Our Insights into M&A Trends 2015

Global Dynamics

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M&A – The Global Picture

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As 2015 dawns, it is time to reflect on a strong recovery in the M&A market globally, and the opportunities that lie ahead this year

Last year brought the long-awaited resurgence in M&A. Global M&A deal values topped US$ 3.23trn in 2014 – a level not seen since before the global financial crisis. We have been seeing, in particular, a rise in cross-border transactions, including between regions, as corporates seek to expand their global footprints and enter new markets. Financing deals is not generally a problem, with excess cash on balance sheets and liquidity available from multiple global sources through an ever-increasing variety of innovative structures.

The US saw the lion's share of inbound cross-border activity over the past 12 months as bidders from Europe, Asia Pacific and Latin America tapped into targeted opportunities. As confidence returned to US boardrooms, domestic and outbound activity from the US also flourished, driven in part by rising stock markets which allowed listed companies to finance large acquisitions with combinations of stock and cash. The first half of the year also saw a number of controversial 'inversion' deals, before the US administration acted in September to make inversions more difficult to accomplish by diminishing their economic benefits.

'Broken deals' also provide interesting hidden indicators of the health of the M&A market. In 2014, US$ 221bn of deals were announced but then withdrawn, up from US$ 87bn in the previous year. On the one hand it means that announced M&A in 2014 matched the peak of pre-crisis levels – further evidence of rising confidence and deals needing to be done. However, the sheer level of failed transactions demonstrates that the current deal-making environment has very significant challenges which require careful planning and execution.

As we look ahead to the rest of 2015, the picture is mixed: there are significant geopolitical and economic uncertainties that have the potential to stall M&A activity again in the months ahead – for example, should the growth rates in China or Europe slow further, political divides within the euro zone deepen, or fears around political gridlock in the US return. Oil prices seem to be on a sustained, downward trajectory, economic sanctions targeting Russia continue to bite, and the results of government elections in the UK and Greece may have impacts far beyond those countries' own borders.

These and other similar macroeconomic and political concerns are combining to paint an uncertain global landscape for 2015. Their effect on M&A activity during the course of this year is by no means clear, but some of these challenges will create attractive opportunities for those who are informed, agile and prepared to take manageable risks.

Guy Norman
Global Head of Corporate, Clifford Chance LLP

Global activity levels

Large strategic transformative deals and unprecedented cross-border activity drove M&A in 2014, with deal values reaching heights not seen since before the global financial crisis

Global M&A activity (by value) increased 45% on 2013 levels, topping US$ 3.23trn (up from US$ 2.23trn). Despite downward momentum during the third and fourth quarters, 2014 was the best year for M&A (by value) since 2007

The US market performed strongly, with deals totalling US$ 1.41trn, including a significant increase in inbound M&A (by value). Latin American activity recovered, driven by European deals into the region. Asia Pacific M&A was up 36% on the previous year, with the region seeing a rising number of US$ 1bn+ deals. Activity also increased in Europe (+41%), although a slowdown in intra-European activity during H2 2014 reflects current economic uncertainties

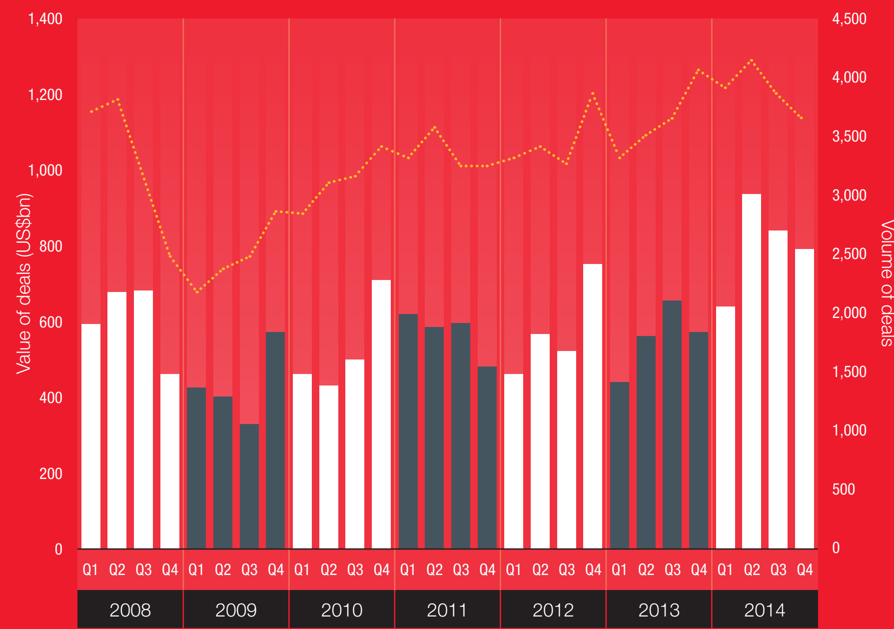
M&A flows between the five main regions represented 27% of total global M&A deal value (up from 21% in the same period last year). Cross-border M&A also shot up, representing 43% of total M&A (up from 34% last year) and the highest proportion of total M&A (by value) since 2007

Energy, Mining and Utilities and TMT continued to be the sectors with the strongest activity (by deal value) – at US$ 632.7bn and US$ 604.2bn respectively. However, the hottest sector was Healthcare, which outperformed other industries as its market share of total deals rose by 4%, buoyed by several mega-deals such as Actavis/Forest Laboratories

Private equity exits had a record year, totalling US$ 489.3bn in 2014 (21% above 2007's peak), driven by US activity, as PE houses took advantage of the strength of the US initial public offering market, eager secondary buyers and active strategic buyers, to realise their investments

