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MERGERS & ACQUISITIONS 2016

VIRTUAL ROUND TABLE

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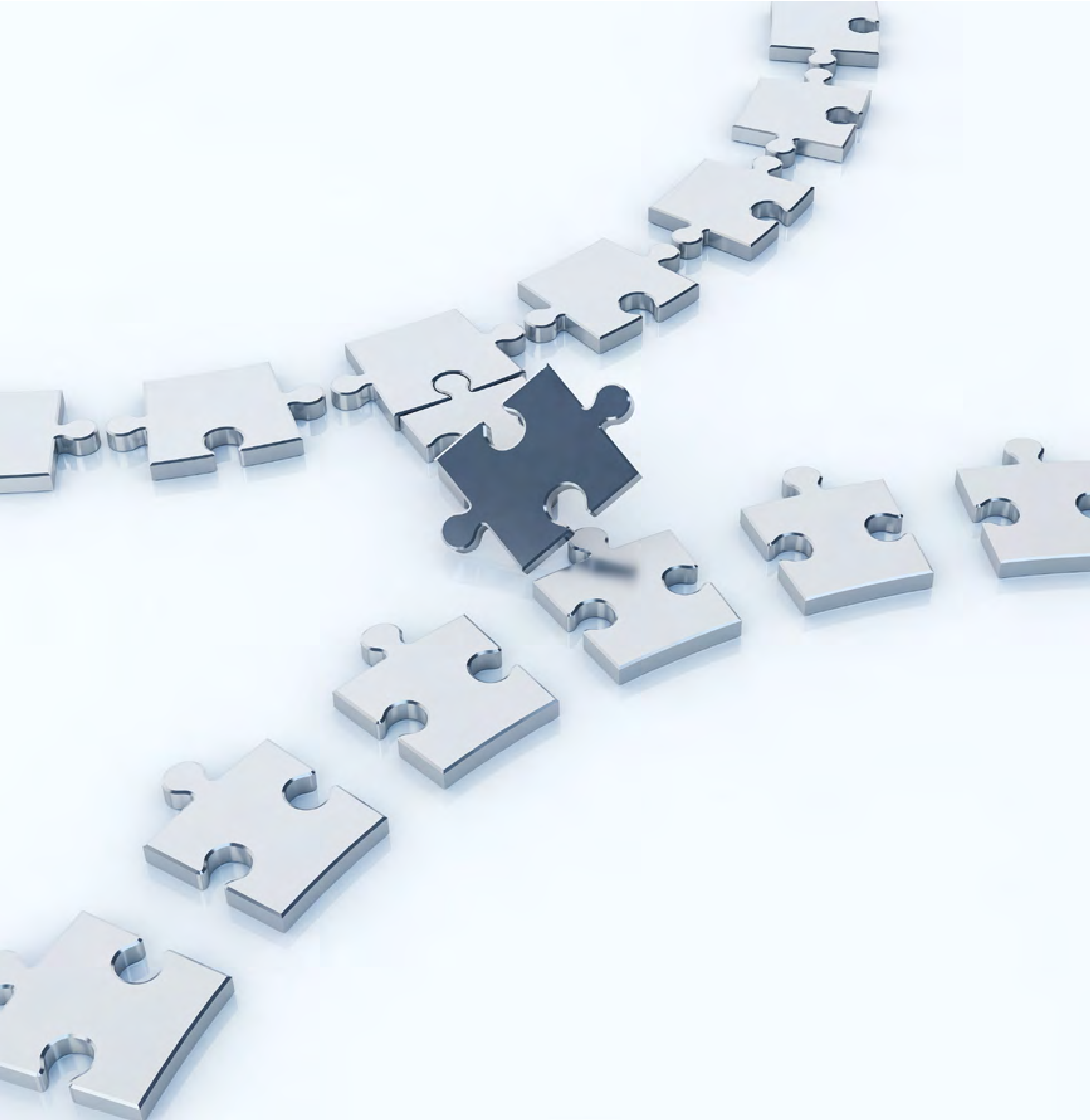

Introduction & Contents

The Mergers & Acquisitions 2016 Roundtable features 12 experts from around the world to discuss the latest trends and interesting developments surrounding both domestic and cross-border transactions. This roundtable considers the reasons behind the large volume of megamerger deal failures in 2016, outlines the growing need for due diligence, and highlights which areas are at greater risk of an antitrust challenge in their respective jurisdictions. Featured countries are: Australia, China, India, Italy, Japan, Mexico, the Netherlands, United Kingdom, and the United States.

James Drakeford
Editor In Chief

MEET THE EXPERTS

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Dr Aare Schaier has been an expert-lawyer and tax consultant with audalis Kohler Punge und Partner since 2000. Aare was promoted to the Executive Board in 2006 and has served as audalis' leading legal partner for corporate law and M&A since 2011.

He has extensive experiences in M&A including cross-border activities with several European countries (inter alia UK, France, the Netherlands and several East European target areas) and the Americas.

Aare has restructured numerous SME firms and corporations. Furthermore, he exhibits a broad range of references in reorganizing various firms and groups, supports generational succession in family firms, gives advice on company pension and incentive schemes and combines his deal experience with a profound knowledge of German tax law (including also fiscal court proceedings).

Aare graduated with honours in law from Ruhr University Bochum in Germany and achieved his PhD in Economics with distinction from Witten-Herdecke University.

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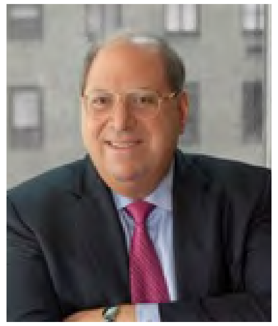

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With over 40 years of experience in mergers and acquisitions, corporate separations, expanding into foreign jurisdictions, business planning and real estate development, Fred's deep understanding of legal implications and problem solving in many scenarios has provided continuous value to his clients. He is experienced with structuring transactions with values up to $4 billion.

From vetting investment opportunities and analyzing complex transactions for wealthy families and money management firms, to structuring, financing and planning for new business start-ups, clients count on Fred to take a proactive approach to tax services – particularly in the international area where maximizing the benefits of International Tax Treaties and potential foreign tax credits provides a significant impact on the financial success of foreign ventures.

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Caroline Berube is the Managing Partner of HJM Asia Law (with offices in China and Singapore). She is admitted to practice in New York and Singapore and holds a BCL (civil law) and an LL.B. (common law) from McGill University (Montreal, Canada). She studied Chinese law at the National University of Singapore in 1998/1999. She was one of the first foreign lawyers to be admitted to Singapore and has so far worked in Singapore, Bangkok and China.

Caroline is also a serial entrepreneur with four successful start-ups with her brother in various foreign Asian countries before she reached 30. HJM was one of the first woman owned, foreign law firms in China in the early 2000's. Caroline has been working in Asia for more than 17 years with SMEs, MNCs and foreign banks, advising them in the field of commercial law, intellectual property, human resources and M&A in the Asia Pacific region. With an extensive presence on the ground in Asia, Caroline is well versed in the opportunities and risks associated with most Asian jurisdictions. She is highly regarded for her legal expertise in setting up legal and tax corporate structures, and navigating the challenges and options faced by potential and existing investors in Asia.

Caroline is a lecturer at the Laval University in Canada and Sorbonne Assas Law School - Asia Campus. She is fluently bilingual in English and French and teaches in both languages. She is also a regular speaker at various international universities, seminars and conferences, giving over 50 presentations per year. Caroline holds several senior positions in international legal organizations such as the International Bar Association, Inter-Pacific Bar Association and Primerus. In 2015, Caroline was selected as the Young Global Leader (YGL) by the World Economic Forum which recognizes the most distinguished leaders under the age of 40. Caroline is married and is a proud mother of 3 children.

MEET THE EXPERTS

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Alex is the Director, Responsible Manager and Authorised Representative of Hanrick Curran Corporate Finance. He has in excess of 35 years' experience in advising Private and Family business clients on business valuations, corporate governance, corporate finance & capital raising and audit & assurance. He holds a Bachelor of Economics, Graduate Diploma in Applied Finance and Investment, is a registered Company Auditor and a Recognised Valuation specialist with CAANZ.

Hanrick Curran Corporate Finance is a division of Hanrick Curran, a multi-disciplined mid-tier Chartered Accounting firm and member of Alliott Group. The firm has been delivering high quality value-add services into our growing Corporate, Small to Medium Enterprise and Personal clients for over 30 years.

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Benjamin Gould represents business clients and financial institutions in transactions and corporate law matters, with extensive experience in cross-border transactions. His experience includes representing public and private companies in domestic and international acquisitions, divestitures, restructurings, joint ventures, inbound and outbound investments, and financing matters. Mr. Gould prepares and negotiates acquisition documents, joint venture agreements, investment documents, financing agreements, letter of credit documents, intercreditor agreements and security documents. He handles transactions in a wide variety of industries, including manufacturing, financial services, food and beverage, pharmaceuticals, technology services, distribution and other general services.

Mr. Gould chairs Masuda Funai's Business Practice Group. He joined Masuda Funai after practicing corporate and finance law for eight years at several large international law firms. He has been selected as an Illinois Rising Star every year since 2012, and he is a member of the Chicago Council of Global Affairs, the American Bar Association, the New York State Bar Association and the Association for Corporate Growth.

Mr. Gould is admitted to practice in Illinois and New York. He received his law degree, with honors, from The George Washington University Law School in 2002, and he received his B.S. in business administration from the School of Business of the University of Kansas in 1998.

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Andrew is a Senior Associate in Sherrards' corporate group. Andrew advises private equity, venture capital, corporate and high net worth clients in respect of international and domestic mergers and acquisitions, including share and asset sales and purchases, MBOs/MBIs, restructurings, corporate finance, corporate governance issues, shareholders' agreements, joint venture agreements, partnership agreements and general contractual advice. Andrew has extensive experience of transactional work in a wide range of jurisdictions.

