DENTON

Contents

Foreword & Key Findings

Global M&A has shifted down a gear over the course of 2022 as investors take stock after last year's whirlwind of dealmaking. Macro pressures including in lation, rising interest rates, geopolitical unrest and ongoing supply-chain disruption have given acquirers cause to pause and appraise the con lux of systemic risks.

Equally, as valuations come down, companies and inancial sponsors understand there are many opportunities upon which to seize. There is also strong motivation to consider cross-border acquisitions, the strengthening dollar having competitively positioned US buyers.

As economies slow and a possible recession looms, there is greater incentive for corporate acquirers to pursue deals that unlock top-line growth and reduce operational costs. Since the onset of the pandemic and the rapid pivot to conducting remotely what used to be in-person or on-site due diligence, scouting out possible deals often requires less travel time than before, putting cross-border processes on a more level pegging with domestic dealmaking.

Through the study detailed in this report we sought to understand how both corporate and private equity (PE) buyers view the current cross-border M&A landscape, their own expected near-term participation in these deals, what is motivating them to look overseas, and where they see the most exciting opportunities.

Key Findings

More than a third (34%) of executives in the US/Canada expect the volume of near-term cross-border M&A to increase compared to the last 12 months, a view shared by 40% of dealmakers surveyed outside North America.

The top three drivers of our survey respondents' cross-border M&A activity over the last 12 months were pursuing digital transformation, expanding into new growth markets, and scaling up to become more competitive.

Technology, media & telecommunications (TMT) is by far the most appealing sector for potential cross-border transactions, being cited by 72% of US/Canada respondents and almost all (93%) of non-North American survey participants.

Two-thirds of respondents based outside North America cite the US as being one of the most appealing regions for buy-side cross-border M&A activity, far ahead of other markets. Their US/Canada peers, meanwhile, are especially keen to emphasize opportunities in Eastern Europe (47%).

Regardless of their location, by far the greatest potential risk that cross-border dealmakers must bear in mind is the impact of rising inflation, being cited by almost half of all respondents as a top-three point of concern.

More than 80% of all respondents agree that stricter protections on foreign direct investment (FDI) will have a noticeable negative impact on their cross-border dealmaking strategy.

Overall, 87% of respondents globally expect guidelines related to environment, social & governance (ESG) principles to become more impactful on cross-border M&A over the next 12 months.

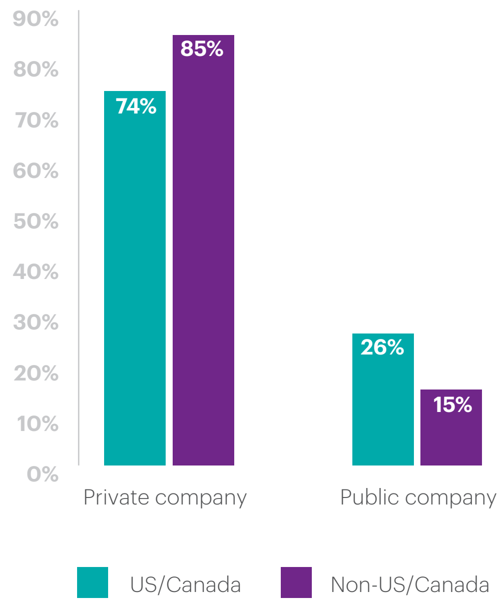
Methodology & Respondent Pro ile

In Q3 2022, Dentons' research provider interviewed 150 senior executives involved in cross-border M&A. Half of the respondents were acquirers based in the US and Canada of targets based elsewhere in the world, and the other half were acquirers from elsewhere in the world of US or Canadian targets. These two groups were divided equally between corporate and PE respondents.

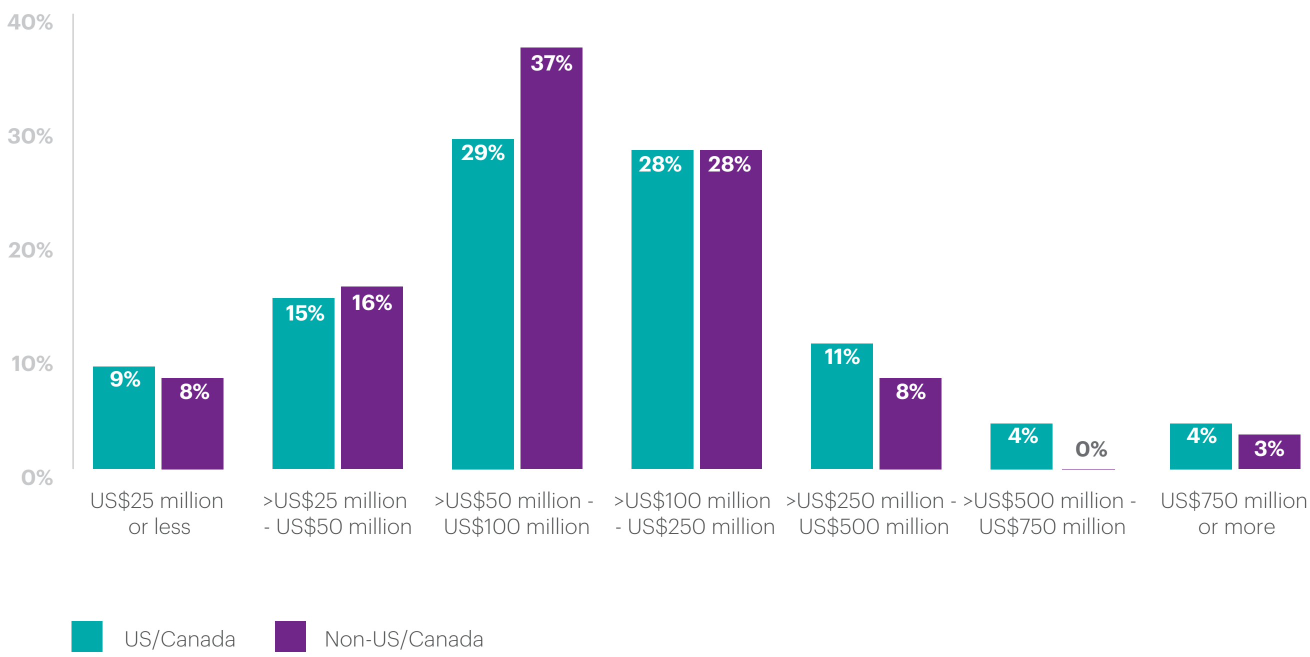
All PE respondents surveyed have a minimum of US$250 million in assets under management. All corporate respondents surveyed have a minimum enterprise value of US$100 million. In addition to having completed at least one cross-border M&A deal over the last 12 months, all respondents surveyed expect to participate in at least one such transaction over the next 12 months.

Just over a quarter of US/Canada respondents report having targeted a public company in their most recent cross-border M&A deal, as did 15% of respondents based outside North America. For more than 60% of all respondents, the enterprise value of the target in their most recent cross-border M&A deal fell between US$50 million-US$250 million, with the bulk of these (33%) falling in the US$50 million-US$100 million range. The most frequent EBITDA multiple paid by respondents in their most recent cross-border deal was 6x-7x, cited by 37% and 31% of US/Canada and non-North American respondents, respectively.

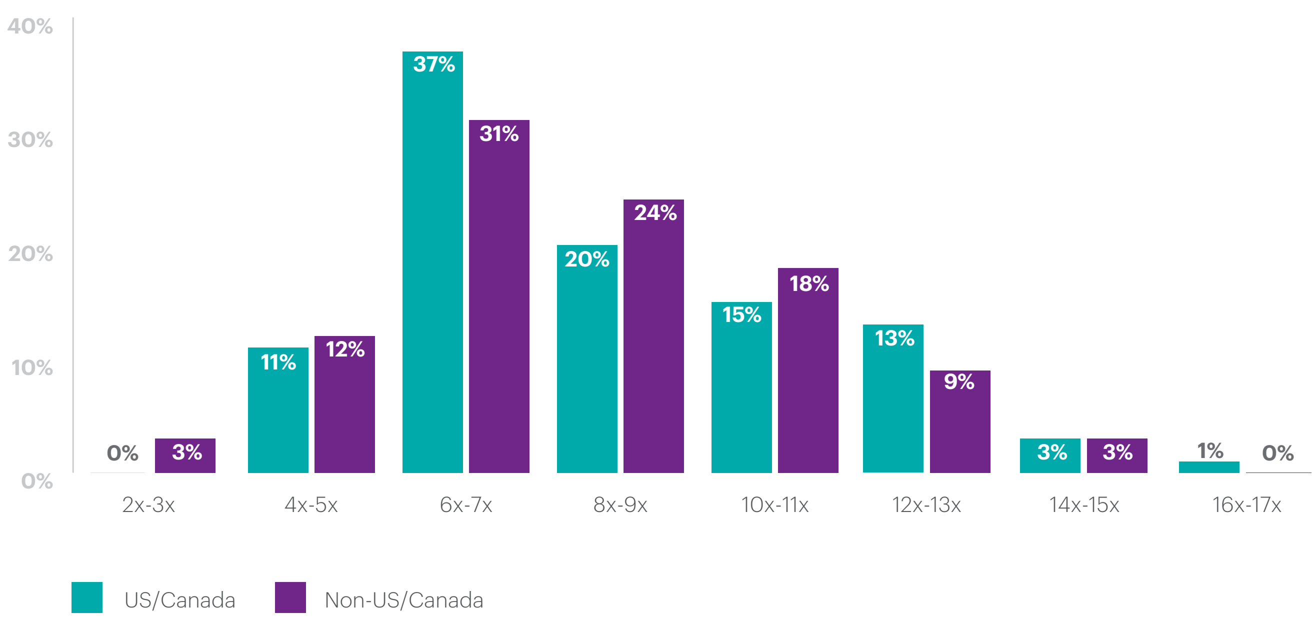
In your most recent cross-border deal, was the target a private company or a public company? (Select one)



What was the approximate enterprise value of the target company in your most recent cross-border deal? (Select one)



What was the approximate EBITDA multiple that you paid in your most recent cross-border deal? (Select one)



Part 1: Lay of the Land

Cross-border dealmaking hit new highs in 2021, with executives on the hunt for growth opportunities in new markets and assets to help them keep up with key trends in digitalization.

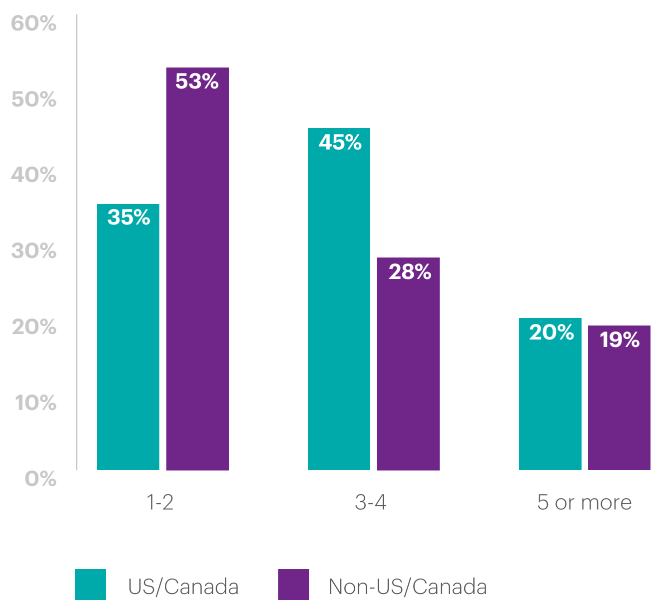
Global cross-border M&A reached its highest ever peak in 2021. More than US$2.1 trillion was invested across 9,558 deals, records in value and volume terms—2021 was nothing short of exceptional. After a robust start to 2022, the market cooled somewhat in the latter part of H1, though remained above pre-pandemic levels.

Our survey respondents attest to the recent red-hot market. They had a busy 12 months up to Q3 of this year, particularly those in North America, 65% of whom report being involved in at least three cross-border transactions over that period, including 20% who were involved in ive or more such deals. Almost as many respondents outside North America (19%) say the same, though the bulk of this group (53%) reports making only one or two cross-border deals.

TMT has been a irm favorite, re lecting wider market trends. The technology space in particular bene its from ongoing industry convergence as companies retool themselves with digital capabilities. This is not to mention the dry powder that PE funds have been plowing into enterprise software businesses, drawn by their subscription-based revenue models and the promise of outsized returns.

