Cautious optimism as dealmaker sentiment signals busier 2025 for M&A

Senior M&A advisers at Latham & Watkins find several reasons to be cheerful about a potential resurgence in global deal activity as IFLR launches its 2025 M&A Guide

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After 2024 showed green shoots of progress in another otherwise modest year for global M&A volumes, the outlook for 2025 is more positive, as the macroeconomic headwinds of previous years are expected to improve. Talk of a turnaround is gathering pace, even if caution remains very much in order.

The start of 2025 brought M&A advisers many reasons to be cheerful, with an anticipated improvement in macroeconomic conditions fuelling expectations of a dealmaking rebound. The geopolitical uncertainty that was such a feature of M&A decision making last year – when more than half of the global population took part in elections – is expected to feature less prominently in the year ahead, although questions over the resolution of the conflicts in Gaza and Ukraine may hamper confidence, at least in the short term.

With plenty of assets sitting on the sidelines ripe for sale, pro-growth pressure being exerted on regulators, and a build-up of 'dry powder' ready for deployment, many began the year in a bullish mood and are expecting pent-up deal demand to manifest in more buoyant activity.

That optimism was tempered only slightly by the arrival of the new administration in the White House. As interest rates and inflation stabilise, President Trump's promises of a new era characterised by his pro-business, deregulatory agenda were welcomed by many as heralding just the

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backdrop needed to revive transactions. However, the fact that he has also moved to introduce tariffs that could yet result in retaliatory trade wars and inflationary pressures necessitates a strong need for caution.

Prudent confidence takes shape

Looking back at 2024 M&A deal activity, we saw a notable shift in momentum in the second half of the year. Inflation receded and dealmakers acted in anticipation of interest rate reductions, meaning global M&A volumes rose 14% year on year to reach $3.6 trillion. North America was responsible for almost half of the total deals, versus 24% attributed to EMEA. However, M&A volume in EMEA did hit $841 billion in 2024, up 10% on the two-decade low recorded for 2023. 2024 also saw the resurgence of mega-deals (valued at over $10 billion), which boosted global deal values.

As a result, sentiment in the global M&A market is optimistic at the start of 2025. Sponsors will be busy: more than 400 auctions are currently active in the UK, Germany, Austria, Switzerland, Italy, France, and the Nordic region, according to Mergermarket's auctions tracking platform.

With strengthening equity markets and continued pressure on dealmakers to deploy record cash and dry powder, we expect to see an increased supply of assets coming to market. That will comprise both non-core assets ripe for divestment by corporates and private equity portfolio companies; in this context, the fact that half of private equity portfolio companies are now more than five years old, with close to 30% being at least seven years old, is worth noting.

Over the past few years we have seen a steady adjustment towards longer holding periods for sponsors, including via the rise of continuation vehicles for 'trophy' assets. That has created a backlog of potential assets that will not only provide impetus for M&A markets but should also lead to some revival in IPO activity, with many private equity assets now too big to be sold to other sponsors.

In the UK, **the Financial Conduct Authority's overhaul of the listing framework that came into effect in July 2024** aims to make London a more attractive destination for IPOs by cutting red tape for public companies. A new listing category for premium listed companies, combining the previous premium and standard listing segments to create a single point of entry, is designed to simplify the listing landscape. The regulation of material transactions by these companies will become more disclosure orientated and the new rules introduce more flexibility for companies to structure arrangements with their controlling shareholders.

Drivers shaping future deal flow and structures

The strong dollar suggests European assets will continue to be a target for US outbound M&A this year. Over the past 14 years, the US economy has grown more strongly than economies in Europe, including the UK, with the cumulative GDP growth rate between 2010 and 2023 standing at 34% in

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the US versus 21% in the EU.

That may spur European companies to acquire US counterparties in search of growth, while US acquirers remain motivated to look to Europe for strategic expansion alongside structurally lower valuations. The Trump administration's hawkish approach to trading relations with China and the EU could also push those economies closer together, as Europe continues to be a more conducive environment for Chinese outbound investment.

Market trends and data

Latham & Watkins' **11th edition of its annual European Private M&A Market Study** (the 2024 M&A Market Study) analyses data from more than 310 European deals signed or closed between July 2022 and June 2024. That data provides insights into the trends and developments shaping the overall market.

For example, the use of earn-outs has continued to rise as a mechanism to bridge valuation gaps between parties, providing flexibility in, and facilitating, deal execution. Earn-out provisions were used in 23% of the deals in the 2024 *M&A Market Study*, an increase that was even more significant among private equity deals, featuring in 24% of deals with a private equity seller, compared with 8% in 2019. While earn-out usage varies between sectors and traditionally features most prominently in healthcare and life sciences deals, it is gaining wider traction. This sector is expected to remain strong in 2025, with $1.3 trillion in transaction firepower available, which could cause this upward trend in earn-out usage continue.

The prevalence of transactions featuring warranty and indemnity (W&I) insurance has plateaued at 48% of deals, according to the 2024 *M&A Market Study*. This is on par with the peak recorded in the previous year's *M&A Market Study*, ending a consistent trend of growth in usage. Uptake tends to be strongest among private equity sellers, which typically favour W&I insurance (compared with corporate sellers).

Escrows remain uncommon – only 16% of deals in the 2024 *M&A Market Study* featured such an arrangement. Although we registered a slight increase compared with the proportion of deals in the previous year's *M&A Market Study* featuring escrows, this is a notable decrease from earlier editions. Despite buyers' concerns about sellers' ability to meet post-completion obligations, this suggests that sellers continue to successfully resist requests for a portion of the purchase price to be placed in escrow. While escrows continue to be much more common in the US than in Europe (with closer to two-thirds of transactions including some form of escrow), the results of the American Bar Association's 2023 *Private Target M&A Deal Points Study* also indicated a decline in escrow use in US M&A.

The sectors set to drive M&A activity

Looking forward, plenty of market trends seem set to power M&A in 2025. From an industries perspective, we expect the tech sector, and especially software and semiconductors, to be key areas of activity, driven by the ongoing AI boom and the resulting demand for chips and technologies.

Data centres are also very much in focus: outlooks suggest that global data centre energy demand could double over the next five years, with leading data centre players preparing to deploy approximately $1.8 trillion in capital by 2030 to meet the need.

As mentioned above, significant investment in life sciences and healthcare is expected to continue in 2025, with the expiry of upcoming drug patents expected to be a big catalyst fuelling activity. Large pharma and medical device players are also on the hunt for acquisitions to drive growth.

Finally, we expect more institutional interest in cryptocurrencies to emerge this year, with 2025 set to be significant for fintech more broadly as a result of crypto asset regulatory changes and the heightened focus on the use of data and AI in financial services.

An evolving regulatory landscape

Regulatory conditions and their potential to impact transactions continue to be a key challenge dealmakers must navigate. Foreign direct investment (FDI) approval regimes are a growing feature, corresponding with an escalation in the number of jurisdictions with their own regimes and the breadth of FDI rules in play.

We saw in the 2024 *M&A Market Study* that the proportion of transactions impacted by approval conditions grew to 38% in 2024, up from 15% as recently as 2021, with the biggest impact being felt in Italy, the UK, and Germany.

As concerns regarding antitrust, FDI, and the EU's **Foreign Subsidies Regulation** remain prevalent, market participants may be unsurprised that 'hell or high water' clauses now appear in some form in just under half of deals, with split signing and completion, and a regulatory clearance condition. The growing trend for hell-or-high-water clauses to cover the target group only featured in around one in five deals in the 2024 *M&A Market Study*.

Deal conditionality beyond mandatory regulatory clearances remains uncommon in Europe, with material adverse change clauses featuring in just 10% of deals in the 2024 *M&A Market Study*. However, buyers are paying close attention to FDI regulations, merger controls, foreign subsidies, and state aid rules, all of which have the potential to lengthen the period between signing and closing, impacting deal timelines.

A new antitrust era in the US

The new administration in the White House is expected to herald a new era of more favourable antitrust and regulatory treatment of dealmakers. The selection of Andrew Ferguson to lead the Federal Trade Commission (FTC) and of Gail Slater to lead the Antitrust Division at the Department of Justice suggests a more restrained approach to M&A antitrust enforcement, while a repeal of the 2023 Merger Guidelines and the FTC's ban on non-compete agreements is also reasonably likely.