Andrew has a particular focus on the Fintech sector and software law generally, and has worked with start-ups in a full range of matters from early stage capital raisings through to disposals.

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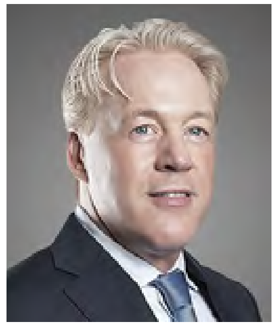
Piergiorgio Zettera speaks fluently Italian and English (mother tongue). He further has a good knowledge of French and German.

MEET THE EXPERTS



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Gerrit-Jan's practice is a good mix of providing legal counsel and litigating on his clients' behalf. He supports entrepreneurs in various matters related to company law by assisting and helping them to devise strategies. He represents clients in takeovers, mergers, divisions and company restructuring programmes. In addition, he regularly gives advice on shareholders' disputes, director liability issues and frequently helps companies through crisis situations.

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I am an experienced Corporate Finance Partner who provides advice to entrepreneurs and owner managers on all aspects of M&A, strategy, growth and value creation. I have personally led a large number of national and international mid-market transactions to successful completion, with values ranging from £1m to over £100m.

For the past 20 years I have worked with mid-market companies across a number of industries, but have a deeper knowledge of Business Services, Technology & Media and the Consulting sectors. I can provide advice on buying or selling a business, valuation, raising equity and debt finance, management buyouts, management buy-ins, exit and succession planning, equity realisation, shareholder restructuring, debt restructuring, and commercial growth strategies.

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Guillermo (1985) has a bachelor in Finance and Accounting and is in the process of obtaining his master's degree in US Tax. Has working experience in Big Four accounting firms and joined the family firm in 2012, taking charge of the international practice of the firm as well as the transfer pricing department and assists in some of the audit projects.

Can you talk us through the current M&A landscape in your jurisdiction?

Pandey: According to a survey, merger and acquisition activity in India is set to retain its momentum through this year, as the deal pipeline remains healthy and is likely to increase further in the next 12 months.

According to EY's 14th Global Capital Confidence Barometer (CCB), 95% of Indian respondents believe M&A activity will remain stable or improve further through 2016.

The uptick in business sentiments with regards to M&A activity was driven by improving domestic macroeconomic fundamentals and expectations around distressed asset sales to gain strength despite concerns regarding volatility around commodity prices and currency fluctuations globally.

Fraser: Compared to 2014, Australian public company dealing activity in 2015 was steady in terms of the number of transactions; however, the deal value (for transactions over $50M) was substantially up at $46B. Approximately 50% of those deals were in the $100M - $500M range.

Australia, being a commodity-based economy, saw significant deals in the resources and energy sectors in prior years. Whilst this area still contributed significantly (35%) to all announced transactions over $50M, transport & logistics, real estate and professional services dwarfed the value of deals in other areas. At the smaller end of deals ($20m - $100M) we are seeing an increased focus on deals in the current year on agri-business sector as food security becomes increasingly important for overseas entities particularly from Asia.

Whilst the preference for takeover bid versus schemes of arrangement remains reasonably consistent at the 55:45 split, in higher value transactions (over $1BN) there is a clear preference for schemes of arrangement in approximately 80% of these transactions.

In addition, there has been an increase in the number of transaction that now offer scrip as part of the consideration. Approximately 30% of all listed company transaction now include scrip.

Just over 50% of all offers were made by a foreign bidder in 2015 with most of those bidders coming from North America and Asia. However, in the current year we expect on-shore acquirors to increase due to increased regulatory scrutiny, the fall of attractiveness in energy and resources and as Australian companies look for growth by way of acquisition.

Berube: Government's administrative control on business activities will be loosened in the coming years in China and the M&A process will be shortened and simplified.

According to Securities Law (2014), there is restriction on sales of shares if an investor holds, or holds with any other person, 30% of the stocks of a listed company. In some cases, however, the investor is no longer required to submit a report on the acquisition to the China Securities Regulatory Commission. He can only announce the acquisition in public.

Gould: Deal volumes in 2016 have decreased in comparison to 2015, while there has been an increase in the number of terminated transactions due to a host of factors, including antitrust scrutiny and changes in the U.S. tax laws. Although the overall number of transactions has declined, the combination of competitive pressures affecting strategic buyers and the need for both strategic buyers and private equity firms to deploy capital has resulted in the multiples remaining high, and the competition for quality acquisition targets continues to be intense.

The M&A market in the United States overall continues to suffer from increased uncertainty in the business climate resulting from many things, including possible interest rate developments, Brexit, the upcoming U.S. elections and global terrorism and other security concerns. Of the transactions that have closed in 2016, most of the activity has occurred in the lower ends of the middle market, with deal values between $25 million and $500 million.

Cooke: The recent Brexit Referendum vote has created a climate of uncertainty which does not appear as though it will dissipate in the short to medium term.

However, many investors view the uncertainty and macroeconomic effect of the proposed Brexit as creating potential buying opportunities. They are of the opinion that, amongst other matters, the market fundamentals continue to obtain, the labour market in Europe is overpriced and the fall in value of the Pound in relation to the Euro and Dollar has made the UK labour market (not to mention other goods and services) more appealing. At the time of writing, the FTSE is now at higher than pre-Brexit levels.

Despite the uncertainty, we have seen a number of large strategic transactions progressing in 2016. The outlook for the longer term is much less certain, and a great deal will depend upon the progress and outcome of the UK's exit negotiations with the EU.

Bowtell: Mid-market M&A in the UK is holding up pretty well in 2016 on the whole, even after the UK's decision to leave EU in June. Smith Cooper as a firm are seeing similar deal volumes to 2015, and anecdotally we are seeing similar statistics and commentary from other corporate finance and M&A firms. The latest CMBOR figures for Europe more broadly support this assertion that the mid-market is performing well: overall buyouts by value are down by approximately 50% year on year (€25bn in H1 2016 compared to €50bn in H1 2015) but this is almost wholly due to a reduction (or complete lack) of mega deals in 2016. The number of mid-market deals is about the same in both periods.

Whilst it doesn't account for the slowdown in mega deals in the first half of 2016 the consequence of Brexit is much more likely to be felt at the larger deal size. Many of these business combinations are predicated on international expansion or increased global reach and involve complex global supply chains as well as international, multi-jurisdictional customers. Uncertainty in major markets such as the UK and Europe clearly impacts the potential success of these larger deals significantly.

Zettera: The first six months of 2016 saw a significant decrease in M&A activity in Italy compared to the whole of 2015.

The biggest deals registered in Italy since the beginning of 2016 are the acquisition of "Birra Peroni" (one of the main historical Italian beer brands) by the Japanese corporation Asahi (deal value $2.5bn) and the acquisition of "Artsana" (an old Italian brand of medical and childhood products) by a British investment fund (deal value $1.2bn).

On the other hand, the first half of 2016 has seen an increase in the "small M&A" deals and in foreign acquisitions by Italian companies.

One interesting remark has to be made in relation to the material increase of private equity investments carried out in Italy by "private equity investment funds", showing an opposite trend compared to the acquisitions of Italian enterprises by foreign investors. With regards to the nationality of investors, the main "shoppers" are U.S. investors followed by the U.K.

Villegas: There are currently a lot of opportunities to increase the value of a company through mergers. We can achieve positive results with professionals working in M&A because they strive to deliver the desired results even during uncertain or weak economic times.

Meeteren: The M&A market in the Dutch jurisdiction is expected to stay healthy in 2016 given the high levels of cash available on corporate balance sheets, combined with the current (ongoing) low interest rates, the relatively advantageous value of the Euro and rising confidence in the market. A further rise of cross border transactions is expected as US Companies seem to show an interest in buying middle market European business. Furthermore, it is to be believed that private equity exits will grow and that there will be a further focus on distressed industries.

Why is 2016 proving to be such a difficult year for M&A activity given that 2015 was a record breaking year for both deal volume and value?

Pandey: Following record-setting levels in 2015, global technology M&A volume rose 8% sequentially and 2% year over year (YOY) in the first quarter of 2016, to 1,002 deals, according to EY's Global technology M&A update: January-March 2016. However, quarterly value fell 65% sequentially and 14% YOY. In spite of falling numbers, the quarter still ranked among the top 10 highest-value quarters at US$66.7b.

Seven of the 10 deal-driving trends were led by big data analytics (up 82% in YOY value and 72% in YOY volume). The volume of dealmaking in the following categories also had YOY increases: internet of things (up 22%), health care information technology (up 19%), cybersecurity (up 9%) and advertising and marketing (up 9%). These categories represent technologies that are disrupting non-tech industries like manufacturing, automotive, health care and media.

Berube: It is normal that the volume and value drop after a peak and it is abnormal that they keep climbing year after year in any jurisdiction.

Other external factors justifying a slowdown:

- <u>Terrorism:</u> Western countries encounter a lot of terrorism attacks, which will have an adverse impact to the economics;
- <u>Natural disaster</u>: it is said that the impact of El Nino (a climate cycle in the Pacific Ocean with a global impact on weather patterns) will be huge this year which could seriously impact and influence the development of various countries.

Gould: "Deal digestion" and political uncertainties have reduced deal activity in 2016. After so many transactions in 2015, strategic buyers have had a great deal of merger integration to complete before they launch their next acquisitions. Integration of cross-border transactions can be particularly time-consuming because of differences in cultural expectations. Although North America remained the most active market in the first half of 2016, the unusual U.S. election and the psychological impact from the shocking Brexit vote have created an environment where usual predictions became suspect: that is, a transaction that once appeared to be a sure winner has to be re-examined more closely.

