

SLAUGHTER AND MAY

Executing M&A in a *volatile* market

Strategic M&A Series



Horizon Scanning
Capital Flows



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Introduction

Dealmakers are operating against a background of acute geopolitical and macroeconomic volatility

The impact has been sharpened by ongoing conflict, political instability, regulatory fragmentation and shifting trade and investment dynamics. The economic ramifications – from volatility in energy and commodity markets to inflationary pressures and disruption to trade flows – add significant complexity to M&A execution.

These shifting dynamics are making it increasingly hard for deals to get done, as risk appetites are reined in and uncertainty weighs on confidence.

The persistent “new normal”

This environment is undoubtedly more acute – and unpredictable – than in the recent past, however it is no longer unprecedented. Businesses have shown remarkable adaptability in responding to successive waves of disruption over the last decade. Deal activity has proven robust through these cycles despite the challenges, with dealmakers becoming accustomed to sustained uncertainty in what has come to be seen as a “new normal”.

Whilst uncertainty can weigh on deal activity, it also presents opportunity to those with the resilience and conviction to move ahead – and transactions are continuing where there are strategic or commercial imperatives to execute.

In such cases, greater focus on execution risk, timing and structure is required. Dealmakers are showing increasing resilience in adjusting to sustained uncertainty as a feature of the landscape and deploying creativity and discipline to navigate it.

Dealmaking through volatility

In this latest edition of our Strategic M&A series, we look at how dealmaking is responding to these challenges.

Drawing on our depth of experience, we examine the recurring themes and share practical steps that dealmakers are using to continue to execute on strategic M&A and get deals done in the current environment.



Key takeaways

01

Bridging valuation gaps is key, with a range of pricing structures being used to get deals done.

“Uncertainty and volatility are making deals *more challenging to deliver*, requiring greater focus on *execution risk, timing and structure*”

02

Deal certainty matters more than ever, which is focusing minds on more considered risk allocation in the face of continuing regulatory scrutiny.

03

Successful dealmaking amid uncertainty requires resilience, creativity and discipline.



Bridging valuation gaps

How are buyers and sellers bridging the gap on price?

Bridge mechanisms

Price continues to be the most fundamental aspect of M&A transactions that is impacted by wider geopolitical and macroeconomic uncertainty.

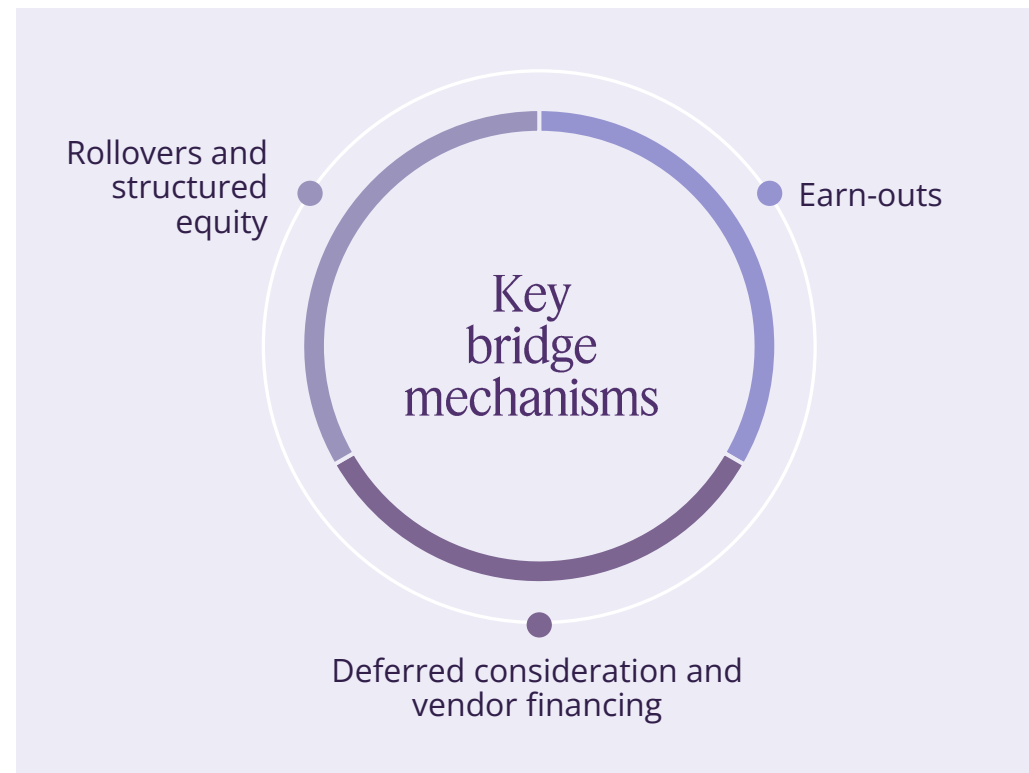
Valuations are acutely vulnerable to the unpredictability of geopolitical and macroeconomic events, as commercial teams and financial advisers contend with modelling the impact on projected performance and resilience over the longer term.

