



# M&A Disputes Report 2025

Improved Macroeconomic Landscape Spurs Deal Growth While Renewing Dispute Challenges

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# Foreword

2024 may not have been the banner year for mergers and acquisitions for which some had hoped. But in 2025, the promising macroeconomic trajectory of the past 12 months could provide the foundation for a more robust deal market. A resilient economy, improved financing conditions and private equity firms' eagerness to exit investments could create conditions for an upswing of activity in the months ahead. Yet as the market moves past the 2023 doldrums, dealmakers continue to grapple with an environment of volatility and an array of dispute drivers, from antitrust scrutiny to geopolitical tensions.

We hope this report's expert insights and key benchmarking data will continue to support dealmakers in preparing for the deals and disputes that lie ahead.



**Mustafa Hadi**

**Founder and Editor, BRG M&A Disputes Report**



# Executive Summary

After moderate deal market gains in 2024, dealmakers are eager to leave the uncertainty of the last few years behind and enter a new chapter of mergers and acquisitions (M&A) activity. The conditions look right for further improvement in 2025: interest rates and inflation declined last year, and valuations and investor confidence are recovering in response. That backdrop could unyoke pent-up demand to deploy capital, especially amongst private equity (PE) firms, potentially giving the market a jump start in the first half of 2025.

Yet dealmakers have obstacles to overcome in the year ahead. Those include questions about how new governments elected in 2024—the returning Trump administration in the US chief amongst them—will shape key components of economic policy, from taxes and interest rates to antitrust interventions. Other challenges—including foreign exchange volatility, rising geopolitical tensions in China and the use of US tariffs as a bargaining tool for negotiating with key trading partners—could hinder M&A activity and foster deal-related disputes.

BRG's sixth-annual *M&A Disputes Report* finds dealmakers are adapting to these challenges by managing financial risk with carefully crafted deal terms and looking for new ways to extract value from transactions. However, these same strategies frequently appeared as catalysts for disputes between buyers and sellers in 2024—and could pose further problems in the year ahead. Our latest research into dealmaker expectations and disputes also finds:

- **Financial services industry deals saw heightened dispute activity in 2024** amidst ongoing fallout from the 2023 banking crisis and a critical antitrust lens from regulators. Increased deal volume in the sector could extend this elevated dispute risk.
- **Regulatory issues frequently led to M&A disputes last year** as governments scrutinised large transactions and cross-border deals with an eye towards antitrust and foreign investment risks. These priorities could shift under incoming administrations.
- **Earnouts pose a growing dispute risk in 2025**, with ambiguous language and shifting post-transaction business conditions expected to amplify scope for disagreement as investors attempt to limit financial risk. In 2024, purchase price adjustments were frequently at issue.

- **Europe, the Middle East and Africa (EMEA) is expected to see the most dispute activity amongst regions in 2025** due to regulatory challenges. For the second year in a row, it was the leading region driving increased dispute volumes—particularly amongst larger deals.
- **Private equity involvement in deals is increasing dispute risks.** PE firms are maintaining high due-diligence standards but are becoming more comfortable with litigation.

