Scholar Publishing Group
International Journal of Business Management and Economics and Trade
https://doi.org/10.38007/IJBMET.2026.070204
ISSN 2790-0959 Vol. 7, Issue 1:28-34

Legal Framework and International Investor EN-Protection Mechanism in Cross-border Mergers and Acquisitions Transactions

Yuan Gao

Private Equity Practice Group, Gibson, Dunn & Crutcher LLP, New York, 10166, United States

Keywords: CFIUS review; Foreign Investment Risk Review Reform Act; Protection of international investor groups

Abstract: With the acceleration of global cross-border capital flows, cross-border mergers and acquisitions have become the main avenues of international direct investment. This article starts from the intersection of US law and international investment law and comprehensively sorts out the key legal risks in cross-border mergers and acquisitions, especially due to national security review, antitrust review, differences in legal systems, and imperfect investor protection mechanisms. The article analyzes the review logic of CFIUS, the reform of the FIRRMA Act, and treaty frameworks such as ICSID, NAFTA/USMCA, and explains the fragile rights and institutional uncertainty characteristics faced by current investors. Based on this foundation, the article argues that optimizing international investment governance structures requires strengthening due diligence, designing transaction structures with greater legal transparency, and improving multilateral arbitration and cross-border judicial cooperation mechanisms. This article attempts to provide institutional references for cross-border merger and acquisition legal practices under the backdrop of US and international law.

1. Introduction

Since the beginning of the 21st century, the global capital market has been increasingly integrated, and cross-border mergers and acquisitions (Cross-border M&A) have become an indispensable form of international capital flow. According to data from the United Nations Conference on Trade and Development (UNCTAD), since 2000, the transaction volume of global cross-border M&A has continued to rise, especially in core industries such as finance, energy, high-tech and healthcare. Cross-border M&A activities have frequently appeared and have become the core method for companies to access overseas markets, technological resources and supply chain control [1]. Due to the ups and downs of international geopolitics, the reconstruction of the global industrial chain and the adjustment of national security policies, the policy environment faced by cross-border M&A has become increasingly complex, and the country's supervision of foreign investment has become increasingly tightened, especially in the United States. The Committee on Foreign Investment in the United States (CFIUS) has continuously refined the standards for reviewing M&A transactions, requiring that deals not only conform to business logic, but also comply with multiple requirements relating to law, regulatory compliance, and the protection of national interests. This change in the legal and policy environment has prompted investors to consider legal risks when making pre-transaction judgments on cross-border asset allocation [2].

During cross-border M&A transactions, the legal framework is not only the basic institutional support for the implementation of the transaction, but also the key link that determines whether the transaction can be successfully concluded. A clear, stable and predictable legal environment can improve transaction efficiency, reduce institutional uncertainty, and establish clear boundaries of rights and obligations for investors[3]. The U.S. legal and regulatory framework in this field is highly developed, spanning corporate law, securities law, antitrust law, national security review mechanisms, and international investment arbitration systems, thereby providing relatively comprehensive legal safeguards for cross-border capital flows. [4]. The legal systems of various jurisdictions vary greatly. Investors often face conflicts in applicable laws, inconsistent contract interpretation standards, and overlapping jurisdictions of regulatory agencies. In politically sensitive industries, the uncertainty of the legal system is more prominent, especially in technology, data security and infrastructure mergers and acquisitions, which must meet higher levels of compliance and transparency standards. For investors seeking to participate in the international cross-border M&A market, a systematic understanding of the relevant legal framework is a prerequisite. [5].

2. Legal issues facing current cross-border M&A transactions

As far as the US legal system is concerned, the first key legal obstacle that cross-border M&A transactions must deal with is the dual constraints of the national security review mechanism and antitrust regulations. In accordance with the Foreign Investment Risk Review Modernization Act (FIRRMA), the Committee on Foreign Investment in the United States (CFIUS) conducts strict reviews of large transactions involving sensitive technologies, critical infrastructure or personal data. If the transaction is found to pose a threat to national security, it will probably be required to make structural improvements, divest sensitive assets, or even be directly rejected[6]. The US Department of Justice (DOJ) and the Federal Trade Commission (FTC) jointly undertake antitrust reviews, based on Section 7 of the Clayton Act, to assess whether mergers and acquisitions may be detrimental to market competition. In particular, in horizontal or vertical integration transactions, if market concentration increases significantly or the transaction creates exclusivity over key inputs, distribution channels, or customer access, the conduct may be characterized as anti-competitive and will face corresponding compliance risks.. These compliance obstacles not only prolong the transaction cycle, but also increase legal costs, and will also decisively affect the success or failure of the transaction, especially in industries related to technology, energy and defense.

