Baker McKenzie.

Asia Pacific Mega-Trends and Legal Solutions

Simplifying Business in a Complex World

Contents

Methodology
This report is based on a survey commissioned by Baker McKenzie and conducted by Mergermarket, the proprietary M&A intelligence provider. This survey aims to highlight opinions among corporate leaders on the complexities and challenges facing their business operations in Asia Pacific. Between January and February 2017, Mergermarket surveyed 150 CEOs, C-Suite officers, and key senior executives within their organizations to complete this analysis.

Cover image: Chongqing City, China

Foreword

Innovation. It has become a rallying cry for businesses wanting to get ahead of advances in technology, the buying patterns of consumers and corporates, and of course the competition.

However, despite the ubiquity of the term, there is no denying its importance. In fact, how to innovate is the number one business concern and complexity among corporates in the Asia Pacific region today. And while there is no one-size-fits-all solution, there are many ways to respond more nimbly and effectively to market trends and opportunities.

In the first report in Baker McKenzie's Simplifying Business series, we explored the key complexities facing corporates across Asia Pacific today. In our second report, we look at some of the legal and business solutions to these complexities, when doing business across this region, and globally. We have identified four mega-trends in the region for 2018: innovating in the digital age, the next wave of Chinese investment, the future of free trade and the rise of India. We have looked at how businesses can approach each mega trend practically, with first hand insights from business leaders and our lawyers.

The report also breaks down what we foresee 2018 will bring across key sectors, including important legal risks, and strategies to consider adopting. We hope that the insights and practical solutions set out in our report will be of value to you, as you navigate the ever more complex global business environment.

If you would like to discuss these strategies and solutions in greater detail, please contact your Baker McKenzie relationship partner.

Gary Seib
Chair, Asia Pacific
Baker McKenzie

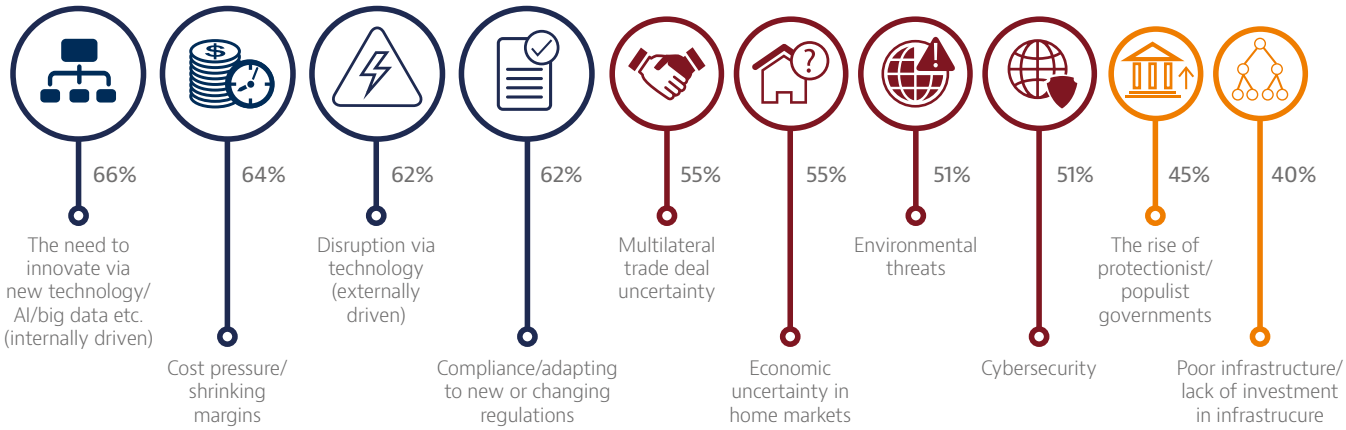
Asia Pacific Mega-Trends:

- Innovation in the Digital Age
- The Future of Free Trade in Asia Pacific
- The Next Wave of Chinese Investment
- The Rise of India

Further insights
For our first report in our Simplifying Business series, please visit:
www.bakermckenzie.com/simplifyingbusiness

Key trends and complexities

The biggest challenges/complexities facing businesses



84%

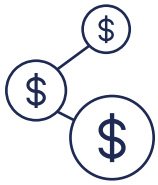
believe it's likely that their industry will see major technological disruption in the next two years

94%

expect M&A to increase over the next two years

Major focus areas for businesses in the next two years

Regulatory change



Optimizing tax structures

Business systems innovation

95%

expect India to have rising economic influence in Asia Pacific in five years' time

77%

expect China to have rising economic influence in Asia Pacific in five years' time

48%

expect the US to have declining economic influence in Asia Pacific in five years' time

Do you feel doing business in your industry is becoming more or less complex?*

*Figure represents sentiments among 150 corporate executives and management teams surveyed

Staying ahead in the digital age

Innovating from within is the top complexity facing businesses across Asia Pacific and the vast majority of executives in our survey expect new technologies to disrupt their industries. In answering the call from industry challengers, corporations have a variety of options at their disposal, a toolbox of tech solutions called the **ABCDE – artificial intelligence, big data, cloud computing, distributed ledger technology, and e-payments –** of digital advances. Corporations across all industries can use these to embrace a culture of change and become more innovative in their markets.

Artificial intelligence (AI)

From virtual assistants to automated workflows, AI has the potential to have a profound real-world impact on businesses in all industries. Yet, for the most part, this technology remains an elusive curiosity as executives seek answers to several key questions on AI's applicability within their organizations.

Aside from the obvious legal and regulatory issues, several other concerns stand out. Existing laws stipulate that AI cannot be awarded copyrights for creations (literary, art, or otherwise) they produce, raising questions on who holds ownership and, perhaps more importantly, where responsibility falls in the event of copyright or intellectual property (IP) violations.

With the right approach, those companies that experiment with AI are most likely to establish a sustainable, industry leading competitive edge. For some, this will mean taking advantage of regulatory "sandboxes" set up in various jurisdictions, while for others it means limited trials in which experimentation and failure is an accepted part of the process.

Big data

Now, more than ever, businesses want to access the treasure trove of insights – and potential new revenue streams – locked within the mountains of data at their disposal. As the world becomes more digital and interconnected,

84%

of corporate executives expect to see major technological disruption in their industries within the next two years.

"Companies looking to adopt a culture of innovation should consider setting up a venture capital arm to invest in tech companies, instead of restricting themselves to conventional in-house R&D. Investing in tech companies around the world enables corporations to import the latest advances and innovations quickly, effectively, and in line with the pace of change in the market."

Komkrit Kietduriyakul, Partner, Bangkok, Baker McKenzie

almost any smart device can produce and collect information, presenting both challenges and opportunities as big data is only likely to get bigger. Making big profits out of big data, then, requires the use of advanced analytics in addition to a comprehensive understanding of legal ramifications of data use and protection.

Uncertainties around how to harvest this data, and how to keep it safe, are often the biggest roadblocks. Individual consumer privacy rights are a sensitive issue, as customers are given more rights over their data and how it is shared. A combination of big data advisory services and legal advice is a very good place to start, or refine, a big data insights program.

Cloud computing

The cloud is evolving and being used to enhance much of the innovation that is currently driving technological change today. With entire infrastructure text being stored remotely, cloud technologies are the driving force behind Infrastructure as a Service (IaaS), Platform as a Service (PaaS) and Software as a Service (SaaS), with applications in e-payment and blockchain solutions becoming increasingly common.

In choosing a cloud service provider, businesses should seek legal advice and conduct due diligence prior to signing. By doing so, businesses can ensure they are only working with reputable service providers that have robust cybersecurity and data protection mechanisms in place, minimizing risks and liability associated with cyberattacks, data loss, privacy breaches and service interruptions.

Distributed ledger technology (DLT)

DLT enables countless applications and can improve operational inefficiencies, particularly around risk management. DLT has come into play during local and cross-border payments and settlements, as well as trade finance. More recently, it has been at the center of the initial coin offering (ICO) debate, now that China has banned fundraising through token-based digital

> "Innovation begins with engagement, and this means being aware of industry disruption, and investing time, money and effort to try out ideas and potential solutions for the long run. It means adopting a tech start-up mindset and collaborating with partners and customers to make the right conditions available to the relevant talent."
>
> Adrian Lawrence, Partner, Sydney and Asia Pacific Head of Technology, Media and Telecommunications, Baker McKenzie

currencies. Many other industries from supply chain to healthcare and beyond are also keen to unlock the value such technologies promise.

Given its complexity, several legal questions arise. Are the tokens used in DLT transactions a valid and recognizable form of ownership, and how can such ownership be proven? Cross-jurisdictional personal data protection is also a key concern. Particularly for permission-less public ledgers, there is the liability question of who should take responsibility for the ledger if no one owns or centrally controls it. As such, corporations may want to seek third-party advisors or legal advice prior to navigating the rapidly changing regulations in each market as they adapt to the increasing prevalence of DLT.

That being said, progress is already being made on this front.

E-payments

As e-payments gain popularity in Asia, many new e-payment technologies are leap frogging traditional payments. DLT is helping to make this more efficient and cost effective, and central banks in many jurisdictions including Singapore, China and the UK are among those exploring ways to use sovereign cryptocurrencies.

From the legal angle, payment service providers need to address the key concerns within their local and regional regulatory regimes, including those that focus on IT and data security. IT security needs to comply with the guidelines set by the relevant regulators, including anti-money laundering and counter-terrorism financing requirements as well as consumer protection. As with all of these areas, companies should be examining each jurisdiction they operate in to understand the most demanding regimes and consider those as their benchmark.

Further insights

For more on distributed ledgers and the legal considerations, see our report in collaboration with R3 at **bmcknz.ie/2gnfX2s**

Learning to lead: Key considerations in tech

Make the most of **AI** advantages by experimenting first in regulatory "sandboxes", where available, and limited trials within individual business divisions before expanding to the whole organization.

Harnessing the power of a **big data** insights program starts with assessing organizational security protocols to protect customer data as it is collected and analyzed.

Cloud computing is only as good as its service provider. Thorough due diligence of cloud vendors to ensure they deploy robust cybersecurity and data protection mechanisms can help reduce exposure to cyber risks and data breaches.

While touted as "revolutionary", **distributed ledger technology** is still very much in its infancy – risks will be high, but so will rewards for corporations that successfully embrace this technology. Start by assessing the legal and regulatory complexities of DLT, especially as it relates to cross-border personal data protection.

Consumer data protection, anti-money laundering and counter-terrorism financing requirements are just the tip of the iceberg of issues corporations must consider when offering **e-payment** options for customers. Avoid litigation by remaining compliant with local data security regimes.