Source: Data produced by Remark, taken from mergermarket.com

Global M&A Activity – Quarterly



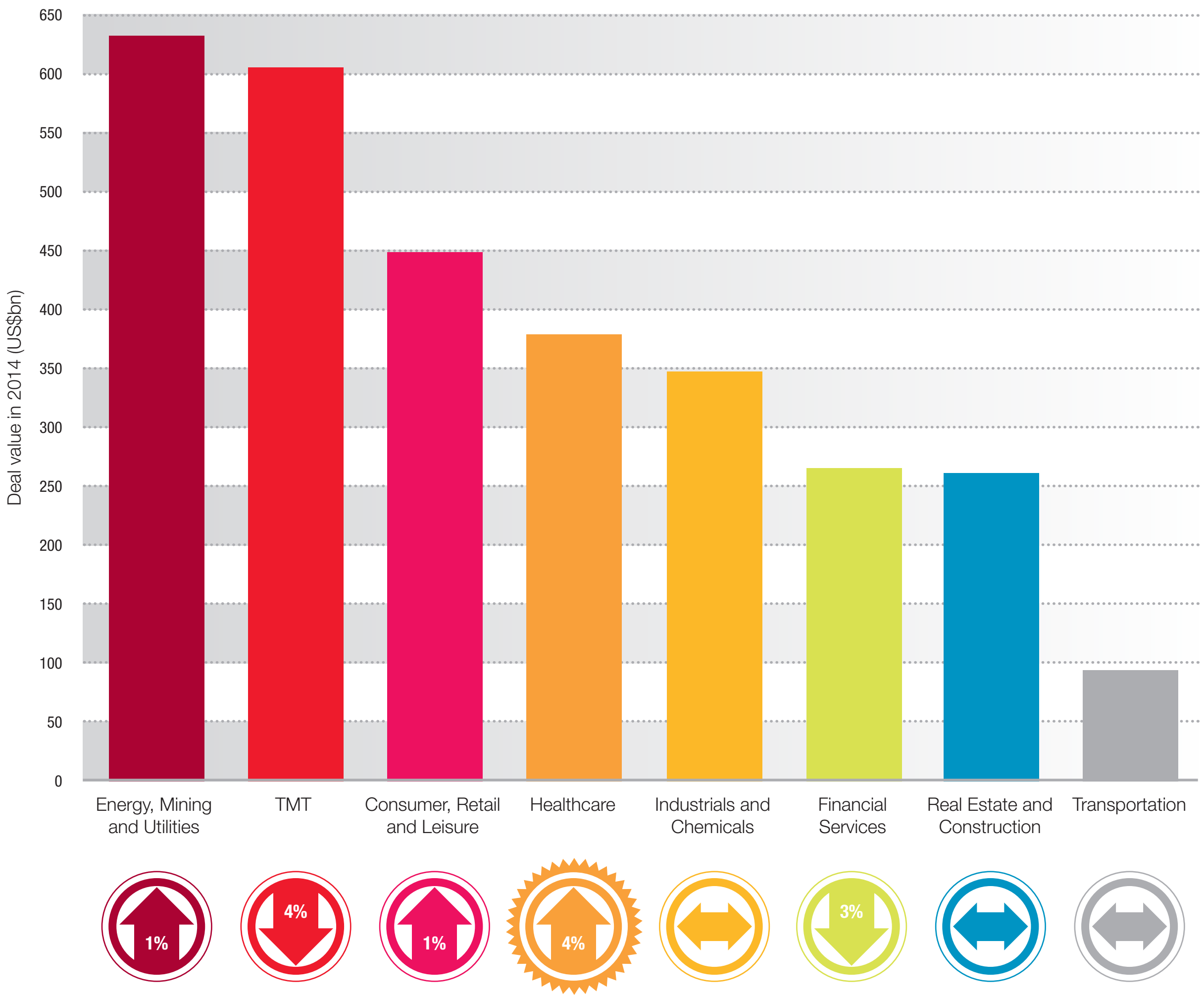
Source: Data produced by Remark, taken from mergermarket.com ▪ Value of deals ····· Number of deals

"Companies are adapting to the evolving world order, as wealth and spending power shift from west to east, and from north to south. Against a backdrop of increasingly complex international regulatory and fiscal regimes and dramatic technology advances, there are real opportunities for agile and innovative organisations to gain competitive advantage."

Matthew Layton, Managing Partner

Sector variations

Energy, Mining and Utilities and TMT dominated the M&A market (by deal value) in 2014, with the former seeing a notable flurry of activity in the final quarter. However, the star sector was Healthcare, where the rise in activity outperformed other industries. Healthcare M&A saw a 119% increase in deal value in 2014 as compared to the previous year, leading to a 4% increase in its share of total deal value



Change in market share from 2013

Source: Data produced by Remark, taken from mergermarket.com

"Ownership of Australian resources assets is being reshuffled as companies rationalise investments to suit lower commodity prices. With falling prices and softening demand, the challenge for resource companies is to re-shape themselves to adapt to a post-boom industry."

Paul Lingard, M&A Partner (Energy and Resources), Perth

"The focus by China's three antitrust agencies on the TMT sector looks set to continue into 2015, adding a further layer of risk for deals in this sector."

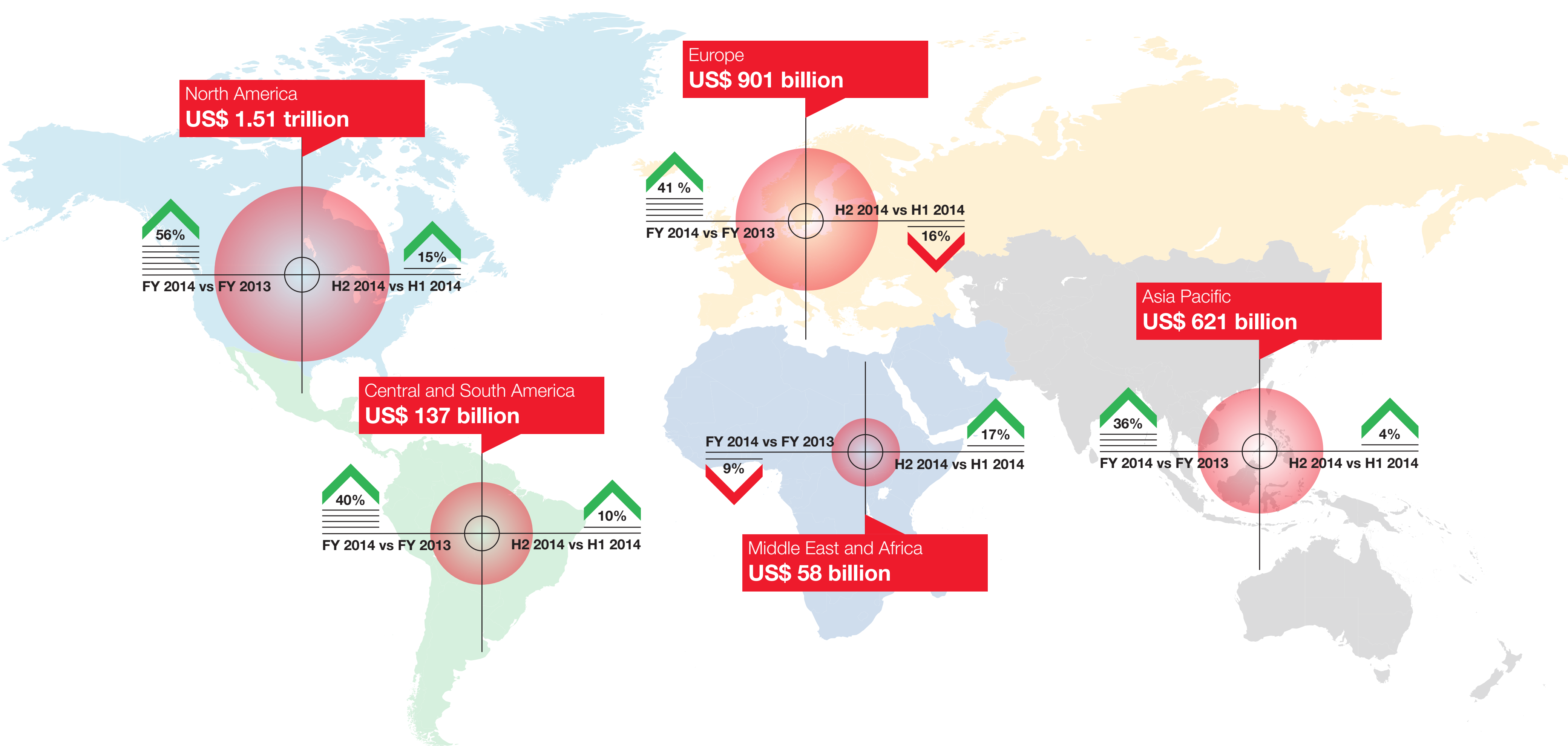
Richard Blewett, Antitrust Partner, Beijing

