



C L I F F O R D
C H A N C E

Our Insights into
Global M&A Trends 2016

CLIFFORD CHANCE

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For the latest insights and intelligence to support your M&A decision-making, visit our online resource and follow us on LinkedIn

The Clifford Chance Global M&A Toolkit
Clarifying the complex world of Global M&A
www.cliffordchance.com/GlobalM&AToolkit
www.linkedin.com/company/clifford-chance-global-m&a-toolkit



M&A – The Global Picture

1

M&A momentum set to continue – but prolonged market turmoil could impact the positive outlook

- **2015 was a bumper year for M&A** – Global M&A value has reached record levels, with over US\$ 4.78trn of deals announced at year end 2015, making 2015 the best year ever for M&A. However these record levels have been driven by several mega-deals (including AB InBev/SABMiller, Pfizer/Allergan, Kraft/Heinz), which mask an underlying decline in deal volumes for the second half of the year.
- **US buyers leading the market** – North American buyers make up just over half of total global M&A activity (by deal value). Since the financial crisis, US boards had been inhibited from launching major or transformational transactions but now perceive inaction as riskier than pursuing opportunities while they are available. This, combined with favourable financing conditions and excess cash that cannot be repatriated without adverse tax consequences, is driving large and mega M&A by US companies.
- **Inversions remain on the M&A agenda** – Mega-deal corporate inversions, particularly in healthcare (e.g. Shire/Baxalta) and consumer goods (e.g. Burger King/Tim Hortons, Coca-Cola (bottlers)) remain part of the M&A landscape. These deals see US companies slash US corporate tax exposure by shifting the merged entity's domicile to the lower-tax jurisdiction. Legislative action limiting the tax benefits of these transactions appears unlikely given the election cycle.
- **Significant regional M&A boom in Asia Pacific** – Despite continued international concerns over the slowdown in China, Asia Pacific M&A increased 63% year-on-year. This 'mini boom' is being driven largely by intra-regional deals, with Chinese companies' continued pursuit of regional expansion and Japanese investment in the wider region (e.g. Japan Post/Toll Holdings, Mitsubishi/Olam) making a significant contribution to activity. The new trans-pacific partnership (TPP) will serve to make the region even more attractive and stimulate further activity.

“In 2015, we saw the pipeline of potential major M&A deals coming to fruition, many of which had been contemplated for some time. As companies had built cash reserves and acquisition finance conditions were favourable, we saw them begin to come to market.

However, while 2016 is expected to continue to see some high value M&A, concerns around the Chinese (and world) economy and collapsing oil and commodity prices may see caution return to temper activity once again. Increasing political tensions globally, the prospective US election and 'Brexit' uncertainties may also impact activity as the year develops.”








Guy Norman
Global Head of Corporate
Clifford Chance LLP

Global activity levels

As we move into 2016, global M&A activity is at an all-time high.

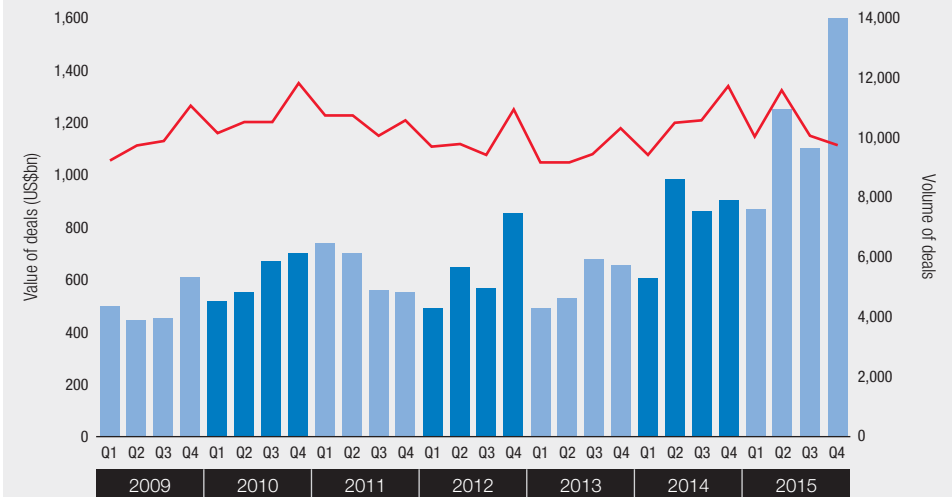
M&A activity in 2015 at a glance

	<p>Global M&A activity increased 43% compared to 2014, with deal value totalling US\$ 4.8trn (up from US\$ 3.3trn) on lower deal volumes as a consequence of the number of mega-deals this year.</p>
	<p>M&A in North America increased 58%, reaching US\$ 2.4trn. Asia Pacific also witnessed a significant increase (+63% year-on-year), with deal value totalling US\$ 1.2trn. European M&A grew by a moderate 9% to US\$ 921bn.</p>
	<p>Cross-border M&A represents 28% of total M&A deal value¹. M&A flows between the five main regions represented 19% of total global M&A deal value.</p>
	<p>TMT (US\$ 1trn) and Consumer/Retail (US\$ 885bn) sectors saw the most M&A activity (by deal value). Healthcare M&A is also a fast-growing sector (its share of total M&A increased by 2%).</p>
	<p>The private equity market was dominated by exits. The trend for sponsors to partner with fund investors continues, with many funds on the road during 2016 raising fresh capital and using co-investment as an incentive for investors to commit to new funds.</p>

Source: Thomson Reuters

¹ Pfizer/Allergan is counted as a US domestic deal by Thomson Reuters.

Quarterly Global M&A Activity by Quarter



Legend: Deal Value \$m (blue bars), Deal Volume (red line)