The next wave of Chinese investment

Headlines and trends:

1. Chinese outbound M&A shows few signs of stopping, with a strong pipeline of deals announced in the first half of 2017
2. China's regulatory authorities adopt a "negative list" for outbound investment, breaking deals down into three categories: encouraged, restricted, and prohibited
3. Belt and Road investments will be a driving force behind China's international M&A
4. China surpasses Japan to become the most acquisitive country among Asian M&A bidders

77%

of executives expect China's economic influence to expand over the next five years.

China's outbound interests remain active in 2017, even as the country's banking regulator puts tighter controls on capital outflows and begins scrutinizing borrowings from top dealmakers. In the first half of 2017, Chinese bidders completed US$49.8bn in deals (187 transactions). While a decrease from 1H 2016, a banner year led by the US$45bn Syngenta deal, recent M&A suggests China's acquisition ambitions are far from quenched. Particularly as it steps up investment as part of its Belt and Road Initiative (BRI) commitments, Chinese dealmaking is likely to press on, if only toward smaller and mid-cap acquisitions as opposed to megadeals.

With this in mind, what should buyers and sellers along the ancient Silk Road and beyond be thinking about? And what are the pitfalls, and prohibited investments, to avoid?

China's strategic investment focus

In August 2017, the State Council, National Development and Reform Commission, Ministry of Commerce, People's Bank of China and the Ministry of Foreign Affairs issued a joint statement setting out China's national policy on outbound investment. Under the new guidelines, China does not plan to regulate outbound investment by way of a stringent administrative approval system, but rather opts for a recordal system approach, which simplifies and speeds up the filing process.

Similar to inbound investments, the new guidelines state China will adopt a "negative list" approach when assessing cross-border projects. These investments will be divided into three categories including encouraged investments (those relating to the BRI, tech and manufacturing, natural resources, and other fields), restricted investments (high risk countries, real estate, hotels, cinemas, projects that do not comply with technological, environmental, energy, or safety standards), and

prohibited investments (those harmful to China's national interests, such as unapproved military technology, gambling, pornography, and investments that are banned under any international trade pact or treaty).

Attracting Chinese investment

For Chinese companies, this new edict has already been embraced. For organizations looking at attracting Chinese funds, the best course of action is to position assets firmly in category one (C1). This will engender far less scrutiny from the Chinese side, although many of those C1 assets may also be subject to greater scrutiny from the target's own regulators.

This new guidance should also dispel any cynicism around the impact of the BRI as a driving force behind Chinese investment: it is the first type of investment to be "encouraged" and is therefore highly likely to be one of the most important macroeconomic drivers globally over the next ten years and beyond.

Looking before you leap

China's BRI is accelerating the country's rise in regional and global economic influence. High-level political negotiations and government contracts have percolated down to the business level, with companies in BRI target countries seeking to leverage off Chinese investment by partnering with Chinese companies on strategic greenfield projects.

Local content requirements are imposed by many target jurisdictions for Chinese investors to source locally for human resources and raw materials. Choosing a trustworthy local partner with robust local connections can help Chinese investors fulfil some of these requirements. To reduce exposure to reputational risk, Chinese investors need to set aside costs for protectionist tariffs, the interests of the local community, and growing environmental protection concerns. Meanwhile, political risk insurance can cushion businesses from geopolitical instability.

M&A trends: China vs Asia

China has maintained its top spot as the most acquisitive Asian country, a title it wrested from Japan in 2016. Nevertheless, corporate Japan continues its global search for growth as demographic shifts – an aging and shrinking population – pressure them to expand into new markets. However, with an increasing number of Japanese deals failing to create value for shareholders and leaving significant debt on the balance sheet – many Japanese corporations need to rethink their international strategies.

From our survey, India's economic influence in the region was predicted to grow significantly, but at present, Indian firms are not often present at the deal making table, with the centralized command model of the Chinese economy continuing to see the nation secure strategic acquisitions with highly competitive bids.

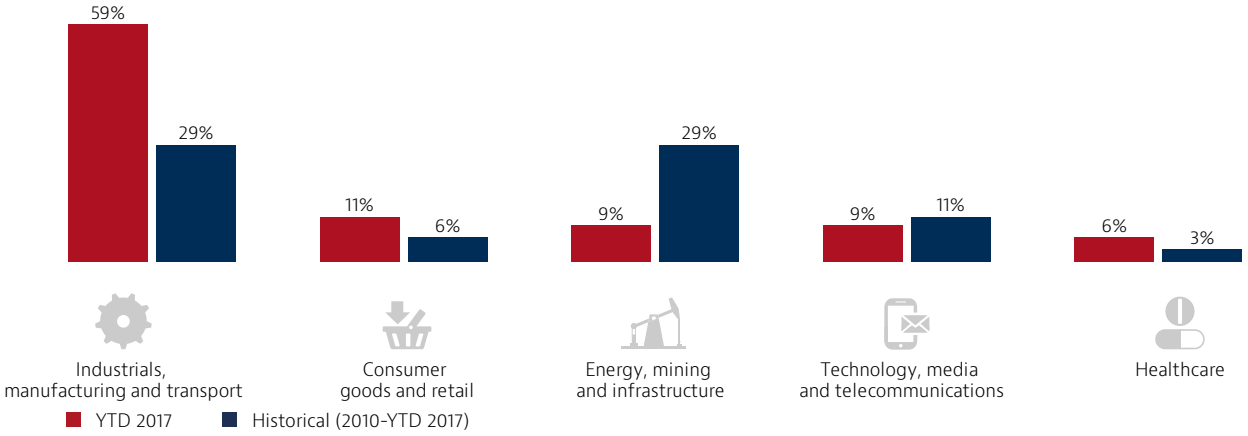
Further insights

For further information on BRI trends and analysis, see our whitepaper on the topic at **www.bakermckenzie.com/ChinaBRI**

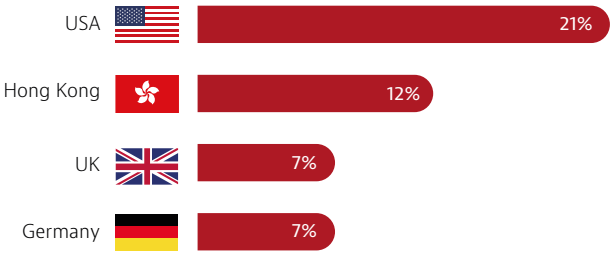
> "Strategic deals and transactions by state-owned enterprises have continued and we'll likely see more in Southeast Asia, where deal sizes tend to be relatively small and often fly under the threshold of the capital controls. Nonetheless, both buyers and sellers must remain vigilant towards the latest legal and regulatory developments, to ensure that deals aren't jeopardized by a change in a regulatory stipulation."

Brian Chia, Partner, Kuala Lumpur, Wong & Partners

Top target sectors by total Chinese outbound deal value

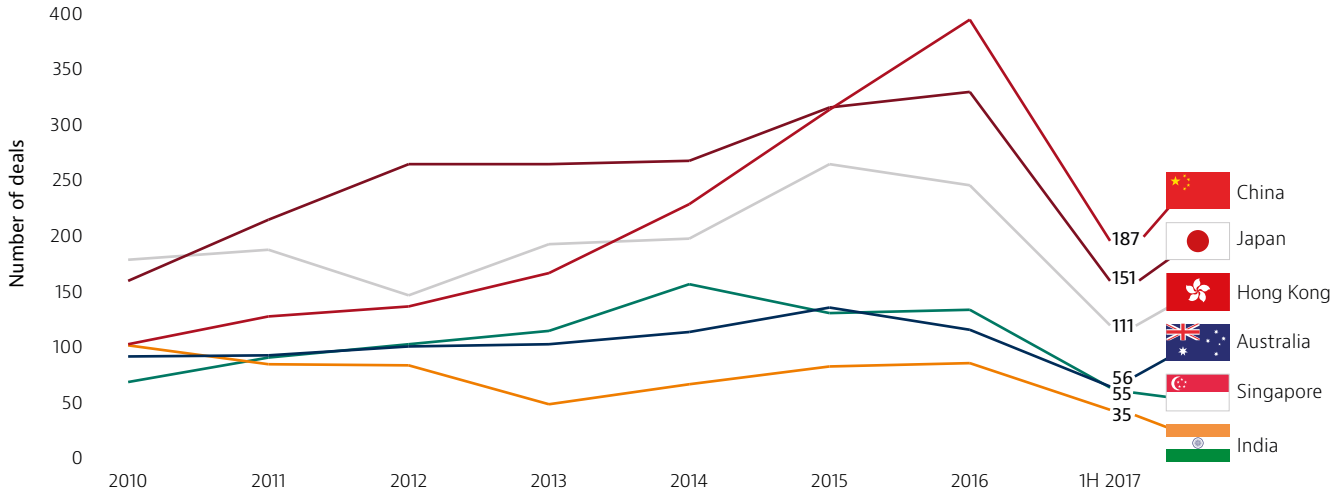


Top M&A destinations by Chinese outbound deal volume (YTD 2017)



Top M&A destinations by Chinese outbound deal value (YTD 2017)

Asia outbound M&A: Top cross-border bidder countries



The future of free trade in Asia Pacific

More than half of business leaders cite trade deal uncertainty as one of the key complexities they face today. In this feature, we consider recent developments shaping trade policy, and provide some direction for companies to approach today's greatest macroeconomic questions on supply chain and trade.

79%

of corporate executives anticipate the collapse of the TPP to have a negative impact on their companies' growth prospects.

TPP: A rebirth?

For 79% of respondents, the Trans Pacific Partnership (TPP) not entering into force as originally envisaged would negatively impact their corporate growth, with 34% saying this impact would be significant. Since the US exited the trade pact, many believed the TPP would be left for dead. Yet, recent discussions among the remaining signatories show signs of life, and the TPP-11 (the other 11 countries that had negotiated the pact) movement seems to be gaining momentum.

The future of other trade agreements also hangs in the balance. A proposed agreement between Vietnam and the EU was recently jeopardized following questions of human rights violations by the Southeast Asian country. Likewise, the US may withdraw from a free trade agreement with Korea on calls by the Trump administration to renegotiate the pact.

Amid these changes, businesses need to gauge the temperature of the current business climate and work out whether it's better to make some deals at present or put investment decisions on hold. They should also consider how they might raise capital and allocate resources for trade relationships or cross-border transactions when it's unclear how the rules and terms of trade are going to change.

China: The next trade leader?

Almost half of executives (48%) see US influence in Asia Pacific to be declining. For 77% of respondents, this void will be filled by a new leader: China.

China's rapid growth has allowed it to expand its influence over the past decade, and the Beijing-led Regional Comprehensive Economic Partnership (RCEP) could further solidify its place in the region. Businesses have to prepare for the possibility of working more with Chinese businesses and capital, requiring them to develop the skill sets and cultural sensitivities to engage with these new business partners and investors.

ASEAN: Moving up in the world

The Association of Southeast Asian Nations (ASEAN) is quickly moving up the global value chain. Singapore is set to become the IP hub of Asia as it shifts towards a knowledge-based economy, while Thailand and Malaysia transition to capital-intensive enterprise and away from labor-intensive industry.

