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STRUCTURES AND APPLICABLE LAW

Types of transaction
How may publicly listed businesses combine?

In the United States, businesses may be combined in a number of different ways. Stock purchases, asset purchases and legal mergers (essentially, an amalgamation of two companies) that use stock or cash as consideration, tender offers for cash, exchange offers for securities and part-cash, part-stock tender offers are all available and widely used business combination structures. In many instances, more than one technique is used, such as a first-step cash tender offer followed by a second-step merger with the purpose of acquiring those shares not purchased in the tender offer.

Owing to practical considerations, business combinations of public companies almost always take the form of a merger completed in one step or a tender offer followed by a merger to eliminate any remaining minority interests. The most common stock-for-stock transactions are mergers of the target directly into the acquiring company or with a subsidiary of the acquiring company. In merger-of-equals transactions, the parties to the merger may also form a new company and effect the transaction by merging each existing company into separate subsidiaries of the new company. In this case, stockholders of both companies are issued shares of the new company.

Law stated - 24 March 2026

Statutes and regulations
What are the main laws and regulations governing business combinations and acquisitions of publicly listed companies?

Business combinations are governed by the federal laws of the United States, the laws of the state or states where the parties to a business combination are incorporated and as specified in the transaction agreement. The two primary relevant federal laws are the Securities Act of 1933 and the Securities Exchange Act of 1934, including the rules and regulations promulgated by the Securities and Exchange Commission (SEC) under both the Securities Act and the Exchange Act.

The Securities Act deals primarily with the sale and purchase of securities and applies to all transactions where securities are being offered or sold. The Exchange Act, among other things, contains the federal law provisions relevant to tender offers, proxy statements, shareholder disclosure obligations and going-private transactions.

Whereas US federal corporate law addresses mainly disclosure and other investor protection issues in the context of transactions, state corporation law concerns itself with all other matters, including the duties of boards of directors, mergers, sales of assets, voting requirements, formation and dissolution of corporations, charters, bylaws, etc. Each of the 50 US states has its own corporation code and, although there is some commonality, there are also many differences. This potential complexity is eased somewhat by the pre-eminence of the state of Delaware, where a disproportionate number of companies are incorporated. Even though there has been some increase in incorporations outside of Delaware in recent years, according to the State of Delaware's Division of Corporations, two-thirds of all Fortune

500 companies are incorporated in that state. Lastly, although the corporate laws of the federal government and the states do overlap in the area of business combinations, as a US constitutional matter, state laws are not permitted to conflict with federal laws.

Law stated - 24 March 2026

Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Although there is no additional legal or regulatory framework in the United States governing cross-border transactions, companies must typically comply with the laws of both the United States and the other relevant jurisdiction. In response to the growing trend of US investors in foreign private issuers being excluded from certain offerings and transactions owing to the unwillingness of the foreign issuer to comply with US requirements, the SEC adopted regulations that provide foreign parties with certain limited exemptions from US regulations, provided that these parties comply with the legal and disclosure requirements of the country in which they are incorporated.

Law stated - 24 March 2026

Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

Many regulated industries (eg, banking, energy and telecommunications) must comply with special business combination legislation particular to those industries. Typically, approval of the relevant federal or state governing agency is required before transactions in these industries may be completed. Also, transactions that have national security implications require special notification to, and approval by, the US government. The Foreign Investment Risk Review Modernization Act (FIRRMA), enacted in 2018, increased the scope and depth of the national security review by the Committee on Foreign Investment in the United States (CFIUS), namely by expanding the types of transactions subject to CFIUS review. Pursuant to the FIRRMA regulations, CFIUS's jurisdiction covers a wide range of foreign investments in US businesses involved in critical technology, critical infrastructure or sensitive personal data, and certain real estate transactions.

CFIUS's authority has expanded significantly in recent years. In December 2024, the US Department of the Treasury issued a final rule, which provided extensive substantive update to the monitoring and enforcement provisions of the CFIUS regulations since the implementation of FIRRMA, including allowing compression of timeline for parties to negotiate mitigation agreements, expanding CFIUS's ability to compel information (including from non-parties), and expanding the range of penalties for certain violations. On 21 February 2025, the White House released President Trump's America First Investment Policy memorandum, which, among other things, signals how enhanced scrutiny will apply to investments involving China and other US foreign adversaries.