Cooke: 2015 was a record-breaking year, and would have been difficult to surpass. The recent Brexit vote has certainly had an effect on the M&A market. We have seen certain transactions put on hold or become abortive. The uncertainty about the timing of the service of the Article 50 notice to leave the EU has fanned the flames somewhat. There is also general concern about the slowdown of growth in China, the continuing Eurozone crisis and developments in the Middle East which are not exclusive to our jurisdiction.

However, there appears to be a glut of global deals being transacted this summer with Pfizer/Medivation, ChemChina/Syngenta, Alimentation Couche-Tarde/CST Brands, Renesas Electronics/Intersil to name a few. The deal between UK-based ARM by Japan's Softbank is rumoured, ironically, to have been facilitated in part by the fall in value of the Pound. There is some hope in the City that the autumn will see a pick-up in transactional work.

> *Despite the optimistic signals during 2015 and the optimistic expectations for 2016, M&A activity slightly decreased during the first few months of 2016 due to a series of changes*
>
> *- Gerrit-Jan van Meeteren*

Bowtell: Given our answer to question (1) we would dispute this assertion – in the mid-market we continue to see deals being done at a similar rate to last year. 2015 was an exceptional year for mega-deal activity in terms of value with some very large deals done, which skews the numbers when compared to 2016. In the mid-market volumes and values are reasonably consistent across both years.

Our view of 2016 so far is that a minority of corporates have tended to hold onto assets they might otherwise have sold due to the uncertain macro-economic environment and also some uncertainty in pricing. In recent years there has also been a trend for corporate acquirors to hold onto cash, rather than invest it and I think we are still seeing some of that restricting deal flow in 2016.

Zettera: The significant decrease in M&A deals and difficulties encountered in the first six months of 2016 have been mainly ascribed to the strong uncertainties on the global markets, the financial stresses due to low growth of the emerging markets and the general economic weakness of European countries, with low average GDP increases.

A brief comment on "Brexit" is also appropriate. "Brexit" has influenced the uncertainties in and fluctuations of the European markets, especially in the financial environment. Notwithstanding, the acquisitions in the Italian market and the related concentration process led by U.K. which had already started before "Brexit" with the purpose of consolidating the multi-nationalisation of many corporations. It should also be taken into consideration that the U.K. already possesses its own currency and has a favourable fiscal regime for enterprises.

Villegas: It is a difficult year due to widespread global economic problems. .

Meeteren: Despite the optimistic signals during 2015 and the optimistic expectations for 2016, M&A activity slightly decreased during the first few months of 2016 due to a series of changes; the volatile stock market, the economic standstill in China as well as recent negative developments in some of the newly advanced economic countries. Also the current the lack of stability in Europe's political situation; the concern about the Eurozone, Brexit as well as the humanitarian crisis may be to blame for the current decrease.

Have there been any recent regulatory changes or interesting developments?

Pandey: In India FIPB permissions have been relaxed.

Fraser: There had been quite a number of regulatory changes since late last year, dealing with foreign investments in Australia. The vast majority of those changes, in our view, are pushing factors for inbound M&A activities. There are two interesting new developments for consideration. Firstly, the increased cost for Foreign Exchange Review Board (FIRB) approvals with $25k to $100k transactions now attracting an application fee. The second development is the consideration of tax risk in the approval process from April 2016 onwards with the Australian Taxation Office (ATO) now taken into account as a key stakeholder in transactions. There is a lot more analysis, planning, discussions, explaining or potential negotiations with the ATO before a transaction gets approved by the (FIRB). Together with the "Truth in Takeovers" policy adopted by Australian Securities Investment Commission (ASIC) (and consistently adopted by the Takeovers Panel), these have made foreign inbound M&A transactions a lot more difficult to go through. In addition there is significant media attention on some transactions particularly involving the potential foreign ownership of large land holdings. The recent rejection of the potential acquisition of the Kidman Pastoral Holdings by an Asian entity is an example of this.

Berube: The Company Law of the People's Republic of China (PRC), effective since 1 January 2006 was recently revised on 28 December 2013. Amendments came into effect on 1 March 2014. The amendment sets out some general procedures and conditions relating to business combinations regarding, for example, the quorum required to pass a shareholder resolution with regard to a business combination.

The Securities Law of the PRC, effective since 1 January 2006 and revised on 31 August 2014 governs the trades of listed companies (one of the ways of effecting a business combination).

The State-Owned Assets of Enterprises Law of the PRC, effective since 1 May 2009: this law sets out some general requirements for combining state-owned companies, for example, an assessment of assets may be required before combination.

Gould: In 2016, probably the most significant regulatory development affecting the U.S. M&A market has been the adoption of new anti-inversion rules by the U.S. Treasury Department. Prior to the issuance of these rules, there were a significant number of inversion transactions completed and being evaluated for the purposes of increasing the tax efficiency of those companies considering such transactions. Additionally, the US Department of Labor (DOL) has recently issued new rules and regulations regarding the classification of employees for compensation purposes. These new rules will significantly affect virtually every industry and type of organisation, and likely lead to an increase in litigation and exposure in this area. Because of these new DOL rules, potential acquirors should be aware of the risks posed by these rules and carefully evaluate the classification practices of any target they are considering for an acquisition. Lastly, one factor to continue to focus on in the regulatory arena is whether the Department of Justice will continue to look ever more closely at market concentrations in consolidated industries.

Bowtell: The VCT (Venture Capital Trust) investment rules changes in early 2016 means that in future VCTs will only be able to provide growth capital to qualifying SMEs rather than being able to undertake a much broader range of transactions, such as MBOs – which are now effectively not possible with VCT money. Much of the equity funding for SMEs in the UK comes from VCT funds and a substantial portion would have been used to fund MBOs historically. There is now arguably an oversupply of capital for development and growth and this means SMEs can attract finance at great rates currently.

Outwardly to the investors in VCT funds there is little change – you can still invest a significant amount into a VCT and obtain 30% tax benefits to mitigate your tax bill. The Government's recent efforts to address tax avoidance has moved many investors towards government-approved schemes such as VCTs that are recognised as a vital source of funding to grow the UK economy.

Another regulation change is the Apprenticeship Levy which comes into force in April 2017 and which is driving some M&A activity in the training and education market. The levy is seen as a new tax on business and will be introduced for all businesses with a payroll greater than £3m per annum at a rate of 0.5% of the payroll bill, deducted at source each month in the same way PAYE and NI is at the moment. This is part of the Governments vision to create 3 million new apprenticeships by 2020.

Here at Smith Cooper, we too will be a payer of the levy and it is our intention to use this money to supplement our training budget, support the development of our staff and encourage the growth in apprenticeships for our business growth.

Interestingly, we did not know until recently that we can use the levy to train our existing staff through apprenticeships using the funds we pay in, we can recruit new staff and put them on structured apprenticeship schemes and soon we will be able to recruit and train our professional accountants through to chartered status using an apprenticeship.

We do a considerable number of deals in the food and drink retail hospitality sector, which is one hit hardest by the new National Living wage legislation which aims to raise the pay rate of employees over 25 to around £9:20p/h by 2020. The first increase in March 2016 saw the wage rate rising to £7:20p/h; interestingly, the impact of this on the sector has been less than expected, most trying to absorb the cost increase through efficiency and/or hiking sales prices. However, that "fix" surely can't be replicated in subsequent years when the rates go up and that may affect the currently unprecedented high multiples being paid in the food and drink hospitality sector.

Zettera: Italy is experiencing a period of very important reforms related to the whole system: both economic and public-institutional.

The most significant reforms affecting the Italian economy are also aimed at attracting foreign investments; notably the reduction of the corporate tax (IRES) to 24% from 2017, compared to its present amount of 27.5%.

Moreover, the recent "Jobs Act" has introduced a generational change in the Italian labour law system, by introducing the "freedom" to fire employees without being obliged to reemploy the same if a judge deems the economic and/or disciplinary reason of the dismissal is not grounded (not applicable in case of discriminatory dismissal or in some cases of ungrounded disciplinary dismissal), even if the company/employer has more than 15 employees. In such cases, the "Jobs Act" provides compensation for the dismissed employee.

Furthermore, to incentivise the employment of new staff, new regulation has been enforced recently to provide employees with a social security fees exemption during a new employee's first three years (capped at €8,060 per year).

Finally, a further reform concerning the civil procedure law is under discussion. Such reform is aimed at shortening the length of civil trials and providing more certainty regarding the outcome of a civil litigation case.

On the public-institutional side, it is worth mentioning that the constitutional reform now waiting to be confirmed or not by a public referendum to be held in November, is mainly focused on the deep reform of the laws approval procedure in order to have a faster and materially higher "law production" and to dramatically reduce the cost of politics to the community. Such reform has to be taken into account in light of recent Italian electoral legislation reform aimed at providing political stability to Italy in the years to come.

Villegas: Corporation law in Mexico provides that a minimum of 5% should be separated annually to form the reserve fund to cover a fifth of the capital.

A simplified joint-stock company may not exceed 5 million pesos. If a simplified joint-stock company exceeds this amount it must be transformed into another corporate regime. A simplified joint-stock society is one that is constituted by one or more individuals who are only required to pay their contributions that represent their equity contribution.

Meeteren: The legal framework in The Netherlands applicable to Dutch private limited liability companies has become more flexible in recent years. As a result Dutch companies (B.V. and N.V.) can now adapt a one-tier board structure, which is more familiar internationally. The new legislation has abandoned a number of mandatory provisions. For example, some of the existing requirements as to share capital have been abolished, and tailor-made transfer restriction clauses are now possible. Dutch M&A legal (and tax) professionals and cross border transactions benefit from this new legal entity. Due to the changes in legislation we notice a trend that the articles of association of a target company are brought in line with the current changes in legislation as well.

Five megamerger deals (valued above $10bn) collapsed during Q1-2016. To what extent have attitudes towards megamerger deals changed? Is regulation increasing M&A failure?

Pandey: In our opinion the decrease is due to the global economic slowdown.

