Regulators: Enabling Progress

"Our business model is a virtuous cycle: We invent, we protect through patents, we license, and then we use the licensing royalties to reinvest in the next generation of technology. Without a rule of law globally to make sure that patent rights will be protected, valued and enforced, our business model cannot work."

DONALD ROSENBERG

Executive Vice President, General Counsel and Corporate Secretary, Qualcomm

Regulation is often associated with impeding and restricting activities, but it can also bring clarity and certainty. "Companies are worried that if they embrace new technologies, regulators may clamp down later," says Samantha Ward, Litigation Partner in Clifford Chance's Tech Group. "They want to do it in the right way from the start so that it is sustainable and avoids issues further down the line."

Our survey shows very different attitudes to tech regulation across the globe. Among U.S. respondents, there is a perception that regulators are lagging behind technological advancements. Many American executives believe the U.S. is taking a laissez-faire approach—38%, the largest percentage from any region, say that there are too few regulatory and industry standards regarding technology (Figure 7).

In the highly regulated European market, executives are evenly split between those who believe there is too much regulation (32%) and those who feel there is too little (33%). Notably, European regulators are taking a consistent approach to data protection, as demonstrated by the EU's General Data Protection Regulation (GDPR) legislation, which protects the personal information of individuals.

Meanwhile, competition authorities in Australia, the EU and the U.S. are pushing for their respective "enforcement toolkits" to be expanded to allow for a greater degree of scrutiny of tech-related M&A activity. "Proposals to introduce additional regulation and antitrust rules governing the conduct of tech companies is sparking concerns of overregulation which could stifle innovation and deprive young tech companies of much needed funding," says Nelson Jung, Antitrust Partner in Clifford Chance's Tech Group.

FIGURE 7

How Executives Feel About Regulation

	APAC	EUROPE	UNITED STATES
There are too many regulatory and industry standards	44%	32%	25%
There is the right amount of regulatory and industry standards	31%	35%	37%
There are too few regulatory and industry standards	25%	33%	38%

In the Asia-Pacific region (APAC), where regulation is strongest, 44% of executives—the largest percentage from any region—believe there is too much regulation. "In Asia, there is a jigsaw puzzle of different standards for outsourcing, data privacy or intellectual property protection," says Clifford Chance's Paul Landless. "This makes overregulation a natural outcome."

Our survey also reveals that U.S. and European executives feel less equipped than their APAC counterparts to deal with regulatory issues related to advanced technologies. This includes big data and automation as well as connected devices and new business/delivery models (Figure 8).

For Jonathan Kewley, Partner and Co-Head of the Clifford Chance Tech Group, this is not a surprise, given that "where there is regulation, even if it is intense regulation, people feel more prepared."

FIGURE 8

Preparedness For The Legal And Regulatory Impacts Of Advanced Technologies

How well equipped is your business for dealing with the legal and regulatory issues associated with the following technologies?

(% well or extremely well equipped)

