PANORAMIC

FINANCIAL SERVICES M&A 2025

Contributing Editors

Jeff Berman and **Chang-Do Gong**

Clifford Chance LLP

LEXOLOGY

Financial Services M&A 2025

Contributing Editors

Jeff Berman and Chang-Do Gong

Clifford Chance LLP

Quick reference guide enabling side-by-side comparison of local insights, includinginto the market and policy climate; key legislation; required regulatory consents and filings; ownership restrictions; directors and officers' issues; foreign investment restrictions; competition law and merger control issues; deal structures and strategic considerations; tax; ESG, public relations, political and policy risk management; shareholder activism; due diligence, including in relation to emerging technologies; pricing and financing; purchase price adjustments; deal terms (including reps and warranties, indemnities and closing conditions); dispute resolution; and current trends.

Generated on: March 7, 2025

Contents

United Arab Emirates

Kate Iliff, **Adela Mues**, **Mira Bagaeen**, **Shivana Agarwal**

Reed Smith LLP

United Kingdom

Alan Bainbridge, **Hannah Meakin**, **Dominic Stuttaford**, **Mark Tricker**, **Emma Lai**

Norton Rose Fulbright

USA

Chang-Do Gong, **Jeff Berman**

Clifford Chance LLP

Global Overview

Jeff Berman and **Chang-Do Gong**

Clifford Chance LLP

The global financial services sector, encompassing banks, non-bank credit institutions, asset management firms, insurers and reinsurers, payment service providers and financial technology (fintech) companies, has experienced transformative M&A activity over the course of 2023 and 2024. The past two years have been marked by a mix of strategic consolidation, macroeconomic pressures, digital innovation and regulatory reform. Each sub-sector and region has had its own unique dynamics, yet overarching themes have emerged, including the pursuit of scale, technological integration and capital optimisation.

Market trends

In 2023, global M&A activity in financial services slowed globally, with overall number of transactions down 12 per cent compared to 2022, while aggregate deal value fell by about 40 per cent, from US$396 billion in 2022 to US$236 billion in 2023, the lowest activity levels since the post-pandemic recovery. A significant factor behind the decline was an environment of rising interest rates, high inflation, bank failures (eg, the 2023 failures of Credit Suisse, Silicon Valley Bank and First Republic Bank), geopolitical uncertainties (eg, the Russia–Ukraine conflict) and recession fears.

By mid-2024, however, a rebound emerged, with global financial services M&A activity, as measured by aggregate deal value, rising 72 per cent in the first 11 months of 2024 compared to the same period in 2023. The overall number of transactions also stabilised, with notable activity across the asset management and payments sub-sectors. Global banking M&A in particular rallied strongly, with 215 deals valued at more than US$30 million announced in the first 11 months of 2024 compared with 151 deals announced during the same period in 2023.

Key drivers of M&A activity

Digital transformation and technological integration

The necessity of digital innovation has remained a primary catalyst for M&A activity in the global financial services sector. Financial services firms have pursued acquisitions as a way to integrate advanced technologies such as artificial intelligence (AI), blockchain and cybersecurity solutions. This trend was particularly evident in the banking and asset management sub-sectors, where firms have sought to enhance their digital platforms to meet evolving client expectations.

Regulatory change and capital optimisation

Regulatory developments, especially in Europe and the United States, influenced M&A strategies. The European Union's Markets in Crypto-Assets (MiCA) framework, implemented in mid-2024, provided clarity for crypto firms, triggering increased M&A activity in the fintech and crypto sectors. In addition, financial services firms have engaged in M&A transactions as a way to optimise their capital structures, comply with stringent regulatory capital requirements (particularly those arising from the implementation of Basel III reforms) and divest non-core assets. This trend was particularly prominent among banks and insurers aiming to strengthen their balance sheets and focus on core competencies.

Market consolidation and competitive pressures

Heightened competition and the need for scale have prompted consolidation across various financial services sub-sectors. Smaller firms have merged to enhance market share, while larger institutions have acquired niche players in order to diversify service offerings. The payments sector is seen as particularly scalable and has experienced significant consolidation as payment services firms have aimed to expand their global footprint.

Private equity participation

Private equity firms have played a pivotal role in driving M&A activity in the financial services sector, leveraging substantial reserves of committed but unallocated capital to invest in financial services. Investors have focused on acquiring firms with strong growth potential, particularly in the fintech, payments and insurance sub-sectors, to profit from emerging market opportunities.

Sub-sector analysis

Banking

The global banking sector experienced a decline in M&A activity in 2023 due to uncertainty arising from bank failures, rising interest rates and potential risks in loan portfolios. However, since 2024, there has been a notable increase in regional bank consolidations, particularly in the United States, where lenders aimed to bolster balance sheets amid rising competition and economic pressures. In Europe, Italy's Monte dei Paschi di Siena recently launched a €13.3 billion all-share takeover offer for Mediobanca that, along with BBVA's €12.28 billion hostile bid for Banco Sabadell, signal significant consolidation within the Italian and Spanish banking sectors, respectively.

Asset management

The asset management sector has seen a resurgence in M&A activity since 2024, driven by firms seeking to enhance digital platforms and meet evolving client expectations. Notable transactions included the recent entry by Generali and Natixis into a joint venture, aiming to merge their asset management operations to create a European powerhouse managing €1.9 trillion in assets.

Insurance

In the insurance sector, M&A activity has been influenced by firms aiming to optimise capital structures and comply with higher capital requirements. A significant recent initiative is Brighthouse Financial's decision to explore a sale, which has attracted interest from private capital managers. This move reflected a broader trend of alternative asset managers acquiring large life insurance platforms to diversify their investment portfolios.

Fintech and payment services

The fintech and payment services sectors have continued to attract substantial M&A interest, driven by the necessity of digital innovation. Consolidation among payments firms has continued apace, fuelled by global players such as PayPal and Stripe acquiring regional competitors to expand their international footprint. Traditional financial institutions have pursued acquisitions to integrate advanced technologies such as AI, blockchain and cybersecurity solutions. This trend was evident in the banking and asset management sub-sectors, where firms sought to enhance their digital platforms to meet evolving client expectations.

Regional insights

United States

The US market is seeing robust M&A activity in the financial services sector, with a focus on fintech acquisitions. Traditional banks and asset managers have acquired technology-driven firms to enhance digital services, reflecting a strategic shift towards customer-focused innovation. Additionally, regional banks have increased the pace of consolidation, aiming to strengthen their balance sheets amid rising competition and economic pressures. Larger banks have actively sought mergers and acquisitions to enhance their market positions and achieve operational efficiencies. A notable example is Capital One's successful bid to acquire Discover Financial Services in an all-stock transaction, valued at approximately US$35 billion, that the parties expect to yield significant synergies and strategic benefits as well as creating the largest credit card issuer in the United States.

United Kingdom and Europe

European financial institutions have engaged in cross-border M&A to achieve scale and operational efficiency. Regulatory harmonisation within the European Union has facilitated these transactions, with notable deals in the banking and insurance sectors aimed at expanding regional presence. The EU's implementation of the MiCA regulation provided a new framework for crypto businesses, attracting global exchanges such as Binance and Coinbase to expand within Europe. In the United Kingdom, although the insurance sub-sector has led financial services M&A activities (with significant consolidation among participants in the Lloyd's market), proposed adjustments to the Prudential Regulation Authority's size thresholds for application of the Minimum Requirement for Own Funds and Eligible Liabilities could influence M&A activity among UK banks.

Asia

In Asia, M&A activity has been driven by the rapid growth of digital financial services. Both domestic and international players pursued acquisitions to tap into Asia's burgeoning fintech landscape, particularly in markets such as China and India, where digital adoption rates are high. Notably, Indian deal value across all sectors surged by 66 per cent in the first nine months of 2024 compared to the same period in 2023, supported by large deals in the technology, media and telecommunications sectors. Recently implemented corporate governance reforms in Japan, aimed at enhancing transparency and shareholder value, may make Japanese financial services firms more attractive to foreign investors and potentially spur inbound M&A activity. In China, Guotai Junan Securities' recently approved 103 billion yuan (US$14.5 billion) merger with Haitong Securities will create China's largest securities brokerage firm.

Outlook for 2025

Sustained digital investment

A continued focus on digital transformation will drive acquisitions of technology firms to enhance service delivery and operational efficiency.

Environmental, Social, and Governance considerations

Environmental, Social, and Governance (ESG) factors will increasingly influence M&A strategies, with firms seeking to align with sustainable practices through strategic acquisitions.

Emergence of new players

Non-traditional entrants, including technology giants, may become more active in the financial services M&A space, leveraging their technological expertise to disrupt traditional models.

Regulatory uncertainty

Market participants should expect continued regulatory uncertainty, particularly in the United States, where the new Trump administration has initiated efforts to ease regulations affecting the financial services sector, potentially leading to the emergence of greater regional differences among regulators and complicating cross-border deals.

[Jeff Berman](#) Jeff.Berman@cliffordchance.com
[Chang-Do Gong](#) chang-do.gong@cliffordchance.com

[Clifford Chance LLP](#)

Read more from this firm on Lexology

China

Zhiyi Ren, Blake Wang, Rena Liu
Fangda Partners

Summary

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

The development of the M&A market in 2024 in the financial services sector in the PRC (for the mere purpose of this Q&A, excluding the Special Administrative Regions of Hong Kong, Macao and Taiwan region) appears to be relatively slow, but the market has indicated an ascending trend in 2024 when comparing the total number of inbound financial M&A transactions with the ones in 2022 and 2023 (especially considering the comparatively long procedure for a financial M&A transaction).

According to public information from the Global M&A Library of Wind, and as far as we are aware, the table below sets out the data on ongoing and completed inbound financial M&A transactions by 31 December 2024 for the period 2022 to 2024. The statistics are based on public information (if the price of a transaction is not available, the database assumes the price is zero in terms of its calculation) and filtered according to a transaction's date of closing in the case of a completed deal or a transaction's first announcement date in the case of an ongoing deal, with the target company of a transaction being in the finance industry.

Year	Financial Inbound M&A	Completed	Ongoing	Total
2022	Quantity	2	3	5
Sum (CNY in million)	2,666.67	2,483.29	5,149.96	
YoY Growth	103.87%	-75.39%	-54.82%	
2023	Quantity	4	5	9
Sum (CNY in million)	19,445.55	7,881.62	27,327.17	
YoY Growth	629.21%	217.39%	430.63%	
2024	Quantity	1	13	14
Sum (CNY in million)	1,723.40	1,782,610.20	1,784,333.60	
YoY Growth	-99.86%	328.04%	328.45%	

Law stated - 24 February 2025

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

China has been expanding its opening-up policies in the financial services sector. The table below represents the lifting of restrictions on foreign investment in various financial institutions:

Type of institution	**Foreign ownership permitted**
Bank wealth management company	Majority
Futures company	100%
Securities company	100%
Public fund management company	100%
Non - banking payment institution	100%
Clearing institution	Majority
Insurance company	100%
Private fund management company	100%

These opening-up policies have been actively implemented, and currently foreign-invested or wholly foreign-owned financial institutions (as applicable) in each of the above sectors are commonly seen in practice. For example, JPMorgan, Goldman Sachs and Standard Chartered Bank have each established a wholly owned securities company, and Amundi, BlackRock, Schroders, Goldman Sachs and BNP have each held the majority stake in a joint-venture bank wealth management company.

Law stated - 24 February 2025

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 What primary laws govern financial services M&A transactions in your jurisdiction?

The Foreign Investment Law of the People's Republic of China governs foreign investment in general, and the Company Law of the People's Republic of China governs corporate governance. Investment in the financial industry has been removed from the Negative List and is subject to regulatory approval from the relevant regulatory authorities.

Specifically, major laws and regulations that govern financial services M&A transactions and corporate governance and compliance requirements of financial institutions include, among others and as amended from time to time, the Securities Law of the People's Republic of China, the Securities Investment Fund Law of the People's Republic of China, the Futures and Derivatives Law of the People's Republic of China, the Insurance Law of the People's Republic of China and the Law of the People's Republic of China on Banking Regulation.

The relevant regulatory authorities have also provided for detailed regulations in furtherance of the aforesaid primary laws.

Law stated - 24 February 2025

Regulatory consents and filings

4 What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Under the regulatory framework, three major regulatory authorities under the State Council are responsible for the regulation of financial institutions: the National Financial Regulatory Administration (NFRA, formerly the China Banking and Insurance Regulatory Commission), the People's Bank of China (PBOC), and the China Securities and Regulatory Commission (CSRC; together with the NFRA and the PBOC, each a Regulator and, collectively, the Regulators).

- the NFRA regulates financial services broadly, other than those in the securities sector, including banks, insurance companies, financial holding companies and other non-banking institutions. It is also responsible for financial consumer protection and investor protection;
- the PBOC is responsible for promulgating macro financial and monetary policies and supervises the State Administration of Foreign Exchange; and
- the CSRC is responsible for regulating the securities sector, including securities firms, fund managers and futures firms.

A financial M&A transaction usually is subject to the review and approval of the relevant Regulator, and the review requirements may vary depending on the nature of the investor, the shareholding ratio and the nature of the target company.

Law stated - 24 February 2025

Ownership restrictions

5 | Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

Under the PRC legal framework, the restrictions on the shareholders that can wholly or partly own financial institutions vary based on the type of financial institution.

Generally speaking, on the one hand, a shareholder of a financial institution usually should not:

- have obvious deficiencies in its corporate governance structure and mechanism;
- be subject to administrative or criminal penalties in recent years for major violations of laws and regulations;
- have dishonest behaviour as a shareholder or actual controller of a company in recent years;
- have large amounts of debt;
- have complicated affiliation relationships; or
- have other circumstances that may have a material adverse effect on the target company.

On the other hand, a shareholder of a financial institution must generally satisfy the following requirements, that it:

- is duly established and has no record of violation of laws in recent years;
- has a certain amount of paid-in capital and net assets;
- has a good corporate governance structure or effective organisational management style;
- has a good social reputation, integrity records and tax payment records;
- has good business management and no major illegal business records in recent years;
- has a good financial status; and
- is able to make equity investment with self-owned funds.

A foreign shareholder, in addition to the above qualifications, must usually satisfy the following additional requirements (if applicable), that it:

- complies with the laws and regulations of the country or region where it is located and the requirements of the supervisory authorities, and has no record of major violations of laws and regulations in recent years;
- has a good international reputation and satisfying business performance, and its long-term credit standing should have remained at a high level in recent years; and
- the financial regulatory authority of the country or region where it is located has established a cooperation mechanism with the relevant PRC regulator.

Law stated - 24 February 2025

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

Yes. In general, none of the following people are eligible to be a director or senior officer of a company (state-owned enterprises have separate requirements):

- any person who has no or limited civil capacity;
- any person who has been convicted of any criminal offence in the nature of corruption, bribery, disseisin, misappropriation or disrupting the economic order of the socialist market and five years have not elapsed since the penalty imposed was completed, or any person who has ever been deprived of his or her political rights due to any crime and five years have not elapsed since the penalty imposed was completed;
- any former director or manager of a company that has been declared bankrupt and liquidated where he or she was personally responsible for the bankruptcy of the company, and three years have not elapsed since the bankruptcy and liquidation of the company was completed;
- any former legal representative of a company that has had its business licence revoked and has been ordered to close its business operations due to any violation of law where the former legal representative was personally liable for the revocation of the business licence and three years have not elapsed since the date of revocation; and
- any person who has significant unpaid due debts.

Specifically with respect to a financial institution, despite different types of financial institutions having different requirements, the following qualifications and restrictions generally need to be satisfied to be a director or officer of a company:

- is righteous and honest and has good conduct;
- is familiar with relevant laws and regulations;
- has several years of working experience in finance, law, etc, relating to the position to be held;
- has several years of management experience;
- has the operational and management capability suitable for the position to be held;
- has not been subjected to administrative or disciplinary sanctions by the regulatory authority for illegal or unethical behaviour, etc (within a certain period of time);
- has not been revoked by the regulatory authorities from the qualification of practice (within a certain period of time); and
- has no personal responsibility or direct leadership responsibility for the illegal and non-compliant business activities or significant losses of the institution for which he or she previously worked.

Law stated - 24 February 2025

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Generally, in the context of financial services M&A transactions, the board of directors is responsible for, among other things, formulating the company's plans for the increase of its registered capital and formulating the company's plans for merger and division, which will be submitted to the shareholders' meeting for deliberation and approval. The board is also responsible for verifying the capital contribution of the shareholders. The manager reports to the board and should perform his or her responsibilities as provided under the articles of association or as authorised by the board.

Specifically, in the context of financial services M&A transactions, the directors of a financial institution usually should attend the meetings of the board of directors, express their clear opinions on the matters discussed at the meetings and assume the corresponding liabilities for the resolutions of the board of directors. The independent directors generally should perform their obligations as directors independently, remain free from the influence of any shareholder or actual controller of the company or any other entity or individual that has a stake in the company, and safeguard the overall interests of the company and the legitimate rights and interests of the investors. The senior managers should perform their duties faithfully and diligently, effectively implement the resolutions of the board of directors and the company's systems, prevent and mitigate operating risks and ensure the company's standardised management and independent operations.

Law stated - 24 February 2025

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

Restrictions on foreign ownership of a financial institution have generally been removed, except in the case of a bank wealth management company or a clearing institution for which a foreign shareholder is permitted to take a majority, but not 100 per cent, stake. The relevant regulators will review a foreign investor's qualifications (eg, industry experience, financial status, social reputation and credit records) in the course of its review of the prospective transaction.

Law stated - 24 February 2025

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

The Anti-monopoly Law of the People's Republic of China was amended in 2022, its first amendment since its promulgation in 2007. Where a concentration of undertakings reaches the threshold of declaration, declaration should be made to the anti-monopoly law enforcement authority in advance. Under circumstances where a concentration of undertakings does not reach the threshold of declaration, if evidence shows that the concentration has or may have the effect of eliminating or restricting competition, the anti-monopoly law enforcement authority may require a declaration.

Further, the 2022 amendment includes a provision for strengthening the review of concentrations of undertakings in important fields such as the national economy and people's livelihoods. Although what constitutes such important fields is not expressly provided, in the consultation paper for soliciting public comments before the 2022 amendment was formerly issued, the finance, technology and media sectors were expressly included in the important fields. Therefore, it could be read from the legislative intent that antitrust enforcement in the finance area may be strengthened.

In 2024, China's antitrust legal framework was further refined and optimised. Several important antitrust regulations and guidelines were introduced, enhancing the operability and predictability of antitrust laws. This laid a solid institutional foundation for advancing fair competition policies and accelerating the establishment of a unified national market.

Throughout the year, antitrust enforcement remained active, with enforcement authorities increasing their focus on areas related to people's livelihoods. Judicial authorities, in the realm of antitrust litigation, concentrated on critical technologies, livelihood sectors, and digital economy platforms, demonstrating their proactive role in maintaining market competition order and protecting consumer rights.

Law stated - 24 February 2025

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

Before 2020, foreign shareholders could hold only a minority stake in major types of financial institutions due to regulatory restrictions on foreign ownership. From 2020, with the gradual lifting of foreign restrictions, foreign institutions started to wholly own or hold a majority stake in financial institutions in China.

Under the current opening-up environment, entities that intend to form a joint venture are usually based on commercial reasons. For example, the parties might rely on each other's resources (eg, the market share and social network of the Chinese party and the funding or technology capacity of the foreign party).

Law stated - 24 February 2025

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

The time frame for a financial services M&A transaction may vary due to the time needed for regulatory review, which may take a few months or even more than one year.

Separately, if the selling party is a state-owned enterprise, its equity interest may need to be listed on an assets and equity exchange for the purpose of soliciting buyers and auction. In such case, the time frame will also be affected by the listing related procedures.

Law stated - 24 February 2025

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

Under ordinary circumstances, a seller in an M&A transaction will need to pay corporate or personal income tax. Both the seller and the buyer in an equity transfer agreement may be liable to stamp duty. Tax might not substantially drive structuring considerations in a financial M&A transaction in China, as a shareholder of a financial institution is generally required to disclose its equity structure up to the level of ultimate controller (usually a listed company with its shares fully diversified or natural persons), and the identity and qualification of a shareholder are also subject to regulatory review (that is to say, an investor may need to select the most appropriate entity in its group to be the direct shareholder).

Law stated - 24 February 2025

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

With the continuous promotion of the dual carbon plans of achieving peak carbon emissions and carbon neutrality, as well as the continuous implementation of innovative development concepts and transformation of development patterns by China, ESG is gradually becoming an important criterion in evaluating enterprise value, which also affects the strategic orientation of investors and how investee enterprises should perform to gain support from investors in the market.

The 2023 amendment of the Company Law of the PRC (which took effect on 1 July 2024) expressly requires a company to take into full consideration the interests of stakeholders, such as the employees and consumers of the company, and the public interest, such as ecological and environmental protection, in the course of its business, and to undertake social responsibilities. Further, the state encourages companies to participate in social and community activities and announce social responsibility reports.

From the perspective of financial M&A specifically, a foreign, major or controlling shareholder of a financial institution is generally required to have, on the one hand, high-level (long-term) credit standing and good international reputation, and on the other hand, good corporate governance structure and risk control capacity. A financial institution is also generally required to have effective internal risk control mechanisms and sound corporate governance structure. Certain institutions (especially listed companies) are also required to make ESG-related public disclosure as required or appropriate.

Law stated - 24 February 2025

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

As inbound investment in a financial institution is generally subject to regulatory review (in addition to potential antitrust review if applicable) and regulatory approval, which, together with the absence of material adverse events, are usually included as closing preconditions. That is to say, if the investor does not obtain regulatory approval, it has no obligation to close the transaction.

In terms of changes in laws or regulations after closing that may negatively affect a foreign shareholder's shareholding or rights, a regulatory put clause could be included in the shareholders' agreement or similar document to give such shareholder a right to exit.

Law stated - 24 February 2025

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Shareholder activism is theoretically restricted by relevant laws and regulations in China.

A company is an independent legal person under the Company Law of the PRC, which has the independent property rights of a legal person. A company is liable for its debts to the extent of all its assets. A shareholder of a limited liability company is liable to the company to the extent of its capital contribution subscribed. Shareholders of a company are entitled to enjoy the return on equity, participate in important decision-making, select managers and enjoy other rights in accordance with the law.

With respect to a financial institution specifically, the directors (especially independent directors) and senior executives are generally required to secure the independent operation of a financial institution. The major and/or controlling shareholders and ultimate controllers are specifically required to have a self-disciplinary mechanism to maintain the independence of the financial institution invested and to prevent improper transmission of risks and profits.

Law stated - 24 February 2025

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

In a joint venture, before a shareholder can transfer its equity interest to a third party it should first obtain the prior consent of the other shareholders of the target company. If the seller is state-owned, the transaction may need to be listed on an assets and equity exchange for auction purposes, and subject to the specific requirements of relevant exchange, the seller may need to obtain the other shareholders' consent before the equity interest can be listed or before the seller can enter into a definitive equity transfer agreement with the buyer that wins the auction.

Any other current shareholder that objects to the contemplated transfer is required to purchase the target equity interest; otherwise it should be deemed as having consented to such transfer. If more than one other shareholder intends to purchase the target equity interest, unless otherwise agreed thereby, they are entitled to purchase the target equity interest in proportion to their respective paid-in capital contribution.

In addition to the above right of first refusal that is generally applicable to a company, with respect to financial institutions specifically, there typically is a regulatory lock-up period during which a shareholder is generally prohibited from selling its equity interest.

Law stated - 24 February 2025

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

Legal due diligence usually covers a broad scope, including, but limited to, the status of relevant licences or qualifications, the equity structure, the corporate governance structure and internal policies, the risk control and other mechanisms required, the compliance of human resource, the compliance of operation, the major vendors, clients or products of the institution, anti-money laundry and anti-corruption, etc. An investor's external legal counsel is usually responsible for carrying out the legal due diligence. For anti-corruption due diligence, accounting firms might also be engaged.

Law stated - 24 February 2025

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

In addition to legal due diligence, financial due diligence, which is usually carried out by an investor's financial advisor, is also an important part of the due diligence. Other types of due diligence, such as IT due diligence, might be carried out, depending on the specific type of financial services.

Law stated - 24 February 2025

Emerging technologies

19 | Are there specific emerging technologies or practices that require additional diligence?

The regulators in China have explicitly prohibited any organisation or individual from illegally engaging in initial coin offering activities. In contrast, for the application of blockchain technology that does not involve illegal fundraising or harm the public interest, most of the relevant policies take a positive attitude, despite financial regulators possibly being more conservative towards emerging blockchain technologies or practices.

Therefore, during the due diligence process, attention might be paid to whether the target company's business involves blockchain or cryptocurrency-related businesses, especially those in a disguised manner.

Law stated - 24 February 2025

PRICING AND FINANCING

Pricing

20 | How are targets priced in financial services M&A transactions? What factors typically affect valuation?

For M&A transactions in the financial industry, the strategic value of a target company is usually more important than the financial value thereof. Due to the scarcity of financial licences, many investors rely on acquisition or becoming the largest shareholder of licence holders to obtain the financial licences. The main factors that may affect valuation include, among other things, the regulatory attitudes of the authorities (eg, the more difficult it is to obtain a licence, the higher the valuation may be), the regulatory and or market trend of the specific business, and the business performance of the target company.

Law stated - 24 February 2025

Purchase price adjustments

21 | What purchase price adjustments are typical in financial services M&A transactions?

Price adjustments are not commonly seen in a financial services M&A transaction in China, essentially because the transaction price needs to be submitted to the regulator as part of the review material and the price needs to be filed with the foreign exchange regulatory authority for forex purposes. If any price adjustment is necessary, it could be reflected via other means (eg, liquidated damages if there is a breach).

Law stated - 24 February 2025

Financing

22 How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

A shareholder of a financial institution is typically required to make a capital contribution via its self-owned funds or non-currency properties necessary (if applicable), and the proportion of capital contribution made in the manner of such non-currency properties is usually limited to a small percentage of the entire capital contribution (eg, 30 per cent for a securities company and 15 per cent for a futures company). Foreign investors are typically required to make capital contributions only via self-owned funds. Therefore, financing arrangement choices are relatively limited in a financial M&A transaction in China.

Law stated - 24 February 2025

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

Representations and warranties made by the target in a financial services M&A transaction typically cover, among other things, the following areas: establishment and internal authorisation, regulatory approvals and third party consents, binding effects, no conflict, business status, compliance with laws, litigations and other material proceedings, accuracy of disclosure, finance, anti-corruption policies and procedures, tax, human resources, material assets and intellectual property, and the specific products of the institution. Among such areas, representations and warranties in respect of regulatory approval of the underlying transaction, good standing of the target's financial licence or qualification, anti-corruption and compliance of the institution's financial products usually are covered in greater detail than in general M&A transactions.

Law stated - 24 February 2025

Indemnities

24

What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

The parties usually provide for indemnities in case of a breach that causes losses to the other party, and the scope of losses is usually defined. A penalty interest rate is also usually provided in the case of late payment. Breach due to force majeure events is usually exempted. Termination of an agreement usually will not exempt a party's liability for breach before such termination.

Law stated - 24 February 2025

Closing conditions

25 What closing conditions are common in financial services M&A transactions?

Commonly seen closing conditions in financial services M&A transactions include, without limitation, duly execution of transaction documents, effective internal approval (including the other shareholders' waiver of the right of first refusal as applicable), regulatory approval, agreed form of other constitutional documents (if subject to additional regulatory approval and could not have been signed simultaneously), accuracy and completeness of representations and warranties, due performance of transaction documents, no occurrence of material adverse events and due completion of forex procedure (if cross-border payment is needed). An aggressive investor may also require the filing with the company registration authority of its capital contribution (ie, register it as a shareholder of the target company at the company registration authority) to also be included as a closing condition.

Law stated - 24 February 2025

Interim operating covenants

26 What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Pre-closing covenants usually include, without limitation, that the registered capital and shareholding structure of the target company remain unchanged, no acquisition or disposal of material assets, no incurring of material debts or other liabilities, stable and compliant operation, validity of core licences, no waiver of any rights in a legal proceeding and no distribution of profits. An investor is usually required to undertake that its qualification as a shareholder of the target financial institution will remain unchanged. Exclusivity covenants are also usually included, but are not necessarily limited to the period before closing.

Law stated - 24 February 2025

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

Disputes in the course of financial services M&A transactions are not commonly seen via publicly available information, despite the parties possibly being involved in controversies or that cooperation may fail. Typical reasons may include breach of representations or warranties, failure to obtain regulatory approval due to a party's breach or lack of qualification, or failure to make payment on time. If a breach is before closing, the parties may terminate the cooperation, but because financial M&A transactions are typically subject to the approval of the relevant regulators, the procedure may be more complex compared to transactions in other unregulated industries. If the breach is post-closing, the parties may bring a legal proceeding for damages or exit the company, if applicable.

Law stated - 24 February 2025

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

In a cross-border financial M&A transaction, the parties usually select arbitration for dispute resolution (although a court proceeding is the default way of dispute resolution), as arbitration appears to have the advantages of specific expertise, flexibility, confidentiality and independence. The parties may select the location and language of the arbitration as well as the arbitrators. Commonly seen arbitration tribunals include, without limitation, the China International Economic and Trade Arbitration Commission, Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center, Hong Kong International Arbitration Centre, the ICC International Court of Arbitration and the Shenzhen Court of International Arbitration.

Law stated - 24 February 2025

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

In recent years, China has relaxed its restrictions on market access to the financial services industry and continually deepened the opening-up of the financial market. Foreign-funded institutions have basically achieved national treatment in terms of business scope and regulatory requirements, and many internationally renowned institutions have accelerated their investment in China.

In addition to the supporting policies at the state level, Shanghai, Hainan, the Great Bay Area and many other areas have also promulgated localised rules to encourage foreign investment, secure the rights and interests of foreign shareholders and improve the convenience of foreign investment and operation.

In the second half of 2024, various buyers and most industries maintained a positive momentum. Although negative factors had not completely dissipated, the number of M&A transactions continued to show an upward trend, and the market has shown signs of positive recovery.

The introduction of the aforesaid policies represents China's recognition of the important role of foreign-invested institutions in the development of the Chinese financial markets and will further attract investment and participation of foreign institutions, promote the internationalisation and competitiveness of China's financial markets and provide opportunities for foreign-invested financial institutions to expand their businesses in China.

Law stated - 24 February 2025

FANGDA PARTNERS
方達律師事務所

Zhiyi Ren zhiyi.ren@fangdalaw.com
Blake Wang blake.wang@fangdalaw.com
Rena Liu Rena.Liu@fangdalaw.com

Fangda Partners

Egypt

Mohamed Hashish, Mariam Rabie, Farida Rezk, Omar Aboul-Ella
Soliman, Hashish & Partners

Summary

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

Egypt has managed to attract more foreign direct investment (FDI) in multiple sectors, including primarily the financial services sector, thanks to the government's efforts in improving the business environment in the country over the past few years. This achievement is supported by a plethora of international recognition, as follows:

- Egypt was recognised as one of the top five destinations globally for greenfield FDI in 2016, where Cairo was also ranked among the top 10 cities hosting start-ups in the same year. In 2023, greenfield projects more than doubled in number, reaching 161.
- Egypt was also recognised as one of the top five countries with economies that account for 40 per cent of projects in Africa as per the United Nations Trade and Development (UNCTAD) World Investment Report 2023.
- Egypt replaced by South Africa, ranking the second destination by projects in the Middle East and North Africa region (MENA), experiencing a 60 per cent increase from 85 to 136 projects as per the FDI Report 2020.
- Egypt came on top of all ranked MENA countries by capital investment in 2020 by acquiring 12 per cent capital investment with a total value of US$13.7 billion, where financial services were among the top five sectors in 2019.
- Net FDI in Egypt reached US$46.1 billion in 2024, a significant leap compared to US$10 billion in 2023, according to the Ministry of Investment and Foreign Trade.
- Egypt remains the second-largest recipient of FDI in Africa after South Africa, as per the FDI Report 2021.

Despite international and local crises faced by the country over the years (including political unrest, covid-19, the Russia–Ukraine war, the Palestine-Israel conflict, inflation and the threat of recession), the current market climate in the banking sector in Egypt can generally be described, as articulated by Bloomberg: 'a profit bonanza for Egyptian banks is ripening the industry for acquisitions. If only there were more willing sellers.'

Currently, there are around 38 banks operating in Egypt, including around 20 regional and international banks.

On 25 January 2022, the Central Bank of Egypt (CBE) announced the issuance of an all-new licence to Standard Chartered Bank to operate in Egypt, marking the first all-new licence to be issued by the CBE since the registration of Arab International Bank in Egypt on 5 June 2012. Since that date, it was not feasible for any new bank to operate in Egypt through an all-new licence, aside from the public entities and international banking institutions operating under a special international instrument (eg, International Monetary Fund (IMF), the World Bank Group and Agence Française de Développement (AFD)). Currently, the only practical way to operate in Egypt is to acquire an existing bank registered with the CBE. Over the past 10 years, a number of large acquisitions took place within the banking sector in Egypt, including the following major acquisitions:

- the completion of the legal merger of First Abu Dhabi Bank and Bank Audi Egypt in June 2022;
- the acquisition made by Bahrain's Arab Banking Corporation of BLOM Bank Egypt in January 2021; and
- the acquisition of Arab Investment Bank by both the Sovereign Fund of Egypt and EFG Hermes Holding S.A.E. in May 2021.

However, the international non-banking financial institutions do not face the same challenges and limitations, as they can still apply for new licences from the Financial Regulatory Authority (FRA) for the majority of non-banking financial activities. This indicates the fact that fintech has been one of the main sectors attracting FDI in Egypt over the past few years, becoming increasingly dominant within the Egyptian market.

In our opinion, the most notable players in the banking sector include:

- National Bank of Egypt and Banque Misr, at governmental level, both of which have been exerting major efforts to improve their services and gain more recognition in Egypt;
- Commercial International Bank and Arab African International Bank, at the local and regional level, both of which predominantly compete to attract corporate clients; and
- HSBC, a top-tier international bank in Egypt, which has the most advanced online banking services in the market.

The most notable players at the non-banking financial institutions level include, in our opinion, EFG Hermes, Beltone, HC Securities & Investment and CI Capital.

Additionally, tseveral large M&A transactions occurred within the non-banking financial sector in Egypt, including, among others, the following major transactions:

- MNT-Halan, Egypt's leading and fastest-growing fintech ecosystem, which announced in February 2023 that Chimera Abu Dhabi has invested more than US$200 million in equity in exchange for over 20 per cent of the company.
- Beltone Financial Holding, a large Cairo-listed investment company, which announced that it signed the final agreement to acquire 100 per cent of Cash Microfinance in September 2023.
- B-Investments Holdings, an Egypt-based private equity firm, which announced in February 2024 its acquisition of a majority stake in Orascom Financial Holding S.A.E., a financial services investment company.
- B2B e-commerce platform MaxAB and the Kenya-based Wasoko were announced in August 2024 to have completed Africa's largest-ever tech merger.
- In 2024, Ezdehar, a direct investment fund management company, acquired a minority stake in Yodawy, a medical technology company, through its Ezdehar Mid-Cap Fund II.
-

United Arab Emirates' open finance platform Fintech Galaxy's acquisition of Underlie, an Egyptian open banking platform offering application programming interface to banks and businesses in December 2022 for an undisclosed amount.

- The recent conclusion by EFG Hermes of the sale of a 60 per cent stake in Auf Group to leading Emirati food company Agthia in November 2022.
- EFG Hermes' Tanmeyah, a microfinance services company, concluded full acquisition of Fatura Netherlands, a provider of B2B e-commerce marketplace and digital solutions, in June 2022. Since 2019, Fatura has expanded its operations across 22 of Egypt's provinces; Tanmeyah serves around 391,000 clients and runs a portfolio of more than US$208 million.
- Vodafone Group plc's completion of the transfer of its 55 per cent shareholding in Vodafone Egypt to Vodacom Group Limited in December 2022, aiming to accelerate the growth in financial services and the Internet of Things.

Law stated - 20 February 2025

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

It is important to differentiate, in general, between banking and non-banking financial services. In this regard, it is not permitted to carry out any banking activities in Egypt without being licensed by and registered with the CBE. This restriction covers any activities of receiving deposits, providing refinancing, loans, facilities and contributing to share capital in local companies, as well as any other activities that are considered a banking activity as per the banking custom, on a regular basis and as the main business activities of any person carrying out these activities. However, this restriction does not apply to public juristic persons that carry out any of the said banking activities within their scope of incorporation and international financial institutions that were empowered to do so in Egypt by virtue of any special law or international treaty (eg, IMF, World Bank Group and AFD).

Any person violating the aforementioned restriction shall be subject to imprisonment for a period of up to three years or a fine of not less than E£5,000 and not more than E£50,000.

The non-banking financial services cover mainly any activities related to the fields of:

- securities, namely capital markets;
- insurance, reinsurance or insurance brokerage activities;
- mortgage finance activities;
- financial leasing activities;
- securitisation and factoring activities; and
- microfinance.

Each of these fields is subject to special and intensive regulation, where FRA is empowered by law to regulate and supervise these fields such that no one can carry out any of these activities without obtaining the required licences, approval or authorisations from FRA.

In 2023, FRA issued a regulatory framework for the licensing of startups engaged in non-banking financial activities, whereby startups must, inter alia, be incorporated as Egyptian joint-stock companies and have a minimum issued and paid-up capital of EG£15 million per activity.

The policies in both non-banking and banking financial services are very strict and implemented in practice.