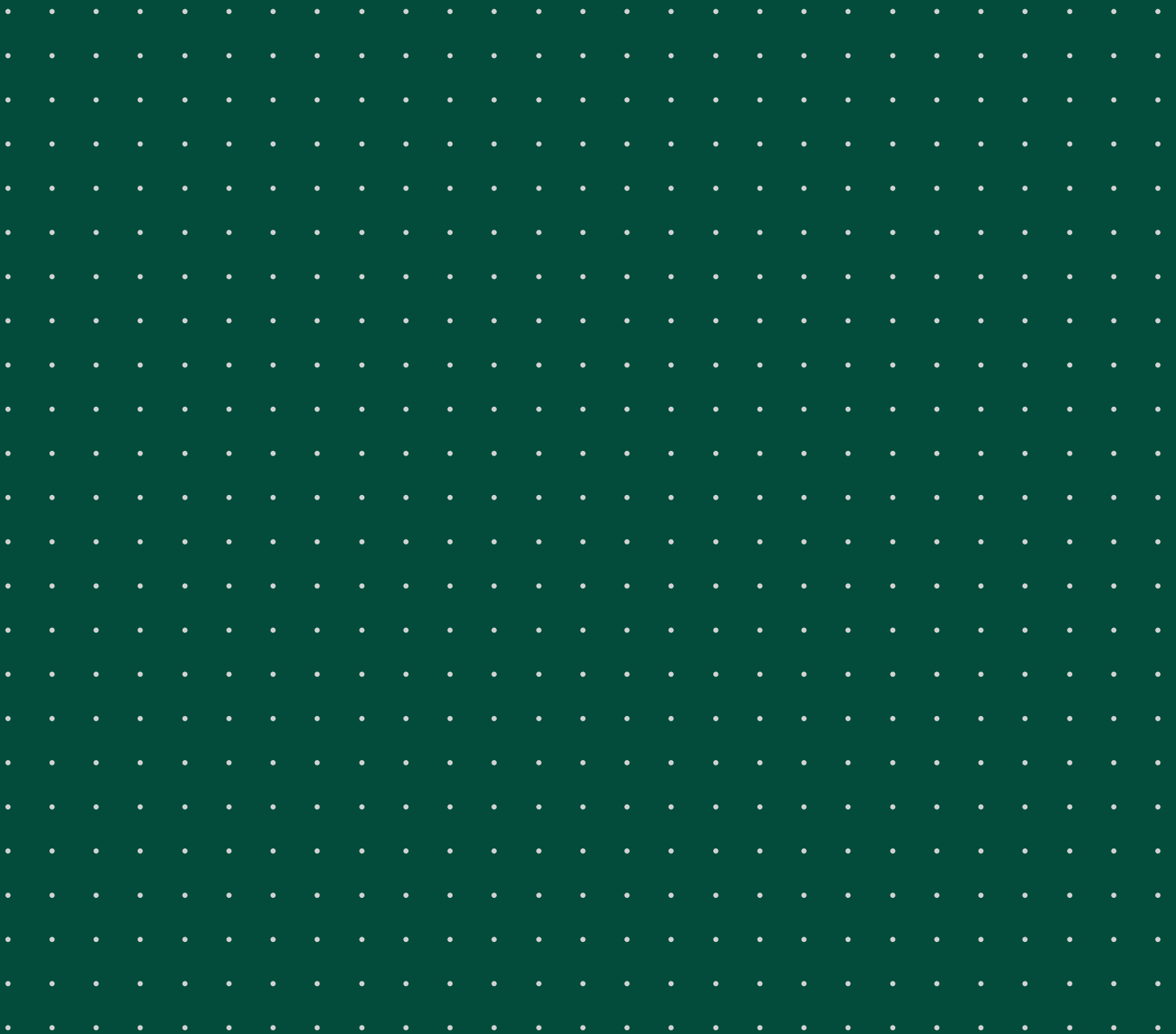
This year's report draws on quantitative findings from a survey of more than 200 lawyers, corporate finance advisors and PE professionals across Asia-Pacific, EMEA, Latin America and North America. It also includes insights and analysis from BRG experts and deal and disputes lawyers from leading global firms. This year's survey also incorporates new insights about dealmakers' preferred dispute resolution venues, from courtrooms to the negotiation table.

**“As buyers and sellers prepare for what many are predicting will be a significantly more active deal market in 2025, BRG's research again shows the importance of having a dispute mitigation strategy that encompasses everything from the macroeconomic landscape to the specific contract provisions shaping the transaction. The analysis and data-driven insights in this report can guide these strategies, helping dealmakers navigate a complex and challenging M&A environment”.**



**Tri MacDonald**  
**BRG Principal Executive Officer and President**  
WASHINGTON, DC

# By the Numbers





22%

of respondents predict deal volume will grow by more than 20% in 2025; 23% expect the same increase in average deal value

>75%

reported year-over-year increase in dispute activity

7 in 10

expect dispute volume (69%) to increase in 2025; 64% say the same of average dispute value



29%

of respondents expect earnouts to become more prevalent in 2025 disputes; 24% cited earnouts as the most prevalent dispute factor in 2024

30%

year-over-year increase in respondents reporting heightened financial services M&A dispute activity