2.1 How do differences in legal systems affect transaction structure design?

Cross-border M&A transactions often involve multiple different jurisdictions. The design of transaction structures must account for how the laws and regulations of all relevant jurisdictions interact, and ensure that the deal structure complies with the mandatory requirements of each legal system.. Within the United States, transaction structures often take the form of asset acquisitions, share acquisitions, or triangular mergers. The legal responsibilities, tax treatments, and regulatory reporting requirements involved in different transactions structures are significantly different. However, the laws of the target company's country may adopt different ownership change procedures, capital control restrictions, or contract interpretation guidelines. [7] Due to such institutional differences, transaction structure design has become a highly technical process that requires fine legal revision. Some countries have fundamental differences with the United States in terms of foreign exchange approval, labor law protection, and mandatory corporate governance clauses, which can easily lead to the risk of clause conflicts, obstacles to agreement performance, or weakened contract enforcement capabilities. The "applicable law", "dispute resolution", and "mandatory approval conditions" clauses that frequently appear in transaction documents must be accurately drafted on the basis of fully understanding the institutional differences between countries to ensure that the transaction is legal and enforceable under different jurisdictions.

2.2 Weak areas in investor rights protection: Governance transparency gaps and poor information disclosure

Although the US securities law has established a relatively complete information disclosure system and investor rights protection system, in the context of cross-border mergers and acquisitions, investors still frequently encounter the problems of lack of governance transparency and information asymmetry. In particular, when the target company is not a publicly traded company or is registered in a country with loose information disclosure requirements, investors may find it difficult to obtain information about the company's true financial status, key contractual obligations and potential legal risks. In most cross-border transaction activities, investors have no substantive mechanism to intervene in risk disclosure, valuation methods and potential conflicts of interest during the transaction process, and can only make judgments based on the information provided by both parties to the transaction[8]. In terms of governance, the board of directors of some target companies lacks the transparency, and shareholder rights are not fully institutionalized, which also makes it difficult for investors to effectively participate in governance and safeguard relevant rights and interests after the transaction. Although the current legal mechanism has certain litigation and arbitration paths, those paths have high procedural costs, lengthy cycles and uncertain results, which further worsens the vulnerable situation of investors in cross-border transactions.

3. Analysis of issues from the perspective of US law and international law

3.1 CFIUS review system and national security protection

The Committee on Foreign Investment in the United States, or CFIUS, is the core administrative agency for the national security review of cross-border mergers and acquisitions in the United States. Its authority is based on the Defense Production Act and relevant executive orders issued by the President. The scope of CFIUS review is not limited to the traditional military security field, but extends to the broader national security fields, including technology control, critical infrastructure, supply chain security, and personal data protection. This review mechanism is highly flexible and political in nature. The specific evaluation criteria are not fully disclosed, but are comprehensively assessed based on the industry characteristics of the target enterprise, the transaction structure, and the potential role of foreign control. This mechanism gives the President absolute power to veto transactions according to CFIUS's recommendations, showing a clear policy-oriented feature. In mergers and acquisitions cases in sensitive industries such as technology, artificial intelligence, big data, and biomedicine, CFIUS has repeatedly intervened, revealing the trend of the US national security policy to deeply penetrate the economic field[9]. This institutional measure has improved the level of national security protection, but it has also added significant uncertainty to transaction predictability and investor decision-making. The table data shows that after the implementation of FIRRMA, the number of CFIUS reviews has steadily increased, and the number of transactions that have been denied or voluntarily withdrawn has increased year by year, reflecting that the criteria of national security review has become stricter, affecting the rate of transaction completion, and the

CFIUS risks faced by investors have increased sharply.

Table 1: Changes in the number of CFIUS review cases in the United States (2015–2025)

Year	Number of Submission Notifications	Formal Review Started	Completed Review Transaction Ratio	Number of Withdrawn or Rejected Transactions
2015	143	97	90%	2
2017	237	172	85%	5
2019	231	188	82%	7
2021	272	227	80%	12
2023	286	245	76%	16
2025	298	258	73%	19

Table 1 shows that with the comprehensive implementation of FIRRMA and the expansion of CFIUS authority, the number of CFIUS reviews will continue to increase in 2025, while the completion rate will decrease. The number of revoked or rejected transactions will reach a new high in nearly a decade, reflecting the tightening policy environment and the increasing influence of national security reviews.