In general, the ASEAN Economic Community is paving the way towards stronger trade flows among its member states through the reduction of tariffs on physical goods. Businesses looking to capture early-stage opportunities need to monitor developing policies so they can move quickly. The best possible counsel, both externally and internally, will be needed to translate current developments into actionable insights. They should also be ready to consider tweaking their supply chains to benefit from trade acceleration measures.

> "New trade facilitation rules have been causing new issues and confusion for businesses, underscoring the importance of distributing supply and value chains across various jurisdictions for tax optimization and better regulatory exposure. Spending more to implement a carefully planned system that ensures strict compliance could simplify problems down the road."
>
> Frank Pan, Special Counsel, Shanghai, Baker McKenzie

Tackling trade deal uncertainty

With the future of the TPP and other trade pacts unclear, businesses need to be mindful before making cross-border investments that trade rules may change in the near term.

With China expected to become a trade leader in the region, businesses need to cultivate the cultural sensitivities requisite for developing successful cross-border business links with China.

As the ASEAN Economic Community strengthens its competitiveness, corporations should keep up to date on the region's developing policies and translate them into actionable insights to capture business.

> "Foreign investors must pay continuous attention to new regulations in emerging Asia. It is often the overlooked detail in a deluge of information that brings an entire business to a standstill. For example, retroactive tax levied by a fiscally challenged government could have serious ramifications for foreign investors."
>
> Fred Burke, Managing Partner, Vietnam, Baker McKenzie

Viewpoint: Investing in India's growth story

India is expected to play a greater role in Asia's economic order, according to 95% of executives in our survey. In this feature, **Sourav Mallik, Joint Managing Director at Kotak Investment Banking**, discusses India's business and regulatory environment and how to effectively invest in the country's growth.

India's economy and population are growing. Consumer demand is rising. And the government continues to push through reforms to improve the ease of doing business. Indeed, it seems the road is being paved for India to become the main attraction for foreign investors and corporations seeking growth in emerging Asia.

Having said that, as with any emerging economy, these developments are very much a work in progress. While policy changes are reshaping and simplifying the business landscape – with the government introducing a new bankruptcy code in 2016 and a universal goods and services tax in 2017 – developing an India strategy requires a rigorous approach that asks several key questions around entry methods, sourcing deals, product selection, and the due diligence process.

Market entry: JVs and M&A
While it's not impossible for foreign corporations to enter the Indian market through a greenfield project, joint ventures (JV) and M&A present more viable options. Aside from access to distribution networks and operating facilities, the true value proposition of an acquisition in India comes from a target's intangibles: experienced local management teams, reputable and established brands, and contacts in the marketplace.

If a JV is the preferred entry route, corporations must start these partnerships by thinking with the end in mind – that is, they need to set up mechanisms and regulate the transfer of shares and shareholdings for after the JV expires. Leaving this open ended can leave investors vulnerable to various risks and disputes.

30%
of executives say the Indian government is simplifying the process of doing business, compared to 20% with similar opinions toward the Chinese government.

Deal origination: A family affair
The first challenge for any corporation looking to enter the Indian market is finding a willing seller. This can be a daunting task, however, the biggest obstacles usually come from engaging sellers. Business in India tends to be a family affair, and most targets will be managed by a promoter or a local family that is deeply invested in the company. Building strong relationships – and possibly bringing a recognizable, reputable brand to the table – with these groups is crucial, since many families will place a premium on alternative business considerations not directly related to the deal or valuation.

Tailoring the product portfolio
When entering new markets that are culturally different to the company's home market, it is critical

to consider how the company's product or service, and, where relevant, its manufacturing practices and raw materials, align with the customs and preferences of the local population. This is particularly relevant for Western companies entering India. In the food industry, in particular, attention to detail in the manufacturing process, food ingredients and marketing of products is critical to avoid damage to brand reputation with the largely vegetarian population.

Basing one's product offering on a solid understanding of India's market is crucial to growing revenues and expanding market share. Investors must find out the product categories that are most appealing to ensure smooth uptake while reducing the risk of public backlash. Equally, corporations and investors should adapt products to fit a price point that is calibrated for the purchasing power and demands of India's context. Product design and cost should be optimized through innovation and economies of scale, while pricing products affordably and on par with local market norms.

Due diligence: Dig deep

The importance of conducting due diligence on a target company or JV partner cannot be overstated. This includes conducting reference checks, getting feedback from the industry at large, and considering the track record of a counterparty's performance. In closely-held or even medium-sized Indian companies, operating structures are often the product of functional convenience and accounting policies may lack consistency. As such, the quality of a target company's management and auditor needs to be validated.

Gathering information on prospective targets and owners or families can be difficult given various nuances of the market and the sometimes complex ownership networks. Where information is inaccessible or unavailable, experienced M&A advisors with longstanding relationships and knowledge of the market can help ease the process by coordinating transactions.

> "Investors must recognize the reality of getting operations running and doing deals in India. They must have patience with unwritten rules and process delays, and may only get to understand the local culture in increments. They should get advisors involved early, while talking to industry peers operating in India."
>
> Ashok Lalwani, Principal, Singapore and Head of the Global India Practice, Baker McKenzie Wong & Leow

Capturing opportunities in India

M&A and JVs offer access advantages and an enhanced competitive position compared to greenfield investment – however, various factors and risks must be considered before sealing the deal.

Relationship building and seller engagement with family-owners often play a more essential part of dealmaking than valuation alone.

Customized products that meet the expectations of India's vast and diverse culture will make the difference between maximized uptake and social backlash.

Robust due diligence programs – especially toward closely-held and mid-sized Indian corporations – are the best way to identify risks and red flags that may be uncommon in an investor's home market.

Energy, Mining and Infrastructure

Trends and key complexities:

Environmental policies and the shift in the regional energy mix to renewables are making the business environment exceedingly complex.

Uncertainty over energy policy enforcement and the rapid pace of regulatory change in key markets is another main concern among energy, mining and infrastructure (EMI) executives.

Lack of infrastructure in some Asian markets is creating setbacks and project losses for EMI corporations.

65%

of respondents feel doing business in the energy, mining and infrastructure sector is becoming more complex.

Asia's EMI corporations face a surge of competing challenges. Despite increases in early 2017, gains in oil prices have receded since the first quarter, causing many businesses to incur heavy losses. In other segments, while financial distress in the mining space seems to have moderated, changes in regulations are adding new complexities to the mix. The same is true in infrastructure, where a funding gap is adding to constraints.

For these reasons and others, 65% of EMI executives say business in their industry is becoming more complex, the highest percentage among respondents from the various industries in our survey. These issues, however, are only the tip of the iceberg and respondents also highlight a series of challenges that they must now contend with to operate efficiently and profitably.

Environmental policies: Clean and green in vogue

Environmental issues are the top concern for EMI executives as public support for renewable energy gains popularity. Indeed, the shift in the energy mix toward cleaner forms of power will prove costly for EMI corporations as they transition from traditional hydrocarbons to solar, wind, and hydro forms of power.

Respondents say this is already happening with increasing frequency, as concerns over

> "EMI companies should be engaging with the local community, and this involves a corporate social responsibility element. If the local community can see how they benefit, they are less likely to break out into civil unrest that can disrupt operations and production."
>
> Jo Daniels, Managing Partner, Yangon, Baker McKenzie

climate change and environmental pollution gain traction among policymakers across Asia.

Regulatory change

Hand in hand with environmental concerns, adapting to new or changing regulations is another core complexity impacting the EMI market today. It is also a decisive forward-looking priority executives will address in the year ahead, according to 86% of respondents (Figure 1).

Uncertainty over energy policy enforcement and shifting legislation is another main concern. By way of example, mining and energy players in Indonesia cited legal uncertainty as a major complexity as the government often changes its position on policy. A dispute over a major US-based mining corporation's rights to operate the world's second-largest copper mine highlights these risks and the possibility of similar challenges in other Asian markets. To reduce risk exposure, businesses need to factor in a wider buffer for unforeseen compliance costs and delays when making critical decisions on the feasibility of their endeavours.

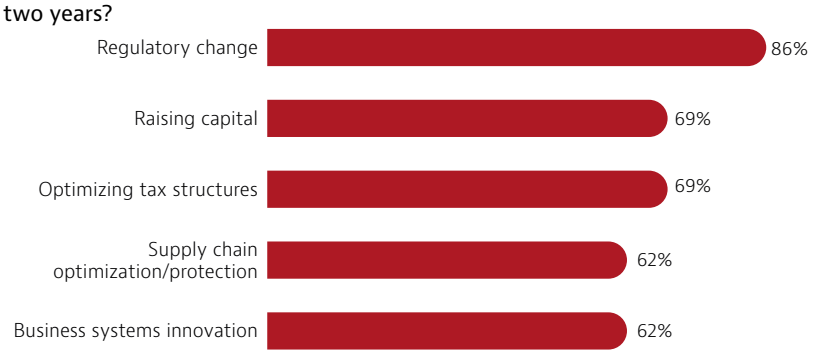
Addressing infrastructure

Outside of Asia's advanced economies, infrastructure, or lack thereof, can often create unexpected setbacks to operations and access to raw materials. Among those in our survey, many highlight unexpected increases in costs associated with bridging infrastructure gaps. Others note that insufficient infrastructure – from drilling and transportation of oil to mining and managing the excavation process – heavily impacted their project returns.

As one solution to this, one respondent points out that consolidation within the industry could help EMI businesses reduce costs. Such collaboration could better position EMI corporations to share resources and infrastructure, efforts that could prove beneficial to reducing pressure on their financial performance.

> "Energy companies often need advice on labor laws, regulatory issues such as licensing and ongoing compliance, as well as land laws. At the very least, an ignorance of the rules – both written and unwritten – can raise the cost of compliance through penalties, legal and social disputes can frustrate business operations, while delays in paperwork can hike up outlay costs through longer production lead times."
>
> Bee Chun Boo, Partner, Beijing, Baker McKenzie

Figure 1: Which areas do you think will be a major focus for your industry in the next two years?



Steps for success:
Regulatory foresight, local insight

Rising environmental awareness and activism are among the biggest issues facing EMI corporations. Baker McKenzie's **Bee Chun Boo** and **Jo Daniels** delve into solutions for addressing the compliance and regulatory complexities for EMI corporations.

Engage local stakeholders

Social unrest and populist movements are becoming an unavoidable part of business in parts of emerging Asia. EMI corporations can engage with stakeholders in the local community as part of outreach efforts to illustrate the social and economic benefits of certain projects and business deals. Managing this process is best accomplished with a boots-on-the-ground approach in which relationships with local business and political leaders are forged to create an understanding between parties.

