GOING GLOBAL

Strategy and execution in cross-border M&A

BAKER & MCKENZIE

FT Remark
Research from the Financial Times Group

Welcome

In 2014, the number of cross-border M&A transactions globally is close to a post-crisis high. Powerful macroeconomic and political forces continue to provide impetus to globalization, and companies around the world are driven by their strategies to move into new markets and jurisdictions.

In the vast majority of instances these moves are positive. Of the 350 companies interviewed as part of the research for this report, **86% said that their most recent cross-border M&A transaction was a success**. Cross-border M&A remains a highly effective tool in the implementation of business strategies.

The principal strategic motivation behind an acquisition plays a large part in shaping the nature of the transaction and the issues that management and their advisors will face. We have identified five significant motivating factors for M&A and apply these to examine the M&A process:

1. Building scale through the **acquisition of customers or distribution networks**. This raises particular issues around the credibility of revenue streams, antitrust and competition and the complex process of retaining customers post acquisition.

2. **Acquiring intellectual property**. Such deals can frequently raise challenges related to ownership, data and brand protection and the need to rationalize and consolidate structures and asset ownership in the post-merger phase.

3. Adding **skills and capabilities through the acquisition of human capital**. This often requires careful planning to address complex cultural and political considerations, as well as the development of policies and incentive programs to retain staff.

4. Gaining **access to natural resources**. Almost invariably such transactions raise questions of politics, regulation/controls and social and environmental impact.

5. Building a company's strength through the **purchase of industrial assets**. This is often associated with complex tax, human resources and compliance issues.

This report is based on research and data from FT Remark and Mergermarket, leaders in M&A market research, combined with the experience of Baker & McKenzie, which advises on more cross-border M&A transactions than any other law firm. The report contains a foundation of data and analysis and a mix of quotes and case studies based on the experience of cross-border acquisitions from the companies involved. Baker & McKenzie partners from our offices around the world contribute practical advice on identifying and addressing the challenges of executing cross-border transactions.

The successful execution of cross-border M&A requires local market expertise, excellent cross-border co-ordination and a nuanced understanding of the cultural and political issues involved. Experience is vital and this report combines the lessons learned by businesses engaged in transactions, with the knowledge of our practitioners to capture this experience for the benefit of our clients and friends.

Tim Gee

Global Head of M&A, Baker & McKenzie

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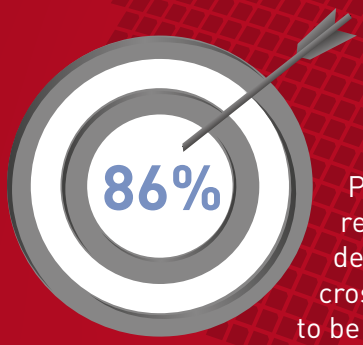
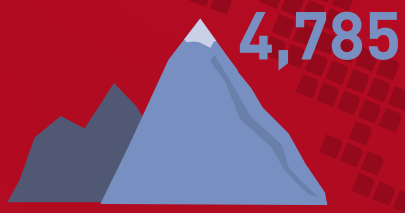
Present and future perfect



Percentage of respondents who deem their last cross-border deal to be **successful**

More than a third say they plan to undertake another cross-border deal in the next two years

Reaching a post-crisis high



The number of cross-border deals conducted by businesses during 2013. The best annual period by volume since the end of the global financial crisis

$263.1bn

The value of cross-border deals for the first quarter of 2014 – close to a post-crisis high

Cross-border catalysts

34%
Access to customers is the most important motivation for the cross-border deals conducted by respondents in our survey

This is followed by

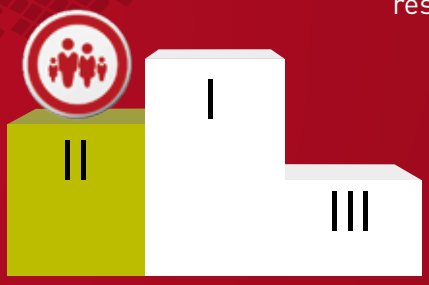
25%
Access to intellectual property

21%
Access to industrial assets

12%
Access to natural resources

8%
Access to human capital

Human capital, while the principal driver in only 8% of transactions, is the second most important consideration in 25% of cross-border deals



MAKING THE MOVE:

THE CROSS-BORDER DECISION

A rise in cross-border M&A

- 86% of respondents deemed their last cross-border deal as successful.
- Cross-border M&A transactions are now at, or close to, post-financial crisis highs.

Global M&A activity continues to recover in the aftermath of the financial crisis of 2007 and 2008. Some 1,087 cross-border deals worth $263.1bn took place during the first three months of 2014, close to a post-crisis high by value (see Figure 1).

Moreover, the deals that are taking place are increasingly global. The first-quarter transactions included 599 deals worth $184.4bn that spanned two regions (for example, an Asian firm buying in Europe), the highest figure by value for six years.

Europe was the most prominent target market for dealmakers looking outside their own region in 2013, with 38% of transactions by value targeting companies in the region (see Figure 2). By contrast, North America, which in 2012 saw the same inbound M&A spending as Europe, was the target of only one in four deals last year (27%).

At the same time, Africa saw the most rapid increase in appetite among dealmakers, with the share of global M&A activity represented by deals for the continent's companies rising from 4% to 7%.

On outbound investment (see Figure 3), the economic recovery in North America appears to be boosting companies' desire to do international deals, with its share of the global outbound activity, by value, rising from 33% to 39% between 2012 and 2013.

Asian businesses (excl. Japan) were also more acquisitive last year, raising their share of global outbound investment from 14% to 17%. By contrast, Japan saw its share fall significantly, from 19% to 10%.

There is also good reason to expect the trend of increasing activity to continue in 2014 and beyond. Just over a third (34%) say they plan to undertake further transactions over the next two years, reflecting the success of deals they have now completed, as well as their future ambitions.

The survey shows that African and Middle Eastern businesses are most likely to be contemplating further deals as they seek to establish a global presence. Half of African corporates surveyed and 44% of Middle Eastern companies are looking to undertake cross-border M&A in the next two years (see Figure 4). Although companies from both regions are mainly focused on acquiring within their own areas, they share an appetite for growth in both developed and emerging markets. For instance, 20% of those African companies that are looking to acquire will be doing so in Asia (excl. Japan) and a further 10% will be active in North America (see Figure 5).

Over a third of North American businesses are planning deals and are spreading their activity across four regions. Despite its

Figure 1: Global cross-border deals 2008 - 2014

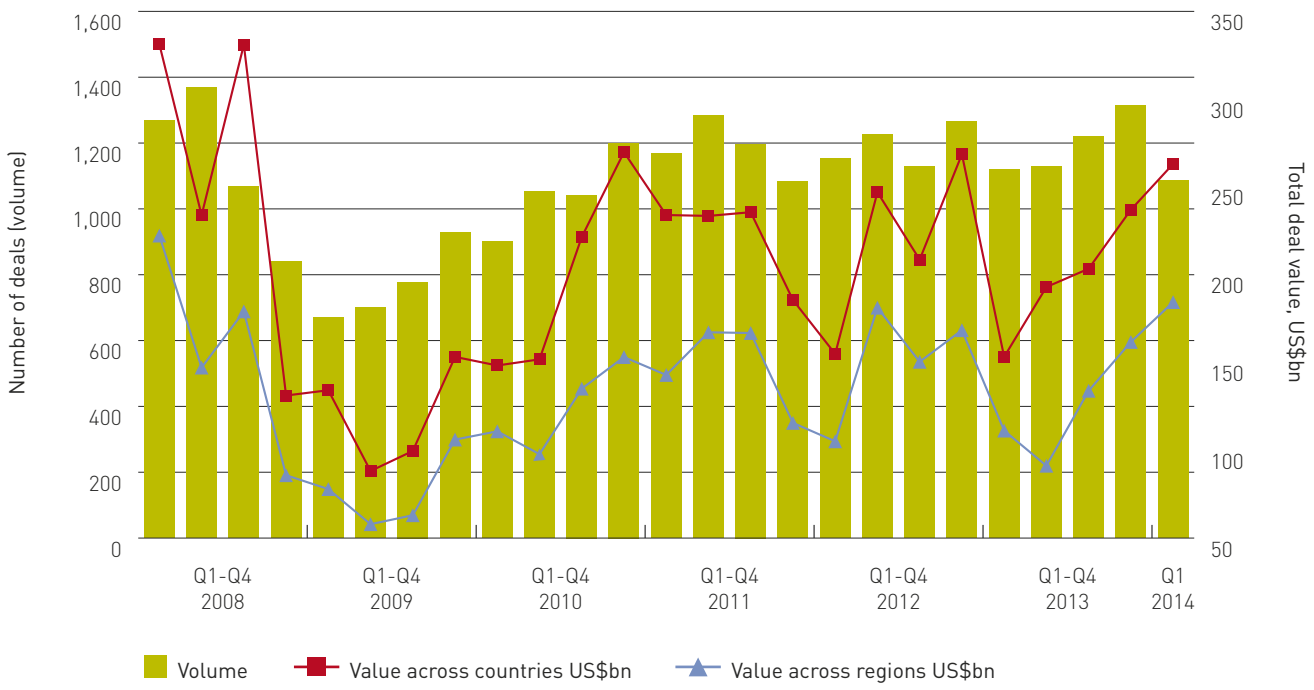


Figure 2: Inbound – share of global value by target region 2012 - 2013

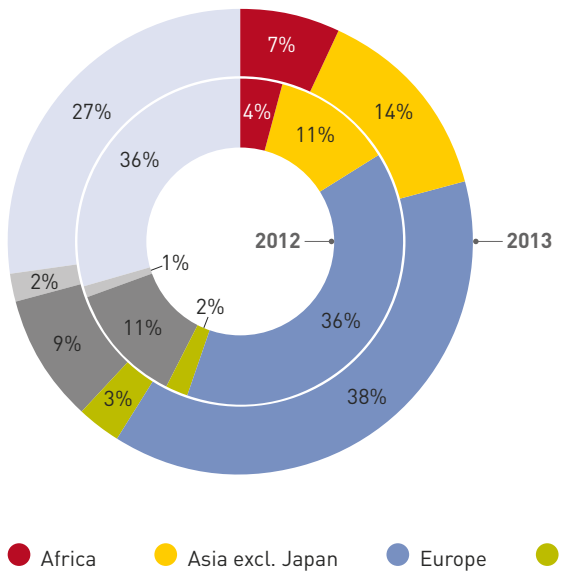
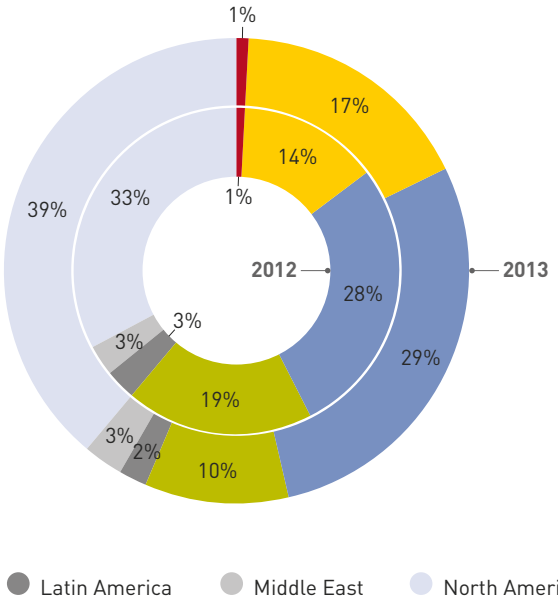


Figure 3: Outbound – share of global value by bidder region 2012 - 2013



Africa · Asia excl. Japan · Europe · Japan · Latin America · Middle East · North America

Figure 4: Is your company planning to undertake any cross-border M&A transactions over the next two years?

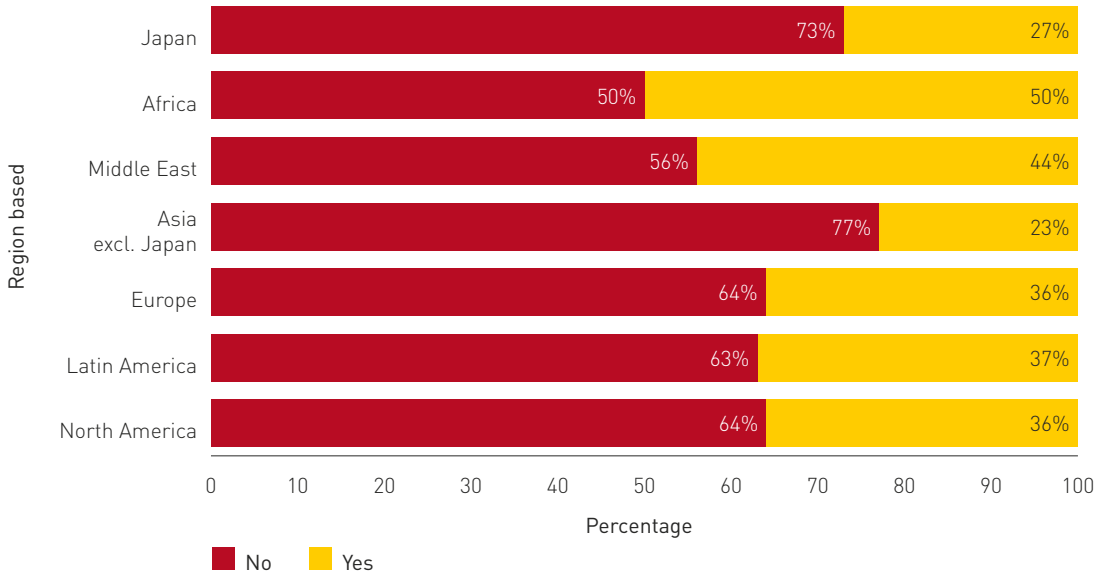
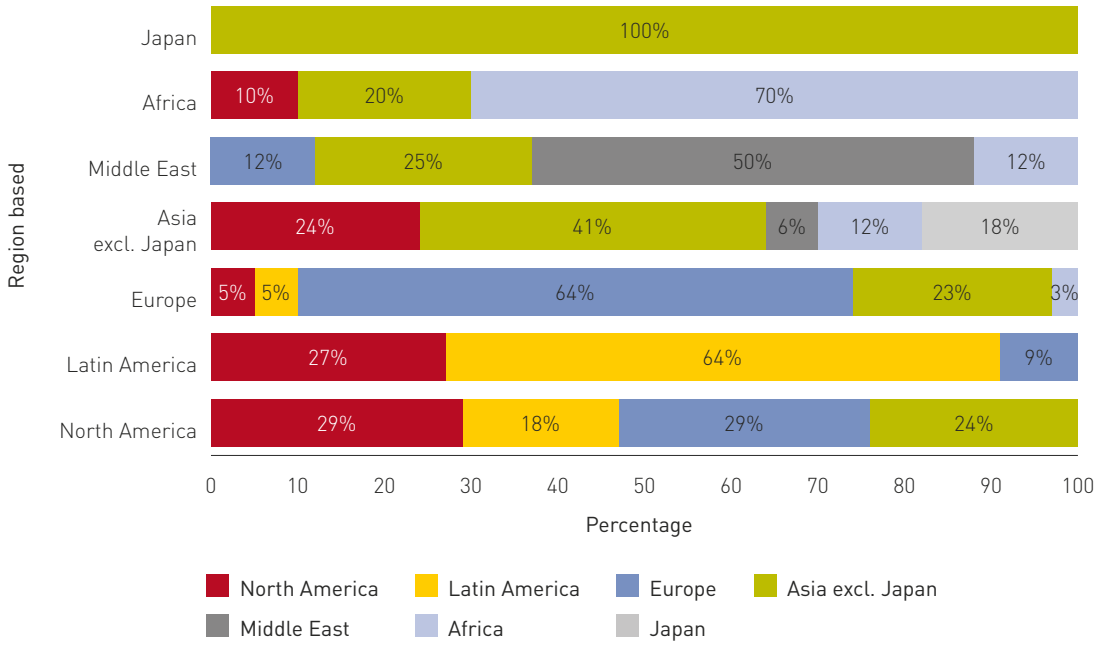


Figure 5: If 'yes', in which region are you most likely to be active?



proximity, Latin America makes up only 18% of proposed activity, which could be due to slowdowns in powerhouse emerging markets such as Brazil.

Businesses in Asia (excl. Japan) can look forward to being targeted by companies from all around the world. With the exception of Latin America, at least 20% of corporates from every other region, including 100% of executives from Japan, intend to do deals in Asia (excl. Japan).

The structure of a cross-border transaction – be it an acquisition, joint venture (JV) or greenfield investment – is a vital strategic decision for cross-border dealmakers.

While the volume of JVs has grown steadily over the past two years (and in some cases, may be a necessity due to regulations), the survey shows that many companies are wary of taking such an approach for fear of the lack of control and potential for conflict within such a partnership. Almost two-thirds of companies (64%) that opted out of JVs did so because they were anxious about the risks of conflicts around decision making and control. More than a third (37%) of all survey respondents say they had previously had a bad experience with a JV (see Figure 6).

The head of finance at an industrial and chemicals business in Belarus reveals that control issues, lack of appropriate targets and previous negative experiences all played into their decision to opt for an acquisition over a JV. "There are tremendous challenges when it comes to a JV – mainly the risk of conflict around decision making and control and also in finding favourable targets for the JV," the executive, who did a deal in Russia, warns. "We did have a bad experience previously and so we thought it would be more appropriate to go for a full acquisition this time rather than a JV."

Corporates feel the most substantial hurdles to greenfield investments are speed to market and regulatory barriers. Half of executives surveyed state that M&A gets them into their desired market more swiftly (see Figure 7). "In the current climate, getting financing for greenfield investments is very difficult," says the legal counsel of a Canadian energy firm that instead made an acquisition in the US. "In comparison, financing for acquisitions is much easier to obtain and it is also a quick way to enter or expand in a foreign market."

Meanwhile, 47% cite the higher regulatory requirements attached to brand new ventures. "Government regulations and barriers put greenfield investments by multinational enterprises like us at a disadvantage," says the head of strategy at a Japanese industrials and chemicals business. "In contrast, the barriers to an acquisition are much lower."

“

Almost two-thirds of companies that opted out of JVs did so because they were anxious about the risks of conflicts around decision making

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Figure 6: Why did you decide to do an acquisition, rather than a joint venture?