"Healthcare M&A headlines in 2014 were dominated by US-based multinationals seeking tax-advantaged structures through so-called corporate inversion transactions. While these types of transactions have been somewhat muted since the US Treasury took steps late last year to reduce the tax benefits associated with these structures, Healthcare – particularly pharma and healthcare IT systems – continues to be one of the most active sectors for deal-making."

Ben Sibbett, M&A Partner, New York

Regional trends

Our map shows that, whilst the US continues to dominate the global M&A market, activity is buoyant across the board with significant increases year-on-year in all regions except Middle East and Africa, which saw a 9% decline (although this figure masks a surge in African M&A activity in recent months)



Source: Data produced by Remark, taken from mergermarket.com

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 impacts across the different regions

US

- US M&A at strongest levels since 2007, driven by large transformational domestic deals and strong inbound investment surpassing pre-crisis levels. Record M&A values reached despite several of the largest announced US deals failing or being withdrawn, some for regulatory reasons and some as a result of competing bids
- Strategic buyers returned to US M&A market – with cash, strong stock prices and cheap debt being used to finance deals – over 85% of US public M&A. Nearly half the deals for US public M&A targets involved some stock consideration
- Divestitures and spin-offs continued to represent some of the largest deals, often driven by activist funds and favourable capital markets
- With the increase in board confidence, 2014 saw hostile deals increase, including several high profile mega-deals, though with mixed results. 2014 also saw the first bidder-activist collaboration in the Valeant – Pershing Square failed bid for Allergan

Central and South America

- Brazilian M&A opportunities increasingly attractive, as sellers' price expectations fall, Brazilian real remains weak and stock markets depressed. Foreign-based investors may benefit as a result of latest corruption scandal involving domestic construction companies – if convicted these domestic companies will be barred from bidding for public sector construction contracts
- Mexico expected to be hotspot in Latin America in 2015 for telecoms, energy and oil and gas – following opening up of sector to international firms, substantial acquisitions and expected strategic joint ventures with local Mexican partners (eg Alfa Group/Pacific Rubiales Energy joint venture)

Europe

- Increased investment seen from US, China and rest of Asia, targeting, eg healthcare assets in UK and Ireland, industrials in Germany, luxury goods in Italy, financial services in Belgium
- However uncertain economic conditions across Europe, a falling euro and nervousness around UK's position in the EU all negatively impacted boardroom confidence and slowed M&A in second half of 2014
- Russian M&A market severely depressed – US/EU sanctions, falling oil prices and depressed rouble making M&A activity challenging. However, low asset prices may create attractive investment opportunities for investors taking long term view. CEE countries (eg Poland, Czech Republic, Romania) relatively unaffected, with improving levels of M&A activity

Africa

- African M&A surged in second half of 2014. Corporate and financial investors chasing yield and expansion opportunities. Relatively new and acquisitive consumer class is generating interest in consumer-focused sectors eg financial services, education, healthcare and TMT
- Intra-African deals also a developing feature, as home-grown domestic businesses seek to expand across borders. Africa also been a focus for global and pan-African PE funds

Asia Pacific

- China remains #1 M&A destination, closely followed by India (US$ 31bn, up 38% on previous year), where perceived stable political environment and Modi's reform policies have increased investor confidence. Australia and Indonesia also attracting significant foreign capital
- Strong activity in the consumer, retail and leisure sectors, with mega-deals such as Temasek's US$ 5.7bn purchase of a 25% stake in A.S. Watson and Anheuser-Busch InBev's US$ 5.8bn acquisition of South Korea's Oriental Brewery
- US and Europe remain popular targets for outbound M&A as Asian companies with strong balance sheets adopt global strategies. Appetite for outbound M&A by Japanese corporates remains high despite a weakened yen. CEE may become new focus of investment in 2015

Middle East

- Strong economic growth fundamentals and potential for expansion across many sectors means region is primed for an M&A uptick. However activity currently held back by political instability, declining oil prices and slow legal and regulatory reform
- Active sectors include consumer goods, with several multi-billion dollar auction sale processes underway; also financial services where consolidation of regional banking market and exiting of international banks is driving activity, and regional banks are looking at acquiring positions in growth markets

