Lex Mundi

Global M&A Trends Report

Lex Mundi
World Ready

About the Lex Mundi Cross-Border Transactions (CBT) Group

This report is produced by the Lex Mundi Cross-Border Transactions (CBT) Group.

The CBT Group provides access to the experienced, top-tier legal advice clients require to expand their operations and investments into global markets. Through our member firms' global reach, and their indigenous know-how and the relationships that they have fostered with regulators and other key stakeholders in their respective jurisdictions, the CBT Group is uniquely positioned to counsel clients on successfully executing complex cross-border transactions and multijurisdictional projects.

For more information on the CBT Group:
https://www.lexmundi.com/lexmundi/CrossBorder_Transactions.asp

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Lex Mundi Horizon Scanning Tool

Lex Mundi's horizon scanning tool provides clients with a customized risk-mapping report that matches their geographic footprint. The purpose of the exercise is to help companies anticipate and proactively respond to risk under the radar in jurisdictions where they operate or may need to expand. Horizon scans have also been used to identify and get an overview of red flag issues in cross-border transactions, including regulatory scrutiny, aspects of due diligence and foreign investment challenges. A member of the Lex Mundi team will work with you to scope the report, analyze responses and present findings.

For further information on the Lex Mundi Horizon Scanning Tool, contact:
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About This Report

In the current environment of political and economic instability brought on by trade wars, Brexit and nationalism (to name a few), cross-border transactions are running into a complex array of challenges in a growing number of countries. Political intervention, increased regulatory scrutiny, shareholder activism and foreign investment restrictions are just some of the trends impacting valuations, execution risk and post-merger synergies. The ability to meet balance sheet objectives, anticipate issues and adhere to sensitive deadlines depends on well-resourced and coordinated legal expertise.

In light of the increasingly complex global market, 69 Lex Mundi member firms from across the globe have shared their insights in respect of mergers and acquisitions (M&A) in their respective jurisdictions, including key concerns facing private company M&A practitioners, deal activity by market segment and sector, and their predictions for 2020.

We are pleased to present our member firms' insights in this first edition of the Lex Mundi Global M&A Trends Report. The summary below highlights key findings from our member firms:

- On a global scale, due diligence continues to rank as a top area of concern for M&A practitioners with 18% of member firms surveyed confirming that the process was top of mind when executing transactions. In addition to the economic environment and new technology disrupting the traditional diligence exercise, buyers' attention has shifted towards target company compliance to mitigate risk across various practice areas such as cyber, anti-corruption and data privacy. In certain developing economies, historic business practices continue to demand an increased level of scrutiny during the diligence review. Offshore jurisdictions, such as the British Virgin Islands and Barbados, expect due diligence to take a more prominent role in 2020 as companies are required to show economic substance in compliance with OECD standards. In parts of the Middle East and Latin America, publicly available information on corporate entities is limited, hence, the importance of a comprehensive exercise.
- 14% of member firms surveyed agreed that transaction structure was top of mind in the M&A process. Practitioners noted that foreign shareholder restrictions across Asian jurisdictions, the US-China trade war and onerous regulations (to name a few) all impact structuring. Lawyers in both Canada and the United States expect transaction structure, valuation, and price adjustment clauses to be more important in 2020 as overall risk in the market increases given the current geopolitical environment, particularly international trade disputes. Practitioners in Asia and the Pacific noted that transaction structure is also high on the list of priorities for publicly-listed company M&A. In India, for example, this is because public deals are heavily regulated and are subject to stricter scrutiny, especially in terms of pricing, entry routes, and tender offer obligations. In Panama, the government has promised further action to remove the country from the OECD's grey list, including centralizing tax and beneficial owner information; hence transaction structure, especially for private company M&A, may take on a new importance as buyers give more thought to how and where to incorporate the acquiring vehicle.

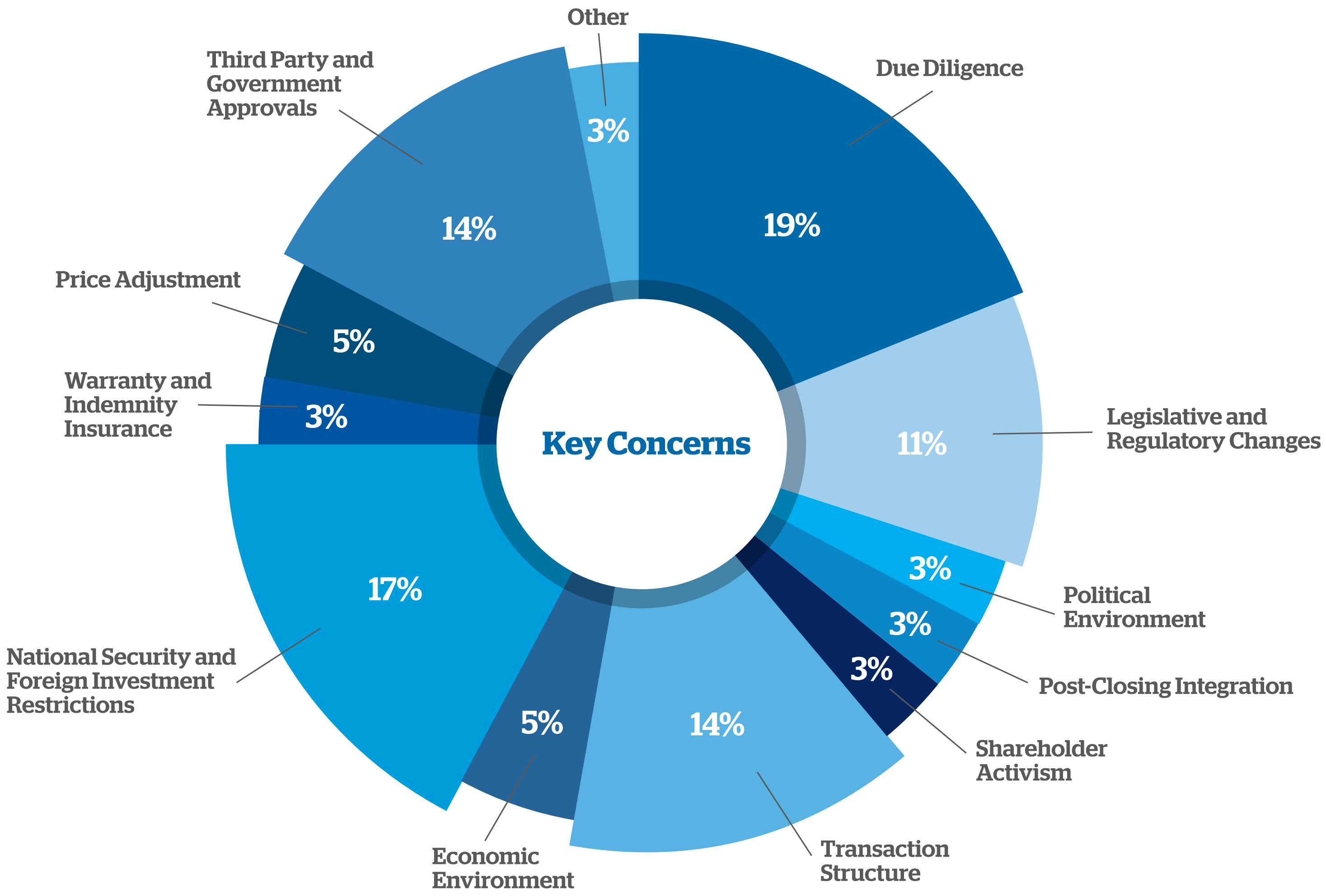
On a global scale, due diligence continues to rank as a top area of concern for M&A practitioners with 18% of member firms surveyed confirming that the process was top of mind when executing transactions.

- Despite global uncertainly in the market, across Lex Mundi 58% of practitioners surveyed expected deal activity in 2020 to stay the same as 2019. The economic environment may be grey, but surveyed market players are still seeing upside. Distressed activity is expected to gain further momentum in regions such as Europe and South Asia. In Brazil, macro reforms by the current administration and a major privatization pipeline is expected to contribute to greater deal activity in 2020, while new legislature such as the Economic Freedom Act reduces government involvement in business, paving the way for more investment in the country and consequently, more deal activity. In Pakistan, the privatization commission has announced the privatization of a number of public sector entities relating to oil and gas, banking, power and steel sectors. As a result, a number of interesting acquisition opportunities are likely to surface during the course of 2020.
- Across both publicly-listed and private company M&A, practitioners are seeing most activity across the energy and power sectors (20%), financial services (17%), manufacturing (11%), technology (11%), and healthcare and life sciences (8%).
- In addition to the above trends, this report also highlights a focus by many jurisdictions on recent developments across shareholder activism, antitrust considerations, foreign direct investment restrictions and W&I (warranty and indemnity) insurance.

We hope private practitioners and corporate counsel alike find the regional themes and trends addressed in this report a useful resource when advising businesses on cross-border transactions during 2020.