Law stated - 20 February 2025

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 | What primary laws govern financial services M&A transactions in your jurisdiction?

The primary laws that govern banking and non-banking financial services include the following:

- Financial Regulatory Authority (FRA) Decree on the Conditions and Procedures Required for the Incorporation, Licensing and Approval of Financial Technology Institutions No. 58 of 2022;
- Fintech Law No. 5 of 2022;
- Banking Law No. 194 of 2020;
- Capital Market Law No. 95 of 1992;
- FRA's Decree on the Non-Banking Financial Services Regulations No. 53 of 2018;
- FRA's Decree No. 268 of 2023 on the rules and procedures for establishing and licensing fintech startups; and
- FRA's Decree No. 176 of 2018, adopting the Microfinance and Factoring Legal Framework.

In 2024, the Egyptian government issued various regulations on fintech in the non-banking financial sector, regulating the licensing framework for such activities, enhancing financial inclusion and propelling the digital transformation of the financial sector within the country.

Law stated - 20 February 2025

Regulatory consents and filings

4 | What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

For banking services

Prior approval is required from the Central Bank of Egypt (CBE) for holding more than 10 per cent in any bank registered in Egypt or holding any percentage that leads to the actual control of such a bank. This actual control covers the ability of a person (including the related parties thereof) to appoint the majority of the company's board members, or to control in any way the decisions issued by its board of directors or general assembly.

In this regard, a pre-acquisition application is required to be submitted to the CBE at least 60 days prior to the acquisition. If the acquisition is based on an involuntary reason, such as inheritance, will, or due to a merger, acquisition or split-up, the application must be submitted at least 30 days as of the date on which the controlling party became aware of such acquisition.

The CBE is required by law to notify the person concerned with its decision within 60 days from the date on which all required documents are successfully submitted to the CBE.

Furthermore, any person holding between 5 and 10 per cent of the issued capital of any registered bank in Egypt or voting rights in such a bank shall notify the CBE of such ownership within 15 days as of the ownership date.

For non-banking financial services

No natural or juristic person (including its related parties) may acquire a non-banking financial institution representing 10 per cent or more of the size of its relevant market without obtaining the prior approval of FRA's board of directors, if the acquisition will result in any of the following:

- acquiring one-third of the relevant target company's capital or voting rights;
- acquiring half of the relevant target company's capital or voting rights;
- acquiring two-thirds of the relevant target company's capital or voting rights; and
- acquiring three-quarters of the relevant target company's capital or voting rights.

Furthermore, anyone who owns at least 10 per cent of the capital or voting rights of a non-banking financial institution is not allowed to increase this ownership by 5 per cent or more in the same non-banking financial institution, unless prior approval is obtained from FRA.

Other than the above, no person is generally allowed to acquire, directly or indirectly, more than one-third of the issued capital of any security brokerage company or managed investment fund that represents more than 10 per cent of the size of its relevant market or any percentage that leads to its 'actual control', except after obtaining FRA's prior approval.

The term 'actual control' covers any position, agreement or ownership of shares or stakes of any percentage that leads to controlling the appointment of the majority of the members of the board of directors or the decisions issued by it and from the general assembly of the company concerned.

Law stated - 20 February 2025

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

For non-banking financial institutions, at least 25 per cent of the share capital of any non-banking financial services company shall be owned by another financial institution and 50 per cent of the said share capital shall be owned by any juristic person, of which 50 per cent shall increase to 75 per cent for mortgage financial services companies. This rule does not apply by law to the banks; however, in practice, the CBE takes into account the adequacy and relevant experience of the buyer who is willing to acquire a stake in banks in Egypt, especially for change of control.

Law stated - 20 February 2025

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

There are no specific restrictions imposed by law on who can hold the position of the director of a bank in Egypt. However, before appointing the chairman of the board of directors, the board members or the directors of any bank in Egypt, the prior approval of the CBE's governor must be obtained. This approval takes into consideration the nominated director's relevant experience and qualifications.

For non-banking financial services, directors are in general required to have minimum relevant experience and qualifications, where their appointment is also subject to FRA's approval. However, the board of directors of companies operating in non-banking financial activities must include at least one female board member, unless otherwise determined by FRA. Furthermore, the board of directors of EGX listed companies must include a minimum of 25 per cent female representation, or at least two female board members.

Law stated - 20 February 2025

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Directors and officers are generally liable for complying with all governing laws and regulations applied to the specific activities of the entities where they are responsible for their actual management by having the power to take decisions. This includes, for example, submitting all required reports and obtaining all required approvals for M&A transactions.

This responsibility is deemed a public order provision that cannot be excluded between the acquisition parties, especially for any criminal risk that might be associated with the specific violation.

Law stated - 20 February 2025

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

In general, there are no foreign ownership or investment restrictions applied to acquisitions within the financial services sector in Egypt. However, as a basic rule under Egyptian law, security clearance shall be obtained for any foreigner seeking to work or do business in Egypt. In practice, the regulatory requirements for obtaining security clearance are highly restrictive for certain countries (such as China, Russia, Ukraine, Nigeria, Israel, Iran, Belarus, Bangladesh, Iraq and Palestine), where security clearance is required to be obtained before authorising any acquisition.

Furthermore, obtaining approvals, licences and authorisations from both the CBE and FRA is subject to a number of elements, including national security and public interest; therefore, granting such approvals, licences and authorisations to the aforementioned nationalities may present a challenge.

Law stated - 20 February 2025

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

In December 2022, the government approved the latest amendment to the Antitrust Law No. 3 of 2005, whereby the newly introduced pre-approval scheme replaces the post-notification requirement. The new pre-approval scheme requires that any transaction that constitutes economic concentration obtains the Egyptian Competition Authority's (ECA) pre-approval. Economic concentration is defined as any change of control or material influence as a result of a merger, acquisition or establishment of a joint venture, whereby the effective date of such merger control regime was only implemented as of June 2024. As part of the said regulatory framework, FRA's notification and pre-approval are required for any transaction that constitutes economic concentration whereby the concerned persons exercise one of the activities under FRA's supervision, noting that both FRA and ECA cooperate in such aspect, in accordance with certain prescribed timelines under the law before clearing an economic concentration.

Law stated - 20 February 2025

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

It is not yet practically possible to obtain a new bank registration licence in Egypt. Therefore, the only available option is shares acquisition. However, as highlighted above, Commercial International Bank, being an existing licensed bank, has managed to acquire the private retail banking portfolio of Citibank Egypt, also an existing licensed bank. With that being said, the acquisition of assets within the banking sector may be made only between two existing banks registered at Central Bank of Egypt (CBE), as long as such assets are interlinked with banking services.

However, for non-banking financial services, investors prefer establishing a new company for the purpose of providing these services unless the relevant licence is not available for issuance by the Financial Regulatory Authority (FRA), such as the case of the brokerage services licence when it was suspended for a year from June 2020 to June 2021.

Law stated - 20 February 2025

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

M&A acquisition within the financial services sector is a time-consuming process involving a typical time frame of, in practice, at least six months, and during which a large number of documents are required to be submitted.

Law stated - 20 February 2025

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

As a general rule, Law No. 76 of 2017 applies to any M&A transactions, as follows:

- capital gains tax, at a rate of 22.5 per cent (the CG tax); and
- stamp duty, at a rate of 0.175 per cent, applicable to both the seller and purchaser.

The stamp duty rate can reach 0.3 per cent for both the seller and the purchaser in the event that the transaction involves the acquisition of 33 per cent or more of the capital or voting rights of a listed company, or in the event that the transaction involves a SWAP of 33 per cent of the assets value of a listed company against shares in another listed company. It is worth noting that the CG tax shall be based on the fair market value determined by an independent financial adviser. However, in the event of a cross-border transaction, a double taxation treaty (DTT) between Egypt and the other state may reduce the CG tax and the stamp duty rate. The CG tax, stamp duty and DTT are usually the primary tax concerns when considering the transaction's structure.

Law stated - 20 February 2025

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

Both CBE and FRA have been working on applying ESG standards in an effort to meet the international ESG standards. In 2021, the FRA has introduced mandatory disclosure obligations for all non-banking financial institutions and companies listed in the EGX, whereby the said companies are obligated to submit ESG reports and climate-related financial disclosures in their annual reports.

The CBE has also worked on multiple successful initiatives with the existing registered banks in Egypt, whereby these banks were required to comply with the terms of such initiatives. Therefore, the ESG standards should be taken into consideration for any M&A transaction within the financial services sector.

Such initiatives, as highlighted by the CBE aim to support Egypt's commitment to the UN Sustainable Development Goals and its Sustainable Development Strategy: Egypt Vision 2030.

Law stated - 20 February 2025

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

Parties usually address political and policy risks by agreeing on mutual collaboration in the event of such risk, with certain assumptions and remedies.

Law stated - 20 February 2025

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Minor shareholders are protected by the relevant financial services laws and regulations against major shareholders where certain procedures are required to be followed strictly to avoid invalidating decisions taken that do not comply with such procedures. For example, the Capital Market Law and its Executive Regulation grant a tag-along right to minority shareholders in listed and delisted joint stock companies (JSCs) upon acquisition of 90 per cent or more of the share capital or voting rights of such JSCs.

Law stated - 20 February 2025

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Third-party consents and notifications are required in certain cases, including, for example, in the event of a shareholders' agreement whereby the other shareholders have a right of first refusal or a pre-emption right (or both) over shares being sold.

As another example, in the event of a merger or change of the company's form, an extraordinary general shareholders' meeting shall be held to approve the said merger or change of the company's form.

Law stated - 20 February 2025

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

As a general rule under the Civil Code, the seller is not answerable for any defects of which the purchaser was aware at the time of the sale or any defects that could be discovered by the purchaser by examining the subject of the sale with the care of a reasonable person, unless the purchaser proves that the seller confirmed the absence of those defects.

There is no typical scope of due diligence in Egypt as it depends on the level to which the buyer is willing to conduct due diligence. However, conducting a full due diligence is usually recommended so as to remain in compliance with the aforementioned general rule. Specialist lawyers in banking and finance laws should typically be involved. According to the Circular dated 7 March 2016 amending the acquisition finance regulation, the CBE requires legal and financial due diligence for certain types of transaction.

Law stated - 20 February 2025

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

Tax and financial advisers are usually required.

Law stated - 20 February 2025

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

There is no additional due diligence required with regard to emerging technologies or practices in Egypt, such as cryptocurrencies, other than the standard due diligence, namely legal and financial due diligence.

Law stated - 20 February 2025

PRICING AND FINANCING

Pricing

20 How are targets priced in financial services M&A transactions? What factors typically affect valuation?

Valuation by a licensed valuator registered at the Central Bank of Egypt (CBE) or Financial Regulatory Authority (as the case may be) should be made.

Law stated - 20 February 2025

Purchase price adjustments

21 What purchase price adjustments are typical in financial services M&A transactions?

Purchase price adjustments are typically based on the fair market value.

Law stated - 20 February 2025

Financing

22 How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

Acquisitions are usually funded by the buyers’ own sources of finances; however, acquisition financing is also commonly used through banks and international financial institutions, noting that banks registered at the CBE may provide acquisition financing of only up to 50 per cent of the acquisition value unless prior approval is obtained from the CBE.

Law stated - 20 February 2025

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

Representations and warranties are typically made, for example, with respect to the satisfaction of all authorisations to enter into the transaction; the transaction documents being binding, legal and valid towards the seller; non-conflict with any other documents; absence of encumbrances; and obligations not to dispose, sell or create any right over the target.

Law stated - 20 February 2025

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Indemnities are typically made, for example, with respect to any matters that the buyer does not seek to assume or matters that pose unusual or unexpected risk, with certain limitations as required by law.

Law stated - 20 February 2025

Closing conditions

25 What closing conditions are common in financial services M&A transactions?

Closing conditions are determined on a case-by-case basis; however, in practice, closing conditions usually include, for example, regulatory approvals, payment, top management restructuring and execution of ancillary documents (if any).

Law stated - 20 February 2025

Interim operating covenants

26 What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Covenants are usually related to, among other things, conduct of business, authorisation, breach of representation and warranties, as well as no transfer or encumbrances.

Law stated - 20 February 2025

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

The most common issue with respect to financial services M&A transactions is primarily related to acquiring the necessary regulatory approvals and authorisations, where the parties may typically agree on a grace period to obtain the required approvals and authorisations. Otherwise, the agreement shall be terminated subject to certain provisions.

Law stated - 20 February 2025

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

Arbitration is the most common ADR in financial services M&A transactions. However, in a few cases, the parties may resort to the competent state court, namely, the Economic Court.

Law stated - 20 February 2025

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

The fintech sector has become increasingly dominant in the Egyptian financial services M&A market, as the most popular business models within the Egyptian jurisdiction are payment platforms and financing services. According to several recent reports, digital payment will be the dominant segment in Egypt's financial services M&A sector by 2025, as evidenced by the introduction of InstaPay and ApplePay in Egypt in 2024.

Furthermore, the Financial Regulatory Authority (FRA) has recently established a regulatory testing platform or sandbox allowing startups engaged in non-banking financial activities to test their fintech products in a live regulatory environment with real consumers for a period of time. This comes in preparation of providing them to clients, under the supervision and oversight of FRA, for the purpose of supporting and facilitating the entry of smart start-ups into the market.

In 2024, FRA approved Egypt's first Special Purpose Acquisition Company, which is defined as a company licensed solely to raise funds through an initial public offering for the purpose of acquiring or merging with an existing company within a two-year time frame from the date of its initial listing in the EGX, as per Decree No. 148 of 2024. The company, Catalyst Partners Middle East, was established to operate as a venture capital firm focusing on acquiring businesses in the non-banking financial services and fintech sectors.

It is also worth noting that as per Decree No. 184 of 2024, FRA has suspended the acceptance of applications for the establishment and approval of persons wishing to obtain a licence from FRA to engage in microfinance or consumer finance, until any further updates in this regard from FRA.

Law stated - 20 February 2025

SOLIMAN, HASHISH & PARTNERS
LAW FIRM

Mohamed Hashish m.hashish@shandpartners.com
Mariam Rabie m.rabie@shandpartners.com
Farida Rezk f.rezk@shandpartners.com
Omar Aboul-Ella o.aboulella@shandpartners.com

Soliman, Hashish & Partners

Japan

Tsunemichi Nakano, Masatsugu Nakajima, Keisuke Hatano, Ryosuke Mochizuki
Anderson Mori & Tomotsune

Summary

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

As in previous years, one of the key areas in the financial services sector where we are seeing renewed activity is fintech, where many businesses and technologies are rapidly evolving. For example, in 2024, Gaitame.Com Co, Ltd made a tender offer to Money Partners Co, Ltd for around US$95 million.

In the current market, large financial sector companies are actively engaging in M&A. One of the key drivers of this trend is addressing the well-documented declining population of Japan, aiming to increase their share of the company in Japan and seeking new growth opportunities out of Japan. There were some notable transactions during 2024. For example, Mizuho Financial Group invested in Rakuten Card Co, Ltd for about US$1.1 billion in Japan, and the acquisition of Resolution Life Group Holdings for US$82 billion by Nippon Life Insurance.

Thus, there is a significant amount of M&A activity taking place in Japan's financial services sector.

Law stated - 31 January 2025

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

Existing government policies regulating M&A activity in the financial services sector continue to appear generally neutral. For example, the approval of M&A transactions will generally proceed smoothly as long as the relevant transaction does not threaten the stability of the Japanese financial system. Furthermore, the nationality of the purchaser will generally not affect the participants from obtaining any necessary licences or permits required.

However, the Financial Services Agency (FSA) is aware that there are certain number of cases where foreign business operators or investors purchase shareholdings of existing Japanese licensed financial institutions, in order to avoid being subject to the relevant licensing requirements. This is theoretically possible because, for certain types of licences, such as securities companies, cryptoasset exchanges or fund transfer service providers, only a post facto notification is required when a major shareholder has changed. In response to these circumstances, the FSA recently amended its supervisory guidelines and stated that, if there is a significant change in the shareholder structure of such financial institutions and a significant change in the composition of the officers or important employees of the financial institution initiated by the change of shareholder, the FSA will verify, in the same way as for registration examinations, whether the financial institution is still able to appropriately carry out the licensed business.

Law stated - 31 January 2025

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 | What primary laws govern financial services M&A transactions in your jurisdiction?

The Banking Law (Law No. 59 of 1981) and the Financial Instruments and Exchange Law (Law No. 25 of 1948) regulate banking and financial instruments, including broker/dealer and asset management. The Insurance Business Law (Law No. 105 of 1995) regulates the insurance sector and the Payment Services Law (Law No. 59 of 2009) regulates payment services such as fund transfer services and cryptoasset exchange services.

Other laws that are generally applicable (albeit sometimes controversially), to M&A transactions in the financial services area include the Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), which regulates investment in Japanese companies by foreign investors, and the Law Concerning the Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947).

Law stated - 31 January 2025

Regulatory consents and filings

4 | What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

A person who holds more than 5 per cent of the voting rights in a bank or an insurance company (foreign or domestic) must submit a report on its major shareholding to the Financial Services Agency (FSA) within five business days of acquiring such stakes. In addition, prior approval from the FSA is required for holding 15 per cent or more (for strategic investments) or 20 per cent or more (for non-strategic investments) of voting rights in a bank or insurance company. Prior approval from the FSA is also required for mergers and company splits in which a bank or an insurance company becomes a party.

On the contrary, no special authorisation from the FSA is required for mergers and company splits involving other types of financial institutions (eg, securities companies, asset managers, cryptoasset exchanges and fund transfer service providers), while the financial institution and/or the new major shareholder are required to notify the name and certain information of the new major shareholder.

Law stated - 31 January 2025

Ownership restrictions

5 | Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

Authorisation from the FSA is required for any legal person to become a major shareholder of a bank or an insurance company (ie, hold voting rights in a bank or insurance company amounting to 15 per cent or more, or 20 per cent or more, depending on the specific circumstances of the case).

As part of the authorisation process, the FSA examines whether the sound and appropriate operation of the bank or insurance company's services can be carried out even after the change of the major shareholder, considering the financial status of the new major shareholder, the purpose of the acquisition, or any other relevant details. Additionally, the FSA assesses whether the system pertaining to the holding of voting rights of the new major shareholder is unlikely to impair the sound and appropriate management of the bank or insurance company's services. Furthermore, the FSA evaluates whether the acquirer has a sufficient understanding of the public nature of banking or insurance services and possesses sufficient social credibility.

The FSA may, when and to the extent necessary for ensuring sound and appropriate management of the business of a bank, in light of the condition of the business or property of a major shareholder of bank that holds more than 50 per cent of total voting rights (controlling shareholder of bank), request such controlling shareholder to submit an improvement plan for the sound management of the bank or take other measures. This means that the FSA is able to request a controlling shareholder of bank to inject new capital.

Law stated - 31 January 2025

Directors and officers – restrictions

6 | Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

There are no domicile requirements that apply to directors or employees of financial institutions. However, a full-time director of a bank or insurance company must meet criteria that aimed at demonstrating that they are 'fit and proper' for the relevant role.

As to the requirement to be 'fit', a full-time director must possess sufficient knowledge and experience to understand and comply with any applicable laws and regulations, as well as the regulator's expectations as outlined in their supervisory guidelines. This includes expertise in compliance, risk management and overall business management of the financial institution.

As to the requirement to be 'proper', a full-time director must have no affiliations with organised crime groups, must not have been convicted of financial services crimes (or, indeed, imprisoned for any crime), must not have caused any other financial institution to face an administrative order or failure and must not have received a dismissal order from the relevant regulator.

Law stated - 31 January 2025

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Directors of a company owe a fiduciary duty to the company itself (rather than to shareholders themselves, as is the case in some jurisdictions) as outlined under the Companies Act. In the context of an M&A transaction, the director's decisions regarding the transaction are evaluated based on the business judgment rule. Under the business judgment rule, a director is not considered to have breached their fiduciary duty unless they make an intentional mistake or a grossly unreasonable decision in the process of gathering and analysing information.

Law stated - 31 January 2025

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

According to the Foreign Exchange and Foreign Trade Act (FEFTA), foreign investors must provide prior notification to the Ministry of Finance when acquiring 1 per cent or more of shares in a listed Japanese company or any shares in a non-listed Japanese company, especially if the company is involved in security-related activities or has been designated by the Ministry of Finance or other authorities due to potential economic risks. Although financial services are typically not included in this category, certain financial institutions engaged in activities such as software development and information processing, may still be required to submit prior notifications and undergo review by the relevant authorities.

However, foreign investors are exempt from prior notification if the following conditions apply to the investment:

- Investors or their closely-related persons will not become board members of the target company.
- Investors will not propose to the general shareholders' meeting the transfer or disposition of the target company's business activities in the designated business sectors.
- Investors will not access non-public information about the target company's technology related to business activities in the designated business sectors.

Nonetheless, even if exempt from prior notification, regulated financial institutions will still be required to submit a post-investment notification for investments acquiring 10 per cent or more of shares.

As for general foreign investors (except for those with a record of sanctions due to violation of the FEFTA and certain state-owned enterprises), if the three conditions listed above are satisfied, the relevant investment is also exempt from prior notification. This is unless the target company operates in a core business sector and the investor acquires 10 per cent or more of the shares. Furthermore, for investments in core business sector, the following additional conditions must be met for the investment to be exempt from prior notification:

- Regarding business activities in core sectors, investors will not attend the target company's executive board or committees that make important decisions in these activities.
- Regarding business activities in core sectors, investors will not make proposals, in a written form, to the executive board of the target company or its board members requiring their responses and/or actions by certain deadlines.

With respect to post-investment notifications, even if the above conditions are satisfied, post-investment notifications are required for acquisitions of 1 per cent or more of shares.

Law stated - 31 January 2025

Competition law and merger control

9 | What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

According to the Antimonopoly Act, if an acquirer's consolidated annual sales in Japan exceed ¥20 billion, they must notify the Japanese Fair Trade Commission at least 30 days before their shareholding in a Japanese target company surpasses the thresholds of 20 per cent and 50 per cent, provided that the target has consolidated annual sales in Japan exceeding ¥5 billion.

The FSA has stated its aim of encouraging the mergers of regional banks to improve the banking system's efficiency and stability. However, the Antimonopoly Act poses a challenge for proposed mergers of regional banks that operate within the same area such mergers could risk creating local, potentially anti-competitive concentrations of regional banks. To address this issue, a special law was enacted in 2020, allowing regional bank mergers to be treated as exceptions under the Antimonopoly Act for 10 years, provided that the relevant merger receives approval from the FSA.

Law stated - 31 January 2025

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 |

What structures are commonly used for financial services M&A transactions in your jurisdiction?

The deal structures commonly used for M&A transactions in financial services are essentially the same as those used in other sectors in Japan. However, M&A targeting certain regulated financial institutions, such as banks and insurance companies, generally require approval from the Financial Services Agency (FSA) regardless of the form of the transaction.

The easiest way to acquire a private company is through the purchase of shares but alternatively, reorganisation structures such as mergers or company splits can be used to acquire all part of a target business. Generally, the main advantage of a merger or company split is that all rights and obligations, including contracts and liabilities, are transferred to the successor company by operation of law without requiring the consent of creditors or other counterparties, unless specifically required by the agreement.

As a reorganisation act peculiar to Japanese law, there is a statutory reorganisation procedure called a 'share transfer'. This allows the parties to incorporate a holding company that will hold all the issued shares in the financial institution to be consolidated.

Law stated - 31 January 2025

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

The time frame for M&A transactions heavily depends on the nature of the transaction in question. Acquiring shares in a bank or an insurance company generally requires authorisation from the FSA, which invariably impacts the overall timeline. On the whole, the process is shorter when a financial institution acquires or merges with another financial institution, compared with when a non-financial institution acquires a financial institution. In the latter case, it is necessary to demonstrate to the FSA that the acquired financial institution will continue to be managed properly after the acquisition.

Law stated - 31 January 2025

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

In a case of reorganisation utilising, for example, a merger, similar to M&A transactions in other sectors, it is essential that any reorganisation qualifies as a tax-qualified reorganisation under Japanese tax regulations. If not, taxes may be imposed on both the target company and its shareholders in connection with the reorganisation.

On the other hand, if the M&A transaction is structured as a simple share transfer, the capital gains from the any sale of shares are subject to a tax at approximately 30 per cent in the case of when the seller is a company. By contrast, if the seller is an individual, the relevant tax rate is approximately 20 per cent.

In addition, in the case of cross-border M&A transactions, the jurisdiction of the purchasing entity should be carefully selected, as relevant tax treaties (if any) may impact the tax implications of the transaction.

Law stated - 31 January 2025

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

In Japan, by virtue of the Corporate Governance Code, companies listed on the Tokyo Stock Exchange are required to make disclosures about ESG-related matters and provide an explanation if they do not do so. The Corporate Governance Code also requires companies to collect and analyse necessary data on the impact of climate change-related risks and opportunities on their business activities and earnings, and to enhance the quality and quantity of disclosures in accordance with the guidelines of the Task Force on Climate-related Financial Disclosures and equivalent internationally established disclosure frameworks.

From 2023 onwards, listed companies have been required to include sustainability disclosures in their annual reports. Major Japanese financial institutions have pledged to stop financing coal-fired power plants as part of their general ESG strategies. In addition, in the Basic Environment Plan, which was published by Ministry of the Environment on 21 May 2024, the Ministry of the Environment indicated the policy that Japan will promote the green transformation of the economic system by expanding environmental finance.

Japan will continue to encourage related parties, including corporations and financial institutions, to improve their efforts for information disclosure and its quality assurance, and it will also organise the environment necessary for the development of the domestic market for green finance (eg, by improving the list of eligible green projects for use of proceeds to further clarify the criteria for determining greenness in the Green Bond and other Guidelines).

Therefore, in this context, ESG considerations, especially environmental and sustainability-linked factors, are anticipated to continue to have an increasingly significant role on future financial services M&A transaction.

Law stated - 31 January 2025

Political and policy risks

14

How do the parties address political and policy risks in financial services M&A transactions?

Political and policy risks arising between signing and closing include foreign capital regulations, such as Committee on Foreign Investment in the United States, and competition law regulations.

These risks, which often lack clear screening criteria, will be addressed in the conditions precedent of the relevant purchase agreement, typically through the inclusion of a material adverse change (MAC) clause.

In covenants clauses, parties may also include provisions for obtaining the necessary clearances to execute the transaction. In some cases, a 'hell or high water clause' stipulates that the Buyer is obligated to do everything necessary to secure clearance, including compliance with foreign capital regulations, competition law regulations and other relevant requirements.

Although hell or high water clauses are not common in Japanese M&A transactions, MAC clauses are widely used. However, these may be less prevalent if the seller has a particularly strong bargaining position, such as in a bidding process with multiple competing bidders or when the seller is a private equity firm.

Law stated - 31 January 2025

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

In Japan, there has been a rapid increase in the number of cases in which shareholder activists are actively involved in M&A. Such activists often become particularly involved in municipal against a company when campaigning against publicly announced transactions that they disagree with, typically on the grounds of valuation or strategy.

Typical M&A deals targeted by shareholder activists include those involving target companies with a limited number of stable and friendly shareholders, transactions where there may exist conflicts of interest between the relevant companies and/or boards, and transactions that take an extended period of time to complete.

For example, in 2023, SBI Holdings, Inc made a tender offer to SBI Shinsei Bank, Limited, and from the closing of the tender offer bid to the squeeze-out period, one of the famous Japanese activist groups increased its shares and remained a shareholder even after going private. After going private, activist shares were acquired by share repurchase of SBI Shinsei Bank, Limited and share purchase of SBI Holdings, Inc.

In the case of regional banks, there is an increasing number of cases in which activists propose shareholder return measures at shareholder meetings, and through these activities, M&A proposals may be made.

Law stated - 31 January 2025

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

On the whole, when executing a financial services M&A transaction, third-party consents and notifications are not required.

For simple share transfers, no third-party consents or notifications are required by Japanese law. However, if the target company has entered into any contracts with change of control clauses, then clearly the parties to the transfer will need to consider obtaining the relevant consents and/or making appropriate notifications.

For transactions structured as mergers or company splits, no third-party consents or notifications are required under Japanese law. However, as is the case for simple share transfers, if the target company has previously entered into any contracts with change of control clauses, then the parties will need to consider obtaining the relevant consents and/or making appropriate notifications. In addition, in the case of mergers or company splits, there is a statutory creditor notification process that entitles creditors to object to the transaction.

Law stated - 31 January 2025

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

As with M&A transactions in other sectors, the legal due diligence process will involve reviewing documentation and conducting Q&A sessions on various matters, including the company's capital structure, assets, liabilities, contracts, compliance, employee issues and current or threatened disputes. One obvious difference between legal due diligence in the financial services sector and in other sectors is that the former typically places greater emphasis on government licensing and compliance matters, including the analysis of guidance, sanctions or any other actions from regulatory authorities. In addition to these, cybersecurity, including the handling of personal data, is often a major concern that requires careful analysis, such as examining the compliance with Guidelines for Protection of Personal Information in the Finance Sector and the systems in place to ensure adherence.

Depending on the target business in question, the legal due diligence may need to consider the target's potential exposure to sanctions or its links to organised crime, especially if the business deals with a significant number of counterparties. Regulations concerning organised crime (or 'anti-social forces' as termed under Japanese law) are specific to Japan and are based on guidelines issued by the Financial Services Agency (FSA). Therefore, any potential acquirer in the financial services sector should conduct screening for organised crime issues, particularly concerning counterparties with potential issues.

Law stated - 31 January 2025

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

In financial services M&A transactions, due diligence typically encompasses business, legal, financial and tax aspects of the target, as is the case with M&A transactions in other sectors.

If the acquirer is a financial service provider, it is important to determine whether acquiring a financial service provider from another country is permitted under the regulations of the target country. Additionally, it should be clarified whether such an acquisition requires any additional disclosures or formalities in the target country.

Also, there is often a heightened focus on the valuation of financial assets involved in the deal during due diligence in the financial services sector.

Furthermore, depending on the specifics of the financial services involved, due diligence may also be necessary for the target's IT systems.

Law stated - 31 January 2025

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

From a legal standpoint, regulatory compliance is essential when the target business involves blockchain and cryptoassets.

The Payment Services Act regulates companies engaged in the exchange, brokerage, intermediation, agency or management of cryptoassets. Cryptocurrency assets are defined as proprietary value that may be used to pay an unspecified person the price of any goods purchased or borrowed or any services provided, where such proprietary value may be (1) sold to or purchased from an unspecified person, provided such sale and purchase is recorded on electronic or other devices through electronic means, and (2) transferred through an electronic data processing system. These activities necessitate registration with the FSA and compliance with anti-money laundering requirements, including customer identification and reporting suspicious transactions.

Moreover, financial regulations extend to derivative transactions involving cryptoassets, such as margin trading, in addition to those governing spot transactions. The Financial Instruments and Exchange Act requires registration with the FSA for activities related to dealing, brokerage, intermediation or acting as an agent.

Furthermore, new regulations introduced in 2023 now govern the exchange, brokerage, intermediation, agency or management of stablecoins.

Given that recent financial services, such as fintech, manage customers' assets alongside their personal data, it is crucial to verify that such personal data is handled in accordance with the Act on the Protection of Personal Information and its associated guidelines during financial services M&A transactions.

Additionally, traditional financial institutions offer a wide range of services utilising AI. Therefore, it is essential to ensure that the information management systems for IT services using AI are appropriately managed and compliant with relevant regulations.

Law stated - 31 January 2025

PRICING AND FINANCING

Pricing

20 How are targets priced in financial services M&A transactions? What factors typically affect valuation?

Listed companies are valued based on market prices, including the DCF method and the comparable company method, as is the case for M&A transactions in other sectors. In the financial services sector, the dividend discount model is also considered alongside these valuation methods.

Law stated - 31 January 2025

Purchase price adjustments

21 What purchase price adjustments are typical in financial services M&A transactions?

For M&A transactions in the financial services sector, net value adjustments are commonly used. However, earn-outs may be adopted in the fintech sector too, especially where there is uncertainty about the future value of the business.

Law stated - 31 January 2025

Financing

22 How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

Acquisitions are usually financed with cash or debt (or a combination of both).

Prior approval from the Financial Services Agency (FSA) is required for holding 15 per cent or more of the voting rights in a bank or insurance company for strategic investments, or 20 per cent or more for non-strategic investments. During the FSA approval process, the FSA will evaluate whether the acquisition is likely to undermine the sound and appropriate management of the bank's operations. This assessment will consider factors related to the funds used by the company to acquire the voting rights and the major shareholders involved.

Although there is no clear standard, the FSA will assess whether the funds used to acquire the voting rights are derived from excessive borrowings. This evaluation aims to determine if there is any potential risk to the soundness and appropriateness of the bank's operations. Therefore, the size of the debt will naturally affect the FSA's assessment.

Law stated - 31 January 2025

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

In Japanese M&A transactions, including those in the financial services sector, it is the seller who provides representations and warranties about the target, rather than the target itself.

Although the representations made by the seller regarding financial services M&A transactions will generally be of a similar nature to those in other sectors, buyers in the financial services sector generally place greater emphasis on government approvals and compliance matters. This includes verifying compliance with anti-money laundering regulations and ensuring there are no connections to organised crime, as required by the Financial Services Authority Guidelines specific to Japan.

In addition to these, in the case of a target company that handles personal data, compliance with the Act on the Protection of Personal Information and Guidelines for Protection of Personal Information will be included in representations and warranties.

Law stated - 31 January 2025

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

The terms of an indemnity in financial services M&A transactions are generally similar to those in other sectors and the specific content of each provision is determined by considering the transaction size and the blocking power of the parties involved. Typically, share purchase agreements or asset purchase agreements include provisions for a survival period, cap, a de minimis threshold, specific durations and amounts for these provisions.

Indemnification provisions in a merger agreement or other integration agreements typically do not survive post-closing. The reason for this is that post-closing, the parties of the merger agreement or other integration agreements will be a parent and subsidiary company, and therefore, even if a claim under the indemnification provisions is made, it will not be effective as only money will be exchanged between companies in the group.

Law stated - 31 January 2025

Closing conditions

25 | What closing conditions are common in financial services M&A transactions?

In financial services M&A transactions, a critical closing condition will typically be obtaining the necessary approvals from governmental authorities given that such approvals are often mandatory in this sector.

Aside from this, closing conditions in financial services M&A transactions are largely consistent with those in other sectors. Common conditions typically include: (1) no breach of representations, warranties or obligations; (2) approval clearances from competition authorities; and (3) obtaining any other required consents or approvals from shareholders and major contractual counterparties, among others.

Law stated - 31 January 2025

Interim operating covenants

26 | What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Interim provisions in financial services M&A transactions are generally similar to those in other sectors, albeit that they may naturally place greater emphasis on compliance issues. If compliance issues are discovered during the legal due diligence process, the buyer may request an undertaking to ensure these matters are properly resolved before closing. Additionally, the buyer will likely require the seller and the target to notify and consult them about any communication that they have had with governmental authorities prior to closing.

Law stated - 31 January 2025

DISPUTES

Common claims and remedies

27 | What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

In financial services M&A transactions, disputes frequently stem from compliance-related issues given that regulatory breaches have the potential to severely affect the target's business.

If compliance issues are identified before the definitive agreement is executed, they can be addressed through specific indemnification provisions. However, as the buyer, it is crucial to consider the duration of the indemnity's survival period, in case compliance issues that emerged pre-closing, are discovered after closing. In such a scenario, the seller will likely argue that the buyer shares some responsibility for the damages, as the purchaser will be expected to monitor compliance post transaction.

Law stated - 31 January 2025

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

In Japan, M&A-related disputes are typically resolved through the courts, with the Tokyo or Osaka District Courts often being designated as the courts of first instance for these cases due to their specialised commercial dispute divisions.

Although ADR is still not widely used in domestic transactions in Japan, its adoption is quite common in cross-border transactions involving international parties.

Law stated - 31 January 2025

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

In August 2023, the Ministry of Economy, Trade and Industry published 'The Guidelines for Corporate Takeovers' (the Guidelines). The Guidelines provide that the purpose of the Guidelines is 'to present principles and best practices that should be shared among the economy to develop fair rules regarding M&A transactions, with a focus on how parties should behave in the context of acquiring corporate control of a listed company' (see page 5 of the Guidelines.) Among other guidance provided in the Guidelines, one of the key principles it presents is that the board of listed companies must sincerely consider any bona fide acquisition proposals. As a result of such principle, the number of companies presentingbona fideproposals to listed companies has increased. This has led to a rise in acquisitions without the issuer's consent, marking a departure from traditional Japanese M&A practices.

Even in Japan's traditionally conservative financial sector, the trend for proposing or receiving non-solicit acquisition offers is expected to persist. Companies in the financial sector are increasingly becoming both the targets and initiators of such proposals. For example, in 2023, the Dai-ichi Life Insurance Company, Limited launched a tender offer to

Benefit One Inc, without the consent of Benefit One Inc, which had already been tendered by M3, Inc. Additionally, in 2024, Seven & i Holdings Co, Ltd, the parent company of Seven Bank, Ltd, received a takeover proposal by Alimentation Couche-Tard Inc.

In addition, in response to the challenges posed by Japan's shrinking population, there is a noticeable trend in active investment and M&A in overseas markets. For example, the acquisition of Resolution Life Group Holdings by Nippon Life Insurance. Furthermore, Japan's megabank groups have expressed significant interest in expanding into Southeast Asian markets, particularly in countries such as India.

