



2020 VISION

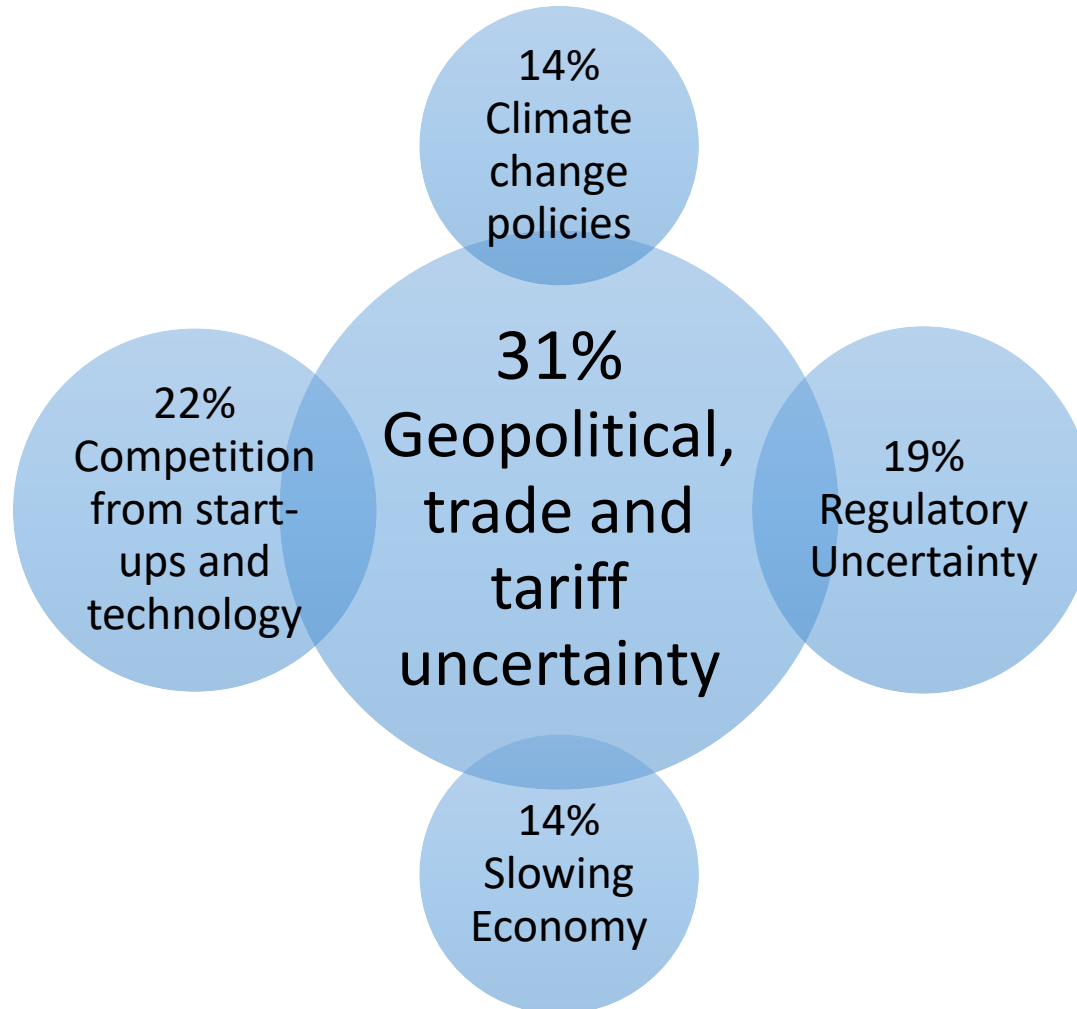
M&A TRENDS FOR THE NEXT YEAR

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Animal Spirits



According to clients surveyed by EY what's the greatest risk to the growth of your business?