That said, antitrust enforcement in the tech sector will probably remain a top priority under Trump's administration, which has previously taken a critical stance against large tech companies. US companies also continue to grapple with new restrictive measures such as the outbound investment screening regime dubbed "Reverse CFIUS", which took effect on January 2 2025. These new rules give the Committee on Foreign Investment in the United States (CFIUS) the authority to review outbound foreign investments by US businesses for potential national security issues in countries of concern, as determined by the president.

January also saw the US Department of Commerce's Bureau of Industry and Security issue rules regulating the export of US-origin AI chips and AI models to protect national security and foreign policy interests.

A potential regulatory shake-up in the EU and the UK

Given the ongoing challenges associated with slow growth in the UK and Europe, we have seen similar pro-investment pressure being exerted on regulators by executive bodies and governments. The European Commission's new competition commissioner, Teresa Ribera Rodríguez, has signalled a shake-up of antitrust rules to foster growth in the EU and promote international competitiveness.

The new Labour government in the UK is making similar noises about a pro-growth agenda, including calls for the Competition and Markets Authority, the UK's principal competition and consumer protection body, to support growth and international competitiveness when carrying out its regulatory functions.

The importance of creativity, early engagement, and preparedness

Given the cautiously optimistic outlook for 2025 M&A, as macroeconomic and geopolitical challenges evolve and the demand and supply for dealmaking builds, we expect to see another year in which dealmakers utilise creative deal structures and terms to facilitate transactions.

One fact remains clear: early engagement with advisers and thoughtful preparation and diligence to get ahead of issues will be important keys to success when transacting in the year ahead. While the next 12 months look set to present plenty of opportunities, dealmakers will need expert and strategic legal counsel to navigate some of the challenges and uncertainties that remain.

Germany

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Market overview

In 2024, the German M&A market showed resilience, maintaining steady activity despite geopolitical and economic challenges. Early signs of recovery appeared with declining inflation and interest rates, boosting market confidence.

Strategic transactions led the market, with companies focusing on supply chain security, digitalisation, and energy transition, creating investment opportunities in technology and expansion. There is a trend towards 'carve-out' transactions focusing on forward-looking motives and situations such as ongoing innovation and strategic realignment for sector-specific growth in technology, healthcare, and diversified industries. A potentially more favourable US regulatory environment is expected to further encourage outbound M&A activity, thus enabling, for example, strategic buy-ins within and outside Germany.

As interest rates stabilise, financial investors may find debt capital more accessible, enhancing dealmaking. Private equity (PE) funds are still experiencing enormous pressure for capital returns and to sell assets that they have been owning for longer than they have traditionally.

Private and public M&A

Public and private M&A are both key for Germany, but it is fair to say that private deals are still dominating the league tables. This is also due to the generally high number

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of private companies in Germany compared with public companies, which differs from other jurisdictions.

In 2024, the public M&A sector experienced an upward trend compared with 2023, with Germany seeing 33 offers, marking a significant increase from the previous year. Notably, the number of delisting acquisition offers surged, surpassing the 2021 'delisting peak' with a total of 20 offers. Conversely, exchange offers involving share consideration remained rare.

Last year's prediction for 2024 to become a boom year for IPOs and public takeovers did not – again, after 2022 and 2023 – materialise. As the prospects for Germany's economy appear to be improving, IPO activity is poised to rise in 2025.

Whether a company successfully goes public depends primarily on its individual performance and less on external influences. Profitable companies are particularly attractive to stock market investors, whereas pure growth companies are having difficulties as their shares are considered to be more volatile and risky, and their business models are often not yet established.

Significant transactions

In 2024, German industrial companies played a key role in dealmaking, highlighted by Bosch's $8.1 billion acquisition of a heating, ventilation, and air-conditioning business from Johnson Controls and Hitachi, and Knorr-Bremse's $700 million purchase of Alstom's North American rail signalling business. These deals underscore the growing importance of the US market for German industrial companies to strengthen their market position and acquire expertise.

Siemens AG's €10.2 billion takeover of Altair Engineering Inc. serves as a good example of German involvement in outbound mega-deals. This trend is not only driven by strategically selling 'silverware' in difficult times, but also by the implementation of, for example, certain sustainability principles, non-compliance with which means a competitive disadvantage that accompanies the obligations imposed by ESG.

Covestro's acquisition by UAE state-backed oil and gas giant Adnoc may provide an insight into dealmaking trends in the year ahead. Adnoc is expected to use the German chemicals company as a platform for further buys of European and US chemicals assets. Deals with buyers from the Middle East will likely continue throughout 2025.

The energy transition is driving green energy deals in Germany. Notable was the $3.1 billion acquisition of Encavis by a KKR- and Viessmann-led consortium. Domestically, SEFE's €1.5 billion acquisition of WIGA Transport was significant, while TPG Capital and GIC's €6.7 billion takeover of Techem GmbH marked the largest financial investor transaction.

Economic factors

In 2024, German M&A activity gradually picked up, with signs of a global and European resurgence starting to appear in the country. While the number of transactions dipped below 2023 levels, the overall transaction value increased slightly, thanks to a few mega-deals.

Cross-border transactions dominated the German M&A scene, with a notable rise in deal volume involving foreign financial investors, particularly from the

US and UK. Outbound M&A volume saw a slight increase over 2023, although it remains below 2020 levels due to limited domestic private equity funds.

German companies are increasingly investing in the US, anticipating rising tariffs on exports. Despite the overall slowdown, the industrial, energy, and technology sectors in Germany have shown resilience, especially in larger transactions. Additionally, financial buyers are showing interest in the German biotech and medtech industries.

Drivers of change

A positive outlook for M&A activity is anticipated in 2025, with a projected 10% increase. This is supported by declining inflation, stable interest rates, and the expected political changes after recent elections.

The resurgence will be driven by major transformation trends, particularly in the automotive and energy sectors, alongside corporations focusing on carve-outs to divest non-core units and strategic acquisitions of new technologies. The technology and energy sectors continue to be pivotal growth areas, with the ongoing integration of AI and automation prompting companies to pursue strategic acquisitions to enhance market share.

Significant easing of transactions in highly regulated sectors such as energy and healthcare is anticipated. The energy sector is set for growth through investments in hydrogen technologies and green infrastructure, while the healthcare sector shows promise in biotechnology and medical technology.

Challenges such as persistently high energy costs, a weak domestic growth outlook, and the threat of trade tariffs are compelling many industrial companies to adapt. M&A is essential for corporate transformation and responding to geopolitical conditions, enabling the acquisition of new technologies.

In 2024, the M&A market transitioned to more of a buyer's market, creating opportunities through innovative deal structures such as deferred payments and equity retention. Buyers continuously demand more guarantees, leading to a rise in warranty and indemnity (W&I) insurance policies.

Regulatory scrutiny continues to impact deal timelines, especially for larger cross-border transactions, necessitating longer preparation and negotiation.

Debt financing markets have stabilised, supporting deal activity with ample liquidity available. Private debt funds continue to be attractive alternatives to traditional bank loans, and PE is poised for increased activity in 2025 as PE funds are under enormous pressure to not only deploy record levels of unspent capital to return cash to investors but – for similar reasons – to sell assets that they have been owning for longer than they have traditionally.

On top of that, rising financial difficulties and structural challenges are prompting more companies to consider M&A for restructuring, with a 20% increase in major insolvencies expected in 2025, indicating a dynamic start to the year. Not only is distressed M&A a way for foreign investors to enter the market, but it reveals sales opportunities for innovation leaders or companies with high potential for improvement.

Financial investors

Financial sponsor activity is clearly rebounding. A long pipeline of portfolio companies is seeking monetisation as the pressure to return investments mounts. Since many PE exits were deferred in 2024, catch-up effects are expected in 2025. The stronger macroeconomic and financing environment is expected to fuel the monetisation of existing portfolio companies and the deployment of new capital. An increase in large-cap corporate carve-outs presents opportunities for PE. Secondary buyouts and family-owned companies continue to be seen as important sources of attractive targets in 2025.