Law stated - 24 March 2026

Transaction agreements

Are transaction agreements typically concluded when publicly listed companies are acquired? What law typically governs the agreements?

At a minimum, the parties to a business combination enter into a central operative transaction document (eg, merger agreement, stock purchase agreement, asset purchase agreement). Depending on the facts and circumstances of the transaction, numerous other related documents may be entered into as well. Examples include:

- voting agreements (typically entered into to ensure that a large stockholder votes in favour of the transaction);
- registration rights agreements (where securities not registered with the SEC are being issued as consideration);
- stockholders' agreements (governing the relationships of the stockholders going forward);
- transitional services agreements (most common where a subsidiary or division of a larger company is being sold); and
- employment agreements.

Agreements are governed by state law, and it is usually a negotiated point between the parties.

Law stated - 24 March 2026

FILINGS AND DISCLOSURE

Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination or acquisition of a public company? Are there stamp taxes or other government fees in connection with completing these transactions?

For transactions over a certain size, a filing will generally need to be made under the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (the HSR Act) to comply with the US competition laws when they meet the other requirements of the HSR Act. Effective 17 February 2026, the new HSR filing threshold became US$133.9 million. The waiting period required under the HSR Act must expire prior to completion of a transaction subject to its jurisdiction. Adopted in 2024 and effective starting February 2025, the US Federal Trade Commission's (FTC) new HSR form significantly broadened the scope of pre-merger disclosure that filing parties need to make. On 12 February 2026, the District Court for the Eastern District of Texas issued a decision vacating the new HSR form in a lawsuit filed by the US Chamber of Commerce, holding that the FTC exceeded its statutory authority and the new HSR form was arbitrary and capricious under the Administrative Procedure Act. The order was stayed for seven days, through 19 February 2026. The FTC sought emergency relief from the US Court of Appeals for the Fifth Circuit, which granted an administrative stay

until further order of the court, meaning that the new HSR form is intact pending further action by the court.

Also, in merger transactions, a certificate of merger or a similar document will need to be filed in the state or states where the constituent companies are incorporated. Certain states also have nominal stock transfer taxes that need to be paid, but that are not comparable to the stamp taxes in the United Kingdom and elsewhere. In addition, in transactions raising national security concerns, filings with the US government are required. In February 2026, the Department of Defense, now Department of War, issued new guidance requiring proactive HSR filing submission for defence-related M&A transactions.

In business combination transactions involving a public offering of securities, a listing application needs to be made with the relevant stock exchange and, under the Securities Act of 1933, a registration statement is required to be filed and cleared with the Securities and Exchange Commission (SEC). A fee is payable in connection with the filing of such a registration statement. In addition, in all public company business combination transactions, a proxy or information statement is required to be filed with the SEC before it is sent to security holders and in some instances requires an additional fee.

The Corporate Transparency Act (CTA), enacted to enhance anti-money laundering enforcement, introduced a federal regime requiring 'reporting companies' to disclose their beneficial ownership information (BOI) to the US Department of the Treasury's Financial Crimes Investment Network (FinCEN). The scope and application of the BOI reporting regime remain subject to ongoing regulatory development and legal challenges. Broadly speaking, under the CTA US public companies and their controlled subsidiaries were exempt from the new requirements. If an entity newly formed for a transaction did not qualify for an exemption, an initial BOI report had to be filed within 90 days of formation if the entity had beens formed in 2024, or 30 days of formation if the entity was formed after 1 January 2025. On 21 March 2025, however, FinCEN issued an interim final rule (IFR) that effectively eliminated BOI reporting requirements for entities formed in the United States. The IFR specifies that only entities formed outside the United States and qualified to do business in any US state or territory are considered 'reporting companies'. Consequently, US entities and their beneficial owners are no longer required to file or update BOI reports. Furthermore, the IFR eliminates the requirement for all US persons to report BOI under the CTA. As a result, non-exempt foreign reporting companies are not required to report US persons as beneficial owners. Non-exempt foreign reporting companies with only US beneficial owners are still required to submit BOI reports, although they are exempt from reporting any beneficial owners. While FinCEN significantly effectively paused BOI reporting requirements for US persons, we note that the IFR might be superseded by further rulemaking down the line.

