THE M&A JOURNAL

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A study from Norton Rose Fulbright sees green shoots amid the challenges

Norton Rose Fulbright lawyers thought it was about time to do their own review of the M&A market. "There are a lot of M&A reports," notes Ayse Yüksel Mahfoud, the firm's Global Head of Corporate, M&A and Securities, who divides her life between New York and Istanbul. "Some of them come out annually, some institutions do them once in a while, others do them all the time," she points out. "We have more than 1,400 leader professionals in the corporate practice, so we're seeing every region, every trend. We wanted to do a comparative report as opposed to one that would look at just one sector or geographic area."

And here it is: *Global M&A trends and risks 2023: Green economic shoots and non-cyclical drivers to underpin international dealmaking*.

In the first quarter of this year, Mergermarket, on behalf of Norton Rose Fulbright, surveyed 200 practitioners. As described in the report, 200 senior practitioners responded to the survey, including 100 C-Suite and other top-level executives from multinational corporates, 50 from large private equity firms, and 50 from major investment banks. Forty percent of those who responded are headquartered in the U.S. and Canada, 25 percent in Asia, 10 percent Australia, and five percent in Africa. In general, the report is optimistic about the future of M&A.

"The macroeconomic shocks of 2022," the study concludes, "had an outsized impact on M&A dealmaking. While headwinds continue to swirl, there are tentative grounds for optimism and a growing consensus that 2023 will see a return to M&A growth."

Inflation is beginning to ease, largely owing to sinking energy prices. Private equity saw a 15 percent rise in activity quarter-on-quarter in Q1 2023 with a total of 1,769 transactions. The report quotes one managing director at a U.S. bank as typical of the growing sense that M&A is gearing up for a return to strength. "In global markets," one banker said, "deal appetite will increase considerably in the second half of 2023."

The key findings are as follows:

1. Voracious dealmakers—M&A appetites on the rise

Fifty-one percent of respondents overall expect their appetite for M&A to increase somewhat in 2023 (compared to 2022), with a further five percent saying it will increase significantly. Only 17 percent expect their appetite to decrease.

2. Private equity ready to put dry powder to work

Fifty-eight of respondents in the U.S. and Canada identify the prevalence of private equity dry powder among their top three drivers of M&A activity in 2023. In Australia and in Europe and the Middle East, the largest shares of votes in both cases are accrued by ESG guidelines (44 percent and 46 percent respectively).

3. Global technology M&A still the gold standard

Sixty-three percent of respondents place the technology sector among their top-three industries expected to see the highest growth in

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inbound cross-border M&A in 2023 compared with 2022.

4. From cyber to sustainability, regulation bites

In the U.S. and Canada, cybersecurity-related regulations are expected to most suppress M&A activity in 2023, identified by 55 percent of respondents among their top two selections.

In Europe and the Middle East, ESG/climate change regulations (54 percent) are predicted to most complicate M&A activity.

5. FDI frostiness inhibiting cross-border M&A in Asia and Africa

In developing economies, foreign direct investment (FDI) regulations are expected to have the most suppressive effect on M&A. This is identified by 65 percent of respondents among their top two selections regarding M&A in Asia, and almost as many (64 percent) say the same of the prospective impact of FDI policy in Africa.

Ms. Yüksel Mahfoud says the most important result of the study for her was the shift in the balance of power between cyclical and noncyclical drivers of M&A activity. For much of the past decade, she says, both categories had similarly powerful effects around the world.

"Inflation has been seen everywhere in the world," she points out. "Interest rates have gone up around the world, and there are geopolitical issues in many places." Now, non-cyclical drivers, what the report calls deep-rooted shifts, are up in some areas and not so relevant in others. These include ESG, supply chain disruption, cyber, and digital transformation. "These are not exactly the same in every region. We see the difference where ESG is more prevalent or where cyber is more prevalent. These forces are what is really changing deal making so we can't really talk any more about all of these forces as global drivers of M&A but more as regional drivers."

