Legal Market Update

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'Legal Market Update' This is a quarterly newsletter produced by Nicholas Scott, a search firm operating at partner and associate level in the legal and financial sectors in the domestic and international markets

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A New Era For The Alternative Asset Space

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> **Transparency has become the watch word for many investors when considering fund allocations**

While some investors see the current global macroeconomic turmoil as offering opportunities, many more are tentatively circling the periphery, hesitant to commit to long term investments. Unprecedented levels of uncertainty surround both fundraising and investment in the alternative asset sector. In the post-Lehman environment, the manger friendly fundraising process that typified the tail end of the boom years, where managers were able to raise funds within months of launching is becoming increasingly rare. Investors are now investing much more time on conducting due diligence on the management team and on negotiating fund terms.

Increasing transparency and a shift in power to investors

Transparency has become the watch word for many investors when considering fund allocations. Historically, investors in the alternative asset space have been obliged to take a more active role in deciding upon allocations to individual managers as they have not enjoyed the breadth of comparators and publicly available information available to their counter-parts investing in the public markets. And now, those investors are demanding more in-depth information from managers, not only on economic matters (e.g. exits strategies for existing investments), but increasingly on the 'softer' areas too, such as corporate governance, investor protections and remedies, team make-up and in some cases on environmental and social responsibility.

New funds are taking longer to launch now, not least because of the difficulties attached to marketing funds in the current climate, but also because investors are bolder in their demands and more confident in their negotiating position. With fewer market participants, the pool of available allocations has shrunk. This is forcing established managers and new entrants alike to adapt their offerings to attract investors.

New structures and incentives

Managers are drawing inspiration from the wider corporate finance sphere to offer investors alternatives to the traditional structures. First time managers, who are struggling to gain traction and long term commitments from investors, are turning to these structures to offer bespoke alternatives to hesitant investors. Managed accounts are seen by many as a credible alternative to direct investment, especially amongst institutional investors, while co-investment structures and pledge funds permit investors to invest with a manager on a discrete and short term basis.

In the hedge fund sphere, investors are coupling their push for increased transparency with heightened demands for liquidity. A result of this has been an increased use of UCITs to sit alongside traditional structures thereby meeting liquidity needs by way of a more regulated structure.
In the private equity domain, one of the more significant trends is the move towards 'first close incentives'.

> **Fundraisings focussing on the emerging markets are attracting a disproportionately high level of interest**

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A number of the larger, established managers who are currently fundraising are offering management fee reductions or holidays as an incentive for investors to commit at first close. Reductions can be structured either as a rebate on a proportion of an investor's total commitment or as a rebate on a percentage of the management fee itself. Heavy emphasis is placed on these economic incentives and investor appetite appears strong.

Given the volatility in public markets, valuations are proving complicated, debt financing is perceived as more difficult to obtain and there is closer scrutiny of the 'skin in the game' by the managers – be it by way of a prescribed minimum commitment or co-investment obligations. Investors are keen to ensure that the manager is sharing in the downside risk – a focus that traditionally has been blurred as a result of an emphasis on upside returns.

Regulation – a looming spectre

The backdrop to this innovation and dynamism amongst mangers is the prospect of increased regulation from Europe and across the Atlantic. While funds and fund managers alike have faced the spectre of the Alternative Investment Fund Managers' Directive (AIFMD) from Brussels, developments under the Dodd-Frank Act resulting in changes to the SEC registration requirements for private investment funds and the introduction of the Foreign Account Tax Compliance Act (FATCA) requiring greater disclosure of information to target offshore tax evasion has meant that fund managers have also had to closely monitor developments in the United States. The weight of industry concern in the UK and abroad has resulted in workable compromises, but this has not stopped mangers reviewing their jurisdiction of establishment.

Many in the hedge fund sector have looked to Dublin and Luxembourg as a potential alternative to the traditional offshore jurisdictions of choice. Yet as the AIFMD has progressed many managers have decided that the cost of moving outweighs the advantages that may be gained. In contrast, private equity managers are deeply concerned about the practical impact of the Directive and are building into their governing documents specific flexibility to allow them to restructure in response to the final form that the Directive takes.

> **"While the emphasis in emerging markets is on primary deal flow, Europe and the US have seen a near exponential increase in secondary activity"**

Emerging markets

Further afield, while Western financial markets reel from a succession of downgrades, defaults and bailouts, BRICS and MIST (Mexico, Indonesia, South Korea and Turkey) have continued to draw the attention of managers and investors. Fundraisings focussing on the emerging markets are attracting a disproportionately high level of interest – For example 2010 saw circa. $23 billion raised across 185 private equity funds, while H1 2011 has seen approx. $22.6 billion raised across just 89 funds. Emerging market focussed funds made up nearly 20% of global private equity fundraisings in the same period. Better growth prospects and increased deal opportunities in the emerging markets, as compared to Europe, is a key driver in this shift of investment focus.

Secondaries activity on the increase

While the emphasis in emerging markets is on primary deal flow, Europe and the US have seen a near exponential increase in secondary activity. In this context, 'secondaries' refer to the sale of limited partner interests in existing funds between investors. This has been fuelled on the one hand by banks and insurance companies who are faced with increased capital requirements looking to divest of their holdings in alternative investment funds and on the other hand, funds are coming to the end of their terms but have limited viable exit opportunities. Figures for H1 2011 are already parallel to the figures for the whole of 2010, distinguishing the first half of this year as the busiest period in secondary market history.

Future prospects

The alternative asset class has matured over the last 30 years to such an extent that it now sits alongside the more traditional asset classes. Yet with this increased maturity has come new challenges, some from within the industry and others from outside. As an asset class, alternatives were founded on principles of innovation, adaption and opportunity. It is important that these core principles are not eroded in the face of the challenges posed by the new post-Lehman landscape.

Market Comment

GLOBAL

Global M&A up 25% from 2009

Global M&A for the first three quarters of 2011 totalled US$ 1,723bn, up 21.8% from the same period in 2010 (US$ 1,414.4bn), making it the busiest Q1-Q3 period since 2008 when the same period saw US$ 1,949.4bn-worth of deals. 9,019 deals were announced in the year to September, 1.1% more than Q1-Q3 2010.