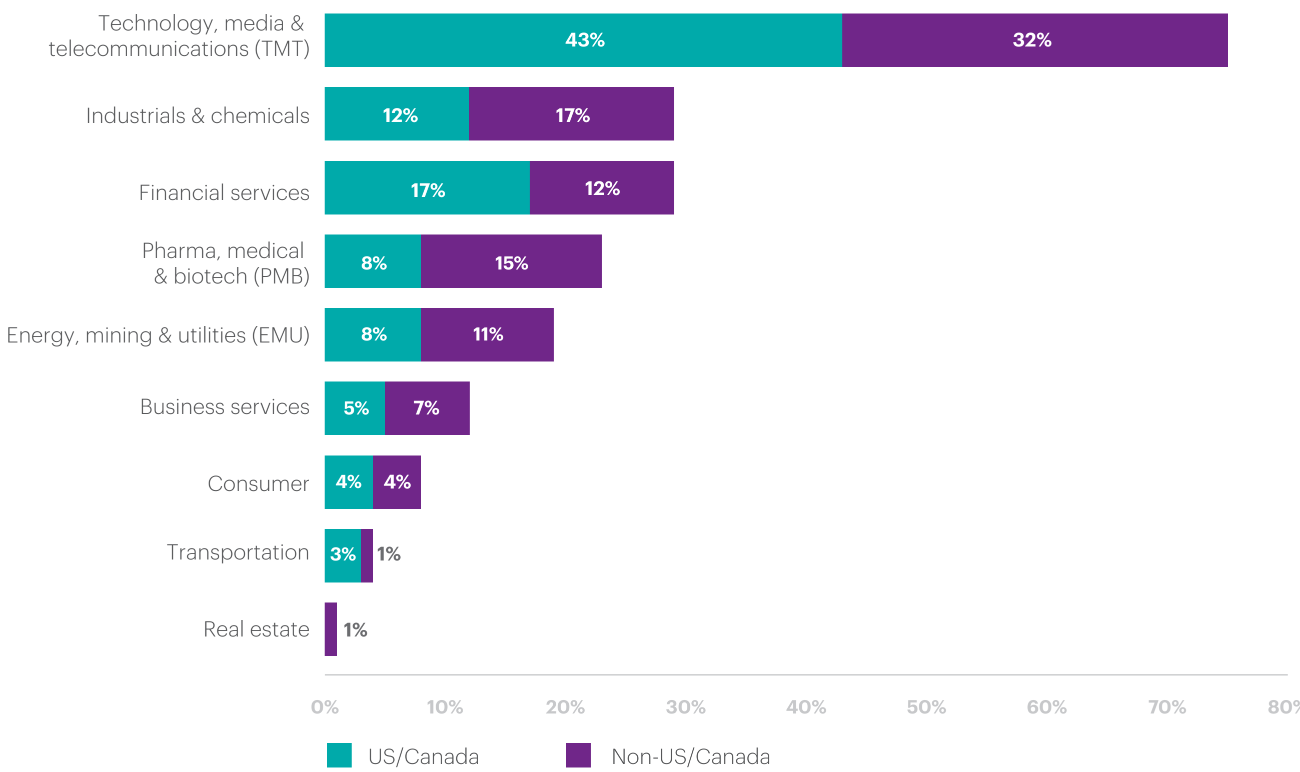
In their most recent cross-border transaction, dealmakers most commonly targeted companies operating primarily in the TMT sector, with 43% of US/Canada and 32% of non-North American respondents, the largest such shares, reporting this industry focus. To clarify just how far in the

How many cross-border deals were you involved in over the last 12 months?   (Select one)



> "The quality of companies' revenue- and pro it-generating capabilities have been a ected in the wake of the pandemic. We must fully understand these limitations, which takes additional time."
>
> —**Finance director of a US corporate**

In your most recent cross-border deal, in what sector did the target primarily operate? (Select one)



lead TMT is, the next most popular M&A sector for our North American respondents was inancial services, in a distant second place with 17% of the vote. For those outside North America, 17% were directing their deal capital toward industrials & chemicals M&A.

Tapping into growth is a major motivator for cross-border deals. This could involve gaining exposure to the equivalent market in a country with stronger long-term growth fundamentals. An overseas company may have similar or synergistic products and mastered distribution or marketing in their own backyard. Another attraction is the potential of fast-tracking the digitalization of the acquiring company via a merger.

For respondents outside North America, the most important motivating force behind their cross-border M&A strategy is expanding into new growth markets, cited by 29% as their primary driver and a further 15% as a secondary reason. Companies based in Western Europe, and which derive most of their revenue from the region, have strong reason to pursue deals elsewhere as populations plateau and growth stalls at home. Those in North America, in contrast, are more interested in pursuing digital transformation, which garners 23% of irst-place votes and a further 12% of second-place selections among this cohort.

New due diligence burdens

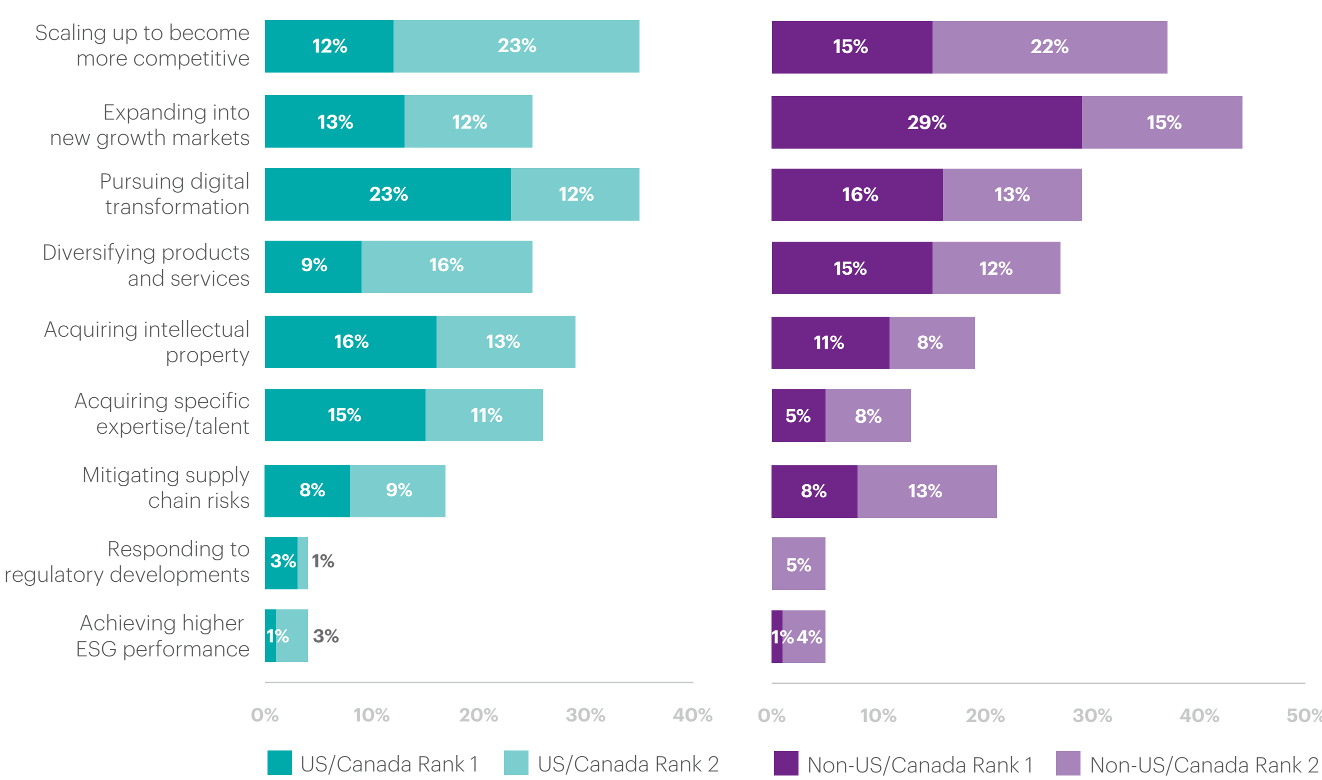
The pandemic greatly disrupted, to say the least, dealmakers' typical due diligence processes. Videoconferencing was hugely helpful for meeting senior management teams remotely, but onsite inspections were frustrated by travel restrictions, or in some cases replaced by walkthroughs using drones.

Dealmakers made the best of a di icult situation but, despite reduced travel time, it seems on the whole that investors found that it took longer than usual to take their usual due diligence steps. Just under a third of both US/Canada respondents (29%) and non-North American respondents (28%), the largest such shares, report that, compared to their pre-pandemic experience, it has been taking an extra three to six months to complete due diligence on cross-border transactions. That said, 23% of respondents report that their timelines have been extended by only a few weeks at most, despite the challenges they have faced.

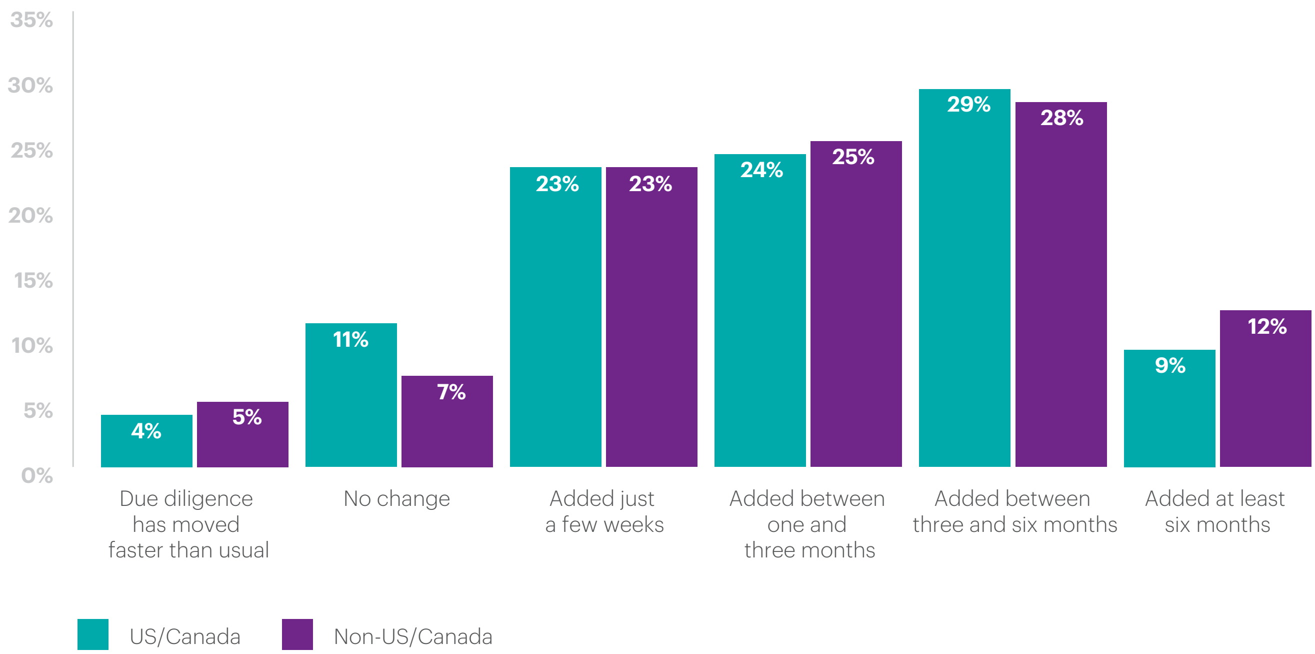
One of the complications induced by the pandemic and its aftershocks has been "earnings noise." Many companies were hit very hard by the crisis, only to see their performance rebound strongly once the worst of the pandemic was behind them. Equally, many digital business models were supercharged during lockdowns, only to slump as economic activity returned to normal. This has added to the due diligence burden, says the inance director of a US corporate: "The quality of companies' revenue- and pro it-generating capabilities have been a ected in the wake of the pandemic. We must fully understand these limitations, which takes additional time."

Not all facets of due diligence are created equal. Respondents in the US/Canada most frequently cite technology (40% of top-three selections) and cybersecurity due diligence (39%) as having been the most di icult to complete in their cross-border deals over the last 12 months, with operational diligence not far behind (36%). Respondents outside North America, meanwhile, have mostly been frustrated by intellectual property (IP) due diligence (51%).

