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US PRIVATE M&A REPORT

TRENDS AND INSIGHTS SHAPING THE THIRD QUARTER OF 2026



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Our Q3 view of the US private M&A market

Q3 2026 brought a genuine shift in tone for the middle market. After a Q2 defined by geopolitical disruption and a widespread reluctance to test valuations in a volatile credit environment, the third quarter delivered a degree of forward momentum. It was not a full reopening, but it was a real reengagement — concentrated in the core middle and upper middle market, where sponsor discipline, established lender relationships, and targeted deal structuring allowed motivated parties to bridge the gaps that stalled activity earlier in the year.

The principal driver of middle market activity in Q3 was add-on volume. With large buyouts still constrained by the cost and selectivity of available leverage, sponsors redirected capital toward add-on acquisitions within existing portfolios. Platform companies with healthy balance sheets were able to pursue acquisitions at attractive entry multiples without the execution risk associated with large leveraged transactions requiring broadly syndicated financing.

The deal-structuring tools that became standard through Q1 and Q2 — earnouts, rollover equity, seller notes, and tailored management incentive arrangements — continued to do heavy lifting in Q3. The prevalence of seller notes in particular has increased relative to prior quarters, reflecting both the ongoing cost of senior debt and sellers' willingness to hold paper on assets they know well rather than accept a price reduction at close.

Founder- and family-owned business exits accelerated through the middle of Q3. Many of these sellers had paused processes during Q2, and the relative calm of July and August encouraged reengagement. That momentum, however, has been checked by a sharp rise in energy prices in recent weeks as hostilities involving Iran have intensified, raising input costs across a range of sectors and reintroducing the macro uncertainty that suppressed activity earlier in the year. These factors contributed to increased inflation and, as a result, a decision by the Federal Reserve to increase interest rates. How sustained those pressures will be is the defining question for Q4 deal flow.

As we enter Q4, the middle and upper middle market's structural advantages — deal sizes that are less dependent on large-scale credit market access and a seller universe more willing to engage on creative terms — provide a degree of insulation. But geopolitical risk remains the variable no underwriting model can fully absorb.



By **Ernie Wechsler**
Managing Partner, Corporate, US



By **Howard Spilko**
Global Head of Private Equity

> "As we enter Q4, the middle and upper middle market's structural advantages — deal sizes that are less dependent on large-scale credit market access and a seller universe more willing to engage on creative terms — provide a degree of insulation."

Emerging issues

Cross-border restrictive covenants – don't assume your US form agreement travels with your employees



By **Robert Holtzman**
Partner



By **Jordan Fisher**
Associate

> When clients expand internationally, whether through organic growth or M&A activity, one of the most frequently overlooked risks is the enforceability of restrictive covenant agreements against employees based outside the U.S."

When clients expand internationally, whether through organic growth or M&A activity, one of the most frequently overlooked risks is the enforceability of restrictive covenant agreements (RCAs) against employees based outside the United States. The assumption that a restrictive covenant governed by U.S. law will protect a company's interests globally is, in most cases, mistaken — and the consequences of that assumption can be severe.



Why US RCAs fall short abroad

Courts in most foreign jurisdictions will apply local employment law to disputes involving locally-based employees, regardless of what the agreement provides with respect to governing law. Many countries treat employee protections as mandatory, and they cannot be displaced by contractual choice-of-law provisions. In practice, this means that even a carefully drafted noncompete or nonsolicitation clause governed by New York or Delaware law may be wholly unenforceable against an employee working in, for example, France, Monaco, the Czech Republic, Mexico, or Costa Rica.

The substantive rules vary significantly by jurisdiction. Some countries permit postemployment noncompetes if paired with financial compensation paid to the employee during the restricted period. Many countries cap permissible duration, limit geographic scope, or prohibit noncompetes for certain categories of employees altogether. Nonsolicitation clauses targeting customers or employees may face heightened scrutiny as well, and garden leave or notice provisions may be required to give a restriction any practical legal effect.

Deciding to remain silent with respect to these local requirements and to instead rely on U.S. law often is a recipe for failure; in many jurisdictions, the consequence of noncompliance is that the restriction is void in its entirety.



What? No injunctions?