As uncertainty rises, parties inevitably prioritise risk avoidance and focus on downside protection. At the same time, this can lead to a flight to quality and greater competition for the best opportunities, driving up average deal values for fewer prized assets.

Against this backdrop, dealmakers are increasingly relying on the full range of “bridge mechanisms” to close the gap and get the deal done - whether by altering risk profiles, mitigating exposure to downside risks, or linking payments to future performance.

In this section, we explore the most common bridge mechanisms that are being utilised in M&A transactions to close the price gap, and share practical steps that dealmakers are using to get deals across the line.

“Dealmakers are increasingly relying on the full range of “*bridge mechanisms*” to close the gap and get the deal done”





Earn-outs

Earn-outs involve part of the purchase price being calculated by reference to the target's post-acquisition performance. They are used to bridge valuation gaps where parties' views and expectations differ on future earnings, allowing consideration to adjust based on actual performance and thus facilitating risk-sharing between the buyer and seller.

Earn-outs are particularly relevant where uncertainty affects the target's future earnings profile, including where:

- the target operates in a sector or has an industrial base that is particularly sensitive to geopolitical or macroeconomic factors, e.g. tariffs, trade measures, supply chain disruption or commodity price volatility; and/or
- earnings have been adversely affected by such factors or vulnerabilities exposed, without certainty as to whether the impact will prove to be temporary or structural.

Practical considerations

Preliminary assessment

Well-prepared parties will assess the feasibility of an earn-out early in the process.

This includes determining whether suitable performance metrics (whether financial or operational) can be measured objectively in light of the business and the buyer's plans for it following completion.

Structuring

Earn-outs can result in disputes if not thoughtfully structured and clearly drafted. Every earn-out, and the parameters that underpin it, will be unique to the target business. Engage accounting and tax specialists from the outset to ensure metrics are workable and the intended tax treatment can be achieved.

If the earn-out is to be based on specially prepared earn-out accounts and an underlying reward formula, rather than annual accounts, specific accounting policies may also be required.

Payment terms

Earn-outs are commonly structured over one to three financial years post-completion, to balance alignment of interests with the need for certainty.

The earn-out payment could be a single fixed payment at the end of the period or multiple, incremental payments.

Seller protections

Sellers should seek robust conduct protections to prevent artificial manipulation of performance metrics, including ordinary-course obligations and arm's-length dealing requirements. It may also be appropriate to consider security for the earn-out. Clear dispute resolution procedures will be required.



Deferred consideration

Deferred consideration involves the seller agreeing to receive part of the purchase price at one or more specified dates following completion, rather than the entirety of the purchase price being paid in cash at completion.

Unlike an earn-out, the deferred amounts are typically fixed and not contingent on post-completion performance, providing greater certainty to both parties on the amount, whilst still allowing the buyer to defer its cash outlay. Deferred consideration is used to bridge valuation gaps where buyers are unwilling or unable to commit the full purchase price upfront, but where the parties are sufficiently aligned on headline valuation.

From a buyer's perspective, deferred consideration reduces the immediate funding requirement, can ease pressure on acquisition financing and allows the buyer to use the target's own cash generation to fund subsequent instalments. For sellers, the structure preserves headline deal value and avoids the uncertainty inherent in performance-based mechanisms, though it introduces credit risk on the buyer and delays receipt of proceeds.

Vendor financing

Vendor financing goes further, with the seller agreeing to lend part of the purchase price to the buyer, typically through subordinated loan notes or other debt-like instruments. This offers sellers enhanced credit protection through subordination terms, security and defined repayment schedules.

