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MERGERS & ACQUISITIONS

Where Should U.S. Companies Base Their Asia M&A Platforms?

By Sachin Java and Ping Li

For U.S. companies pursuing acquisitions across Asia, the entity selected to serve as a regional holding company can materially affect deal execution, financing, governance, tax analysis, and exit flexibility. The best platform is not necessarily located where the first target is located; it should support the buyer's anticipated investment corridor, investor base, and operating model. Singapore, Hong Kong, the Dubai International Financial Centre (DIFC), Abu Dhabi Global Market (ADGM), and Malaysia's Labuan International Business and Financial Centre (IBFC) are among the principal "neutral" locations to evaluate. None eliminates target-country approvals or diligence.

Singapore: The Default Asia-Pacific Platform

Singapore is often the default choice for establishing an Asia-Pacific acquisition platform. Its well-developed common law-based judicial system, robust dispute resolution infrastructure, deep financial services market, transparent and low taxation, and regional headquarters role make it a natural fit for transactions spanning China, Southeast Asia, India, and Australia. A Singapore holding company can accommodate regional management, centralized treasury functions, IP ownership, and add-on acquisitions. Foreign ownership is generally unrestricted, though limitations apply in regulated sectors such as banking, insurance, broadcasting, and defense. Singapore's Significant Investments Review Act imposes notification requirements for acquisitions of control in designated entities. For many U.S. buyers, Singapore is the

For more details on any of the topics covered in this *Business Law Update*, please contact the authors via the links at the end of each article or [David R. Valz](#), editor-in-chief. For information on our Corporate Transactions & Securities practice, please contact [Frank D. Chaiken](#), practice group leader.

strongest all-purpose choice for acquiring and expanding a business in an Association of Southeast Asian Nations (ASEAN) member country from a credible regional headquarters.

Hong Kong: The Greater China Gateway

Hong Kong remains a leading option for investment strategies centered on Greater China, North Asia, or Hong Kong capital markets. It enjoys preferential treatment from the Chinese central government in taxation, judgment recognition, and currency exchange controls, making it uniquely qualified to host the overseas holding structure of choice for mainland China deals. Its common-law system and sophisticated M&A ecosystem continue to make it familiar to U.S. counsel. Private M&A documentation and governance concepts are generally recognizable, and public transactions can be implemented through a takeover offer or scheme of arrangement under the Hong Kong Takeovers Code. Hong Kong should not be viewed as a substitute for People's Republic of China (PRC) analysis, however. A Hong Kong holding company with PRC subsidiaries, China-based data, or material Mainland operations can bring PRC merger-control, foreign-investment, cybersecurity, and data-transfer requirements into the transaction.

Dubai International Financial Centre (DIFC): The Middle East and North Africa (MENA)-India-Asia Bridge

DIFC is compelling where an Asia strategy overlaps with Middle Eastern capital, Gulf investors, India, or regional financial services activity. Its common-law framework is familiar to U.S. buyers negotiating shareholder agreements, financing documents, and governance arrangements. DIFC is a structuring location, however, not a substitute for local operational analysis. Subsidiaries in onshore United Arab Emirates, Saudi Arabia, or India remain subject to those jurisdictions' merger-control, licensing, and regulatory requirements.

Abu Dhabi Global Market (ADGM): A Private Capital Alternative

ADGM should be considered alongside DIFC where the transaction involves institutional capital, sovereign investors, or private equity. Its legal system gives direct precedential value to English common law. The choice between DIFC and ADGM should be driven by commercial considerations: DIFC may be more natural for a Dubai-oriented presence, while ADGM may be more compelling for buyers seeking Abu Dhabi institutional capital or sovereign-investor relationships. Like DIFC, ADGM does not eliminate the need to evaluate the legal regimes governing the acquired business's actual operations.

Labuan: A Specialized ASEAN Alternative

Labuan IBFC may be worth considering for specialized structures involving cross-border financing, leasing, captive insurance, or Shariah-compliant finance. It offers a cost-conscious alternative to Singapore but is less suited for a high-substance regional headquarters. U.S. buyers should not select Labuan based solely on historical tax assumptions; the analysis should include operational substance, tax residency, transfer pricing, and treaty eligibility.

Key Takeaways

For most U.S. acquirers, the choice of platform will follow the investment strategy. The entity location should be selected before committing to a long-term acquisition architecture, but only after mapping the target group's ownership, revenue, licenses, workforce, data, and markets. The question is not simply where to form an acquisition vehicle—it is where a U.S. company can establish a durable regional platform that supports its next transaction and every transaction that follows.