Even where restrictive covenants are at least theoretically enforceable, in some jurisdictions it is legally or practically impossible to obtain a temporary restraining order or preliminary injunction to force compliance. In such jurisdictions the employer or acquiror must assess the risk of nonenforcement (or a long wait to a judgment for money damages only) and consider whether any alternatives exist to encourage compliance.

Restrictive covenants in the international M&A context

The practical takeaway is straightforward: U.S. companies with international workforces need locally compliant restrictive covenants tailored to each relevant jurisdiction. This imperative is especially acute in the M&A context, where acquirors should diligence the target's existing restrictive covenant framework, identify enforceability gaps across all operating jurisdictions, and develop a remediation plan before closing — not after.

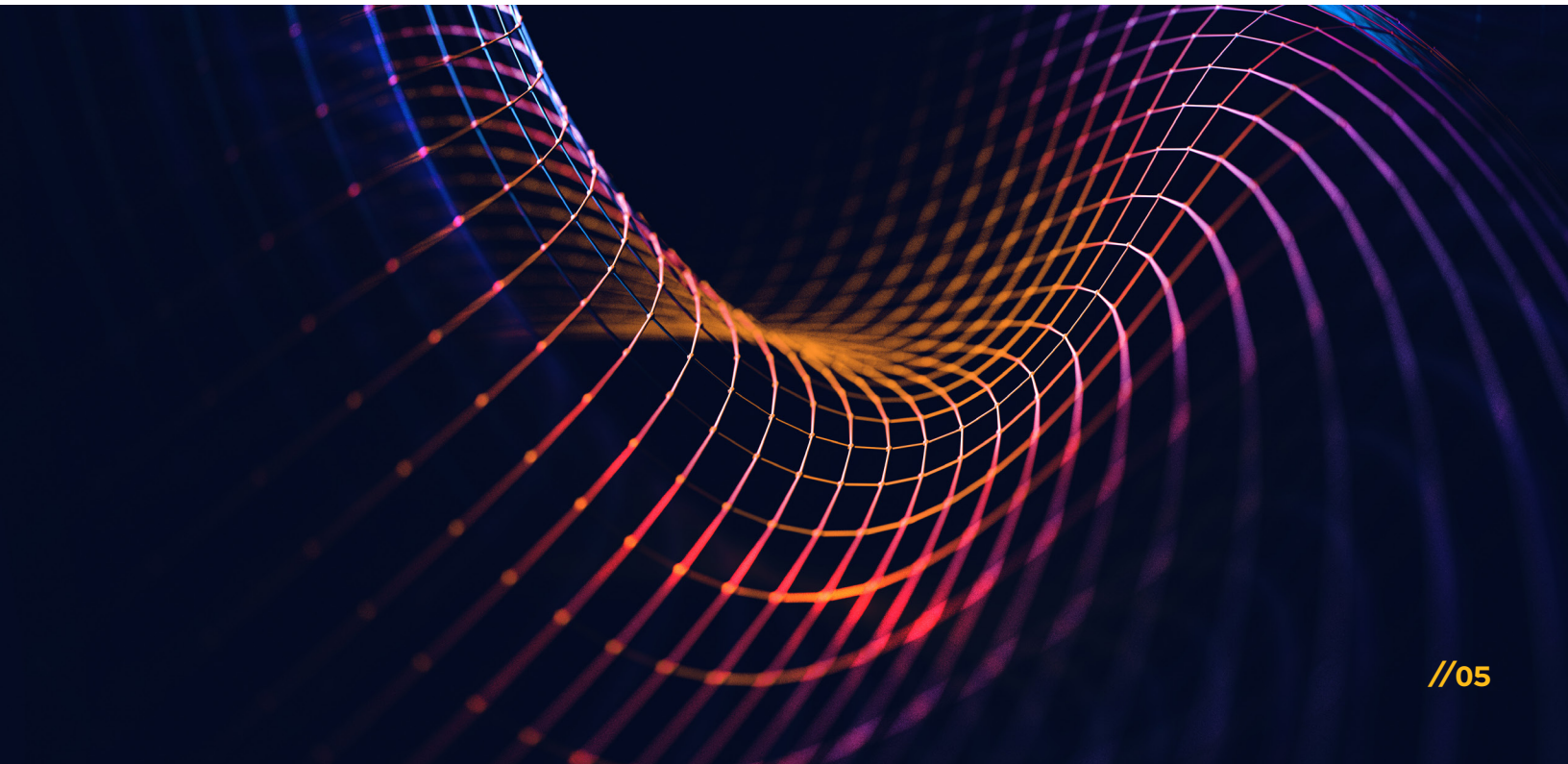
In a cross-border acquisition involving an international target, this challenge takes on added complexity. The acquiring party should ensure that the acquisition agreement contains representations and warranties specifically addressing the enforceability of the target's existing restrictive covenants in each operating jurisdiction. Sellers should be required to disclose any known enforceability deficiencies and historical challenges to enforceability. Where key personnel — such as founders, senior executives, or individuals with access to proprietary technology or critical client relationships — are identified during diligence as unbound by enforceable restrictions, remediation should be addressed as a condition to closing rather than through a post-closing workstream.

