

UNITED STATES

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1. What are the main structures for mergers and acquisitions (M&A) transactions available under local law, and what are their key distinctions?

The main structures for M&A transactions include stock purchase, asset purchase, one-step merger and two-step merger (which is tender offer followed by a back-end merger).

Stock/asset purchase

In a stock purchase, the buyer acquires the equity interests of the target entity (such as shares of stock in a corporation or membership interests in a limited liability company (LLC), thereby stepping into the shoes of the existing owners. Because the legal entity itself remains intact, all assets and liabilities continue to reside within the company by operation of law. By contrast, in an asset purchase, the buyer acquires specific assets and liabilities of the target that are expressly agreed upon in the purchase agreement. This structure allows the buyer to “cherry pick” desired assets and limit exposure to unwanted liabilities, although it may require third-party consents to assign certain contracts and can involve more complex transfer mechanics.

Merger

In a one-step merger, the buyer can acquire 100% ownership of the company under state law after obtaining requisite board and stockholder votes. In a two-step merger, the buyer first launches tender offer to acquire shares from individual stockholders and then squeezes remaining stockholders via a back-end short-form merger that bypasses the lengthy stockholder meeting and proxy statement approval process of a one-step merger. Compared to one-step mergers, two-step mergers enable a faster path to full ownership and greater deal certainty.

Distressed M&A

In distressed or insolvency contexts, particularly where the target is undergoing a Chapter 11 reorganization, a court-supervised sale under section 363 of the U.S. Bankruptcy Code provides an alternative M&A structure. A section 363 sale allows a buyer to acquire assets or, in some cases, equity interests through a bankruptcy court process that can deliver the assets free and clear of liens, claims and encumbrances, subject to court approval. This structure offers speed and liability protection but involves public auctions, creditor involvement and judicial oversight, distinguishing it from conventional one-step or two-step merger processes.

2. How would you describe the current M&A market in the United States?

M&A activities in the U.S. rebounded meaningfully in 2025 in terms of aggregate deal value, following a more muted period from 2022 through 2024 which were marked by macroeconomic uncertainty, higher interest rates and regulatory scrutiny. The total announced deal value returned to multitrillion dollar levels, driven in significant part by a resurgence of large-cap and mega-cap transactions. At the same time, however, overall deal volume declined compared to prior years, reflecting a continued slowdown in small and mid-market transactions.

This divergence suggests a market characterized by selectivity: buyers are pursuing strategic, high-conviction transactions with clear synergies or platform value, while sellers are more disciplined on pricing and timing. In other words, the market is favoring quality over quantity.

Financial sponsors remain highly active, particularly in take-private transactions, sponsor-to-sponsor deals and middle-market platform acquisitions. With private equity firms continuing to manage significant dry powder and facing pressure to deploy capital and generate exits, sponsors have been creative in structuring transactions, including through continuation vehicles, minority investments and structured equity solutions. Strategic acquirers (especially those with strong balance sheets, global operations and access to capital) are also demonstrating sustained appetite for transformative or capability-enhancing acquisitions.

From a sector perspective, technology and software continue to lead by deal value. Artificial intelligence, cloud infrastructure, Software as a Service (SaaS) platforms, semiconductors and cybersecurity remain focal points. In healthcare, biotech and life sciences consolidation has remained active, driven by patent cliffs, pipeline replenishment needs and collaboration between large pharmaceutical companies and emerging innovators. Renewable energy transactions also continue to generate momentum, supported by corporate decarbonization commitments and long-term infrastructure investment themes.

Overall, the 2025 market reflects improved confidence and capital availability, but with continued discipline and strategic selectivity across participants.

3. What major trends have you seen in the past 12–24 months?

Over the past 12–24 months, U.S. M&A activity has been shaped by a combination of macroeconomic normalization and structural shifts in dealmaking. After a pronounced slowdown in 2022–2023 driven by higher interest rates and valuation uncertainty, the market began to stabilize in 2024 and showed renewed momentum in 2025. While overall deal volume remained below prior-cycle highs, deal value recovered meaningfully, reflecting a return of large strategic transactions and increased confidence among well-capitalized buyers. Private equity sponsors adapted to higher financing costs by using more creative structures to bridge valuation gaps, including minority investments, preferred equity, seller financing and earn-outs.

Regulatory and geopolitical considerations also played a prominent role in shaping deal timelines and structures. Antitrust scrutiny remained elevated, particularly for large horizontal or vertical combinations, leading parties to engage earlier with regulators and to allocate regulatory risk more explicitly through covenants and termination fees. Global trade relationships have increased uncertainty around supply chains, energy markets, technology access and cross-border capital flows. As a result, dealmaking has become more cautious, with greater emphasis on downside protection and execution risk. Foreign buyers, particularly from jurisdictions viewed as sensitive from a U.S. national security perspective, face enhanced scrutiny under foreign investment review regimes and export control laws.

