Global M&A Trends Report

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About this report

This report sets out our Lex Mundi member firms' insights and predictions for 2022 in respect of mergers and acquisitions (M&A), including key concerns facing M&A practitioners across our various regions, and a look back and look forward on deal activity by market segment and sector.

The global pandemic that shook the world in 2020 had a massive impact in 2021 as well, and although it continues to disrupt and affect virtually everyone's life, it appears to be doing this less than many expected. Brexit too appears to have had less of an impact on business in Europe than perhaps anticipated – for now.

Most of the respondents unsurprisingly confirmed that 2021 was a record year for the M&A market - proving that the general sense of optimism for 2021 that was reported at the end of 2020 was not unfounded. And for 2022, a large majority of our respondents continue to hold an optimistic outlook.

While our survey respondents noted the impact of COVID-19 on the wider market and on M&A deal terms, its importance has diminished. The pandemic continues to play a role in of M&A transactions (for example evident in heightened due diligence on its effects on target companies) but it seems to occupy peoples' minds much less than at the beginning of 2021.

With numerous countries opening up and taking a more hands off approach to the situation, many – including the undersigned and everyone within the Lex Mundi organization – are looking forward to live meetings in favor of virtual versions.

National security and foreign investment restrictions, and the regulatory environment more broadly, remain high on the list for our Europe and Middle East & Africa regions (antitrust regulations standing out for our respondents in Asia). But these factors are of less immediate concern in our Latin America and North America regions.

In 2021 some downturn was expected as a result of governments moving to scale down broad aid packages, but that doesn't appear to have happened (yet). Perhaps the second half of 2022 will see that become reality, but for now a substantial majority of our member firms across the globe expect 2022 to see as much, if not more, deal activity in both public and private M&A activity (with less than a handful of jurisdictions actually expecting to see less activity than in 2021).

Thank you for your interest in our report, thank you to our respondents for their thoughtful replies, and above all a big thank you to the many people at Lex Mundi who put this all together.

We wish everyone good health and sincerely look forward to meeting as many of you as possible live in 2022 again.

Jennifer Maxwell
Corporate Partner

Blakes Cassels & Graydon
Member firm for Alberta,
Ontario and Québec, Canada

Bram Caudri
Corporate Partner

Houthoff
Member firm for the
Netherlands

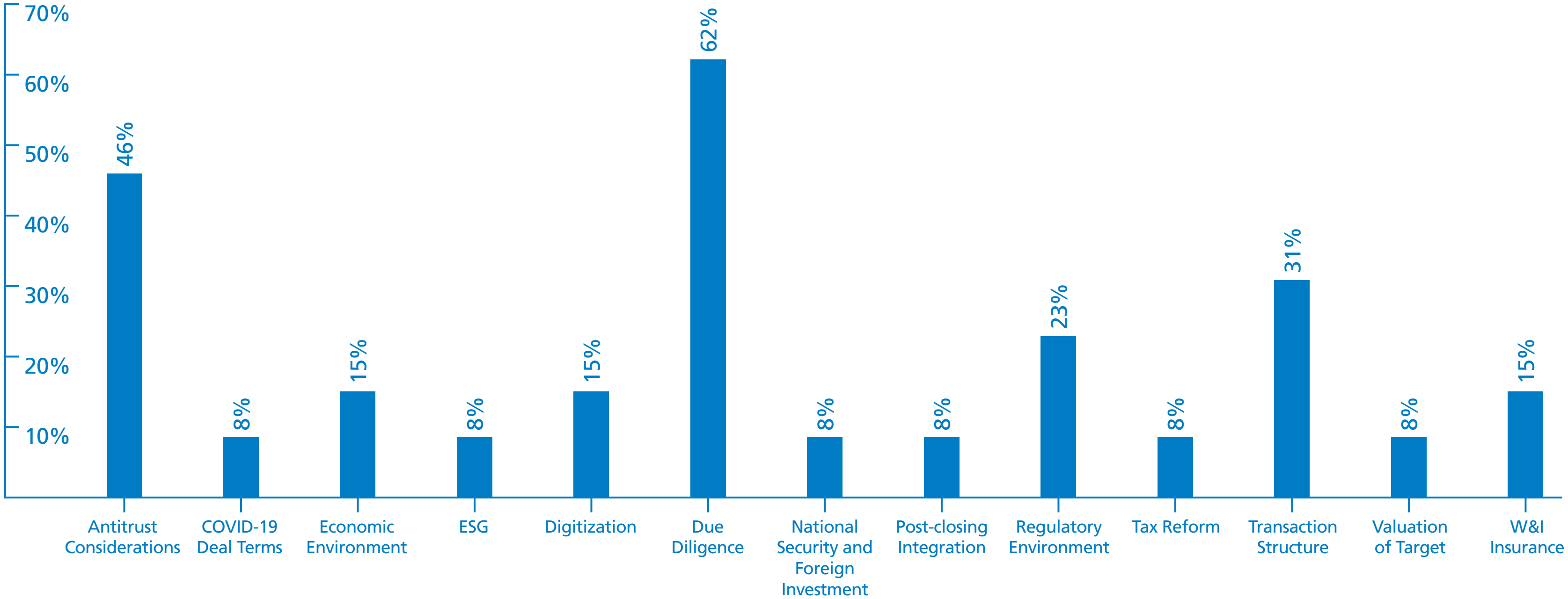
Asia and the Pacific

Tokyo, Japan.

Key concerns facing private company M&A practitioners

Due diligence featured high on the list of factors that private M&A practitioners in Asia were focused on when doing deals in 2021.

Note. Results are based on a multi-response question where survey respondents were asked to choose their jurisdiction's top three concerns.



Practitioners in some countries, such as Australia, noted that due diligence was top of mind as a result of the pandemic, resulting in company balance sheet scrutiny (particularly for targets that have received government financial support) and questions on whether they are secured and have repayable conditions that would pose a challenge to profit margins. Other practitioners advised that the importance of due diligence arose from complex underlying legislation impacting M&A. In Vietnam, for example, Thomas Treutler of **Tilleke & Gibbins** (member firm for Thailand) notes that due diligence is crucial in getting comfort around land and employee transfers. In jurisdictions where there is limited data publicly accessible on private companies, most investors rely on detailed due diligence to validate valuation assumptions.

Practitioners in some countries, noted that due diligence was top of mind as a result of the pandemic.

Iqbal Khan, a senior partner at **Shardul Amarchand Mangaldas & Co** (member firm for India) noted that if an investor wants to purchase a W&I insurance policy in India, the insurer requires such investor to conduct detailed due diligence on the target company. However, with respect to obtaining a W&I insurance policy due to the overall global demand, such policy underwriters are unwilling (at least for now) to focus on smaller deals, even for large global clients. Finally, many transactions are aborted either due to material issues (which cannot be ring-fenced or completely indemnified for) discovered during the due diligence process or for valuation mismatch.

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Antitrust and foreign investment considerations also featured top of mind for many practitioners across the region, including in Japan and Taiwan. In addition:

- Kobkit Thienpreecha, partner at **Tilleke & Gibbins**, explained that merger control rules have been adopted under Thailand's Trade Competition Act only in the past 2-3 years. Due to the broad interpretation of the regulator, all offshore merger transactions could trigger merger control filings in Thailand if the relevant threshold is met. Therefore, advisory and application services in relation to merger control filings have become one of the key components in all M&A transactions.
- In Malaysia, following the lifting of the state of emergency and the reconvening of parliament, a number of regulatory reforms have been announced which are likely to have an impact on business operations and M&A activity domestically. The introduction of merger control laws originally announced in 2019 have not yet been incorporated into domestic law but there is no doubt that the authorities remain determined to bring in such controls. Fariz Abdul Aziz of **Skrine** (member firm for Malaysia) noted that the new government is also committed to achieve its goal of 30% Bumiputera equity ownership in the Malaysian corporate sector. Bumiputera refers to persons who are of Malay ethnicity or other indigenous peoples and currently only hold 17% equity ownership of the corporate sector. As part of its plans to achieve this, the government has announced that disposal of Bumiputera shares or companies to only be offered and sold to Bumiputera consortiums, companies or other Bumiputera individuals. In addition, the ownership and disposal by Bumiputera companies will be monitored by the relevant ministries and agencies as the sector regulators.

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- In Australia, Emma Covacevich, partner at **Clayton Utz** (member firm for Australia), noted that with changes introduced to the Foreign Investment Review Board in January 2021, and potential changes to the Australian Competition and Consumer Commission merger clearance regime imminent, M&A practitioners need to have a solid understanding of the approval processes and the regulators' drivers in order to complete transactions in the most efficient manner possible.

W&I insurance is also becoming a staple of private M&A transactions in Australia, particularly on the back of private equity investments. W&I insurance allows these firms to maximize proceeds actually received on the deal completion (without the need for escrow) and then to return those sale proceeds to its investors, thereby driving the private M&A market by speeding up the transaction process and negating risk. Despite the update, there is a dearth of underwriters available, which may cause difficulties if the number of private M&A transactions continue to rise.

While W&I insurance in Japan in less common compared to the U.S. market (there are several legal restrictions for insurance companies and brokers), Yoshiyuki Kizu, partner at **Nishimura & Asahi** (member firm for Japan), explained that it is often considered during the M&A process.

In countries like India and New Zealand, valuations of targets have been trending upward. Andrew Matthews, partner at **Simpson Grierson** (member firm for New Zealand) noted that valuations are pushing up, with more vendors keen for clean exits, pushing focus onto diligence. In China, as the recovery becomes more entrenched, the structure of aggregate demand is expected to continue to rotate toward private domestic demand. Audrey Chen at **JunHe LLP** (member firm for China) notes that given persistent uncertainty to the pandemic, the authorities will need to stay agile and proactively adjust the level and composition of macroeconomic policy support.

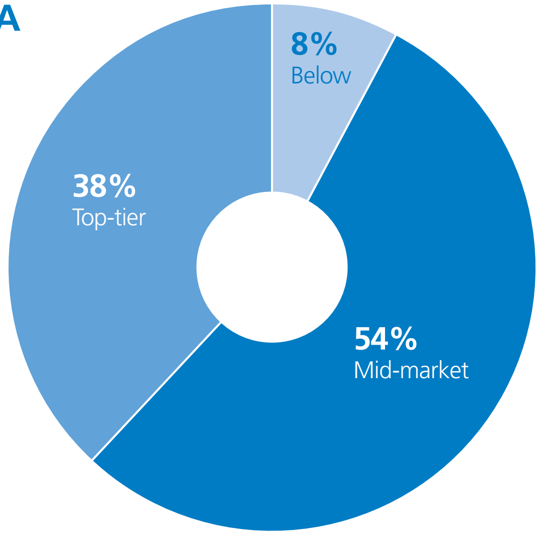
2021 has been a banner year in which many M&A and investment deals pivoted to ESG concerns and technological innovation across all industries.

Terence Quek
Partner
Rajah & Tann Singapore LLP

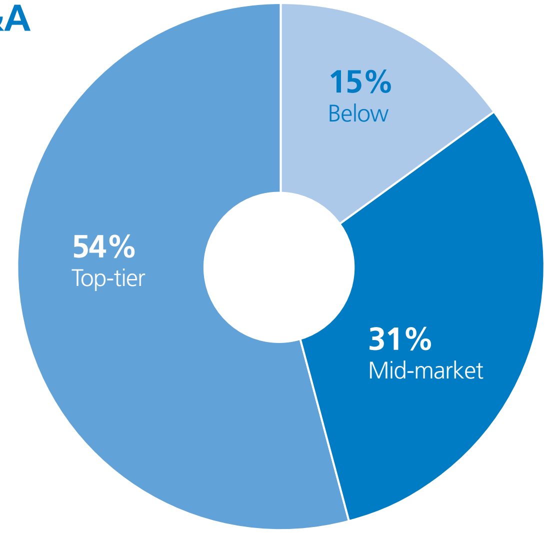
In Australia, there may be additional considerations around ESG factors as public companies must be averse to the non-financial environmental, social and governance risks. The increased attention on ESG issues has largely been driven by broader societal trends, such as the focus on climate change. As such, the ESG wave is being accelerated by demands by various investor classes (including super funds as well as the younger generation of individual investors) to focus more attention on such issues. Terence Quek, partner at **Rajah & Tann Singapore LLP** (member firm for Singapore), noted that 2021 has been a banner year in which many M&A and investment deals pivoted to ESG concerns and technological innovation across all industries. Several public M&As this year involved take-privates due to industry consolidation, with some of them for the purposes of focusing on clean energy.

