Global M&A Trends Report

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World Ready

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About this report

This report sets out our Lex Mundi member firms' insights and predictions for 2021 in respect of mergers and acquisitions (M&A), including key concerns facing private company M&A practitioners, deal activity by market segment and sector, in their respective jurisdictions. The global pandemic that shook the world in 2020 is still expected to have a material impact in 2021, the effects of Brexit have begun to sting, and foreign investment restrictions are gaining traction – but optimism appears to be the prevailing sentiment among our member firms.

The summary below highlights some of the key findings:

- Although the impact of COVID-19 on deal terms is noted by some respondents as top of mind, legislative and regulatory changes, national security or foreign investment restrictions, and antitrust considerations rank higher or at least as high. For more than a quarter of respondents from our member firms in Asia and the Pacific in fact, national security and foreign investment restrictions stood out as a key concern for 2021.

- The pandemic is generally seen as having a much broader impact than just deal terms, however. Member firms from all regions note that national security interests and foreign investment restrictions in many cases were in fact accelerated by the pandemic, with national governments wanting to protect certain key assets from foreign takeovers. Also, economic downturns are expected where governments stepped in with broad aid packages when the crisis started and continue to provide broad relief packages, but are expected to scale down the aid available over the course of 2021.

  Target valuation is also expected to become a more complex exercise as parties try to find suitable mechanisms to account for an unpredictable economic climate.

- All in all, 2020 was for many of our member firms a year with generally fairly (and perhaps surprisingly) strong M&A activity. And with hopes of swift roll-out of vaccination increasing and life returning to a somewhat more normal routine for many people, a substantial majority across the globe expects 2021 to see increased deal activity in both public and private M&A activity, with less than a handful of jurisdictions actually expecting to see less activity than in 2020.

Bram Caudri
Corporate Partner
Houthoff (member firm for the Netherlands)

Asia and the Pacific

Hong Kong, China.

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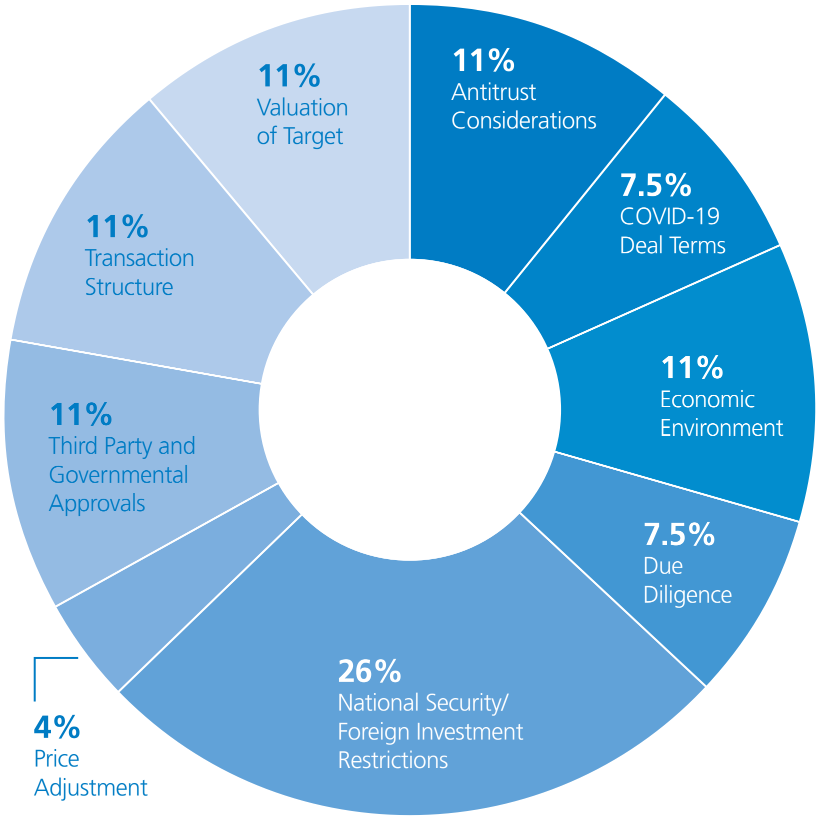
Key concerns facing private company M&A practitioners

Foreign investment restrictions featured high on the list of concerns for private M&A practitioners in Asia during 2020.



We highlight a few examples below:

- Australia is a significant foreign-capital inbound investment destination, so federal investment regulatory issues are always a critical factor to take into account. The current environment has made the Foreign Investment Review Board more willing to exercise caution on certain inbound investors and transactions.

- In India, one of the crucial concerns for deal-making in 2020 was the market-wide uncertainty created due to the lack of clarity with respect to the ambit of the regulations introduced by the Indian government to target foreign investment from certain neighboring countries, i.e., the PN3 regulations. Sellers and authorized dealers will continue to demand PN3 regulations related representations and warranties and declarations, respectively, until further clarity is provided by the government on the scope and applicability of these regulations.

- In Malaysia, (i) as government / regulatory discretion plays an important role in completing transactions, and (ii) guidance on regulatory policy within certain sectors of the industry is often opaque, foreign investment restrictions and government approvals are top of mind for practitioners advising on M&A transactions.

- The New Zealand Government, like many other states, recognized that key New Zealand assets required better protection from being sold to overseas owners in a way contrary to the national interest as a result of COVID-19. New Zealand introduced three major changes under its foreign investment restrictions, these being (i) the introduction of a "national interest test" which allows the government to deny consent to any investment that is deemed contrary to New Zealand's national interest; (ii) the requirement for notification of all transactions, irrespective of value, that would result in more than 25% overseas ownership of a New Zealand business or its assets; or an increase to an existing holding beyond 50% or 75% or up to 100%; and (iii) empowerment to review certain investments in "strategically important businesses" that are not ordinarily screened under the foreign investment regime.

Top of mind for acquirers in Southeast Asia during these unusual times was the desire for more realistic valuations especially in industries hardest hit by COVID-19, and a pressing need to build in adequate mechanisms to address the occurrence of material adverse events (catastrophic decline in business, loss of key suppliers, disruption to supply and fulfilment chain, etc). More attention was placed on these issues, with principals taking pause at the early stages of the pandemic to reassess their timelines and deal structures to work on these concerns. In several PE deals that *Rajah & Tann Singapore LLP* (member firm for Singapore) worked on during 2020, the earn-out component took center stage in ensuring alignment between management responsibility and their business projections, with a corresponding downward pressure being felt on the upfront consideration.

Moving into 2021, *Shardul Amarchand Mangaldas & Co* (member firm for India) partner Iqbal Khan predicts new highs for valuations of companies that have withstood the pandemic-test and survived – such as those belonging to the resilient sectors such as health care (especially pharmaceuticals with a focus on API, biotech and life sciences), tech (especially SaaS, edtech, healthtech and fintech) and e-commerce. There are also additional crucial factors that will push valuations upwards in 2021, such as accessibility to significant dry powder in the market by financial investors and auction processes being the preferred method for sell side players. To bridge continuing valuation gaps, most of the deals going forward will have permissible structured components, such as downside protection through the use of convertible instruments (e.g., warrants), earn-outs, deferred compensation and the investor’s right to acquire additional stake at pre-agreed valuation methodologies.

A number of practitioners noted that antitrust considerations are high on their radar. In Vietnam, a recent antitrust law established new thresholds which require the involved parties to notify to (and obtain clearance from) the Vietnamese antitrust authority in an M&A transaction. In Thailand, antitrust will likely be key during 2021 because the merger control rules which were issued by virtue of the Thai Trade Competition Act have recently come into effect, and at the present time, many guidelines have been issued. A recent ruling by Thailand's antitrust regulator was made in November 2020, whereby it has approved the USD10.6 billion acquisition of a local retail business of Tesco by Charoen Pokphand (CP) Group. In Australia, the competition regulator has become increasingly emboldened over the last decade, and competition issues remain a crucial factor to take into account on any Australian M&A transaction.

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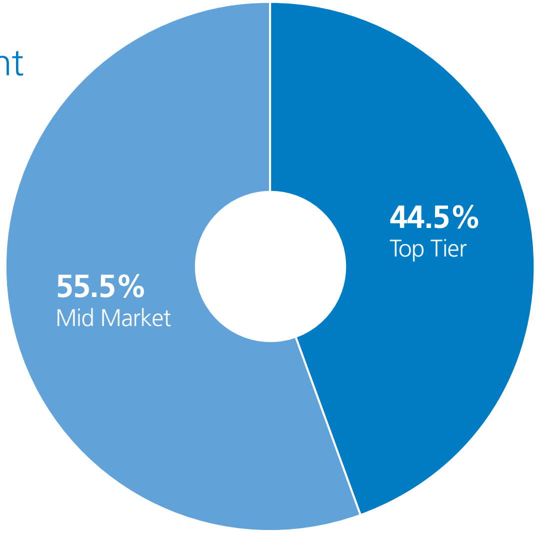
Deal activity by market segment and sector