On 1 January 2026, the New York LLC Transparency Act (LLCTA) came into effect. The LLCTA incorporates certain key elements of the federal CTA, and it covers limited liability companies (LLC) that are formed under the law of a foreign country and are authorised to do business in New York, subject to exemptions that largely mirror those set forth in the federal CTA. Covered entities formed or registered in New York before 1 January 2026 will have until 1 January 2027 to submit their filings, while entities formed or registered on or after 1 January 2026 will have 30 days to file upon the date of formation or registration.

Law stated - 24 March 2026

Information to be disclosed

What information needs to be made public in a business combination or an acquisition of a public company? Does this depend on what type of structure is used?

Although the disclosure requirements vary depending on the type of transaction, under the Securities Act and the Securities Exchange Act of 1934, public companies are required to inform stockholders of all material information related to the transaction, including the background of the transaction, the principal terms of the material transaction documents, the historical financial information of each company that is a party to the business combination, and the pro forma combined financial information of the combined entity.

In addition, SEC Regulation FD (fair disclosure) (the Regulation) exists to address selective disclosure of material non-public information. The Regulation requires that whenever an issuer, or a person acting on an issuer's behalf, discloses material non-public information to securities market professionals and holders of the issuer's securities who may trade on the basis of the information, the issuer must make simultaneous public disclosure of that information. If the issuer unintentionally discloses material information, it must "promptly make public disclosure of such information. The SEC adopted the Regulation to address its concerns over selective disclosure. Selective disclosure occurs when an issuer releases material non-public information on a limited basis, such as to a group of analysts or institutional investors, prior to releasing the information to the public as a whole.

The Regulation applies only to communications to certain securities market professionals, such as:

- broker-dealers or persons associated with broker-dealers;
- investment advisers or persons associated with an investment adviser;
- institutional investment managers or persons associated with an institutional investment manager; or
- investment companies.

The Regulation also applies to communications to holders of the issuer's securities, if in the circumstances it is reasonably foreseeable that such person will trade on the basis of the information. The public disclosure requirement would not be triggered by issuer disclosure to:

- persons who owe a duty of trust or confidence to the issuer such as attorneys, investment bankers or accountants; or
- persons who have expressly agreed to keep the information confidential.

Law stated - 24 March 2026

Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a public company? Are the requirements affected if the company is a party to a business combination?

Persons or groups of persons acting together who own 5% or more of a public company are required to make a public disclosure filing pursuant to section 13 of the Exchange Act. Whether this stockholder is required to make the disclosure in a Schedule 13G (which requires only basic information about the stockholder and the amount of its holdings) or a Schedule 13D (which requires more extensive information, including information related to the purpose for acquiring the shares, any relationship such stockholder has to the issuer, and any plans or proposals that the stockholder may have for the issuer that would result in a material event for the issuer) depends on several factors, including whether such person has acquired the securities with any purpose or intent to change or influence the control of the issuer.

In 2024, the SEC's rule amendments adopted in October 2023 on beneficial ownership reporting pursuant to sections 13(d) and 13(g) of the Exchange Act (2023 amendment) came into effect. With the goal of providing more timely information on market participant's positions, these rule amendments, among other things, accelerated filing deadlines and broadened the scope of required disclosure. As amended, an initial Schedule 13D needs to be filed within five business days after initial acquisition of more than 5% of beneficial ownership. Schedule 13D filers are required to file an amendment within two business days after the date of a material change is triggered. In addition, 13G filers who become 13D filers owing to a change in circumstances are required to file a Schedule 13D within five business days of the event giving rise to the filing obligation. Schedule 13G filers are generally required to make initial filing and certain amendments to the information previously reported within 45 days after the end of the applicable calendar quarter. The disclosure obligations of large stockholders under these regulations are not affected if the company is a party to a business combination, unless such a shareholder is a party to this business combination. Special rules apply in some instances to large shareholders in going-private transactions. On 11 July 2025, SEC staff made updates to various Compliance and Disclosure Interpretations (C&DIs) relating to Regulation 13D-G beneficial ownership reporting. The updates are mostly non-substantive and are intended to align C&DIs with the 2023 amendment, but whether certain revisions might carry substantive implications remains unclear.