Law stated - 31 January 2025

AMT / ANDERSON MORI & TOMOTSUNE

Tsunemichi Nakano	tsunemichi.nakano@amt-law.com
Masatsugu Nakajima	masatsugu.nakajima@amt-law.com
Keisuke Hatano	keisuke.hatano@amt-law.com
Ryosuke Mochizuki	ryosuke.mochizuki@amt-law.com

Anderson Mori & Tomotsune

Malta

Andrew J Zammit, Kurt Hyzler, Jessica Camilleri
GVZH Advocates

Summary

MARKET AND POLICY CLIMATE

Market climate

1 | How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

The M&A market in Malta (excluding cross-border transactions) experienced a slowdown between 2022 and 2023, with a total deal value drop of 66 per cent, according to local statistics. This can be attributed to several key factors, which include principally, the higher interest rate environment, and, to a lesser degree, a more stringent regulatory environment and increased foreign direct investment supervision. On the cross-border side, activity also slowed down but not to the same degree as the local market.

Despite these challenges, the near future looks promising, with various international forecasts predicting an increase in M&A activity in 2024 and a return to levels comparable to those seen in 2021 and early 2022 by 2025, according to various international broadcasters who predict heightened economic stabilisation over the course of the next two years.

Law stated - 5 January 2024

Government policy

2 | How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

Maltese financial services legislation and regulation is based on the EU legislative framework. Changes in qualifying shareholdings and changes of control are subject to prior authorisation or notification and are undertaken by the Malta Financial Services Authority (MFSA), being the single regulator for financial services in Malta. The MFSA applies rigorous due diligence screening of the proposed purchasers and its beneficial owners, besides undertaking a detailed assessment of the impact that the proposed acquisition may have on the licensed entity's business model, resources and licensed activities. These assessments are based on detailed submissions made for the MFSA's consideration. Transactions relating to a change of qualifying ownership in a licensed entity may be declared to be null and void if these are implemented without the MFSA's prior approval or notification.

Law stated - 5 January 2024

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 | What primary laws govern financial services M&A transactions in your jurisdiction?

Besides being subject to general contract and corporate law provisions under the Maltese Civil Code, the Commercial Code, the Companies Act and sector-specific laws, including the Banking Act, Investment Services Act, Financial Institutions Act, Insurance Business Act, Virtual Financial Assets Act and the Malta Financial Services Authority Act (European Crowdfunding Service Providers for Business) Regulations, financial services M&A transactions may also be regulated, to a greater or lesser degree, by various other statutes. These include the Competition Act, Employment and Industrial Relations Act, Financial Markets Act, Financial Markets Abuse Act, Malta Financial Services Authority Act and the National Foreign Direct Investment Screening Office Act. The applicability or otherwise of these latter statutes will very much depend on the nature, size, complexity and structure of the proposed transaction, and the profile of the proposed purchaser. Takeover bids of public companies listed on the Malta Stock Exchange will also be regulated by Chapter 11 of the Capital Markets Rules published by the Malta Financial Services Authority (MFSA). The Malta tax and transfer duty aspects of the transaction will also be affected by the provisions of the Income Tax Act, Income Tax Management Act and Duty on Documents and Transfers Act.

Law stated - 5 January 2024

Regulatory consents and filings

4 What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Transactions involving companies in the financial services sector invariably require pre-approval or notification by the MFSA, where the transactions involve a change to a qualifying shareholding under the applicable rules. A qualifying shareholding is defined as 10 per cent or more of the direct or indirect holding in the capital or voting rights or other means to exercise a controlling influence over the financial services operator concerned, and this 10 per cent threshold finds application across all regulated industries, including banks, investment firms, financial institutions and insurance undertakings.

Certain transactions may also require pre-clearance or non-opposition from the Malta Competition and Consumer Affairs Authority (MCCAA) and the National Foreign Direct Investment (NFDI) Screening Office. With respect to clearances by the NFDI, it is only those transactions involving undertakings that operate critical financial infrastructure, whether physical or virtual, by non-EU purchasers that require prior screening and approval.

Once the aforesaid transaction filings are complete, the filings of the relevant statutory corporate forms and returns may be made with the Malta Business Registry, which houses Malta's public company register, typically within a period of 14 days from the effective date of the transaction.

If the transaction involves the transfer of shares in a Maltese company, it will also involve Malta tax filings, regardless of whether the transaction is subject to Malta capital gains or duty on documents and transfers or exempt from such capital gains or duty. These filings must be processed prior to filing the share transfers with the Malta Business Registry.

It is important to note that there can be significant variations in turnaround times to obtain these regulatory approvals, driven by various factors including the complexity of the ownership structure of the proposed new owner, any proposed changes to the target's business model post-transaction and the approval of incoming directors and other key persons. This process must be carefully managed to achieve the successful and timely completion of the transaction.

Law stated - 5 January 2024

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

There are generally no restrictions on the types of entities and individuals that can wholly or partially own financial institutions in Malta. However, any changes in direct or indirect qualifying shareholding in regulated financial institutions shall be subject to a fitness and propriety assessment by the MFSA.

It is noteworthy, however, that in the context of the acquisition of licensed credit institutions (banks), there are significantly more onerous assessments undertaken by the MFSA in considering the suitability of any proposed acquirers. The specific requirements are set out in Banking Rule 13 on Prudential Assessment of Acquisitions and Increase of Shareholdings in Credit Institutions Authorised under the Banking Act, which essentially captured the recommendations made in the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01) published by the Joint Committee to the European Supervisory Authorities (European Banking Authority, European Securities and Markets Authority and European Insurance and Occupational Pensions Authority) on 20 December 2016. This assessment is essentially undertaken on the basis of five specific criteria, namely:

- the reputation and track record of the proposed acquirer;
- the reputation and experience of any person who will direct the business of the credit institution as a result of the proposed acquisition;
- the financial soundness of the proposed acquirer, in the context of the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;
- the credit institution's continued ability to comply with the prudential requirements applicable to credit institutions, in particular whether the group of which it will become part makes it possible to exercise effective supervision, exchange information within the competent authority and overseas authorities and determine the allocation of responsibilities among the competent authority and overseas authorities; and
- any risks that the proposed acquisition may raise or increase in respect of money laundering or terrorist financing.

The role of the NFDI Screening Office, on the other hand, is to safeguard the security or public order of Malta, implementing the provisions of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments by non-EU persons into the EU.

Law stated - 5 January 2024

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

While the provisions of article 142 of the Maltese Companies Act sets out a list of the obvious circumstances where persons are disqualified from holding office as director or company secretary of a Maltese company, including minors, interdicted and incapacitated persons, and persons convicted of crimes against the public trust, holders of certain positions within regulated financial institutions are clearly expected to satisfy significantly higher thresholds of integrity.

While the applicable rules for the various types of licensed financial institutions may vary slightly, in essence, proposed directors or holders of key operational or compliance functions of financial institutions are subject to a rigorous fitness and propriety assessment undertaken by the MFSA, which must be positively concluded prior to any such appointment becoming effective.

Several criteria are taken into consideration by the MFSA in reaching its conclusions (see the guidance here), such as reference to professional experience and qualifications, financial solvency and integrity, absence of conflicts of interest, residency considerations, capacity to perform the proposed functions, and the contribution of the individual to the proper management of the financial institution. The nominated person must demonstrate knowledge or experience in the specific sector in which the undertaking operates if they are to be considered suitable and eligible to hold the position. To properly assess these factors, the MFSA requires new directors or officers of financial institutions to submit a comprehensive questionnaire, referred to as the Personal Questionnaire, serving to disclose all relevant personal information for the MFSA's consideration.

Law stated - 5 January 2024

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

In Malta, directors are bound by fiduciary obligations set out in article 1124A et seq of the Maltese Civil Code and article 136A of the Companies Act. In keeping with Anglo-Saxon company law doctrine, the general duty imposed on directors by virtue of the Maltese Companies Act is that they act honestly and in good faith in the best interests of the company. Directors must promote the well-being of the company and are responsible for the general governance and proper administration, management and general supervision of the company and its affairs. Among the general duties of the directors, the Companies Act also provides that directors must:

- not make secret or personal profits from their position without the consent of the company, nor make personal gain from confidential company information;
- ensure that their personal interests do not conflict with the interests of the company;
- not use any company property, information or opportunity for their own or anyone else's benefit, nor obtain benefit in any other way in connection with the exercise of their powers, except with consent from the company in a general meeting or as permitted by the company's memorandum or articles of association; and
- exercise the powers they have for the purposes for which they were conferred and not misuse them.

In the context of an M&A transaction, the directors and officers of the target undertaking are subject to significantly onerous obligations, requiring them to ensure that the proposed acquisition process is managed as objectively and smoothly as possible, ensuring that no personal interests of the directors and officers in any way cause an obstruction to the due diligence process or the negotiations relating to the proposed transaction. One particularly sensitive issue that tends to crop up repeatedly in such transactions is the expectation that directors provide warranties to the purchasers about the proposed target and its operational and financial standing, creating potentially significant liability on the part of directors in the eventuality that such warranties are inaccurate or incomplete. Directors must also be vigilant not to pursue any personal gain, whether directly or indirectly, in connection with the proposed transaction, particularly as they are in possession of price-sensitive information, or allow the consideration of their respective security of tenure post-acquisition to conflict with their obligation towards the shareholders to ensure that the proposed transaction is properly managed to achieve the objectives established by the shareholders when approving the negotiation of a proposed bid or transaction.

In the context of a Malta-regulated financial services operator targeting the acquisition of another, it is incumbent on the directors to undertake legal, financial, tax and operational due diligence on the proposed target to ensure that all related risks are identified and properly managed throughout the course of the transaction.

The liability of directors to the company is joint and several, based on the principle that the board of directors is expected to act collectively, with the consequence that any resulting liability is to be borne in solidum. Directors are liable for any improper performance or breach of any fiduciary or other duty in relation to the company. Directors are also liable for any act that by law must be performed by a company. However, the Maltese Companies Act recognises exceptions to this rule, exempting a director from liability if they can prove unawareness of the breach before or at the time of its occurrence, signifying dissent in writing or taking all reasonable steps to prevent such breach.

Law stated - 5 January 2024

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

The NFDI Act imposes a requirement for non-EU investors investing in Malta to undergo a formal prior notification and screening process with the NFDI Office in Malta if the following factors exist cumulatively:

- the investment is likely to affect security or public order in terms of its potential effects on activities that include critical infrastructure, critical technologies and dual-use items, supply of critical inputs, access to sensitive data and the freedom and pluralism of the media. The factors to be considered are whether the foreign investor is directly or indirectly controlled by a third-country government (including state bodies or armed forces), whether the foreign investor has already been involved in activities affecting security or public order in a member state or whether there is a serious risk that the foreign (non-EU) investor engages in illegal or criminal activities;
- there is an ultimate beneficial owner (ie, direct or indirect ownership by a third country national of 10 per cent or more of the shares, voting rights or ownership interest in the target); and
- there is a foreign direct investment, that is, an investment of any kind by a natural person or an undertaking of a third country (non-EU) aiming to establish or to maintain lasting and direct links to carry on an economic activity in Malta.

Should a proposed transaction be caught under the NFDI Act in Malta, the attainment of approval or no objection will need to be obtained from the NFDI Office prior to the effective date or completion of the transaction. It is noteworthy that the application of such notifications will find very limited application in the context of M&A activity in the financial services sector, as it is only those transactions affecting the critical financial infrastructure that will need to be notified and pre-cleared. It will, however, be incumbent on the parties to the transaction to assess the applicability of these provisions to the transaction in question, being mindful that defaulting on the obligation to notify could result in the unwinding of that transaction altogether.

Law stated - 5 January 2024

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

The Maltese Control of Concentration Regulations establish two tests that, if both satisfied, trigger a notification requirement of a proposed acquisition by a prospective purchaser with the MCCAA.

Firstly, there must be a 'concentration' as defined under Regulation 2 of the aforementioned regulations, which provides that a concentration is triggered where either of the following occurs:

- the merging of two or more undertakings that were previously independent from each other; or
- the acquisition by one or more undertakings or by one or more persons already controlling at least one undertaking, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.

Where the audited accounts of the previous financial years are not yet accessible, the preceding year's figures will be utilised. The necessary adjustments may be required to be made to the most recent audited accounts to account for any subsequent acquisitions or divestments when determining the turnover of each of the parties involved.

Law stated - 5 January 2024

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

The most common structure used for financial services M&A transactions in Malta involves the transfer of shares in private limited liability companies, although some transactions are structured as asset transfers in circumstances where the purchaser targets specific assets within the target undertaking.

Given Malta's small geographical size, which is reflected in its capital markets, takeover bids involving listed financial services undertakings are very rare occurrences.

Special purpose holding vehicles are commonly used for the purpose of share acquisitions, driven primarily by tax-structuring considerations targeted at managing dividend distributions through a holding company.

Law stated - 5 January 2024

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

Although the time frame for M&A transactions may differ on a case-by-case basis, financial services M&A transactions typically take between three and six months to close due to the regulatory approvals that are required to be obtained from the Malta Financial Services Authority (MFSA), although admittedly these time frames may become significantly longer where the business model of the target undertaking may be materially affected as a result of the proposed transaction.

The time frames applicable from a regulatory approval differ in terms of law. The MFSA rulebooks provide specific time frames within which the reply or approval will be granted, depending on the type of financial services institution involved. Other general considerations for the time frames include, inter alia, the compliance with anti-money laundering obligations to be fulfilled by legal and other advisers, the performance of legal, regulatory, financial and tax due diligence exercises, the negotiation of transaction documents such as share sale purchase agreements and financing agreements, the valuations to be undertaken by auditors, the organisation of banking logistics in relation to the transaction, and the fulfilment of agreed conditions precedent for completion that may be beyond the direct control of the parties.

Law stated - 5 January 2024

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

The tax considerations applicable to financial services M&A transactions will largely depend on the nature, size, complexity and structure of the transaction concerned. Tax and VAT considerations certainly have a significant impact on the structuring of M&A transactions generally, and the financial services industry is no exception.

Law stated - 5 January 2024

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

With the implementation of sustainable finance legislation at EU level, namely the Sustainable Finance Disclosure Regulation, and the ongoing public and targeted consultations published by the European Commission to enhance such legislation, local corporate governance codes issued by the MFSA are factoring in ESG considerations and increasing investor interest in climate change and sustainability. ESG is already a factor contemplated by boards of directors and investors in financial services firms. As it currently stands, disclosure requirements, also including engagement strategies, regarding ESG compliance apply solely to financial market participants that hold article 8 and article 9 financial products. The European Commission is, however, seeking feedback on whether uniform disclosure requirements should be imposed on all financial products offered within the EU, as opposed to only those making sustainability-related claims. This current trend is expected to intensify, and it is likely that parties will increasingly reference ESG in public relations relating to M&A transactions.

Law stated - 5 January 2024

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

Maltese financial services legislation and regulation mostly derives from the EU legislative framework, and thus political and policy risks are low and not directly addressed within M&A transaction terms in Malta.

Law stated - 5 January 2024

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

There is no obligation in terms of law for the board of directors to engage actively with the company's shareholders. The general governance of a company as well as its proper administration and management and the general supervision of its affairs are vested in the board, and hence, shareholder activism is not common practice in Malta. Although shareholder activism has increased in Malta in recent years and is promoted through publications such as the MFSA's corporate governance code, it is less prevalent in Malta than many of its EU counterparts. This phenomenon is principally attributable to the limited number of listed financial services undertakings in Malta.

Law stated - 5 January 2024

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Apart from the regulatory approvals referred to above, financial M&A transactions in Malta do not typically require any third-party consent or notification unless the target company is party to a contract or forms part of a corporate structure that specifically requires such notification or consent to another shareholder or to the relevant competent authority prior to a change of control in the company.

Law stated - 5 January 2024

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

Financial services transactions are usually subject to a thorough legal due diligence exercise involving a team of specialists in the corporate, regulatory, contract law, tax, employment, intellectual property and data protection sectors.

General practice is to initially run the following searches:

- review of local online and physical databases, such as the Malta Financial Services Authority (MFSA) financial services register, Malta Business Registry and Malta Public Registry, to assess the overall legal and regulatory status of the target company;
- court searches to determine whether the company has ever been the subject of any litigation matters; and
- insolvency searches with the Maltese register of companies and the office of the official receiver.

Furthermore, documents related to the following areas are generally requested:

- good standing certificates of the company;
- identification or passport documentation, or both;
- police conduct certificates;
- share registers;
- minute book of meetings of the company's board and its shareholders;
- copies of all licences issued by the competent authority;
- material correspondence with regulatory authorities;
- copies of the company's policies and procedures and standard terms and conditions of business;
- insurance documentation;
- employment contracts and director agreements;
- all agreements in place with the company, including commercial agreements and agreements with any service providers;
- compliance, anti-money laundering (AML) and GDPR-related documentation;
- any and all intellectual property matters and registration certificates;
- any outsourcing agreements and details of any arrangements; and
- any loan and financing agreements in place.

Law stated - 5 January 2024

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

Depending on the client's requests, there may be instances in which the following due diligence may be required to form part of a due diligence report aside from the legal due diligence report:

- tax and financial due diligence;
- IT infrastructure and IT audits;
- compliance and AML due diligence; and
- ESG due diligence.

It is also recommended good practice for directors of companies, investment firms, financial institutions and fund managers to regularly review all updates to the Corporate Governance Manuals as issued by the Malta Financial Services Authority. The MFSA also regularly issues Corporate Governance Guidelines which should be adhered to on an ongoing basis. Similarly, listed companies on the Malta Stock Exchange should abide by the listing rules which include corporate governance provisions relating to disclosure requirements.

Law stated - 5 January 2024

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

With the launch of the legislative framework for virtual financial assets in Malta in 2018, service providers of virtual currencies and their corresponding technology must be registered with the MFSA in Malta in accordance with the Markets in Crypto Assets Regulation (MICA). When contemplating the acquisition of a firm active in blockchain and cryptocurrency activities, the purchaser should look into whether the target company has registered with the MFSA (if the activities require it to do so) and if so, whether it is in compliance with the applicable legislative framework. On this basis it is also relevant to note that the MFSA has recently made amendments to Chapter 3 of the Virtual Financial Assets Rulebook (hereinafter 'the Rulebook') issued on 18 September 2023 wherein various amendments were proposed to align the requirements applicable to VFA Service Providers with those found within Title V of MiCA. The MFSA has also announced that, following the adoption of feedback regarding the consultation on changes to Chapter 3, it will be commencing an outreach in the first quarter of 2024 with VFA Service Providers to discuss MiCA preparedness and issues raised vis-à-vis compliance with MiCA requirements.

Other typical due diligence of blockchain and cryptocurrency firms would include ongoing IT infrastructure audits, such as systems audits. With the application of the Digital Operational Resilience Act (DORA) in 2025, it is recommended that entities begin to take note of the relevant cybersecurity obligations being introduced by this act to satisfy the necessary legal obligations resulting therefrom.

Law stated - 5 January 2024

PRICING AND FINANCING

Pricing

20 | How are targets priced in financial services M&A transactions? What factors typically affect valuation?

In our experience, there are no set formulae applied for the pricing of financial services targets, and the pricing would very much be established through the negotiation process between the parties. The pricing would essentially be based on valuation methods adopted within the relevant industry, but driven primarily by the attractiveness of the target to the prospective purchaser as an additional or complementary business. The target's reputation, client base, cash generation and market positioning will invariably have a material impact on the target's value.

Law stated - 5 January 2024

Purchase price adjustments

21 | What purchase price adjustments are typical in financial services M&A transactions?

Many local transactions tend to have components of earn-out provisions intended to tie key persons into the business over a period of time to ensure a smooth and stable transition and alignment of objectives between the purchaser and the key persons who drive the business. Besides earn-outs, certain liabilities, such as outstanding debt or contingent liabilities, may be deducted from the purchase price if they are not being assumed by the buyer. This adjustment ensures that the buyer does not pay for obligations that it is not taking on after the acquisition.

Additionally, there may be adjustments in the net working capital of the company which cater for the changes in the target company's working capital between the signing and closing dates. In this case, where the net working capital at closing is different from the predefined net working capital the purchase price may be adjusted accordingly.

Law stated - 5 January 2024

Financing

22 | How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

While there are no official statistics available in Malta in relation to the financing of M&A transactions, acquisitions are typically financed through the purchaser's own funds, or financed externally through lenders' or investors' funds.

However, debt financing has become more widely used as a method for financing transactions in the financial services space in Malta. One consideration that should be carefully assessed in the context of such transactions is the extent to which financial assistance rules would apply to the proposed transaction, prohibiting the leveraging of the target company's assets to secure funding. Essentially, article 110 of the Companies Act prohibits a target Maltese company from giving, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of an acquisition or subscription made or to be made by any person of or for any shares in the company or its parent company.

Law stated - 5 January 2024

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

Typical representations and warranties include warranties relating to title, wherein the seller represents and warrants legal and beneficial title of the shares, that the shares are free of encumbrances and that the seller has not entered into any other transaction for the sale of the shares. Other representations and warranties also include warranties relating to the target's constitutional documents, corporate registers and minute books, the financial position of the target, the preparation of accounts and debtors and creditors of the target. Areas that are covered in greater detail in financial services M&A transactions are representations and warranties on compliance with the law and regulations applicable to the financial services business, such as, inter alia, anti-money laundering regulations, the Malta Financial Services Authority (MFSA)'s authorisation requirements and conduct of business rules, and GDPR requirements.

Law stated - 5 January 2024

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Indemnities in M&A transactions in Malta are generally linked to the outcome of any of the due diligence exercises performed prior to the transaction. Typical terms for the indemnities are the payment of damages.

Law stated - 5 January 2024

Closing conditions

25 What closing conditions are common in financial services M&A transactions?

Closing conditions in financial services M&A transactions are typically limited to matters that are legally required to complete the transaction, which include merger clearance, regulatory approvals and National Foreign Direct Investment (NFDI) approvals. Furthermore, the following completion conditions are common:

- the completion of the financing of the acquisition;
- required merger clearance, financial regulatory approvals and NFDI approvals;
- the full payment of the purchase price;
- changes in the officers, managers and auditors of the target company;
- the amendment of the articles of association of the target company or the shareholder's agreement, as relevant;
- the material transfer of the target company's books and records, and title of ownership (register of member and share certificates) to the buyer;
- the buyer, seller or target company corporate approvals of the transaction;
- the termination of agreements entered into by the target company with service providers or members of the sellers;
- release of any debt owed by the target or security given by the target;
- waiver of any pre-emptive rights;
- release of any encumbrance on the shares or assets of the target, or both;
- subscription rights by other shareholders of the target company;
- resignation or appointment of certain officers of the target; and
- termination of bank mandates regarding the former managers, directors and proxies.

Law stated - 5 January 2024

Interim operating covenants

26 What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Even though interim operating covenants are generally sector-specific to the M&A transactions and the trading business of the entities involved, certain common covenants specific to M&A transactions generally appear in the transaction documentation, which would relate to:

- the protection and preservation of the assets and working or regulatory capital of the target;
- the preservation of employees of the target; and
- disclosure of information and duty of collaboration between the parties in relation to the MFSA's prior approval or notification.

Law stated - 5 January 2024

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

Most disputes following financial services M&A transactions relate to false, incomplete or misleading representations or breaches of warranties, and the enforcement of specific indemnities. However, since the Maltese market is rather small, and financial services M&A transactions are less common than standard M&A transactions, there are limited examples of such claims in Malta.

Disputes in financial services transactions may also arise in relation to valuation disagreements. For example, differences in the valuation of assets or companies can arise, particularly when assessing the worth of intangible assets, goodwill or future potential earnings. Notwithstanding the foregoing, the most common remedy is for an aggrieved party to sue for damages in the Maltese courts. It is also evident that, very often, share purchase agreements would typically include provisions for resolving disputes through arbitration or mediation rather than through court proceedings, as arbitration and mediation provide a more discreet and usually more expeditious route towards resolving the dispute.

Law stated - 5 January 2024

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

The choice of law and jurisdiction in M&A transactions often depends on the types of parties involved in the transaction and where they are domiciled. In local transactions where the two parties are both domiciled in Malta, the applicable law clause is invariably Maltese law and the dispute resolution method would vary between arbitration or the Maltese courts. However, where one or both of the parties (buyer or seller, or both) are of different nationalities, the trend is that foreign law is selected as the governing law for the transaction documents and arbitration as the preferred method of dispute resolution. UK law is very often selected as the default governing law in many transactions that we deal with.

Within the arbitration option, the rules of the International Chambers of Commerce or the Malta Arbitration Act are most chosen by the parties to M&A transactions in Malta. Parties to cross-border M&A transactions should undertake careful assessment of the choice of law that will regulate the transaction documents governing the relationships between them and the associated dispute resolution methods to be adopted in the case of disputes in the course of that relationship. The key consideration should centre on the practicalities of enforcing an award or judgment against the defaulting party (or its assets) as seamlessly and efficiently as possible.

In accordance with Chapter 555 of the Laws of Malta, the Office of the Arbiter for Financial Services is a local office charged with the power to mediate, investigate and adjudicate complaints filed by a customer against a financial services provider and in turn provide a fair and efficient resolution process for financial disputes within the jurisdiction of Malta. This method offers an avenue to consumers to address grievances outside of the formal court system.

Law stated - 5 January 2024

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

Regulatory reform and investor demand, in the ESG space, is currently pushing acquirers to keep a close eye on new rules that come into force which could impact their respective transactions. In this regard, the Malta Financial Services Authority (MFSA) has published regular consultation documents to reflect the most recent relevant legislative developments relating to ESG practices from an EU level.

Furthermore, the MFSA, in its strategic statement, has stated that regulatory changes might expand the scope of due diligence to cover emerging risks and evolving areas such as cybersecurity, data privacy, sustainability and environmental considerations. In this regard, it is clear that the MFSA has placed emphasis on the regulation of cybersecurity in financial services, especially with the coming into force of the Digital Operational Resilience Act and NIS 2 in 2024. This will invariably have an impact on the financial services industry.

Law stated - 5 January 2024

Andrew J Zammit andrew.zammit@gvzh.mt
Kurt Hyzler kurt.hyzler@gvzh.mt
Jessica Camilleri jessica.camilleri@gvzh.mt

GVZH Advocates

Read more from this firm on Lexology

Netherlands

Pete Lawley, Bart de Rijke, Mariska Enzerink, Wiebe Dijkstra, Eva Schram
De Brauw Blackstone Westbroek NV

Summary

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

The financial services M&A market in the Netherlands has been relatively active in recent years, and particularly in the past 12–18 months. This has partially been driven by strategic transactions by financial institutions, and partially by increased involvement of private equity in the Dutch financial services sector, particularly in the 'asset light space' (broadly speaking, financial services businesses other than banks and insurers).

One of the most significant transactions in 2024 was the strategic partnership between Achmea, Lifetri and Sixth Street in the Dutch pension and life insurance market, which merges Achmea's and Lifetri's pension and life insurance portfolios into Achmea Pension & Life Insurance. This follows several other transactions re-aligning the Dutch insurance industry in recent years, including the Aegon and a.s.r. transaction in 2023, NN's sale of its asset management business to Goldman Sachs Asset Management, and the acquisition of Vivat by Athora (and on-sale of the non-life part to NN).

Other major transactions in 2024 include Apollo's acquisition of equipment leasing specialist Beequip from NIBC, Aquiline's sale of insurance broker Quintes to Brown & Brown, and BlackFin's acquisition of wealth manager IBS Capital Allies.

There continues to be limited M&A activity in the Dutch banking sector, with the exception of the sale by a.s.r of Aegon Bank (Knab) to BAWAG following its acquisition of Aegon's Dutch operations. Unicredit's ongoing attempt to acquire Commerzbank, as well as the increasing focus of the European Commission on building out the Savings and Investment Union, could encourage cross-border bank consolidation in Europe. In recent weeks, major Dutch banks ING and Rabobank have both announced that they are looking at potential acquisitions. However, major cross-border bank combinations do not seem likely in the short term.

Law stated - 1 February 2025

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

Generally, the Dutch government is not actively involved in M&A activity in the financial sector and leaves the assessments thereof to the regulatory authorities. Politically, most discussions take place in the European arena and not so much at national level. However, the Dutch government holds various interests in the financial sector.

On 15 October 2024, the Dutch foundation NL Financial Investments (NLFI), acting on behalf of the Dutch State, announced its intention to reduce its stake in ABN AMRO

Bank per net through a pre-arranged trading plan. The goal of this trading plan is to decrease NLFI's stake in ABN AMRO Bank from 40.5 to approximately 30 per cent. NLFI is a foundation with a statutory task established by the Minister of Finance following the nationalisation of several financial institutions during the financial crisis. Its primary role is to exercise the shareholder rights on behalf of the Dutch state in a number of financial institutions in a business-like, non-political manner and to separate the interests in a transparent manner. NLFI still holds a stake of 100 per cent in De Volksbank, another Dutch significant credit institution. In October 2024, the Minister of Finance presented to the Dutch Parliament his approval of NLFI's analysis on the future options for the 100 per cent stake held in De Volksbank. In short, NLFI advised the Dutch State to explore the options to sell its stake in De Volksbank to a private party, or prepare for an initial public offering. However, on 18 December 2024, the House of Representatives passed a motion with a large majority, requesting the Dutch government not to privatise De Volksbank. Therefore, the future course of action concerning the Dutch State's stake in De Volksbank remains unclear at this time.

In addition, the Dutch state holds stakes in various other entities active in the financial services industry in light of the public interest: FMO, BNG Bank, the Nederlandse Waterschapsbank and Invest-NL. It has no intention to decrease its stake in these entities.

Law stated - 1 February 2025

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 | What primary laws govern financial services M&A transactions in your jurisdiction?

The regulatory rules applicable to financial services undertakings mostly derive from EU legislation and relate to shareholder approval from the Dutch Central Bank (DCB) or European Central Bank (ECB). These rules are laid down in the Dutch Financial Markets Supervision Act, which has been in force since 2007, and in the various decrees and regulations deriving from it.

Law stated - 1 February 2025

Regulatory consents and filings

4 | What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Each person who holds, acquires or increases a qualifying holding in a bank with a corporate seat in the Netherlands requires a declaration of no objection (DNO) from the ECB, who takes the formal decision in close cooperation with the DCB. The same approval is required for qualifying holdings in a settlement agent, insurance or re-insurance company, manager of an undertaking for collective investment in transferable securities, investment firm, electronic money institution, special purpose insurance vehicle, premium pension institution, or payment institution. For these institutions the approving regulator is not the ECB but the DCB.

A qualifying holding is a direct or indirect holding of 10 per cent or more of the issued share capital of the bank, direct or indirect voting power, or a right to exercise equivalent control. This definition is subject to certain aggregation principles: for instance, voting rights held through subsidiary companies or voting agreements are to be included.

In addition to the rules regarding holdings in financial undertakings, a bank with a corporate seat in the Netherlands must itself obtain a DNO for certain actions, depending on their materiality:

- acquiring or increasing a qualifying holding in another bank, investment firm, insurance company or financial institution with a corporate seat outside the EU or the European Economic Area;
- acquiring or increasing a qualifying holding where the target is not a bank, investment firm, insurance company or financial institution;
- acquiring the whole, or a substantial part, of the assets and liabilities of another enterprise or institution;
- merging with another undertaking; or
- undertaking a financial or corporate restructuring of its own business.

For significant banks, the ECB is the competent authority in relation to the above-mentioned DNOs. For non-significant banks, the DCB remains competent.

In relation to certain financial undertakings, including the smaller financial service providers (eg, providers of credit, insurance intermediary companies), that have obtained a licence from the Dutch Authority for the Financial Markets (AFM), an approval or notification requirement may apply to changes in the shareholding structure.

Law stated - 1 February 2025

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

Not generally, but each person wishing to acquire a qualifying holding (direct or indirect holding of 10 per cent or more of the issued share capital or direct or indirect voting power, or a right to exercise equivalent control) in most financial undertakings in the Netherlands must obtain a DNO from the DCB or ECB.

A DNO will be refused if:

- the integrity and professional competence of the proposed acquirer or the persons who, as a result of their qualifying holding, can determine the day-to-day policy of the financial undertaking are not beyond doubt;
-

the proposed acquirer, taking into account his, her or its reputation, or the persons who, as a result of their qualifying holding, will determine the day-to-day policy of the financial undertaking, are not fit for purpose;

- the financial soundness of the proposed acquirer, in particular in relation to the business activities of the financial undertaking, is not beyond doubt;
- the qualifying holding would constitute an impediment for the financial undertaking to comply with the prudential requirements to which it is subject;
- there are reasonable grounds to suspect that, in connection with the acquisition of the qualifying holding, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof; or
- the information provided by the proposed acquirer is incorrect or incomplete (eg, in the event of a proposed participation of more than 50 per cent, the applicant must submit a detailed business plan with its application for a DNO).

Where the applicant for a DNO is a legal entity, the integrity and professional competence of all its directors and other persons, if any, who can determine or co-determine the day-to-day policy of the applicant is tested.

Law stated - 1 February 2025

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

Depending on the type of financial undertaking, the DCB, the ECB or the AFM assesses whether incumbent and prospective management and supervisory board members (or executive and non-executive members of the management board) are fit to occupy their position and whether their propriety is beyond doubt. The fitness test is specific to the role the director or officer is intended to fulfil. The propriety test in principle is a one-time test, unless specific circumstances merit a new assessment. The assessment takes place on the basis of the criteria of the Policy Rule on Suitability 2012, which is continuously updated to reflect changing expectations and knowledge requirements, for example most recently, the ability to effectuate changes in light of climate risks and sustainability, and digital operational resilience.

Law stated - 1 February 2025

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Directors and officers must fulfil their duties in the interest of the financial undertaking, also in the context of M&A transactions. In the Netherlands, the stakeholder model applies. In accordance with this stakeholder model, the interest of the company is – in short – not only creating (long-term) shareholder value, but also encompasses long-term (sustainable) value creation for the company and its affiliated undertaking and takes into account the stakeholder interests that are relevant in this context. The revised corporate governance code, effective from 1 January 2023, moreover states that directors of listed companies should take into account the effects of the company's and its affiliated enterprise's actions on people and the environment and, to this end, should weigh the relevant interest of stakeholders. Stakeholders include groups and individuals who, directly or indirectly, influence or are influenced by the attainment of the company's objectives such as employees, shareholders, suppliers, customers, the public sector and civil society.

Law stated - 1 February 2025

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

Based on the Investment, Merger and Acquisition Safety Test Act (Vifo Act), which entered into force on 1 June 2023, investments that pose risks to Dutch national security can be blocked by the Minister of Economic Affairs (Minister). The Vifo Act is 'country neutral', applying equally to both Dutch and non-Dutch/non-EU investors. Strictly speaking, the Vifo Act establishes a national security regime – not a foreign direct investment regime.

The Vifo Act's national security premised investment screening regime concerns investments in: (1) vital providers (for example, key financial markets infrastructure providers like significant banks and trading platforms); (2) sensitive technologies; (3) highly sensitive technologies; and (4) operators of business campuses. If an envisaged investment falls within the scope of the Vifo Act's investment screening regime, a notification is mandatory and must be made by either the acquirer or the target company. However, a separate notification under the Vifo Act is not required in case an investment activity is covered by a sector-specific screening regime with a focus on national security such as the screening regime in place for the telecoms sector. Other mandatory notification regimes that do not concern national security – for example, regimes observed by DCB, or the Authority for Consumers and Markets – do not release the parties from the obligation to notify the transaction in parallel under the Vifo Act. In addition to a notification obligation, the Vifo Act also imposes a standstill obligation, and a notifiable transaction can only be implemented after approval. The substantive assessment under the Vifo Act is meant to check if a notified transaction poses a risk to national security, taking into account several factors including transparency of the ownership structure, sanctions, the geopolitical situation of the acquiring party's country or region of origin, the acquirer's track record in operating businesses in the same sector, past bankruptcies or moratorium proceedings, and worldwide acquisition activities in the last five years. Depending on the national security risk assessment, the Minister will decide whether to allow the transaction (either unconditionally or with commitments). The Minister will prohibit the transaction if the national security risks cannot be remedied.

The Vifo Act has an impact on financial services M&A transactions. This is because the Vifo Act considers banking providers, operators of a trading platform in the Netherlands, central counterparties, clearing institutions, clearing houses, settlement firms and central securities depositories as vital providers. An acquisition of such a party will have to be notified to the Bureau Toetsing Investeringen, which is part of the Ministry of Economic Affairs. The Vifo Act also covers the acquisition of control in a target undertaking that is not a vital provider but which has control over a Netherlands-based undertaking that is a vital provider. Parties should expect an additional administrative burden and an impact on their transaction timetables if their M&A activities fall within the scope of the Vifo Act. Lack of precedents and transparency may lead to uncertainty.

Certain transactions fuelled by foreign subsidies could also face the separate prospect of investment screening at the EU level under the investment screening mechanism of the EU Foreign Subsidy Regulation (FSR). If the FSR's notification thresholds are met, a notification to the European Commission is required and a standstill obligation applies. The notification obligation may co-exist with other mandatory notification regimes, such as merger control and FDI screening.

Law stated - 1 February 2025

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

Merger control is a central element of the supranational competition law framework applicable in the EU, and is premised on a division of competences between the European Commission and individual Member States. Transactions meeting the EU Merger Regulation's specific turnover-linked quantitative thresholds – deemed to have a 'community dimension' – fall under the European Commission's sole jurisdiction. Others qualify for review at the national level, provided they satisfy the domestic thresholds of the member states.