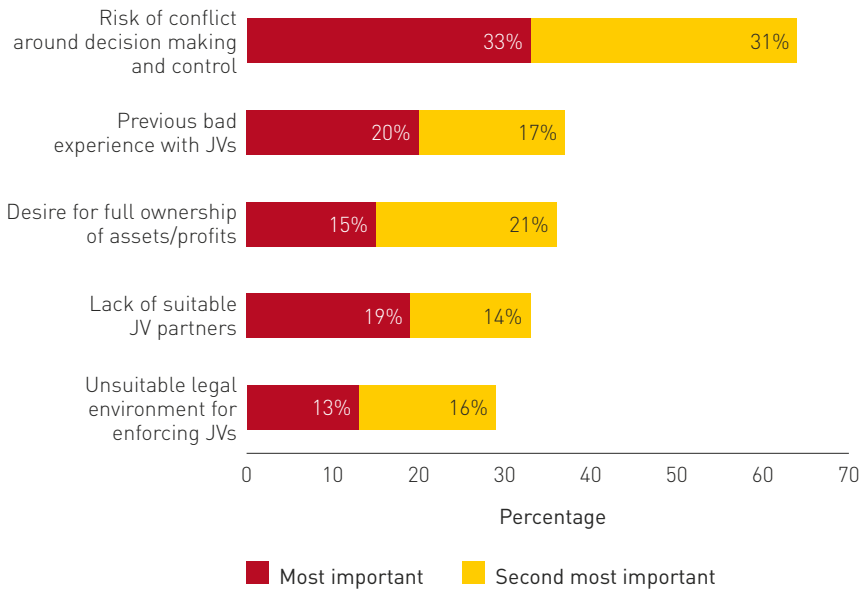
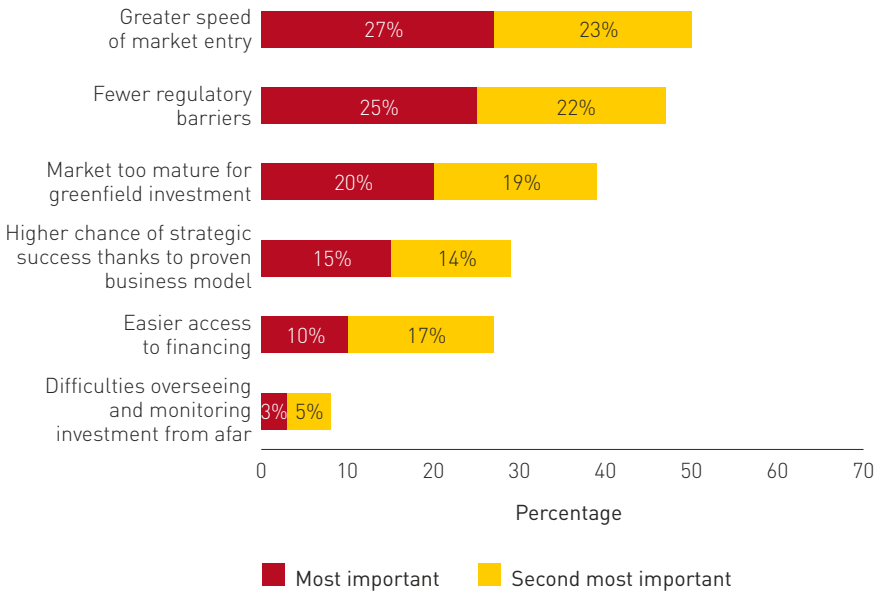


Figure 7: Why did you decide to do an acquisition, rather than a greenfield investment?



The five motivating factors

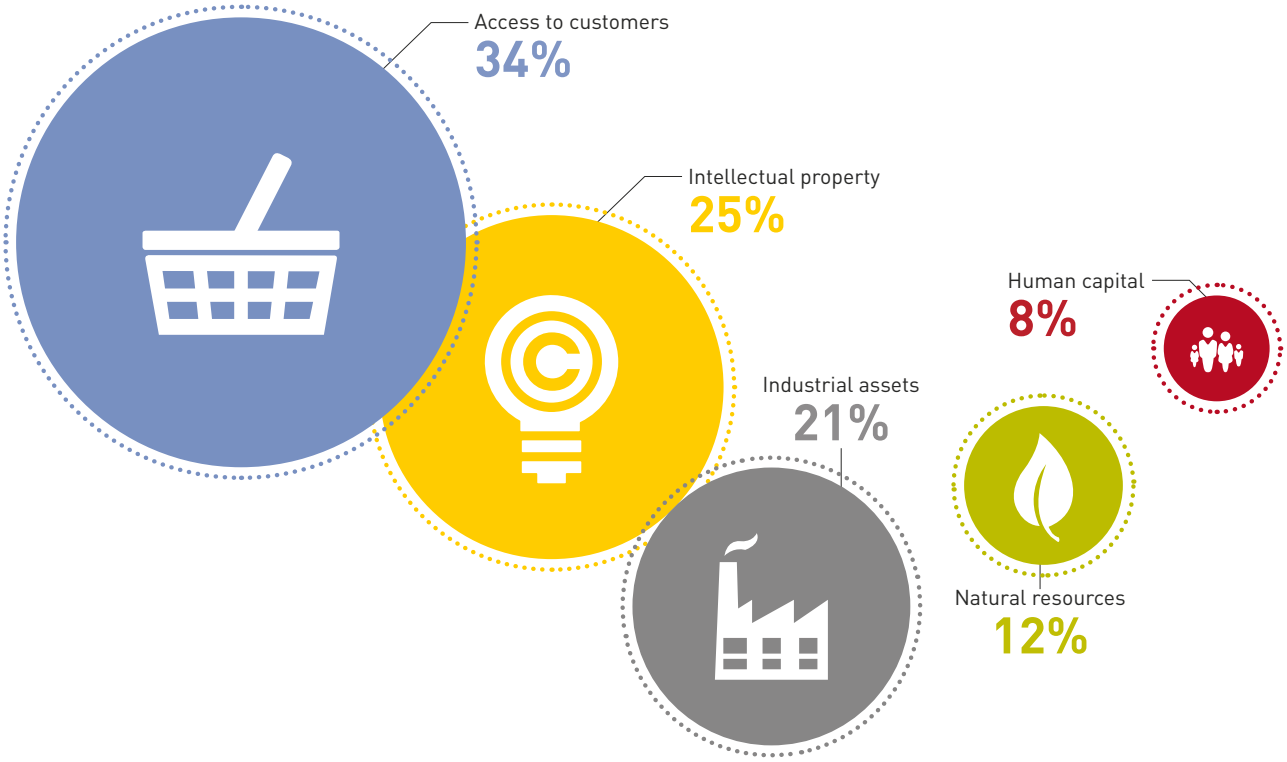
A company's underlying strategy will guide its decision to undertake a cross-border acquisition and determine the choice of target and location. The motivations behind the decision (i.e. the business strategy and objectives) will, in turn, determine some of the major issues that will be faced when pursuing the transaction.

In our analysis, five sources of motivation are found to be useful predictors of the types of issues faced (see Figure 8):

1. Access to customers
2. Access to intellectual property
3. Access to industrial assets
4. Access to natural resources
5. Access to human capital

While most transactions involve a combination of factors, the principal motivation is often paramount and will drive dealmakers' decisions. This report explores each factor and the inherent challenges in turn.

Figure 8: The top five drivers for cross-border M&A



ACCESS TO CUSTOMERS:

CREDIBILITY, COMPETITION AND RETENTION

Deal drivers

- Gaining access to customers is the most important motivation for cross-border deals.
- Two of the most significant challenges to a successful deal are the credibility of the target's financial accounts and retaining customers.
- Regulatory challenges for such deals include political interference and antitrust hurdles.

Gaining access to customers is a key factor driving deals in Africa, Latin America, the Middle East and Asia (excl. Japan). This partly reflects the increasing importance to multinational businesses of the burgeoning middle-class consumer base in these regions. However, even in the remaining markets covered in this report – North America, Europe and Japan – a significant minority of transactions are driven by the acquirer's desire to access customers (see Figure 9).

In Africa, "the search for a customer base is driving acquisitions – the perception of a great untapped customer base causes capital to flow into the continent," according to Baker & McKenzie Partner and Chair of its EMEA M&A Practice Group Ines Radmilovic.

Invariably, companies are looking to acquire large numbers of new customers in territories they are entering for the first time. This is particularly true where there is a significant market opportunity on offer – or where companies can substantially increase their market share in countries where they are already present.

For example, the senior legal counsel of an energy and resources firm based in the Czech Republic, says an acquisition made in Turkey enabled a much speedier move toward scale in the country than a greenfield investment. "The target firm had an outstanding customer base with profitable returns, so we could tap this market rather than having to develop a whole new structure and then striving to get a good customer base," he says.

Figure 9: Percentage of deals where access to customers was the top motivation

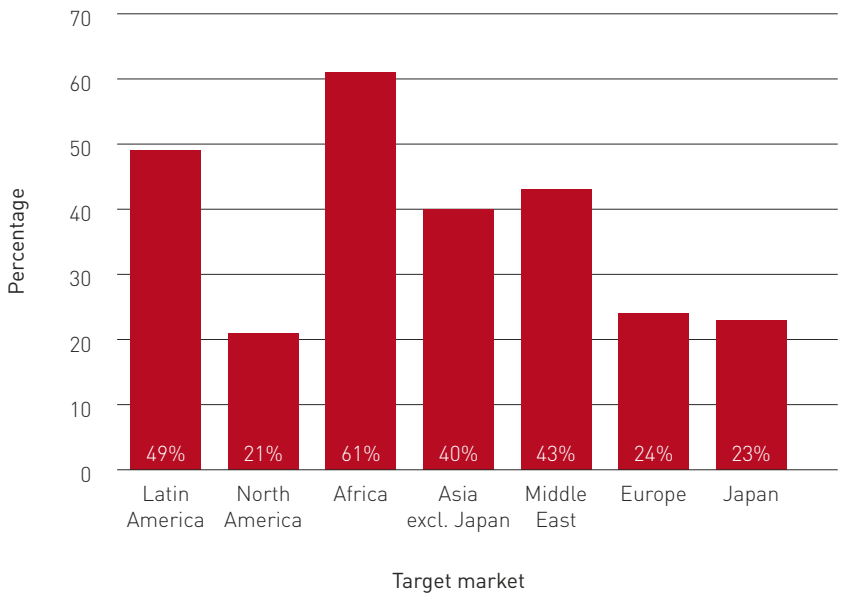


Figure 10: Main access to customers motivation

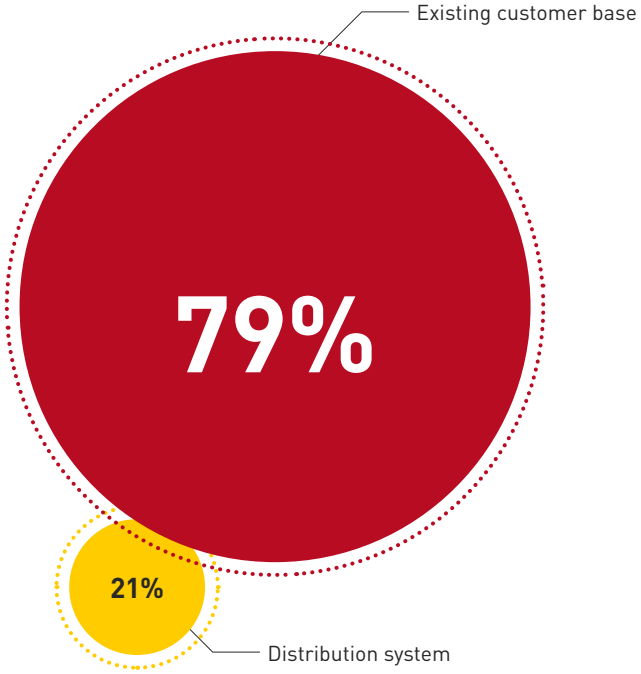
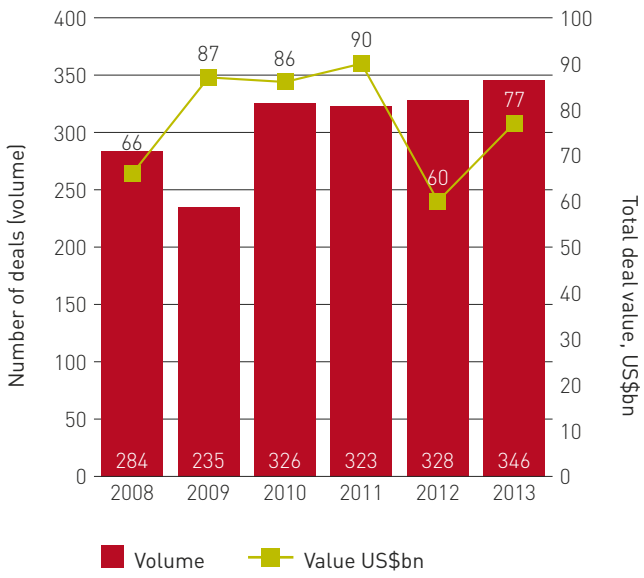


Figure 11: Pharma, medical and biotech cross-border deals 2008 - 2013



Similarly, the chief financial officer of a South African business services firm says of a deal in Mauritius: "The target country is growing fast and the level of demand is very promising – the customer base was very attractive and we were confident of extracting the value by targeting the customer base of the target company."

Companies seek to access customers in different ways. In almost four-fifths (79%) of the deals where access to customers is the primary motivating factor, companies are predominantly targeting an existing customer base (see Figure 10). However, in a fifth of such deals (21%), they are focused on the target's distribution systems. The difference is subtle, but the latter gives businesses the opportunity to apply the systems acquired elsewhere in their operations.

This can be highly valuable to an acquirer. "The methodologies and the pattern of the distribution system of the target firm were efficient, which could prove to be an asset for our company," says the executive vice president for strategy of a Colombian life sciences business (see Figure 11 for industry deals) that made an acquisition in El Salvador. In a similar vein, the director of strategy at an Indonesian financial services business that did a deal in Singapore says: "The distribution model of the target firm was advanced and co-ordinated systematically, which was the most important feature from our firm's perspective."

The due diligence challenge: Financial credibility

In deals where access to customers is the key factor driving the acquisition, buyers pinpoint the credibility of the target company's financial accounts as the biggest due diligence challenge. Where a company makes an acquisition on the basis of the revenue streams generated by its customers and distribution model, it needs to be sure it can trust the data of such criteria.

Credibility of financial accounts is a concern across all markets, but is regarded as a particularly significant challenge in Africa and Asia (excl. Japan). These regions are mostly comprised of developing markets where governance and reporting standards may be lower – or at least perceived to be lower – which may explain why they stand out in the survey.

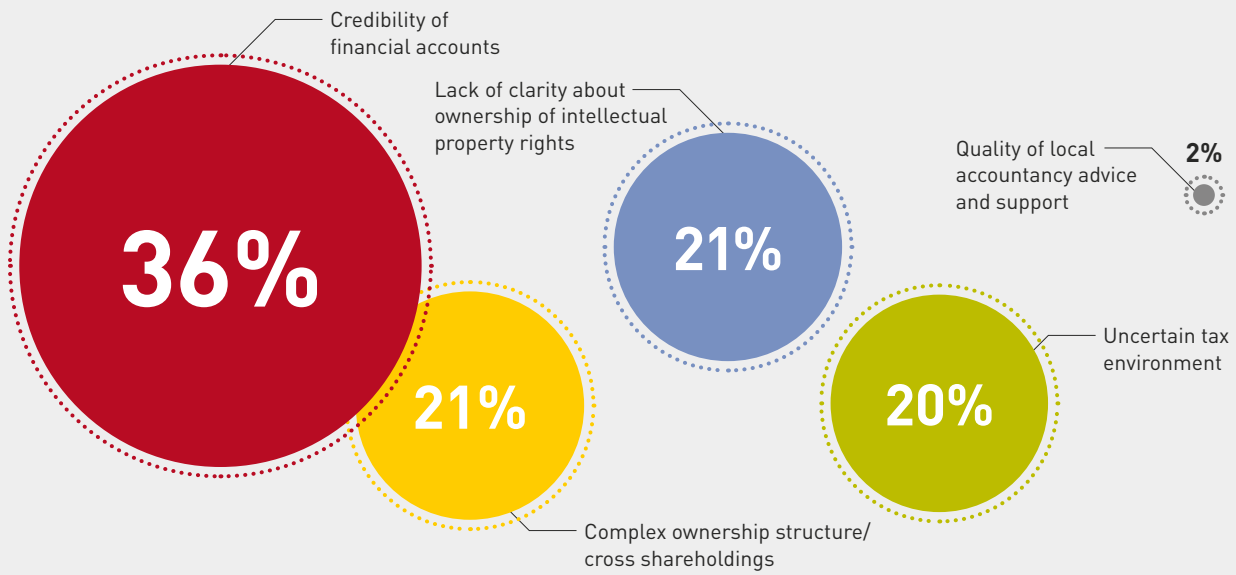
There are other factors at play, however, including:

- The critical importance of ensuring the quality and credibility of revenue streams in such deals;
- The fact that this M&A activity often centers on private companies, which are not generally required to be as transparent as public businesses listed on stock exchanges;
- And that deals may be for specific divisions or subsidiaries of companies, rather than the whole concern – visibility may be poorer for this reason, with data not publicly broken down on divisional performance (see Figure 12).

In tackling these hurdles, those with experience of doing deals, and legal counsel with expertise on advising on them, stress three crucial solutions to these problems (see Figure 13):

1. **Businesses need to ensure that the deal timetable allows sufficient time for thorough due diligence to be conducted – this needs to be planned for right from the beginning of the process.**

Figure 12: Key due diligence challenges for acquisitions motivated by access to customers



2. **Due diligence work needs to include extensive dialogue with the management of the target business, so that the acquirer and its advisors have the best possible understanding of the asset they're buying.**

3. **Advisors with local specialist knowledge of the idiosyncrasies of their particular market, are a crucial part of the deal-making process.**

"The big problem always is validating the target's financial projections and any identified synergies. However, assessing the overall market attractiveness and the competitive position of the target is also not easy in the current market where companies are hiding their liabilities," says the director of strategy at a Brazilian consumer company that bought a Portuguese business. "We used advisors with local knowledge, but also allowed extra time for more thorough due diligence to ensure we checked all the necessary factors before giving the nod for the acquisition. In a cross-border transaction there are many areas that need more focus than a domestic acquisition and we rightly employ a more thorough process."

The director of M&A at a Japanese financial services firm that did a deal in the US echoes these views. "In a cross-border acquisition, assessing the credibility of financial accounts is a major issue (see Figure 14). To ensure the information we get is correct we had to spend a lot of time finding information and investigating its accuracy from various sources."

It needs to be noted that the accounting credibility issue is important not just in itself, but also because of what it says about the company, according to Baker & McKenzie Partner and Chair of its EMEA M&A Practice Group Steering Committee, Ines Radmilovic. "The credibility has become more of a due diligence issue because of what this tells the buyer about the target's compliance – particularly in relation to bribery and corruption," she says.

Figure 13: How did you overcome these due diligence challenges?