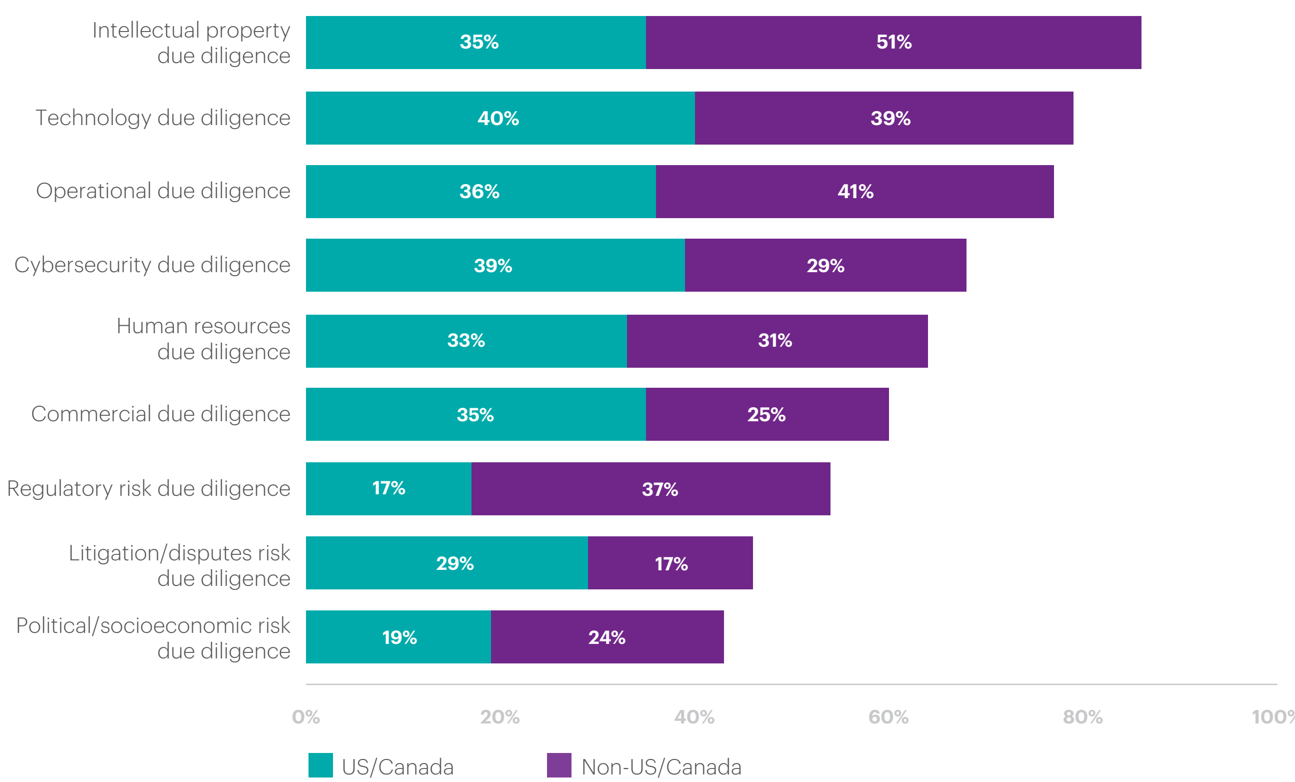
What were the most important factors driving your cross-border dealmaking strategy over the last 12 months? (Select top two and rank 1 2, where 1=most important)



Compared to your experiences before the pandemic, how much longer has it taken to complete due diligence on cross-border deals over the last 12 months? (Select one)



What element of due diligence has been the most di icult to complete to a satisfactory level in your cross-border deals over the last 12 months? (Select up to three)



Assessing the validity and enforceability of IP rights owned or licensed by a company can make or break a deal, since IP can create signi icant barriers to entry that prevent competitors from winning market share. A related phenomenon that has become more acute since the pandemic is regulatory creep, particularly as it relates to FDI. Governments are growing increasingly wary of investors from competing or geopolitically unallied countries gaining access to strategically important assets.

“Over the last 12 months, there were a few weeks added to our due diligence timeline,” says the director of strategy at a Japanese corporate. “This is bound to happen when geopolitical risks and protectionist policies come into the picture.”

There is a clear divergence between our two subsets of respondents, with 37% of those outside North America identifying regulatory risk assessments as one of the three most challenging facets of cross-border due diligence, versus just 17% of US/Canada respondents who feel the same. This latter group, conversely, is considerably more concerned with litigation due diligence (29%) than the former (17%).

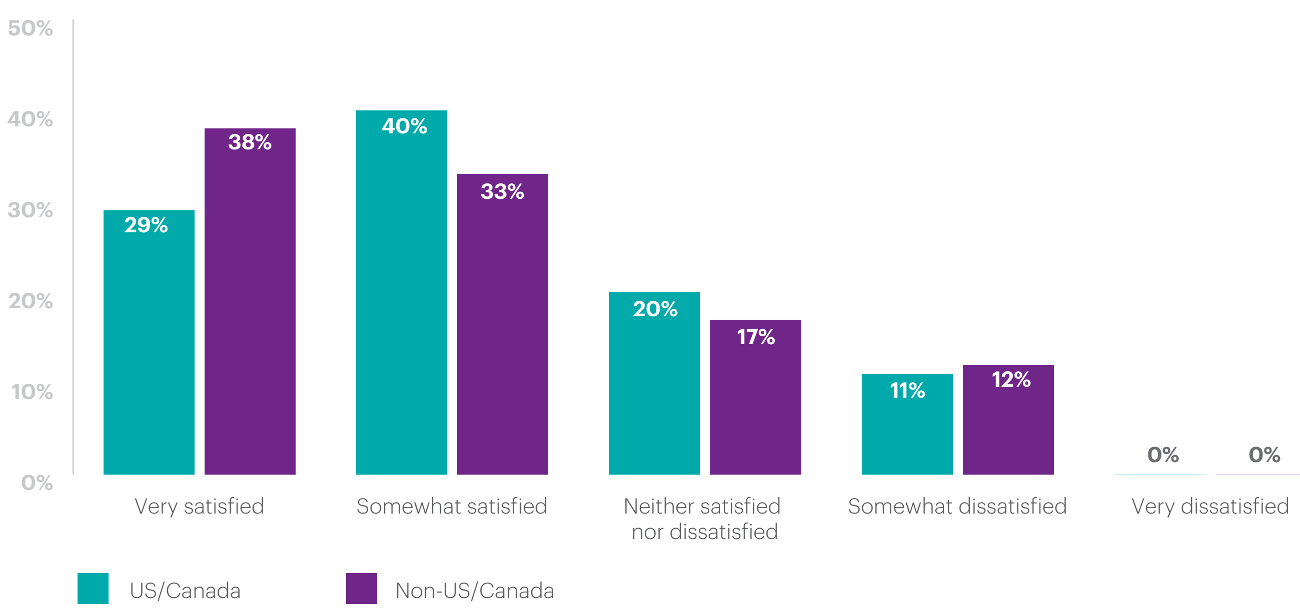
Room to improve

Delays notwithstanding, satisfaction levels are running high. Among all our respondents, 70% say they are satis ied with the outcome of their most recent cross-border transaction, including 29% of US/Canada respondents and 38% of their non-North American peers who go as far as saying they are very satis ied.

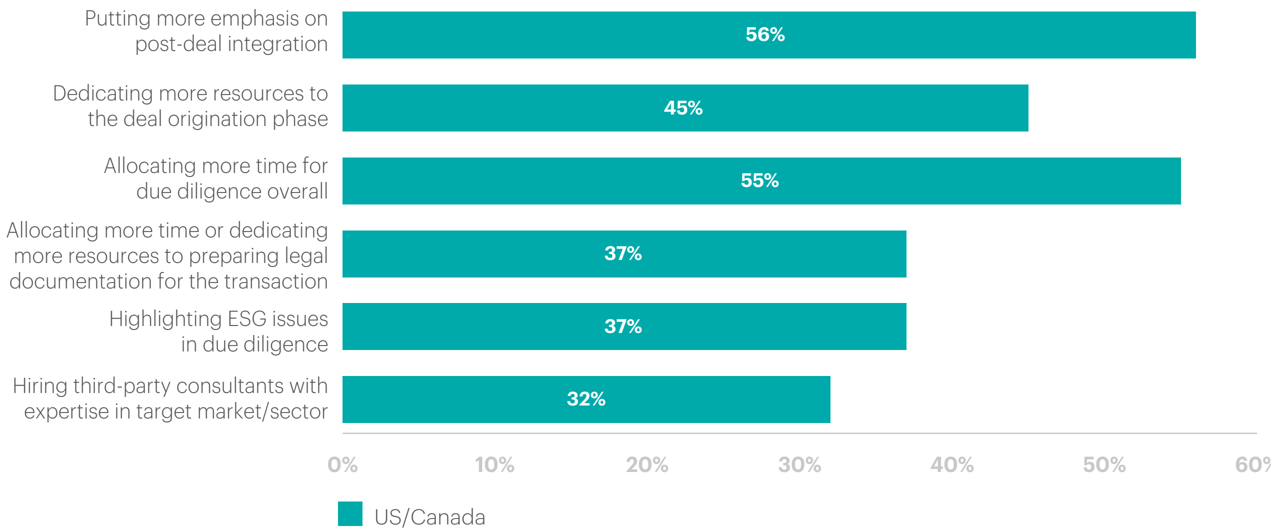
There is always room for improvement, of course. M&A is a delicate process, even more so when acquiring and integrating a business that operates in a foreign market. It is not a simple case of identifying a direct competitor or an innovative upstart with a state-of-the-art product. There are operational hurdles to overcome when assimilating a company, not to mention cultural barriers.

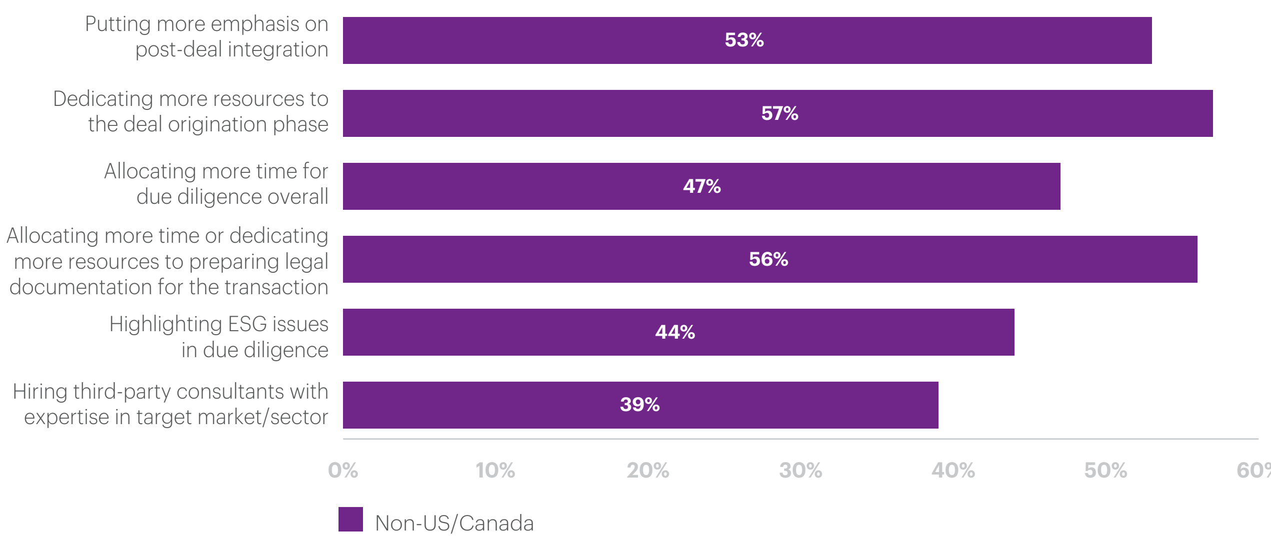
Although respondents are broadly satis ied with their recent deals, 55% of those from North America say they should have allocated more time to due diligence, and 56% believe they should have placed more emphasis on post-deal integration. A similar proportion of non-North American respondents (53%) agree that their most recent international deal would have bene ited from focusing more

Ultimately, how satis ied were you with the outcome of your most recent cross-border deal? (Select one)



What additional measures do you think should have been taken to improve the M&A process overall in your most recent cross-border deal? (Select all that apply)





on integration issues at the outset. However, this camp was more likely to say improvements could have been achieved by dedicating more resources to deal origination, cited by 57%, suggesting they believe more suitable targets may have been left on the table, and 56% believe that spending more time preparing legal documentation would have bene ited their last deal.

"Over the last 12 months, there were a few weeks added to our due diligence timeline. This is bound to happen when geopolitical risks and protectionist policies come into the picture."