Deal Activity by Segment

Private M&A



Public M&A



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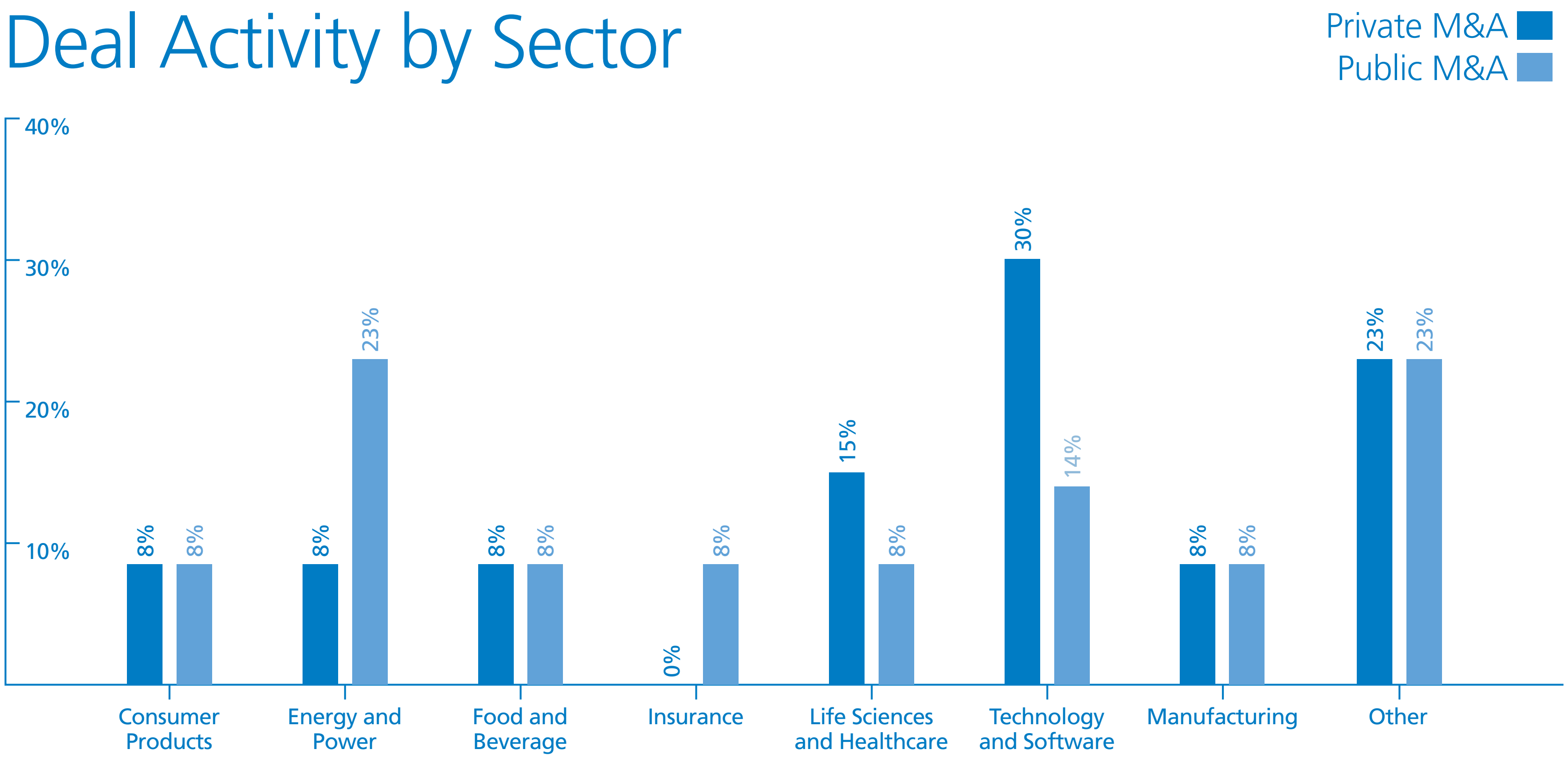
- In 2021, a number of mega public M&A deals accounted for a large percentage of total deal value in Australia, namely Square/ Afterpay, Sydney Airport, Brookfield/AusNet Services and Santos/ Oil Search. Covacevich notes that would be unlikely that assets and companies of this stature were available for M&A activity going forward, and as such, deals existing in the mid-market is likely to dominate once again.

In India, there was consolidation and certain large acquisitions in the public M&A sphere during 2021.

- In India, there was consolidation and certain large acquisitions in the public M&A sphere during 2021, including a number of transactions triggering public disclosures advised on by Khan and his team such as TPG's Rise Climate Fund in their USD 1 billion investment in Tata Motors EV subsidiary, PharmEasy's in its USD 1+ billion Thyrocare open offer and subsequent investment transaction, Biocon Biologics in its USD multi-billion long-term strategic alliance with Serum India Life Science (SILS), and SILS' investment in Biocon Biologics.

Deal Activity by Sector



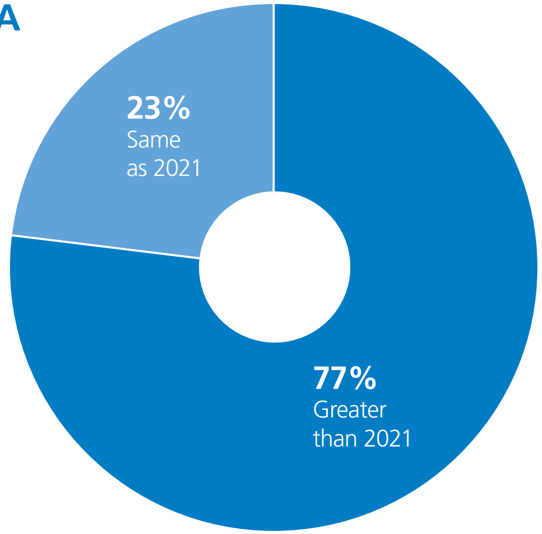
- In Australia, traditional industry boundaries are converging as digitization is seen across fintech and healthcare, creating opportunities for M&A. The uncertainty around the first onset of the pandemic in 2020 forced businesses to shore up balance sheets with debt/equity and plan for the future. As such these businesses have developed a clearer vision of where value creation or efficiency opportunities exist in their current portfolios, prompting M&A strategies to drive growth, increase scale, and most prominently here, encourage digitization and technology improvements. Covacevich expects highly sought-after deals for technology and other innovative capabilities likely to continue to command a premium price throughout the transaction process as companies prefer to scale business through acquisition as opposed to up skilling or improving their business operations.

- Janice Lin, partner at **Tsar & Tsai Law Firm** (member firm for Taiwan), expects to see renewable energy related deals in 2022 and notes that semiconductors are in high demand.

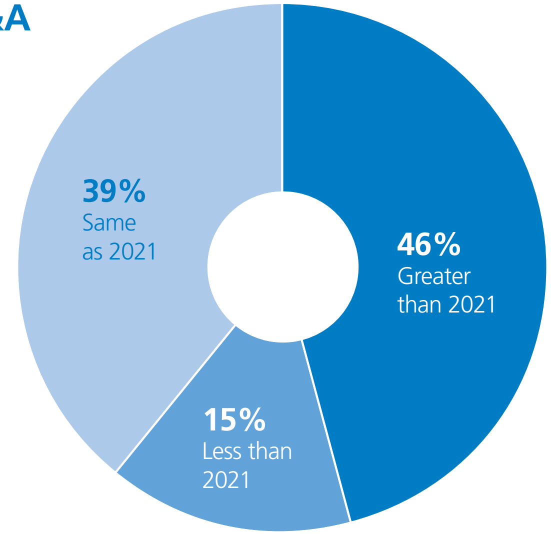
With the uncertainty around the first onset of the pandemic in 2020, businesses have developed a clearer vision of where value creation or efficiency opportunities exist.

Predicted Deal Volume for 2022

Private M&A



Public M&A



Looking forward into the new year, most of our respondents in Asia expect to see greater public and private deal activity than in 2021. Kyungchun Kim, partner at **Lee & Ko** (member firm for Korea) notes that there is steady upward movement regarding private M&A deal volume. Public companies in Korea also continue to seek M&A opportunities for business growth. Kizu expects that the acceptance by market of hostile deal and shareholder activism could create a trend to change the past closed market of Japan.

Across Southeast Asia, there is an expectation in many countries that deal activity will continue to rise in 2022. In Singapore, there are many deals still in the pipeline and practitioners anticipate that valuations will continue to be attractive to buyers. In Malaysia, Aziz notes that ongoing poor economic conditions and the need to improve balance sheets of large conglomerates are likely to encourage further divestments of non-core or non-performing businesses. Coupled with the removal of government-imposed loan repayment moratoriums, these effects are expected to hasten the motivation of corporates to achieve these objectives.

In Thailand, Thienpreecha shares that digital transformation and change of market trend are expected to have stronger impact next year and, with promising recovery from the COVID-19 pandemic, funding to M&A should be more accessible to investors and dealmakers next year. In addition, there seem to be the uptick trend of public M&A in Q3 and Q4 of 2021 which suggest upcoming M&A talks and prospects across various sectors in 2022.

In Australia, the continued high deal activity is spurred by Australia's relatively strong performing public markets, with domestic-listed companies looking to consolidate within their own industry using scrip for other listed groups. Likewise, there is a considered trend by superannuation funds moving towards direct investment in strong performing companies directly as opposed to equities, e.g., Aware Super's acquisition of Vocus Group and their willingness to pay a premium for the target should ensure the high levels of activity remain through 2022.

In India, unprecedented dry powder coupled with fast approaching fundraising timelines for many funds continue to keep the private deal volume at an all-time high. Public valuations continue to remain sky high, and because of the regulatory challenges around take private and acquisition leverage, deal volumes may remain the same as 2021 or may even dip slightly. There is, however, a likelihood for SPAC-based large transactions to dominate the market over the next 12 months.

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Iqbal Khan
Senior Partner
Shardul Amarchand Mangaldas & Co

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Berlin, Germany.

Europe

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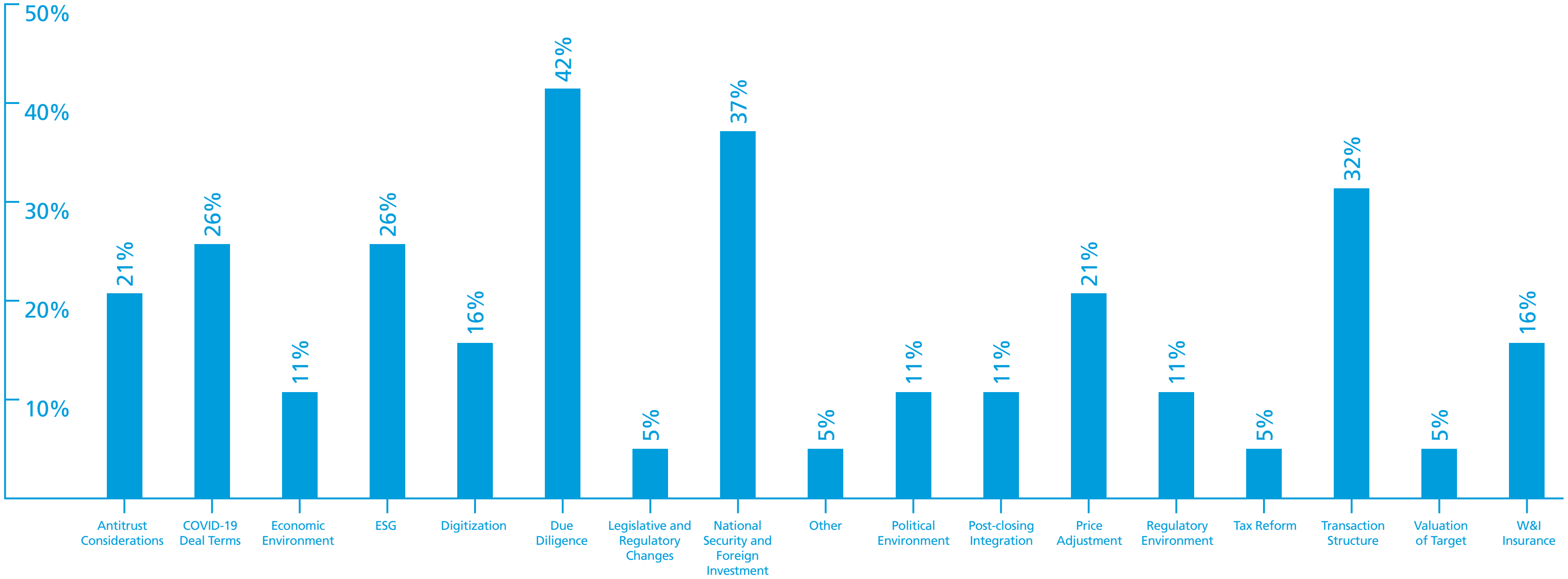
Key concerns facing private company M&A practitioners

37% of all European practitioner respondents agreed that national security/foreign investment was of paramount importance when doing deals in 2021.