Local counsel are critical

Engaging local employment counsel early is essential to ensuring that key employees will be bound by enforceable restrictions, whether existing or new. In the M&A context, local counsel should be integrated into the diligence workstream so they can identify risks early in the deal process. The cost of doing so is modest relative to the exposure created when departing key employees are unencumbered by enforceable restrictions and take customers, trade secrets, or an entire team to a competitor.

A one-size-fits-all approach fails

International employers and acquirors of entities that have foreign employees and contractors must recognize that the use and enforceability of restrictive covenants in different jurisdictions requires separate analyses and, often, separate forms of agreement. These issues should be confronted early in the deal process given the complexity and the time it can take to work through them. Careful consideration of the challenges associated with restrictive covenants in the international context ultimately leads to an approach that best enhances enforceability.



Regulatory Updates

State antitrust enforcement emerges as an important factor in US merger review



By **David Pearl**
Partner



By **Abbe Dienstag**
Counsel

> What does the rise of the states in antitrust mean for merging parties as a practical matter?"

Many dealmakers have experience with the Department of Justice (DOJ) or the Federal Trade Commission reviewing their mergers preclosing. But even regular participants in the merger review process may have missed another set of antitrust enforcers in the United States: state attorneys general (state AGs). State AGs have their own power to enforce federal antitrust laws, as well as parallel state laws, and while they have historically taken a back seat in U.S. merger review, the states have increasingly asserted their independence in this space.

In the past, state AGs often piggybacked on federal investigations into proposed transactions, then followed the federal agencies' lead in resolving such investigations, whether through closure, a negotiated settlement, or a court challenge. But this pattern has dramatically changed over the past several years as the states have parted ways with federal authorities in a number of high-profile cases:

- In October 2025, a coalition of 13 states led by Colorado intervened in federal court to oppose the DOJ's settlement permitting Hewlett Packard Enterprise to acquire Juniper Networks in a $14 billion transaction. The states alleged that the transaction resulted from improper lobbying and that the settlement offered inadequate remedies. Notwithstanding the states' opposition, in August 2026 a federal judge approved the settlement.
- In March 2026, 13 states led by California sued in federal court under the Clayton Act to block Nexstar Media Group's proposed $6.2 billion acquisition of Tegna Inc., which would create the nation's largest broadcast station group. The states commenced their action, which is continuing, even though the Federal Communications Commission and the DOJ had already allowed the transaction to close.
- In July 2026, a coalition of 12 states also led by California sued in federal court to block Paramount Skydance from completing its $110 billion acquisition of Warner Bros Discovery. The states argued that the merger would violate the Clayton Act by harming competition, hiking consumer prices, and threatening industry jobs. Again, the states brought this case despite the merger having been cleared by the DOJ and dozens of other competition authorities around the world. On September 30, 2026, the court approved a settlement in which the states extracted added behavioral concessions from Paramount.

Though not related to a current merger, the states' monopolization case against Live Nation underscores state AGs' increased willingness to go it alone. In 2010, the DOJ permitted Live Nation's acquisition of

Ticketmaster to proceed subject to a consent decree, but after repeated violations of the decree and other alleged anticompetitive practices by Live Nation, the DOJ and the states sued Live Nation in 2024. The DOJ settled midtrial, but 30 states deemed the settlement inadequate and pressed forward with the litigation, ultimately winning a jury verdict in April 2026.