Ms. Yüksel Mahfoud disputes the view that COVID-19 was primarily responsible for the recent stall in dealmaking. After the pandemic, she notes, 2021 was the best year M&A had in a very long time. Above all, according to Ms. Yüksel Mahfoud, the war in Europe had the worst effect on dealmaking.

"It was Russia's invasion of Ukraine that really slowed down global M&A." Three other brakes on dealmaking were also powerful restraints on dealmaking: regulatory changes, geopolitical changes, and economic changes, all were far more culpable than the coronavirus.

Regulatory restraints are, not unexpectedly, unpopular among those surveyed but Ms. Yüksel Mahfoud argues that foreign investment review regimes and antitrust regulatory scrutiny toward consolidation are increasingly seen as inevitable hurdles that are gradually subsiding into a given for dealmakers.

"They are not preventing M&A activity, although they certainly do slow it down," she says. "People learn to work with it." "What's more", she says, "there are many ways to protect oneself from regulatory intrusions. Due diligence, reps and warranties in the merger agreements, reps and warranty insurance coverage, and corporate policies that activate once the target is absorbed, all these are useful reactions that can be deployed to move forward. Once people get comfortable with all this and learn how to deal with regulators, then I think M&A activity will be more than ready to continue."

Access to financing, the life blood of dealmaking, is flowing unevenly around the globe. The report addresses this issue: "With inflation levels hitting levels not seen in decades, central banks have been compelled to raise interest rates at similarly intense speed. With that has come higher financing costs for prospective dealmakers, with those in Europe and the Middle East expected to suffer the worst effects in the near term."

According to Ms. Yüksel Mahfoud, most of the report's respondents said that it is less of an issue in Asia than anywhere else. Australia also seems to be having few obstacles in financing deals. Europe and the Middle East, however, are expected still to be affected by supply chain issues and the war in eastern Europe. Conditions in the U.S. and Canada are also expected to be tighter in 2023.

