

Intellectual property and Innovation in Due Diligence processes



Due Diligence is a very complex process related to analyzing different aspects of the company under evaluation as an in-depth review before a financial transaction, usually a merger and acquisition. The final aim of the due diligence is to ensure that the final decision related to the company is based on strong and informed knowledge linking together all data coming from operational areas.

In a worldwide scenario in which the capacity to be a pioneer is crucial, analyzing the propension of the company itself to innovation and related intangible assets represented by patents, is essential to have a full picture of the real value and perspective of the business under the due diligence process.

The overall Due Diligence process can be analyzed considering different aspects

Commercial due diligence: The starting point are the understanding of the company's market share and competitive positioning, and also future perspectives and growth opportunities. This will consider the company's supply chain from vendors to customers, market analysis, sales pipeline, and R&D approach. This can also encompass a firm's overall operations, including management, human resources, and IT. In this area, is included the propension to innovation of the analyzed company.

Financial due diligence: in this area, the focus is represented by the financial performance of the company until the present date and ensuring that the numbers presented in the financial statements are accurate and sustainable. Of course, it's also important to exclude irregularities and if any assess them properly. Linked to the balance sheet, the analysis of intangible assets gives the quantitative magnitude of the innovation and R&D approach as in commercial due diligence.

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Legal due diligence: Focusing on all legal aspects of the company and its relationships with its stakeholders. Areas typically analyzed include licenses, regulatory issues, contracts, and any legal liabilities that may be pending. Also, patents are included in this area, assessing for example if related rights are still valid or now expired or still pending. Then, litigation is required to be analyzed and understand their content.

Operational due diligence: Focusing on the company's operations - essentially looking at how the company turns inputs into outputs. This is generally considered to be the most forward-looking type of due diligence.

Tax due diligence: focusing on all of the company's tax affairs and ensuring that its tax liabilities are paid in full to date and related tax exposure. Due diligence in tax also looks at how a merger would affect the tax liabilities of the new entity created by the transaction.



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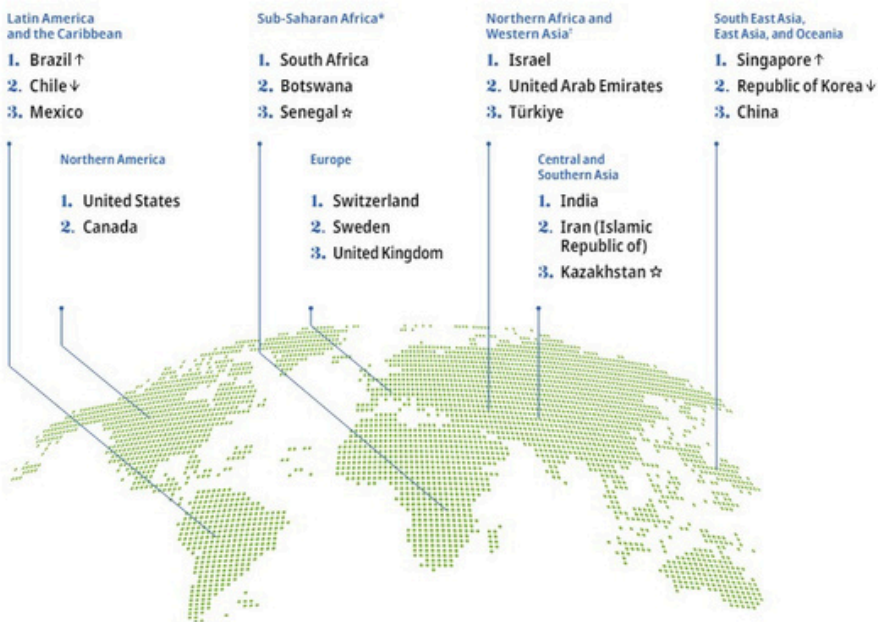


Why innovation, R&D and related propensions are so important in a due diligence process?

Innovation can be considered as an essential driver of economic growth giving benefits to business, consumers, and the economy overall. Being innovative means increase own market positioning and keeping an advantage versus other players on the market. As innovation is related to Research and Development propension of a company, it's necessary to have the right tools to understand how a company is positioned and define the best approach.