Act accordingly: Know the law of the land

To limit risk exposure, EMI corporations need to educate themselves on the regulatory nuances of local markets and seek to open a dialogue with local authorities. Businesses also need to build in expectations for a longer lead-time when it comes to securing government approvals. Furthermore, EMI corporations should consult local advisors on issues from tax compliance to environmental approvals to help them understand local laws and the enforcement landscape where laws and ordinances lack detail and clarity.

Abide by higher standards

When it comes to compliance and anti-corruption standards, most EMI multinationals will know the requirements of laws from their home jurisdictions, such as the US Foreign Corrupt Practices Act (FCPA). The challenge they face is whether they can still carry out their businesses efficiently and legitimately in investment destinations in Asia Pacific. Equally, the FCPA and other foreign legal guidelines stipulate that foreign businesses may face some consequences if their local suppliers and contractors are not fully compliant, even if these business partners are not familiar with these laws. To minimize risk exposure, corporations need to set up a strong compliance framework and train their staff to follow a comprehensive code of conduct.

Plan for the unexpected

Natural disasters and social unrest are outside a corporation's control, however, having a comprehensive business interruption plan can help manage the risks of these events. This includes insurance against heavy costs from disrupted supply chains and business processes and holds true when forging partnerships with local businesses: EMI corporations need to ensure their counterparties are adequately covered and have similar plans for worst-case scenarios.

Industry insights:
Powering the future

After a protracted period of low oil prices, the EMI sector is seeing an urgent need to reassess their energy mix and leverage emerging technologies to find solutions to power the future. **Mike Thomas, Partner and Co-Founder of Lantau Group**, discusses policy, operational and technological questions for corporations looking to correct course.

1

Energy players that find policy support in the changing energy mix will stay relevant

EMI corporations should regularly ask where their offerings fit in the regional and global energy mix, and where there is more robust policy support. Policy uncertainty is one of the more challenging strategy variables. Then it becomes a matter of assessing the value of their portfolios and plotting a direction to steer investments.

Given falling costs and improving performance, traditional energy players should prepare for a market swing towards renewables. The tipping point may be indeterminate, so timing may be the most challenging variable. Few Asian countries have consistent or supportive renewable energy policies despite growing awareness and interest, though Malaysia and Taiwan bear promise.

2

Tech disruption will offer opportunities for electricity system flexibility

The hidden value behind disruption in EMI lies in opportunities for electricity system flexibility. When new technology is adopted and throws things out of balance, corporations should recognize that this represents an opportunity for a market for demand-side and supply-side flexible responses. Such responses could include battery storage and ancillary service revenue streams.

Industry players can also leverage disruptive technologies for more subtle applications in asset management and efficiency. Advanced metering technologies offer options to electrify emerging markets while reducing non-technical losses, with ways to use information to optimize maintenance, enhance service and improve revenue collection. In the Philippines, Meralco is transforming its network into a smarter grid via Advanced Metering Infrastructure (AMI) and other technologies.

3

Energy players who plan for change will lower stranded cost exposure for legacy assets

Industry stakeholders need to think about what potential regulatory change and technological inflection mean for the value in existing or legacy assets in terms of stranded cost exposure. Power purchase agreements (PPAs) offer some protection, but as legacy generation assets reach the end of their PPAs, investors should consider whether they need to be decommissioned or if they can be re-contracted. Investors buying assets that face post-PPA regulatory exposure must factor that into their bid price. They should also consider whether regulatory change has transitional safeguards for stranded cost recovery, and whether the change is likely to trigger unintended consequences, such as a degradation of the security of supply.

Technology, Media and Telecommunications

Trends and key complexities:

Innovating and adapting to disruption are the leading challenges for technology, media and telecommunications (TMT) corporations.

Preparing adequate and inventive defenses is necessary to prevent heavy losses from cyberattacks.

Regulatory change on data protection and storage and other digital innovations will be a priority in the year ahead.

62%

of respondents feel doing business in the TMT sector is becoming more complex.

Change is the only constant in the tech world. And today, this change is happening at light speeds in the form of cutting edge technologies and applications.

It is no surprise, then, that transformative technology – both internally driven innovation and disruption – is among the top challenges facing Asia's TMT companies. 89% of TMT executives expect their industry to be disrupted in the next two years. From AI to blockchain, it is difficult to pinpoint where exactly the digital upheaval will come from – and various other threats (cybersecurity) and uncertainties (regulatory change, including data protection and localization requirements) are adding to the list of challenges.

Transformative technology

Sentiments toward transformative technology as the leading complexity for their businesses are strongest among TMT executives: 78% toward innovation and 72% toward disruption.

However, adopting the latest technology is easier said than done. As respondents mention, the cost of innovation is often significant when considering compliance and shrinking margins. Yet, the cost of doing nothing can be far greater. On the upside, while costly to the bottom line, respondents point out that investment in innovation – upgrading digital infrastructure or turning to advances like AI and big data – can actually help reduce other costs across the organization if managed properly.

> "To unravel the complexities of the different regulatory regimes across Asia Pacific, tech companies expanding their geographical spread should rank and prioritize their target jurisdictions. They should expand operations in one jurisdiction after another, prioritizing jurisdictions with more transparent regulatory frameworks, instead of opening in too many places at once."
>
> Anne Petterd, Associate Principal, Singapore, Baker McKenzie Wong & Leow

Cybersecurity: Preparing a defense

TMT executives say cybersecurity is the second-greatest complexity in their industry. As Internet use surges across Asia, so too does the threat of Internet-based attacks. Equally, respondents realize that as attacks from cyberspace become more complicated and creative, reinforcing their defenses must be a priority.

Indeed, while corporate resources are often earmarked for R&D, the economic impact of a cyberattack and importance of upgrading IT infrastructure must not be overlooked. A recent report by Lloyd's insurance estimates losses from such attacks and data breaches can be as costly as those from major natural disasters.

A further cost challenge is emerging cybersecurity regulation. Several jurisdictions have or are developing new laws that will impose cybersecurity protection obligations, and businesses face challenges in understanding if and how they will be regulated and the cost of compliance.

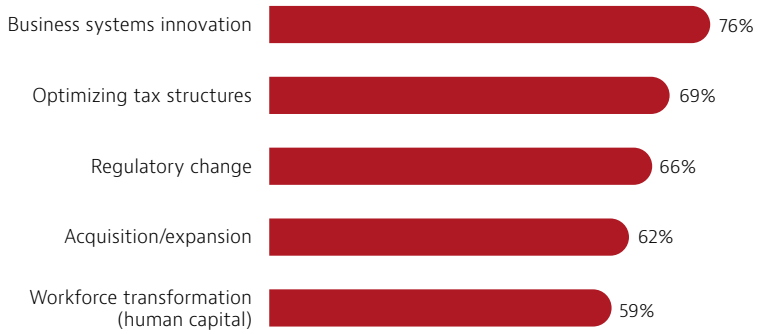
Regulation: Change on the horizon

Regulatory change will be among the top focus areas for TMT executives, according to 66% of respondents (Figure 2). Among recent developments, new data laws in China require foreign corporations to store domestically generated user data within the country. While some multinationals have opened data centers, many companies may be shut out under these rules. Smaller firms could exit China altogether as they lack the funds to meet compliance costs.

Another issue executives raise involves regulatory "sandboxes". In some jurisdictions across Asia, regulators, as part of their support for innovation such as fintech, have allowed businesses the opportunity to trial tech solutions that would usually be prohibited or heavily restricted under normal regulation. The question executives are asking is: What happens after the "sandbox" trials are complete? In choosing whether to invest in a "sandbox" project, businesses need some guidance from regulators on the parameters for policies being changed to allow the product to be effectively taken to market.

> "The larger the tech companies become and the more their products are available regionally and globally, the more they have to stay ahead of changes and variations in the law from jurisdiction to jurisdiction."
>
> Adrian Lawrence, Partner, Sydney and Asia Pacific Head of Technology, Media and Telecommunications, Baker McKenzie

Figure 2: Which areas do you think will be a major focus for your industry in the next two years?



Steps for success:
Innovation, regulation, acquisition

While some aspects of corporate activities are being simplified, overall new technologies may be adding to the growing list of complexities for TMT corporations. And with many traditional leaders losing ground to agile upstarts, the stakes are only getting higher. Baker McKenzie's **Adrian Lawrence** and **Anne Petterd** discuss actionable approaches TMT corporations can take to stay ahead.

Find individuals to drive innovation.

There is no magic formula for innovation, but to drive change within their organizations, TMT corporations need to find the right leaders for the job. Ideal candidates will be a hybrid of an entrepreneur and a politician, willing to take calculated risks and experiment. At the same time, they need to have the capacity to tread carefully on the internal dynamics of a corporation and implement a culture of compliance toward local regulatory regimes.

Create channels with regulators.

Conversations with governments and policymakers on a constant basis are critical for TMT corporations pursuing growth via expansion into new markets. However, not all companies have a public affairs representative or team located in every jurisdiction, and it may be difficult for small tech companies to find out how to engage with regulators. To overcome this barrier, many companies are reaching out through chambers of commerce, as well as partnerships with industry groups that have more resources and a stronger voice.

Tech M&A: First, design a blueprint...

The starting point in tech M&A is for corporations to question what they are trying to achieve: Is it to acquire new products or gain access to new markets, or even to acquire talent and management teams or specific assets (data, IP or a division of the target company)? Asking these questions helps acquirers to start with the commercial piece of the puzzle, which directs focus on the core business case, and whether it is viable from a financing, competition and profitability standpoint. This then evolves to the legal analysis to see if the building blocks are really in place, and asks whether what is being sold can truly be delivered.

...then, find all the facts.

To mitigate risks, acquirers need to conduct thorough due diligence to find out whether a target company truly has IP rights and control of the technology it is offering. It also allows buyers to see whether the target company is really a good cultural fit. Deals have been known to collapse when traditional businesses try to impose their culture on agile upstarts.

Industry insights:
The double-edged sword of tech

While tech disruption threatens to displace those unprepared for ground-breaking change, innovation is allowing businesses to proactively pursue the next industry revolution. **Janos Barberis, Founder of SuperCharger**, a fintech accelerator, discusses how TMT corporations can become adept at wielding the double-edged sword of tech disruption and innovation.

1

TMT companies will need to adjust to the reality of digital business via M&A or digital transformation

To stay buoyant, both traditional TMT companies and financial institutions need to adjust their business models and embrace a digitally-enabled modality of doing business. To achieve this, they can acquire companies which offer the digital processes which can then be scaled, or create a brand new company or spin-off dedicated to the development of digital offerings and capabilities for the wider corporation.

Businesses can also undertake a digital transformation campaign which completely digitizes their current processes and experiences.

2

Partnerships will provide an edge up in fighting the talent war

People are a tech firm's greatest asset. As many Asian tech companies are learning, the cost of replacing people is high and the talent pool is shallow. So what we've been seeing is a vicious talent war for the best minds, especially in fintech. As the cost of hiring rises, this could create a bottleneck, especially for start-ups that lack the financial resources to hire away top talent from larger firms.