Most deal activity by market segment **Private and Public M&A**

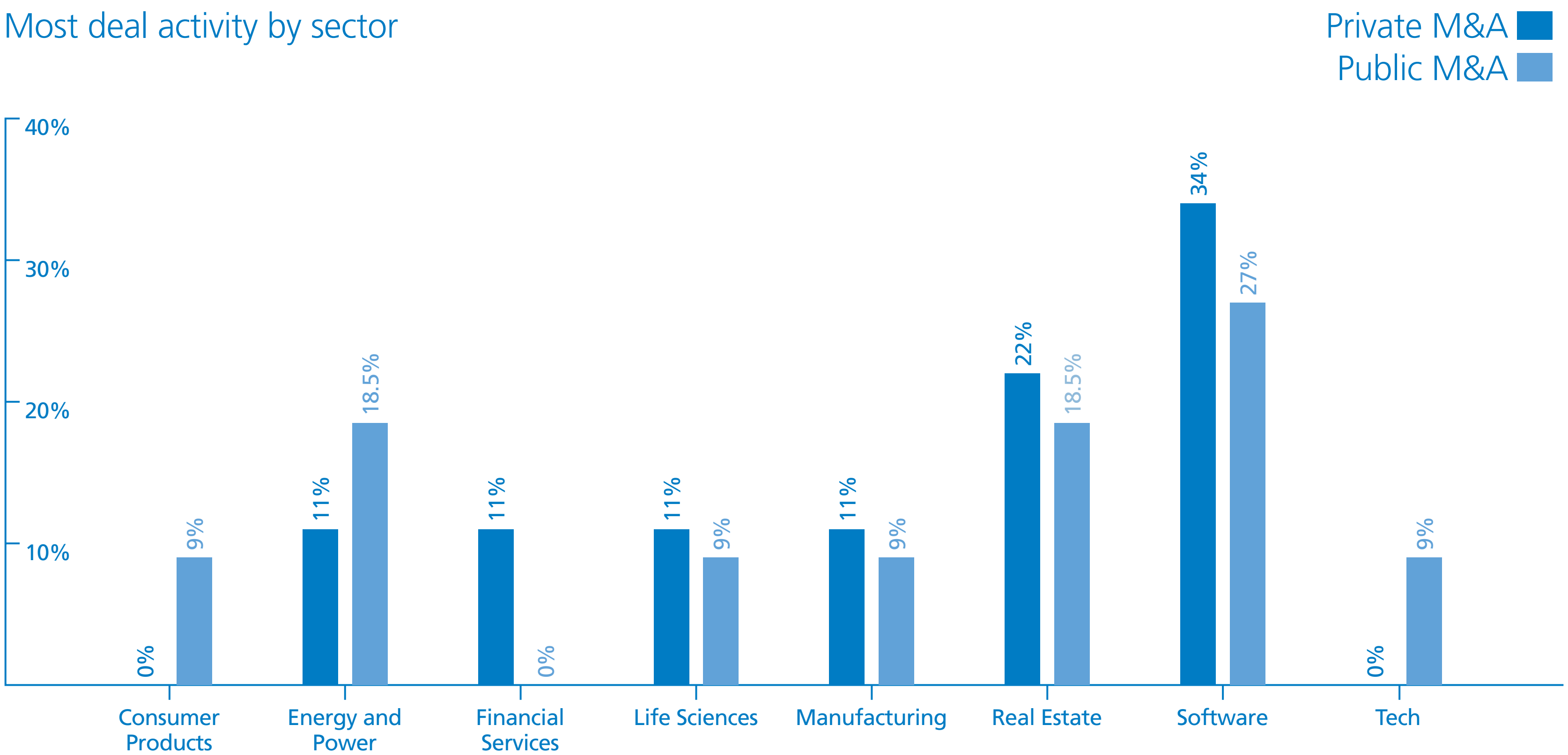


- In New Zealand, certain industries (e.g. health, tech, consumer) have thrived in 2020 as a result of COVID-19 related disruptions and may continue to see improved valuations going into 2021 (compared to 12-18 months prior). A combination of readily available capital and resilience in 2020 will likely reflect positively in target valuations.

- In China, life sciences is also a hot area.

- 2021 is expected to see an increase in the number of M&A deals in Malaysia with fintech and consumer related business leading the way. In terms of deal size however, energy industry deals will remain at the forefront with both Exxonmobil's proposed USD3 billion sale of its Malaysian assets and Repsol's estimated USD1.2 billion dollar sale of assets and country exit expected to complete during the course of 2021.

Most deal activity by sector



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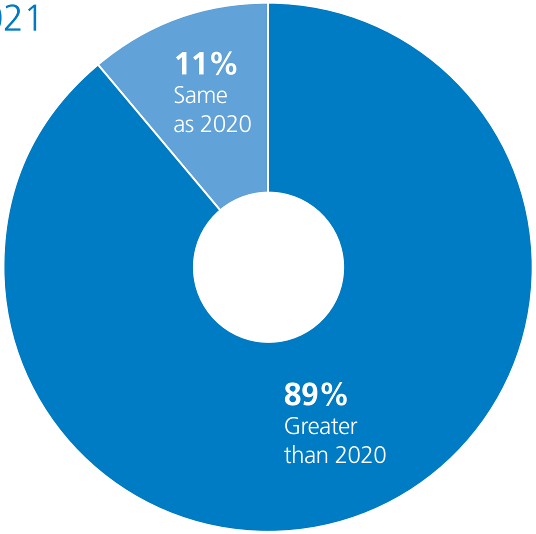
Predictions for 2021

Deal volume in 2021
Private and Public M&A



It goes without saying that 2020 was more than just a profoundly disrupting year. Most member firms were on tenderhooks at the early stages of the pandemic, as the pause button was pressed on pending deals whilst principals scrambled to make sense of the future of the global economy. Nevertheless, the overwhelming majority of firms surveyed expect M&A deal volume to increase in their jurisdictions during 2021 and outlook seems to be cautiously optimistic across the region.

- Fariz Abdul Aziz, a partner at *Skrine* (member firm for Malaysia) foresees an increase in M&A volume in the country this year from two main sources, namely (i) distressed asset sales following the expiry of the government mandated loan moratorium; and (ii) increased clarity on the path to recovery as further positive news is reported on vaccine development.

- Oceania's recovery from COVID-19 may see a short-term increase in deal volume while the cost of capital remains at record lows. This is likely further compounded by continuing interest from North America and Europe as they start their recovery and resumption of status quo.

- Terence Quek, a partner at *Rajah & Tann Singapore LLP*, notes that one keenly watched space in Singapore is the agritech industry, with the pandemic starkly revealing the urgent need to ensure food security by encouraging big ticket investments in alternative protein production and hyper-efficient urban cultivation techniques.

- Taiwan has handled the COVID-19 pandemic successfully, and hence the economic activities are mostly not adversely impacted. Taiwan's economy is expected to grow in 2021 by the government prediction, which we expect will bring more deal flow. Many larger Taiwanese industries (semiconductors, other electronics, light manufacturing, offshore wind, etc.) have flourished in the current market creating deal opportunities. The availability of a safe and effective COVID-19 vaccine and the increased availability of capital are set to increase M&A activity in 2021.

- Moving forward, Khan notes three additional crucial factors that will push valuations in India upwards in 2021:

  - The first, is the fact that despite active deployment in 2020, considerable dry powder still exists, ready to be deployed in the market. Presented with an opportunity to gain significant minority or control – which will be the preferred trend for most investors in the near future – most investors will be amenable to tipping the scales towards an additional turn of EBITDA to win the bid.

  - Auction processes, albeit more focused ones, will continue to remain the preferred way to choose the best suitor, or an exit, by sellers. As a reference point, at one point during the past few months, 31+ live auction processes were simultaneously ongoing for deals in the Indian pharmaceutical sector. Unsurprisingly, almost all of these processes expected, and received, multiple serious bids, from motivated buyers, which were well within the "expected" valuation ranges.

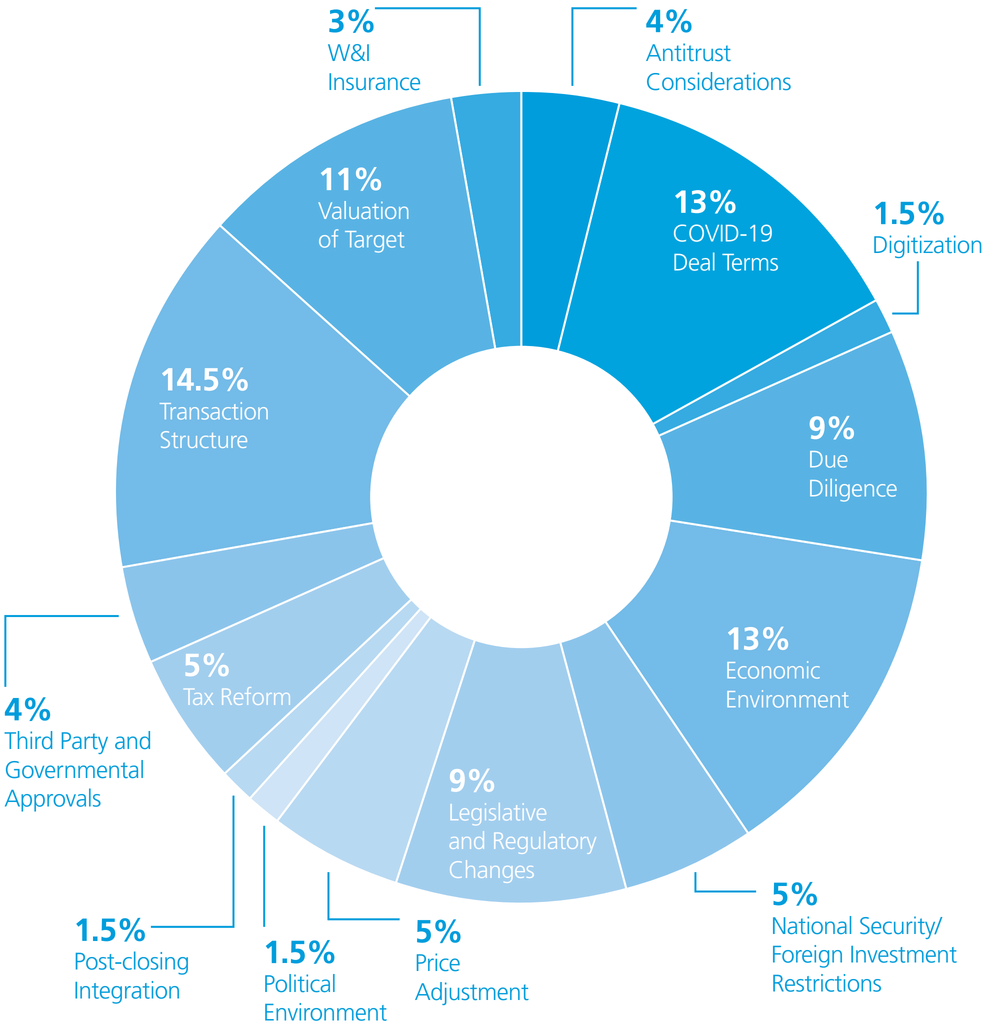
  - Finally, a new material fact is at play in the Indian markets after a hiatus of many years. There has been, and there will continue to be, substantial churn across the senior Indian leadership rungs at various prominent PE funds. This new incoming leadership, armed with substantial dry powder and redesigned investment mandates, will compete aggressively to acquire high-quality assets in a market which is relatively shallow, in comparison to western markets, and thereby push valuations into the thermosphere.

London, United Kingdom.

Europe

Key concerns facing private company M&A practitioners

Unsurprisingly, the effect of the pandemic and the economic environment are top of mind for private M&A practitioners in Europe.