Asia and the Pacific

Key Concerns Facing Private Company M&A Practitioners



It is no surprise that, as with most other regions, due diligence features top of mind for M&A lawyers in Asia and the Pacific.

17% of member firms also identified national security and foreign investment restrictions as being current concerns for private company M&A lawyers, from the foreign investment negative list promulgated by the government in China to burdensome regulatory review in Taiwan of transactions involving Chinese money or investors.

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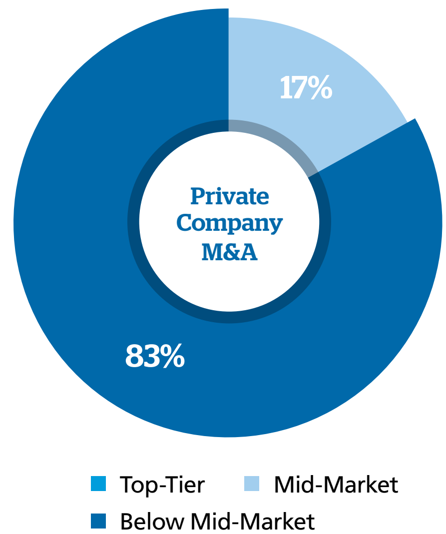
In order to address foreign shareholder restrictions across jurisdictions in the region, practitioners are having to be creative when structuring transactions. Lawyers in Hong Kong foresee that the development of the trade war between China and the United States may have an impact on how transactions should be structured. Practitioners noted that transaction structure is also high on the list of priorities for publicly-listed company M&A. In India, for example, this is because public deals are heavily regulated and are subject to stricter scrutiny, especially in terms of pricing, entry routes, and tender offer obligations.

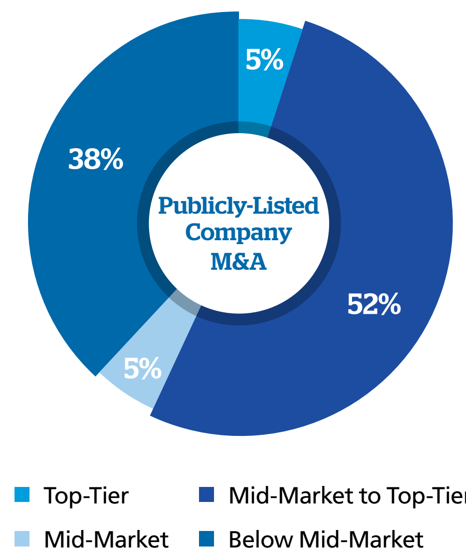
Member firms indicated that regulatory and governmental approvals (including antitrust clearance) are also a cause for concern.

- In India, M&A deals in heavily regulated sectors such as financial services and insurance often hinge on successfully obtaining regulatory approvals. Large scale M&A deals may also be subject to antitrust approvals. As a result, M&A transactions in highly regulated sectors run the risk of falling through if these approvals are not obtained.
- In Thailand, antitrust considerations are likely to be top of mind for M&A practitioners in 2020. Merger control rules that were issued by virtue of the Thai Trade Competition Act have come into effect and certain guidelines have recently been issued.
- Indonesia is awaiting the enactment of a new antitrust law, introducing a mandatory pre-closing notification and approvals based on set thresholds.

Shareholder activism is emerging in Japan and lawyers foresee takeover defenses to be significant when advising the current management of a listed company in a hostile bid. Likewise, it is worth noting that the government plans to impose more restrictions on inbound investment in national security-related sectors, such as high-tech and cybersecurity, and other public interest-related sectors, such as the telecommunications and energy sectors. Under the proposed regulation, a foreign investor will be required to pass a government review before taking a stake of 1% or more in Japanese listed companies in the said sectors (under the current regulation, the threshold is 10%). At the same time, the proposed regulation will introduce certain exemption rules, under which the pre-transaction review will not be required if an investor complies with certain conditions: refrains from appointing a closely-related person as a director of the issuer, refrains from proposing the transfer of the issuer's important business, and refrains from accessing non-public technology information possessed by the issuer. In addition, most foreign financial institutions' investment activities will be exempted. However, there are certain limited cases where the application of the above exemption will not be allowed.

Most Deal Activity by Market Segment*





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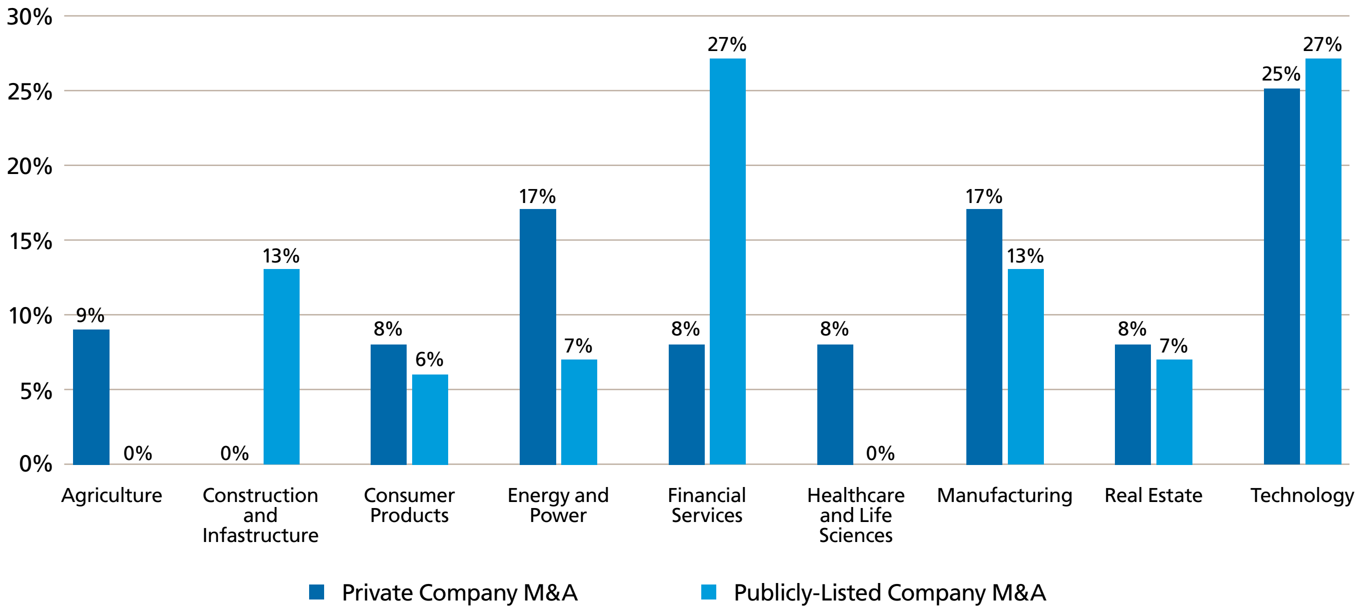
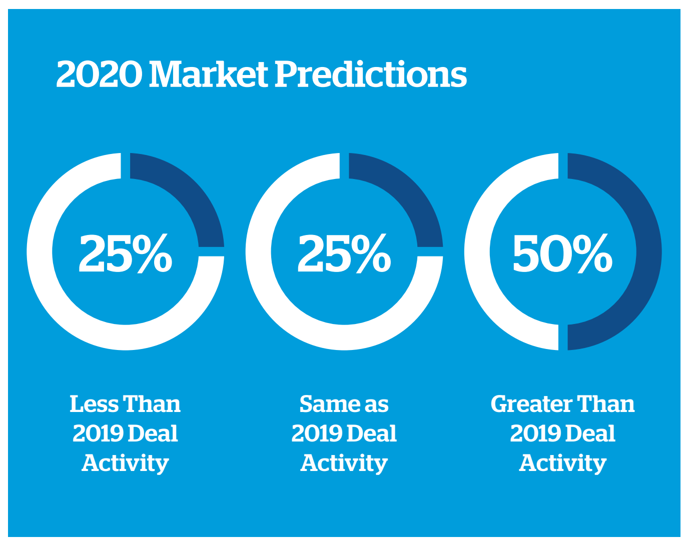
Most Deal Activity by Sector



Half of our member firms expect M&A deal volume to increase in their jurisdictions during 2020. For some, this is reflective of periods of political stability and steady economic growth.

- In Bangladesh, the government is adopting a pro-business and pro-investment attitude resulting in more dynamic legislation.
- In Indonesia, investors expect more stability than 2019 which was punctuated by the presidential re-election last October. Like Bangladesh, Indonesia is an example of increased stability in terms of political risk coupled with the promise of fewer restrictions on foreign investment and increased tax incentives.

Other countries predict increased activity as a result of particular investors from abroad. Despite the decrease in inbound M&A from China, interest from investors in Japan, Singapore, the United States, and Europe has increased in Thailand.