59%

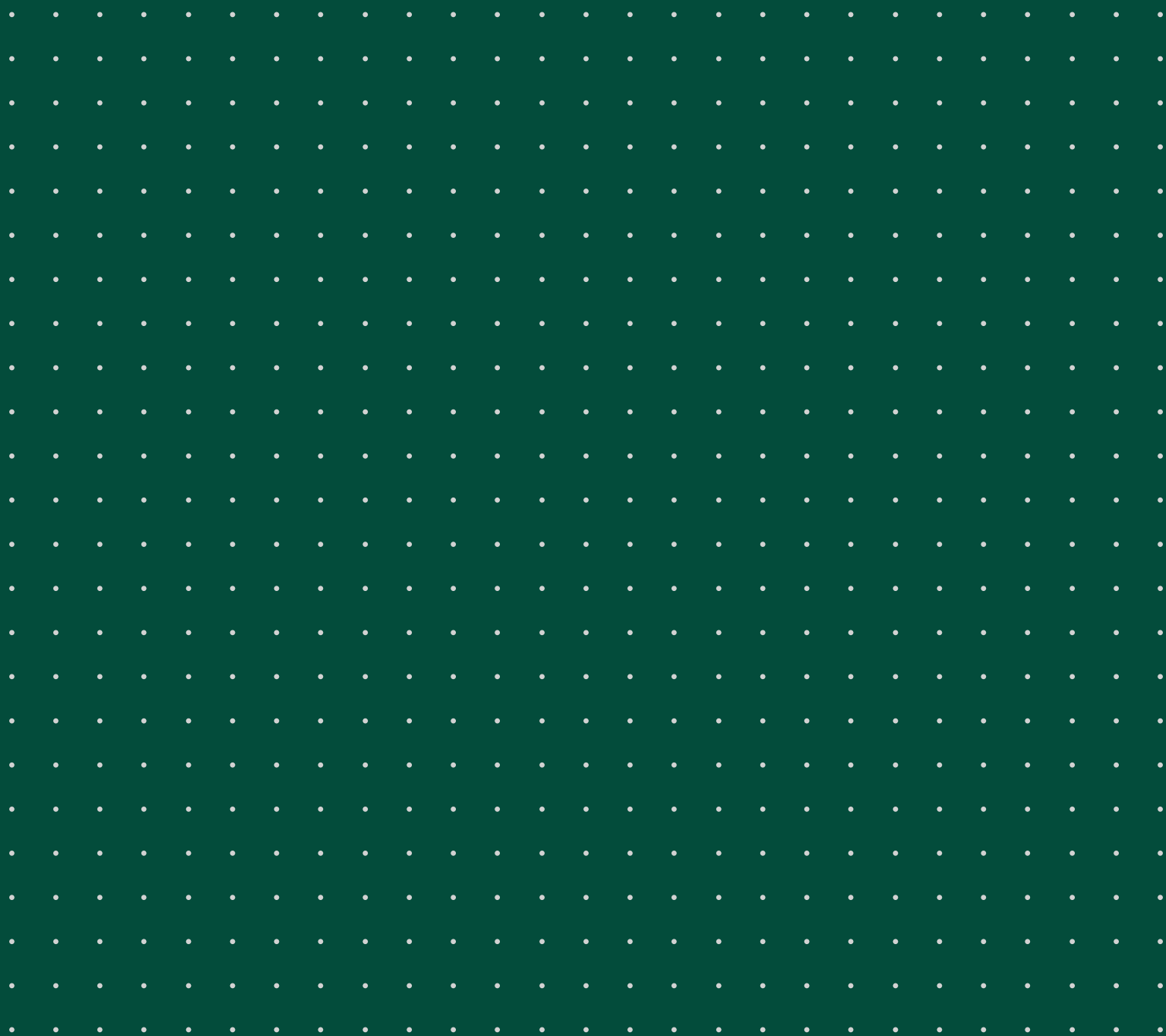
say EMEA will be primarily responsible for driving disputes in 2025

72%

say PE dealmakers have become more willing to advance to formal dispute proceedings in the past three years



# Full Findings



# 2024 M&A Market and Dispute Overview

Last year's M&A market was characterised by moderate overall gains, with total deal values increasing 15% to reach **\$3.45 trillion globally**, a shift from the historic highs of 2021 and the record lows of 2023.

2024 also appeared to be the year of the megadeal: the aggregate value of transactions totaling more than \$5 billion **grew** by 17% while deals under \$500 million fell by 4% compared to 2023. The year brought a number of notable multibillion-dollar deals, including Mars, Inc.'s \$25.9 billion **purchase** of Kellanova, Home Depot's \$18.25 billion **purchase** of SRS Distribution and Johnson & Johnson's \$17 billion **deal** for Shockwave Medical. In EMEA Abu Dhabi energy company ADNOC **acquired** German chemicals company Covestro for \$16.3 billion, while in APAC Blackstone **purchased** Australian data center company AirTrunk for \$24 billion.