4. What are your predictions for the M&A market in the next 12–24 months?

The U.S. M&A market is expected to experience measured, gradual growth over the next 12–24 months rather than a broad-based surge reminiscent of the 2021 peak cycle. Stabilizing interest rates, clearer forward rate outlook, improved financing availability and greater valuation alignment between buyers and sellers should support increased transaction activities. Deal activity is likely to remain concentrated in technology (including artificial intelligence and digital infrastructure), healthcare, energy and financial services. Cross-border investment is expected to continue, particularly from allied and capital-exporting jurisdictions, although geopolitical dynamics and national security considerations will remain central to transaction planning. Transactions involving sensitive technologies, critical infrastructure, data-intensive businesses or defense-adjacent industries are likely to face sustained and, in some cases, heightened scrutiny.

Overall, dealmaking is expected to remain disciplined, with continued emphasis on regulatory risk allocation through tailored interim operating covenants, reverse termination fees, and specific performance provisions. There will likely be continued emphasis on deal certainty, financing flexibility and thoughtfully structured consideration packages. Rather than a return to the speed and aggressiveness of pre-2022 transaction dynamics, the market environment over the next two years is more likely to reflect careful underwriting, selective capital deployment and heightened attention to execution risk.

5. What are the key laws and regulations governing M&A?

M&A transactions in the United States are governed by a combination of state corporate law and federal law.

State corporate law

Most large U.S. corporations are incorporated in Delaware and are governed by the Delaware General Corporation Law (DGCL) with regard to mergers, asset sales, stock issuances, fiduciary duties and shareholder approvals. Delaware courts, especially the Court of Chancery, are highly influential in shaping M&A practice through case laws. Corporate law in other U.S. states tend to follow Delaware with some local variations.

Federal securities law

At the federal level, U.S. securities laws regulate public M&A transactions. The Securities Exchange Act of 1934 and related Securities and Exchange Commission (SEC) rules govern tender offers, proxy solicitations, disclosure requirements and take-private transactions. Public deals typically require extensive filings, including registration statement for securities issued as consideration, proxy statements for shareholder approvals, tender offer documents and current reports, if applicable.

Regulatory law

Transactions meeting statutory thresholds must be notified under the Hart-Scott-Rodino (HSR) Act and are reviewed by the Federal Trade Commission (FTC) and the Department of Justice (DOJ). Parties are required to observe a 30-day waiting period after submitting the HSR filing before they are allowed to close, unless early termination is granted. In addition, acquisitions involving foreign buyers or sensitive U.S. businesses may be subject to review by the Committee on Foreign Investment in the United States (CFIUS), which can impose mitigation measures or block transactions on national security grounds. Depending on the industry, additional approvals may be required from sector-specific regulators (e.g., banking, insurance, telecommunications, energy). These regulatory processes can materially affect deal timing and structure and are often addressed expressly in transaction documentation.

6. What forms of consideration are commonly used? Are there restrictions on non-cash consideration?

Forms of consideration

The most commonly used forms of consideration in U.S. M&A transactions are cash, stock, mix of cash and stock, earn-outs and other contingent consideration. The choice of consideration is driven by a range of factors, including deal certainty, valuation, financing availability, tax objectives, accounting treatment and the strategic relationship between the parties. Generally speaking, cash consideration is frequently used in private and public takeovers where deal certainty and speed of execution are priorities and stock consideration is often used in strategic mergers where parties seek to align long-term interests or preserve liquidity. Many transactions use a mixed cash-and-stock structure to balance value, risk allocation and tax considerations.

Earn-outs and other contingent consideration mechanisms are frequently used in private M&A transactions as a tool to bridge valuation gaps between buyers and sellers, particularly where there is uncertainty regarding the target's future performance. These structures allow a portion of the purchase price to be paid after closing, contingent upon the achievement of specified financial, operational or milestone-based targets, including revenue, Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), gross profit, customer retention, product development milestones, regulatory approvals or other tailored benchmarks. Earn-outs are especially common in growth-oriented sectors such as technology, life sciences and founder-led businesses, where historical financials may not fully reflect anticipated upside. The structure can take the form of cash payments, additional equity issuances or a combination thereof, and may be measured over one or multiple post-closing periods.

Potential restrictions

There are generally no legal restrictions on the use of non-cash consideration in U.S. M&A transactions, but stock consideration in public transactions typically requires compliance with U.S. securities laws and may trigger stock exchange listing and shareholder approval requirements. The issuance of public buyer

securities must either be registered with the SEC under the Securities Act of 1933 by filing a Form S-4 (or F-4 for foreign private issuers) or qualify for an available exemption from registration. In addition, stock consideration in public deals often triggers stock exchange requirements (e.g., New York Stock Exchange (NYSE) or National Association of Securities Dealers Automated Quotations (Nasdaq) rules), including shareholder approval obligations where the issuance exceeds specified thresholds (commonly 20% of outstanding shares), or where the transaction could result in a change of control. These rules can affect deal timing and certainty.

