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INTRODUCTION

Deals are not failing because buyers and sellers cannot agree on price. They are failing because the legal architecture underpinning those deals was designed for a world that no longer exists. Compressed valuations, geopolitical shock, sanctions volatility, and trade fragmentation have not merely added complexity to M&A transactions, they have fundamentally reordered the risk profile of M&A transactions. Yet too many boards, management teams, and their advisers continue to approach structuring and documentation as though the pre-2022 playbook remains fit for purpose. It does not. According to market data, while a wave of headline mega-deals was announced through 2025 and into Q1 2026, overall year-on-year M&A volume has remained stubbornly flat. This is a signal not of market paralysis, but of hard-won caution. The buyers and sellers who will capture value in this environment are those who recognise that the question is no longer simply whether to transact, but how to structure and document a transaction that remains legally enforceable, economically coherent, and operationally resilient when the world shifts beneath it. We examine in this Article, the critical legal pressure points that separate deals which close successfully from those that become cautionary tales.

DEAL AND CONSIDERATION STRUCTURING

The full-acquisition model, of a buyer acquiring 100% of the target, assuming control at completion and bearing all post-closing risk from day one, remains commercially rational in stable conditions. In volatile markets, it is a mechanism for amplifying exposure. A buyer who acquires a target at a valuation predicated on uninterrupted supply chains, stable tariff regimes, and benign regulatory conditions may find that by closing, the foundational assumptions of the deal have dissolved, with no structural protection and no price relief. The antidote is not to walk away from deals; it is to structure them differently. A *minority investment paired with a contractual option to acquire a controlling or complete stake* over agreed timelines reduces immediate capital deployment while preserving strategic access to the target. The trade-off is real: the buyer concedes control from day one. That concession must be managed through rigorously negotiated, enforceable governance rights and not generic minority protections that appear in first drafts.

Those governance rights must be calibrated to the specific risks the geopolitical environment presents. Veto rights over steep customer price concessions forced by tariff exposure, contracts with sanctions-proximate counterparties, emergency liquidity injections on punitive terms, and large-scale workforce reductions are not peripheral protections, but are the provisions that determine whether a minority investor retains meaningful economic and reputational protection over the investment horizon. Where majority control from the outset is commercially essential, a *staggered acquisition structure* tied to defined financial performance milestones offers a viable path. Critically, however, where subsequent tranches constitute binding purchase obligations, sellers have every reason to negotiate a deferral right triggered by defined geopolitical events capable of producing sudden, material adverse impacts on the relevant metrics. An export-reliant target blindsided by a punitive new tariff regime is a concrete scenario, not a theoretical one; the documentation should treat it accordingly.

For acquirers targeting businesses in geopolitically sensitive jurisdictions, or pursuing the increasingly common strategy of partnering with suppliers, contract manufacturers, or logistics counterparties in neutral jurisdictions to preserve supply chain continuity - *contractual joint venture* structures deserve serious consideration as an alternative to equity acquisition. They permit competitive positioning and operational access without premature commitment of capital to the target's cap table. Price-adjustment triggers linked to applicable tariff rates or the status of relevant trade agreements are a logical feature of any such structure, particularly where tariff exposure was the foundational rationale for the partnership. Finally, where the seller or target is operating in a stressed or distressed environment, the structural preference for *asset acquisition* over share transfer is not merely a matter of drafting elegance but is the mechanism by which a buyer ring-fences legacy liabilities that may not yet be fully visible at the time of signing.

Consideration mechanics deserve equal attention to headline price, and in volatile markets, they may matter more. Where valuation gaps are wide and the risk of post-closing deterioration is both real and foreseeable, how and when consideration is paid is as consequential as the number itself. *Deferred consideration, escrow and holdback structures, and earnout* mechanisms are well-established tools; the question in volatile markets is whether they are being deployed with sufficient rigour. A seller who accepts deferred consideration from a buyer whose creditworthiness deteriorates between signing and closing has, in economic terms, accepted something close to an unsecured loan from a weakening counterparty. Appropriate security arrangements, whether by way of guarantee, charge, or escrow, are not negotiating overreach; they are basic risk management. Equally, earnout metrics must be constructed to neutralise the distorting effect of macro-shocks that neither party caused and neither party can control. Armed conflict, pandemic-scale disruption, sanctions designations, and abrupt regulatory change should not operate to transfer value from one party to the other through the mechanics of a performance metric, unless that is precisely what was negotiated.