Activity was, however, down for the third consecutive quarter in Q3, with US$ 513.9bn-worth of deals announced globally in the third quarter of 2011, down 9.3% from Q2 2011 (US$ 566.3bn) which in turn was down 11.9% from Q1 2011 (US$ 642.9bn). 2011 third quarter activity was up though from Q3 2010 (US$ 506.9bn), a 1.4% increase, and was the highest Q3 total since Q3 2008 (US$ 682.8bn).

The largest deal of the year to date was Deutsche Telecom's US$ 39bn disposal of T-Mobile USA to AT&T, the largest corporate deal since ExxonMobil's US$ 40.6bn acquisition of XTO Energy in December 2009. Express Scripts' US$ 33.4bn offer to acquire US-based Medco Health Solutions was Q3's largest announced deal.

Cross-border M&A has had the busiest Q1-Q3 period since 2008, in spite of a slowdown in M&A during the last quarter. Cross-border deals (by individual countries) announced in the last nine months added up to US$ 690.8bn and regional cross-border deals were up to US$ 483.2bn, increases of 31% and 40.4% respectively since Q1-Q3 2010, which saw US$ 527.5bn-worth by country and US$ 344.2bn-worth by region. The first three quarters of 2011 saw cross-border deals between individual countries accounting for 40.1% of global M&A activity, the highest proportion for a year-to-September since 2008 when Q1-Q3 cross-border activity totalling US$ 895.8bn accounted for 46% of global M&A.

The Energy, Mining & Utilities sector saw the highest total value of deals in the year-to-September, with deals totalling US$ 395.7bn, up 7.9% from the same period last year (US$ 366.7bn), and accounting for 23% of all global deals in the first three quarters of this year. Industrials & Chemicals dominated the third quarter, with US$ 101bn-worth of deals (up by 16% compared to Q2 2011's US$ 87.1bn).

Sullivan & Cromwell moved up one position from last year's rankings to top the global M&A legal advisory tables by total deal value for the year to September. Sullivan & Cromwell has worked on five of the ten largest deals announced so far in 2011.The top ten firms in the global M&A legal advisory tables saw an average increase of 40.5% in the total value of deals worked on for Q1-Q3 2011 compared to the same period in 2010. 14 of the top 20 ranking law firms were US-based and five were UK-based. Blake, Cassels & Graydon, based in Canada and ranked 19th, was the only non US/UK firm in the top 20 ranking.

Mid-market M&A Activity (US$ 250m - US$ 2bn)

The global mid-market saw the announcement of US$ 186.9bn-worth of M&A deals in Q3 2011, bringing the total for Q1-Q3 2011 to US$ 600bn. Q3 2011's total was just 0.1% greater than the same period last year (US$ 186.8bn in Q3 2010), and 16.8% less than the previous quarter this year (US$ 224.8bn in Q2 2011).

Europe, Africa & the Middle East, and Japan all saw more mid-market M&A in Q3 2011 than in the same period in 2010. Europe saw the announcement of mid-market deals worth US$ 59.2bn, 22% more than Q3 2010 (US$ 48.5bn). Mid-market M&A in Africa & Middle East region doubled, with US$ 5.8bn-worth of deals in Q3 2011, compared to US$ 2.9bn in Q3 2010. Japan witnessed the biggest increase in mid-market M&A with a total value of US$ 5.3bn in Q3 2011, 191.4% greater than in Q3 2010 (US$ 1.8bn). The US saw the largest decrease in Q3 mid-market activity, with US$ 58.1bn-worth of deals, 25.4% less than in Q3 2010 (US$ 77.9bn).

Energy, Mining & Utilities was the most active sector in the global mid-market in the third quarter, accounting for 23.3% of all mid-market activity.

The Industrials & Chemicals sector saw the biggest increase in mid-market activity with US$ 97.7bn-worth of deals during Q1-Q3, 53% higher than the same period in 2010 (US$ 64bn). The Agriculture sector saw the biggest drop with US$ 2.3bn-worth of deals, 67% lower than in the same period in 2010 (US$ 6.9bn).

Latham & Watkins topped the mid-market legal adviser league tables with US$ 41.6bn-worth of deals, up four spots from its ranking a year ago. Linklaters was also up four spots from its ranking last year, taking second place in the table with US$ 40.9bn-worth of deals.

Private equity buyouts strongest since Q1-Q3 2008

The first nine months of 2011 saw US$ 219.9bn-worth of buyout transactions globally, up 41.5% from the same period last year (US$ 155.5bn), and the strongest Q1-Q3 period since 2008 (US$ 224.7bn). The continuing growth in buyout activity was also reflected in the proportion of global M&A activity accounted for by buyouts: 12.8% in Q1-Q3 2011, up from 11% for the same period last year, and the highest first-nine-month proportion since 2007, when buyouts accounted for 23.9% of global M&A.

Q3 2011 saw US$ 76.7bn-worth of buyouts globally, up 7.9% from Q3 2010 (US$ 71.1bn), though down 4.7% from Q2 2011 (US$ 80.5bn). This relatively insignificant drop, globally, from Q2 to Q3 this year masks some much larger regional differences, with a strong Q3 2011

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in Asia-Pacific propping up weaker numbers in Europe and the US. While Asia-Pacific saw US$ 17.1bn-worth of buyouts, up 185% from Q2 2011 and the strongest quarter since Q1 2007 (US$ 19.2bn), in Europe and the US buyout activity was down by 21.2% and 24.5% respectively from Q2 2011.

On leveraged buyouts (US$ 200m+ and excluding buy-ins), private equity firms raised, on average, debt financing of 5.6x EBITDA in Q1-Q3 2011, slightly up from 5.5x for the year 2010. Meanwhile, debt financing on LBOs reached an average of 54.7% of total funding per deal in the first nine months of 2011, down from 58.8% in the full year of 2010, and the lowest since 2009 (53.1%).

Europe's sovereign debt crisis has been the main cause of the slow-down in the European private equity market, causing deals to be postponed or pulled altogether in recent weeks. Banks have become increasingly reluctant to hand out debt, unless on expensive terms. Examples include the US$ 1.2bn sale of All3media by Permira, and Schneider Electric's US$ 1.4bn sale of its US division, both attracting private equity interest but the former was cancelled and the latter delayed.

Globally, the activity in large-cap buyouts has grown, with the five largest buyouts in Q1-Q3 2011 totalling US$ 31.8bn, a 63.7% increase from the total value of the top five deals in the same period in 2010 (US$ 19.5bn). While the average size of each of the top five deals in the first three quarters of 2010 was US$ 3.9bn, in 2011 so far it is US$ 6.4bn per deal.