—**Strategy director of a Japanese corporate**

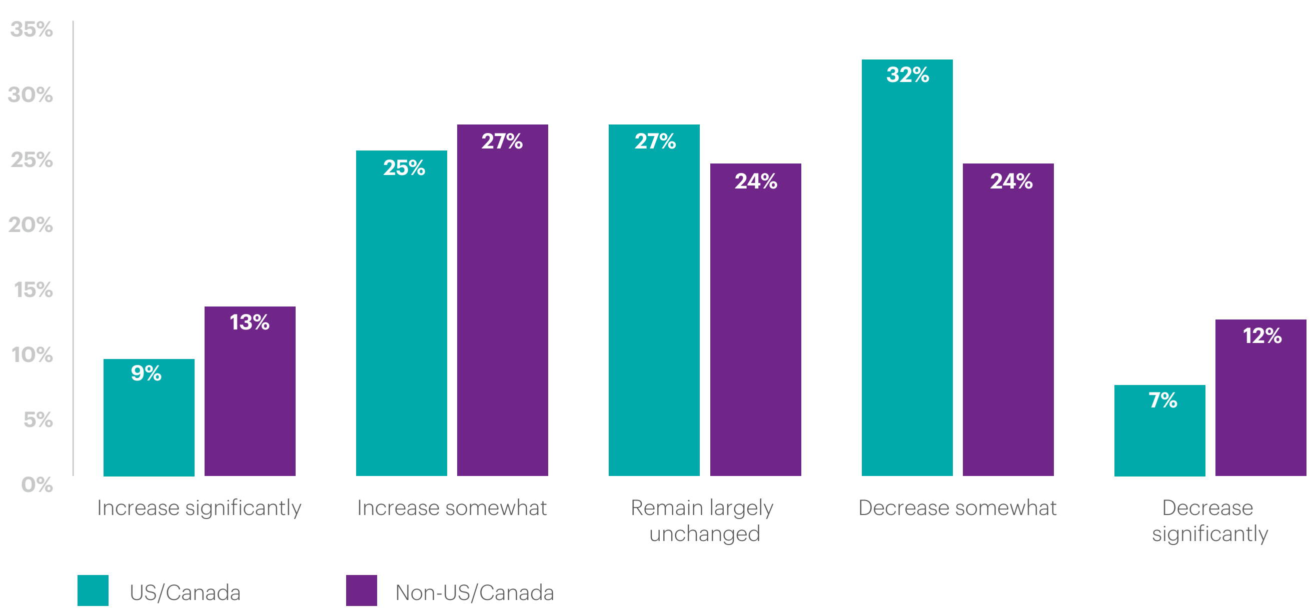
Part 2: The Road Ahead

Although various risk factors, especially in lation and protectionist attitudes, must be carefully navigated, executives are excited by the litany of potential deals to be found overseas.

Acquirers barely had a moment to catch their breath in 2021, busy as they were amid the most active cross-border M&A market on record. Maintaining that momentum was always going to be di icult, not only in deal markets but across the global economy writ large. The onset this year of monetary tightening and fever-pitch geopolitical tensions understandably have investors questioning the sustainability of the recent pace of action.

Respondents are mixed regarding the near-term outlook for cross-border M&A activity. Among US/ Canada respondents, 39% expect it to decrease compared with the past 12 months, a view that 36% of non-North American executives share. That said, 34% of the former and 40% of the latter are bullish, predicting an increase.

Overall, what do you think will happen to the number of cross-border M&A deals globally over the next 12 months as compared to the last 12 months? (Select one)



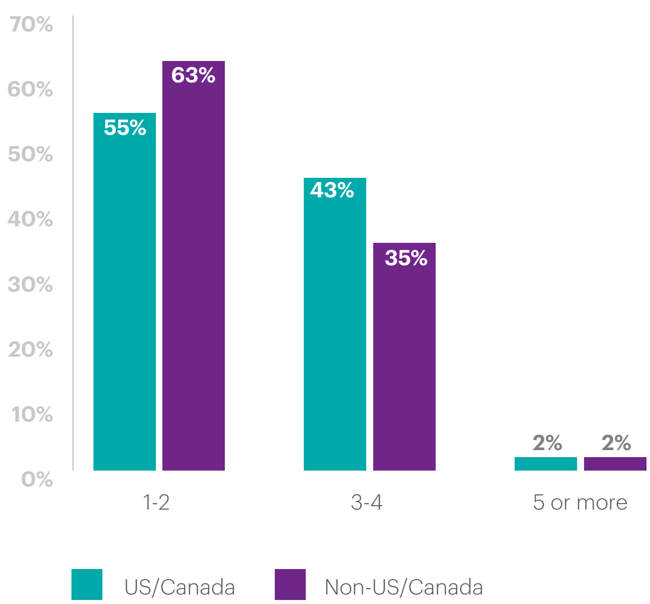
But that optimism does not apply as widely to the outlook for their individual activity. More than half of all respondents (59%) expect to conduct only one or two cross-border transactions over the next 12 months, a noticeable jump compared to the 44% who report having completed so few deals over the last 12 months.

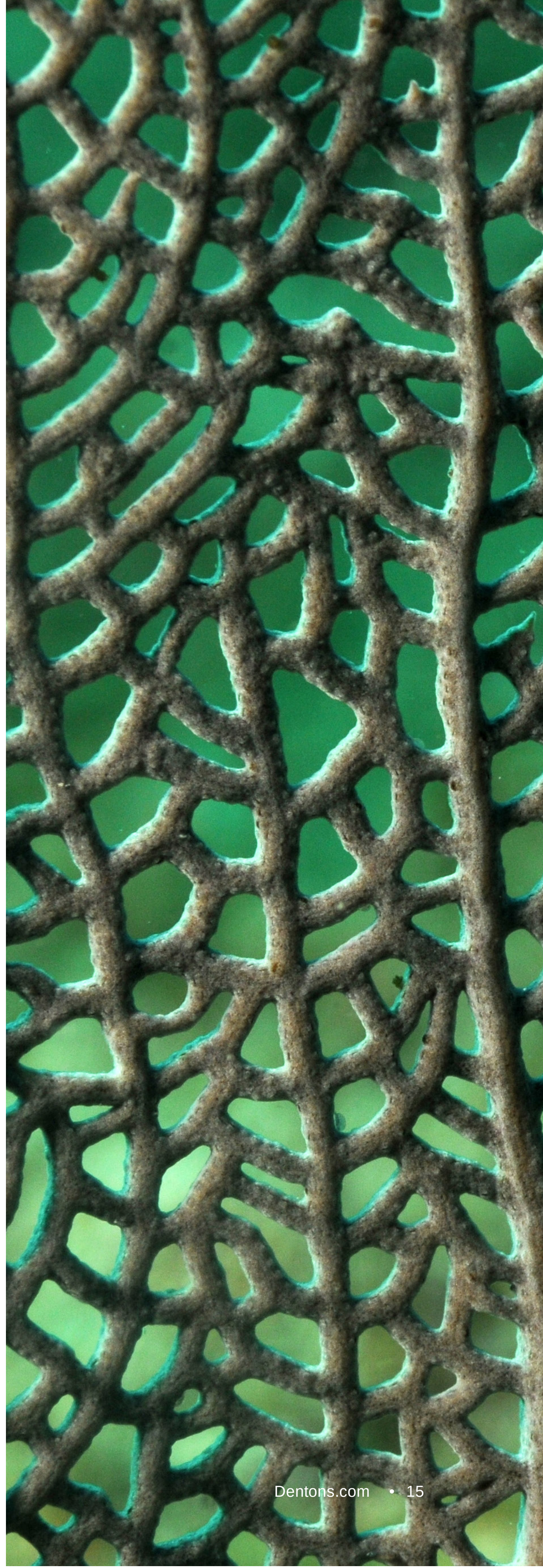
A world of opportunity

Dealmakers are sticking to the script with their strategies, with TMT remaining by far the most appealing sector for future cross-border transactions. This was cited by 72% of US/Canada respondents and almost all their peers outside North America (93%). The next most popular industry, cited by just over half of respondents overall, is inancial services. At the other end of the spectrum sit the real estate and energy, mining & utilities sectors, which more than half of respondents globally consider unappealing.

Real estate is being rocked by rising interest rates and the attendant higher costs of servicing mortgages and other loans. It may take some time before in lation is brought to heel and dealmakers

How many cross-border deals do you expect to be involved in over the next 12 months? (Select one)

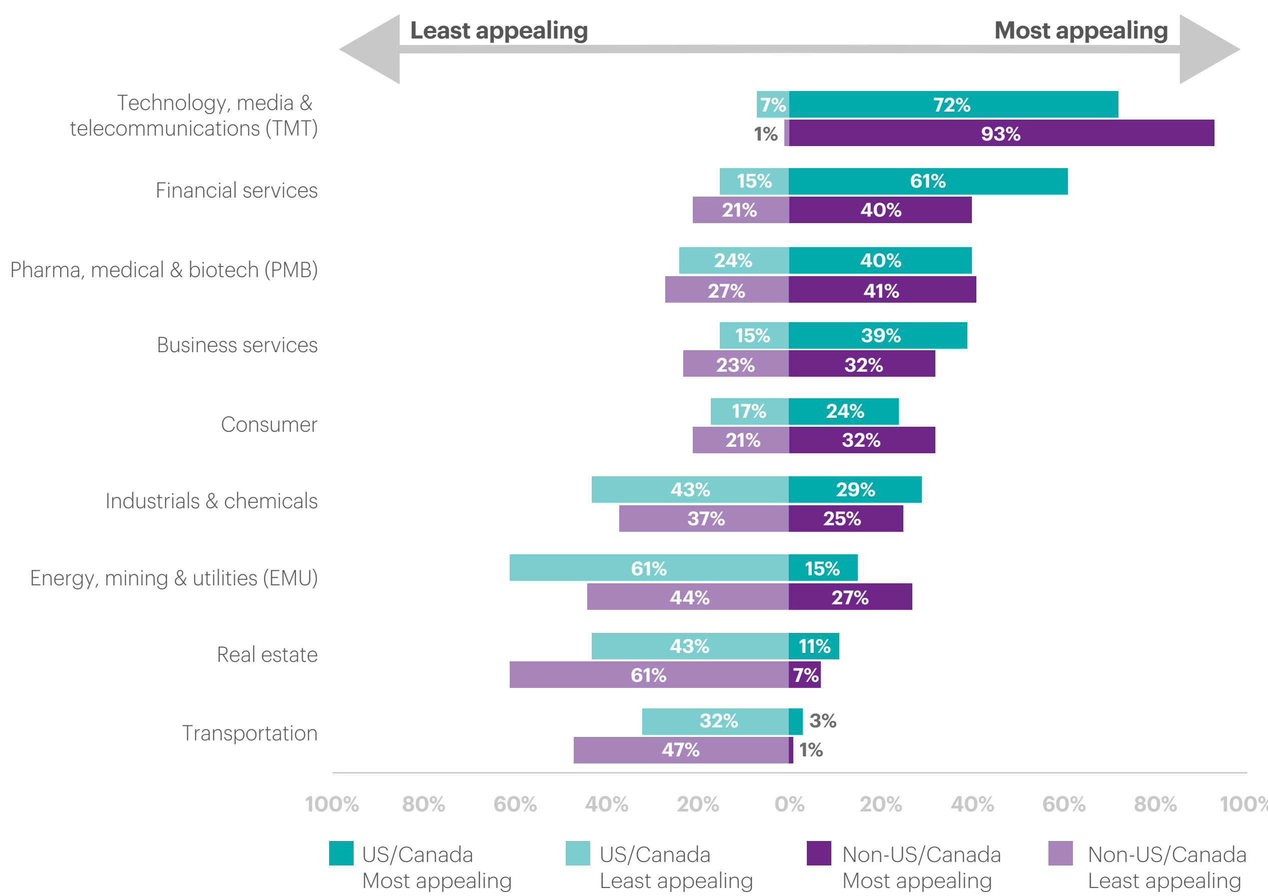




regain their appetite for the sector. And while energy prices have never been higher, in lated by supply disruptions stemming from the war in Ukraine, investors will be questioning how high they can go from here and be cautious of buying at the top of the market. Notably, these sectors also have far less convergence potential for corporate acquirers compared with technology-related assets.

The US understandably has unmatched appeal, particularly considering investors' continued focus on TMT. The country leads the world in R&D investment, is the home of Big Tech, and has the richest startup scene globally. No wonder then that two-thirds of our respondents based outside North America cite the US as being one of the most appealing regions for buy-side cross-border M&A, far ahead of other markets.