Note. Results are based on a multi-response question where survey respondents were asked to choose their jurisdiction's top three concerns.



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Across the EU, foreign direct investment is a trending topic. Bram Caudri, partner at Houthoff (member firm for the Netherlands) noted that the political situation worldwide has given rise to some uncertainly on foreign investment regulations (as well as tax). In the UK, the new UK *National Security and Investment Bill* is taking a tough approach to national security concerns in relation to foreign direct investments which includes mandatory and voluntary notifications for certain M&A transactions that may harm the UK's national security. In terms of public M&A, as part of legislation brought on by the pandemic, Poland has enacted provisions which increase the regulatory burden on public M&As. Until July 2022, the acquisition of 20% of shares or more or change of control over Polish companies that are listed on the Warsaw Stock Exchange or in an alternative trading system in Poland will require consent of the Polish antimonopoly office if the purchaser is based or controlled by an entity not being a EU, EEA or OECD member states resident.

Compared to previous years' reviews, due diligence in 2021 featured more heavily on practitioners' minds. In many countries including the UK, Norway, and Estonia, ESG was designated a big driver for M&A, both in terms of what targets are attractive and scope of due diligence. In the UK, clients are increasingly asking for ESG due diligence and ESG experts; this has been dictated by clients' own investors. According to Sverre Tyrhaug, managing partner at **Advokatfirmaet Thommessen AS** (member firm for Norway), ESG along with technology and private equity drove an extremely busy year for M&A. The impact of ESG on deal activity is reflected in the *EY 2022 CEO Outlook Survey*, where ESG and sustainability concerns are becoming more important for dealmakers. That survey noted that 99% of responding CEOs (out of more than 2,000) say they factor ESG issues into their buying strategies, while 6% of respondents say they have walked away from deals in the past year, due to ESG related concerns about the target[†].

† https://www.ey.com/en_gl/news/2022/01/over-half-of-ceos-to-step-up-investment-and-m-a-in-2022-but-headwinds-remain

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The state of the economic environment is a key factor for investors contemplating an investment in Serbia. However, across many Western and Central European jurisdictions COVID-19 has, ultimately, had very little impact on the economy. Chryso Pitsilli-Dekatris, co-managing partner at **Dr. K. Chrysostomides & Co LLC** (member firm for Cyprus) notes that the regulatory, political, economic and tax environment is fairly stable and does not give rise to any concerns which should be high in priority in structuring an M&A transaction. The COVID-19 pandemic has also had very limited impact on economies in jurisdictions such as the Netherlands and France. However, Antoine Tézenas du Montcel and Nadège Nguyen, partners at **Gide Loyrette Nouel** (member firm for France), note that M&A actors still pay a lot of attention to COVID-19 deal terms as the pandemic is not yet over. In the UK, historically MAC clauses have not been used regularly in English law as opposed to U.S. law, but they are now creeping into UK-style transactions (for example, *Travelport Ltd. & Ors. v. WEX Inc.*, where the High Court considered the construction of a MAC clause in an SPA due to the impacts of the pandemic on targets).

In countries where no general tendency has been observed with respect to MAC or similar provisions being triggered due to the COVID-19 pandemic alone, parties should proceed with enhanced caution when preparing the deals and specifically when drafting and negotiating contracts.

In addition to the factors above, practitioners in numerous countries including Malta and Luxembourg noted that the regulatory environment posed a concern for dealmakers. Alexander Olliges, partner at **Arendt & Medernach** (member firm for Luxembourg), explained that transaction structuring became even more important with the rise of regulatory activity across Europe. In Malta, Nikolai Muscat Farrugia, partner at **Ganado Advocates** (member firm for Malta), notes that regulatory considerations are also extremely pertinent in areas and in respect of companies which fall outside the historical regulatory (licensed) sphere but are now impacted by regulatory concerns such as with respect to ultimate beneficial ownership.

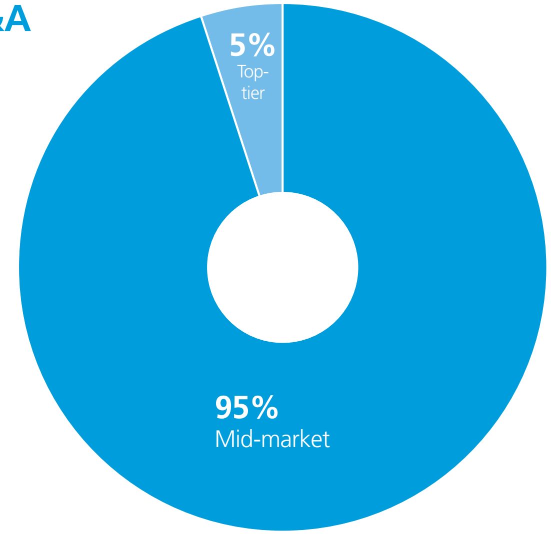
In comparison to other regions, antitrust featured lower on the list of concerns; nevertheless, several practitioners such as Milan Sivy at **PRK Partners** (member firm for Czech Republic) raised it as an area of interest. In Norway, consolidation generally that makes more acquisition prone to antitrust scrutiny.

Across the EU, foreign direct investment is a trending topic. The political situation worldwide has given rise to some uncertainly on foreign investment regulations.

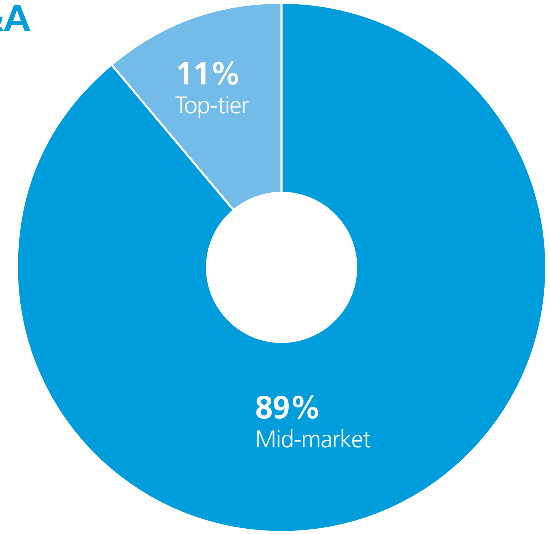
Bram Caudri
Partner
Houthoff

Deal Activity by Segment

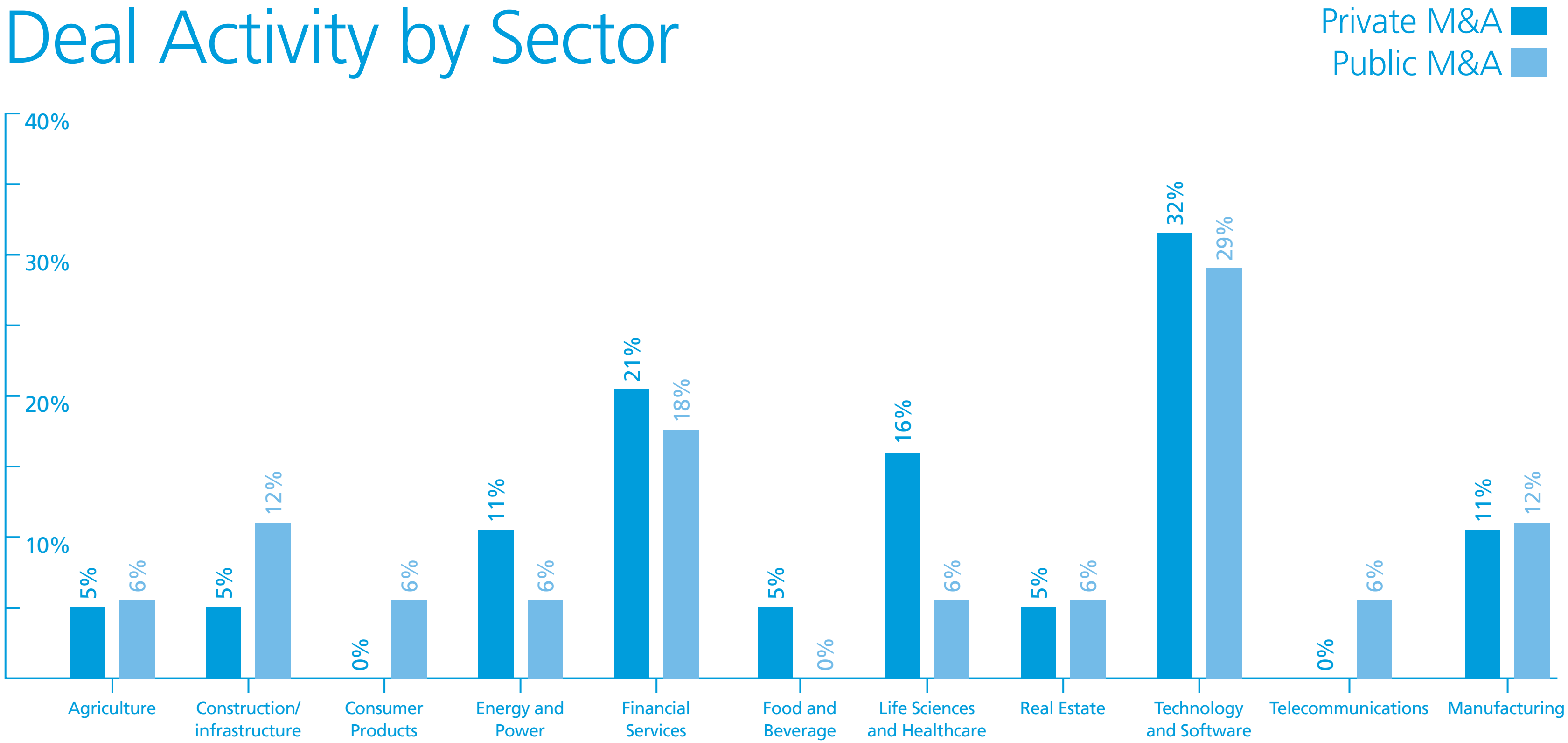
Private M&A



Public M&A



Deal Activity by Sector



Note. Some jurisdictions selected more than one sector.

