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GLOBAL M&A:
MOMENTUM FOR GROWTH

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About the Report

"Global M&A: Momentum for Growth" explores the risks and rewards of cross-border M&A. Paul Hastings commissioned Day One to interview more than 40 corporate executives, investment bankers, private equity practitioners, and other business leaders in Europe regarding risks and trends in cross-border M&A. In addition, our market-leading lawyers from Europe, Asia, and the Americas weighed in with their own views on the markets in which they advise clients on game-changing transactions.

Organizations interviewed include:

- **3i Group**
- **Accor**
- **Advention Business Partners**
- **Arthur D. Little**
- **Astorg Partners**
- **Ausy**
- **Bain & Company**
- **BC Partners**
- **BNP Paribas**
- **Canal+**
- **Carrefour**
- **Chequers Capital**
- **Dassault Systèmes**
- **DC Advisory**
- **Deloitte**
- **Diagonal Capital**
- **Eight Advisory**
- **Equistone Partners Europe**
- **Essilor**
- **EY**
- **Gemalto**
- **Goldman Sachs**
- **Imerys**
- **Kering**
- **Lazard**
- **Leonardo & Co.**
- **Morgan Stanley**
- **Nexter**
- **Orange**
- **PAI Partners**
- **PSA Peugeot Citroën**
- **Roland Berger**
- **Rothschild**
- **Saint-Gobain**
- **Société Générale**
- **Solvay**
- **TF1**
- **Transaction R**
- **Vallourec**
- **Veolia Environnement**
- **Vivendi**

About Paul Hastings

Paul Hastings is a leading global law firm with a strong presence throughout Asia, Europe, Latin America, and the United States.

About Day One

Day One is a leading global consulting firm that helps clients, corporate businesses, and professional service firms align their organization with their strategy at each stage of their life cycle.

Foreword

Cross-border M&A can be a dynamic part of your business growth. In this volatile global environment, simply having domestic strategies may not be enough. While the hurdles can be daunting, the advantages of achieving a much broader global presence are significant.

The convergence of a number of policy and financial challenges is exerting pressure on national economies as never before. As a result, outbound investment has increasingly become the growth strategy of choice for European companies. Again this year, we have seen Western Europe continuing to lead the way in outward Foreign Direct Investments (FDI).

European firms have amassed nearly €1 trillion in cash reserves, and the opportunities are plentiful. The first half of 2014 saw the highest level of cross-border M&A activity since before the financial crisis and there is growing optimism that this activity will only increase.

We have seen deals run exceptionally well. When Fiat and Chrysler began negotiations, it seemed to be a marriage made in heaven from the start. Other deals have moved in a different direction than originally planned. It was touch-and-go for General Electric in its bid to buy Alstom's energy assets as it faced initial opposition from the French government and a counter offer from Siemens. In the end, GE agreed to sell a 20% stake to the French government and secured its biggest acquisition ever. However, not everyone has been as fortunate and the list of aborted deals is long.

Given the number of deals that are failing and the obstacles discouraging some companies from certain regions, we set out to find some answers. We partnered with consulting firm Day One, to conduct in-depth qualitative interviews with more than 40 executives from leading corporations, investment banks, and private equity firms in Europe. In addition, our own market-leading lawyers shed light on trends in cross-border M&A in Asia, Latin America, the United States, and Europe. The result is "Global M&A: Momentum for Growth".

Our interviewees were very candid with their responses. Approximately 88% of them considered legal and compliance issues critical when dealing with cross-border M&A. They expressed their frustration with the increased regulatory environment and pointed to anticorruption compliance as a particular challenge. Given the corruption crackdown in China, approximately 42% of respondents stated that it was the most difficult country in which to do a deal. Also highlighted were India, Vietnam, and Brazil due to legal, compliance, and political issues.

Antitrust law was another major concern for respondents. With more than 120 antitrust regimes established internationally, the intensity in this area is greater than ever. Other major risks identified included employment, IP, and tax issues.

Despite these risks, cross-border M&A can be a successful part of your growth strategy if handled skillfully. We hope you will find the recommendations and tools we provide in the pages ahead useful as you design your pre-merger strategy.

We are ready at Paul Hastings to help you in reaching your business objectives and would welcome the opportunity to partner with you as you gain your momentum for growth.

Guillaume Kellner
Head of Corporate Practice, Paris

Cross-Border M&A:

High Risk, High Reward

The more than 40 business leaders interviewed for this report cited position, product, and customer assets as the prime drivers for companies looking to merge, acquire, or create alliances, whether domestic or cross-border. They felt that management's focus on these areas must be balanced with an appreciation of a wider range of assets, both tangible and intangible, financial and non-financial.

When working cross-border, however, it is even more important to keep in mind the big picture. A company that stays focused on the merger process not as an end in itself, but as a transition to a relationship that needs careful management, has a greater chance of ultimate success. A well-judged merger or acquisition can win a company time and business.

€1 Trillion
Current reserves at European-listed companies

On the other hand, a misfire can produce devastating results. The art of dealmaking requires creative yet calculated planning to avoid regulatory landmines and manage multi-jurisdictional risk. At the same time, the clock remains a critical factor in closing a transition.

With great risks come great rewards, and the bold will see the highest payoff. European-listed companies are sitting on nearly €1 trillion in cash reserves at the moment and are ideally placed to move. The questions to consider are: where, when, and how?

Key Growth Strategy

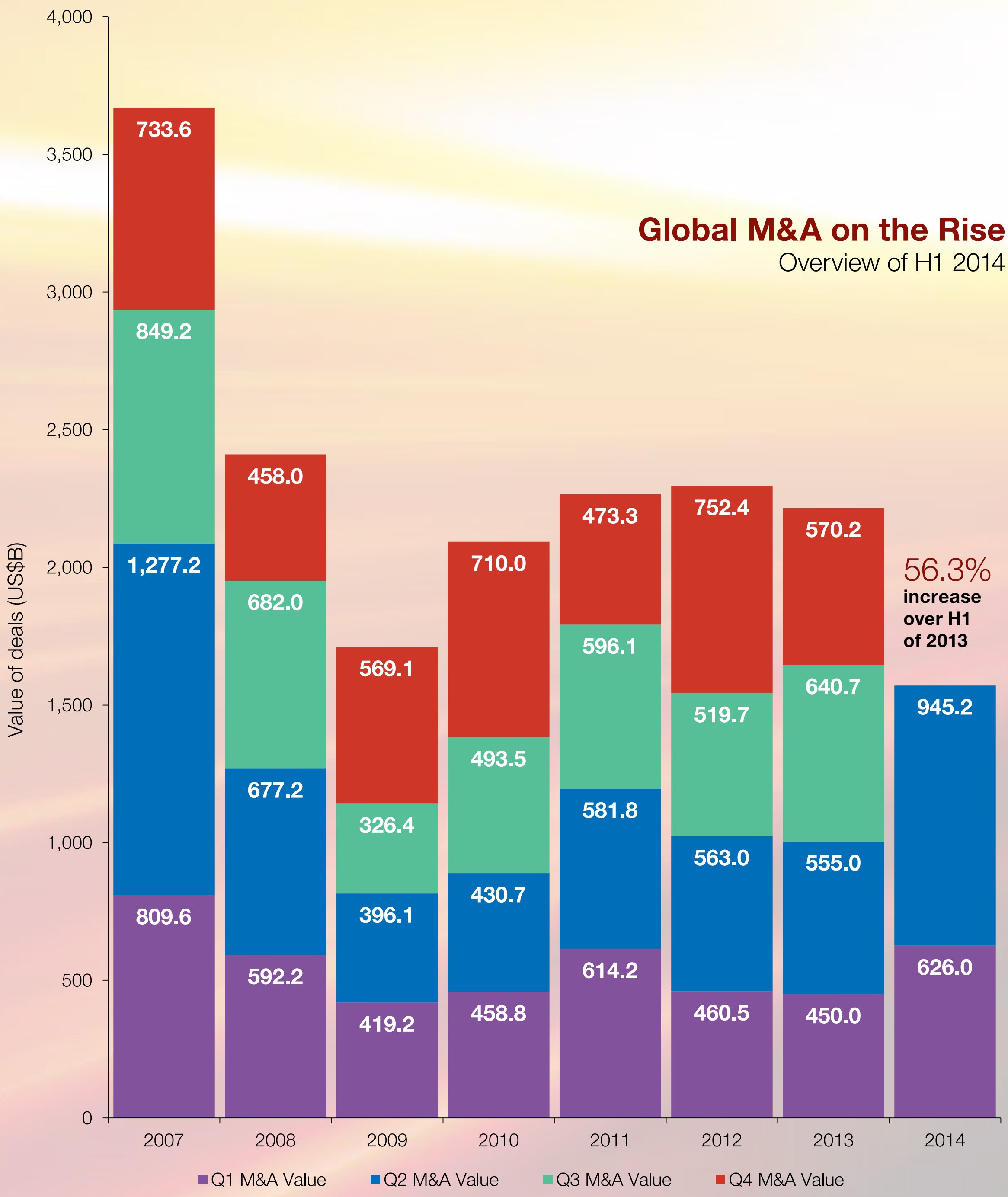
Since the start of 2014, there has been a steady increase in the pace and value of European M&A. Companies continue to look to the market for potential investment opportunities and distressed assets, and take advantage of relatively accessible financing. The appetite for overseas opportunities that provide the right mix of markets and corporate fit has been a fairly constant point of interest for companies wherever they are based.

