

Understanding the Mergers & Acquisitions (M&A) Transaction Landscape

A Spotlight on Operational and Regulatory Risk Drivers
in Pre-M&A Decisions

Mergers and Acquisitions Landscape

Mergers involve the union of assets when two companies combine to form a new entity, whereas an acquisition is when one company absorbs another company. Mergers and acquisitions (M&A) are strategies for business growth that come with substantial risks. M&A among privately-held entities differs from transactions between a publicly traded company and a privately held entity, as detailed below.

Private to Private

Fewer regulatory requirements since both entities are privately held. Negotiations are usually confidential with underlying financial details of the transaction not publicly disclosed.

More flexible with fewer regulatory constraints, focusing primarily on financial, operational, and statutory risks.

The proposed transaction requires approval of majority owners of both corporations.

Transaction structure and terms can vary to include private equity, bank loans, or seller financing.

Direct negotiations typically happens with private-to-private M&A between key stakeholder with fewer governance complexities.

Ownership and Disclosure Requirements

Due Diligence Process

Regulatory and Compliance Requirements

Financing and Deal Structure

Shareholder and Governance Implications

Public to Private

There Stricter disclosure rules that public companies must adhere to such as reporting the acquisition to shareholders and regulatory bodies.

More rigorous due to regulatory scrutiny. Companies must ensure compliance with securities laws, financial reporting standards, and governance requirements.

Required regulatory reviews include antitrust considerations and financial disclosures to the Securities and Exchange Commission (SEC).

Public companies can use stock-based transactions, debt financing, or cash reserves. Deal must align with shareholder interests and regulatory requirements.

Approvals from shareholders and governance changes must align with US public company standards.