"Overall, dealmaking benefitted from an increasingly stabilised macroeconomic landscape—including slight interest rate declines—and cautiously optimistic sentiment amongst investors", said BRG Director Kevin Hagon. Half the global population participated in elections in 2024, ushering in new administrations and offering some clarity on future regulatory climates, though the overall impact on markets is uncertain.

Yet last year also brought increased dispute activity, with more than three-quarters (78%) of respondents reporting that their firms worked on more disputes in 2024 compared to the same period in 2023. While more than half (54%) say these disputes most often stemmed from financial or operational performance issues, nearly one-third point to government interventions such as regulation and compliance structures (32%), foreign investment or cross-border scrutiny (29%) and tax policies (28%) as contributing factors.

Indeed, regulators and courts citing antitrust concerns blocked major deals such as the **JetBlue-Spirit Airlines** merger and Kroger-Albertsons grocery deal (which devolved into a **dispute** late last year). Just this past January, the Justice Department **sued** to block Hewlett Packard's \$14 billion **acquisition** of artificial intelligence company Juniper Networks, one of the big deals that

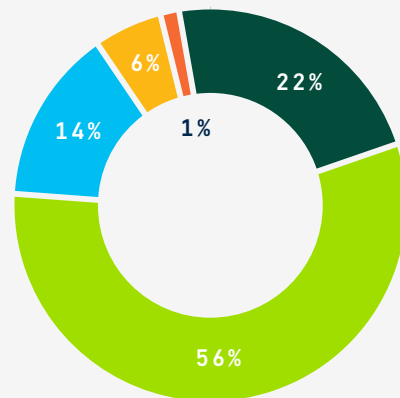
kicked off 2024. Even more deals were abandoned due to regulatory concerns, including Qualcomm's planned **acquisition** of semiconductor company AutoTalks Ltd. and Amazon's proposed **purchase** of iRobot Corp.

"Generally, the regulatory environment has been more and more tense", said Karolina Rozycka, international commercial arbitration counsel in Clifford Chance's Paris office. "Enforcement and antitrust regulation remain a concern for M&A activities, especially for large transactions involving major companies. Regulatory bodies are increasingly vigilant about preventing things like monopolistic practices and ensuring competitive markets".

Amongst the small share (7%) of respondents who saw disputes decrease over the past 12 months, half attribute this to an increased willingness to settle amongst the parties.

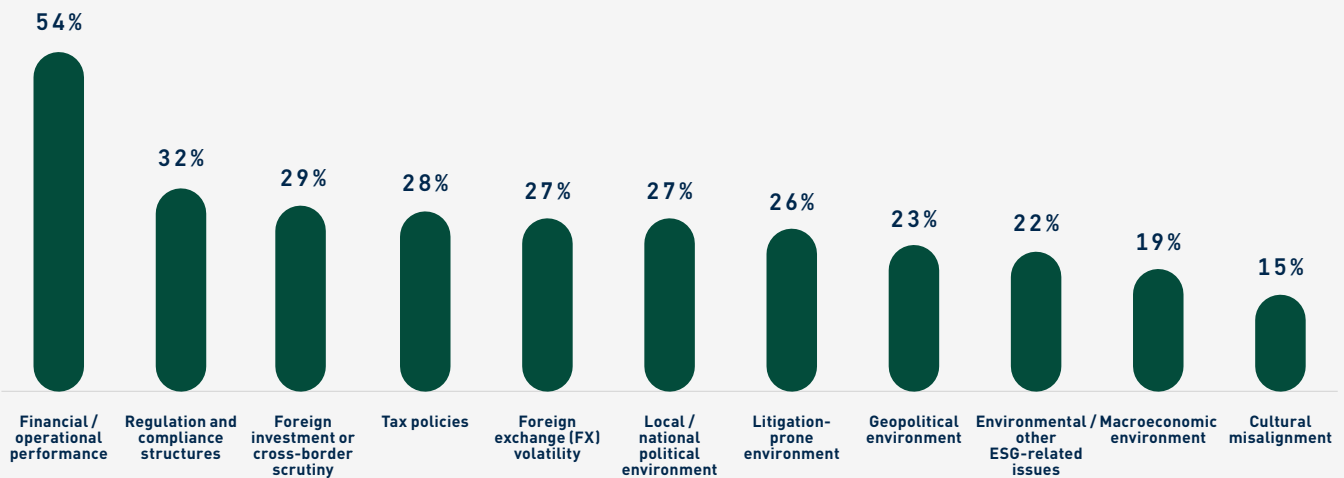
"What stands out this year is the increased appetite for settlement in M&A disputes", said Isabela Lacreata, a Paris-based international arbitration and dispute resolution counsel at Mayer Brown. "This is in part because significant uncertainty remains around the macroeconomic outlook and future economic policy".