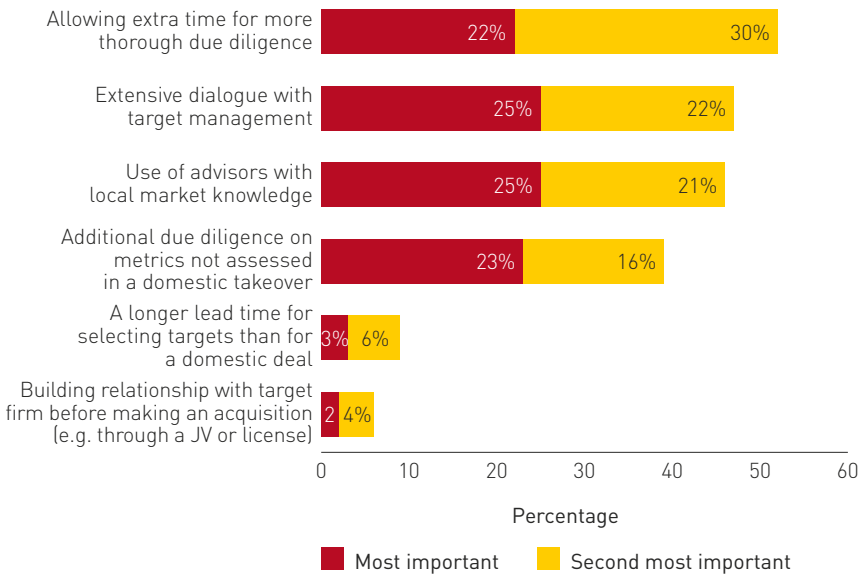
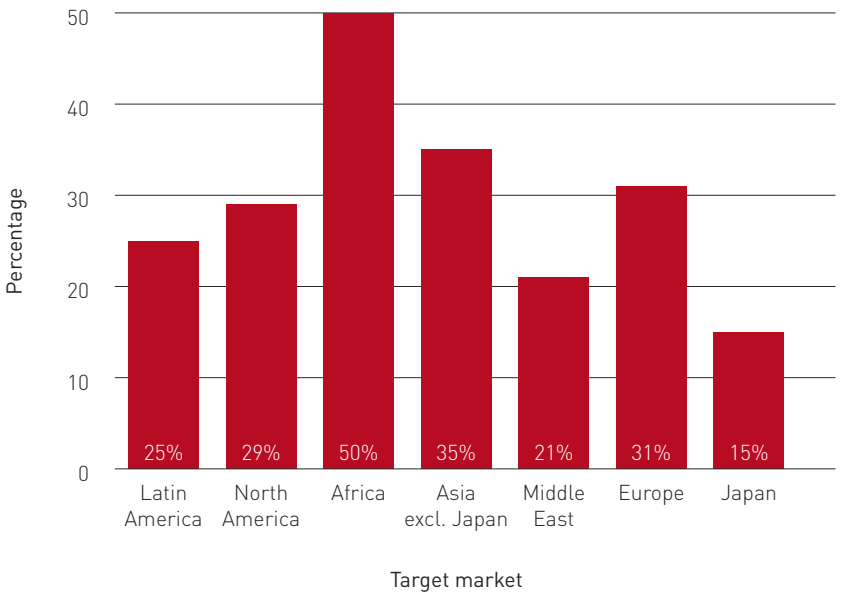


Figure 14: Percentage of deals where credibility of financial accounts was the top due diligence challenge



The Baker & McKenzie perspective

One aspect that acquirers need to keep in mind in numerous emerging markets, such as those in Latin American countries, is that many of the targets are privately-owned and controlled. Foreign investors are liable to discover that standards of governance and management and labor relations practices are very different to those in developed economies.

In terms of due diligence, corporates need to explore how these practices can be brought up to the levels the purchasers are required to have.

Jaime Trujillo
Partner and Chair of the Latin American M&A Practice Group, Baker & McKenzie

The regulatory challenges: Antitrust and politics

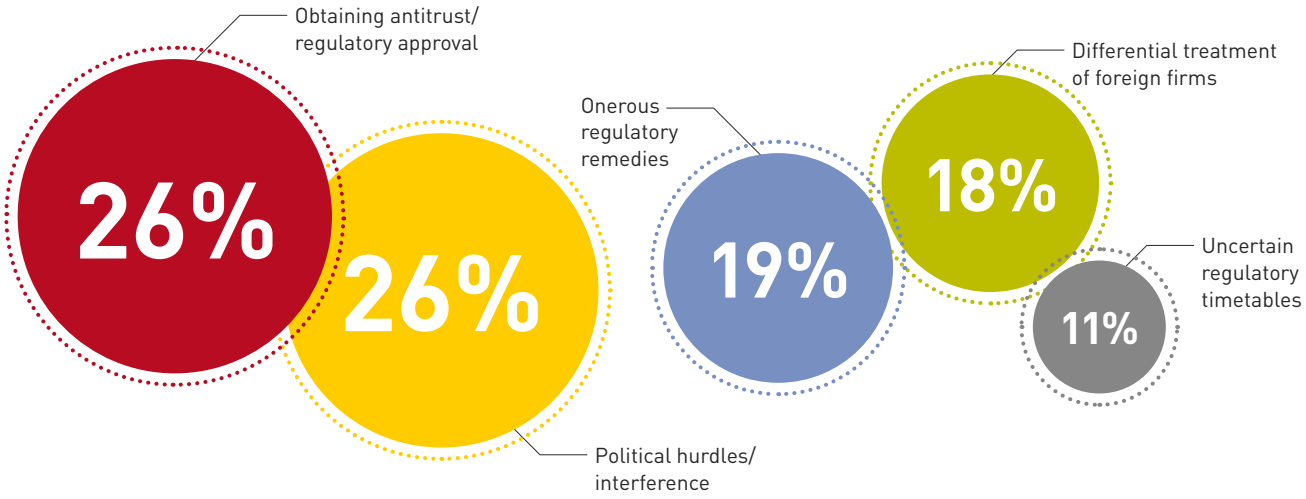
With competition and antitrust regulators around the world increasingly focused on the need to protect consumers and other customers from monopolistic or cartel-like behaviour, businesses often find that getting approval from such authorities for M&A, which usually represents some level of industry consolidation, can be a major regulatory hurdle. All the more so where the deal is motivated by the desire to get access to the very customers that such authorities are looking to protect.

However, executives warn that other regulatory challenges are coming to the fore. Political interference is seen as a key challenge by one in four businesses (26%) doing deals that prioritize access to customers (see Figure 15). Another issue, particularly likely to be seen in the Middle East, but also common in Japan, Latin America and the rest of Asia, is the regulatory remedies that companies are sometimes expected to accept in order to get clearance for the deal. The problem may simply be that regulation of a particular industry is more onerous in the country of the target than the acquirer (see Figure 16). In other cases, the acquirer may be ordered to take certain actions – to agree to dispose of a particular subsidiary, say – if it wants regulatory approval.

The solutions to these problems vary, but one common piece of advice from dealmakers is to allow extra time. These obstacles will be less frustrating when working with realistic deal timetables.

That was certainly the approach taken by a Dutch financial services firm that ran into antitrust issues when trying to acquire a US business. Its legal counsel also stresses the importance of building a case for the deal in terms that the local authority is concerned about, which worked in this instance. "Our firm was an outsider for the target country, so there was stricter treatment," says the lawyer. "We took the time to understand the pre- and post-regulatory requirements and tried to focus on meeting them at an early stage; we also developed a forecasting model projecting the economic and social benefits for the economy as a whole so we had an advantage there."

Figure 15: Key regulatory challenges for acquisitions motivated by access to customers

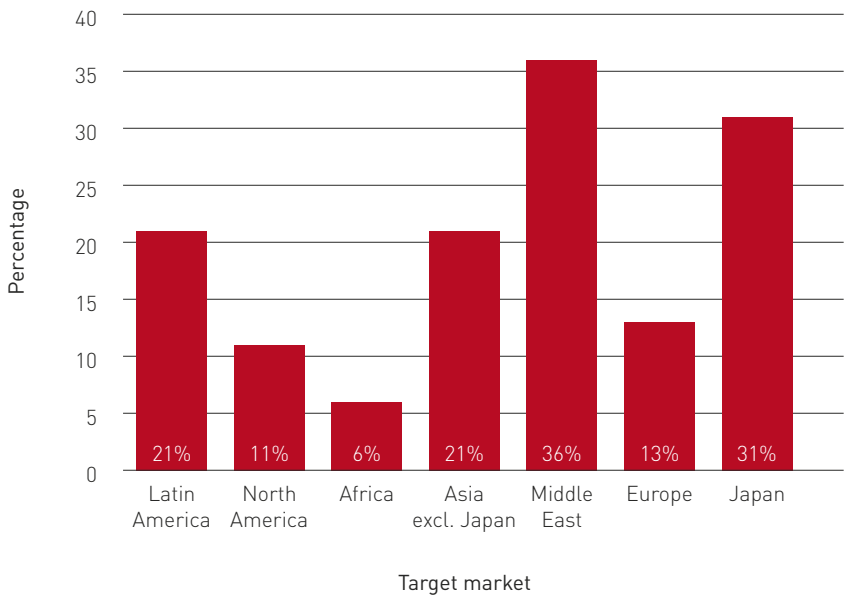


Another tactic, suggests the head of strategy at a Russian financial services firm that did a deal in Serbia, is to enlist your own government's support – by stressing the importance of the deal for domestic jobs and growth, for example. "We approached our own government," the executive explains. "Acting as an advisor, our government kept us informed about the various upcoming rules or regulations, and also negotiated with the target government during the deal."

That strategy also worked for a Hungarian life sciences company doing a deal in Israel that was at one stage threatened by onerous regulatory remedies. "Regulatory norms were high in the country and the governing body was not supportive of the acquisition, which slowed down our process and flow of the transaction," the firm's chief financial officer says. "By involving our own government we were able to procure approval – our government was supportive enough and also guided us through the various regulations."

> "Political interference is seen as a key challenge by one in four businesses"

Figure 16: Percentage of deals where onerous regulatory remedies was the top regulatory challenge



The post-acquisition challenge: Customers and synergies

The Baker & McKenzie perspective

Data privacy is crucial. If you're acquiring a company in Europe, for example, corporates need to know whether they are able to transfer customer details outside of the European Economic Area.

If corporates do not do their homework, they may find that they come under scrutiny from regulators complaining that they have broken the target's privacy policy.

Data protection issues have to be a key part of the due diligence process and bidders need to be extremely clear about what they want to do with the target's data and indeed, whether they are allowed to do it. For example, the company needs to know whether it is even allowed to write to the company's customers to tell them about its new owners and to ask if it can use their data.

Harry Small
Partner and Head of the Global Technology Practice Group, Baker & McKenzie

Companies doing deals motivated by access to customers stress the same post-acquisition challenges as other businesses – particularly around integration issues – but also face additional questions (see Figure 17). The most obvious issue is how they will ensure they retain those customers they were so keen to access. A related issue that scores highly in the survey is the need to ensure desired synergies can be quickly realized so that the new customer base complements the existing business.

On customer retention, every company that has completed a successful acquisition makes the same point – getting to know the new customers and understanding their needs and desires is absolutely crucial. This must be done at the earliest opportunity.

"The only way to effectively mitigate the challenge of retaining customers is through effective, proactive and frequent communications with all key customers," advises the director of strategy at a Brazilian consumer business that did a deal in Portugal.

This means planning ahead, creating clear timelines for communication and discovering which customers will be negatively impacted and targeting them accordingly, says the head of M&A at a UAE-based energy firm that made an acquisition in Turkey. "Once we create the timelines, we can then determine which customer groups, segments or geographies will face prolonged periods of negative impact and subsequently create specially designed risk-mitigation plans for these groups," says the executive.

Take action

- Ensure the deal timetable allows for sufficient time for thorough due diligence. Be flexible so that due diligence can be extended if required.

Sometimes it may be necessary to go even further to reassure new customers – such as showing the benefits that your company can bring on a societal level. For example, the director of strategy at a financial services business making an acquisition in South Korea, says: "As a foreign firm to the target country, it was difficult to win the confidence of the customers, so we implemented economic and social development programs within the country in order to market our brand name and position our firm as a welfare-oriented organization."

Other strategies will be required in order to realize synergies. Part of the challenge, as with other obstacles, is to start the work as early as possible. "Our ability to deliver future value typically

Take action

- Use advisors with local knowledge, who can help identify and explain the idiosyncrasies of the particular market.

depended on a limited number of drivers and our approach to due diligence reflected this," the director of strategy at a US industrials company says of a deal in the UK. "Each due diligence work stream was given a clear set of value drivers and risks to assess. Only once there was clarity on the most important issues did the due diligence focus shift to the next set of issues. This approach gave us the key benefits of the deal and helped us to accurately forecast the financial synergies."

Take action

- Speak extensively with the management of the target to help provide a complete picture of the asset being acquired.

Armed with such information, the post-deal priority should be to drive through the realization of these benefits, with constant monitoring of results achieved and transparency about lines of responsibility. "Realizing financial synergies requires accurate data so that we can measure and evaluate the changes and adapt quickly to new strategies to increase the integration pace," says the finance director of a US firm buying a TMT firm in Brazil. "For this, we continuously kept

Figure 17: Key post-acquisition business challenge for acquisitions motivated by access to customers

The Baker & McKenzie perspective

Post-acquisition integration does not have to mean merging all the entities into one operating entity in each country. However, even if the acquirer is just holding the acquisition as a standalone investment, this does not mean they can stand still.

Look for simplicity while staying alive to the fact that operating structures need to make sense in relation to where people are based and where management is based.

Flexibility is also vital. Be aware that the environment could change and think about what it would take to unwind the model that has been set in place.

Kirsty Wilson
Partner and Head of the Global Business Transformations Group, Baker & McKenzie

The Baker & McKenzie perspective

Companies recognize that the post-acquisition work is so crucial that they are now bringing in advisors like us to help them with global or regional integration. There are so many issues related to employment, tax, intellectual property, and regulation.

It is possible to use a collection of local and specialist advisors to grapple with those issues, but that does not necessarily give you efficiency and consistency. Corporates need to have the overall picture that only a top-down view can provide. Businesses require a combination of legal advice and business strategy – it's all about execution.

Milton Cheng
Partner and Head of the Asia-Pacific M&A Practice, Baker & McKenzie

Take action

- Spend time getting to know the acquired customers at an early stage. Aim to develop a full understanding of their needs and the strength of their relationships with the target.

a close watch on the targets and financial outcomes and identified the areas that needed improvement – for these areas, the business heads planned alternative strategies to further improve the synergies and achieve the financial goals."

In addition, corporates need to have a light touch and not be heavy-handed with the new business. "Due to mid-level management disagreement it was difficult to raise the synergies to the expected level," recalls the finance director of a South African life sciences firm making an acquisition in India. "It is very important to keep the mid-level management satisfied as they manage most of the business integration processes and can drive the employees with their skills and talent."

Take action

- Build a strong argument to present to local authorities and governments to smooth the regulatory approval process.

CASE STUDY: **MANY HANDS MAKE LIGHT WORK**

The head of finance at a Mexican consumer company was tasked with managing a number of post-acquisition challenges following a cross-border transaction in Colombia. The deal was seen as the best hope of realizing the company's strategic objective of expanding aggressively in the region, but was also predicated on the opportunity to realize financial synergies.

Delivering that potential proved difficult, however. "Realizing these synergies was the most significant challenge as the company's complex structure made it difficult to understand the various debts and tax shields," the head of finance explains. Only by working closely with the target's existing management, as well as with specialist advisors, was it able to overcome such difficulties.

"We asked for help from the target management, which helped us to get a clearer idea of these structures," the head of finance adds. "Then, with the help of peer advisors we were able to sort out and compute the various debt structures and tax patterns."

The deal has proved very successful. "Our investment yielded high returns," the executive says. "Returns on investment were strong and we have maintained a strong reputation in the target region."

INTELLECTUAL PROPERTY:

OWNERSHIP, INFORMATION AND PROTECTION

Deal drivers

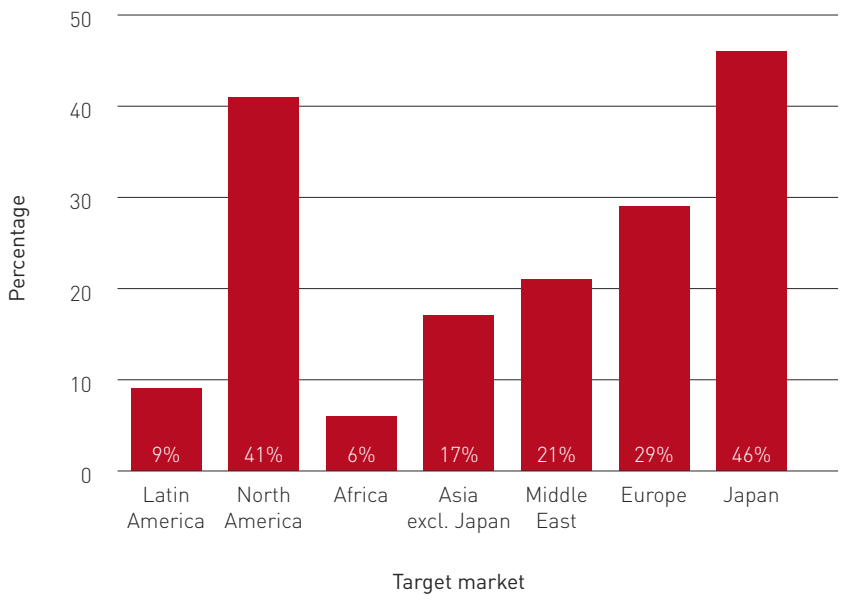
- Access to IP is a prominent motivation for companies making acquisitions in Japan, North America and Europe.
- IP-motivated deals present particular challenges around ownership rights and data protection.

Buying a company in order to gain access to new knowledge, experience or technology is an established business strategy and this continues to be an important driver of M&A activity around the world. The desire to access intellectual property (IP) is a particularly prominent motivation for companies making acquisitions in Japan, North America and Europe – though it also has significance in deals in the Middle East and Asia (excl. Japan) (see Figure 18).

Developed markets are more likely to be home to countries that are known for pioneering advanced technologies in industries such as TMT, life sciences, and manufacturing, but IP-driven acquisitions may also be motivated by the desire to access other types of asset. In just over half (56%) of deals motivated by IP considerations, the acquisition is predominantly targeting technology and patents. But in 44% of these deals, companies are targeted for their brands and trademarks (see Figure 19).