Half of our member firms expect M&A deal volume to increase in their jurisdictions during 2020. For some, this is reflective of periods of political stability and steady economic growth.

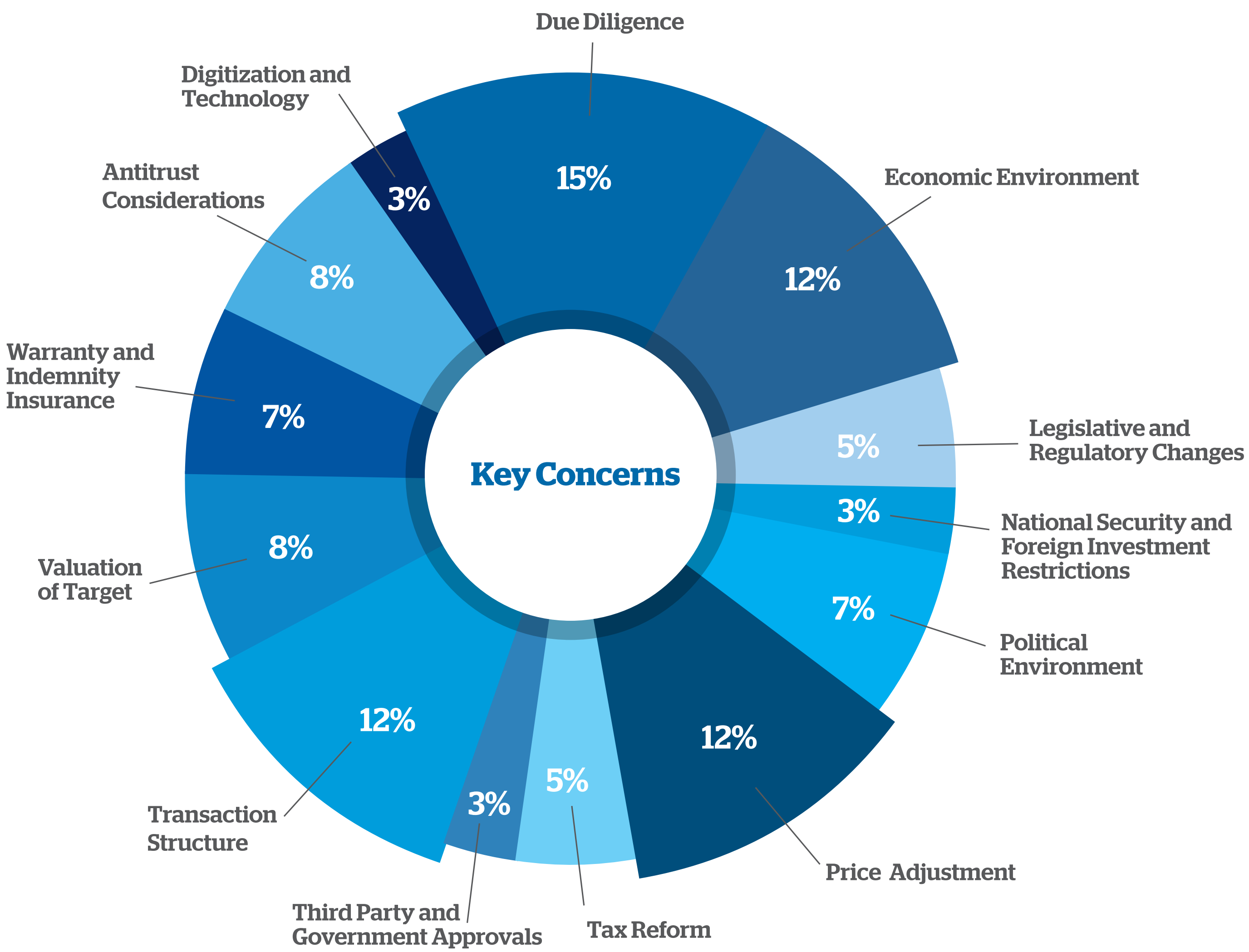
2019 saw the number of private equity deals and outbound deals in South Korea increase as well as the consolidation and reformation of businesses of Korean conglomerates. We foresee that these trends will continue and result in the increase of private deal volume during 2020.

However, the forecast is less positive for certain countries.

- Due to the trade war between China and the United States, players in the Chinese market tend to hold a conservative forecast for M&A activities in the coming year. The uncertain landscape is likely to keep both buyers and sellers in Singapore on the sidelines, waiting to see which direction the market will eventually go. A notable exception is private equity and venture capital deals in the technology space, which was buoyed by the government's strong support in creating an extensive digital ecosystem to connect researchers, innovators and entrepreneurs with funding sources. Various sectors including finance, transportation, healthcare, manufacturing, IoT (internet of things) and AI (artificial intelligence) saw tremendous activity in fund-raising at both early and late stages, as well as strategic acquisitions. Likewise, 2019 saw continued momentum in privatizations and delistings of publicly-listed companies especially in the first half of the year. Whilst the Singapore Exchange has tightened the voluntary delisting rules with effect from the second half of 2019, the trend of delistings is expected to continue into 2020. M&A interest in REITS is also likely to continue, with Singapore REITS poised for further consolidation in 2020.
- In India, after a record year of M&A activity in 2018, deal activity fell in 2019. This can largely be attributed to the economic slowdown and the uncertainty in the global market. However, based on recent court decisions and growing non-performing assets, distressed M&A is expected to gain further momentum. Further, economic slowdown has also resulted in valuation realignment in certain sectors, and if this continues, M&A resulting from private equity investments, especially growth deals, may see a substantial uptick.

Europe

Key Concerns Facing Private Company M&A Practitioners



As in Asia and the Pacific, a number of member firms are seeing a greater focus on diligence in the M&A process, perhaps as a result of the economic environment and new technology disrupting the traditional diligence exercise. Economic nationalism and political risk call for heightened emphasis on the due diligence process and for valuation matters. In developing economies, such as Serbia, historic business practices continue to demand an increased level of scrutiny during the diligence review.

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Firms across the region are monitoring the general economic environment and the potential down turn around the corner. Practitioners agree that, like private company M&A, publicly-listed company M&A continues to be impacted by the economic environment, bringing issues such as valuation, shareholder activism, takeover defenses and even post-closing integration to the forefront of discussions.

- In Austria, the focus on valuations in 2020 will likely continue to be critical given the expected increase in interest rates.
- In Germany, the high valuations in some sectors continue to pose challenges for buyers and their approach to participating in auction processes. In a publicly-listed company M&A context, statutory minimum price provisions and the expectation of takeover premiums will continue to challenge bidders in Germany and other European countries.
- Certain countries, such as Turkey, have struggled with a difficult year due to national economic and political developments, including currency fluctuations, high inflation rates, presidential elections and a re-run of municipal elections over the last couple of years.

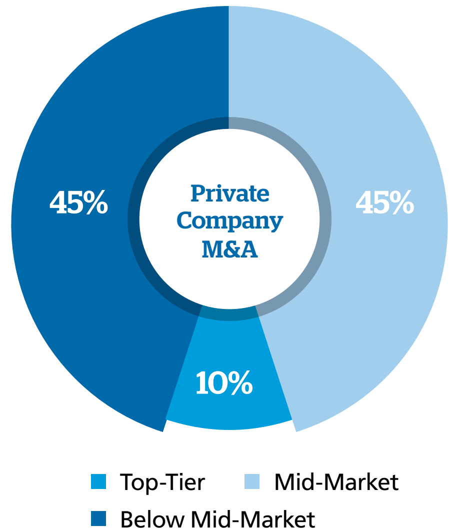
In addition to transaction structure and price adjustment, the use of W&I insurance is top of mind for many European practitioners and is likely to become a more established part of deal-making during 2020.

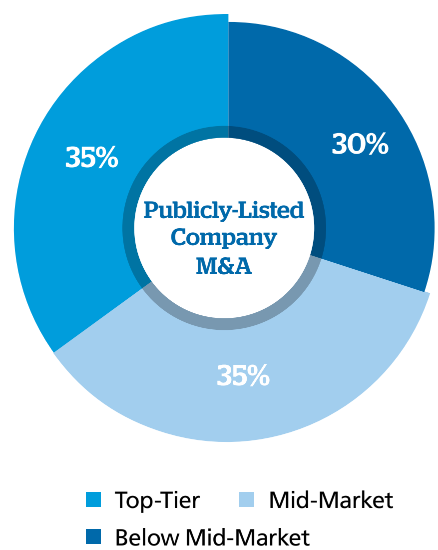
While a number of lawyers predict that Brexit and the continued uncertainty around the health of the European economy will act as a damper on deal making, 75% of respondents are optimistic that 2020 will not see a significant decline in deal volume.

According to lawyers from the Netherlands and Germany, while the general economic circumstances worldwide (with cooling economies, Brexit, and geopolitical headlines) may impact M&A levels, firms are likely to see more distressed activity, restructurings and transformative deals changing existing business models. And of course, there's still plenty of money that needs to be spent by many investment funds, which is also expected to lead to more public to private transactions.