### Number of M&A Disputes Firm Worked on in 2024 versus 2023



- Significant increase (more than 20%)
- Slight increase (up to 20%)
- No change
- Slight decrease (up to 20%)
- Significant decrease (more than 20%)

## Factors That Most Often Led to M&A Disputes over Past Year



### Performance-Related Deal Terms Most Common amongst 2024 Disputes

As dealmakers attempted to sidestep risk amidst uneven economic growth and lingering uncertainty, they inadvertently may have increased their dispute exposure. Deal terms to manage risk and account for fluctuations in performance are amongst the most commonly cited contractual or process-related factors prevalent in disputes over the last year.

Four in 10 respondents say purchase price agreements (PPAs), true-ups and completion accounts are frequent points of contention between parties, for example, while similarly large segments point to put and call options or redemption rights (36%) and indemnity provisions (34%) as common dispute drivers. Approximately one-quarter (24%) of respondents say they frequently encountered earnouts and post-closing obligations in 2024 disputes—with even more predicting they will figure in disputes over the coming year.

“Price adjustments have been key in many post-M&A disputes that we’ve handled”, said Hong Kong Skadden international litigation and arbitration partner Friven Yeoh. “Financial performance has also been front and center in a lot of arbitrations, especially when pricing and valuations were very depressed”.

When it comes to PPA disputes, nearly two-thirds (63%) of respondents say that tax liabilities adjustments are a likely factor in generating a dispute. More than half say the same of working capital adjustments (57%), net debt adjustments (53%) and restricted cash or cash-equivalent adjustments (52%).

“Given that tax regimes are complicated, and buyers and sellers may disagree about the appropriate tax treatment for a transaction, it is unsurprising that respondents often see adjustments lead to disputes”, said BRG Managing Director Frank Dery. “With respect to working capital, net debt and cash or cash-equivalent adjustments, buyers and sellers are frequently including more complex and technical language defining these terms in PPAs. Increasing complexity can lead to differences in interpretations, which in turn give rise to disputes”.

Due diligence also appeared to have an impact on disputes in 2024: 37% of respondents say due diligence-rated factors were prevalent in the disputes they handled last year. Relatedly, more than one-quarter of respondents say representations and warranties (R&W) and warranties and indemnities (W&I) issues frequently added fuel to M&A disputes over the past 12 months.

“The best way to mitigate a dispute is by limiting your reps and warranties and, if you do include them, keeping them as tight as possible”, said Mike McClure KC, a Herbert Smith Freehills arbitration partner based in London.

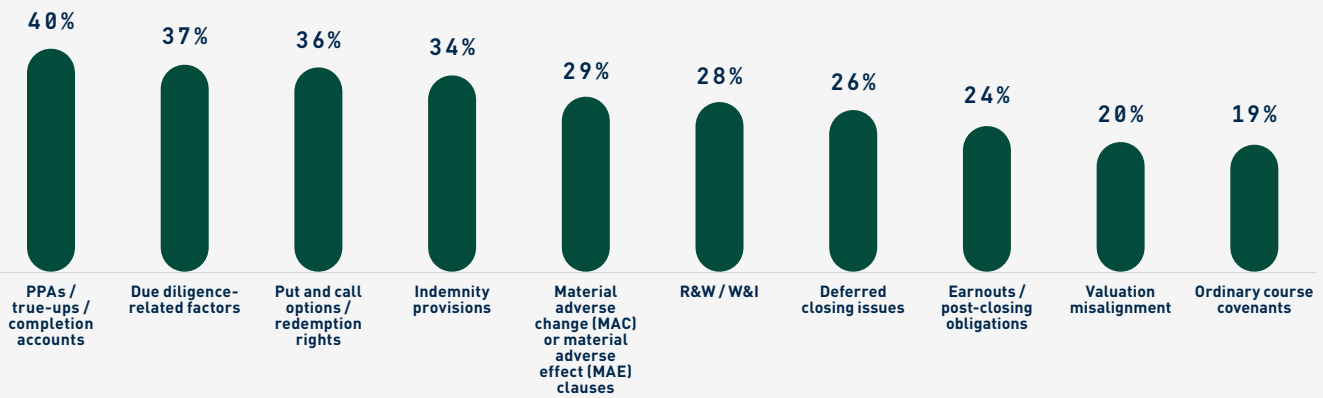
Of those who worked on disputes involving R&Ws, nearly half (48%) agree that the use of R&W insurance will increase the number of claims made by buyers seeking recovery from the third-party insurer, rather than the seller. Adding insurers to the mix only makes the dispute resolution process lengthier and more complex, according to 29% and 36% of these respondents, respectively.