States have also begun to pass their own premerger notification statutes that require merging parties to submit their Hart-Scott-Rodino Act filings to the state if they meet certain thresholds of contact with that state. Three states — California, Colorado, and Washington — have adopted such statutes to date, with other states likely to follow suit. In addition, 16 states have statutes that require premerger notification of healthcare transactions. Those statutes vary widely from state to state in terms of the breadth of transactions they capture, what must be disclosed in a filing, and the presence of preclosing waiting periods.

What does the rise of the states in antitrust mean for merging parties as a practical matter? Parties should:

- **catalog state filings early**, identifying state-specific filing obligations and ensuring any suspensory periods are built into the parties' expectations concerning the timeline for closing;
- **assess state-specific competitive impact**, especially where transactions may have disproportionate effects on particular states;
- **anticipate independent premerger state investigations**, including differing substantive emphases and more active roles in prelitigation discovery and negotiation; and
- **develop state-specific engagement strategies**, including early outreach to state authorities and tailored remedies addressing state-specific concerns.



CFIUS: Increased scrutiny and more technical reviews





By **Joseph Falcone**
Partner

> "CFIUS considerations should be assessed early in a transaction's life cycle."

The recently released 2025 Annual Report of the Committee on Foreign Investment in the United States (CFIUS) highlights several developments and trends in 2025 that may affect future cross-border M&A activity. Notably, the Report confirms that the U.S. government shutdown significantly disrupted CFIUS review timelines, underscoring the importance of building regulatory contingency into transaction schedules, and also reflects the government's continued resourcing of CFIUS, including the creation of a new Office of Research and Analysis (within the U.S. Treasury's Office of Investment Security), staffed by scientists, engineers, and data specialists to support reviews of transactions involving sensitive and emerging technologies.

The Report also points to potentially less predictable outcomes when using CFIUS's abbreviated declaration process. Although declaration filings increased materially in 2025 compared to 2024, a larger proportion of those filings did not result in a clearance determination at the declaration stage and instead was routed into the longer-form notice process. At the same time, overall CFIUS enforcement activity remained robust, even as the use of mitigation agreements continued to decline. One practical takeaway for dealmakers is that CFIUS considerations should be assessed early in a transaction's life cycle, with particular attention paid to filing strategy, regulatory timing, technical diligence, and the potential impact of national security issues on deal certainty and execution. We prepared a more extensive overview of the 2025 Report, available here.

Defense-sector deals: Expanded FOCI review may be looming



By **Joseph Falcone**
Partner

Defense-focused acquirers should note a recent Department of Defense/War (DoD) proposed rule that could expand foreign ownership, control, or influence (FOCI) reviews beyond the traditional U.S. classified contracting environment. Historically, FOCI concerns have arisen when foreign investors seek to acquire U.S. companies performing classified U.S. government work, often requiring measures to limit foreign access to classified information.

If finalized as proposed, however, the new rule could extend FOCI scrutiny to certain unclassified DoD contracts and subcontracts valued above $5 million, bringing more defense-related businesses within the scope of ownership review and FOCI mitigation requirements. The rule remains under consideration, and its ultimate form remains to be seen. Nevertheless, parties involved in defense-sector M&A should be aware that FOCI considerations may become relevant even where a U.S. target does not perform classified work. As a result, potential FOCI issues with unclassified DoD contracts should be assessed as part of the diligence process to help avoid post-closing surprises and to inform transaction structuring, regulatory planning, and timing considerations.

> “The new rule could extend FOCI scrutiny to certain unclassified DoD contracts and subcontracts valued above $5 million.”



What's happening around the globe?

Our Tokyo office provides a Q3 market update



By **James Campbell**
Partner

> Public activist campaigns and take-private transactions have been a large driver of deals in the Japanese market."

Japan's M&A market continues to be strong, based on information that is available comparing the number of in-bound deals year to date 2026 to the number of in-bound deals year to date as of the end of Q3 2025. Both Japanese and non-Japanese buyers remain active in the market, with non-Japanese buyers increasing their activity by a larger margin. In addition, despite geopolitical and other factors, Japanese corporates and trading houses continue engaging in a large volume of outbound investment, with the United States being a beneficiary of a significant amount of this investment.