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Predicted Deal Volume for 2022

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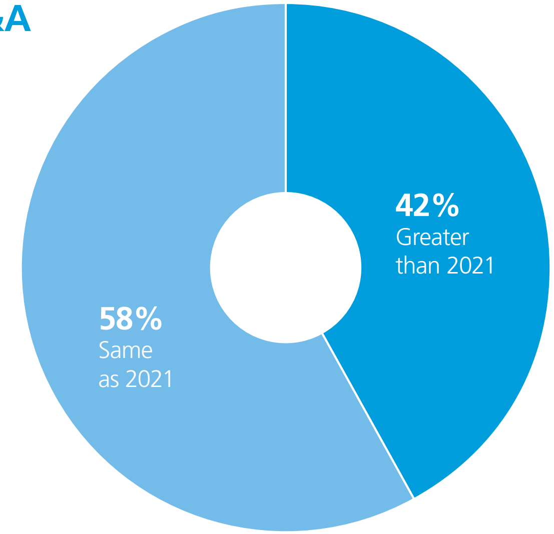
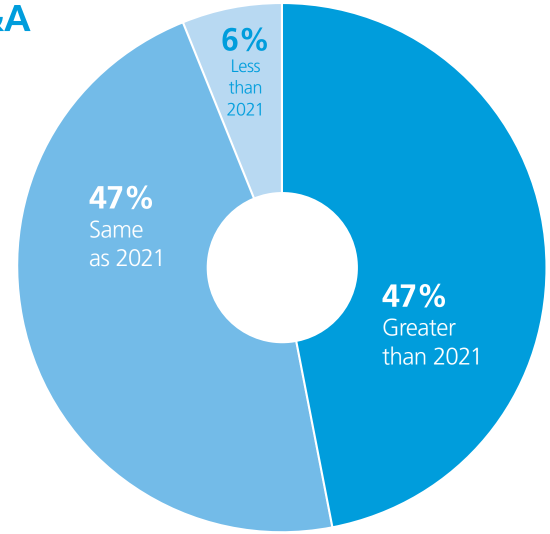


Public M&A



42% of member firms expect private M&A deal volume to increase during 2022. Yvonne Costello, partner at **Armstrong Teasdale** (member firm for USA, Missouri, with a UK office) notes that with respect to the UK M&A private market, transaction volumes remain at unprecedented levels due to the amount of dry powder, easy access to debt finance, consolidation, and new opportunities arising from a post-pandemic world; and M&A trends are evolving, leading to practitioners becoming hyper-specialized. Dr. Alexander Hirsch, partner at **Noerr LLP** (member firm for Germany) agrees. There is a lot of money in the market, and a lot of investment pressure on private equity funds as well as on corporates, coupled with fewer targets. This leads to a lot of activity, which is probably going to increase further into 2022 in Germany.

In Sweden, Jesper Schönbeck and Jonas Bergstrom of **Advokatfirman Vinge KB** (member firm for Sweden) note that inflation and an increase in interest rates could have a significant value impact but the first half of 2022 looks busy. Other jurisdictions, like Estonia, Malta, Ireland and Austria, expect more stable yet still busy levels of activity and there is certainly no slow-down in sight.

For public M&A, a number of member firms predicted even greater deal activity in 2022, in large part driven by SPACs looking for targets in countries such as the UK, Luxembourg and the Netherlands. Given the increased activity with SPAC IPOs and PE-funded acquirers, Costello also anticipates greater public M&A activity in 2022 with an increased appetite for acquisition targets and UK public companies having a lower valuation. SPAC targets are increasingly looking at the value/liquidity of the paper offered by acquirers as consideration for the transaction.

According to Nenad Popovic, senior partner at **JPM Jankovic, Popovic & Mitic** (member firm for Serbia) the nearly completed privatization of a number of enterprises has resulted in a highly reduced number of publicly traded companies and with a significant number of non-performing companies that have not attracted any interest and are now in bankruptcy. The government is offering significant grants for foreign greenfield and brownfield investments that are directly negotiated without any tender requirements and with the main requirement to maintain agreed level of employment during the agreed period of time (usually 5 years). This is unfortunately reducing the level of M&A transactions in the country.

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Mexico City, Mexico.

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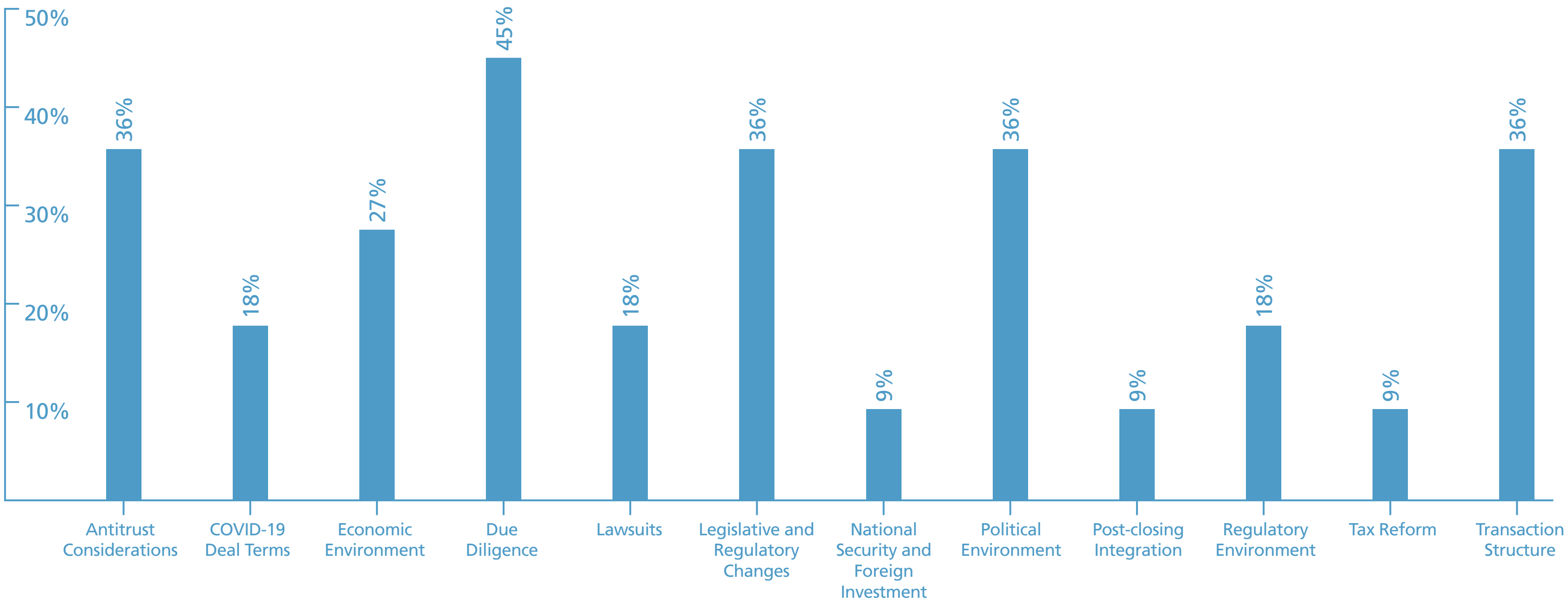
Key concerns facing private company M&A practitioners

Note. Results are based on a multi-response question where survey respondents were asked to choose their jurisdiction's top three concerns.



In line with practitioners across the globe, member firms in Latin America and the Caribbean agreed that proper due diligence of a target is essential not only to determine current liabilities and contingencies, but also to plan for post-merger integration and achieving synergies.

Across the region, antitrust considerations were also a key factor to be addressed when advising on M&A matters. Both Peru and Uruguay have seen recent merger control legislation (before June 2021, Peru's antitrust regulations were limited to the electric sector). In Costa Rica antitrust laws were recently revised in order to provide the antitrust authority with broader powers to review and investigate, even without any formal complaint filed by a third party. Other jurisdictions, such as Brazil, have seen an uptick in activity by antitrust authorities in certain sectors. With the recent introduction of merger control legislation as well as new guidelines for mergers and acquisitions of banks and financial institutions, the approach of regulators to the interpretation and application of the legislation/guidelines is perhaps the greatest focus of M&A lawyers in Trinidad & Tobago.

The local political environment was at the forefront on many minds, in particular in jurisdictions where local elections were held during 2021 such as Bolivia, Mexico and Peru.

Argentina's economy is always a major factor in any local M&A transaction. Valuation of companies and their businesses can be significantly impacted in very short periods of time by economic crises, not uncommon in Argentina. An economic crisis will typically trigger new legislation and regulations in areas such as taxes, foreign exchange and repatriation of funds. Sebastian Iribarne, partner at **Marval, O'Farrell & Mairal** (member firm for Argentina), notes that the strong fluctuations of the Argentine economy have a significant impact in M&A transactions, but at the same time create very interesting business opportunities for both buyers and sellers.

Compared to responses from other regions, it is interesting to note that few member firms identified national security and foreign investment restrictions. Sergio Solera, partner at **Facio & Cañas** (member firm for Costa Rica), notes that (like many countries in the region) Costa Rica encourages foreign investment and that there are no restrictions on inbound investments. However, with the acceptance of Costa Rica to the OECD new regulations have been approved and compliance requirements have increased, which must be taken into consideration when doing business in the country. Although Uruguay is a small economy, partner Corina Bove at **Guyer & Regules** (member firm for Uruguay) has over the last years seen an increasing flow of foreign investment that has impacted the M&A market and led to a change of control in ownership to multinationals and/or foreign companies/individuals.

> Although Uruguay is a small economy, it has recently seen an increasing flow of foreign investment that has impacted the M&A market and led to a change of control in ownership to multinationals and/or foreign companies/individuals.

Corina Bove
Partner
Guyer & Regules

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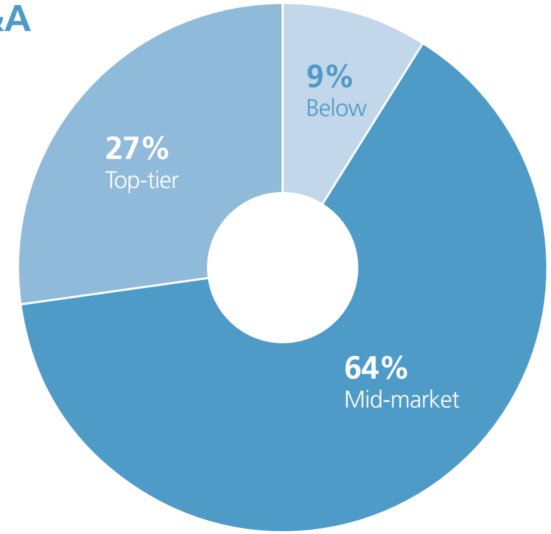
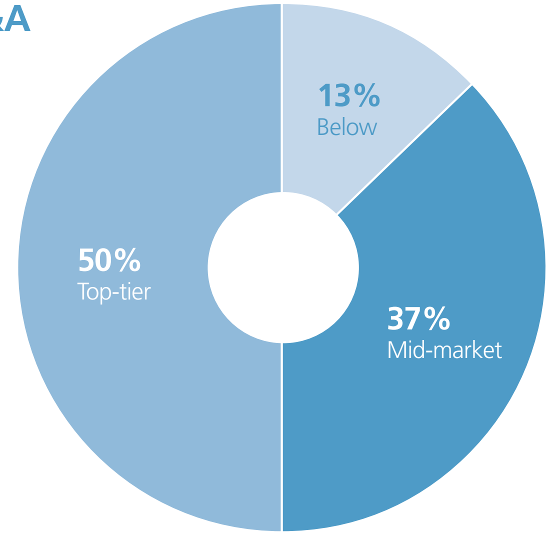
Deal Activity by Segment