Our respondents agreed that merger activity has been, and continues to be, affected by shifts in regulatory and political factors that have seen some countries fall in and out of relative favor over the past few years.

Europe's need to identify new sources of growth has driven much of this corporate outreach. While many companies may instinctively prefer to focus on their core markets, in an environment of low or slow growth, the attraction of expanding into newer and faster growing markets becomes more compelling. It is the promise of new customers, new brands, and new opportunities. In short, it is about infusing growth into the business.

To be successful, however, there has to be strong alignment between corporate objectives and strategy. A lot has been written over the years on the challenges posed by M&A to even a well-functioning corporate structure. Those challenges – not least the legal and regulatory ones – have not diminished, and in some areas have grown more acute. There are also the intangible and vital human elements. Managing a post-merger cultural integration is a key consideration everywhere, as global M&A is on the rise.

Global M&A on the Rise
Overview of H1 2014



Source: *Mergermarket*

Our respondents have good reason to be optimistic about the future of global M&A, based on the first half of the year. For H1 2014, we experienced the highest global M&A deal value – US$1,571.2B – for a half-year since 2007, up 56.3% compared to H1 2013 and 29.8% from H2 2013.

Major Turnaround Ahead for Germany in Inbound M&A

Q: Following some high-profile investments in Germany in the past two years by Chinese companies, what do you see as the most interesting areas of inbound investment over the next five years?

A: **Although Germany has been one of the strongest economies within the Eurozone, it nonetheless saw a sharp decline in inbound M&A activity over the past 18 months. Looking ahead, however, we anticipate a revitalized international investment environment.**

The most important influence on this revival is that corporate leaders have become disappointed with the slow pace of organic growth. They are expected to put more emphasis on M&A to achieve business expansion, having tested the limits of cost and process efficiencies. Having remained on the sidelines in recent years, owners of high-quality companies are now more open to selling, providing attractive inbound investment opportunities in Germany over the next few years. Private equity portfolio exits from companies bought during the 2006-2007 buyout boom are also expected to boost inbound transactional activity.

In addition, Germany will profit from a trend we are seeing in Asian economies in particular, where many local companies are seeking access to developed countries like Germany with mature, stable economies to diversify their customer base and gain access to higher-end manufacturing plant and processes, as well as to move their own industrial capacity further up the value chain. Inbound investment gives them this access.

The industry sectors which are expected to be particular targets of FDI include technology, media, telecommunications, healthcare, and energy/alternative energy, as well as the banking and securities industries. We expect each of these sectors to offer investment opportunities for inbound investors. Asian companies have been especially interested in German technology and engineering competencies, and we expect that this sector will continue to draw strong investor interest from the region.

We expect that Germany will continue to be one of the top investment locations in Europe, supported by a liberal foreign trade policy and its reputation for high-quality manufacturing and economic stability.

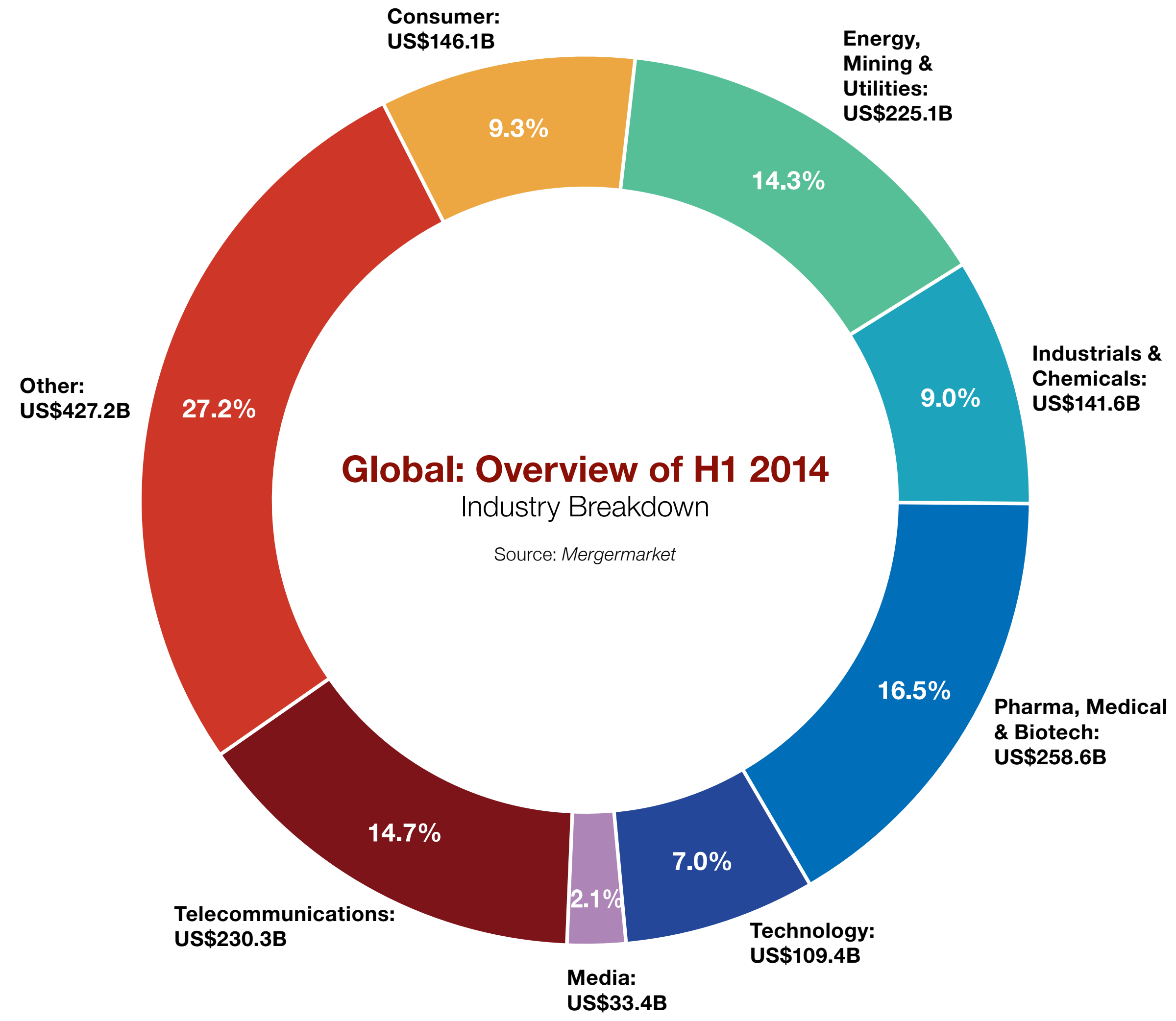
Dr. Regina Engelstädter
Partner, Frankfurt