How do you prevent valuable talent from leaving? Among fresh graduates and even experienced professionals, many cite vision and a sense of belonging as key to keeping them onboard. For traditional corporations, rather than joining the talent war to accelerate innovation, partnerships with tech upstarts may provide a better alternative to accessing the same talent pool. Partnerships should be handled like any professional commercial relationship that stipulates concrete deliverables and rewards. Adequate remuneration ascribes tangible value to the work that start-ups are capable of producing, and can act as a motivator to start-up talent for better innovation and results.

3

Open banking standards will be the next fintech trend to watch

With the rise of application programming interface (API) open standard connectivity, fintech and TMT businesses need to contribute to the development of an open banking strategy that is compliant with changing regulatory requirements, particularly if they have cross-jurisdictional operations. Europe, for example, has set hard laws and standards for open banking, while API regulations are still about encouragement and soft supervision in a grey area in many Asia Pacific jurisdictions. Businesses should seek cross-border guidance and peer advice in addition to consulting with governmental fintech offices.

Consumer Goods and Retail

The struggles of the retail industry are well known. Shifting consumer habits and the rise of online shopping has seen a precipitous decline in market values and profits among traditional brick-and-mortar stores. Brands are going digital or going broke. Yet, reports of the death of retail and some segments of the consumer goods sector may be widely exaggerated, at least for now.

If anything, the industry is going through a transitionary phase of growing pains. The rules of retail are being rewritten, especially in Asia where increasing numbers of customers are going digital. For instance, in Malaysia, Touch 'N Go, a mobile payment platform, is simplifying the payment process for online shoppers and challenging traditional market leaders. And while the rapid rise of disruptive technologies and new competitors is definitely putting a dent in top and bottom-line growth among Asian consumer goods corporations, other priorities also pose a challenge.

Trends and key complexities:

Controlling costs is the biggest challenge for Asia's consumer goods and retail corporations.

Digital transformation strategies will help consumer goods companies, especially retailers, remain relevant in the face of increasing industry disruption.

M&A is a quick path to growth for Asian consumer goods companies looking to expand their customer bases, especially in the region's emerging markets.

Keeping up with costs

Despite the seismic shift in technology sweeping the industry, executives say dealing with costs is the biggest complexity facing their businesses. From their additional insights, it's easy to see why.

From almost every direction, pressure on cost structures and cash flows is impacting corporate growth. Many respondents point to increasing competition in the market as start-ups upend the industry or as rivals roll out digital strategies. Others highlight increasing costs in procurement and rising compliance costs on the heels of new legislation in various countries. Taxes and trade deal uncertainty add to the mix, as do shifting consumer demands for cheaper products.

55%

of respondents feel doing business in the consumer goods and retail sector is becoming more complex.

> "With mounting pressure to develop game-changing innovations, there's going to be a sharpened focus on IP. But profiting from IP is only possible if a corporation is able to protect it."
>
> Say Sujintaya, Partner, Bangkok and Head of Asia Pacific Intellectual Property, Baker McKenzie

Digital transformation

Disruptive technology and innovation, respectively, rank as the second- and third-greatest complexities facing the industry. Providing insight into possible solutions, respondents agree that the only way to survive, let alone thrive, in the current market is through the uptake of digital technology and a comprehensive digital transformation strategy.

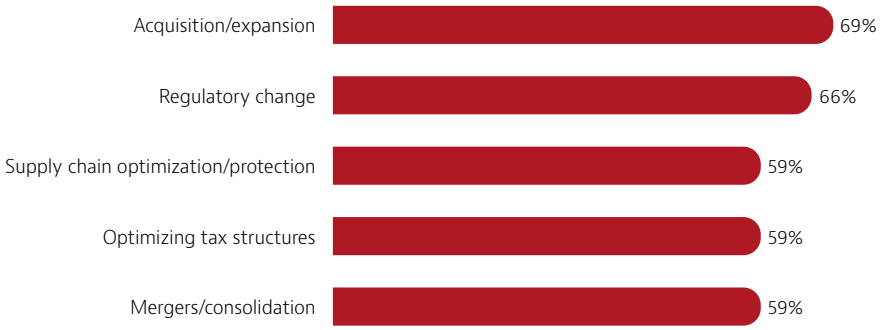
E-commerce will be the main component of these strategies, as the increasing use of mobile phones opens new customer segments in emerging Asia. Indeed, e-commerce sales in Asia Pacific may rise at a 32% CAGR from US$5.5bn in 2015 to US$88bn in 2025, according to research by Google. Technology in general can also help retailers find the middle ground between using physical stores and digital channels to merge and synergize the online and traditional shopping experiences.

M&A: China's e-commerce giants expand

As part of mid- to long-term strategies, Asian consumer goods companies will likely pursue acquisitions to achieve growth, according to 69% of respondents (Figure 3). China's e-commerce giants exemplify this trend, with Alibaba making investments globally to aggressively expand its Alipay mobile payment into Southeast Asia and forge partnerships in the US. Alibaba's latest "Smile and Pay" technology, which uses facial recognition software to allow customers to complete payments, is yet another example of the company's drive to disrupt mobile payments as it simplifies the traditional shopping experience.

Meanwhile, US firms are not sitting on the sidelines. Major online retailers have been opening offices and operations in Singapore as their first steps into Southeast Asia. Some are also planning to expand into Australia.

Figure 3: Which areas do you think will be a major focus for your industry in the next two years?



> "While e-commerce is becoming rapidly more popular in Asia, there's still a preference for brick-and-mortar stores, resulting in the development of multiple channels based on an online-offline model. Asia has room for both virtual and physical channels and needs to have both."
>
> Loke-Khoon Tan, Partner, Hong Kong, and Head of Asia Pacific Consumer Goods & Retail, Baker McKenzie

Steps for success:
Adapting to the new rules in retail

It is the best of times and the worst of times for retailers. As e-commerce rewrites the rules of shopping, many retailers and consumer brands are falling hopelessly behind tech trends and relentless disruption. However, those that are able to navigate the challenging landscape are innovating, or buying, their way into the future.

Baker McKenzie's **Say Sujintaya** and **Loke-Khoon Tan** provide highlights of best practices that major retailers and consumer goods companies are implementing amid radical industry change.

Realize the complexities of digital business

Given the transmission of personal data and other financial information from customers, data privacy concerns are at the forefront of issues facing retailers as they turn to the Internet to expand sales. As the propensity of cyberattacks rises globally, e-retailers should implement network security infrastructure and protocols, conduct IT security audits, and control physical access to their hardware. While this can prove costly, the regulatory and compliance repercussions of failing to implement this infrastructure can be even more damaging to a corporation's reputation and bottom line.

Make brand protection a priority

Trademark infringement and counterfeiting are major threats to the values of brands, which have been prevalent in parts of Asia. To counter this, businesses must adopt a vigilant and proactive attitude towards seeking out and investigating cases of infringement. This means devoting personnel and making it a consistent and relentless effort, since the later an infringement is detected, the more susceptible the brand becomes to value erosion and reputational damage.

Know your data

Cybersecurity concerns and data localization laws are restricting the free flow of data and many governments now require companies to maintain physical servers for storing data on local customers. This can be expensive – but so can a data breach and the cost of non-compliance. To remain compliant, businesses should conduct data audits to gain a clearer picture of what they have and follow the principle of data minimization to aid businesses with all-round compliance.

M&A: Avoiding "problem" buys

Dealmaking in parts of the consumer goods space comes with heightened compliance and regulatory risk, especially when completing a cross-border transaction. Conducting thorough pre-transactional due diligence can reduce the chance that acquirers unintentionally buy up a target company's problems alongside its perceived value. Acquirers need to ensure that these investigations drill down to address difficult issues such as conducting IP audits and discovering what contracts with suppliers, business partners, distributers, third-party service providers and employees are in currently in place.

Industry insights:
Restructuring retail

With the expansion of digital payments in Asia Pacific, the retail industry is becoming a battleground between digital and traditional sales and distribution channels. **Michael McCool, Managing Director at AlixPartners**, takes a look at the situation in China and how industry players there and in the rest of Asia Pacific can rethink operational structures and strategies in a fast-changing market.

1

Leaders will be able to predict changing consumer tastes before they start trending

Consumer demands in Asia Pacific are changing so quickly that consumer goods companies need to not only be thinking about the future, they need to actively have one foot in that future. What are consumers going to want, and how will they want to buy it? You almost have to be able to predict what these trends will be – that is, give the consumer what they want before they know they want it.

For retailers, they need to understand customer buying patterns and how these wants vary with demographics and country. In the luxury segment, for example, luxury fashion houses are loathe to go into e-commerce as their consumers demand exclusivity and an on-site experience. However, the fast-moving consumer goods segment lends itself to the convenience and ease of online marketplaces.

2

Untangling channel conflict will become increasingly important

In China, retailers traditionally go through distributers and franchisers to sell in physical storefronts. With e-retail rising, marketplaces like China-based Tmall, the largest business-to-consumer retail platform in Asia, allow brand-owners and manufacturers to sell directly to consumers. This has resulted in a conflict in sales channels as brick-and-mortar distributers fear losing customers to the brand-owners' direct sales online. At the same time, distributers are also allowed to sell through Tmall, further increasing the competition between brand-owners and distributors.

To unravel the complexities of channel conflict, brand-owners and manufacturers need to look into how they can tweak their marketing strategies and supply chains so they can price, promote, sell and deliver directly to individual consumers, where they only have a history of selling to distributers and depending on them to take care of the rest.

3

Industry consolidation will create a channel for growth among Asia's consumer goods and retail companies

Asia Pacific's consumer market is saddled with excess capacity, and M&A can facilitate consolidations among local companies. Asian brands that previously anticipated large-scale rapid expansion can look to acquisitions by foreign multinationals as a way out of physical retail sites and to transfer assets so they can operate more efficiently. As Asian consumer brands start to amass brand value, we expect foreign multi-brand retailers to become increasingly interested in acquiring local brands, as a more assured way of getting access to products which have proven their appeal to local tastes.

Financial Institutions

Trends and key complexities:

Cybersecurity and protecting customer data in an increasingly dangerous digital world creates challenges, and Asia may be particularly vulnerable.

In the race to stay relevant to customers, innovation via partnerships with tech firms and fintech start-ups may provide better results than internally driven R&D.

Complying with regional and international banking standards and implementing detailed and voluminous regulations will continue as a prevailing theme for next year and beyond.

55%

of respondents feel doing business in the financial institutions sector is becoming more complex.