Farkouh: We would suggest the current climate is that many countries are trying to protect their borders, tax base and national interests, which has led to both new regulations and the strict enforcement of existing legislation. The reason cited for the implosion of the $160 billion deal between Pfizer and Allergan was newly issued U.S. Treasury rules aimed at curbing tax inversions; while opposition from antitrust regulators in the U.S. and Europe led to the demise of the Halliburton and Baker Hughes transaction.

Antitrust regulators have also been cited for the collapse of the Canadian Pacific Railway and Northern Suffolk proposed transaction. Most of these laws and regulations have been in effect, in some form, for many years and therefore dealmakers and companies will need to interpret these rules and structure their transaction based on the current economic and social climate.

Berube: There are several factors affecting M&A deals such as the expected profit, economic conditions, market expectation, safety (anti-terrorism), buyer and the seller's own business and so on.

With regards to whether regulation is increasing M&A failure, we believe that except for those deals involved in prohibited and/or restricted industries due regulation, we don't think the increase of failure is caused only by regulations.

Gould: Given the continued consolidation and changes in the regulatory landscape in the health care and health insurance industries in the United States, the antitrust regulators have closely scrutinised transactions in these sectors. Recently, there also seems to have been an increased focus by the regulators on reviewing proposed consolidations of companies that serve the business community, which is in contrast to their traditional focus of acting to protect consumers. Overall, the U.S. competition authorities have grown increasingly sceptical of the megamerger-size transactions in industries that are already heavily consolidated and have successfully challenged a number of these attempted transactions. In addition to focusing on the health care and health insurance industries, the U.S. antitrust authorities have also been very active in scrutinising deals in the energy, office equipment and food and beverage sectors.

Bowtell: I don't think regulation is increasing M&A failure. Public interest in the corporate world is at an all-time high, and in some part this is driving increasing political intervention. Social media has empowered the individual to create substantial campaigns and publicity around negative corporate activity and governments need to be seen to respond. Businesses which are perceived as 'cheating' the system, whether through anti-competitive behaviours or through complex tax planning schemes are firmly in the spotlight.

The Pfizer/Allergan deal which collapsed earlier this year is an example of a deal which was seemingly built primarily on the tax benefits of a combination of the two businesses, with other synergistic benefits a secondary concern. As soon as it was likely this tax benefit was not going to materialise (due to government intervention) the deal was called off. So whilst I see increasing regulation as a necessary hurdle to overcome in deals I don't see it as a primary driver for failure.

Villegas: An increase in regulation would be a big problem for M&A activity. Companies tend to merge if one party is struggling to achieve their desired results; for instance, they may be making poor financial forecasts or are simply struggling to get ahead. If regulation increases the amount of economic problems within a company is likely to decline resulting in a lower appetite for M&A transactions.

What types of transactions are at greatest risk of an antitrust challenge?

Berube: This question is wide! The risk of transaction will be subject to the local laws and regulations of the transactions location. If such transaction is not regarded as antitrust in most of countries, it may be the case in some countries. For example, Coca Cola submitted to purchase Huiyuan Juice in 2008 but the transaction was turned down by the Ministry of Commerce of People's Republic of China in 2009. According to the common rules in most countries, the acquisition of a juice company will not consist of monopoly. However, the Chinese government turned down such transaction using the risk of monopoly by a foreign company.

Zettera: Like many developed countries' antitrust systems, the Italian antitrust legislation sets forth specific and strict rules to be implemented in order to guarantee the actual maintenance and development of a really competitive market.

The established Italian Antitrust Authority holds several powers of intervention in the economic and financial environment to prevent and/or change entrepreneurial scenarios which may hinder the development and/or maintenance of competition in a specific business sector.

Among the aforementioned powers, there are also those that are provided for handling M&A deals that could hinder competition in the particular industry/ies they relate to. Such powers mainly consist of obliging the companies involved in the deal to provide formal communication in advance of the pending transaction with all the relevant specifics thereof to the Italian Antitrust Authority to obtain its authorisation to finalise the notified transaction or to finalise it under some prescriptions provided for by the same Antitrust Authority.

The abovementioned notice must be given when the aggregate Italian turnover of the involved companies *and* the Italian turnover of the target company respectively exceed €495 m and €50m (such thresholds are annually updated by the Italian Antitrust Authority).

Villegas: Mutual non-financial loans are being targeted due to money laundering concerns. Establishment and modification of legal persons without documents supporting movements can be anti-veridical changes.

Meeteren: The types of transactions that are at greatest risk of an antitrust challenge are to be found in the medical, energy, chemicals and supermarket retail sectors. These sectors are segments of the relevant market in the Netherlands which just consist of a few players. However, on the other hand we have to keep in mind that the Dutch market is focused internationally. Therefore a lot of mergers and acquisitions have a cross border element. Apart from the above the local Dutch market itself is to be taken into consideration. There are a lot of family companies which operate in a particular area within the Netherlands. Regionally, such family companies can be very strong e.g. the beer company Bavaria. Locally such a company can have a very strong position which means when it takes over another local enterprise, there is always a chance of national antitrust legislation being applicable.

When thinking about due diligence associated with M&A, which areas are the most important for your organisation?

Schaier: Generally, every due diligence report should include all relevant financial, tax, economic and legal aspects with potential impact on the target's purchase price. Even if the target's worth does not significantly depend on its "technical" assets (industrial and intellectual property rights, technical know-how, research & development) it should still be subject to a technical due diligence verification and its report.

Within the financial/tax due diligence the annual statement of accounts of the last years, any relevant financial and audit report, the current business plan, a profit and loss statement as well as any investment plan surely are the most important factual basis for our M&A team. When it comes to the legal due diligence, the basic contracts such as articles of association, supply and service contracts, cooperation agreements, granted contractual guarantees and employment contracts are the most relevant pieces of information. Additionally, existing insurances and an overview on all pending out of court disputes and at least on all mayor court proceedings should be considered.

Pandey: Financial Matters: the buyer will be concerned with all of the target company's historical financial statements and related financial metrics, as well as the reasonableness of the target's projections of its future performance.

Technology/Intellectual Property: the buyer will be very interested in the extent and quality of the target company's technology and intellectual property.

Strategic Fit with Buyer: the buyer is concerned not only with the likely future performance of the target company as a stand-alone business; it will also want to understand the extent to which the company will fit strategically within the larger buyer organisation.

Material Contracts: one of the most time-consuming (but critical) components of a due diligence inquiry is the review of all material contracts and commitments of the target company.

Farkouh: In our experience, one of the most important components of any M&A transaction is thorough due diligence. Although we are primarily involved in tax due diligence, we feel it is our responsibility as advisors to ensure that operational and legal issues are also considered. We're primarily concerned with potential tax liabilities, both disclosed and undisclosed, that might be inherited. We examine deferred tax liabilities (which have to be paid in the future), and whether or not our client will be able to utilise acquired tax attributes. Other considerations include pensions liabilities, environmental liabilities (depending on industry), and funding.

Fraser: Over the last several years, including the current financial year, the due diligence emphasis has probably been reasonably consistent. Our focus has remained on the commercial aspects of the transaction including both the value of the target organisation and the structure, including the taxation aspects, of the deal itself.

The next significant area for focus is delivering confidence that the acquiror can rely on historic financial statements and also the financial projections in terms of cash flows/budgets. This is particularly relevant for smaller deals. In this respect we are seeing a number of deals from overseas whereby both differences in methodologies, e.g. valuation methodologies and culture, means that both parties confidence in the diligence assessment and valuation is an agenda item.

The skills and confidence of key executives in the target entity is also an important consideration, particularly where many of the deals are at less than 50% of the target. It is often the case where overseas investors want to effectively have a joint venture with the target and secure both equity and continuity of existing key executives to operate the business albeit with restructured ownership.

Finally, there has also been an emphasis on contingencies such that there are "no surprises" after the due diligence process is complete.

Berube:

a) Collection of legal documents (commercial, corporate, labour, environmental, financial, loan, lease, etc.) – we cannot guarantee the parties will provide all the necessary documents
b) Review of legal documents –
   i) to check if the documents are duly executed
   ii) to check if the original copy is required
   iii) we may need to check with the other contracting parties
c) onsite inspection
d) communication with the key personnel of the company, such as the financial manager.

Financial due diligence should also be done.

Gould: As sophisticated institutions focus more on building and maintaining their portfolios of intellectual property, as opposed to hard assets, it is more critical than ever that the due diligence review of intellectual property assets be conducted thoroughly and that all parties involved in that evaluation understand how the potential acquiror anticipates realising its short- and long-term business goals through the utilisation of the target's intellectual property. With respect to the acquisition of U.S. companies, the high levels of regulation and litigation related to employee benefits/compensation and employment practices present a heightened level of risk for acquirors, and even an abbreviated due diligence evaluation should include a thorough review of these areas.

Cooke: Clearly much depends on the nature of the transaction and the target. However, commonly we will focus on issues relating to tax, intellectual property, material contracts, employment and pensions, and real estate.

Other issues such as litigation and compliance arise on a more infrequent basis, but are no less important.

Bowtell: Generally, there is more due diligence performed on deals as each year passes. There will always be financial and commercial diligence undertaken but increasingly we are seeing political (covering policy and regulatory), particularly in highly regulated markets or those markets which are heavily influenced by public policy. Investors are attracted to these types of businesses as there can be good long-term revenue visibility but it can be a double edged sword as governmental or regulator intervention can also completely change the dynamics in a market as we saw with solar energy subsidies in 2015.

There has also seen a change in approach to diligence from some investors. We have seen a focus on shorter scopes which are aimed at investigation into specific identified risk areas, typically fairly early on in a process. This is much more time and cost efficient from an investor perspective as risks are either mitigated and the deal progress as normal or it aborts, typically at an earlier stage and for less abort cost. This is something we see as a focus area for us in the coming 12 months as it requires a different, more senior experience-led approach.