Source: Thomson Reuters

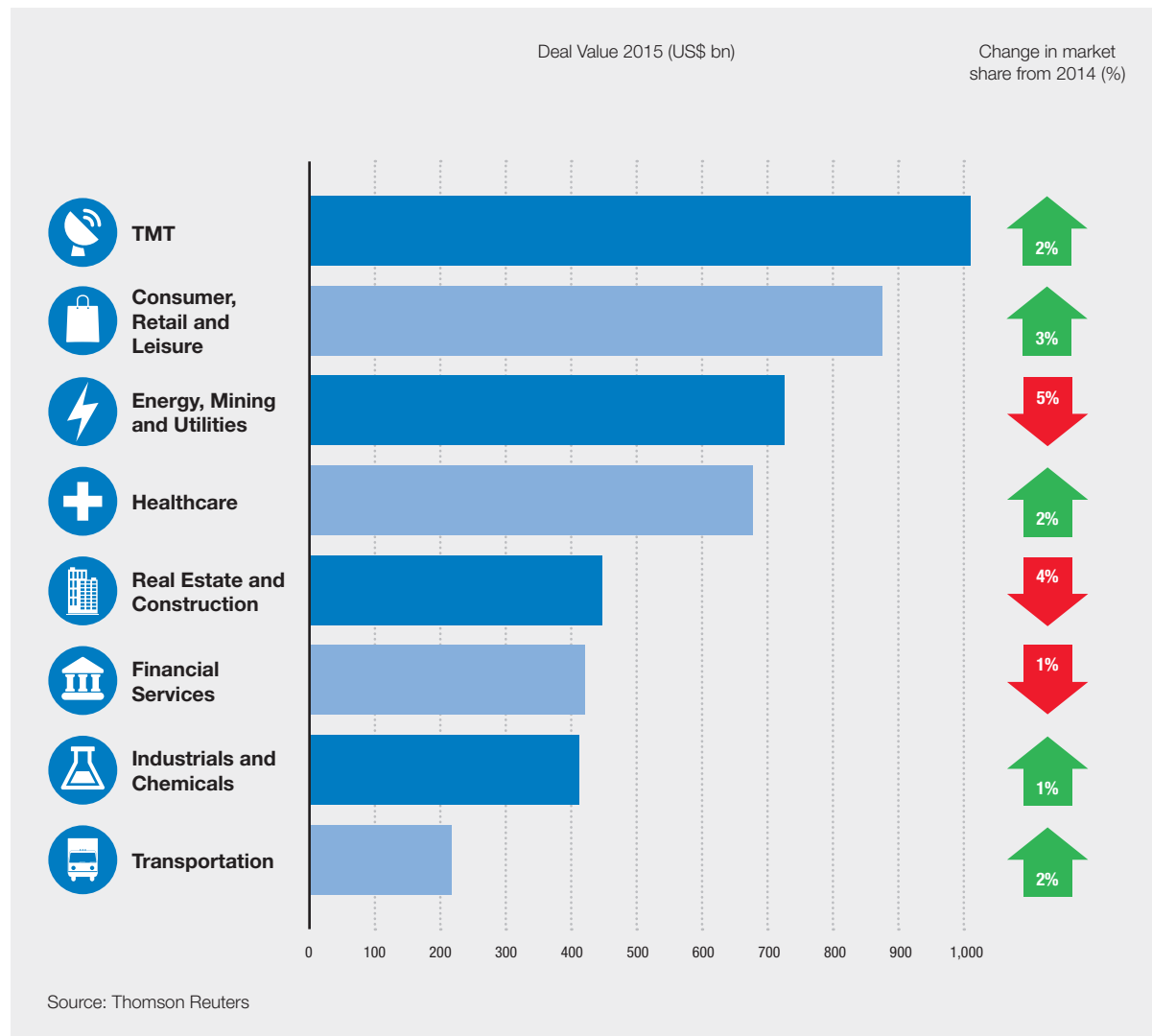
“Technology and digitisation are transforming many industries – from manufacturing to financial services and beyond – marking the onset of the so-called ‘fourth industrial revolution’. We stand ready to support clients as they adapt to these seismic shifts, and as the risks facing their businesses evolve and expand. Boards must be proactive as disruptive technologies drive extraordinary transformations in their markets.”



Matthew Layton, Managing Partner, Clifford Chance LLP

Sector overview

TMT and Consumer, Retail and Leisure sectors have seen the most M&A activity by deal value. Healthcare is also a fast growing sector while Energy, Mining and Utilities saw an increase in absolute terms but an overall decrease in market share.



“Major consolidation in the telecoms sector in Europe (e.g. Three/O2 and BT/EE) drove high deal values in 2015. We have also seen an increase in M&A for telecoms infrastructure such as towers in developed markets and we expect to see increased activity from the US and Asia into Europe for this asset class in 2016.”



Joachim Fleury, TMT Sector M&A Partner, London

“The Consumer and Retail sector reached an all-time record value in 2015 (US\$ 885bn). Several mega-deals in the consumer goods area (e.g. AB InBev/SABMiller; Kraft/Heinz; Mondelez International/D.E. Master Blenders) largely contributed to make this one of the fastest growing sectors. We expect 2016 to be as robust as 2015, especially in the Food industry where consolidation and acquisitions of innovative start-ups are likely to continue.”



Dessislava Savova, Consumer Goods & Retail Partner, Paris

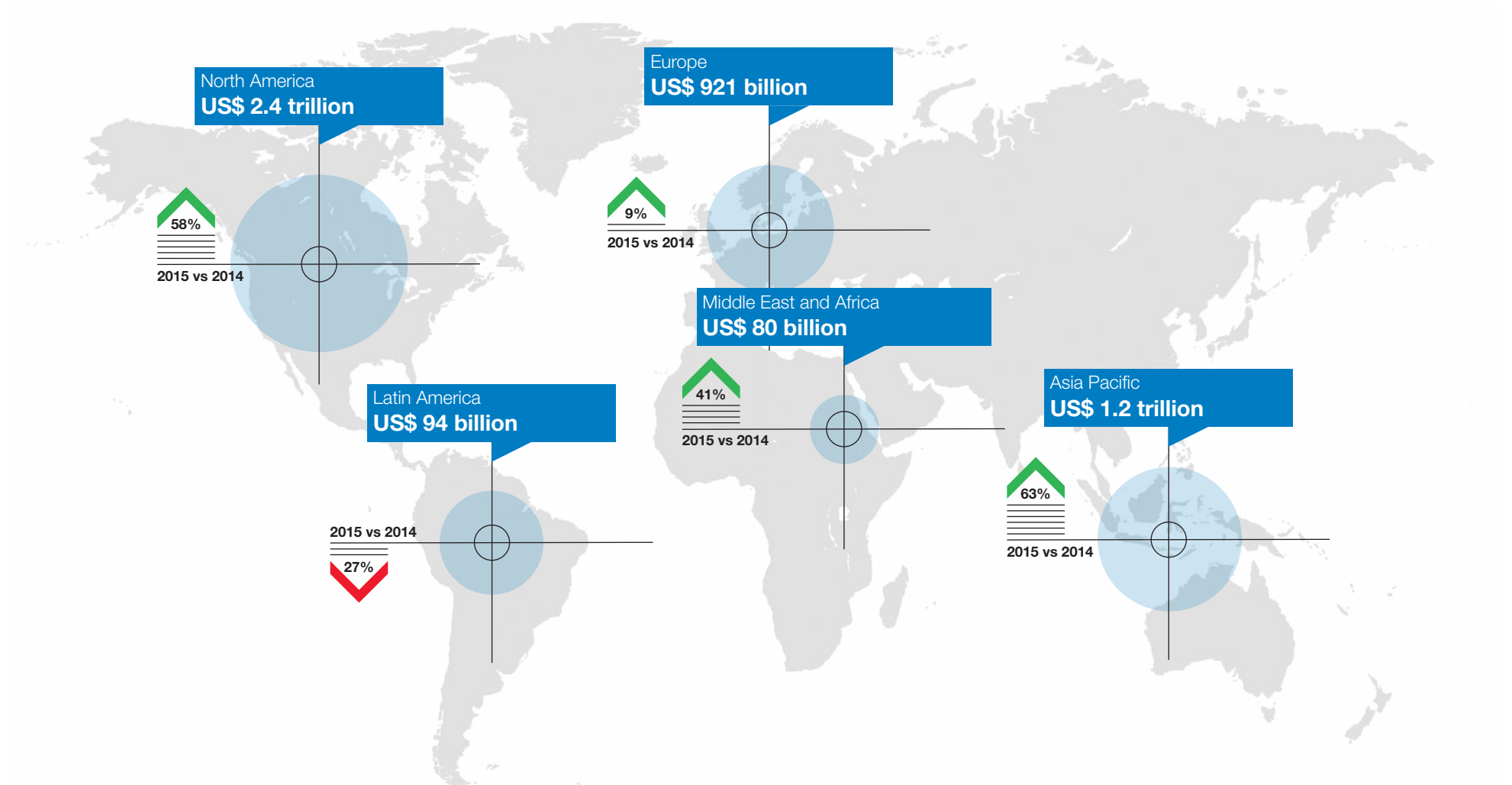
“Asia is a popular destination for many international and domestic companies looking to invest in the Healthcare sector as a result of the region’s large populations and rising income levels. In particular, Chinese outbound investment in the sector was a key trend of 2015, which we expect to continue in 2016 as Chinese companies become more confident in their abilities to integrate and manage businesses acquired in markets such as Australia, Europe and the US.”



