

Review

The Role and Practice of Delaware Law in Global Cross-border M&A Transactions

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Abstract: Delaware law has emerged as a cornerstone in facilitating cross-border mergers and acquisitions, offering significant institutional value to global business transactions. This comprehensive value proposition is primarily reflected in its well-developed corporate law framework, which provides organizations with the flexibility to implement diverse ownership structures, adaptable contractual mechanisms, and efficient dispute resolution processes. These features have proven instrumental in supporting the seamless operation of global capital flows in international business transactions. However, the increasing complexity of international business environments has brought forth several critical challenges that warrant careful consideration. These challenges include determining the appropriate scope of judicial application under Delaware law, establishing effective cross-border regulatory coordination mechanisms, and maintaining consistent information disclosure standards across different jurisdictions. The evolving nature of global business transactions necessitates a thorough examination of both the functional and structural limitations inherent in Delaware law's application to cross-border M&A transactions. This analysis leads to the development of strategic improvements informed by international best practices and emerging global standards. The ultimate objective is to enhance the legal framework's capacity to provide more robust protection and institutional support for global M&A transactions, ensuring their continued efficiency and effectiveness in an increasingly interconnected business world.

Keywords: delaware corporate law; cross-border acquisitions; international business law; regulatory compliance; corporate governance; judicial jurisdiction; merger regulations

1. Introduction

As global economic integration continues to deepen, transnational acquisitions have emerged as a pivotal strategy for enterprises aiming to enhance the efficiency of their capital utilization and broaden their operational reach into international markets. The legal system plays an indispensable role in guiding mergers and acquisitions (M&A) activities by ensuring the seamless execution of transactions and effectively managing the legal risks associated with these complex processes. A robust legal framework is essential as it minimizes uncertainties and facilitates the orderly completion of cross-border transactions, thereby fostering a stable environment for international business operations [1, 2]. Delaware law, in particular, provides a variety of legal options for multinational enterprises to establish entities and manage capital operations [3]. This is largely due to its comprehensive corporate law framework, which is supported by a specialized court system and a strong emphasis on the freedom of contract. Such a legal system not only benefits domestic enterprises but has also been extensively adopted in cross-border M&A transactions. However, as transaction structures become more intricate and institutional differences among various jurisdictions continue to expand, the effectiveness and adaptability of Delaware law in coordinating transnational legal matters warrant further scrutiny. This paper delves into the structural challenges that arise in cross-border M&A transactions involving Delaware law and suggests targeted improvement measures. The goal is to provide more effective legal support for global M&A activities, ensuring that

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enterprises can navigate the complexities of international transactions with greater confidence and efficiency. By addressing these challenges, the legal framework can be refined to better accommodate the evolving needs of multinational enterprises engaged in cross-border operations.

2. The role of Delaware law in global cross-border M&A transactions

2.1. Optimizing the design of corporate control structure

The Delaware General Corporation Law offers an exceptionally adaptable legal framework that is instrumental in the design and implementation of corporate governance structures [4]. This adaptability is crucial for companies engaging in overseas mergers and acquisitions, as it allows them to customize control arrangements to align with the specific needs and complexities of each transaction. Such flexibility is particularly significant in scenarios involving intricate ownership structures and numerous stakeholders. Under this legal framework, corporate charters can be crafted to include multiple classes of shares, each with distinct voting rights and tailored board authorization mechanisms. This means that the percentage of ownership is not the only factor determining corporate control [4]. For instance, in a dual-class share structure, shares with enhanced voting rights can provide certain shareholders with a disproportionate level of influence over corporate decisions, even if their actual equity stake is relatively small. This dynamic can be illustrated by examining the relationship between voting power and shareholding, which can be represented in a simplified manner. By allowing for such tailored governance structures, the Delaware General Corporation Law enables companies to maintain effective control and decision-making processes, even in the face of complex and multi-faceted ownership arrangements.