In the Netherlands, the merger of two or more formerly independent undertakings, the direct or indirect acquisition of sole or joint control of an undertaking and the establishment of a new 'full function' joint venture have to be notified to the ACM if the notification thresholds of the Dutch Competition Act (DCA) are met. That is the case when (1) the combined turnover of the undertakings concerned in the preceding calendar year exceeded €150 million, and (2) turnover of each of at least two undertakings in the Netherlands is €30 million. For pension funds, notification is mandatory when the combined worldwide gross premiums of the undertakings involved is at least €500 million, and the gross premiums in the Netherlands of each of at least two undertakings is at least €100 million.

Just like at the EU level, there are special turnover calculation rules applicable to banks and other financial institutions for determining if the DCA's notification thresholds are met. The turnover of banks and financial institutions is calculated as the sum of the following: interest income and similar earnings; proceeds from value instruments or securities; commissions receivable; results from financial transactions; and other business proceeds/other operating income. The turnover of insurance companies and pension funds is the value of the gross premiums written worldwide, and for calculation of the turnover achieved in the Netherlands it is the gross written premium received from Dutch residents.

If a transaction needs to be notified, a standstill obligation applies, meaning that the transaction cannot be implemented before obtaining clearance from the ACM. It is a sanctionable breach of the DCA to implement a transaction that meets the merger control thresholds before notification or approval. Moreover, the ACM intends to pursue a policy of strict merger control enforcement without exceptions, including deploying a new statutory tool, which the ACM is currently seeking to 'call-in' below-threshold concentrations.

Next to the merger control regime and similar to EU competition law, Dutch competition law prohibits anticompetitive agreements. In relation to M&A transactions, this means that non-compete clauses and non-solicitation clauses between the seller and acquiring parties need to be limited to what is necessary for the implementation of the transaction. Furthermore, when the acquiring party and target are competitors they may not exchange commercially sensitive information pre-closing. Consequently, it may be necessary to work with clean teams until closing.

Law stated - 1 February 2025

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

In recent years, targets for financial services M&A in the Netherlands have mostly been non-listed (including carve-outs from listed companies) and therefore private M&A has been more prevalent than public M&A.

Most private M&A transactions in the Netherlands are structured as share sales for cash consideration, although there are recent examples of mixed cash and share consideration. This is typically the simplest and fastest transaction structure to implement and is therefore preferred by sellers running competitive auction processes. It is generally accepted in the Dutch market that integration is primarily a post-closing buy-side responsibility. As such, mergers between target and buyer entities, for example, are typically not built into the transaction structure. Sellers will, however, often agree to provide assistance with integration planning between signing and closing. Where a carve-out of the target business from a broader group is required, it is common for the seller to implement, or at least prepare for, this before commencing a sale process.

Where the buyer is a private equity party, it is customary for some or all of the sellers (particularly founders and senior management) to retain part of their investment in the target. This is typically achieved through a cashless rollover into one of the private equity acquisition vehicles to create a simple structure for an exit at a later date.

Law stated - 1 February 2025

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

Financial services M&A transactions generally take longer to implement than M&A transactions in other sectors, due to the (in many cases) complex nature of the target business and the need for financial regulatory approvals. However, the required time frame will differ depending on the target business.

In more heavily regulated parts of the financial services sector, such as banking and insurance, financial regulatory approvals for an M&A transaction will often take six to 12 months from signing and, in more complex cases, can take more than a year. In other parts of the financial services sector, financial regulatory approvals can often be obtained more quickly and, in some cases (eg, for fintech targets without a regulatory licence), may not be needed at all. In such cases, it may be that merger and foreign direct investment (FDI) clearance or Dutch works council consultation processes (or both) will take longer and therefore determine the time frame to closing of the transaction.

Law stated - 1 February 2025

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

Most of the tax issues that arise in M&A transactions are legacy issues analysed as part of due diligence. Those issues may or may not be specific to the industry, with examples of specific issues being disputes on the VAT treatment of certain services or products, involvement in perceived tax avoidance structures, tax policy and governance-related considerations, industry-specific transfer pricing risks and increasingly disputes on industry-specific taxes and tax rules.

Buyers typically try to address these issues by applying discounts on the purchase price where commercially feasible, (specific) tax indemnity arrangements or (specific) tax insurance, or a combination thereof. Further, buyers are increasingly focusing on major legislative developments such as the Organisation for Economic Co-operation and Development initiated Pillar 2 rules, the preparations by the target in that respect, and quantifying and qualifying possible implications.

Another important theme regards post-closing integration, including regulatory capital and financing structures. Determining and executing a coherent strategy for navigating the regulatory and tax rules applicable to the parties and the target, and managing the authorities involved, is key.

As set forth above, most deals are structured as share deals, which are generally the simplest from a tax perspective as well. There will often be limited room for enhancing efficiency through acquisition financing, in view of limitations on interest deduction and scrutiny of financing structures by regulatory authorities. Still, especially cross-border deals require careful acquisition structuring to manage the future tax position of the combined group. Further, carve-out and carve-ins require particular attention, not only from a corporate tax perspective (eg, optimising cash tax leakage and optimising the use of tax attributes), but also from a VAT perspective in view of the limited ability of financial groups to recover VAT.

Law stated - 1 February 2025

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

ESG is a topic that remains at the forefront of the minds of the boards of, and investors in, financial services firms in the Netherlands, notwithstanding recent developments in the United States, not least because it has become a key regulatory priority for regulatory authorities such as the European Central Bank, Dutch Central Bank and the AFM. It influences the types of financial services M&A transactions that are done in the Dutch market, and potentially the valuations at which they are done. This trend is expected to continue in the coming years, at least in a European context. In the context of regulatory consents and filings, the topic of ESG has also become the subject of much more attention. It is, however, not yet common to see ESG, or other public relations issues, directly addressed in the deal terms of financial services M&A transactions (except in certain specific situations – eg, in relation to continuing investment mandates in asset management transactions).

Law stated - 1 February 2025

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

Political and policy risk in financial services M&A transactions is commonly accepted by the buyer. This is most relevant in the context of the level of ‘efforts’ or 'endeavours’ that a buyer is required to undertake to satisfy conditions relating to merger or FDI clearance and financial regulatory approvals.

In competitive auction processes, it has become very common in relation to merger clearance (including in financial services M&A) for the buyer to accept a full ‘Hell or High Water’ (HoHW) obligation, with no exceptions, or HoHW but limited to the target group (ie, divestments from the buyer's existing group would not be required). In recent years, sellers in financial services M&A have begun to propose full HoHW also for FDI/FSR clearance and financial regulatory approvals. This is occasionally accepted by buyers in competitive processes but we also see less onerous obligations being agreed – eg, HoHW qualified either by a general ‘materially burdensome’ exception or one or more specific exceptions, such as (in the case of financial regulatory approvals) a regulator requiring regulatory capital above a certain threshold or certain burdensome governance arrangements.

In relation to representations and warranties, sellers often propose that they will not have any liability arising from changes of law after the date of signing. However, where the representations and warranties are being insured and the seller will have no, or very limited, residual exposure (which is very common), this limitation in the transaction agreement will have limited relevance and what the buyer may be able to negotiate with the insurer in this respect will be more important

Law stated - 1 February 2025

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Activist shareholders are not shying away from the Dutch financial services industry any more than from listed companies in other sectors. M&A remains one of the areas of focus for activist shareholders, either acting as a catalyst for M&A transactions (pushing for a sale of the company or certain parts thereof) or taking a position in respect of an already announced deal (typically pushing for an increase of the consideration offered).

As a famous historical example, the activist campaign by The Children's Investment Fund against major Dutch bank ABN AMRO led to the RBS/Fortis/Santander €72 billion break-up bid in 2007.

More recently, there are examples of Dutch financial services firms with activist shareholders in their shareholder registers (for example NN, which was targeted by activist shareholder Elliott Advisors). Depending on the objectives of such activist shareholders, this may also influence the decision-making of such firms in relation to M&A. However, in recent years, there has been limited direct involvement by activist shareholders in financial services M&A transactions in the Dutch market.

Law stated - 1 February 2025

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Transactions involving parties or a target group with a Dutch works council typically require completion of a consultation procedure with the works council, prior to closing of the transaction, on the proposed change of control. Depending on the transaction, other topics – such as the financing of the target group or the granting of security – may also be subject to works council consultation.

Prior to the signing of an M&A transaction, including in financial services, the parties are typically required to make a notification to the Dutch Social-Economic Counsel (SER) of the basis of the Dutch Merger Code. If Dutch trade unions are active within either of the parties or the target group, the SER Merger Code also requires a notification to the relevant trade unions.

In most M&A transactions, including in financial services, change of control provisions in a number of the target group's material contracts will usually be triggered by closing of the transaction. The parties to the transaction will typically include in the transaction agreement a procedure for trying to obtain consents to the change of control from the relevant counterparties between signing and closing. It is uncommon for obtaining such consents to be a condition to closing of the transaction, except potentially in the case of business-critical contracts.

Law stated - 1 February 2025

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

The usual legal due diligence topics are also relevant for financial services M&A transactions, but there are a few topics that typically warrant additional attention and specialist involvement.

Regulatory compliance is clearly important in financial services M&A, and in particular know your customer or anti-money laundering and tax administration and reporting (eg, FATCA and CRS) compliance, which have been subject to considerable regulatory scrutiny in the Dutch market in recent years. There are also regulatory topics that relate to other areas of legal due diligence – for example, compliance with employee bonus cap rules, outsourcing rules (including the European Banking Authority Outsourcing Guidelines) in material supplier contracts, and the EU Digital Operational Resilience Act (DORA). Data privacy compliance is also very relevant given the considerable volume of sensitive client data that many financial services firms handle.

From time to time, there are also developments in the financial services sector that may require specific investigation in legal due diligence. One Dutch example in recent years is potential liability in relation to unit-linked insurance products, although this issue is now largely resolved due to recent case law and subsequent settlements. Diligence on such topics frequently requires both regulatory and litigation, as well as operational, expertise, and as such may be conducted through a combined effort between external counsel and in-house legal and operational teams.

Law stated - 1 February 2025

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

The most common areas of non-legal due diligence in financial services M&A transactions are financial (including actuarial for insurance companies), tax, commercial or operations or IT, and HR. On larger transactions with an auction process, the seller will often commission vendor due diligence reports on some or all of these topics, as well as on legal due diligence. In recent years, specific ESG due diligence is increasingly undertaken.

Law stated - 1 February 2025

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

Blockchain technology and cryptocurrency activities are likely to become additional subjects for both legal and non-legal due diligence as this part of the industry further matures and, in particular, as incumbent financial services firms engage in M&A to acquire these capabilities or strengthen their existing capabilities in this area. We are also seeing Dutch businesses related to blockchain technology and cryptocurrency themselves becoming involved in M&A transactions.

Generative AI will be another area of focus in financial services M&A in the coming years as financial services companies implement this technology in their businesses. This is likely to have compliance implications, not least in relation to data privacy, and could also impact how M&A processes themselves are run (eg, in relation to data room or disclosure exercises).

Law stated - 1 February 2025

PRICING AND FINANCING

Pricing

20 How are targets priced in financial services M&A transactions? What factors typically affect valuation?

M&A transactions involving banking or insurance targets are most commonly priced on the basis of (a multiple of) net assets or eligible 'own funds', as well as regulatory capital ratios (eg, the solvency ratio under Solvency II). A dividend discount model – taking into account relevant dividend capacity in a regulated target – is often used as a supporting valuation method (in addition to comparables analysis). Target businesses without, or with more limited, regulatory

capital requirements are typically priced similarly to businesses outside the financial services sector.

Due to a seller preference in the Dutch M&A market for a ‘clean exit’, buyers typically do not expect sellers to give specific indemnities. As such, known material issues in a target business are frequently taken into account in valuation (ie, ‘priced in’).

Law stated - 1 February 2025

Purchase price adjustments

21 | What purchase price adjustments are typical in financial services M&A transactions?

The Dutch M&A market has been seller-friendly for several years and it has become common for sellers to propose a locked-box purchase price mechanism, including in financial services M&A transactions, with no adjustments other than for (reverse) leakage. In competitive auction processes, this has frequently been accepted by the buyer. Where the buyer is in a stronger negotiating position (eg, a bilateral deal), however, or the transaction is more complex (eg, a carve-out), purchase price adjustments are more common, and we have seen more examples of this in the last couple of years. These adjustments typically relate to, for banks and insurers, target net assets or regulatory capital ratios, and for asset managers, revenue run rate (which is, broadly speaking, a function of AuM and fee rates), but there is also increasing creativity in the types of adjustments, including various types of earn-outs, particularly where private equity buyers are involved.

Law stated - 1 February 2025

Financing

22 | How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

Strategic buyers will usually be prepared to finance smaller acquisitions from available cash and existing credit facilities. This allows them to move quickly toward signing and they may then optimise the financing structure between signing and closing or after closing. For larger acquisitions, they will often put in place specific acquisition financing, which may be one or more of bank debt, listed debt or, for listed buyers, potentially additional equity (eg, by way of a rights issue). The choice of financing is driven by relative cost of capital (which, in the higher interest rate environment of recent years, lead to a number of deals being done with lower or no leverage initially) as well as impact on capital structure and, particularly for banks and insurers, applicable regulatory capital requirements for the combined group after closing (which will similarly be impacted by market or interest conditions). Deal (and financing) certainty is also a relevant consideration given that financing conditions continue to be the exception in the Dutch market.

Private equity buyers will usually look to put in place a relatively typical acquisition finance structure. However, this will often create a 'double leverage' structure, where there is leverage both within the target group and in the private equity holding structure above it. This can be subject to scrutiny by regulators (including the Dutch Central Bank) in the financial regulatory approval process, in light of the potential for dividend pressure on the target group in order to service the debt higher up. Private equity buyers in the Dutch financial services industry may therefore need to be prepared to accept less than their preferred amount of leverage in the financing structure.

Law stated - 1 February 2025

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

As most financial services M&A transactions in the Dutch market in recent years have been private M&A transactions, it is typically the seller (rather than the target) that gives the representations and warranties.

The scope of the representations and warranties is usually similar to a typical scope in general M&A transactions. However, there are some areas where the representations and warranties tend to be more detailed in financial services M&A. Regulatory and compliance matters are a focus area, including in relation to sanctions, anti-bribery and corruption and anti-money laundering, and this may increasingly extend to ESG topics in the coming years. Data privacy is also often covered in greater detail, as are IP and IT in relation to, for example, proprietary software or technology, and digital operational resilience. Certain remuneration topics are also frequently addressed specifically, especially where they are subject to regulation (eg, bonus cap rules).

There are also certain topics that are commonly expressly excluded from representations and warranties – for example, actuarial reserving or unit-linked products in insurance M&A transactions.

Law stated - 1 February 2025

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Representations and warranties are typically given on a non-indemnity basis in the Dutch market, with the buyer being entitled to claim damages in the case of breach.

Where the representations and warranties are insured – which is relatively common in the Dutch market even in financial services M&A – it is usual for the liability of the seller to be capped at a very low amount (often €1) except in the case of fraud or wilful misconduct. In that case, the seller gives the representations and warranties in the transaction agreement primarily to facilitate the insurance and, as such, the key limitations in the transaction agreement (eg, survival periods and monetary limitations) will typically be aligned with the corresponding limitations agreed in the insurance policy between the buyer and the insurer.

Whether or not the representations and warranties are insured, survival periods of one to two years from closing for (non-tax) business warranties, and five to seven years from closing for fundamental warranties and tax warranties (and a tax indemnity, if given), is relatively common. In terms of monetary limitations, the following ranges are typically seen (in each case as a percentage of enterprise value): a de minimis of 0.1– 0.2 per cent, a basket or threshold of 1–2 per cent, and a cap on business warranty and tax claims of 10–20 per cent.

Specific indemnities have not been common in the seller-friendly Dutch market of recent years, although they have been seen in some cases recently where the buyer has had a stronger negotiating position. Sellers frequently pursue a 'clean exit', via competitive auction, with no or very limited residual exposure. They therefore typically expect bidders to take known issues into account in their valuation.

Law stated - 1 February 2025

Closing conditions

25 | What closing conditions are common in financial services M&A transactions?

Closing conditions in financial services M&A transactions are typically limited to matters that are legally required to close the transaction. In most cases, this means required merger clearance, financial regulatory approvals, and possibly FDI/FSR approvals, in relevant jurisdictions. If applicable, it will also include completion of required work council consultations in the Netherlands and any other relevant jurisdictions.

It is uncommon for other closing conditions to be included – for example, in relation to business-related matters or buy-side financing – although business-related conditions are sometimes seen in more complex transactions. In addition, in asset management M&A it is not uncommon for the parties to consider a condition that the target business' revenue run rate (which is, broadly speaking, a function of assets under management and fee rates) will remain above a specified threshold between signing and closing.

Law stated - 1 February 2025

Interim operating covenants

26 | What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Sector-specific interim operating covenants typically address specific business issues for the relevant type of financial services firm. For example, in a banking M&A transaction, there may be an interim operating covenant relating to the target's loan origination policies and practices. In insurance M&A, it is relatively common to see interim operating covenants relating to the target's underwriting and reserving policies and practices. In an asset management transaction, there may be restrictions on the target business changing fee rates or giving fee waivers to clients.

It is also relatively common for the transaction agreement to provide for detailed separation and migration or integration planning between signing and closing, given the complexity of many financial services businesses, and the regulated environment in which they operate. This can be an intensive workstream between signing and closing, particularly where there is a strategic buyer, to ensure business continuity and regulatory compliance immediately from closing.

Law stated - 1 February 2025

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

There have been limited examples recently of material disputes in financial services M&A transactions in the Dutch market. This is likely due to the fact that in the seller-friendly market of recent years, many transactions are done on the basis of nil, or very limited, recourse to the seller for business warranties. Most deals in the Netherlands also have a high level of deal certainty built into the transaction documents, so the scope for a dispute to arise and completion not to occur is relatively low.

Law stated - 1 February 2025

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

Market practice varies in respect of choice of jurisdiction for dispute resolution. The outcome often depends on the parties involved in the transaction and their relative bargaining power. For example, it would not be unusual for a transaction between Dutch financial institutions to include dispute resolution in Dutch courts. Where non-Dutch parties are involved (or are expected to be involved – eg, in an auction process), arbitration is often chosen. Within the arbitration option, the rules of the International Chamber of Commerce or Netherlands Arbitration Institute are frequently chosen and it is relatively common for the seat, if not Amsterdam, to be an established, but neutral, arbitration centre.

Law stated - 1 February 2025

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

The most significant recent development for financial services M&A, and M&A generally, is the beginning of the second presidential term of Donald Trump. The first few weeks since his inauguration have been a whirlwind of executive orders, policy changes and other activity, relating to both domestic and international matters. This has, at least for the time being, created an environment of uncertainty. It remains to be seen whether this will continue and how M&A activity, both in the United States and around the world, will fare under the second Trump presidency.

In this context, it is currently challenging to foresee what the coming year may hold for financial services M&A in the Netherlands. Private equity interest in the sector will almost certainly continue, and potentially increase, especially in asset light financial services businesses. We also expect to see financial services businesses owned by private equity engage in add-on M&A activity. We may also see M&A activity in relation to emerging and developing areas, such as blockchain or cryptocurrency and generative AI use in financial services.

Beyond this, the larger Dutch banks and insurers are likely to continue to assess potential M&A opportunities, within both the Netherlands and in other parts of Europe, although whether they pursue those opportunities is likely to depend on how the macro-economic and geopolitical environment develops in the coming months.

Law stated - 1 February 2025

DE BRAUW BLACKSTONE WESTBROEK

Pete Lawley	pete.lawley@debrauw.com
Bart de Rijke	bart.derijke@debrauw.com
Mariska Enzerink	mariska.enzerink@debrauw.com
Wiebe Dijkstra	wiebe.dijkstra@debrauw.com
Eva Schram	eva.schram@debrauw.com

De Brauw Blackstone Westbroek NV

South Korea

Sky Yang, **Mieun Roh**, **Daniel Joonwu Park**, **Yoonhyoung Jeong**, **Minkyung Song**
Bae Kim & Lee LLC

Summary

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

M&A activities involving South Korean financial institutions (as buyer or target) have generally diminished in the recent years due to economic uncertainties, economic downturn, interest rate hikes and complex regulatory environment. The situation even seems to have worsened because of recent political turmoil in South Korea.

Nevertheless, there are movements to sell financial institutions held by private equity funds, and some financial holding companies are attempting to expand their business areas.

Sale or restructuring of certain credit finance companies and savings banks were anticipated due to failing project finance deals, but have not occurred to date.

Digital finance services sector seems focused on strategic acquisitions to enhance their technological capabilities and expand their market presence, but actual deals have been rarely seen to date.

Law stated - 21 February 2025

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

The authorities that supervise the Korean financial services sector are the Financial Services Commission and the Financial Supervisory Service. The Financial Services Commission is a government agency with statutory authority over financial policy and regulatory supervision. The Financial Supervisory Service is a specially legislated quasi-government supervisory authority that is in charge of financial supervision across the entire financial sector.

In South Korea, regulation of the financial services sector has traditionally been complex and strict. In many cases of M&A activity in the financial services sector, the aforementioned authorities examine the eligibility of a party seeking to acquire a financial institution or become its controlling shareholder. The key regulatory aspect is the approval of change of a controlling shareholder, which is granted by the Financial Services Commission. More specifically, a person who intends to become a controlling shareholder of a financial institution shall, first and foremost, obtain the aforementioned approval from the Financial Services Commission. Thus, to receive such approval, the prospective controlling shareholder needs to qualify under certain requirements. Although the Financial Services Commission, in principle, examines requirements that are prescribed under the relevant Korean laws, it holds and utilises a certain degree of discretionary power.

Therefore, in practice, the Financial Services Commission has conducted its examinations in light of the overall circumstances of the financial sector.

Law stated - 21 February 2025

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 | What primary laws govern financial services M&A transactions in your jurisdiction?

The applicable regulations tend to slightly vary for each specific business. Nonetheless, the Act on Corporate Governance of Financial Companies, enacted on 19 October 2017, is the statute that brings together all pieces of finance-related regulations existing under individual laws.

However, in the case of a financial institution that is subject to the Financial Holding Companies Act (namely, a financial holding company), if it conducts an M&A transaction whereupon its direct or indirect subsidiary (such as a second-tier subsidiary and a lower-tier subsidiary) is created or added, the Financial Holding Companies Act, instead of the Act on Corporate Governance of Financial Companies, will govern such M&A transaction. Further, other financial institutions that are not subject to the Financial Holding Companies Act may still face restrictions under the Financial Holding Companies Act when conducting the aforementioned M&A transaction. An example of such restrictions is the restriction on the type of business of a direct or indirect subsidiary to be acquired. Separately, if a financial institution intends to acquire not less than a certain percentage of shares in another company, approval from the Financial Services Commission is required pursuant to the Act on Structural Improvement of Financial Industry and other governmental approvals may be required pursuant to other laws applicable to such financial institution.

Law stated - 21 February 2025

Regulatory consents and filings

4 | What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Approval for Change of a Controlling Shareholder under the Act on Corporate Governance of Financial Companies

The Act on Corporate Governance of Financial Companies prescribes that any person who intends to become a controlling shareholder of a Korean financial institution that is listed in the said statute, whether through a purchase of new shares or existing shares, shall satisfy certain eligibility requirements and thereby obtain prior approval from the Financial Services Commission. Under the Act on Corporate Governance of Financial Companies, a ‘controlling shareholder’ of a financial institution means any of the following:

1. the largest shareholder, which is a shareholder who, together with its specially related persons (such as affiliates), holds the greatest number of voting shares of the financial institution; or
2. a major shareholder, which is defined as a shareholder who:
    - holds at least 10 per cent of the total number of outstanding voting shares of the financial institution for its own account; or
    - exercises de facto control over important matters concerning the management of the financial institution, including through appointment or dismissal (or both) of officers or by other means.

Approval for Addition of a Direct or Indirect Subsidiary under the Financial Holding Companies Act

If a financial holding company incorporated pursuant to the Financial Holding Companies Act, or its direct or indirect subsidiary, intends to acquire or incorporate another company as a direct or indirect subsidiary of such financial holding company, an approval shall be obtained from the Financial Services Commission. In such a case, approval for change of a controlling shareholder in (1) above is not required.

Approval under the Act on Structural Improvement of Financial Industry

Prior approval from the Financial Services Commission is required if a financial institution alone or together with another financial institution belonging to the same corporate group with which it is affiliated:

- holds 20 per cent or more of the total issued and outstanding voting shares of another company; or
- holds 5 per cent or more of the total issued and outstanding voting shares of another company and the same corporate group with which it is affiliated de facto controls such another company.

Law stated - 21 February 2025

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

In South Korea, pursuant to the principle of separation of bank and commerce, the Financial Holding Companies Act and the Banking Act impose a special restriction regarding the ownership of banks and bank holding companies. The legislative intent of such restriction is to prevent banks from being under any improper influence exerted by industrial capitals (namely, a non-financial business operator) through ownership.

Under the Banking Act and the Financial Holding Companies Act, a shareholder of a bank or a financial holding company that owns a bank is classified as either a non-financial business operator or a financial business operator.

A shareholder is deemed to be a non-financial business operator if:

- 25 per cent or more of the aggregate equity interests held by such shareholder and its specially related persons (collectively called the 'same person group') comprises equity interests in non-financial companies (which means companies not engaging in a financial or insurance business, such as commercial banking, financial investment and asset management business, or any other business closely related thereto, such as finance-related IT outsourcing business) within the same person group; or
- the aggregate gross assets of all of the non-financial companies within the same person group are not less than 2 trillion won.

A shareholder that is not a non-financial business operator shall be deemed a financial business operator.

The Banking Act prescribes that a non-financial business operator may acquire up to 4 per cent of voting shares of a bank without any approval. However, a non-financial business operator is prohibited from acquiring more than 4 per cent of such voting shares unless it qualifies for certain limited exceptions.

Similarly, under the Banking Act, a financial business operator may acquire up to 10 per cent of voting shares of a bank without any approval. However, any transaction whereupon the financial business operator acquires more than 4 per cent of such shares must be reported to the Financial Services Commission. For the acquisition of more than 10 per cent of voting shares of a bank, a financial business operator may not proceed with the transaction unless prior approval from the Financial Services Commission is obtained. Such prior approval is granted if certain eligibility requirements set forth in the Banking Act and related regulations are satisfied.

Despite the above regulations prescribed by the Banking Act, the Act on Special Cases Concerning Establishment and Operation of Internet-Only Bank allows a non-financial business operator to hold up to 34 per cent of shares of an internet-only bank (namely, a bank that only provides online banking services). However, a non-financial business operator seeking to hold more than 10 per cent of shares of an internet-only bank shall still obtain approval from the Financial Services Commission.

Law stated - 21 February 2025

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

The Act on Corporate Governance of Financial Companies stipulates the qualification requirements for executive officers of financial companies.

Article 5 of the aforementioned statute prohibits the following persons, among others, from being executive officers of a financial company:

- a person who is a legal minor or is legally incompetent or quasi-incompetent;
- a person who was adjudicated bankrupt and has not been reinstated from bankruptcy;
- a person who was convicted of a crime and sentenced to imprisonment without prison labour (or a criminal fine if convicted of a crime under any financial law) or more severe criminal penalty, and five years have not passed since such person fully served the punishment or otherwise was exempted from the punishment;
- a person who was sentenced to imprisonment without prison labour or more severe punishment and is within the period of probation;
- a person who serves or served as an officer or employee of a financial company that was subjected to a sanction of a certain level or above in the past five years, and such person is responsible for such sanction; and
- a person who was subjected to a sanction as an officer or employee pursuant to any financial law within a certain period.

Article 6 of the aforementioned statute provides that an outside director of a financial company shall be a person who has abundant expertise or practical experience in finance, economy, business administration, law, accounting, and other pertinent areas. Further, the same provision provides that the following persons, among others, are prohibited from being an outside director of a financial company:

- the largest shareholder or its specially related person, or an officer or employee of the largest shareholder or its specially related person if the largest shareholder or its such specially related person is a corporation;
- a major shareholder and his or her spouse or lineal ascendant or descendant, or an officer or employee of a major shareholder if it is a corporation;
- a person who served as a full-time officer or employee or a non-standing director of such financial company or its subsidiary in the past three years; and
- a person who, in the past two years, served as a full-time officer or employee of a corporation that has an important business relationship with such financial company or a competitive or cooperative business relationship with such financial company.

Law stated - 21 February 2025

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Directors of the seller and the purchaser have a general duty of care under the Commercial Code to review the terms of the proposed transaction and confirm whether they are in the interest of such party before approving the proposed transaction at a meeting of their respective boards of directors.

Law stated - 21 February 2025

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

The Act on Corporate Governance of Financial Companies requires that any person, including a foreign investor, who intends to become a controlling shareholder of a Korean financial institution shall obtain prior approval from the Financial Services Commission by satisfying certain eligibility requirements (namely, licence requirements and no-sanction requirements).

Also, the Foreign Investment Promotion Act requires that any foreign investor who intends to acquire 10 per cent or more of the total issued and outstanding shares of a Korean company, for which the total acquisition price is at least 100 million won, must file a foreign investment report to the Korea Trade-Investment Promotion Agency or a designated foreign exchange bank. In most cases, the foreign investment report is merely a formality and can be filed at any time between the execution of the relevant definitive agreement and the closing thereof.

After the closing of the transaction, the foreign investor or the target company must complete a foreign-invested enterprise registration or, if the target company has been already registered as a foreign-invested enterprise, update the foreign-invested enterprise registration, in each case within 60 days.

Law stated - 21 February 2025

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

Under the Monopoly Regulations and Fair Trade Act, an acquirer must file a business combination report with the Korea Fair Trade Commission for the acquisition of 20 per cent or more of the voting shares or equities of a target company if:

- the consolidated total assets or the annual turnover of such acquirer and its worldwide affiliates is equal to or exceeds 300 billion won; and
- the consolidated total assets or annual turnover of the target company and its worldwide affiliates is equal to or exceeds 30 billion won.

Further, even if the target company's turnover or total assets do not meet the foregoing thresholds, a transaction that may not be caught by the above jurisdictional thresholds will be notifiable if:

- the transaction value (ie, the total consideration to be paid in the transaction) exceeds 600 billion won and
- the target company has a significant presence in the relevant market in Korea.

If, in addition to the above thresholds having been satisfied, the acquirer's or the target company's consolidated total assets or annual turnover calculated as above is equal to or exceeds 2 trillion won, a business combination report must be filed prior to the consummation of the transaction.

Where approval for the addition of a direct or indirect subsidiary is required pursuant to the Financial Holding Companies Act, the filing of a business combination report is not required. This is because during the review process for the aforementioned approval, the Financial Services Commission consults with the Fair Trade Commission on the anti-competitive effects of the proposed transaction. However, documents similar to those required for a business combination report need to be prepared and submitted to the Financial Services Commission as part of the application for the aforementioned approval.

Law stated - 21 February 2025

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

Financial services M&A transactions in South Korea are predominantly structured as share transactions instead of asset or business transfers, because the financial business licence or approval held by the target company, which is one of the decisive factors that affect the valuation of the target company, may not be transferred via an asset transfer or a business transfer.

Law stated - 21 February 2025

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

In general, the time frame for a financial services M&A transaction requires an additional four to six months compared to that of a general M&A transaction. The key factor that affects the time frame for a financial services M&A transaction is the Financial Services Commission's approval required to become a controlling shareholder. More specifically, the Act on Corporate Governance of Financial Companies requires that any person who intends to become a controlling shareholder of a Korean financial company receive approval from the Financial Services Commission. Provided that a foreign investor satisfies the eligibility requirements set forth in the Act on Corporate Governance of Financial Companies, such approval will take several months to obtain.

Law stated - 21 February 2025

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

In South Korea, tax issues that arise in financial services M&A transactions do not differ from those of general M&A transactions.

For foreign corporations without permanent establishments in South Korea, corporate income tax is charged and withheld on each separate item of Korean-sourced income, and the applicable withholding tax rates are as follows:

- for interest and dividends: 22 per cent; and
- for share transfers, the lesser of either 11 per cent of the proceeds of the sale or 22 per cent of the capital gains made.

For foreign corporations with permanent establishments in South Korea, corporate income tax will be imposed on all taxable incomes from South Korean sources. From the business year commencing as of 1 January 2023, rates of corporate tax, which encompass the local income tax, between 9.9 per cent and 26.4 per cent have been levied on foreign corporations with permanent establishments in South Korea.

The corporate income tax rates may be reduced or exempted by an applicable double tax treaty between Korea and the country in which the foreign corporation is a tax resident.

Securities transaction tax is also imposed at 0.15 per cent from 1 January 2025 for the sale of shares through the Korea Stock Exchange (KOSPI) and the Korean Securities Dealers Automated Quotations (KOSDAQ). In case of transfers of shares through the Korea New Exchange (KONEX), the rate is 0.1%. Such rate increases to 0.35 per cent for the sale of shares that are sold outside the Korea Exchange. For transfers made outside the Korea Exchange, if the seller is a non-resident, the buyer must withhold and pay the securities transaction tax to the tax authorities on behalf of the seller within two months of the last day of the half-year period, which includes the date of the transfer.

Law stated - 21 February 2025

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

In South Korea, public relations issues and ESG factors have grown in significance recently. However, although a target company and an investor will make mandatory public disclosures to the extent required by the Korean laws or the regulations of the applicable stock exchange, further commitments related to social or ESG issues will be made upon the voluntary discretion of an investor. Such commitments are not yet common in South Korea.

Law stated - 21 February 2025

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

In the event of a policy change, the common practice has been that changes be disclosed to the public in advance. Therefore, when a policy change is announced in advance, the parties to an affected transaction must decide whether to proceed with the deal and adjust the valuation accordingly. If any change to the approval procedure of the Financial Services Commission is announced, the affected parties shall consult with the financial regulators and confirm the specific approval process.

Law stated - 21 February 2025

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Shareholder activism appears to be less prevalent in the South Korean financial services sector. One reason for this phenomenon is that in South Korea, it is not easy for investors to acquire sufficient shares to be able to influence a financial company's policies. This is because becoming a controlling shareholder requires prior approval from the Financial Services Commission. Another reason is that regulators appear to give more weight to the stability of a financial company's management structure and prefer that the profits of a financial company be used for the benefit of its consumers rather than shareholders. As such, the aforementioned position of regulators makes it challenging for shareholder activists to use offensive tactics and impact the financial services sector.

Law stated - 21 February 2025

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

A financing agreement, such as a loan agreement, may contain a change of control provision that requires prior consent from or notification to a lender if the proposed transaction involves a transfer of a controlling interest in a financial company. It is also common that a reinsurance agreement for an insurance company contains a change of control provision, based on which a reinsurer may terminate such agreement if there is a change in the ownership of an insurance company.

Law stated - 21 February 2025

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

The scope of legal due diligence for a financial institution is similar to that for non-financial institutions and covers areas such as general corporate information, contracts, property and assets, employment and litigation. Additionally, legal due diligence for a financial institution is conducted with heightened focus on the following areas:

- regulatory requirements: the acquisition of shares in a financial institution commonly requires approvals from the Financial Services Commission pursuant to relevant laws and regulations and thus analysis is conducted as to whether any legal requirements are to be noted;
- licences: the operation of a financial institution requires that certain licences be obtained respectively under individual laws and regulations and thus analysis is conducted as to whether the target financial institution legally holds all of the licences that are required; and
- inspection and sanctions: a financial institution is inspected regularly and frequently by the Financial Services Commission and the Financial Supervisory Service and thus analysis is conducted as to whether sanctions have been imposed on the target financial institution or its executive officers or employees.

Law stated - 21 February 2025

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

The scope of due diligence for financial services M&A transactions typically covers legal, business, accounting and tax areas. The specific scope varies depending on the nature of the business engaged by the target company and the type and volume of the proposed transaction.

A key aspect of due diligence for financial services M&A transactions is accounting or financial due diligence, which is of greater importance as financial institutions are required to comply with the capital adequacy and financial soundness regulation.

Further, due diligence on anti-money laundering is advised. In Korea, the regulatory regime of anti-money laundering or combating the financing of terrorism is governed by the Financial Transaction Reports Act, the Proceeds of Crime Act and the Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction.

The Financial Transaction Reports Act, which is the key piece of legislation of the anti-money laundering or combating the financing of terrorism regime in Korea, requires financial companies to:

- undertake preventive measures such as consumer due diligence, suspicious transaction reporting and currency transaction reports; and
- establish sufficient internal control systems.

The Proceeds of Crime Act criminalises money laundering and provides the legal ground for the confiscation of proceeds derived from criminal activities.

Finally, the Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction criminalises terrorist-financing activities, including collecting, providing, delivering or safekeeping funds with the knowledge that such funds are to be used in connection with terrorist activities.

Law stated - 21 February 2025

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

First, regarding a financial company conducting businesses related to blockchain and cryptocurrency, additional diligence is required to determine whether necessary licences have been legally obtained or whether an exemption therefrom applies based on a financial regulatory sandbox or otherwise.

In addition, due to the recently increased interest in environmental, social and governance (ESG) issues, there have been an increasing number of transactions for which due diligence on ESG compliance was additionally conducted. In particular, an ESG due diligence of a financial institution tends to consider the following issues:

- whether an appropriate system of corporate governance has been established;
- whether an effective system of anti-trust or anti-corruption prevention has been established;
- whether the independence of the auditor is assured; and
- whether lawful processing of personal and personal credit information is conducted.

Law stated - 21 February 2025

PRICING AND FINANCING

Pricing

20 | How are targets priced in financial services M&A transactions? What factors typically affect valuation?