Emma Davies, Healthcare Sector M&A Partner, Hong Kong

Regional trends

North America continues to lead the M&A market (US\$ 2.4trn, comprising over half of total global M&A deal value). Asia Pacific M&A activity rose 63% to US\$ 1.2trn, overtaking European deal value for the first time. M&A in Middle East and Africa was strong, despite regional political tensions. The European M&A market, together with the emerging markets of Latin America are faring less well as we enter 2016.



Source: Thomson Reuters

Note: Interactive maps showing investment flows into and out of each region are available on the Clifford Chance Global M&A Toolkit

Regional trends

Key trends in the different regions

US

- US M&A is at its strongest level since 2007, driven by large transformational deals. 20 deals greater than US\$ 20bn were announced in the US in 2015.
- Strategic buyers dominate US M&A activity – with cash, strong stock prices and cheap debt being used to finance deals. Private equity buyouts are only 60% of 2007 levels with a handful of deals over US\$ 10bn in 2015 (e.g. Keurig Green Mountain).
- While activism continues to be a catalyst for M&A activity and corporate spin-offs, activist opposition has impacted announced deals. Activist investor activity is growing, with activists setting their sights on larger companies and new industries.

Latin America

- There has been a slowdown of M&A activity across the region, driven by the plunge in commodity prices and economic, political and structural challenges currently facing Brazil, Chile and Peru. Hot spots for foreign investment include Colombia and Mexico.
- Inbound M&A activity is being caused by Chinese investment in Energy/Power assets and strategic European and North American players looking to grow market share in the region. Minority stake purchases and JVs play an important role, offering opportunities for new market entrants to share financial/business risk.
- Intra-regional deals are being led by Latin American conglomerates (*multilatinas*) that are relying on M&A as a growth strategy.

Europe

- European M&A has been dominated by flagship megadeals such as AB InBev/SABMiller, Shell/BG Group and Pfizer/Allergan. Hotspots for M&A activity include the UK, Ireland, Germany and Spain.
- Designer brands, knowhow and patents attract interest from the US and China (e.g. ChemChina/Pirelli).
- Lower prices and tighter liquidity conditions in the Russian market are giving rise to opportunistic M&A from Asia, particularly in the energy and infrastructure sectors.

Africa

- Whilst overall M&A levels continue to be impacted by depressed oil and commodity prices and FX devaluations, inbound activity continues to grow. Global multinationals and international private equity players are attracted by the prospect of buying growth.
- Sectors which benefit from more affluent consumers (e.g. Financial Services, Healthcare and Education) are performing well, alongside other asset classes which are fundamental for continued development (e.g. Power, Infrastructure). Favoured markets include Nigeria, Egypt and Kenya which are enjoying periods of relative political stability.

Asia Pacific

- Regional M&A boom is self-driven, fuelled by domestic Chinese M&A (US\$ 637bn), conglomerate restructurings and other intra-regional deal activity such as Chinese investment into Australia. The region's first wave of mega-deals (e.g. Cheung Kong/Hutchison, China Tower/China Mobile) drove deal values to record levels in 2015. More big ticket acquisitions are expected in 2016.
- However, reduced growth and adverse business performance in China and Indonesia and the upcoming elections in the Philippines are dampening M&A activity in some areas. Local protectionism and regulatory issues are cited as the greatest concerns for cross border deals in the region*.
- Disposal of non-core assets by multi-nationals are presenting opportunities for private equity players with dry powder (e.g. Tesco's Korean business acquired by regional fund MBK).

Middle East

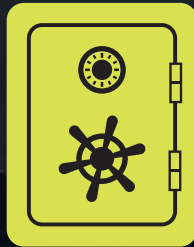
- There is significantly higher M&A activity in the region, especially in the UAE and Saudi, due to a congested pipeline and narrowing valuation gaps. Against a backdrop of lower oil prices, government-owned investment firms are primarily in disposal mode, partly to increase liquidity and/or reinvest budgets.
- Consumer goods, Retail and Leisure is the hot sector, with family-owned conglomerates seeking exits and/or private equity involvement, and further activity is expected given the anticipated relaxation of foreign ownership restrictions in the UAE and Saudi.

* Clifford Chance/FinanceAsia 2016 M&A Survey

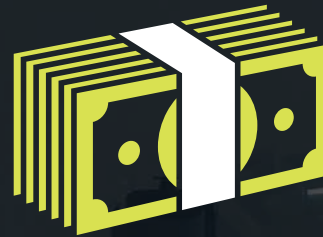
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Key drivers and challenges for M&A in 2016

+0.25%



The amount by which the US Federal Reserve increased interest rates in December 2015 – the first increase since 2006



US\$ 1.3 trillion

The 'dry powder' available to private equity funds in 2016 for deals

US\$ 75bn

The financing supporting the AB InBev/SABMiller bid – the largest ever loan financing



