



HERBERT
SMITH
FREEHILLS

M&A IN 2020 **THE NEW NORMAL**

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Introduction

In this report we focus on four trends which we believe will be important in 2020 dealmaking:

- Environmental, social and governance (ESG) issues are now mainstream and can no longer be considered an afterthought in M&A decision making.
- Public-to-private bids have returned to the market as financial buyers perceive greater value in underpriced public equity markets than in overcrowded private auctions.
- Political intervention remains a real risk which buyers and their advisers must navigate carefully as the widespread tightening of FDI regimes continues.
- Deal disruption is the "new normal", with threats from shareholders, from interventionist governments and from anti-trust regulators with increasing appetite to exert their powers, in many cases with the possibility of competitor intervention never far away.

We also report on the views of our colleagues on regional M&A activity in 2019 and the outlook for 2020.

"In 2019, M&A activity remained healthy, despite persistent geopolitical and economic uncertainty.

The market continues to adopt ever-greater care around deal execution, against the backdrop of increased protectionism by governments around the world and a growing expectation on, and willingness of, investors to make their views known.

Deals around the globe are being driven by private capital with plenty of dry powder and by shareholder activists pursuing campaigns with an M&A objective. Strategic co-investing and consortium bids also remain popular, with parties teaming up to share the risk and rewards of public-to-private deals.

As market conditions become increasingly challenging for particular sectors, we will see a rise in stressed and distressed M&A. We are also seeing end-of-cycle transacting, with companies focusing on their core business and so looking to divest non-core or underperforming divisions. And tech disruption continues to drive not only dealmaking in every sector, but also minority and venture investing, and strategic partnerships."



GAVIN DAVIES
HEAD OF GLOBAL M&A PRACTICE

ESG – going mainstream

Environmental, social and governance matters come of age in M&A

Accelerating awareness of the threat of climate change combined with pressure from activists, consumers and investors have been pushing environmental, social and governance matters (ESG) up the agenda, as both a driver and a risk factor for M&A. In some jurisdictions, this is coupled with rules that permit or require directors to take into account external stakeholder interests.

Inadequate attention to ESG may expose businesses and investors to significant reputational risk, as well as liability arising from litigation and compliance failings. ESG is also increasingly a factor in discussions with shareholders and other stakeholders on M&A, especially with governments and regulators when seeking consents.

For buyers on an M&A transaction, ESG risk must therefore be brought within the scope of both due diligence and post-closing compliance. It is no longer sufficient to confirm a target's historical compliance with legal and regulatory ESG requirements – it is also essential to look ahead to consider what risks the business may face in the foreseeable future. Buyers should not just focus on the company or assets being bought, but also on the wider business and its network, including the target's supply chains.

On the sell-side, ESG policies, and the potential for post-transaction issues to impact the seller's reputation, increasingly require "clean and responsible" exits from assets. Sellers who have embraced ESG are no longer just interested in price and a "clean" break; they also wish to assure themselves that the asset will continue to be managed responsibly post-completion. This is manifesting itself in increased due diligence by sellers, even on cash buyers, and sometimes in enhanced post-completion undertakings being sought from buyers.

The absence of a common language and single methodology for benchmarking ESG risks and behaviour remains a challenge. However, ESG risks cannot be overlooked and M&A parties and professionals must look further forward than ever before when assessing them. Today's guidance and principles – which already impact the bankability of assets – will be tomorrow's law and regulation. A thoughtful approach to ESG due diligence in M&A and post-transaction risk management will yield significant benefits in the medium-to-long term.

"Whilst the extractive industries have been dealing with certain aspects of ESG for some time, ESG rapidly rose up the agendas of corporate boards and investment committees in all sectors in 2019 and is now mainstream. It demands heightened attention on all M&A transactions, regardless of sector."

In a global survey:



Source: IHS Markit/Mergermarket report on ESG and Agile or irrelevant, Redefining resilience, 2019 Global CEO Outlook, KPMG International 2019.

ESG issues under UN Principles for Responsible Investment

Environmental

- Climate change
- Water
- Sustainable land use
- Fracking
- Methane
- Plastics

Social

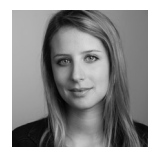
- Human rights and labour standards
- Employee relations
- Conflict zones

Governance issues

- Tax avoidance
- Executive pay
- Corruption
- Director nominations
- Cyber security



Greg Mulley
London



Rebecca Perlman
London

P2P – returning to the market

After several years where volumes of public to private bids were reduced, 2019 saw a return of financial buyers to the public arena

As well as an increase in volume, the size of P2P transactions has increased as private equity and infrastructure funds team up in consortium or club deals to boost their financial firepower while sharing both the potential upsides and risks.

The value offered by public markets recently has also attracted financial buyers, as the economic driver of attractive valuations outweighs the perceived downsides of a public deal, including the likely wasted costs and publicity of a failed bid.

Typical investment periods for financial buyers mean that they are able to take a longer term view on macro-economic factors, unlike buyers listed on public markets who are often pressured to demonstrate almost immediate returns on M&A.

Other drivers for this increased P2P activity include a perception that there is an absence of high quality, privately-held assets and that those that do exist are often subject to competitive auction processes, leading to inflated valuations.

Private auction processes typically favour trade buyers who are able to pay higher multiples as a result of synergy benefits and who, driven by the requirement to increase revenue and geographic footprint, turn to inorganic growth.

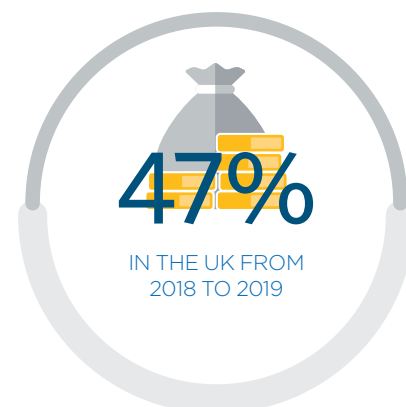
Financial buyers are therefore increasingly willing to take on the additional challenges that public M&A carries in order to take advantage of the better value they see in the public markets.