The valuation method used in financial services M&A transactions will differ case by case and from one specific industry to another. Therefore, one or more valuation methods cannot be singled out as being uniformly used. For instance, for the valuation of financial institutions, the methodologies of discounted cash flow or dividend discount model are known to be commonly used. On the other hand, for the valuation of insurance companies, embedded value is a common valuation methodology mainly used in South Korea.

In addition, if the target is a financial institution, factors including the solvency of its assets are also considered during the valuation process. In some cases, if the target financial institution holds a rare licence or a licence difficult to obtain, a premium for holding such licence is added to the valuation price.

Law stated - 21 February 2025

Purchase price adjustments

21 | What purchase price adjustments are typical in financial services M&A transactions?

The structures of price adjustments are different for each case of financial services M&A transactions. In financial services M&A transactions, although earn-outs or net value adjustments are not unprecedented, it is uncommon to have an earn-out provision, and in terms of price adjustments, it is more common to either not have any price adjustment mechanism or to make an adjustment only to the extent of increase in net asset value until the closing. However, where the period between the signing and the closing is overly prolonged due to the delay in obtaining approvals from regulatory authorities, attempts are sometimes made to adjust the purchase price through net value adjustments or delay interest after a certain period of time.

Law stated - 21 February 2025

Financing

22 | How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

In general, a strategic investor finances a transaction using their own equity capital instead of via acquisition financing. In contrast, private equity funds frequently use acquisition financing. Considering that eligibility requirements for major shareholders under Korean law in certain cases include limits on the debt ratio of financial arrangements and financing via borrowed capital, when opting for acquisition financing, prospective investors must confirm whether the eligibility requirements of major shareholders will restrict financing arrangements.

Law stated - 21 February 2025

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

In general, representations and warranties regarding a target company in a financial services M&A transaction are not different from those in general M&A transactions. However, a financial business being a regulated industry, representations and warranties regarding possession of valid governmental approvals and compliance with relevant laws have been considered to be of greater significance and thus usually set out in greater detail than those in general M&A transactions.

Law stated - 21 February 2025

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

As in general M&A transactions, indemnities are commonly the exclusive contractual remedy provided in financial services M&A transactions.

Representations and warranties tend to survive for longer than one year after the closing. In particular, representations and warranties on tax and employment matters often further survive the closing until the expiration of the applicable statute of limitations plus a certain number of days. Limitations on the indemnification amount, such as basket, de minimis and cap, as well as special indemnity, are matters to be negotiated and thus their terms vary for each transaction and circumstance.

The purchase of warranty and indemnity insurance that covers breaches of representations and warranties is becoming increasingly common.

Law stated - 21 February 2025

Closing conditions

25 What closing conditions are common in financial services M&A transactions?

The customary closing conditions for M&A transactions, such as accuracy of representations, performance of obligations, and obtaining of consents and waivers, are also commonly required for financial services M&A transactions. On top of these, given that financial services M&A transactions generally require approvals from the Financial Services Commission, it is very likely that the issuance of such requisite approvals is made a closing condition.

Law stated - 21 February 2025

Interim operating covenants

26 What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Since the closing of financial services M&A transactions tends to take several months longer than the closing of general M&A transactions, the operating covenants to operate the target company in the ordinary course of business and preserve its business intact during the pre-closing period are considered essential.

Further, the seller or the target company, as the case may be, is often required to obtain the buyer's prior consent for certain activities of the target company prior to the closing that may adversely affect the valuation of the target company.

In addition, considering that obtaining approval from the Financial Services Commission is a significant hurdle in financial services M&A transactions, the usage of hell or high water clauses related to such approval is increasing.

Law stated - 21 February 2025

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

In financial services M&A transactions, approval by the Financial Services Commission is usually a closing condition. Therefore, disputes frequently arise as to how to proceed with a transaction in the event that the Financial Services Commission denies or delays its approval. During the process of negotiation, if the seller holds greater bargaining power, the seller sometimes demands the buyer to pay a penalty if the buyer fails to obtain approval from the Financial Services Commission by a specified deadline. In addition, as in general M&A transactions, liabilities for breach of representations and warranties are frequent matters of dispute in financial M&A transactions.

Law stated - 21 February 2025

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

Upon the occurrence of a commercial dispute of a substantial size regarding financial services M&A transactions, civil litigation is the most favoured method used to resolve such disputes. In such an event, the parties generally designate Seoul Central District Court to resolve the relevant dispute. In a civil proceeding, unless it is served via a public notice, the defendant has 30 days from the date on which the complaint was received to submit a statement of defence. If an investor is a foreign corporation, parties also commonly resort to arbitration for dispute resolution.

Law stated - 21 February 2025

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

The latest and biggest talking point of financial services M&A in Korea is the convergence of finance and IT and digital sectors (such as blockchain and cryptocurrency). The number of M&A or joint venture transactions is increasing due to the attempt to augment the synergy created via such convergence, and transactions of these kinds are expected to continue to rise. Further, the Korean market will see more transactions that build upon the expansion of the aforementioned synergy to establish new business models and invest in such businesses.

Private equity funds, which are already key players in the market, will continue to be active in making, and exiting from, investments in financial institutions. Additionally, investments by venture capital funds under the Specialised Credit Finance Business Act are expected to become livelier.

Law stated - 21 February 2025

Sky Yang	sky.yang@bkl.co.kr
Mieun Roh	mieun.roh@bkl.co.kr
Daniel Joonwu Park	daniel.park@bkl.co.kr
Yoonhyoung Jeong	yoonhyoung.jeong@bkl.co.kr
Minkyung Song	minkyung.song@bkl.co.kr

Bae Kim & Lee LLC

Read more from this firm on Lexology

Switzerland

Philipp Candreia, Martin Schaub, Philippe A Weber
Niederer Kraft Frey

Summary

DISPUTES

UPDATE AND TRENDS

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

M&A activity in the financial services sector slowed down in 2023 compared to previous years. The most prominent transaction in 2023 was clearly the US$3.5 billion merger of Credit Suisse Group into UBS. This Swiss Federal Council-brokered transaction between two systemically important banks was announced on 19 March 2023, following significant turbulences at Credit Suisse. The merger was legally effected on 12 June 2023.

Since the announcement of the merger, there have been numerous shifts of teams and employees from former Credit Suisse to other financial institutions, which might have contributed to reduced M&A activity.

The asset management sector continues to account for the majority of financial services M&A, but without a consolidation on the scope initially expected with the FINMA licensing requirement applicable since 2023. It is followed by the insurance sector.

Law stated - 25 May 2024

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

There is only limited government policy or political pressure towards regulating or otherwise influencing M&A activity in the financial services sector, except in extraordinary circumstances where the existence of a systemically important or otherwise significant bank or financial institution is concerned. Such an exceptional case materialised in March 2023, when the Federal Council, the Swiss National Bank and the Swiss Financial Market Supervisory Authority (FINMA) encouraged or pressured UBS to take over the ailing Credit Suisse. This was preferred to a resolution in order not to threaten the stability of the international financial system and limit the harm to the Swiss economy, given that CS was globally systemic and the country's second-largest bank.

FINMA, besides having to approve most M&As, sometimes regulates such activity in enforcement decrees by imposing temporary M&A restrictions on institutions that breached supervisory law and must restore compliance with the law or otherwise remediate irregularities (article 31 Financial Market Supervision Act). The regulator argues in such cases that the institution needs to concentrate on remediation and avoid diverting resources and increasing complexity or risks by venturing into acquisitions.

On the other hand, FINMA may welcome or even request (under threat of licence withdrawal) mergers of deficient institutions into other companies. Similarly, it may support the acquisition of an institution suffering from financial troubles like a liquidity shortage.

Such was the case with Sberbank (Switzerland) AG in the wake of Russia's attack on Ukraine and the resulting sanctions; FINMA enabled the sale of the shares by the Russian parent company to a Geneva conglomerate in 2022. In the *Credit Suisse* case, the Federal Council and the Swiss National Bank played a much more prominent role than FINMA, as they had to provide the necessary credits and guarantees and to enact an emergency ordinance.

Law stated - 25 May 2024

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 | What primary laws govern financial services M&A transactions in your jurisdiction?

The primary laws (all on federal levels) are:

- Code of Obligations (CO);
- Merger Act (MA);
- Cartel Act;
- Financial Market Infrastructure Act (FinMIA) (in particular, article 9, paragraph 5, and articles 17 and 125–141);
- Banking Act (BA) (in particular, article 3, paragraph 5, and articles 3-terand 30);
- Financial Institutions Act (FinIA) (in particular, article 11, paragraph 5, and articles 15 and 43); and
- Insurance Supervision Act (ISA) (in particular, article 3, paragraph 2, article 5, paragraph 1, and articles 21 and 62).

Law stated - 25 May 2024

Regulatory consents and filings

4 | What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Financial markets supervisory law

Banks (including Swiss subsidiaries or branches of foreign banks)

Persons must notify FINMA before acquiring or selling a qualified participation (10 per cent of the capital or voting rights or other means to exercise a controlling influence; the term has the same meaning below in the context of other financial institutions) or when their participation reaches, exceeds or falls below 20, 33 or 50 per cent (article 3, paragraph

5 BA). The bank must also notify FINMA of any persons subject to these requirements as soon as it becomes aware of them and at least once a year (article 3, paragraph 6 BA).De facto, the notification duty is an approval requirement, as FINMA may question the continuous fulfilment of the licence conditions if a person not deemed fit and proper takes a qualified participation. (This also applies to the notification duties concerning other financial institutions mentioned below.)

Banks that come under foreign control (foreign shareholders with participations of more than half of the voting rights or otherwise able to exercise a controlling influence) or whose foreign qualified shareholders change require an additional FINMA licence (articles 3^{ter} and 3^{bis} BA). The Federal Council may derogate from this requirement in international treaties for nationals of the treaty state generally or contingent on the granting of reciprocity (article 3^{quater} BA). Banks that establish (including, in practice, acquire) a foreign subsidiary, branch, agency or representative office have to report this beforehand to FINMA (article 3, paragraph 7 BA).

Special rules apply to banks for situations of impending insolvency, where FINMA may order a restructuring, in particular an asset sale to another bank or a bridge bank to ensure the continuation of banking services (article 30, paragraphs 2 and 3 BA). Since 2023, FINMA has also been able to order a merger (revised article 30, paragraph 2 lit. b and c BA).

Financial market infrastructures

This includes stock exchanges and other trading venues, central counterparties, central securities depositories, payment systems and trade repositories.

Persons must notify FINMA before acquiring or selling qualified participations in a financial market infrastructure or when their share reaches, exceeds or falls below 20, 33 or 50 per cent (article 9, paragraph 5 FinMIA). The financial market infrastructure must also notify FINMA of any persons subject to these requirements as soon as it becomes aware of them and at least once a year (article 9, paragraph 6 FinMIA).

A financial market infrastructure must notify FINMA before establishing, acquiring or closing a foreign subsidiary, branch or representative office, as well as before acquiring or surrendering a qualified participation in a foreign company (article 17 FinMIA).

Financial institutions under the Financial Institutions Act

Collective asset managers, securities firms

Persons must notify FINMA before acquiring or selling qualified participations in collective asset managers and securities firms or when their share reaches, exceeds or falls below 20, 33 or 50 per cent (article 11, paragraph 5 FinIA). The target companies must also notify

FINMA of any persons subject to these requirements as soon as they become aware of them (article 11, paragraph 6 FinIA).

For securities firms that are foreign-controlled, articles 3-ter and 3-quater BA requiring an additional FINMA licence (see above) apply by analogy (article 43 FinIA). The special rules for banks set out above for situations of impending insolvency also apply by analogy to securities firms (article 67, paragraph 1 FinIA).

Collective and individual asset managers, trustees, fund management companies, securities firms

The acquisition or sale of a foreign subsidiary, branch or representative office or a qualified participation in a foreign company must be reported to FINMA (article 15 FinIA).

Insurance companies

Persons who wish to acquire a share in a Swiss insurance company reaching or exceeding 10, 20, 33 or 50 per cent of capital or voting rights have to report this to FINMA. The same applies to persons that wish to reduce their share below 10, 20, 33 or 50 per cent of capital or voting rights or otherwise change their share so that the company ceases to be a subsidiary.

A Swiss insurance company that wants to acquire a share in another company reaching or exceeding 10, 20, 33 or 50 per cent of capital or voting rights also has to report this to FINMA.

FINMA can prohibit the transaction or impose conditions if it could threaten the insurance company or the interests of the insured persons (article 21 ISA). In any case, it must be ensured that insurance contracts can be continued without change (article 4, paragraph 2 Insurance Supervision Ordinance (ISO)).

As mentioned above, article 3, paragraph 2 ISA also requires a FINMA licence for any merger (or split/ demerger or change of the legal form).

Since 1 January 2024, in situations of impending insolvency analogous rules have applied as for banks (see above); previously, a restructuring was only practical in the case of a bankruptcy, forcing this route even if the company could have been stabilised otherwise. The new law has introduced specific restructuring provisions outside a bankruptcy (articles 52a-52m ISA).

Corporate law

Mergers in the form of a *combination* require a change of the articles of association of both companies, which must be approved in advance by FINMA. A new licence is generally not needed if the merging entities already each had the licence needed by the new company (which can, accordingly, usually 'inherit' it).

In the case of an absorption, the target needs to obtain FINMA's approval for the surrender of its licence, while the acquiring entity needs to change its articles of association if its purpose or business area changes. Such changes again have to be approved by FINMA. FINMA approval is also needed if the absorption leads to a 'significant change' of the circumstances underlying the licence. Otherwise, FINMA only needs to be notified. (Except for the insurance sector, where each merger needs FINMA approval; see article 3, paragraph 2, and article 5, paragraph 1 ISA.) Finally, if the acquiring entity assumes an activity for which it has not been licensed so far, it needs an additional licence – it cannot simply 'inherit' the licence of the absorbed entity.

Share or asset deals may also lead to a change in the articles of association of the companies concerned or a 'significant change' of the circumstances underlying their licence, again requiring FINMA approval, and otherwise a FINMA notification.

In an emergency threatening 'serious disruption to public order or internal or external security' (article 185, paragraph 3 Federal Constitution), in particular concerning a systemically important bank, the Federal Council may deviate from these provisions. It did so in the merger of Credit Suisse Group into UBS in 2023 by declaring various provisions of the Merger Act inapplicable, in particular the need to obtain the approval of the general assemblies of the companies (see article 10a – in the meantime repealed – of the Ordinance on Additional Liquidity Assistance Loans and the Granting of Federal Default Guarantees for Liquidity Assistance Loans from the Swiss National Bank to Systemically Important Banks of 16 March 2023).

Competition and takeover law

Depending on the market share of the entities, merger filing requirements under the Cartel Act may apply. For listed entities, public takeover rules under FinMIA must be complied with.

Law stated - 25 May 2024

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

Banks

Persons with a participation of 10 per cent or more of the capital or voting rights or other means to exercise a controlling influence (qualified participation; the term has the same meaning below for other financial institutions) must ensure that their influence is not detrimental to prudent and sound business activity (article 3, paragraph 2 lit c^{bis} BA). In this regard, FINMA may and does exercise some control over the types of entities and individuals holding qualified participations. FINMA is also generally reluctant to accept PE vehicles as holders of qualified participations and would only do so under additional requirements.

In addition, for foreign-controlled banks, FINMA makes the bank licence conditional upon reciprocity by the home country of the holders of qualified participations, provided there are no contrary international obligations (article 3-bis, paragraph 1, and article 3-terBA).

Financial market infrastructures and financial institutions under the Financial Institutions Act

Persons with a qualified participation must enjoy a good reputation and ensure that their influence is not detrimental to prudent and sound business activity (article 9, paragraphs 3 and 4 FinMIA; article 11, paragraphs 3 and 4 FinIA). The standard of FINMA for the assessment is similar to that for banks (see above).

Insurance companies

Since 2024, persons with a qualified participation have been required to enjoy a good reputation and ensure that their influence is not detrimental to prudent and sound business activity (article 14, paragraph 3 ISA under the revision of 18 March 2022). Already before, FINMA was authorised to prohibit or impose conditions for an acquisition if it could threaten the insurance company or the interests of the insured persons (article 21 ISA), which could – and still can – relate to the acquirer.

Law stated - 25 May 2024

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

All financial institutions

While the wording of the provisions for the various financial institutions differs slightly, in essence they all require that the members of the board of directors and the executive board (and persons representing foreign insurance companies under a general power of attorney) enjoy a good reputation and guarantee irreproachable business conduct (ie, be fit and proper). Additionally, these corporate bodies as a whole must have sufficient expertise and experience and be sufficiently independent (see, explicitly, article 14, paragraph 2 ISA; article 12, paragraph 1 and 2 ISO).

In the M&A context (or situations with dominant shareholders generally), FINMA will particularly strive to ensure that directors representing qualified shareholders do not enable the latter to exert undue influence on the institution's operations and procedures. In light of recent experience, this will particularly apply to foreign state-linked owners.

These requirements must be met for the granting of the original licence for the institution (the individuals as such do not need a licence or registration). Later director and officer changes in banks, securities firms and insurance companies must be approved by FINMA as well. For other financial institutions, prior (de facto) approval is generally sought to ensure that FINMA has no reservations regarding fitness and properness.

In addition to the general fitness and properness requirement, the following specific requirements apply.

Banks

At least one third of the board of directors must consist of independent members (-FINMA Circular 2017/1 Corporate governance – banks), unless an exemption is granted. Further, to enable FINMA to effectively exercise its supervision, the bank must be managed from Switzerland (article 10 Banking Ordinance), namely, key persons of the executive management must be available in Switzerland and the chairman, or at least the vice-chairman, of the board of directors must be domiciled there.

Financial market infrastructures

There is no explicit quorum for independent directors, but just as banks, financial market infrastructures must be managed from Switzerland (article 7, paragraph 1 Financial Market Infrastructure Ordinance (FinMIO)). The workplace of executive managers must also generally be in Switzerland, but they only need to ʻreside in a place from which they can effectively exercise such management'(article 7, paragraph 2 FinMIO) – that is, not necessarily in Switzerland.

Financial institutions under the Financial Institutions Act

The requirement of FINMA Circular 2017/1 of at least one-third of independent board members also applies to securities firms.

The same quorum is required for fund management companies and managers of collective assets, but independence is more narrowly defined here as independence from persons with a qualified participation only (article 38, paragraph 3 and article 52, paragraph 4 Financial Institutions Ordinance (FinIO)). Further independence and incompatibility requirements apply between directors and officers of fund management companies and their custodian banks (article 53, paragraphs 2–4 FinIO).

Financial institutions must again be managed from Switzerland (article 10 FinIA), but only one or two members (with individual or collective signatory powers) of the board of directors or the executive board must be domiciled there (article 23, paragraph 2, article 37, paragraph 2 and article 66, paragraph 1 FinIO).

Insurance companies

One third of the board of directors must be independent (FINMA Circular 2017/2 Corporate governance – insurers), unless an exemption is granted.

The insurance company does not need to be managed from Switzerland, and there are thus no attendant residence requirements, except that a person representing foreign insurance companies under a general power of attorney must reside in Switzerland (article 16, paragraph 1 ISO).

Law stated - 25 May 2024

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

There are no financial-institution-specific liabilities and legal duties of directors and officers in the context of M&A transactions, except for certain notification or approval requirements.

Directors and officers must perform their duties with all due diligence and safeguard the interests of the company in good faith (article 717 CO).

The members of the board of directors and all persons engaged in the executive management are liable both to the company and the individual shareholders and creditors for any losses or damage arising from an intentional or negligent breach of their duties, in particular under article 717 CO (article 754, paragraph 1 CO). Furthermore, violations of these civil law duties often translate into violations of supervisory law that can be sanctioned by a professional ban (article 33 Financial Market Supervision Act (FINMASA)). For example, FINMA imposed a professional ban for two years on a BoD member of a bank who failed to ensure that the entire BoD was informed about critical internal assessments of a planned acquisition and did not recuse himself despite conflicts of interest (FINMA enforcement case 2021/10).

Law stated - 25 May 2024

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

There is no general foreign investment control regime in Switzerland yet, but in December 2023 the Federal Council submitted an Investment Screening bill to Parliament, aimed at state-controlled foreign investors targeting companies in particularly critical sectors(-media release). The covered sectors include defence, electricity, water, health, telecoms, transport as well as systemically important banks and financial market infrastructures. For the latter, the acquisition of companies with revenues of 100m Swiss francs would be subject to approval by the State Secretariat for Economic Affairs (SECO), on top of the existing FINMA approval requirements.

Today, while there are no general foreign investment controls, the background and nationality of a person acquiring a qualified participation in a financial institution may already be considered by FINMA in notification or approval processes or ongoing supervision. For example, FINMA investigated Venezuelan (potential) qualified shareholders of Banca Credinvest and reviewed whether they had a negative influence on the bank's strategy and operations, especially in the AML area (see the decision of the Federal Administrative Court B-5445/2019 of 15 September 2020).

Also, banks and securities firms coming under foreign control or whose foreign qualified shareholders change require an additional FINMA licence.

Law stated - 25 May 2024

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

A concentration of undertakings must be notified to the Competition Commission (Comco) if, in the financial year preceding the concentration, (1) the combined turnover was at least 2 billion Swiss francs or the combined turnover in Switzerland of all undertakings concerned together was at least 500 million Swiss francs, and (2) two of the undertakings concerned each have a turnover in Switzerland of at least 100 million Swiss francs, or (3) an undertaking concerned has been held to be dominant in a market in Switzerland, and if the concentration concerns either that market or an adjacent market, or a market upstream or downstream thereof.

If FINMA deems a concentration of banks necessary to protect creditors (ie, in case of a rescue merger), their interests may be given priority (ie, the concentration may be approved even though it could not under 'pure' competition law reasons), and FINMA decides in place of Comco (article 10, paragraph 3 CA). Accordingly, it approved the UBS/CS merger in March 2023, though only provisionally (under article 32, paragraph 2 and article 33, paragraph 2). A definitive decision is still outstanding; it will take into account the legally prescribed opinion from Comco of October 2023.

Even in the case of a FINMA competence under article 10, paragraph 3, Comco remains competent for subsequently preventing unlawful, abusive practices if the resulting bank is a dominant undertaking or an undertaking with relative market power (article 7).

The above-mentioned turnover triggering the duty to notify ComCom is calculated under a special rule for certain financial companies (article 9, paragraph 3 CA): for banks and other financial intermediaries subject to the accounting regulations set out in the BA, 'turnover' is replaced by 'gross income', which is considered generated in Switzerland if the client relationship is booked with the entity or branch in Switzerland; for insurance companies, 'turnover' is replaced by 'annual gross insurance premium income'.

Law stated - 25 May 2024

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

Financial services M&A transactions are commonly:

- share deals (ie, acquisition of a stake in a licensed entity);
- asset deals (acquisition of all or part of the assets, either as partial universal succession pursuant to article 69 et seqq. Merger Act (MA) or singular succession, or in the case of insurance companies, portfolio transfers under the Insurance Supervision Act (ISA)); or
- referral agreements for the transfer of certain customer portfolios.

Share deals may be followed by a group-internal merger post closing. Mergers (by absorption) are also used for (other) intra-group transactions. Otherwise, they have been less common in recent years.

Share deals are regularly used in transactions where the – often non-Swiss – purchaser does not yet hold a respective Swiss Financial Market Supervisory Authority (FINMA) licence and wishes to establish a banking or other regulated operation including acquiring respective infrastructure, etc. Asset deals, on the other hand, are often used by purchasers who already have a FINMA licence and want to expand their business. Asset deals, in particular, allow 'cherry picking' (ie, a selective transfer of client relationships). Asset deals are also often used if a target has significant legacy risks or ongoing proceedings that would not be part of the transfer (leaving a residual bad bank that will later be liquidated).Finally, mere referral agreements are an option where only a portfolio of selected client relationships (eg, clients from selected countries) is to be transferred. With referral agreements, a buyer only pays for the clients that actually enter into a new client relationship.

For the past decade, most financial services M&A transactions, in particular regarding banks, have been asset deals.

For public companies, the structures commonly used are mergers, tender offers or asset sales. The UBS/CS merger in 2023 took place as a share deal; anything else would not have been possible within the very short timespan available.

Law stated - 25 May 2024

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

The key timing element in financial services M&A transactions is the time required for notifying and obtaining approval from FINMA between signing and closing.

Typically, we would allow for two to four months in the case of notification requirements (share deal without requirement for an additional licence and asset deals); and three to six months if an additional or new licence is required, and if bylaws and organisational regulations need to be adapted, and in the case of insurance transactions where the business plan must be adjusted.

The timing may be extended in the case further clarifications e.g. on incoming shareholders are required, and/or approvals must be sought also in foreign jurisdictions, in particular if FINMA has to coordinate on consolidated supervision with foreign regulators.

Law stated - 25 May 2024

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

The same tax considerations apply to financial services M&A transactions as to transactions in other sectors.

One tax aspect that is of particular relevance for M&A transactions in the financial services industry is Swiss stamp duty: if the seller, the buyer or a person acting as intermediary in the sale of shares is a securities dealer within the meaning of the Stamp Duty Act, which includes licensed banks and securities dealers (besides other Swiss entities holding securities with a book value of more than 10 million Swiss francs), a stamp duty of 0.15 or 0.3 per cent of the purchase price is levied on the sale of shares in Swiss and non-Swiss companies, respectively. This should be appropriately considered when drafting the cost and tax clauses of the SPA.

Asset deals pursuant to the Merger Act are exempt from the stamp duty. Nonetheless, for Swiss-domiciled individual sellers, a share deal tends to be more attractive than an asset deal, as capital gains resulting from the sale of shares held as private assets are generally tax free income in Switzerland, which is not the case for the proceeds of an asset deal.

For real estate funds, the Federal Supreme Court has confirmed that cantons may levy a real estate transfer tax if the fund management is transferred from one fund management company to another pursuant to article 39 (or 39a) FinIA (decision 9C_312/2023 of 7 December 2023; BGE 148 II 121). In the (few) cantons who use this competence, the tax may practically be prohibitive. It can be avoided by a corporate merger of the fund management companies or a share deal between them (which, however, necessarily encompasses any funds managed by the acquired company).

Law stated - 25 May 2024

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

The parties to a transaction are generally free as to how to include and specifically address ESG factors in their M&A activity, though as part of their diligence duties, they (and their directors and officers) are obliged to take into account ESG risks (and conversely opportunities/upsides) with a potential direct or indirect (eg, via reputational harm) financial impact, and laws and regulations increasingly say so explicitly (see, eg, the draft FINMA Circular 'Nature-related financial risks'). In practice, specific ESG due diligence has become increasingly standard.

For conflict minerals and child labour specifically, Swiss law has been imposing various supply chain due diligence and transparency duties on Swiss companies (subject to thresholds and exemptions) since 1 January 2023. To avoid legal and reputational risks arising from non-compliance with these new rules, acquirers should include these aspects in their M&A due diligence.

ESG matters have also become a significant focus of FINMA in recent years. In its strategic goals 2021–2024, FINMA committed to contributing to the sustainable development of the Swiss financial centre. For example, FINMA requests the identification, measurement and management of climate-related risks (at least from financial institutions of a certain size), has taken measures to prevent greenwashing and generally has integrated climate-related risks into its supervisory practice. Further regulatory and legislative measures are in preparation (see, eg, the above-mentioned draft Circular 'Nature-related financial risks').

Furthermore, with customer demand for ESG-focused or -compliant products at a very high and generally still growing level, the offering of such products by a target is an increasing factor in acquisitions and their pricing.

Law stated - 25 May 2024

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

Political and policy risks are generally very limited in Switzerland, including in the financial industry. It is, however, advisable to pre-sound with FINMA early in the process if the parties are uncertain whether FINMA sees potential hurdles approving an incoming shareholder, director or officer.

The risk distribution between the seller and the buyer, including regarding political and policy risks, should be carefully negotiated, in particular in connection with representations and warranties on compliance with law. Besides changes in law and policy, a change in the interpretation of laws (usually applicable not only for the future, but also for past facts) and policy changes should be addressed. In practice, risks, including legal risks related to political and policy concerns and legacy matters, are often excluded from a transaction by choosing an asset deal, specifically carving out such political or legacy risks.

Law stated - 25 May 2024

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Deals driven directly by activist investors only represent a small share of the overall M&A activity in Switzerland, and the financial services sector is no exception to this.

Law stated - 25 May 2024

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Besides the regulatory notification and approval requirements and possible contractual third-party consent and notification requirements (eg, under finance arrangements or change of control/non-transfer and other provisions in contractual agreements), a key question in financial services M&A transactions is if and in what form clients of the bank or other FINMA-licensed financial services provider need to consent to effect a transfer of the legal relationship, in particular to safeguard banking secrecy and the analogous secrecies for other financial institutions.

Generally, in the case of a share deal, no consent or notification to clients is required, as all client data remain with the target (and after completion of the deal, article 4^{quinquies} Banking Act (BA) allows foreign parent companies to access Swiss secrecy-protected data as far as necessary for their consolidated supervision; this is usually complemented by broader intra-group information exchange provisions in the form of client waivers of banking secrecy and data protection).

In the case of an asset deal by singular succession, the transfer of contractual relationships in principle requires the consent of the counterparty. An exception applies to transfers of dormant accounts (article 37*l* BA) and transfers ordered by FINMA in the case of an insolvency or risk thereof (article 30 BA). Furthermore, if an asset deal is structured as a partial universal succession pursuant to article 69ff MA (asset transfer of a business), it is the prevailing view in practice that contracts transfer automatically, unless this has been contractually excluded. Nonetheless, even under article 69ff MA client consent is generally required in view of the banking secrecy and analogous secrecies for other financial institutions.

There are no clear general rules for the required form of such consent. In practice, clients are generally informed by letter (sent by the target) about the transfer, and the question is whether positive consent is required, or whether deemed consent, with the clients being given adequate time to oppose a transfer, is sufficient. In practice, deemed consent is sometimes viewed to be sufficient where the buyer is a financial institution already headquartered in Switzerland (ie, when there is no transfer abroad and Swiss banking secrecy, etc, continues to apply) and a large number of client relationships are to be transferred. The requirements can be further relaxed in the case of an asset transfer among Swiss entities of the same group – although the secrecies in principle also apply group-internally, deemed consent can more easily be assumed, and the Federal Supreme Court recently appeared to see no banking secrecy issue at all in such a situation (decision 2C_958/2021 of 8 December 2021, consid. 3.2– concerning an asset transfer pursuant to article 69ff MA within UBS).

Additional notification requirements may apply, for example regarding information of employees in the case of an asset deal, or information of creditors in the case of a merger under the MA.

Regarding insurance companies, in the case of a portfolio transfer pursuant to the rules of article 62 ISA, affected insured persons have a statutory right to terminate the insurance contract following the transfer.

Law stated - 25 May 2024

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

In addition to general legal due diligence topics (corporate, tax, employment, pension, real estate, claims or litigation), regulatory and compliance due diligence plays an eminent role in financial services M&A transactions. Besides law firms, audit firms are often consulted for this work. This regulatory or compliance due diligence commonly involves the review of the licences, annual regulatory audit reports (long form reports) provided to Swiss Financial Market Supervisory Authority (FINMA), risk reports, sample account documentation, AML documentation, review of communication with regulators, as well as regulatory proceedings.

When conducting due diligence on financial services firms, particular attention must be paid to the secrecy requirements for banks (article 47 Banking Act (BA)), financial infrastructures (article 147 Financial Market Infrastructure Act (FinMIA)) and financial institutions (article 69 Financial Institutions Act (FinIA)). As no client-identifying information may be provided in the due diligence, the buyer cannot directly review the client portfolio, credit book, etc. It is, however, possible that the target mandates a third party (often an audit firm) to conduct a due diligence, and that this mandated firm reports the findings (in anonymised form) to the potential buyer. Also, the seller or target frequently produces a vendor due diligence report setting out key aspects of the client business in anonymised form.

Law stated - 25 May 2024

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

Besides the legal due diligence, a tax due diligence, financial due diligence and specific compliance due diligence are advisable. A special focus should also be put on cybersecurity, in particular as the financial services industry is both sensitive-data intensive and increasingly relying on online business. In addition, owing to the increased requirements and expectations regarding ESG issues, ESG due diligence is advisable and more and more common.

Law stated - 25 May 2024

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

Yes. If the target financial services firm is active in, or has any exposure to, emerging technologies or practices, these should be covered by the due diligence, in particular if they entail increased compliance risk – for example, regarding AML, sanctions or uncertainty about supervisory treatment/status and need for a licence (eg, for fintech and DeFi companies).

Law stated - 25 May 2024

PRICING AND FINANCING

Pricing

20 How are targets priced in financial services M&A transactions? What factors typically affect valuation?

In particular for banks and asset managers, the common purchase price formula comprises the net asset value, plus goodwill on the assets under management (AuM).

Law stated - 25 May 2024

Purchase price adjustments

21 What purchase price adjustments are typical in financial services M&A transactions?

Sometimes, purchase price adjustments after closing are agreed in the SPA, based on the development of the AuM or net new money in that period (eg, 12 or 18 months). If so, it is important to clearly define and contractually ring-fence the basis of the calculation of the AuM (eg, to avoid variations of the AuM due to reorganisation or tactical considerations of the buyer post-closing).

For insurance companies, price adjustments post-closing may be agreed in particular based on developments of clients or insured persons, or premium volumes, or both.

Law stated - 25 May 2024

Financing

22 How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

As long as regulatory capital requirements are safeguarded, there are no notable regulatory issues affecting the choice of financing arrangements. Leveraged transactions are, however, less common than in other sectors, and the Swiss Financial Market Supervisory Authority would only accept PE structures (if at all) subject to specific additional requirements.

Law stated - 25 May 2024

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

In financial services M&A transactions, representations and warranties on compliance with law and default risks of the credit business are particularly relevant.

Compliance with law representations may typically include:

- Swiss financial institutions regulatory provisions in a broad sense (Swiss Financial Market Supervisory Authority (FINMA) requirements; outsourcing requirements; conduct rules);
- anti-money laundering (AML) and KYC requirements (including the banking industry's self-regulation (CDB));
- compliance with sanction and embargo laws;
- compliance with the Unfair Competition Act; and
- compliance regarding retrocessions: third-party payments received in connection with asset management and advisory services must be forwarded to clients, unless they were duly informed of and waived their right, pursuant to and in line with the requirements set forth by case law to article 400 CO and article 26 Financial Services Act. A particular focus should be put on waivers pre-2014/2015, which sometimes do not meet these requirements. Waivers are also often missing or deficient for execution-only relationships. While in the opinion of three cantonal courts (including Geneva) and of us, the duty to forward retrocessions in the absence of a waiver does not apply to this type of relationship, the Berne and Zurich Commercial Courts and part of learned writing take the opposite view; the Federal Supreme Court left the question open repeatedly.

Compliance with foreign laws is also relevant, as their breaches may simultaneously constitute a breach of Swiss proper business conduct and risk management requirements. Foreign law may directly apply to Swiss financial institutions, even if they provide services cross-border without a presence outside Switzerland, or even if they merely route transactions through a country such as the US via correspondent banks. Thus, compliance with law representations may include foreign sanction, embargo and corruption laws, tax laws and cross-border provision of services laws.

Besides legal compliance, potential default risks in the credit business should be addressed (eg, representations and warranties for no breaches or defaults under credit agreements), the recoverability of collateral and adequate provisions for risks.

In share deals, it is rather uncommon, however, for the *target* to directly grant warranties, as it is generally not a party to the SPA (and becomes part of the buyer following the transaction). Rather, warranties are generally granted by the seller.

Law stated - 25 May 2024

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Specific indemnities in financial services M&A transactions significantly depend on what the relevant issues at a specific target are. Commonly, specific indemnities are requested for regulatory or criminal investigations based on identified issues (eg, tax-related issues, breaches of sanctions, embargo or corruption laws, identified AML matters, Madoff risks, retrocession cases or specific credit claims).

Indemnities are generally agreed either in the form of an abstract guarantee pursuant to article 111 CO, or as specific covenants not subject to a de minimis, without application of the general cap (but potentially subject to a specific cap), without application of the shortened statutes of limitations under the contract, and with no exclusion of liability for known or disclosed information.

Law stated - 25 May 2024

Closing conditions

25 What closing conditions are common in financial services M&A transactions?

Common closing conditions include all supervisory approvals and notifications, merger control approvals, and further standard closing conditions (no hindrances for closing, no material adverse changes, compliance with contractual obligations, or representations and warranties).

Law stated - 25 May 2024

Interim operating covenants

26 What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

While it used to be common in financial services M&A transactions to allow for an observer delegated by the buyer to participate in board and management meetings of the target prior to closing, FINMA generally no longer accepts this, for fear of gun-jumping prior to FINMA approval.

FINMA, however, allows access to information and interaction to the extent required for integration planning purposes.

The contractual documentation also commonly includes usual conduct of business covenants for the period between signing and closing.

Law stated - 25 May 2024

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

The predominant issues in our experience are: (1) compliance matters and regulatory or criminal investigations against a bank, in particular for cross-border, foreign tax (evasion), anti-money laundering or KYC matters; and (2) the calculation and development of the assets under management, in particular in connection with a post-closing price adjustment mechanism.

A distinction must be made between: (1) a breach of representations and warranties leading to compensation or indemnification (mostly explicitly foreseen in the sales and purchase agreement); and (2) contractual violations (such as of covenants) leading to damages.

In addition to the indemnifications in the case of breach of representations and warranties, in particular the following remedies are possible in the case of a contractual breach: specific performance; compensatory damages; and suspension of performance of its own obligations. An unwinding of the transaction is often contractually excluded.