DILIGENCE AND DOCUMENTATION

Agreed deal structure and commercial terms are only as valuable as the contractual architecture that protects them through the period between signing and closing - a period that, in volatile markets, has become one of the highest-risk intervals in any transaction. Robust, precisely drafted protections are not a luxury; they are the difference between a transaction that completes on agreed terms and one that becomes an expensive dispute.

Material Adverse Effect

No provision in a transaction document is more contested, more consequential, or more routinely under-engineered than the Material Adverse Effect definition. Consider a target deriving a material portion of its revenue from a long-term government offtake agreement or a cross-border SaaS contract. That contract contains a force majeure termination right triggered by armed conflict. The transaction documents, negotiated in good faith, expressly carve out war from the MAE definition on the basis that it is a systemic, market-wide risk. The conflict escalates. The customer invokes force majeure. The revenue stream is extinguished. The buyer is legally obligated to complete the acquisition at the agreed price with no recourse against the seller. This is not a hypothetical. It is a structuring failure that is entirely preventable. In a geopolitical environment defined by the ongoing Russia-Ukraine conflict, continued instability across the Middle East, and the creeping militarisation of trade and technology policy, the question of whether a specific conflict qualifies as a force majeure event under a specific commercial contract is a live legal question that must be answered during diligence and addressed in the MAE clause, not discovered at closing. Beyond the binary MAE construct, parties should identify, with precision, the categories of market disruption that are realistically foreseeable in the relevant sector and geography, and negotiate, for each, a defined contractual response: enhanced reporting obligations, mandatory consultation periods, short-term deferral of completion, or expert-determined price adjustment. The goal is a transaction architecture robust enough to absorb significant turbulence without forcing either party into a default or walk-away scenario for which neither was responsible.

Where external debt or equity financing is required to fund completion, the MAE analysis does not end with the acquisition agreement. Buyers must align market-related conditions, drawstop triggers, and MAE definitions in their financing documents with those in the acquisition agreement. A misalignment, even a subtle one, can produce a scenario in which the acquisition agreement obliges the buyer to complete while the financing facility permits the lender to withhold drawdown. That is not a theoretical risk; it is a real and recurring closing failure. Sellers should anticipate this risk and protect against it in the documentation from the outset.

Sanctions & Representations and Warranties

Treating sanctions exposure as a standard warranties item is a category error. The sanctions landscape is no longer a static compliance checklist, it is a dynamic, unpredictable regulatory environment in which designations are imposed, extended, and modified faster than due diligence cycles move. A single warranties item, even one carefully worded, is structurally incapable of providing adequate protection in that environment. Buyers should negotiate a standalone closing condition entirely separate from the general bring-down of representations requiring a confirmed no-sanctions-event position as at the completion date. That condition must look through the corporate structure to indirect beneficial ownership chains, extend to key commercial counterparties and supply chain jurisdictions, and be expressly drafted to capture both existing designations and new or amended designations arising between signing and closing. A sanctions position that was clean at signing can be materially compromised at closing, and the documentation should be architected to address that risk explicitly.

The warranties package as a whole demands discipline from both sides. Sellers who accept broad, unqualified warranties without corresponding disclosure are inviting

indemnity exposure for events they have not adequately contemplated; targeted, specific disclosures are the correct mechanism for managing that risk. Buyers who accept warranties packages that do not address the specific vulnerability of key commercial contracts in a volatile environment are acquiring exposure they have not priced. A rigorous review of termination rights, pricing reset mechanisms, most-favoured-nation clauses, and force majeure constructs across all material contracts is not a diligence nicety, it is a commercial necessity. The diligence scope should equally address supply chain dependencies, regulatory licences subject to renewal or political discretion, export control compliance, and material third-party consents required in connection with the transaction. One further dimension demands attention: given the documented escalation of cyber operations and infrastructure attacks during geopolitical conflicts, buyers should seek detailed warranties covering cyber incidents, vulnerability management, and business continuity and disaster recovery frameworks and should conduct substantive diligence on any deficiencies identified.