The challenges that financial buyers face on public transactions include greater levels of regulation and scrutiny, particularly around cost savings, disclosure of financing arrangements and management incentivisation, as well as a need for secrecy that makes it harder to line up a management team, finance providers or a consortium for example. In the UK, the prohibition on break fees and other “offer-related arrangements” protecting the bid may also be seen as a disadvantage.

“We expect to see more P2P activity in 2020. Financial buyers are no longer deterred by the challenges associated with public deals and are seeking additional opportunities to deploy their dry powder, regardless of deal size or complexity.”

Public-to-private deal volume

PUBLIC TO PRIVATE DEAL VOLUME SAW AN INCREASE OF



Source: Refinitiv

The rise of a wider class of financial buyers

- As well as the return of PE investors to the public markets, we are also seeing an increasing number of pension funds, sovereign wealth funds and family offices emerge as key participants in public M&A.
- For example in Australia, we have seen AusSuper participating in bids for Healthscope and Navitas alongside BGH Capital; and in the UK the Canadian Pension Plan Investment Board joined forces with Blackstone and KIRKBI to bid for Merlin Entertainment.
- We are also seeing a merging of asset classes and blurring of lines between them, for example with infrastructure moving into areas that may have been more traditionally targeted by private equity, and activists moving into M&A.



Rebecca Maslen-Stannage
Sydney



Robert Moore
London

Political intervention – the rise continues

Widespread tightening of foreign direct investment regimes is set to continue

Whilst some jurisdictions such as China and the UAE have adopted new opening-up policies, the shift towards stricter foreign direct investment (FDI) regimes in countries traditionally open to investment shows no signs of abating, against the backdrop of increased protectionism on a global scale. Governments remain focused on trying to preserve their country's position in increasingly global value chains, as well as protecting their own national security.

The focus now stretches well beyond acquisitions by Chinese companies, and the concept of "national security" continues to be extended. It is no longer confined to the defence sector but now includes critical infrastructure, communications assets, advanced technology and data.

A number of notable amendments to existing regimes are due to come into effect in 2020, including a significant expansion of the jurisdiction of CFIUS in the US, and a tightening of the notification thresholds in Japan. In Europe, the EU Regulation on FDI screening mechanisms will come into force and is likely to encourage those EU Member States that do not currently have their own regime (around

half of them) to introduce one. In the UK, the introduction of a new standalone FDI regime is likely to feature on the legislative agenda for the next year.

It remains the case that FDI regimes tend to be less transparent than merger control processes, with some countries choosing not to publish any decisions, or only very brief details. However, behind the scenes, FDI authorities are increasingly sharing information and liaising with each other during the course of reviewing transactions. This makes it more important than ever to adopt a consistent global approach to FDI filings.

The possibility of offering up remedies to ease the FDI process remains an important consideration for dealmakers: many cases that raise initial concerns are still being resolved with, for example, undertakings to ringfence sensitive information and maintain certain business activities in the jurisdiction.

In such cases, effective and sensitive communication with stakeholders to explore potential options will be critical.

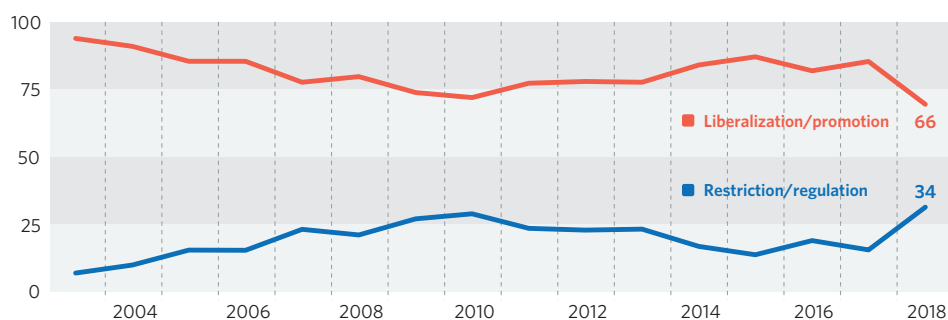
Blocked deals

- Beijing Kunlun was forced by CFIUS to divest Grindr (a dating app), after completing the acquisition without notifying, due to concerns about foreign access to personal information
- Hong Kong based CKI's takeover offer for APA Group (a natural gas infrastructure business) was blocked in Australia
- Yantai Taihai Corp's acquisition of Leifeld Metal Spinning AG (a manufacturer of aerospace materials) was abandoned before being blocked in Germany

"FDI filings are an increasingly important piece of the regulatory jigsaw for cross-border M&A, and co-ordinating a global approach is key to minimising deal risk."

The global trend towards increasing restrictions and regulations

Changes in national investment policies, 2003–2018 (Per cent)



Source: UNCTAD, Investment Policy Hub



Karen Ip
Beijing



Veronica Roberts
London

Deal disruption – the new normal

Third parties will continue to play a key role in M&A deals. The biggest threat comes from anti-trust regulators and a company's own shareholders

Deal execution continues to be challenging and it remains as important as ever to plan carefully for the risk of intervening events and disruption between signing and closing.

Shareholders

Activism continues to rise around the world and almost half of activist campaigns have an M&A theme, whether that be calling for a company to break up or sell itself, demanding a higher price on live deals or seeking to scupper a deal altogether. We are also seeing a convergence between the activist and the private equity business models and are even starting to see activists making public takeover bids. Beyond the established activists, traditional institutional shareholders are also making their views heard, particularly on shareholder votes, and often either publicly or privately supporting or teaming up with activists.

Securing public support from shareholders can be key for a successful deal but there is always a risk that shareholders change their minds, particularly where deals have a long timetable to completion due to merger control processes. Therefore, as well as sounding out shareholders ahead of any significant transaction, obtaining undertakings to support the deal will help reduce the risk of shareholder disruption.