Which of the following sectors do you believe o er the most and least appealing opportunities for cross-border M&A? (Select up to three for each)

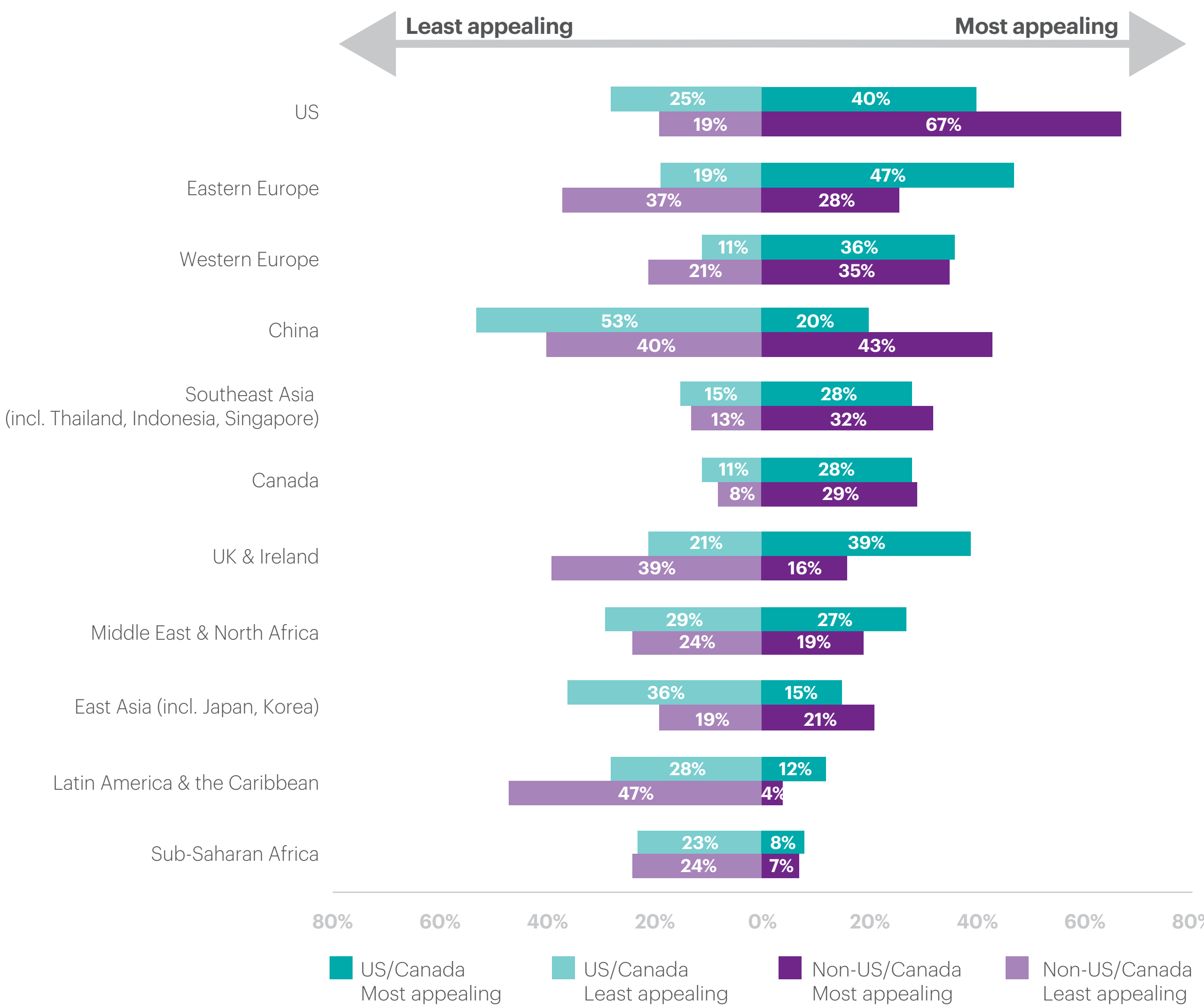


Their US/Canada peers, meanwhile, emphasize the appeal of Eastern Europe (47%), followed by the US (40%), the UK & Ireland (39%), and Western Europe (36%).

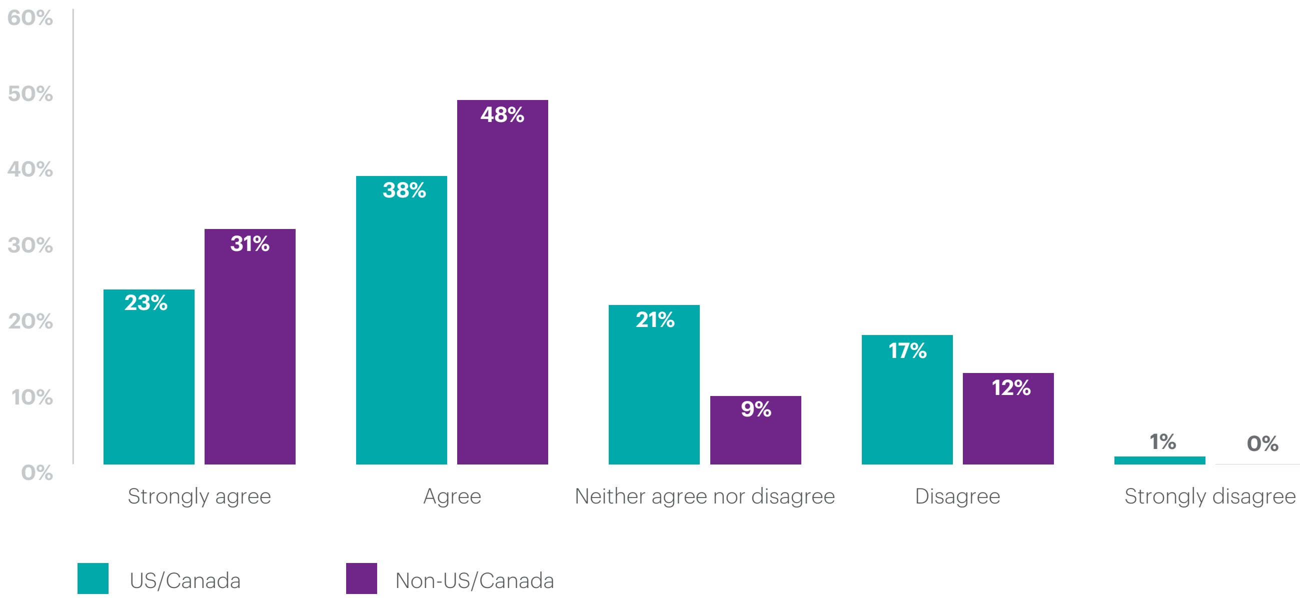
Eastern Europe may not seem like an obvious choice given the con lict in Ukraine, but the region has emerged as a tech tour de force in recent years, largely thanks to its deep pool of technical and coding talent. Global awareness has been raised by the success of companies like Romanian automation player UiPath, DevOps irm GitLab, and Baltic standouts like Bolt, Wise, and Vinted. Tallinn, the capital of Estonia, features the most startups per capita in Europe.

There may also be steeper discounts to be found as geopolitics weigh on con idence, adding to the currency advantage that US buyers already enjoy as the dollar has strengthened over the past year. As the vice president of strategy of a US corporate explains, “Eastern Europe has many distressed deal opportunities. For corporate buyers, this o ers the best opportunities to buy companies at a lesser price, integrate them, and then work on any performance challenges.”

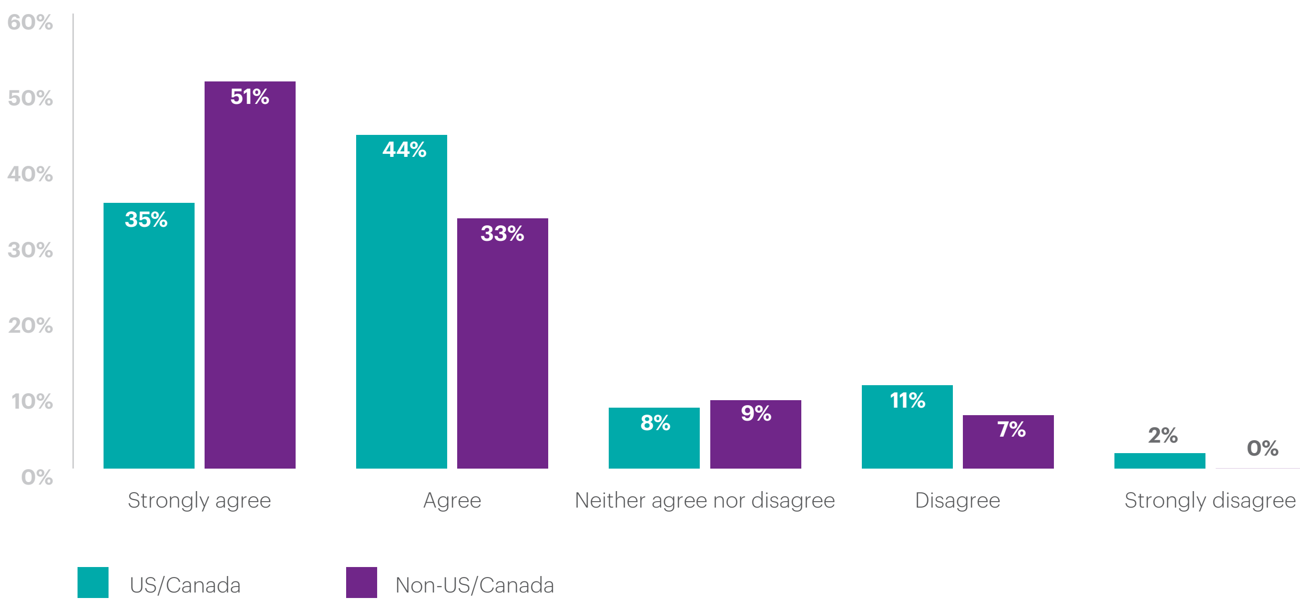
Which of the following regions do you believe are the most and least appealing for buy-side cross-border M&A activity? (Select up to three regions for each)



To what extent do you agree with the following statement: “The pandemic experience and issues with global supply chains will cause organizations to prioritize onshoring and domestic dealmaking in the near term”? (Select one)



To what extent do you agree with the following statement: “Stricter protections on foreign investment—such as those directed by the Committee on Foreign Investment in the United States and its counterparts in other countries—will have a noticeable negative impact on our cross-border dealmaking plans”? (Select one)



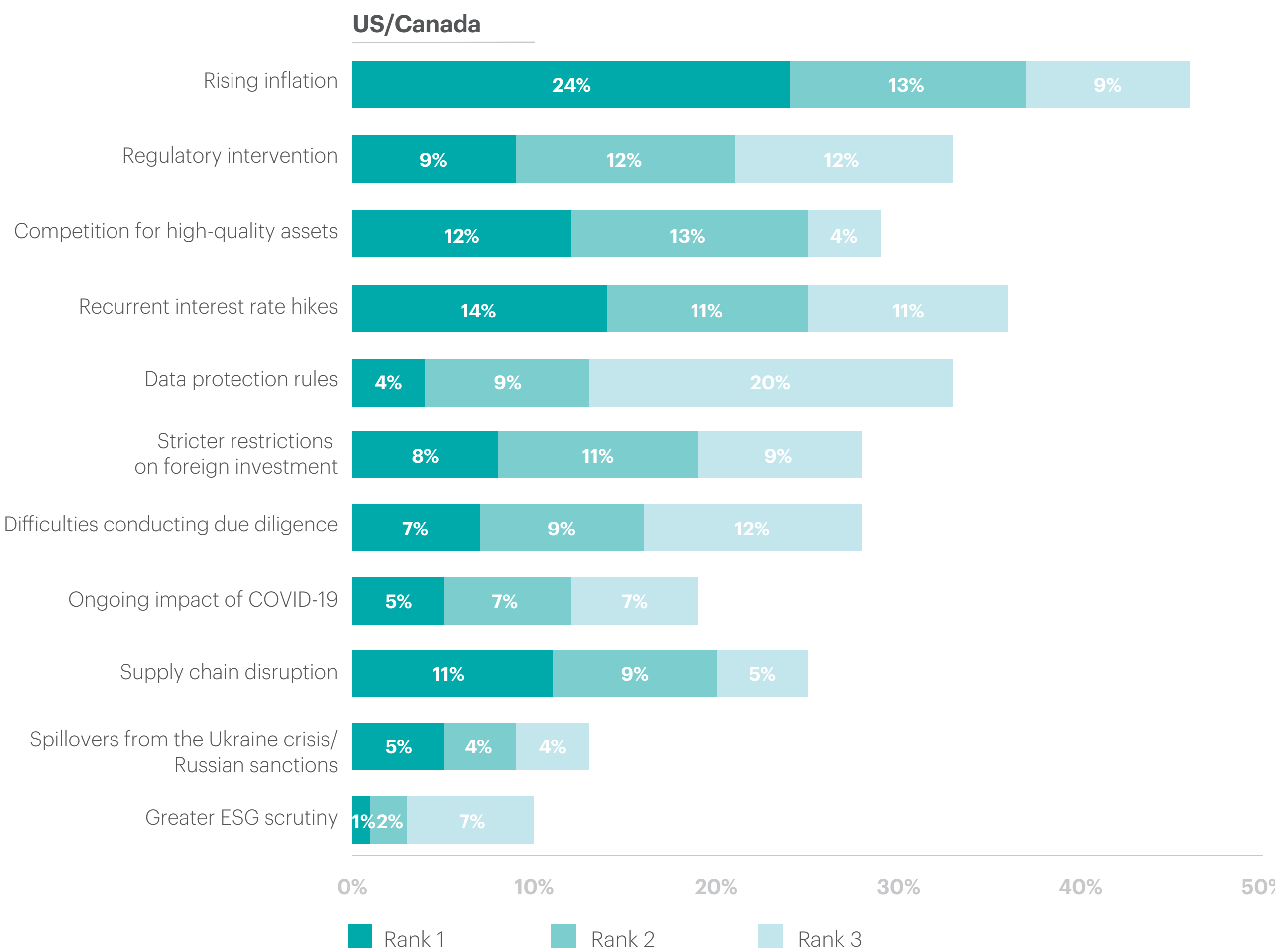
Economic decoupling

Opinion is split over the appeal of Chinese targets. More than two- ifths (43%) of non-North American respondents identify China as an appealing region, as do 20% of US/Canada respondents. However, almost as many participants outside North America (40%) say China is among the least appealing destinations for buy-side activity, a view shared by 53% of US/Canada respondents.