Private M&A

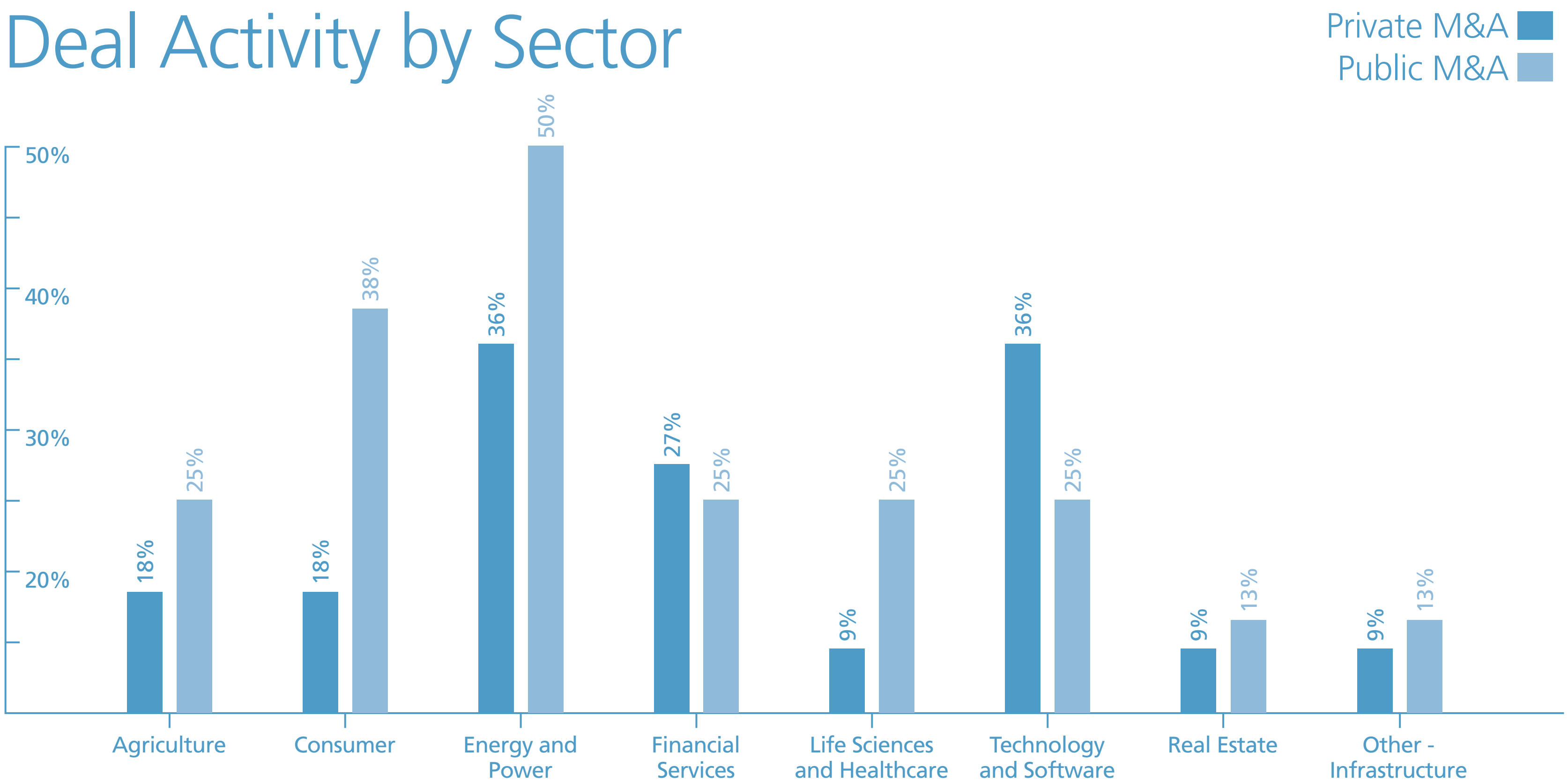


Public M&A



Practitioners from Costa Rica, Uruguay and the Dominican Republic noted very little, if any, public M&A in their jurisdictions.

Deal Activity by Sector



Note. Some jurisdictions selected more than one sector.
There is insufficient public M&A in Costa Rica, Uruguay and the Dominican Republic to classify.

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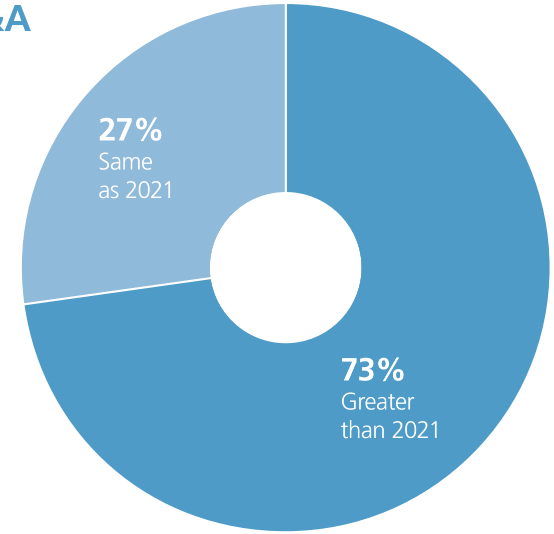
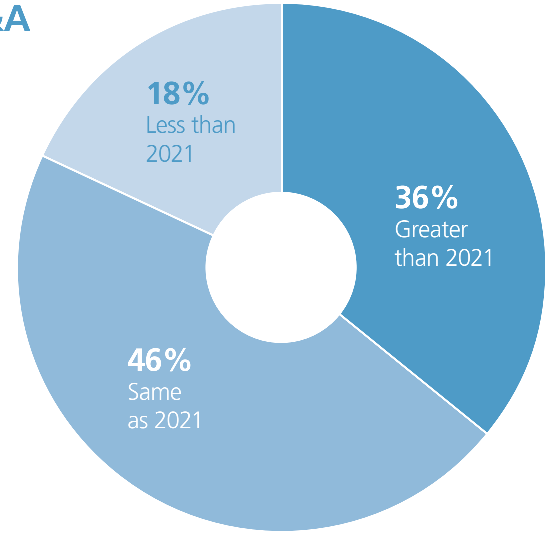
Predicted Deal Volume for 2022

Private M&A



Public M&A



A majority of our practitioners from Latin America and the Caribbean agreed on a positive outlook for private M&A in 2022 as countries adjust to the COVID-19 pandemic-norm environment. In Argentina, expectations are that 2022 will be a more "normal" year and that the economy will grow, particularly if the country reaches an agreement with the IMF, which is expected to occur withing the next few months. In Uruguay, Bove notes that the strong political, social, economic and legal stability of the country coupled with the management of the pandemic by the government has provided a favorable environment for foreign investment into Uruguay that she believes will continue to grow through 2022. In Costa Rica, many companies still have a lot of cash from measures taken during the pandemic and are looking to add or increase new lines of products. Additionally, there are several family-owned companies which may make attractive targets for PE funds or multinational companies.

In Bolivia, the second half of last year saw an active M&A market across traditional industries such as mass consumption. However, Paula Bauer, partner at **C.R. & F. Rojas Abogados** (member firm for Bolivia) notes that interesting transactions also appeared in unusual industries such as aviation and mining. Sectors currently growing are those related to tourism, hotels, and aviation, the three main affected industries during the COVID-19 pandemic. Carlo Viacava, partner at **Estudio Olaechea** (member firm for Peru) expects dormant sectors during the pandemic, such as mining, to become attractive during 2022. In addition, international private equity funds could start evaluating exiting local investments due to political uncertainty in Peru.

Paulo Frank Coelho da Rocha, partner at **Demarest Advogados** (member firm for Brazil), notes that there has been a consolidation trend in 2021 in Brazil, which is likely to continue in 2022. Technology is likely to remain very hot, along with other industries most affected by the pandemic. Private equity funds have been looking for companies in vulnerable situation especially in retail, entertainment, and hospitality. 2021 saw a large number of IPOs, which increased the level of M&A activity involving public companies.

The share value of some of the companies that went public decreased sharply following their IPO, suggesting that such companies were not ready for an IPO yet. This scenario points to a deal volume of public M&A similar to 2021.

While much focus remains on the development of Guyana's energy sector and the opportunities arising from the same, Glenn Hamel-Smith, partner at **Hamel-Smith** (member firm for Trinidad and Tobago) explained that the country continues to enjoy a reputation as one of the most developed economies in the English-speaking Caribbean that remains open for business.

In Brazil, technology is likely to remain very hot, along with other industries most affected by the pandemic.

Paulo Frank Coelho da Rocha
Partner
Demarest Advogados

While the country hopes to transition away from its oil-based economy to become more of a manufacturing and services-based one, its abundant natural gas resources are expected to continue to power the economy for some time to come, creating opportunities for M&A activity in related industries. For larger groups, he expects that private M&A activity (in the form of internal restructuring of group companies to streamline operations and reduce carbon footprint) will continue apace. The push towards greater digitization of operations leading to downsizing could also contribute to greater activity while simultaneously presenting opportunities for new entrants. To increase predictability and certainty, it is hoped that regulators will continue to work on being facilitative while ensuring that the interests of the marketplace are appropriately protected.

Cairo, Egypt.

Middle East and Africa

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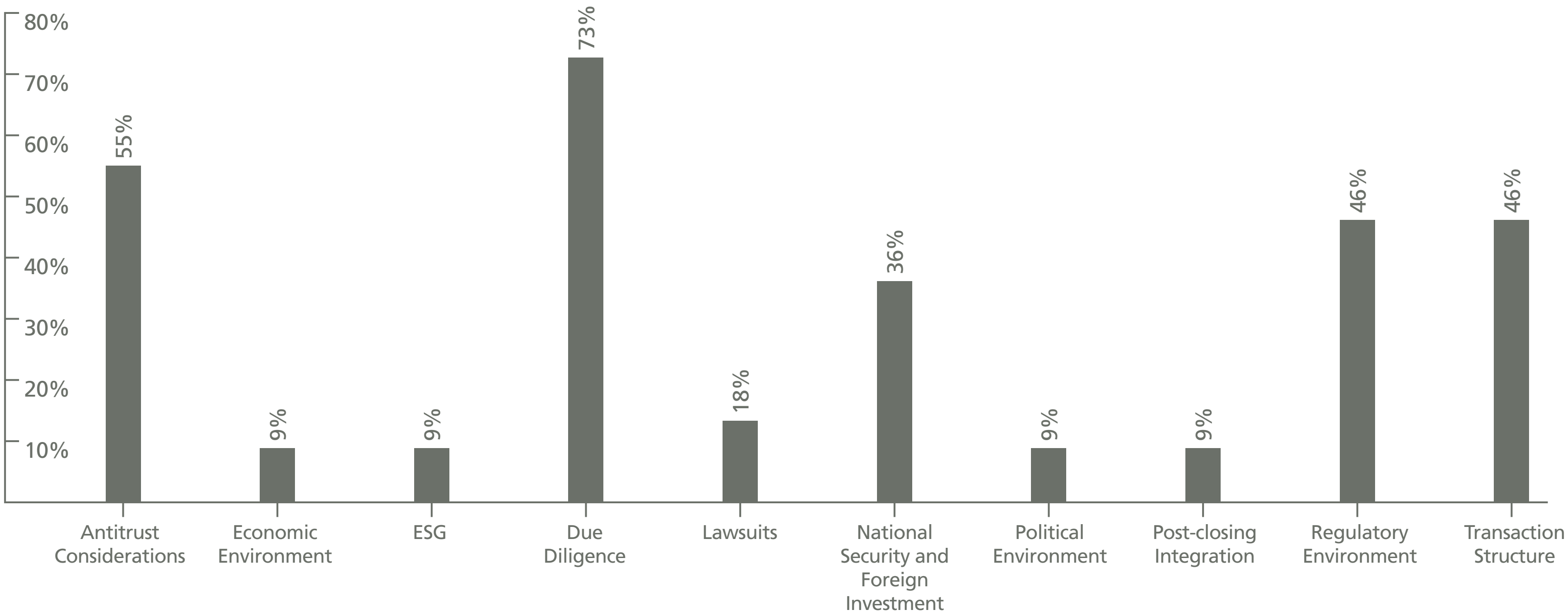
Key concerns facing private company M&A practitioners

Note. Results are based on a multi-response question where survey respondents were asked to choose their jurisdiction's top three concerns.



Similar to the insights we received from respondents in other regions, due diligence was the key area of focus for private M&A practitioners in the Middle East and Africa during 2021 with 73% of practitioners agreeing that the process is of paramount importance in the deal process. This demonstrates a shift from last year's survey, in which a smaller number of member firms in the region chose due diligence.

Many practitioners also agreed that antitrust had been top of mind in their jurisdictions during 2021.