“Buyers may be more likely to file an R&W or W&I claim against an insurer than the seller directly, especially in instances where the seller has either rolled over equity or continues on with the company in a leadership capacity, since the working relationship needs to be preserved”, said BRG’s Dery. “However, the more claims filed with insurers, the longer the process takes because the backlog builds as insurers must take an appropriate amount of time evaluating each claim”.

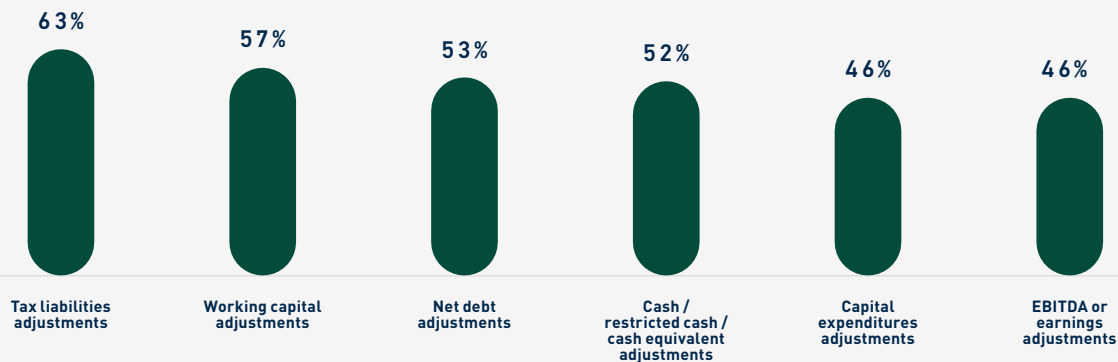
“Resolution timelines in R&W insurance claims have ballooned as insurers dig in more and put companies through their paces”, said William O’Neil, a Chicago-based M&A disputes litigator with Winston & Strawn. “I used to tell clients 9 to 12 months for resolutions, and now I’m telling them 12 to 15 months—insurers are asking more questions and going deeper”.

Chad Schiefelbein, a Chicago-based commercial litigation shareholder with Vedder Price, concurred: “Insurance companies are looking for policy exclusions and coverage, so sometimes those battles become elongated. By contrast, if you are dealing with the two parties who did the deal, they may find a business solution. It’s much harder to do that with insurance”.

### Most Prevalent Deal Terms, Contractual or Process-Related Factors in Disputes over Past Year



### PPA Elements Most Likely to Result in a Dispute



Asked to those who indicated PPAs, true-ups and completion accounts were prevalent in disputes

# 2025 Outlook for M&A and Disputes

The M&A market appears on track for a stronger performance in 2025, building on last year’s modest upward trajectory. Nearly two-thirds (64%) of respondents expect average deal value to increase in 2025, while almost three-quarters (72%) anticipate higher deal volume—a 25-percentage-point increase from last year’s survey forecast, suggesting widespread confidence that 2023’s decade-low slump is firmly in the rearview mirror. In fact, nearly one in four respondents is bullish, predicting that deal volume (22%) and average values (23%) will grow by more than 20% in 2025.

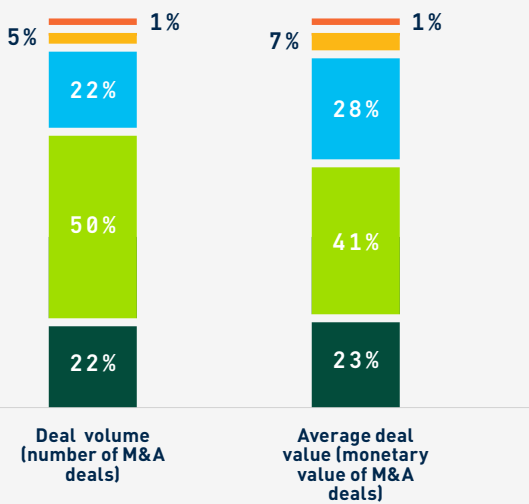
“We’re starting to see more and more M&A transactions month over month, so I think 2025 will be very busy”, said O’Neil of Winston & Strawn. He expects to see a jump in activity, particularly on the PE side, “when interest rates really start to soften for the market, as PE firms have a lot of pent-up desire to sell assets and call capital back to do more transactions”.

