在瑞士进行合作研发

R&D collaboration in Switzerland

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截至2017年，瑞士已连续七年被全球创新指数(GII)评为全世界最富创新能力的国家。2016年，中国作为第一个中等收入经济体跻身全球最具创新力的25国之列。2017年，中国在该排行榜上排名第22，比2016年上升了三名。

除了传统行业以外，中国的生命科学、自动化与数字产业等先进高科技行业的创新能力也在稳定提高。对于奋力推进新业务的创新型中国企业来说，瑞士是开发、完善创新理念及产品的理想之地。与此同时，瑞士有不少创新型企业家也在中国寻找希望将创意转化为市售产品的商界伙伴。

本文着重介绍瑞士的合作研发环境，以及相关瑞士法律的一些具体规定。

与高等院校合作

瑞士的理工院校站在基础研究的前沿，可谓是创新型新兴企业的孵化器。苏黎世联邦理工大学(ETH)就是一个典型例子，过去20年从该校产生的新兴企业多达350多家。理工院校普遍提供多种形式的研发合作，以下仅列举三种：

* **研究合作**。在这种形式下，由企业方出资支持研究项目，项目通常会产生新的知识产权，因此合作方会做一些针对性的约定，例如经协商后向企业方授予项目开发的新知识产权的一般性许可、排他性许可或者甚至向其转让该等知识产权；
* **合同研究**。在这种形式下，企业方利用理工院校已有知识对特定领域开展研究，通常不产生新的知识产权；以及
* **许可安排**。这是一种理工院校授权企业方使用其知识产权的形式。

For the seventh consecutive year, the Global Innovation Index (GII) 2017 has ranked Switzerland the world's most innovative country. In 2016, China entered and became the first middle-income economy among the top 25 most innovative countries in the world. From 2016 to 2017, China rose three positions to 22.

China has been steadily improving its innovation in traditional industries, but also in sophisticated high-tech fields such as life science, automation and the digital industry. For innovative Chinese companies striving for new business, Switzerland can be an ideal place to develop and enhance creative ideas and products. And many of Switzerland's innovative entrepreneurs are looking for Chinese business partners who want to transform their innovation to market-ready products.

This article provides an insight into the research and development (R&D) collaboration environment in Switzerland and the specifics of the related Swiss law.

COLLABORATION OF UNIVERSITIES

Swiss technical universities are at the forefront of fundamental research, and they serve as incubators for innovative start-up entrepreneurship. A perfect example of this is the Swiss federal university of technology and science (ETH) which has generated more than 350 start-ups in the past 20 years.

The technical universities are generally open to various forms of R&D collaboration, such as:

* **Research collaboration.** An industrial partner supports a research project through funding. The parties typically expect the generation of new intellectual property rights, and therefore, agree, for instance, on an option to negotiate a licence, an exclusive licence or even the assignment of the developed new intellectual property rights;
* **Contract research.** An industrial partner uses existing knowledge of the technical university to conduct research in a certain area. The generation of new intellectual property is usually not expected; and
* **Licensing arrangements.** The technical universities license the usage of their intellectual property to an industrial partner.

COLLABORATION OF ENTERPRISES

The success of Swiss private enterprises is very much driven by R&D. The large multinational companies in Switzerland take over the bulk of Switzerland's R&D in terms of expenditure. In addition, most Swiss small and medium-sized enterprises (SMEs) have incorporated R&D as an integral part of their business. Swiss companies are very aware of the potential of joint efforts in R&D, and so are prepared for, and very much accustomed to, R&D collaboration.

Collaboration in R&D with Swiss enterprises may range from a mere exchange of ideas to establishing a common joint venture company funded by two or more parties, which will conduct fundamental research in a specific field.

Each R&D collaboration is unique. Accordingly, the agreement between the collaboration partners is individually drafted. In the beginning, the parties are usually very optimistic and exchange ideas openly and freely. Since the results in R&D

与企业合作

积极开展研发是瑞士私人企业取得成功的主要原因。在瑞士，虽然大型跨国公司在当地研发支出中占大头，但多数中小企业也将研发视为不可分割的业务内容。瑞士的公司普遍清醒地认识到合力研发可能产生的巨大潜力，因此它们既乐于、也非常习惯于与他人合作开展研发。