The authors expect to see more deal types such as the following:

- Further public-to-private deals;
- Activist shareholders increasingly pushing for divestitures;
- Regulatory intervention (including blocked deals) continues to drive divestitures and carve-outs;
- More IPOs of large portfolio companies, with a stronger growth outlook for Europe leading to better valuations, creating value buy opportunities; and
- More 'direct secondaries' (transfer of portfolio, rather than limited partner interests).

Legislation and policy changes

Private M&A transactions are primarily structured as share or asset deals and are not subject to any particular statutory processes, other than regulatory clearances (see below), certain registrations, and/or the reissuance of permits.

In contrast, public M&A transactions have to comply with:

- **The German Securities Acquisition and Takeover Act** (the Takeover Act);
- **The EU Market Abuse Regulation** (*Marktmissbrauchsverordnung*); and
- **The German Stock Corporation Act.**

They are subject to the supervision of the German Federal Financial Supervisory Authority (BaFin).

In addition, any M&A transaction (private and/or public) that is deemed a concentration may be subject to European or German merger control. The primary goal of merger control is to prevent the creation or strengthening of market dominance that could impede effective competition.

Furthermore, transactions (private and/or public) in Germany may be subject to foreign direct investment (FDI) control, where the Federal Ministry of Economic Affairs and Climate Action (BMWK) can review acquisitions of German companies by foreign investors.

The BMWK may block acquisitions of 25% or more of the voting rights by non-EU/European Free Trade Association investors or require commitments if public order or security is at risk. A lower level of voting rights (10% or more) may block acquisitions in sensitive sectors, such as critical infrastructure or defence, and must be notified and cleared by the BMWK. The BMWK can also review acquisitions involving 'atypical control', such as board seats or voting rights, which are not subject to mandatory filing but may warrant a voluntary filing to avoid ex officio review.

Additionally, the **EU Foreign Subsidies Regulation** (FSR) grants the European Commission (EC) the authority to examine and address distortive subsidies. With the FSR in place, the EC can scrutinise a broad spectrum of M&A deals (subject to certain concentration benchmarks) that involve any firm benefiting from subsidies provided by non-EU nations. This additional regulatory tier is supplementary to the current merger control and FDI examination processes.

Legislative changes

The range of business activities subject to Germany's investment control law has significantly expanded, with the number of domestic company activities requiring a foreign investment filing having quadrupled in the past four years. Many emerging technologies – including AI, robotics, nanotechnology, and quantum technology – now fall under this reporting requirement. Other areas include cybersecurity, semiconductors, 3D printing, and automated vehicle and aerial systems.

Potential changes

The German government is in the process of significantly revising its FDI framework, which includes the introduction of a new Investment Screening Act. The act aims to uphold the principle of equal treatment for all shareholders, as mandated by **the Takeover Act**. Furthermore, the executive and supervisory boards of the company being acquired shall be bound by fiduciary responsibilities to prioritise the interests of the company and its shareholders. This may restrict the implementation of certain deal protection measures. The changes also aim to broaden the FDI regime's coverage to include intellectual property licensing and to modify the industries with mandatory reporting.

At an EU level, the EC presented its **Competitiveness Compass** policy initiative in January 2025, reiterating the need for a fresh approach to competition policy to allow companies to scale up in global markets. The EC plans to prioritise innovation, resilience, and competitive investment intensity in specific strategic sectors.

Practice insight/market norms

Foreign investors continue to wonder about the notarisation requirements in Germany; in particular, in connection with German limited liability companies (GmbHs). Share purchase agreements, including all annexes, must be read out loud by a notary to the parties, which is a potentially long exercise. Even so, the notarisation process is generally no obstacle to any deal but serves as a disciplinary tool to complete negotiations and get the documentation in final shape. Costs can be considerable and need to be factored into the buyer's transaction budget.

Depending on the deal structure, it is highly advisable to seek employment and tax advice early on, as German law has some unique peculiarities in these areas.

Technology

Most German dealmakers foresee AI significantly enhancing the due diligence process by improving risk assessment, compliance, negotiation, decision making, and post-merger integration. Despite these opportunities, many companies are still in the early stages of testing or implementing AI. Currently, German M&A practitioners use AI tools sparingly, prioritising the expertise of M&A teams and investment narratives over AI-driven screenings. AI is primarily used for preliminary research, with experts verifying the results.

Future top-tier M&A due diligence will require close collaboration between AI software and experienced professionals. German dealmakers acknowledge both the opportunities and challenges, such as data privacy and security, and are actively working to integrate AI into their processes.

Public M&A

The scope of legal documentation required for the acquisition of shares in a public company depends on the type of business combination chosen, as well as on the type of shares being acquired and whether these shares are to be acquired through the stock exchange, via a capital increase, or from other shareholders.

Holding 30% of the voting rights in a listed company amounts to 'control' under German takeover law. Any party that is about to reach or exceed this threshold, directly or indirectly, will need to consider a public takeover offer. Such an offer requires an offer document. Unsolicited takeover attempts are rare in Germany; in particular, since cooperation with the management is key for a successful integration of the acquired company into the bidder structure.

After the decision to launch an offer has been published, the management board is prohibited from taking any action that could prevent the success of the takeover offer (no 'poison pills'). But the management board may:

- Search for a 'white knight';
- Take any action within the scope of the management board's powers if approved by the supervisory board and if no further legal requirements exist; and
- Take actions that would have reasonably been taken if no offer had been launched, even if this limits the success probability of the offer.

Furthermore, the shareholders may, under certain restrictions, authorise the management board to take action within the scope of the powers of the shareholders' meeting before, and independent of, any takeover offer.

BaFin takes a rather restrictive position on the possibility of imposing offer conditions, as outlined below:

- Voluntary public takeover offers – offers that are made by buyers that do not own shares in the target company or whose shareholding is below 30% are usually only subject to regulatory approvals, fairly standardised market and company material adverse change clauses, and no defensive measures (such as capital increases during the offer period) being taken. There is often a minimum acceptance threshold for offers, as the acquisition of only some of the shares may not be attractive.
- Mandatory offers – offers that are triggered once a shareholding of 30% is reached by one shareholder can only be made subject to regulatory conditions. Minimum acceptance thresholds are not permitted.

In public M&A transactions in Germany, parties can employ several deal protection measures to safeguard the interests of the acquirer and ensure the successful completion of the transaction. These include a prohibition on searching for alternative bidders (white knight), implementing structural measures (capital increases, mergers, etc.), or buying back its own shares. These measures are subject to legal and regulatory constraints, particularly under the **German Securities Trading Act,** the **German Stock Corporation Act**, and the **Takeover Act.**

Notably, deal protection measures in Germany must be carefully structured to comply with legal requirements and to respect the principle of equal treatment of all shareholders. Additionally, the management and supervisory boards of the target company have fiduciary duties to act in the best interests of the company and its shareholders, which may limit the extent to which certain deal protection measures can be implemented.

Private M&A

The 11th edition of the Latham & Watkins Private M&A Market Study (2024) shows that locked-box mechanisms for purchase price provisions, unlike in the US, remain popular, particularly among European PE buyers and sellers, but decreased among corporates compared with 2023. Earn-out usage continued to rise in the post-COVID years, most significantly among PE sellers, albeit that they remain uncommon overall. The use of earn-outs varies between sectors. Earn-outs seem to feature most prominently in healthcare and life sciences deals.

Escrows remain uncommon. Only 16% of deals in 2023 and 2024 featured an escrow. While gaining popularity among PE sellers compared with earlier editions of the study, the usage among corporate sellers is further declining. This decrease is in part due to the continued prevalence of W&I insurance, and sellers providing relatively limited covenants in a more seller-friendly market. The consistent reluctance also suggests that, despite buyers' concerns about sellers' ability to meet post-closing obligations, sellers are successfully resisting requests for a portion of the purchase price to be placed in escrow.

Share purchase agreements relating to German targets are usually governed by German law under the jurisdiction of German courts or arbitral tribunals. Depending on the specific preferences of the parties, agreements may also be made subject to non-German laws.

In 2024, a weak economy, rising financing costs, and an uncertain geopolitical environment led – besides persisting valuation gaps – to cautious investor behaviour and fewer exits. Trade sales, including sales to other investors, remained the main exit routes for private equity. As valuation gaps narrow and interest rates drop, exits are expected to rebound in 2025.