- In Germany, it will be interesting to see whether the slowdown will have an effect on the still-high valuation multiples. Some countries, like Luxembourg, have actually seen a positive impact by Brexit-driven deals.
- Swiss lawyers noted that while there have been fewer transactions during 2019, higher deal volumes have been driving transactions.
- In Austria, the M&A market will remain active with a likely focus on mid-cap deals (large-cap being the exception).

Most Deal Activity by Market Segment*





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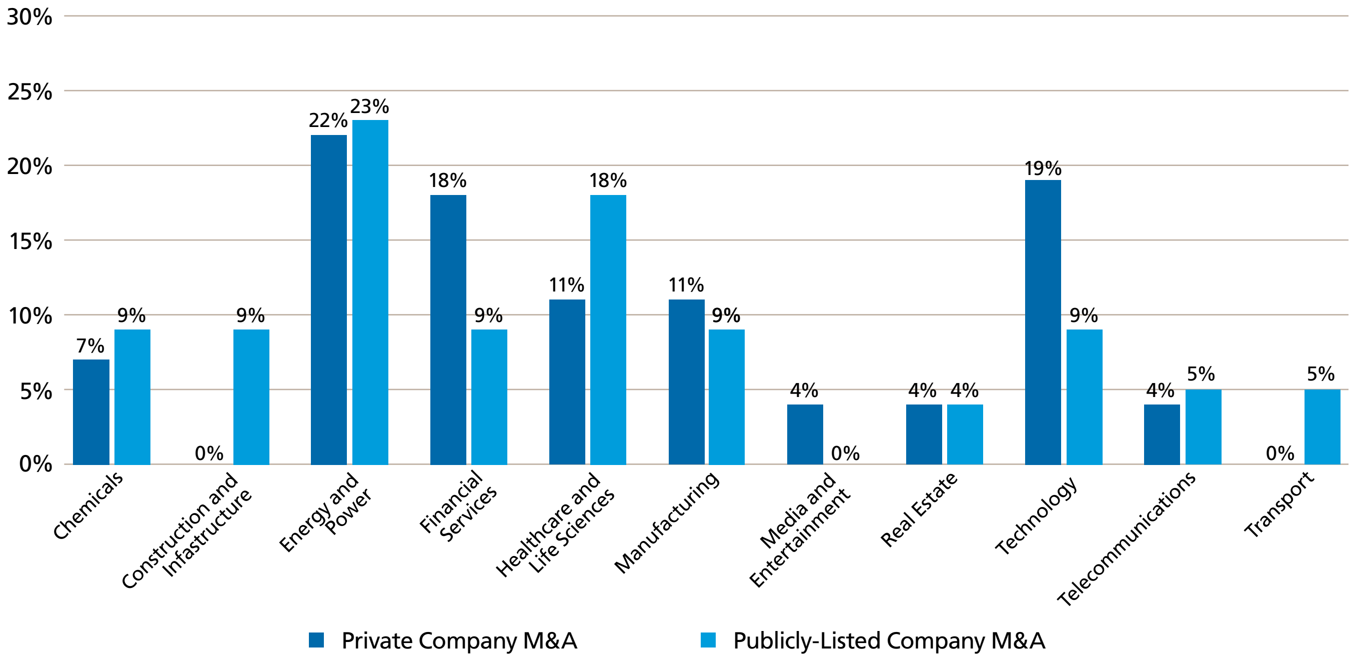
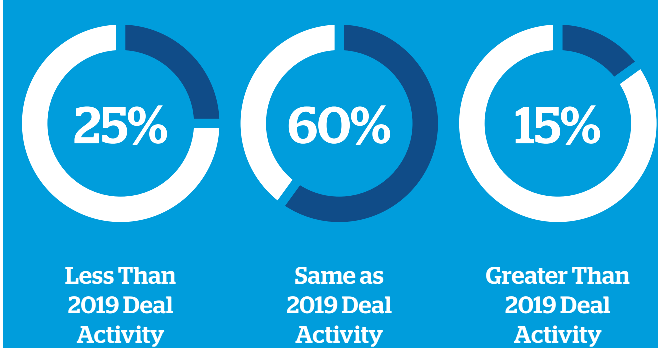
Most Deal Activity by Sector



- Estonia saw a decrease from 2018 in deal-making, which was an exceptional year, but expect volume into 2020 to be steady.
- In Poland, the market expects that employee pension plans will fill the gap left on the Warsaw Stock Exchange after investment by previous pension vehicles shrank, bringing international investors back to the exchange and thereby encouraging companies to remain listed.

A number of practitioners (including in Norway and Russia) do anticipate increased deal activity in 2020. The Russian M&A market is continuing to recover from the economic down-turn, and according to available statistics, there was a significant increase in the aggregate deal value in the first half of 2019 as compared to the same period of 2018. The Russian government is taking measures to stimulate investments and simplify administrative procedures. Recently, Russian civil and

2020 Market Predictions



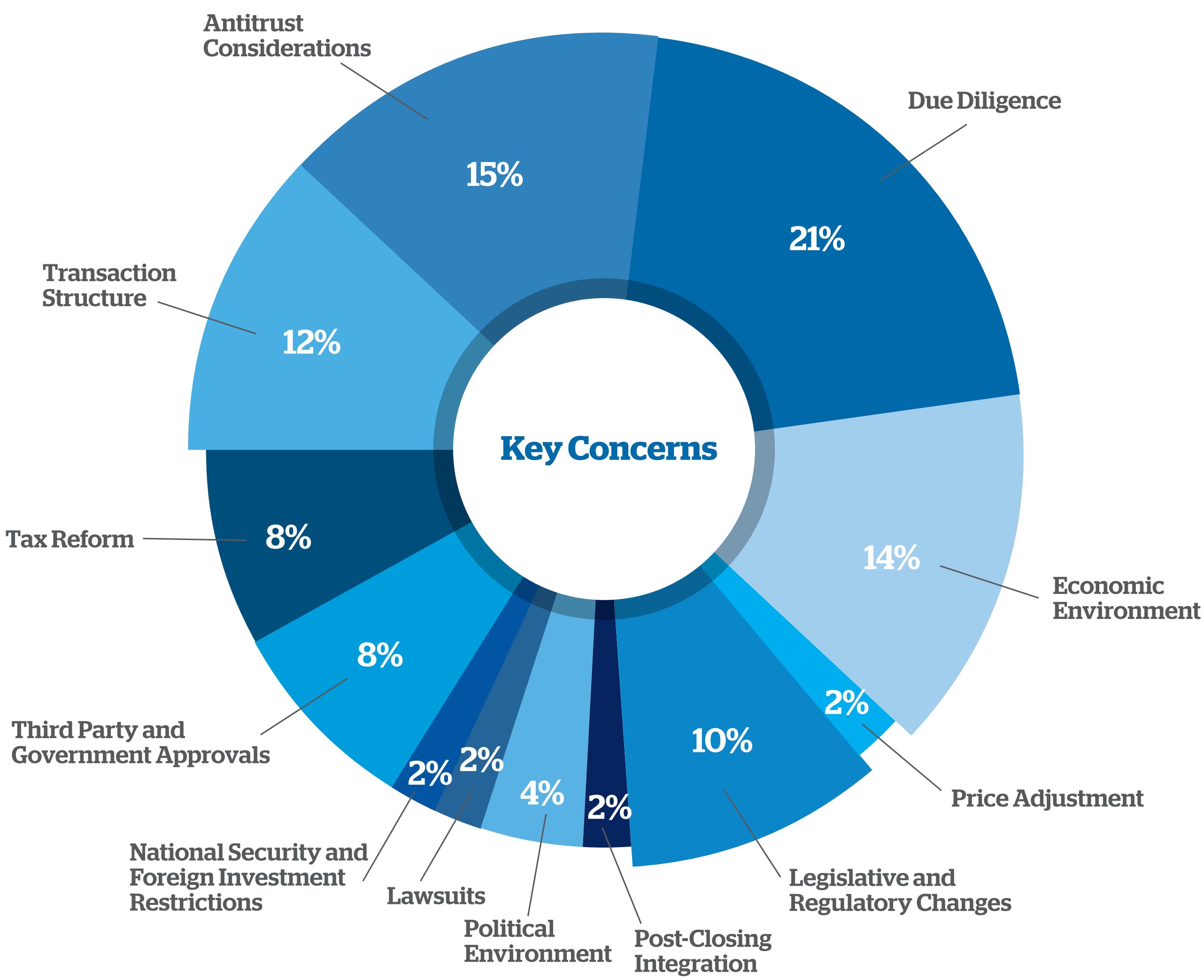
While a number of lawyers predict that Brexit and the continued uncertainty around the health of the European economy will act as a damper on deal making, 75% of respondents are optimistic that 2020 will not see a significant decline in deal volume.

corporate law incorporated several mechanisms widely used in the international M&A market, such as representations and warranties, indemnities, options and escrows, with the aim of providing foreign investors with additional comfort and security.