Key tools for minimising shareholder disruption

- Monitoring the share register and dealing disclosures
- Sounding out shareholders on a regular basis (including activists)
- Obtaining undertakings or letters of support from shareholders
- Listening to analysts/market feedback
- Establishing and maintaining a communications strategy
- Minimising the timetable to reduce the risk that shareholders withdraw their support
- Obtaining a break fee to focus the minds of the parties and deter any interloper

Anti-trust regulators

Early planning and engagement with the regulators is important and well-advised parties will:

- have a global strategy in place to assess timing and regulatory risk across the world
- pull together all relevant documentation and
- consider what remedies can be offered to secure clearance from regulators.

Anti-trust regulators across the globe continue to have strong appetite and resource to intervene in transactions – regulators seem undeterred by any criticism that an overly interventionist approach is being adopted. The European Commission in particular will not hesitate to block deals where it deems the remedies offered to be insufficient.

The review processes are invariably long, complex and costly. In addition, regulators will take action for procedural breaches, even when there are no competition concerns, so parties need to navigate their way through investigations very carefully.

A key area of focus is tech deals and deals involving data, which are carefully scrutinised regardless of deal value. The European Commission may consider introducing new thresholds to catch so-called “killer acquisitions”, involving early stage technology start-ups with no or very low turnover but a high purchase price; and, in line with several jurisdictions around the world, it may look to capture non-controlling stakes, possibly as low as 10%.

The European Commission is also monitoring the issue of “common ownership” where a limited number of shareholders, mainly funds, end up owning several players in the same sector which may be seen as softening competition.



Caroline Rae
London

Penalties for procedural breaches of merger control regimes

- Canon was fined €28 million by the European Commission for using a “warehousing” structure on a transaction (although it is appealing)
- PayPal was fined by the UK Competition and Markets Authority (CMA) for undertaking integration activities during a merger review process

Blocked deals

- Siemens' proposed acquisition of Alstom was blocked by the European Commission
- Sainsbury's proposed acquisition of Asda was blocked by the CMA
- The merger between TPG and Vodafone Australia was blocked by the Australian Competition and Consumer Commission

“Anti-trust regulators’ appetite to intervene in M&A continues to increase, in particular in the tech sector where deals are being called in regardless of deal value. It is now essential to have a clear strategy for managing the anti-trust process, which should help to minimise the timetable and reduce the risk of disruption prior to completion.”



Kyriakos Fountoukakos
Brussels

A view from Europe

2019 has been a year of contrasts for M&A in Europe

In 2019, M&A deals in Europe decreased by 24% in value compared to 2018. However, 2018 had seen a strong first half and a weak second half of the year: a comparison of the first half of 2019 with the second half of 2018 actually shows an uptick in M&A activity and a comparison of the two second halves shows only a slight decline in M&A activity.

Some European countries were very active in outbound M&A activity. In the first half of 2019, France was second only to the United States in terms of value of acquisitions of foreign companies worldwide. Meanwhile the four largest transactions in the DACH region were conducted by foreign bidders and were all valued over €4 billion.

Central and Eastern Europe had a robust 2019 for inbound M&A and German M&A picked up in value in the second half of 2019.

M&A has taken a downturn in Spain, where dealmaking fell 21% in 2019 compared with the same period in 2018, and was sustained only by the ongoing strength and growth of the private equity market.

KKR's €5 billion offer for German publishing house Axel Springer highlighted the rise of take-privates across Europe. From a sectoral perspective, activity was particularly strong in the pharma, medical and biotech sector, with the three most important deals in Europe of the year. This is in strong contrast with financial services M&A, where 2019 was a disappointing year.

A trend which has been particularly visible in Europe is the rise in regulatory intervention and protectionism, leading to the failure of a number of M&A deals over the year. For example the European Commission blocked the Siemens-Alstom merger and the French State opposed the abandoned merger between Renault and Fiat.

The EU Regulation establishing a framework for the screening of foreign direct investments into the Union will encourage Member States to create or bolster their control of foreign investments: France has already introduced legislation along these lines and Germany has tightened its foreign trade regulation to extend the notification requirements and the sectors to which it applies.

In terms of outlook, there is some pessimism for M&A in Europe over the next year, given in particular the level of macroeconomic and geopolitical uncertainty.



IN 2019:

**inbound M&A
for Central and
Eastern Europe**

WAS NEARLY

€16.5 billion





"A rise in protectionism has led to a notable reduction in Chinese acquisitions in Europe in 2019. The withdrawal of China has however been balanced by an influx in particular of US buyers."



Soenke Becker
Düsseldorf



Lorenzo Parola
Milan



Alberto Frasquet
Madrid



Christopher Theris
Paris

A view from the UK

Although overall deal value fell slightly in 2019 compared to 2018, deal volumes continued to be healthy and the value exceeded 2016 and 2017 values.

This is despite the prolonged Brexit uncertainty, which suggests that investors are now accustomed to seeing Brexit as just one of many risks in an increasingly complex environment for M&A globally. The weakness in the value of sterling also made UK companies, particularly those with international businesses, more attractive to overseas buyers.

In public M&A, the uptick of hostile and competitive situations continued. As part of the increasing activity by private capital, including pension funds, PE backed bidders are now emerging as significant participants in these contested public takeovers. Fuelled by large amounts of dry powder and ready access to cheap debt, the value of PE transactions also increased markedly (including P2Ps where the quality and integrity of the available assets remains very attractive) and we expect this trend to continue.

Investor activism also continues to drive M&A, both in terms of shareholders exerting pressure for breakups and spin-offs and also in terms of 'bumpitriage' efforts.

In terms of sectors, the TMT and consumer sectors remain very active. However, a number of other sectors have also kept up momentum, with high profile deals in the hospitality, leisure and tourism sector in particular.

The growth of distress-driven M&A is notable, especially in the retail sector, where some longstanding high street names have experienced challenging conditions. We foresee this continuing in 2020, accompanied by a rise in restructurings and the sale of non-core or underperforming divisions. With a wave of cash-rich buyers in the market, businesses are taking the opportunity to review and streamline their operations, often to deflect criticism from activist investors.