Considering economic terms, innovation is related to the development and implementation of ideas and technologies with the aim to improve goods and services or make their production more efficient.

Top three innovation economies by region



☆ Indicates a new entrant into the top three in 2023.

↑↓ Indicates movement in ranking (up or down) within the top three, relative to 2022.

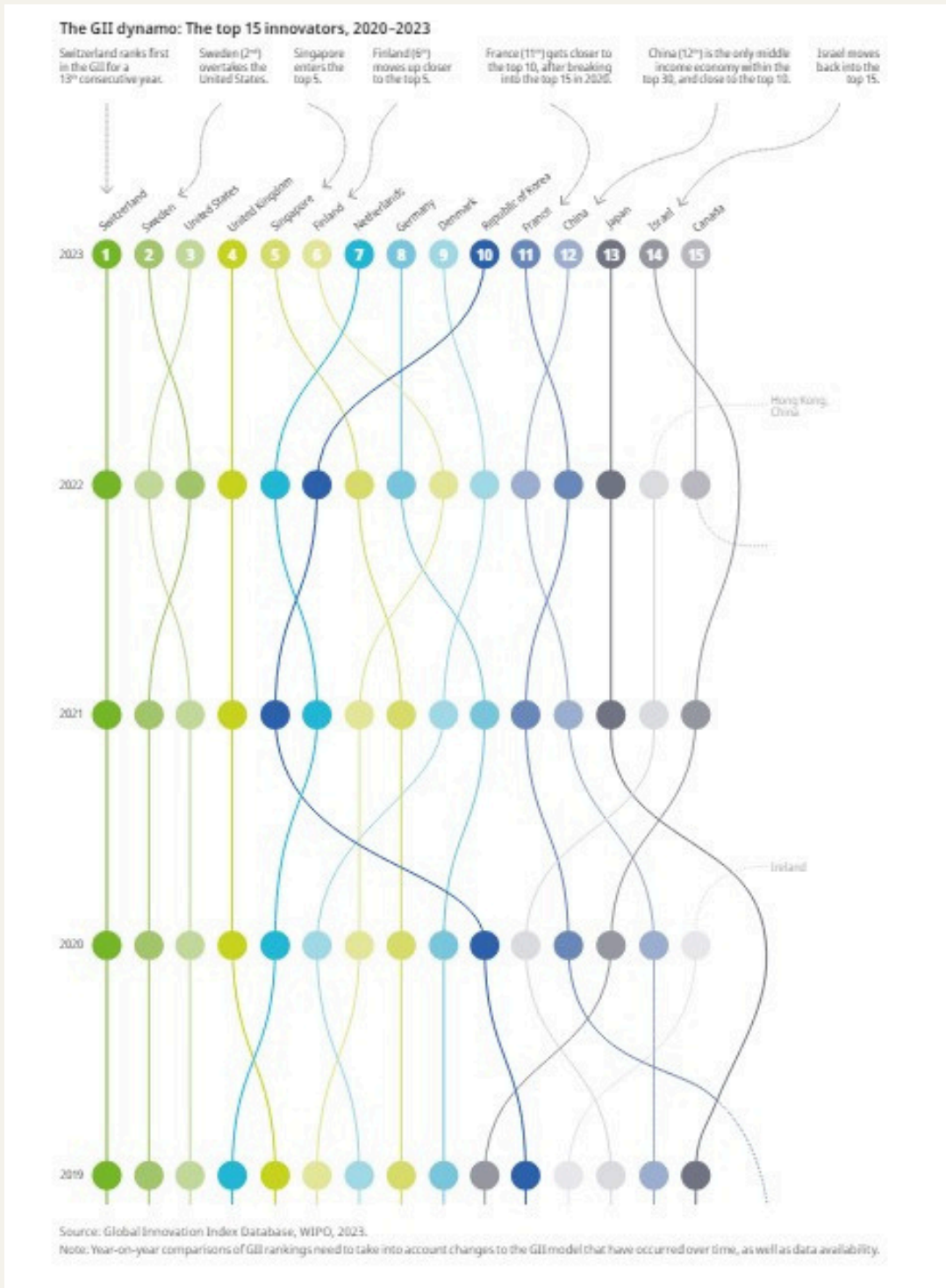
* Top three in Sub-Saharan Africa (SSA) - excluding island economies. The top five within the region, including all economies, comprise Mauritius (1st), South Africa (2nd), Botswana (3rd), Cabo Verde (4th) and Senegal (5th).

