of an acquisition of a technology company.

Switzerland's data privacy regulatory regime is governed by the Federal Act on Data Protection Act (DPA), which is broadly aligned with the EU GDPR. The competent supervisory authority is the Federal Data Protection and Information Commissioner ("FDPIC") who does not however have the authority to issue fines like its European counterpart.

Although the DPA applies primarily to the territory of Switzerland, it has an extraterritorial scope of application and can extend to data processing that occurs abroad but has an effect in Switzerland. Consequently, if personal data is processed outside of Switzerland but affects natural persons in Switzerland, the controller or processor abroad must comply with the revised Swiss law.

Data subjects benefit from enhanced information rights and controllers must inform data subjects of personal data collection and provide certain minimum information. Such rights included access, rectification, deletion, objection, and review of automated decisions. Data subjects also have a right to data portability. Controllers and processors must keep records of processing activities (SMEs with less than 250 employees and low risk processing activities may benefit from an exemption).

With a risk-based approach, controllers and processors must determine the necessary level of protection and implement suitable technical and organisational measures and consider (i) types of processed data, (ii) purpose, type, extent and circumstances of processing, (iii) risks to data subjects, (iv) current state of the art and (v) implementation costs.

22. Briefly describe any common issues that arise with respect to employment laws, in the context of an acquisition of a technology company (e.g., contractor misclassification).

Common employment issues include (i) employee transfer and information in the event of an asset deal (see question 9 above), (ii) stock-options and other incentive plans (vesting acceleration or payout triggers for instance), (iii) pension plan liabilities, (iv) employee claims, and (v) immigration law and mobility issues (in particular for non-EU nationals contracted by Swiss firms).

23. Briefly describe any recommendations for dispute resolution mechanisms for M&A transactions in your jurisdiction and highlight any common issues that arise in the context of an acquisition of a technology company.

Arbitration is often the preferred mechanism for most cross-border and technology transactions due to its speed, confidentiality, ability to select sector-specialised arbitrators. Local cantonal courts (commercial courts in certain cantons) are often opted for in domestic deals. Some agreements push for initial mediation before litigation.

The most common issues that arise in tech M&A are post-closing disputes involving IP chain of title, breach of representations and warranties, price adjustments, earn-outs, data breaches.

24. Briefly describe any special corporate or stamping formalities that transaction parties should make sure to plan for in your jurisdiction (notarization, etc.).

Swiss M&A transactions generally do not require a notary-public's intervention for share transfers or asset deals, except for very specific cases such as real estate share transfers, amendments to articles of association, merger agreements. Share purchase agreements, assignment forms, and asset sale agreements are customarily simply executed in writing.

Changes in board composition, removal and appointment of managers, seat of the target company need to be registered with companies' house.

Apostille and legalisation will be necessary for share and asset transfer instruments executed abroad and filed in

Switzerland.

No legal or tax advice This Q&A provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this Q&A or would like to have advice concerning your particular circumstances, please get in touch with your contact at 100 Legal.

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