Lastly, in certain circumstances, the Hart–Scott–Rodino Antitrust Improvements Act requires disclosure in connection with the acquisition of substantial shareholdings even where there is no change in control.

Law stated - 24 March 2026

DIRECTORS' AND SHAREHOLDERS' DUTIES AND RIGHTS

Duties of directors and controlling shareholders

What duties do the directors or managers of a publicly traded company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination or sale? Do controlling shareholders have similar duties?

Customarily known as the business judgement rule, in nearly all cases, the business and affairs of companies in the United States are managed by or under their boards of directors. In carrying out their roles, including in connection with business combinations, directors are charged with a fiduciary duty to the company and all its stockholders. This fiduciary duty

includes two elements: the duty of care and the duty of loyalty. The duty of care includes a duty of the board to inform itself, prior to making a business decision, of all material information reasonably available to it. The duty also includes a requirement that the board reasonably inform itself of alternatives, which takes on particular importance in the context of evaluating a material business combination transaction. A board is also required to act with requisite care in the discharge of its duties. The duty of loyalty requires that any decision by the board must be made on a disinterested basis and not with a view to obtaining any personal benefit from the business combination. This duty mandates that the best interests of the company and its stockholders take precedence over any interest possessed by any members of the board or any particular group of the company's stockholders and not shared by stockholders generally. In certain situations involving business combinations, the directors' duties may be subject to a higher level of scrutiny.

In Delaware and many other states, this is sometimes referred to as a ***Revlon*** duty, after the ***Revlon*** case in Delaware, which states that where a company is engaging in a sale of control, the company's directors have a duty to obtain the best transaction reasonably available for stockholders. It should be noted that this ***Revlon*** duty is not applicable to corporations in several US states that by statute or case law have provided that there be no enhanced level of scrutiny for directors' business judgement. Recent Delaware case law, including the ***Mindbody*** and the ***Columbia Pipeline*** cases, clarified that a buyer cannot be held liable for aiding and abetting a seller in breach of the seller's fiduciary duty unless the buyer had clear and direct knowledge of the seller's breach and the wrongfulness of the buyer's own conduct, which is a notably high bar for the plaintiff to overcome in establishing aiding and abetting claims against the buyer.

Controlling stockholders can be deemed to have fiduciary duties similar to those outlined above depending on the applicable state law and circumstances. Notably, on 25 March 2025, the Delaware governor signed new legislation in Delaware that is designed, among other things, to provide clarity and greater predictability in Delaware law regarding director independence and controlling stockholder transactions. In the meantime, recent case law, including the ***Musk*** decision regarding Elon Musk's 2018 equity compensation package for his position at Tesla, also demonstrates a degree of judicial moderation on remedies, all of which should prove helpful to both boards and M&A practitioners.

Law stated - 24 March 2026

Approval and appraisal rights

What approval rights do shareholders have over business combinations or sales of a public company? Do shareholders have appraisal or similar rights in these transactions?

Under the various state laws, shareholder approval is generally required whenever a company is a party to a merger or sells all or substantially all of its assets. Shareholder approval is not required in the context of tender offers or squeeze-out mergers where one person or company owns a large majority of the target company (typically 90%, although the requirements vary in each state). Under the rules of the New York Stock Exchange and Nasdaq, shareholder approval is generally required before a company can issue shares of stock equal to or in excess of 20% of the number of currently outstanding shares. Under the Delaware General Corporation Law, companies may complete two-step mergers without

a target company stockholder vote if the acquiring corporation consummates a first-step tender offer.