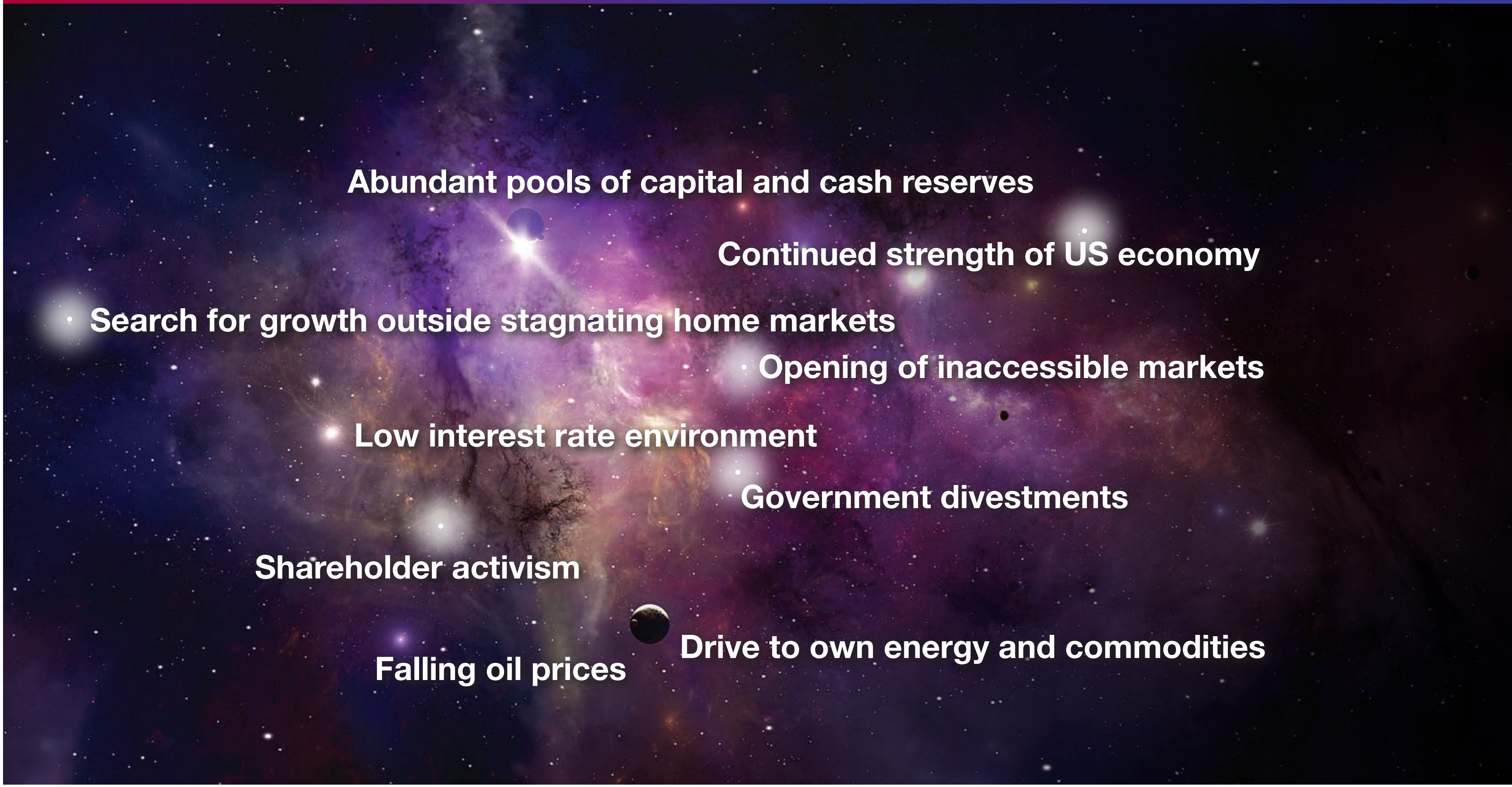
2 Key drivers and challenges for M&A in 2015

M&A activity is being stimulated by organisations tapping into growth opportunities in markets that were previously relatively inaccessible, and also in the US, where growth remains strong

Abundant pools of capital are available, and are likely to continue to provide buyers with liquidity to undertake M&A throughout 2015

Low oil and commodities prices may drive M&A activity to some extent this year, although the fact that recent falls are a symptom of fundamental weak demand in the world economy is causing uncertainty as we enter 2015

Key drivers for cross-border M&A in 2015...

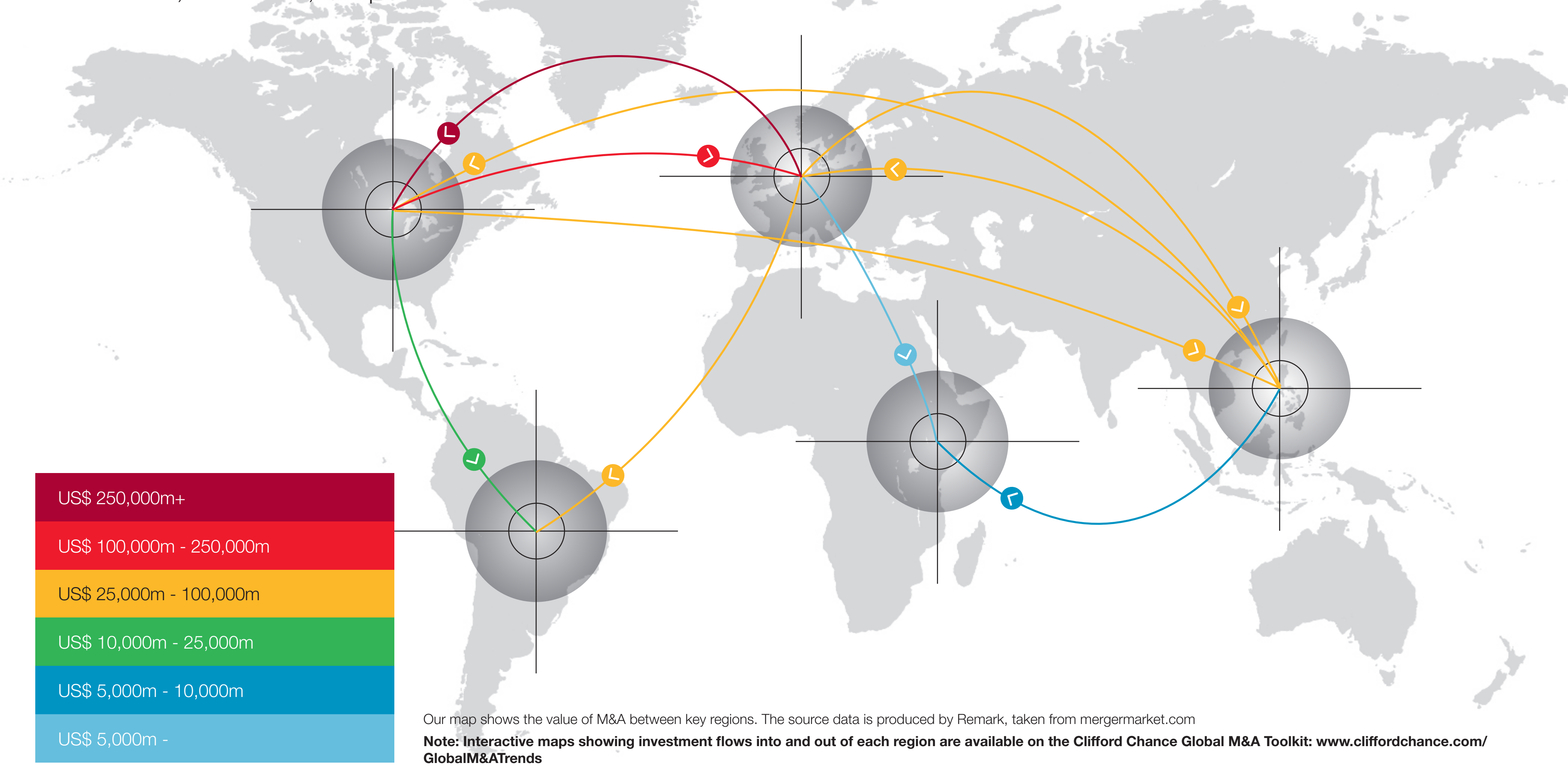


...and challenges for cross-border M&A in 2015

Cross-border M&A at an all-time high

Inter-regional cross-border M&A currently accounts for 27% of total M&A. But where are the major investment flows? Our heat map shows that the most significant cross-border M&A flow in 2014 was from Europe into North America (which, at US$ 277bn, surpassed the value of M&A investment in the opposite direction)