Nearly all respondents agree that current market recovery will increase

Expansion into New Markets

Cross-border M&A and investment open the door for businesses of all sizes to achieve a much broader market presence. Beyond the obvious appeal of this proposition is the collateral aspect of geographic and market expansion, which includes the innovations and other advantages that often accompany entry into new markets. These range from the immediate acquisition of companies themselves, to potentially more favorable tax regimes and subsidies, to broadening the management talent pool. Balancing this may be a host of new regulators, environmental controls, and cultural integration of management styles.

Respondents pointed toward the development of trading blocs in the Americas and those under discussion in Asia and Africa as yet another driver toward investment. This can help ensure a strong footprint in relevant locations. A new free trade agreement among a group of countries may suddenly make a facility located in one of those countries more competitive because of the facility's access to lower tariff rates within the group.



During the first half of the year, the Pharma, Medical, and Biotech industry was the most active in global M&A, with deals valued at US$258.6B (16.5% market share). This industry experienced a significant increase year-to-year (H1), as it climbed by 225%. Telecommunications came in second with deals valued at US$230.3B (14.7%). This industry experienced the most significant year-to-year (H1) increase of any industry, as it jumped by 278%. Energy, Mining & Utilities placed third with deals valued at US$225.1B; however, it experienced only a 3% increase from H1 of last year.

Brand Value and Reduced Political Involvement Drive M&A into Italy

Q: Italian companies have generated enormous interest from international buyers with a mix of great brands and what have been some very competitive prices; how do you see these partnerships developing within industry verticals?

A: A number of factors have been driving a renewed interest in Italian M&A. In terms of fundamentals, among European countries Italy is second only to Germany in manufacturing output and has a high number of mostly mid-sized companies producing appealing products. The country also has strong global brands and pockets of manufacturing excellence, such as luxury goods, footwear, and sport cars. At the same time, many of these companies are unable to grow under their current ownership, given financial constraints and in some cases generational issues. Years of recession have also made owners more realistic about the price they can expect to obtain from the sale of their company. In addition, some large Italian corporates such as Eni and Finmeccanica have embarked on a process of rationalizing their portfolios, putting on the market important subsidiaries such as Ansaldo and Saipem.

Respondents cite European brands as a distinguishing feature for investors

Political factors also appear to play a role in facilitating foreign investments in Italy. The Renzi government seems to have brought a feeling of political stability and new hopes of reforms intended to reduce red tape, make the judiciary more efficient, and generally facilitate business. Contrary to its predecessors, the current government is not showing an appetite for taking an active role in foreign takeovers. For instance, the acquisition of white-goods manufacturer Indesit by Whirlpool has not attracted the political opposition seen in the past for the takeovers or attempted takeovers of the likes of Edison, Parmalat, or Telecom Italia. The new rules on the protection of so-called strategic sectors from foreign takeovers also bring a welcome degree of clarity.

Bruno Cova
Partner, Milan

Enhancing Brand Value

Brands are a major part of shareholder value, and European companies have some enviably strong brands. Yet in many M&A transactions the risks and potential of brand earnings are not always fully leveraged. This greatly increases the likelihood of either overpaying for a business or missing a good acquisition opportunity through underbidding. At the same time, the impact of M&A on the value of brands is perhaps less appreciated than it should be.

European brands have made their companies attractive targets for external acquirers, and have also supported the expansion of European companies into export markets. However, there remains a perception by some that these European brands are undervalued and underinvested.

81.9%
increase in cross-border M&A between regions from H1 2013 to H1 2014

Source: Mergermarket

M&A provides an opportunity for companies to expand and develop brands in a number of ways. It gives companies options when it comes to brand use – whether to retire the name of the acquired company in favor of the parent business or retain it for certain markets. The biggest risk is brand clash, bringing together brands whose values and image detract from each other.

Respondents confirmed that European brands do have the interest of the market, given their enviable brand presence. The challenge for many companies may be to determine the value they place on the brand and what they want to do with it from the standpoint of developing the business, then translate that into corporate action.

Navigating Antitrust Regimes

As the pace of M&A has picked up, so have the expansion and vigor of antitrust regimes internationally. More than 120 countries now have antitrust regimes in place. Roughly one-third are aggressively targeting cartel activity, with nearly a dozen state actors pursuing price-fixing and other anti-competitive activity beyond their own borders. This had added enormous complexity to our respondents' planning and execution of cross-border M&A, with the potential to reshape the nature and the type of deals done in the future.

The potential limitations on a company's freedom to maneuver mean that other forms of corporate combination may come back into favor as companies try to sidestep antitrust regulations. The other option is to move laterally along the industry vertical into something which is adjacent to, but not overlapping with, its current product lines. In short, this means taking actions essentially recreating a conglomerate model, which is perhaps less attractive to shareholders.

Today's business environment demands flexibility – including an understanding of the options available when considering outbound expansion and designing a strategy in advance to navigate these complexities. While regulatory drivers are important, there are other factors that also must be weighed when considering the best form of corporate combination for business success.

Top Five Considerations for Your M&A Strategy

1. **Protectionism & Politics**: Understand the political climate and potential local hurdles to navigating the regulatory environment
2. **Competition & Antitrust**: Know the potential obstacles and have a plan in place to address concerns
3. **Revenue Sources**: Ensure you know who owns intellectual property and how it is protected
4. **Business Structure**: Design in advance the most advantageous corporate structure for business operations and tax regimes
5. **Culture**: Consider the impact of cultural differences and variances in management style

France and the UK: Unique Landscapes with Growing Opportunities

Q: What is the best way for foreign investors to navigate the regulatory environment when they are negotiating a major M&A transaction in France? What specific initiatives have been the most successful in drawing international investment?

A: With unemployment nearing 10%, any major M&A transaction may trigger government intervention if a large number of jobs or sensitive technology might be transferred out of France. GE's recent deal with Alstom, in which negotiations were held not only with top managers but the Prime Minister and even President Hollande, is the best example of this.