Shareholders do have appraisal rights in certain circumstances to demand the payment of fair value for their shares, as decided by an independent party. The deal price is often considered to be the best evidence of the fair value of a company's shares when the sale process was robust. This right is generally available when the consideration that would otherwise be received is different from the shares being purchased from the shareholder (eg, cash for stock transactions). In addition, Delaware law generally provides the right of appraisal only in the case of mergers, although many other states permit the exercise of such rights in other matters (eg, the sale of all of a company's assets) that require the vote of shareholders. In all states, there are numerous other procedural requirements and limitations on a person's ability to exercise appraisal rights.

Law stated - 24 March 2026

COMPLETING THE TRANSACTION

Hostile transactions

What are the special considerations for unsolicited transactions for public companies?

Hostile transactions in the United States generally consist of one or both of the following elements:

- an attempt to purchase all or a majority of the voting stock of a target by way of a tender or exchange offer; and
- an attempt to replace the directors of the target's board with individuals nominated by the acquirer.

In attempting to consummate a hostile transaction, an acquirer is faced with numerous obstacles. First, many states have enacted takeover statutes that impose super-majority voting and other requirements that can have the effect of making it challenging for an unsolicited party to consummate a takeover without the consent of the target's board.

Second, the availability of stockholder rights plans and, to a lesser extent, the existence of staggered boards (and the willingness of courts to explicitly uphold the use of these devices by boards of directors) means that it can take time (up to two years if there is a staggered board in place) for a potential acquirer to consummate a pure hostile transaction. With respect to special considerations for targets, many states (including Delaware) impose a requirement on the board of directors that their actions taken in the face of an attempted hostile takeover be reasonable in relation to the threat posed by the hostile takeover. This imposes a greater duty on the board than the general fiduciary duty.

Law stated - 24 March 2026

Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a public company's ability to protect deals from third-party bidders?

Reasonable break-up or termination fees are allowed. Although there are no absolute statutory or judicially determined limits as to the amount of break-up fees, they must be reasonable and typically represent 1% to 6% of the transaction's value (with the median being approximately 5% in 2025, which is higher than the historical average of approximately 4% previously enjoyed by Delaware). The reasonableness of any particular break-up fee is highly dependent on the facts and circumstances of the transaction.

In addition, many other forms of deal protection are also available in US transactions, including no-shop provisions, poison pills and limited termination rights. In overly broad terms, the standard applied to deal protection techniques is that they must be reasonable and they must not be preclusive with respect to a potential third-party bidder. It is also important to note that because these and other deal protection techniques are frequently the subject of comment by both judges and practitioners (and are typically heavily negotiated by parties engaged in business combinations), their form and use are constantly evolving.

For example, it has become customary in private equity transactions to include a reverse break-up fee that is payable to the target in the event that the debt financing needed for completion becomes unavailable. The amounts of these fees are often not reciprocal with the amount of the standard break-up fee, but instead are higher (5% and higher is typical). Following heightened levels of antitrust scrutiny in recent years, it has also become increasingly popular to include an antitrust termination fee of around 5% or more, which is payable by the acquirer if the transaction cannot close due to the inability of the parties to secure antitrust approval.

There are no restrictions on financial assistance in the United States.

Law stated - 24 March 2026

Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations or acquisitions are regulated, may government agencies influence or restrict the completion of such transactions, including for reasons of national security?

The Securities and Exchange Commission has broad powers to prohibit the issuance of securities if the Securities Act of 1933 is not complied with. Meanwhile, transactions that have national security implications can, regardless of the industry, require special notification to and approval by the US government, including parallel filing to the Department of War (former Department of Defense), while triggering heightened scrutiny from the Committee on Foreign Investment in the United States. In general, although other governmental agencies do not typically influence or restrict the completion of business combinations, dealmakers need to grapple with an increasingly unpredictable overlay of governmental influence under the current administration. As an example, under President Trump's America First Investment Policy memorandum (2025 Memorandum), the current administration signals its dual objectives with respect to inbound and outbound investments. On the one hand, the 2025 Memorandum intends to reinforce an open investment environment by encouraging

investment from US allies and partners. On the other hand, the 2025 Memorandum warns of the threat of US adversaries by exploiting foreign investment and US capital to unlock sensitive domestic technologies, critical infrastructure and persona data while degrading the United States' competitive advantage on military and economic fronts. Meanwhile, state legislators (including in Texas and Florida) have begun to introduce parallel legislation aiming at establishing state-level review of transactions involving foreign entities. Since many of these proposed updates are yet to materialise pending further legislative authorisation or agency action, the impact on deal execution remains to be seen.