Please contact [Sachin Java](#) or [Pingshan Li](#) with any questions.



COMMERCIAL CONTRACTS

Your Data, Their Rights: What the EU Data Act Means for Your Contracts

By Jennifer N. Elleman and Julie D. Honor

Prior to the passage of the EU Data Act (Regulation (EU) 2023/2854), the manufacturers of smart or connected products effectively had exclusive ownership of the data generated by their products. The EU Data Act has ended this assumption. For companies that make, sell, or service connected products in Europe, data generated from such products is now a shared asset, and certain contractual terms are no longer enforceable.

What the Act Is

The EU Data Act went into effect on September 12, 2025. The Act applies to manufacturers of connected products, providers of related digital services, and to cloud and data processing providers that place products on, or offer services in, the EU market (“Data Holders”), regardless of where they are headquartered. A U.S. company selling smart equipment to European customers is squarely within its scope. The primary impact of the Act is on B2B relationships.

Key Dates

- September 12, 2025 — **IN FORCE:** Core obligations apply; national enforcement is live.
- September 12, 2026 — **IN FORCE:** Access-by-design requirements apply to connected products and related services placed on the market after this date.
- January 12, 2027 — **UPCOMING:** Cloud switching and data egress charges must be fully eliminated.
- September 12, 2027 — **UPCOMING:** Unfair-terms rules extend to older long-term contracts with an indefinite term or expiring at least 10 years from January 11, 2024.

Mandatory Access and Sharing

Users of connected products in the EU, including business customers, now have the right to access the data that is generated by their use promptly and free of charge, and to direct that such generated data be shared with third parties such as competing repair or analytics providers (“Data Recipients”). Products placed on the EU market on and after September 12, 2026 must be designed to make that data accessible by default. However, Data Holders may still protect certain trade secret information through confidentiality safeguards, and may charge Data Recipients reasonable, non-discriminatory compensation for providing the data (which does allow a margin).

Prohibited Contractual Provisions

The Act declares certain data-related terms unilaterally imposed on another business unfair and unenforceable. (Terms are considered unilaterally imposed where the non-drafting party has not been able to influence its content despite an attempt to negotiate it.) Blacklisted terms include those that exclude liability for a party’s gross negligence or intentional acts, strip the other party of remedies for non-performance, or give the imposing party sole power to interpret the contract. Additionally, terms that unduly limit liability, restrict a party’s use of data that it has contributed, permit termination on unreasonably short notice, or allow significantly detrimental data use are presumed to be per se unfair.

The rules prohibiting unfair contract terms apply to contracts entered into on and after September 12, 2025, and as of September 12, 2027, apply to any contracts that are indefinite in term or expire at least 10 years from January 11, 2024. The Act therefore may result in the quiet erosion of protections a business may otherwise believe it has under its commercial agreements.

The Commercial Impact

The practical burden of the Act on Data Holders is substantial. Data Holders must audit their B2B contracts, rework standard terms, and redraft data licensing and data-sharing agreements to eliminate any prohibited contractual terms. Additionally, product teams must re-engineer their products to build in required data access and sharing capabilities, and cloud providers must support customer switching, with switching charges prohibited starting as of January 12, 2027. Business models that monetize equipment data or lock in aftermarket services face new competition and complications.

Key Takeaways

- **Map your exposure.** Identify connected products, related services, and data flows touching the EU.
- **Update contracts.** Flag one-sided data, liability, and termination terms, prioritizing evergreen and long-term agreements before 2027. Update standard terms and data agreements to reflect user access rights and incorporate the EU Commission's model contractual terms.
- **Engage product teams.** Confirm new products enable data access and sharing by design.
- **Protect trade secrets.** Establish documented confidentiality measures before access requests arrive.
- **Rethink strategy.** Treat data access as both a compliance obligation and a competitive opportunity.