Law stated - 25 May 2024

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

For transactions with Swiss applicable law and Swiss jurisdiction, ordinary Swiss courts are often agreed as the forum for dispute resolution. When Zurich is the chosen venue, parties often refer to the specialised Zurich Commercial Court that takes on a case if competent. Arbitration with a seat in Switzerland is also regularly used.

Law stated - 25 May 2024

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

The Federal Council's draft Investment Screening Act is likely to be submitted to, and debated in, parliament in 2024/2025.

On 6 September 2023, the Federal Council submitted a bill to parliament with amendments to the Swiss Banking Act, introducing in particular a public liquidity backstop (PLB) for systematically important banks, as already employed by emergency ordinance in the takeover of Credit Suisse Group by UBS in March 2023. The bill will be debated in 2024/2025.

Economically, we expect M&A activity to remain subdued as long as macroeconomic conditions do not fundamentally change, in particular by a lowering of interest rates.

Law stated - 25 May 2024

NIEDERER KRAFT FREY

Philipp Candreia philipp.candreia@nkf.ch
Martin Schaub martin.schaub@nkf.ch
Philippe A Weber philippe.weber@nkf.ch

Niederer Kraft Frey

Taiwan

Mark J. Harty, Alex Yeh
LCS & Partners

Summary

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

Between 2004 and 2010, the Taiwan Financial Supervisory Commission (FSC) reported 47 M&A transactions in the financial services sector, a figure that dropped to 11 from 2011 to 2020. Recently, the sector has seen various notable deals, influenced by broader economic trends. These include significant transactions such as Fubon Financial Holdings' acquisition of Jih Sun Financial Holdings, marking Taiwan's first financial holding company M&A, Taishin Financial Holding's expansion into the insurance sector by acquiring Prudential Life Insurance of Taiwan, and attempts at smaller bank mergers, such as the planned but ultimately unsuccessful acquisition of EnTie Commercial Bank by IBF Financial Holdings. In August 2023, DBS Bank (Taiwan) finalised its acquisition of Citibank Taiwan's retail segment, assuming control of 45 branches and around 3,500 staff, propelling its assets to NT$193.2 billion and establishing it as Taiwan's largest foreign bank.

Law stated - 13 March 2024

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

The FSC is responsible for reviewing and approving M&A transactions involving financial institutions. The FSC generally supports such deals, valuing market dynamics and the intentions of the entities involved while ensuring compliance with legal standards and considering the welfare of employees, shareholders and customers. It adheres to four key review principles: financial health and capital structure, with a focus on indicators surpassing industry averages; adequacy of funds, ensuring no funding concerns; business management capabilities; and the ability to safeguard the rights and interests of customers and employees post-investment. An example highlighting these principles is the failed acquisition of EnTie Commercial Bank by IBF Financial Holdings, which did not meet the FSC’s criteria regarding financial stability, funding sources, synergy and employee considerations, leading to the deal's rejection.

Law stated - 13 March 2024

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 What primary laws govern financial services M&A transactions in your jurisdiction?

The key legislation includes the Financial Institutions Merger Act and the Financial Holding Company Act, which directly address the consolidation and acquisition processes within the financial sector. These acts detail the necessary procedures, requirements and regulatory approvals specific to financial institutions. Additionally, the Business Mergers and Acquisitions Act offers a broader guideline for M&A activities, applicable when specific provisions are absent in the sector-specific laws. The Securities and Exchange Act also plays a crucial role, especially for deals involving publicly traded companies, by setting forth requirements on disclosures and public offers. The oversight and approval from the Financial Supervisory Commission (FSC) are imperative in these transactions, ensuring they meet regulatory standards and safeguard stakeholder interests.

Law stated - 13 March 2024

Regulatory consents and filings

4 What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Financial services M&A transactions must navigate a complex regulatory landscape, with requirements varying based on the deal's specifics and the entities involved. Key regulatory approvals include:

- FSC Approval: Essential for transactions involving banks, insurers or securities firms, reflecting the sector's regulatory intensity to ensure financial stability and consumer protection.
- Fair Trade Commission Notification: Necessary for significant transactions that could impact market competition, assessed under the Fair Trade Act.
- Department of Investment Review (previously known as Investment Commission) Approval: Required for deals with foreign, overseas Chinese or mainland China investors.

Concessions may be needed to secure approval, including financial arrangements to uphold stability, social measures to mitigate employee impacts, and operational adjustments to ensure competitive fairness.

Law stated - 13 March 2024

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

Ownership restrictions in financial institutions vary. For banks, any acquisition exceeding five percent of voting shares requires notification to the FSC, with further reports needed for changes over 1 per cent. Acquiring over 10 per cent, 25 per cent or 50 per cent necessitates FSC's prior approval. While Taiwan is open to foreign investment, Chinese investors face stricter rules, needing approval for investments and adhering to a 'positive list'. Restrictions or bans can apply, especially for those with military, political or Chinese Communist Party affiliations, if national security could be influenced. Non-compliance may result in fines, divestiture demands, shareholder rights suspension or revocation of the invested company's registration, underscoring Taiwan's cautious approach to safeguarding its financial sector and national security.

Law stated - 13 March 2024

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

The criteria for becoming directors or officers in financial institutions are stringent, varying by institution type. Bank directors, for instance, cannot be legally incapacitated, under unrevoked assistance orders, or have recent convictions under the Organized Crime Act, for financial crimes or offences such as counterfeiting, embezzlement, fraud or breach of trust. A 10-year clearance is needed for such convictions, while a five-year period is required for those convicted under the Anti-Corruption Act or similar offences, as well as for individuals previously involved in bankruptcy, denied by bills clearing houses, with poor creditworthiness or removed from financial positions due to legal violations.

Law stated - 13 March 2024

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Financial services M&A activities impose fiduciary obligations on directors and officers. They are required to prioritise the company's interests, demonstrating care and loyalty. This includes steering clear of conflicts of interest and ensuring decisions are well informed. Typically, disclosure of potential conflicts to both the board and shareholders is obligatory, with restrictions on voting in conflicting situations. To ensure the integrity of M&A transactions, a special committee is formed to assess the M&A deal for fairness and advisability, offering guidance to the board and shareholders. The Business Judgment Rule, applied by certain Taiwanese courts, shields directors acting sincerely and in the company's interest. Nonetheless, neglecting these fiduciary obligations can lead to legal liabilities, including the risk of lawsuits from shareholders or actions by regulatory bodies.

Law stated - 13 March 2024

Foreign investment

8

What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

Foreign investors looking to enter Taiwan's financial sector through M&A transactions must navigate a series of regulatory challenges. Key among these is securing approval from the FSC, which assesses the transaction's impact on financial stability, the foreign entity's financial strength and its business strategy. The Department of Investment Review also evaluates the investment, focusing on the legality of the funding and the investment's strategic purposes. Investments from mainland China face additional scrutiny due to geopolitical considerations. Furthermore, adherence to anti-money laundering regulations is critical, requiring foreign investors to prove their capability to manage these risks.

Law stated - 13 March 2024

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

Taiwan's Fair Trade Act introduces antitrust regulations and criteria for M&A activities, including a comprehensive revenue threshold that accounts for affiliated entities, making it easier to meet filing requirements. Financial institutions involved in M&As meeting these thresholds must file with the Taiwan Fair Trade Commission, barring regulatory exemptions. The antitrust thresholds consider both revenue and market share. The Commission's review focuses on market concentration and competition, favouring mergers that offer synergies or prevent market exit, while also assessing impacts on market stability, service quality, innovation and compliance with financial regulations.

Law stated - 13 March 2024

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

Financial services M&A transactions utilise structures like mergers, share exchanges, share purchases and asset purchases, each serving different strategic purposes. Mergers and share exchanges enable complete control of a target, useful against resistant shareholders, but involve complex legalities. Share purchases offer speed by keeping the target's structure intact. Asset purchases allow for acquiring specific assets, sidestepping undesired liabilities, though they require detailed agreements and may face approval hurdles. Hybrid or alternative strategies, such as statutory spin-offs, can provide customised solutions to meet specific acquisition objectives, adapting to the transaction's unique needs.

Law stated - 13 March 2024

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

Financial services M&A transactions typically unfold over a span of three to eight months, influenced by the acquisition method. Tender offers, favoured for their tax efficiency due to the absence of capital gains tax on share sales, usually wrap up within three to four months. Although swift, tender offers might not secure total ownership of the target company. Mergers (or share exchanges), requiring more comprehensive processes including fairness assessments, approvals from boards and shareholders, and adherence to notification and waiting periods, can extend from five to eight months. The timeline is shaped by several factors: the need for regulatory clearances, the deal's complexity, due diligence efforts, negotiation lengths and whether a tender offer or merger (or share exchange) is pursued.

Law stated - 13 March 2024

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

The Financial Institution Merger Act provides tax benefits for mergers, such as exemptions from stamp duty and securities transaction tax, deferred real estate tax, a fifteen-year goodwill amortisation, 10-year deductibility of merger-related costs, and loss carryforwards. For financial holding companies acquiring subsidiaries via share exchanges, the advantages include waived registration fees for property transfers, deferred taxes on land until subsequent transfers, and exemptions from stamp duty, deed tax, income tax, business tax and securities transaction tax on business transfers or share exchanges, making these transactions tax-efficient and financially attractive.

Law stated - 13 March 2024

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

Recently, the Taiwan government has increasingly focused on energy, environmental, social, and governance (ESG) issues. In 2022, the Financial Supervisory Commission introduced the ‘Green Finance Action Plan 3.0’, emphasising Taiwan's shift towards a sustainable economy. This initiative aims to boost the role of financial institutions in evaluating investments, assessing risks and opportunities, and strategic planning, with a key objective of driving businesses towards sustainable finance and improving climate-related disclosures. Consequently, financial services involved in M&A transactions are now expected to incorporate ESG considerations into their decision-making processes.

Law stated - 13 March 2024

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

Managing political and policy risks in M&A transactions often centres on contractual standards that outline the acquirer's responsibilities to secure regulatory approvals, allocating risk between the parties involved. Additionally, mechanisms such as 'material adverse effect' (MAE) clauses and specific closing conditions help mitigate these risks. MAE clauses generally include provisions for significant legal changes that could impact the transaction's closing conditions.

Law stated - 13 March 2024

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Shareholder activism in Taiwan's financial M&A landscape, once a rarity, has seen a significant uptick, driven by regulatory advancements and the involvement of organisations like the Securities and Futures Investors Protection Center. These shifts have bolstered the power of minority shareholders, allowing them a more substantial role in guiding corporate governance and M&A initiatives. Although direct meddling in M&A dealings remains infrequent, there's a notable trend of shareholders exercising their rights to sway corporate decisions, aiming for equitable valuations through appraisal rights or the nomination of independent directors to safeguard their interests. The introduction of electronic voting for shareholder meetings has amplified this influence, positioning shareholder activism as a crucial element in M&A strategy formulation and execution.

Law stated - 13 March 2024

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Several third-party consents and notifications are typically required. These include regulatory approvals from financial regulatory authorities, competition authorities, and securities regulators, which are pivotal for transaction legality. Client consents are crucial for transferring contracts or personal data. Additionally, existing contracts may have 'change of control' provisions that necessitate contractual consents. Outstanding debts or lines of credit often require creditor consents. Cross-border personal data transfers or significant processing changes may trigger the need for approval from data protection authorities. Employee notifications involve informing or consulting with employee representatives or unions, and the transfer of intellectual property rights must be managed carefully.

Law stated - 13 March 2024

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

Legal due diligence in financial sector M&A transactions scrutinises the target's legal standing and regulatory compliance, covering corporate governance, licences, financial health, key contracts, litigation history, intellectual property and employment issues. Given the financial industry's regulatory complexity, a multidisciplinary team is essential, including M&A lawyers to oversee due diligence, draft agreements, regulatory specialists for compliance, tax advisers for fiscal impact analysis and intellectual property attorneys to evaluate assets.

Law stated - 13 March 2024

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

Material due diligence in M&A transactions thoroughly assesses the target's operations, financial health and associated risks, analysing financial statements for asset quality, capital adequacy and profitability. It evaluates operational procedures, IT infrastructure, cybersecurity and market position, alongside competitive dynamics and strategic alignment with the acquirer. Human resources scrutiny includes reviewing employee agreements, benefits and potential liabilities.

Law stated - 13 March 2024

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

Although no explicit regulations require financial institutions to undertake additional due diligence for blockchain or cryptocurrency-involved financial service M&A transactions, it is customary for these entities to conduct more thorough examinations. This extra due diligence usually focuses on evaluating the technology, data privacy practices and intellectual property rights, especially for investments in blockchain-related companies.

Law stated - 13 March 2024

PRICING AND FINANCING

Pricing

20 How are targets priced in financial services M&A transactions? What factors typically affect valuation?

Valuation in M&A transactions combines quantitative metrics, such as enterprise value, earnings before interest, taxes, depreciation and amortisation, and return on equity, with qualitative factors, including market position, brand value and technological capabilities, to assess a target's worth and future profit potential. The valuation process also takes into account the target's competitive stance, regulatory environment and potential synergies with the acquirer, which can elevate the valuation in cases of strong market dominance or unique sector positions.

Law stated - 13 March 2024

Purchase price adjustments

21 What purchase price adjustments are typical in financial services M&A transactions?

In public financial services M&A, price or exchange ratios are governed by specific regulations, limiting adjustments except under conditions like cash capital increases, bond issuances or significant asset changes, with requirements for contractual specification and public disclosure. For private transactions, adjustments focus on net debt variations, modifying the purchase price according to the target's closing debt level, and earn-outs, linking payments to future performance.

Law stated - 13 March 2024

Financing

22 How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

Financing strategies for acquisitions mix debt and equity, with debt offering tax advantages and lower costs at the risk of higher leverage, while equity avoids additional debt but may dilute existing shareholder value. Hybrid instruments such as convertible bonds blend both benefits. Regulatory limits on leverage, especially in regulated sectors, and securities laws affecting share issues shape these choices. Cross-border deals face further complexity from multiple jurisdictions' oversight.

Law stated - 13 March 2024

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

Sellers in financial services M&A provide detailed representations, warranties and indemnities to assure their authority, share ownership and the business's operational health, covering legal compliance, financials and key operational aspects. Given the sector's regulatory demands, there is an emphasis on financial law adherence, licence validity and financial statement accuracy. Concerns focus on legal compliance (banking, securities, anti-money laundering, know your customer), financial record accuracy, licence status, agreement enforceability and litigation risks, highlighting the importance of regulatory compliance and risk management in these transactions.

Law stated - 13 March 2024

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Indemnities safeguard against discrepancies in sellers' claims about regulatory compliance, financial health, and contractual obligations. They also address tax liabilities and potential or existing litigation before closing. While public transactions often do not specify terms such as survival periods, caps and special indemnities, private deals do. Here, indemnity terms typically span 12 to 24 months post-closing, with longer periods for significant issues. Indemnity claims usually have limits, set at the purchase price or a portion thereof, excluding cases of essential breaches or fraud. Moreover, due diligence may uncover risks warranting special indemnities with bespoke terms for caps and survival periods, designed to address particular risks identified during the deal-making process.

Law stated - 13 March 2024

Closing conditions

25 What closing conditions are common in financial services M&A transactions?

Typical closing conditions involve obtaining essential approvals from regulators, ensuring thorough due diligence covering financial, legal and operational facets to the buyer's satisfaction, and confirming no material adverse changes in the target's business prior to closing. It also includes securing agreements for the retention of crucial employees or management after the deal closes, verifying the accuracy of all seller's representations and warranties at the time of closing, acquiring necessary third-party consents due to existing contracts and ensuring the target company's compliance with all relevant legal and regulatory standards.

Law stated - 13 March 2024

Interim operating covenants

26 What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

During the period from signing to closing, sector-specific interim operating covenants include the target's adherence to all pertinent financial regulations like banking laws, securities regulations and anti-money laundering and know your customer practices. The target commits to actively seeking all required regulatory approvals, a process that often requires significant engagement with financial regulators. It must also run its business as usual, preserving current operational methods, client relationships and regulatory statuses, avoiding any new substantial commitments or shifts in business strategies. A key covenant is the prevention of any actions that could cause a material adverse impact on the business, its financial health or compliance with regulations. Additionally, the target faces enhanced reporting duties to update the buyer on regulatory compliance, any material business changes and the progress in securing necessary regulatory nods.

Law stated - 13 March 2024

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

Disputes in financial services M&A dealings sometimes originate from violations of M&A regulations, leading to possible legal actions. Additionally, disputes may occur when parties fail to comply with agreed-upon conduct prior to the deal's completion. Common solutions to such disagreements involve rescission, effectively cancelling the transaction and restoring the parties to their original state, and financial compensation for losses incurred.

Law stated - 13 March 2024

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

In Taiwan, financial services M&A transaction disputes are typically settled via litigation or arbitration. The Commercial Case Adjudication Act, effective from 1 July 2020, targets the swift resolution of such disputes. This legislation mandates preliminary mediation, akin to alternative dispute resolution, to streamline the litigation journey. It necessitates the involvement of mediators with finance expertise or related backgrounds. Should mediation not yield results, it's compulsory for parties to engage qualified lawyers for proceeding in the commercial courts. This method aims to reduce the complexities and time span of commercial disputes, lessening their effect on the operational dynamics of the companies involved and the wider market.

Law stated - 13 March 2024

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

Observations suggest that M&A among financial holdings, and between financial and non-financial holdings, are emerging as a future trend. The Financial Supervisory Commission has introduced incentives for regulatory M&As and established policies for hostile takeovers, aiming to foster financial institution consolidation. These measures encourage industry consolidation that complies with regulations and market mechanisms, benefiting the public and shareholders. It is expected that larger financial holding companies, particularly those with diverse operations in banking, life insurance and securities, will strengthen in the coming year, continuing this trend.

Law stated - 13 March 2024

Mark J. Harty markharty@lcs.com.tw
Alex Yeh alexyeh@lcs.com.tw

LCS & Partners

United Arab Emirates

Kate Iliff, Adela Mues, Mira Bagaeen, Shivana Agarwal
Reed Smith LLP

Summary

DISPUTES

UPDATE AND TRENDS

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

The UAE's financial services M&A market remains active, driven by fintech growth, regulatory reforms and sector consolidation. Banks, insurers and asset managers seek acquisitions to expand market share, enhance digital capabilities and meet regulatory requirements.

Deal activity is strong, particularly in fintech and digital banking, with transactions involving neobanks, payment platforms and blockchain firms. Traditional financial institutions are pursuing mergers to optimise capital efficiency and comply with regulatory expectations.

Key market players include UAE-based banks, sovereign wealth funds and international investors targeting the region's fintech and virtual asset sectors. Increased cross-border interest reflects confidence in the UAE's financial sector and its regulatory advancements. Market activity is expected to remain robust, with digital finance and compliance-driven transactions continuing to shape the landscape.

Law stated - 17 February 2025

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

The UAE government maintains a proactive and supportive approach to regulating M&A in the financial services sector, balancing market growth with financial stability. Regulations are designed to encourage foreign investment, fintech innovation and sector consolidation, while ensuring compliance with international standards.

The UAE Central Bank, Securities and Commodities Authority, Virtual Assets Authority (VARA), Dubai Financial Services Authority, and Financial Services Regulatory Authority oversee M&A activity, requiring approvals for ownership changes, competition reviews, and financial soundness assessments. VARA plays a key role in transactions involving digital assets.

In practice, regulators have streamlined approval processes and updated frameworks to attract investment. Recent initiatives, such as open banking policies, digital finance regulations and fintech licensing reforms, reflect the government's commitment to modernising the financial sector. While regulatory oversight remains stringent, particularly for anti-money laundering compliance, the overall policy fosters a stable, growth-oriented M&A environment.

Law stated - 17 February 2025

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 | What primary laws govern financial services M&A transactions in your jurisdiction?

Financial services M&A in the UAE operate under a multi-layered regulatory framework, with federal laws governing onshore transactions and independent legal systems in the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM).

Onshore UAE (Federal Law)

- Federal Decree-Law No. 32 of 2021 regulates mergers, share transfers and corporate structuring.
- Federal Decree-Law No. 14 of 2018 grants the UAE Central Bank authority over financial institution M&A, requiring approval for ownership changes.
- Federal Law No. 36 of 2023 and Cabinet Resolution No. 3 of 2025 regulate market concentration and competition thresholds.
- Securities and Commodities Authority (SCA) regulations, including Decision No. 18 of 2017, govern M&A involving publicly listed entities.
- Central Bank regulations, such as Circulars No. 2 and 5 of 2020, outline requirements for banks and financial institutions.

DIFC and ADGM (Common Law Frameworks)

- DIFC Companies Law No. 5 of 2018 and Regulatory Law No. 1 of 2004 — regulated by the Dubai Financial Services Authority (DFSA);
- ADGM Companies Regulations 2020 and Financial Services and Markets Regulations 2015 — regulated by the Financial Services Regulatory Authority (FSRA);
- Listed companies in DIFC and ADGM must comply with their respective takeover rules;
- Dubai (virtual assets service providers located in Dubai); and
- Virtual Assets Regulatory Authority (VARA) Company Rulebook (in particular part D – mergers and Acquisitions).

Law stated - 17 February 2025

Regulatory consents and filings

4 | What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Regulatory consents, filings, and approvals vary depending on whether the transaction occurs onshore or within the financial free zones of DIFC or ADGM.

Key approvals and filings

For financial institutions under UAE federal law, the UAE Central Bank must approve ownership changes under Federal Decree-Law No. 14 of 2018, ensuring financial stability and compliance. Additional filings may be required with the Ministry of Economy, the Securities and Commodities Authority (SCA) (for listed entities), and, where relevant, the Competition Regulation Committee under Federal Law No. (36) of 2023 on Competition.

In the DIFC, the DFSA oversees financial services M&A under the Regulatory Law No. 1 of 2004, while in the ADGM, the FSRA enforces the Financial Services and Markets Regulations 2015. M&A involving listed companies is subject to the takeover rules of the DFSA and the FSRA respectively.

With VARA's oversight of virtual assets in Dubai, M&A involving virtual assets service providers requires heightened regulatory scrutiny and approval processes. Mergers and acquisitions in relation to VARA registered entities are subject to its approval.

Concessions and deal structure impact

Authorities may impose conditions such as employment protections, Emiratisation compliance, capital injections or operational guarantees — especially in government-linked or high-impact deals. Share acquisitions require direct regulatory approvals, while asset transfers may necessitate licensing and customer consent. Public M&A deals face additional SCA disclosure obligations or compliance with free zone-specific takeover rules.

Law stated - 17 February 2025

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

Financial free zones are not subject to any foreign ownership restrictions. Onshore UAE, entities conducting certain strategic impact activities are subject to certain local ownership requirements. This includes banks, exchange houses, finance companies and insurance activities and money printing entities and activities. The list of regulated strategic activities is subject to the oversight of the Central Bank, which has the right to determine permitted proportions of national of foreign national participation in the capital of the entities carrying on such activities, requirements and to the participation of UAE nationals in their management, as well as impose other conditions or controls.

Law stated - 17 February 2025

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

In the UAE onshore jurisdiction, the Central Bank imposes fit and proper criteria for directors and officers of banks and financial institutions under Circular 4 of 2024. Appointments require Central Bank approval, with assessments based on qualifications, experience, integrity and financial soundness. Central Bank Circulars No. 83/2019 sets governance standards, including restrictions on conflicts of interest and the requirement for board independence.

For publicly listed financial institutions, the Securities and Commodities Authority (SCA) enforces additional corporate governance requirements, including minimum experience and independence criteria.

In the DIFC and ADGM, the DFSA and FSRA apply fit and proper tests under Regulatory Law No. 1 of 2004 (DIFC) and Financial Services and Markets Regulations 2015 (ADGM). Directors and senior officers must meet integrity, competence, and financial soundness requirements, with regulatory approval required for key appointments.

Directors of VARA regulated entities are subject to requirements set out in the Company Rulebook of VARA, including fitness and propriety requirements.

Law stated - 17 February 2025

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Directors and officers of financial institutions in the UAE are subject to fiduciary duties, statutory obligations, and regulatory oversight, particularly in the context of M&A transactions.

Fiduciary and statutory duties

Under Federal Decree-Law No. 32 of 2021 on Commercial Companies, directors must act in good faith, with due care and in the best interests of the company and its shareholders. They are prohibited from engaging in transactions that create conflicts of interest or unfairly benefit related parties. Similar principles apply in the DIFC (DIFC Companies Law No. 5 of 2018) and ADGM (ADGM Companies Regulations 2020).

Regulatory responsibilities

Financial institution directors must ensure compliance with UAE Central Bank, Securities and Commodities Authority (SCA), VARA, DFSA or FSRA regulations. This includes obtaining necessary M&A approvals, maintaining transparency in disclosures and ensuring fair treatment of minority shareholders. Non-compliance can result in personal liability, fines, regulatory sanctions and disqualification.

Liabilities in M&A transactions

Directors may be held personally liable for misrepresentation, failure to disclose material information, or breaches of regulatory requirements. In public M&A, failure to comply with SCA acquisition rules or DIFC/ADGM takeover regulations can lead to enforcement actions. Directors must also oversee due diligence, risk management and post-transaction integration to safeguard financial stability and regulatory compliance.

Law stated - 17 February 2025

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

Foreign investment in UAE financial institutions is subject to sector-specific restrictions and regulatory approvals, varying between onshore UAE and the DIFC/ADGM.

Onshore UAE, under Federal Decree-Law No. 32 of 2021, 100 per cent foreign ownership is permitted in most sectors, but financial services remain highly regulated. The UAE Central Bank must approve acquisitions of banks, insurance firms, and financial institutions under Federal Decree-Law No. 14 of 2018. Additional approvals may be required from the SCA for public M&A.

No foreign ownership restrictions apply in the DIFC and ADGM. However, acquirers must pass fit and proper tests and secure regulatory approvals from the DFSA or FSRA, respectively.

In addition, acquirers may face competition law scrutiny, Emiratisation obligations and national security considerations in strategic sectors. Government-linked transactions or those affecting market stability may require additional financial or social commitments.

Law stated - 17 February 2025

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

Financial services M&A in the UAE is subject to competition law oversight, with approvals required in certain cases to prevent market concentration and anticompetitive behaviour.

Onshore UAE, under Federal Law No. 36 of 2023 on Competition and Cabinet Resolution No. 3 of 2025, mergers that could substantially lessen competition may require review by the Competition Regulation Committee. Transactions exceeding specific market share thresholds or affecting industry dominance may be subject to pre-merger notifications and regulatory scrutiny. However, banks and financial institutions may be exempt based on UAE Central Bank oversight.

While DIFC and ADGM do not have standalone merger control regimes, M&A transactions must comply with DFSA and FSRA regulations, ensuring financial stability and fair competition. Cross-border transactions may trigger foreign antitrust filings, depending on the acquirer's global market position.

Law stated - 17 February 2025

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

Financial services M&A in the UAE typically follow three primary structures: share acquisitions, asset purchases and mergers. Each has distinct regulatory and commercial implications.

Share acquisitions

The most common structure, it involves the purchase of (usually) a controlling stake in a financial institution. The main advantage of such structure is that it ensures business continuity of the target business and it preserves exiting licences, contracts and regulatory approvals. However, the acquirer buys into the entity as it is at the time of the transfer, including its assets and liabilities. Moreover, from a timing perspective, regulatory approvals are usually time consuming.

Asset purchases

An asset purchase allows the acquirer to acquire selective financial assets (such as, for example, a loan portfolio), thus limiting potential liability exposure. However, the acquirer must be duly licensed to carry on the relevant financial services business; therefore if the acquirer is not already licensed in the relevant jurisdiction, it must go through a lengthy licensing process before it con conduct the business relevant to acquired assets. In addition, the acquirer will need to assemble appropriate staff and deal with any customer migration issues that may arise.

Mergers

This structure entails a combination of two financial institutions, creating synergies but requiring regulatory scrutiny and potential competition law approvals. A successful merger will create scale and operational efficiencies; however, such transaction may come with its own challenges, such as obtaining complex regulatory approvals, dealing with integration challenges and managing potential redundancies.

Law stated - 17 February 2025

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

Financial services M&A transactions in the UAE typically take nine to 12 months to complete, though complex deals may extend well beyond a year.

The overall timing of the transaction will depend on a myriad of factors, including complexity of due diligence needed, necessary regulatory approvals (it can take several months) competition clearance time frame, stakeholder approvals and integration complexities.

Law stated - 17 February 2025

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

While the UAE has a favourable tax environment, certain tax consideration can impact deal structuring – these include the recently introduced corporate tax, VAT, withholding tax (which may be relevant in cross-border deals) and preservation of available free-zone specific benefits. Tax efficiency influences structuring, particularly in asset v share acquisitions and free zone v mainland transactions.

Law stated - 17 February 2025

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

Public perception is a critical factor in UAE financial services M&A, particularly for government-linked or high-profile deals. Acquirers often commit to employment stability, Emiratisation policies and community investment to maintain regulatory and public goodwill.

ESG considerations are increasingly significant, with regulators and investors emphasising sustainability, governance, and ethical banking. Financial institutions may integrate green financing initiatives, diversity policies and corporate social responsibility commitments into post-merger strategies.

Transparent communication with regulators, customers and stakeholders is essential to manage reputational risks and ensure a smooth transition in sensitive transactions.

Law stated - 17 February 2025

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

Parties will need to stay on top of regulatory changes in the UAE, both onshore and in free zones, as the UAE has been reforming laws to align with global standards and international practices. Parties can address political and policy risks by ensuring that extensive due diligence is conducted to evaluate potential legal and regulatory changes, ensure that contractual safeguards are in place in the merger documentation, and to engage with authorities early on in the M&A process to ensure compliance with their requirements. Parties should adhere to international best practices to address such risks. Political risk insurance may be used for cross-border transactions involving sensitive sectors or government-linked institutions.

Law stated - 17 February 2025

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Shareholder activism in UAE financial services M&A remains limited compared to Western markets, largely due to concentrated ownership structures, with government entities, sovereign wealth funds and institutional investors holding significant stakes. However, activism is emerging in publicly listed companies, particularly regarding governance, ESG and minority shareholder rights.

The Securities and Commodities Authority (SCA) provides mechanisms for shareholder engagement, while the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) regulations offer robust minority protections. Activist investors typically influence deals through regulatory challenges, governance demands or engagement with key stakeholders, rather than hostile takeover attempts.

Law stated - 17 February 2025

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Financial services M&A transactions in the UAE require regulatory, contractual, and stakeholder consents before completion.

-

Regulatory approvals: approval from the UAE Central Bank, SCA, Virtual Assets Authority (VARA), (Dubai), the Dubai Financial Services Authority (DFSA) (DIFC) or FSRA (ADGM) is mandatory for changes in control.

- Competition clearance: certain transactions may require review by the Competition Regulation Committee under UAE competition law.
- Contractual consents: customer, lender and counterparty approvals may be required for key contracts, financing arrangements, or licensing agreements.
- Public disclosures: Listed companies must notify the relevant financial services regulator, the relevant stock exchange, and shareholders of material transactions.

Law stated - 17 February 2025

DUE DILIGENCE

Legal due diligence

17 | What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

Legal due diligence in UAE financial services M&A is comprehensive, focusing on regulatory compliance, corporate governance, contractual obligations, financial stability and liability exposure Given the sector's heavy regulation, acquiring parties conduct extensive risk assessments before proceeding with a transaction.

Key areas of legal due diligence include:

- regulatory compliance: ensuring compliance with applicable financial services regulations, including licensing, capital adequacy and governance standards;
- corporate and shareholding structure: verifying ownership records, board compositions and any shareholder restrictions;
- contracts and liabilities: reviewing key agreements, including customer contracts, financing arrangements, third-party service agreements and regulatory obligations;
- labour and employment: assessing composition of workforce, terms of employment, key employees' employment terms, incentives schemes and compliance with Emiratisation requirements;
- real estate : If the target firm owns or leases property, assessing lease terms, ownership restrictions and compliance with applicable property laws;
- intellectual property and data protection: assessing adequate protection of intellectual property rights of the business and compliance with data protection requirements;
- insurance: assessing insurance policies in place from a legal perspective; and
- litigation and disputes: assessing ongoing or potential regulatory investigations, lawsuits or compliance breaches.

Specialists involved typically include:

- corporate and M&A lawyers who handle structuring, approvals and transaction documentation;
- regulatory experts, who navigate banking, financial and competition laws;
- banking lawyers: analyse existing financing and related security;
- tax advisers who assess corporate tax, VAT and cross-border tax implications;
- employment specialists: address labour and employment issues, address Emiratisation policies and workforce transition issues;
- dispute resolutions lawyers: consider existing or threatened proceedings and related liability exposure;
- real estate specialists;
- intellectual property specialists; and
- insurance specialists.

Law stated - 17 February 2025

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

Beyond legal due diligence, financial, operational and IT assessments are critical in UAE financial services M&A.

- Financial due diligence: evaluates asset quality, loan portfolios, capital adequacy, liquidity risks and financial reporting compliance.
- Operational due diligence: reviews business continuity, key management retention and integration risks.
- IT and cybersecurity due diligence: Assesses core banking systems, fintech infrastructure, data protection and cyber risk exposure.
- Regulatory and compliance audits: Ensures adherence to UAE Central Bank, Securities and Commodities Authority, Virtual Assets Authority (VARA), Dubai Financial Services Authority (DFSA) or Financial Services Regulatory Authority (FSRA) requirements.
- Insurance due diligence: assesses adequacy of insurance cover in place.

Law stated - 17 February 2025

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

Financial services M&A in the UAE requires enhanced due diligence for emerging technologies, particularly blockchain, cryptocurrency, and artificial intelligence (AI), given evolving VARA, FSRA and DFSA regulations.

- Blockchain and cryptocurrency: acquirers must assess compliance with the VARA in Dubai, FSRA (Abu Dhabi Global Market) and DFSA (the Dubai International Financial Centre), focusing on licensing, anti-money laundering/know your customer (AML/KYC) frameworks and investor protection.
- AI and fintech: due diligence examines algorithmic transparency, regulatory compliance and data security, particularly under UAE Central Bank digital finance rules.
- Cloud and cybersecurity: ensuring compliance with UAE data residency laws, cyber resilience and regulatory technology standards is essential.

Law stated - 17 February 2025

PRICING AND FINANCING

Pricing

20 | How are targets priced in financial services M&A transactions? What factors typically affect valuation?

Financial services M&A valuations in the UAE are typically based on earnings multiples, book value and discounted cash flow analysis, depending on the target's business model and regulatory standing.

Key factors influencing pricing include:

- Regulatory capital requirements: compliance with UAE Central Bank, Dubai Financial Services Authority (DFSA) (the Dubai International Financial Centre (DIFC)), Financial Services Regulatory Authority (FSRA) (Abu Dhabi Global Market (ADGM)) and Virtual Assets Authority (VARA) regulations impacts valuation.
- Asset quality: loan book health, non-performing loans and risk-weighted assets.
- Profitability and ROE: revenue stability, cost efficiency and return on equity.
- Technology and innovation: fintech capabilities, AI adoption and blockchain integration.

Market sentiment and regulatory approvals also influence transaction pricing.

Law stated - 17 February 2025

Purchase price adjustments

21 | What purchase price adjustments are typical in financial services M&A transactions?

In UAE financial services M&A, purchase price adjustments account for regulatory, financial, and risk-based uncertainties. Net asset value a are common, ensuring the target meets FSRA (ADGM), DFSA (DIFC), VARA or UAE Central Bank capital adequacy requirements. Earn-outs are often used in fintech and asset management deals, linking payments to assets under management growth, revenue targets or regulatory approvals.

Buyers may also adjust the purchase price for regulatory capital shortfalls, bad debts or contingent liabilities tied to anti-money laundering/know your customer compliance and enforcement risks. While some deals use a locked box mechanism, completion accounts are more common to adjust for final capital, liquidity and regulatory reserves at closing.

Law stated - 17 February 2025

Financing

22 How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

Acquisitions in the UAE financial services sector are typically financed through equity, debt, vendor financing and private credit, with structures influenced by regulatory capital requirements and foreign ownership laws.

Equity financing is common, particularly in regulated firms subject to FSRA (ADGM), DFSA (DIFC), VARA or UAE Central Bank capital rules. Bank debt and leveraged financing are limited due to capital adequacy restrictions and lending exposure limits. Vendor financing, deferred payments and earn-outs are frequently used when regulatory approvals impact deal certainty.

Regulatory constraints include minimum capital requirements, foreign ownership rules and approval for change of control. Given these factors, buyers often use a combination of equity, private credit and deferred consideration structures to comply with UAE financial regulations while optimising transaction financing.

Law stated - 17 February 2025

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

In UAE financial services M&A, representations and warranties go beyond standard corporate disclosures, with a strong focus on regulatory compliance, financial stability and risk exposure.

Key representations and warranties include:

- fundamental title and capacity warranties;

- regulatory compliance: confirmation of compliance with UAE Central Bank, Dubai Financial Services Authority (DFSA) (the Dubai International Financial Centre (DIFC)), Financial Services Regulatory Authority (FRSA) (Abu Dhabi Global Market (ADGM)) and Virtual Assets Authority (VARA) (Dubai crypto) regulations;
- financial accuracy: assurance that loan books, capital adequacy, and reserves align with regulatory and accounting standards;
- AML/KYC and sanctions compliance: Stronger scrutiny on anti-money laundering, counter-terrorism financing and sanction risks;
- customer and contractual obligations: Validity of client agreements, data protection compliance and dispute disclosures.
- cybersecurity and IT infrastructure: Ensuring resilience against cyber threats, especially for fintech and digital banking firms;
- disputes and liability exposure;
- employment; and
- insurance.