The IPO market remained modest, with Germany seeing four IPOs, raising $2.2 billion, similar to the previous year but below 2021 levels. Optimism is growing due to a strong deal pipeline and recent IPO performance, with companies considering listings to streamline operations. At the same time, delistings, which are driven by strategic takeovers and low valuations, increased in 2024, reducing the number of listed companies in Germany to around 400. The future trend of IPOs and delistings will depend on economic and geopolitical factors and capital market attractiveness.

Looking ahead

Following a period of economic and political uncertainty, a cautious optimism is emerging among German dealmakers. While challenges remain, including negative GDP growth and high energy prices, a more stable economic outlook and a clearer political landscape are creating a more favourable environment for M&A activity in general. Lower interest rates and higher stock valuations will help to bridge the gap between buyers' bids and sellers' expectations. The reduced cost of acquisition financing will further entice more deals from private equity.

At the same time, trends such as digitalisation, AI, and the transition of established industries and business models remain the main drivers for transactions across all sectors, with many companies realigning their business models, carving out profitable business units, and acquiring new technologies to strengthen their market share. In particular, the German automotive industry is impacted by transformation pressures, facing additional pressure due to weakened demand, a sluggish shift to electromobility, and competition from China.

Amid rising export tariffs, German companies are seeking to bolster their US presence, with transatlantic takeovers being a key strategy. The US is viewed as an attractive M&A market, although companies are often pricier (but more profitable) than European ones.

The growing scope of regulatory requirements is anticipated to prolong the transaction process.

India

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Market overview

Despite continuing global geopolitical tensions on account of the Ukraine and Gaza crises and political uncertainty ahead of general elections in several major economies in 2024 (including the US, the UK, and India), M&A activity in India remained resilient and strong last year.

According to statistics released by the Ministry of Industry and Commerce, **inbound foreign investment in 2023–24 amounted to $70.95 billion**. The first six months alone of the last fiscal year saw **a 26% increase in foreign investment activity**, amounting to a staggering $42.1 billion.

Furthermore, between 2000 and 2024, India's gross foreign direct investment inflows crossed an impressive $1 trillion and the country remains on the ambitious path of becoming a $30 trillion dollar economy by 2047. This growth is largely credited to:

- The liberalisation/relaxation of foreign investment rules in India over the past decade;
- The improved competitiveness of Indian industries (particularly manufacturing and healthcare);
- Government stability; and
- Geopolitical advantages that India has gained over its Southeast Asian neighbours, including China and Taiwan.

In terms of the public markets, the Nifty 50 and the Sensex hit record high levels in 2024, with the Sensex touching 85,372.17 points in October for the first time. The

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key drivers were mid-cap and small-cap stocks, together with a renewed focus on IT, renewable energy, and banking stocks. There has, however, been a valuation reset as far as the stock markets in India are concerned and this will likely only bolster further listed/public M&A activity in India.

2024 was also dominated by blockbuster equity capital markets activity in India, notwithstanding the otherwise lukewarm listing activity in the US and the rest of the major economies (including the UK and Europe).

Private and public M&A

In terms of M&A market drivers, public and private M&A both play an important part in the Indian market, but private M&A deals make up a significant majority of the cross-border M&A deals in India. As in other jurisdictions globally, public takeover processes have a prescribed process, which is governed by **the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations**, 2011 (the Takeover Regulations), whereas the structure and process of private acquisitions are a matter of negotiation between the buyer and seller, subject to applicable regulatory considerations (including foreign exchange investment rules and sector-specific approvals; e.g., insurance and pharmaceuticals).

Significant transactions

Latham & Watkins' market-leading India practice advised on a number of significant cross-border transactions involving India in 2024, including those of Hexaware, Swiggy, and Hyundai Motor India. Each of these IPOs was valued at upwards of $1 billion.

Furthermore, Latham & Watkins continued to advise strategic and sponsor investors on their complex cross-border transactions in India across a variety of sectors, such as energy, healthcare, and hospitality.

Economic factors

As mentioned above, India maintained resilience and strength through 2024 in terms of M&A and IPO activity.

Economic activity levels

Following the 2024 general elections in India, which resulted in a landmark third term for the Modi government, the overall M&A market remained active, with record-breaking equity capital markets deal activity. IPOs in India boomed in 2024 compared with any other global stock exchange, with the National Stock Exchange reporting a capital raise of approximately $19.5 billion, touted to be the highest in the world for 2024. As would be expected, this massive upsurge in IPOs impacted some of the planned M&A capital/fund raises, resulting in Indian targets contemplating listings as opposed to private fundraising rounds.

Building on the momentum from 2024, equity capital markets/IPOs are likely to remain active in 2025, but further growth is expected in terms of M&A activity as well.

An expected driver of activity is the pent-up demand due to a build-up of record levels of 'dry powder' that needs to be deployed. This factor led to a revival of competitive auction processes and increased participation by private equity (PE)/sponsors in 2024 (particularly following post-election political certainty in India). The investment organisations KKR, Blackstone, EQT, and Brookfield, among others, remained bullish about India's growth story.

Notable transactions included Brookfield's acquisition of ATC India Tower Corporation, the Indian arm of American Tower Corporation, for $2 billion and KKR's back-to-back investments in hospitals/healthcare and pharmaceuticals (including the acquisition of Healthium from Apax Partners). On the other hand, Novo Holdings (the holding and investment vehicle of Novo Nordisk Foundation) announced its plans regarding the deployment of further capital in India.

Strategic M&A activity also witnessed a surge, with high-value transactions such as the Reliance–Disney merger transaction and Tata Consumer Product' acquisition of Capital Foods.

Another notable feature of 2024, as per ***the Indian Venture Capital Association-EY monthly PE/VC roundup*** published last December, was that PE/venture capital (VC) exits were up by 7% year on year in value terms and amounted to approximately $26.7 billion. These were also driven by attractive IPO valuations, resulting in a large number of PE/VC exits.

While it was anticipated that President Trump's term would be characterised by his pro-business approach and that it would benefit India given the US's anti-China stance, the fact that he has also moved to introduce tariffs against India necessitates caution and may impact the pace of deal activity. How this will unfold in terms of actions taken by the Indian government, including anticipated tax cuts on imports, will need to be closely scrutinised in the days and months ahead.

Legislation and policy changes

There have been material regulatory deterrents to 'take private' listed Indian companies on account of the reverse book building mechanism that enabled price arbitrage by minority shareholders (without any monetary caps) and a 90% threshold for shareholder participation in the delisting process. Delisting or take private transactions have historically been unsuccessful and rarely pursued by Indian investors, let alone foreign investors.

In 2024, the Indian securities market regulator amended some of these onerous requirements and introduced a fixed price delisting mechanism for listed companies whose shares are frequently traded. It is still early days for this legislation, and it remains to be seen whether this will open the door to more delisting/investment opportunities for foreign investors.

Set out below are a few regulatory reforms and changes introduced by the Ministry of Finance in India pursuant to the 2025 budget that are expected to further boost investment opportunities:

- An increase in the foreign direct investment limit for the insurance sector from 74% to 100%;
- Launching a National Manufacturing Mission (to support medium and small-scale enterprises) to boost the Indian government's Make in India initiative, which emphasises and supports self-reliance in manufacturing capabilities in India; and
- Increasing/incentivising private participation in infrastructure.

Public M&A

In 2024, there were approximately 105 public M&A transactions in India. These were primarily dominated by domestic strategic acquirers, with less than 10% of such transactions being undertaken by foreign acquirers. The hesitation among foreign buyers in acquiring controlling positions in Indian listed companies has been on account of a number of factors, including valuation considerations and an ongoing regulatory/compliance monitoring burden associated with listed companies in India (including regular interactions with the market regulators).

A foreign party may purchase the capital instruments of an Indian public listed company on the floor of the stock exchanges in India only if it "controls" the company, as per the Takeover Regulations. As an exception to the rule, a non-resident that does not have control of the company is permitted to invest in/purchase up to 9.99% of the share capital of listed securities on the floor of the stock exchanges if it is registered as a foreign portfolio investor.