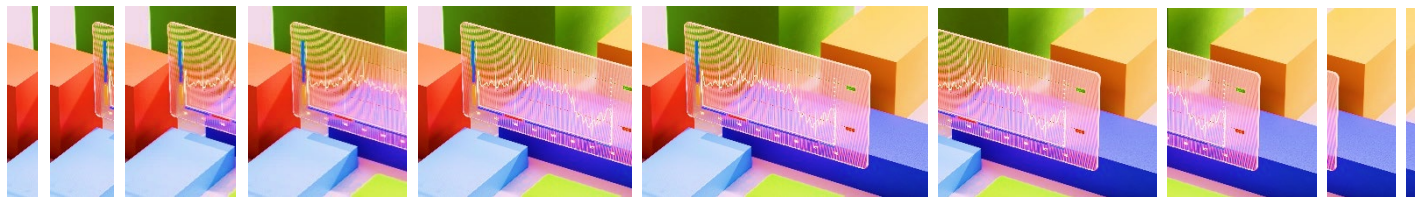


SECURITIES QUARTERLY UPDATE

Check out the latest edition of [Securities Quarterly Update](#), our newsletter that provides updates and guidance on securities regulatory and compliance issues. In this edition, we review considerations for quarterly reports on Form 10-Q; recent insider trading enforcement actions; recent SEC, Nasdaq, CA CARB and corporate governance updates; and SEC rulemaking activity.

The EU Data Act rewards companies that act early. Those that wait may discover that portions of their contracts are no longer enforceable, or that their products are unable to support legally required data access. While the Act does not have centralized enforcement like the GDPR, EU member states can appoint enforcement authorities and establish fines and penalties, and companies should watch for member state guidance and enforcement mechanisms and penalties as they emerge.

Please contact [Jennifer Elleman](#) or [Julie Honor](#) with any questions.



NEW VENTURES

Formation Structure in Venture-Backed Companies: A Q&A Guide

By Aisling Susan O'Laoire

Q: Why does entity formation structure matter so much for founders seeking venture capital?

For founders pursuing private financing, the choice of entity formation structure is one of the most consequential early decisions they will make. A poorly considered formation can create friction with investors, generate unnecessary tax liability, and complicate future fundraising rounds, while thoughtful planning at the outset pays dividends throughout a company's lifecycle.

Q: Why do venture capital investors prefer Delaware C-corporations?

Venture capital investors overwhelmingly prefer Delaware C-corporations because the Delaware General Corporation Law offers a well-developed body of case law, predictable judicial outcomes through the Court of Chancery, and flexible corporate governance provisions. The C-corporation structure allows for preferred stock issuance with the rights institutional investors expect, including liquidation preferences, anti-dilution protections, and board representation. Founders who organize as LLCs or S-corporations may need to convert before closing a financing round, adding cost, delay, and potential tax consequences when momentum matters most.

Q: What are the key tax considerations founders should keep in mind at formation?

While a C-corporation creates the possibility of double taxation, most venture-backed companies reinvest earnings rather than distribute them, making this concern largely theoretical. More importantly, the C-corporation structure enables founders to take

advantage of Qualified Small Business Stock treatment under Section 1202 of the Internal Revenue Code, which can exclude up to 100% of gain on stock held for more than five years. Founders who initially organize as pass-through entities and later convert may find that the QSBS holding period does not begin until the date of conversion, potentially forfeiting years of qualifying time and significant tax savings.

Q: How should founders approach capitalization and equity incentive planning?

Founders should consider how many shares to authorize, how to allocate equity among co-founders, and whether to implement vesting schedules before outside investors arrive. Institutional investors expect clean capitalization tables, vesting arrangements aligned with long-term value creation, and an equity incentive pool sized to accommodate future hires without excessive dilution. Addressing these elements at formation rather than under the pressure of a term sheet puts founders in a stronger position and signals sophistication to investors. Companies that fail to maintain a clean cap table or implement proper vesting often face co-founder disputes, unexpected dilution, and eroded investor confidence.

Q: Why is governance architecture important at the formation stage?

While a two-person founding team may not need elaborate governance on Day 1, the certificate of incorporation and bylaws should be drafted with future financing rounds in mind. Investors will expect protective provisions, board composition rights, and information rights. A formation structure that anticipates these needs—by authorizing blank check preferred

stock, for example—avoids costly charter amendments before a Series A closing.

Q: What are the consequences of getting the formation structure wrong?

Restructuring a company after the fact is never free. Converting from an LLC to a corporation may trigger taxable gain, and redomiciling to Delaware requires compliance with the laws of both jurisdictions. These remediation costs consume management attention and can erode investor confidence during diligence. A growth-stage company that must pause to restructure risks losing time-sensitive financing opportunities and

may project a lack of operational maturity that discourages the very investors it needs to attract.

Q: What is the bottom line for founders?

Founders who get formation right—choosing the appropriate entity type, jurisdiction, capitalization structure, and governance framework from the outset—position themselves to move quickly when the right financing opportunity presents itself. In venture-backed companies, where speed and credibility are currency, thoughtful formation is one of the highest-return investments a founding team can make.

Contact [Aisling O’Laoire](#) with any questions.

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