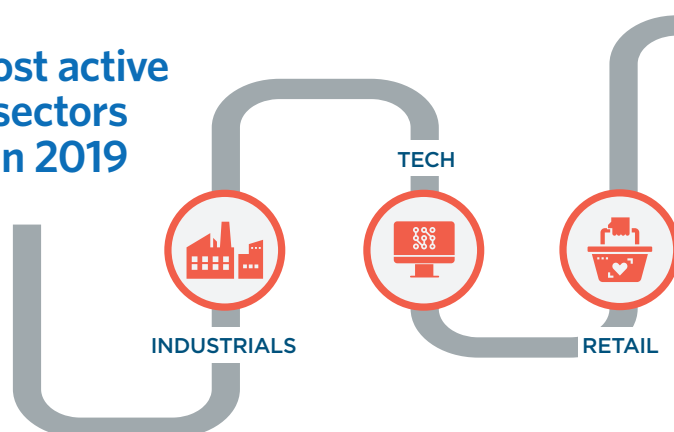
Warranty & indemnity (W&I) insurance is now a common and prominent feature of private M&A in the UK, as the market matures and there is greater visibility on claims payments.

2019 saw increased scrutiny of proposed acquisitions by the UK Government on national security grounds, with the Government issuing four intervention notices. Looking ahead to 2020, overseas bidders considering acquisitions in potentially sensitive UK sectors should remain alert to the development of the proposed new standalone FDI regime. We also expect that the UK Pensions Regulator will be granted significantly enhanced powers, including new criminal and civil sanctions, which may impact M&A in the near future.

In terms of outlook, whilst there is some pessimism for M&A in the UK over the next 12 months, given in particular the level of macroeconomic and geopolitical uncertainty, the same fundamentals referenced above that have driven M&A volumes in 2019 are expected to remain.



Most active sectors in 2019



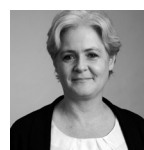


"The existence of a majority government for the first time since 2017 should create political stability and enhance economic confidence and, through that, M&A. However, the progress and outcome of Brexit negotiations may give rise to some caution along the way."

MEDIA &
ENTERTAINMENT



FINANCIALS



Antonia Kirkby
London



Roddy Martin
London

A view from the Middle East

Middle East deal activity has been dominated in recent years by regional investors but, despite the volatility in the region, international purchasers have been responsible for landmark transactions and we expect this trend to continue

The dawn of 2019 was met with scepticism as M&A activity was forecast to be relatively flat due to concerns surrounding the growth of the Middle Eastern economies in light of the increased volatility in the oil price, geopolitical issues and social instability.

The collapse of The Abraaj Group and the surrounding negative press played a pivotal role in the waning interest from international investors. This was evident on transactions, with significant global players unwilling to commit time and resource to Middle Eastern targets as their attention diverted to other markets. The knock-on effect of this was fewer exit opportunities for sellers looking to attract international investment.

Despite this backdrop, the Middle East did witness a number of landmark transactions – a prime example of this was Uber agreeing to acquire its competitor Careem for US\$3.1 billion. The transaction is expected to complete in the first quarter of 2020 and has been heralded as the largest technology-related transaction in Middle East history.

Consolidation was a recurring theme throughout 2019. This was particularly evident in the financial services industry, where we saw a number of transactions designed to alleviate liquidity concerns of smaller industry players and create more robust financial institutions that are better equipped to withstand the challenging market conditions.

The UAE has recently issued a new law on foreign direct investment, reducing barriers to entry in certain sectors, in contrast to the increasing levels of scrutiny seen in many other jurisdictions. Regional demographics and consumer trends will also mean that infrastructure, giga projects, healthcare, education, e-commerce and technology will continue to be sectors of interest for inbound investment in the Middle East.

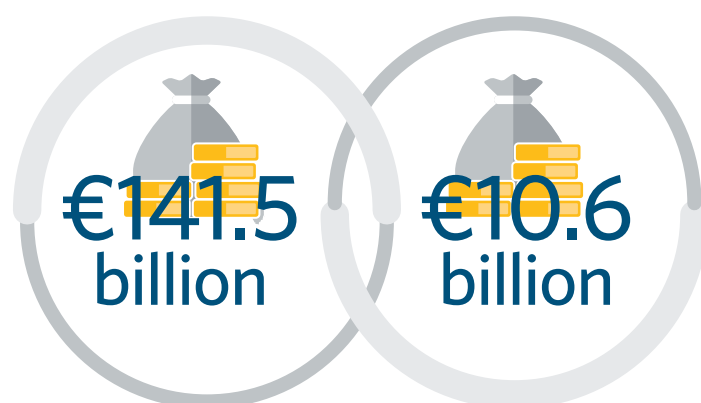
Our expectation for 2020 is that consolidation will continue to be a key driver of M&A activity and that it will extend to a wider number of industry sectors such as construction, real estate and manufacturing.



Deal value across the MENA

(MIDDLE EAST AND NORTH AFRICA) REGION, WAS NEARLY DOUBLE THE VALUE OF 2018 (EUR 72.3 BILLION).

UAE COMPANIES WERE TARGETED IN 131 DEALS, VALUED OVER EUR 10.6 BILLION





"If the oil price remains steady and political tensions ease, there will likely be an acceleration of growth in the Middle East, which should foster increased deal activity in the region. We also expect that Saudi Arabia's push for economic diversification through Vision 2030 will continue to play a pivotal role in increased M&A activity."



Haitham Hawashin
Dubai



Zubair Mir
Dubai

A view from Africa

M&A activity in the major regions of Africa has been positive and there has been some improvement on 2018

It is not easy to identify general M&A trends across the African continent. Africa is made up of 54 very different countries, with different economies, regulatory regimes and stages of economic development. That said, in the major regions, M&A activity and outlook have generally been positive. In Sub-Saharan Africa the value of M&A transactions was up significantly compared to the same period last year. This was driven by a couple of large transactions, such as Naspers' spin-off of MultiChoice onto the Johannesburg Stock Exchange.