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The pandemic has had an impact on the negotiation of various transaction terms across the board - including MAC clauses, force majeure clauses, and other pre-closing covenants, and specific warranties, earn-outs and deferred purchase price mechanisms to share the risk of target sub-par performance or non-performance, especially during national lockdowns. The pandemic has also increased the importance of due diligence in related fields (notably HSE matters).

Contracting parties across many countries are now more familiar with such matters and more likely to find a middle ground through various contractual arrangements.

By way of example, in the Netherlands the ‘regular’ M&A market has rebounded strongly after a sluggish summer in which many transactions were put on hold (in any event the PE-driven transactions which required debt funding were mostly dead in the water, as investors took a wait-and-see approach and banks had no time for anything other than COVID-19 relief activity).

That said, according to Bram Caudri, partner at *Houthoff* (member firm for the Netherlands), it is still broadly expected that an economic downturn will come in 2021, due to government aid lapsing, and businesses undertaking restructurings and cost-cutting exercises – making the economic environment a key concern for 2021. This uncertainty has caused an increased use of earn-out arrangements and the like, to cover the valuation gaps that have arisen. Legislative and regulatory changes, in a combination of foreign investment restrictions, tax reform worldwide, and UBO registration requirements, are ongoing, and may impact the attractiveness of the Netherlands as an economic hub.

The pandemic has had a broad impact on foreign investment restrictions, reinforcing a trend where states broaden the scope of the foreign investment controls and prior authorization regime. FDI regulations have been amended and expanded in Spain in order to protect Spanish corporates from takeovers by foreign investors (including, recently, EU investors). In Slovenia, the scope of recently adopted FDI approval rules is still being tested and is currently a hot topic.

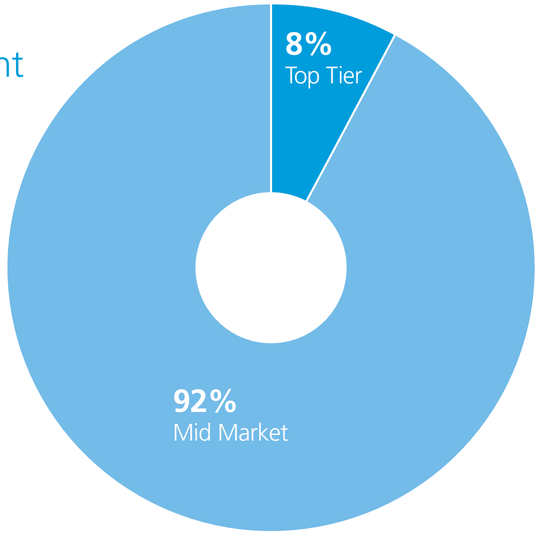
Nadège Nguyen, partner at *Gide Loyrette Nouel A.A.R.P.I.* (member firm for France), noted that as the crisis had an impact on the restrictions of foreign investments, this in turn reinforced the importance of target valuation in this volatile market where sellers and buyers may have more difficulties in agreeing on the actual value or EBITDA (neutralizing the COVID-19 impact) and estimate future cash flows, hence the need for more complex pricing arrangements. The same is true in Luxembourg, where the crisis, coupled with the need for the financial sector to fully come to terms with the digitalization of their activities in the near future, has led to more questions around valuation.

For public M&A activity, many practitioners noted their expectation that companies will be mostly concerned with the political environment, shareholder activism and takeover defenses. In Norway, practitioners noted a greater emphasis on antitrust and due diligence. In Estonia, due diligence remains top of mind for public M&A given regulatory hurdles on disclosure of information. As part of legislation caused by COVID-19, Poland has enacted provisions which increase the regulatory burden on public M&As.

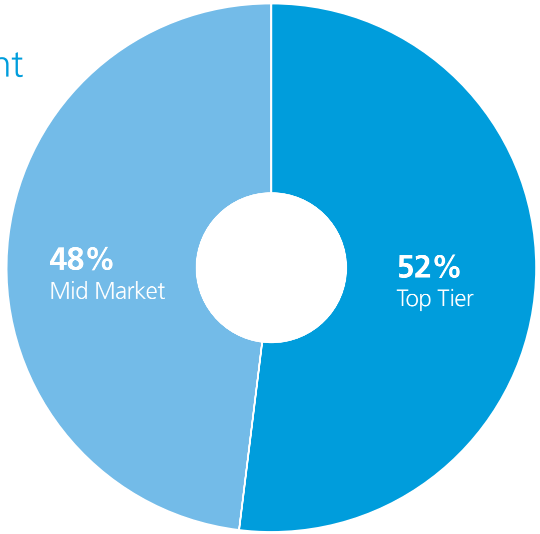
Until July 2022, acquiring 20% or more of shares or change of control over Polish companies that are listed on the Warsaw Stock Exchange or in an alternative trading system in Poland will require consent of the Polish antimonopoly office if the purchaser is based or controlled by an entity not being a EU, EEA or OECD member state resident.

Deal activity by market segment and sector

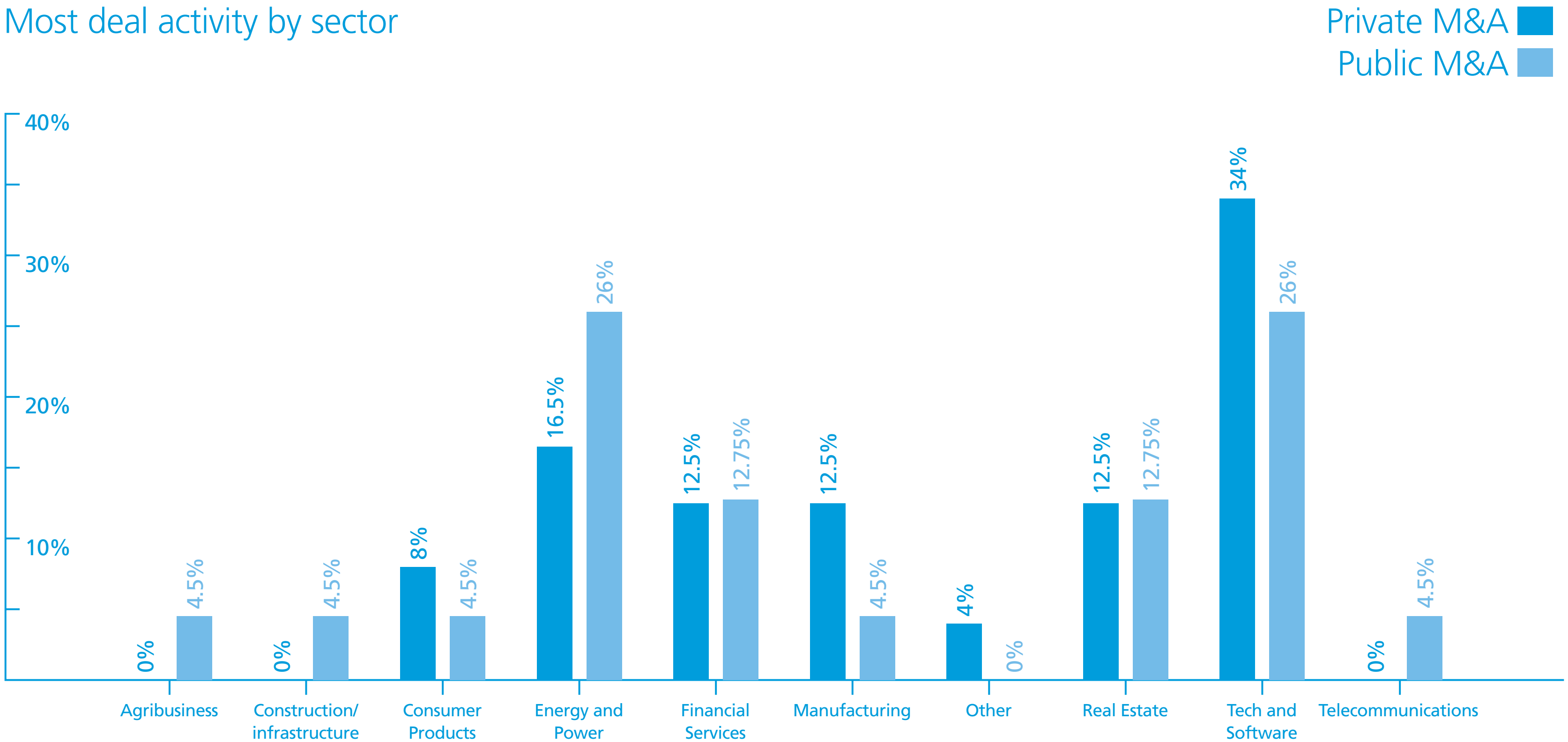
Most deal activity by market segment
Private M&A



Most deal activity by market segment
Public M&A



Most deal activity by sector



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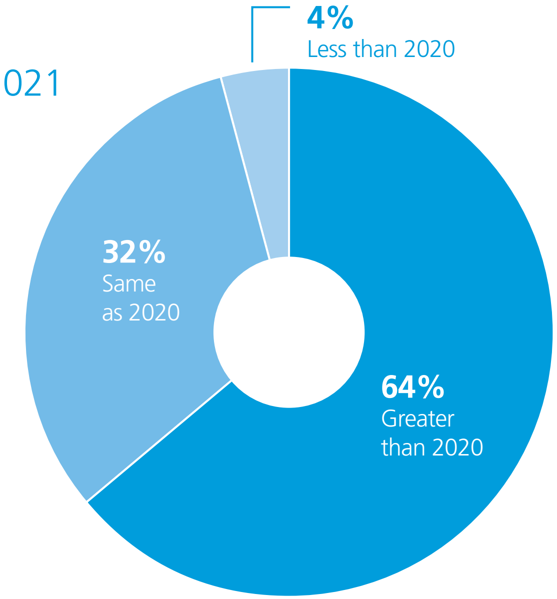
For 2021, a number of countries expect to see an increase in transactions in the tourism and IT sectors (notably Slovenia), and within renewable energy (notably Portugal). France expects 2021 to see a concentration of transactions in the retail and consumer industries, aeronautic industry, financial services and automotive sector which have all been impacted by the COVID-19 crisis, but also in the pharmaceutical, health care and tech sectors where investors see an opportunity for future growth.