The Carlyle Group was the most active private equity firm, having made 20 buyouts with a total value of US$ 4.1bn in Q1-Q3 2011. Simpson Thacher & Bartlett was top of the legal adviser to private equity firms table by deal value, with 29 deals with a total value of US$ 36.1bn in Q1-Q3 2011. Both companies retained these top spots from Q1-Q3 2010.

European M&A up 41% by value
Private Equity Exits

Private equity exits via secondary buyouts (SBO) and trade sales in Q1-Q3 2011 totalled US$ 217.8bn, up 47.3% from the same period last year (US$ 147.9bn). This was the strongest first-nine-month performance since Q1-Q3 2007 which saw US$ 314.3bn. Q3 2011 saw US$ 64.5bn-worth of exits, down 31% from Q2 2011 (US$ 93.5bn), but still 21% higher than the total for exits in Q3 2010 (US$ 53.3bn) and the strongest third quarter since Q3 2007 (US$ 75.9bn).

There has been a steady growth in secondary buyout exits this year, with such deals accounting for 34% of all exits in Q3 2011, up from 17.2% and 24.9% in Q1 and Q2 2011 respectively, and the highest Q3 proportion since 2007 when they accounted for 42.4%.

Private equity firms exited their holdings at an average enterprise valuation of 11.8x EBITDA in Q1-Q3 2011, slightly down from 12.2x in 2010 (full year) and the lowest since 2004 (10.8x). The median deal value for PE exits in Q3 2011 was US$ 135.5m, the highest Q3 median on mergermarket record (since 2001). Meanwhile, the amount paid for PE firms' portfolio companies averaged US$ 336.2m per deal in Q3 2011, down from Q2 2011 (US$ 493.6m per deal), despite being the highest Q3 average since Q3 2001 (US$ 563.3m per deal).

The Carlyle Group sold the most portfolio holdings in Q1-Q3 2011, with 17 exits valued at US$ 11bn, retaining its 2010 top position in the private equity tables. Latham & Watkins advised on the most private equity exits in the first nine months of 2011, climbing two places from the same period last year, with 35 deals worth in total US$ 18bn.

Emerging Markets

The emerging markets saw M&A activity with a total value of US$ 352.4bn in the first nine months of 2011, a 3.6% increase over the total for Q1-Q3 2010 (US$ 340.3bn). This was the highest Q1-Q3 on mergermarket record (since 2001). Emerging market M&A in the third quarter of 2011 added up to US$ 105.9bn, a 2.9% increase on the US$ 102.9bn-worth of M&A seen in the same period in 2010.

However, the total value of emerging markets deals announced has decreased continually for three quarters in a row since Q4 2010 (US$ 179.3bn): by 23.8% to Q1 2011's US$ 136.7bn, then by another 19.6% to Q2's US$ 109.9bn, and in the last quarter it dropped by 3.6% to US$ 105.9bn. This was an overall decrease in M&A activity of 40.9% since Q4 2010. BRIC M&A activity increased by 3.3% in Q3 2011 (US$ 71.5bn) compared to Q2 2011 (US$ 69.2bn).

Emerging markets accounted for 20.5% of global M&A activity in Q1-Q3 2011, less than the 24.1% they accounted for in Q1-Q3 2010. On a quarterly basis, emerging markets accounted for 20.6% of global M&A in Q3 2011, recuperating from two consecutive quarterly falls. After Q4 2010's 25.2%, the market share declined to 21.3% and 19.4% in Q1 and Q2 2011 respectively. BRIC countries saw a total of US$ 221.1bn-worth of M&A in Q1-Q3 2011, representing 62.7% of overall emerging markets activity, up by 12.6% from the same period last year (US$ 196.3bn).

Inbound cross-border activity in the first three quarters of 2011 added up to US$ 149.2bn, the biggest Q1-Q3 for emerging markets on mergermarket record (since 2001). Outbound cross-border activity amounted to US$ 73.5bn, down 19.4% from its Q1-Q3 2010 value of US$ 90.8bn and the lowest since 2009 (US$ 46.3bn). The average deal size for inbound emerging market M&A in the first nine months of 2011 was US$ 277.8m, which is higher than any annual average deal size on mergermarket record (since 2001).

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Allen & Overy ranked first in the legal adviser league table for emerging markets M&A with a total value of US$ 39.2bn, up two places from Q1-Q3 2010.

Emerging market buyout activity, valued at US$ 28.2bn, represented 12.8% of global buyout activity in Q1-Q3 2011, up from 11.5% in the full year 2010, and the highest annual proportion since 2009 (19.1%). Buyouts represented 8% of total emerging market M&A activity in Q1-Q3 2011, the highest annual proportion since 2007 (9%).

Premia and Multiples Analysis

The average premium (one day before) paid globally on M&A deals in the first three quarters of the year increased to 23.4%, up from 22% in 2010 and reached its highest since 2009 (when it was 25.5%). European premiums, averaging 20.4% in the first three quarters, reached their highest since 2008 (when they averaged 22.9% for the full year). Meanwhile premiums for North American companies, at 32.4%, were higher than the 32.7% seen in the same period in 2010, though still well below 2009's 42.4%. In the Asia-Pacific region, Japanese premiums averaged at 29.5%, at their highest since 2008 when they were 41.2%.

Meanwhile, Q3 2011 saw a 25.2% global average premium paid on M&A deals valued at US$ 500m or more. This was the third consecutive quarterly increase, with the average premium already having increased from 14.8% in Q4 2010 to 14.9% in Q1 2011 and 17.3% in Q2 2011. The upward trend was driven by Europe, where the average premium rose from 7.9% in Q4 2010 to 11.1% and 12.7% in Q1 and Q2 2011 respectively, and 31.5% for Q3 2011. North America, on the other hand, after a near-stagnation between Q4 2010 and Q2 2011, with the average premium paid hovering between 21.2% and 22%, saw a 27% average for Q3 2011.

The average EBITDA multiple across global M&A for the first nine months of 2011 was 12.7x, down from 15x in 2010 (full-year average) and the lowest since 2009 which saw 12.6x. At a quarterly level, the global average EBITDA multiple was up from 12.3x in Q2 2011 to 14.9x in Q3 2011.