Law stated - 24 March 2026

Conditional offers

What conditions to a tender offer, exchange offer, merger, plan or scheme of arrangement or other form of business combination are allowed? In a cash transaction, may the financing be conditional? Can the commencement of a tender offer or exchange offer for a public company be subject to conditions?

In general, tender offers, exchange offers, mergers and all other forms of business combinations can be conditioned on any event occurring, including obtaining financing.

In the tender offer and exchange offer contexts, however, the conditions cannot be drafted in such a manner so that the offer is illusory. For example, a typical condition in a tender offer or exchange offer specifies the minimum number of shares that must be tendered before any shares are accepted for payment. If the condition is drafted so that this objective fact is determined at the sole discretion of the offeror, it may be argued to be an option, rather than an offer. In addition, binding financing commitments are included in tender offers that are conditioned on financing.

Law stated - 24 March 2026

Financing

If a buyer needs to obtain financing for a transaction involving a public company, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

Typically, if a buyer requires debt financing to complete a transaction, the seller will require that the buyer enter into the financing or commitment papers for the requisite debt financing at the same time as the purchase or merger agreement is executed by the parties. Also, as part of entering into the overall transaction, a seller will generally seek to ensure that such financing documents do not contain any conditions different from those negotiated in the main transaction document. The purchase or merger agreement then typically requires the buyer to take all actions necessary to obtain that financing or substitute financing.

In leveraged buyout transactions, where the selling company is also the borrower, buyers need to ensure the selling company's cooperation in obtaining such financing, such as preparing any necessary financial information, participating in road shows and facilitating entering into the financing transactions at the closing of the deal.

In circumstances where the overall transaction is not conditioned on the financing being available but is required by the buyer, parties often negotiate a reverse break-up fee payable by the buyer to the seller to compensate the seller if the transaction does not close.

Law stated - 24 March 2026

Minority squeeze-out

May minority stockholders of a public company be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Yes. State statutes provide that, if a party owns or acquires more than a certain percentage of another party's stock (typically 90%), the board of directors of the acquiring party may, by resolution, merge the target into the acquiring party. This procedure does not require a vote on the part of either company's stockholders or even a resolution of the target's board. The state of Delaware permits such a resolution to merge the target into the acquiring party when the acquirer obtains 50.1% of the target's shares.

It is intended that the minority stockholders be protected by their appraisal rights, which allow stockholders who do not consent to certain transactions to seek judicially determined consideration for their shares. A 2018 amendment to the Delaware General Corporation Law, however, provides a market-out exception to the availability of appraisal rights to certain intermediate form mergers consisting of an exchange offer followed by a back-end merger without a shareholder vote if the target's stock is listed on a national exchange and held of record by more than 2,000 holders and where the holders receive stock in the surviving corporation.

Further, in the context of both squeeze-outs and non-squeeze out controller transactions, a majority of minority vote (MOM) is frequently sought. By conditioning the transaction upon the approval of an informed and uncoerced majority of disinterested minority stockholders, MOM offers meaningful protection to the interest of minority stockholders. In the meantime,a MOM would also shield the parties to the transaction as such procedural guardrails would help neutralise conflict of interests inherent in such transactions.

In the public context, certain squeeze-out transactions are referred to as 'going-private' transactions and, in most cases, are subject to rule 13e-3 of the Securities Exchange Act of 1934. Rule 13e-3 requires that a Schedule 13E-3 form, which provides detailed disclosure as to the fairness of the transaction, be publicly filed in connection with any such going-private transaction. Because rule 13e-3 supplements, rather than replaces, the other filing and disclosure requirements that may be applicable to a going-private transaction, the disclosures required by the rule will ordinarily be included in tender offer documents or proxy statements required by other applicable statutes or regulations. As a result, the going-private nature of a transaction will generally not affect the timing of the transaction. As above, appraisal rights statutes exist as a protection for minority shareholders in going-private transactions.