"In our most recent transaction, the target had technology that will enhance our value significantly to both new and existing customers," says the director of strategy at a US firm that made an acquisition in Canada. "Technology has had a big impact on the global market and the demand to acquire new technological products is rising – it has proved to be a success for many firms that have chosen such targets," adds the chief financial officer of a Mexico-based life sciences business.

Figure 18: Percentage of deals where IP was the top motivation



The Baker & McKenzie perspective

It's not easy to protect IP on an ongoing basis. Our general advice is that if there is a problem, then companies must enforce. There is an index that shows those countries that are robust and those that are not.

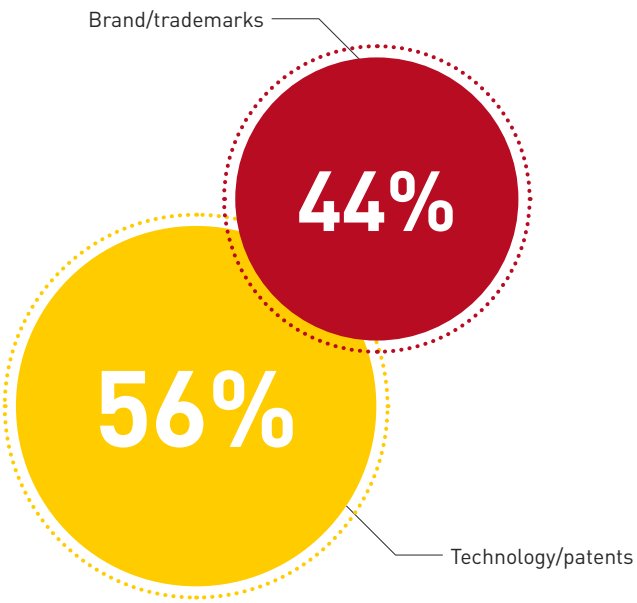
Corporates need to be on good terms on the ground with local partners and particularly the lead individuals involved. These people are in high demand and if they take your rights with them to a rival, that's a major risk.

Jane Hobson
Partner and Global Head of the Pharmaceutical and Healthcare Group, Baker & McKenzie

It is also notable that many companies doing IP-driven deals are focused on technologies around business processes that might be applied elsewhere in the organization, rather than a specific end product.

For example, the head of finance at a Peruvian financial services company says of an acquisition in Chile: "The target company had techniques of function and overall operations that were new to us but highly beneficial to the overall company – their methods of marketing, operations and planning were backed by highly technical methods." Similarly, the chief financial officer of a Qatari firm that bought in the US talks about gaining technology: "The most significant part of the transaction was taking over the technology of the target company – we could plan our strategy to make processes and functions easier and more efficient with the use of this technology," he says.

Figure19: Main IP motivation



The due diligence challenge: Ownership

Companies making acquisitions with the aim of accessing IP commonly report similar concerns about the due diligence challenges. The main obstacle is dealing with complex ownership structures at the target business and the question of who actually owns the IP rights in question. In the survey, 33% stated that this is their key due diligence challenge.

The importance of these issues reflects the potential they have to damage the success of any deal. In instances where it is difficult to ascertain IP ownership, the whole rationale for the deal may be undermined, yet the problem is commonplace (see Figure 20). In many industries, IP is developed in JVs or through licensing deals and it may not be clear where ownership resides.

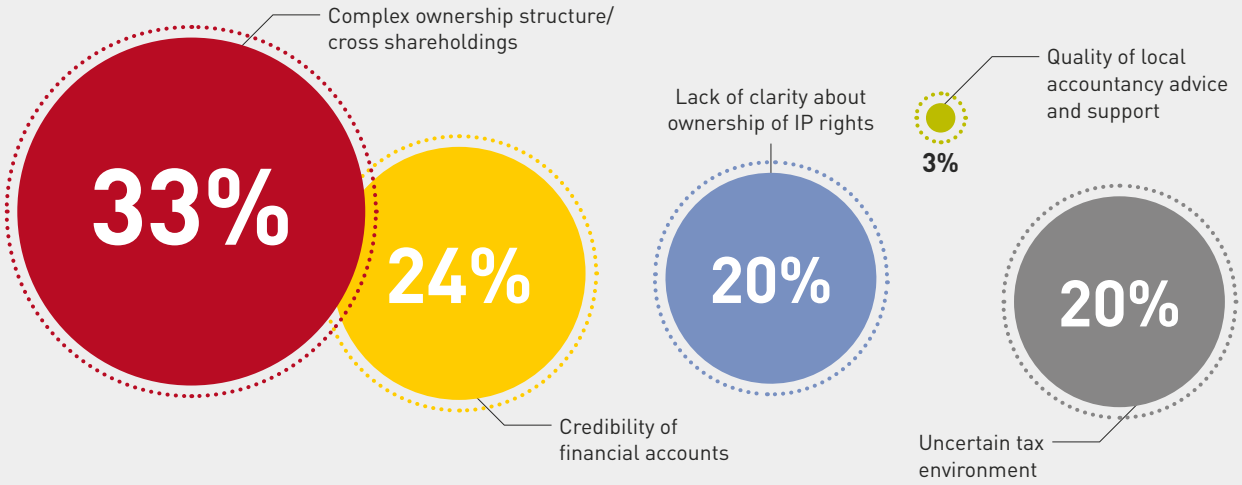
Similarly, complex ownership structures can muddy the waters of a transaction. The survey suggests this is most often a challenge in markets such as Japan, Latin America and the Middle East, but it is significant all around the world (see Figure 21). In private companies, in particular, it can be difficult to unravel ownership structure.

Companies adopt a variety of tactics to confront these challenges. It is important to ensure that sufficient time is built into the due diligence process to get to the bottom of uncertainties. Local advisors with specialist understanding of local customs and practices are likely

Take action

- Clarify issues around ownership and cross shareholdings. This needs to be at the heart of due diligence when intellectual property is being acquired.

Figure 20: Key due diligence challenges for acquisitions motivated by IP

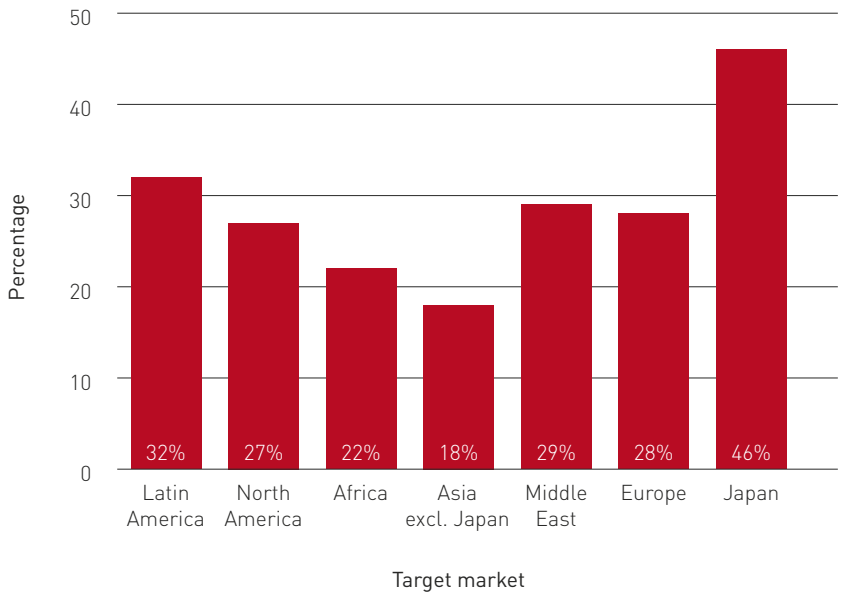


The Baker & McKenzie perspective

In Japan, for example, the reality of the real estate sector is that there are local legal requirements on how foreign investors proceed. In the Philippines and Thailand, there are restrictions on foreign ownership, so the structures of companies need to reflect that. In China, the variable interest entity structure is designed to have similar effects."

Milton Cheng
Partner and Head of Asia-Pacific Mergers Group, Baker & McKenzie

Figure 21: Percentage of deals where complex ownership structure/cross shareholdings was the top due diligence challenge



"Advisors with local knowledge are likely to prove valuable when it comes to drilling down into the ownership of IP rights"

Take action

- Focus on the extent to which IP acquired in one market will be protected in other markets.

to offer important insights. And an open dialogue with the target company's management will also be important.

"In a foreign market, with different governance rules and structures, it was difficult to find out about shareholdings early on during the transaction to know whether the target was feasible or not," says the head of finance at a South Korean company buying in Japan. "First, we had to use advisors who had the knowledge of the internal market and were able to find out about shareholdings. Also, we took extra time to ensure all the information was verified in detail."

"The company we targeted had a complex web of cross-shareholdings which meant it was difficult to uncover exact ownership details," adds the chief financial officer of an Indian financial services company that made an acquisition in Bangladesh. "Extensive dialogue with the management team helped us to understand the exact ownership pattern, and proved to be very efficient for the due diligence process."

Advisors with local knowledge will help here and are also likely to prove particularly valuable when it comes to drilling down into the ownership of IP rights. The director of finance at a Malaysian industrials firm explains how they took this approach when making an acquisition in the UK. "The target firm had technically advanced resources and patent rights but the ownership pattern was blurred so understanding the ownership structure of these IP assets was time-consuming, and represented the most critical due diligence challenge," he says "We made use of external advisors from the local market that helped us in the due diligence process and gave us a clear understanding of the IP rights and the process of transferring ownership."

Take action

- Create an open dialogue with the target company's management.
- Use advisors with local market knowledge, to help address challenges of ownership and protection.

The Baker & McKenzie perspective

Often, the key challenge is not so simple as checking that the target owns the IP. Usually, complex products include a mix of owned IP and property licensed from a third party. It may be, for example, that the software of a web company uses bespoke software created by a third party that is critical to the platform the web company runs on its business.

When acquiring a target, the bidder may believe that they are acquiring all the IP, however it may be necessary to renegotiate with one or more third parties because the product is inextricably linked to the licensed property.

It's crucial to make resolving these issues a condition of closing the deal – sometimes the pricing may even be affected if, for example, renegotiating licenses results in higher royalty payments.

Pamela Church
Partner and Head of the Intellectual Property Practice Group in New York, Baker & McKenzie

The compliance challenge: Data protection

Issues related to data protection and information governance are the key compliance challenges for companies pursuing M&A transactions for IP reasons. Almost one in four (24%) respondents cited this as the main obstacle. This is likely to become an important trend as businesses around the world strive to achieve more value from data and analytics – and as legislation changes to reflect such developments, as well as public concern about issues such as privacy.

"Big data and analytics are so often the focus of these deals and we very regularly find that companies being acquired are not compliant in all of the acquirers markets," says Pamela Church, a Partner at Baker & McKenzie. "Different countries have extremely diverse regimes in areas such as consent and data holding. These issues have to be identified as part of due diligence. Especially, since these deals are so often done on the basis of what might be achieved on the back of the target's technology."

Companies making acquisitions are vulnerable to risks related to data security and these are likely to be heightened in cases where IP is to the fore (see Figure 22). It is important to assess these risks in advance of closing the deal – and to engage with the relevant local authorities at the earliest opportunity in order to ensure ongoing compliance.

Take the example of a US firm which made a significant acquisition in the consumer sector in China. "Data protection was one of the greatest challenges as the security of information was important and essential to maintain the trust of service users," says the firm's director of strategy. "We applied new strategies, solutions and planned with the team and management – as we were already aware of these challenges we had our planning and strategies in place."

It is not just the protection of IP data that is important to remember, but also that the acquisition itself is properly safeguarded during the deal process. "With our cross-border deal, it was necessary to maintain adequate data security since there were chances of data leakage and misappropriations," says the chief financial officer of an Australian energy firm that made an acquisition in the UK. "We engaged only with the relevant authorities during the procedure, and ensured all the documents and data were safe and secure – we also keenly monitored any suspicious activities during the data transfers and handover."

Figure 22: Key compliance challenges for acquisitions motivated by IP

The post-acquisition challenge: Consolidation

One particularly important issue to companies motivated primarily by IP access is the question of how to consolidate and protect the IP assets acquired.

However, acquirers do sometimes neglect these issues says Harry Small, a Partner at Baker & McKenzie. "Companies frequently assume the law is global. So once they've registered a copyright in their own market, they can use it around the world," he warns. "That's just not true – there are as many copyright rights as there are countries in the world and what creates, for example, a British copyright, does not create an American copyright. That's particularly true for IP created by employees."

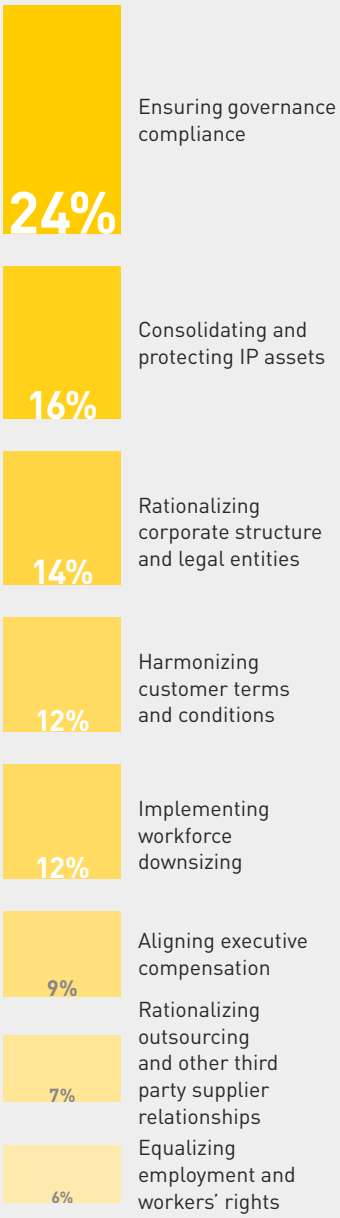
Companies that have been through this process say it is important to think about this issue even before the deal completes (see Figure 23). For example, the chief financial officer of a Mexican life sciences business that made an acquisition in Canada says: "With the extended time we took for due diligence, we made sure we had all the documents in hand to protect the technology from any kind of threat from competitors or other technology users in this industry; we also went through all the regulatory requirements thoroughly to make sure we were safe from any threat."

The first step is to understand very clearly what IP needs protecting. "We took help from legal counsel who conducted an audit to identify all our registered and unregistered trademarks, and copyrights, and we also engaged them for the preparation of document transfer," says the chief financial officer of a Chilean life sciences company pursuing a deal in South Africa.

Getting the help of the acquired company's management can help, suggests the legal counsel of a German company buying a Dutch TMT business. "Consolidating the IP assets was a big task but we were able to overcome it by setting up a panel of experts in the field along with employees from the target company."

External advisors with specialism in all relevant markets will also be an important part of the solution. The head of strategy at a business in the Philippines says: "We felt we had to outsource the work to third party legal advisors who helped us in procuring and transferring the necessary rights to the assets."

Figure 23: Key post-acquisition legal challenges for acquisitions motivated by IP



CASE STUDY: **THINK LOCAL AND LEGAL**

The director of finance at a South African insurance firm that made an acquisition in Nigeria says IP was the primary motivation for the deal. "We thought that the use of the target's technology could help us save on our operational costs, and have a positive impact on our revenues," the director recalls. "The technology will also help us to stay ahead of rising competition as we work towards new areas of business."

The problem was a lack of clarity about the extent to which the Nigerian firm owned the IP rights that the insurer was keen to acquire, and this delayed the transaction. "The firm's patent rights and ownership structure were very complex and challenging to deal with – to understand all the procedures took a large amount of time, which affected successful completion of due diligence," the director says.

The solution proved to be engaging local advisors with experience of working with similar firms. "These advisors provided due diligence structures that brought good results and a clear understanding of the target firm's structure," the director of finance adds. "They also helped to solve most of the legal and regulatory issues."

The deal is now considered a success – the firm's processes and systems have been integrated and the South African insurer is delighted with the synergies that have been achieved.

HUMAN CAPITAL:
DIPLOMACY, CULTURE AND RETENTION

Deal drivers

- Human capital is very often the second most important consideration for those considering cross-border acquisitions.
- Employee retention, cultural barriers and political concerns are all major hurdles when human capital is a key consideration for a deal.

The desire to access new human capital can often be an important motivating factor in an M&A transaction. The survey suggests it is less likely to be the overriding driver for a deal, but that it will often be the second most important consideration. A quarter of respondents say that human capital considerations are the second most important motivation in a deal, while 29% say it is their third most important.

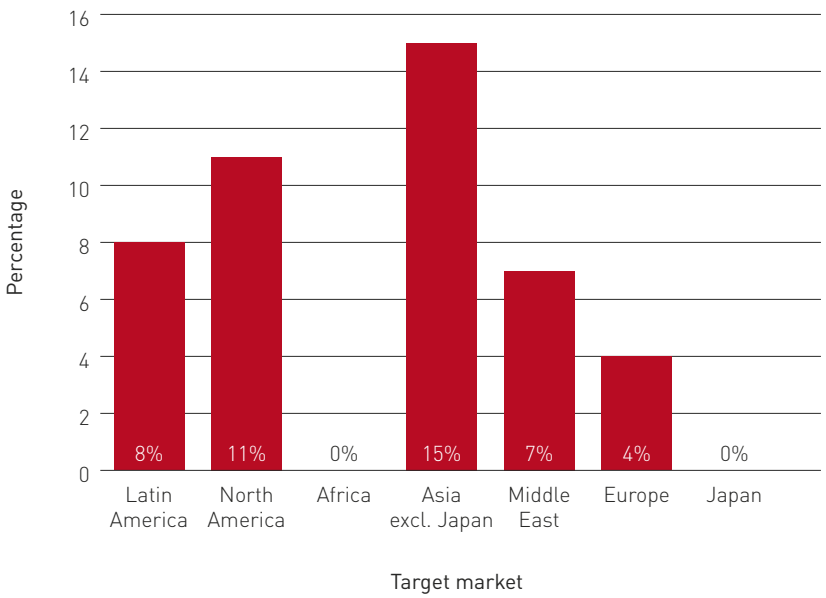
Human capital is most likely to be the top motivation for deals involving companies in Asia (excl. Japan). The logical explanation for this is that acquirers are very often looking for low-cost workforces. By contrast, North America is also a market in which deals are commonly driven by the need for human capital, but here, it is more likely that acquirers are seeking to acquire particular skills (see Figure 24).

And, while it is the workforce that the acquirer wants – the actual people – in certain cases the desire is to access their technical know-how (see Figure 25).

It is also the case that in certain people-centric industries, human capital takes on more significance during a bid process. Financial services is an obvious example (see Figure 26 for a breakdown of crossborder activity in the sector).