Regulatory compliance, anti-money laundering/know your customer (AML/KYC), and financial integrity are more detailed than in general M&A to mitigate post-closing risks.

Law stated - 17 February 2025

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Indemnities in financial services M&A serve as critical risk allocation mechanisms, particularly given the heightened regulatory, tax and compliance risks associated with the sector. Compared to general M&A, buyers often seek more robust indemnities covering regulatory liabilities, tax exposures, financial crime compliance and third-party claims.

Typically indemnities are sought in relation to matters revealed during due diligence investigation, such as regulatory compliance breaches, historical liabilities, AML/KYC and sanctions risks, loan book sand financial statements, unresolved investigations or contingent liabilities.

Typical indemnity terms include:

- Survival period for general claims is usually 12 to 24 months; however indemnities for regulatory breaches, tax liabilities and AML compliance often extend beyond standard survival periods, typically lasting three to five years post-closing to align with regulatory audit cycles and tax reassessment windows. Financial crime compliance indemnities may have no fixed expiry due to potential long-term regulatory exposure.

- Caps: caps usually depend on the type of risk to the indemnity relates and size of the deal. While typical caps may vary between 10 and 30 per cent for typical risks, higher caps usually apply to regulatory breaches, and unlimited liability may apply to AML/KYC sanctions violations, fraud or hidden regulatory risks.

Law stated - 17 February 2025

Closing conditions

25 | What closing conditions are common in financial services M&A transactions?

Closing conditions, or conditions precedent, are common in financial services M&A transactions, as split signing and completion is necessary due to regulatory consent requirements, even for minority share acquisitions. These conditions are typically more regulatory-driven and more extensive than in general M&A, and usually include regulatory approvals, competition clearance, regulatory capital compliance, no material adverse change and operational and IT integration.

Law stated - 17 February 2025

Interim operating covenants

26 | What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Between signing and closing, financial services M&A agreements in the UAE include strict covenants to ensure regulatory compliance and business stability.

Common covenants include:

- Regulatory compliance: the target must maintain all licences and approvals from the UAE Central Bank, DFSA (DIFC), FSRA (ADGM) and VARA (crypto transactions).
- Capital and liquidity maintenance: ensuring the business meets capital adequacy and liquidity thresholds.
- Restricted activities: limits on new debt, major contracts, asset sales or executive changes without buyer approval.
- No material business changes: Preventing operational shifts that could affect valuation or regulatory risk.
- No distributions without buyer's consent.

These covenants protect the transaction’s integrity and regulatory standing.

Law stated - 17 February 2025

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

Disputes in UAE financial services M&A often arise from regulatory compliance, valuation adjustments and post-closing liabilities.

Key issues include:

- Regulatory delays or non-approval: If the UAE Central Bank, Dubai Financial Services Authority (DFSA) (the Dubai International Financial Centre (DIFC)), Financial Services Regulatory Authority (FSRA) (Abu Dhabi Global Market (ADGM)) or Virtual Assets Authority approvals are denied or delayed.
- Breach of representations and warranties: misstatements on anti-money laundering/know your customer compliance, loan book quality or financials.
- Purchase price adjustments: conflicts over earn-outs, net asset value or capital adequacy adjustments.

Remedies include indemnification claims, escrow releases, arbitration or litigation, depending on contract terms.

Law stated - 17 February 2025

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

Disputes in UAE financial services M&A are typically resolved through arbitration or specialised financial courts, depending on the transaction structure and governing law.

- Arbitration: ICC, Dubai International Arbitration Centre (DIAC) or ADGM Arbitration Centre are commonly used for financial services disputes, offering enforceability and neutrality. DIAC, based in Dubai, is increasingly used for UAE-related transactions, while ADGM arbitration is preferred for common law-governed agreements.
- Court litigation:
    - Onshore UAE: Disputes are heard in UAE civil courts, where proceedings are in Arabic and follow UAE law.
    - DIFC/ADGM Courts: Financial free zone disputes are resolved in common law courts with English-language proceedings.

Alternative dispute resolution, including mediation and expert determination, is also used for valuation and regulatory disputes.

Law stated - 17 February 2025

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

UAE financial services M&A is driven by fintech expansion, regulatory evolution and consolidation among traditional banks and financial institutions.

Key trends are:

- Fintech and digital banking growth: increased M&A involving neobanks, blockchain firms and AI-driven financial services.
- Regulatory developments: the Virtual Assets Authority's crypto framework, Central Bank digital finance regulations, and the Dubai International Financial Centre/Abu Dhabi Global Market fintech and virtual assets policies shaping transactions.
- Bank and insurance sector consolidation: larger institutions acquiring smaller players to enhance capital efficiency and market reach.

Expected developments are:

- stronger Environmental, social, and governance and compliance focus: M&A driven by sustainability-linked finance and AML/KYC regulatory tightening; and
- increased cross-border deals: foreign investors targeting UAE's fintech and virtual asset sectors.

Law stated - 17 February 2025

Kate Iliff kiliff@reedsmith.com
Adela Mues amues@reedsmith.com
Mira Bagaeen mbagaeen@reedsmith.com
Shivana Agarwal sagarwal@reedsmith.com

Reed Smith LLP

United Kingdom

Alan Bainbridge, Hannah Meakin, Dominic Stuttaford, Mark Tricker, Emma Lai
Norton Rose Fulbright

Summary

DEAL TERMS

DISPUTES

UPDATE AND TRENDS

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

In 2024, the financial services sector saw a cautious recovery in both deal volumes and value, attributed to the loosening of monetary policy, stabilising interest rates and greater political certainty in the UK following Labour's victory in the elections. Speculation around potential capital gains tax changes in the Autumn Budget gave rise to a temporary surge in M&A activity.

Consolidation and disposal of non-core businesses continued in 2024, notably among lenders, insurers and asset management, with a number of significant deals announced during that period. It is anticipated that this will continue into 2025 and could extend to the consolidation of smaller pension schemes into 'megafunds', which may provide additional firepower for funding M&A.

Looking ahead, several key areas are expected to be particularly active in 2025, including asset management, insurance, payments and fintech. Asset managers, for instance, are likely to pursue dealmaking to combat slowing organic growth, client asset withdrawals, declining margins and an increased regulatory burden, while the proposed reform of the life insurance and pensions sector presents opportunities for strategic transactions as part of the new Labour government's growth agenda. We also expect the insurance broking sector to remain active as consolidators with the large listed broking groups competing for scale and opportunities.

The United Kingdom's regulatory landscape post-Brexit has led to a period of regulatory realignment, with the UK authorities focused on maintaining the country's status as a leading financial hub while ensuring stability and consumer protection. Financial services firms must navigate a dual regime of UK-specific regulations alongside ongoing adherence to EU standards in certain areas, notably for firms operating across borders. This complexity requires enhanced due diligence and strategic planning in M&A deals, particularly in assessing regulatory compliance, data protection standards and the implications of the United Kingdom's evolving relationship with the EU.

While the FCA has sought to improve the competitiveness of UK capital markets through the long-awaited reforms to the UK Listing Rules introduced in July 2024, the perception continues that many listed companies (including asset managers and banks) remain undervalued by the market and thus susceptible to takeover approaches, including by private equity and North American institutional buyers.

Although there is now greater political certainty in the UK, it remains to be seen how the Labour government's policies will take shape in 2025 and how companies will respond to higher employment costs and other tax reforms introduced by the new government. The outlook remains, however, that M&A activity is set to continue its recovery in 2025.

Law stated - 31 January 2025

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

The UK government's approach towards regulating M&A activity in the financial services sector is characterised by a balance between promoting competitive markets, protecting consumers and safeguarding against systemic risks.

Post-Brexit, the UK government has been actively exploring, through its policy developments, ways to enhance the overall competitiveness of the United Kingdom – this was codified in the Financial Markets and Services Act 2023 with the implementation of a new 'competitiveness and growth objective'. This objective requires both the Financial Conduct Authority (FCA) – the conduct regulator for all authorised firms and the prudential regulator for all firms except banks, insurers and designated investment firms – and the Prudential Regulation Authority (PRA) – a subdivision of the Bank of England that is responsible for the prudential supervision of banks, insurers and designated investment firms – to have regard to the international competitiveness of the UK economy when discharging their functions and duties.

Additionally, the new listing rules introduced by the UK government in July 2024 place the United Kingdom on more equal footing with other major international listing venues by simplifying the listing regime (such as by introducing a single category for commercial companies) and making the regime more disclosure based, thus eliminating the potential competitive disadvantage that a listed company pursuing M&A would previously have had in any material deal being conditional upon shareholder approval. There is also increased flexibility for dual-class share structures, which are more common in growth companies.

Existing regulatory policy towards M&A activity in the United Kingdom is, on the whole, relatively settled, and the overall stability in the approach to financial services regulatory policy has helped to foster an attractive environment for M&A transactions across the financial services landscape in recent years.

In practice, financial services regulatory policy relating to M&A transactions is implemented through rigorous review processes, requiring firms to engage in detailed planning and consultations with the FCA and PRA. This involves comprehensive assessments of the strategic rationale behind a transaction, its impact on the competitive landscape and implications for financial stability. Prompt, transparent and effective engagement with UK regulators is essential to minimise execution risk and ensure that transactions proceed in accordance with their desired timetables.

Law stated - 31 January 2025

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 What primary laws govern financial services M&A transactions in your jurisdiction?

The base change in control regime for authorised persons is established under the Financial Services and Markets Act 2000 (FSMA). The Financial Services and Markets Act (Controllers) (Exemption) Order 2009 is also relevant for determining the relevant control thresholds that determine whether or not an acquirer is to become a controller of the target. Given the United Kingdom's financial services regulatory regime is to some degree a series of different regimes based on the nature of the financial services business performed, there are also specific change in control requirements established under the Payment Services Regulations 2017 (for payment institutions) and the Electronic Money Regulations 2011 (for electronic money institutions). There are also relevant provisions regarding change in control requirements in Chapter 11 of the Financial Conduct Authority (FCA)'s Supervision Sourcebook, forming part of the FCA Rules. The FCA published new guidance on the regime in 2024 in its Finalised Guidance 24/5 'Prudential Assessment of Acquisitions and Increases in Control'.

The UK merger control regime, enabling relevant M&A and joint venture transactions to be reviewed for competition concerns and on certain public interest grounds, is set out in the Enterprise Act 2002.

The new UK digital regulatory regime for SMS firms – large tech firms designated with Strategic Market Status in respect of one or more digital activities – which includes mandatory merger reporting obligations is set out in the Digital Markets, Competition and Consumers Act 2024.

The UK national security regime is set out in the National Security and Investment Act 2021 (NSI Act).

Law stated - 31 January 2025

Regulatory consents and filings

4 What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Any person who would become a 'controller' of a regulated target entity on completion of the transaction is required to seek prior approval from the relevant regulator before completing the transaction. The acquisition of control without prior approval is a criminal offence. In light of this, the transaction documents will need to reflect the necessary regulatory approvals as a condition precedent to the completion of the transaction.

The relevant thresholds dictating when a person acquires control differ depending on the regulatory status of the target firm. For 'directive firms', that is banks, investment firms, undertaking for collective investment in transferable securities (UCITS) management companies, insurers and reinsurers, the control bands are 10, 20, 30 and 50 per cent. Although not directive firms, payment institutions and electronic money institutions are also subject to these control bands. For 'non-directive firms', in other words, firms such as insurance intermediaries that are not any of the aforementioned directive firms, there is one control band of 20 per cent. For firms with limited permissions, there is one control band of 33 per cent.

The relevant legislation allows the relevant regulators to approve a transaction subject to certain conditions. Conditions may be financial (such as a requirement to inject additional capital into the target or agreements not to withdraw capital), but may also be non-financial (eg, relating to governance, requirements to maintain ongoing regulatory or compliance projects within the target, etc).

Additional filings arising in connection with a transaction might include: applications for certain persons to perform senior management functions for the target firm from completion (ie, new director appointees, new executives), waiver or permissions applications (eg, permission to treat a new class of shares as Common Equity Tier 1 instruments, or a newly issued debt instrument as AT1), notifications made under the Alternative Fund Managers Regulations 2013 where an alternative investment fund acquires a notifiable shareholding (particularly relevant for financial sponsors), and notifications relating to the establishment of a new consolidation group. The target itself will need to make a notification providing details on the proposed controllers, whilst any existing controllers who reduce their control through a relevant threshold or cease to be controllers altogether (ie, selling shareholders) will also need to make a notification to the relevant regulator prior to completion.

Depending on the nature of the target, a mandatory notification could also be required under the NSI Act, or a voluntary notification may be advisable. This will depend on whether the level of control being acquired is a relevant trigger event, and the need for a mandatory notification will also turn on whether a target entity is active in any of 17 qualifying sectors. Financial services is not specifically one of those sectors, although some of the sectors (eg, quantum technologies and cryptographic authentication) can catch activities linked to financial services.

A voluntary notification to the Competition and Markets Authority (CMA) for UK merger control approval may be appropriate if the transaction meets the requirements for CMA jurisdiction and raises potential competition concerns. Also, SMS firms – large tech firms designated with Strategic Market Status under the UK's new digital regulatory regime, which entered into force on 1 January 2025 – will be subject to mandatory merger reporting regarding qualifying transactions involving their groups, which could potentially capture relevant transactions in the financial services sector.

Law stated - 31 January 2025

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

The United Kingdom's financial services regulatory regime does not, as a matter of law, impose any restrictions on the types of persons that may own, whether wholly or partly, any UK financial institution. However, where an acquisition requires approval, the relevant regulators will consider the fitness and propriety of the proposed acquirer and its financial position to determine whether they are an appropriate acquirer.

Under the UK merger control regime, an acquirer that controls a close competitor of a financial institution it is seeking to acquire is more likely to raise competition concerns.

Under the UK national security regime, substantive concerns depend on an assessment of acquirer risk, control risk and target risk. An acquirer with links to a state perceived as hostile to the United Kingdom's interests will naturally raise greater concerns than an acquirer from a 'friendly' state (although this will also depend on the nature of the target business and to what extent control of that business might be viewed as raising national security concerns).

Law stated - 31 January 2025

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

Any person seeking to become a director or officer of a financial institution in the United Kingdom may need to be approved by the relevant regulator before assuming that role, due to the United Kingdom's Senior Managers and Certification Regime. Part V of the FSMA lays down the mechanics by which persons performing senior management functions must be assessed and approved by the relevant regulator. In short, this obligation captures executive directors, certain non-executive directors (eg, a chairperson, the chairperson of certain committees) and a variety of executives, including the chief executive officer, chief financial officer, chief risk officer, chief compliance officer and money laundering reporting officer.

As part of the assessment process, the relevant regulator will consider the prior experience, competency and fitness and propriety of the relevant individual before reaching a determination on whether to grant approval to perform the relevant role.

Law stated - 31 January 2025

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Directors' duties in the United Kingdom are codified in the Companies Act 2006 and do not distinguish between companies in the financial services sector versus other sectors. In the context of financial services M&A, the target board will need to assess the implications of disclosing confidential information to a potential buyer and the extent to which they can facilitate the due diligence process. Provided that the directors can identify a benefit for the target in doing so, they should be able to comply with any applicable directors' duties provided they take the usual precautions.

Similarly, those persons holding senior management functions within a target firm and/or an acquiring firm should be mindful of their relevant personal regulatory obligations under the Conduct Rules when considering and effecting M&A activity. These obligations are additional to the duties that any senior manager may have in their capacity as a director. One particular area of difference in the duties to which a director is subject and the obligations to which a senior manager is subject relates to the need for a senior manager to pay due regard to the interests of customers and treat them fairly. This is a relevant consideration on a transaction and demonstrates how senior managers acting as directors have to balance their duties to their respective companies and shareholders with their obligations to customers, which can be a delicate balance.

Law stated - 31 January 2025

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

The NSI Act came into force in January 2022, significantly strengthening the United Kingdom's national security regime. The Investment Security Unit within the Cabinet Office operates the regime and the Chancellor of the Duchy of Lancaster (acting as the relevant Secretary of State) is the decision-maker. The NSI Act provides for mandatory and voluntary notifications:

- Mandatory notifications: acquiring control of a qualifying entity that is active in any of 17 qualifying sectors requires mandatory notification/approval and is automatically void if completion occurs without the requisite approval– it is also an offence with parties risking penalties. The level of control must amount to one of the mandatory trigger events: (1) acquiring shares or voting rights of more than 25 per cent, more than 50 per cent, or 75 per cent or more; or (2) acquiring voting rights enabling or preventing the passage of any class of resolution governing the affairs of the entity.
- Voluntary notifications: even if a target entity is not active in a qualifying sector, the Secretary of State may call in a transaction for review (up to five years after completion) if they reasonably suspect a risk to national security – provided there is one of the trigger events mentioned above or material influence is acquired. Acquiring the ability to use or control a qualifying asset (land, tangible movable property, and ideas, information or techniques with industrial, commercial or economic value) can similarly be called-in regardless of the sector. Acquirers may voluntarily notify for certainty.

The 17 qualifying sectors under the mandatory regime are set out in the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021. In addition to traditional areas of concern (eg, defence, energy, transport), a number of the sectors relate to new technologies (eg, artificial intelligence, cryptographic authentication, quantum technologies).

Financial services is not one of the 17 sectors listed, although some of the sector definitions catch activities linked to financial services (eg, the cryptographic authentication sector includes researching, developing or producing systems to authenticate a credit/debit chip-and-pin card and a bank could be within the quantum technologies sector if it develops an algorithm to run on a quantum computer to speed up financial trading). A financial services firm could also trigger a mandatory notification by investing in an entity active in one of the 17 sectors.

The scope of the national security regime is very broad. Only relatively limited UK nexus is required and even entirely UK transactions (ie, with no foreign acquirer) and intra-group reorganisations can trigger a mandatory notification. However, while a large number of transactions are being reviewed (around 900 per year), relatively few have required remedies or been prohibited so far (in 2024, 14 transactions were cleared with remedies and one prohibited; in 2023, three transactions were cleared with remedies but none prohibited). Substantive concerns depend on an assessment of acquirer risk, target risk and control risk.

Notified transactions are reviewed within 30 working days and either cleared unconditionally or called-in for a full assessment. A full assessment takes a further 30 working days but may be extended by 45 working days and any additional period the parties agree. A full assessment can end in unconditional clearance, clearance with remedies or prohibition. Unnotified transactions proceed straight to a full assessment if called in.

Law stated - 31 January 2025

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

The UK merger control regime is set out in the Enterprise Act 2002 (Enterprise Act) and operated by the CMA. The CMA has jurisdiction to review M&A and joint venture transactions amounting to a 'relevant merger situation'. This requires that two or more 'enterprises' (businesses) 'cease to be distinct' (are brought under common ownership or control, which could be by acquiring material influence, de facto control or a controlling interest) and that:

- the parties have an overlapping UK 'share of supply' of at least 25 per cent, with an increment caused by the transaction, and at least one relevant party has UK turnover exceeding £10 million;
- the target's UK turnover exceeds £70 million; or
- under the 'hybrid threshold', one party (intended to be the acquirer) has UK turnover exceeding £350 million and a UK share of supply of at least 33 per cent and another relevant party (intended to be the target) has a specified UK nexus.

The above thresholds include recent changes that came into force on 1 January 2025 under the Digital Markets, Competition and Consumers Act 2024 (DMCC Act).

Notification is voluntary, but it is typically advisable to notify if a transaction raises potential competition concerns, given that the CMA monitors public information and can call-in unnotified transactions up to four months after closing (or, if later, after the deal became public). If a transaction raises few or only minor concerns, it might be advisable to approach the CMA informally by means of a briefing paper instead of a formal notification. This can be a lot quicker and cheaper and, although no formal clearance is obtained from the CMA at the end of it, in practice, significant comfort can be obtained if the CMA do not consider that a formal notification is required.

If a formal notification is submitted, the CMA's review comprises three potential stages:

- Pre-notification discussions: an informal stage during which parties submit one or more drafts of their notification and the CMA satisfies itself it has sufficient information to commence its review. The duration of pre-notification discussions is uncertain but can take several months (potentially more than six months in complex cases).
- Phase I: the first formal review stage, which usually takes 40 working days but can be extended by up to 90 working days for remedies. Transactions are either cleared (unconditionally or with remedies) or referred for an in-depth Phase II review.
- Phase II: this stage takes 24 weeks but can be extended if remedies are needed. Phase II can end in unconditional clearance, clearance with remedies or prohibition.

A transaction is considered problematic if it gives rise to a 'substantial lessening of competition', with the CMA applying a 'reasonable prospect' standard at Phase I and a 'balance of probabilities' standard at Phase II. Relevant factors include whether the parties are close competitors, number and strength of other competitors, market definition and market shares, and the extent of any barriers to entry or expansion. Beneficial efficiencies arising from the transaction are also considered.

Transactions can also be reviewed on certain public interest grounds under the Enterprise Act. One such ground is maintaining the stability of the UK financial system. In exceptional cases, transactions raising significant competition concerns may be cleared if deemed necessary to maintain the stability of the UK financial system (such as the *Lloyds Bank/HBOS* merger in 2008).

On 1 January 2025, the DMCC Act introduced new mandatory merger reporting obligations for SMS firms – large tech firms designated with Strategic Market Status in respect of one or more digital activities. This is to increase the CMA's awareness of such transactions and help it decide whether to conduct a review under its general merger control regime. The SMS regime is in its infancy, with the CMA carrying out its first investigations to designate SMS firms during the early months of 2025. Once an SMS firm has been designated, a transaction is reportable if the SMS firm (or a member of its group) will acquire 15 per cent or more, more than 25 per cent or more than 50 per cent of shares or voting rights in an entity with a specified UK nexus, and the consideration is at least £25 million. This is the case regardless of the area of activity, so transactions involving SMS firms that relate to the financial services sector could be caught.

M&A and joint venture parties should also be mindful of not infringing the general UK competition law rules regarding arrangements they enter into in the context of such transactions. In particular, 'clean team' or confidentiality arrangements offer protection against the risk that information exchanged during due diligence or transaction planning might constitute an unlawful exchange of competitively sensitive information between competitors.

The scope and duration of non-compete provisions to protect the value of the acquired business or the joint venture should be carefully drafted. Overly broad restrictions may amount to unlawful market sharing.

During a CMA review, it may also be the case that the parties to a transaction are subject to 'hold separate' requirements preventing integration. Transactions that trigger a mandatory merger report under the new SMS regime are subject to a short standstill period, ending five working days after the CMA accepts the report.

Law stated - 31 January 2025

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

Although the usual choice of share sales and business/asset sales also exists in financial services M&A, the way in which financial services groups are typically structured, in particular through the use of branch operations, means it is common to see M&A transactions (particularly in the banking sector) take the form of business/asset sales. Share sales, where buyers acquire the entire share capital, thus taking over all assets, liabilities and operations of the target, are perhaps more typical where a financial services group has subsidiarised a particular country or business operation and can avoid some of the disadvantages of the business/asset sale route, including, for example, a consent process to transfer the relevant customer agreements, other contracts, employees (if automatic transfer legislation does not apply), IP, etc. A number of the most significant recent transactions in institutional asset management have been structured by way of share sales, in some cases where all or part of the consideration comprises shares in the purchaser (in some cases unlisted). Likewise, some asset managers are constituted as limited liability partnerships and deals will be structured through the acquisition of membership interests (in a similar way to share sales). Some of these types of transactions often see key individual investment managers retaining a holding with the perceived benefits of an alignment of interest.

Many transactions, often including those where the target is owned entirely or partially by the founders of the business, are structured as partial acquisitions. A purchaser may acquire a majority or minority interest with the relationship being governed by a shareholders or limited liability partnership agreement, sometimes with the addition of future put and call options and, on occasion, with specific provisions relating to retention or sharing of carried interest or similar fund performance entitlements.

The United Kingdom has a specific mechanism under Part VII of the Financial Services and Markets Act 2000 (a Part VII Transfer) that facilitates the transfer of all or part of a banking or insurance business and is commonly deployed in financial services M&A involving banking and insurance groups. A Part VII Transfer involves an application by the proposed transferor to the applicable UK court for an order sanctioning the business transfer and includes scrutiny by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA). While it involves a court process and formal steps such as counterparty notification requirements and a formal hearing, a key advantage of a Part VII Transfer is that it overrides contractual consent rights for third parties in English law governed contracts (and may operate for other governing laws in certain circumstances). Clearly, this is of great value in the context of insurance or banking group M&A where there may be thousands of policyholders or account holders. There are certain prerequisites for using a Part VII Transfer but, in most cases, these can be satisfied.

In contrast to some of the sub-sectors discussed above, insurance broking and managing general agent transactions are almost always structured as acquisitions of 100 per cent of the share capital (albeit that sellers may receive part of their consideration in equity in a buyer parent vehicle or bidco, depending on the buyer's own ownership structure).

From an acquirer perspective, the structure of the acquirer vehicle will have a bearing on the scope of the resulting UK regulatory consolidation group and also on the regulatory capital requirements. In the context of a business/asset deal, the acquirer will need to have all of the required regulatory permissions to carry on the business being acquired (including to cover any proposed expansion or change in the regulated business to be carried on). Where this is not the case, it may drive the acquisition structure towards a share sale, albeit with a need to go through a PRA and FCA controller application process.

Law stated - 31 January 2025

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

In the context of a share sale structure, the relevant regulators have 60 business days from the date that a submitted change in control application is deemed complete and there is no outstanding information required by the regulator to begin its assessment. While the language in the Financial Services and Markets Act 2000 (FSMA) states that this period actually starts once the relevant regulator acknowledges receipt of the application, in practice the regulators only determine this to occur once the application is deemed complete. Once an application is submitted, it will be triaged before it is allocated to a case officer, who will need to conduct an initial review before determining whether the application can be deemed complete. In addition to the core 60 business day period, the relevant regulators have the ability to pause the assessment period to request further information for up to a maximum of 30 days, provided they may make such a request no later than the 50th business day of the assessment period. In all, it is not uncommon for a change in control procedure to take between three and six months (depending on complexity and the identity of the parties), which should be factored into the transaction timeline.

In the context of a business/asset sale structure using a Part VII transfer under FSMA, the timeline will largely be driven by the court process, which will only commence once complete transaction terms are agreed and signed and regulators have confirmed their in-principle comfort to the court process commencing. The court process itself may take several months and the views of the PRA and FCA on the proposed transaction will be an important component in the court's assessment of whether to sanction the transfer. It is rare for insurance business transfers under Part VII to be completed in less than 12–18 months due to the requirement to also obtain an independent expert opinion and to ensure adequate notification of customers who are given the right to make representations to the court.

For other notifications, consents and applications linked to the transaction, such as applications for certain persons to perform senior management functions, waiver or permissions applications, notifications made under the Alternative Fund Managers Regulations 2013 and notifications relating to the establishment of a new consolidation group, differing time frames may apply and, in the aggregate, the suite of regulatory filings will need to be properly accounted for when determining longstop dates and likely completion dates.

Timing can be impacted by the need to obtain relevant merger control and/or national security approvals. In addition to formal review periods, time needs to be allowed to prepare notifications and (depending on the type of approval and jurisdiction) possible pre-notification discussions with the relevant authority (which can take several months before the formal review commences in the case of the Competition and Markets Authority (CMA)). The overall time required will depend on the complexity of the transaction and extent of any substantive issues (eg, a straightforward CMA Phase I review takes 40 working days, but if a Phase II review is needed, this would take a further 24 weeks at least).

Law stated - 31 January 2025

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

Tax is rarely the main driver in the structuring of a financial services transaction. If, from a commercial or regulatory perspective, a share sale is possible, this is usually the preference for both seller and the buyer. A corporate seller may benefit from the UK substantial shareholdings exemption; individual sellers will be liable to tax on capital gains on any proceeds, although issues may arise when and if any deferred consideration is pegged to their continued employment. There is UK stamp duty (at a rate of 0.5 per cent) but this is generally seen as just another deal cost.

While business sales may have a lower rate of stamp duty (unless there is UK real estate), they can lead to more complications. In particular, it will be important that the transaction is a transfer of a going concern for value added tax (VAT) purposes. If not, it can lead to irrecoverable VAT and a commercial debate as to which party bears that risk. Particular issues can arise on insurance portfolio transfers or where there is a ’mere’ transfer of assets as opposed to a business.

Law stated - 31 January 2025

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

The United Kingdom's financial services regulatory regime does not, as a matter of law, impose any restrictions on the types of persons that may own, whether wholly or partly, any UK financial institution. However, where an acquisition requires approval, the relevant regulators will consider the fitness and propriety of the proposed acquirer and its financial position to determine whether they are an appropriate acquirer. That fitness and propriety assessment does not look specifically at social issues such as ESG factors but such factors may come into play in other ways, including the capital risk weighting that may attach to particular exposures of the underlying business. The United Kingdom's Sustainability Disclosure Requirements and Investment Labels regime may also have a bearing on the underlying risk assessment of any transactions, including any impact of the anti-greenwashing rule, particularly in relation to any customer-facing or market-facing documentation or communications.

Law stated - 31 January 2025

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

In the context of UK financial services M&A, such risks are generally addressed by way of contractual provisions with the end result largely dependent on the relative strength of each party's negotiating position. For example, a potential buyer may seek to mitigate the impact of political or policy change risks by way of a material adverse change clause allowing the buyer to terminate the agreement if significant regulatory or political changes occur between signing and completion that are materially detrimental to the target, its business or assets.

Additionally, scenario planning and stress testing against potential political or policy changes may be used to forecast impacts on the transaction's value and structure. For particular transactions where a shift in the political climate or regulatory policy could have a significant impact on the target and the deal itself, parties may wish to engage with regulatory and political advisers early in the process to ensure informed decision-making and to develop robust mitigation strategies.

Law stated - 31 January 2025

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Outside of some relatively well documented activist investor interventions in some publicly listed UK banking groups in recent years, shareholder activism has not been particularly prominent in the UK financial services sector. However, traditional asset managers are starting to become more publicly active, particularly on ESG campaigns. In addition, we have seen increased shareholder activism in the listed investment trust sector with hedge funds and other activists taking stakes in such companies with a view to changing board composition and influencing strategy to eliminate embedded discounts to asset values through buy-backs, asset disposals and other corporate actions, including winding-up or mergers with other trusts.

As the public markets rebound, we may see more shareholder activism seeking to influence M&A deals to unlock value or push for strategic change.

Law stated - 31 January 2025

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

In the context of banking and insurance groups, depositors and policyholders will generally have a consent right (express or at law) that restricts the relevant bank or insurer from transferring its obligations under the relevant customer agreement or policy. This consent right will typically not bite in the context of a share sale where customer agreements or policies are generally not being transferred and instead continue to reside within the target entity. A Part VII transfer under the FSMA is therefore frequently deployed in the context of a banking or insurance group business or asset sale to override this customer or policyholder consent requirement, albeit at the cost of adding a formal court process to the deal timetable.

There is then always the case of applicable regulatory approvals, whether for a change in control or material change to the business of a regulated firm. The PRA and/or FCA must approve any change in control before the buyer can complete the acquisition. This process involves a detailed review of the buyer's financial position, business plan and suitability to take over the regulated business.

Merger control and/or national security approvals may also be needed in the United Kingdom depending on whether relevant jurisdictional thresholds are met.

Law stated - 31 January 2025

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

In addition to the typical areas of diligence focus, financial services M&A transactions involve a heightened level of regulatory, risk and compliance diligence. The exact nature of diligence performed will depend on the target group, its regulatory status and regulatory history and the scope of its business from a product and geographical perspective. It will typically involve assessing the authorisations, licences and consents of the target group and determining whether they are sufficient or otherwise subject to conditions or restrictions; reviewing correspondence with the target group's regulators to identify historic and/or current compliance issues or enforcement actions; assessing risk reports, financial crime reports, breach registers and complaints registers to identify conduct risk and other possible areas of regulatory exposure and liability; and assessing prudential status and capital position to determine if there is any shortfall that may require additional capital injections by the acquirer.

That additional due diligence might encompass, for example, the following additional key areas:

Regulatory compliance:

- licences and registrations for the target and regulated group entities;
- relevant approvals and certifications under the Senior Managers Regime;
- operational resilience and recovery and resolution plans;
- details of the jurisdiction or customer concentration exposures;
- details of the underwriting methodology, including alignment with applicable technical standards on supervisory reporting on forbearance and non-performing exposures;
- analysis and detail on risk mitigation tools such as reinsurance and derivatives hedging positions;
- compliance with product governance, customer duty and conduct of business requirements;
- details of secrecy and personal data handling policies and any complaints received about the handling of customer or personal information;
- details of sensitivity on interest rate change and on cost of funding change;
- details of any product mis-selling exposures, particularly in relation to mortgage, derivative, hedging and tax products or pyramid selling and motor finance;
- non-routine correspondence with regulators;
- details of any regulatory actions or investigations;
- evidence of preparedness for forthcoming regulatory changes or completion of implementation for the same; and
- regulatory returns.

Financial:

- current ICAAP and ILAAP and capital forecasts;
- reserving analysis and sensitivity testing;
- details of the funding arrangements, including details of all wholesale funding programmes and material borrowings; and
- tax.

Contracts and commitments:

- material outsourcing agreements;

- material guarantees, indemnities, suretyships or comfort letters;
- template contractual documents for higher risk products; and
- policy terms and conditions/customer-facing contractual documentation (in an institutional asset management transaction, there will be particular focus on the most significant investment management agreements (including whether they include any change of control provisions) as well as distribution and other marketing arrangements).

Law stated - 31 January 2025

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

Beyond the critical legal due diligence in financial services M&A transactions, certain non-legal due diligence may be required to fully assess the value, risks and opportunities of the target. This multifaceted approach generally includes financial (including regulatory capital structure), tax, technology and operational resilience or dependencies.

Law stated - 31 January 2025

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

Emerging technologies may require additional specialist insights from the advisory team to ensure that relevant risks associated with those technologies are being properly diligenced. For instance, when assessing a cryptoassets business or a financial institution that is making use of blockchain technology or smart contracts, there are specialist firms that conduct relevant audits of the underlying technology to determine whether it is performing effectively. Similarly, acquirers may need specialist support from the cryptoassets-focused compliance firms to assess cryptoasset transaction data and other relevant data points connected to blockchain transactions, wallet addresses and other transactional activity.

Emerging technologies may also carry a higher degree of financial crime risk, meaning that acquirers need to be able to draw on specialist knowledge within their advisers to assess the financial crime risk profile of any target entity and whether that risk is mitigated (eg, through policies and procedures, robust controls, etc).

The increasing use of artificial intelligence is also of interest to the regulators, who would expect potential acquirers to understand the extent of any use of such technology and how that use complies with the regulatory requirements, with particular focus on data management, governance, resilience and client protection.

Digital markets are an area of particular focus for the Competition and Markets Authority and competition authorities in other jurisdictions currently, so to the extent that a transaction involving financial services firms may have an adverse impact in such markets, this is likely to attract greater scrutiny during any merger control review. In addition, the new mandatory merger reporting requirements for SMS firms – large tech firms designated with Strategic Market Status – could potentially apply to transactions in the financial services sector if SMS firms (or their groups) enter into relevant transactions concerning the sector.

There is also a greater appreciation of the national security threats posed by new technologies, with transactions facing greater scrutiny if they concern sensitive technologies. Several of the 17 qualifying sectors falling within the mandatory notification regime under the National Security and Investment Act 2021 concern new technologies (eg, advanced materials, advanced robotics, artificial intelligence, cryptographic authentication, quantum technologies).

Law stated - 31 January 2025

PRICING AND FINANCING

Pricing

20 How are targets priced in financial services M&A transactions? What factors typically affect valuation?

Valuation methodology will be greatly influenced by the scope and nature of the relevant target. A business/asset sale comprising only a single asset class such as a mortgage book or loan book will be very different from a whole banking business or entity acquisition. Likewise in the context of insurance groups,a multiple of, or sometimes discount to, tangible book value may be used on a share acquisition, whereas a discounted cash flow basis may be used on a selective business/asset acquisition. Insurance brokers and managing general agents are typically valued on an EBITDA multiple basis. Asset managers will typically be valued on the basis of a percentage of their assets under management (AuM) and the quality of the underlying earnings attributable to their investment management agreements with clients. Comparables in the market may also be used, taking into account trading multiples of other financial institutions operating within that sub-section of the financial services landscape, whether via analysis, modelling or utilising prior published deal values, to reach a determination on valuation.

In the context of financial services M&A, influential factors will include the regulatory capital requirements applicable to the existing and go-forward business.

Law stated - 31 January 2025

Purchase price adjustments

21 What purchase price adjustments are typical in financial services M&A transactions?

Although locked box structures are not uncommon in UK financial services M&A, net asset value adjustments are still used as well as bespoke adjustments particular to the underlying regulated nature of the business. This might include, for example, a specific CET1 minimum adjustment or an adjustment by reference to specific capital add-ons mandated by the applicable approving regulatory authority. Earn-outs are very common in sales of financial boutiques or insurance brokers. Earn-outs or deferred consideration are also features of asset manager transactions where a purchaser will often wish to structure a transaction to cover the potential for AuM attrition through client withdrawals, failure to obtain any change of control consents in a key investment management agreement or through the loss of a key individual fund manager or other senior staff with close client relationships.

Other financial value protection measures include seeking commitments from the seller's group or, in some cases, third-party clients, to commit to maintain AuM to the target for a defined period, often multiple years, post-closing.