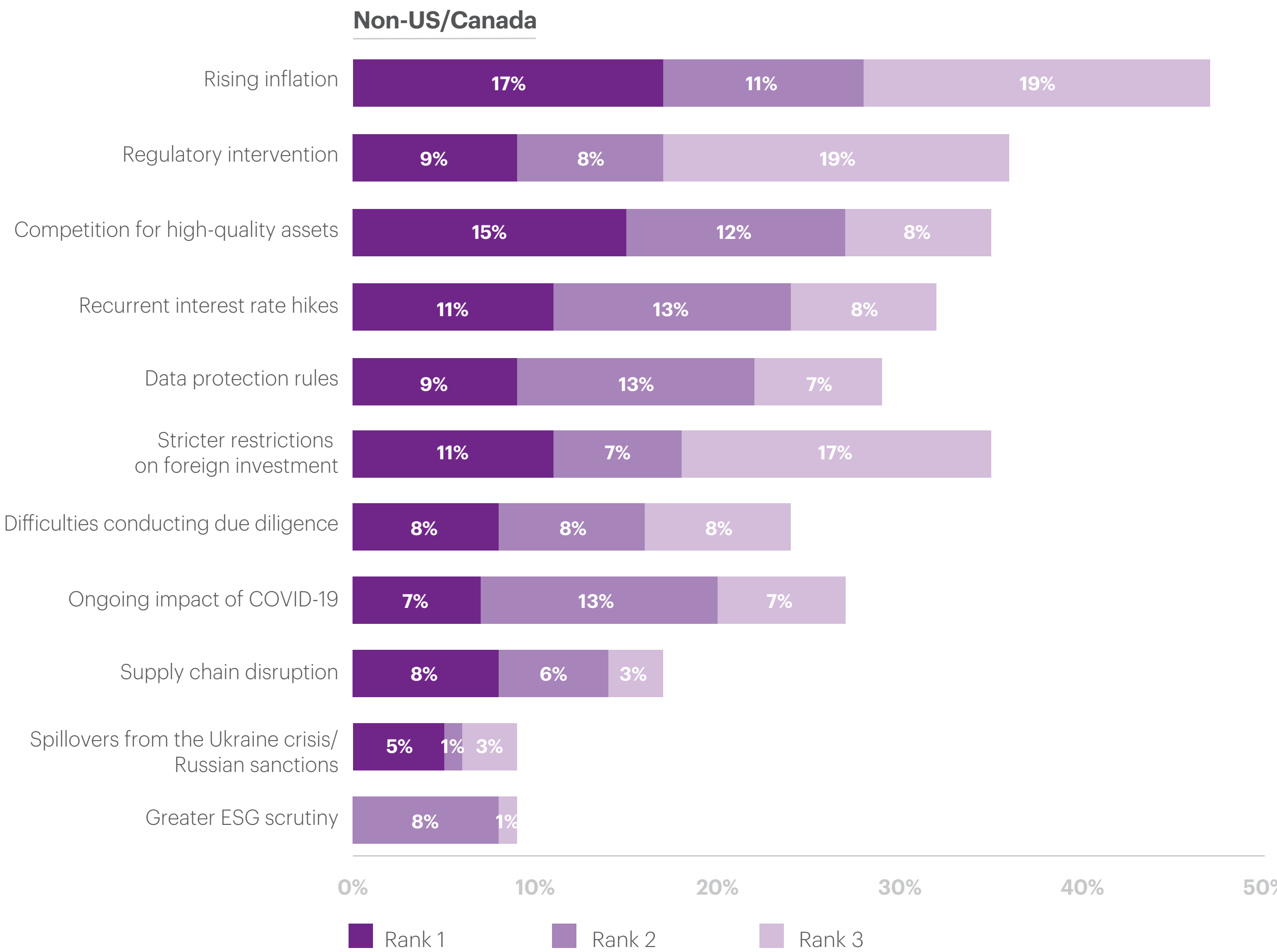
The US has been taking a decisively protectionist position toward China over the past six years, culminating in August with the passing of the CHIPS and Science Act, intended to incentivize the repatriation of semiconductor manufacturing. A huge amount of attention is being paid now to supply-chain resilience, competitiveness, and national security. A case in point, 70% of respondents overall agree that "the pandemic experience and issues with global supply chains will cause organizations to prioritize onshoring and domestic dealmaking in the near term," including more than a quarter (27%) who strongly agree with this statement.

Not everyone, however, is on the same page. Some see the need to recon igure global supply chains to increase optionality instead as a motivation

What are the greatest potential risk factors that may negatively impact your cross-border dealmaking plans? (Select top three and rank 1 3, where 1=greatest risk)



What are the greatest potential risk factors that may negatively impact your cross-border dealmaking plans?   (Select top three and rank 1 3, where 1=greatest risk)

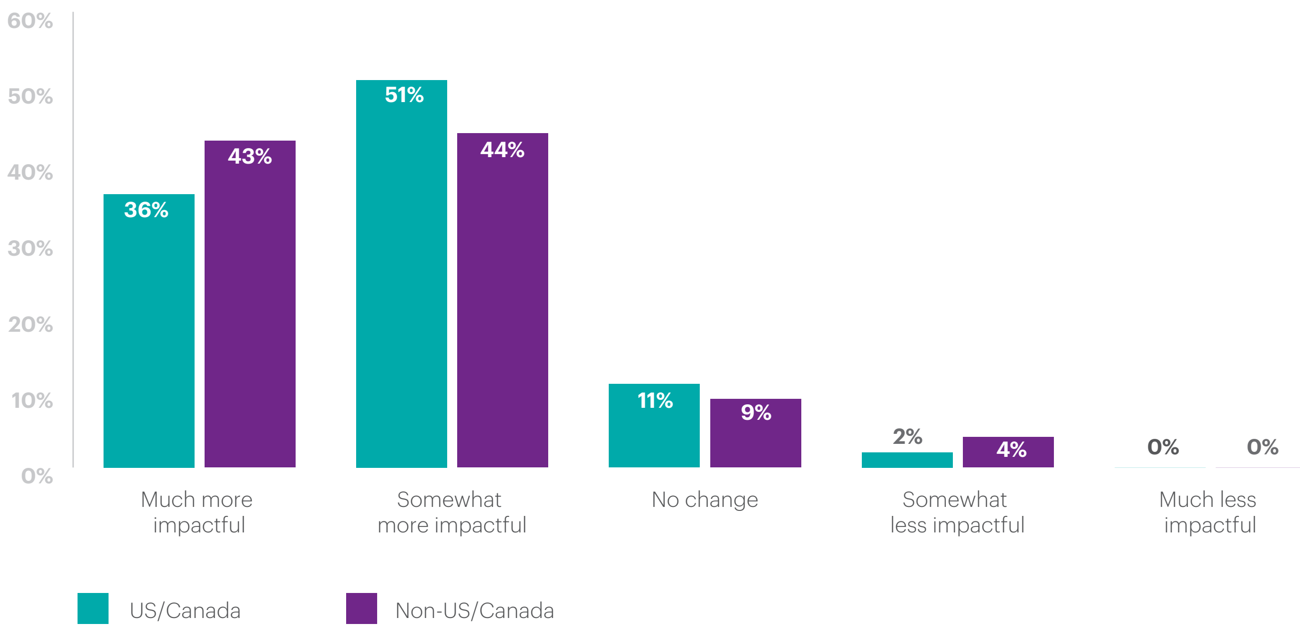


for seeking to acquire strategic suppliers in new geographies, spurring deals. “Organizations will prioritize cross-border dealmaking in the near term. They can o set supply-chain risks by making them more lexible. When they invest in global companies, they have a better chance of mitigating key risks,” says the CFO of a US corporate.

Protectionism in the US toward China is being reciprocated, with Beijing taking an equally stando ish position toward Washington on trade and FDI. This decoupling of the world’s two largest economies is dimming sentiment among investors, though this is not isolated to US acquirers. As much as 80% of all respondents agree that stricter FDI protections will have a noticeable negative impact on their cross-border dealmaking plans.

It has not just been the Committee on Foreign Investment in the United States (CFIUS) that has been cracking down on inbound Chinese investment. Many Western European countries have taken similarly hawkish stances on FDI, particularly in relation to strategically sensitive industries. Attitudes could not be more explicit on this point, with 51% of executives outside North America being especially pessimistic and strongly agreeing that protectionism will have a negative impact on cross-border M&A.

How much more impactful do you expect ESG-related guidelines to become on cross-border M&A over the next 12 months? (Select one)



Above all else, however, it is spiraling prices that are the biggest worry. Both respondent groups identify rising in lation as by far the greatest potential risk factor that may negatively impact their cross-border M&A plans, cited by 46% of US/Canada respondents and 47% of their non-North American peers as a top-three point of concern.

For US/Canada respondents, other key issues include, related to in lationary pressures, the risks posed by recurrent interest rate hikes (36% of top-three votes), as well as regulatory intervention (33% of top-three votes). It is di icult to alleviate the impact of in lation given that all economies are experiencing surging prices, with the most likely net e ect of this, combined with restrictive rates, being higher unemployment and reduced economic demand. This will hit many companies' earnings, restricting their ability to raise equity while simultaneously inhibiting their access to credit.

ESG-related guidelines are also likely to shape cross-border M&A in the near term. Buyers need to be increasingly aware of the gaps in ESG strategies and cultures between themselves and their investee companies, in addition to the traditional synergies and gaps they must identify. There is evidence of positive capability transfer between acquiring companies in developed and more-highly ESG-regulated markets, such as those in Europe, and their targets in emerging economies.

This process acts as a conduit via which businesses in less developed geographies can learn and adopt technologies and sustainable practices in the post-deal integration stage of these deals, according to research from the Mergers & Acquisitions Research Centre, part of Bayes Business School. Overall, 87% of our respondents expect ESG guidelines to become more impactful on cross-border M&A over the next 12 months. That includes more than a third (36%) of US/Canada respondents and 43% of those based outside North America who anticipate this trend to become much more impactful.

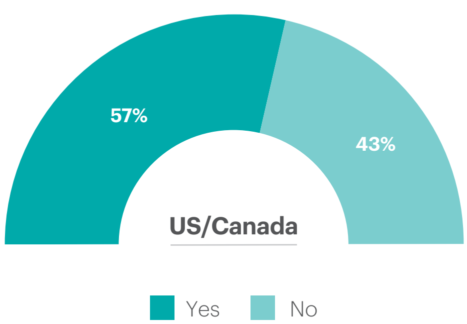
Part 3: Deal Defenses and Dispute Resolution

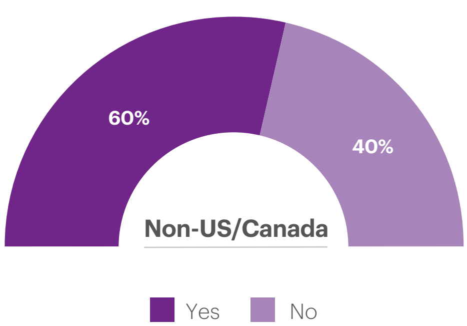
In this period of macroeconomic turbulence, dealmakers are more aware than ever of the need to mitigate buyer risk and remain more than prepared to take legal action where necessary.

As capital and M&A markets have increasingly transitioned to risk-o mode over the course of 2022, it is only natural that acquirers double down on protective measures that mitigate against unwanted outcomes. Representations and warranties (R&W) insurance is one such solution available to them. These policies protect buyers against misleading statements or potential warranty breaches made by vendors. Most of our survey respondents (57% in the US/Canada and 60% elsewhere in the world) report making use of R&W insurance in their most recent cross-border deal.