In the Asia-Pacific region, the average EBITDA multiple was down to 14.2x from 17x in 2010, the lowest since 2004 (which was 10.4x). The North American EBITDA multiple in 2011 was 14.1x, down from 17x in 2010. The Pharmaceutical, Medical, and Biotechnology sector had the highest average EBITDA multiple – at 18.6x – in the first three quarters of 2011, replacing 2010's leading sector Technology, Media & Telecom which saw 17.6x.

Deal Type/Deal Value Breakdown

Deal Type

The total value of public M&A deals announced globally during Q1-Q3 2011 was US$ 738.5bn, up 34.1% over the same period in 2010 (US$ 550.7bn).

Fewer hostile offers have been announced in 2011 so far than in the same period last year, and their overall value has decreased by 22%. While the first three quarters of this year have seen 26 hostile deals valued at US$ 47.6bn, 2010 had seen 29 deals valued US$ 61.1bn by the end of Q3.

In Q1-Q3 this year, hostile offers accounted for 6.5% of all public M&A deals by value, down 4.6% from the same period last year. Since 2004, hostile offers have accounted for an average of 12.8% of public M&A deals by value. So far 2011 is one of the least hostile periods in the past seven years, with only 2007 seeing hostile deals accounting for a lower proportion of public deals (4.3%).

Hostile offers have also accounted for 65.1% of global unsolicited offers by value, with 20 deals valued at US$ 41bn so far this year. The proportion of unsolicited offers that have been hostile this year is down 9.9% compared to the same period last year, when 23 hostile deals valued at US$ 57.3bn represented 75% of unsolicited offers.

Deal Value Breakdown

Mega-deals (over US$ 10bn) accounted for 18.9% of the value of global M&A announced in Q1-Q3 2011, with a total of US$ 325.4bn, up 71.9% from Q1-Q3 2010 (US$ 189.3bn). 19 mega-deals were announced (compared to ten in the same period last year), of which ten were US deals, six were European deals and two were Asian deals.

Deals valued between US$ 2bn and US$ 10bn account for 33.4% of global M&A so far this year, with a total value of US$ 575.5bn, up 23.7% from Q1-Q3 2010 (US$ 465.1bn).

In Q3 2011, mega-deals (over US$ 10bn) comprised 24.2% of overall global M&A activity, compared to 11.8% of total deal value in the previous quarter. Deals valued between US$ 2bn and US$ 10bn in Q3 2011 added up US$ 136.6bn, accounting for 27.6% of total Q3 deal value, compared to 34.2% in Q2 2011 (US$ 192.9bn).

The average deal size in Asia-Pacific (excluding Japan) of US$ 257m in Q3 2011 was the highest for the region since Q4 2008 (US$ 262m).

Consideration Structure/ Insolvency

Consideration Structure

The total value of equity-only deals in the first three quarters of this year was 1.4% lower than in the same period last year, amounting to US$ 292.7bn by the end of September 2011, compared to US$ 296.8bn in Q1-Q3 2010. US$ 906.4bn-worth of cash-only deals had been announced by the end of September 2011, 16.8% more than in the same period in 2010 (US$ 775.8bn).

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Globally, the proportion of transactions paid with only equity decreased, with such deals accounting for 20.6% of total deal value in the first nine months of 2011, compared to 24.9% for the same period last year. This was the lowest proportion since 2007, which saw equity-only deals accounting for 17.8% of all deals. In Q3 2011, equity-only transactions accounted for 14%, compared to 15% in Q2 2011 and 31% in Q1 2011. The largest equity-only deal in Q1-Q3 2011 was the acquisition of Progress Energy Inc by Duke Energy Corporation for US$ 25.8bn, while the largest equity-only deal in Q3 2011 was Nippon Steel Corporation's acquisition of Sumitomo Metal Industries for US$ 22.5bn.

In North America, equity-only deals accounted for 4% of total deal value in Q3 2011 compared with 15% in Q2 2011 and 38% in Q1 2011. In Europe, equity-only deals accounted for 5% in Q3 2011 compared with 8% in Q2 2011 and 17% in Q1 2011.

Cash-only was the preferred structure for cross-border deals in Q3 2011, with cash-only deals accounting for approximately 87% of the value of all the deals announced in Q3 2011, compared with 70% in Q1 2011 and 69% in Q2 2011.

Insolvency
With Q3 2011 seeing the announcement of 88 insolvency deals totalling US$ 4.7bn, the value of insolvency deals continued its gradual increase for the third consecutive quarter since Q4 2010 (US$ 2.9bn), with Q3 2011 seeing increases of 17.5% and 56.7% compared to Q2 2011 (US$ 4bn) and Q1 2011 (US$ 3bn) respectively. However, the third quarter still saw the announcement of insolvency deals adding up to less than half of the total value of insolvency deals in the same quarter last year (53% down from US$ 10bn in Q3 2010).

In Q3 2011, the total value of European insolvency deals (US$ 2.5bn) was higher than the North American total (US$ 0.6bn) for the first time since Q1 2008. The value of North American insolvency deals was down 88% from Q3 2010 (US$ 5.0bn) and 78.6% from Q2 2011 (US$ 2.8bn), while European insolvency deal value was over 12 times the total for Q3 2010 (US$ 0.2bn) and more than double the total for Q2 2011 (US$ 1.2bn).

The Consumer sector saw the highest value of insolvency deals in Q3 2011, with 23 deals worth US$ 3.1bn. The bankruptcy of Nueva Rumasa SA for US$ 2bn was the largest insolvency case in the third quarter of 2011.

Demerger
Global demerger activity in Q1-Q3 2011 added up to US$ 52.3bn, accounting for 3.1% of global M&A activity (the highest proportion since 2008), and up 15.5% from the same period last year (US$ 45.3bn). Although only 29 demergers were announced in Q1-Q3 2011 (with 13 yet to be valued), the pipeline for expected demergers includes big conglomerates like McGraw-Hill, Tyco International, ITT Corp and Kraft Foods, all of which have decided to split themselves up.

At a regional level, the US has dominated so far this year with 11 transactions in Q1-Q3 2011, adding up to almost US$ 33.4bn. This amount is higher than the total value for the whole of the two preceding years (US$ 21.2bn in 2009-2010) and accounted for 4.9% of the total value of US deals in Q1-Q3 2011, with two spin-off s making the top ten global deals list. Europe saw US$ 6bn-worth of demergers in Q1-Q3 2011, the lowest value on mergermarket record (since 2001).

Cravath Swaine & Moore topped the league table of legal advisers on demergers by value in Q1-Q3 2011, having advised on two deals worth US$ 16.9bn. Simpson Thacher & Bartlett took first position in the volume table in Q1-Q3 2011, having advised on four deals valued at US$ 14.8bn.