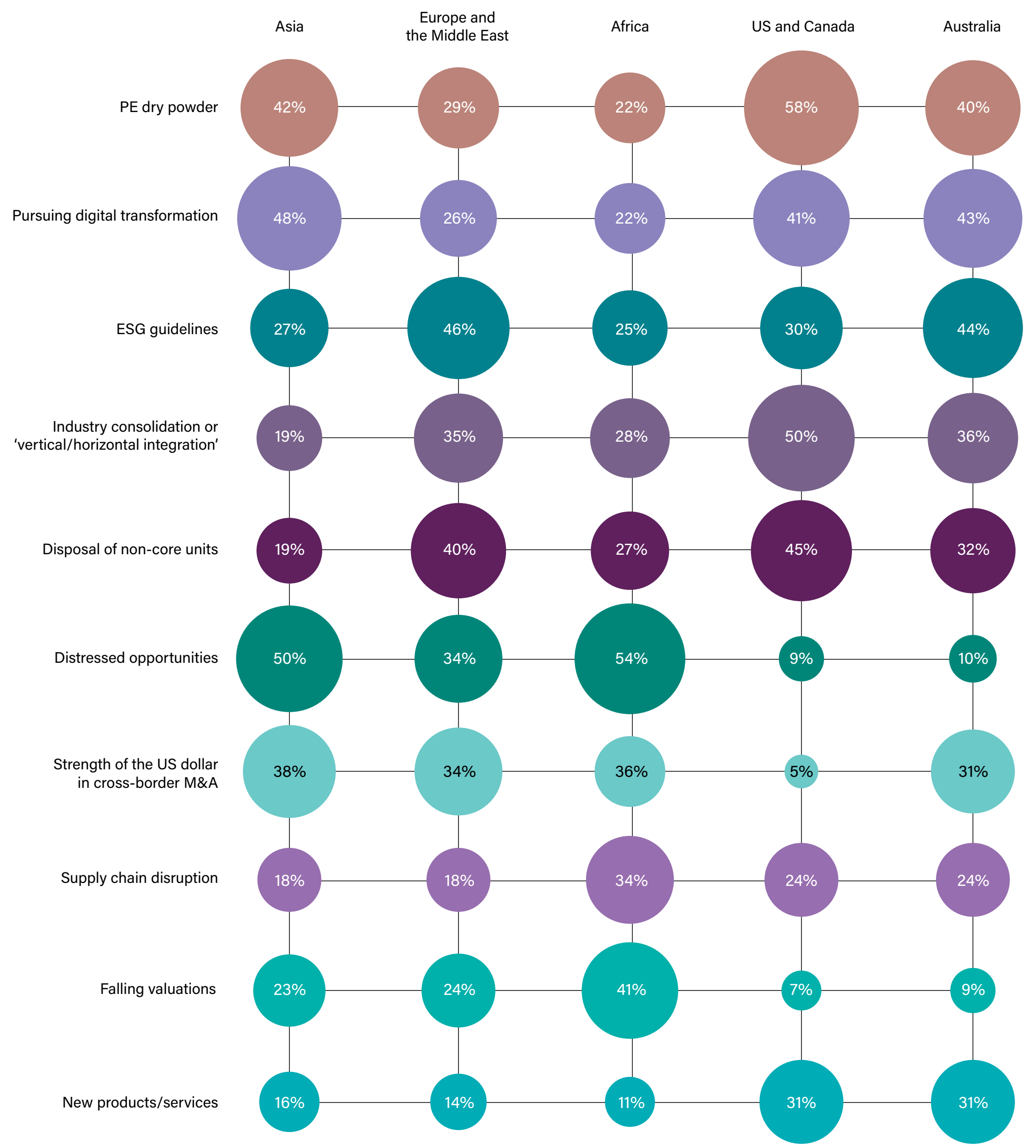
The report entitles its first section Part 1: Hungry for M&A. "Dealmakers are forecasting an uptick in global M&A, with North America and Asia—especially India—expected to enjoy the most growth in cross-border activity," the report predicts. "From digitalization and distressed opportunities to industry consolidation and the predominance of private equity dry power, a wealth of factors are set to propel dealmaking." One important indication of a renewal is the fact that most respondents said they expected to be buyers rather than sellers in 2023. Investment bankers agree. Sixty-two percent said they also expect their clients to be net buyers.

Ms. Yüksel Mahfoud advises some caution. "I wouldn't say we're seeing this hunger in everything among everybody. Private equity dry powder is definitely a good sign, particularly as little was deployed last year. Technology is primed for action as well. Let's call it cross-sector tech," she says. "There is no way forward without having the technology you need. Whether it's fintech, health tech, whatever sector you're in, or whether it's corporates or larger technology companies buying smaller technologies, we're seeing activity and we're going to be seeing a lot more activity. Many tech companies ramped up in the hope of going public or to make themselves attractive targets for SPAC acquirors and those hopes died with the slowdown of the capital markets and the disappearance of the SPAC market. Now they are ripe for acquisition."

Here is the link to the report:
https://www.nortonrosefulbright.com/en-us/knowledge/publications/ba20c750/global-ma-trends-and- risks

Inflation, interest rates, and the paucity of financing, all economic factors that subdued M&A in recent years, all show similar signs of a return to calm.