合作者可以通过各种各样的方式与瑞士企业合作研发，从简单的理念交流，到两方以上共同出资设立从事具体领域基础研究的合资公司等等，不一而足。

每一种合作研发方式都具有其独特性，因此合作方需要单独为此起草协议。刚开始时，合作方往往抱着非常乐观的心态开放自由地交流观点。但是，合作研发项目的结果未必能尽如人意，有可能最终开发出一种可成功利用的新产品，也有可能取得终极突破，但还有可能是耗费巨资后以失败或出人意料的情况告终。因此，合作方需要在早期协商好当出现各种情况时如何处理。无论如何，我们建议合作方尽早签订保密协议，例如在开始交换信息之前，甚至在评估对方作为潜在合作伙伴是否合适的更早阶段。

合作方既可以设立有限责任公司或股份公司形式的合资企业，也可以采用瑞士法律下允许的更简单方式：各自提供一定的财力和人力，以追求共同目标为目的，建立简单合伙。若合作研发项目的各参与方仅贡献财力和人力而无共同目标，瑞士法律称此种合作模式为"伪"合作。当企业委托理工院校在约定范围内开展有偿的研发工作时便属于此种情形。此类合作通常以委托合同或服务合同的形式出现。

签订合作研发协议的目的在于管理好合作方的预期、贡献、责任以及权利和义务。瑞士法律已针对合作方未约定的多种情况提供了默认规则，因此合作方着重就研发协任项目的重要因素达成合意即可。另外，我们也建议就合作终止、管辖法律和争端解决等事项达成共识。

有两个问题需要特别注意，一是共同研发成果的所有权归属，二是合作方如何利用这些成果。乍看之下，由合作方共同拥有新的知识产权似乎已经是一个合适的解决方案。

但是我们必须考虑瑞士法律的相关规定。例如，根据瑞士法律，若一项专利或专利申请的所有权人有两个以上，就此项专利或专利申请向他人授予许可时需要取得全体共有人的同意。因此，作为一种选择，合作方可以约定研发成果归一方所有，由其向另一方授予无特许权使用费的、可以转授他人的排他性许可。

在瑞士法律下，研发合作模式可以设计得非常灵活。瑞士的理工院校和企业对合作研发已司空见惯，因此它们以开放的心态看待合作研发关系及国外商界伙伴。瑞士是世界领先的创新孵化器，对于积极推进国内外业务的中国企业来说，与瑞士伙伴携手合作可以说是一个极佳的机会。

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> " 签订合作研发协议的目的在于管理好合作方的预期、贡献、责任以及权利和义务
>
> *The purpose of the R&D collaboration agreement is to manage the parties' expectations, contributions and responsibilities, as well as rights and obligations*

collaboration may range from ending up with nothing more than many expenses to developing an innovative product that can be successfully exploited, it is important that the parties agree at an early stage on how to proceed with the collaboration in the event of an ultimate breakthrough, but also failure or unexpected situations. In any case, before the parties start exchanging information – even at a very early stage when assessing a potential collaboration partner – the parties are advised to sign a confidentiality agreement.

The collaboration partners may either establish a joint venture company in the form of a limited liability company or a corporation, or merely join common means and efforts in order to pursue a common goal and establish a simple partnership under Swiss law. Where the R&D collaboration partners contribute joint means and efforts, but do not share a common goal, Swiss law qualifies such R&D collaboration as a "pseudo" collaboration. This is the case if a company mandates a technical university to conduct R&D within a specified scope against payment of a fee. This type of collaboration is usually qualified as a simple mandate or service contract.

The purpose of the R&D collaboration agreement is to manage the parties' expectations, contributions and responsibilities, as well as rights and obligations. Since Swiss law provides default rules for many situations in which the parties have not reached agreement, the parties may focus on agreeing on the important elements of the R&D collaboration. It is also advisable to already reach agreement on how to terminate the collaboration, the law applicable to the agreement and how to resolve disputes.

Special attention must be paid to the question of ownership of the results of the joint R&D, and how the parties will exploit those results. Joint ownership of the new intellectual property seems at first glance to be an adequate solution but it must, for instance, be considered that under Swiss law, if more than one person owns a patent or patent application, licensing such patent or patent application requires the consent of all co-owners. Hence, alternatively, the parties may agree on allocating the ownership of the results to only one partner, who in return would grant the other partner an exclusive, royalty-free and sub-licensable licence.

R&D collaborations under Swiss law can be set up to be very flexible. Swiss technical universities and enterprises are very accustomed to collaborating in R&D and open-minded towards entering into R&D collaborations, also with foreign business partners. Since Switzerland is the world's leading incubator for innovation, teaming up with Swiss partners can be an ideal opportunity for Chinese enterprises to boost their international and domestic businesses.

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