Lastly, the EU Screening Regulation (Regulation (EU) 2019/452), which establishes a framework for screening for foreign direct investment into the EU, will apply from October 2020. Although the framework does not mandate the introduction of a member state screening system, it provides for a framework in case member states have done so or choose to do so, and provides for a cooperation mechanism among member states in case of relevant foreign direct investment into the EU. There will be process and timing effects due to the new mechanism. Whether this will put an additional damper on investments from certain countries, such as China, will have to be seen.

Latin America and the Caribbean

Key Concerns Facing Private Company M&A Practitioners



Common themes running through the entire Latin America region are political instability and economic uncertainty. Many countries are addressing these with macro reforms that will improve investor confidence, especially from abroad, and ultimately increase both deal volume and value over the next year and in the long term. But it will be up to governments to push through the proposals, particularly in countries experiencing political and social unrest.

Out of the 69 member firms who participated in this report, only practitioners in Bolivia and Honduras saw more hostile takeovers than friendly acquisitions in their countries during 2019.

Due diligence features top of mind for M&A lawyers in Latin America and the Caribbean.

- This is especially important in countries such as Peru where public information on corporate entities is limited.
- In Brazil, labor and tax diligence features prominently in M&A transactions, including more recently compliance given high-profile ongoing investigations in the country.
- In addition to labor and tax, anti-bribery and anti-money laundering due diligence in Mexico are significant given increased scrutiny by authorities.
- Certain offshore jurisdictions, such as the British Virgin Islands and Barbados, expect due diligence to take a more prominent role in 2020 as companies are required to show economic substance in compliance with OECD standards.
- In Venezuela, extensive due diligence is required given the anti-corruption compliance risk.

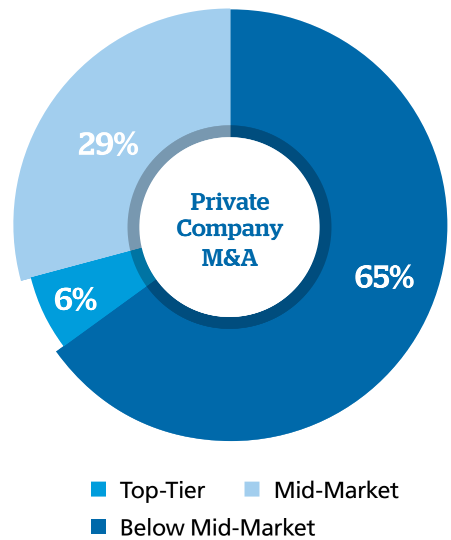
Antitrust considerations also ranked highly in the region.

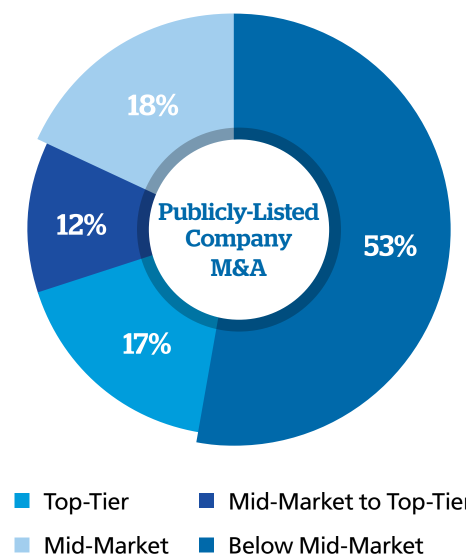
- In Chile, antitrust clearance has recently become mandatory and there has since been an increase in the number of industries which require governmental approval.
- With Costa Rica in the process of applying for OECD membership, the local Antitrust Authority has obtained broader authority to investigate filings and antitrust practices, with potentially substantial fines.
- In Nicaragua, the ProCompetencia is very proactive and monitors all corporate transactions that take place.

Practitioners note that a stable economic environment is important for sustained deal activity; however, a number of countries in the region are struggling.

- In July 2019, Costa Rica adopted a major tax reform including the creation of capital gains and value added tax. This contributed to the struggling economy and tax concerns have given sellers pause before executing transactions.
- Similarly, tax reforms in Colombia have led parties to accelerate or suspend investment decisions based on their expectations around changes to the tax regime.
- In Brazil, proposed reforms to the complicated and restrictive tax system are already under discussion and if passed, will create a positive environment for both domestic and cross-border deal activity, among other benefits.

Most Deal Activity by Market Segment*





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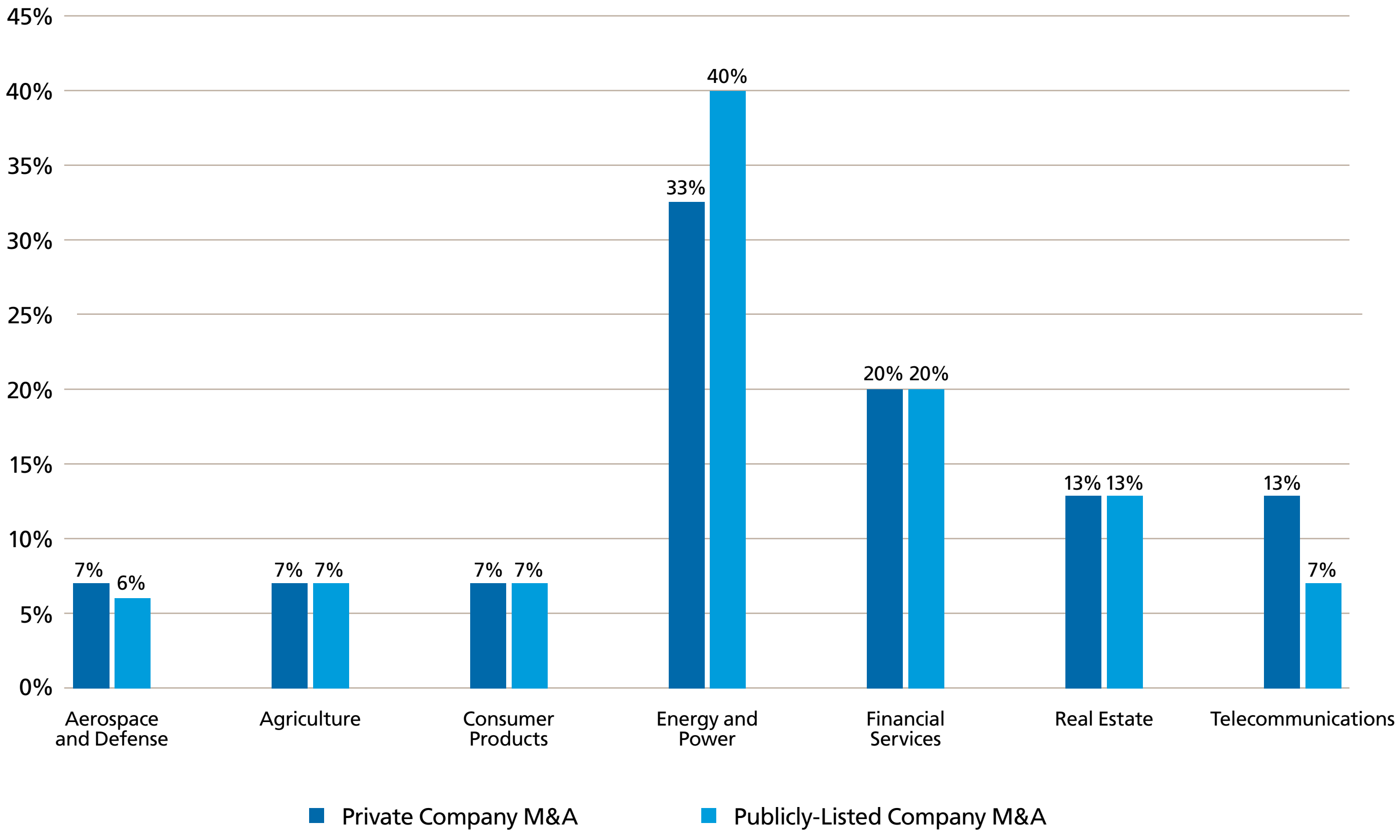
Most Deal Activity by Sector

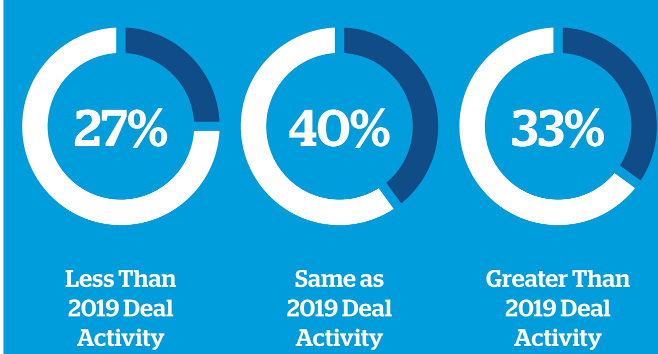


A number of practitioners noted the importance of transaction structure. In Panama, the government has promised further action to remove the country from the OECD's grey list, including centralizing tax and beneficial owner information; hence transaction structure, especially for private company M&A, may take on a new importance as buyers give more thought to how and where to incorporate the acquiring vehicle.