The administration's goal is not necessarily to block transactions, but to keep employees and technology in France. This led the government to change its regulation on foreign investment, giving the Minister of Economy the right to block transactions in sensitive sectors such as telecom, energy, defense, and health. In most cases this right will not be used, but it enables the government to require potential buyers (even those based in the EU) to inform the French administration of their projects (similar to how CFIUS works in the U.S.). Thus it is highly advisable for foreign investors to approach the administration carefully and at the right moment, especially when a transaction might imply some significant transfer of employees or technologies, whether or not the target would be covered by the new regulation.

While the French economy is sometimes depicted as a "rogue" economy, with constant strikes and powerful unions, the government has tried to alter this by introducing significant economic changes to restore French companies' competitiveness. This is a result of the "pact for growth, competiveness and employment" that must be implemented in the coming months, and is expected to reduce labor costs for French companies by €20B per year, as well as a set of initiatives to simplify and stabilize the regulatory and tax environment for both French companies and foreign investors. Another important reform is the new regulation giving French employers greater latitude to implement social changes.

Guillaume Kellner
Partner, Paris

Q: Given the ongoing dynamism of the UK economy, where do you see the growth opportunities for foreign investors? What has been a source of particular success in the current burst of foreign investment?

A: The UK market saw a strong renewal of inbound interest as its economy rebounded in 2013-14; it currently attracts some 20% of all EU FDI.

The enormous success enjoyed by London's prime real estate market has had a ripple effect through secondary and even tertiary centers, and has drawn a broad range of commercial and sovereign investors. While there are signs the rapid escalation in prices seen in 2013 may have slowed in the past six months, it shows no sign of reversing; and there is further evidence that the country's secondary and tertiary centers have profited from the upturn in London prices.

The UK has also attracted substantial inbound technology investment as well as offering – via its extensive university network – an ideal startup network for venture capitalists. Inbound software investment was up 50% last year and the UK has 36.5% of all EU funding in this area. The UK patent box regime provides a highly competitive 10% tax rate where a company's inventions or innovations are granted patents in the UK or Europe. It has led to the UK becoming a center for a number of established and developing high-tech companies right across the development spectrum, from ISPs to fintech specialists.

Finally, the primacy of English law as the governing law of choice in many European M&A transactions has also continued to fuel activity in London, as the European M&A market maintained its recovery in 2014.

Ronan O'Sullivan
Partner, London

Optimism About Recovery; Anxiety About Legal and Regulatory Risks

Cross-border M&A transactions dominate today's headlines, and deal momentum keeps growing. M&A transactions are also in the eyes of regulators and national authorities everywhere. However, along with these higher risks and complexities comes the potential for growth and access to more expansive and dynamic markets.

The urge to merge or establish alliances will continue to dominate the global landscape as corporations seek competitive advantage.

The substantial majority of respondents believed strongly that the current recovery in M&A activity is set to increase in the near future. The rebound in M&A since 2012 has been an important part of European companies' efforts to find a path to sustainable recovery. Despite the ongoing and substantial economic challenges facing the region, inbound and outbound investment is playing a major role in corporate strategy.

Europe was the top source for outbound FDI internationally, representing nearly 35% of global FDI in 2013 – a more than 10% increase from 2012. The U.S. was the biggest recipient of EU countries' direct investment in 2013, accounting for 32% of outbound FDI, followed by Switzerland and Canada. Hong Kong, Singapore, and China led EU inbound FDI in Asia.

As in the previous year, the leading European countries for outbound FDI were Germany, the UK, and France. While there was a slight falloff in FDI into Europe last year, certain countries in the region continued to perform strongly, notably the UK.

Within the numbers, the technology, media, and telecommunications sector clearly dominated inbound investment into Europe in line with trends seen in other developed economies.

FDI Out of Europe
by Capital Investment 2013 (US$B)

Country	Capital investment	Market share
Germany	42.59	17.24%
UK	34.90	14.13%
France	23.83	9.65%
Spain	20.98	8.50%
Italy	17.63	7.14%
Switzerland	16.49	6.68%
Russia	16.11	6.52%
Netherlands	13.17	5.33%
Sweden	8.33	3.37%
Turkey	6.69	2.71%
Other	46.27	18.73%
Total	246.99	100%

FDI Into Europe
by Capital Investment 2013 (US$B)

Country	Capital investment	Market share
UK	26.5	19.31%
Spain	12.0	8.74%
Russia	10.6	7.72%
Turkey	9.2	6.69%
Germany	9.2	6.69%
Romania	8.4	6.13%
Netherlands	6.9	5.01%
France	6.6	4.78%
Poland	6.2	4.49%
Ireland	4.2	3.08%
Other	37.5	27.36%
Total	137.3	100%

Source: fDi Markets

U.S. Recovery Continues, Competition Grows

Q: If you were speaking with a company looking to invest in the United States, what would you say are the most critical issues they must address to ensure their potential deal will be a success?

A: The U.S. inbound investment market attracted nearly US$193B in FDI in 2013, and has, despite the economic events of the past few years, continued to recover, develop, and draw in increasing numbers of international investors.

There are few sectors of the U.S. economy that have not seen some form of FDI. Foreign buyers are, however, often aware of the role of the Committee on Foreign Investment in the United States (CFIUS), a body which really comes into play if a non-U.S. company is looking to invest in "sensitive" assets, such as those that raise potential national security concerns or which could impact critical infrastructure. In that case, it is essential that the foreign investor fully review all potential legal hurdles to getting such a transaction approved by the U.S. agencies involved in reviewing the transaction (whether that be CFIUS, antitrust, or the Federal Communications Commission). There is more openness today around this topic than ever before, which is helpful in understanding the issue, but preparation is still vital.

As in other countries, when dealing with sensitive deals, companies also have to consider the larger political climate, the geographic scope of the assets involved, and the local politics of the jurisdictions in which the assets are located. Resistance could come from governmental agencies or candidates seeking office or from labor unions or general public protest. We have seen U.S. companies encounter this with investments abroad, just as we have seen international companies run into issues with inbound investments in the U.S.

In navigating the regulatory maze, investors need knowledgeable local advisors and a good public relations firm. Potential investors should also know that the United States welcomes entrepreneurship and investment, and that many companies that came here have gone on to build major, successful business enterprises.

Carl Sanchez
Partner, San Diego

Q: What are the most critical issues foreign companies must address to ensure a potential deal in the U.S. will be successful?

A: As with any business deal, understanding the market, crystalizing the risks, and being clear about acquisition goals are among the factors critical to success, but a cross-border investment requires a higher level of attention to both market understanding and risk management. Whether the deal achieves its objectives – either in terms of return on investment, improved access to customers or markets, or acquiring intellectual property or manufacturing capabilities – depends on how well the initial due diligence and risk management are carried out with the client's longer-term objectives in mind.

U.S. M&A has become increasingly standardized; the effectiveness of the acquirer's due diligence and ability to integrate acquisition targets has thus become more critical to the deal's eventual success. Effective due diligence means identifying risks and accounting for them in deal documents or mitigating them after the closing. These can cover everything from the growing array of environmental liabilities through to potential tax exposures that arise through certain forms of deal structure.

By collaborating effectively and dividing tasks, the team avoids due diligence gaps. They can identify and explain risks and U.S. accounting, business, and legal concepts to buyers in a well-organized and easily understandable way. When risks are identified, these are quantified (where possible) and recommendations made on how to mitigate them effectively through risk allocation and offset in deal documentation or after closing.