The use of stock consideration also raises corporate law considerations, including compliance with charter limitations on authorized shares, board fiduciary duties in approving dilutive issuances, and appraisal rights analysis in certain merger structures. From a tax perspective, stock consideration may permit tax-deferred treatment under qualifying reorganization provisions of the Internal Revenue Code, but the structure must satisfy continuity of interest and other technical requirements.

7. What is the typical scope and focus of due diligence?

Due diligence in U.S. M&A transactions typically covers legal, financial, tax, regulatory, and commercial matters, with the depth of review depending on deal size, structure, and risk profile. Legal diligence focuses on corporate organization, material contracts, litigation, regulatory compliance, employment and benefits, intellectual property and real estate. In recent years, diligence has increasingly focused on technology, cybersecurity, data privacy and Environmental, Social and Governance (ESG) considerations, particularly in regulated or data-intensive sectors.

Access to information during diligence is subject to confidentiality, insider trading, competition law and data protection constraints. In public company transactions, diligence is often more limited and confirmatory, with greater reliance on public disclosures and representations and warranties. Where material non-public information is shared, parties use confidentiality agreements, clean teams and restricted access protocols to manage risks. In transactions involving competitors, “gun-jumping” rules restrict the sharing of competitively sensitive information, leading parties to use clean teams or anonymized data to share information. Data privacy laws and contractual restrictions may also require anonymization or redaction of sensitive information, affecting the scope and timing of diligence review.

8. How common are warranty and indemnity (W&I) insurance policies, and how do they affect negotiations of representations and warranties?

Representations and warranties insurance (RWI) has become commonplace in U.S. private M&A transactions, particularly in sponsor-led deals and competitive auction processes. Its use is most prevalent in middle-market transactions where it facilitates cleaner exits for sellers by reducing or eliminating post-closing indemnity exposure. American Bar Association (ABA) Deal Points data reported approximately 64% usage of RWI in 2025 M&A transactions, up from 55% reported in the prior year.

The availability of RWI significantly influences negotiations over representations, warranties and indemnification. With RWI serving as the buyer's primary recourse, sellers often seek to limit or eliminate post-closing indemnity exposure by pushing for lower escrow amounts, shorter survival periods and minimal indemnity caps. Buyers, in turn, focus on aligning the scope of representations with broader policy coverage, negotiating materiality scrapes, and managing exclusions, retentions, and interim covenant breaches. As a result, insurance underwriting has become an integral part of the deal process, often shaping diligence depth and transaction timing.

9. Distinct from antitrust and competition law requirements, are there restrictions or review mechanisms for foreign buyers acquiring domestic businesses or assets?

In the U.S., foreign acquisitions of domestic businesses or assets are subject to national security review, most notably by the Committee on Foreign Investment in the United States (CFIUS). CFIUS has authority to review transactions that could result in foreign control of a U.S. business, as well as certain non-controlling investments in U.S. businesses involved in critical technologies, critical infrastructure or sensitive personal data. The review process can result in clearance, mitigation measures, or, in rare cases, a recommendation that the transaction be blocked or unwound. While many filings are voluntary, some transactions trigger mandatory filing requirements, particularly those involving sensitive technologies or government-linked foreign investors.

Beyond CFIUS, foreign buyers may face sector-specific ownership restrictions or regulatory approvals. Industries such as banking, insurance, telecommunications, aviation, energy and defense-related businesses are subject to additional federal or state regulatory oversight that can affect foreign ownership or control. In practice, these review mechanisms can influence deal timing, structure and bidder participation, and are often addressed through conditionality, cooperation covenants and risk-allocation provisions in transaction agreements. As a result, foreign buyers typically engage early in regulatory analysis when pursuing U.S. acquisitions.

10. What are the major disclosure or announcement requirements for public M&A transactions?

Public M&A transactions in the United States are subject to extensive disclosure obligations under U.S. securities laws, designed to ensure that investors receive timely and accurate information. Public companies must file current reports (Form 8-K) upon entering into material definitive agreements, announcing mergers, tender offers, or other significant transaction-related events. Transactions requiring shareholder approval trigger the preparation and filing of a proxy statement, which must include detailed disclosures regarding the transaction terms, background of the deal, fairness considerations and conflicts of interest.