Our heat map shows the value of the two greatest flows of cross-border inbound investment into each of the following regions: North America, Latin America, Asia Pacific, Europe and Africa/Middle East:



Our map shows the value of M&A between key regions. The source data is produced by Remark, taken from mergermarket.com

Note: Interactive maps showing investment flows into and out of each region are available on the Clifford Chance Global M&A Toolkit: www.cliffordchance.com/GlobalM&ATrends

Cross-border M&A

We consider how the investment flows on page 12 reflect deal activity in 2014 as compared to the value of M&A activity in the previous year, and what this could mean for cross-border M&A trends in 2015

NORTH AMERICA

Outbound +55%

Inbound +192%

Inbound: Investment into the US increased from every major region, notably from Europe (+272% on 2013 levels) on the back of several mega-deals including Activis' two US bids, for Forest Laboratories (US$ 24bn) and Allergan (US$ 67bn). Increased confidence in US-based management teams resulted in the most foreign private equity-backed MBOs in the US since 2007

Outbound: Inversion transactions were a significant feature of the first half of 2014, in particular targeting European healthcare companies. Renewed investment into Latin America (+42%) was driven by a search for growth by first-time acquirers in the region, as well as seasoned acquirers looking to add to their existing LatAm investments

EUROPE

Outbound +190%

Inbound +69%

Inbound: Investment into Europe rose 69% on 2013 levels, largely reflecting US mega-deals. Whilst overall Asia Pacific deals targeting Europe remained flat on 2013 levels, there was a three-fold increase in Chinese investment targeting the region

Outbound: European companies sought to escape their low growth environment at home by targeting growth opportunities elsewhere. 2014 saw a significant shift in trans-Atlantic capital flows, as the value of European M&A into the US topped the value of US flows into Europe for the first time. Deals such as GTECH's US$ 4.7bn acquisition of International Game Technology and Publicis Groupe's pending US$ 3.7bn offer for Sapient helped to boost flows into the US

ASIA PACIFIC

Outbound +14%

Inbound +18%

Inbound: Chinese businesses continue to be of interest to those in other regions, particularly North America (+248% to US$ 8.4bn), and also to other parts of the Asia Pacific region (+325% to US$ 62.7bn). Currency devaluation, lower commodity prices and increased financial liberalisation among ASEAN countries will likely impact foreign investment into the region this year

Outbound: Overall outbound M&A from the region rose on 2013 levels (+14%), as a result of increased investment from the region into North America, and increased Chinese investment into Europe, characterised by Chinese firms partnering with established overseas firms to make their investments

LATIN AMERICA

Outbound +201%

Inbound +86%

Inbound: Total inbound investment into Latin America increased 86% on 2013 levels, to US$ 84.2bn. Consumer Goods and Natural Resources sectors were targeted, with headline deals such as Constellation Brands/Compañía Cervecera de Coahuila, and MMG/Las Bambas

Outbound: Significant increased Latin American investment into Europe (+534%) targeted opportunities in Spain and Portugal (eg Oi/Portugal Telecom deal), reinforcing the importance of cultural and linguistic links. WEG's acquisition of two China-based companies: Changzhou Sinya and Changzhou Machine Master helped to boost the value of Latin American M&A targeting Asia Pacific

AFRICA/MIDDLE EAST

Outbound +74%

Inbound -59%

Inbound: Geopolitical tensions weakened M&A investment into the region during 2014, with flows into the Middle East hit particularly hard. The African M&A market was down 10% on 2013 levels but this figure masks a significant rise in intra-African M&A (+314%) and an increase in investment from Asia Pacific and Europe during the last few months of the year

Outbound: Cash-rich regional corporates and Middle Eastern sovereign wealth funds drove a rise in outbound M&A from the region (+74%), particularly into North America. The value of outbound M&A from Turkey was also significantly up on 2013 levels

M&A opportunities in the MINT economies

The MINT economies of Mexico, Indonesia, Nigeria and Turkey may not yet be exhibiting the sustained levels of growth expected when the term was initially coined a few years ago, but there are signs that M&A may be starting to pick up in these countries

72%
Year-on-year increase in M&A

Mexico

Recent hot deal:
Joint venture between Actis and Mesoamerica. 600+ MW renewable energy platform assets (including wind, hydro and solar projects)

"Mexico is predicted to be a hotspot for M&A in Latin America following the opening up of several industries to foreign ownership by government deregulation (eg energy, and telecoms). The government has also announced investment of US$ 590bn over the next five years in 743 projects in energy, communications, transportation, housing, healthcare and tourism."
Javier Amantegui, M&A Partner, Madrid

5.2%
Expected GDP growth in 2015 (World Bank)

Indonesia

Recent hot deal:
Acquisition by South Korea's Woori Bank of a 33% stake in Bank Saudara – the first approved acquisition under Indonesia's new bank ownership rules

"Despite a volatile 2014 due to falling commodities prices, a weak rupiah and uncertainty over Presidential elections, Indonesia remains an attractive destination for foreign investment, and there are high hopes that Indonesia's new President, Joko Widodo, will bring much needed economic reform to the country. Increased investor confidence in the new administration will drive M&A activity in 2015, although regulatory and compliance risks remain a challenge for prospective investors."
Linda Widyati, M&A Partner, Jakarta*

326%
Year-on-year increase in M&A

Nigeria

Recent hot deal:
Series of deals between IHS, the Nigerian telecoms towers giant, and MTN to bring 10,000 towers under its control, including a US$ 2bn equity fundraising from investors

"With the rebasing of its GDP, Nigeria is now Africa's largest economy and we expect to see increased M&A activity in 2015 as investors seek to enter the market, following a possible lull at the start of the year due to government elections. Activity in Financial Services, Power and Consumer Goods sectors is likely to continue. Depressed oil prices are taking their toll on oil and gas sector assets in Nigeria and the naira, and this will impact M&A activity in 2015."
Edmund Boyo, Co-head of Africa Group

3.5%
Expected GDP growth in 2015 (World Bank)

Turkey

Recent hot deal:
EBRD's €125m investment in Paşabahçe, a subsidiary of Şişecam, a global player in glass industry. This deal is EBRD's largest equity investment into Turkey to date

"Turkey is considered as a significant growth market due to steady economic growth over the last decade, a resilient financial sector and high population. Despite an unstable 2014 as a result of local and presidential elections, we expect to see increased M&A activity in 2015. Energy, infrastructure and healthcare are expected to be dominant sectors for M&A once more, supported by the privatisation of various state-owned assets in these sectors."
Itir Çiftçi, M&A Partner, Istanbul*

*Linda Widyati & Partners in association with Clifford Chance

*Yegin Ciftci Attorney Partnership in association with Clifford Chance

Financing: diverse sources of capital

As sources of capital continue to expand, borrowers and sponsors can access debt finance for M&A through a range of loan and bond products in all the major global markets. Terms and structures are becoming increasingly inter-related as financing becomes ever more internationalised

2014 was marked by a number of 'jumbo' cross border corporate M&A financings including:

Corporate	Target Assets	Debt Quantum	Arrangers/ Lenders
Imperial Tobacco	US assets of Reynolds and Lorrillard	USD 7.1bn	BNP Paribas, RBS & Santander
Bayer	Merck's US Consumer care business	USD 14.1bn	BNP Paribas
Dongfeng Motor	Peugeot	Euro 830m	HSBC, BOCHK, BNP Paribas, Société Générale Asia, ICBC

"The experience of 2014 has shown that for **leveraged and cross-over credits** we now have a wide range of financing sources and debt investors and that where one market slows down, as high yield did in late 2014, other sources can take up the slack. We will see a continuing development of financing structures and products; and the trend over the last couple of years, where terms from one market or product 'cross-fertilise' into other types of financing, will continue. As a result, for the bigger, more complicated deals, financing will become more bespoke."