The United States is highly competitive globally as an investment destination. AT Kearney's 2013 FDI Confidence Index found that the U.S. tops the league of countries with the top FDI prospects globally as ranked by 302 companies in 28 countries. This is the first time the U.S. has held the top place since 2001. And while competition for prime investments will remain keen, the U.S. market is continuing to expand.

Philip Stamatakos
Partner, Chicago

Legal and Compliance: The Twin Pillars of Process

Legal and compliance issues are seen as the primary risk factors by market participants. An overwhelming 88% of respondents consider legal issues critical when dealing with cross-border M&A. This view is hardly surprising given how the market is evolving. Not only is there a growing number of potential investment targets that have operations covering multiple jurisdictions, but there is also an increasing number of countries that each have their own rigorous (and ever-expanding) compliance demands. There are also issues arising in areas such as financial reporting through the differential treatment of balance sheet items.

Our respondents note that the number of steps required to take a transaction through to completion appears to be steadily escalating. Fortunately, good navigation and risk mitigation are both effective and available.

88%
of respondents consider legal issues critical when dealing with cross-border M&A

Much of the concern around compliance centers on the developed countries and in particular the U.S., whose regulators established early on their willingness to view their remit as extraterritorial.

> **"In the U.S., the amount of preparatory work you have to do for antitrust and regulatory purposes is getting higher and higher."** – General Counsel

Over the years, this rigor has been adopted by an increasing number of other jurisdictions, from the EU at a regional level to individual countries such as China, India, Australia, the UK (via its adaptation of the EU Anti-Bribery Act) and so on. In each of these countries, there are varying levels of proscription and enforcement.

> **"China is changing. The environmental regulation is getting thicker and more stringent because the country has decided to tackle these subjects."** – General Counsel

Overall, for our respondents, regulatory and corporate compliance risks outweigh all the other categories and are the primary source of concern for investors. They viewed the differences from one country to another as a particular challenge.

Many investors also cited tax, employment law, and IP issues as critical to the M&A process as they are a source of potential challenges. Over time one can see this concern reaching further into areas such as environmental issues, corporate social responsibility, and gender equality.

High Risk Areas to Probe During Due Diligence
for Cross-Border M&A

1. Identify anticorruption and fraud compliance risks
2. Understand local employment laws and labor union concerns
3. Get good advice about potential environmental issues
4. Evaluate the impact of multi-jurisdictional financial regulations and accounting standards
5. Analyze cyber security risks including management of data, systems, and third-party suppliers

Corruption Risks in M&A: Overreaction Impedes, Strategy Succeeds

Q: With companies facing numerous national and regional anticorruption regimes to navigate when contemplating a cross-border M&A transaction, how do they manage these while keeping the dealmaking process on track?

A: With the World Bank estimating that corruption is three percent of the global economy, fighting bribery is an increasingly high priority for U.S. and European enforcement agencies and has become a significant issue for buyers contemplating a cross-border M&A transaction.

Purchasing an entity engaged in corrupt practices could significantly reduce the value of the acquisition, as well as expose buyers to significant regulatory penalties. Ancillary costs such as legal fees associated with internal investigations and defending against shareholder derivative suits can run into the tens of millions of euros and consume significant management attention. The mere reputational risk of being associated with corrupt activities can jeopardize future business opportunities for multinational corporations or global investment funds.

Yet, overreaction to these corruption risks can significantly impede cross-border transactions. Corruption risks could impact the value proposition of the deal, but rarely, if ever, should they dictate its timing. Only by taking appropriate pre- and post-closing measures, in coordination with anticorruption counsel aware of the strategic imperative of the deal, can one effectively navigate the multiple anticorruption enforcement regimes and emerge through the dealmaking process on track and protected from anticorruption risks. Fortunately, by conducting rigorous diligence, negotiating strong compliance-related contractual provisions, and implementing robust policies and procedures upon closing, acquirers can manage, if not eliminate, the risk of successor liability, financial loss, and reputational damage.

Anticorruption risk topped the list of concerns for respondents in the area of legal and compliance for cross-border M&A

The broad overlap between the conduct prohibited under U.S. and most European anticorruption regimes means that regulators will have little sympathy for companies claiming ignorance of corruption risks. While corruption may pose challenges for cross-border transactions, incorporating anticorruption evaluation early into the deal timeline and throughout the process will minimize the risks and maximize the likelihood that the anticorruption process will assist rather than hinder the successful completion of a strategic deal.

Nathaniel Edmonds
Partner, Washington, D.C.

Corruption & Fraud

More stringent oversight from government regulators and courts around the world has increased the pressure on companies to understand and comply with all the different laws and regulations applicable to transactions (buy-side, sell-side, and extra-territorial laws such as the Foreign Corrupt Practices Act [FCPA] and the UK Bribery Act). Because anticorruption and fraud is a dynamic area of law, investors need to be on the lookout to ensure they are up to date with ever-changing legislation.

Complying with the more stringent laws and regulations has significant cost implications for companies today. Some companies even prefer to avoid certain transactions due to the high risk levels involved.

"Overall, compliance issues have stopped us from closing a deal for fear of violating regulations. We'd rather play it safe and avoid pursuing the deal than take unnecessary risks." – Investment Banker

"When a large company is under the scrutiny of the U.S. regulators, the higher level of complexity (when engaging in cross-border transactions) is raising the acquisition costs to a level that erodes medium-term ROI."
– General Counsel

Throughout our interviews, investors highlighted anticorruption compliance as an issue, especially FCPA compliance, which has given rise to more thorough due diligence processes to better mitigate risk. The multimillion-dollar fines levied against European institutions for rule breaking have certainly drawn attention to the increasing severity of attitude on the part of U.S. regulators.

Some of our respondents commented on the impact of U.S. extraterritorial reach related to compliance issues, most notably the fact that any previous FCPA violation, even if unknown at the time of purchase, is inherited by the corporate buyer. This is seen as having an important impact on the length and complexity of the purchase transaction.

"On the one hand you have countries with a high degree of corruption and little to no control, and on the other hand you have the extraterritoriality principles of the U.S." – General Counsel

It is important to note that other countries have started to tackle corruption and bribery issues with increasing vigor. Some 40 countries are currently signatories to the OECD Anti-Bribery Convention. In addition, the UK, China, Brazil, and Canada have all enacted their own anti-bribery laws. There is also a European Union Anti-corruption Act.

Brazil's anticorruption law came into effect this year. It imposes civil and administrative liability on corporations, a shift from the previous regime under which only individuals could be punished. Under the UK Bribery Act, "failure to prevent bribery" can lead to prosecution of a foreign company doing business in the UK even if the bribery took place outside the UK, and regardless of whether the act was committed by the company or the company failed to report an act committed by a third party. Unlike the FCPA, the UK Bribery Act does not distinguish between a facilitating payment and an unlawful bribe.

40
countries are currently signatories to the OECD Anti-Bribery Convention

"Compliance matters are ever-present in the UK; the anti-bribery act compels you to report any violation, otherwise you can be entangled in an investigation as an accomplice." – General Counsel

Chinese Government Pushes for More Inbound FDI

Q: What has been/will be the impact on inbound FDI, following the most recent round of financial reforms?

A: There has been a marked slowdown in FDI into China over the past 12 months, at a time when the country is introducing a series of important reforms to capital and investment markets. The pattern of inbound investment into China has been affected more by changes in the global economy and the sluggish economic growth in some of China's key trading partners and less by China's recent round of financial reforms.