$$C = \frac{V_h \cdot w + V_o}{V_h + V_o \cdot 1}$$

In this context, the control ratio, denoted as C , is a critical factor. It is influenced by the number of super-voting shares, the voting weight assigned to each share, and the number of ordinary shares [3, 5]. When the voting weight per share exceeds one, even a relatively small number of super-voting shares can lead to a significant concentration of control within a select group of shareholders [4, 6]. This institutional arrangement is designed to prevent the fragmentation of voting power, which can occur when control is diluted among many shareholders, potentially leading to delays in decision-making and uncoordinated management following a merger or acquisition. Delaware corporate law plays a pivotal role in facilitating the allocation and consolidation of corporate control in cross-border mergers and acquisitions. It achieves this through well-defined authorization mechanisms that ensure clarity and efficiency in the post-merger governance structure. By providing a robust legal framework, Delaware law supports the seamless integration and management of corporate entities across borders, thereby enhancing the overall effectiveness and stability of international business transactions [7].

2.2. Enhance the flexibility of cross-border transaction system

The Delaware General Corporation Law serves as a remarkably adaptable foundation for facilitating cross-border mergers and acquisitions. This adaptability is primarily due to the law's allowance for corporations to navigate and reconcile legal discrepancies that may arise across different jurisdictions. By employing governance arrangements and contractual mechanisms sanctioned under this law, corporations can effectively minimize disruptions that might be caused by conflicting legal frameworks and varying regulatory demands [6, 8]. Furthermore, the extensive body of judicial precedents established by Delaware courts offers a stable and reliable source of guidance for corporate transactions. This contributes significantly to the predictability and certainty in the application of legal rules across different jurisdictions [9]. The adaptability of cross-border transactions can be further understood through the interplay between the complexity of transactions and the capacity of legal rules to accommodate them. This

relationship is exemplified by a conceptual function that illustrates how these elements interact to facilitate smoother transactions.

$$F(c) = \frac{r}{1 + e^{-k(c-c_0)}}$$

In this conceptual framework, the function $F(c)$ symbolizes the institutional capacity under Delaware law, where c represents the complexity inherent in the transaction structure. The variable r signifies the maximum level of adaptive tolerance that the system can handle, while k denotes the responsiveness of governance adjustment mechanisms [6, 10]. The critical point of system adaptation is represented by c_0 . The function is characterized by an S-shaped curve, which vividly demonstrates the high degree of flexibility that Delaware law offers, particularly in handling complex transactions. Within this legal framework, corporations are empowered to respond dynamically to diverse market regulations and evolving international compliance standards [11, 12]. This flexibility not only enhances the freedom with which transaction structures can be designed but also bolsters the security and strategic autonomy of global capital operations [10, 13]. As a result, corporations can navigate the complexities of international markets with greater confidence and strategic foresight.

2.3. Guarantee the efficiency of M&A Dispute Adjudication

Cross-border mergers and acquisitions are complex transactions that require a careful balancing of the interests of all involved parties. These transactions often lead to intricate legal challenges that can be quite difficult to navigate and resolve. In this context, the specialized judicial system of Delaware, particularly the Court of Chancery with its appellate review by the Delaware Supreme Court, has shown remarkable efficiency and professionalism in handling disputes related to mergers and acquisitions [3, 14]. The Delaware judiciary has a long history of adjudicating corporate cases, which has allowed it to accumulate a substantial body of precedents. These precedents provide consistent and authoritative guidance, which is crucial for resolving transactional disputes effectively [3, 15]. This legal framework enables enterprises to respond adeptly to diverse market conditions and comply with the latest regulatory requirements across different countries. As a result, businesses can enhance the adaptability of their business models while increasing the legal certainty and predictability of cross-border M&A activities. Furthermore, Delaware corporate law places significant emphasis on the fiduciary duties of directors and the legitimacy of procedural actions. It also relies on judicial management to reduce the risks associated with malicious litigation and excessive judicial intervention. The efficiency of adjudicating M&A disputes can be understood through a functional relationship that considers the processing time of cases in relation to the complexity of disputes, as described in the following model [16].