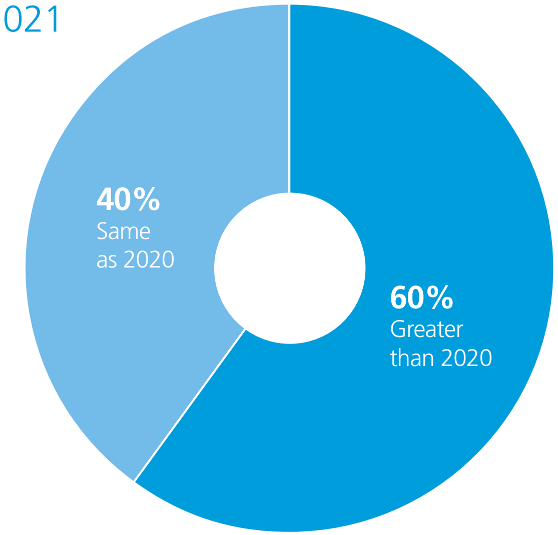
In the UK, Mark Ellis, partner at *Burness Paull LLP* (member firm for Scotland), noted a trend for an increasing number of oil and gas exploration companies, such as Savannah Energy and i3 Energy, using their AIM listings to raise substantial funds to acquire portfolios of revenue-producing assets. With the price of a barrel of oil continuing to remain low and the fundraising environment for exploration activity challenging, a number of exploration businesses have been acquiring producing assets in order to secure future revenue streams rather than being wholly reliant upon external sources of funding.

Predictions for 2021

Deal volume in 2021 **Private M&A**



Deal volume in 2021 **Public M&A**



64% of firms expect private deal volume in 2021 to be greater than in 2020, in particular, in those jurisdictions where deals were put on hold during 2020. This comes as no surprise. After the mid-year slump resulting from the pandemic and more recently with the announcement of COVID-19 vaccines, firms across the continent all noted a rebounding market and general optimism. There is also an expectation across numerous jurisdictions that 2021 will bring an increase in distressed M&A. Certain countries such as Poland and Norway noted that M&A activity had been (perhaps surprisingly) strong throughout 2020. In Norway, this was particularly so in real estate, life sciences, tech and renewable energy.

In the UK, but also the Netherlands, despite the continuing global pandemic and political uncertainty faced throughout 2020, the deal market is already moving far quicker than anticipated, with lots of clients actively looking at deals planned to come to market in Q1 and Q2 of 2021. Venture and development capital investments particularly in tech businesses continue without too much interruption, and private equity is very much on the look-out for deals – in particular, opportunistic bolt-ons are certainly viable at the moment.

Burness Paull LLP is seeing a lot of activity driven by a potential increase in Capital Gains Tax in the March 2021 budget. This would seem to bode well for deal volumes throughout 2021.

A number of member firms caution that deal activity is expected to stay the same as in 2020. For example, in France, deal activity in the first quarter of 2020 was high, benefiting from the strong M&A activity of 2019. Nguyen expects M&A activity to pick up in 2021 with positive impact expected from the arrival of COVID-19 vaccines, but notes that deal processes may take longer in general – for example, due to enhanced due diligence exercises, more stringent finance requirements, complex discussions around valuation and price mechanisms, and transaction documentation involving MAC clauses, interim covenants and warranties for pre-closing liabilities. In the Netherlands, although economic uncertainty may impact buyer willingness to deal, there is still a shortage of attractive targets. *Pekin & Pekin* (member firm for Turkey) expects the negative impacts of COVID-19 to extend into 2021 and affect the Turkish domestic market conditions, leading clients to postpone certain projects to the last quarters of 2021 or the first quarters of 2022.

Rio de Janeiro, Brazil.

Latin America and the Caribbean

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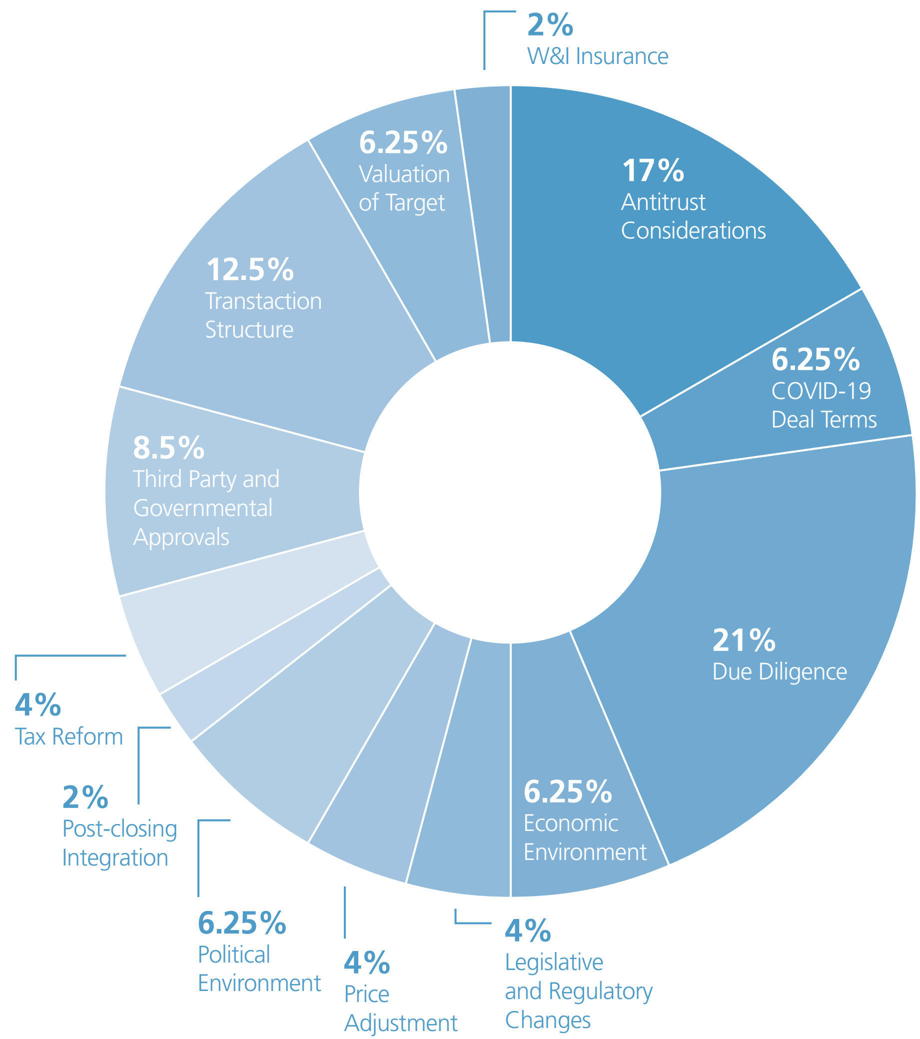
Key concerns facing private company M&A practitioners

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



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While countries such as Costa Rica, the Dominican Republic and Paraguay all agreed on the importance of the due diligence process, a number of member firms noted that as a result of the pandemic many ongoing projects during 2020 required updated due diligence to ensure no material changes to or additional liabilities.

Antitrust considerations also featured top of mind during 2020:

- Under Bolivian law, there is no overarching set of antitrust regulations applicable to the different sectors of the economy. The Bolivian government is not planning any legislative or formal proposal to enact general merger control legislation for all sectors of the economy. The fact that certain practices or agreements may fall under the scrutiny of multiple local competition authorities, and may be subject to sanctions, is an important risk to consider when doing business. For this reason, it is essential to undertake a risk analysis under local competition laws before entering into such practices or agreements.
- With the approval of Costa Rica to the OECD there were several changes made to local law. One of these related to the role of the antitrust authority which was endowed with broader powers and independence.
- In Trinidad and Tobago, the country has recently introduced antitrust legislation so there is no track record as to views of the regulators.
- In Paraguay, the local antitrust authority and regulations were recently implemented a couple of years ago, and are therefore still top of mind for practitioners.

Transaction structure, price adjustments and approvals are also key to private practitioners, especially so as a result of the pandemic. In Trinidad and Tobago, as a result of the negative impact of COVID-19, many are focused on the potential for price adjustment based on closing accounts. Government approvals, while usually a bureaucratic process, are taking longer than ever during lockdowns as all the decision makers are not in office simultaneously.

In Panama, transaction structures are also particularly relevant to appropriately insulate risk among the parties in order to address contingent liabilities which, under Panamanian law, may extend for up to 15-20 years in certain matters.

Regulation of mergers and acquisitions are sector-specific in the Bahamas, hence legislative changes are a primary concern in order to properly guide and structure transactions. For much the same reason approvals of various governmental departments and approvals by governmental or quasi-government regulators adds some complexities to M&A transactions and one must clearly and efficiently meet the needs of clients in synchronizing these processes.

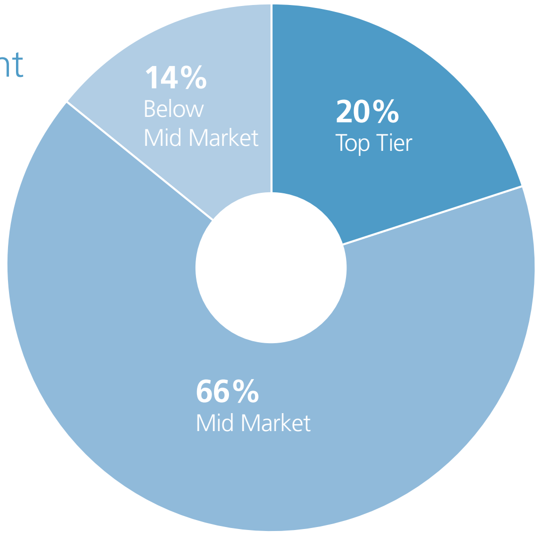
Argentina is currently undergoing an economic crisis in addition to the effects of the pandemic. According to Sebastian M. Iribarne, partner at *Marval, O'Farrell & Mairal* (member firm for Argentina), although there is hope for an increase in activity in 2021, inflation and potential devaluations must always be considered in an M&A transaction, particularly when the purchase price is paid over time and/or based on performance of the target.

Legislative and regulatory changes affecting the flow of funds into and out of the country, the ability to pay debts in foreign currency and the ability to access FX markets are common in times of economic distress. Particularly regulatory chances can occur repeatedly in very short period of times, and can have a significant impact on the target and its business as well as on the contractual obligations of the parties to the transaction.