The Chinese government is making a determined push in certain key sectors: energy, environmental sciences, advanced manufacturing, consumer products, healthcare, Internet, and business services. There is, as well, a longstanding commitment to developing the services sector and to moving Chinese industries up the value chain – two objectives that have been critical to the national strategy for a number of years.

In the first seven months of 2014, inbound investment was dominated by investors from the Asia-Pacific region, including Hong Kong, Taiwan, Singapore, South Korea, and Japan. The dominant European investors were from Germany, the UK, France, and the Netherlands. Their combined investment hit US$66.8B, accounting for 94% of total FDI into China. Investment from the UK and South Korea grew at the fastest pace, rising 61% and 32%, respectively, while Japanese investment declined in the same period, reflecting a politically tense period between the two countries due to territorial disputes.

However, an example of the Chinese government's influence over inbound investment is the increase in investments in the services industry by 11.4% to US$39.7B during the first seven months of 2014, while investments in the manufacturing industry fell 14.3% to US$25.2B. With the government's strategy beginning to yield benefits, the financial reforms should begin to reshape longer-term FDI patterns.

David Wang and Jia Yan
Partners, Shanghai

42%
of respondents stated that China was the most challenging country in which to do a deal

In India, the government has introduced more stringent anticorruption regulations over the past few years to increase transparency and criminalize bribery and corruption. However, it makes foreigners buying Indian companies take full responsibility for any prior violation of the law and be held accountable for any unsolved litigation procedures. Due diligence is clearly the key to mitigating risk.

> **"In India, even in the case where you acquire assets, you are still accountable for any unresolved litigation procedure, which greatly increases the legal risks borne by the acquirer."** – General Counsel

The Chinese government is undergoing a transition at several levels including the introduction of some important market reforms. As part of this, there is a push for greater transparency and a toughening of existing regulations, especially in anticorruption. Although there is no single "law" as such, there are rules in a number of areas and several agencies which enforce them. Recent high-profile cases involving Western companies that have run into difficulties have heightened concern among Western investors. Given the complexity of the Chinese market and the importance of understanding the correct way to navigate it, the advice of experts with deep local knowledge is critical at the planning and due diligence phases right through to deal completion.

> The Chinese government is undergoing a transition at several levels including the introduction of some important market reforms

Best Practices in M&A Due Diligence Regarding Anticorruption

Pre-Close Due Diligence Objectives
- Evaluate FCPA/anticorruption risk in acquiring the target
- Develop a refined due diligence and integration plan
- Identify personnel to serve as diligence and integration leads
- Develop plans for disseminating codes of conduct
- Demonstrate reasonable efforts to conduct due diligence

Upon Closing – Immediate Integration Efforts
- Focus on policy and procedure alignment
- Provide anti-bribery and corruption training to newly acquired personnel
- Obtain signatures by agents and third parties on new contracts incorporating FCPA representations

Post-Close Steps
- Obtain certifications from key market personnel
- Gain understanding of anticorruption policies
- Gain awareness of any potential violations
- Issue market questionnaires, broken down into tiers based on perceived market risks
- Review information going back five years
- Assess basic versus high risk questionnaires
- Send out document requests to the markets and above-market equivalent functions
- Conduct auditing and financial testing
- Interview senior management
- Remember: proper planning and execution will affect prosecutorial discretion

Three Essential Antitrust-Related Dealmaking Strategies

Q: With companies facing so many national and regional antitrust regimes to navigate when contemplating a cross-border M&A transaction, how do they manage these while keeping the dealmaking process on track?

A: While only the U.S. had merger control laws prior to World War II, today more than 120 nations do – and these laws are not mere regulatory checkboxes. International competition regulations have become domestic policy tools frequently employed to further national interests in a global economy. While those interests vary, multinational deals frequently trip over international trade interests implemented through competition regimes. Here are three tips dealmakers must consider:

1. **Expect national political issues to arise in multinational merger clearance proceedings. Particularly in new economies, authorities can hold up deals for reasons that have nothing to do with merger control. This is most evident in China's reviews of non-China company transactions, where authorities have used trustees to learn foreign businesses, transfer foreign assets to state-owned enterprises, and relocate assets within China. However, the U.S. Federal Trade Commission has likewise used merger transactions to resolve privacy or competitive practices concerns regarding one of the merging parties.**

120+
antitrust regimes established internationally

2. **Know the landscape and the timing. Most of the world follows the European merger control model, rather than the U.S. agencies' harder-focused economic approaches. The EU issues a decision when it clears a transaction, giving the rest of the world grounds to adopt, and making it more difficult to depart from, that decision. The EU may now be the most important authority in terms of sequencing clearance and decisions about clearance.**

3. **Pay attention to antitrust risk shifting up front in a transaction. Given the minefield in a multijurisdictional merger clearance matter, the antitrust (and adjacent political) questions must be assessed early, allowing the parties to set expectations for the deal timetable and address the antitrust clearance risks contractually. Gone are the days when antitrust merger clearance was an afterthought to the deal.**

Finally it is important to note that firms handling the antitrust and competition aspects of multinational transactions have rapidly gained a distinguished body of experience to help advise clients in this difficult area. Quarterbacks are critical in this arena, and attempting to string together local counsels for the regulatory merger clearance strategy is like trying to link exit ramps to form a highway. It won't work. Antitrust risk must be managed singularly and strategically at the senior dealmaker and international adviser level.

Michael Cohen
Partner, Washington, D.C.

Antitrust and competition laws must be taken into account when considering a cross-border deal. There are now more than 120 antitrust regimes established internationally – quite a wide net to catch any potential deal.

> **"Antitrust issues are critical and are treated as early as possible during the strategic planning stage."** – General Counsel

The EU Commission, the U.S. Department of Justice (DOJ) and Securities Exchange Commission (SEC), China's NDRC (which is one of its three antitrust bodies), and Brazil's Conselho Administrativo de Defesa Econômica (CADE) can stop or stall a deal if they deem it necessary. As international regulators accumulate increasing power, respondents recognized the importance of including the agencies in their M&A strategy.

> **"One difficulty is the fact that you have to deal with multiple regulators which are either uncoordinated or uncooperative or opaque. This makes the whole process unpredictable."** – General Counsel

In managing exposure to U.S. antitrust law, it seems clear that all parties in the U.S. must tread carefully when executing strategic transactions. 2013 saw continuing aggressive enforcement in U.S. merger control. Careful analysis, prudent document management, and conservative risk assessment are essential.

The Federal Trade Commission and DOJ Antitrust Division maintained a heightened level of enforcement, particularly in evaluating mergers involving high technology and health care. These areas require a balancing of complex policy considerations that can have different, though not always contradictory, objectives. In the intellectual property arena, both agencies have continued to tread carefully, with a tendency to impose less onerous conduct remedies in place of structural fixes when aggregation of IP rights creates potential anticompetitive issues.

Respondents named competition/antitrust as one of the top two biggest areas of legal risk in cross-border M&A

> **"In the US, these last few years have seen regulations evolve in a dramatic manner; they have become more stringent and extraterritorial. The authorities are doing things at their own pace and according to what they want or don't want. This has prolonged the process and resulted in an increase in costs."**
> – General Counsel

Historic Time for Key Latin American Countries Means M&A Opportunities

Q: Which areas of the economy will see the greatest revival of M&A activity? How will the new government influence this? Do you see a return of private equity to Brazil?