$$T = \frac{\alpha \cdot C}{\log(\beta + E)}$$

In this model, T represents the average duration of adjudication, C denotes the dispute complexity index, E signifies the accumulated judicial experience, and α and β are parameters of the model. The model suggests that an increase in judicial experience correlates with a reduction in adjudication times, even when dealing with complex M&A disputes [5, 17]. This institutional framework significantly enhances the effectiveness and predictability of dispute resolution in cross-border M&A transactions. Consequently, it bolsters confidence in the enforcement of contracts, as parties involved in such transactions can rely on a well-established legal system that ensures fair and timely resolution of disputes [15, 16]. This confidence is crucial for fostering a stable and reliable business environment, encouraging more enterprises to engage in cross-border mergers and acquisitions with the assurance that their contractual agreements will be upheld and disputes will be resolved efficiently [7].

3. Issues of Delaware law in global cross-border M&A transactions

3.1. Ambiguity in the scope of judicial application

In the realm of cross-border mergers and acquisitions, a multitude of challenges frequently emerge, particularly concerning the application of legal principles and the jurisdiction of courts across various legal systems [7, 14]. Delaware law, often a focal point in these transactions, may face certain ambiguities when it comes to resolving disputes that involve foreign elements. The legal framework of the United States is characterized by its federal structure, where state laws coexist alongside federal laws, leading to a scenario where courts in different states might adopt varying approaches to handling cross-border commercial disputes. This diversity in institutional approaches can result in differing standards for parties involved in determining the most suitable mechanisms for dispute resolution. Even though acquisition agreements typically include choice-of-law and forum-selection clauses to provide clarity, practical uncertainties can still arise. These uncertainties often pertain to the scope of judicial authority, especially in cases involving foreign parties, transaction targets located in distant geographical areas, or international investors [9]. When multiple jurisdictions have significant connections to a transaction, courts may vary in their evaluation of territorial links that are pertinent to the exercise of jurisdiction. This lack of clarity adds layers of complexity to the determination of jurisdiction in cross-border M&A disputes, leading to increased litigation costs, extended proceedings, and a decrease in the predictability of dispute resolution outcomes [5]. Such complexities necessitate a thorough understanding of the interplay between different legal systems and the strategic navigation of jurisdictional challenges to ensure effective resolution of disputes in the global M&A landscape.

3.2. Obstacles to integration of regulatory system

In the realm of cross-border mergers and acquisitions, the integration of regulatory systems is often hindered by institutional obstacles [7]. These challenges primarily stem from the simultaneous application of regulatory frameworks across various countries and regions, rather than the direct enforcement of foreign laws by specific courts [8]. While certain legal frameworks offer a degree of flexibility in terms of corporate governance and transaction structuring, cross-border mergers and acquisitions are still subject to a multitude of institutional constraints. These include, but are not limited to, antitrust reviews, national security assessments, and industry-specific access regulations. Each of these regulatory aspects is typically managed independently by the relevant authorities within different jurisdictions. Consequently, there are notable disparities in their substantive standards, procedural frameworks, and risk assessment criteria. This divergence leads to increased compliance costs for enterprises and elevates the uncertainty surrounding transactions. Without an effective mechanism for coordination, the cumulative effect of these multi-layered regulatory requirements can significantly extend approval timelines and complicate transaction structures. This, in turn, undermines the efficiency and predictability of cross-border mergers and acquisitions, posing a substantial challenge for enterprises seeking to navigate the complex landscape of international business transactions.

3.3. Lack of uniformity of information disclosure standards

The information disclosure system serves as a fundamental mechanism for establishing and maintaining transactional trust in mergers and acquisitions (M&A). This system is particularly crucial in cross-border transactions where parties from different jurisdictions are involved. Delaware law, known for its flexibility, often contrasts with the more rigid regulatory frameworks found in other regions. This flexibility allows companies operating under Delaware law to exercise significant discretion in determining both the scope and method of their information disclosures. While this can enhance operational efficiency by allowing companies to tailor disclosures to their specific needs, it can also lead to challenges. One such challenge is the potential erosion of the