- In Kenya, most of the transactions that **Coulson Harney LLP** advise on, due to the deal sizes and the parties involved, generally require notifications to the Competition Authority of Kenya (CAK) which occasionally imposes conditions for its approvals. In Uganda, **Bowmans** deputy chairman David F.K. Mpanga notes an increase in activist litigation that arise in relation to M&A activity. This may in part be because Uganda does not have a competition authority to adjudicate grievances related to M&A activities.
- Antitrust considerations in cross-border transactions are an essential component of the M&A advisory work conducted from a Mauritius law perspective. Although Mauritius does not require mandatory filings with the local authority, Mauritian law practitioners are required to consider and advise as to the need for voluntary filing, with the consequences of acting in breach of competition laws including divestment orders. Further, Mauritius being a COMESA member, due consideration must be given as to whether filing must be made to COMESA.
- Trending in South Africa, antitrust is increasingly playing a major part of M&A deals (2021 having seen the first prohibition on public interest grounds alone).
- In Pakistan, antitrust restrictions are applicable to almost all deals.
- According to **The Legal Circle** (member firm for Bangladesh), the Bangladesh Competition Commission (BCC) is expected to publish a regulation on M&A transactions in 2022 under which transactions which fall within a certain threshold will require prior approval from the BCC. With the introduction of these regulations, anti-trust issues will come to the forefront for M&A transactions for practitioners.

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Certain firms across the regions noted foreign investment restrictions to a key consideration when advising on cross-border deals. In Bahrain, **Hassan Radhi & Associates** (member firm for Bahrain) noted that the *Commercial Companies Law* allows foreign investments, and the Economic Development Board focuses on attracting such investments to the Bahraini market. However, some activities are restricted to pure local shareholding or a minimum local shareholding. Special treatment is given to certain jurisdictions (such as Gulf Cooperation Council countries, United States, etc.). Bashir Ahmed, managing partner of **Afridi & Angell** (member firm for the United Arab Emirates) notes that the UAE is undergoing a rapid change in foreign ownership laws and corporate structuring options, which make transaction structure even more important (and somewhat fluid) at the moment. While South Africa welcomes foreign investment, in both the public and private sectors and in all spheres of the economy, offering a wide range of incentive schemes, recent amendments to legislation, not yet in force, contemplate a separate application to an executive body to screen transactions that impact a specified list of national security interests.

Charles Douglas, partner at **Bowmans** (member firm for South Africa), explained that shareholder activism and ESG is also increasingly a hot topic and for good reason with its impact on obtaining financing, investment strategies, shareholder and other activism, and disclosure requirements. While there are increasing pressures and trends in respect of each of these aspects of ESG, the marked increase in activism and shareholder pressure that many clients are facing to engage on environmental issues and include climate-related resolutions in their AGMs is noteworthy. This also comes at a time when amendments to the *South African Companies Act* have been published for public comment and renewed *South African King IV* guidance material has been produced on stakeholder engagement as it pertains to remuneration.

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A number of Lex Mundi member firms highlighted the need to obtain regulatory permission for specific industry sector deals, including energy, telecommunications and logistics in Bangladesh. The complexity and duration of obtaining such approval for a deal may vary on the amount of investment, the residency status of the investor, the deal structure etc. As a requirement of the *Companies Act, 1994*, mergers or amalgamation of companies are to be undertaken with the permission of the Hon'ble High Court Division of the Supreme Court of Bangladesh. Filing such application before the High Court may significantly alter the time of the transaction and hence becomes a key consideration for mergers in Bangladesh.

Due diligence was the key area of focus for private M&A practitioners in the Middle East and Africa during 2021, with 73% of practitioners agreeing that the process is of paramount importance in the deal process.

B&M Legal Practitioners explained that the Zambian economy has been in distress with inflation averaging 19.5% and the country defaulting on its debt to bondholders in 2020. Restoring key macroeconomic fundamentals will be critical in increasing investment in key sectors of the economy. In 2020, certain actions by the Government were viewed as being expropriation in nature and this negatively impacted M&A deals. Some proposals have been made to increase local ownership in insurance companies and insurance brokerage companies, therefore increasing M&A activity to ensure that companies comply with such requirements. However, this will impact new investments in the sector and particularly, how foreign investors will structure their deals in this sector.

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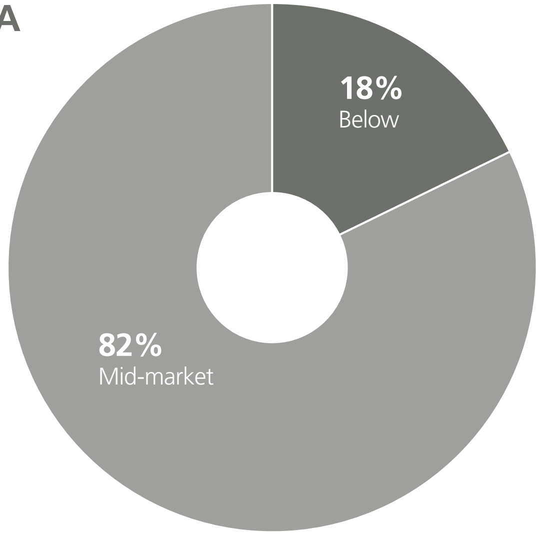
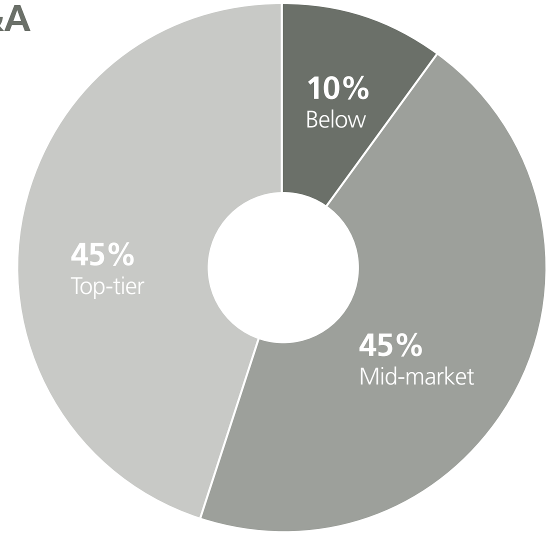
Deal Activity by Segment

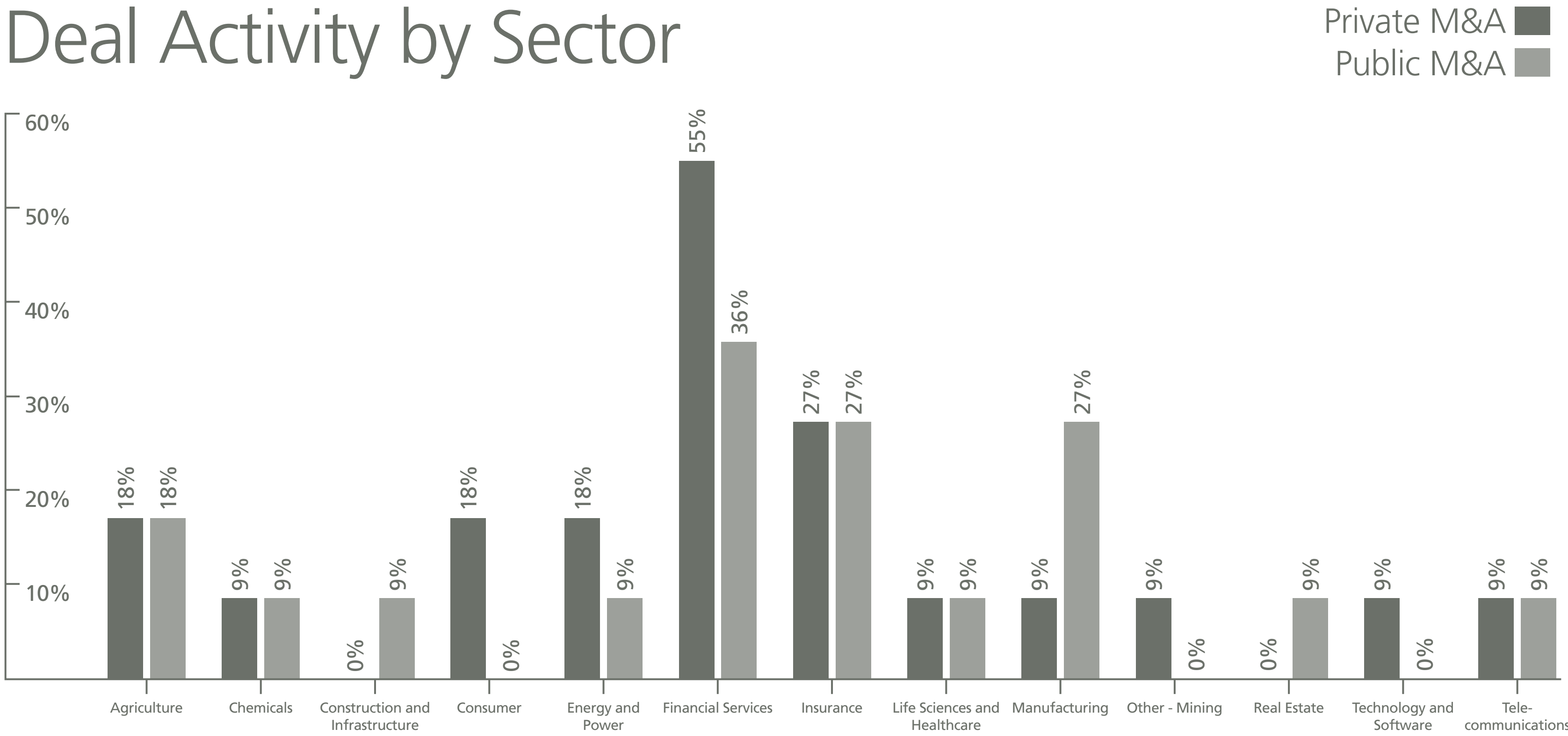
Private M&A



Public M&A



Deal Activity by Sector



Note. Some jurisdictions selected more than one sector.

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- In relation to the recent merger between two insurance firms in Bahrain (Solidarity Bahrain and T'azur), the CEO of Solidarity Group, Mr. Ashraf Besaisu, stated in an interview with Al-Ayam Newspaper (Bahrain) that *"the potential merger between Solidarity Bahrain and T'azur will result in the creation of one of the biggest insurance companies in Bahrain in terms of assets and underwritings in addition to the increase of the market share and ability to compete"*[†].

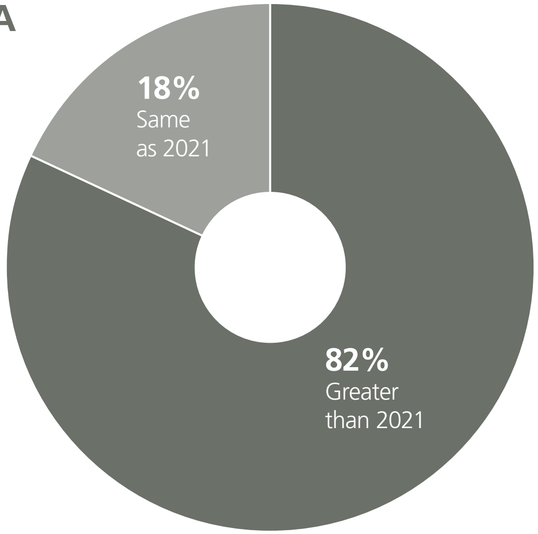
- Tiago Arouca Mendes, managing partner at **Mendes, Duarte Rocha & Associados Advogados, members of the Morais Leitão Legal Circle network** (member firm for Portugal), notes that rising markets of gas, mineral resources, energy, infrastructures, among others are indicators of greater deal activity in Mozambique.

- The new administration in Zambia intends to grow productivity so as to make Zambia a net exporter of goods and services. Incentives have therefore been offered to companies in the manufacturing sector in Zambia, particularly those operating in multi-facility economic zones, industrial parks and rural areas. Further, the government intends to diversify the economy away from mining with a focus on agriculture and agro-processing.