Zettera: The areas of M&A related due diligence that are of strategic and material importance are strictly linked to the kind of business underlying the target

company. In any case, the areas that a due diligence activity must cover are: (i) corporate; (ii) permitting; (iii) tax and accounting; (iv) financial; (v) labour and employment; (vi) intellectual property; (vii) commercial contracts; (viii) real estate.

The preliminary results of the due diligence activity on the aforementioned areas are essential to plan the subsequent steps in terms of: (i) widening the due diligence's areas by involving further specific aspects/subareas to be examined and (ii) establishing what could be contractually solved, what can be solved before the closing (through an agreed "condition precedents" list) and what cannot be solved, so to outline the consequent effects on the pricing and/or the feasibility of the deal.

Villegas: The most important area in an organisation is finance because the merging or acquiring company will want to analyse financial statements before completing a transaction. If the financial statements suggest the company is almost impossible to save it will be very difficult to attract an acquiror.

Meeteren: For our organisation the most important aspects in a due diligence investigation are the following: all matters concerning company law, intellectual property law, lease law, banking and securities. Our company has a main focus on the aforementioned areas of expertise. These areas are also very prominent in a due diligence investigation. Other important issues concern the area of labour law, for which we have our preferred suppliers with whom we cooperate very closely. A very important aspect in our firm is the international law aspect. We are specialised in international private law, which means we can answer all relevant questions concerning international mergers and acquisitions which have cross border aspects in them. We believe this is a unique selling point of our organisation.

Cross-border M&A is currently at the highest YTD level on record. What are the key drivers behind the rise in cross-border M&A?

Schaier: There are many reasons why cross-border M&A is at the highest YTD level. Vibrant globalisation and active deregulation are major driving forces for cross-border M&A on the macro level. Additionally, corporate culture and policy are highly affected by shareholder pressure to create value via horizontal and vertical optimisation strategies. Many companies can explore business opportunities based on solid financial fundamentals and strong cash reserves and they look for enhancing options domestically and – with growing enthusiasm – abroad.

The rationale behind this is economic diversification over several regions and relevant markets. International markets show a swift development. A growing number of also mid-sized and smaller companies can overcome market entry barriers and try to buy country-specific knowledge. In fact, such a diversification strategy is plural: Achievable advantages are inter alia the benefit of different time zones for trading, the opportunities of emerging markets, digging into fast evolving technology and the internalisation of regulatory and structural arbitrages – which means much more than realising comparative cost advantages.

Over the last couple of years (not to say decades) many political initiatives have brought (sometimes significant) regulatory reforms. Often accompanied with active privatisation this policy has opened windows of opportunities. Set-backs such as the GFC mitigated certain positive effects, but risk management strategies such as QE by central banks have also partially eased financial M&A conditions (willingly or indirectly).

Industries adapt to an ever-changing economic landscape and adjust to times of disruptions: Companies apply M&A strategies to preserve margins, rationalise costs and to achieve strategic advantages. Relevance, risk management and sustaining strategic positions and resources are key in the demanding business environment we all live in.

Pandey:
- Strengthening core business
- Staying ahead of competition
- Growth in our core geographic markets
- Diversifying business areas
- Opportunistic acquisitions
- Financing / balance sheet pressures
- Diversifying risk portfolio
- Shareholder pressure
- Internalising outsourced functions

Fraser: The weak (and steadily weakening) Australian dollar at 70-75 US cents levels, coupled with the current low interest environment, has made Australian assets very attractive. The Quantitative Easing by the ECB in Europe has resulted in increased funding available for M&A activities.

The Chinese economy is rebalancing from an investment led, export oriented economy to a domestic consumption driven economy. While it may mean lower economic growth and slowdown in respect of the resources sector, it is expected that M&A activities in other sectors will increase.

In terms of Japan, the Yen remains weak and corporate profits have been good. However, they are experiencing decreased domestic consumption, decreased real earn-

> *What was once considered foreign, exotic or uncertain is now known and familiar. More and more business leaders have global experience*
>
> *- Benjamin Gould*

ings, and an ageing population. So, Japanese companies are keen to go cross border looking for growth aspects.

Berube: Give access to new capital: Chinese capital purchased/invested foreign football clubs – such as the Inter Milan, AC Milan, Aston Villa, Atletico Madrid etc. As known to all, the European's economics is in depression, many football clubs, which are not profitable, are struggling to survive and their bosses growing tired of continually injecting capital. Hence, they have no choice but to sell clubs while the Chinese capitals are encouraged by the State Council's policy to invest in sports industry. In addition, there is a rumour that one of the state leaders likes football very much so the Chinese capitals prefer to purchase/invest foreign football club.

Faster growth than organised growth in a new market: Gaining local knowledge of the market and commercial pitfalls. Cross-border M&A enables foreign buyers to establish a local market quickly. A local acquisition can also help utilise local people and connections.

Gould: The world is shrinking and opportunities across borders are more visible. What was once considered foreign, exotic or uncertain is now known and familiar. More and more business leaders have global experience. With greater comfort with and knowledge of economies in other parts of the world, business leaders are quicker to see opportunities and act upon them. In addition, globalisation is placing great pressure on domestic middle market companies and family businesses. Their customers are now operating in other countries and their customers are meeting foreign suppliers. If these domestic companies and family businesses do not expand with their customers, then their own domestic sales might, at some point, be lost to those foreign suppliers entering the domestic market.

Cooke: Multiples on cross-border M&As are certainly at a very high value in 2016. The performance of the cross-border M&A market from the UK's perspective is, however, very mixed. This has in part been driven but such factors as the Brexit Referendum, the Presidential nomination process and subsequent campaigns in the US, and a number of other parliamentary elections being held worldwide. This can also, in part, be put down to fewer mega-deals being struck, whilst other jurisdictions may be seeing positive trends based on smaller transactions being pursued more evenly across the market.

What are some of the key issues that need to be considered by a foreign investor when planning an investment in your jurisdiction?

Pandey: As a preliminary step towards evaluating a potential acquisition in India, an acquiror must consider the rules governing foreign investment into India. India's foreign direct investment rules are prescribed by the Foreign Exchange Management Act, 1999 ("FEMA") and the rules and regulations issued thereunder (the "FDI Regulations").Foreign direct investment policy is also determined by the Department of Industrial Policy and Promotion ("DIPP") directives issued by the Secretariat for Industrial Assistance ("SIA") in the Ministry of Commerce and Industry. The principal government agencies implementing India's foreign investment scheme are the Foreign Investment Promotion Board ("FIPB"), which is a unit of the Ministry of Finance and India's central bank, the Reserve Bank of India ("RBI")

Fraser: The recent regulatory changes mean there is a lot more regulation and stringency that foreign investors need to consider in their planning process.

Bidders need to be aware of the time it will take for various review and approval processes. A foreign takeover bid took an average of about 110 days to close, in 2015. However, as mentioned earlier, there have been quite a number of FIRB changes since December 2015 and the review process now involves the ATO as well. Furthermore and if there are competition concerns, ACCC (Australian Competition and Consumer Commission) notification is required and if this cannot be done concurrently with other application processes, it can take additional time (on average public merger decisions take about 16 weeks).

Consideration also needs to be given to the tax treatment of the proposed post-merger entity to ensure it is well planned. While a proposed structure may be most desirable and tax effective for the bidder, it may not be acceptable from the Australian Government or the ATO's perspective. While planning, it is very important to balance the risk, especially as the ATO is now considered a key stakeholder within the FIRB review process.

Berube:

- Chinese currency control is a key aspect in China for investing and repatriating profits.
- Dealing with local labour markets which are very pro-employees
- Dealing with a high level of bureaucracy and red tape
- Restriction of acquisition in some industries protected by the government

Some of the new controls are:

- Foreign-exchange administrator and the State Administration of Foreign Exchange set limits on the amount of money Chinese bank-card owner can take money from ATMs outside China;
- It implemented a new guideline to supervise individual purchases of foreign currency;
- Banks started to set limits to charge the purchase of foreign insurance policies;
- Banks are told to limit foreign-currency transactions;
- Companies are required to get more than ever approvals before they can exchange CNY for foreign currencies.

Gould: Most foreign acquirors investing into the United States for the first time find the pace of competing for and successfully completing transactions in the U.S.

to be a challenge. There are typically a number of reasons for this, but most often the difficulties stem from cumbersome internal approval processes at the top levels of the organisation and the failure of the acquiror to delegate sufficient authority to their deal team to allow that team to have the flexibility to successfully compete with other sophisticated buyers.

From a purely legal standpoint, the least understood and most commonly troublesome issues for foreign acquirors relate to employment practices, employee benefit plans, and generally, the multiple levels of regulation (by national government, state governments and multiple local government subdivisions) to which U.S. companies are subject because of the federal structure of the United States legal system.

Cooke: Our jurisdiction has tightened up greatly on issues relating to compliance and transparency in recent years. Companies are now required to create and maintain a register of people with significant control, for example. Investors should factor this in when investing in the UK as compliance issues can slow down a transaction and, in extreme cases, prevent a practitioner from acting on their behalf.

Foreign investors should avail themselves of good quality tax advice at an early stage in a transaction, as it commonly has a tremendous impact on the manner in which many transactions are structured. Many investors have seen real estate as an area of high returns with acceptable risk margins. An investor would be well advised to procure legal and tax advice in respect of real estate investments as both the law and tax in this area are complex.

One should also observe currency fluctuations closely. The pound is at historic lows against many major currencies which creates buying opportunities. New auto-enrolment pension laws have been implemented in the UK which means that companies are obliged to make certain payments into pension schemes on behalf of their employees.

Zettera: A foreign investor looking to invest in Italy should take into account several issues, primarily related to the kind of business the investment is targeted to.