All Indian public listed companies are required to maintain a minimum public shareholding of 25% at all times. Any acquisition by a person of 25% or more of the listed shares or voting rights results in an obligation to make an open offer to acquire additional shares. The open offer should be for at least 26% of the total share capital.

The Takeover Regulations also provide for a dual-track delisting-cum-open offer process, which has not been a preferred route for investors/acquirers because of the regulatory impediments to the delisting regime, as noted above.

Private M&A

As discussed, a vast majority of deals in the Indian M&A market are private M&A transactions (between domestic parties or with one or more foreign parties).

M&A transactions involving foreign parties are subject to foreign exchange control restrictions, thereby limiting the flexibility available for earn-outs, post-completion holdbacks, and other price adjustment mechanics.

Broadly speaking, in a transaction involving a foreign party as a buyer or seller, only 25% of the total consideration to be paid can be deferred, for a period not exceeding 18 months from the date of the binding transaction agreement. The consideration will be subject to a fair market valuation, which is determined as per an internationally accepted pricing methodology by a chartered accountant or merchant banker in India.

The use of warranty and indemnity insurance (particularly in PE-led sell-side auctions and other competitive processes) has increased across deals in Asia (including India). The use of specialist insurance products, including withholding tax insurance, is also becoming increasingly common in Indian deals.

In private M&A, the conditions to closing included in a purchase agreement will vary based on the circumstances of each transaction. Conditionality will include mandatory regulatory and antitrust clearances, as well as material third-party consents that are critical for business operations.

In cross-border Indian transactions, it is most likely that the parties will agree to foreign law as the governing law (commonly, English or US law, depending on the location of the parties, etc.) because these legal regimes are viewed as being stable, impartial, and commercial, with a developed litigation infrastructure. Dispute resolution is typically through arbitration under Singapore International Arbitration Centre or London Court of International Arbitration rules, with a choice of arbitration venues in Singapore or London. There is still wariness on the use of Indian courts for dispute resolution given the substantial backlog of cases, the high level of bureaucracy, and a perceived lack of impartiality.

Outbound investments by Indian parties

Another trend that came to the fore in 2024 was that Indian companies more actively sought to expand their global presence, as evidenced by the nearly 17% increase in outward foreign direct investment in 2024 in comparison with 2023, reaching approximately $37.68 billion.

As an example of the growing offshore interest among Indian businesses, Latham & Watkins is advising the England and Wales Cricket Board on private investment into teams in the Hundred competition, which has attracted interest from several Indian companies and investors.

Looking ahead

There are several reasons for optimism in the Indian M&A market this year. This positive outlook needs to be tempered by developments around tax cuts and the approach taken by the government in response to Trump's tariff regime, but confidence is driven by:

- Interest rate and inflation stabilisation;
- The resolution of key elections;
- Pro-business pressure on regulators; and
- Pent-up demand for dealmaking as investors continue to hold record levels of cash and dry powder.

Investment in energy, semiconductors, and technology, driven by the AI boom, together with evergreen sectors such as healthcare and pharmaceuticals, will continue to be in focus. It will be interesting to see if there will be further appetite to explore delisting in the wake of recalibrated market valuations and whether there is an appetite for more innovative/creative structuring, despite foreign exchange and other applicable regulatory considerations.

** Disclaimer: This article does not purport to provide legal advice on Indian laws and is only meant to provide a summary of trends in the Indian M&A market. This is not intended to be comprehensive and the statistics are sourced from the public domain and have not been independently verified.*

United Kingdom

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Market overview

While the 2024 M&A environment continued to face the headwinds of the previous three years, the second half of last year saw an uptick in cross-border transactions. Despite market pressures, M&A volume in EMEA hit $841 billion in 2024, up 10% from the two-decade low reached in 2023. The UK further asserted its dominance in the European M&A landscape in the fourth quarter of 2024, accounting for more than 31% ($54 billion) of all EMEA deal volume.

Take-private transactions (i.e., when a publicly traded company returns to private company status as a result of a sale) remained a key feature of the 2024 M&A market and reached their highest number on record, with 95 deals in Europe worth a combined $80 billion. In the UK, take-privates accounted for approximately 14.28% of the value of all UK transactions in 2024, compared with approximately 11.20% in 2023, according to Dealogic.

Private and public M&A

In terms of M&A market drivers, public and private M&A both play an important part in the UK market, but private M&A deals make up a significant majority of UK-target M&A deals. Public takeovers have a prescribed process under **The City Code on Takeovers and Mergers** (the Takeover Code), as administered by the Panel on Takeovers and Mergers (the Takeover Panel), whereas the structure and process of private acquisitions

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are a matter of negotiation between the buyer and seller.

Significant transactions

Latham & Watkins advised on a number of significant transactions in 2024, including acting for Ericsson on a new joint venture with some of the world's largest telecom operators to combine and sell network application programming interfaces on a global scale to spur innovation in digital services.

Furthermore, Latham advised Darktrace plc, a global leader in cybersecurity AI, on its public-to-private recommended takeover offer by Thoma Bravo, a US private equity and growth capital firm. The acquisition valued Darktrace's entire issued, and to be issued, ordinary share capital at approximately $5.3 billion.

Economic factors

After subdued deal activity in 2023, the 2024 M&A environment showed signs of a rebound as inflation and interest rates began to stabilise. The 2024 inbound UK M&A deal value (based on target nationality) was up to its 2022 levels at £79 billion in 2024, following a drop to £42 billion in 2023, according to Dealogic.

Drivers of change

Looking ahead, the sentiment in the M&A environment is cautious optimism. An expected driver of activity is the pent-up demand due to a build-up of record levels of 'dry powder' that needs to be deployed. Furthermore, European and UK regulators are experiencing pro-growth pressures, which could result in more favourable outcomes for the 'right' deals that promote the international competitiveness of European and UK businesses.

One of the most significant factors influencing deal structures in 2024 was the low availability and high cost of traditional debt financing. The challenges faced by firms in sourcing debt at reasonable rates has meant that private equity and venture capital bidders have struggled to implement long-term financing arrangements in the post-completion phase, impacting bidder returns and capital availability. As a result, certain private equity and venture capital firms that could not fully fund transactions pressed the pause button on investments.

Strategic bidders with committed but undrawn capital, however, could afford to be more flexible in how they deployed capital and were therefore more active in this space. This was seen in the uptick in mega-deals in 2024, with 37 transactions at over $10 billion, driven by corporates, which accounted for over 70% of deals.

Private capital seeking opportunities to deploy dry powder also meant 2024 was a banner year for take-private transactions, which globally reached more than $200 billion. Take-private deals in Europe reached their highest number on record in 2024, with 95 deals worth a combined $80 billion. Notable transactions include CVC's $6.9 billion acquisition of investment platform Hargreaves Lansdown plc and Thoma Bravo's above-mentioned acquisition of Darktrace plc (both of which Latham & Watkins advised on).

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Another key influence was the heightened pace of M&A-related shareholder activism campaigns. For example, Anglo American's (AA's) $3.775 billion sale of its Australian steelmaking coal business to Peabody Energy and $1.1 billion sale of its 33.3% minority interest in joint venture Jellinbah Group Pty Ltd to Zashvin Pty Ltd. Latham advised AA on both these transactions, as part of AA's defence of BHP's rejected takeover bid. Carve-out transactions are expected to be a major theme in 2025, with Smiths Group plc's announcement in January to break up, in the face of activist shareholder pressure, just one example.

Financial investors

Private equity acquirers continued to be active in the UK M&A market, albeit at lesser levels than in recent years. Continued challenges in financing markets in 2024 led financial sponsors to look to non-traditional lenders and equity co-investors to finance deals. The general partner-led secondaries market continued to experience growth as the range of accessible exit routes for funds narrowed across the IPO and M&A markets, compounded by the need of limited partners to realise liquidity; notably, the structuring of continuation funds for 'trophy' assets.

However, many private equity assets have become too large in value for additional secondary transactions. Further opportunities to acquire high-quality assets at lower multiples are expected to continue to drive deal volume, and the related recovery of acquisition financing markets should help to drive M&A activity in 2025.