One-third of member firms expect to see an increase in deal volume in their respective jurisdictions during 2020.

- In Argentina, most M&A is on hold due to sellers keeping pre-crisis company valuations. This trend suggests that sellers are anticipating better market conditions ahead contrary to broad negative media perception.

2020 Market Predictions



One-third of member firms expect to see an increase in deal volume in their respective jurisdictions during 2020.

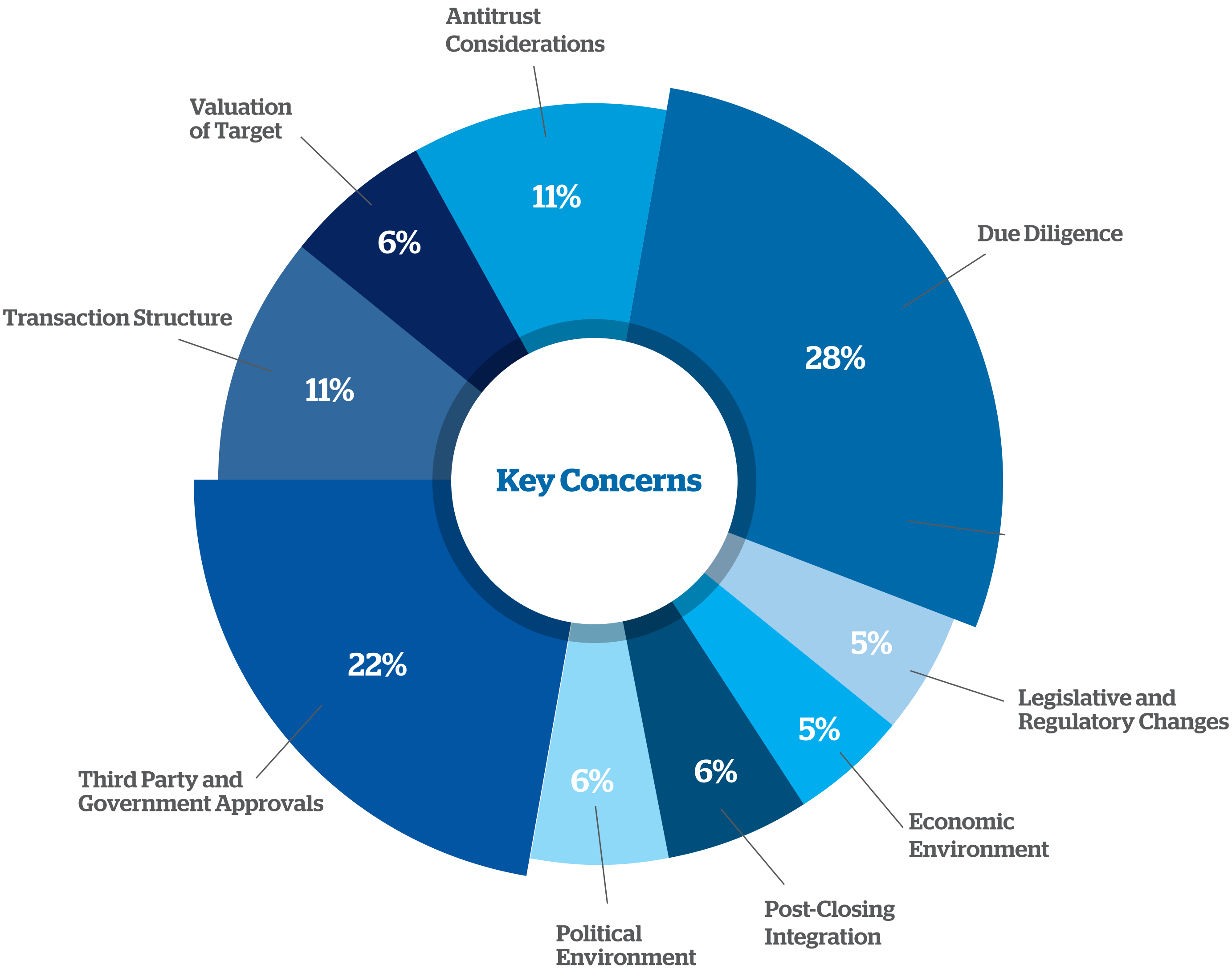
- Countries such as Uruguay and Nicaragua are expecting that a more stable political and economic environment in 2020 will usher in an increase in deal volume.
- In Brazil, macro reforms by the current administration and a major privatization pipeline is expected to contribute to greater deal activity in 2020, while new legislature such as the Economic Freedom Act reduces government involvement in business, paving the way for more investment in the country and consequently, more deal activity.
- The British Virgin Islands is seeing a lot of consolidation due to political pressure in Asia and the broader economic environment.
- Despite slow economic growth, Mexican practitioners are optimistic that the new United States-Mexico-Canada Agreement will continue to bring opportunities for companies interested in the NAFTA region.

For markets like Colombia, deal activity is likely to remain at 2019 levels. While most transactions some years ago were driven by foreign buyers acquiring local companies as part of their expansion strategy, nowadays relevant players include domestic companies, private equity and venture capital funds, international pension funds and sovereign funds. After a long wait, China is finally making an entrance. Following Softbank´s investment in Rappi, tech companies are also becoming attractive targets.

On the other hand, practitioners in Bolivia and Honduras expect the national political climate (and lack of legal security) to impact deal flow negatively. In Peru, the Lava Jato scandal (which started in Brazil) has paralyzed construction projects until it is confirmed that these projects are not involved in the payment of bribes. Barbados expects deal flow to fall as a result of OECD and EU challenges reducing the use of corporate vehicles in tax efficient jurisdictions.

North Africa and the Middle East

Key Concerns Facing Private Company M&A Practitioners



As with other regions, due diligence remains top of mind for M&A lawyers, especially as there is often a lack of publicly available information in the Middle East and North Africa.

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Governmental and regulatory approvals are also critical, because they are often needed to implement mergers, especially for highly regulated sectors.

- In the UAE, approvals are often matters of privilege, not right, and no business can run without them. It is worth noting, however, that approvals are less likely to be problematic in publicly-listed company M&A transactions.
- In Pakistan, certain industries are highly regulated and it is important to evaluate the approvals/consents that will be necessary to complete transactions. Separately, if mergers and acquisitions meet certain thresholds an approval of the Competition Commission is required.
- In Egypt, regulators are becoming more involved and aggressive in their interventions, especially for high profile transactions. This is more so if those are publicly-listed company M&A deals. The Egyptian Competition Authority is also taking a much more active role and this is likely to continue into 2020.
- Given that a new Competition Encouragement and Protection Law has recently been adopted in Bahrain, we anticipate that practitioners will give more consideration to issues related to economic concentration.

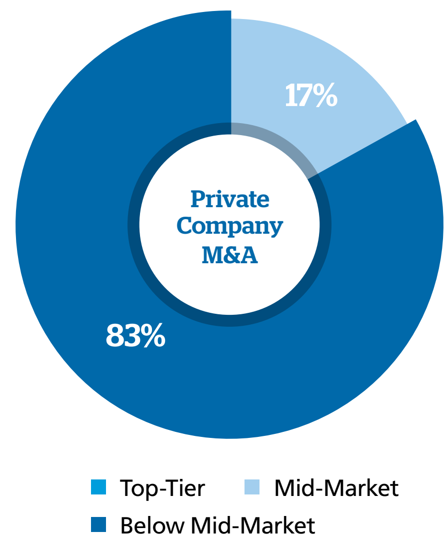
Digitalization and technology are also expected to be vital topics throughout the region given the recent changes in the market.

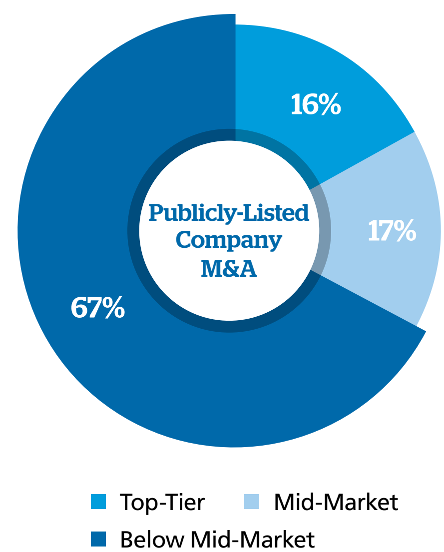
Publicly-listed company M&A across the region likely requires an increased focus on transaction structure, valuation of target and shareholder activism.