counterparty's confidence in the accuracy and reliability of the information being disclosed [3]. This is because Delaware law does not mandate a separate disclosure regime for foreign investors, nor does it establish a globally unified standard for information disclosure that could be applied across different jurisdictions. As a result, significant discrepancies can arise, leading to issues such as information asymmetry and inadequate disclosure. These issues are particularly pronounced in transactions involving private ownership structures, cross-border financing arrangements, and other complex transactional settings. Such complexities underscore the limitations of institutional coordination and highlight the fragmentation of disclosure standards [9, 12]. This fragmentation can create an environment where parties may not have access to the same level of information, potentially leading to misunderstandings and disputes [5]. Therefore, addressing these challenges requires a concerted effort to harmonize disclosure standards and improve the transparency and reliability of information shared in cross-border M&A transactions (As shown in Figure 1).

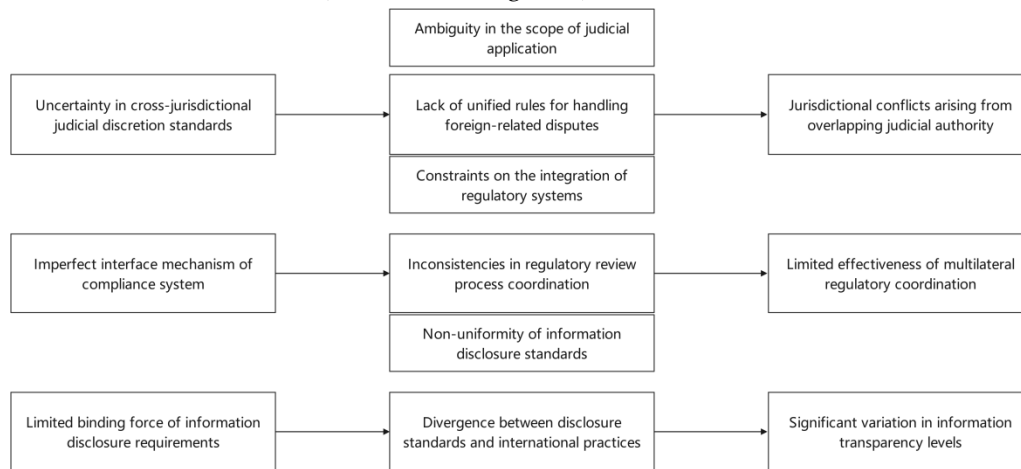


Figure 1. Problems of Delaware law in global cross-border M&A transactions

4. Practice Strategies for Delaware law in Global Cross-border M&A Transactions

4.1. Clarifying the Applicable Boundaries of Judicial Jurisdiction

To enhance the judicial binding force of *ex ante* jurisdictional determinations in cross-border mergers and acquisitions involving Delaware, it is crucial to establish a quantitative judgment model centered on the concept of 'territorial link strength.' This model serves as a foundational reference framework for court acceptance criteria, aiming to minimize judicial subjectivity in territorial determinations. The model assigns fixed scores to transaction-related locations, such as the location of the target company, the place of registration, and the place of contract performance. By doing so, it provides a structured approach to determining jurisdiction. For instance, if the local contact score exceeds 60, the court may be recognized as having original jurisdiction. If the score surpasses 80, the Delaware court is preferred as the competent court. This scoring mechanism is designed to improve judicial efficiency and enhance the coordination of legal applications in cross-border mergers and acquisitions. Additionally, it is essential to compare international judicial practices and develop coordination mechanisms between Delaware courts and other jurisdictions that frequently handle cross-border mergers and acquisitions. In practice, a significant number of mergers handled by the Delaware Court of Chancery in recent years have been cross-border transactions. However, the proportion of such transactions is lower compared to other jurisdictions like the British High Court, the French business court, the German regional court, and Singapore. Furthermore, the average duration for resolving a merger and acquisition case in Delaware is longer than in England and Singapore, highlighting the need for improvements in judicial efficiency [15]. By addressing these issues, Delaware can strengthen its position as a preferred

jurisdiction for cross-border mergers and acquisitions, ensuring that legal processes are both efficient and effective (As shown in Table 1).