† Top three in Northern Africa and Western Asia (NAWA) - excluding island economies. The top four within the region, including all economies, comprise Israel (1st), Cyprus (2nd), United Arab Emirates (3rd) and Türkiye (4th).

Starting with this perspective, one of the major benefits of innovation is linked to contributing to economic growth and in production is done in a more efficient way, an increase is expected.

SOURCE: WIPO

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Table 3 Top 10 economies by income group (rank)

Rank Global Innovation Index 2023

High-income economies (48 in total)

1	Switzerland (1)
2	Sweden (2)
3	United States (3)
4	United Kingdom (4)
5	Singapore (5)
6	Finland (6)
7	Netherlands (Kingdom of the) (7)
8	Germany (8)
9	Denmark (9)
10	Republic of Korea (10)

Lower middle-income economies (37 in total)

1	India (40)
2	Viet Nam (46)
3	Ukraine (55)
4	Philippines (56)
5	Indonesia (61)
6	Iran (Islamic Republic of) (62)
7	Mongolia (68)
8	Morocco (70)
9	Tunisia (79)
10	Uzbekistan (82)

Rank Global Innovation Index 2023

Upper middle-income economies (36 in total)

1	China (12)
2	Malaysia (36)
3	Bulgaria (38)
4	Türkiye (39)
5	Thailand (43)
6	Brazil (49)
7	Russian Federation (51)
8	Serbia (53)
9	North Macedonia (54)
10	Mauritius (57)

Low-income economies (12 in total)

1	Rwanda (103)
2	Madagascar (107)
3	Togo (114)
4	Zambia (118)
5	Uganda (121)
6	Burkina Faso (124)
7	Ethiopia (125)
8	Mozambique (126)
9	Guinea (128)
10	Mali (129)

Source: Global Innovation Index Database, WIPO, 2023.

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Intellectual property rights to protect innovations

To protect legal creators for original work, inventions, or the appearance of the product intellectual rights are encouraging new creations.

Inventions are mandatory for innovation and they must be protected through patents protecting the interests of inventors. An individual or a company must control the commercial use of the invention preventing others from making, selling, retailing, or importing that technology. It means allowing the inventors to sell, trade or license patented technologies with others who may want to use them.

When a new solution is available on the market, it's a benefit for all society, as it may enable to do something previously not possible. In addition, revenues generated from commercial success coming from patented new products make it possible to finance further research.

New Patents stimulate economic and technological development, creating competition. There are other ways to protect inventions, such as copyrights, design rights, trademarks, and trade secrets, but patent is the most effective to protect innovation.

What is a Patent?

A patent is an exclusive right granted to an inventor for a fixed time period. A patent excludes others from making, using, or selling the item in question for the duration of the patent's life. Once a patent has been granted to an inventor, they have the legal authority to prohibit others from making or selling the invention in the country where the patent was granted. To summarize:

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- A patent provides an inventor with exclusive rights to the patented process, design, or invention for a certain period.
- For a business, patents are classified as intellectual property, a form of intangible asset.
- Being intangible, patents are difficult to value properly, but they still must be accounted for on a firm's balance sheet.
- Patents can be valued using a variety of methodologies depending on the type of patent and whether the patent is likely to produce future cash flows or not.

Inventions do not fall into three different categories:

- Laws of nature
- Natural phenomena
- Abstract ideas

It also requires that inventions that seek to be patented fall within one of three categories:

- Machines
- Human-made products
- Processing methods
- Innovation Criterion

The invention must be unknown. In other words, the invention cannot have been shown to the public, and in addition that an invention will not be patented if the invention only differs from a previously patented invention by making obvious modifications.

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There are several types of patents:

- **Plant Patent:** granted to an inventor who has invented or discovered a new variety of plants.
- **Utility Patent:** granted to inventors who invent or discover any new and useful process, software or machine, or any new functional improvement to an existing invention.
- **Design Patent:** protects an invention's ornamental design, improved decorative appearance, or shape.



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