Two-thirds of our member firms agreed that deal activity would likely stay the same in 2020 and the remaining lawyers expect it to increase in 2020.

For financial services, the Central Bank of Bahrain has been promoting the idea of merging small banks and financial institutions to ensure those remaining in the market are strong prominent institutions. There is no clarity in terms of other sectors in the market as the activity will depend on the market conditions which may be affected by the economic environment. Having said this, Bahrain experienced a lot of M&A activity in the industrial sector.

Most Deal Activity by Market Segment*





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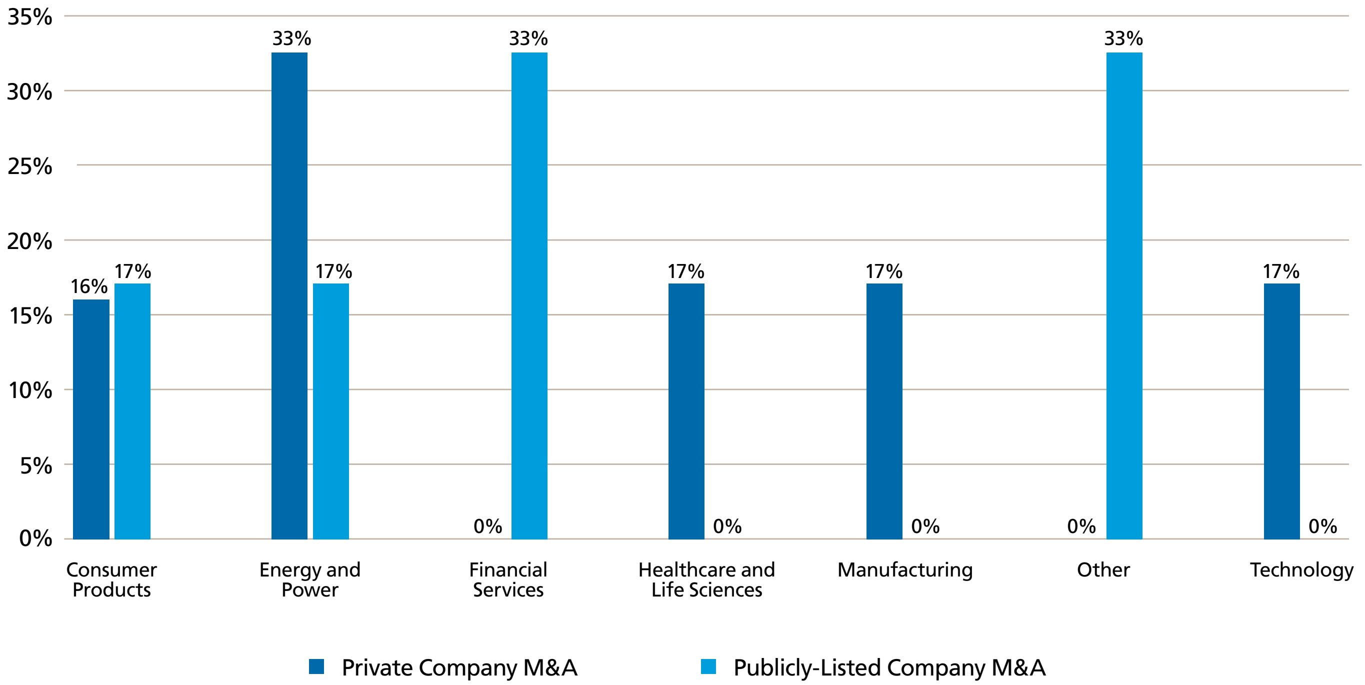
Most Deal Activity by Sector

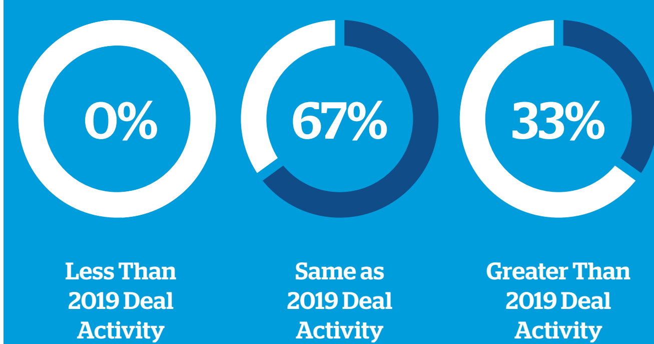


In Egypt, as the economy improves and diversifies, practitioners anticipate greater activity in the M&A market, especially in the energy, infrastructure, financial, healthcare, education and manufacturing sectors.

In Pakistan, the privatization commission has announced the privatization of a number of public sector entities relating to oil and gas, banking, power and steel sectors. As a result, a number of interesting acquisition opportunities are likely to surface during the course of 2020.

Finally, some parts of the Middle East and North Africa, such as Lebanon, are going through troubled economic and political times. The same is expected to apply in 2020.

2020 Market Predictions



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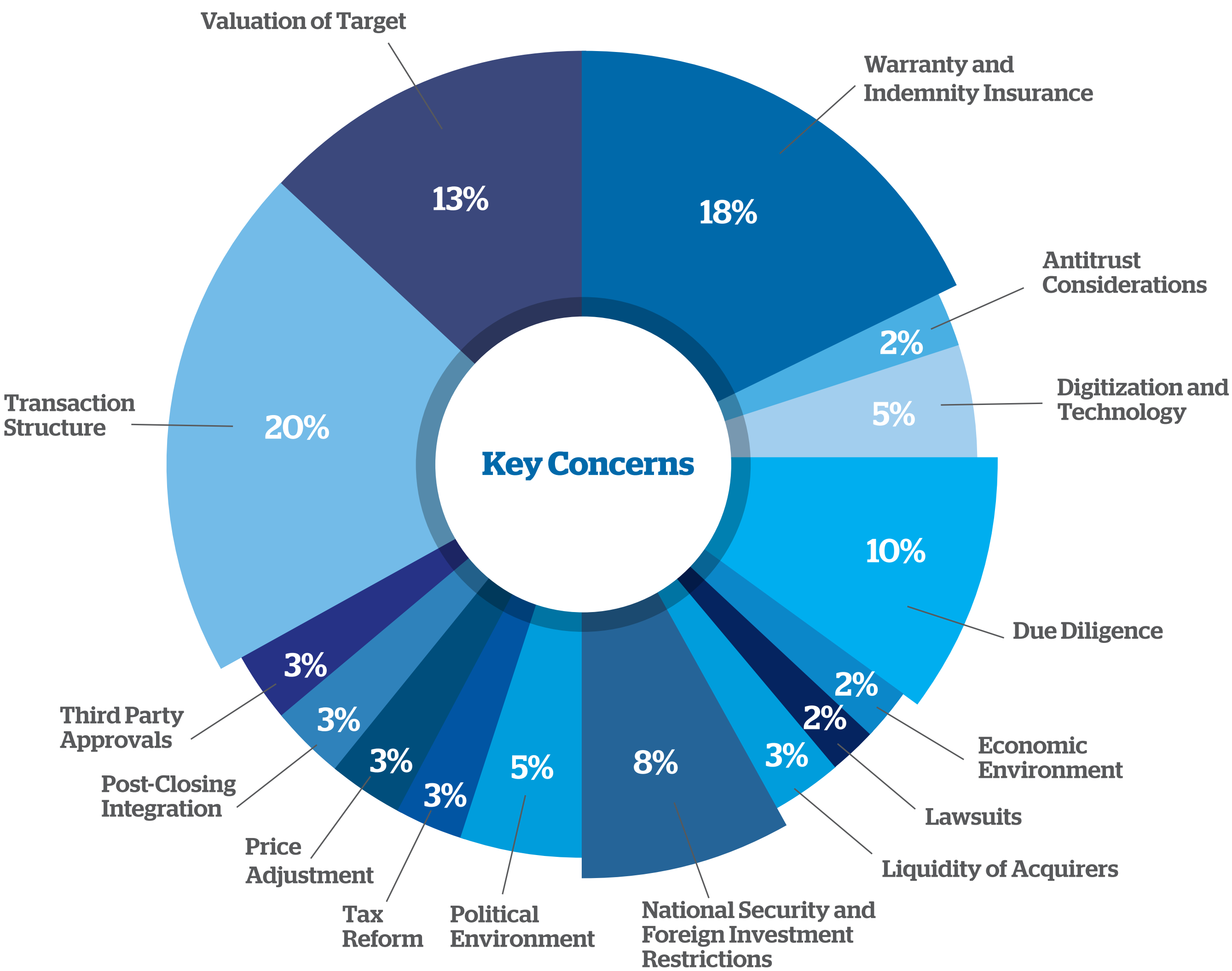
North America

Key Concerns Facing Private Company M&A Practitioners



Structuring transactions remains top of mind for M&A practitioners across North America. Lawyers in both Canada and the United States expect transaction structure, valuation, and price adjustment clauses to be more important in 2020 as overall risk in the market increases given the current geopolitical environment, particularly international trade disputes.