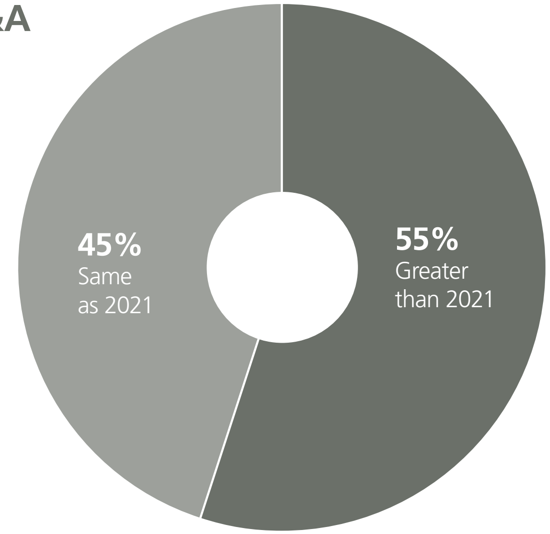
† Al-Ayam Newspaper, Issue no. 11831 dated 29 August 2021.

Predicted Deal Volume for 2022

Private M&A



Public M&A



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A good majority of participants from the region predicts greater private M&A activity in 2022; for public deal activity, that number is slightly smaller.

In the Middle East, all jurisdictions surveyed expect to see greater private deal activity in 2022. By way of example:

- Noora Janahi, partner at **Hassan Radhi & Associates** (member firm for Bahrain) anticipates that the impact of the pandemic will lead smaller sized entities to merge in order to sustain in the market.

- In Bangladesh, Anita Ghazi Rahman, founder of **The Legal Circle**, expects to see much movement and activity within the technology enabled, financial services and consumer product companies in 2022. Public M&As are rare in Bangladesh, however, given that the BSEC is taking an active role in forcing compliance with securities laws, she expects public M&A to increase.

- The UAE is encountering a wave of foreign interest in investment in the UAE and Mr. Ahmed foresees an increase in public M&A particularly in Abu Dhabi. The signing of the Abraham Accords (the peace treaty with Israel) has been widely welcomed across the UAE and has resulted in UAE/Israeli joint initiatives particularly in fields such as life sciences, healthcare, water and agriculture technology, and security. In addition, **Afridi & Angell** has witnessed an unprecedented spate of legislative and regulatory amendments as the UAE seeks to transform its legal framework in line with international trends.

The signing of the Abraham Accords has been widely welcomed across the UAE and has resulted in UAE/Israeli joint initiatives particularly in fields such as life sciences, healthcare, water and agriculture technology, and security.

- Pakistani startups have gained a serious momentum in 2021, collectively raising approximately $350m, which was around 450% percent higher than the $66m raised in 2020. However, it was also more than the amount raised in all previous years combined. Secondly, the government has taken initiatives to promote infrastructure development/real estate development business. The deal activity is therefore likely to increase in 2022. Bilal Shaukat, a partner at **RIAA Barker Gillette** (member firm for Pakistan) notes that the government has, however, not taken any serious initiatives to promote public M&A. The consistent devaluation of rupee and unstable and inconsistent government policies are discouraging investment for public M&A. The privatization initiatives taken by the government have also not been very successful this year.

In Kenya, 2021 had a slow start on deal activity due to the impact of the COVID-19 pandemic, however, there was increased deal activity towards the end of Q3 2021 and Q4 2021. Deal activity is expected to increase in the first half of 2022 before slowing due to national elections.

In August 2021, there was a change of government in Zambia, and the new administration is focused on rebuilding the economy by promoting foreign direct investment and the private sector growth. For example, the new administration has proposed to reduce corporate income tax from 35% to 30% and has proposed to make mineral royalties paid by mining companies deductible. These proposals are likely to increase M&A activity, especially in the mining sector where copper production is projected to increase due to the deductibility of mineral royalty tax.

Even though activity in Uganda seems to continue under similar uncertainty arising from the COVID-19 pandemic and now its variants; there is also the inevitable re-opening of the economy where business may pick up. Further, there is more activity expected in the oil and gas sector which may trigger more M&A activity. For public M&A, **Bowmans** anticipate the opening of the economy to trigger greater M&A activity. The pandemic and its effects triggered much activity in the technology especially in regard to the fintech and telemedicine space; we expect this continue in coming months.

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With the COVID-19 pandemic and the grey-listing by the FATF and black-listing by the EU of Mauritius, **Bowmans** noted a slow down on M&A transactions. Now that Mauritius has been removed from the FATF grey-list and potentially from the EU blacklist in the near future, practitioners expect an upturn with more buoyancy to choose Mauritius as a jurisdiction of choice for structuring and consolidation of existing businesses.

South Africa has seen a large M&A deal volume which Douglas anticipates will continue into 2022 based on the current trajectory and the dry power. The International Monetary Fund has revised South Africa's GDP outlook from 4% to 5% but is of the view that this momentum will slow in 2022. South Africa, with a pre-pandemic budget deficit of 7% of GDP and in recession, has had its challenges, but has still exceeded growth expectations for 2021.

Private and public M&A transactions have contracted somewhat in early 2021, especially due to the COVID-19 pandemic and armed attacks in northern Mozambique, but private sector transactions are expected to increase in 2022. The Mozambican legal and fiscal framework is conducive to investment and facilitates M&A transactions.

New York, United States.

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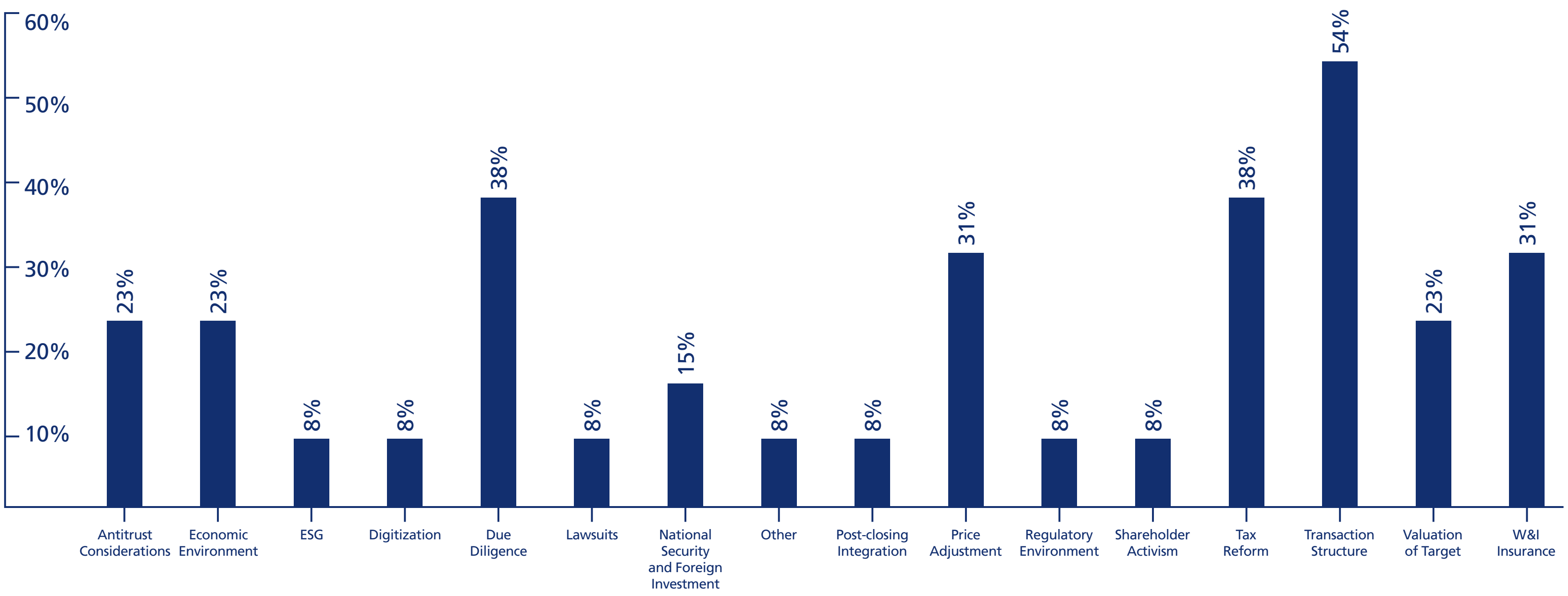
Key concerns facing private company M&A practitioners

Note. Results are based on a multi-response question where survey respondents were asked to choose their jurisdiction's top three concerns.



Many practitioners across the region agreed that transaction structure was a key area of concern in the deal process during 2021 (54%), closely followed by due diligence (38%). A focus on transaction structure parallels similar findings in the Middle East and Africa region (46%).The macroeconomic issues facing businesses since the start of the pandemic (e.g., supply chain disruption, labor shortages, etc.) have had a significant impact on the diligence process as well as the structure of deals.

- In the U.S., some practitioners mentioned private equity funded acquisitions with a transaction structure enabling a tax-efficient rollover of a portion of the target company.

- In Canada, with so many buyers and the relative availability of capital, valuation remains the key factor concerning clients. To address these valuation issues, **Blake, Cassels & Graydon LLP** (member firm for Canada, Alberta, Ontario & Quebec) is seeing innovative transaction structures and pricing mechanisms.

- Somewhat surprisingly, ESG concerns featured less prominently in the responses by our North American respondents than their European counterparts. However, **Blake, Cassels & Graydon LLP** and **Baker Botts LLP** (member firm for USA, Texas) both noted that ESG is a growing area of focus as a driver for purchases and a due diligence consideration (particularly in the context of public companies acquiring assets via M&A).

Across the U.S., practitioners agreed that valuation of targets is at the forefront of discussions as a target's expectations are very high and not always aligned with those of the acquirer. Price adjustments and earn-outs are often used to mitigate those expectations. Regulatory issues and due diligence always play an important role, pre and post COVID-19 pandemic.

According to respondents from **Troutman Pepper Hamilton Sanders LLP** (member firm for USA, Pennsylvania), **Calfee, Halter & Griswold LLP** (member firm for USA, Ohio), and **Akerman LLP** (member firm for Florida), the economic environment has been a main diver for the past 18 months; if inflation continues and interest rates rise, then M&A activity may fall. In addition, Congress has proposed significant tax reform that may change transaction structures and also impact the speed at which sellers may want to sell. As a result, many practitioners saw clients accelerate sales in 2021. How and when the U.S. Government will raise taxes has been a major topic of discussion among M&A professionals and clients throughout the latter half of 2021. Concerns regarding potential tax reform brought out a lot of potential sellers and possibly pulled forward a number of transactions. The Biden Administration has also increased antitrust scrutiny, which can impact transaction processes, timelines, and deal terms.

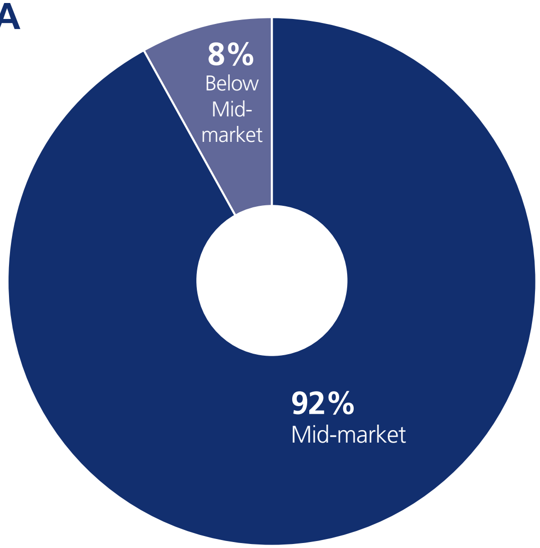
W&I insurance is increasingly becoming commonplace in private M&A transactions, particularly as the market for such policies evolves across the United States.

Finally, practitioners agreed that for many clients doing cross-border M&A, the landscape of national security reviews is becoming increasingly burdensome. Governments are carefully evaluating the acquisition of companies in key sectors, and the U.S. and Canada are not exception to this. In Canada, while the rejection of transactions based on national security or foreign investment concerns is relatively rare, clients may face more detailed and lengthy scrutiny from governmental regulatory authorities, which has an impact on timing and planning.