The senior legal counsel of a Spanish financial services firm that bought in the Netherlands, says: "The technical knowledge

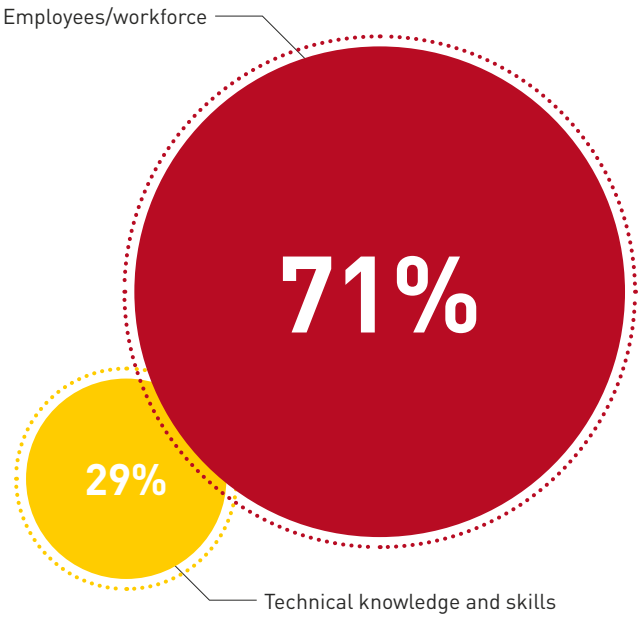
Figure 24: Percentage of deals where human capital was the top motivation



Take action

- Make a strong economic case for the deal with a focus on the benefits for the local workforce, particularly when a large number of employees are to be transferred to a foreign organization.

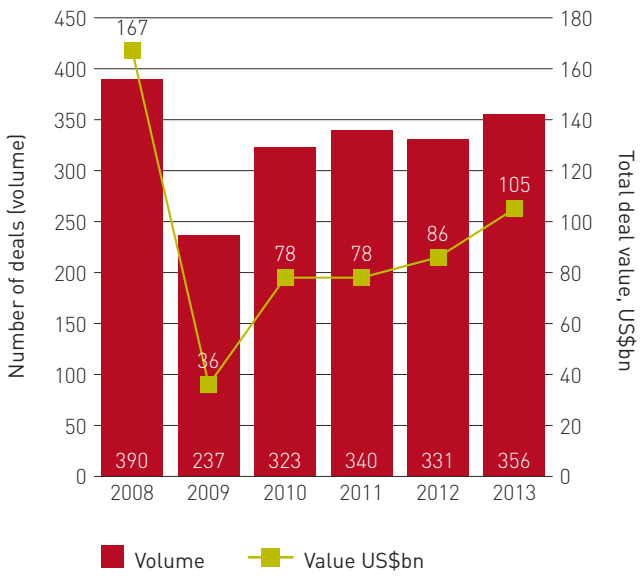
Figure 25: Main human capital motivation



and skills were key factors which steered our focus onto the target firm – they were technically brilliant and had an efficient workforce." Similarly, the director of corporate development at a Malaysian financial services firm that invested in Australia, says: "The level of technology and skills possessed by the employees in the target firm were highly noticeable."

Financial services is not the only sector where human capital is of key importance – there are many other examples. For instance, the director of strategy of an Italian life sciences business that bought in the US, says: "Employees had an outstanding track record and their level of knowledge and competency was great." Or the Colombian business services firm that bought in Peru – its director of finance says: "Labor costs were cheap."

Figure 26: Financial services cross-border deals 2008 - 2013



Take action

- Identify and address cultural differences during the pre-acquisition planning phase.

The regulatory challenge: Politics

Cross-border transactions involving large numbers of employees can be sensitive as governments and other authorities strive to protect the interests of the local population – and to be seen to be doing so. And where deals are primarily motivated by access to human capital, these issues are even more likely to be prominent.

This is why the key regulatory challenges identified by buyers who said human capital is their key driver are political interference and the differential treatment of foreign firms (see Figure 27).

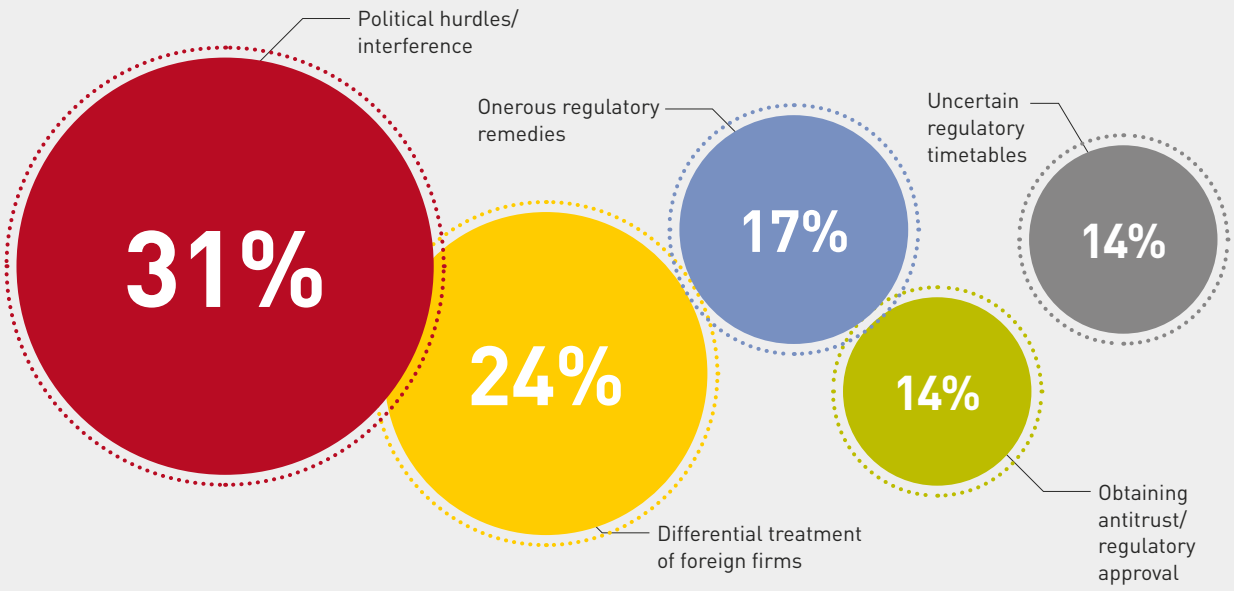
While this may feel uncomfortable – and even unfair in instances where foreign owners appear to be singled out for particularly troublesome regulatory interventions – it is not an unusual problem and acquirers need to be prepared to address such challenges. The key is to make a strong economic case for the deal – focusing particularly on the benefits for the local workforce.

It may also pay for acquirers to get their own governments' help with the transaction. Politicians may be more receptive to lobbying and persuasion from their opposite numbers elsewhere than from business interests.

In the US, for example, the legal counsel of a TMT firm that made an acquisition in Canada, says: "Political interference meant that the deal could only be achieved by abiding by onerous regulatory remedies – along with the advice taken of local market experts, we also extensively involved our own government to put forward our points."

Similarly in South Korea, the head of an industrial business says of a deal done in China: "We put together a strong report explaining the benefits that the company and the entire economy would derive from this acquisition, but getting our government to support the deal also worked in our favor."

Figure 27: Key regulatory challenges for acquisitions motivated by human capital



The post-acquisition challenge: Retention and culture

Where cross-border transactions are motivated by a desire to access human capital, businesses will want to ensure that the employees they acquire stay with them once the deal is done. Not surprisingly, the importance of retaining key employees comes joint top when businesses are asked about the most important post-acquisition challenges in such transactions.

Take action

- Approach staff retention in a structured way. Start by identifying which staff are the most crucial for the ongoing success of the business.

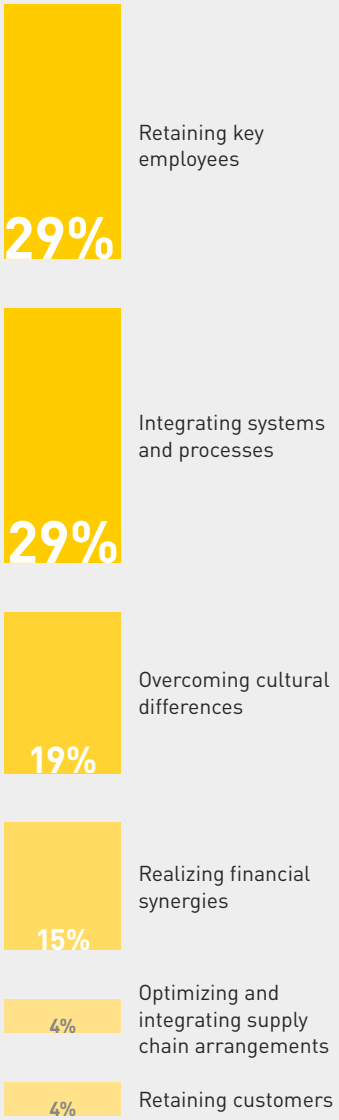
The importance attached to overcoming cultural differences is also significant in this context (see Figure 28). For one thing, these differences may result in employees leaving. And even where that doesn't happen, it will not be possible to get the best performance out of the workforce unless everyone is working together comfortably.

These problems occur frequently in cross-border deals. Often, companies expect to realize synergies from M&A transactions, which may cause problems with the workforce. Also, businesses in different countries inevitably have diverse approaches to business issues. Sometimes it may just be a question of style – a workforce used to a management with a relaxed and hands-off attitude may bristle if the new owners are more formal and structured.

It makes sense to approach the staff retention challenge in a structured way – start by identifying how many staff are to be retained, and which ones. In the US, the head of strategy at another TMT firm which made an acquisition in Canada, identifies this as an important first step. "We identified the retention of critical talent as key to the success of the integration and developed a retention and integration plan," the executive says. "We collected relevant HR information from both public and acquisition target sources during due diligence. By analyzing the skills and experience of each individual alongside his or her existing position and future potential in the target organization we were able to identify key individuals that we should retain."

With targets in mind, it is important to connect with employees at the earliest stage possible. The uncertainty that an M&A transaction creates is unsettling for employees, so putting people's minds at rest quickly is crucial. "We clearly communicated both the rationale for the acquisition and the strategic direction of the new

Figure 28: Key post-acquisition business challenge for acquisitions motivated by human capital



The Baker & McKenzie perspective

The key issue with retention is to address the reasons why people leave. Not enough attention is given to cultural disparities during the pre-acquisition planning phase. It is an aspect that is underestimated and undervalued.

Once the deal is done, communication is important, but ultimately people will make their judgements on the basis of what they see happen, rather than what the CEO says at a town hall meeting. Substance will prevail over form.

Guenther Heckelmann
Partner and Chairman of the European Employment Group, Baker & McKenzie

Take action

- Communicate with new employees at the earliest stage possible. Outline a clear vision for the future of the organization with which the employees can identify.

company, which allowed the employees to find a healthy career with the future company," says the legal counsel of a Chinese industrials company that bought in Germany.

Companies emphasize the importance of proper incentives as crucial for retention. "We developed an effective retention plan that included both monetary and non-monetary incentives prior to the deal announcement, and then communicated with key employees soon after the deal was announced," says the head of strategy at a Japanese firm that bought in the US.

Sometimes, however, it may not be immediately obvious what aspects of the remuneration package will be most attractive to employees. Companies making acquisitions in new markets often hire advisors with local knowledge to get a better understanding of what is important in the territory. These consultants can also advise on local working cultures.

Recognize, too, that staff in one part of the organization are unlikely to be impressed by the message that their compensation will be adjusted downwards so that it comes into line with the rewards being earned elsewhere in the group. "People are used to a certain level of compensation setting," says Charlie Dodds, a Baker & McKenzie Partner and Head of the firm's Labor Practice Group in Buenos Aires. "When, post-acquisition, benefits packages are changed, employees will be disappointed and are unlikely to remain in the organization."

Sometimes, it may not even be legally possible to change compensation as the company wishes. "In some countries, statutory obligation means you cannot level down; the only way you can go is up," adds Dodds. "In others, you may be able to adjust downward, or at least to buy out whatever you are deleting or eliminating from the compensation structure, but these issues are very delicate and harmonization requires deep analysis."

Communication is vital. "We paid special attention to the cultural aspects of the deal," says the general counsel of a US firm that made an acquisition in the UK. "We had a clear vision of the future organization and made that identity real to people – helping them to understand what would change and what would stay the same really helped us to retain key employees."

Take action

- Combine communication with the right incentives. This ensures that employees feel their concerns and needs are being actively considered and addressed.

Communication is a two-way process though. "Our senior team immersed itself in the cultures and traditions of the target, by participating in cultural exchange programs and meets," says the head of finance at an Indian life sciences firm that bought in China. "That also helped them to formulate customer communication and advertising strategies." Even something as basic as the language barrier can cause problems and businesses often invest in language tuition for key staff – on both sides of the transaction.

Another strategy commonly employed is to seek a company-wide brand that helps to unite people, suggests the director of M&A at a French business services firm that made an acquisition in India. "By establishing an internal brand, we presented our culture to the target company in a way that they would value too and that helped us retain key employees," the executive explains. "We expressed our values in ways that appealed to employees from both companies."

Ultimately, patience is required – it takes time to bring organizations together and moving too quickly may be counterproductive in the long-term. "We faced a lot of cultural differences," recalls a Chilean business service company's head of strategy of a deal conducted in Colombia. "There were no similarities and the gaps could not easily be met – we had to extend the timelines to get this under control."

In addition, businesses need to take advantage of all the expertise they have at their disposal when making acquisitions – it is too easy to focus on issues such as business strategy at the exclusion of all others during a transaction process. "Don't have human resources play a service role after the deal is done – get them involved from the beginning," advises Dodds.

The Baker & McKenzie perspective

It's vital to have a scoping conversation at the beginning of the deal process to understand what the business's motivations are for the transaction. Otherwise, the wrong priorities could drive the due diligence (DD) review itself or severely limit its usefulness for post-acquisition integration.

In the case of human capital, some DD exercises might just spot-check a few employment contracts, or only focus on a segment of the management.

This sort of scaled-back DD can have adverse consequences. Before deciding to review only some HR material during the DD process, the client needs to assess how that approach will limit the usefulness of the DD information for integration purposes. If you're not going to have external counsel involved in an aspect of that review, then consider whether one or several internal resources should examine certain issues you'll need to address for integration purposes.

Ines Radmilovic
Partner and Chair of the EMEA M&A Practice Group, Baker & McKenzie

CASE STUDY: **BEST INCENTIVES**

The director of finance at a US IT outsourcing business is keenly aware of some of the challenges of doing deals motivated by human capital. The firm recently acquired a large business in India and had to work hard to ensure it could retain key employees – achieving that goal represented the most significant post-acquisition challenge for the company.

"An acquisition by a foreign company is bound to influence the employees," the finance director says. "They get worried about their future under a new management and they tend to leave, which could result in the loss of valuable talent and then customers."

In this case, the US firm recognized the danger even before the deal completed and took early steps to head it off.

"We developed appropriate incentive plans to retain important employees through the transaction and after the deal closed," the executive explains. "Apart from the monetary part we made communication an important priority so that employees understood that we were focused on growing the business and that we did not want to change the environment in which they worked."

NATURAL RESOURCES:

POLITICS, REGULATIONS AND CONTROLS

Deal drivers

- Deals done in Africa are the most likely to be motivated by a desire to acquire natural resources.
- Regulatory approvals are among the main challenges to deals motivated by the acquisition of natural resources.
- Corporates need to consider these regulatory requirements early in the deal, according to the survey.

Take action

- Take into account the different priorities of different regulatory authorities when structuring an argument to meet their concerns.

Africa continues to be favored by businesses doing M&A deals in order to acquire natural resources. In almost one in four transactions in Africa (22%) the desire to access natural resources is the catalyst for the deal (see Figure 29).

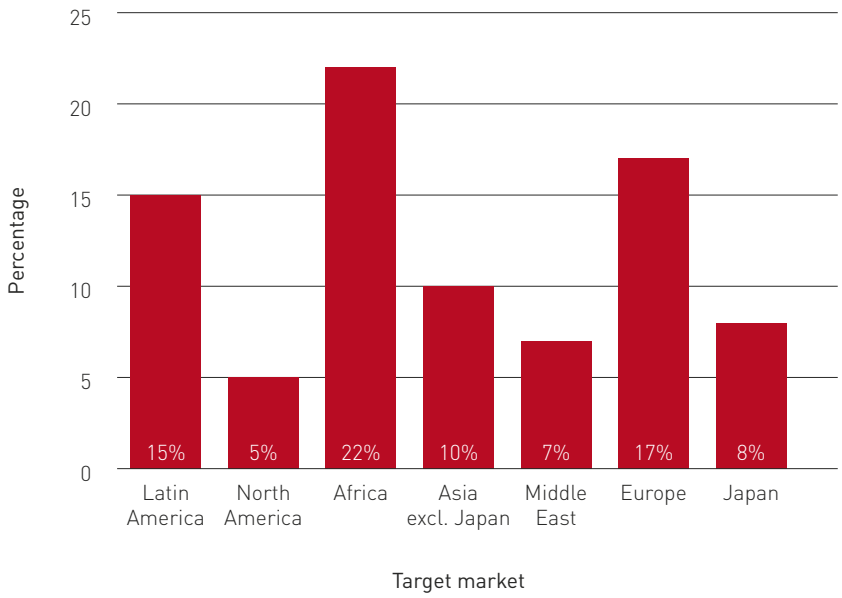
However, natural resources-driven deals are common elsewhere too. In almost one in six deals in Europe (17%), this is the key motivation.

This is reflected in the growing number of deals in the energy and mining sector during 2013, from 478 to 525 deals (see Figure 30), despite a decrease in the value of these deals.

But it isn't only natural resources businesses that are conducting deals for this reason – in some cases, for example, transactions are motivated by a company's desire to secure vital energy supplies, or other raw materials.

Take, for instance, an industrials company in Kazakhstan that bought a Russian business. Its chief financial officer explains:

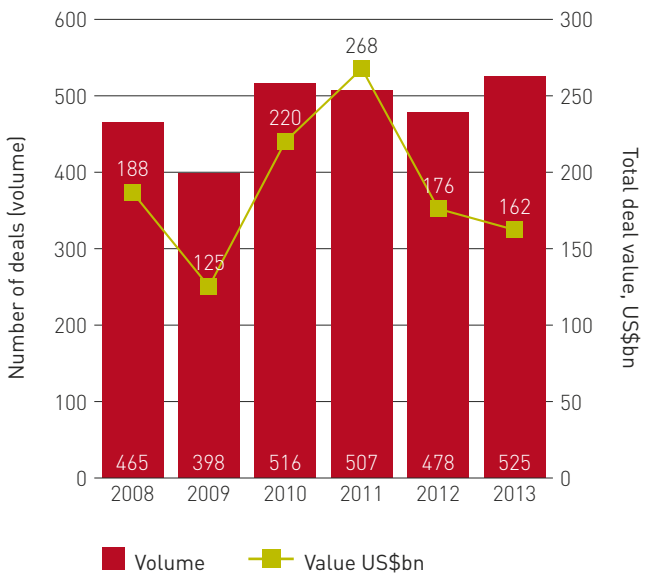
Figure 29: Percentage of deals where natural resources was the top motivation



"Our primary target was natural resources held by the target firm as it would secure supply for our domestic plants."