We foresee that the insurance landscape will continue to be competitive, and we will continue to see a rise in its use across private company M&A, particularly as premiums and retentions decline.

The heightened sensitivity and awareness around cybersecurity and data protection may continue to increase and impact deals, and the volatility in the global economy and trade disputes may start putting downward pressure on valuations.

Post-transaction risk allocation continues to be a significant concern, with W&I insurance dramatically transforming the deal-making process across Canada and the United States over the last several years. In the United States, practitioners are seeing an increasing shift away from full seller indemnity in favor of W&I insurance in private deals, particularly in competitive auctions, where requests for post-closing seller indemnity are increasingly viewed as a competitive disadvantage for bidders. We foresee that the insurance landscape will continue to be competitive, and we will continue to see a rise in its use across private company M&A, particularly as premiums and retentions decline.

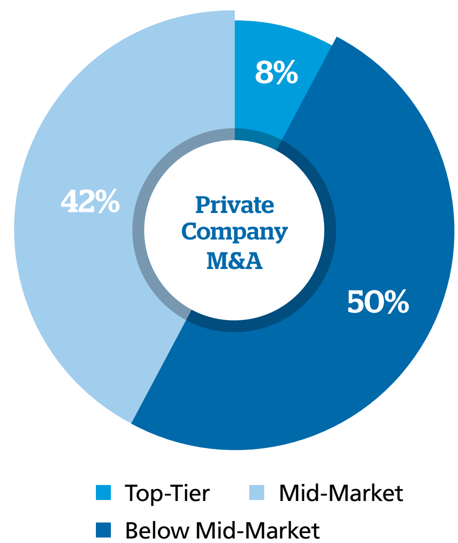
Practitioners in the United States note that target valuations are near historic highs across multiple sectors and industries, which largely is the result of there being relatively few quality targets on the market in this point of the current M&A cycle. There are also near record levels of uncommitted capital in the private equity market that the sponsor groups must deploy to generate returns for their limited partners. Excess capital chasing fewer quality targets will continue to result in increased valuations as sponsors compete for deals.

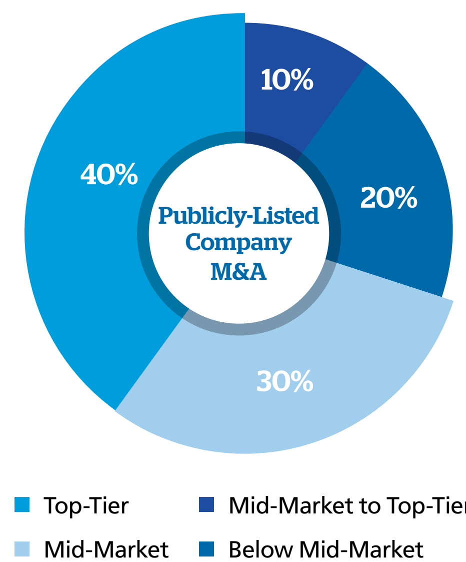
Third party and governmental approvals continue to be significant in both public company and private transactions given the activist approach the US authorities are taking towards transactions, with antitrust considerations top of mind for large transactions and the revamped US CFIUS regime at the forefront of any inbound, cross-border transaction. Across publicly-listed company M&A, shareholder activism and takeover defenses continue to be a critical concern for any significant transaction.

While a number of lawyers noted that the present uncertainties in the global economy might chill M&A markets across North America, the vast majority of respondents were confident that deal activity would stay the same through 2020. By way of example:

- Lawyers based in Florida foresee continued growth across real estate-based transactions and healthcare.
- Markets across states such as Tennessee and South Carolina remain equally strong.
- In Ohio, fund-less sponsor groups and family offices are becoming more of a driving force in the private equity M&A market.
- In Quebec, the availability of cheap private capital will continue to drive deal making through 2020.

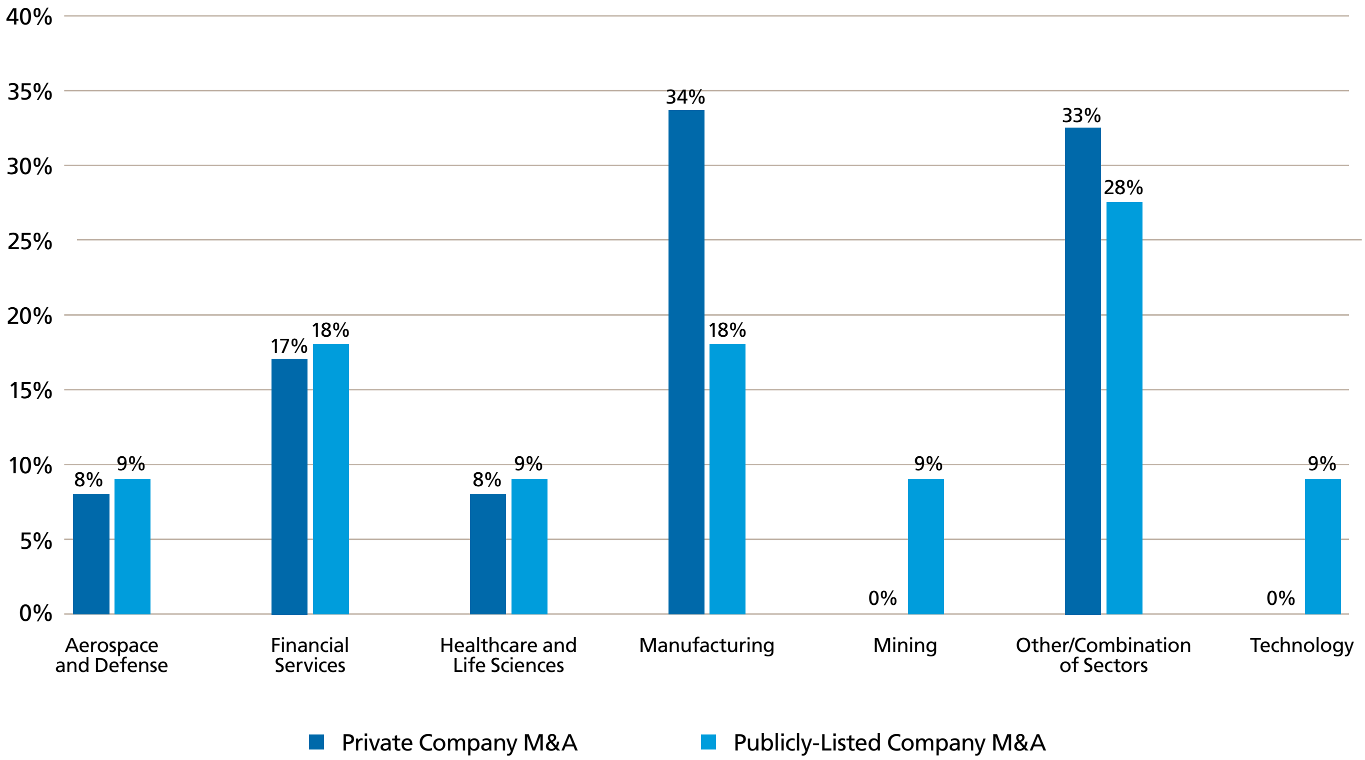
Most Deal Activity by Market Segment*





* While respondents were asked to reply based on how their particular jurisdiction categorizes deals, we see top-tier transactions as deal value over US$500m and mid-tier transactions starting at US$250m.

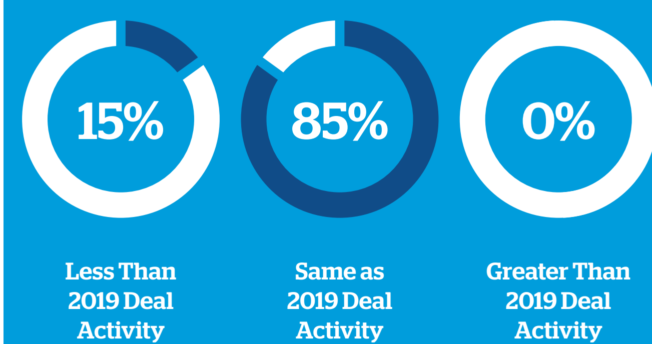
Most Deal Activity by Sector



In the United States, other than the 2020 presidential election (and it is too early to tell, if at all, whether this event will change the deal-making environment), there is no identifiable outside influence that is likely to impact deal activity, although overall consumer confidence and the ongoing trade policy of the present US administration continue to be watched carefully.

According to Alston & Bird, member firm for USA, Georgia, "the U.S. M&A market remains robust, but there are increasing geopolitical and policy headwinds that are straining the market and creating more caution that has been seen in some time."

2020 Market Predictions



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