For a buyer, vendor financing can provide greater flexibility in structuring acquisition financing, particularly where debt markets are constrained or lenders require the seller to retain economic exposure as a condition of providing acquisition finance.

That said, vendor financing introduces additional complexity - including intercreditor considerations and the need to align with the buyer's external financing - which may not be warranted where the deferred consideration is modest or the credit risk is low.

Practical considerations

Preliminary assessment

There is significant flexibility in negotiating the terms of both deferred consideration or vendor financing arrangements, but careful planning to optimise for tax and accounting outcomes is key.

Structuring

Sellers typically focus on credit protection, including (in the case of vendor financing) subordination terms, security, interest rates and clear repayment profiles. If payment of deferred consideration is conditional on certain outcomes, such as financial performance targets, the conditions and consequences will need to be clearly drafted.

Buyers should ensure that the terms of any deferred consideration or vendor financing align with their external financing constraints, including intercreditor arrangements and covenant packages.

Both structures are more commonly deployed in bilateral or less competitive processes. In an auction process, a proposal that relies on deferred consideration or vendor financing may signal limited alternative funding options and could put the bidder at a disadvantage.



Rollovers

Whilst not a novel structure, there has been an increase in deals where a rollover is used to help bridge a valuation gap. Rollovers involve a portion of the consideration for a sale being reinvested into the purchaser's equity structure rather than being paid out to the seller directly in cash.

From a buyer's perspective, this reduces the size of the upfront equity cheque (typically, whilst still acquiring control) and requires the seller to stand behind the business plan going forward, ensuring it has "skin in the game" and better aligning interests on future performance – a particularly important feature on carve-out transactions. It also demonstrates seller confidence in the business and allows sellers to retain upside exposure, which can be appealing where there is anticipated growth.

Structured equity

Deals can also incorporate differentiated equity structures – including ordinary, preferred and subordinated equity tranches – as a bridging mechanism. These structures allow parties to tailor the economics of a transaction by allocating risk and return disproportionately between them.

Commonly used in private equity transactions to ensure sponsors secure downside protection and priority returns over management teams, these are increasingly used as part of the toolkit on M&A transactions, where a seller is asked to retain exposure but seeks protection against downside risk or delayed liquidity.

Under these structures, one or more shareholders is entitled to receive priority distributions, often capped at an agreed threshold, before ordinary equity is entitled to participate, altering the risk-return profile of the future investment rather than the "Day 1" valuation or the amount of equity retained.

Practical considerations

Preliminary assessment

A rollover adds significant complexity to deal structure, as it introduces a retained shareholding in the business after completion – and requires negotiation of a shareholders' agreement between buyer and seller.

If a rollover structure is contemplated, early thought to the terms of future shareholding arrangements will be important to avoid losing pace in a competitive auction process.

Structuring

A rollover term sheet is typically agreed in advance, and key considerations include:

- governance and control rights, including any board seats and the scope of seller influence over strategic commercial matters;
- minority protections, typically focused on economic rights such as rights to receive distributions and veto rights over changes to capital structure;
- liquidity and exit rights, such as the timing and structure of an exit, ability to sell to third parties and who controls any sales process; and
- information and audit rights in relation to the target business, which will be particularly important where the seller is listed.



Deal certainty and conditionality

How are buyers and sellers allocating risk?

Navigating regulatory uncertainty

The regulatory landscape for M&A is increasingly shaped by geopolitical tensions and shifting political priorities providing both opportunities for ambitious transactions as well as potential challenges. While regulatory risk in M&A may be most acute for transactions involving “strategic” assets (such as defence, infrastructure, data or critical minerals), and in cases raising newer antitrust theories of harm (such as the entrenchment of a dominant position), an increasingly dynamic international merger control environment means that regulatory scrutiny can affect deals across a range of industries, impacting execution and timing.

“In the face of a more uncertain deal environment, *execution certainty* has become critical alongside price. Buyers and sellers are sharpening their focus on risk allocation around regulatory approvals, financing and interim protections, while *pursuing disciplined and front-loaded deal processes* to manage extended timelines and complexity.”



Mandatory vs. voluntary approvals

Regulatory regimes have proliferated globally and authorities continue to adapt their approaches to merger review. As a result, parties are closely negotiating whether failure to secure approvals that would not have a material adverse effect on the bidder should be permitted as conditions to completion.

