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## Trends affecting the globalization of M&A

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Security concerns, among other things, have resulted in increased governmental scrutiny and regulation of foreign investments. This trend has been dramatically evidenced in the United States by recent changes in Committee on Foreign Investment in the U.S. (CFIUS) regulations. For example, CFIUS is no longer a voluntary filing, and penalties are imposed for missed filings. In addition, the number of industries covered has expanded.

Similarly, governments around the world have enacted legislation mandating review of inbound foreign investment. Many governments have tried to keep foreign products out of their domestic markets by enacting new tariffs and re-negotiating trade agreements. In the U.S., new announcements on tariffs and other trade measures regarding China, NAFTA, the European Union and South Korea have become a common occurrence.

In addition to the challenges created by this new wave of protectionism, data protection and cybersecurity are now a high-level priority. The European Union passed the General Data Protection Regulation (GDPR) in May 2018 to protect the personal information of its citizens.

The implementation of the GDPR created a significant amount of compliance work for both EU and non-EU based businesses. And assessing the amount of access a foreign business will have to personal information of U.S. citizens is now part of determining whether a transaction is subject to CFIUS review.

Despite the hurdles that protectionism and data protection may present, cross-border M&A appears to be thriving based on data from the first three quarters of 2018. Global M&A value increased 22% over the same period of 2017 (according to Toppan Vintage). However, domestic M&A increased in deal value by 27%, which suggests that while the cross-border M&A market is thriving, the overall landscape for M&A has remained strong – both for domestic and foreign transactions.

In all events, in the context of cross-border M&A, due diligence among both the target company and the regulatory and political environment of the foreign jurisdiction is a critical aspect of any successful transaction.

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