	APAC	EUROPE	UNITED STATES
Big data	54%	39%	39%
Automation	54%	41%	41%
Connected devices	53%	44%	40%
New business/ delivery models	44%	39%	38%
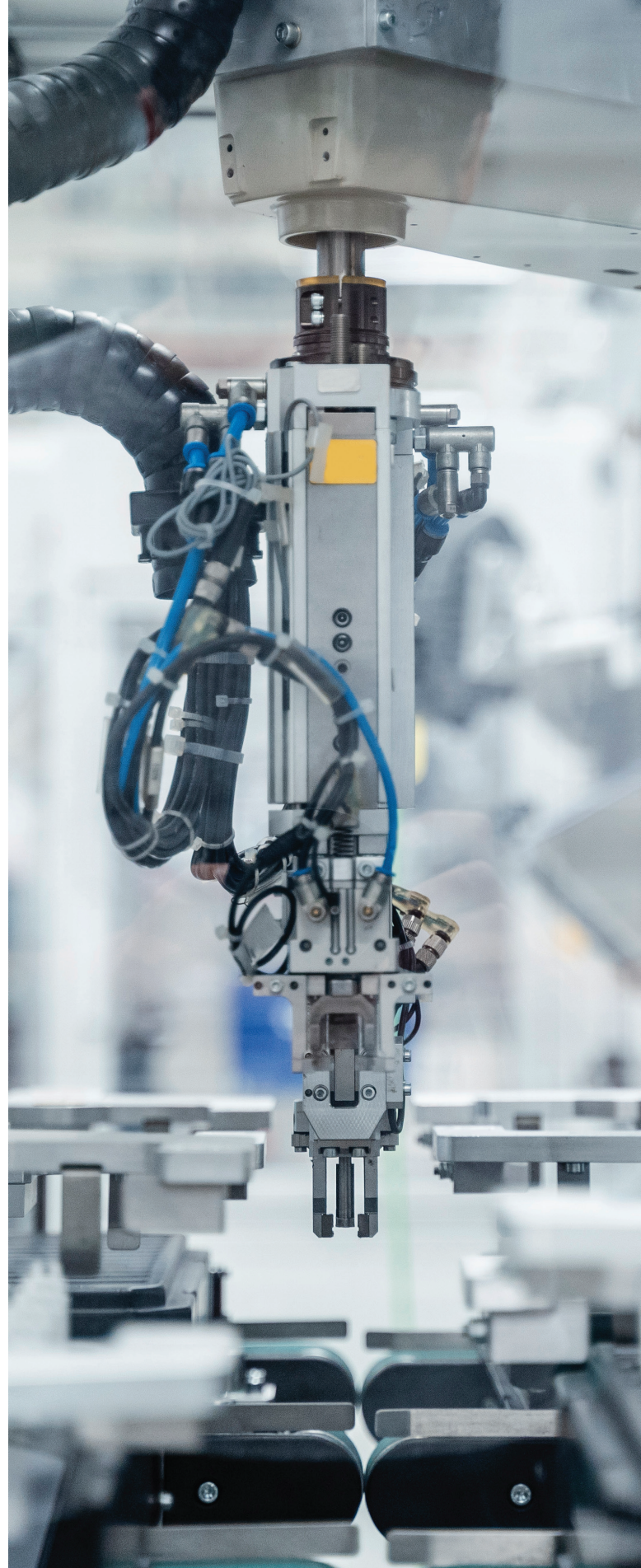
Paul Landless adds that strong regulation in the APAC region provides companies with an advantage because it creates certainties, leading to more precision about capital commitments. Ethical standards around AI in Singapore, for example, have moved the conversation to a higher level. "In the banking and financial services space, some of the questions around 'Is it legal to do this?' have been overtaken by 'Is it right to do this?'" he says.

At Qualcomm, a U.S. semiconductor company that designs telecommunications products, regulation is of prime importance. Every year, the company invests 20% of its revenues in research and development and derives the bulk of its profit from its patent licensing businesses. As Donald Rosenberg, executive vice president, general counsel and corporate secretary, explains, "We don't file patent applications in every country. We analyze where we think it's most important to file our patents, and our decision making considers the state of the rule of law in that particular jurisdiction from a patent protection perspective."

Many technology companies, especially those with the most groundbreaking, tech-driven business models, find the global regulatory environment more constrictive than Qualcomm. Some of the biggest and most innovative technology companies have become well known for run-ins with regulators globally because of regulators' unpreparedness for these organizations' new business models and the tech companies' tendencies to push legal and regulatory boundaries.

Among them are "shared economy" companies, such as ride-sharing apps and online lodging marketplaces. Both have been embroiled in multiple regulatory-driven disputes worldwide. In London, for example, a ride-sharing company lost its license for the second time over safety concerns, and an online lodging marketplace has faced challenges from authorities in several European cities.

CLIFFORD CHANCE VIEWPOINT

Dessislava Savova On Aiming For The Highest Levels Of Compliance

We need to work toward creating global, cohesive standards in data and AI regulation. In the meantime, companies that want to scale their businesses globally should be looking to the highest level of regulatory compliance globally, not the lowest. Designing products carefully and thoughtfully to comply with a complex regulatory landscape will make them easier to sell. Technology buyers want to know if vendor sites are secure, if their clients will understand and approve of how their data is being used, and if the systems can be switched off if something goes wrong.

Companies that consider regulation from the inception of a product and involve other business functions (not just the legal team) in understanding how to create products that meet regulatory compliance will grow their business as a result. Those who do not aim for the highest levels of compliance globally may soon find themselves unable to launch a product or enter new markets, or even be forced to withdraw products. It is time to make a long-term strategic decision, and invest in pursuing compliance at the highest levels as a key factor in the success of a business.

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Dessi specialises in new technologies, and accompanies clients in their digital transformation and in designing and implementing their strategic data, cyber and AI projects.