Just weeks into 2025, two of the US’s largest power generators, Constellation Energy and Calpine, announced a \$16.4 billion [merger](#), and healthcare giant Johnson & Johnson announced a \$14.6 billion [deal](#) to acquire biopharmaceutical company Intra-Cellular Therapies. Declining interest rates, a more stable macroeconomic environment and looser lending standards could see major deals follow in the weeks and months to come.

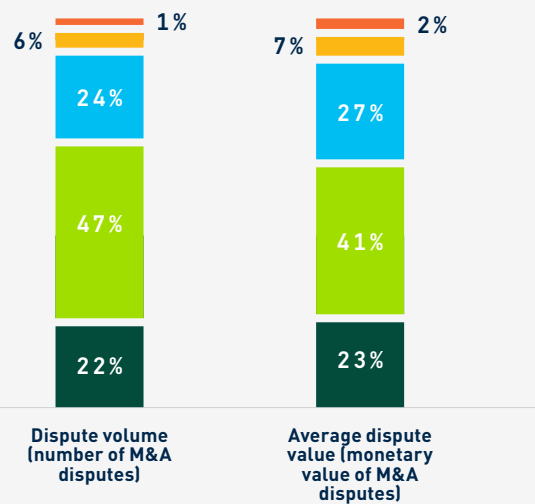
Yet a busier deal market also offers more potential for disputes. Approximately 7 in 10 respondents also expect to see dispute volume (69%) increase in 2025, while 64% expect average dispute value to rise. Some of the biggest failed deals of 2024—including Nippon Steel’s proposed \$14.9 billion [takeover](#) of US Steel, blocked by former President Biden—have already ended up in court.

The financial outlook could also shift as US tariffs and retaliatory measures from China and possibly other trading partners like Canada and Mexico go into effect, potentially jeopardising deals currently in the works, according to BRG Director Calvin Qiu. “Beyond the individual impacts on valuation and performance for affected companies, tariffs tend to fuel inflation, which could lead central banks to once again raise interest rates in response”, he said.

## Expectation of Change in M&A Deal Volume and Value in 2025



## Expectation of Change in M&A Dispute Volume and Value in 2025



● Significant increase (more than 20%)   
 ● Slight increase (up to 20%)   
 ● No change   
 ● Slight decrease (up to 20%)   
 ● Significant decrease (more than 20%)



## Earnout Issues Loom in 2025 Disputes

Earnouts and post-closing obligations could pose more problems. Nearly three in ten (29%) respondents expect to see these contractual terms become more prevalent in the disputes they will handle in 2025, a 5-percentage-point increase from those who reported issues with earnouts or post-closing obligations in 2024.

“In uncertain M&A markets like those we’ve had over the last several years, lack of alignment on price means parties feel compelled to build in some kind of earnout provision”, O’Neil of Winston & Strawn explained. Such terms are becoming “increasingly bespoke” and involve “highly interpretive language”, which “only increases the likelihood of a dispute”, he said.

“Buyers and sellers that added earnouts in 2023 or 2024 to get deals done in challenging conditions likely started to see those earnout measurement periods expire towards the end of 2024 and into 2025”, added BRG’s Dery. “As the earnout achievement results come in, disputes are likely to follow”.

A large share of respondents agree. Approximately two-thirds who said earnouts were prevalent in 2024 disputes cited as underlying issues the ambiguity in performance metrics (67%) and post-transaction changes in business conditions (63%). More than half of this group say disagreements on financial reporting or calculation methods for earnouts also foster such disputes.