Law stated - 31 January 2025

Financing

22 How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

The transaction parties need to be mindful of relevant regulatory considerations when determining the approach to financing for a transaction, particularly with regard to debt financing. Depending on the regulatory status of the target entity or the target group, the approach to financing could have a material impact on the capital position of the target entity or group, which may impact its ability to comply with relevant requirements and may not be within the risk tolerance of the relevant regulator. By way of example, the feasibility of financing a transaction part in equity and part in debt may depend on the existing capital position of the target entity or group – if the equity component is not sufficient to satisfy solo or consolidated capital requirements, then the debt component may need to reduce accordingly. Similarly, regulatory capital requirements can limit the ability to leverage the relevant target entity or group and may also limit the ability to extract capital to service or repay debt, which can therefore increase the cost burden for the acquirer of the transaction. The buyer should consider whether any debt used to finance the acquisition is tax deductible – the United Kingdom has a myriad of rules designed to prevent what could be seen as excessive leverage. There are also a number of recent court cases where the courts have denied relief for acquisition financing in what are seen as tax avoidance situations.

A number of the most significant transactions in the asset management sector have involved share consideration by the purchaser to create enlarged entities akin to a merger or joint venture structure.

Law stated - 31 January 2025

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

Beyond the customary seller representations and warranties given in general M&A transactions, the following areas are typically covered in greater detail in the context of financial services M&A deals:

- regulatory compliance – comprehensive warranties on compliance with all applicable financial services regulations, including authorisations, licences, conduct rules, record-keeping requirements and anti-money laundering and counter-terrorist financing regulations;
- client assets and funds – assurances that client assets have been handled in accordance with regulatory requirements, including segregation and protection of client funds;
- client contracts/policies – specific disclosure of template documentation and assurances that client contracts/policies were prepared on the same terms and comply with all applicable financial services laws; and
- regulatory investigations and actions – comprehensive disclosures about any ongoing, pending or threatened regulatory investigations or disciplinary actions.

Law stated - 31 January 2025

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Typical indemnities for financial services M&A deals cover regulatory compliance (eg, potential fines or penalties), litigation (eg, ongoing or potential litigation risks disclosed) and other specific risks particularly relevant in financial services, eg, indemnities to cover liabilities arising from the misselling of financial/insurance products.

Typical survival periods can vary, but often ranges from 12 to 36 months. Tax indemnities often have a survival period of six or seven years, which is based on the historic limitation period for HM Revenue & Customs to look back to pre-sale periods.

Caps can generally range from 10 to 50 per cent of the deal value, however for certain high-risk indemnities, such as misselling, caps may be much higher or even uncapped. Liability may be further restricted by way of a de minimis threshold, which typically ranges from 0.1 to one per cent of the deal value, and a basket, which is often between one and three per cent.

Warranty and indemnity (W&I) insurance has become an increasingly popular tool in financial services M&A. The majority of policies are buy-side, allowing the buyer to recover losses arising from breaches of warranty and tax indemnity claims directly from the insurer. Specific risk policies are also becoming more common for risks not covered by a typical W&I policy.

Law stated - 31 January 2025

Closing conditions

25 | What closing conditions are common in financial services M&A transactions?

Regulatory closing conditions play a significant role in UK financial services M&A transactions and can considerably impact the timeline and complexity of closing a deal. For acquisitions of banks and insurance companies, Prudential Regulation Authority (PRA) change in control approval must be obtained before completion. The Financial Conduct Authority (FCA) may make representations to the PRA and may impose certain conditions related to market conduct or consumer protection. Acquisitions of other regulated entities, such as asset managers or payments firms, require FCA approval for changes in control. For multinational transactions, approvals may be required from regulatory bodies in other jurisdictions where the entities operate.

If the transaction meets certain thresholds (ie, the target turnover threshold, the 25 percent share of supply threshold or the hybrid threshold), it may be subject to merger control notification to and review by the Competition and Markets Authority (CMA), and could potentially even trigger a mandatory merger report to the CMA under the UK's new digital regulatory regime for SMS firms (large tech firms designated with Strategic Market Status). If any mandatory merger control, foreign investment and/or national security approvals are needed, or the parties agree any such voluntary approvals are appropriate, it is usual for closing to be conditional on receipt of such approvals. In drafting those conditions, parties need to decide whether to limit interaction with the CMA to submission of a briefing paper or whether approvals must be at Phase I or they are willing to go through an in-depth (and more onerous) Phase II review, as well as whether clearance has to be unconditional or approval with remedies would be acceptable (and the extent of any obligations on the acquirer to offer or accept remedies). It is also usual to include cooperation obligations regarding preparation of notifications, so these are accurate and approvals obtained promptly.

Given the potential lengthy gap between signing and closing to obtain the necessary regulatory approvals, a purchaser may sometimes seek to introduce a condition on no material adverse change having occurred in order to permit it to walk away from the deal in certain circumstances. For example, in an asset manager transaction this may be linked in some way to the loss of assets under management (AuM) during the interim period. Whilst these may also be covered by closing adjustments to the purchase price, a very material reduction in AuM (or related run-rate revenue) might trigger a termination right.

Law stated - 31 January 2025

Interim operating covenants

26 What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Interim operating covenants or pre-completion undertakings are very standard in UK financial services M&A. Some examples of covenants that are added for such UK deals include:

- underwriting/lending policies – no material changes to the target's underwriting, origination and pricing policies and practices;
- capital and liquidity requirements – for banking and insurance sectors, maintaining stipulated capital and liquidity requirements (and, in respect of insurers, no change to reinsurance strategy);
- customer or policyholder documentation – no material changes to customer or policy terms and conditions or standard documentation; and
- regulatory reporting – continuing to fulfil all regulatory reporting obligations and promptly notifying the buyer of any regulatory communications that could affect the business or transaction.

To the extent that any suspensory merger control, foreign investment and/or national security approvals are needed (including a UK merger control review if the CMA imposes 'hold separate' requirements during its review, or if a mandatory merger report is required to the CMA under the UK's new digital regulatory regime for SMS firms (large tech firms designated with Strategic Market Status)), parties should take care that steps taken between signing and closing do not stray into early implementation of the transaction, risking penalties for 'gun-jumping'. 'Clean team' or other confidentiality arrangements should be used to manage this risk, as well as the risk that exchanges of competitively sensitive information prior to closing may infringe the general competition law rules.

Law stated - 31 January 2025

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

Accounts or financial statements are a common area for dispute. This could arise via a breach of accounts representations and warranties or where a transaction is structured using completion accounts and adjustments are made to reflect the true value of the business at the time of closing. This detailed review of completion accounts can lead to disputes if the parties interpret the financial data differently or disagree on the effect of the accounting principles applied. Earn-out arrangements, where part of the purchase price is contingent on the future performance of the business, can lead to disputes over calculation methods, the achievement of targets or the actions of the buyer affecting the earn-out.

Given the heavily regulated nature of targets in financial services M&A, regulatory compliance and compliance with conduct rules in particular are also common areas for dispute. These are usually addressed through claims under specific representations and warranties or indemnities but may include recourse to equitable remedies such as specific performance where damages might be an insufficient remedy.

For any issues discovered between signing and closing, a buyer might try to terminate and withdraw. However, the contract will usually prevent termination or withdrawal for breach unless, for example, a material adverse change clause has been negotiated and the relevant issue is treated by the buyer as a trigger event. For disputes arising after closing, available remedies typically include damages for losses suffered due to breach of representations and warranties or applicable indemnity provisions, subject always to the applicable time and monetary thresholds and caps.

Law stated - 31 January 2025

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

Disputes in the United Kingdom are most commonly resolved through either court proceedings or arbitration. The High Court in England typically has exclusive jurisdiction for the handling of commercial disputes. For arbitration proceedings, the most common choices are the London Court of Arbitration or the International Chamber of Commerce, with London as the preferred seat. ADR is not commonly used in the United Kingdom for financial services M&A disputes.

When choosing a dispute resolution mechanism, parties should bear in mind certain key factors. Court proceedings and judgments are generally public, whereas arbitration proceedings are confidential. In terms of appeals, courts provide structured appeal processes, whereas arbitral awards are final and binding. The enforceability of judgments or arbitral awards is also a key consideration.

Banks and larger financial services firms often prefer arbitration for resolving disputes. This is driven by the confidentiality of the process, the ability to select arbitrators with specific expertise relevant to the dispute and the efficiency and finality of the arbitration process.

Law stated - 31 January 2025

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

A few areas that are anticipated to give rise to additional activity in UK financial services M&A in the coming year include:

- stress-driven bank M&A;
- sub-sector consolidation: asset and wealth management, payments and insurance broking;
- continued insurer and lender consolidation;
- continued private equity backed M&A;
- non-core disposals;
- compliance burdens and costs with increased focus on regtech as a potential consequence; and
- undervalued listed financial institutions prompting increased peer-to-peer deals.

In the context of merger control, the Digital Markets, Competition and Consumers Act 2024 (DMCC Act) introduced a number of changes to the UK merger control regime on 1 January 2025, including changes to the jurisdictional thresholds, while the Competition and Markets Authority (CMA) revised its procedures for Phase II cases in 2024. The DMCC Act also introduced the UK's new digital regulatory regime for SMS firms (large tech firms designated with Strategic Market Status), which includes mandatory merger reporting requirements.

There may also be changes to the UK national security regime in 2025. The previous Conservative government indicated in May 2024 that it was contemplating changes to the 17 qualifying sectors under the mandatory notification regime and possibly exemptions for certain types of transactions. It remains to be seen whether the new Labour government will take forward these changes, although a statutory report published in December 2024 indicates that the new government agrees that certain improvements could be made to the sector definitions and related guidance.

The Pensions Schemes Bill is also expected to introduce pension reforms in 2025, depending on the result of the consultations in January 2025. This could boost investment in the financial services sector by driving the development of pension 'megafunds' as a result of consolidation in the defined contribution market.

Law stated - 31 January 2025

NORTON ROSE FULBRIGHT

Alan Bainbridge alan.bainbridge@nortonrose.com
Hannah Meakin hannah.meakin@nortonrosefulbright.com
Dominic Stuttaford dominic.stuttaford@nortonrose.com
Mark Tricker mark.tricker@nortonrose.com
Emma Lai emma.lai@nortonrosefulbright.com

Norton Rose Fulbright

Read more from this firm on Lexology

USA

Chang-Do Gong, Jeff Berman
Clifford Chance LLP

Summary

DISPUTES

UPDATE AND TRENDS

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

The US financial services sector is experiencing a notable resurgence in M&A activity that began in the second half of 2024 and is expected to continue through 2025. Compared with 2023, the US has significantly increased its share of global financial services M&A deal value in 2024. The increase is being driven by a combination of favourable economic conditions, strategic dynamics and a more accommodating regulatory environment.

Key market drivers

Economic stability and growth

The US economy has demonstrated resilience, with declining inflation rates and a series of interest rate reductions by the Federal Reserve beginning in September 2024. These macroeconomic factors have bolstered business confidence and created a more hospitable environment for deal-making. For example, during the third quarter of 2024, there were 241 M&A deals announced in the US financial services industry, with a total deal value of US$23.7 billion. This represented a substantial 137 per cent increase compared to the previous quarter's total deal value of $10 billion and a remarkable 611 per cent increase compared to the third quarter of 2023.

Strategic consolidation

US financial institutions are actively seeking mergers and acquisitions to enhance their market positions and achieve operational efficiencies. A notable example is Capital One's successful bid to acquire Discover Financial Services in an all-stock transaction, valued at approximately $35 billion, that the parties expect to yield significant synergies and strategic benefits as well as creating the largest credit card issuer in the United States.

Regional and community banks

Consolidation among US regional banks with assets between $10 billion and $100 billion has also increased, particularly in the Midwest and Southeast, with lenders aiming to bolster balance sheets, reduce the cost of capital and diversify deposits amid rising competition and economic pressures. Operating cost and technology demands at community banks with less than $10 billion in assets are expected to lead to consolidation, including by way of 'fill-in' acquisitions by regional banks on a limited basis or as part of a general roll-up strategy.

Private equity involvement

Private equity firms are increasingly influential in the financial services M&A landscape. Their focus has been on acquiring firms with strong growth potential, particularly in the financial technology (fintech), payments and asset management sectors, and taking advantage of profitable exit opportunities under favourable market conditions. For example, Blackstone is reported to be exploring a sale of its majority stake in HealthEdge, a provider of health insurance software, in a deal that values the company at more than US$2.5 billion.

Key regulatory drivers

Relaxation of regulatory constraints

The Trump administration has initiated efforts to ease regulations affecting the financial services sector. Anticipated changes include loosened requirements around capital adequacy, consumer protection and anti-money laundering. The banking sector, in particular, is looking forward to significant liberalisation of the federal banking agencies' proposed Basel III 'endgame' implementing rules.

Bank Merger Guidelines uncertainty

In September 2024, the Antitrust Division of the US Department of Justice (DOJ) announced its withdrawal from the 1995 Bank Merger Guidelines that DOJ had developed jointly with the Board of Governors of the Federal Reserve System (Federal Reserve Board) and the Office of the Comptroller of the Currency (OCC) to guide competition review of bank merger proposals. The Federal Deposit Insurance Corporation (FDIC) and the OCC concurrently adopted changes to their standards for Bank Merger Act applications, but the Federal Reserve Board did not update its own standards for review and, presumably, will continue to apply the 1995 Bank Merger Guidelines. On 3 March 2025, the FDIC proposed to rescind the Bank Merger Act standards it had adopted in 2024. Although it is reasonable to expect that the DOJ under President Trump will adopt a generally more permissive approach to bank mergers , Republicans in Congress have not uniformly embraced the idea of relaxing merger enforcement. Divergent approaches and continued uncertainty remain distinct possibilities for 2025.

Sector-specific drivers

Private equity involvement

Private equity firms are increasingly influential in the financial services M&A landscape. Their focus has been on acquiring firms with strong growth potential, particularly in the fintech, payments and asset management sectors, and taking advantage of profitable exit opportunities under favourable market conditions. For example, Blackstone is reported to be exploring a sale of its majority stake in HealthEdge, a provider of health insurance software, in a deal that values the company at more than US$2.5 billion.

Digital transformation

Recent M&A activity in the US financial services industry has increasingly focused on acquisitions in the fintech and payments sectors. Traditional banks and asset managers acquire technology-driven firms to enable digital services, which often feature advanced technologies (including artificial intelligence, blockchain and cybersecurity solutions) and reflect a strategic shift towards customer-focused innovation. A continued emphasis on digital transformation is likely to drive acquisitions of fintech and payments firms in order to improve banks' and asset managers' service delivery and operational efficiency.

Law stated - 31 January 2025

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

Financial services M&A, and especially transactions involving large banking organisations, is highly regulated in the United States. Determining whether any particular transaction is subject to a regulatory approval requirement requires analysing the facts, such as the identity and activities of the buyer and target and the markets in which they operate. In 2024, President Biden's DOJ signalled a more stringent approach to competition reviews of proposed M&A transactions generally, including its withdrawal from the 1995 Bank Merger Guidelines; the FDIC and the OCC also adopted changes to its standards for Bank Merger Act applications. On 3 March 2025, the FDIC proposed to rescind the Bank Merger Act standards it had adopted in 2024. Although it is reasonable to expect that the DOJ under President Trump will adopt a generally more permissive approach to bank mergers, this is by no means a foregone conclusion, and the resulting uncertainty concerning the standards for regulatory approval will probably result in some proposed deals being delayed or derailed entirely.

Law stated - 31 January 2025

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 What primary laws govern financial services M&A transactions in your jurisdiction?

Laws that govern financial services M&A transactions in the United States include the following statutes, along with their implementing regulations:

- the Bank Holding Company Act of 1956;
- the Bank Merger Act;
- the Change in Bank Control Act of 1978;
- the Home Owners' Loan Act of 1933;
- the Securities Exchange Act of 1934;

- the Investment Company Act of 1940;
- the Investment Advisers Act of 1940;
- the Hart-Scott-Rodino Antitrust Improvements Act of 1976;
- state banking laws;
- state insurance laws; and
- state licensed lender, money transmitter, non-depository trust company and similar laws.

Law stated - 31 January 2025

Regulatory consents and filings

4 What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Applications for regulatory approval and notice filings with regulators may be required for M&A transactions (including, but not limited to, transactions resulting in a change of control) that involve US insured depository institutions, bank or thrift holding companies, broker-dealers and investment advisers registered with the Securities and Exchange Commission, insurance companies licensed under state law and other state-regulated financial institutions (such as licensed lenders and money transmitters). Whether any particular transaction requires approval or a notice filing will depend on the identity and activities of the buyer and target and the structure of the transaction.

Law stated - 31 January 2025

Ownership restrictions

5 Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

Generally speaking, there are no restrictions on the types of entities that may own or control financial institutions in the United States. Under the Bank Holding Company Act of 1956 (BHC Act) and the Home Owners' Loan Act of 1933, however, direct or indirect control of US insured depository institutions and may be acquired only by bank or thrift holding companies, which are generally prohibited from engaging, directly or indirectly through controlled subsidiaries, in activities other than banking, subject to limited exemptions. Depending on whether the acquiring bank holding company has 'financial holding company' status under the BHC Act, exempt non-banking activities include activities determined to be 'closely related to banking' or activities that are 'financial in nature'. In addition, non-US banks that are 'qualifying foreign banking organisations' may engage in activities of any kind outside the United States.

Similarly, there are no restrictions on the types of individuals that may own or control financial institutions in the United States. In many cases, however, the regulatory application process for a transaction requires significant shareholders, executive officers and directors to undergo background checks by the relevant regulator and to submit documents verifying the individuals' criminal records and financial wherewithal. Individuals may be disqualified based on the results of such a background check. For example, an individual with a history of personal bankruptcy or who was an executive of a company that became insolvent may face challenges in obtaining approval to be a significant shareholder, officer or director of a target company. The same may be the case for an individual that previously was subject to a regulatory enforcement action or was a senior executive of a company at the time the company was subject to a regulatory enforcement action.

Law stated - 31 January 2025

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

Generally speaking, there are no restrictions on the types of individuals that may be directors or officers of financial institutions in the United States. In many cases, however, the regulatory application process for a transaction requires executive officers and directors to undergo background checks by the relevant regulator and to submit documents verifying the individuals' criminal records and financial wherewithal. Individuals may be disqualified based on the results of such a background check. For example, an individual with a history of personal bankruptcy or who was an executive of a company that became insolvent may face challenges in obtaining approval to be an executive officer or director of the target or surviving company. The same may be the case for an individual that previously was subject to a regulatory enforcement action or was a senior executive of a company at the time the company was subject to a regulatory enforcement action.

In addition, directors of national banks are required to be US citizens, although the Office of the Comptroller of the Currency (OCC) has some discretion to waive this requirement. State banking laws may have similar requirements for directors of state-chartered banks.

Law stated - 31 January 2025

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

The liabilities, duties and responsibilities of directors and officers in the context of US financial services M&A transactions are similar to those for most other M&A transactions in the United States and require a company's directors and officers to seek the best outcome for the company's shareholders. Directors also are subject to standards of conduct under US federal banking law and supervisory guidance. A director would need to meet those standards when evaluating a proposed M&A transaction, such as by exercising effective supervision of company management and considering whether and the extent to which the proposed transaction is consistent with the company's strategy and risk tolerance.

Law stated - 31 January 2025

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

The Committee on Foreign Investment in the United States (CFIUS) has the authority to review certain foreign investment transactions to determine the effect of such transactions on the national security of the United States. CFIUS can review any transaction that could result in foreign control of a US business, certain types of non-controlling but non-passive investments by a foreign person in a US business, and certain real estate transactions. With limited exceptions, filing with CFIUS is voluntary, although closing a transaction that is within CFIUS's jurisdiction without its approval entails the risk that CFIUS subsequently imposes conditions or, in extreme cases, forces a divestiture. Certain transactions that involve either a US business that deals with critical technology or a foreign investor that is substantially owned by a foreign government must be notified to CFIUS at least 30 days prior to closing. CFIUS regularly reviews financial services M&A transactions, particularly where the US business in question deals with large amounts of sensitive personal data or is considered to be critical infrastructure.

In addition, under the BHC Act, the Federal Reserve Board has established a specialised regulatory framework applicable to foreign banking organisations. Generally, a foreign banking organisation is any non-US bank that controls a US insured depository institution or that has a branch or agency in the United States. This framework generally does not apply BHC Act's non-banking activities restrictions to activities conducted by a 'qualifying foreign banking organisation' wholly outside the United States. In some cases, however, as part of reviewing a foreign banking organisation's proposed acquisition of a US insured depository institution, the Federal Reserve Board or other regulators are required to analyse, under the law of the foreign banking organisation's home country, whether the foreign banking organisation is subject to 'consolidated comprehensive supervision' and whether US firms are entitled to reciprocal treatment. Finally, notice to the Federal Reserve Board (and potentially state regulators) can be required if there is a change of a control of a foreign banking organisation that has a branch or agency in the United States.

Law stated - 31 January 2025

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

In the United States, certain mergers and acquisitions by or of insured depository institutions and depository institution holding companies require a federal banking agency's prior approval and such approval includes a review of the competitive effects of the proposed transaction. If a federal banking agency's prior approval is not required, then a filing with the Federal Trade Commission and the Department of Justice (DOJ) Antitrust Division under the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (HSR Act) is required. If only part of a transaction requires a federal banking agency's prior approval, an HSR Act filing may be required for the remaining part.

The competitive effects of proposed acquisitions of insured depository institutions and depository institution holding companies are reviewed concurrently by the DOJ Antitrust Division and the relevant federal banking agency, with the DOJ reporting to the banking agency regarding the DOJ's competition analysis. Applicants generally may not consummate a proposed transaction within 15 days of receiving the federal banking agency's approval; if the DOJ has provided adverse comments, that waiting period can be extended to allow the DOJ time to exercise its authority. In addition, state banking agencies often require prior approval or notice of transactions affecting regulated institutions within their jurisdiction. Financial services M&A transactions not involving insured depository institutions or depository institution holding companies generally are subject to the HSR Act process.

In September 2024, the DOJ Antitrust Division announced its withdrawal from the 1995 Bank Merger Guidelines that DOJ had developed jointly with the Federal Reserve Board and the OCC to guide competition review of bank merger proposals. Although it is reasonable to expect that the DOJ under President Trump will adopt a generally more permissive approach to bank mergers, divergent approaches among the federal banking agencies and continued uncertainty remain possible.

Law stated - 31 January 2025

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

For public companies, the structures commonly used are mergers, tender offers and asset purchases. Tender offers are theoretically faster than the merger process, but the timing of most financial services M&A transactions is more likely dependent on the time it takes to obtain regulatory approval (which may vary widely depending on the circumstances, but which generally will take three months or longer). In a merger, the risk of a competing bid is eliminated once the target's shareholders approve the transaction, but in a tender offer, this risk persists until closing. An asset purchase may provide more flexibility in terms of which assets to purchase and which liabilities to leave behind in any particular transaction. However, asset purchases are likely to require more third-party consents than either mergers or tender offers.

For private companies, the structures commonly used are mergers, share purchases and asset purchases. The advantage of share purchases is that they give rise to direct contractual privity between the buyer and the selling shareholders and also are more likely to include seller indemnities. In a share purchase, however, every shareholder must sign up for the deal, which could be difficult to achieve in the case of private companies with a large shareholder base. Although mergers of private companies do not give rise to direct privity between the acquirer and the target's shareholders, they generally only require that shareholders representing a majority of the voting interests of the target support the merger. (Depending on state law applicable to the target, the approval threshold may be higher.)

Law stated - 31 January 2025

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

Generally speaking, under normal circumstances, an M&A transaction involving review by a federal banking agency requires several months between submission and approval. Statistics published by the Federal Reserve Board indicate that the median processing time for M&A proposals in the first half of 2024 was 55 days. For proposals that were the subject of adverse public comments, the median processing time in the first half of 2024 was 119 days. In September 2024, the Department of Justice (DOJ) Antitrust Division announced its withdrawal from the 1995 Bank Merger Guidelines that DOJ had developed jointly with the Federal Reserve Board and the Office of the Comptroller of the Currency (OCC) to guide competition review of bank merger proposals. The Federal Deposit Insurance Corporation and the OCC concurrently adopted changes to their standards for Bank Merger Act applications, although on 3 March 2025, the FDIC proposed to rescind the Bank Merger Act standards it had adopted in 2024. As a result of these changes, processing times may exceed historical norms, both because of the uncertainty created by the new standards and because the new standards may result in agency staff taking longer to review proposed transactions.

A change of control application for a broker-dealer must be submitted to the Financial Industry Regulatory Authority (FINRA) at least 30 days prior to closing of the transaction resulting in a change of control. As a technical matter, a transaction may close once this 30-day period has expired, provided that FINRA has neither rejected the application nor prohibited the transaction from closing. Closing a transaction without obtaining approval, however, entails the risk that FINRA subsequently imposes conditions or rejects the application after the fact.

Law stated - 31 January 2025

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

There are several tax issues particular to financial services M&A that can drive structuring considerations. First, domestic tax-free rollover transactions often require a target bank to be initially situated as a first-tier subsidiary of the acquirer, and subsequent repositioning of the target bank (which usually is permissible for tax purposes) is sometimes problematic under applicable banking laws. Second, taxable acquisitions of US financial institutions by non-US acquirers often are accompanied by the introduction of intercompany debt, which usually is permissible for tax purposes but can be problematic under the banking law requirements applicable to intermediate holding companies. Third, banks often hold material amounts of tax-advantaged life insurance on their executives, and the merger of a target bank into an acquiring bank can undo those tax advantages if not structured properly. Finally, the tax information reporting required of financial institutions is often quite onerous, and acquirers in carve-out transactions may need to craft special indemnities for post-closing reliance on target reporting systems pending the ability to integrate (and re-verify) customer data.

Law stated - 31 January 2025

ESG and public relations

13 How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

In the context of financial services M&A transactions that require federal banking agency approval, ESG criteria are not an explicit factor. However, the banking agencies could conceivably take the position that they have the authority to consider ESG criteria under the 'convenience and needs of the community to be served' rubric that the BHC Act and the Bank Merger Act require the banking agencies to apply. Historically, the convenience and needs of the community analysis has relied on the performance record of the parties to the transaction in meeting their obligations under the Community Reinvestment Act. But the federal banking agencies might feasibly take into account a wider range of ESG considerations in their analysis.

In some circumstances it could also be necessary to address ESG criteria in order to build shareholder and other stakeholder support for a transaction. For example, to avoid attracting adverse public comments on an application for approval of a proposed bank M&A transaction, community and public interest groups may demand that the parties make certain ESG commitments. Failing to meet this demand could lead to adverse public comments on the application, potentially delaying or derailing an otherwise routine approval.

Law stated - 31 January 2025

Political and policy risks

14 How do the parties address political and policy risks in financial services M&A transactions?

Political and policy risks in US financial services M&A are mainly addressed in the transaction agreement, which sets the standard for the efforts the parties must apply to obtain regulatory clearance. For example, an acquirer may be required to apply 'reasonable best efforts', with the term defined to exclude any actions that would have a material adverse effect on the assets or financial condition of the acquirer or the target. This standard can be adjusted to reflect the preferred allocation risk between the parties. For example, the acquirer could be required to take any and all actions necessary to receive regulatory clearance, without regard to the effect those actions would have on the acquirer or the target.

Another way that political and policy risks are managed is through the material adverse effect (MAE) provisions in the agreement and through closing conditions. For example, MAE closing conditions often exclude the effects of changes in law. In addition, transaction agreements often have an ‘outside' or 'long stop' date by which all closing conditions must be met, including obtaining regulatory clearance. If regulatory clearance is not obtained by the long stop date, the parties would not be required to close and either party would be entitled to terminate the agreement, effectively shifting to the target the risk of a delayed regulatory approval.

Law stated - 31 January 2025

Shareholder activism

15 How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

There has not been a substantial change over the past several years in the prevalence of shareholder activism in the US financial services sector. Outside of financial services, activist investors have increasingly targeted companies in the US technology, industrial, consumer and healthcare sectors. The overall level of US activist campaign activity in 2024 was roughly equivalent to the level of activity in 2023.

Law stated - 31 January 2025

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

In an asset purchase, the assignment of contracts to the purchaser may trigger third-party consent requirements. In a share purchase or merger, contracts with anti-change of control provisions may require third-party consents, but such provisions are generally less common than anti-assignment provisions (which are usually not triggered in a share purchase or merger).

Share purchase or merger transactions targeting Securities and Exchange Commission-registered investment advisers are an important exception to the foregoing.

The Investment Advisers Act of 1940 requires all investment advisory contracts between a registered investment adviser and its clients to include an anti-assignment provision and defines 'assignment' to include, in effect, a change of control of the registered investment adviser (constructive assignment). As a result, third-party consent solicitations are a key element of most investment adviser M&A transactions.

Law stated - 31 January 2025

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

Legal due diligence in a financial services M&A transaction is similar to due diligence in any other M&A transaction, with incremental additional diligence to address regulatory compliance issues. Specialists that help with due diligence around regulatory compliance include experts in banking, securities, asset management and digital asset regulation. Particularly in the context of bank M&A, regulatory diligence is critical for ensuring that the target institution has no issues that would imperil regulatory approval of the proposed transaction.

When conducting due diligence on a bank, lawyers must be sensitive to restrictions on the sharing of confidential supervisory information (CSI). CSI includes examination reports and other communications between the bank and its federal or state supervisors, which may not be shared with third parties, subject to limited exceptions (which do not include disclosing CSI to a potential acquirer) or the approval of the relevant agency (which is unlikely to be forthcoming). As a result, the parties need to work collaboratively for the acquirer to be able to understand the target's business and its regulatory posture without the disclosure of CSI.

Law stated - 31 January 2025

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

In financial services M&A transactions, cybersecurity, data privacy and third-party risk management have become priority subjects for due diligence. Particularly in the case of companies in the vanguard of digital transformation, it is important to focus due diligence on the business model behind the technology. In the payments sector, for example, whether a service provider acts as a 'merchant of record' is critical to understanding its risk exposure under various regulatory frameworks.

Law stated - 31 January 2025

Emerging technologies

19 | Are there specific emerging technologies or practices that require additional diligence?

Blockchain and cryptocurrency-related activities, as well as artificial intelligence applications, require specific due diligence to ensure that the proposed target's activities are permissible for the acquirer and that the target is conducting such activities in accordance with applicable regulations and with due regard for cybersecurity, data privacy, third-party risk management and intellectual property standards. In addition, depending on the novelty of a proposed target's cryptocurrency-related activities, it may be necessary to confirm that the target has taken a view on the legal ambiguities consistent with the acquirer's risk appetite, and more generally that the target has adopted risk management practices that meet the acquirer's standards and its regulators' supervisory expectations.

Law stated - 31 January 2025

PRICING AND FINANCING

Pricing

20 | How are targets priced in financial services M&A transactions? What factors typically affect valuation?

In financial services M&A transactions, pricing depends on the nature of the target. For bank deals, value is often expressed as a multiple of tangible book value. For branch deals, value may be expressed as a premium to deposits assumed by the buyer. For asset management deals, value may be expressed as a multiple of assets under management. For fintech companies and financial or payment service providers, value may be expressed as a multiple of revenue or EBITDA.

Law stated - 31 January 2025

Purchase price adjustments

21 | What purchase price adjustments are typical in financial services M&A transactions?

Earn-outs may be available as a way to bridge valuation gaps. For traditional bank deals, there is typically a net asset adjustment. For non-bank deals in the financial services sector, there may be a traditional working capital adjustment. In acquisitions of asset management firms, a purchase price adjustment based client attrition between the announcement and closing of the deal is increasingly common.

Law stated - 31 January 2025

Financing

22 How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

Debt financing of bank deals is uncommon due to limits on banks' ability to incur debt in the face of regulatory minimum risk-based and leverage capital requirements. Deals involving prudentially regulated non-banks (such as broker-dealers) also tend to avoid debt financing. Otherwise, consistent with market practice and regulatory constraints in other financial services sub-sectors, debt financing may take the usual form of a debt commitment at signing that ensures the required loan or bond proceeds will be available at closing.

Law stated - 31 January 2025

DEAL TERMS

Representations and warranties

23 What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

Targets in US financial services M&A deals are expected to provide customary representations and warranties. In addition to the usual representations and warranties covering compliance with applicable regulations and the absence of undisclosed enforcement proceedings, there has recently been significant focus on representations and warranties with regard to compliance with laws and regulations such as the Foreign Corrupt Practices Act of 1977 and adherence to cybersecurity, data privacy, artificial intelligence (AI), third-party risk management and intellectual property standards.

Law stated - 31 January 2025

Indemnities

24 What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Merger and acquisition agreements in the US financial services sector generally have customary indemnities for breaches of representations and covenants, customary survival periods from 12 to 24 months, and indemnity caps in the range of 10 per cent. In addition, indemnities covering certain key areas of focus, such as compliance with laws and regulations, cybersecurity, data privacy, AI, third-party risk management and intellectual property, may have longer duration (such as five years or the period specified in the applicable statute of limitations) and, in some cases, a higher indemnity cap. As is the case in other industries, the use of representation and warranties insurance has become more popular in financial services M&A, but the parties should be attentive to exclusions in the representations and warranties insurance that are specific to the financial services sector (such as exclusions for cybersecurity breaches).

Law stated - 31 January 2025

Closing conditions

25 | What closing conditions are common in financial services M&A transactions?

For M&A transactions involving banks and broker-dealers, a common closing condition is the receipt of all required regulatory approvals. For transactions involving investment advisers, a common closing condition is the receipt of client consents to the assignment (or constructive assignment) of their investment advisory contracts and there may also be a closing condition related to minimum client assets under management following the consent solicitation process.

Law stated - 31 January 2025

Interim operating covenants

26 | What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Banking sector M&A transactions may have interim operating covenants regarding the extension of credit to certain borrowers (such as loans that would present single counterparty credit risk concern for the combined entity or loans that are subject to regulatory focus on highly leveraged transactions). In addition, in the case of depository institutions, the typical covenant restricting the incurrence of debt and liens will normally include carve-outs for deposit liabilities and certain wholesale borrowings. To the extent the target has particularly important client or customer relationships, the buyer may seek interim operating covenants that limit the ability of the target to modify the terms of these relationships or that require the target to make introductions to those clients or customers for purposes of integration planning.

Law stated - 31 January 2025

DISPUTES

Common claims and remedies

27 | What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

Common issues that may give rise to disputes in financial services M&A transactions include issues around regulatory compliance, cybersecurity, data privacy, artificial intelligence, third-party risk management and intellectual property. Remedies differ based on when the issue is first discovered. If an issue is discovered between signing and closing of the transaction, and the issue is material, then the target may be asked to take corrective action or, if the issue is sufficiently severe, the buyer may refuse to close. If the issue is discovered after closing and the target's shareholders have indemnified the buyer, then the buyer's remedies will be limited to the indemnity. In M&A transactions involving a publicly traded target, it is typical for the buyer not to have any post-closing remedies.

Law stated - 31 January 2025

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

Generally, Delaware and New York law, as applied by the Delaware and New York courts, are the two most popular choices of governing law in US M&A agreements because of their long history of use in a wide variety of commercial transactions. Alternative dispute resolution is much less common; instead, claimants rely on the courts, especially in Delaware and New York, since the courts are able to act quickly, and the judges are often highly experienced in disputes involving matters of commercial law.

Law stated - 31 January 2025

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

The US financial services sector is experiencing a notable resurgence in M&A activity that began in the second half of 2024 and is expected to continue through 2025. The pace of M&A activity is being driven by a combination of favourable economic conditions, strategic dynamics and a more accommodating regulatory environment.

The US economy is continuing to show resilience, with declining inflation rates and a series of interest rate reductions by the Federal Reserve beginning in September 2024. These macroeconomic factors have bolstered business confidence and created a more hospitable environment for deal-making in the coming year. In view of the economic tailwinds, it is no surprise that US financial institutions are actively seeking mergers and acquisitions to enhance their market positions and achieve operational efficiencies.

Consolidation among US regional banks with assets between US$10 billion and $100 billion, particularly in the Midwest and Southeast, is also poised to accelerate in 2025, with lenders aiming to bolster balance sheets, reduce the cost of capital and diversify deposits amid rising competition and economic pressures. In addition, operating cost and technology demands at community banks with less than $10 billion in assets are expected to lead to consolidation, including by way of 'fill-in' acquisitions by regional banks on a limited basis or as part of a general roll-up strategy.

The new Trump administration has initiated efforts to ease regulations affecting the financial services sector. Anticipated changes include relaxed requirements for capital adequacy, consumer protection, and anti-money laundering. The banking sector, in particular, is looking forward to significant liberalisation of the federal banking agencies' proposed Basel III 'endgame' implementing rules. Although it is reasonable to expect that the Department of Justice (DOJ) under President Trump will adopt a generally more permissive approach to the review of bank mergers than in the Biden administration, Republicans in Congress have not uniformly embraced the idea of relaxing merger enforcement. Divergent approaches among the DOJ and the federal banking agencies, resulting in continued uncertainty, remain distinct possibilities for 2025.

In the coming year, M&A activity in the US financial services industry will likely continue to focus on acquisitions in the fintech and payments sectors. Traditional banks and asset managers will rely technology-driven acquisitions to enable digital services, often featuring advanced technologies (including artificial intelligence, blockchain and cybersecurity solutions) and reflecting a continued emphasis on digital transformation. This trend is likely to drive acquisitions of fintech and payments firms to improve banks' and asset managers' service delivery and operational efficiency.

Law stated - 31 January 2025

CLIFFORD CHANCE

Chang-Do Gong chang-do.gong@cliffordchance.com
Jeff Berman Jeff.Berman@cliffordchance.com

Clifford Chance LLP