> "Legacy IT systems constrain the ability of incumbent banks to innovate. These systems are incompatible with the demands of AI, big data and an open architecture approach. New entrants and start-ups have a serious advantage. Consequently, alliances between incumbents and fintechs offer the best solution. Asian banks tend to be in a better IT position than their European counterparts, many of which have compounded the challenge through historic M&A which created a blend of systems."
>
> Jeremy Pitts, Managing Partner, Tokyo and Head of Global Financial Institutions, Baker McKenzie

Technology is upending traditional banking and investment business models, effectively redefining the way Asia's financial institutions do business for both retail and corporate customers. In fact, the financial sector, more than any other, is braced for inevitable and widespread disruption, according to 97% of respondents in our survey.

Examples of significant breakthroughs include blockchain, AI, machine learning, big data analytics, digitalization and auto processing. The reality today is that a shake-up in the industry isn't just anticipated; it is already here. Now, financial institutions are stepping up initiatives to innovate and remain relevant. Innovation and digitization are happening concurrently with other issues that require navigation in today's market complexities.

Cybersecurity: A game of catch-up

Worldwide, the threat of cyberattack has become an unavoidable part of doing business. The global "WannaCry" attack was a reminder of this and a harsh reality check that cyber incursions can happen anywhere, at any time – and more so for the underprepared and heavily exposed corporation. Since WannaCry, Equifax, a large US entity, announced cyber thieves had taken records of 143 million US citizens, including social security numbers and date of birth.

Asia Pacific is no less vulnerable. Detailed and clear data breach notification laws, supported by enforcement, and a culture of compliance and transparency within organizations, are cited as often lacking across the region. For these reasons and others,

cybersecurity ranks as the top complexity facing executives at the region's financial institutions in our survey.

Driving innovation through partnerships

To remain relevant, financial institutions in Asia Pacific need to digitize quickly to offer a price sensitive customer solution; tech adoption is the only way to stay ahead. Based on the time, resources, and talent required, innovation is among the top complexities facing these respondents in our survey.

While internally driven R&D can sometimes provide solutions, the rapid pace of change frequently necessitates looking outside the organization for solutions. Executives in our survey say that partnering with tech firms that offer cross-sector fintech solutions is one way of achieving desired game-changing results.

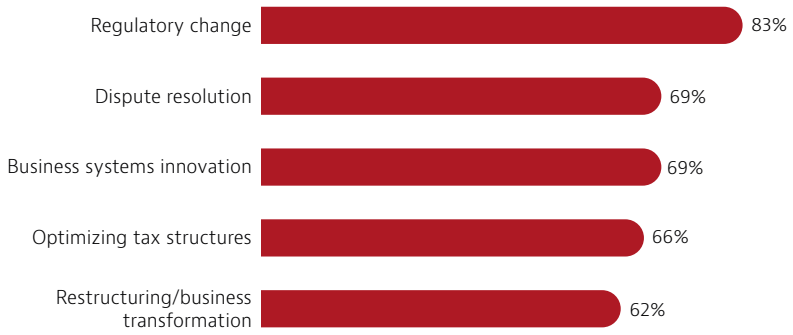
Regulation: Playing by new rules

Compliance and adapting to changing regulations is another major complexity for financial institution executives. Regulatory change will be a top focus area for these firms in the year ahead (Figure 4). Based on the amount of new legislation and regulation in this sector, it's easy to see why.

Regulators across Asia are stepping up efforts to establish fintech and regtech legislation to encourage innovation while mitigating potential risks, with a focus on the themes of governance and supervision. Complying with international regulatory frameworks, like BASEL III, will also create challenges and increasing costs, while the European Union's updated Markets in Financial Instruments Directive (MiFID II) brings non-EU-based financial institutions under its scope, requiring substantial work to attain compliance.

> "Financial institutions that make changes to their internal cultures and switch to a more innovative mindset are going to be the ones leading the discussion on the future of finance, not just listening to it."
>
> Gavin Raftery, Partner, Tokyo, and Head of Asia Pacific Banking & Finance, Baker McKenzie

Figure 4: Which areas do you think will be a major focus for your industry in the next two years?



Steps for success:
A balancing act

Globally, more than 200 regulations applicable to financial institutions are issued every day. The enormity of the challenge this creates cannot be underestimated. At the same time, many banks and financial services corporations are struggling to find innovative solutions to remain competitive while also exploring ways to optimize their tax structures.

Baker McKenzie's **Jeremy Pitts, Gavin Raftery,** and **Steven Sieker** provide effective solutions to balance priorities in terms of regulatory change, innovation and tax.

Adopt a culture of compliance

The most important way to figure out which rules apply and how to remain compliant with changing regulations will be internally driven – that is, by adopting a culture of compliance rather than one that emphasizes profit maximization. Across Asia, many banks and other financial institutions continue to expand compliance functions to ensure compliance and avoid unnecessary and costly enforcement actions.

Knowledge is power

Having access to the latest information and updates on legal regimes and trade regulations across markets – and even more so in Asia Pacific where each market has its own unique set of rules – is crucial to remaining compliant and staying out of court. Financial institutions should search out resources and experts with a deep knowledge of Asia's markets and an understanding of regulators and the topics being discussed today.

Have a voice: Take part in regulatory change

Many regulators in Asia Pacific have established committees to facilitate a dialogue on new laws and requirements before they are enforced. Financial institutions should think about who they have representing them on these committees so they have a voice in decisions being made. At the very least, such representation will help them stay informed on the latest decisions being made so they can take appropriate action in compliance or their corporate strategies.

Lead the charge

Investing in innovation gives financial institutions a seat at the table on how the industry will be shaped. However, one of the biggest changes that traditional financial institutions need to make is to their corporate culture. Today, industry leaders are the ones who adopt that start-up mentality and experiment with new ideas. They're making mistakes, but correcting course quickly and moving forward until they reach a satisfactory solution.

Have a tax team

Developing an effective tax strategy and optimizing tax structures, despite the ease of doing business and sophisticated structures in some of Asia's markets (Hong Kong and Singapore, for example), requires more than just planning. The real success comes from implementation, and having the right team to execute this plan.

Industry insights:
Small change, big returns

To be better in 2017 and beyond, financial institutions need to focus on several key opportunity areas where small changes can have a very significant impact to their business futures. **Wan Marzimin, Group General Counsel and Company Secretary at Maybank*,** discusses the top trends and predictions driving these changes and strategies.

1

Talent, rather than tech, is a financial institution's most valuable asset

Transformative or digital change in the financial field is not just about tech, but also about people. That means giving the workforce an upgrade from basic retail employees to specialized personnel – make them financial advisors as opposed to back or middle office employees – capable of handling a wider range of client and investment services.

This also involves hiring, training and promoting the next generation of leaders. The larger banks are hiring more and more millennials because these employees bring a special mindset that allows them to connect with the customers of today and tomorrow. Indeed, boards and management teams in Asia are realizing that to cater to younger customers requires them to let the younger generations lead, play with new ideas and see what they can produce.

2

Regulatory change will be a cornerstone of digital change

Financial institutions are asking themselves: Can we innovate faster to tackle the fintech agenda? While this may be the right mindset to have, banking leaders must realize that digital strategies can only move as fast as the regulations behind them. Therefore, understanding current regulations and coordinating with policymakers needs to be a part of internal digital change.

Regulators are often receptive to exchanges of ideas, and these dialogues help us understand how policies are progressing so we can adjust strategies if laws in new markets become more accommodating. This way, we have the flexibility to go where we need to go as opportunities arise.

3

Forging partnerships – starting with small ones – will help advance product offerings and expand the broader banking ecosystem

Local and regional banks are locked in a heated race to see who can launch the next big innovative product first. The high costs and unknown risks of R&D, however, can prove prohibitive. Therefore, to navigate these challenges, banks can form partnerships with tech companies or fintech firms to share research and resources and get their products to market faster.

One approach, something that several Malaysian banks have done, is to start these partnerships with small stake investments or by funding start-ups to collaborate on product development. From there, financial institutions can build these into larger stakes or full acquisitions in future.

**DISCLAIMER: The views expressed in this editorial are those of the author and not Maybank.*

Healthcare

Trends and key complexities:

New laws and healthcare standards are being implemented across Asia, and regulatory concerns are among the top concerns for healthcare executives.

Concerns over the ability to respond to natural disasters and extreme weather events is the second-greatest complexity.

Digital technology and innovation can help executives unlock new potential within their organizations.

48%

of respondents feel doing business in the healthcare industry is becoming more complex.

Asia Pacific represents a challenging region for healthcare and pharmaceutical companies. Unlike the US or EU, which provide large, established homogeneous markets, Asian countries have their own diverse local laws and regulations. Many are influenced by geopolitical affairs as key policy drivers constantly shift the legal and regulatory landscape.

Against this backdrop, respondents in our survey say that it is a real challenge to manage the often more restrictive foreign investment and product regulatory environment to manage complex supply chain and post entry marketing issues. Not to mention the need to manage compliance risks due to concerns over corruption in many parts of this region and keep up with evolving life sciences technology.

Regulatory change: The pulse quickens

Navigating Asia's ever-changing regulatory environment while operating across markets is the top complexity facing healthcare executives and one that 76% say will receive considerable attention from corporate boardrooms in the year ahead (Figure 5). Waves of new laws and healthcare standards are being implemented and with these come various compliance costs and uncertainties. Failure to obey these new regimes could mean heavy penalties for corporations already struggling to operate in an environment of increasing competition and shrinking margins.

Executives mention that while Asia Pacific poses vast market opportunities, launching a new drug or medical device is

> "The development of healthtech and demands for related backend support, while presenting challenges, also mean opportunities for players in the sector. We will likely see more businesses going from products to services, as we have seen for the TMT and other sectors."
>
> Isabella Liu, Partner, Hong Kong, and Head of Asia Pacific Healthcare, Baker McKenzie

comparatively more complicated from a regulatory perspective than in Europe or the United States. For this reason, monitoring legislative updates and maintaining good relations with governments across the region will be a priority.

Environmental concerns

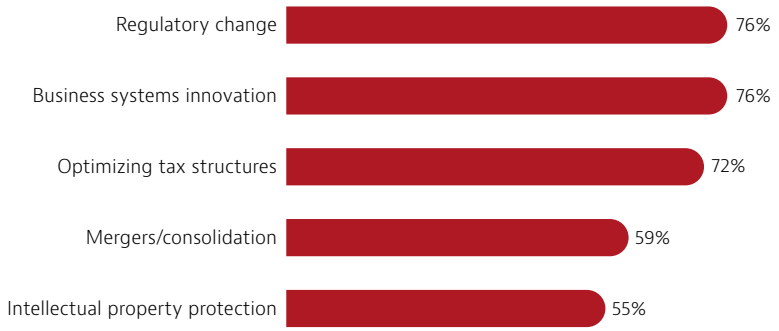
Parts of Asia Pacific are some of the most disaster-stricken in the world, and respondents recognize this vulnerability as a key complexity affecting most segments of the healthcare industry. With billions of people exposed to various natural disasters, infrastructure concerns constitute the second-greatest challenge for healthcare corporations. Indeed, respondents say better and more reliable medical systems and response networks are required in the region's emerging markets, as the number of destructive weather events and impact of intense natural disasters become a grave concern.