European M&A in Q1-Q3 2011 totalled US$ 540.2bn, an increase of 27.3% compared to Q1-Q3 2010 (US$ 424.2bn). Q3 saw US$ 130.1bn worth of deals, a 43.4% drop from Q2 2011 (US$ 229.9bn).

US M&A appears to be on its way to having the strongest year in a while, with US$ 680bn-worth of M&A already announced, a 43% increase on the same period last year. The year-to-date total is already 95% of the full-year total for 2010, although, in common with the global trend, momentum has fallen off as the year goes on: following a strong start to 2011 with US$ 293.6bn-worth deals in Q1, activity dropped by over 33% in the following two quarters, with totals of US$ 191.7bn and US$ 194.8bn in Q2 and Q3 respectively.

Asia-Pacific M&A in Q1-Q3 2011 totalled US$ 257bn, up 5.5% from Q1-Q3 2010 (US$ 243.5bn). Q3 activity was up 18.8%, from US$ 78bn in Q2 2011 to US$ 92.6bn.

EUROPE

Europe saw a significant drop in M&A deals in Q3 2011 compared to the previous two quarters of the year. Q3 saw US$ 130.1bn-worth of deals announced, 43.4% and 27.8% lower than Q2 2011 (US$ 229.9bn) and Q1 2011 (US$ 180.2bn) respectively. Q3 2011 was also lower than Q3 2010 (US$ 174.8bn) by 25.6%, with the lowest quarterly total M&A value since Q2 2010 (US$ 122bn).

Despite the overall decline in European M&A activity in Q3 2011, Austria, Belgium, Ireland and the UK managed to show increases in activity, compared to Q2 2011, of 70% (to US$ 1.4bn), 391.1% (to US$ 5.7bn), 874.5% (to US$ 15bn) and 73.8% (to US$ 38bn) respectively.

European M&A in the first nine months of 2011 totalled US$ 540.2bn, a

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27.3% increase in comparison to the same period last year (US$ 424.2bn).

Northern Europe as well as many of the Western European countries have had a better year for M&A so far in 2011 compared to 2010, with the Nordic countries seeing an 87.1% increase to US$ 51.1bn-worth of deals. France, Germany, Ireland and Spain saw similar jumps of 58.5% (to US$ 59.4bn), 51.4% (US$ 46.3bn), 153.7% (to US$ 17.3bn) and 124.2% (US$ 57bn) respectively.

Activity in Greece for the first three quarters of 2011 increased by 7.5% to US$ 3bn compared to the same period in 2010, whereas activity in Italy and Portugal was down by 15.8% (to US$ 30.7bn) and 94% (to US$ 253m) respectively.

European inbound cross-border investment amounted to US$ 219.7bn in Q1-Q3 2011, a 127.7% increase on Q1-Q3 2010 (US$ 96.5bn) and the highest Q1-Q3 period since 2008 (US$ 236.5bn). European outbound cross-border deals added up to US$ 131.9bn – just over their Q1-Q3 2010 value (US$ 129.6bn).

Having worked on seven of the ten largest deals in Europe for the year to September, Freshfields Bruckhaus Deringer continued to keep its top ranking in the European M&A legal advisory table by total deal value. Linklaters jumped five places to second position by advising on five of the ten largest European deals.

USA

Following a strong start to 2011 with US$ 293.5bn-worth of announced deals in the first quarter, US M&A activity dropped by over 33% in the following two quarters – with Q2 closing at US$ 191.7bn and Q3 at US$ 194.8bn. As a proportion of global M&A, however, US activity was holding its own, making up 38% of Q3 global M&A values (US$ 513.9bn) compared to 34% in Q2 and 45.7% in Q1.

US M&A appears to be on its way to having the strongest year since the dizzying heights of 2007 (US$ 1,328bn). The first three quarters of 2011 saw the announcement of US$ 680bn-worth of M&A in the US, 43% higher than the same period in 2010. Even with the – usually busy - fourth quarter still to come, this figure already represents 95%, 99%, and 91% of full year values in 2010, 2009, and 2008 respectively (US$ 715.5bn, US$ 687bn, US$ 748.3bn).

The same is true for US buyout activity, with US$ 88.9bn-worth of private equity backed transactions announced in Q1-Q3 2011 (US$ 26.2bn in Q3), a 30.4% increase on the same period last year (US$ 68.2bn).

US inbound cross-border deals add up to US$ 129.8bn for the last nine months - an increase of 18.4% since Q1-Q3 2010 (US$ 109.6bn). US outbound cross-border total value was US$ 182.1bn, the highest Q1-Q3 period since 2008 (US$ 202.3bn).

US deals also dominate the list of top deals announced globally; with the top three deals so far this year all targeting US-based companies – led by AT&T's US$ 39bn bid for T-Mobile USA. In total, eight of the top ten deals are US-based and each has a value in excess of US$ 14bn.

Non-traditional M&A has also made a comeback in the form of spin-offs. This year has so far seen the announcement of 11 spin-off s – more than in the whole of the previous two years combined (nine spin-off s in 2009-2010). Of these, only four have been priced but their combined value is already US$ 33.4bn (4.9% of the total value of US deals to date) – with two spin-offs making the top ten global deals list.

This trend is set to continue with a very healthy pipeline, including McGraw-Hill which is splitting into McGraw-Hill Markets and McGraw-Hill Education, Tyco which recently announced a plan to split the company into three, and murmurs of a possible Netflix separation following a move to separate the company's streaming and DVD services.

Simpson Thacher & Bartlett tops the US legal advisory M&A league tables with US$ 258.2bn-worth of deals, maintaining its rank from the same period in 2010. With a total value of US$ 224bn, Wachtell, Lipton, Rosen & Katz has climbed seven places, compared to the same period last year, to finish third after three quarters. The firm has seen a 155% increase in the aggregate value of deals the firm advised on in 2010 (US$ 88bn).

ASIA

M&A activity in Asia-Pacific (excluding Japan) saw a slight recovery last quarter, with 448 deals worth US$ 92.6bn announced, an increase of 18.8% from the second quarter of the year when US$ 78bn-worth of deals were announced, and on a par with the same period in 2010 (US$ 90.7bn).