China fourth-quarter GDP growth – the slowest growth since 2009



+6.8%

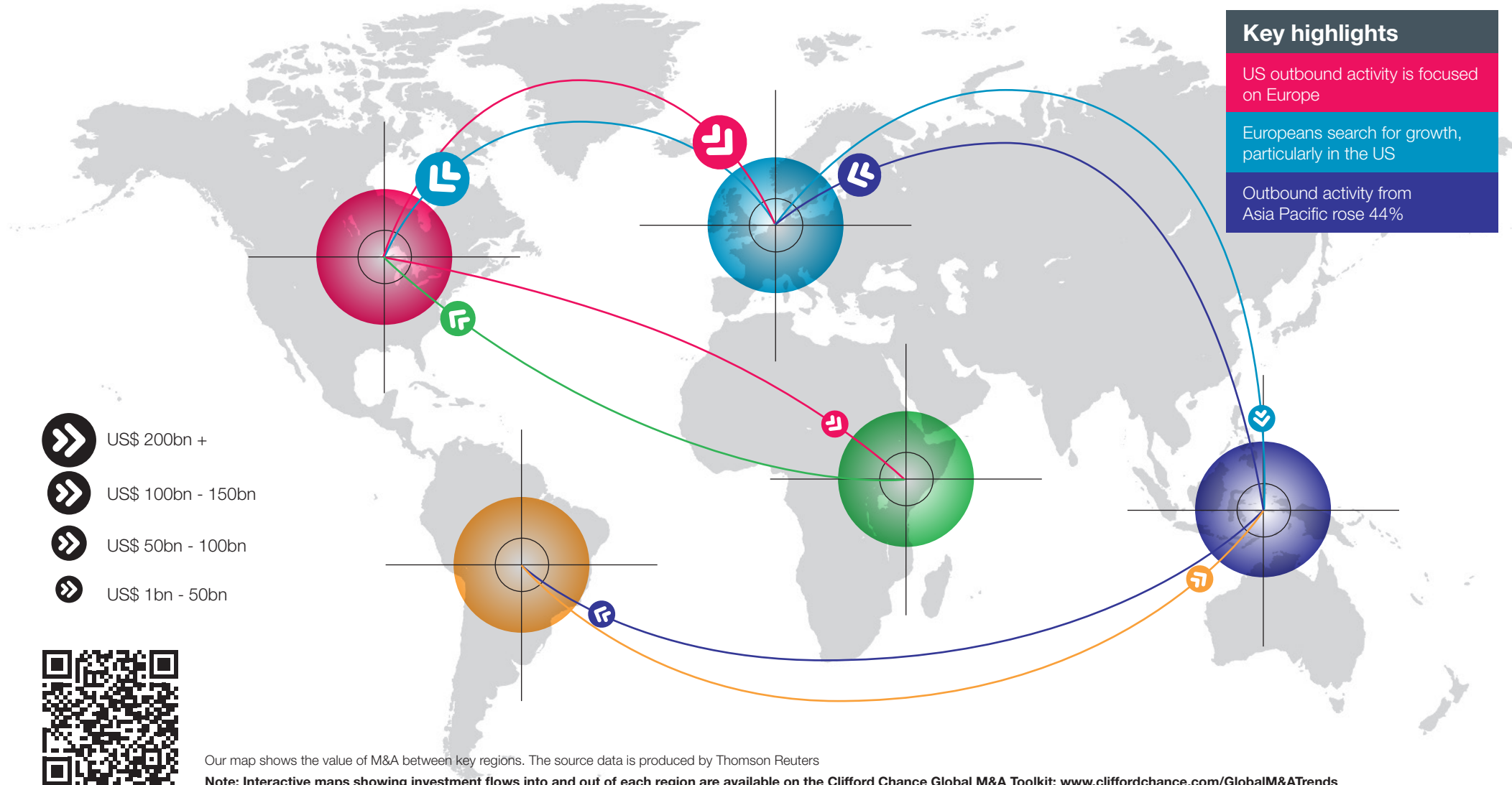
US\$ 470bn

The value of failed or 'broken' M&A deals during 2015 (a 31% decrease on 2014)



Cross border M&A

Inter-regional M&A in 2015 represented 19% of global M&A. Looking at outbound activity, we explore where interesting cross-border investments are being made, and why.



Cross border M&A

Trends, political factors and increasing developments explain and underlie the M&A flows shown on the map opposite.

US outbound

- Outbound activity from the US centered on Europe, with tax-driven deals in the Pharma and Fintech sectors (e.g. Allergan/Pfizer and Visa/Visa Europe) bolstering deal value.
- US investment into the Middle East and Africa region also saw a sharp uptick as US firms took advantage of opportunities in Israel as well as in Egypt (e.g. Ferro/Al Salomi) and Nigeria (e.g. Kellogg/Multi Pro).

Latin America outbound

Latin America M&A into Asia Pacific included deals in the Consumer sector (BRF/Golden Foods Siam), which contributed to increased deal value between these regions.

“We are seeing a steady flow of US investment by European companies. Beyond traditional drivers such as expanding into new markets, increasing revenue, growing market share and/or achieving better synergies/economies of scale, long-established European corporates are also being driven by a search for new technologies that can be used to enhance old-line businesses.”



**Benjamin Sibbett, M&A Partner,
New York**

Europe outbound

- European outbound activity increased 32% as corporate enterprises and investors search for growth outside the low-growth home economies.
- M&A from Europe into Asia Pacific increased 27% to US\$ 39bn, the main target being Japan (US\$ 21bn), as European firms invested in infrastructure (e.g. Kansai airports) and in the healthcare industry (e.g. purchasing businesses/divisions from Astellas Pharma and Takeda Pharma). European investment into China fell sharply (-69%) as a result of a combination of business performance of existing investments and increased political and regulatory intervention.
- Investment from Europe into North America increased 28%, and at US\$ 236bn this comprises the greatest of all the intra-regional M&A flows. German acquisitions in the US dropped off the radar in 2015, representing only US\$ 3bn last year.
- The historically substantial investment by Iberian companies in Latin America decreased during 2015.

Middle East and Africa outbound

Strategic investments by government owned investment/development firms (e.g. Mubadala's Spanish base metals mining joint venture with Trafigura) together with real estate acquisitions by UAE investors (e.g. Henley Holding/Exeter Property) led outbound activity from this region in 2015.

Asia Pacific outbound

- Outbound activity from the Asia Pacific region rose significantly, to US\$ 193bn (+44%).
- Investment into Europe rose, as investors targeted Russia and the UK in particular. Investment is being fuelled by Chinese companies' desire to access technology (e.g. Shanghai Electric acquiring Ansaldo Energia in Italy) as well as infrastructure (e.g. Hinkley Point nuclear plant) and real estate (e.g. Royal Albert Docks).
- The Chinese government's initiative to encourage outbound investment along the Silk Road will see more investments by China investors into central Asia and Europe.
- Interest in the struggling economies of Latin America also remained high – whilst overall inbound activity into Latin America fell, this masks a strong uptick from Asia Pacific (e.g. China Three Gorges' acquisition of Brazil hydropower plants).

“Pressure from shareholders for improved returns and the slow growth of the Japanese economy has driven Japanese corporates to seek and acquire assets outside of Japan, particularly in the broader Asia Pacific region.”



**Tatsuhiko Kamiyama, M&A Partner,
Tokyo**

US leads the market

US activity continues to drive global M&A levels, with significant rises in both domestic and cross-border inbound investment (up 62%). In addition to other strategic drivers, tax efficiencies are playing a critical role in US transactions. High-profile inversion deals and tax-driven transactions represent a significant portion of US activity.

- Tax savings can be a fundamental driver in US M&A deals. Corporate inversions are the most visible examples of US companies' focus on tax savings across a range of deals. We are also seeing other high-profile, highly tax-structured transactions, including for example spin-offs and asset sales by companies that are seeking to unlock value, often in response to pressure from activist investors. Some notable deals are below.
- The US tax landscape is continuously shifting – for inversions, and also for spin-offs, asset dispositions, and other tax-structured transactions. The shifts may reduce tax savings on some deals but also may create new opportunities going forward.

Case study: Yahoo/Alibaba

- A sale of Yahoo's 15% stake in Alibaba would result in a huge US corporate tax bill.
- When Yahoo announced a spin-off of the stake in a tax-free transaction, its share price rose 8%.
- The IRS then declared a review of such transactions. Yahoo deemed the risk of pursuing the spin-off as too high and decided not to pursue it.
- Yahoo is now considering a spin-off of its main businesses (potentially a tax-free transaction), leaving behind the Alibaba stake in the Yahoo corporate shell.