The period of July to September, which includes both the Northern Hemisphere's summer and Japan's Obon holiday in August, makes Q3 a transition point between first-half strategic planning and the year-end transaction push. For many Japanese corporates, Q4 and Q1 of the calendar year correspond to the third and fourth quarters of their fiscal years, and deal timetables routinely become more urgent from October through March as boards and management teams seek to sign or close before the new year holiday period in Japan or their March 31 fiscal year-end. Market participants may therefore wish to regard Q3 not only as a quiet period but as the calm before the storm where discussions or plans regarding potential transactions begin to mature.

Public activist campaigns and take-private transactions have been a large driver of deals in the Japanese market. In addition, corporates are evaluating their noncore assets and engaging in spin-off or carve-out transactions, and succession-driven disposals by aging founder-owners also continue to be a source of M&A activity in Japan.

AI compute and data centers, defense, real estate, renewable energy, advanced manufacturing and semiconductors are among the key focuses of Japanese and non-Japanese investors and acquirors in the Japanese market.

Origination, however, appears sometimes to be a central challenge for those without a significant presence in Japan: Attractive opportunities can be difficult to identify, and access to such opportunities may depend on early market intelligence, local relationships and credible execution capability.



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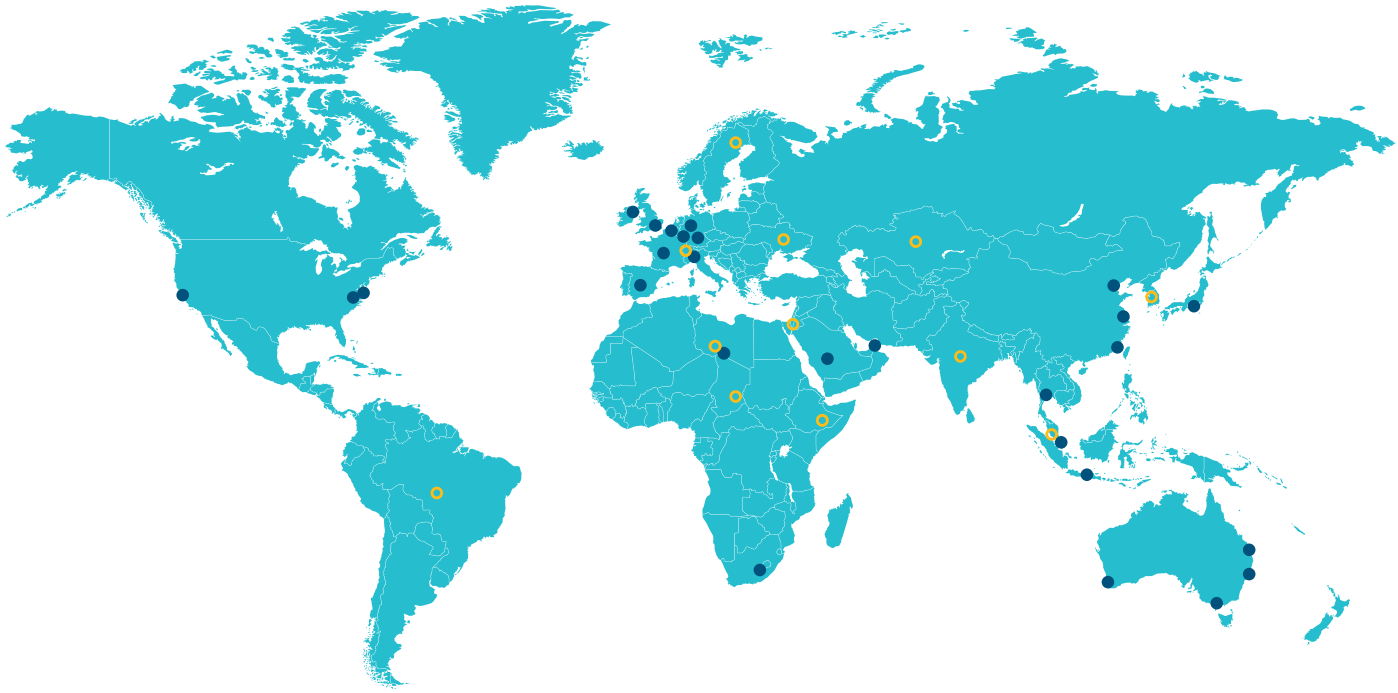
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