Legislation and policy changes

In terms of legislation and the regulatory bodies that govern M&A activity in **the UK, the UK Companies Act 2006** (the CA 2006) applies to public and private companies registered in the UK. While the CA 2006 does not govern M&A activity as such, its requirements dictate the way that deals by UK companies are effected.

The acquisition of private companies is a matter of negotiation between the buyer and seller, and no regulated offer process is required. In non-regulated industries (i.e., other than financial services, telecoms, media, and pharmaceuticals), deals are not typically subject to input from regulatory bodies, save for competition and foreign direct investment (FDI) matters. Public acquisitions are governed by the Takeover Code, a principles-based set of rules issued and administrated by the Takeover Panel.

The end of the Brexit transition period on December 31 2020 marked the end of the European Commission's (EC's) status as a 'one-stop shop' for the review of mergers relating to the UK meeting monetary thresholds. This means that if a merger satisfies the jurisdictional thresholds of **the EU Merger Regulation** and **the UK's Enterprise Act 2002,** the Competition and Markets Authority (the UK's principal competition regulator, or CMA) and the EC may conduct parallel assessments of the same merger in their respective jurisdictions.

Legislative changes

The Financial Conduct Authority's (FCA's) radical overhaul of the UK's listing framework came into effect on July 29 2024. A new listing category for equity shares (commercial companies) has replaced the previous premium and standard listing segments for commercial companies, creating a simpler, more flexible framework for UK listings that is capable of accommodating a wider range of IPO candidates.

The new regime aims to foster a more dynamic and competitive listing environment, while ensuring that the UK remains a leading global financial centre. With a number of companies with preparations for a UK listing under way, increased momentum in IPO activity in 2025 and 2026 is anticipated. In terms of the impact on M&A, the removal of the requirement for shareholder approval of significant transactions has eased the challenges listed companies face when undertaking M&A.

In the world of public takeovers, the Takeover Panel has introduced a minor but significant change to its practices, with the introduction of private sale processes. Such processes enable target companies looking to sell themselves to control a limited number of potential buyers privately, with a relaxation of the requirement to name bidders with whom the company is in talks in the event of a leak.

Potential changes

The UK government's pro-growth agenda has seen it issue a strategic steer at the start of 2025 to the CMA to support and contribute to economic growth. This has been linked to the recent change in the CMA's leadership with the appointment of Doug Gurr as interim chair of the CMA. While the impact of these changes on dealmaking remains to be seen, the expectation is of a more favourable antitrust and regulatory environment for M&A relative to recent years.

Practice insight/market norms

A common misconception about the UK M&A market is that public transactions cannot be consummated by way of merger. The CA 2006 does, in fact, provide for merger by absorption for UK public companies, but these provisions are generally not used and a scheme of arrangement is more commonly seen. This approach contrasts with other jurisdictions, in particular the US, where mergers are frequently encountered.

An area that is often overlooked by parties involved in M&A is that buyers do not appropriately attend to the consolidation of group companies immediately after closing, resulting in continued administrative and financial burdens (for example, filing annual accounts) to correctly maintain newly acquired dormant or inactive subsidiaries.

Technology

Dealmakers are increasingly using AI technology to conduct more efficient due diligence in M&A transactions. It is now routine for dealmakers to use virtual meeting technology and electronic signature platforms to negotiate and close transactions, and this looks set to continue. On the other hand, cybersecurity preparedness has become a paramount technological concern for companies, as sophisticated and costly attacks are on the rise.

Public M&A

The acquisition of control of a public company is regulated by the Takeover Code and the Takeover Panel. A bidder may choose to stake-build to obtain a toehold in a public company. However, depending on the timing of such an acquisition and the form of consideration, stake-building may set a floor price and fix the form of consideration for any future offer. Furthermore, acquiring 30% of the voting rights in a public company will require a bidder to launch a mandatory cash offer for the remainder of the shares it does not own at the highest price it has paid.

In addition, any dealing giving rise to speculation, rumour, or an untoward movement in the public company's share price may require an announcement (if the acquirer is considering making an offer for the whole company), while disclosures will also be necessary once certain thresholds of ownership are crossed.

A takeover offer will usually be subject to an extensive set of conditions, including:

- Securing acceptances carrying more than 50% of the voting rights in the target (or, in the case of a court-sanctioned scheme of arrangement, the requisite 75% target shareholder approval);
- Antitrust and regulatory approvals;
- The bidder's shareholder approvals;
- Listing of consideration shares (when applicable); and
- Conditions dealing with the state of the target's business.

A bid cannot be subject to conditions that depend on the judgement of the bidder. Additionally, bidders seeking to rely on a material adverse effect, or similar bidder protective condition to not proceed with an offer, require the consent of the Takeover Panel, which applies a materiality test with a high bar (requiring the circumstances to be of considerable significance and aiming to strike at the heart of the purpose of the transaction) before it will permit an offer to be lapsed.

In public takeover offers, break fees (when the target pays the prospective buyer) are now largely prohibited, whereas reverse break fees (when the prospective buyer pays the target) are not prohibited. Only in limited circumstances can a break fee be offered; for example, a break fee may be offered to a 'white knight' making a bid in competition with a hostile offer that has already been announced (subject to such fee being de minimis and payable only upon the first offer becoming, or being declared, wholly unconditional).

Private M&A

According to Latham & Watkins' **11th edition of its annual European Private M&A Market Study** (the L&W Market Study), 53% of deals included a locked-box mechanism, 30% of deals included a completion accounts mechanism, and 17% of deals did not provide for price adjustment – broadly consistent with the 2023 findings.

The proportion of deals that included an earn-out increased in 2024 (and more significantly among private equity sellers) given the uncertain economic environment. The L&W Market Study noted that earn-outs featured in 23% of deals analysed, up from 14% in 2019. Earn-outs featured most prominently in healthcare and life sciences deals in 2024. However, with a growing range of innovative earn-out metrics – and market dynamics in favour of cash-rich buyers – earn-outs are expected to continue to facilitate M&A deals across sectors in the year ahead.

Escrows remain uncommon. Only 16% of deals in the L&W Market Study featured an escrow, a slight increase from last year's study, but a notable decrease from earlier editions.

Warranty and indemnity insurance uptake has plateaued, featuring in 48% of transactions analysed in 2024 and 2023, in contrast to the steady increases seen in previous editions.

In private M&A, the conditions to closing included in a purchase agreement will vary based on the circumstances of each transaction. Historically, conditionality beyond regulatory and antitrust clearances have been uncommon, but the increasing role of regulation in dealmaking is having an impact in this regard.

The prevalence of FDI approval conditions continues to increase, corresponding with the increased number of jurisdictions with FDI regimes and the high-value, high-profile, and strategically significant nature of deals included in the L&W Market Study – 38% of 2024 deals analysed included FDI approvals as a condition (compared with 34% in 2022).

In the UK, it is not common practice to provide for a foreign governing law and/or jurisdiction in private M&A share purchase agreements. Such agreements relating to UK companies and assets are typically governed by English and Welsh law and are subject to the jurisdiction of the English and Welsh courts. In fact, for global transactions, depending on the location of the parties and their advisers, purchase agreements are also often governed by English and Welsh law, because it is viewed as stable, impartial, and commercial, with a developed litigation infrastructure.

The exit environment in the UK throughout 2024 remained subdued. Macroeconomic headwinds of economic and geopolitical uncertainty, rising interest rates, and stock market volatility continued to create hesitancy among many acquirers. However, a growing number of companies are preparing to list in the UK, with the backdrop of the FCA's radical overhaul of the UK's listing regime coming into effect in 2024, which aims to make this framework 'match fit', as mentioned above.

Looking ahead

There are several reasons for a positive outlook in the M&A market this year. This optimism is driven by interest rate and inflation stabilisation, the resolution of key elections, pro-business pressure on regulators, and pent-up demand for dealmaking as investors continue to hold record levels of cash and dry powder.

The technology sector, especially in software and semiconductors, will be a key area of activity, driven by the ongoing AI boom and a resulting demand for chips and technologies. Investment in data centres and institutional investment in crypto assets should also remain in focus. This anticipated boost in M&A activity is expected to lead to creative deal structures and negotiated deal terms in response to navigating the macroeconomic and geopolitical challenges that may remain.