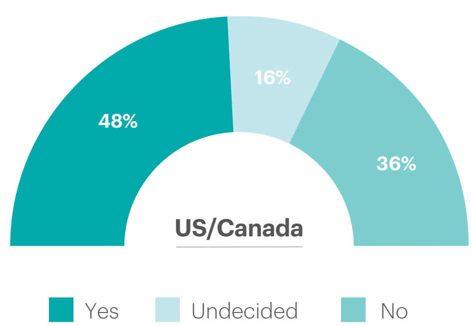
These percentages may have been even higher were it not for the unparalleled demand for R&W insurance observed through 2021, with

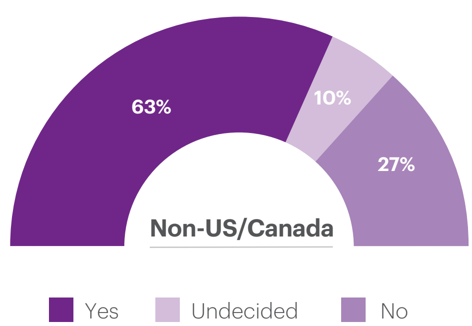
In your most recent cross-border deal, did you employ representations and warranties (R&W) insurance? (Select one)





Do you plan to employ R&W insurance in cross-border deals over the next 12 months? (Select one)





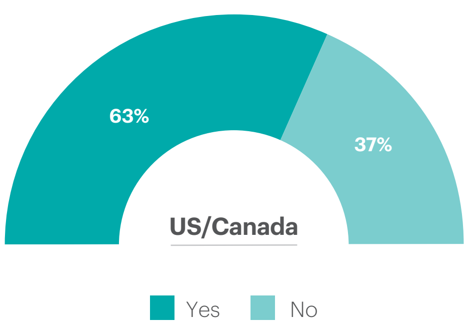
underwriting capacity unable to meet transaction volumes. It has been reported that declination rates exceeded 60% by Q4 of last year, even with new underwriters entering the market. Inevitably, this supply/demand mismatch led to R&W policy rates spiking in 2021, including by as much as 40% across the US and Canada.

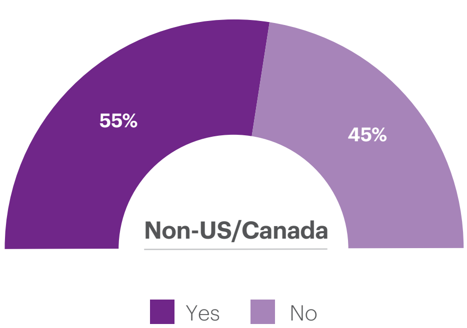
These insurance market pressures may explain why a smaller proportion of North American respondents (48%) say they plan to employ R&W insurance in cross-border deals over the next 12 months compared with the past year, with a further 16% reporting that they are currently undecided. Their peers outside of the region, however, are more convinced, with 63% a irming that they intend to make use of it and just 10% being undecided.

Earnouts are another way for buyers and sellers to settle on mutually bene icial arrangements. Acquirers will be wary of overpaying for assets that may go on to underperform once a deal has concluded, especially in a potentially weakening economic environment. Earnouts have always been a part of the dealmaker's toolkit but were less prevalent a year ago, before in lationary pressures grew and the monetary tightening cycle began. They are back in the spotlight as a means to bridge valuation gaps, minimizing buyer risk with performance ratchets that accrue to the seller if the company performs as promised. These deferred payments can be based on pro it or revenue targets, or even product development milestones, depending on the sector, the subject of the deal, and what will allay acquirers' concerns.

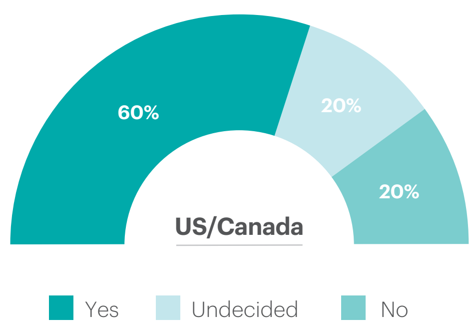
Most respondents (63% in the US/Canada and 55% elsewhere in the world) employed earnouts or similar deferred compensation and deferred payment mechanisms in their most recent cross-border transaction. This approach is expected to remain popular in the short term, with precisely equal 60% shares of respondents inside and outside North America saying earnouts will be employed over the next 12 months in their cross-border deals.

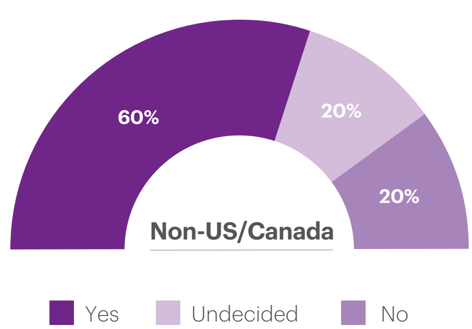
In your most recent cross-border deal, did you use an "earnout" or similar mechanism so that a portion of the purchase price was based on the target's post-closing performance? (Select one)





Do you plan to employ an "earnout" or similar mechanism in any cross-border deals over the next 12 months? (Select one)





Fighting your corner

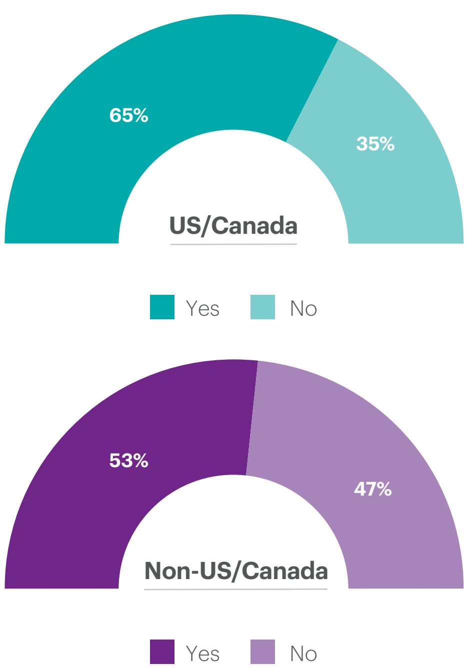
Outside of earnouts and R&W provisions, one party to a transaction may deem it necessary after the fact to take legal action against the other for any number of reasons. For instance, a vendor may breach an agreement not to disclose IP, poach key senior management sta , or interfere with supplier arrangements, all of which could negatively a ect the performance of the acquired company and leave dealmakers nursing losses on their investment.

Bringing a claim if a deal counter-party breaches the contract is a costly pursuit. Litigation funding, which is put up by a third party to inance legal costs in exchange for a portion of any recovered funds, is an option that is increasingly considered to o load this burden.

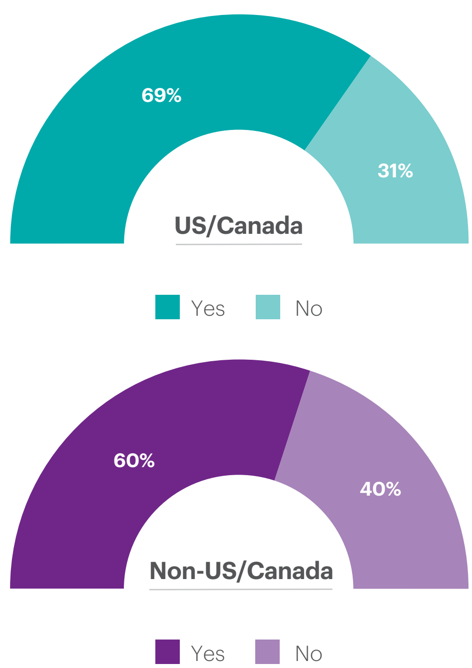
Regarding their prospective dealmaking, the vast majority of respondents globally plan to engage or will at the least explore engaging a disputes funder over the next 12 months. Fewer than 10% of respondents in either the US/Canada or elsewhere in the world are prepared to dismiss the idea outright.

The most common type of dispute concerns con identiality breaches. Disputes of this nature may not necessarily arise in relation to completed deals—breaches of con identiality are common, but actual claims are few and far between. Non-disclosure agreements (NDAs) are used to keep parties from discussing sales, and to minimize disruption from word reaching customers, employees, vendors, or competitors. Over the past 24 months, 58% of

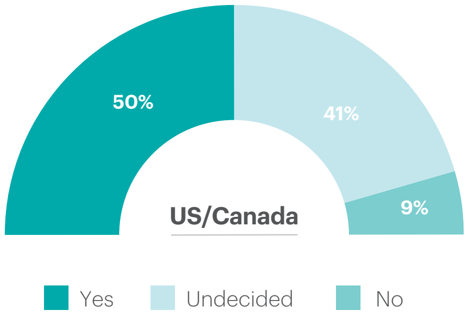
Over the last 12 months, did you engage a litigation/disputes funder to inance any M&A-related litigation (i.e. use funding from a third-party lender with no direct interest in the litigation who would receive their investment back plus a pre-agreed margin if this case was successful)?   (Select one)

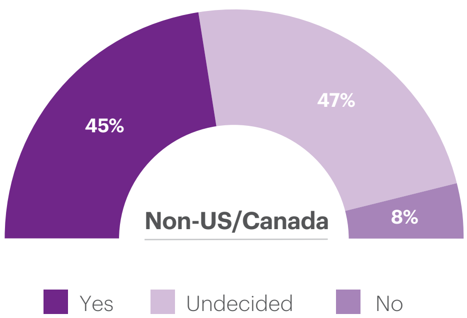


If you have engaged a litigation/disputes funder to inance any M&A-related litigation over the last 12 months, have you ever engaged a litigation/disputes funder in relation to your M&A activity?   (Select one)



Do you plan to engage a litigation/disputes funder in any future cross-border deals over the next 12 months? (Select one)



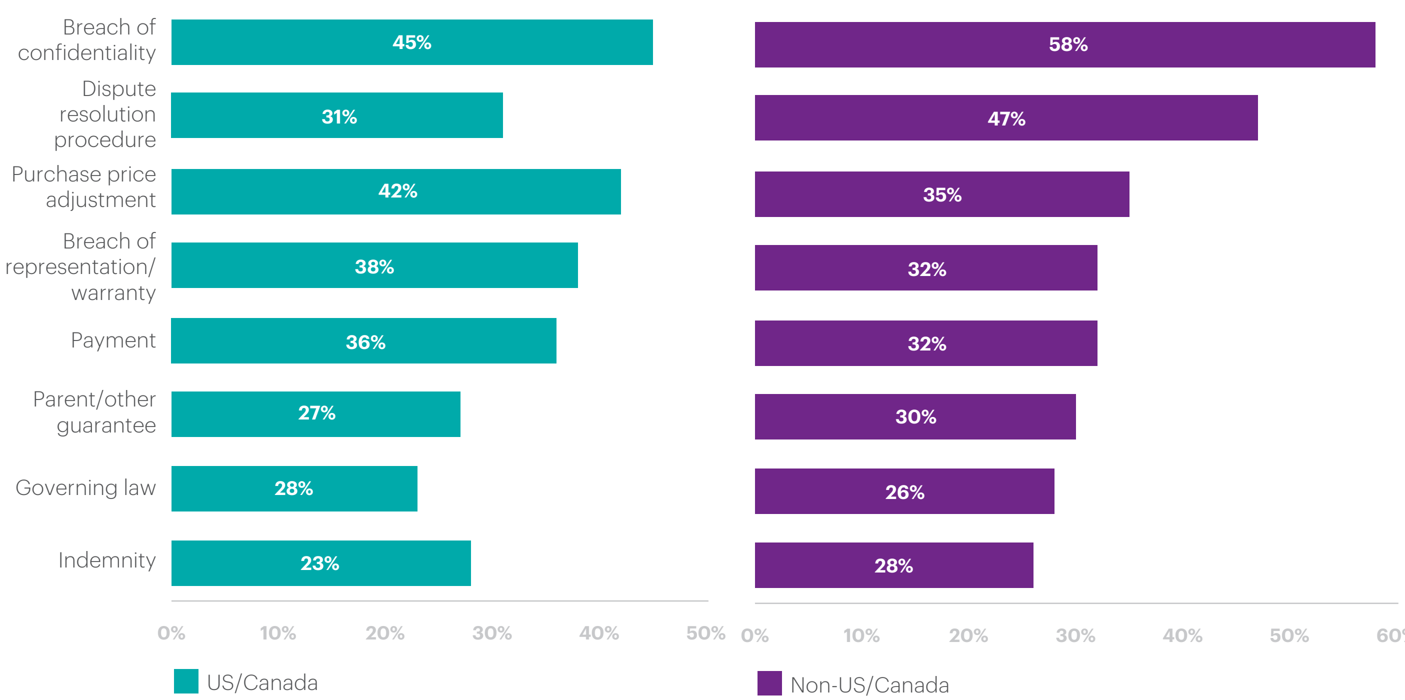


respondents based outside North America report having been involved in a dispute relating to a breach of con identiality. Just under half (45%) of their US/Canada peers report the same.