Other acquisitions in the sector may reflect market expansion strategies. "The natural assets and resources were highly productive and the valuation of these assets was high in the global market," says the director of strategy at a Saudi Arabian company that made an acquisition in Kuwait. "An acquisition would therefore enable us to achieve our goal of becoming a global player."

Figure 30: Energy and mining cross-border deals 2008 - 2013



The Baker & McKenzie perspective

North America is open for business and the oil and gas industry, for instance, has welcomed foreign investors, however these companies have to ensure they work within the system. Both the US and Canada have federal regulation that specifies that if the deal size is high enough, it needs to be reported to the government so that it can review the implications.

While this is not usually an issue, we have seen certain investments kicked back. When these companies start operating, the key will be to build and maintain good relationships with the land owners.

Guenther Heckelmann
Partner and Chairman
of the European Employment Group,
Baker & McKenzie

Take action

- Address regulatory issues at an early stage, particularly with natural resource-focused deals, which have a high likelihood of political interference and regulatory involvement.

The regulatory challenge: Politics and antitrust

Cross-border deals motivated by a desire to access natural resources carry some difficult challenges. Host governments get nervous if there is any perception that the acquisition represents some kind of raid on their country's assets. Businesses in these sectors are often very large, which may create scope for difficulties with antitrust and competition regulators. And the politics of such deals can be very tricky to negotiate.

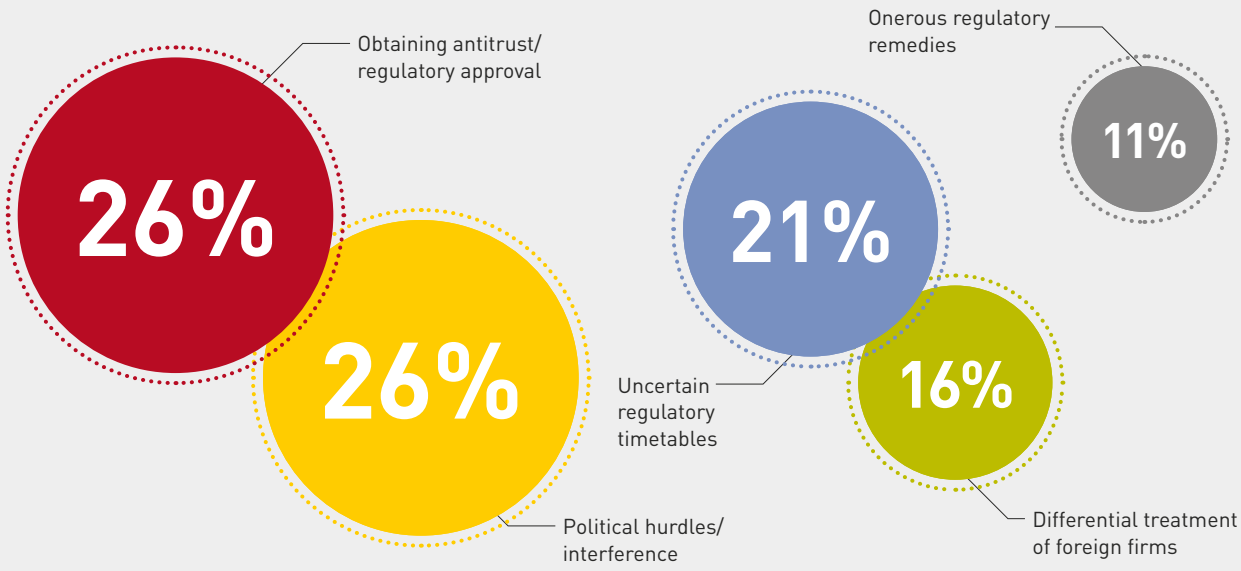
These issues are borne out by the survey. One in four companies (26%) pursuing natural resources deals say that political hurdles and interference represented the key regulatory difficulty they faced (see Figure 31). The same number cite the need to obtain antitrust or other regulatory approvals.

Other obstacles frequently mentioned are related, with political authorities and regulators placing additional challenges in the way of cross-border transactions. For example, one in five companies (21%) complains about the uncertainty of regulatory timetables. And almost one in six (16%) say that foreign companies are treated differently to domestic buyers, which is likely to be related to their concern about political interference.

Take action

- Co-ordinate regulatory approval through a lead counsel who will develop arguments that local advisors then adapt and deploy in their own markets.

Figure 31: Key regulatory challenges for acquisitions motivated by natural resources



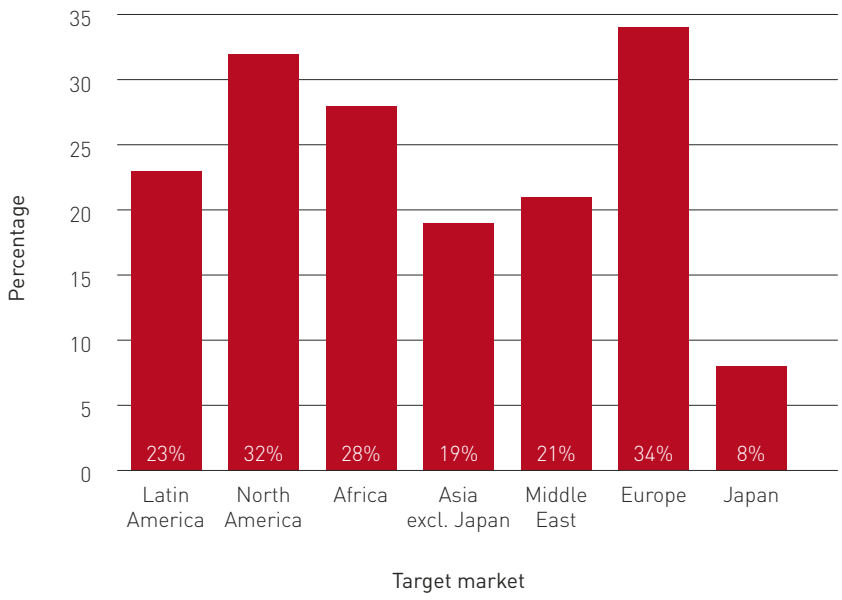
The Baker & McKenzie perspective

It is important to have the paperwork absolutely rock solid if you're struggling to overcome local political difficulties, but there is so much more you can do – more lobbying, more preparatory work, meetings with the local government to keep them informed. Even after the deal is signed, maintaining and building those relationships is crucial.

Many companies rely on the support of local partners to obtain local regulatory approvals within a short space of time. Others may use the support of their own government to facilitate the progress of the transaction and sometimes they have no choice in the matter. Chinese companies very often also have to seek approval from their own government before making overseas acquisitions.

Bee Chun Boo
Partner, Baker & McKenzie

Figure 32: Percentage of deals where obtaining antitrust/regulatory approval was top regulatory challenge



Companies should not think these issues are only significant in developing economies: these problems are consistent for businesses conducting transactions around the world. Companies doing deals in Europe and North America, where competition regulators are particularly aggressive, are most likely to say getting antitrust and regulatory approval is their biggest headache, but the same is true for significant numbers of those pursuing transactions in every other region (see Figure 32).

Similarly, political hurdles are most likely to impact on transactions in Latin America, North America and Africa, but Asia (excl. Japan) isn't far behind – and this is also a significant issue in the Middle East and Europe (see Figure 33).

Businesses that have faced these difficulties – and emerged from them with a good outcome – stress a number of strategies that may make the difference between a successful transaction and a failed deal. Patience is important, since resolving the problems can take time, and this underlines the importance of tackling potentially difficult issues at an early stage. It will be necessary to make a compelling economic case for the

transaction – compelling, that is, not just for the acquirer, but the host nation too – and political support may also be crucial. Buyers who can get their own governments to intervene often find this to be helpful.

In Colombia, for example, the head of corporate development at an energy business that was seeking to do a deal in Chile describes this sort of intervention as crucial. "Foreign direct investment was not encouraged in the target country so there was political interference from the start and we could not get regulatory clearance to start up the acquisition procedure," the executive says. "In order to overcome the political challenges, we saw the need for a strong influence so we decided to seek help from our government, who were highly encouraging and supportive." (See Figure 34)

In the Netherlands, meanwhile, the chief financial officer of a Dutch firm that wanted to make an acquisition in Indonesia, says the key was to think about what would appeal locally – particularly as the company's own government wasn't willing to engage. "Initially we faced difficulties in getting approval for the deal from both governments and this disturbed the entire flow of the transaction," the CFO recalls. "We constructed a strong case, projecting how our organizational outcomes could

Figure 33: Percentage of deals where political hurdles/ interference was the top regulatory challenge

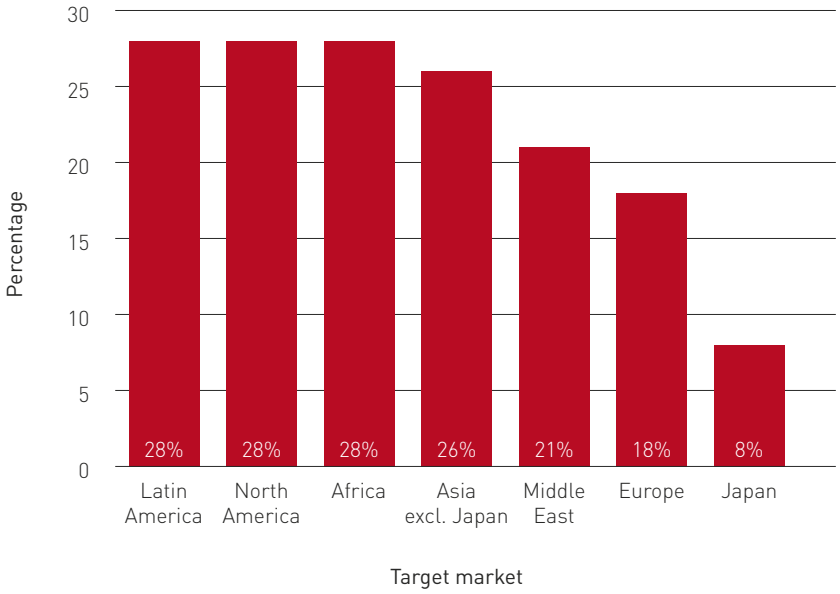
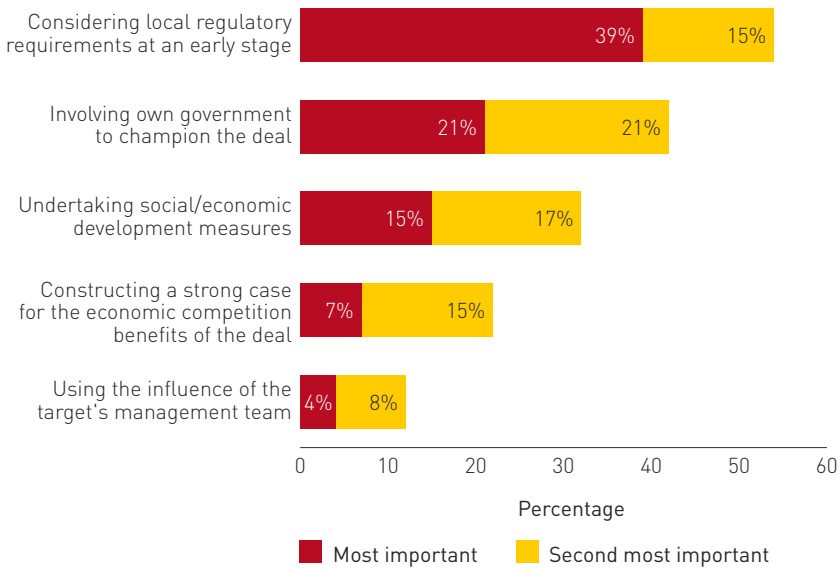


Figure 34: How did you overcome these regulatory challenges?



The Baker & McKenzie perspective

It is very important to plan early with thorough merger control analysis: to identify where a filing is necessary, what impact that will have on the deal timetable and what approach is going to be taken. That analysis needs to be undertaken regardless of whether there is a substantive issue, because every regime has different timetables for clearance and these will impact on the completion dates.

You may want to encourage regulators to talk to one another and you can do that by giving them waivers over your confidential information, though think carefully about doing that.

Local input is important but it's also strategically important to have the entire exercise centrally co-ordinated by a lead counsel who will work to articulate why the merger is non-problematic – once that message is developed, it can be used by local lawyers in a way that's appropriate.

Samantha Mobley
Head of the EU Competition and Trade Practice Group, Baker & McKenzie

contribute to socioeconomic growth and development in both countries."

Where specific antitrust regulation is the potential obstacle, early engagement is crucial, adds the head of strategy at an energy business in Thailand, which successfully completed a transaction in Mongolia. "We faced antitrust issues in the target country as we indirectly held an interest in a company that competes in the same industry as the target company," the executive explains. "Our pre-close planning integration efforts were directed towards the antitrust considerations and we addressed the local regulatory requirements at an early stage so that during the deal we did not face any issues."

Samantha Mobley, a Partner at Baker & McKenzie, says companies may need to adjust their approach to antitrust issues depending on where they're investing. "Antitrust issues used to be predominantly a developed market challenge, but they are increasingly a feature of emerging markets, notably China and India, and the difficulty in these countries is that it's not always clear what the authorities are taking into account when looking at deals," she says. Often, the criteria against which deals are judged will be very different to what businesses are used to in territories with well-developed competition regimes, and this can affect the whole tone of the transaction. In some countries, for example, competition authorities are concerned about the impact of deals on the local labor market – in which case, public talk about the synergies that a transaction offers could be a strategic mistake.

It will often be important to use a wide range of advisors to overcome such problems, including local specialists in public relations and reputation management. The director of strategy at an Argentinian energy business doing a deal in Brazil says: "Obtaining regulatory approval was the most challenging problem, delaying the entire deal cycle and causing financial impacts that affected the business negatively – we had to build our influence to get approval so we consulted local advisors who helped us in this regard."

The compliance challenge: Export sanctions

The biggest compliance headache for acquisitions motivated by natural resources is export controls and sanctions (see Figure 35). A third of companies that have done such deals (31%) cite this as a problem. A further fifth (19%), point to customs duties and import controls.

Given that so many cross-border deals done in order for companies to acquire natural resources will result in these assets being taken out of the country, it is logical for businesses to worry about the extent to which they will be able to do so. And the political sensitivities in many regions mean that at any given time there will be a number of countries where sanctions of one type or another make it outright illegal for companies to export.

The key to overcoming these difficulties is to take as much time as is required to ensure the regulation is understood. "There will be jurisdictions where there are significant export restrictions – Argentina, for example," says Baker & McKenzie Partner Bee Chun Boo.

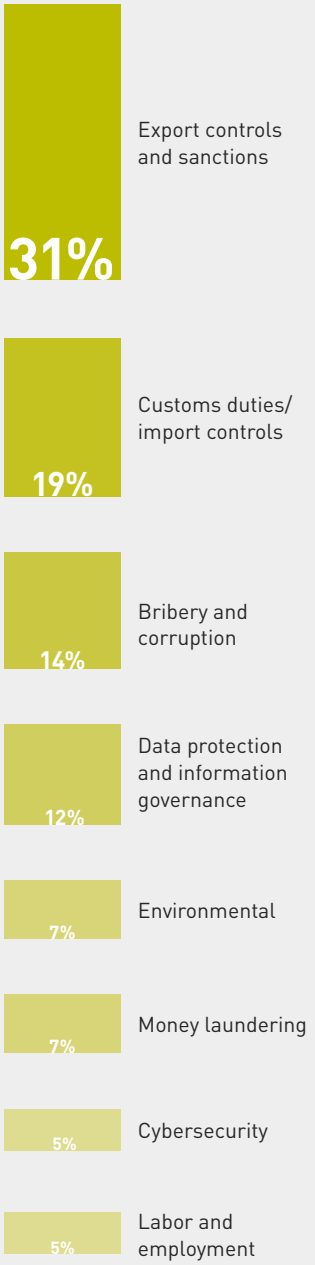
"Exports have lengthy procedures and approval formalities, but by holding regular meetings with the relevant authorities in advance of closing and involving professionals, we were able to mitigate these problems," says the general counsel of an Italian business that did a deal in Brazil.

The legal counsel of a New Zealand-based energy company that made an acquisition in the US, says: "There was a constant microscopic eye on exports, which led to lengthy compliance challenges and approvals at each stage – we had to engage with the authorities before closing the deal in order to discuss these issues."

It is worth noting one other growing challenge for acquisitions in the natural resources sector: 7% of companies warned that environmental issues are coming to the fore. While surprisingly low, this figure is likely to increase, as new legislation designed to combat climate change comes into effect around the world and it is already having a major impact on some areas of the natural resources sector.

Louis Davis, a Partner at Baker & McKenzie, says, for example, that while shale gas has transformed the US energy industry, companies doing acquisitions elsewhere in the world with the hope of capturing shale assets, may find their ambitions thwarted. "Many countries are worried about shale and about hydraulic fracturing," Davis says. "France has banned it and, even in the US, there's a ban in New York too. From an environmental perspective, in certain jurisdictions, these deals are just a non-starter."

Figure 35: Key compliance challenges for acquisitions motivated by natural resources



CASE STUDY: **CONNECTIONS MATTER**

The head of strategy at an Italian energy company says the business's recent cross-border acquisition in Azerbaijan was challenging given the instabilities that often characterize the country. "The political situation is volatile and the government is involved around the issue of resource nationalization which made negotiating an acquisition very challenging," the executive says.

"We had to use advisors who not only had a complete knowledge of the local regulations and market conditions but also enjoyed strong connections with government officials and could help us maintain dialogue. We also got the help of our own government, which championed the deal with the Azerbaijani government."

There were other issues to overcome too. The company knew that bribery and corruption risks were higher in the country and that export controls could cause problems. "We had to discuss these problems with all relevant authorities," the head of strategy adds. "We also analyzed the target company's interaction with government agencies so we could identify any problems with contracts and permits."

The deal was ultimately successful and worth the work required to overcome these challenges. "We are an expanding energy and resources company and the return on our investment was high," the executive says.

INDUSTRIAL ASSETS:

TAX, CORRUPTION AND COMPLIANCE

Deal drivers

- The desire to acquire industrial assets is the third most prominent motivation for cross-border deals in all markets except Africa.
- An uncertain tax environment makes it harder to do such deals, which depend on long-term strategies.
- Corruption issues have climbed the agenda following legislation in the UK and the US.
- Labor and employment regulation must be addressed early in the deal process.