Sellers are placing greater focus on the list of regulatory deal conditions, paying particular attention to any voluntary approvals, alongside early upfront regulatory risk analysis, especially on auctions. Bidders, on the other hand, are increasingly considering whether to accept the risk of signing transactions without conditionality for clearances under voluntary regimes, in order to make their bid more attractive.



Sweeper conditions

Sweeper conditions allow the bidder to add new conditions for regulatory approvals that are identified between signing and completion. These protect buyers against change-in-law risk and regulators inviting a filing post-signing. Their inclusion and scope are coming under sharper focus.

Sellers will resist an unfettered sweeper, which, in the worst case, could result in late additions of conditions timing out a transaction or the buyer invoking an additional condition in the event it is unsatisfied.

If agreed, parties will consider whether:

- additions should be limited to mandatory regimes or inclusive of voluntary ones too;
- conditions to invoking a sweeper should be included, e.g. material adverse effect on the bidder, and if these should differ between approvals.



Delays and long stop dates

On more complex, multi-jurisdictional deals, counterparties are increasingly open to extended long stop dates, typically around 18-24 months. Where regulatory conditions prove more time consuming than expected, parties may need to re-negotiate the timing of the long stop date. However, this risks giving counterparties the opportunity to also re-open other deal terms.

Financial terms are increasingly being used to incentivise the bidder to close as soon as possible and compensate the seller for delays – these include “ticking fees” or permitted dividend regimes that step up if completion does not occur by a certain date.

Spotlight on UK public M&A

Conditionality is approached differently in public takeovers, in light of Rule 13 of the Takeover Code and its “material significance test” for invoking conditions.

However, bidders and targets are increasingly focused on strategies to reduce overall deal timelines.

These include “starting the clock” on filings as quickly as possible, as well as shortening timescales once “on the clock” through early engagement with regulators.



Reverse break fees

There has been an increase in the number and value of reverse break fees (RBFs) in deals with greater risk of regulatory scrutiny.

RBFs create a strong incentive for the buyer to take the necessary steps to obtain regulatory approvals, whilst also compensating the seller for deal risk if the transaction collapses for regulatory reasons.

Practical considerations

Quantum

The fee amounts are often tiered based on the triggering event. For example, in a public M&A context, failure to satisfy regulatory conditions may have a higher fee than a failed bidder shareholder vote, unless a failed vote follows the target board withdrawing its recommendation, which is likely to be the highest fee trigger.

Fees are typically set at a level that is material enough to incentivise the buyer, often 2-4% of deal value – although this varies depending on the level of perceived regulatory risk and type of trigger event.

Interplay with conditionality

RBFs should be negotiated in the round with the bidder's overall standard of endeavour to satisfy conditions.

Where parties are apart on the level of commitment (e.g. best endeavours vs. "hell or high water") or the scope of any qualifications (e.g. excluding certain divestment remedies), an RBF may form part of an overall acceptable package – although a seller will seek to ensure the fee is payable regardless of the level of effort the buyer has expended.



MAC conditions

While still less prevalent in the UK than in the US, there has been some resurgence in the use of material adverse change (MAC) clauses as a risk allocation tool in private M&A transactions – reflecting the growing influence of US market practice.

However, it remains less common in the UK market and, unless the buyer has strong bargaining power, sellers will generally resist giving the buyer a walk-away right – particularly where the regulatory risk is a function of the identity of the buyer.

Practical considerations

Scope

Where MACs are included, they should contain bespoke triggers that are tailored to target- or sector-specific risks, rather than general qualitative triggers.

Where macro carve-outs are included, such as conflict or inflationary impact, a proportionality “kick-back” will often be negotiated to capture changes that adversely affect the target in a disproportionate way relative to other companies in the same sector. This works to limit the carve-outs, and key negotiation points will include how to define the peer group to which performance is compared, and to which carve-outs the limitation should apply.

Structuring

MACs can be framed as a termination event, allowing the buyer to walk-away at any time when there is a MAC, in which case notification and remedy provisions need careful thought. Alternatively, “no MAC having occurred” could be a condition to completion, which tends to allow time for transitory or short-term effects to pass.