US$ 257bn-worth of deals were announced in the region in the first three quarters of 2011, up 5.5% from US$ 243.5bn for the same period in 2010 and the busiest nine-month period since 2008 (US$ 256.6bn) and the second busiest on mergermarket record (2001). Asia-Pacific accounted for 14.9% of total global deal value, down from 17.2% in 2010.

Activity in Q3 2011 was driven by large increases in India (up from US$ 3.7bn in Q2 to US$ 8.3bn), and Australia (up from US$ 18.2bn in Q2 to US$ 31.7bn), despite drops in China (down 2.4% at US$ 27.9bn) and South Korea (down 38% at US$ 4.4bn).
For the year to September, an overall increase in activity was seen in New Zealand (US$ 4.2bn, up from US$ 1bn in 2010), Taiwan (US$ 5.5bn, up from US$ 3.6bn), China (US$ 78.4bn,

cont'd page 09

Market Comment cont'd

up from US$ 60.4bn) and Australia (US$ 61.8bn, up from US$ 48.6bn). Activity in Singapore and India fell by 14.4% and 41.5% respectively compared to the same period in 2010.

Private equity buyout activity picked up significantly in the third quarter of 2011. US$ 17.1bn-worth of deals were announced, the highest quarterly figure since the first quarter of 2007 and 32.6% higher than Q1 and Q2 2011 combined (US$ 12.9bn).

Asia-Pacific inbound cross-border deals for the last three quarters totalled US$ 79.7bn – a 27.7% increase since Q1 Q3 2010 (US$ 62.4bn). Outbound cross-border deals from the region amounted to US$ 88bn. In both directions these have been the highest first-nine-month totals for the region on mergermarket record.

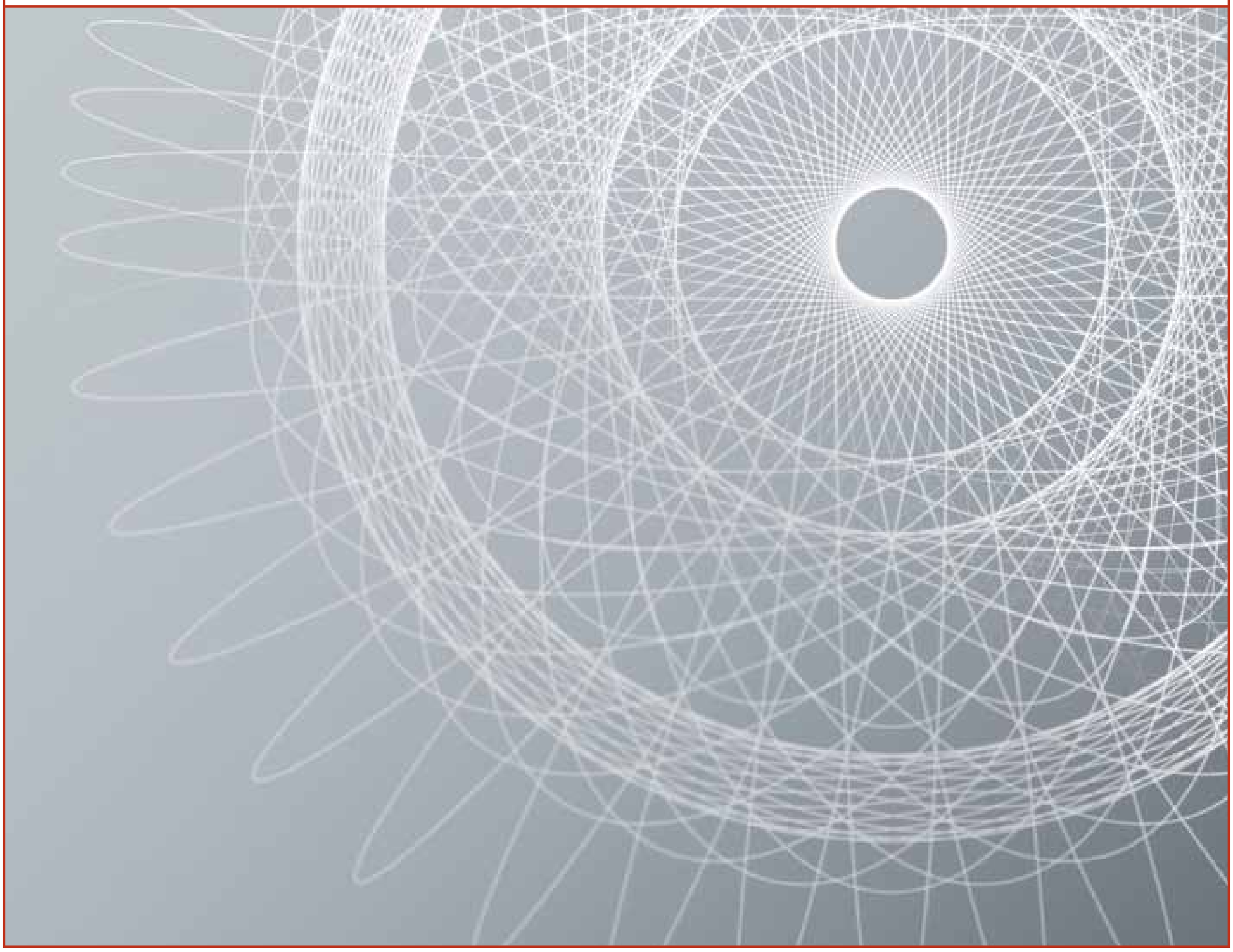
Allen & Overy has come back to the top spot in the legal advisory league table for Asia-Pacific (excluding Japan) M&A in 2011.

Allen & Overy has been involved in three of the year's ten largest deals in the region, including SABMiller's US$ 12.9bn-acquisition of Foster's, the largest deal of the year so far. Australian Allens Arthur Robinson, in second place overall, was the top local law firm in the Asia-Pacific league tables.

AFRICA & MIDDLE EAST

M&A activity in Africa and the Middle East totalled US$ 7.8bn in Q3 2011, slightly up by 1.3% compared to Q3 2010 (US$ 7.7bn) as well as Q2 2011. The last quarter seemed to mark a recovery in quarterly activity after Q2 saw a 48.7% drop from Q1 (US$ 15bn). Deal activity for the year to September closed at US$ 30.5bn, a decrease of 21% compared to the same period in 2010 (US$ 38.6bn).

Freshfields Bruckhaus Deringer topped the legal advisory league table by deal value in Q1-Q3 2011, moving up seven positions from its Q1 to Q3 2010 ranking.