Table 1. Comparison of the Proportion and Resolution Efficiency of Cross-Border M&A cases in Selected jurisdictions

District/court	Number of M&A cases	Number of foreign mergers and acquisitions	Proportion (%)	Average review duration (days)
Delaware court of chancery (2022)	426	52	12.2	278
High Court of England (2022)	361	103	28.5	201
Commercial Court of Paris, France (2022)	298	89	29.9	194
German District Court (2022)	334	97	29.0	215
Singapore Commercial Court (2022)	272	85	31.3	189

Integrating a territorial scoring mechanism with existing legal frameworks can significantly enhance the clarity and procedural efficiency of jurisdictional determinations in cross-border mergers and acquisitions disputes involving Delaware law. This approach not only provides a structured method for evaluating jurisdictional claims but also reduces the potential for subjective interpretations by the judiciary. By assigning specific scores to various transaction-related factors, such as the location of the target company, the place of registration, and the place of contract performance, this mechanism offers a clear and objective basis for jurisdictional decisions. As a result, it facilitates smoother legal proceedings and ensures that jurisdictional determinations are made with greater precision and consistency [2]. Moreover, this method encourages the harmonization of legal practices across different jurisdictions, fostering better cooperation and understanding between Delaware courts and their international counterparts. By adopting such innovative strategies, Delaware can enhance its reputation as a reliable and efficient jurisdiction for handling complex cross-border mergers and acquisitions, ultimately benefiting all parties involved in these transactions.

4.2. Improving Institutional Integration and Coordination Mechanisms

In the realm of cross-border mergers and acquisitions involving companies based in Delaware, a significant challenge arises from the need for institutional coordination. This challenge is not primarily due to conflicts within Delaware's corporate law itself, but rather from the necessity for these M&A activities to undergo scrutiny by regulatory authorities across multiple countries and regions simultaneously. The Delaware General Corporation Law primarily governs the internal governance structures of companies, yet cross-border M&A transactions must also navigate through various layers of regulatory review, including antitrust evaluations, national security assessments, and industry-specific regulatory procedures. Each jurisdiction has its own set of review standards, procedural requirements, and information submission protocols, which can lead to redundant applications and extended review periods. This, in turn, increases transaction costs and introduces uncertainties. Within the current framework of regulatory authority division, enhancing the connectivity of the review processes and minimizing repetitive information declarations can significantly boost regulatory efficiency and improve the predictability of cross-border M&A transactions. In the United States, five major regulatory authorities are involved in M&A reviews, and their interface integration index is notably low at 4.3 out of 10. This is considerably lower compared to Singapore, Germany, and France, which have higher integration indices of 8.2, 7.1, and 6.8, respectively [4]. Companies in Delaware are required to submit identical information reports to at least

four different regulatory agencies, with the average review time exceeding 90 days. This duration is substantially longer than the review periods in Singapore and France, which are 52 and 61 days, respectively. Furthermore, M&A operations in the United States entail six types of regulatory disclosure obligations, whereas Germany only requires three. These figures underscore the impact of regulatory interface integration levels on transaction duration and compliance costs, highlighting the need for streamlined processes to facilitate more efficient cross-border M&A activities [17] (As shown in Table 2).

Table 2. Comparison of M&A regulatory synergy efficiency and compliance intensity in typical global jurisdictions

Country/Region	Number of M&A review bodies	Interface integration index (10 points)	Average review duration (days)	Compliance disclosure requirements (items)
United States (Delaware)	5	4.3	97	6
Britain	3	6.9	65	4
Germany	2	7.1	59	3
France	3	6.8	61	3
Singapore	2	8.2	52	2

The comparative analysis of regulatory procedures for cross-border mergers and acquisitions in the United States reveals a complex landscape characterized by multi-departmental reviews. The integration of review interfaces is relatively low, which can lead to extended review cycles and increased compliance costs. To enhance transaction efficiency, it is imperative to optimize the connectivity of regulatory processes [2, 15]. This involves creating a more seamless interaction between different regulatory bodies to reduce redundancy and streamline the overall review process. By improving the integration of these processes, it is possible to shorten the review cycle, thereby reducing the time and resources required for compliance. This optimization not only benefits the companies involved in the transactions but also enhances the overall efficiency of the regulatory framework [12, 14]. A more integrated approach can lead to a more predictable and efficient transaction environment, which is crucial for fostering international business activities and maintaining competitive advantage in the global market. Therefore, efforts to improve the synergy between regulatory processes are essential for reducing the barriers to cross-border M&A activities and promoting a more conducive environment for international business operations [12].