Dialing up digital

Executives at healthcare corporations across Asia are adopting or developing an array of technologies and equipment to meet the region's shifting demographics and increasing demand for medical services. However, many are finding it challenging to adapt, with driving such innovation internally a top complexity facing the industry. Respondents say that as healthcare becomes more digital, moving quickly to integrate new digital technology into existing infrastructure can give corporations a competitive edge.

> "Healthcare companies also need to be proactive in managing compliance efforts, a process that includes managing distributors, agents and other service providers. While much of this will be based on having thorough internal compliance processes in place, a large part is also dependent on the due diligence of business partners, in particular understanding how business partners do business."
>
> Vivian Wu, Partner, Beijing, Baker McKenzie

Figure 5: Which areas do you think will be a major focus for your industry in the next two years?



> "To stay ahead in the transition to digital healthcare, corporations should embrace the latest revolutions in tech and also anticipate policy changes and the creation of new laws."
>
> Ben McLaughlin, Partner, Sydney and Head of Global Healthcare, Baker McKenzie

Steps for success:
Upping the dosage of compliance and due diligence

Complying with healthcare standards and legal regimes in Asia can be a major hurdle. Indeed, recent years have seen a number of cases where corporations have suffered heavy fines for various breaches, prominent among them the fining of a multinational British pharma company for 3 billion yuan (US$460m) in China on counts of corruption.

Outside of this case and across the region, governments are stepping up regulation to monitor the healthcare industry. Baker McKenzie's **Vivian Wu** and **Ben McLaughlin** provide tips and tactics to comply with healthcare laws, mitigate risks, and avoid litigation.

Prioritize compliance with anti-bribery and corruption laws

Successfully navigating Asia's healthcare space starts with a robust internal compliance program. However, such efforts go well beyond the bounds of the corporation and includes a deep-rooted investigation into managing compliance risks associated with third-party intermediaries. This involves thorough compliance due diligence of business partners and associates in target markets to ensure they have adequate compliance programs of their own and a clean record on bribery issues.

Know data protection laws inside and out

As data becomes the lifeblood of innovation in healthcare, corporations should regularly check and audit their policies on data privacy, protection and compliance. They should also know data protection rules within their operating jurisdictions as they pertain to: cross-border transfer of data and risks; strictness and enforcement of data privacy laws; and remaining compliant with new regulations, especially when it comes to network-connected medical devices and the storage of related data.

Perform regular corporate health checks

Risk assessment is a very important component of successful compliance programs, and it goes far beyond routine employee training. A full "health check" must be performed on the company, and such checks often benefit with insights from external consultants. Especially if compliance breaches occur, it can be prudent to consult advisors for a new perspective and solutions to rooting out the cause of the problem and proposing a strategy to move forward.

Acquiring patents or medtech? Implement thorough IP due diligence

Verifying intellectual property can prevent setbacks post-close. In any transaction involving healthcare IP, make sure you are securing the rights to all relevant inventions, patents, and distribution rights. Third-party patent rights preventing use post acquisition can clearly defeat the very purpose of the transaction. It is important to properly scope the IP due diligence at the outset and following the completion of the deal.

Industry insights:
Tending to the pain points

Technology offers immense potential in Asia Pacific's search for effective healthcare solutions. **Justin Wang, Managing Director at L.E.K. Consulting** based in China, discusses how healthcare businesses can administer technology-enabled remedies to alleviate industry pain points, from catering to rising public health needs, to tailoring service offerings for decentralized healthcare.

1

Industry players that monetize healthcare IT will stay ahead of competitors

Healthcare IT is an area of significant opportunity, as Asian healthcare practitioners and patients continue on their fast track of "digitalization", through the use of smart phones, mobile wallets, and innovative apps. Market participants are thinking beyond just using healthcare IT as a tool to enhance operational efficiency and communication with their customers – they are actively exploring ways to digitalize their products, and even into monetizing data and analytics.

The tightening of cybersecurity laws in China and other Asian markets puts higher requirements on market participants in upgrading their systems, tightening protocols, and re-strategizing their infrastructure investments to comply with local regulations and further capture opportunities.

2

Mobile healthtech will be the central component of healthcare business models

Asia's emerging market populations, with their increasing mobility and spending power, represent a significant business opportunity for healthcare companies. However, to capture this segment, healthcare companies need to continue to evolve their business models to better cater to people outside the major city centers, enabling them to deliver timely and affordable treatment to the broader markets.

Business models that emphasize mobile health technology can empower populations where the central healthcare systems are concentrated and overloaded, but where smartphone penetration is high. Those that aim to enhance access to healthcare infrastructure for populations in less developed areas will also help solve this problem.

3

Healthcare decentralization will require businesses to adjust operational structures and distribution channels

Healthcare in Asia is gradually becoming decentralized. Reflecting this trend, China, which boasts one of the world's largest medtech markets, is seeing investment into new tech, such as telemedicine, mobile health, and home care technologies.

Asian pharmaceutical and medtech companies need to think about how to optimize their distribution channels to address retail pharmacies, reach online/mobile customers across geographies, and get products delivered more efficiently to patients. For businesses with cross-jurisdictional footprints, staying abreast of changing regulations will also be a priority.

Industrials, Manufacturing and Transportation

Trends and key complexities:

Economic growth uncertainty and cost concerns are the top complexities facing manufacturing and industrial corporations.

Deploying new technology to upgrade outdated manufacturing processes and drive innovation is also a concern.

M&A is proving a viable strategy for manufacturers to grow beyond their home markets and dominant market segments.

20%

of respondents feel doing business in the industrials, manufacturing and transportation industry is becoming more complex, while 50% feel it has remained unchanged.

Executives in the industrials, manufacturing and transportation (IMT) space maintain a positive outlook for conditions in their markets. Only 20% feel doing business is becoming more complex, and 50% feel it has remained unchanged.

This positive sentiment is somewhat surprising given uncertainties around the future of the TPP and threats to free trade from populist governments. These uncertainties aside, various other macro factors and challenges are having an impact on Asia's industrial base.

Economic and cost concerns

Respondents note that uncertainty over economic growth rates in their domestic markets is causing business opportunities to shrink and profits to become more elusive. As such, it is the top complexity facing the industry. With few options at home, many are searching out growth and revenue streams in new markets, both geographical and in new product segments. This in itself is a complex process, as many respondents say such shifts in business require considerable changes to their operational strategies.

> "Businesses that need an innovation push should implement a company-wide change process. The change process can include making a bolt-on acquisition of a technology company that comes with new ideas, improved processes and creative talent, instead of just buying technology."
>
> Nikolaus Reinhuber, Partner, Frankfurt and Global Chair of Industrials, Manufacturing and Transportation, Baker McKenzie

Costs are another cornerstone concern. As costs rise, companies are coming under pressure to cut back expenditures, sometimes in areas where investment is vital to growth. Environmental threats and regulatory change will contribute to these burdens. Many manufacturing executives mention that rising labor costs have forced them to transfer operations from China to cheaper markets.

Innovation: Embracing advanced manufacturing

With new technology replacing legacy machinery and processes, the need to innovate is among the top issues facing IMT executives. Already, automation has become a game-changer, and while still in its nascent stages, it is being widely used to improve efficiency and profitability among traditional low-tech, labor-intensive segments, such as textiles.

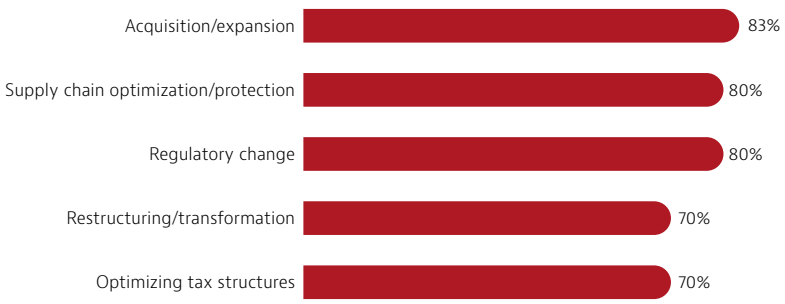
However, this can only happen if companies have the resources to make this transition. For this reason, respondents say a faster shift has proven both challenging and unlikely as cost concerns impede wider use or advanced manufacturing processes. On the upside, respondents note that applying new technologies and upgrading manufacturing processes have, in some cases, helped them lower production costs and improve product quality.

M&A

Struggling to grow organically, many IMT corporations will likely turn to acquisitions as they buy competitors to expand operations, a sentiment shared by 83% of respondents (Figure 6). Respondents say that acquisitions are allowing their companies to focus on expanding output and supply chains while also placing them in possession of technological solutions to fill gaps in their own industrial capabilities. M&A, one respondent says, can allow these companies to focus on developing regional as well as global strategies and position themselves to earn stronger revenues over the long run.

> "Manufacturers need to factor environmental issues into their business models, strategies and production processes. Should businesses choose to ignore environmental problems, this will only increase and prompt governments to put stricter restrictions in place, thus increasing regulatory risk for businesses."
>
> Peerapan Tungsuwan, Partner, Bangkok, Baker McKenzie

Figure 6: Which areas do you think will be a major focus for your industry in the next two years?



Steps for success:
Reinventing the wheel

Despite respondent sentiment that business is becoming less complex, many IMT executives recognize a lag in the application of new industrial technologies and processes. If this is the case, where should manufacturing and industrial corporations start as they reinvent themselves? Baker McKenzie's **Nikolaus Reinhuber** and **Peerapan Tungsuwan** outline several methods and practical considerations corporations can take to drive change within their organizations.

Give business models an upgrade

To give their business models a boost, IMT corporations need to adapt to and embrace what might look like a disruptive challenge. For instance, a major German automaker is currently transforming itself from a pure carmaker to a mobility services and solutions provider that caters to the younger generation's view on mobility versus car ownership. Indeed, as the world marches into Industry 4.0, Asia's manufacturers must look beyond their comfort zones. An injection of innovation – combining robotics, 3-D printing and IoT with digitalization through big data, cloud computing, analytics, and AI – can provide such a boost and be leveraged to automate manufacturing processes, making them more efficient and interoperable in "smart factories".

Build an international workforce

A corporation is only as global as its workforce, and this goes far beyond a presence in multiple jurisdictions. Today, corporations must fill their ranks with an international set of employees with local insights and perspectives to create global strategies. This involves sending top talent abroad to understand foreign markets, consumers and cultures and return with international experience to take up leadership positions and implement what they have learned.