Putting aside the cultural norms, mindsets and consumer attitudes that should always be considered from a strategic perspective (depending of the type of investment), the key issues a foreign investor should focus on are the ongoing reforming policies that Italy is implementing, as referred to previously, which aim primarily to: (i) lower the fiscal burden on enterprises and entrepreneurs, (ii) reduce and accelerate the administrative procedures and requirements for operating a business; (iii) provide Italy with political stability, and ensure reasonable foreseeability and certainty in legislative stability and the applicable rules; (iv) favour and incentivise the employment of new staff through fiscal incentives and flexibility in the employer/employee relationship; (v) shorten the length of civil trials and provide more certainty to the outcome of a civil litigation case.

Moreover, some further fiscal advantages already enforceable, such as the "participation exemption" scheme, might stimulate a foreign investor to establish or widen its business in Italy.

Meeteren: When a foreign investor considers investing in the Netherlands there are a few key issues which he has to keep in mind. First of all, it should be taken into consideration that the Netherlands is strategically well located within Europe, and therefore is often used by foreign companies to cover several European markets. Secondly, as to tax matters, it is noted that the Netherlands have a very liberal and advantageous tax climate in comparison to other countries. The Dutch tax system has many advantages for holding companies. Therefore, it can be very enticing for a foreign company to have its head-office located in the Netherlands, or even to acquire a Dutch company. However, there are some considerations for foreign investors to take into account when involved in the acquisition of a private limited company. For example, under Dutch law parties have the freedom of contract, which means they are free to determine the terms of the agreement they want

to enter into. However, the freedom of contract is limited by the principle of "reasonableness and fairness". This principle demands that parties to an agreement treat each other in a reasonable and fair way. As a result acquisition agreements, as well as certain legal actions that are taken with respect to such an agreement, are also subject to the principles of "reasonableness and fairness". We would like to point out that due to the good faith principle "subject to contract"- clauses will not always have the effect that parties expect in relation to these clauses. It should also be taken into account that Dutch law does not provide for one single code regulating acquisition agreements. Various regulations and codes as well as case law are applicable, and have an impact on the content of acquisition agreements. Having said this it is to be noted that there are only limited areas in which Dutch law will override the terms of an acquisition agreement.

It should be pointed out that in the Netherlands it is possible to make a distinction between the actual operation of the company and its primary assets. For example, it is possible to place the primary valuable assets in a separate entity, with the entity operating separately from the actual company. By constructing this vehicle the valuable assets are not at risk when the actual company experiences problems. Foreign investors should also note that in the Netherlands it is possible to hold different kinds of shares in companies. It is possible to make a distinction between different kinds of shares. One can be very flexible in the use of shares. It opens up the opportunity to create shares with a dividend right and a non-voting right only. This can be very interesting because it can, for example, attract investors. It makes it possible to have all kinds of arrangements which are interesting to the company and its financing without giving the shareholders too much influence in the operating of the company.

Which markets and industries are currently proving most popular?

Schaier: We see a record-breaking $3.8 trillion in M&A deals including several mega-deals in 2015.

There are different "hot" business sectors for global M&A in 2015:

- Energy, Mining & Utilities
- Pharma, Medical & Biotech
- Consumer
- Financial Services
- Industrials & Chemicals
- Technology

FY 2016 has been a busy year for merger and acquisition activities, too. In particular, the diverse field of SMEs (revenues between $5 million and $2 billion) aims at revenue growth after certain sluggish years spent focused on preserving liquidity and bolstering balance sheets following GFC.

In our view, the following business sectors can be expected to globally show significant M&A activity in 2016:

- Technology
- Pharmaceuticals/Biotechnology
- Healthcare
- Media
- Consumer markets (food & beverages, consumer packaged goods, non-retail)
- Medical Devices
- Health Plans/Insurers
- Energy

Farkouh: Based on recent trends and our own experiences, we see technology, pharmaceuticals, biotechnology, and healthcare being the most popular industry sectors. It's probable that technology, which has seen exponential growth both domestically and globally in recent years, could become the most prominent market.

Fraser: The Energy and Resources sector declined for the fourth year in a row. However, this sector still dominated M&A activities last year and remains significant although they mainly represent consolidation of domestic businesses.

The Life Science and Healthcare sector is expected to have increasing M&A activities. An ageing population in developed countries globally has contributed to increased demand for healthcare services. Furthermore the support industries including vitamins, supplements and health products are still in great demand from China. Australia is considered one of the leading 'clean' countries to source these products from.

Thanks to the China-Australia Free Trade Agreement, it is also expected that M&A activities will increase in the Agricultural Business and Infrastructure sectors.

Berube: In general, the emerging markets are currently proving most popular because of the low salary and low cost. Companies in developed countries like to invest in emerging market because of the high salary and high cost in their own countries. China, Southeast Asia – including Vietnam, Thailand and India – are proving most popular.

With regard to the popular industries, Information technology would be useful:

- IT changes people's life – for example, people like to communicate with each other with Facebook, Twitter, Snapchat.
- More and more people use cell phone and tablets instead of PCs and laptops, while the launching period of new cell phone and tablet keep is very short – people like to pursue new products. China moved from no phone to multiple ownership of mobiles by each individual. The middle class can afford it.
- Alphabet, Apple, Facebook, Amazon, Alibaba play a very important role in the market share.

Luxurious brand and middle class products for household products are good industries to invest as the middle class has more money to spend and believe in buying foreign products/technology.

Services/Products and Technology for a growing population is in demand too. From a sociology perspective, the cultural habit for kids to look after their aging parents is changing. Hence ageing population will need to be looked after in different ways, more like in the West.

Cooke: Real estate still continues to prove popular with foreign investors. The market has proven to be very resilient to macroeconomic shocks, and shows signs of dealing more robustly with the fallout from Brexit than other industries. Certain property funds have suffered from the withdrawal of funds from investors, particularly in the immediate aftermath of the Brexit vote. However, it appears that the values and returns in the real estate markets have, for the time being, not fallen as far as many had feared.

IT and software also continues to be very popular in the UK, particularly the Fintech sector which has seen records sums invested in recent years.

Bowtell: Fintech is a space which still attracts huge investment despite the lack of understanding about what actually constitutes as fintech! Investment in the sector has grown from about $1bn in 2008 to $12bn in 2015, which the biggest growth coming in Europe, particularly in London.

Increasing financial regulation, the increased use of technology by the consumer and the need to remain competitive are all key drivers. These days everyone has a smartphone and more and more fintech is driven at this device, whether it's simply the ability to pay bills on the move, the ability to pay someone just using their mobile number, or running your own business information and KPIs through an app. Most fintech businesses have one thing in common – they are all disruptive, rejecting the old ways and delivering something more easily or more cost effectively. Financial Services is often at the forefront of innovation because it is fiercely competitive and I predict continued investment in this space for years to come.

Zettera: Notwithstanding the general decrease in M&A deals during the first six months of 2016, looking at Europe, Germany appears to be a market experiencing a countertrend with an increase in deal volume so that it would be appropriate to infer that the German market is currently very attractive.

Focusing on Italy, taking into account what has already been said above, it is worth mentioning that, amongst others, industries such as hotels and leisure, renewable energy, manufacturing and IT are quite popular for M&A.

Hotels and leisure are strong industries in Italy due to the nation's renowned touristic appeal and for public safety reasons, particularly in light of the widespread terrorism attempts around the world in recent years which have evaded Italy.

With reference to the renewable energy sector, Italy is still very attractive both for the secondary market of the already built, operating and publicly incentivised plants and for new projects, since public incentives on renewables (aside from solar) have been recently reintroduced.

In relation to manufacturing, Italy is the second biggest market in Europe for manufacturing. The large scale of existing small and medium-sized manufacturing enterprises are currently very attractive to investors.

Finally, IT and telecommunications are developing in Italy due to the "digital agenda" under implementation to drive Italy forward as a modern, efficient and widely well-connected country. As a result, large scale M&A deals are quite common in these areas.

Meeteren: At the moment, the health care, telecommunication, financial, technology, pharmaceuticals, energy, oil and gas sectors are the most popular. Due to the competitive elements within these markets M&A has proven to be a more effective tool than organic growth.

How have falling oil & gas and weakened commodity prices affected M&A activity?

Schaier: Oil and gas prices (combined with volume management of producing countries) are key factors that influence M&A activities. Low oil and gas prices impact growth and investment across a broad range of global industries, successively affecting non-oil and gas sectors across the board. The oil and gas companies' valuation is heavily tied to respective commodity prices, also considering various cross-relations with size and development of reserves and (potential) areas of exploration.

Given the latest price and market disruptions, the energy sector is more active than in recent years. Generalising to a certain extent, companies suffer from low oil and gas prices. Tackling these conditions, increased global transaction activity mirrors certain trends of revision, consolidation and adaption. Mitch Fane (heading E&Y's Oil & Gas Transaction Advisory Services) clearly summarises: "On one hand, upstream companies with strong balance sheets operating in low-cost basins will be well-positioned to not only weather the dip in prices, but also scoop up assets from those with less liquidity or more capital intensive assets. At the same time, companies across the O&G segment will be pressured to review and reshape their portfolios to optimise capital and create higher returns."

Upstream operators put significant pressure on oil field services supplies to reduce costs and, consequently, oil field service firms fight to retain market shares through both innovation and consolidation in the form of M&A. But uncertainty about the future price levels of oil, gas and commodities as well as the volatility in the oil price adversely affect expectations and actions: In a nutshell, it is harder for sellers and buyers to agree on valuation. Thus, a certain decrease in terms of deal count and value cast a cloud over the recent months.

Farkouh: Prior to the collapse in energy and other commodity prices, there was a large gap between the price buyers were willing to pay and what sellers were willing to accept. Due to the fall in commodity prices, smaller companies with weaker balance sheets are now realising they will have to accept a lower price as they face fewer options (such as debt or refinancing of debt) to ensure that they remain a viable company. As the expectations between buyers and sellers become more aligned and realistic, we expect the price gap to narrow significantly. Where we typically add value in this activity is aiding our clients in further bridging that gap by providing viable, creative solutions which maximise the value of both the buyer and seller.