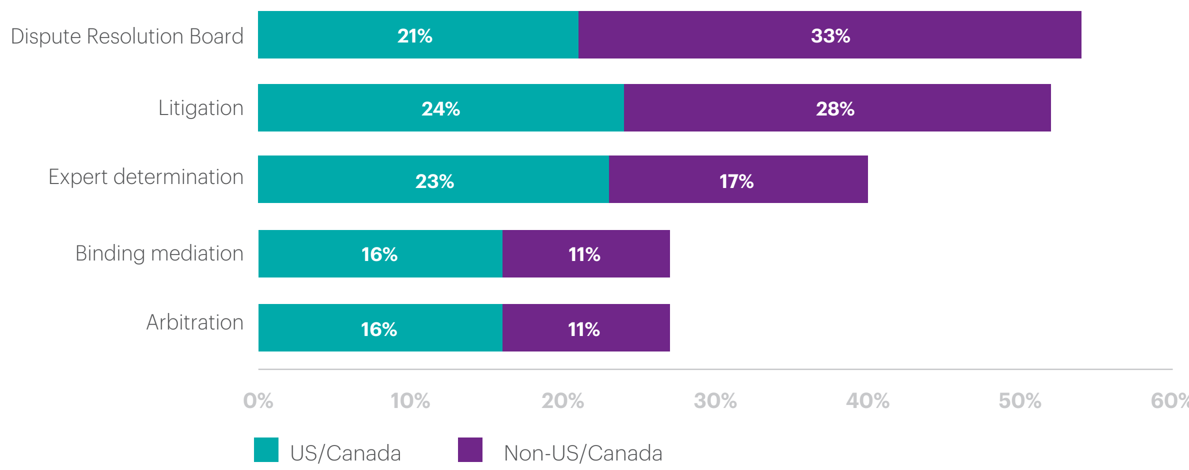
For these North American respondents, disputes related to purchase price adjustments (PPAs) are also common, cited by 42%. PPAs occur in virtually all private M&A transactions to protect parties against the change in value of the deal target between an o er being accepted and the inal closing of the transaction.

This period can stretch for months, over which time the inancial position of the company may change, particularly with regard to its working capital requirements. PPAs are of particular signi icance in cross-border transactions, in which parties may follow di erent accounting standards. Even if both sides agree to accept US Generally Accepted Accounting Principles, they may not fully take into consideration how this can impact the purchase price until closing.

Which forms of litigation and/or dispute has your organization found itself in post-closing over the past 24 months? (Select all that apply)



Which type of dispute resolution mechanism does your organization most commonly use or is most likely to use? (Select one)



Outside North America, meanwhile, 47% of respondents say they were involved in a dispute resolution proceeding, whereby a voluntary settlement is reached by means of resolution techniques such as mediation, conciliation, or early neutral evaluations. And as concerns the various methods for resolving post-closing disputes, non-North American dealmakers most frequently make use of dispute resolution boards, cited by 33%, the next most common recourse being litigation (28%). Their North American counterparts are more evenly split in their approaches, with 24% resolving disputes in litigation, 23% through expert determination, and 21% via dispute resolution boards.

Lower down the hierarchy of common dispute types, but of particular interest in respect of cross-border M&A, are disagreements relating to governing law. Specifying an agreed governing law and other clauses relating to jurisdiction is crucial when signing international commercial contracts. Nonetheless, more than a quarter of respondents from both North America (28%) and outside the region (26%) reveal that they have been involved in a post-closing dispute relating to governing law over the past 24 months.

Earnouts have always been a part of the dealmaker's toolkit but were less prevalent a year ago, before in lationary pressures grew and the monetary tightening cycle began. They are back in the spotlight as a means to bridge valuation gaps, minimizing buyer risk with performance ratchets that accrue to the seller if the company performs as promised.

Outlook

Near-term macroeconomic conditions may be turbulent, but our respondents are already mindful of several crucial and seemingly ubiquitous long-term M&A trends: higher cross-border deal volumes are expected, with an emphasis on technology assets and emerging markets.

H2 2022 has seen friction build in M&A markets globally, with the outlook in the immediate term being quite fraught. But dealmakers already have their eyes on the not-so-distant future. Over the next three to ive years, our survey respondents irmly believe that cross-border deals will be on the rise. And tomorrow's M&A activity will be motivated in large part by the challenges of today. "Heightened M&A activity is anticipated. More cross-border deals will take place to enhance supply-chain consistency and mitigate companies' integral challenges," says the director of strategy of a Japanese corporate.

In addition to securing supply-chain resilience, dealmakers see several dominant themes fueling activity. One is the familiar subject of digitalization. TMT is expected to remain the standout industry for cross-border M&A, with many respondents anticipating sustained high levels of investment in the sector. Relatedly, they also say their approach to cross-border M&A will be rede ined by the ongoing uptake of technology solutions. "The application of technology can really enhance M&A processes, and this will be one of the most impactful trends," remarks the senior director of M&A of a Chinese corporate. "The use of automation and arti icial intelligence technologies can improve due diligence processes to a great extent." Digital transformation, evidently, is no passing fad.

The global regulatory environment is also expected to continue along its increasingly restrictive path, with policymakers in key markets becoming more protectionist. In response, survey respondents predict that increasing numbers of dealmakers will seek out opportunities in emerging economies that promote more investor-friendly FDI principles. If the current direction of travel around the Paci ic continues, for example, the Association of Southeast Asian Nations (ASEAN) could become one of the prime bene iciaries of soured relations between China and the West.

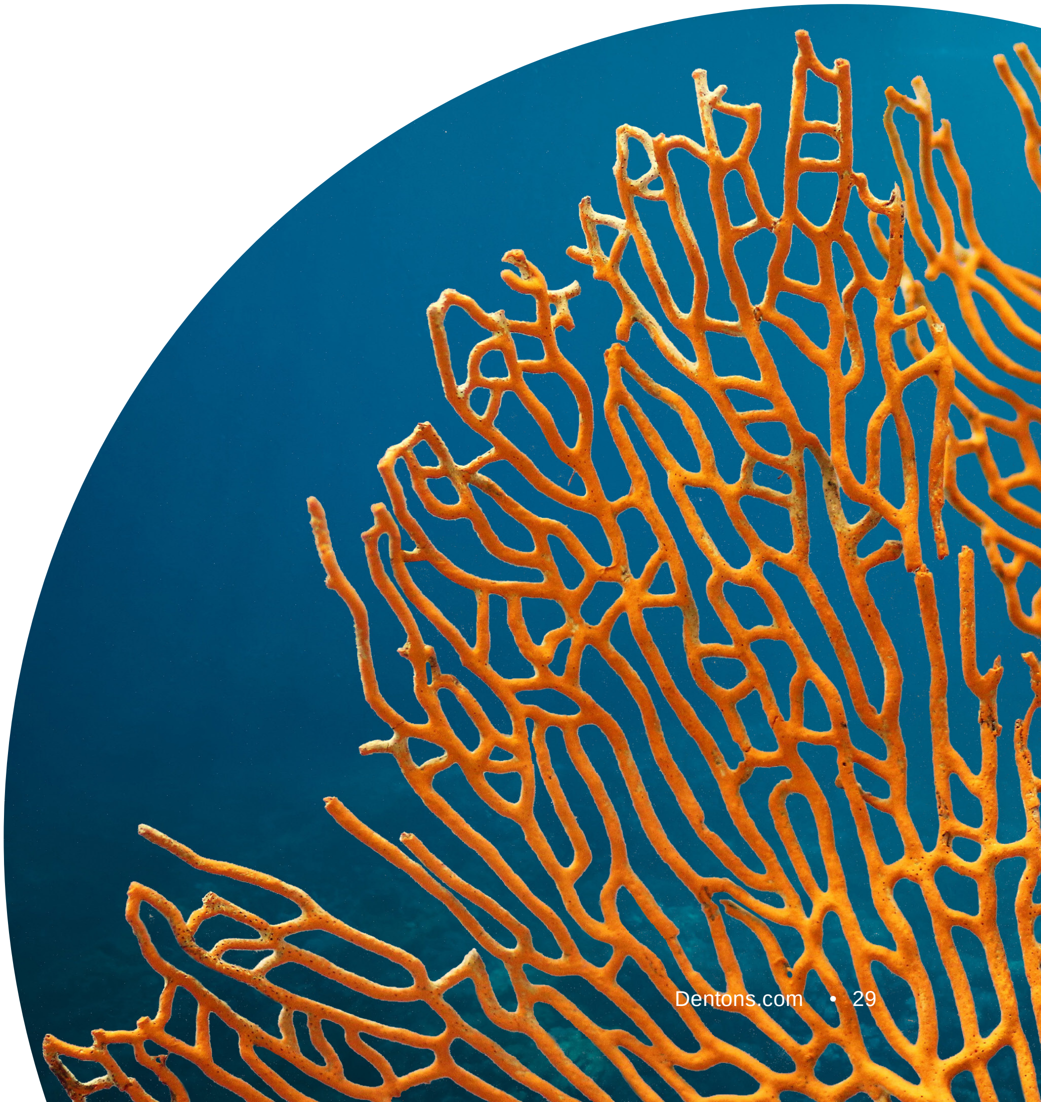
According to the 2022 ASEAN Investment Report, the region saw FDI in lows increase by 42% year-on-year to US$174 billion in 2021, returning to pre-pandemic levels. This was well above the FDI rebound of 30% in developing economies on average. The association notes that Southeast Asia bene its from corporates investing in bolstering their supply chains in the wake of the pandemic, as well as FDI-friendly policies. As the senior director of strategy at a Dutch corporate participating in our survey explains, "Stricter FDI norms will discourage dealmakers from investing in some regions. I think that emerging economies will be more open with their FDI policies, and they will invite companies from other countries to invest."

Finally, several respondents we spoke to underscore the rising importance of ESG, sustainability strategies, and net-zero initiatives. As a UK-based partner of a PE irm puts it, “ESG performance is becoming a deciding factor for deals. If the ESG performance of a target company is not good, then the deal may be abandoned midway.”

What was once optional or considered a nice-to-have will become increasingly essential to all facets of cross-border M&A, from deal origination and due diligence to price negotiations and post-closing integration. Over the long haul, there should be a gradual equalization of technologies and corporate-level ESG standards through an ongoing mindshare process, as capabilities and best practices migrate via cross-border M&A.

“Stricter FDI norms will discourage dealmakers from investing in some regions. I think that emerging economies will be more open with their FDI policies, and they will invite companies from other countries to invest.”

—**Senior strategy director of a Dutch corporate**



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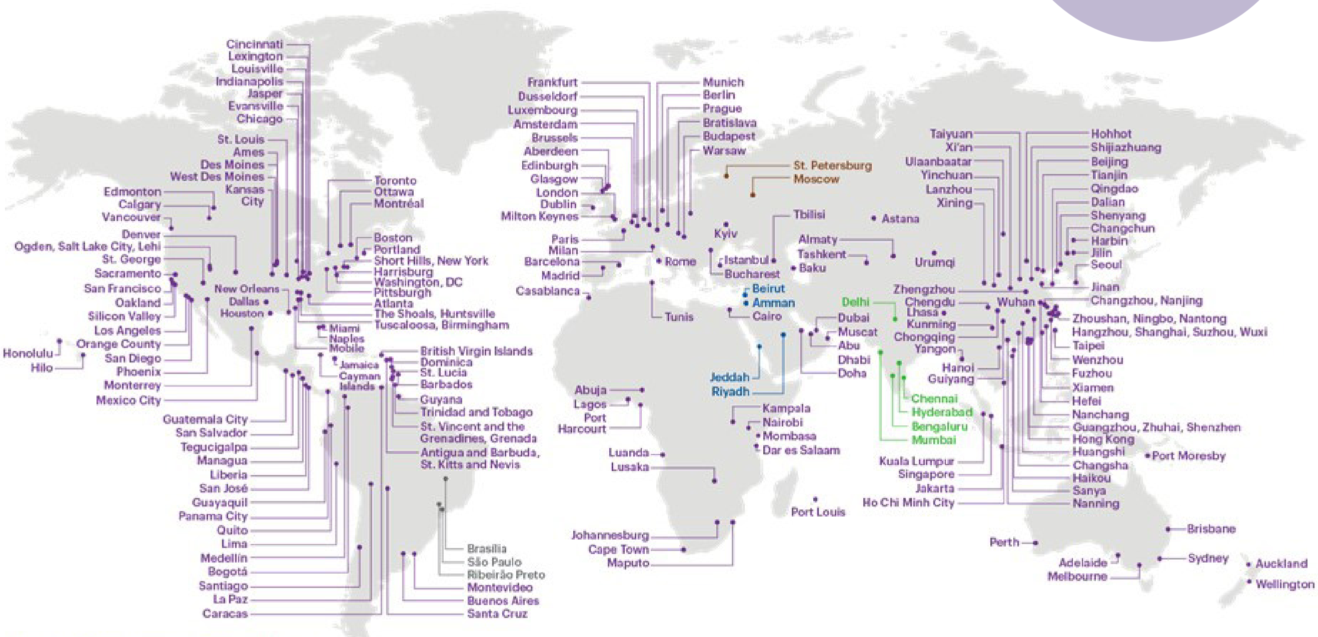
200+

locations



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October 2022

20,000+

Total number of people

80+

languages spoken

80+

countries

12,000+

Total number
of lawyers

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