In 2019 the total value of deals, excluding South Africa, is sitting at US\$3.8 billion. The most active target nations by deal value were Egypt (US\$1.6 billion), Republic of Congo (US\$813 million) and Nigeria (US\$581 million).

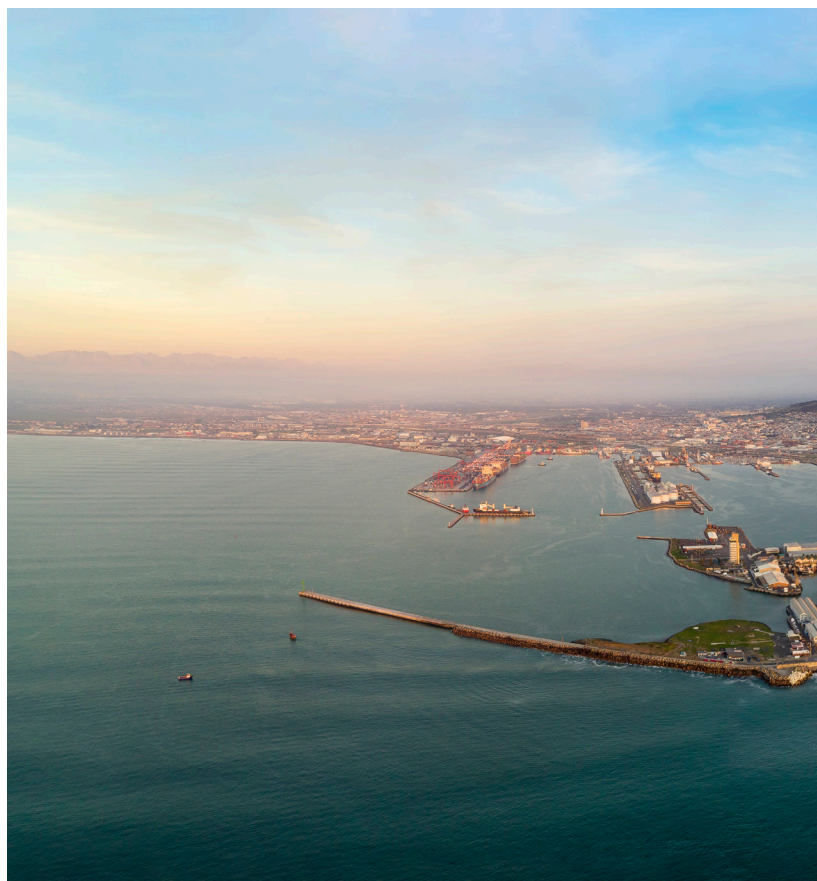
Whilst foreign direct investment into Sub-Saharan Africa and East Africa increased steadily, it slightly declined in West Africa in the last year.

Multi-national companies continue to take minority "venture capital" stakes in innovative African companies, often set up by African entrepreneurs.

We believe that there will be continued growth in sectors such as financial services and fintech, agriculture, consumer goods, TMT and the mining and energy sectors (gas, hydro and solar particularly).

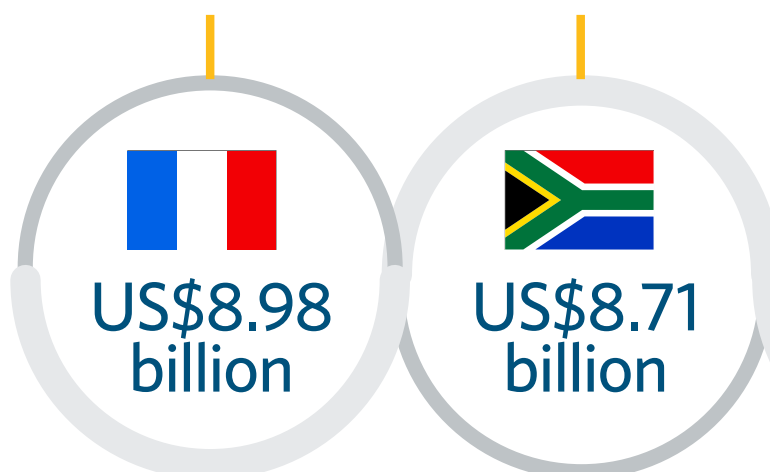
Political and policy uncertainty and, in some areas, security issues, continued to inhibit deal value and volumes and to affect inbound, outbound and domestic transactions. Elections in a number of Sub-Saharan African countries have also put the brakes on activity to some extent. We are also seeing lower transaction values, as investors are cautious about making large investments during uncertain political times.