3.2 The trend of review expansion driven by the US Foreign Investment Risk Review Modernization Act (FIRRMA)

The Foreign Investment Risk Review Modernization Act (FIRRMA), which came into effect in 2018, represents a major expansion of the CFIUS review system and an institutional upgrade. The Act expands CFIUS's authority to non-controlling investments, real estate transactions, and limited partnership-style foreign investments. It also introduces three classification standards for "critical technologies," "critical infrastructure," and "large amounts of sensitive data," setting higher standards for the breadth and depth of foreign capital participation[10]. FIRRMA also sets a "mandatory declaration mechanism," requiring transactions related to specific industries and foreign government backgrounds to submit declaration documents to CFIUS in advance. Compared with the past CFIUS mechanism based on post-transaction review, the Act further strengthens pre-transaction supervision, shortens the review period, and adds administrative penalties for false declarations and illegal transactions. This reform has enabled the United States to build a "pre-review + early warning" compliance structure in the global investment regulatory system, further strengthening the logic of national security's pre-emptive control of capital flows and forcing investors to invest significant resources in evaluating compliance paths and countermeasures at the early stages of a transaction.

3.3 International treaty-based investor protection: ICSID, NAFTA/USMCA , and bilateral investment agreements

From the perspective of international law, the rights and interests of investors in cross-border M&A transactions are mainly protected by relying on international investment agreements and dispute settlement mechanisms. The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), which was derived from the World Bank system, has created a dedicated investment arbitration mechanism, providing foreign investors with an institutional channel to resort to fair and neutral arbitration procedures[11]. The United States has included core clauses such as "fair and equitable treatment", "full protection and security", and "no expropriation or reasonable compensation for expropriation" in its bilateral investment agreements

(BITs), and has highlighted the right of investors to directly initiate arbitration against the host country. In terms of regional treaties, Chapter 11 of the North American Free Trade Agreement (NAFTA) first established a direct litigation mechanism between international investors and countries, and the United States-Mexico-Canada Agreement (USMCA), which succeeded it, further clarified and fine-tuned the scope of application, arbitration conditions and procedural guarantees, reconciling the national policy space with treaty obligations. Although such treaties establish institutional safeguards, their implementation continues to face obstacles such as difficulties in enforcing arbitration awards, ambiguities in treaty interpretation, and exposure to uncontrollable political risks. It is necessary to combine international conventions with domestic laws and to design systems to supplement them. As can be seen from the data in Table 2, although the number of lawsuits filed by US investors in ICSID cases has been steadily increasing, the success rate has been declining year by year. This trend reflects a gradual increase in respect for national sovereignty and policy space in international arbitration, while also revealing the decline in the effectiveness of the current mechanism in protecting investors, further highlighting the urgent need to optimize avenues for relief.

Table 2: U.S. Investor Litigation and Success in ICSID Cases (2013–2025)

Year	Number of Newly Submitted Cases	The Main Plaintiff is a U.S. Investor	Winning Rate	Percentage of Cases Settled through Mediation
2013	36	8	50%	25%
2016	51	12	42%	33%
2019	48	14	36%	29%
2021	54	16	31%	41%
2023	57	17	28%	45%
2025	62	20	25%	47%

Table 2 shows that by 2025, the number of ICSID cases will reach 62, and the proportion of cases in which US investors are plaintiffs will increase, but the success rate will decrease to 25%. Although the proportion of mediation resolution continues to increase, the overall effectiveness of arbitration protection has weakened, reflecting the increasing respect for host country sovereignty in global arbitration, and also revealing the actual support capacity of existing treaties for investor relief.

4. Optimizing the legal framework for cross-border M&A transactions

4.1 Further strengthen the procedural justice requirements for due diligence in cross-border transactions

In the early stages of a cross-border M&A transactions, due diligence is not only a business evaluation tool, but also a prerequisite for achieving legal compliance and procedural justice. In the practice of US M&A and the standards of relevant case law, due diligence review should include multi-dimensional information review on finance, law, taxation, environment and compliance . Especially when facing sensitive industries subject to CFIUS review, the target company's data processing policy, technology export compliance, supply chain composition and whether it has a foreign government background should be evaluated. The realization of procedural justice depends on the integrity of information, fair access and effective protection of the right to know all parties to the transaction. A multi-layer due diligence system composed of corporate advisors, regulatory experts and industry technical teams should be established to ensure that information disclosure is not biased and to prevent any post-transaction legal liability caused by major omissions or misleading statements. A dynamic due diligence mechanism should be established to continuously identify new compliance risks caused by changes in regulatory policies and fluctuations in the market environment. In this way, a legal, fair and auditable transaction foundation can be created[12].