The desire to acquire industrial assets is a prominent motivation for cross-border deals in all markets with the exception of Africa, where infrastructure and other networks are still at an earlier stage of development.

This driver is most likely to be of significance in Europe, where one in four M&A transactions (25%) are motivated by the desire to acquire industrial assets. But the figures for Japan (23%), North America (21%) and the Middle East (21%) are not far behind (see Figure 36).

Each of these regions boasts a large number of technically advanced, high-quality facilities, particularly in heavy industry sectors such as chemicals, manufacturing, utilities, power and energy. The fact that Europe stands out as the region where this driver is most important, may be explained by the recent economic woes in the region, which have created valuation opportunities for those pursuing cross-border deals.

It is also the case that the region offers access to large customer bases for those with the industrial assets to cater for them, and a strong foundation on which to build a global presence.

Take, for example, the Chinese chemical business that successfully completed a sizeable purchase in Germany. "The acquisition was a major benefit for our long-term development and a milestone

Figure 36: Percentage of deals where industrial assets was the top motivation

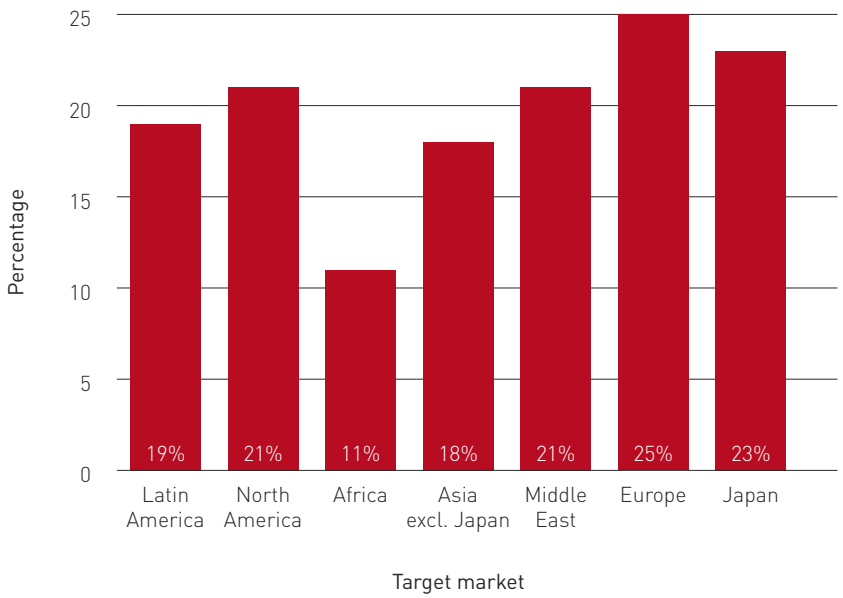
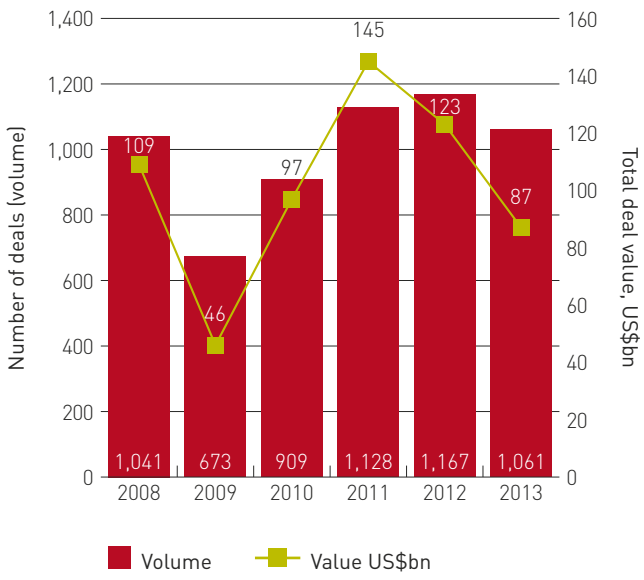


Figure 37: Industrials and chemicals cross-border deals 2008 - 2013



for us in our industry," says the company's legal counsel. "We have captured an opportunity for a world class business expansion and the process of internationalization will accelerate. With our combined customer base we will become the leading global enterprise."

Deals will continue elsewhere too. In many heavy industries, scale is a crucial element of any drive to realize efficiencies and improve margins. "Plant, equipment and facilities were important features to us," says the head of strategy at a Japanese industrial business that made an acquisition in the US. "Our networks and those of the target complement each other and the combined networks allow us to lower distribution costs."

There may be higher numbers of deals motivated by industrial assets, as 2013 was not an especially busy year for M&A activity in some of the sectors where such facilities are likely to be key drivers of transactions. In the industrials and chemicals industry, for example, the number of cross-border deals fell last year in terms of both value and volume (see Figure 37).

"

In many heavy industries, scale is a crucial element of any drive to realize efficiencies and improve margins

"

The due diligence challenge: Tax

Companies doing deals in order to acquire industrial assets noted some due diligence challenges which are similar to other types of transaction – notably, concern about the credibility of target companies' financial accounts and complex ownership structures – but they are also more likely to flag up an uncertain tax environment (see Figure 38). Almost a third of companies involved in M&A activity driven by the acquisition of industrial assets (29%) cited this as a key challenge.

Investment in large industrial-scale infrastructure and facilities is generally a long-term endeavour, with the desired return on investment often only achievable over an extended cycle. If the tax system changes before the return is realized, the aims and objectives of the transaction may be fatally undermined, making it impossible to achieve the original targets.

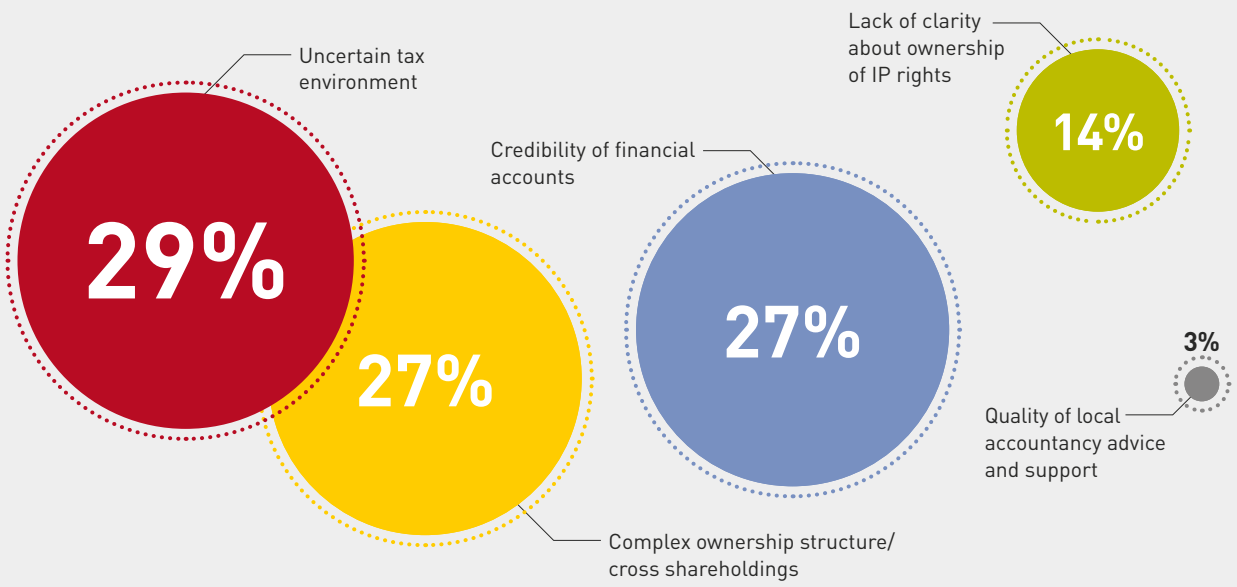
Nor can businesses easily escape the consequences of such a problem. In some industries, it is simple for companies to relocate if they are unhappy with tax legislation or regulation, but industrial assets are typically immovable.

In some industries, the issue may be the imposition of new tax charges or regulations.

Take action

- Consider the question of future tax liabilities when weighing up the business case for a deal.

Figure 38: Key due diligence challenges for acquisitions motivated by industrial assets



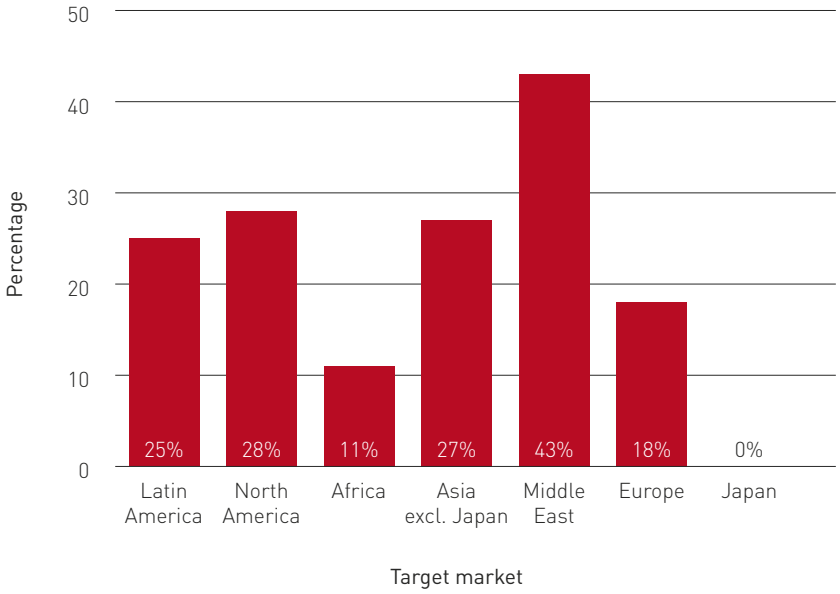
In others, it may be the withdrawal of favorable tax treatments – this is particularly common in the renewables sector, for example. Broadly speaking, however, it is not higher tax costs that worry businesses most, but lack of certainty and visibility about future liabilities, which limit their ability to plan for them.

A related issue of growing importance, says Guillaume Le Camus, a Partner at Baker & McKenzie, is the scope for tax issues to cause reputational damage – and this applies in many industries. "Tax issues now regularly make the newspapers and there are charities and organizations that run very successful campaigns related to tax avoidance and tax planning," he says. "So companies need to take advice not only on specific tax issues but also on tax matters that may cause reputational problems, even where there is no question of any rules having been broken."

Take action

- Seek the advice of tax specialists who have a detailed understanding of the local tax environment and who can provide an informed view of how it may change in the future.

Figure 39: Percentage of deals where uncertain tax environment was the top due diligence challenge



The Middle East stands out as the region where uncertainty about the tax environment is currently most pressing, with 43% of all companies doing deals there listing this as their top due diligence challenge. But the issue is a concern in most global markets (see Figure 39). Nor is it confined to developing economies, which are often associated with volatility and uncertainty – many companies point to the uncertain tax environment in North America, for example.

In order to overcome the issue, corporates need to work closely with tax specialists who have local expertize and a detailed understanding of the current environment and who are likely to be able to take a more informed view of how this may change in the future.

For example, the senior legal counsel of a US life sciences firm making an acquisition in Israel, says: "We had to deal with a huge number of tax authority officials before transacting the deal, but we hired tax regulation analysts and researchers who provided a detailed report underlining all the tax regulations that would have to be adhered to on completing the

transaction and on continuing the business."

However, acquirers shouldn't overlook the expertise and experience likely to reside in the companies they are buying. "It was a difficult task for us to understand the tax responsibilities and go ahead with the deal," says the head of finance at an Italian consumer business that made an acquisition in Brazil. "We tried to seek the help of the target management team and with increased communication and the exchange of knowledge, we were able to minimize this challenge. We conducted meetings with the target management, in which experts from the fields of accountancy and legal were involved."

What is certain, says the head of strategy at a consumer business in the Philippines that did a deal in Indonesia, is that most companies will need more time to get to grips with these issues than they originally anticipate. "The uncertain tax environment proved to be a big challenge – adopting totally new tax policies and patterns, determining the existing tax responsibilities and estimating the future liabilities was gruelling," the executive says. "Only because we took enough time were we able to maintain thorough due diligence."

Take action

- Engage with the relevant authorities when any issues are identified before the deal closes.

The Baker & McKenzie perspective

It is increasingly common for clients to ask us to work on forecasts for how tax rules may change within a particular jurisdiction – and how that might affect their business. Predicting what these laws might look like in a few years' time is difficult but it has to be discussed.

Tax changes are hugely significant in certain industries – we have seen this with changing incentives for renewable energy, for example, which have been tinkered with so often in some markets that some buyers have decided to pull back from that industry for the time being until there is more certainty.

It is not possible to anticipate every eventuality, but businesses can look at the case for a transaction under different tax scenarios, thinking about how the returns would be affected by potential changes, and working with local advisors to predict what those changes might be.

Guillaume Le Camus
Partner and Chair of the European Tax Transaction Group, Baker & McKenzie

The compliance challenge: Corruption

One in four companies doing deals motivated by industrial assets said the need to get to grips with issues related to bribery and corruption, is a key compliance challenge – more than for any other deal driver.

There is no doubt these issues (see Figure 40) are rising up the agenda. In the UK, the Bribery Act of 2010 has placed onerous conditions on any company doing business in the country, irrespective of where corruption and bribery issues may occur. The Foreign and Corrupt Practices Act (FCPA) in the US, poses a similar risk to companies with activities there. Elsewhere in the world, regulators are also taking a keener interest in such issues.

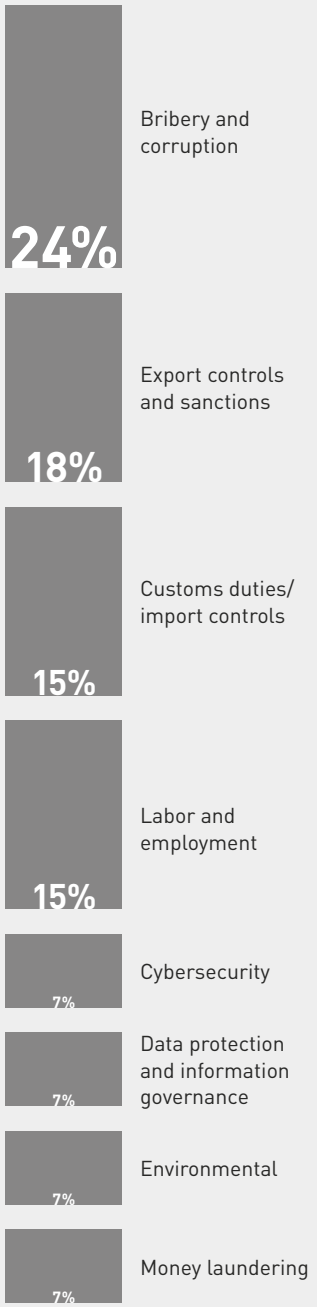
The survey reveals that one in two companies (50%) doing a deal in Africa saw bribery and corruption as a key compliance challenge. But while this certainly reflects the widespread perception that many markets in the continent are prone to such issues, Africa is far from the only region where companies worry about bribery and corruption issues (see Figure 41). It is also a significant issue in other developing markets, notably in Latin America and Asia (excl. Japan), as well as in the Middle East. And even in the developed markets of North America and Europe, a small but notable minority of companies had concerns.

Strategies for coping with this challenge generally fall into two categories. The first solution is to seek to identify as accurately as possible potential problems – both actual instances of bribery or corruption, and weaknesses in controls at the target company which might have given rise to vulnerabilities (see Figure 42).

"Start with a preliminary risk assessment: not every country is as high-risk as others and the Transparency International rankings, for instance, give a good overview of which jurisdictions to worry about," says Andrew Martin, a Partner at Baker & McKenzie. "There are also certain key industries that have always been the targets of regulators – oil and gas comes to mind – and the higher risk tends to be in companies that have more dealings with governments, where the business is dependent on public contracts or permits."

However, businesses also need to understand that legislation such as the Foreign Corrupt Practices Act (FCPA), will affect them on a global basis. The survey shows that many companies making acquisitions in the US are doing so to acquire industrial assets, but overseas buyers entering the market for the first time have to think about what the impact of the FCPA might be throughout their global businesses, warns Baker & McKenzie Partner Michael DeFranco.

Figure 40: Key compliance challenges for acquisitions motivated by industrial assets



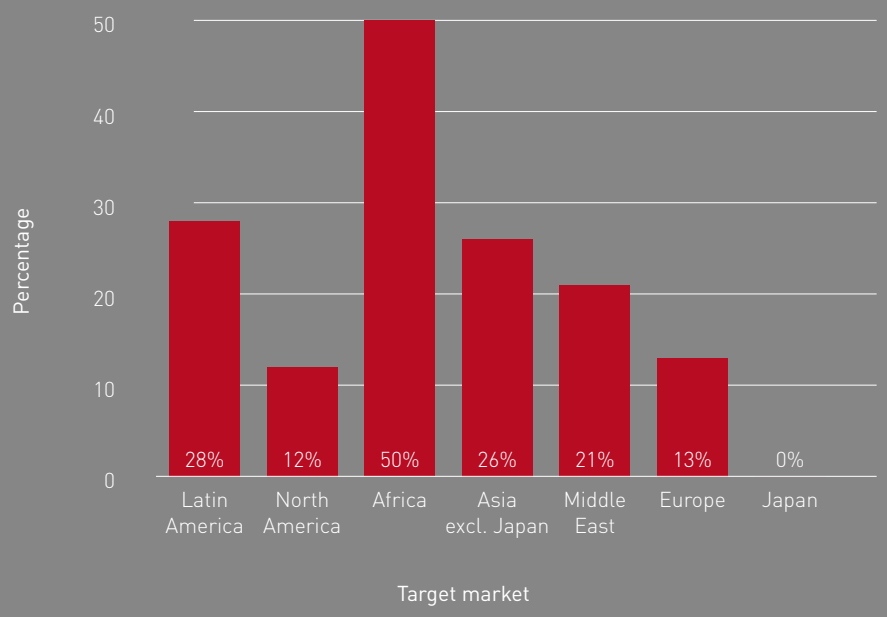
"If you were not previously governed by FCPA, establishing the extent to which it now applies and understanding the provisions has to be a priority," he says.

The second set of solutions relates to where difficulties are identified. Acquirers often seek to protect themselves by negotiating indemnities as part of the transaction, or even by engaging with the authorities before the deal closes, rather than risking falling foul of such bodies after the transaction (see Figure 43).