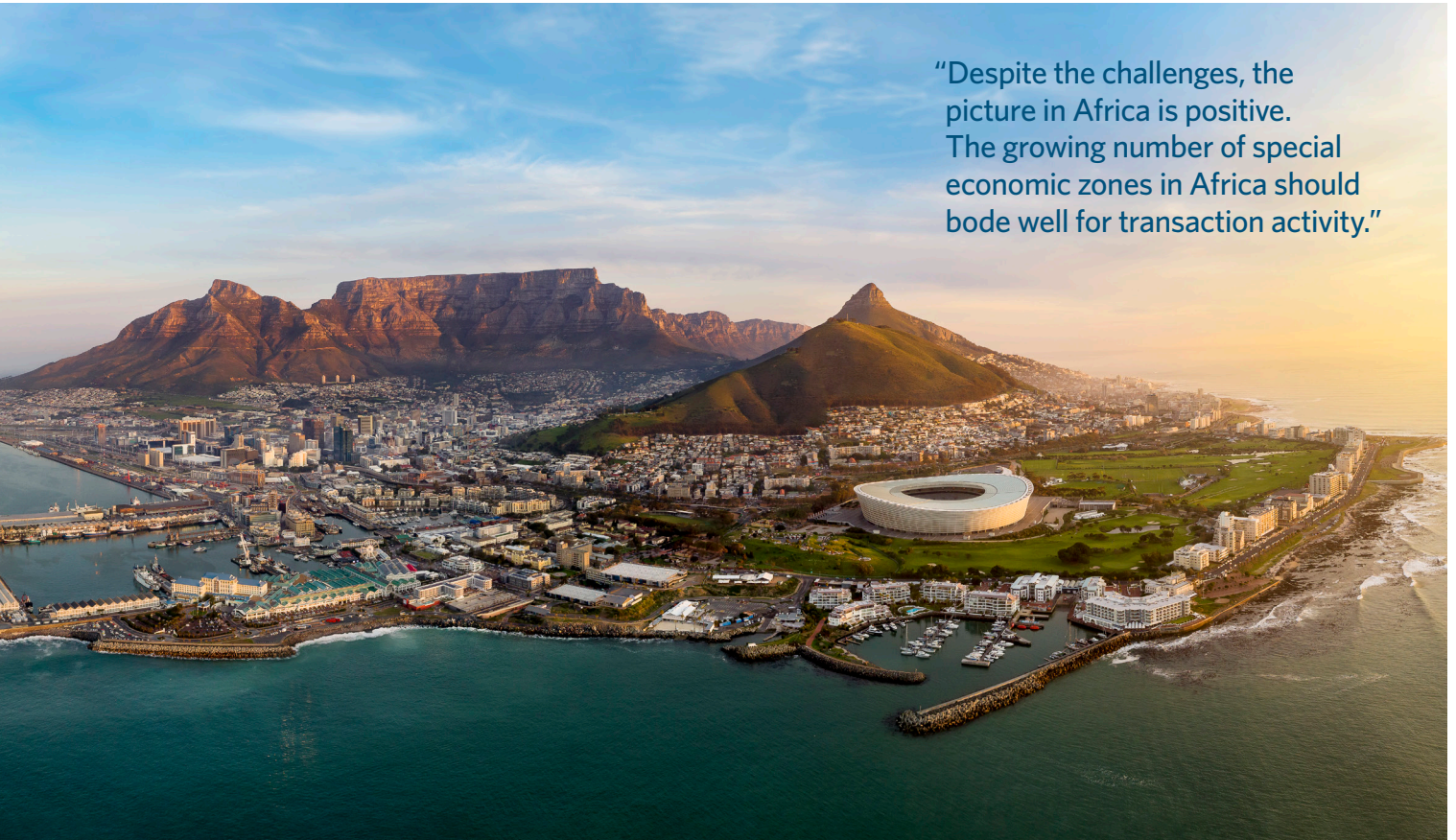
One example of a country where policy and political turmoil has impacted negatively on foreign direct investment and M&A activity is South Africa, where the effects of corruption and corporate scandals can still be seen. The Government there is implementing economic growth reforms and there is high hope that these reforms will result in growth in the economy and increased M&A activity.



IN 2019 FRANCE-BASED ENTITIES
WERE MOST ACTIVE IN AFRICA
WITH DEAL VALUES OF

...FOLLOWED BY
SOUTH AFRICA





"Despite the challenges, the picture in Africa is positive. The growing number of special economic zones in Africa should bode well for transaction activity."

...AND THE
UNITED STATES



US\$2.32
billion



Rudolph du Plessis
Johannesburg



Rebecca Major
Paris

A view from Asia

Asia deal activity is as diverse as the region

Against a backdrop of trade tensions between the US and China, Southeast Asia and North Asia bucked the downward trend in Asia M&A activity in 2019.

Singapore announced M&A deals totalling US\$45.2 billion in 2019. The city state has seen a strong influx of capital from global institutions and continued investment by its own government-linked funds, both within the country and across the region. Activity was strong elsewhere in Southeast Asia. Malaysia announced deals totalling US\$29.0 billion, Indonesia totalling US\$12.6 billion, Thailand totalling US\$12.0 billion and the Philippines totalling US\$4.7 billion. Vietnam also had a high deal count. This investment no doubt reflects trade tensions elsewhere in the region.

In North Asia, Japan had a positive year, posting a 8.9% increase in deal value year on year by the third quarter. Year to date, Japan outbound M&A increased by 31.2% compared to Q1-3 2018, while inbound deals increased six-fold in value compared to the same period the year before. South Korea recorded similar gains, with inbound deals in Q1-3 increasing by 11% on 2018 and outbound deal value rising by 10.6%.

Shareholder activism has spiked in Japan, pressuring companies to invest rather than hoard cash. Japan-South Korea trade tensions also forced companies to the marketplace, particularly in the manufacturing sector in order to reinforce supply chains and test new markets.

Asset demand from institutional investors has resulted in fundraising successes. A number of private equity houses have closed Asia-focused funds with large amounts of dry powder. Consequently, transactions have become increasingly competitive with diverse private capital chasing the same assets. In some instances, competitive auction processes have resulted in private capital

co-investing in clubs. This is leading to an intersection of LP-GP investment relationships: there are now a number of sovereign wealth funds and pension funds making direct investments or co-investments, sometimes together with general partners, sometimes even independently.

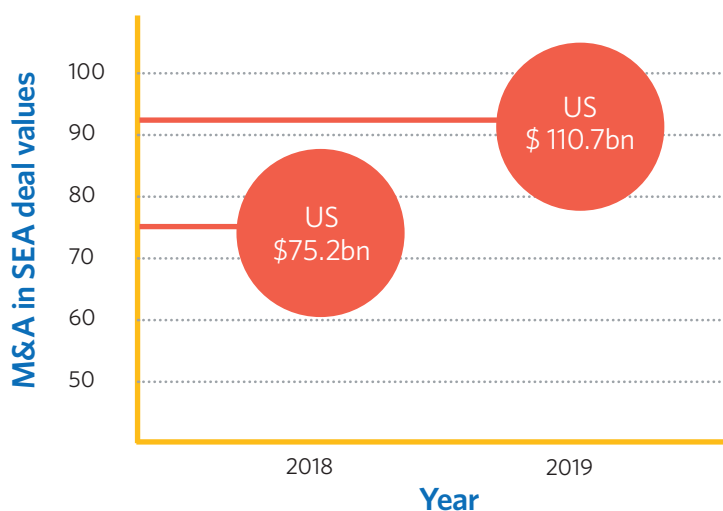
Industrials was the most active sector by value and volume of deals. The real estate and financial sectors also saw some large transactions, driving deal values.