SLOWING GROWTH

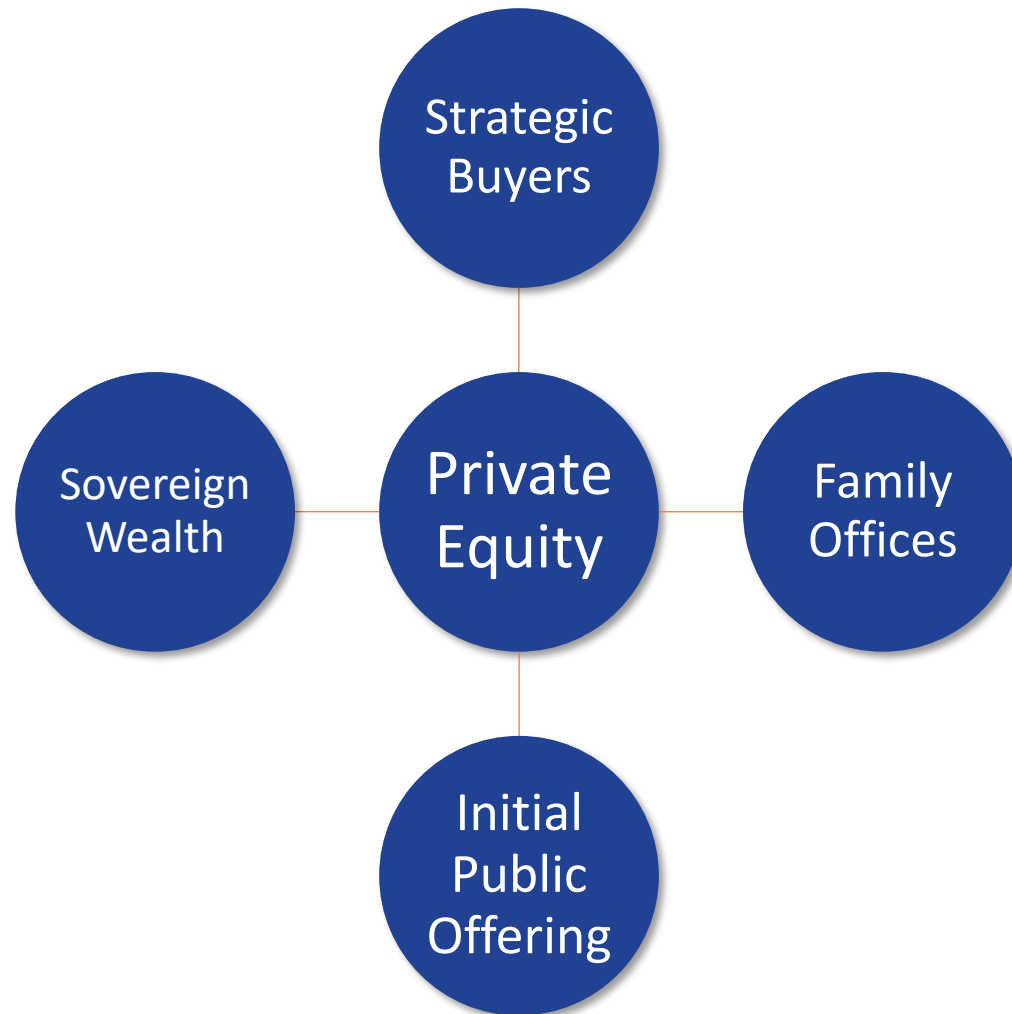


RECESSION

Dry Powder



Where is the capital coming from?



Capital on the Sidelines

Private Equity - \$1.5 TRILLION

S&P Global 1200 - \$2.4 TRILLION
(exclusive of Finance + Insurance)

Other Forces Driving M&A Activity

Rationalization & Accountability

P&E Exits

Consolidation (Tech, Health, Industrial)

Technology – not just a pure play

Talent (“Acqhire”)

What other trends are in the market right now?

- ▶ Litigation
- ▶ Politics
- ▶ National Security
- ▶ Privacy
- ▶ #MeToo
- ▶ Legal Project Management
- ▶ Rep & Warranty Insurance

Litigation



Danger
Golf in progress

Beware of golf balls from
both directions

M&A Litigation is on the rise

Which state law governs?

Where will disputes be litigated?

Should the parties agree to ADR?

Shareholder activism is increasing.

Politics



Political Uncertainty is Affecting Decision-Making

Two dates that are driving deal timelines:

Democratic National
Convention
July 13, 2020

U.S. Election
November 3, 2020

International Conflict



National Security Concerns

Committee on Foreign Investment in the U.S. (CFIUS)

Chinese company Kunlun Tech forced to sell Grindr

Huawei's continuing saga

New CFIUS Rules effective February 13, 2020

Privacy & Data Security



Privacy Issues in M&A

- ▶ Privacy and Data Security representations and warranties becoming standard
- ▶ California Consumer Privacy Act (CCPA; effective January 1, 2020)
- ▶ General Data Protection Regulation (GDPR; effective May 25, 2018)

Bad Behavior



#MeToo Developments

▶ #MeToo Representations in M&A agreements are becoming more common (aka “Weinstein clauses”)

▶ #MeToo representations are generally qualified by “knowledge”

Whose knowledge?

▶ What kind of claims?

What time period is covered?

Getting Things Done



Legal Project Management



Security of Virtual Data Rooms



Cloud-based/ERP software



AI for Due Diligence



ABA M&A Subcommittee of the Business Law Section is promulgating checklists (see *The Checklist Manifesto* by Atul Gawande)

Coverage



Rep & Warranty Insurance

Available for smaller deals - \$30 million and up

From 2008 with 40 deals and \$541 million of coverage to 2018 with 1,500 deals and \$38.6 billion of coverage

26% of R&W deals are “No Seller Indemnity”

Premiums are coming down

BEWARE OF THE EXCLUSIONS!

Conclusion



According to BCG's study of 51,600 deals, 2 years after closing, deals done in weak economies created more value for the buyers than deals made in strong economies



Boldly take advantage of lower valuations and “margin for error” to make strategic acquisitions and grow versus your competitors



You have to get off the sidelines to win the game!