M&A: Culture counts more than you know

Closing an M&A deal is relatively easy, but for transactions to truly add value, the key question is how to orchestrate post-merger integration successfully, especially when dealing with diverse work cultures. Cultural integration can make or break a deal. Acquirers must understand the employees, ethics and business practices at the target, as well as how to mesh these with the parent organization. To this end, getting support from local managers is critical to keeping key personnel who will contribute to the integration and merging of companies, a process that can take up to three to five years.

Learn from the best

Asia's manufacturers and industrial corporations have some catching up to do and the best way to fill the gap in technology use and processes is by learning from international leaders in their space. At the same time, senior executives should strive to implement a creative work environment and culture to encourage experimentation and ingenuity. This leads over time to innovative solutions. In addition, adding innovation expertise through dedicated acquisitions of creative start-ups should be considered.

Industry insights:
Making manufacturing smarter

Engineering manufacturing operations fit for Industry 4.0 requires planning and processes that are increasingly intelligent by design. **Jason Lo, Head of Strategy for China, Honeywell** discusses how industry players can build for the future while hedging uncertainties and rethinking their business models.

1

An asset-light model will help IMT corporations remain agile and reduce risks

Facing political and economic uncertainty, industry players need to consider becoming more asset light by turning fixed costs into variable costs, such as by leasing instead of buying factory or office space, establishing original equipment manufacturer (OEM) partnerships, or outsourcing non-core activities. In times of economic volatility, an asset-light model allows the business to scale flexibly according to economic cycles and reduces risk exposures, particularly in emerging markets which are more susceptible to shocks.

2

Long-term thinking and vision will be key to combating cost pressures

As spending power in Asia's middle class continues to rise, industry players not only need to compete in the cost-competitive market segment, but should also consider the emerging premium segment, which could provide better pricing and profit margins. However, companies need to re-think their products and solutions for the discerning nouveau riche end-users who rose from rags to riches.

Corporate customers who are gaining scale and maturity are increasingly considering life cycle cost. Instead of buying the cheapest available power generator, for instance, businesses are evaluating efficiency, maintenance cost, down time, and cost of operations.

3

Experimentation will be the secret ingredient to significant, long-term change

IMT businesses must consciously shift investment from traditional to digital offerings. They then need to build an innovation process with tangible steps into their product development cycles. At Honeywell, all our different businesses draw up strategic plans annually and then spend a significant portion of our revenue on R&D. Our process begins with understanding mega-trends, generating ideas based on customer feedback, and having these ideas compete for funding.

Businesses must bear in mind that internal innovation requires top level commitment and often takes a lot of experimentation. They need to recognize that digital transformation is not a matter of choice but a matter of survival, and that new organizational DNA is necessary for them to upgrade to their digital selves.

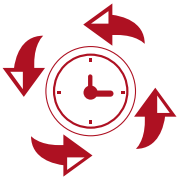
Conclusion

43%

of executives expect business (particularly within multiple jurisdictions) to become more complex in the next two years.

Finding a way to navigate today's business complexities need not be an overly complex process itself. With the right foresight, insight, preparation, and diligence there are few challenges that can completely derail corporations operating in Asia Pacific or looking to expand across the region.

While there is no one-size-fits-all approach to addressing current corporate concerns, several solutions stand out for their applicability across industries and borders. These broad strokes are an excellent starting point in any discussion on how to simplify business in a complex world.

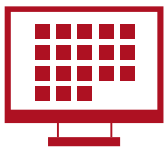


Engage regulators early and often. Industry leaders know that engaging regulators on issues impacting their markets not only allows them to stay ahead of new regulations, but also allows them to have a voice in the course of legislative change. Executives need to understand how to open these dialogues and who should be representing them on regulatory committees.

Regulations: Play by the rules. Far from a cohesive network of legal regimes, most countries in Asia Pacific operate under their own unique set of laws on trade, business, compliance and others relating to corporate affairs. Staying apprised of these regulatory differences requires access to the latest information and updates on changes in the market and the direction new laws are likely to take.

M&A: Deal or no deal. Acquisitions offer a fast-track to rapid and sizable growth. It can also expose a corporation to various compliance and regulatory risks. Avoiding litigation and value erosion requires a thorough due diligence process that analyzes each dimension of the deal – such as cultural fit, deal rationale, and integration – rather than focusing simply on valuation.

Disrupt or be disrupted. Industry leaders are often innovators. While there are various tech solutions corporations can turn to today – from AI to e-payment options – each comes with its own set of risks and challenges that must be considered.



Data: Regulation in a digital world. Data is often a corporation's biggest asset. It can also be its greatest liability. As data laws play catch-up with rapidly emerging technologies and restrict the free flow of information, domestically and across borders, corporations must understand these changing regimes and remain compliant to reduce their overall risk exposure and avoid heavy fines.

Being mindful of these solutions will be invaluable to successfully operating in the current business environment, which 43% of executives anticipate will become more complex in the next two years. The increasing cross-border nature of business and trade today is driving these expectations, and this is likely to continue as Asia's corporations look beyond their borders to establish a global presence and as international businesses try to tap the region's high-growth markets.

Analyzing these trends and providing clear and comprehensive answers to the key questions corporations in Asia Pacific, and globally, are asking will be an ongoing part of our research. We look forward to helping executives and their teams tackle these challenges as they plan for the future.

Contacts

Bee Chun Boo
Partner, Beijing, Baker McKenzie
+86 10 6535 3913
bee.chun.boo@bakermckenzie.com

Jo Daniels
Managing Partner, Yangon,
Baker McKenzie
+95 1 255056 # 8857
jo.daniels@bakermckenzie.com

Fred Burke
Managing Partner, Vietnam,
Baker McKenzie
+84 8 3520 2628
frederick.burke@bakermckenzie.com

Martin David
Principal, Singapore and Head of Asia
Pacific Energy, Mining & Infrastructure,
Baker McKenzie Wong & Leow
+65 6434 2588
martin.david@bakermckenzie.com

Rico Chan
Partner, Hong Kong and Head of Asia
Pacific Real Estate, Baker McKenzie
+852 2846 1971
rico.chan@bakermckenzie.com

David Holland
Partner, Sydney and Head of Asia Pacific
Capital Markets, Baker McKenzie
+61 2 8922 5535
david.holland@bakermckenzie.com

Brian Chia
Partner, Kuala Lumpur, Wong & Partners
+60 3 2298 7999
brian.chia@wongpartners.com

Komkrit Kietduriyakul
Partner, Bangkok, Baker McKenzie
+66 2636 2000 extn 3399
komkrit.kietduriyakul@bakermckenzie.com

Stephen Crosswell
Partner, Hong Kong and Head of Asia
Pacific Competition, Baker McKenzie
+852 2846 2599
stephen.crosswell@bakermckenzie.com

Ashok Lalwani
Principal, Singapore and Head of the
Global India Practice, Baker McKenzie
Wong & Leow
+65 6434 2684
ashok.lalwani@bakermckenzie.com

Adrian Lawrence
Partner, Sydney and Head of Asia Pacific Technology, Media and Telecommunications, Baker McKenzie
+61 2 8922 5204
adrian.lawrence@bakermckenzie.com

Frank Pan
Special Counsel, Shanghai, Baker McKenzie
+86 21 6105 8523
frank.pan@bakermckenzie.com

Isabella Liu
Partner, Hong Kong and Head of Asia Pacific Healthcare, Baker McKenzie
+852 2846 1689
isabella.liu@bakermckenzie.com

Anne Petterd
Associate Principal, Singapore, Baker McKenzie Wong & Leow
+65 6434 2573
anne.petterd@bakermckenzie.com

Ben McLaughlin
Partner, Sydney and Head of Global Healthcare, Baker McKenzie
+61 2 8922 5342
ben.mclaughlin@bakermckenzie.com

Jeremy Pitts
Managing Partner, Tokyo and Head of Global Financial Institutions, Baker McKenzie
+81 3 6271 9737
jeremy.pitts@bakermckenzie.com

Yoshiaki Muto
Partner, Tokyo and Head of Asia Pacific Dispute Resolution, Baker McKenzie
+81 3 6271 9451
yoshiaki.muto@bakermckenzie.com

Kelvin Poa
Principal, Singapore and Head of Asia Pacific Private Equity, Baker McKenzie Wong & Leow
+65 6434 2524
kelvin.poa@bakermckenzie.com

Hideo Norikoshi
Partner, Tokyo and Head of Asia Pacific M&A, Baker McKenzie
+81 3 6271 9471
hideo.norikoshi@bakermckenzie.com

Gavin Raftery
Partner, Tokyo and Head of Asia Pacific Banking & Finance, Baker McKenzie
+81 3 6271 9454
gavin.raftery@bakermckenzie.com

Contacts continued

Nikolaus Reinhuber
Partner, Frankfurt and Global Chair of Industrials, Manufacturing and Transportation, Baker McKenzie
+49 69 2 99 08 406
nikolaus.reinhuber@bakermckenzie.com

Vivian Wu
Partner, Beijing, Baker McKenzie
+86 10 6535 3860
vivian.wu@bakermckenziefenxun.com

Steven Sieker
Partner, Hong Kong and Head of Asia Pacific Tax, Baker McKenzie
+852 2846 1048
steven.sieker@bakermckenzie.com

Gil Zerrudo
Partner, Manila and Head of Asia Pacific Employment, Quisumbing Torres
+63 2 819 4916
gil.zerrudo@bakermckenzie.com

Say Sujintaya
Partner, Bangkok and Head of Asia Pacific Intellectual Property, Baker McKenzie
+66 2636 2000 extn 4545
say.sujintaya@bakermckenzie.com

Loke-Khoon Tan
Partner, Hong Kong and Head of Asia Pacific Consumer Goods & Retail, Baker McKenzie
+852 2846 1970
lkt@bakermckenzie.com

Peerapan Tungsuwan
Partner, Bangkok, Baker McKenzie
+662 636 2000 extn 4333
peerapan.tungsuwan@bakermckenzie.com

About Baker McKenzie

Baker McKenzie helps clients address the challenges and opportunities of competing in the global economy. Founded in Chicago in 1949, Baker McKenzie opened its second office in Caracas in 1955. At a time when many firms were focused on their local markets, we were helping clients do business globally, something that has grown exponentially over the past six decades, and today we are proud to have more than 4,200 lawyers in 77 offices across 47 countries.

We realize that in today's dynamic and fast-moving global economy, every single one of our clients is presented with a huge array of opportunities, challenges and complexities. Our unique culture enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends for the true benefit of our clients.

www.bakermckenzie.com

About Mergermarket

Mergermarket is an unparalleled, independent mergers & acquisitions (M&A) proprietary intelligence tool. Unlike any other service of its kind, Mergermarket provides a complete overview of the M&A market by offering both a forward-looking intelligence database and a historical deals database, achieving real revenues for Mergermarket clients.

Acuris Studios, the events and publications arm of Acuris, offers a range of publishing, research and events services that enable clients to enhance their own profile, and to develop new business opportunities with their target audience.