Case study: corporate real estate



- Operating companies with large real estate holdings (e.g., hotels (Hilton), retailers (Sears), restaurant chains (Darden)) have been placing real estate assets in holding companies and spinning them off to shareholders in tax-free transactions.
- The spun-off company would often obtain favourable financing terms and until recently would qualify as a REIT for US tax purposes.
- Congress passed a law in late 2015 generally denying REIT status. The spin-off is still tax-free and the financing benefits remain. Other structures may also be explored in the future to achieve similar results.

Spotlight: inversions remain on the rise

- Burdened by an excessive corporate tax regime, some of the largest US companies continue to flee to other jurisdictions. Pfizer, for instance, agreed to acquire Allergan (itself the product of an earlier inversion) in the biggest pharmaceutical merger in history.
- Inversion transactions have become increasingly sophisticated and innovative. For example, the tax structuring in the Burger King/Tim Hortons and Broadcom/Avago inversion transactions allowed different groups of shareholders to elect between different types of consideration with different tax consequences.
- The IRS has been unsuccessful in stopping these deals. Instead, the ongoing string of inversions probably will not end without legislative reform, which is unlikely to occur prior to the upcoming presidential election. Democrats generally favour stronger restrictions on inversion transactions. Republicans generally favour reforming the US tax system to reduce or eliminate tax on non-US earnings.
- Non-US sellers can participate in the US tax savings of a corporate inversion by demanding a higher sale premium.



“US corporates continue to wrestle with the US tax system, as both a major potential cost and (through reducing their tax bills) a source of big opportunities in M&A deals.”

Philip Wagman, Tax Partner, New York

Financing channels for mega-deals

Mega-deals are being driven by synergies and abundant finance. 2015's mega deals were supported by the highly liquid debt markets and costs of debt financing at historic lows. The anatomy of a jumbo financing can be complex, and financing sources and structures differ across the global M&A landscape.

Mega-deals: preparation is key

- Jumbo financings have helped facilitate mega M&A deals (such as the US\$ 75bn financing for AB InBev/SABMiller)
- Relationship banks with sufficient capacity for the deal are critical
- Depth in the capital markets for the take out is essential



"The importance of planning and timing the implementation of a deal of such size cannot be stressed enough."

Peter Dahlen, Finance Partner, London

Borrowers: demand for flexibility

- Strong borrowers are seeking more flexible terms
- US regulators express concern as leverage terms are relaxed in buoyant markets
- Liquid markets are seeing looser terms, including larger thresholds in corporate M&A and increasing flexibility for incremental, additional and replacement debt in leveraged deals



Finance: more options?

- Outbound M&A has stepped up in Asia (e.g. ChemChina/Pirelli, Mitsui Sumitomo/Amlin)
- Cash in the business and bank loans are staple financing sources for Asian M&A. However there is growing interest in other sources such as high yield

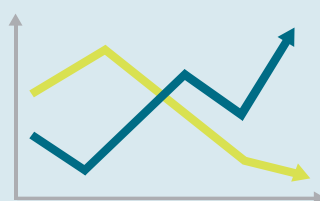


"We continue to see Chinese banks assuming more active and prominent roles in financing for mega deals, and a willingness to go beyond the traditional approach of relying on the corporate credit of the Chinese parent."

Maggie Lo, Finance Partner, Hong Kong

High yield: marked by volatility

- High yield remains an important source of capital for M&A in the US and Europe but the markets are choppy
- Volatility has driven innovation to minimise funding risk at completion – solutions in Europe include bridge financings and funding into escrow
- Backstop facilities offer significant flexibility in an M&A context and can give bidders a significant advantage



Lenders: appetite for risk grows

- Banks continue to dominate corporate M&A debt financing
- Non-banks remain more active in the mid-market, with unitranche a particular feature in sponsor-led deals



"Banks and alternative lenders are willing to take on ever larger underwriting risks and commitments right across the credit spectrum."

Barbara Mayer-Trautmann, Finance Partner, Munich

Market crossover: Term Loan Bs

- There is continued and increasing crossover between markets
- Cov-lite and cov-loose TLBs are a prime example
- Cov-lite is an established feature of US financings but Europe is developing its own distinct cov-lite TLB market
- Terms are more fluid in Europe when contrasted with the US



Financial Services M&A and the focus on FinTech

Financial Services M&A is being stimulated by disruptive technologies which are changing the way consumers interact with financial services businesses. The sector also continues to be influenced by consolidation activity and regulatory changes.



Banking and Asset Management

- Global banks have been analysing the value of their presence in national markets around the world with a renewed focus on strong markets and a desire to divest non-core assets.
- Disposals in emerging and low-volume markets have been driven by localised economic, political and regulatory factors.
- Interest in retail bank acquisitions has arisen from opportunistic buyers seeking to take advantage of post-recession changes in bank ownership (such as re-privatisations) and improvements in credit quality.
- Wealth management continues to be an area of activity with a number of major institutions adjusting their focus towards it, whilst others are exiting businesses which are sub-scale.
- Private equity houses and financial services aggregators from both developed and emerging markets are increasingly acquisitive across the sector.
- Changing regulations and business environment issues such as a possible Brexit mean that institutions continue to explore corporate re-organisations.

“Strategic plans to dispose of non-core assets, in part to reduce business complexity and the impact of the cost of regulatory compliance, are driving FIG disposals in Asia Pacific. Asian institutions, particularly insurance companies, are growing their presence in the region, which has led to insurance acquisitions in China, India, Australia and Hong Kong and there continues to be serious interest in South-East Asia. Japanese insurers have been especially active cross-border, both regionally and globally, and we expect this to continue in 2016.”



Roger Denny, FIG M&A Partner, Hong Kong

“Middle East bank M&A activity levels remain high. This is driven by global banks looking to dispose of non-core businesses in the region (e.g. Citibank’s sale of its retail business in Egypt), as well as Middle East headquartered banks having significant outbound ambitions. The relative size of banking markets (typically over-saturated) in the Middle East, coupled with heightened capital adequacy requirements in Europe instigating disposals, suggests we may see more

major outbound bank acquisitions (e.g. QNB Group’s EUR €2.7bn acquisition of Finansbank from the National Bank of Greece).

Relaxation of foreign ownership restrictions would further drive M&A in the region if regional banks would be able to make inter-regional acquisitions. Organic growth is often challenging given restrictions on new licences. However that does not yet seem imminent, despite positive policy messaging.”