Asia has also started to shift its focus towards ESG and impact investing. One example is a US\$4.25 billion fund raised by Warburg Pincus which is focused on scalable and sustainable growth companies in China and across Asia. Over the coming years, impact investments with a clear focus on renewables, waste to energy, healthcare and equality are expected to increase across Asia.

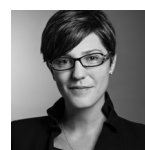
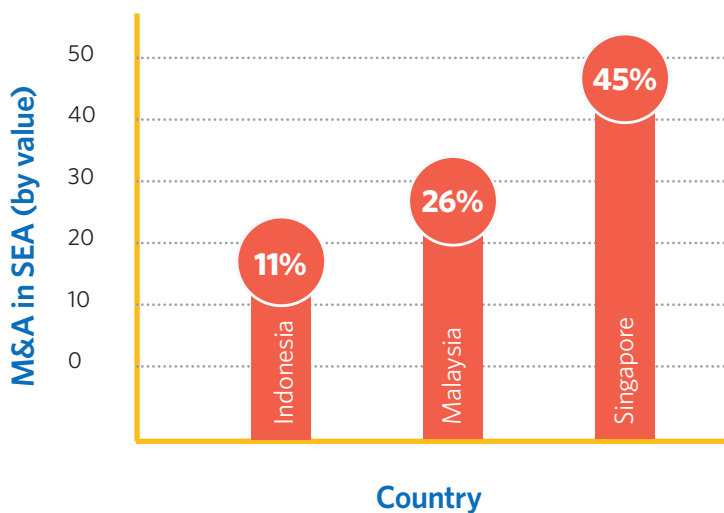
Venture capital is another important trend in the region. Many PE firms and even traditional Japanese trading houses are now focusing on emerging businesses and start-ups. Examples include TPG into PropertyGuru, Equinas into MediExpress, Temasek into Zilingo and Sociolla, KKR into aCommerce and Voyager.

We are also seeing many of Asia's "unicorns" (including Grab in Singapore, Go-Jek and Traveloka in Indonesia, and VNG Corporation in Vietnam) competing directly for deals.

For more information, see our Asia Pacific Mergers and Acquisitions Review.



"We expect that greater pressure will be placed on investors to anchor their investment decisions to environmentally, socially and ethically sustainable outcomes."



Nicola Yeomans
Singapore



Vik Tang
Jakarta

A view from China

2019 has seen China-related M&A transactions slump significantly in terms of deal volume and value

The drop in outbound M&A and PE deals were major factors in what has been the lowest year for deal values since 2013. In particular, PE deals (inbound and outbound) fell by 46% in volume. Increased FDI scrutiny in the US and Europe has been a key driver for outbound M&A decline. The prolonged and unpredictable US-China trade war has made matters worse.

Despite the overall decline, certain sectors remained active in 2019. There were a number of large transactions in the industrial sector, with the consumer and high technology sectors remaining the most attractive for investment. Smaller-sized domestic deals also remained strong. The STAR Board of the Shanghai Stock Exchange, China's Nasdaq-style new technology innovation board, was officially launched, attracting many domestic high-tech companies to apply for listing. In the professional services sector, taking advantage of the liberalisation policy in the Shanghai Free Trade Zone, Herbert Smith Freehills itself successfully launched a joint legal operation platform with Shanghai Kewei Law Firm to provide end-to-end legal services integrating PRC and international law capabilities.

To boost the domestic economy, the Chinese government has reaffirmed its policy of opening up to foreign investment. It has adopted new rules to open up certain heavily regulated industries, such as the automobile and financial services industries. In October 2019, the Chinese securities regulator announced that the limitations on foreign shareholding percentages will be lifted in 2020 for securities, fund management and futures companies.

The Foreign Investment Law, which will replace decades-old laws with a unified, streamlined legal and regulatory framework for foreign investment applicable nationwide, will take effect on 1 January 2020.

We are hopeful that in 2020, the US-China trade tensions can stabilise through incremental or phased agreements.


Even if the trade tensions continue, the market will likely adapt to the "new normal" with gradually resuming investor confidence. Despite economic and geopolitical uncertainties, we are cautiously optimistic that China will divert its outbound investment from the US and EU to Asia Pacific countries.



The value of investment in China in Renminbi by foreign investors



(NOT INCLUDING FOREIGN INVESTMENT IN THE BANKING, SECURITIES AND INSURANCE SECTORS)



"Whilst upcoming changes to government policy on inward investment are expected to boost activity, the persistence of the US-China trade war and global regulatory scrutiny of Chinese investments will continue to weigh on outbound M&A in 2020."

••• for the first three
quarters of 2019
compared to the same
period in 2018



Gavin Guo
Kewei Law Firm in
Joint Operation with
Herbert Smith Freehills



Nanda Lau
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A view from Australia

M&A activity in Australia in 2019 remained robust, featuring a high number and value of announced deals

We have witnessed a material expansion in the bidder universe. This has driven both deal volumes and values.

First, we have seen Australian pension or “superannuation” funds (including AustralianSuper and Queensland Investment Corporation) participate in a number of high profile takeover bids (including for Healthscope, Navitas, Pacific Energy and Superloop).

Secondly, we have also seen a marked uptick in the participation of private equity sponsors in Australian public M&A (20% of announced deals in FY19, as compared to 18% in FY18 and 10% in FY17).

In our view, this reflects a long-term structural shift in the nature of Australian public markets.