Another major factor is large banks having substantial exposure to the oil & gas industry. This exposure reduces the overall credit capacity, particularly in their ability to lend to the energy industry, and has created an environment in which it's more difficult for businesses in all industries to obtain loans. Furthermore, since the recent financial crisis, new and increased regulations (including Dodd Frank and Basel III) have increased banks' capital requirements which – in addition to stress testing – has further restricted banks' ability to lend. The availability of financing is a key driver in M&A activity.

Berube: It depends on whether the country is exporting or importing oil & gas. If the country is exporting oil & gas, then the country's income will decrease, and vice versa.

If the oil & gas price is falling, the importing country's disposal income will increase, resulting in increased consumption. As a result, the country's economy will improve.

However, as we reiterate many times, M&A is a business activity affected by complicated factors. Therefore, we don't think we should attribute the decrease in M&A activity to the the falling oil & gas and weakened commodity price.

What are the advantages and disadvantages of the various different types of deal structures?

Schaier: There are generally three alternative forms of structuring a corporate deal: share deal, asset deal and merger.

Share Deal: The buyer aims at acquiring shares of the target company. The target company remains intact, but with new ownership. The key for a successful share deal is to negotiate representations and warranties concerning the business's assets and liabilities to ensure a complete and accurate understanding of the target.

Mostly, the buyer acquires a controlling majority, if not all, of the seller's voting shares. In many cases, due structuring can achieve that proceeds are taxed at a lower capital gains rate. Additionally, such sales are less likely to disrupt the company's day-to-day business. From the buyer's point of view, one advantage of this deal structure can be that the target continues running operations, helping the buyer to mitigate at least certain aspects of a lengthy — and expensive — integration. The buyer assumes all contract positions of the target, intellectual property and assets. On one hand, this often facilitates the change of control and thus makes it easier to derive value from the acquisition in a shorter time frame. On the other hand, one has to keep in mind that there are contracts which can be terminated in case of a change of control. A possible downside is the fact that the buyer unavoidably legally assumes all liabilities of the target company, deriving from contract positions as well as from taxes etc.: Deals gone awry and the reduction of value is often based on this fundamental risk position of the acquisition. However, a thorough legal and financial due diligence can help to reduce the effective risk of such a deal structure. Sound deal experience of professionals and a good project management are key to lessen the individual risk exposure. And, let's face it, if the target company has dissenting (minority) shareholders, a calibrated share purchase won't make them go away. In fact, dissenting shareholders (depending on the scope of their rights) can become an uncomfortable thorn in the buyer's flesh.

Asset Deal: The buyer purchases only (certain) assets and assumes liabilities that are specifically indicated in the purchase agreement. Buyers often favour this structure because they can cherry-pick only the assets they wish to acquire and the liabilities they wish to assume. Sellers often don't prefer this deal structure because it can have adverse exit tax consequences in comparison to other deal structures and due to the allocation of the purchase price to various assets. The buyer has to consider size, allocation and mere existence of amortized tax benefits. Furthermore there usually remains a rest which the seller has to dispose of or use otherwise.

This structure is often used when the buyer wishes to acquire a single division or business unit within a company or if there are certain risks already identified in the target company (e.g. insolvency). This structure can be time-intensive and complex, because of the extra effort involved in identifying and transferring only the specified assets. In case the transfer of certain contractual positions is essential for a buyer, one has to keep in mind that the consent of the contract partner is needed. In general, the (remaining) target company continues to exist after the sale, though in many cases it may wind down operations soon after the deal closes.

Buyers enjoy many advantages with this structure. An asset sale enables them to cherry-pick assets, choosing not to carry over certain liabilities that might prove burdensome such as accrued benefit obligations. And by avoiding the rights of appraisal issues that typically surface in a share deal or merger, buyers can sidestep complaints made by dissenting shareholders. On the other hand, buyers may lose desirable non-transferable assets such as licenses or permits. An asset deal can also trigger a costly tax event, hindering the transaction or requiring both buyer and seller to agree on a price that takes mutual tax implications into consideration (exit tax, tax benefits by step up, depreciation/amortization). Consequently, such sales can be time-consuming and it's possible for sellers to get stuck with liabilities that the buyer declines.

Merger: Two or more companies join forces to form one legal entity. The "currency" of such a deal can be cash, shares of the buyer or a calibrated combination. A key advantage of a merger is that it generally requires consent of only a majority of the target company's shareholders—it could be a good choice when the target company has a diversified ownership structure with certain anchor investors.

The term "merger" is thrown around a lot, but strictly speaking a merger occurs when two distinct companies agree to legally form a combined entity. Either the buyer's or seller's company is reconstituted or they start with a fresh "NewCo". The upside of a merger can be simplicity, even though the proceedings are quite formal and have to be adhered to closely. Furthermore there are requirements regarding the timeline to be met. But all contracts and liabilities are transferred to the new entity, thus requiring little negotiation about such terms. However, comparable to a share purchase, the buyer is on the hook for all of the seller's obligations. This risk can be mitigated by establishing an acquisition vehicle first (a new company acting as the acquiror which is legally separate from the original business operations of the economic beneficiary).

To sum up, while choosing the preferable deal structure various aspects have to be taken into consideration and the respective advantages and disadvantages of each possible structure have to be weighed against each other.

Pandey: The following are some of the advantages:

- The most common reason for firms to enter into merger and acquisition is to merge their power and control over the markets.
- Another advantage is synergy, the magic power that enables the increased value efficiencies of the new entity and it takes the shape of enhanced returns and cost savings.
- Economies of scale are formed by sharing resources and services (Richard et al, 2007). The union of two firms leas to overall cost reductions giving a competitive advantage, that is feasible as a result of raised buying power and longer production runs.
- Decrease of risk using innovative techniques of managing financial risk.
- To become competitive, firms have to be up to date on technological developments and dealing applications. Through M&A with a small business with unique technologies, a large company will retain or develop a competitive edge.
- The biggest advantage is tax benefits. Financial advantages might instigate mergers and corporations will use tax-shields extensively, increase monetary leverage and utilise alternative tax benefits (Hayn, 1989).

The following are some of the difficulties encountered with a merger:

- Loss of experienced workers aside from workers in leadership positions. This kind of loss inevitably involves loss of business understand and on the other hand that will be worrying to exchange or will exclusively get replaced at nice value.
- As a result of M&A, employees of the small merging firm may require exhaustive re-skilling.
- Company will face major difficulties thanks to frictions and internal competition that may occur among the staff of the united companies.

There is conjointly risk of getting surplus employees in some departments.

- Merging two firms that are doing similar activities may mean duplication and over capability within the company that may need retrenchments.
- Increase in costs might result if the right management of modification and also the implementation of the merger and acquisition dealing are delayed.

Farkouh: This is really where we earn our keep and add the most value to our clients. Typically, the buyer and seller have different objectives when negotiating a buy-sell transaction. Through various elections and purchase price allocations, we are often able to help bridge this divide. When certain facts or conditions exist, deals can be structured to be tax-free to both the companies involved and their shareholders.

Other transactions, such as asset acquisitions, can lead to stepped-up tax basis for the purchaser, and result in increased depreciation and amortization deductions to shelter future income. When achieving these tax benefits, the purchaser may be willing to increase the purchase price paid to the seller. In addition, in the U.S., a transaction can be structured in which the individual seller of a company can realise capital gain income, as opposed to ordinary income, and therefore be taxed at an effective tax rate almost 20% less than that of ordinary income tax rates.

Berube: In practice, there are various types of private equity transactions that occur in China (China or the PRC), such as leveraged buyouts, venture capital, mezzanine capital and growth capital transactions, angel investments and private investments in public equity (commonly referred to as PIPE).

In China, there are also two special types of funds that could fall within the definition of private equity funds – the industry investment fund (IIF) and the start-up investment fund (SIF). IIFs and SIFs are similar to most private equity funds in the sense that they can only purchase shares in non-listed companies. They are the form of private equity funds referred to in Chinese legislation. IIFs are usually funded by certain institutional investors who are state-owned or state-controlled enterprises. For example, the Bohai Industry Investment Fund is jointly sponsored by the National Social Security Fund, China Development Bank, Postal Savings Bank of China and five other state-owned enterprises. Some IIFs are also funded by large Chinese commercial banks, private insurance companies and security companies.

The central government opened the door to foreign investors to set up SIFs through the Provisions Concerning the Administration of Foreign-funded Start-up Investment Enterprises, effective from 1 March 2003, and later published the Interim Measures of the Management of Start-up Investment Fund for the Start-up Investment Projects in the Emerging Industry on 17 August 2011 so as to facilitate the development of this emerging industry. However, while the central government has allowed foreign participation, some restrictions still exist. For instance, SIFs in emerging industries must be funded by the government.

While leveraged buyout firms may play an important role in the global private equity transactions market, they do not currently play a major role in China, as the majority shareholders of Chinese enterprises, whether state or privately owned, are generally reluctant to give up their position as majority shareholders.

Currently, the most commonly used structure is the Foreign-Invested Limited Partnership (FILP), which was introduced in 2010, and is particularly beneficial to foreign investment firms looking to establish RMB funds.

Chinese and foreign (enterprise and individual) investors may both participate in the FILP. The operation of a FILP is largely provided for in the partnership agreement, although it is subject to certain corporate governance structures provided for in the Partnership Enterprise Law (2006). A FILP may be registered directly with the State Administration for Industry and Commerce (SAIC) and is not required to be established with the approval of the Ministry of Commerce (MOFCOM). A FILP is still subject to the foreign investment restrictions provided in the Guidance Catalogue for Foreign Investment (2015 Amended version) (GCFI).

Cooke: There are many different structures which may be used. However, there are two distinct and commonly used methods (and sometimes a combination of the two). One is to buy the shares of the company that owns the assets; the other is to buy from the company the assets which make up the business.