United States

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Market overview

For much of 2024, market participants were looking for a more robust M&A environment. The belief was grounded in certain key expectations, including:

- US monetary policy would become less restrictive and therefore lower the cost of borrowing;
- Valuation expectations between buyers and sellers would 'normalise' and therefore eliminate price friction; and
- Regulatory concerns would be better understood and therefore be less of an impediment.

While these beliefs conjured optimism, headwinds continued to mute the pace, breadth, and depth of the M&A market in 2024. That said, global deal volume rose off the lows of 2023 and deal value in North America increased by high single digits year on year. Market participants learnt to adapt their M&A strategy and processes to account for macroeconomic and geopolitical issues, and renewed optimism exists for 2025.

Several factors account for the more robust outlook in 2025, such as:

- The final outcome of national elections in the US;
- An apparent 'changing of the guard' as it relates to regulatory affairs within the US;
- Financial sponsors continuing to hold 'dry powder' at the ready;
- More understanding of attractive valuations as buyers and sellers have internalised valuation expectations;

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- Event-driven investors catalysing opportunities; and
- Well-capitalised strategic corporates undertaking transactions that look beyond the current economic cycle, as well as being conscious of having streamlined portfolios.

Market participants are optimistic about countervailing factors, including a healthier IPO market that may provide competition for exit transactions apart from M&A. All in all, however, the M&A markets are expected to improve but will likely continue to lag behind 10-year historical averages.

Dealmakers will continue to strongly consider regulatory enforcement, interest rates, and financial market uncertainty in 2025. In addition, market participants are heavily focused on technology disruption, including the use of AI and how this will affect their industries. With the pace of market movements, dealmakers will be focused on staying on top of the trends and should foment a more aggressive approach to M&A.

Private and public M&A

The market continues to be driven by both private and public M&A transactions, although private M&A is more prevalent because there are many more private than public companies. The cost of capital and the availability of debt financing is a driving factor, particularly for private company and private equity dealmaking, where acquirer stock is not available as transaction currency. For public companies, well-capitalised balance sheets and an ability to use stock as an acquisition currency remain key drivers for potentially strong deal volume in 2025.

Significant transactions

Transactions involving controlling and/or significant stockholders continued to be a topic reviewed by the courts and discussed among dealmakers. While practitioners widely understand that any such transaction must take into account the inherent conflicts and manage them accordingly, the courts' scrutiny of such transactions inspires debate.

Notably, there has been increased activity related to companies incorporating themselves outside Delaware, the state that has historically been 'home' for an outsized number of public companies, despite being one of the country's most geographically diminutive states.

Controller transactions involving Paramount and Skydance Media, among others, sparked considerable conversation in 2024. Indeed, the market discussions around controller-related transactions were so acute that in February 2025, the Delaware legislature introduced proposed amendments to **the Delaware General Corporation Law** that would significantly alter the landscape for negotiating and litigating conflict transactions, particularly with respect to controlling stockholders.

Similar to 2023, a constant theme discussed among dealmakers when considering M&A transactions in 2024 was the scrutiny and models of antitrust enforcement and review in the US and around the globe. Particular industry verticals – including technology, energy, and healthcare – continue to be subject to heightened scrutiny from regulators.

Certain mega-deals in 2024 propped up total deal value, including:

- Mars–Kellanova in consumer products;
- Synopsys–Ansys in technology; and
- Verizon–Frontier in telecommunications.

Mega-deals commonly receive extensive regulatory review, and practitioners continue to have somewhat less visibility and certainty as to which transactions will close, and when.

Economic factors

Deal flow in 2024 was somewhat similar to that seen in 2023. Global M&A deal value increased by approximately 9% to about $3.5 trillion, with global M&A volumes rising at approximately 15% year on year.

While transaction volume was relatively static, a larger number of significant transactions buoyed transaction value levels. Corporate acquirors were the driving force in the large-cap market space, accounting for nine of the 10 largest transactions in 2024. In the US/North American market, deal value increased in line with the global increase (i.e., high single digits), driven by an uptick in certain market segments, including technology and energy. While the market did see an increase in deal flow, M&A did not return to its historical 10-year averages.

Drivers of change

Generally speaking, market participants are bullish on the prospects of increased deal flow. Dealmakers look to greater clarity on certain macro issues, including monetary policy (i.e., a steady signal from central banks as to the direction of interest rates, including lower rates in the US) and regulatory uncertainty. While no one can speak definitively on those issues, the directional shift of these issues signals a more supportive deal environment.

In addition, capital allocation considerations have dealmakers optimistic on deal flow, as companies are focused on having more simplified and streamlined portfolios as a catalyst towards separation and spin-off transactions.

Private equity sponsors are also providing optimism to M&A participants, with a high level of dry powder available to be deployed. In addition, private equity sponsors are expected to continue to participate in M&A-adjacent structures, including joint ventures, alliances, minority stakes, and continuation fund structures. Moreover, in the private equity space, sponsors will continue to work through more mature/end-of-life holdings that will necessitate transactions.

Increased activism is also a likely catalyst for deal volume, as activist funds continue to raise capital and hunt for 'big game' targets. In 2024, nearly a third of activist campaigns targeted corporations with a market cap in excess of $10 billion. M&A is expected to continue to be a theme of activist investors.

Transaction participants have been more keenly focused on the scrutiny that regulators will apply to M&A transactions and how such risks are allocated among the parties to transactions. US regulators have explicitly signalled a heightened sensitivity to the competitive effects of certain transactions and have taken more aggressive actions, including prohibiting particular transactions based upon the presumed anti-competitive effects. This increased regulatory scrutiny has impacted, and will continue to impact, transaction strategies in the global markets. In particular, certain industries – including technology, energy, industrials, and healthcare – will remain under heightened oversight.

Participants in the US M&A market continue to see some acute disagreement between buyers and sellers with respect to valuations. To bridge the difference between the bid/ask spread in M&A transactions, the use of earn-outs, contingent value rights, and other means by which buyers and sellers could mitigate pricing risks becomes more common.

Continuing a trend that has taken hold, representation and warranty insurance (RWI) remains a tool used by M&A market participants to bridge and disintermediate exposures for unknown liabilities.

Debt financing and private capital continue to be a driver of M&A activity.

To address the absence of, or more subdued, traditional financing, parties have been more active recently in discussing alternative financing arrangements with direct lenders and the use of seller financing. In 2025, private capital (financing from non-bank lenders) is expected to feature with more frequency and become part of the established landscape.

Financial investors

Private equity remains a driving force of dealmaking. Although US interest rates have not decreased as forecast for 2024, private equity participants are expected to remain active in 2025, with uncommitted capital at private equity firms remaining at record levels. 'Middle market' private equity transactions (i.e., transaction values ranging from $50 million to $500 million) have been, and are expected to represent, a significant portion of private equity M&A volume.

Legislation and policy changes

The federal government primarily regulates the issuance and sales of securities through the Securities and Exchange Commission (SEC), antitrust matters through the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ), and foreign investment that may have national security implications through the Committee on Foreign Investment in the United States (CFIUS).

The laws, rules, and regulations administered by the SEC are particularly relevant in the purchase or sale of a US public company. The laws of the target's state of incorporation govern that company's internal affairs and impose requirements for shareholder approval of mergers and the procedures for effecting mergers.

Of note in evaluating M&A transactions is that most jurisdictions outside the US have equivalents to the FTC/DOJ in terms of regulating competition and the CFIUS in terms of regulating foreign investment. It is not unusual to see countries outside the US claim jurisdiction over transactions if there is a meaningful business within such home country.

Legislative changes

In 2024, competition and antitrust regulators around the globe continued, and in some ways expanded, their review of business combinations and the harms to consumers and competitors. With a new administration in the US, market participants are, optimistically, anticipating a directional shift in policy. That said, many dealmakers understand that while a shift may occur, it is unlikely that all of the Biden administration's prior polices will be outright reversed, and certainly not in a very expeditious timeframe.

The prior administration in the US was very aggressive in regulating M&A, with a large number of transactions having been litigated and blocked outright. The first Trump administration was not entirely merger friendly (specifically, disfavouring behavioural remedies), but the second Trump administration is expected to be more accommodative. That said, while antitrust/competition reviews may be less stringent, tariffs and 'trade wars' could result in increased use of foreign direct investment regulation as a tool with political motivations.