James Butters, Banking & Finance Partner, London

Loans

- 'Traditional' loans with maintenance financial covenants remain strong, but with more flexibility
- 'Covenant lite' loans increasingly seen, particularly in the US
- Evolution of 'covenant loose' loans, combining traditional and covenant lite technology

High Yield

- Very strong year globally but tailed-off in Q3/Q4 2014
- Expectation of a return of market in 2015 as search for yield continues
- Terms and structures continue to evolve

Subordinated Debt

- Increased options for capital structures (eg PIK, mezzanine, second lien, subordinated high yield)
- Can be structured as loans and/or notes which widens appeal to different investor bases
- Alternative debt providers active in the market, which is leading to innovation

Specialist Debt

- Continued development of specialist sector financing, notably for infrastructure, energy and real estate
- "Unitranche" debt in mid-market as alternative to bank loans

"**Corporate M&A debt financing** grew significantly in 2014 and there have been some very sizeable cross border deals in the public and private markets. Although the acquisition financing landscape is more varied now, it's interesting to see how significant the role of traditional bank lenders has remained in many of these big corporate M&A deals and how European banks have come back strongly into the market for some of these deals."

Karen Hodson, Banking & Finance Partner, London

"Chinese and foreign banks in Asia continue to provide strong support to Chinese companies' expansion overseas. Many of the debt financings to Chinese SOEs are structured as corporate credits, backed by guarantees or other form of credit support by the Chinese parent or the group's listed vehicle. Relaxation of the Chinese foreign security regime in 2014 is good news for both lenders and borrowers for financings of China outbound M&A."

Maggie Lo, Banking & Finance Partner, Beijing

The new face of private equity: is it well positioned for 2015?

Sponsor-led M&A continues to adapt in the aftermath of the global financial crisis

Challenges facing private equity in the financial crisis era

Low growth environment inhibiting organic growth	**Undeployed capital**	**Challenges to traditional incentive model**
Investors over-allocated	**Greater regulatory and political scrutiny**	**Investors making direct investments**
Reduced availability of debt financing	**Competition for quality assets**	**Reputational damage from 'broken' processes**

How PE has adapted

Strategic diversification

The growth of the diversified asset manager

- Diversification from pure private equity buy-outs into other asset classes, including debt, hedge funds and equities

'Buy and build' strategies

- Using portfolio companies or dedicated platform vehicles to build market share by acquisition and generate value through consolidation and the creation of larger businesses

Sector driven teams and funds

- Many sponsors are now structured on a sector basis, hiring and growing their capability in niche areas so as to gain competitive advantage in new markets previously not seen as suited to private equity investing
- Growth areas include pharma/healthcare, education, infrastructure and energy

Focus on high growth markets

- The lower growth environment has encouraged sponsors to look beyond developed markets and into high growth markets such as those in Africa and Latin America
- Local and regional players and international specialists are increasingly being partnered with international global funds

Diverse financing

- Pricing, liquidity and regulatory constraints have led to a greater diversity of financing sources, products and investors

Dividend re-caps and partial exits lead to longer hold periods

- With leverage available for quality assets, many sponsors are recapitalising portfolios to achieve an economic 'exit' whilst retaining control of the business or simply selling down a stake, often to a fund investor

The continuing evolution of PE...

"Our sponsor clients have been evolving to meet and shape the 'new normal' since the global financial crisis. The low growth environment in developed markets has seen funds meet the challenge by diversifying into new sources of funding, new geographies (such as the high growth markets in Africa and Latin America), and new and often highly specialised sectors (such as pharma, education and energy)."

Spencer Baylin, M&A Partner (Private Equity), London

Evolving market participants

Co-investment

- Many larger investors are demanding a right to co-invest with sponsors in deals
- Co-investment enables sponsors and investors to do larger deals which is competitively advantageous but can be dilutive to sponsor economics

Non-traditional sources of debt finance

- Debt funds, alternative asset managers, insurers and pension funds have stepped into the sponsor-financing market alongside traditional lending banks
- High yield bonds are now well established outside traditional US markets as a source of liquidity for mid- and large-cap deals
- CLO 2.0 issuance has returned very strongly both in Europe and the US

New players go direct – pension funds, insurers and sovereign wealth

- Emboldened through the opportunities afforded by co-investment and their increasingly active participation in direct investments
- This rise in direct deal making by players such as Canadian pension funds, insurers and other pension houses as well as sovereign wealth investors is driving M&A volumes

Regulatory change drives spin outs

- New sponsors are being created by regulatory changes, such as the Volker rule, necessitating captive funds to ‘spin out’ of investment banks in order to satisfy regulatory requirements or strategic repositioning

Strategic partnerships with corporates

- Sponsors are also forming partnerships on deals, often with industry players who have experience of certain sectors and markets

Capital markets: a source of liquidity for private equity in Africa

“Much has been made of private equity investors’ recent interest in Africa. Fast growing economies, a rising consumer class and historic under penetration have made Africa an attractive destination for investors seeking higher returns. However, little focus has been given to the increasing liquidity of the capital markets for Africa focussed businesses and the options this provides for investors seeking exits.

2014 saw a string of high profile exits, many of which involved the public markets. These included Actis’ sale of an interest in Umeme through a public market block trade in Uganda/Kenya and CapitalWorks/Morgan Stanley achieving a partial exit and issuing primary equity in Rhodes Food Group via the Johannesburg stock exchange. These transactions highlight a developing trend as more investors successfully exit their investments, whether via the capital markets or otherwise. We expect this enhanced exit liquidity to further stimulate private equity investment across the continent in 2015.”