A: M&A and capital markets activity in Brazil in 2014 has been in a holding pattern. The revival of M&A in Brazil will be strongly influenced by the outcome of general elections held in October 2014, which were underway as we went to press. The leading contender, Marina Silva, is well respected for her ethical and environmental credentials and is offering a fairly non-interventionist economic policy platform. Regardless of the election results, the state of the Brazilian economy will be another important factor. Generally speaking though, markets are expected to stabilize and we could see more M&A activity and international debt and equity issuances after the election results.

The potential for M&A in Brazil reflects the country's size and regional importance as well as spinoff from high-profile Olympics and infrastructure projects in the pipeline. From 2014-2016 Rio de Janeiro alone is estimated to receive US$98.6B in investment.

Under existing plans, investments are expected to be largely financed by Banco Nacional de Desenvolvimento Econômico e Social (BNDES), the Brazilian Development Bank, and by local markets, but following the election the new government may prefer to see less subsidized lending and a greater reliance on commercial criteria in determining investment. This would level the playing field to some degree for non-Brazilian players and may support greater foreign investment and involvement.

There is already interest in the private equity sector. DealBook reported that private equity fund-raising this year already surpassed the US$2.4B raised in all of 2013. Several large firms have come back into the market and others are looking to enter. Aside from infrastructure, investors are interested in the pharmaceutical, agricultural, and energy sectors.

Taisa Markus
Partner, New York

Q: How have the government's planned reforms changed investor attitudes in Mexico? Have you noticed a shift in areas of interest among the investment community? Are there new players coming into the market?

A: Inbound M&A activity into Mexico stands at a historic precipice. Recently enacted energy reforms, for instance, are widely anticipated to result in hundreds of billions of dollars of investment pouring into the country in the next few years. Exploration and development activity will need to be funded both onshore and offshore. There will also be a huge need for infrastructure, including pipelines and rail/road transport, to accommodate the anticipated increase in oil and gas production. Numerous joint ventures are already being formed with local operators, and toe-hold stakes in many Mexican oil and gas services companies have already been purchased.

A less well-recognized but very important reform passed at the same time concerns the electricity industry in Mexico. That industry was likewise dominated by one state-owned enterprise. However, private enterprise is now permitted to participate. Given the capital-intensive nature of this industry, it is anticipated that thermal power generation plants and the infrastructure associated with the generation and transmission of electricity will need to be funded primarily through external sources, leading to additional joint ventures and M&A-related activity.

Even prior to the recently enacted reforms liberalizing energy and electricity investments, Mexico has been experiencing a boom in inbound M&A activity. While the country has abundant natural resources, including copper and silver, the real growth story has been driven by the emergence of a rapidly developing middle class whose spending has fueled M&A activity across consumer sectors. For instance, there has been significant M&A activity in real estate, especially involving shopping malls and hotels. Additionally, there has been inbound investment in restaurants, consumer-lending businesses, and low-income housing. These powerful consumer-driven forces, together with the recent legislation allowing for investment in the energy and electricity areas for the first time, should power inbound M&A investment for many years to come.

Michael Fitzgerald
Partner, New York

Brazil's antitrust authority CADE was cited by respondents as being difficult to deal with since the new competition law was enacted in 2012. The law made the process much more complex and prolonged and introduced a pre-merger review. This includes a change in the thresholds of notifiable transactions and a time limit of 240 days for the antitrust merger review, among other obligations.

> **"Dealing with the CADE can be complicated, expensive, and lengthy, with some aspects of the process lacking transparency. Furthermore, the closing of the deal is pending upon the regulator's approval, which was established very recently."**
> – General Counsel

Brazil's antitrust authority was cited by respondents as being difficult to deal with since the new competition law was enacted in 2012

In Europe there is a two-layer antitrust and competition system: first there are national competition authorities, and then the EU Competition Commissioner. If the annual turnover of the proposed combined businesses exceeds specified thresholds in terms of global and European sales, the European Commission must be notified of the proposed merger and must examine it. Below these thresholds, the national competition authorities in the EU Member States may review the merger.

These rules apply to all mergers regardless of where in the world the merging companies have their registered offices, headquarters, activities, or production facilities, on the basis of any potential impact on EU markets. The EU Commission has the right to stop deals, or in some cases the right to require the divestment of certain branches or parts of a company before permitting the deal to go ahead.

China has three agencies with responsibility for antitrust issues, the Ministry of Commerce, the National Development and Reform Commission (NDRC), and the State Administration for Industry and Commerce (SAIC). There appears to be considerable competition between the latter two. The NDRC currently seems to be somewhat on the ascendancy.

> **"Uncovering and understanding the regulatory environment is always complicated. More often than not, we don't understand the relationships between different government agencies and how they interact with some companies."**
> – Private Equity Partner

Respondents Name
Top Five Cross-Border Legal Challenges in Brazil

1. Corruption Risk
2. Antitrust Regulation
3. Complex Tax System
4. Open Litigation Cases
5. Employment Issues

Spotlight:

Outbound M&A in Asia

Experts Forecast Increase in Activity in Key Markets

Q: How has the pattern of Chinese outbound investment changed over the past 12-18 months? Looking ahead, do you see further shifts in interest, both in industry focus and geography?

A: We expect to see increasing Chinese outbound M&A in 2014-15, following a robust 2013 when outbound investment exceeded US$100B for the first time. We expect to see two key trends developing: private companies will become more active than state-owned enterprises (SOEs) and investment targets will become more diversified. In general, we believe Europe will be more attractive to Chinese investors than the U.S. because of pricing and regulatory considerations.

In the European market, we expect to see a change in the traditional deal structure for real estate deals, where Asian investors establish joint ventures with local operators. The Asian investor traditionally brings the bulk of the capital, while the local partner brings the local expertise and some capital, sources the transaction, and manages the asset through disposition. This is evolving. Asian investors now often expect more control over operational and long-term strategic matters.

The Asian investor's viewpoint is that contributing the majority of capital to a project should translate to control, whereas the operator partner's viewpoint is that they have the expertise to manage these types of assets and should be allowed to do so. This is often the most difficult issue to bridge in these joint ventures.

Regulatory obstacles and post-closing integration issues still confront Chinese investors. But in addition to a growing number of jurisdictions with regulatory barriers, investors are increasingly more concerned about international taxes. However, it is the ability to bridge cultural differences between Asian and Western companies that remains critical to longer-term business success.

David Wang and Jia Yan
Partners, Shanghai

Q: How has the pattern of Korean outbound investment changed over the past 12-18 months? Looking ahead, do you see further shifts in interest, both in industry focus and geography?

A: Outbound M&A activity noticeably slowed this year. Several factors influenced this, such as the higher overall valuations in many of the major markets, especially with U.S. indexes at their current highs, but there also seems to be a sharper focus on domestic investments and restructurings. For example, Hyundai Motor made headlines this year with an astounding US$10B real estate investment in Seoul, while Samsung Heavy Industries combined operations with Samsung Engineering in a US$2.5B merger.

We believe the pace of outbound M&A should resume in the next six to 12 months. We are very bullish on Korean outbound M&A and see it becoming much more assured and focused. This has a lot to do with the growing internationalization of Korean corporates and the sophistication of Korean corporate dealmakers. Korean corporations are showing the highest level of expertise in making foreign acquisitions and getting deals done. In addition, they have the right DNA to excel at quickly integrating acquired businesses, as adaptability and adroit management during difficult times have become hallmarks of successful Korean companies. And we are not just talking about the big conglomerates like Hyundai, LG, and Samsung, but in fact we are beginning to see this level of sophisticated deal making among the top 50 or 60 corporations.