Mohammed Al-Shukairy, M&A Partner, Dubai



Insurance

- An upturn of insurance M&A in 2016 is expected following the momentum built up in 2015, however growth challenges remain in particular jurisdictions.
- In Europe, a low interest rate environment and increasing regulation are acting as drivers for M&A activity. The consolidation of smaller insurers will continue following Solvency II implementation as well as an increase in hostile deals e.g. Exor's takeover of PartnerRe.
- In emerging markets, such as Latin America and parts of Asia, we expect a rise in inbound M&A activity given the perceived growth opportunities in these markets and the sales opportunities from some global insurers rationalising their international businesses and making disposals.
- Chinese, Japanese and Korean insurers are looking at outbound insurance acquisitions, in the case of China, in part to hedge against its recent financial turmoil.
- A positive macro-economic outlook in the US, coupled with increasing competition in the insurance sector, suggests likely growth in M&A activity.
- Continued economic uncertainty in the Middle East indicates a subdued M&A insurance sector. However, the lifting of sanctions against Iran could present opportunities especially given recent deregulation of the Iranian insurance sector.

Spotlight: the focus on FinTech

- We are seeing numerous strategic direct investments in, and acquisitions of, technology start ups. Financial institutions focused on competing with FinTech businesses, and companies operating in other industries investing in technologies and platforms with a financial services aspect which are often complementary to their principal businesses (e.g. social media networks investing in P2P payment arrangements, online consumer retail businesses investing in supplier finance platforms, etc), are driving this activity.
- With regulators across the US, Asia Pacific and Europe introducing new policies and establishing new supervisory teams designed to facilitate the launch and expansion of start-ups undertaking regulated activities, investment and M&A opportunities in the FinTech sector are expected to continue to increase.
- For companies across non-FIG sectors, the move into FinTech is typically causing them to be subject to financial regulation for the first time – for them, understanding this regulation and leveraging opportunities to operate under regulatory-lite frameworks if available, is key.
- Many financial institutions, who have traditionally not been technology-focused, are learning to understand the value of technology assets, and how they are protected and leveraged, as they transition from being financial institutions into being (to a greater or lesser extent) technology companies also.

“As financial institutions and corporates seek to integrate specialist tech enterprises into their traditional business lines, the focus of diligence has shifted towards financial regulatory compliance, data protection, cybersecurity, licensing software, use of big data, and the protection and leveraging of IP rights.”

Melissa Ng, M&A Partner, Singapore



Infrastructure M&A market is maturing

The maturing Infrastructure M&A market is highlighted by new investors, an increase in the number of funds being raised and a corresponding increase in the capital available. This trend is punctuated by rapidly increasing deal values.

“We are seeing fierce competition for infrastructure assets resulting in higher prices with corresponding pressure on returns. This is a result of the dramatic increase in the number of investors targeting the sector – particularly ‘direct investors’, such as pension funds and insurers, who previously invested through funds – and the

amount of capital allocated to infrastructure investment. Favourable credit markets and greater use of non-bank debt financing are having an impact.”

Brendan Moylan, Infrastructure M&A Partner, London



Volume of infra deals globally has fallen 9% (921 in 2014 to 835 in 2015) **but overall global deal value has grown 7%** (from US\$ 241bn in 2014 to US\$ 258bn in 2015)

2014

2015

Leading sectors by market share



32%
Transport



29%
Renewable energy



25%
Power

Source: Infra Deals

Our expectations for 2016

- 1 Huge amount of capital available for investment** – We are seeing strong fundraising by traditional infrastructure funds and massive amounts of dry powder available to direct investors.
- 2 Increased volume of secondary transactions** – a sign of a maturing market, these will comprise a significant proportion of total deals in 2016 as funds take advantage of seller-friendly conditions as they exit investments made in the mid to late 2000s.
- 3 Increased competition for non-core assets** – Competition for ‘core’ infrastructure, such as water utilities and energy distribution assets (e.g. acquisition of Australia’s TransGrid), is driving down returns and encouraging infrastructure investors to look harder at ‘non-core’ infrastructure and at less mature markets. This is particularly true of traditional infrastructure funds, who typically require higher returns than direct investors. Funds are forced to take greater risk in order to achieve target returns and are now chasing core-plus assets.
- 4 More partnerships** – Regulatory risk will remain high on the agenda for infrastructure investors and we see an increased number of partnerships between infrastructure funds – who provide capital – and industrial firms – who bring expertise.
- 5 Platform investments** – these offer steady transactions for funds to deploy capital and risk sharing with other investors or industrial partners and will continue to be popular. For example, OTPP, PSP and Santander’s joint venture into Cubico Sustainable Investments, which targets renewable energy projects, particularly in Europe and Latin America.

“The CEE region presents opportunities in regulated energy infrastructure assets, renewable energy companies operating wind power, biogas and solar energy projects (attractive targets for international investors) and via secondary buyouts, particularly of road and port assets. Privatisation of municipal assets – mainly utilities and airports – expected over the next 2-3 years will be closely tracked, although ‘big privatisation’ of large state-owned companies in the energy sector has been stopped.”

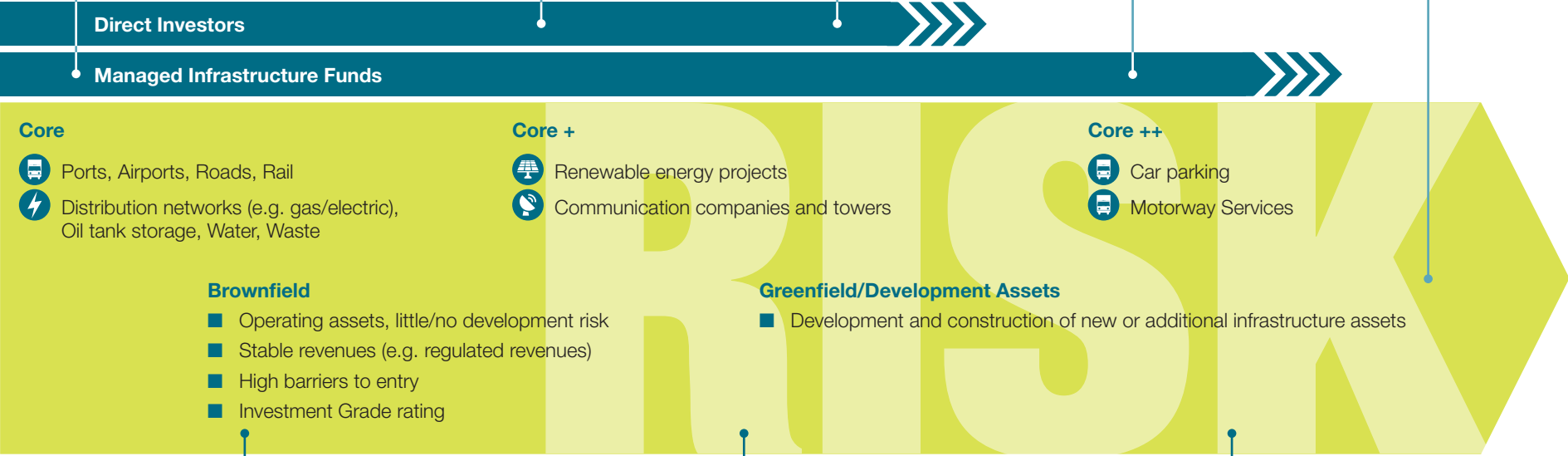
Agnieszka Janicka, M&A Partner, Warsaw



Infrastructure M&A market is maturing

Fierce competition in the Infrastructure M&A market is set to continue with huge numbers of direct investors seeking stable returns forcing traditional managed infrastructure fund investors to target higher return 'non-core' infrastructure assets.