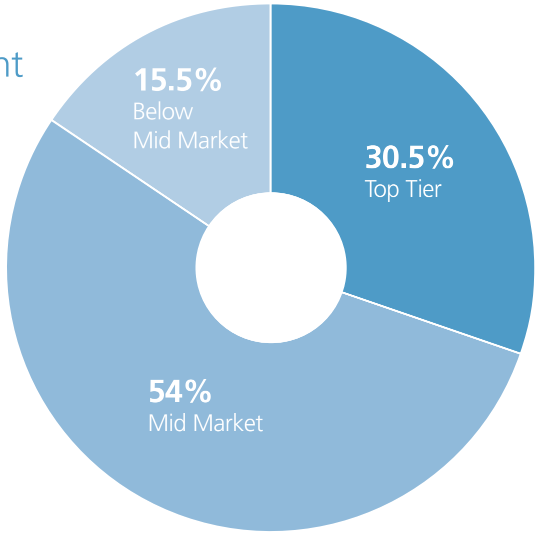
Finally, the political environment continues to be of significance for certain jurisdictions. In the case of Brazil, the current presidency also causes a lot of political noise, which reflects in the international image of the country – and therefore in the way investors see the country. Peru is expecting to hold presidential elections this year and as a result is also expecting new M&A legislation.

Deal activity by market segment and sector

Most deal activity by market segment
Private M&A



Most deal activity by market segment
Public M&A



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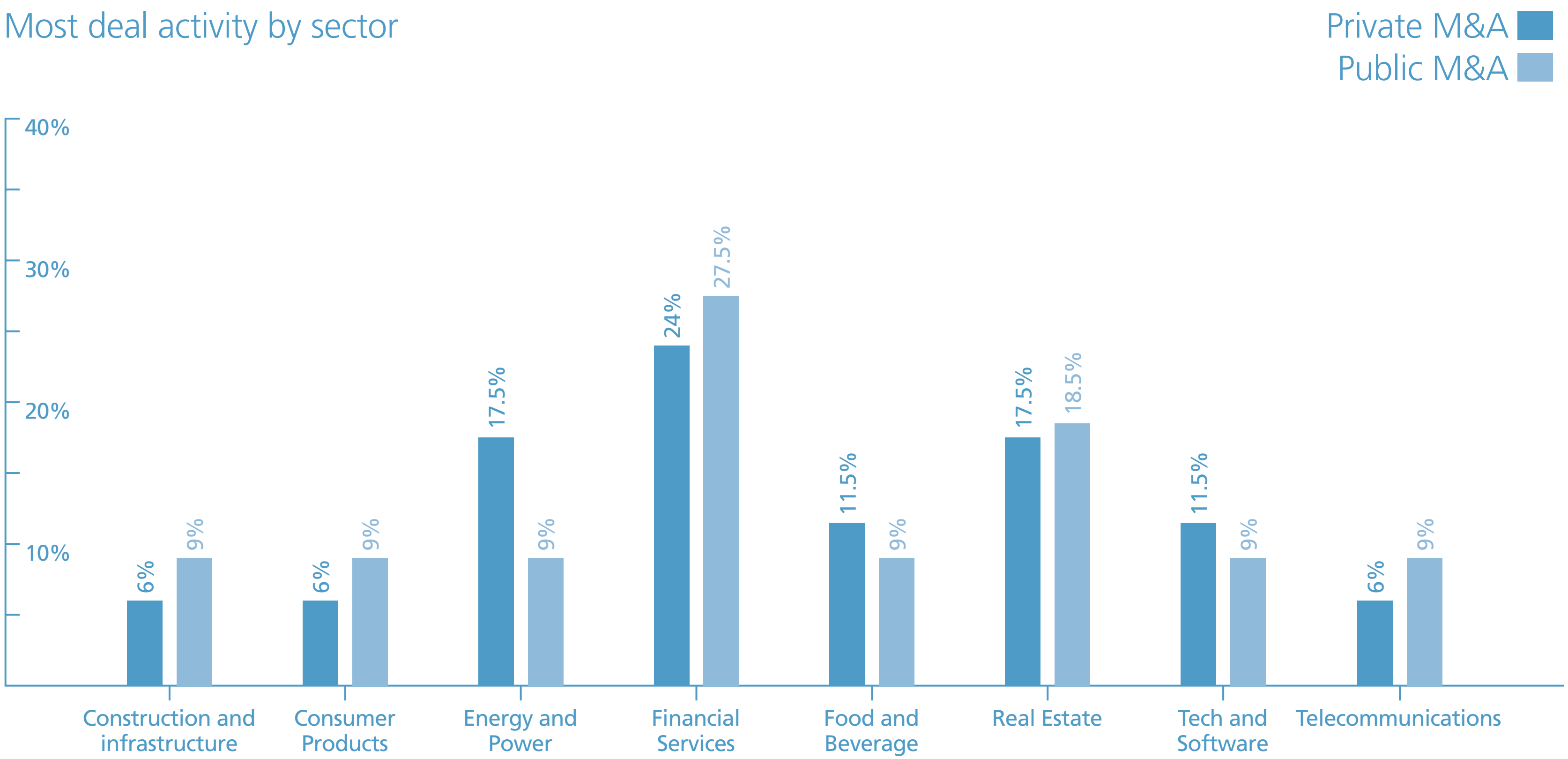
Most deal activity by sector



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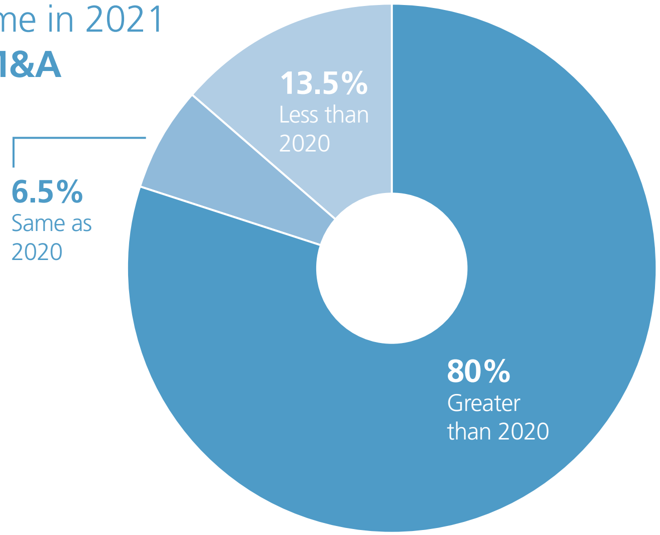
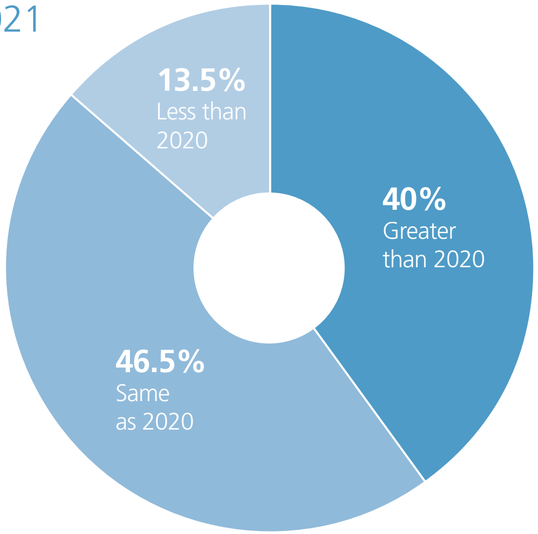
Deal volume in 2021 **Private M&A**



Deal volume in 2021 **Public M&A**



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The vast majority of M&A practitioners expected more private deal activity during 2021.

- Practitioners in Costa Rica, Panama and the Dominican Republic noted that they expect deals suspended during 2020 to close this year. In the Dominican Republic, considerable changes in laws are expected from the new government, mainly in the energy sector and in connection with expected tax reform, that will undoubtedly attract foreign investment into the country.
- Mexican practitioners expect to see an increase in M&A activity across sectors affected by COVID-19, in particular, real estate and hospitality.
- In Peru, practitioners expect to see a surge of closings (and some suspensions of deal activity) ahead of the pending implementation of new antitrust regulations in March 2021.
- In Trinidad and Tobago, as a result of economic misfortunes, more entities are becoming attractive targets. While M&A transactions are usually comparatively few in number, practitioners anticipate that the number of M&A deals will increase in 2021. The negative economic fallout, together with diminishing foreign exchange availability, constitutes a challenge for some entities and makes them more attractive to more robust businesses.

Other jurisdictions do expect to see a slowdown in activity this year. In the Bahamas, as foreign direct investment is the main driver affecting deal volume, activity is likely to slow down given the general economic impact of COVID-19 globally.

Finally, certain M&A practitioners noted mixed signals regarding the M&A market for the upcoming years.

- In Brazil, with the absence of a vaccine until the end of the first quarter of 2021, the market should not show much improvement. It is also likely that companies will continue to suffer until then and some of them will fail. Paulo Frank Coelho da Rocha, partner at *Demarest Advogados* (member firm for Brazil) notes that local analysts hope that the economy (and M&A activity) should improve after July. The federal government expects to privatize many companies and auction infrastructure projects in 2021. That should present many good opportunities for investors.
- Paula Bauer, partner at *C.R. & F. Rojas - Abogados* (member firm for Bolivia) notes that although Bolivia has continued to be politically and economically stable and predictable over the past decade, its "socialist" economic orientation has created somewhat of a hostile investment environment for certain industries (such as hydrocarbons and mining). In 2020, her firm observed the companies with the largest cash reserves display a fiscally conservative attitude towards cash, despite their position of strength. On the other hand, the ones with relatively small cash reserves are more bullish in the pursuit of growth and aggressively seek M&A opportunities.

Dubai, United Arab Emirates.