Law stated - 24 March 2026

Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations or acquisitions involving public companies?

Both federal and state proxy rules require various waiting periods to allow the dissemination of information before a business combination may be voted upon by stockholders. The length of these waiting periods is typically one month or less. Similarly, the federal tender offer rules require tender and exchange offers to be open for at least 20 business days, with mandatory extensions if there is a material change in the terms of the offer. As a general rule, after disclosure of a material change, an all-cash tender offer should remain open for at least five business days. On 6 March 2025, the SEC published new Compliance and Disclosure Interpretations relating to tender offers, that clarified that a shorter time period can be adequate if disclosure and dissemination of the material change provides security holders sufficient time to consider such information and factor it into their decisions with respect to the tender offer.

Law stated - 24 March 2026

OTHER CONSIDERATIONS

Tax issues

What are the basic tax issues involved in business combinations or acquisitions involving public companies?

The most basic tax issue is whether the transaction is taxable or tax-free to the acquirer, target and their respective stockholders. Although acquisitions for cash are generally taxable, when stock is being issued as consideration, the structure of the transaction is very important in determining whether the transaction will be tax-free. In many cases, the structure of a transaction is dictated by the reduction or elimination of tax that the structure may provide. Another basic tax issue is the determination of basis; that is, whether the acquirer purchases the target and retains the historical basis of the target's assets, such as in a stock purchase transaction, or receives a step-up in basis, such as in an asset purchase transaction. In certain circumstances, US tax rules allow acquirers to make an election to treat stock purchases as asset transactions and receive a step-up in basis. Lastly, an issue in many transactions concerns who is to be liable for the target's past and future tax liabilities. Where indemnification is available from a seller, the seller typically retains all pre-closing tax liabilities, with the buyer being responsible for all post-closing tax liabilities.

Law stated - 24 March 2026

Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination or acquisition involving a public company?

There are numerous federal statutes and regulations that govern labour and employee benefits matters in a business combination. These statutes (eg, the Employee Retirement

Income Security Act) provide protection to employees in connection with business combinations, including continuation of benefits following termination, advance notification prior to mass layoffs or plant closings, and full funding of benefit plan liabilities. In addition, federal tax and securities laws are often relevant and must be considered in the context of employee benefits matters in any business combination.

Law stated - 24 March 2026

Restructuring, bankruptcy or receivership

What are the special considerations for business combinations or acquisitions involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Companies going through a reorganisation under US bankruptcy laws are subject to the jurisdiction of a US bankruptcy court that is charged with managing the assets of the company for the benefit of its creditors. As a result, all M&A transactions in this context need to be approved by this bankruptcy court and usually by the creditors of the target company. Generally, a purchaser of a company (or, as is more typically the case, the assets of the company) that has been cleansed by the US bankruptcy process does not inherit any of the pre-existing liabilities or debts of the company prior to its bankruptcy or reorganisation. Because of the complexity and procedural requirements of the federal bankruptcy laws, transactions involving a company going through bankruptcy or restructuring can often take significantly longer to complete. The ability to obtain a break-up fee or other significant deal protections is also substantially limited in this context.

Law stated - 24 March 2026

Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations with, or acquisitions of, a public company?

The primary US law governing overseas bribery is the Foreign Corrupt Practices Act (FCPA). In basic terms, the FCPA is a federal statutory scheme, enacted in 1977, that is designed to prohibit bribery of a broadly defined group of foreign officials. The FCPA contains the anti-bribery provisions, which render it unlawful to take any action in furtherance of an offer, payment, promise to pay, or authorisation of the payment of money or anything else of value to any foreign official when such action is taken with a corrupt purpose, such as to obtain or retain business or to gain an improper business advantage.

The group of foreign officials that are covered by the FCPA is broadly defined. The FCPA defines a 'foreign official' as:

> any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or

department, agency, or instrumentality, or for or on behalf of any such public international organization.

In addition to foreign officials as defined above, the FCPA also applies to "any foreign political party or official thereof or any candidate for foreign political office". In many countries, especially those with mixed economies in which many business enterprises are at least partially state-owned, many members of a business management team may also be considered foreign officials for FCPA purposes.