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People Moves...

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New Company		Name		New Position	Location		Old Company
Dechert LLP	has hired	Charles Malpass	as a	Banking and Finance Partner	London	from	Lawrence Graham
Berwin Leighton Paisner	has hired	Elaine Whiteford	as a	Competition Partner	London	from	Freshfields
Reed Smith	has hired	Jeb Clulow	as a	Shipping and Trade Partner	London	from	Barlow Lyde & Gilbert
Field Fisher Waterhouse	has hired	Michael Harte	as a	Corporate and Commercial Partner	London	from	Olswang
SNR Denton	has hired	Humphrey Douglas	as a	Energy Partner	London	from	Barlow Lyde & Gilbert
Lawrence Graham	has hired	Iain Shurwood	as a	Finance Partner	London	from	Squire Sanders Hammonds
Osborne Clarke	has hired	Clive Smith	as a	Asset Finance Partner	London	from	DLA Piper
Lewis Silkin	has hired	Graham Reid	as a	Banking Partner	London	from	Finers Stephens Innocent
Stephenson Harwood	has hired	Fraser Sparks	as a	Pensions Partner	London	from	Squire Sanders Hammonds
Winston & Strawn	has hired	Michael Madden	as a	Commercial Litigation Partner	London	from	Ashurst
SNR Denton	has hired	Will Gunston	as a	Restructuring and Insolvency Partner	London	from	Dickinson Dees
DLA Piper	has hired	Debra Erni	as a	Asset Finance Partner	London	from	White & Case
Ince & Co	has hired	Simon Cooper	as a	Insurance and Reinsurance Partner	London	from	Barlow Lyde & Gilbert
Ince & Co	has hired	Kiran Soar	as a	Insurance and Reinsurance Partner	London	from	Barlow Lyde & Gilbert
Nabarro	has hired	Belinda Doshi	as a	Technology and Outsourcing Partner	London	from	Field Fisher Waterhouse
Osborne Clarke	has hired	Dominic Ross	as a	Finance Partner	London	from	Taylor Wessing
Osborne Clarke	has hired	Akmal Ghauri	as a	Finance Partner	London	from	Taylor Wessing
Squire Sanders Hammonds	has hired	Garfield Smith	as a	Outsourcing Partner	London	from	Pinsent Masons
Fasken Martineau	has hired	Stuart Hills	as a	Banking & Finance Partner	London	from	DMH Stallard
Minter Ellison	has hired	Michael Wallin	as a	Corporate Partner	London	from	Mayer Brown
Maclay Murray & Spens	has hired	Darius Lewington	as a	Corporate Partner	London	from	Pinsent Masons
Watson Farley & Williams	has hired	Gareth Phillips	as a	Planning Partner	London	from	SNR Denton
Pinsent Masons	has hired	Vanessa Heap	as a	Banking Partner	London	from	Berwin Leighton Paisner
Osborne Clarke	has hired	James Watson	as a	Projects Partner	London	from	Pinsent Masons
Osborne Clarke	has hired	Madeleine Clark	as a	Real Estate Finance Partner	London	from	Berwin Leighton Paisner
Simmons & Simmons	has hired	Julian Perimutter	as a	Corporate Partner	London	from	Clifford Chance
Jones Day	has hired	Eric Stuart	as a	Corporate Partner	London	from	Ashurst
Edwin Coe	has hired	Joe Griffiths	as a	Property Construction Partner	London	from	Manches
SJ Berwin	has hired	Andrew Bliss	as a	Finance Partner	London	from	Sidley Austin
Dewey & LeBoeuf	has hired	Marc Hammerson	as a	Energy Partner	London	from	Stephenson Harwood
Reynolds Porter Chamberlain	has hired	Victoria Sherratt	as a	Insurance Partner	London	from	Barlow Lyde & Gilbert
Hunton & Williams	has hired	Rosemary Jay	as a	Privacy and Information Partner	London	from	Pinsent Masons
Michael Simkins LLP	has hired	Philip Cameron	as a	Employment Partner	London	from	CMS Cameron McKenna
Mishcon de Reya	has hired	Lewis Cohen	as a	Intellectual Property Partner	London	from	Field Fisher Waterhouse

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New Company		Name		New Position	Location		Old Company
Mishcon de Reya	has hired	Michael Bardell	as a	Banking Partner	London	from	Travers Smith
Brown Rudnick	has hired	Alper Deniz	as a	Finance and Restructuring Partner	London	from	Chadbourne & Parke
Davenport Lyons	has hired	Nick Goldstone	as a	Commercial Litigation Partner	London	from	Magrath LLP
Stephenson Harwood	has hired	Jeremy Sheldon	as a	Corporate Partner	London	from	Fulbright & Jaworski
Stephenson Harwood	has hired	Andrew McLean	as a	Corporate Partner	London	from	Weil Gotshal & Manges
Jones Day	has hired	Paul Exley	as a	Energy Partner	London	from	Simmons & Simmons
Jones Day	has hired	John Ahern	as a	Financial Services Partner	London	from	Addleshaw Goddard
Skadden, Arps, Slate, Meagher	has hired	Stephen Sims	as a	Funds Partner	London	from	Macfarlanes
Macfarlanes	has hired	Ian Nisse	as a	Partner and Head of Commercial Real Estate	London	from	Shearman & Sterlin
Speechly Bircham	has hired	Daniel Rosenberg	as a	Corporate Finance Partner	London	from	Taylor Wessing
Norton Rose	has hired	Catrina Smith	as a	Employment Partner	London	from	Linklaters
Bird & Bird	has hired	Iain MacVay	as a	EU Law and Competition Partner	London	from	Steptoe & Johnson
Herbert Smith	has hired	Andrew Roberts	as a	Debt Capital Markets Partner	London	from	Linklaters
Stephenson Harwood	has hired	Jonathan Cripps	as a	Projects Partner	London	from	Eversheds
Stephenson Harwood	has hired	Rebecca Carter	as a	Projects Partner	London	from	Eversheds
Field Fisher Waterhouse	has hired	John Bowman	as a	Environment and Planning Partner	London	from	Burness
Proskauer Rose	has hired	Nigel van Zyl	as a	Funds Partner	London	from	SJ Berwin
Proskauer Rose	has hired	Kate Simpson	as a	Funds Partner	London	from	Kirkland & Ellis
Proskauer Rose	has hired	Oliver Rochman	as a	Funds Partner	London	from	SJ Berwin
DLA Piper	has hired	Dr Jacqueline Bore	as a	Life Sciences Regulatory Partner	London	from	Arnold & Porter
Taylor Wessing	has hired	France Delord	as a	Intellectual Property Partner	London	from	Field Fisher Waterhouse
Weil Gotshal & Manges	has hired	Paul Bromfield	as a	Restructuring and Insolvency Partner	London	from	Jones Day
Ince & Co	has hired	Nilam Sharma	as a	Insurance Partner	London	from	Crowell & Moring
Silverman Sherliker	has hired	Adam Powell	as a	Corporate Partner	London	from	Irwin Mitchell
Eversheds	has hired	Richard Lewis	as a	M&A Partner	London	from	Hogan Lovells
Mayer Brown	has hired	Bernd Bohr	as a	Corporate Partner	London	from	Allen & Overy
Speechly Bircham	has hired	Keith Bordell	as a	Corporate Partner	London	from	Travers Smith
Speechly Bircham	has hired	Rupert Connell	as a	Corporate Partner	London	from	Barlow Lyde & Gilbert
Simmons & Simmons	has hired	Julian Perlmutter	as a	Corporate Partner	London	from	Clifford Chance
Simmons & Simmons	has hired	Pollyanna Deane	as a	Corporate and Commercial Partner	London	from	Berwin Leighton Paisner
Orrick, Herrington & Sutcliffe	has hired	Anthony Riley	as a	Corporate Partner	London	from	Norton Rose
Withers	has hired	Maurice Martin	as a	Tax Investigations Partner	London	from	Irwin Mitchell
DLA Piper	has hired	Tom Kerr Williams	as a	Employment Partner	London	from	Baker & McKenzie