Key sectors which have seen significant activity include financial services, aged care & health, TMT and infrastructure, as well as energy and resources.

We are also continuing to see escalated regulatory scrutiny (including from Australia’s corporate, competition and foreign investment regulators). This trend in part stemmed from the Banking Royal Commission which concluded in 2019, but has extended to sectors beyond banking.

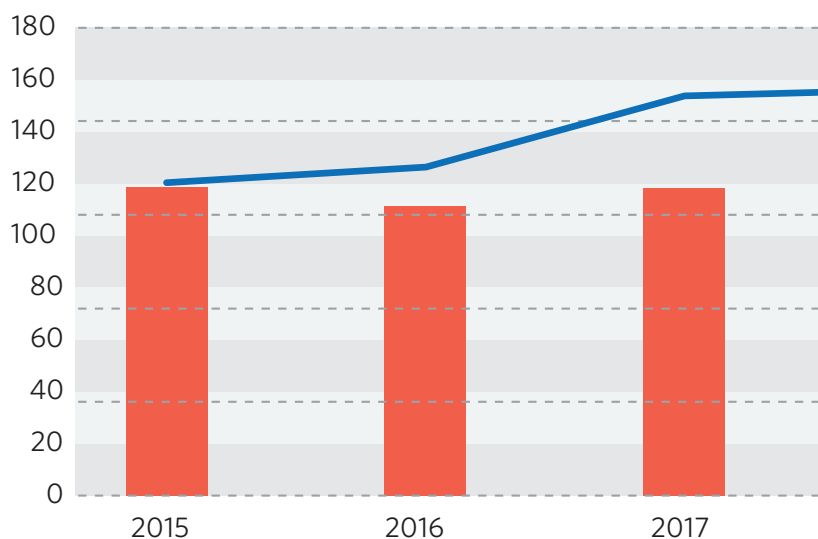
We anticipate that strong M&A activity will persist in 2020. In the context of increasing competition for assets (driven, in part, by the expanding bidder universe), we will continue to see the development of new deal technology that balances, on the one hand, giving certainty to preferred bidders and, on the other, the facilitation of auctions.

Examples from 2019 which we see continuing into 2020 include “go shop” provisions, process deeds, bidder commitments to support superior proposals, and concurrent schemes and takeovers.

For more information, see our Asia Pacific M&A Review and [Australian M&A report](#).

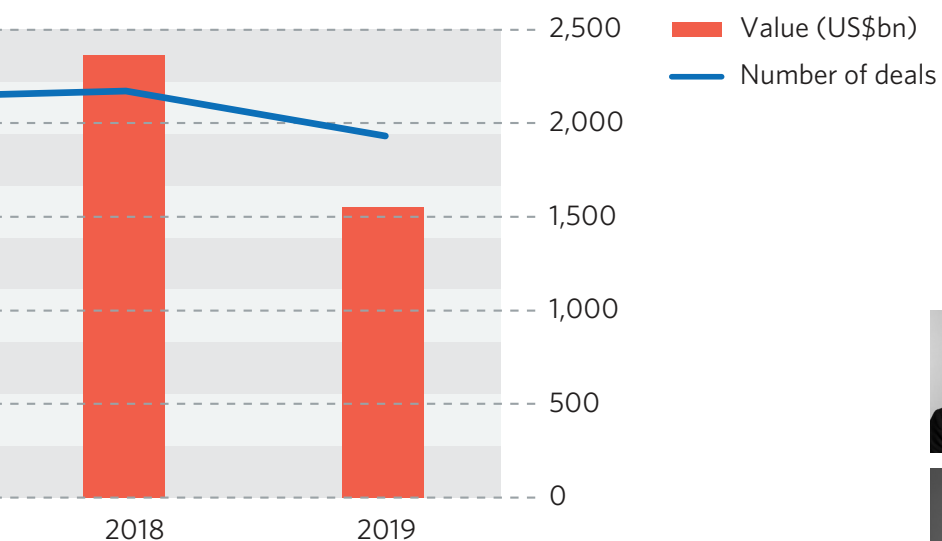


While deal values have declined compared to last year, both volumes and values are close or above 2015-2017 value and volumes



Source: Refinitiv

"In the context of enhancing deal certainty, the increase in regulatory scrutiny brings into focus the importance of thorough preparation as well as undertaking a strategic and proactive approach in dealing with regulators."



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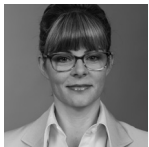


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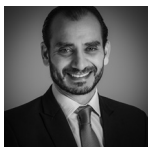


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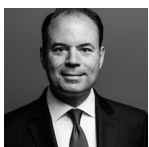


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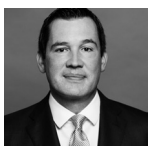


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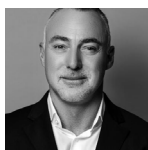
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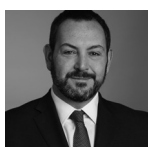
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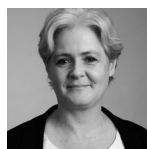
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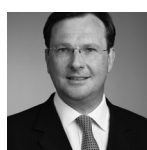
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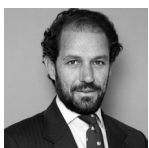
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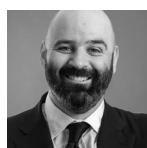
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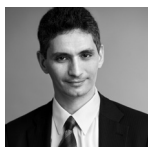
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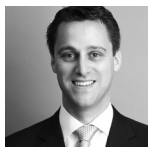
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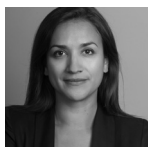
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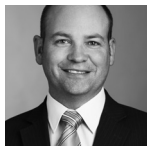
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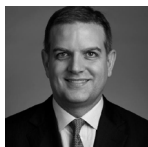
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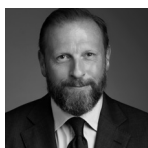


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