Simon Thomas, Capital Markets Partner, London

3 Managing risks in Global M&A

The challenges and risks facing corporates undertaking M&A continue to evolve and develop. For example, several high profile deals were withdrawn or failed during 2014 for non-commercial reasons such as antitrust, government intervention and changes in law and policy. Firms undertaking high profile M&A in sensitive regions or sectors will need to ensure that they consider the risks at the outset of any transaction and put in place appropriate mitigation strategies. Comprehensive due diligence and well-designed integration plans will be key

Fast-developing risk areas such as cyber-security and sanctions and trade compliance need increased focus during M&A due diligence, and acquisitive corporates need to carefully integrate newly-acquired businesses into a robust global compliance programme

Regulatory changes on the horizon this year will impact M&A in key markets, including by opening up previously 'inaccessible' emerging markets

Busted deals: what does this mean for global M&A?

Failed deals worth US$ 221bn represented 7% of total completed global M&A deal value last year, almost double the rate of previous years. Many broken deals were high-profile and high-value, and were toppled not by commercial differences between the parties but by intervention from regulators, politicians, governments and activist shareholders

Antitrust

P3 Merger – China's MOFCOM ruled against a proposed merger of Denmark's AP Møller-Maersk, Switzerland's Mediterranean Shipping Company and France's CMA CGM on competition grounds (despite clearance being granted in the US and the EU)

Softbank/Sprint's acquisition of T-Mobile – Softbank's attempt to acquire T-Mobile failed due to antitrust issues in the US

Government intervention

Archer Daniels Midland/Graincorp – ADM's offer for Graincorp was rejected by the Australian government in late 2013 on national interest grounds

GE/Alstom – French government intervened, forcing GE to enter into a JV with it in order to invest in Alstom

Change in law

Public relations

Pfizer/AstraZeneca – AstraZeneca's board rejected a final offer from Pfizer stating it undervalued the company, but the bid was also subject to significant negative press and criticism from the US and UK governments

AbbVie/Shire – AbbVie board decided to withdraw its offer because of "uncertainty" caused by changes to US tax rules around inversions in September 2014

Busted deals: what does this mean for global M&A?

How to avoid or mitigate a busted deal

1. **Diligence on approvals –** Early diligence on approvals that may be required, particularly from governmental and quasi-governmental bodies, antitrust authorities and sector specific regulators. Be aware of the position of relevant governments on key issues, and ensure that their support is never taken for granted. Also consider any upcoming regulatory changes that may affect a transaction

2. **Stakeholder engagement –** Ensure early engagement with all stakeholders, including governmental, antitrust and regulatory authorities, key business counterparties, the media and employees. Engagement and communication with bidder's own shareholders can also be highly important to ensure the deal has broad support

3. **Innovative deal structures to mitigate risks –** Eg 'fix it first', 'take or pay', can be used to mitigate risk of competition issues; also 'reverse auctions' to ensure potential sellers are fully engaged (as used on the BT/EE deal in the UK TMT sector); and dual track M&A/IPO structures to allow alternative routes to market

4. **Break fees and other contractual provisions –** Include sufficiently material break fees (subject to applicable legal restrictions) to ensure both parties are fully incentivised for the transaction to proceed. Consider strength of obligations to comply with any conditions imposed by antitrust or other authorities

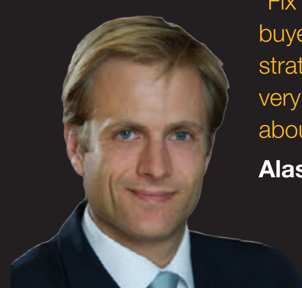
"The impact of the recent series of busted deals may include conservatism when dealing with high profile companies or sectors and parties seeking greater protection in the form of break fees or using M&A hedging. Also companies that were targets of failed bids could see themselves 'in play' again in 2015."

Sarah Jones, M&A Partner, New York

Fix it first

If a deal is expected to raise antitrust concerns, the parties will sometimes anticipate the divestments that are likely to be required by competition authorities as a condition of merger control clearance, and enter into negotiations during or before the clearance process to make those divestments to third parties. These 'fix-it-first' remedies mitigate timing and execution risks on complex deals, as without them the process of identifying divestment remedies and suitable third party purchasers can jeopardise or substantially delay clearance and – if the authorities require upfront buyers – closing of the main transaction.

A recent example is the proposed merger of Holcim and Lafarge, for which the parties released a list of proposed asset sales worth around €5 billion months before filing their deal with antitrust agencies.



"Fix it first remedies can be an effective way of reducing risk for buyers and sellers, and we expect to see increased use of this strategy in 2015, particularly where the likely remedy package is very large or where authorities are expected to have a concern about a lack of potentially suitable purchasers."

Alastair Mordaunt, Antitrust Partner, London

Key business risks – due diligence in focus

Boards do not always prioritise new and developing areas where a risk incident could significantly damage their reputation. Similarly in the M&A arena, sufficient focus and investment is not always given to investigating the target in relation to fast-developing risk areas

	SANCTIONS AND TRADE CONTROLS COMPLIANCE	BRIBERY AND CORRUPTION	HUMAN RIGHTS	CYBER-SECURITY
OUR SURVEY OF BOARD-LEVEL EXECUTIVES SAYS*	**62% say they are concerned about trade restrictions incidents affecting their company**	**59% say they are worried about a corruption scandal, with 30% in Asia Pacific saying this is a 'significant concern'**	**Despite high profile scandals affecting multinational companies, 56% say they are 'not at all concerned' about a human rights scandal**	**57% say they are worried about the prospect of a cyber attack, but just 15% say cyber is a focus within their company at board-level**
TOP AREAS FOR TARGETED DUE DILIGENCE	• Does the target have operations or business in countries that are subject to sanctions? Can the target cease these operations prior to the acquisition completing? • Does the target do business with sanctions targets (governments, entities, persons)? • Is the target owned or controlled by sanctioned persons or entities? • Does the target have compliance systems to identify and address sanctions and export controls issues? • Has the target ever been investigated for alleged sanctions violations?	• How does the target ensure effective risk-based approach to anti-bribery law compliance? • Does the target need government licences/approvals? What relationships/business connections exist with state entities/public officials, and are third party agents involved? • Do the target's financial records disclose any improper payments? • Have there been any bribery related allegations, investigations or prosecutions? • Could the business continue to operate effectively if any historic improper practices ceased?	• What are the actual and potential human rights impacts of the target's operations? • How are human rights risks managed by the target? • Does the target have a human rights policy? • Has the target been subject to legal action or complaints for alleged human rights abuses? • How does the target address complaints about its human rights impacts?	• What data does the target hold? Where does it hold it? How does it obtain the data? From whom is data obtained? • What security measures are in place? How are the board and management involved in cyber-security? • What protections exist for third party breaches? Does the target have cyber insurance? • Has the target been involved in any cyber-security breaches?