Equity Finance



Debt Finance



3

Managing risk in Global M&A

US\$ 3.0-3.5bn

The break fee payable on Pfizer/Allergan. The fee steps down to US\$ 400m if an adverse change in tax law causes the deal to fail (US authorities clamp down on corporate inversions)

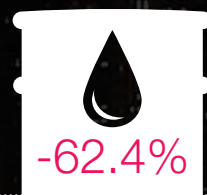


US\$ 8.9bn

Largest sum paid under a settlement for breach of US sanctions



47 The number of proposed national or presidential elections globally in 2016



-62.4%

Fall in crude oil price in 2014/2015

EUR 350m

The fine levied by French antitrust authorities on Orange for anti-competitive behaviour



Focus on structuring deals with share consideration

As stock prices have thrived alongside the M&A boom, shares in listed companies have become an increasingly popular form of acquisition currency. Deals in which sellers receive shares in the combined group post acquisition are not without risk for buying and selling shareholders.



“Recently, many of the deals driving the current M&A market have been stock-for-stock transactions. While there are advantages to an all stock deal – for example, no financing considerations and an effective sharing of the risk of the acquired business between the buyer and the seller – the use of equity as acquisition currency also raises a number of issues, including pre-closing price risk arising from stock price movements and post-closing governance rights and resale restrictions.

One way to address stock price fluctuations is through the use of a collar, which allows the price of the stock being issued to fluctuate within a range before adjustments, either upward or downward, are made in the number of shares to be issued, but typically not beyond a stated minimum and maximum share amount. Another option is to include a termination right if the share price falls beyond an agreed floor.”

David Brinton, M&A Partner, New York

Fixed Share or Fixed Value?

Fixed Share deal – buyer issues a fixed number of shares

- The number of shares to be issued to the seller is fixed, but the value of those shares in the buyer may fluctuate between the announcement of the deal and completion.
- If the seller believes the share price will increase at any time up to and including completion, then the seller may see upside here but it is exposed to a negative reaction in the markets.
- A seller may protect itself with a termination right if the price drops below a certain floor.
- The proportionate ownership of the seller in the combined group is unaffected.
- Examples in 2015 include Concordia Healthcare’s US\$ 3.5bn acquisition of AMCo from Cinven.

	Who bears risk?	
Fixed shares deal	Share price	Ownership stake
Buyer	x	x
Seller	✓	x

Fixed Value deal – buyer issues a fixed value of shares

- The buyer pays the seller by issuing a fixed value of shares in the combined group.
- The number of shares issued is not fixed until a short period prior to completion and depends on the market price (it may also depend on other factors, such as FX).
- The seller’s ownership stake in the combined group is unknown until completion.
- The buyer bears all the price risk on its shares between announcement and completion. If the share price falls, the buyer must issue incremental shares to pay the sellers the fixed value.
- Examples in 2015 include Paysafe’s US\$ 1.2bn acquisition of Skrill from CVC Capital Partners.

	Who bears risk?	
Fixed value	Share price	Ownership stake
Buyer	✓	✓
Seller	x	✓

Earn-outs bridging the valuation gap

With a booming M&A market, buyers and sellers are seeking to bridge valuation gaps leading to an increase in deal technology designed for that purpose, such as earn-outs.

Earn outs	
1	<p>What is an earn-out?</p> <p>Mechanism whereby the buyer pays incremental value for target based on pre-agreed performance metrics (e.g. EBITDA, profit, particular industry measures)</p>
2	<p>Why use an earn-out?</p> <p>To bridge the delta between buyer/seller price expectations; both take risk on future performance of the business being sold</p>
3	<p>Which sectors use earn-out mechanisms?</p> <p>Sectors where performance post-completion is uncertain (e.g. pharma, where pipeline products may only come to market after completion or where product revenues are difficult to assess pre-launch)</p>
4	<p>Are there other uses?</p> <p>Earn-outs are also used to achieve 'deferred consideration' (e.g. if the target makes an acquisition sourced by the sellers or closed during the sellers' ownership)</p>

"Whilst a great value bridge and a means of sharing risk, earn-outs quickly become complex and can carry unintended consequences for post deal activity like integration and M&A. Extreme care should be taken in agreeing an earn-out to avoid creating misalignment and the potential for disputes down the line. In a private equity context, if a management team are participating in the earn-out advice should be taken to achieve the optimal tax outcome."



Extreme care should be taken in agreeing an earn-out to avoid creating misalignment and the potential for disputes down the line. In a private equity context, if a management team are participating in the earn-out advice should be taken to achieve the optimal tax outcome."

Anselm Raddatz, M&A Partner, Düsseldorf



Navigating political risks in growth markets

In spite of the slowdown in many emerging markets, companies still view these markets as interesting opportunities. The shifting sanctions landscape that tends to impact emerging markets requires vigilance.

Sanctions

1

2015 has seen the continued use of sanctions as a foreign policy tool often aimed at regimes in emerging market economies. A particular feature of 2015, however, was the international policy shift in relation to Iran following the Joint Comprehensive Plan of Action agreed between Iran, the P5+1 and the EU in July 2015. With effect from Implementation Day (16 January 2016), there was a significant easing of existing sanctions and, consequently, 2016 is expected to offer much greater opportunity for those wishing to invest in or trade with Iran, provided the residual sanctions risks are manageable.

2

Companies exploring possibilities resulting from these and other sanctions changes will need to tread carefully, however, as they navigate the compliance challenges thrown up by differences in international frameworks and enforcement trends. Sanctions due diligence and appropriate contractual protections will assist in mitigating risk.

3

This is vital in relation to Iran in particular where European sanctions relief will be much more significant than that in the US, with much Iranian business remaining off limits for US entities. This means that non-US firms may have a 'head start' on entering newly available Iranian markets, if they are comfortable with managing any residual US sanctions risk.

4

Companies seeking financing in markets subject to sanctions risk will continue to face the stringent demands of banks that require thorough sanctions due diligence and assurances. Sanctions will be an early consideration in many transaction processes.

Spotlight: practical considerations in relation to Iran

- Extensive due diligence on any counterparties in Iran or that have significant Iranian interests.
- 'Snap back' risk – sanctions could be re-imposed by the US and/or the EU if Iran fails to meet its nuclear obligations. Wherever possible, contractual and joint venture arrangements should provide for this risk – but it will be interesting to see how willing Iranian counterparties will be to including such provisions.
- Protections for foreign companies – those acquiring companies/assets in Iran should seek to mitigate the risk of sanctions being re-imposed between signing and completion of any deal.
- Vigilance – all companies considering Iranian business need to be vigilant to identify and address US sanctions risks that can arise from involving US person employees or other US elements in transactions.

“Many organisations looking to trade with, or make investments in Iran, now that sanctions have been eased may experience a tension between business development personnel who may wish to take advantage of the opportunities offered, and those whose responsibilities are for risk management and compliance. A grasp of the legal parameters that will apply going forward and their impact on transactions, matched with scrupulous due diligence and appropriate investment in compliance resources, will be key in aligning opportunity with risk.”