4.3. Promoting Consistency of Disclosure Standards

In the realm of cross-border mergers and acquisitions, the obligation to disclose information is primarily driven by overarching federal or transnational regulatory frameworks. These frameworks encompass areas such as anti-monopoly laws, national security considerations, and securities regulations. Unlike these comprehensive systems, the Delaware General Corporation Law (DGCL) is primarily concerned with the internal governance structures of companies. It does not impose standardized requirements regarding the content or timing of information disclosure in the context of mergers and acquisitions. This lack of uniformity stands in contrast to various jurisdictions around the world, which have established more explicit institutional arrangements. These arrangements define the scope of information disclosure, the volume of documentation required, and the timelines for disclosure during merger and acquisition reviews [6]. The disparities in these regulatory frameworks have a direct impact on the transparency of

transactions, the costs associated with compliance, and the efficiency of the review process. To better understand these differences, a comparative analysis of the institutional characteristics of representative jurisdictions is provided [6]. This analysis aims to visually illustrate the variations in the intensity and timeliness of information disclosure requirements for mergers and acquisitions across different regions, highlighting the need for a more harmonized approach to enhance global transaction transparency and efficiency [4] (As shown in Table 3).

Table 3. Comparison of the Intensity and Timeliness of M&A Information Disclosure in Selected Jurisdictions of the world

Region/Country	Disclosure applicability (%)	Pages of disclosure documents	Minimum disclosure period (days)
Delaware (USA)	52	73	No uniform provisions
EU	89	125	60
Japan	87	118	45
Singapore	91	132	40

In the context of cross-border mergers and acquisitions, it is crucial that information disclosure practices are aligned with the requirements set forth by federal and multinational regulatory bodies. This alignment is essential to ensure that compliance processes are efficient and effective [16]. By promoting the harmonization of disclosure standards, companies can better navigate the complex landscape of international regulations. This harmonization not only facilitates smoother transactions but also reduces the potential for misunderstandings and discrepancies that can arise from differing disclosure requirements. As companies engage in cross-border activities, they must prioritize the centralization of information disclosure around these regulatory standards. Doing so will enhance the overall efficiency of compliance efforts and contribute to a more streamlined and transparent process for all parties involved in the transaction. Ultimately, the goal is to create a cohesive framework that supports the seamless integration of diverse regulatory expectations, thereby fostering a more predictable and stable environment for international mergers and acquisitions.

5. Conclusion

Delaware law, with its adaptable corporate governance framework and effective judicial system, presents significant institutional benefits in the realm of global cross-border mergers and acquisitions (M&A). This legal framework is instrumental in adjusting shareholding structures, enhancing transaction flexibility, and ensuring the swift execution of judgments, thereby facilitating international investment endeavors. Nevertheless, as the complexity of cross-border M&A transactions continues to escalate, certain limitations inherent in Delaware law are becoming more apparent. These include constraints related to the scope of judicial application and the challenges of cross-jurisdictional coordination. To address these issues, it is crucial to clarify jurisdictional standards, bolster regulatory coordination, and enhance the predictability of procedural rules. Such measures would significantly improve the efficacy of Delaware law in the context of global cross-border M&A activities. Furthermore, future research should focus on exploring innovative legal frameworks that can better accommodate the dynamic nature of international business transactions. This includes examining the potential for integrating technological advancements into legal processes to streamline operations and reduce transaction costs. By addressing these areas, Delaware law can continue to evolve and maintain its relevance in the ever-changing landscape of global commerce.

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