Middle East and Africa

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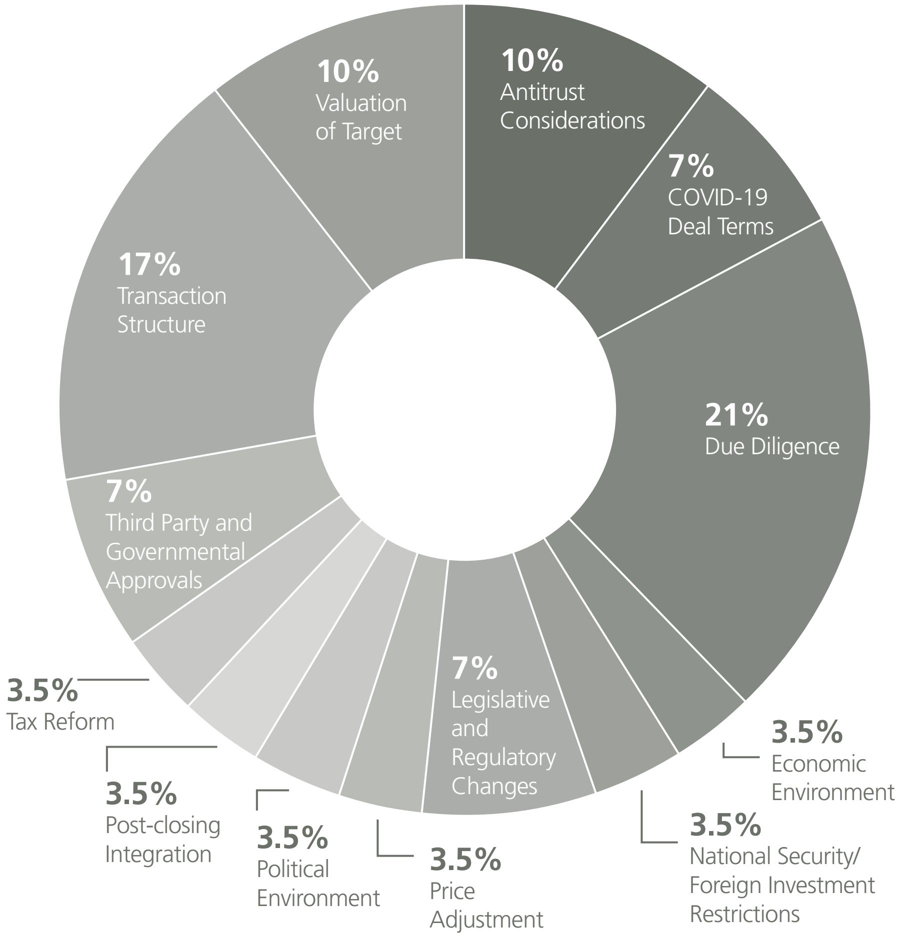
Key concerns facing private company M&A practitioners

As in Latin America and the Caribbean, many M&A practitioners from both African and Middle Eastern jurisdictions agreed that the due diligence exercise was top of mind in 2020 for private M&A deals.



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Without doubt, COVID-19 has had an impact on M&A transactions across various jurisdictions in the region:

- According to Bwalya Chilufya-Musonda, a partner at *B&M Legal Practitioners*, the Zambian economy was performing poorly prior to 2020 and this was exacerbated by the COVID-19 pandemic. A recent default by Zambia on its debt obligations has also placed a strain on the economy. The Kwacha continues to depreciate against the U.S. Dollar. This has had an impact on the deals and transactions going on in the market as both foreign and local investors are cautious to invest in companies. The political environment has also made it such that there is a lack of certainty regarding policies and the law. There is a general election set to be held in August 2021 and it is likely that market players will want to see the outcome of the election before making big and impactful investment decisions.

- According to Seth Asante, a partner at *Bentsi-Enchill, Letsa & Ankomah* (member firm for Ghana), a lot of time is spent by practitioners negotiating MAC provisions to deal with COVID-19's impact on the target.

  Valuation issues have also been a key top of mind issue, in particular, how the pandemic will impact the closing valuation of the target. Post-closing integration issues have also become pivotal since most companies are themselves dealing with COVID-19 imposed operational changes. Planning and implementing integration has therefore become even more challenging.

- Coupled with the economic conditions, in South Africa, price adjustments and MAC provisions are increasingly heavily negotiated. The scope of due diligence is also in many instances changing with increased focus on assessing risk and vulnerable areas of a target. Cathy Truter, head of Knowledge Management at *Bowmans* (member firm for South Africa), also noted that other front of mind issues impacting the foregoing and transaction structure are Broad-Based Black Economic Empowerment (BEE) and exchange control (in respect of which government is currently relaxing requirements, encouraging inward investment).

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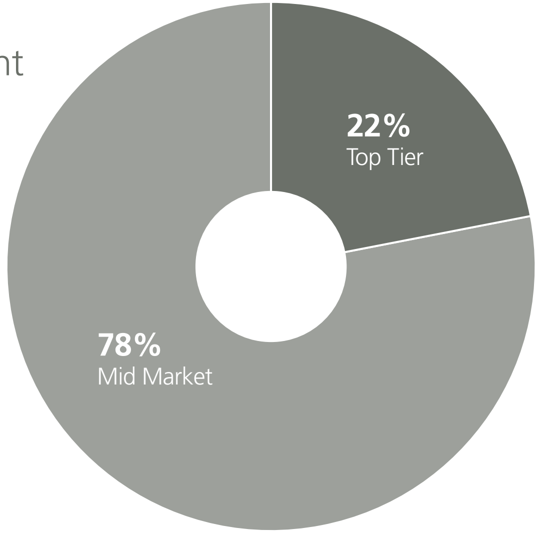
A number of practitioners also noted that antitrust considerations were top of mind during 2020. In Mozambique, while the respective legislation has been in force for quite some time the competition authority is not operational yet, which leaves a grey area regarding how to comply and avoid sanctions. In Pakistan, both private and public M&A deals are generally subject to premerger approval from the competition commission.

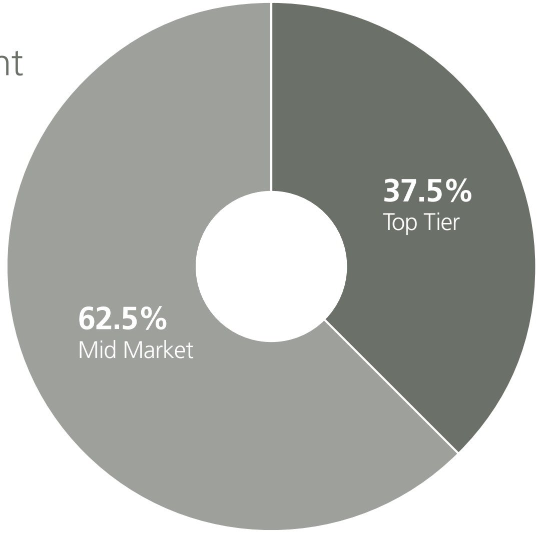
Finally, Mauritius is in the process of making a number of reforms to legislation regarding tax and anti-money laundering which has an impact on transaction structures and disclosure requirements regarding sources of funds and beneficial ownership.

Deal activity by market segment and sector

Most deal activity by market segment **Private M&A**



Most deal activity by market segment **Public M&A**



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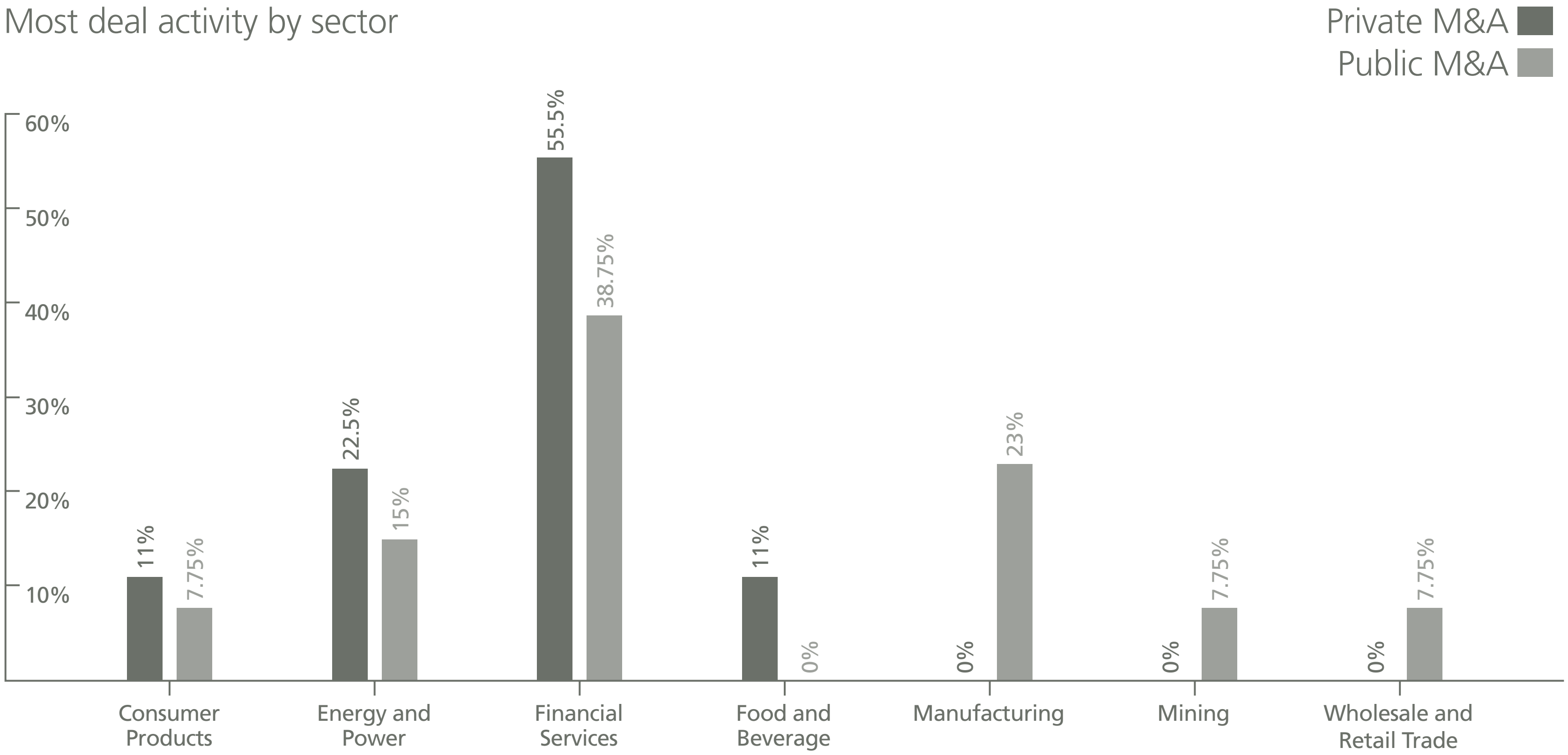
Most deal activity by sector