Rae Lindsay, Partner, Global Risk Team, London



Navigating political risks in growth markets

It is more important than ever to carry out the necessary preparatory work when deciding how best to protect your investment – not only in terms of formal due diligence, but also gaining a real understanding of the legal-political landscape on the ground and how it might change.

Government intervention: 5 mitigation strategies

1

Structure investments to take advantage of substantive treaty protections against expropriation, and unfair or discriminatory treatment. Ideally, this is done before entering a new jurisdiction, but restructuring can be effective if secured any time before a dispute arises.

2

Negotiate stabilisation clauses in government contracts to maintain the status quo. These can operate either to fix the fiscal terms for the duration of a project, or to indemnify the investor against the costs of tax increases so as to preserve the economic equilibrium of the commercial arrangement.

3

Take out appropriate political risk insurance policies. These may enable prompt and effective recovery of compensation for losses, provided the right cover is in place.

4

Ensure access to independent international dispute resolution mechanisms under relevant treaties and contracts, and negotiate effective waivers of sovereign immunity in agreements with state entities.

5

Keep detailed and complete records and retain copies of all important correspondence with the Host State (e.g. mining concessions, constructions permits), including from prior to the decision to invest. This may prove to be invaluable evidence in the event of a future dispute.



“The careful drafting of contracts, the structuring of investments for treaty protection and the placing of insurance policies prior to an investment being made can, together, help minimise the political risks of government intervention.”

Jessica Gladstone, Partner, Global Risk Team, London

Managing cash across borders – repatriation risk



“Foreign companies need to be proactive in engaging with regulators, local banks and advisers to ensure they can effectively extract future cash returns in countries with controlled currencies or restrictions on capital outflows.”

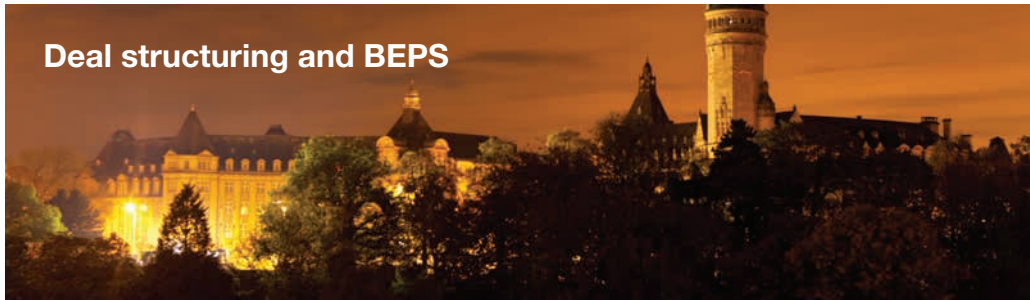
Neeraj Budhwani, M&A Partner, Hong Kong

- Concerns remain around the ability of foreign companies to repatriate cash from many growth economies, including larger markets such as China, India and Nigeria. The landscape is constantly evolving with economic strains and political influences driving regular rule changes, often at short notice.
- For those carrying out M&A or joint ventures in growth economies with capital controls there is the risk of not being able to extract future returns through dividends or interest payments on shareholder loans due to prescriptive or new legal (including tax) requirements or a lack of locally available US dollars.
- Affected companies must consider the legal and practical issues around cash repatriation and ways to manage the risks through close monitoring of guidance from central banks and other regulators. Advance planning, banking with significant institutions and appropriate structuring of transactions and financial instruments may provide effective mitigants.

Looking ahead to 2016 and beyond

Forthcoming events, regulatory developments and economic indicators will create trends and opportunities in the year ahead.

Deal structuring and BEPS



- OECD has issued its final recommendations to counter perceived avoidance by multinationals involving “base erosion and profit sharing”.
- All EU members and many other OECD countries will be implementing the recommendations.
- New restrictions on interest deductibility will apply to both related party debt and bank debt.
- Holding companies and SPVs will find it harder to extract interest and dividends from subsidiaries without incurring withholding tax.



“It is still unclear how and where BEPS will be implemented, and how the details will work, but it is likely that many countries will restrict the tax deductibility of hybrid debt, shareholder debt and even external bank debt, potentially reducing the return on capital for equity investors. The effect on M&A deal structuring will be significant.”

Dan Neidle, Tax Partner, London



Commodities prices



- Some commentators predict oil prices will continue to fall from already historic lows. The lifting of Iranian sanctions and US restrictions on crude exports could contribute further to an oversupply in the oil market.
- The Bloomberg Commodity Index, measuring 22 future commodity contracts, fell 26% in 2015, the worst of five straight years of decline.
- The strong US\$ has undermined the appeal of raw materials as alternative investments; Market uncertainty in China has added to concerns that consumption by the world’s largest commodity buyer will slow.

“Oil, gas and commodities M&A continue to be impacted by unstable commodity prices and an uncertain outlook. Consolidation in the oil & gas sector has not yet followed the pattern of the last period of depressed oil prices in the late 1990s. However, the pressure will only increase in 2016 with constrained financing options coupled with an increase in buying power of cash rich buyers with strong balance sheets.”

Tracey Renshaw, Oil & Gas M&A Partner, Perth



ASEAN: The power of 10



- Singapore, Indonesia, Malaysia, Thailand, Vietnam, Myanmar, Brunei, Laos, the Philippines and Cambodia have formed the newly-established Association of South East Asian Nations (ASEAN Economic Community).
- ASEAN has a combined GDP of US\$ 2.4trn – ahead of Brazil and Russia, with a growing middle class and swift urbanisation. It is expected to be the world's 4th largest economy by 2050.
- It already attracts strong FDI and is a focus for China's US\$ 40bn Silk Road Fund and the US\$100bn Asian Infrastructure Investment Bank fund.

"We see the establishment of the ASEAN Economic Community as an accelerator for businesses to sharpen and develop their ASEAN strategies. Investment treaty protection is key for foreign investors, and political risk can be partly reduced by securing protection under the new ASEAN Comprehensive Investment Agreement"

Jeroen Koster, M&A Partner, Jakarta



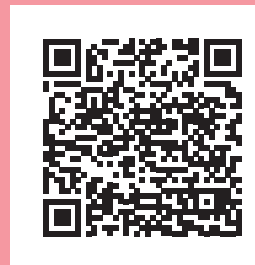
UK will decide whether to leave the European Union



- The UK will hold a referendum in 2016/17 on whether or not to leave the European Union. A vote to leave would start a two year or longer countdown to the UK's departure. Polls remain finely balanced, and often in the margin for error.
- Commercial contracts, employment law, trade agreements and customs arrangements, data protection, IP, competition law, and tax are all currently underpinned/ impacted by the EU legal framework, which would no longer directly apply after an exit.

"No-one knows how a 'Brexit' scenario would play out, but whether the outcome is ultimately better or worse for a particular business, multinational companies operating here would need to re-assess their UK investments and operations. A vote for leaving the EU would certainly impact the UK M&A market – whether for a short period of uncertainty or a longer downturn remains to be seen."

Patrick Sarch, M&A Partner, London





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