"If you are buying a data-rich business, cyber due diligence needs to be at the top of your list. The value of the target could be undermined if its contracts, policies and databases have not been designed to mitigate the risk"

Alvin Khodabaks, Partner, Risk Team

*Source: Clifford Chance's *View from the top* Global Risk Report: www.cliffordchance.com/GlobalRiskReport

Integrating control systems on cross-border deals

Ensuring a uniform approach to risk across international operations is a crucial challenge for acquisitive corporates. The buyer needs to take practical steps to carefully integrate the newly-acquired business into a robust, global compliance programme. Otherwise the acquirer risks damage to its reputation as well as impact on its bottom line

Practical steps for effective management and control systems across a newly-acquired business

01: Identify

Identify any practices which may be legally or culturally acceptable on the ground, but which are non-compliant with cross-jurisdictional regulations (eg US FCPA and UK Bribery Act). Also measure target's existing practices against acquirer's policies, and any internationally recognised standards to which the acquirer subscribes, or which apply to the sector

02: Investigate

Probe target's record and existing practices, and also those of its major business partners, agents and supply chain. Historic or ongoing compliance failures by any of these could lead to investigations, enforcement action and penalties, impacting reputation and causing business disruption and revenue decline

03: Implement

Implement relevant aspects of the acquirer's global compliance programme/codes of conduct as quickly as practicable post-acquisition, while being sensitive to possible need for regional/local variations. Meaningful training in key business risks/compliance areas for the acquired business's board, employees, and third party agents/partners may be appropriate and/or specific, targeted audits of the newly acquired business

04: Integrate

Whilst robustly upholding and monitoring the acquirer's global standards, adapt to local organisational structures, responsibilities and idiosyncrasies. It is a difficult balance to achieve but companies committed to compliance need to think globally, but also to act locally

Ensuring a uniform approach to risk is difficult due to cultural differences across the organisation's international operations*

64% Agree **36% Disagree**

"Failure to properly investigate the target and its relationships during due diligence can mean that historic or ongoing compliance failures by a target or its partners are not spotted. This could lead to investigations, enforcement action and penalties, impacting the reputation both of the target and acquiring company and, in serious cases, causing business disruption and revenue decline."

Amy Ho, M&A Partner, Hong Kong

*Source: Clifford Chance's *View from the top* Global Risk Report: www.cliffordchance.com/GlobalRiskReport

Tax: competing aims collide

Governments and multinational bodies are tackling abusive tax planning through a re-shaping of domestic and international tax rules, and challenges against countries and taxpayers. Simultaneously, governments are engaging in competition to make their tax regime more attractive and encourage inward investment

CLAMPDOWN

- **Change:** unprecedented changes in international tax
- **Authorities are tackling abusive tax planning:** through re-shaping domestic and international tax rules, and challenges against countries and taxpayers
- **OECD Review:** the 'Base Erosion and Profit Shifting' initiative is a systematic review of the global tax system including transfer pricing, taxation of the digital economy, tax treaties and arbitrage of cross-border tax rules
- **Sweetheart deals:** legal challenges have begun against Ireland, the Netherlands and Luxembourg alleging that 'sweetheart' tax rulings amount to unlawful state aid
- **Inversions:** in the US, emergency measures have been introduced to reduce 'tax inversions'

IMPACT ON M&A

- **Tax competition: opportunities for deals to be sweetened when tax benefits are factored in (such as patent box regimes encouraging pharma deals)**
- **Fiscal uncertainty: businesses want to minimise the overall tax cost of their activities, but a bigger priority, particularly in an M&A context, is fiscal certainty**
- **Failure to realise tax benefits: modelling M&A transactions to test their viability is hard when the rules underpinning anticipated tax benefits are subject to change**
- **Broken deals: there are examples where deals have collapsed as they no longer made economic sense when the tax benefits were removed**

INCENTIVES

- **Encouragement:** while clamping down, many countries have simultaneously been engaged in competition to make their tax regime more attractive and encourage inward investment and M&A structuring
- **New regimes:** several jurisdictions have introduced beneficial tax regimes for intellectual property (such as the UK's 'patent box', offering an effective tax rate of 10% for profits derived from patents)
- **Trends:** corporate income tax rates are falling and some governments have developed favourable tax rulings regimes

"Planning a corporate deal is more difficult, and requires more care, than ever to ensure the transaction will secure anticipated tax benefits."

Nicholas Mace, Tax Partner, London

Regulatory drivers: what's on the horizon?

Forthcoming regulatory developments in 2015 have the potential to impact M&A in key markets

Stimulating Chinese outbound and inbound M&A

The threshold for NDRC approval on outbound deals was raised to US$ 1bn in April 2014, and then further relaxed at the end of 2014 to only require NDRC approval for investments involving 'sensitive jurisdictions or sectors'. For inbound investments, NDRC approval threshold was raised to US$1bn for 'encouraged' sectors and US$100m for 'restricted' sectors. These relaxations are expected to encourage inbound and outbound M&A activity in 2015

Facilitating Japanese Public M&A

Introduction in 2015 of 'squeeze-out' regime for 90% voting rights that will facilitate full-company takeovers and streamline deals

Reforms to stimulate investment into Italy

Regulatory reforms aimed at attracting foreign investment into Italy are being brought in by new Italian Prime Minister Matteo Renzi, including to reduce/simplify taxation, address flexibility of the labour market, and progressively cure the inefficiency of the judicial system

Prompting minority stake sales in EU

Proposed expansion of the regime surrounding non-controlling minority interests would make prior notification to the Commission mandatory in some cases – whilst not on the cards for 2015, the effect of this change on the horizon may be to prompt minority stake M&A in 2015, before the new regime comes in

Relaxation of Australian inbound FDI thresholds

The Australian government's approval threshold for certain investments by South Korean, Chilean and Japanese private sector investors recently increased to AUD$ 1,094m, in line with that applicable to private United States and New Zealand investors. This preferential threshold is expected to extend in the near future to Chinese non-government investors following implementation of free trade arrangements

Indian insurance market opening up

Foreign investors will be able to take 49% stakes in Indian joint ventures under proposed new rules (26% limit currently applies). New entrants are watching the situation closely and those already involved in joint ventures are gearing-up to increase their stakes in anticipation of the new rules taking effect

"The regulatory landscape is developing and becoming increasingly complex and difficult to navigate, but at the same time, the current macroeconomic environment is prompting de-regulation in certain markets which will yield new opportunities"

Terence Foo, M&A Partner, Beijing

Global M&A Toolkit

Clifford Chance Global M&A Toolkit

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Global M&A Trends: Interactive investment flow maps

Our interactive maps show current M&A flows into and out of each major investment region of the globe giving you insights into the latest trends in cross-regional M&A. The maps are easy to use, simple and effective. Available through the Global M&A Toolkit at:

www.cliffordchance.com/GlobalM&ATrends

View from the top: A board-level perspective on current business risks

This 2014 report from Clifford Chance is based on a global survey to assess boardroom attitudes to risk. In the aftermath of the global financial crisis, the survey of board members from across the world's largest corporates explores which areas of risk feature at the top of board agendas, the extent to which board-level investment in risk management is paying off, and the depth of change required to ensure more robust risk management.

www.cliffordchance.com/GlobalRiskReport

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