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New Company		Name		New Position	Location		Old Company
Bird & Bird	has hired	Andrew Renton	as a	Energy Partner	London	from	Dundas & Wilson
Lawrence Graham	has hired	Mark Mallon	as a	Real Estate Partner	London	from	SJ Berwin
Dorsey & Whitney LLP	has hired	John Lurie	as a	Commercial Litigation Partner	London	from	Dechert
Mills & Reeve	has hired	Paul Spibey	as a	Insurance Partner	London	from	Kennedys
Dewey & LeBoeuf LLP	has hired	Mark Fennessy	as a	Insolvency Partner	London	from	Orrick, Herrington & Sutcliffe
DLA Piper	has hired	Simon Cookson	as a	Real Estate Partner	London	from	Ashurst
Bates Wells & Braithwaite	has hired	Richard Marke	as a	Commercial and Technology Partner	London	from	Lawrence Graham
Taylor Wessing	has hired	Joanne Kelly	as a	Construction Litigation Partner	London	from	Manches
Mishcon de Reya	has hired	Richard Anyamene	as a	Property Litigation Partner	London	from	Jones Day
Goodman Derrick LLP	has hired	Simon McLeod	as a	Corporate Partner	London	from	Bird & Bird
Goodman Derrick LLP	has hired	Paul Webb	as a	Corporate Partner	London	from	Taylor Wessing
Collyer Bristow	has hired	Alex O'Connor	as a	Real Estate Partner	London	from	McGrigors
Collyer Bristow	has hired	Jonathan Pawlowski	as a	Construction Litigation Partner	London	from	Davies Arnold Cooper

Nicholas Scott Profile

See www.nicholas-scott.com for the full company profile

Nicholas Scott provides search services in the City and on an international basis (Russia, Middle East, Far East, Australia and Offshore).

The Legal Division of Nicholas Scott has been developed by Nicholas Robbins who owned the legal recruitment company Garfield Robbins International between 1989 and 2005.

He is a major shareholder and practising search consultant (Partner hires) at Nicholas Scott Ltd with a team of consultants who are all qualified lawyers.

Our Service - City and International

Partner and Associate Introductions

Nicholas Scott will facilitate introductions to Partners and Associates who approach Nicholas Scott for career advice on their next move.

Partner Searches

Identifying, referencing and approaching Partners, ascertaining motivations to consider a move, acquiring information on the portability and value of their business including business planning and monitoring each stage of the process.

Associate Searches

Identifying, referencing and approaching Associates, ascertaining motivations to move ensuring expectations can be met in a move.

In House Searches

Identifying, referencing and approaching In House Counsel, ascertaining motivation to move and relevant management and product/service experience.

Senior Non Lawyer Searches (including COO,KM and FD)

IIdentifying, referencing and approaching senior individuals in non fee earning management roles within law firms.

Practice Areas

- Capital Market Products
- General Banking
- Mergers and Acquisitions
- Private Equity Corporate and Funds
- General Commercial Litigation
- White Collar Crime
- Financial Services Litigation
- Insurance & Insurance Litigation
- Construction & Construction Litigation
- IP & IP Litigation
- Structured Finance
- Leveraged Finance
- Property Finance
- Real Estate

Practice Areas cont'd

- Restructuring and Insolvency
- Corporate Tax
- Employment & Employee Benefits
- Chief Executive / Chief Operations Officer / Finance Director

Examples of recent assignments

- Tax Partner for a US Law firm
- Real Estate Partner as Head of Real Estate for the London office of a UK Firm
- Corporate Insurance Partner for a US Firm
- IP Partner for a Silver Circle Firm
- Oil and Gas (Corporate) Partner for the Moscow Office of a US firm
- Head of Contentious Intellectual Property for a UK City Firm
- Pensions Partner for a UK City Firm
- Private Equity Partner for a UK City Firm
- Finance Partner for the London Office of a US Firm
- Construction Partner for a UK City Firm
- Corporate Partner for the Hong Kong Office of a US Firm
- Aviation Finance Lawyer for a US Firm
- Structured Finance Associate for a Silver Circle Firm
- Corporate Associate for a Mid-Sized Firm
- Funds Associate for a Silver Circle Firm
- Regulatory Associate for a Silver Circle Firm
- Corporate Associate for the Hong Kong Office of a Magic Circle Firm
- Construction Associate for a US Firm
- In-house Lawyer for a Regulatory Body
- Projects Associate for a US Firm

Other examples of searches undertaken include

We have carried out searches for Associates in the areas of Corporate M&A, Private Equity, Private Equity Funds, Real Estate Funds, Acquisition Finance, Real Estate Finance, Project Finance, Corporate in Moscow and In-House for an Abu Dhabi bank.

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