Interim Operating Covenants & Leakage

Extended signing-to-closing timelines are an unavoidable feature of volatile market transactions, driven by regulatory approval processes, financing conditions, and geopolitical developments that cannot be compressed. That extended window is where deals most frequently unravel not because either party has acted in bad faith, but because the interim operating regime was not drafted to accommodate the operational realities of a volatile environment. The covenants must strike a precise balance: effective day-to-day management of the target must be preserved, but value must not be permitted to leak ahead of closing. From the seller's perspective, the regime must preserve sufficient operational flexibility to implement necessary risk-mitigation measures re-routing supply chains, substituting key suppliers, temporarily suspending operations in affected geographies, procuring business interruption insurance against identified geopolitical risks without requiring prior buyer consent in circumstances where time is genuinely of the essence. Where consent is required for other matters, a deemed consent mechanism triggered after a defined response period, subject to a reasonableness standard, provides a workable solution that prevents the consent regime from being weaponised as a tool of commercial renegotiation.

Where parties elect a locked box pricing mechanism, the selection of the locked box date requires more care than it typically receives. In a volatile market, the relationship between the locked box date, the signing date, and the anticipated closing date must be assessed against the current geopolitical timeline with precision. The standard leakage definition addresses value extraction in ordinary circumstances; it does not, without careful drafting, capture the extraordinary cash outflows that may be necessitated by geopolitical developments after the locked box date. Such extraordinary cash outflows include expedited procurement to mitigate supply disruption, inventory pre-positioning against anticipated import restrictions and emergency supplier payments not contemplated at signing. Sellers should negotiate permitted leakage carve-outs that acknowledge these realities, and buyers should scrutinise them carefully. Neither party is well served by a locked box regime that generates a contested leakage claim six months after closing because the documentation failed to address conditions that were foreseeable at the time of signing.

Information Rights

Acquirers in volatile markets routinely demand and frequently obtain extensive pre-closing information rights and early operational access to the target. The commercial logic is

sound, i.e., in an environment of heightened uncertainty, buyers want maximum visibility. However, the legal risk here is frequently underestimated. Where the acquirer and the target are horizontal competitors, the disclosure of competitively sensitive information prior to closing creates gun-jumping exposure under competition law that can survive the transaction itself and, in the most serious cases, attract regulatory intervention. Clean team arrangements, ring-fenced information protocols, and carefully defined disclosure categories are not administrative formalities, they are the mechanism by which commercially rational information access is structured in a legally defensible manner. The documentation of these arrangements, and their operational implementation, requires the same rigour as any other element of the transaction.

Dispute Resolution

In a volatile market, dispute resolution is not a boilerplate clause, it is a core commercial protection. Where deal economics are fragile and the stakes of a closing dispute are high, the dispute resolution architecture must be capable of providing fast, enforceable, and sanctions-resilient remedies. Institutional arbitration seated in a neutral jurisdiction with emergency and interim relief provisions expressly available to address closing disputes, price-adjustment mechanisms, and leakage claims, provides the appropriate framework. The clause must address the risk of sanctions exposure and payment disruption, including provisions for lawful alternative payment routes and award currencies. These are necessary safeguards in a world where the ability to transfer funds between jurisdictions can be disrupted by events entirely outside the parties' control. A well-constructed dispute resolution clause does more than define the forum; it closes the route by which an unwilling counterparty might otherwise deploy adverse market developments as a basis for renegotiating agreed terms or simply refusing to pay. In a market where walk-away risk is real, that protection is not incidental, it is foundational.

The deals that define this cycle will not be won by the most aggressive bidders or the most optimistic valuations. They will be won by the parties and their advisers who understand that in volatile markets, legal architecture is not a transaction cost to be minimised. It is the mechanism by which commercial intent survives contact with reality. The technical precision of the documentation, and the commercial clarity of the thinking that drives it, are the only reliable instruments available to dealmakers operating in conditions of sustained uncertainty. Those who treat them as such will transact with confidence. Those who do not will discover their limitations at the worst possible moment.

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