By their terms, the Anti-bribery Provisions generally govern three classes of entities:

- issuers, which includes companies with a class of securities registered with the Securities and Exchange Commission (SEC), regardless of where that company may be based;
- any domestic concern, which is a term defined to include any citizen, national or resident of the United States, or any business entity organised under the laws of a US state or having its principal place of business in the United States, regardless of whether such a company has any securities listed with the SEC; and
- any entity taking any action prohibited by the FCPA within the territorial jurisdiction of the United States.

On 10 February 2025, President Trump issued an executive order directing the attorney general to refrain from initiating any new FCPA-related investigations or enforcement actions for 180 days and to review ongoing FCPA cases to determine the appropriate path forward and to revisit agency guidelines and policies currently in place. On 9 June 2025, Deputy Attorney General Todd Blanche published a memorandum (June Memorandum) establishing guidelines for Department of Justice investigations and enforcement actions under the FCPA, which supplements the criminal division's enforcement plan for white-collar crime that was released in May 2025. Under the June Memorandum, actionable conduct that has national security implications are high priorities for FCPA enforcement, but the June Memorandum leaves open questions as to its implementation in practice.

Law stated - 24 March 2026

UPDATE AND TRENDS

Key developments

What are the current trends in public mergers and acquisitions in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory framework governing M&A or the financial sector in a way that could affect business combinations with, or acquisitions of, a public company?

US target M&A deals reached US$2.3 trillion in 2025, a 57% increase compared to 2024 levels. In the first half of the year, deal activities increased by 13% compared to 2024, with US$857.5 billion in deals announced. Despite a weakening US dollar, subdued consumer sentiment and persistent tariff concerns, the first half of 2025 marked the strongest opening for US dealmaking in three years. As the Federal Reserve moved to slashing interest rates, which

lowered financing costs, dealmaking momentum accelerated sharply in the second half of the year, during which period deal activities rose by 53% year-to-year in terms of deal value. Overall, M&A activities with US targets made up half of global M&A activities in 2025, the United States' highest share of global dealmaking since 1998.

While the M&A deal landscape appeared more animated, the total number of announced deals declined by 11% compared to 2024, underscoring a market increasingly defined by scale rather than volume. Echoing the theme from 2024, mega deals (transactions with a value of US$10 billion or more) had a stellar year in 2025. Driven in part by the AI boom, high technology, energy and power, and industrial emerged as the most active sectors in 2025. As the current administration tends to favour domestic transactions, their share in overall deal flow rose to over 70%. All the top US M&A deals by value announced in 2025 were domestic in nature: Paramount Skydance's US$103.6 billion bid and Netflix's US$99.1 billion bid for Warner Bros Discovery, Norfolk Southern and Union Pacific's merger of approximately US$85 billion, Kimberly-Clark's acquisition of Kenvue for approximately US$50 billion and the take-private of Electronica Arts of approximately US$50 billion.

In 2026, the administration's regulatory posture is expected to remain largely business friendly. Antitrust regulators appear increasingly open to addressing competition through a negotiated transaction-specific solutions – such as targeted divestitures, behavioural remedies or structural commitments – rather than defaulting to outright challenges or prohibitions. A renewed push towards regulatory easing and potential tax relief could further support dealmaking conditions. At the same time, the administration is likely to remain cautious on cross-border transactions – particularly those involving US targets and acquirors from certain jurisdictions. Transactions with national security implications will continue to face heightened scrutiny, with expanded review processes and longer timelines shaping execution risk.

A revitalised public market should further catalyse deal activity, with companies increasingly using stock as transaction currency and private equity sponsors benefiting from more viable exit pathways. At the same time, record levels of dry powder are likely to continue driving sponsor-lead M&A, including take-private transactions during periods of public market dislocation. Additionally, policy developments – such as the recent executive order expanding private equity access to 401(k) plans – could unlock a meaningful new source of capital for sponsors, further reinforcing deployment capacity. In 2026, a more permissive stance towards domestic transactions – set against persistent trade uncertainty, intensifying geopolitical tensions and rising energy prices – may further shift dealmaking towards transactions where both parties are US domestic.

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