The head of finance of a Colombian TMT firm that made an acquisition in Peru says both these strategies were important during its transaction. "The most important compliance challenge was bribery and corruption, including unlawful payments made by entities we acquired," the executive explains. "We overcame this challenge by performing adequate due diligence prior to acquisition and disclosing any pre-acquisition misconduct to the government and implementing effective compliance procedures thereafter."

Inevitably, however, businesses have to take a view on whether the potential for the deal is valuable enough to outweigh the risks. "We analyzed the company's internal anti-corruption policies and measures to identify ways to avoid the impact of corruption," says the head of finance at an Indian life sciences firm that did a deal in China. "However, this factor could not be totally avoided so we had to take on some of the risk."

Figure 41: Percentage of deals where bribery and corruption was top compliance challenge



In addition to bribery and corruption, many firms doing deals motivated by industrial assets, said that labor and employment issues are also an important compliance challenge. This is particularly notable for acquisitions in Japan, where almost two-fifths of companies (39%) saw this as the key hurdle to overcome, but labor and employment concerns are also significant in Europe, Africa and the Middle East.

Part of the challenge is that labor market laws vary considerably around the world and companies engaging in cross-border transactions where they are entering a territory for the first time, may have a poor understanding of the issues. Local advisors can play a role here, but acquirers will also need to come to their own view about the trade-offs they are prepared to make, particularly where synergistic cost savings related to employment are part of the rationale for doing the deal.

"In any M&A, especially in a cross-border deal, human resources and employment law compliance is always a challenge and this transaction was no exception –

Figure 42: How did you seek to identify/minimize compliance risks?

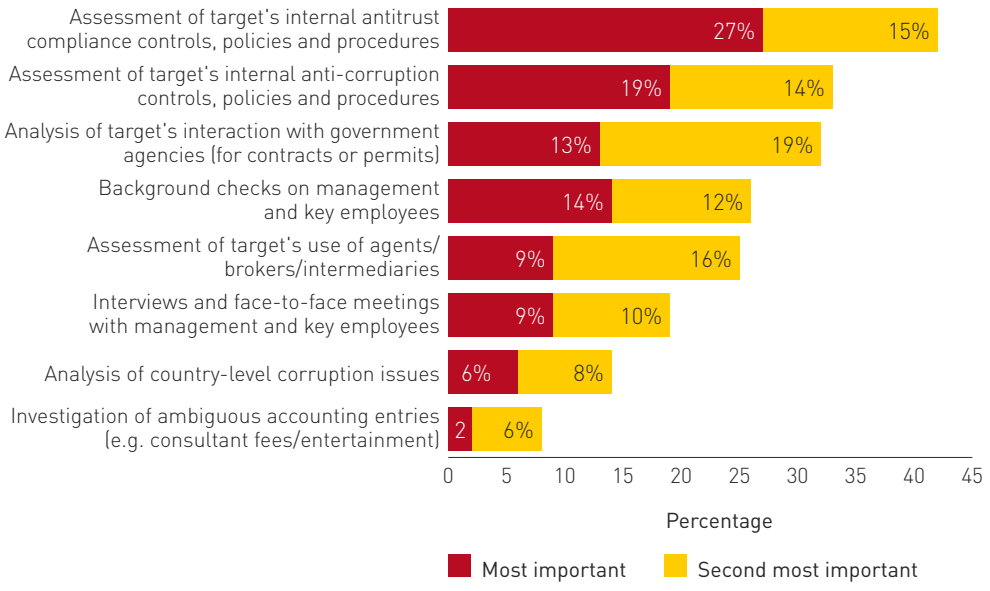
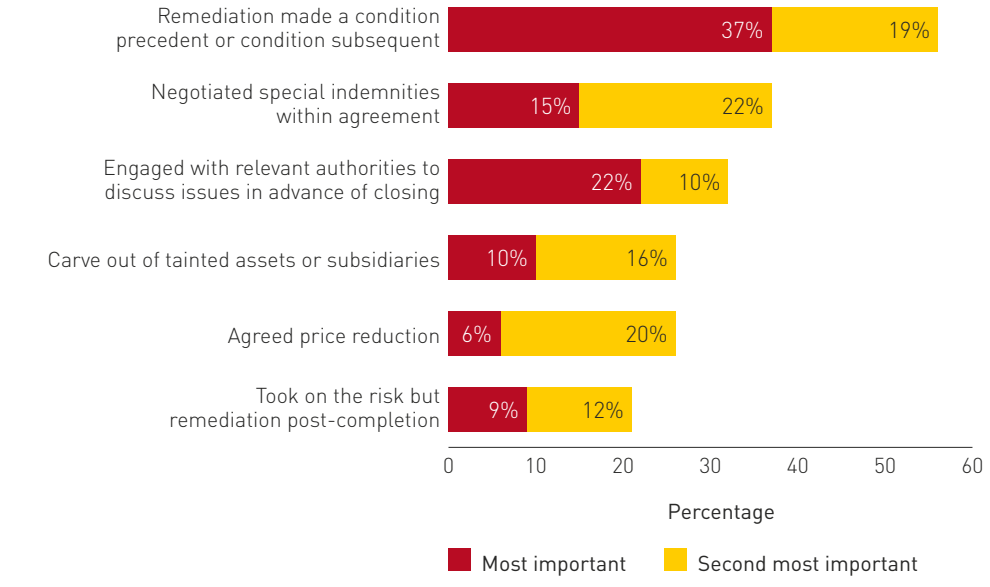


Figure 43: How did you address/overcome compliance challenges?



Take action

- Identify potential bribery and corruption problems swiftly and accurately. This needs to include actual instances of corruption as well as any weaknesses in controls at the target company. Conduct forensic due diligence on the target's documentation as well as detailed interviews with the target's management.

from due diligence and acquisition agreement through to closing and post-merger integration, the labor and employment compliance in the target country was an issue," says the head of finance at an Italian energy company that made an acquisition in Bulgaria.

In this case, the solution was a due diligence process that focused particularly closely on labor issues. "We addressed the employment law considerations at the earliest opportunity in order to minimize further expense or delay further down the line," the executive says. "We uncovered the related legal risks and hidden liabilities by looking at the assessment of the target's advisors and through face-to-face meetings with management to get the required information."

Sometimes it may be necessary to go further than simply seeking information; companies will often seek to remedy potential issues before closing the deal, or even to build the cost of such problems into the acquisition agreement. For example, the general counsel of a US business services firm that made an acquisition in the UK, says: "We identified the issues at an early stage and engaged the relevant authorities so that we could sort out the issues prior to closing the deal – also we asked for a lower price given the issues we had found."

The Baker & McKenzie perspective

Where red flags do come up during due diligence enquiries related to bribery and corruption, consider getting forensic accountants involved to really drill down into the issue. You may also want to have interviews with management rather than relying solely on documents – getting a sense of how they do business will give you a feel for whether they run the company in an appropriate way.

There may be cases where the issue is so systemic that you question whether to take on the business – or at least that you insist the seller fixes the problem before completion and you build that into the transaction documentation before completion.

In some cases, we've felt a business is so tainted that we've not wanted to touch it, so we've insisted on it being carved out of the transaction, requiring the seller to keep it and adjusting the purchase price accordingly.

Andrew Martin
Partner and Head of the Corporate and Securities Practice in Singapore, Baker & McKenzie

CASE STUDY: **BEWARE NASTY SURPRISES**

The head of finance at a Japanese chemicals company that made an acquisition in the US describes the deal as a success. "The combined business is profitable and the exchange of technology has improved our production and desirability," the executive says.

Nevertheless, getting to this stage has required a great deal of work. For example, the finance head warns: "In our experience, most of the time there is a danger of entering due diligence with synergy expectations that are too optimistic and it is critical to come out of the process with a more robust set of synergies – that requires the use of advisors with local market knowledge."

Another issue is the need to understand the target's customer base. "It is imperative that we know why customers do business with the company we are buying – for example, price, quality or service provision. We need to then ensure that the combined organization will still be able to meet customers' needs," the Japanese executive says. "In this case, we did adequate research into these needs in advance of the deal's close and we devised a strategy for meeting them."

Above all, the executive warns: "In any cross-border transaction there are going to be hidden surprises, so going into the transaction without expertise and a strategy is a waste of time."

CONCLUSION:

A BLUEPRINT FOR DEAL SUCCESS

From planning to culture: The five steps to deal success

The Baker & McKenzie perspective

There was a time when advising a company on a deal meant chasing down every last due diligence point, but that's no longer the market for legal services around M&A. Today, it is much more about understanding the client's commercial considerations and helping the client, based on local knowledge, properly to scope the due diligence, and then exerting a strong degree of global co-ordination and control on the transaction.

Ines Radmilovic
Partner and Chair of the EMEA M&A Practice Group, Baker & McKenzie

The challenges faced by companies undertaking cross-border acquisitions are determined by the objectives behind the deal. However, there are a number of common themes that run through the solutions that respondents have used to overcome these obstacles.

1. MAKE TIME FOR DUE DILIGENCE

The particular focus of due diligence depends on the rationale for a deal. For example, companies targeting an existing customer base generally work to make sure the financial and revenue figures are robust. On the other hand, those looking to harness new IP seek to ensure that ownership can be successfully transferred. However, despite these variations, respondents repeatedly stress the need to allow enough time in the deal timetable for sufficient due diligence. This should also include inbuilt flexibility so that due diligence can be extended if any problematic areas are identified.

The due diligence challenges will also depend on the idiosyncrasies of the local market. It is here that advisors with local market knowledge can prove invaluable, by both flagging up potential issues, and offering their experience on how these issues have been addressed in previous transactions.

Across different deal types, respondents also highlighted the huge benefit of maintaining an open dialogue with the target company's management. This can help speed up the due diligence process by quickly identifying problems buried within the paperwork. The target's management can also offer their own experience of how regulation within the local market impacts reporting standards.

2. PLAN FOR COMPLIANCE

These same steps are also important for addressing compliance challenges. For example, issues around corruption or data compliance can be identified by thorough due diligence that includes detailed interviews with the target's management. Identifying these risks at an early stage means that they can be mitigated by engaging with the relevant authorities before the deal closes.

The solutions for addressing compliance problems when they are identified will be dependent on the local regulations, as Baker & McKenzie Partner Jaime Trujillo explains. "In general, legislation in Latin America, for example, lacks any benefit for companies that come forward and say they have found a problem

they wish to fix. Purchasers are then very often faced with generating a very significant financial burden on the company they have acquired," he says. "If you didn't plan for that, by structuring the deal in advance as an asset purchase rather than a share purchase, or through the use of devices such as escrow funds and indemnities, it takes a lot of time, effort and negotiation to get these issues identified and resolved."

3. SMOOTH THE PATH FOR REGULATORY APPROVAL

The study found that deals involving natural resources and/or large numbers of employees are the most likely to face challenges around regulatory scrutiny. But whatever the motivation behind the deal, a common theme for overcoming this challenge is building a strong argument for the acquisition that could be presented to the regulatory authorities.

For most deals, this should include a compelling economic case that identifies how the deal can benefit the target country. Meanwhile, deals involving a large number of employees should also detail how the acquisition could bring benefits to the local workforce.

When regulatory approval is likely to be difficult, respondents also state the need to begin addressing this challenge as early as possible. This can help in ensuring that all the necessary economic arguments are backed by strong evidence and also ensure that the momentum behind the deal is not lost due to extensive prevarication from the regulating authorities.

4. PLAN FOR INTEGRATION AND GET EMPLOYEES ON BOARD

A large number of the obstacles and hurdles identified by the businesses in this survey, relate to post-acquisition challenges that must be overcome. Getting the deal done will get you the headlines, but a key measure of success is generating the value on which the transaction is predicated.

The key to unlocking this value is a well managed post-acquisition integration. As Baker & McKenzie Partner Pamela Church says: "Get on top of your post-transaction integration before the deal closes. For example, make sure you know where you want IP to be owned. Once the company becomes part of a group and there are inter-company licenses set up throughout the group, you're going to have issues because in some countries only the licensor itself has control over the property."

The Baker & McKenzie perspective

There is a trend now – and this is a worldwide phenomenon, particularly among large multinationals – to wrap post-M&A integration issues into due diligence processes right from the start, to enable companies not only to run from day one, but to run efficiently.

The acquirer knows what the issues are and has fully developed its integration plan, including the legal aspects, as part of the diligence process. It makes for a deeper diligence process, but our clients have found it to be really valuable.

Corporates need to know how they are going to operate the day after the deal closes. This means the changes that they are going to make, the synergies they desire and the legal issues that need to be resolved – whether from a contractual, tax, or employment standpoint.

Michael DeFranco
Partner, Baker & McKenzie

> A third of companies (34%) plan to make further acquisitions within the next two years

And businesses must be ready for that work. "We had pre-transaction integration planning done, which was the most significant factor in mitigating deal-execution risk," says the director of finance at an Argentinian financial services firm that made an acquisition in Chile. "Day one readiness is the critical success factor for the completion of a cross-border M&A deal."

In other words, post-deal integration planning – and execution, if at all possible – has to begin well before the transaction completes. Those businesses that fail to plan ahead risk wasting time after closing on resolving issues that should already have been sorted out.

5. CREATE THE CULTURE

Baker & McKenzie Partner Guenther Heckelmann identifies human capital challenges as a reason that deals often fall down: "If you look at all available data, mismatch and cultural clashes within the human capital arena are one of the biggest causes of transaction failures – that should be something at the top of everyone's mind."

This is also reflected in the results of the survey, with respondents noting that cultural challenges should be identified and addressed during the pre-acquisition planning phase. This allows time for planning an effective communication and remuneration strategy to bring key employees on board with the strategies and objectives of the acquirer.

Judging success

Cross-border M&A remains a powerful business tool, which delivers enormous benefits and value to companies that successfully complete deals.

Most of the companies in this survey regard their transactions as having achieved their objectives – almost nine in ten businesses (86.4%) described their deals as either successful or very successful (see Figure 44).

And the fact that as many as a third of companies (34%) plan to make further acquisitions within the next two years, underlines the increasing extent to which cross-border M&A is an intrinsic part of the business strategy of many multinational organizations. Globalization is only likely to augment that trend.

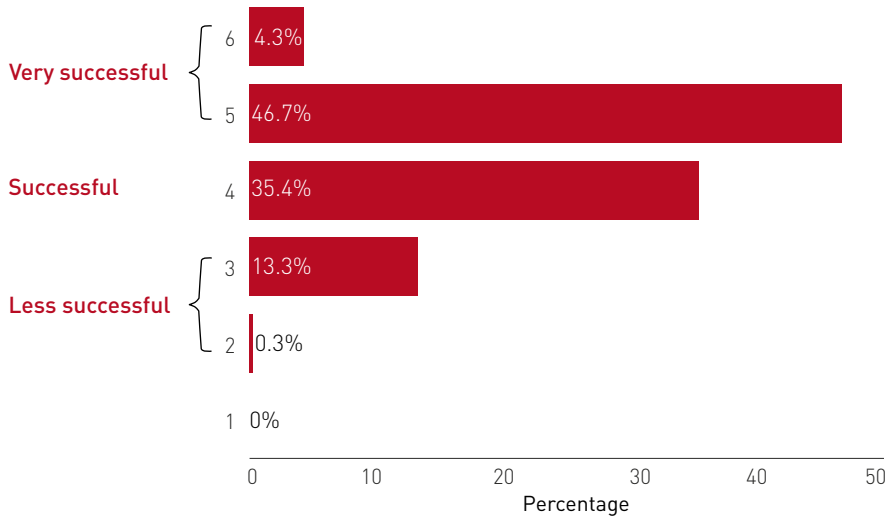
Companies inevitably have different criteria for assessing the success of their deals. The most straightforward indicators are

financial yardsticks. For example, the head of strategy at a Malaysian business services firm says of an acquisition in India: "Our profit margin has shot up following the acquisition and we are performing excellently." The director of finance at a Chinese life sciences firm says of its acquisition in Taiwan: "Revenue-wise our acquisition was a success."

Sometimes, however, deal success is reflected in more human terms. "We have successfully retained key employees and their contribution to our overall success is significant," says the director of strategy of an Italian life sciences firm that made an acquisition in the US. And in other cases, ROI is a key factor. "Our return on investments has been hugely significant and we are moving steadily towards our strategic goals," says the head of strategy at a TMT business in the Philippines that bought in Japan.

Ultimately, however, companies will (and should) judge the success of their acquisition against their motivations for doing it – and the extent to which such deals have moved their businesses forward. As the director of strategy at a Japanese consumer firm said of its US deal: "The transaction has placed our company among the world's top international brands."

Figure 44: On a scale of 1-6, where 6 is outstanding, how would you rate the success of the transaction?



Methodology

In the first quarter of 2014, FT Remark surveyed 350 C-level executives on behalf of Baker & McKenzie. All of the companies included in the survey were identified as having conducted a recent cross-border transaction.

The employees surveyed occupy a range of senior roles, with 45% having the title chief financial officer (or head/director of finance), 24% having the title chief strategy officer (or head/director of strategy), 10% having the title head/director of M&A and 17% consisting of in-house legal counsel.

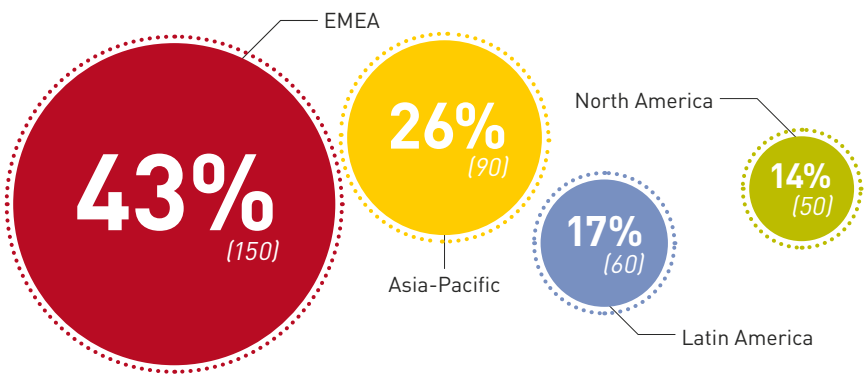
Just over two-fifths of the respondents (43%) are based in the EMEA region, a quarter (26%) from Asia-Pacific countries, 17% are Latin America-based, and 14% are from North America.

Respondents are split evenly between five sectors – TMT, energy and resources, industrials and chemicals, consumer and life sciences. Half of the respondents are from companies with revenues of between US$500mn and US$1bn, while the other 50% had revenues of more than US$1bn.

The survey included a combination of qualitative and quantitative questions and all interviews were conducted over the telephone by appointment and the results analyzed and collated by FT Remark. All responses are anonymized and presented in aggregate.

This research was complemented by a series of interviews with senior Baker & McKenzie practitioners in a number of jurisdictions.

Demographics – number of respondents by region



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