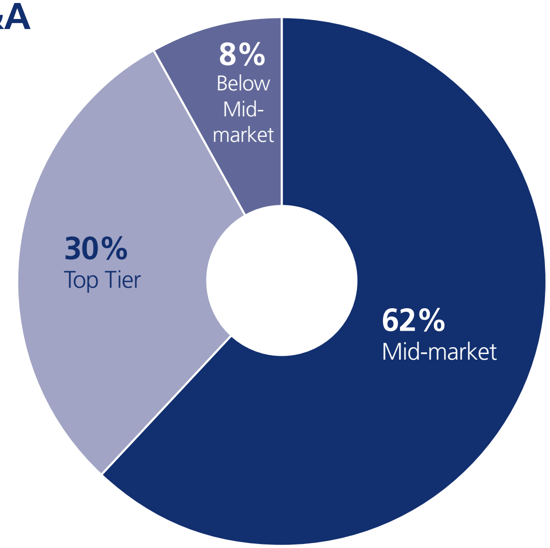
Many practitioners across the region agreed that transaction structure was a key area of concern in the deal process during 2021, closely followed by due diligence.

Deal Activity by Segment

Private M&A



Public M&A



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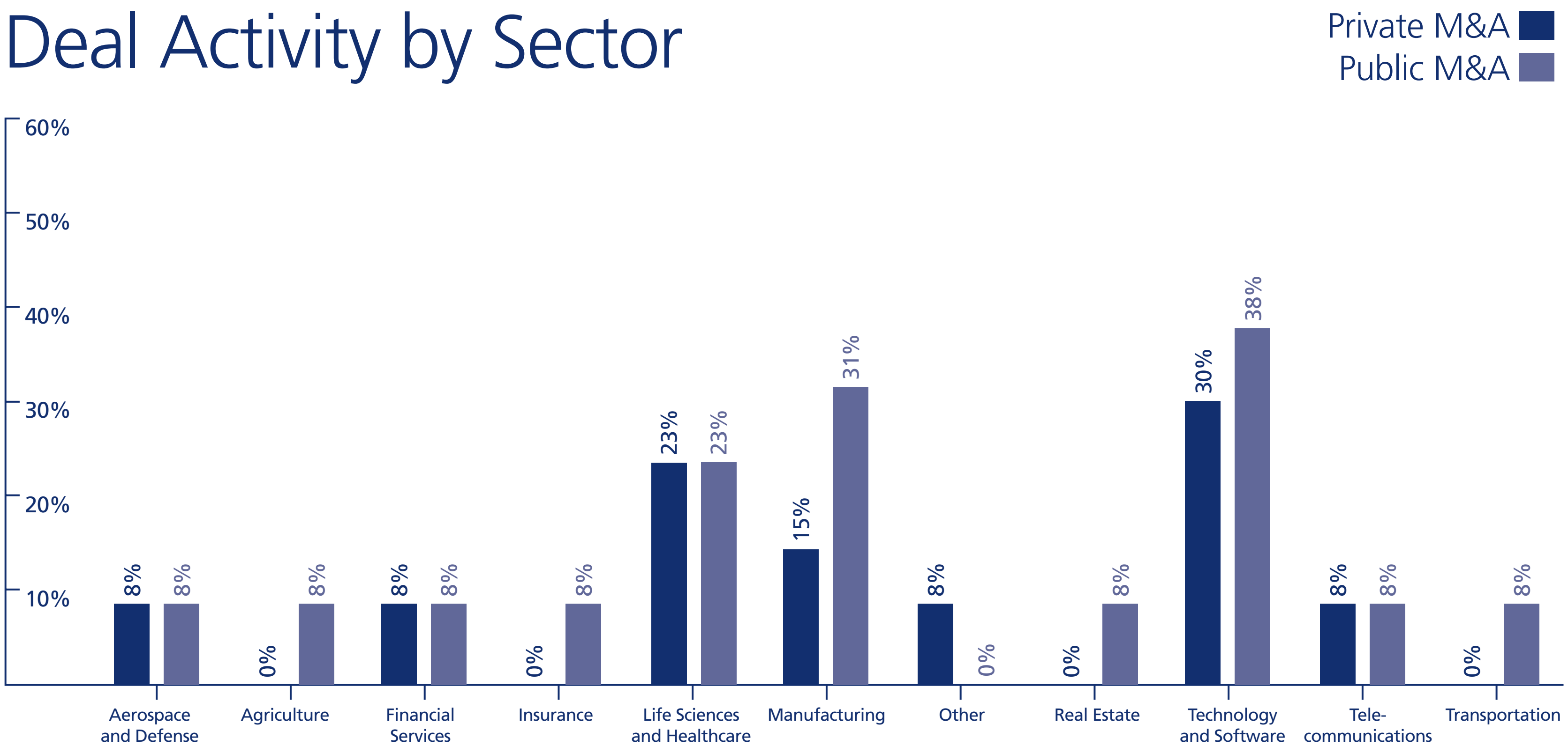
Deal Activity by Sector



Note. Some jurisdictions selected more than one sector.

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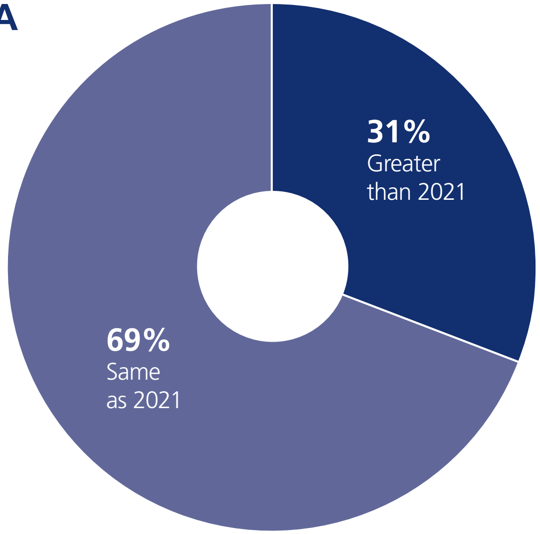
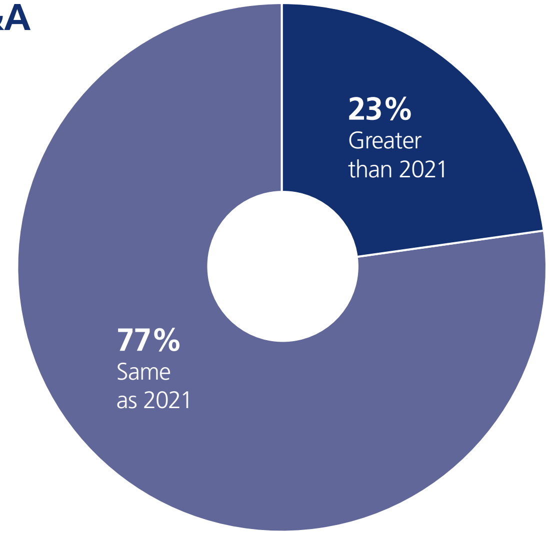


Public M&A



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After an initial two-month slowdown of M&A in early 2020, M&A has been on a tear. Across many U.S. states and Canadian provinces, deal flow in 2021 was at an all-time high.

With so much liquidity and historically low interest rates, 2022 looks like it will be another active year, barring global disruptions or regulatory roadblocks.

- In Ohio, Brent Pietrafese, partner at **Calfee**, explained that private equity and family office-backed acquisitions continue to drive a large portion of the total overall deal activity the firm is currently seeing, and he expects that trend to continue into 2022.
- In Wisconsin, Hamang Patel, partner at **Michael Best & Friedrich LLP** (member firm for USA, Wisconsin) has seen a mix of family-owned companies test the market given strong valuations for target companies. Simultaneously, there are a number of growth companies that are maturing into attractive target candidates.
- In California, Mike Krigbaum, partner at **Morrison & Foerster LLP** (member firm for USA, California) notes that tech and life science M&A show no sign of slowdown, and given the pace of venture capital investments, there are plenty of targets on the market for prospective buyers.
- According to Megan DeVault, partner at **Akerman LLP** (member firm for USA, Florida), Florida has seen a significant flow of deals inbound from Latin America to the U.S. due to political instability. The big surprise has been Chile, the poster child of economic development and political stability which is now going through a constitutional revision.

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Across many U.S. states and Canadian provinces, deal flow in 2021 was at an all-time high.

Most of our Canadian respondents agreed that deal activity will stabilize during 2022. Jennifer Maxwell, partner at **Blake, Cassels & Graydon LLP**, notes that 2022 is likely to bring new political risks, macro-economic challenges and market volatility to compound the continuing uncertainties fueled by the COVID-19 pandemic. That being said, with funding markets still favorable and companies still looking to build their businesses, indicators suggest that M&A activity should continue to be strong.

Lex Mundi wishes to thank the following participating law firms

- Advokatfirmaet Thommessen AS (member firm for Norway)
- Advokatfirman Vinge KB (member firm for Sweden)
- Afridi & Angell (member firm for United Arab Emirates)
- Akerman LLP (member firm for Florida, USA)
- Arendt & Medernach (member firm for Luxembourg)
- Armstrong Teasdale LLP (member firm for Missouri, USA)
- Arthur Cox (member firm for Ireland)
- B&M Legal Practitioners (non-member firm for Zambia)
- Baker Botts L.L.P. (member firm for Texas, USA)
- Basham, Ringe y Correa, S.C. (member firm for Mexico)
- Bass, Berry & Sims PLC (member firm for Tennessee, USA)
- Blake Cassels & Graydon LLP (member firm for Alberta, Ontario and Québec)
- Bowmans (member firm for South Africa)
- C.R. & F. Rojas - Abogados (member firm for Bolivia)
- Calfee, Halter & Griswold LLP (member firm for Ohio, USA)
- CERHA HEMPEL RechtsanwÃ¤lte GmbH (member firm for Austria)
- Clayton Utz (member firm for Australia)
- COBALT Law Firm (member firm for Estonia)
- Coulson Harney LLP (non-member firm for Kenya)
- Demarest Advogados (member firm for Brazil)
- Dr. K. Chrysostomides & Co LLC (member firm for Cyprus)
- Estudio Olaechea (member firm for Perú)
- Facio & Cañas (member firm for Costa Rica)
- Farris LLP (member firm for British Columbia, Canada)
- Gide Loyrette Nouel A.A.R.P.I. (member firm for France)
- Guyer & Regules (member firm for Uruguay)
- Hamel-Smith (member firm for Trinidad and Tobago)
- Hassan Radhi & Associates (member firm for Bahrain)
- Houthoff (member firm for Netherlands)
- HRA Advogados (non-member firm for Mozambique)
- Jenner & Block LLP (member firm for Illinois, USA)
- JPM Jankovic, Popovic & Mitic (member firm for Serbia)
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- Marval, O'Farrell & Mairal (member firm for Argentina)
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- McKinney, Bancroft & Hughes (member firm for Bahamas)
- Michael Best & Friedrich LLP (member firm for Wisconsin, USA)
- Morrison & Foerster LLP (member firm for California, USA)
- Nishimura & Asahi (member firm for Japan)
- Noerr LLP (member firm for Germany)
- Pekin & Pekin (member firm for Turkey)
- Pellerano & Herrera (member firm for Dominican Republic)
- Penkov, Markov & Partners (member firm for Bulgaria)
- Pestalozzi (member firm for Switzerland)
- PRK Partners (member firm for Czech Republic)
- Rajah & Tann Singapore LLP (member firm for Singapore)
- RIAA Barker Gillette (member firm for Pakistan)
- Shalakany Law Office (member firm for Egypt)
- Shardul Amarchand Mangaldas & Co (member firm for India)
- Simpson Grierson (member firm for New Zealand)
- Skrine (member firm for Malaysia)
- Snell & Wilmer (member firm for Arizona, USA)
- The Legal Circle (member firm for Bangladesh)
- Thompson Dorfman Sweatman LLP (member firm for Manitoba, Canada)
- Tilleke & Gibbins (member firm for Thailand)
- Troutman Pepper Hamilton Sanders LLP (member firm for Pennsylvania, USA)
- Tsar & Tsai Law Firm (member firm for Taiwan)
- Wardynski & Partners (member firm for Poland)
- Zepos & Yannopoulos (member firm for Greece)

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