In respect of a share purchase, a buyer will acquire a company owning a business and running it as a going concern, with the contracts in place and continuing under new ownership (subject to any change of control provisions).

In respect of an asset purchase, contracts or existing trading arrangements will not automatically transfer (other than employment contracts in a relevant transfer) to the buyer, and these will need to be amended or assigned to the new owner, which will require the co-operation of the contractor.

There can be serious tax ramifications of structuring a transaction in either manner and tax advice should be procured at an early stage of any transaction.

Zettera: The most common deal structures are: (i) share deals and (ii) asset deals.

Generally speaking, the main advantages of a share deal are fiscal, because a share deal is subject to a materially lower rate of taxation compared to an asset deal. Furthermore, a share deal is usually faster than an asset deal from a contractual and document point of view and, coming back to the tax side, the aforementioned "participation exemption" scheme can be exploited just through a share deal.

On the other hand, among the main disadvantages of a share deal there is the effect of acquisition of the underlying enterprise as a whole, with all its assets and liabilities, so that if an investor would not be interested in some business lines of the target company, a preliminary splitting thereof would be needed, with the consequent further costs, as well as the necessary seller's consent for such purpose.

Among an asset deal's main advantages there is the faculty to agree between the seller and the buyer the splitting of the business and the sale of just a specific or specific business line/s, together with the related assets and liabilities, as well as the exclusion from the deal of specific liabilities referred to the transferred business line/s (in such latter case, the relevant creditors must also agree in order to give actual effect to the mentioned exclusion).

Nonetheless, the main disadvantages of an asset deal are the materially higher taxation applied thereto compared to a share deal and the more structured contractual documentation to be prepared and negotiated between the parties.

Moreover, given some specific circumstances, an asset deal, differently from a share deal, requires the participation of the trade unions if employees are involved.

Can you outline the importance of implementing an effective post-merger integration strategy?

Schaier: In M&A transactions, the typical focus is put on preparing for and executing the deal, but studies show that 50%-67% of all mergers fail to meet the expectations.

Potential of the strategic combination is not realised automatically and the degree of effective synergies realised depends on how such a new organisation is managed after the day of acquisition. That is why an effective integration strategy is necessary to combine and rearrange the businesses – the "real life" is the place where potential efficiencies and synergies that usually motivate M&A materialise.

Post-Merger Integration (PMI) is highly complex, resource intensive, taking place under severe time pressure and in parallel to running the core business. In addition it involves combining the original socio-technical systems of the merging organisations into one newly combined system. Furthermore PMI involves activities which should secure the effective and efficient management of organisational activities and resources under the common goals.

It is the motor of organisational change and development. PMI is a process of adaption in which the acquiring company and the acquired company perform a transfer of competences and work on achieving acquisition goals. Many integration issues may arise out of employees´ resistance and incompatible cultures which, if not adequately handled, can prevent synergy realisation.

Deal transactions involve high risk and demand exceptional care in the process of planning and implementation in order to achieve the desired goals and facilitate value creation. Poor implementation of post-acquisition integration is cited as one of the main causes of M&A failure. Therefore, it is necessary to conduct a detailed observation of integration mechanisms and identify the sources of value as well as possible issues and challenges within the integration phase. Tackling integration issues, which can create effective barriers to success in M&A, is possible with the adequate management of post-acquisition activities.

Pandey: Execution errors are responsible for most M&A failures Studies have shown that more than 80% of M&A actually fail to enhance shareholder value and achieve the anticipated synergies. And, in at least 70% of these cases, failure is due to execution errors. Organisations struggle with the complexity of integrating legacy systems and processes to create common data standards and measures in the merged entity. Other common reasons that post-merger integrations fail include: inadequate support teams; an inability to identify new synergies; poor program management, communications, and leadership; and slow decision-making. Additionally, poorly defined metrics and weak governance often result in companies being unable to track the predicted M&A benefits all the way to delivery. Given the complexity involved in large M&A deals, organisations must be able to deliver effective post-merger integration—and deliver it fast—while also creating opportunities to enhance value in the merged entity.

Farkouh: Implementing effective post-merger integration strategies is absolutely critical in realising the hoped for synergies, cost savings, clients, markets, etc., that were the impetus for the original transaction. Based on our experience, it is imperative that we stay involved in this transition process. The adoption and implementation of a common accounting and reporting system is crucial to management's ability to monitor the success of the transaction and make key real-time decisions.

We often assist our clients in post-transaction human capital assessments to ensure that costs are not duplicated, and that the right people are retained (whether they were from the acquiror or target company) to lead the new combined company forward.

As advisors, we support our clients in all phases of M&A transactions, from helping negotiate the purchase price, performing due diligence prior to the transaction, and the post-transaction transition process. We find this is the best way to help our client avoid having buyer's remorse.

Berube: The buyer should spend time and money on the following aspects:

- Company culture and core value – each company has its own and unique company culture and core value. After a merger, a new company culture and core value shall be set up for all the employees from different companies;
- Uniform benefits scheme – all the employees from different companies shall be entitled to the same benefits system;
- Restructure – same departments shall be combined to avoid the waste of resources and increase efficiency and profitability;
- Communication – set up a communication system for all the employees from different companies to know each other.

Gould: A buyer's investment with an acquisition can be significantly hampered, or even lost, if the buyer does not invest time up front, and prior to the transaction's closing, to the numerous details of the target's business. The buyer's financial investment must be matched by an investment of time by the buyer's management team in building relationships with the employees of the target and in learning about the target's approach to handling its customers. Gaining an understanding of and then managing the expectations of the target's customers is critical for a successful integration of buyer's and target's businesses. The importance of understanding and managing expectations is particularly pronounced in cross-border transactions with US targets where the business cultures in the countries of the overseas buyers can be significantly different from those in the US.

Zettera: A post-merger integration might be difficult to process, especially when employees are involved and the internal policies change because of the appointment of a new management, which is the expression of the new shareholder/s/buyer/s.

On the other hand, a new systematisation of the internal processes and decision policies might quickly favour a material development in the production efficiency and output with a consequent significant economic improvement.

Specific attention should be placed on other post-merger integration tools aimed to gain fiscal and financial advantages, such as fiscal consolidation and cash pooling.

In general terms, through an intra-group fiscal consolidation agreement, a group of companies resulting from one or more acquisitions could systematise the tax credits and tax debts of the whole set of companies that are part of the group by carrying out the relevant offsets among some of the said tax credits and tax debts and/or by using the tax credits of a company to offset the tax debts of another company of the same group.

With reference to a cash pooling set of agreements, a group of companies could achieve optimum internal financial efficiency by making the cash flows of a company of the group circulate into another company of the same group and vice-versa with the further financial advantage of avoiding the negative interest arising as a consequence of use of relevant credit lines.

What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?

Farkouh: To answer this, we would have to polish our crystal ball. In the U.S., the current presidential election and its accompanying uncertainty has made it significantly difficult to plan for and structure transactions. We foresee a slow-down in transactions until the election is over and the true policies of the next president are known.

International transactions will be greatly influenced by the BEPS (Basic Erosion & Profit Sharing) Initiative as well as U.S. anti-inversion legislation and earnings-stripping rules. These issues will greatly impact the types of deals that are taking place and could affect the strategies that companies have previously put in motion to reduce their worldwide effective tax rate.

Existing free trade agreements and the changing future of free trade agreements will also likely impact the M&A sector; and recent events like the Brexit will require that new cross-border deals be structured.

Berube: In an ideal world I would like to see (i) world peace, no more war, no more terrorism attacks or natural disasters such as the typhoon in China, and no more incurable contagion; (ii) share market increase and individual's disposable income to increase; and (iii) more oil fields, mine, gold, gas and any other natural resources to be found.

I also believe this would be good too:

- Currency unification to reduce the risk of floating currency (though EU has faced so many issues with one currency);
- Lower customs duties among the countries to increase the international trade;
- UK to remain in the EU.

Zettera: I think that a potential trend might be an increase in M&A activity as financing facilities are now less expensive than ever before due to European "Quantitative Easing" measures.

Such measures might also favour the "pure" financial investors and the private equity investors that I would like to see invest more to support the development of many existing valuable Italian enterprises that lack the sufficient financial capacity to grow. This will prevent the Italian enterprise from being "eaten" by financially stronger competitors or being bought at a low price.

Looking at the intensive reforming period Italy is experiencing, I would like to see all of the aforementioned reforms further completed, complied with and, with reference to the pending ones, duly implemented in order to make Italy an ever more reliable place to invest.

Meeteren: The expectation is that in the near future the number of mergers and acquisitions will rise. The economy in the Netherlands is growing and the situation in the Netherlands is considered to be very stable. Also most of the acquisitions have a cross-border element in them which means that international aspects play an important role in the Netherlands. The expectation is that this international aspect will also grow.

One of the changes that would make the world of merger and acquisition a bit more ideal would be the implementation of a regulation within the Dutch legal framework that constitutes a situation in which a (former) shareholder who sells his shares on a so-called 'earn out arrangement' still has some influence in the company as to make sure the buyer is able to pay the former shareholder the (postponed) purchase price. At this moment several complex arrangements are made to secure the position of the departing shareholder. However, in daily life these arrangements result in a lot of civil procedures in court.

As to the so-called deadlock situation it would be desirable to have a special arrangement as well. One can imagine a situation wherein shareholders have an equal (50/50) voice and don't reach a shareholder's decision. Currently there is no legal provision to resolve this deadlock situation. A deadlock situation can have a very detrimental effect on the company when not resolved on time. Therefore it would be desirable that in case of a deadlock situation, in which the shareholders after a number of shareholders meetings do not come to a solution of the dispute in mutual consultation, either party has the right to submit the dispute to the competent civil court, which court based on all the relevant documents and arguments takes a decision in the best interest of the company.