Cross Border M&A Transactions

1. A "hard Brexit" will likely have the greatest impact on industries relying on just-in-time production because (1) UK tariffs on certain imports will be imposed or increased and (2) there will likely be delays at customs related to new compliance procedures.

2. Because US and European dealmakers are becoming more aligned on what are considered "acceptable" or "common" deal terms in transactions, representation and warranty insurance policies are becoming more uniform.

3. There is no one-size-fits-all where due diligence is concerned – due diligence techniques should differ depending on who the parties are.

4. With respect to due diligence, the way in which risks are managed differs between countries. For example, legislation differs among countries with respect to detecting and addressing red flags or violations. The UK Anti-Bribery Act takes a no tolerance stance and encourages more robust compliance program). The US FCPA has more flexibility, as evident by the allowance of grease payments and the availability of affirmative defenses.

5. Today, hedge fund and PE activism is becoming more common in the shipping industry.

6. One of the major "deal killers" in cross-border transactions is failure to understand another's culture and customs because these factors affect every stage of a deal.

7. Increasing protectionism and state actors' involvement in transactions often clash with "getting the deal done" (e.g., enhanced scrutiny with CFIUS reviews and decreased Chinese investment in the U.S).

8. Areas in South and Central America are ripe for cross-border M&A because they have weak economies and prices are cheap. Still, dealmakers should consider whether they can tolerate the risk and whether they are prepared to deal with corruption at the government level.

9. One of the top diligence items dealmakers should tackle is intellectual property. Laws, regulations and customs on how intellectual property can be used and is protected can drastically differ depending on the country.

10. The demand for representation and warranty insurance in certain areas with high M&A cross-border activity, like Brazil, is not being met. This is, in part, because carriers continue to assess risk and the prior policies/economic strength of such areas. In such areas, policies are largely solicited by international or US buyers and regionally, insures do not crowd the market.