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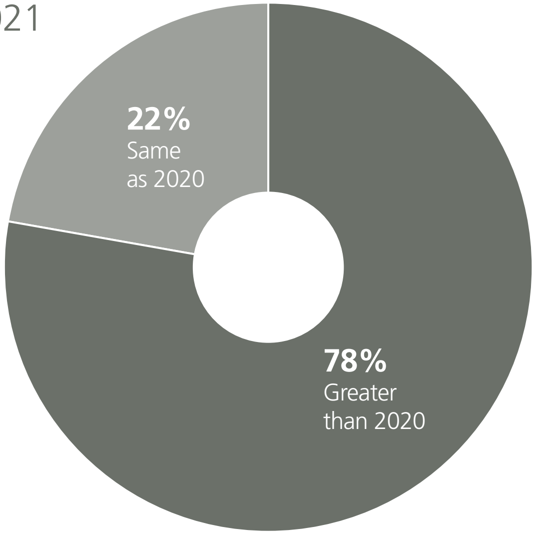
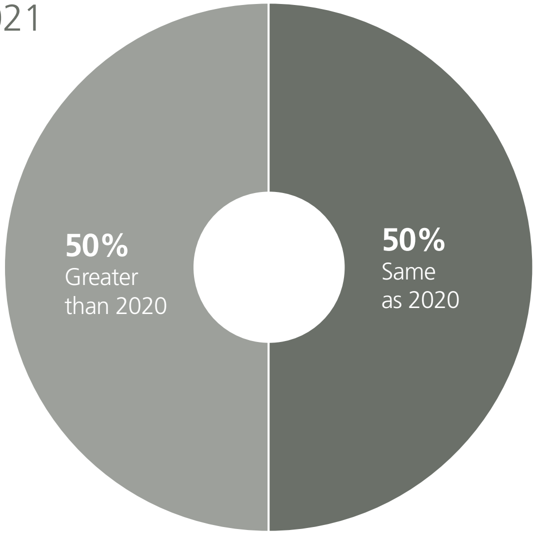
Predictions for 2021

Deal volume in 2021
Private M&A



Deal volume in 2021
Public M&A



As across other regions, the majority of M&A practitioners expect the market to rebound this year.

- Noora Janahi, a partner at *Hassan Radhi & Associates* (member firm for Bahrain) noted that practitioners expect to see an intensified movement towards mergers and acquisitions due to the implications of the financial situation following the COVID-19 pandemic.

- In Ghana, the economy seems to be rebounding. Asante expects acquirers who were conservative in 2020 to start executing deals this year. Deals have been few and far between in recent times. However, practitioners like Asante expect improved activity in the course of this year particularly in financial services, mainly driven by market expansion and regulatory changes.

- According to Paras Shah, partner *Coulson Harney LLP*, the Kenyan economy is expected to rebound and there are a lot of capital-hungry targets as well as possible PE exits in play. Kenya continues to strengthen its position as a regional hub for M&A activity in the East and Central African region.

- Managing partner Bilal Shaukat at *RIAA Barker Gillette* (member firm for Pakistan) notes that in 2020, investment opportunities including those relating to CPEC were put on hold as people were not sure how the financial and forex markets would react to changing legislation and work environment. A number of privatizations were also postponed. Practitioners are hopeful that those deals will also be executed in 2021.

- In South Africa, growth is expected to rebound in 2021, helped in part by the government's announced fiscal stimulus package to soften the impact of the pandemic and help set the stage for a robust recovery. According to Truter, the recovery could gain further traction if planned structural reforms are implemented, including plans to improve public investment management and to encourage greater private sector participation in infrastructure development. Truter is optimistic that if the reforms mentioned above are implemented the country could see an increase in investor confidence and M&A activity.

At the date of writing, South Africa has not (unlike some other jurisdictions) enacted special COVID-19-related protective measures against the acquisition of companies. Bowmans are also noticing an increase in shareholder activism and other activist-like interventions, including M&A-related activism, in South Africa. This is consistent with global trends and a function of a regulatory and corporate governance framework in South Africa that enables shareholder and activist interventions.

The outlook is less rosy in a number of jurisdictions however, such as Lebanon, which is going through a severe economic crisis and no improvements are expected this year. In Zambia, the upcoming general election will add to the uncertainty that is compounded by the COVID-19 pandemic so that investors are likely to be more cautious in making investment decisions.

Chilufya-Musonda notes that over the last three years, the country's agriculture, services, manufacturing, energy, wholesale and retail sectors led in both volumes and values in mergers, reflecting the economic trends driving growth in Zambia, at the same time, proofing government's resolve of prioritizing certain sectors.

According to Fabricia Henriques of *HRA Legal Circle*, Mozambique rightfully aspires to become one of the world's largest exporters of natural gas as huge offshore deposits are still being discovered in the Rovuma Bay, off the coast of Mozambique. While a significant part of this area is already subject to concessions and exploration has suffered some delays, there has been an active "secondary market" regarding the rights to explore the gas deposits, meaning that it may still be an interesting investment opportunity.

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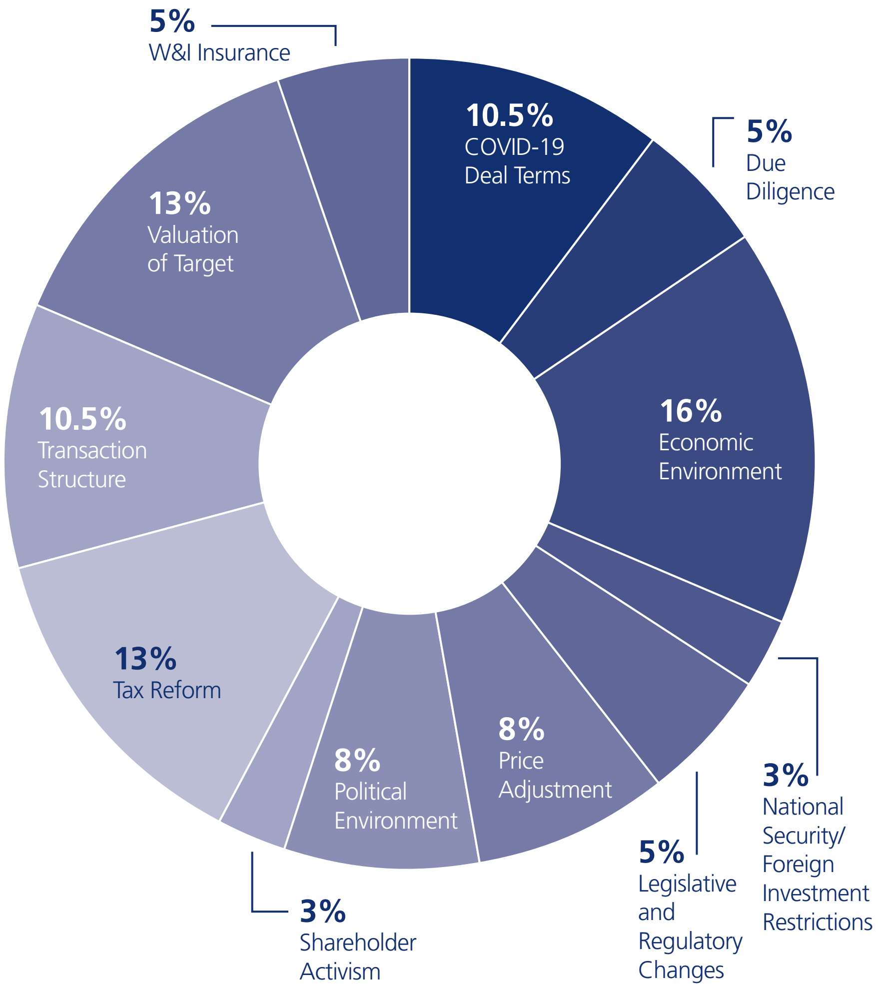
Key concerns facing private company M&A practitioners

Issues that dealmakers are grappling with are largely driven by the pandemic and, in the U.S., the change of administration.



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According to Pedro Freyre, partner at *Akerman LLP* (member firm for USA, Florida), the full impact of the pandemic and the political upheaval in the U.S. has yet to be realized, and buyers and sellers are struggling with unprecedented disruptive factors. With the change in U.S. administration and general uncertainty over the political environment, anywhere politics may impact business is driving decision making and risk analysis, particularly given for unified democrat federal government, which is typically hostile toward traditional business interests. The concerns have been heightened during the year by the recent national election and the economy and changes to the tax code next year. In addition to the federal issues identified, we set out the following examples of issues identified across U.S. states:

- In Texas, the oil and natural gas price environment, which is derivative of the overall economic environment, and its impacts on the energy industry drives a significant portion of M&A activity. Megan Greene, partner at *Baker Botts* (member firm for USA, Texas) noted that practitioners watch the landscape for potential changes to regulatory frameworks for the energy industry as a new presidential administration begins. There also is, in the background, changing investor priorities as ESG concerns move to top of mind along with the pressure at some institutions to shift away from investments in traditional fossil fuel companies in favor of renewables. All of these factors mix against a backdrop of a significant number of companies in the oil and gas sector, particularly in the shale industry, continuing to navigate liquidity and balance sheet issues.

- In Delaware, valuation is always a key issue and significant negotiation is frequent with respect to price adjustment matters such as post-closing indemnities and the like. In public deals, price adjustment mechanisms are far less common and typically not an issue. Valuation, liquidity of acquirors and economic environment are all top of mind.

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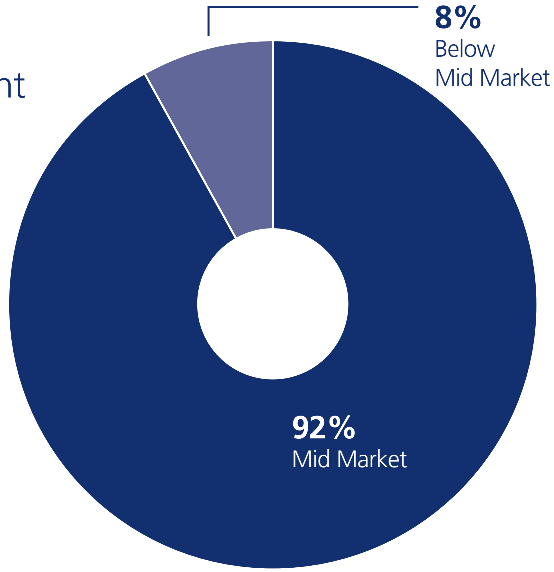
- In Missouri, many sellers are concerned that they will begin a sale process only to have taxes increase before the process is completed. Valuation issues are always critical, but have become more complicated due to the challenges of separating temporary COVID-19 impacts from longer-term changes in performance. Finally, W&I insurance is increasingly seen as a helpful tool, but is one that can also leave sellers with the need to cover matters excluded from insurance (which matters are often not identified until promptly before closing-- a point at which sellers have little negotiating leverage).