What will be the most important drivers of M&A in each of the following regions in 2023? (Select top three for each region)



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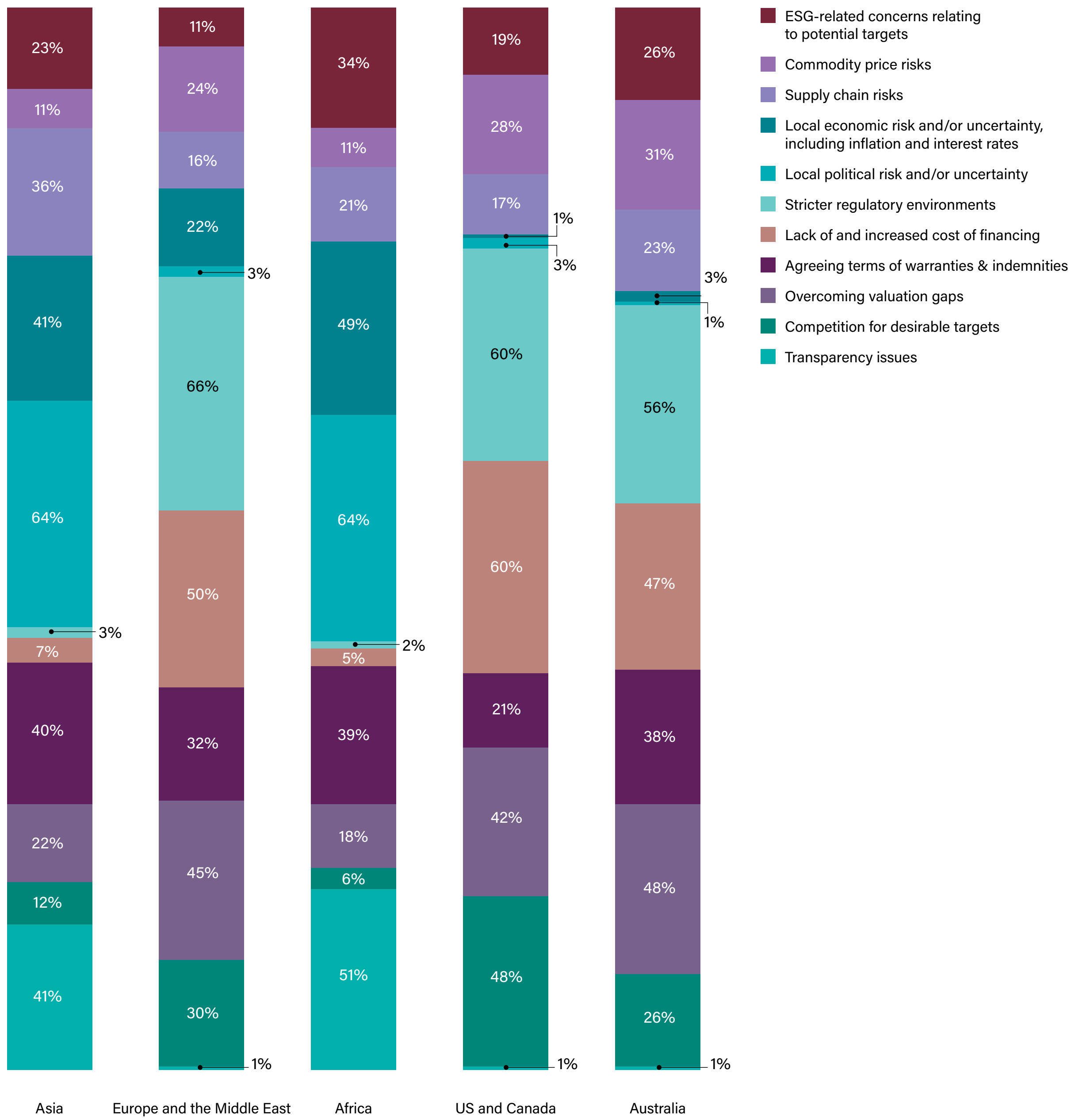
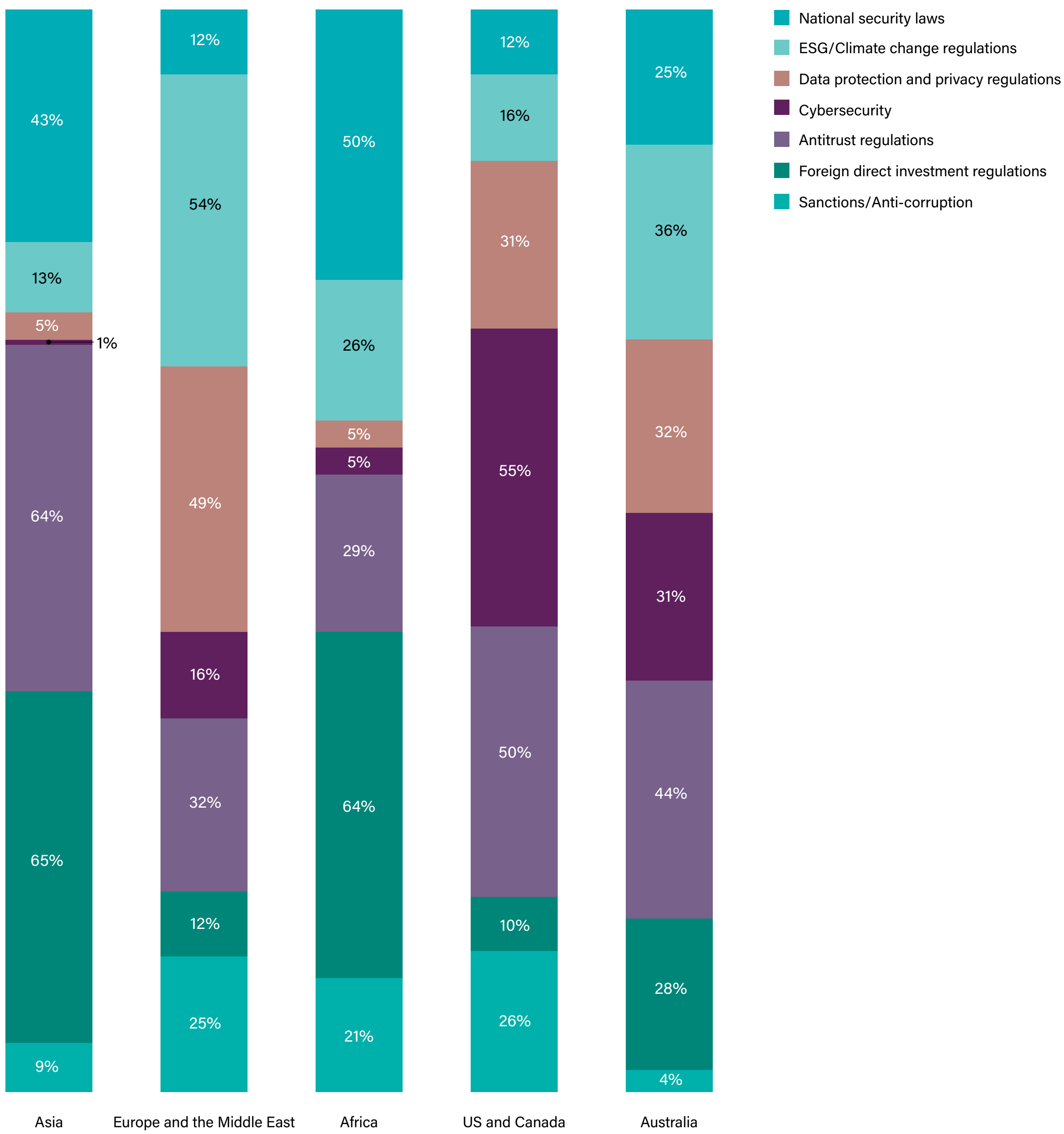
What do you expect will be the top obstacles to completing M&A deals in each of the following regions in 2023? (Select top three for each region)



Which of the following areas of regulation/policy do you believe will most suppress M&A activity in each of the following regions in 2023? (Select top two for each region)



Website: www.themandajournal.com

E-mail: info@themandajournal.com

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The M&A Journal, 1008 Spruce Street, Suite 2R, Philadelphia, PA 19107