Sellers who accept its inclusion should stress-test the MAC with in-house commercial teams, to ascertain if the proposed formulation is appropriate and set at a standard that is high enough for the business to tolerate.



Interim covenants

Another feature of deals with protracted sign-to-close timelines is greater attention on interim period covenants. Adequate conduct of business protections remain critical for buyers in preserving deal value between signing and closing by restricting the seller's ability to take, or omit from taking, material actions without the buyer's consent, such as incurring capital expenditure, doing M&A, and entering into or amending material contracts.

Practical considerations

Scope and structuring

Negotiations are focusing on greater covenant specificity, with clearer compliance standards, defined consent thresholds and tailored carve-outs – whilst also ensuring the seller has sufficient flexibility to run its business normally and without raising “gun-jumping” concerns prior to obtaining regulatory approvals.

Conduct of business provisions should be read alongside, and made to work with, any specific policies or leakage covenants agreed on deals with completion accounts or a locked box.

Buyer protections

Buyer rights to audit seller compliance with agreed covenants are also an emerging feature of negotiations where the interim period is lengthy – although UK practice is not as buyer-friendly as the US, where a completion condition that requires there to have been no material breach of interim covenants remains a common feature of US deals.

Tips for sellers and targets

User-friendly crib sheets (“do’s and don’ts”) that can be circulated to the wider business and commercial teams are often a useful way to ensure that seller and target obligations and restrictions remain on the radar of appropriate personnel internally for the full length of the interim period.



Bidder financing

With the extended period of lower interest rates behind us, there have been cases of increased pressure on bidder financing, particularly where finance is committed for potentially lengthy sign-to-close periods.

Practical considerations

Structuring

Banks have generally shown reduced appetite for larger deals, and less willingness to lend on balance sheet without clear syndication routes.

Private credit has increasingly stepped up as an alternative source of bidder finance and now competes directly with banks, sometimes joining together to finance larger transactions.

Short-term bridge facilities remain common, offering quick negotiation for certain funds purposes and are typically refinanced rapidly, usually before completion. Longer-term acquisition debt has declined, though is still seen on certain transactions, offering upfront funding certainty.

Preliminary assessment

The type and scope of commitment letters to be given at signing, and restrictions on amendments to financing terms are likely to be a focus of negotiations, alongside the level of cooperation the seller is required to give to the buyer to enable it to secure its financing, such as providing information for marketing and syndication purposes.

Terms

Confidentiality and disclosure provisions in the transaction documentation will need to work alongside financing proposals and there is often a tension between them that needs to be balanced.

Finance conditionality (“financing-outs”) remains a US concept and less commonly seen in the UK, but there have been deals where it has been accepted with an RBF to compensate the seller for financing risk.



Our experience

In the last 12 months alone, we have advised on a wide range of market-leading transactions across the spectrum of strategic M&A.

Selected highlights include:

We are recognised in the leading legal directories for the quality of our work across multiple areas – with rankings in

Band 1 and 2
in 62 categories

across Legal 500 and Chambers UK guides for 2026

Private M&A

Carve-out transactions and disposals



on the separation and sale of its Essential Home business to Advent



on the carve out and disposal of its pharmaceutical division



on the sale of Pension Insurance Corporation to Athora



on the sale of its Catalyst Technologies business to Honeywell

Acquisitions



on its acquisition of Evelyn Partners



on its acquisition of Worldpay from FIS and GTCR and the sale of its issuer solutions business to FIS



on their joint acquisition of atNorth from Partners Group



on its acquisition of WhoSampled



Joint ventures



on its buyout of CK Hutchison from (and on the formation of) the VodafoneThree JV



on its strategic JV with CVC, named Therme Horizon



on its creation of a 50:50 JV with ACS Group



on the sale of their JV, Wilson Sons Ultratug, to Tidewater

Public M&A



on its recommended cash acquisition of Beazley for c.£8.2bn



on its combination with Nuveen, valuing Schroders at c.£9.9bn



on the competing offers by Advent and by KKR, with KKR's offer valuing Spectris at £4.1bn



on its recommended cash acquisition by Tincum and Blackstone for £1.3bn

"I believe the department at Slaughter and May is *peerless in its ability to deliver strategic M&A*. In particular, the ability to think and plan several steps ahead in a process."

Chambers, 2026

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May 2026