While the same issues certainly present themselves in public M&A transactions, our practitioners are seeing an increased emphasis on ESG and divestment pressures in relation to public M&A transactions. The emphasis on W&I insurance is certainly less of a factor in public M&A.

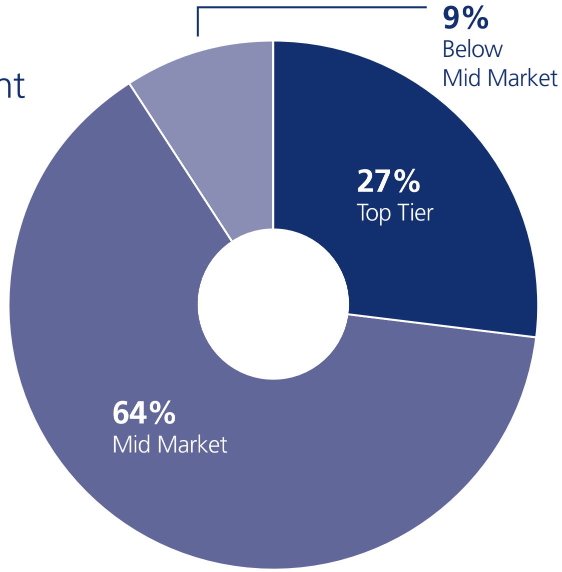
Across Canada, COVID-19 also complicated the M&A market by making pricing more difficult given the continuing uncertainty. To alleviate these concerns, companies are placing more focus on deal terms including interim period covenants and termination language. Given the current uncertainty, valuation continues to be a major factor during negotiations, which in turn encourages increasing use of pricing structures that mitigate that risk to some extent.

Deal activity by market segment and sector

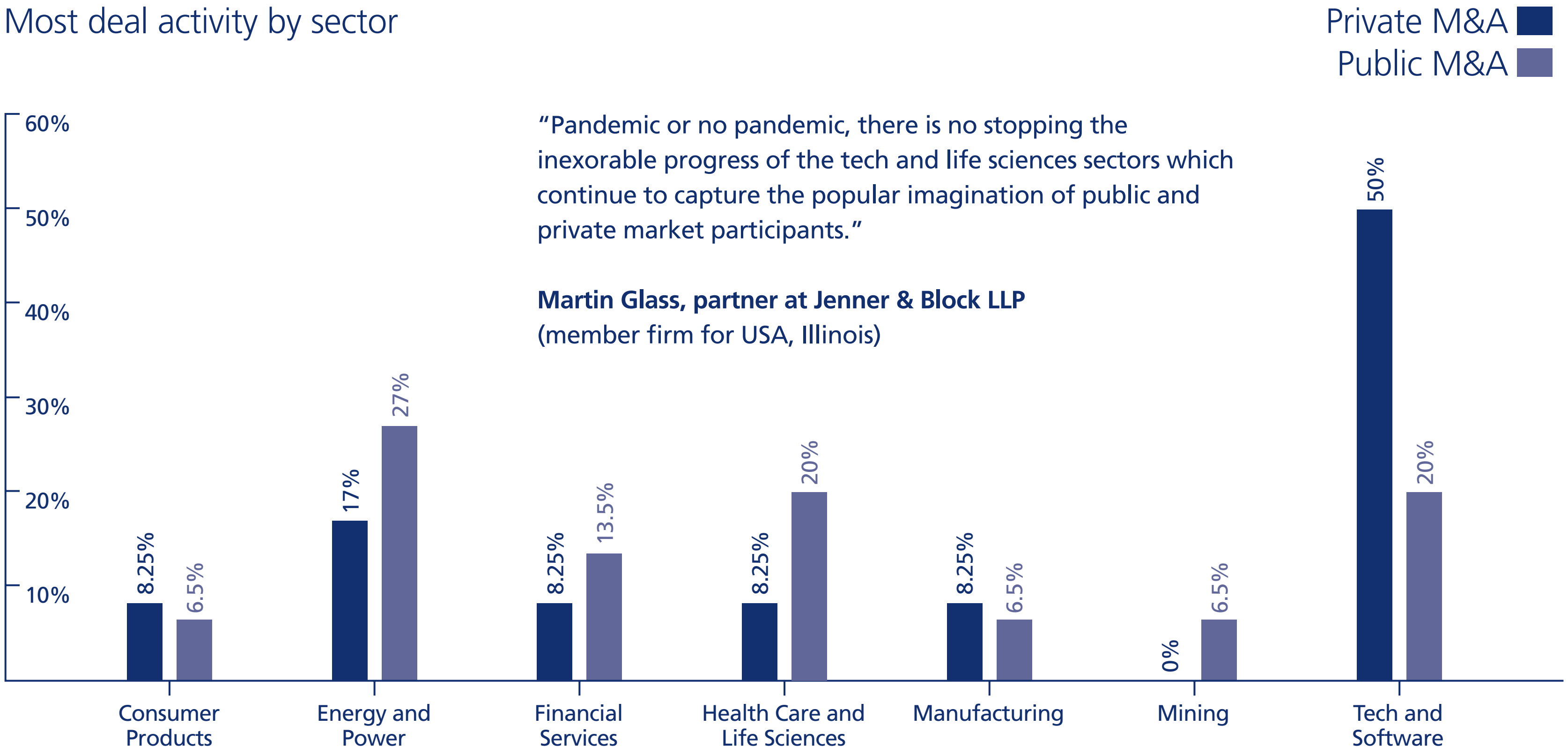
Most deal activity by market segment **Private M&A**



Most deal activity by market segment **Public M&A**



Most deal activity by sector

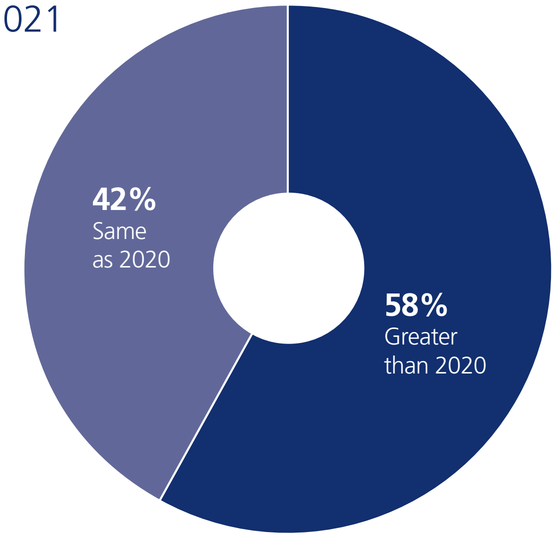


"Pandemic or no pandemic, there is no stopping the inexorable progress of the tech and life sciences sectors which continue to capture the popular imagination of public and private market participants."

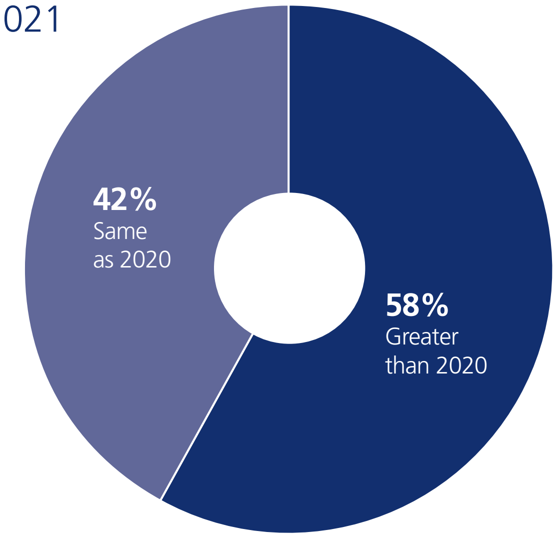
Martin Glass, partner at Jenner & Block LLP
(member firm for USA, Illinois)

Predictions for 2021

Deal volume in 2021
Private M&A



Deal volume in 2021
Public M&A



A slight majority of M&A practitioners expect greater deal volume for both private and public M&A during 2021.

Generally, across Canada, M&A deal activity picked up significantly in the second half of 2020, and indications are that this optimism will continue. Deal valuations become easier as uncertainty decreases. There is a lot of "dry powder" available, so there may be an increased opportunity to deploy that capital to acquire or invest in the companies that must soon emerge from the protection afforded by existing government support programs. In British Columbia, deal volumes have slowed but not stopped. Brad Newby, partner at *Farris LLP*, expect a return to 'normal' sometime in 2021 with a potential surge in activity in late 2021 if the COVID-19 vaccines are effective and interest rates remain low globally.

In the U.S., with the change in administration and the impact of COVID-19 and the associated lockdowns, 2021 is likely to be a challenging year for both public and private M&A activity, with the U.S. federal response to everything from tax policy, to stimulus, to regulatory considerations across the agencies the most likely driving force (for good or for ill) in 2021.

Notwithstanding the above, many practitioners in states such as Illinois, New York and Delaware expect an uptick in M&A during 2021, particularly during the second half of the year. In certain states, like Wisconsin, the second half of 2020 was surprisingly strong. With the continuing effects of COVID-19 in the first half of 2021 and anticipated economic rebound in 2021, practitioners anticipate that 2021 will at least equal 2020.

In other states, such as Texas, Greene notes that the hammer and anvil of the oil price volatility and the sharp economic downturn associated with the COVID-19 pandemic put the brakes on a lot of M&A. With some hope that commodity prices will remain stable or increase, and that we may see markers of normal life returning sometime in 2021, some Texas companies are starting to move back into dealmaking mode for 2021.

In Oklahoma, practitioners expect M&A activity to focus on industries less affected by the pandemic and distressed situations that create opportunities.

During 2020, there was some period during which existing transactions were put on "pause". That seems to have lifted by early fall, 2020, but practitioners across states such as New Hampshire and Missouri agree that will create a backlog (for both buyers and sellers) for deals that still need to get done. Moreover, concerns about tax increases could bring some sellers out to market sooner than would have otherwise been the case. Mark Stoneman, partner at *Armstrong Teasdale* (member firm for USA, Missouri) sees increasing activity in the lower middle market, as financial sponsors look to find less hotly contested valuations and are willing to consider smaller transactions as bolt-on acquisitions to existing platform investments.

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