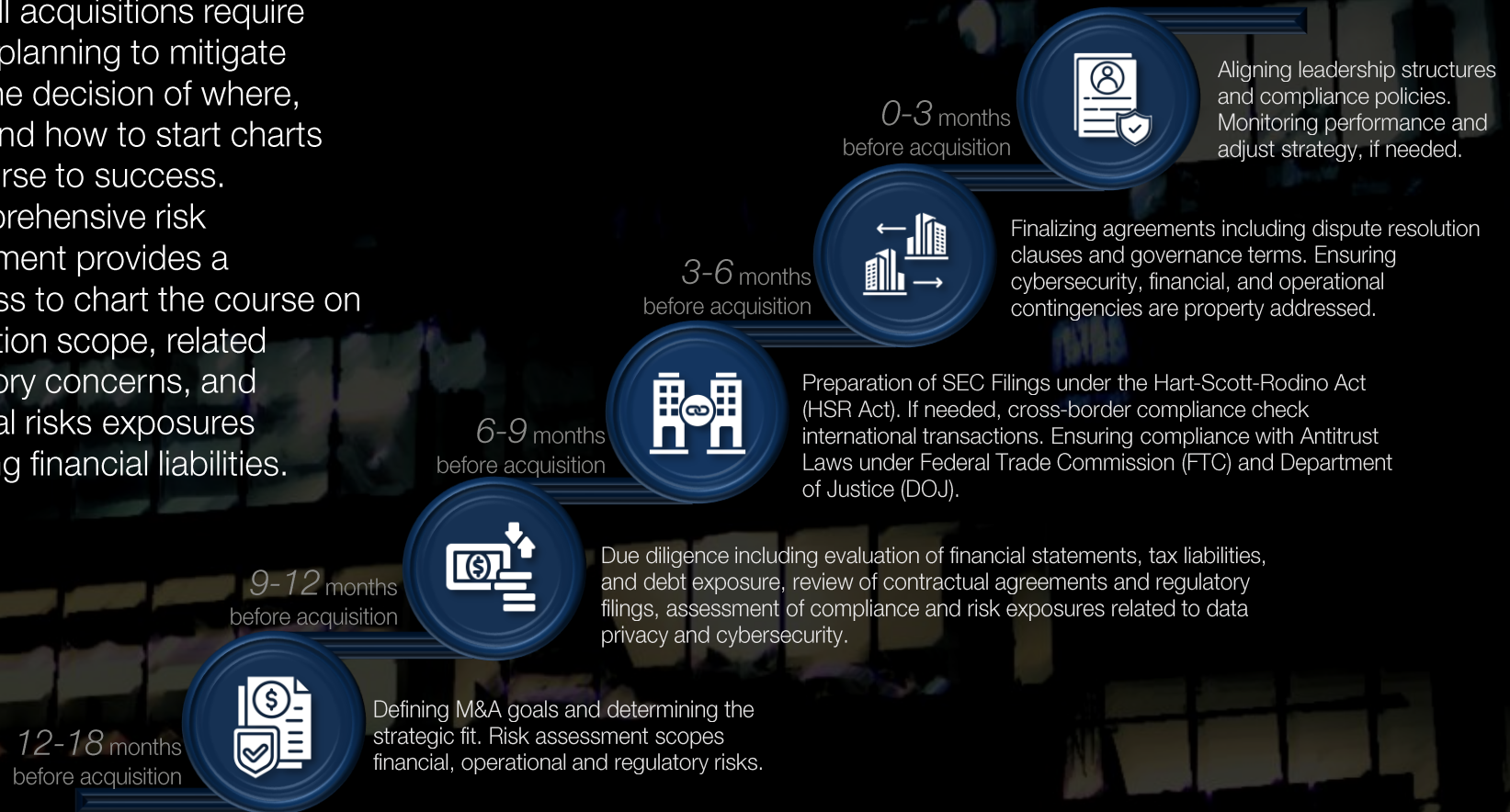


Jumpstarting an Acquisition

A public-to-private acquisition happens when a publicly traded company is acquired and transitioned into private ownership. This process is often referred to as a “take-private” transaction and is commonly executed by private equity firms, institutional investors, or management buyout groups. Take-private acquisitions often involve risks, compliance challenges, and due diligence requirements, particularly related to transparency, e.g., cross-border disclosure standards for international acquisitions.

While all acquisitions require careful planning to mitigate risks, the decision of where, when and how to start charts the course to success.

A comprehensive risk assessment provides a compass to chart the course on acquisition scope, related regulatory concerns, and potential risks exposures including financial liabilities.



Merging the Specifics in Real World

M&A are transformative business transactions that require careful planning, thorough due diligence, and strict regulatory compliance to ensure success. In the US, M&A are regulated at both federal and state levels to ensure compliance with securities laws, antitrust regulations, and corporate governance standards. Public companies are subject to stringent disclosure requirements, shareholder scrutiny, and regulatory oversight to establish financial transparency and operation integrity.

Risk Assessment



Financial risks includes evaluating debt structures, liabilities, and revenue streams, as well as the working capital to determine short-term liquidity post-merger activities.



Review anti-money laundering (AML) policies, Know Your Customer (KYC) procedures, fraud prevention, customer disclosures, and sanctions mitigation measures.



Identifying potential data breaches and regulatory compliance gaps in General Data Protection Regulation (GDPR) and existing privacy laws in the US.



Assessing outdated IT systems that may pose as technological risks for the entities. Review of contractual obligations and legal disputes or pending lawsuits.

Financial Due Diligence



Review and audit of balance sheets, income statements, and cash flow reports, which includes verification of accounting standards compliance (GAAP).



Assessment of tax liabilities, credits, and deductions, as well as compliance to existing IRS rules and regulations.



Review existing financial projections and evaluate stress testing assumptions.

Regulatory Filings



HSR Act is required for transactions exceeding a monetary threshold.



Form 8-K is required by SEC, together with proxy statements, and tender offers for publicly traded entities.



Committee on Foreign Investment in the US (CFIUS) filings are required if foreign entities are involved.



State regulatory filings may be required based on incorporation laws on specific states.

Cybersecurity, Antitrust, and Cross-Border



Antitrust regulations ensure fair market competition by preventing monopolistic practices of entities.



Cross-border compliance ensures harmonization of governance structures across jurisdictions. This also avoids any noncompliance with sanctions laws.



Discover what Stratis Advisory can do for you



Pre-M&A Readiness Assessment

Risk factors must be taken into consideration in anticipation of filing for an M&A. Readiness assessments should include operations, governance, regulatory compliance, partnerships, and cybersecurity. Stratis can execute enterprise-wide assessments with enough time for you to remediate significant issues, get the board buy-in and budget, and deliver a clean company for your M&A transaction.



Post-Acquisition Integration and Operations

Understanding your inherent risks in the context of regulatory frameworks provides insights that inform post-acquisition integration planning and, together with strategic imperatives such as speed to market, product roadmap and equity valuation, ultimately determine your growth path. Stratis can help with preparing a detailed plan, managing it end-to-end, and adjusting it as need to help you stand up and continuously execute the infrastructure and operations for success as a regulated entity.



Regulatory Compliance Advisory

Regulatory compliance is an ongoing function pre-and-post M&A. Compliance relies extensively on the success of your underlying operational processes. From reportable sanctions to cyber incidents, Stratis can help you identify enterprise-wide gaps in your organization leading up to and through your M&A to mitigate disclosable activity and protect your purchase price.