Additional disclosure requirements apply depending on deal structure. Tender offers require filings under Regulation 14D or 14E, including bidder and target disclosure documents, while going-private transactions involving affiliates are subject to enhanced disclosure under SEC Rule 13E-3. Share accumulations or activist activity in connection with a transaction may trigger Schedule 13D or 13G filings. These disclosure regimes significantly influence transaction timing, communications strategy, and deal documentation in U.S. public M&A deals.

11. How are public takeovers regulated, and what are the main procedural requirements?

Public takeovers in the U.S. are regulated through a dual framework of federal securities law and state fiduciary law. Federal law, primarily under the Williams Act and related SEC rules, governs tender offers, disclosure, timing, and procedural protections for shareholders. These rules impose minimum offer periods, withdrawal rights, and equal treatment requirements, while state law (most commonly Delaware law) governs the internal corporate decision-making process, including board approval, fiduciary duties, and stockholder voting requirements. Boards of U.S. public companies play a central role in takeover responses and are subject to fiduciary duties when evaluating offers, including duties related to process, disclosure and defensive measures.

Competing bids are generally addressed through board-controlled processes and fiduciary-out provisions, with deal protection measures such as no-shop clauses, matching rights and termination fees permitted, but closely scrutinized, under fiduciary standards to ensure that boards retain flexibility to respond to superior proposals. Minority shareholders are protected through a combination of disclosure requirements, voting rights, and appraisal rights in certain mergers, allowing dissenting shareholders to seek judicial determination of fair value.

12. How are M&A disputes commonly resolved? Are there preferred dispute resolution forums or governing laws?

M&A disputes in the U.S. are most commonly resolved through litigation, particularly in transactions involving public companies. For Delaware-incorporated targets, disputes relating to fiduciary duties, deal process, disclosure, and deal protections are frequently brought before the Delaware Court of Chancery, which is widely regarded as the leading forum for corporate law matters. Federal courts may also have jurisdiction over disputes involving federal securities law claims, including disclosure and tender offer issues.

In private M&A transactions, parties often agree to arbitration for post-closing disputes, especially those relating to purchase price adjustments, earn-outs or indemnification claims. Arbitration is favored for its confidentiality and procedural flexibility, while courts remain the default forum for claims involving injunctive relief or fraud. Governing law provisions typically select Delaware or New York law, reflecting their well-developed commercial jurisprudence and predictability in M&A-related disputes.

13. What role are emerging technologies playing in shaping upcoming M&A opportunities or challenges locally?

Emerging technologies are a major driver of M&A activity in the U.S., particularly in areas such as artificial intelligence, software, fintech, and digital infrastructure. It is both a primary driver of deal volume and a strategic differentiator in transaction rationales. Strategic buyers increasingly pursue acquisitions to obtain proprietary technology, data, talent, and platforms that can accelerate innovation and maintain competitive advantages. AI-related transactions, in particular, have fueled deal activity across multiple sectors, including healthcare, financial services, manufacturing and defense-adjacent industries.

At the same time, emerging technologies introduce new diligence, regulatory and integration challenges. Buyers place heightened focus on intellectual property ownership, data rights, cybersecurity, open-source software compliance and regulatory exposure related to data privacy and national security. Transactions involving advanced or sensitive technologies may also attract increased scrutiny from competition authorities or foreign investment regulators, affecting deal timing and structure. Additionally, post-closing integration also presents challenges, including talent retention and cultural alignment, requiring buyers to plan carefully for technology integration and risk management. As a result, technology considerations now influence not only target selection but also risk allocation, valuation and post-closing integration planning.

14. Are there any other significant corporate M&A considerations in the United States?

A defining feature of U.S. M&A is the central role of fiduciary duties and board process, particularly for public companies. Directors' duties of care and loyalty, as interpreted by Delaware courts, shape how transactions are negotiated, approved and disclosed. Process-related considerations (such as conflicts of interest, use of special committees, reliance on financial advisors and the quality of disclosures) often drive litigation risk and outcomes as well. As a result, deal planning in the U.S. places heavy emphasis on procedural rigor and documentation.

Regulatory risk allocation and deal certainty mechanisms are also critical considerations. Parties increasingly negotiate detailed covenants addressing antitrust and other regulatory approvals, including standards of efforts, cooperation obligations and allocation of divestiture or mitigation risk. Reverse termination fees, ticking fees, interim operating covenants and financing-related protections are commonly used to manage execution risk, particularly in large or complex transactions. These provisions can be central to value and are often heavily negotiated.

Finally, U.S. M&A transactions are influenced by tax and financing considerations that affect structuring and outcomes. Tax structuring and efficiency is often a central focus, heavily affecting choices of merger structures. Financing availability and terms directly affect bid competitiveness and are frequently addressed through debt/equity commitment letters, limited financing conditions and reverse termination fees. Together, these factors contribute to a highly developed and sophisticated M&A environment that prioritizes predictability, risk management and enforceability.

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