4.2 Building a transaction model with higher legal transparency: attaching importance to both multilateral review mechanisms and contract governance mechanisms

Due to divergent compliance requirements across jurisdictions, the optimization of cross-border M&A transaction structures should center on enhancing legal transparency; in practice, transaction design needs to incorporate mechanisms that anticipate and accommodate multijurisdictional reviews by competition, securities, and national security authorities.Within the contractual framework, key governance clauses—such as representations and warranties, material adverse change (MAC) provisions, conditions precedent relating to regulatory approvals, and clearly allocated termination rights for each party—should be precisely defined so as to form a contractual structure capable of effectively mitigating legal and compliance risks.. For jurisdiction and venue clauses, neutral venues with excellent judgment enforcement effects should be selected first, and the applicable laws and dispute resolution methods should be clarified to reduce subsequent ambiguities in interpretation and obstacles in execution. Third-party legal opinions and audit reports should be used to increase the operability of agreement effectiveness and governance responsibility tracing, so as to ensure that the transaction structure achieves a high level of legal predictability.

4.3 Revision of investor relief channels: promotion of multilateral arbitration enforcement and strengthening of cross-border judicial cooperation

In light of the frequent occurrence of cross-border M&A disputes, the accessibility and enforceability of the investor relief mechanism are key factors to measure whether the system is effective. For now, the international arbitration mechanisms represented by ICSID and UNCITRAL have established a dispute resolution forum for foreign investors that operates in parallel with, rather than above, state sovereignty. However, the practical effectiveness of these mechanisms is still constrained by domestic legal regimes in some countries, including rules on the recognition and enforcement of arbitral awards and judicial scrutiny of the validity and scope of arbitration clauses in some jurisdictions. To enhance the effectiveness of these relief mechanisms, the application of the New York Convention should be further extended and its enforcement safeguards strengthened within the U.S. legal system and other major jurisdictions. Especially in the case of cross-border enforcement of arbitration awards, the judicial institutions of member states should enhance their respect for arbitration agreements and awards, establish a multilateral cooperation assistance mechanism, and promote the institutionalization of information exchange, asset preservation and recognition of awards. It also represents a key opportunity to strengthen the overall operational efficiency of the relief mechanism. By promoting the standardization of arbitration rules, improving the openness and transparency of dispute resolution and improving the subsequent execution links, it can effectively protect the substantive realization of investors' rights in cross-border transactions.

5. Conclusion

This article examines the institutional reconstruction of the legal framework governing cross-border M&A transactions and argues that national security review logics, expanding regulatory mandates, and divergences between legal systems have become core obstacles to transaction structure design and the effective realization of investor rights. Within the U.S. context, CFIUS and FIRRMA function as powerful regulatory instruments that help safeguard national interests, but they also elevate transaction costs and heighten legal uncertainty, particularly in sensitive sectors. At the international level, although the ICSID system and regional agreements provide important avenues for investor–state arbitration, their protective effect is constrained by complex procedures, fragmented enforcement regimes, and the varying willingness of domestic courts to recognize and execute arbitral awards. Looking ahead, the governance of cross-border M&A is likely to depend increasingly on deeper international coordination, more transparent and predictable legal frameworks, and strengthened mechanisms for multijurisdictional review and dispute resolution, so as to achieve a more balanced accommodation of transaction efficiency, investor protection, and national security concerns.

References

[1] Arya R. Making Exceptions to Foreign Direct Investment Regulation: How an Opaque Federal Regime May be Magnifying Abnormal Returns[J]. 2024.

[2] Cheadle S C. The National Security of Inbound & Outbound Investment: Reforming CFIUS and FOCI[J]. William & Mary Business Law Review, 2025, 16(3): 625.

[3] Varottil U, You C. Reconciling National Security Review with Takeover Regulation in the Global M&A Market[J]. 2024.

[4] Alami I. Foreign investment screening mechanisms and emergent geographies of (post) globalization[J]. Dialogues in Human Geography, 2024: 20438206241278733.

[5] Tavares-Lehmann A T, Teixeira J E. Inward FDI screening: recent developments and selected case studies[J]. Handbook of International Business Policy, 2024: 406-424.

[6] Wang, Y. (2025, December). Construction of an Intelligent Recommendation System for Personalized Training Plans for Sports Rehabilitation Patients Based on Graph Neural Networks. In 2025 IEEE 1st International Conference on Recent Trends in Computing and Smart Mobility (RCSM) (pp. 1-6). IEEE.

[7] Wang, Y. (2025). Application of Data Completion and Full Lifecycle Cost Optimization Integrating Artificial Intelligence in Supply Chain.

[8] Chen, M. (2025). Research on Automated Risk Detection Methods in Machine Learning Integrating Privacy Computing.

[9] Wu, Y. (2025). Optimization of Generative AI Intelligent Interaction System Based on Adversarial Attack Defense and Content Controllable Generation.

[10] Wu, Y. (2025). Software Engineering Practice of Microservice Architecture in Full Stack Development: From Architecture Design to Performance Optimization. Machine Learning Theory and Practice, 5(1), 64-75.