In addition, new Hart–Scott–Rodino (HSR) rules took effect in February 2025. In connection with the adoption and implementation of those rules, regulators in the US have indicated they would be amenable to revisiting the practice of granting early termination of the HSR waiting period, a practice that has been suspended since 2021.

Potential changes

In general, the US framework seeks to protect 'consumers', rather than 'competitors'. The prior administration was interested in revisiting that paradigm writ large with a view towards regulators focusing on other constituencies, including labour, the environment, and other ESG-related concerns. The Trump administration is likely to reverse that trend.

The new HSR rules materially increase the information that the filing parties must provide. Of particular note, the increased information includes:

- More 'ordinary course of business' documents prepared by the parties, describing competition from the prior year;
- Documents shared with the broader set of transaction team participants in addition to officers and directors of the filing parties; and
- Information regarding customers and suppliers.

The new rules also require additional information from private equity filers in certain circumstances with respect to limited partners.

These new filing requirements will prolong the time it takes to prepare an HSR filing. Market participants should be conscious of this timing in formulating transaction timelines and in agreeing to contractual provisions that prescribe the time by which filings must be submitted.

Practice insight/market norms

The litigation profile as it relates to the US M&A market may sometimes be overstated. While it is true that 'public' M&A transactions have significant probabilities of being litigated, the large majority of all such cases are neither material nor time consuming. A well-run, deliberative, and thoughtful transaction process guided by informed and independent boards of directors will substantially reduce, if not entirely obviate, the risks of litigation. Market participants should not avoid transactions for fear of litigation.

Public transactions often raise the question whether the buyer may pursue indemnity claims or escrow funds, or provide for RWI to satisfy any post-closing claims for a breach of a representation or warranty. Notably, public M&A transactions are without recourse to the target company or the target company shareholders once the transaction has closed. In public company transactions, buyers should assume that once definitive transaction documents have been executed, the parties will be obligated to close, subject only to the receipt of required regulatory approvals or the occurrence of a material adverse event (MAE) with respect to the target company.

An intuitive follow-on question, and one that non-US market participants often ask, is how an MAE is determined; specifically, whether there are quantitative guidelines or whether it is entirely qualitative. There are no definitive guidelines to determine whether an MAE has occurred. While the definition as drafted in the contract is important in terms of, for example, critical exclusions, the question, ultimately, is whether the company concerned has suffered a durationally significant, material diminution of its earnings potential not necessarily tied to macro market conditions but, rather, specific to that company.

Technology

The role of technology continues to evolve in the dealmaking process. AI is becoming more prevalent and market participants believe the utility of AI and its impact on M&A could be significant. In particular, companies that use AI may be able to identify targets, understand transaction value and where it may come from, and execute due diligence and integration activities between targets ad acquirors more efficiently.

Public M&A

In public M&A, issues relating to obtaining control of a company are governed by the laws of the state in which a company is incorporated and the company's organisational documents. Most states require shareholder approval (usually by a vote of a majority of outstanding shares) for M&A. Similarly, in the tender offer context, acquisition of a majority of a company's outstanding shares is required to obtain control. This would be the case when the target company has recommended the tender offer and in the unsolicited/hostile context, in which an acquiror has launched a tender offer without requiring (or, in some cases, seeking) the target company's recommendation.

Certain regulatory approvals – including clearance under the HSR antitrust statute, and, for non-US acquirers, from the CFIUS – must be obtained before an acquirer can take control of a US company. Acquiring a US company in regulated industries such as financial services and energy may be subject to additional regulatory scrutiny at the federal and/or state level.

In light of the fiduciary duties of public company directors that generally require them to maximise shareholder value in a sale/change-of-control context, target boards often conduct some form of a pre-signing market check – an auction-type process. In some transactions, however, the target board will forgo a pre-signing market check in exchange for a 'go shop' right to solicit competing offers for a limited period (usually 30–60 days) after signing the transaction agreement.

An overarching feature of US public company transactions and bidders' attempts to obtain control of a public company is that US federal securities laws impose disclosure requirements on parties seeking control of public companies. In particular, a buyer must file statements of beneficial ownership when crossing the 5% ownership threshold.

Public company acquisitions can be structured as:

- A one-step merger between the acquirer (or, more commonly, a subsidiary of the acquirer) and the target (typically requiring majority shareholder approval); or
- A two-step transaction involving a tender or an exchange offer by the acquirer for all the target's outstanding shares (which is generally subject to a 'minimum tender condition', requiring the tender of at least a majority of the outstanding shares) followed by a back-end merger.

Both types of transactions are typically subject to the following conditions, among others:

- Accuracy of representations and warranties;
- Material compliance with covenants;
- No MAE on the target; and
- The receipt of regulatory approvals.

Parties to public company merger agreements may employ various deal protection measures to deter third parties from interfering with the closing of an agreed-upon transaction. Parties may employ the following:

- A no-shop provision – a contractual provision that prohibits the target company (and its representatives) from soliciting competing proposals after the execution of a merger agreement.

- Termination fees ('break-up fees') – termination fees are payable by the target company to the buyer to reimburse the buyer for its costs and expenses in the event the target company terminates its merger agreement to accept a superior proposal from a third party. In practice, termination fees are in excess of the costs and expenses incurred by the buyer, but the quantum of the fee must not be so large that courts find the termination fees coercive and in violation of the target board's fiduciary duties. In the US, such fees typically range from 3–4% of the transaction value.
- Matching rights – merger agreements typically include contractual provisions that grant the buyer the right to match, within a number of days, any superior proposal that is received by the target company.
- Voting lock-ups – buyers may secure firm commitments from shareholders of the target company to vote their shares in favour of the proposed transaction.
- 'Force the vote' provisions – merger agreements may include provisions, subject to compliance with applicable state laws, that require target companies to put the proposed transaction to a vote of its holders, regardless of whether a superior proposal exists.

The suite of deal protection provisions agreed to in a transaction are, typically, the most heavily negotiated terms.

Private M&A

2024 saw the continued use of earn-outs and other similar provisions under which the seller will receive one or more additional payments, contingent on the target's future performance, in part to account for differences in valuation.

Completion accounts (known as working capital or balance sheet adjustments) are common in US private company acquisitions.

Locked-box transaction structures are much less prevalent in US private company acquisitions, although they are often discussed.

A trend that continues is the use of RWI in private transactions. The private market has reached a point where RWI is the norm rather than a negotiated point. Market participants, both private equity and strategics, have become comfortable with the product and how it is employed.

All the conditions listed above in relation to public takeover offers (except the minimum tender condition) generally also apply in private M&A transactions. However, in the absence of RWI, representations and warranties usually survive the closing in private M&A transactions and may give rise to post-closing indemnity claims.

Agreements are typically governed by the law of the target's state of incorporation. If such state has sparsely developed corporate law, the parties sometimes provide that Delaware law will govern certain issues.

The exit environment in 2024 was, similar to the M&A environment writ large, somewhat muted. The IPO market showed certain green shoots as the appetite for equities began to reflect increasing demand. The M&A markets were also somewhat choppy, as buyers and sellers had gaps in their valuation expectations and overall confidence levels ebbed and flowed. Financial sponsors actively sought opportunities but continued to face some difficulties in exiting their investments and in providing an exit opportunity for sellers. Private equity sponsors confronted challenges related to valuations and the cost of debt financing.

Market participants expect a stronger exit environment in 2025. The equity markets grew more buoyant through the second half of 2024 and in the early days of 2025, which bodes well for the IPO market. There is an expectation that improving costs of capital and more moderated regulatory scrutiny will fuel M&A activity.

Looking ahead

Market participants are increasingly confident that M&A activity will be robust in 2025. Equity markets and asset prices have, generally, remained strong and are trading near record highs. Corporate/strategic M&A players have strong balance sheets and there is confidence more generally regarding profitability. Financial sponsors are similarly well situated.

As the recent heightened geopolitical and economic uncertainties that characterised previous years dissipate, a material positive shift in sentiment and focus is emerging that bodes well for M&A dynamics in 2025.