In almost every sector – consumer, transportation, electronics, industrials, chemicals, and financial – Korean companies more and more will look outward for geographic growth, for new revenue sources, and for filling gaps in their product offerings and technologies. This will be Korea's story going forward, as it continues to develop into one of the global economic leaders.

Daniel Kim
Partner, Seoul

Q: How has the pattern of Japanese outbound investment changed over the past 12-18 months? Looking ahead, do you see further shifts in interest, both in industry focus and geography?

A: Japanese corporations must aggressively expand abroad to counter the dramatic shrinkage of their domestic markets. Southeast Asia (excluding China) is a favored target for this expansion, because high market growth can be reasonably expected in the next decade, given the region's demographics, and because of Japan's strong geographic connections relative to other developing countries.

However, the U.S. also remains an attractive target, particularly where there are cutting-edge technologies on offer, as well as access to strong global market channels and/or high brand value. Post-merger integration is the key to success in all such external expansion, and this remains a challenge for Japanese acquirers. However, compared to a decade ago, Japanese corporations have learned much from their own and their peers' experiences. Many Japanese corporations have seriously pursued globalization, which should help reduce cultural and language barriers. This should enable us to see more examples of successful outbound M&A by Japanese corporations going forward.

Areas of focus include Latin America, inclusive of Brazil, which is getting a lot of attention from Japanese companies these days, as well as countries on Europe's periphery such as Turkey and the central Asian republics that were once part of the former Soviet Union. All these countries are being looked at for their market potential. In terms of industries, there is an intensifying focus on foodstuffs – both drinks and more general consumer goods. These tend to draw a lot of attention as was seen in the acquisitions by Suntory and just recently Ajinomoto. We have also seen a lot of pharmaceutical opportunities in conventional European markets as well as in the U.S. and these remain in very strong demand.

Toshi Arai
Partner, Tokyo

Japan and Korea Governments Push to Increase Foreign Direct Investment

Q: Which areas of the economy do you think will benefit from the Japanese government's plans to increase foreign direct investment?

A: Despite Japan's high profile as a trading nation, inbound direct investment into Japan is amongst the lowest in the OECD at around 3.5% of GDP. The government would like to see this increase substantially and the policy is supported by the weakening of the yen on international markets. Earlier this summer, the government announced that it would like to see a tripling in the value of projects financed through public-private partnerships over the next eight years and the doubling of the amount of foreign direct investment Japan attracts, to approximately US$345B by 2020.

Inbound investment has seen growth in deal activity across the board, but especially in the manufacturing and technology sectors, and with companies from within and outside the region. As with other countries in Asia, buyers from the region itself now dominate: they represent 66% of completed inbound transactions in Japan since 2010, according to a recent Deloitte study. European buyers were led by France, Germany, and the UK. American players coming into this market have been targeting Japanese corporates by way of equity acquisitions. The Japanese market has seen a major revival in interest in private equity investment and in the SME sector.

FDI investors are also tapping into real estate opportunities in the current investment climate, not so much through the purchase of underlying real estate assets, but through the purchase of corporate assets. The Tokyo real estate market is the third most heavily traded internationally, drawing institutional investors from around the world. The upcoming Olympics is also expected to give a longer-term boost to the property sector, though its overall effect, as other host nations have found, can be somewhat mixed.

Toshi Arai
Partner, Tokyo

Q: Given the Korean government's interest in increasing domestic investments, what types of inbound transactions are getting done?

A: FDI into Korea reached US$12B last year, the highest level since the mid-2000s. Meanwhile, outflows of around US$30B mean the country ranks behind only China and Hong Kong as the region's biggest outbound investor. The government, like others in the region, would like to encourage the growth of domestic demand and has introduced measures to make it easier for foreign investors to come into the market – for example, last spring it eased the regulation for investors in listed companies and for listed companies that were merging, as well as providing tax and other incentives to support domestic M&A. Several companies in industries that have not fully recovered from the global financial crisis, such as shipping, shipbuilding, and certain financial sectors, face restructuring, and foreign and domestic private equity firms have been a welcome source of financing and investments.

It might not be a coincidence that there has been a significant uptick in the number of inbound deals this year, including Tyco's US$1.9B sale of ADT Korea to Carlyle, and several exits by private equity firms, such as KKR and Affinity's US$5.8B sale of Oriental Brewery back to InBev. Several private equity firms have raised new, sizable Asia-dedicated funds for investment and Korea is seen as a "safer," more developed jurisdiction for seeking lower-risk targets. However, the competition has gotten a lot stiffer as well.

There are some characteristics particular to the Korean economy: one of the main sources of investment flows is China, arguably its most important trading partner for imports and exports, along with the U.S. This exposes Korea to the volatility of China's economy and underlines the importance of developing a robust export and business base beyond the region.

Daniel Kim
Partner, Seoul

Employment

Employment risks are complex in nature because employment law is unique to each jurisdiction, even within the EU. This is an area where respondents expressed their heavy reliance on outside counsel during the due diligence phase of an acquisition.

One area of particular focus is the influence and role of the work council and union-related issues as M&A transactions give rise to consultation obligations. One key task of specialist counsel is to review the employment documentation of a target company's employees worldwide. This includes reviewing benefits arrangements, non-compete-, and confidentiality agreements, as well as union-related issues and pending litigation and layoffs within recent years, to identify potential liabilities.

Key Employment Challenges for Cross-Border M&A

1. Structure of the transaction (asset vs. share deal), impact on employee transfer, impact of consultation obligation
2. Work councils, trade union, and information consultation obligations
3. Impact on benefits including equity plans, pension and retirement benefits
4. Confidentiality, protection of IP, and post-termination restrictive covenants
5. Post-transaction harmonization exercise

Intellectual Property

Respondents were also alert to vulnerabilities in the area of intellectual property. Not only is there a heavier IP component in most transactions – whether that entails patent portfolios, customer databases, or other forms of data – there has also been a sharp increase in IP-related litigation that has become a very evident concern in corporate boardrooms. Although IP is viewed as critically important in high-tech deals, it is now a pervasive component of every sector of the economy, from healthcare to heavy industry. To avoid costly IP litigation, respondents are focusing their due diligence on evaluating the value of targets' patent assets and portfolios, evaluating the status of licensing agreements, and conducting full-scale risk assessment (including a review of current and pending litigation).

> **"The risks of having to deal with litigation cases are very high; it's often a major issue."** – General Counsel

Tax

Companies have a natural commercial wish to minimize their tax bills, just as governments have a natural political wish to maximize their revenues. Between the two is a very active regulatory dialogue and in certain countries, such as Brazil, tax litigation is especially prevalent.

> **"Brazilian companies have hundreds of open litigation cases (both tax and employment law)."** – General Counsel

Some respondents have added more checks and balances to the due diligence process to minimize risk in this area, while continuing to consult with both international and regional counsel.

Final Thoughts

During the first half of the year, cross-border M&A deal value between regions soared to the highest level since 2007. Companies are recognizing that a well-planned merger or acquisition can win time and business. As a result, it is likely we will continue to see an increase in activity in the foreseeable future.

After the financial crisis we accepted a new reality built on cautious optimism, but we are finally able to let go of some of that caution. There is now opportunity for players who are bold and nimble to gain great reward. Yes, the risk can be great, as we have shown here, but with innovative planning and risk management, the questions “where, when, and how” become easier to answer.

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