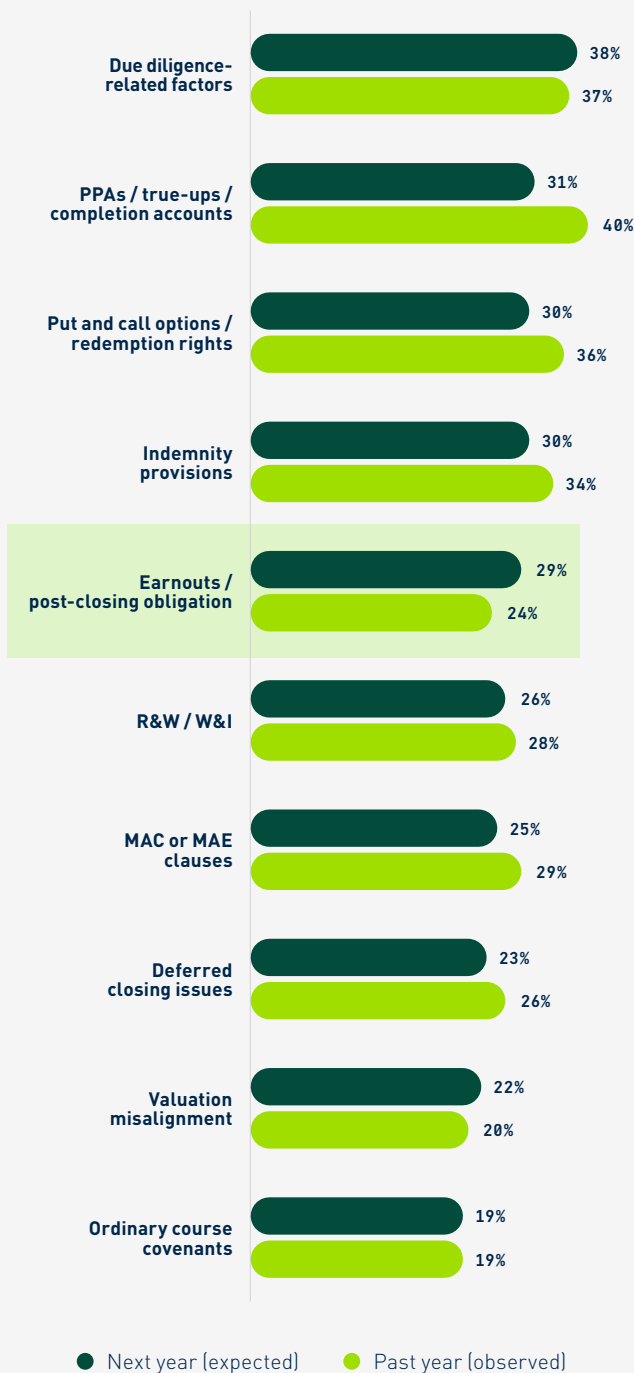
At the same time, due diligence-related factors could be in the spotlight this year. Nearly two in five respondents (38%) predict issues tied to the diligence process will be prevalent in disputes over the next 12 months. One potential reason? Big payouts.

“Buyers—and specifically PE buyers—are seeing value in doing post-completion due diligence because more often than not you can find a breach of warranty somewhere”, noted McClure of Herbert Smith Freehills. “An extra \$250,000 in due diligence could net you a \$20 million claim”. That can shift the dispute calculus—especially, he said, when buyers “want to extract value from every angle”.

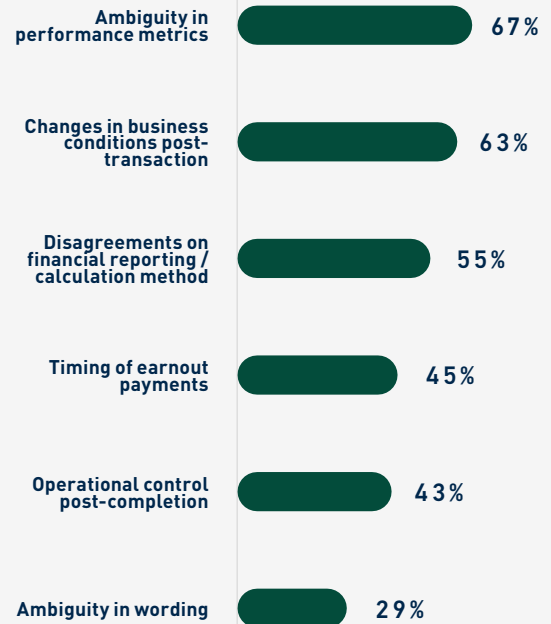
“Buyers and sellers that added earnouts in 2023 or 2024 to get deals done in challenging conditions likely started to see those earnout measurement periods expire towards the end of 2024 and into 2025. As the earnout achievement results come in, disputes are likely to follow”.

**Frank Dery**  
Managing Director, BRG

## Most Prevalent Deal Terms, Contractual or Process-Related Factors in Disputes: Next Year versus Past Year



## Underlying Issues Most Likely to Result in an Earnout Dispute



*Asked to those who indicated earnouts and post-closing obligations were prevalent in disputes*

# Industry Overview: Financial Services Disputes Rose as FinTech Fights Fell

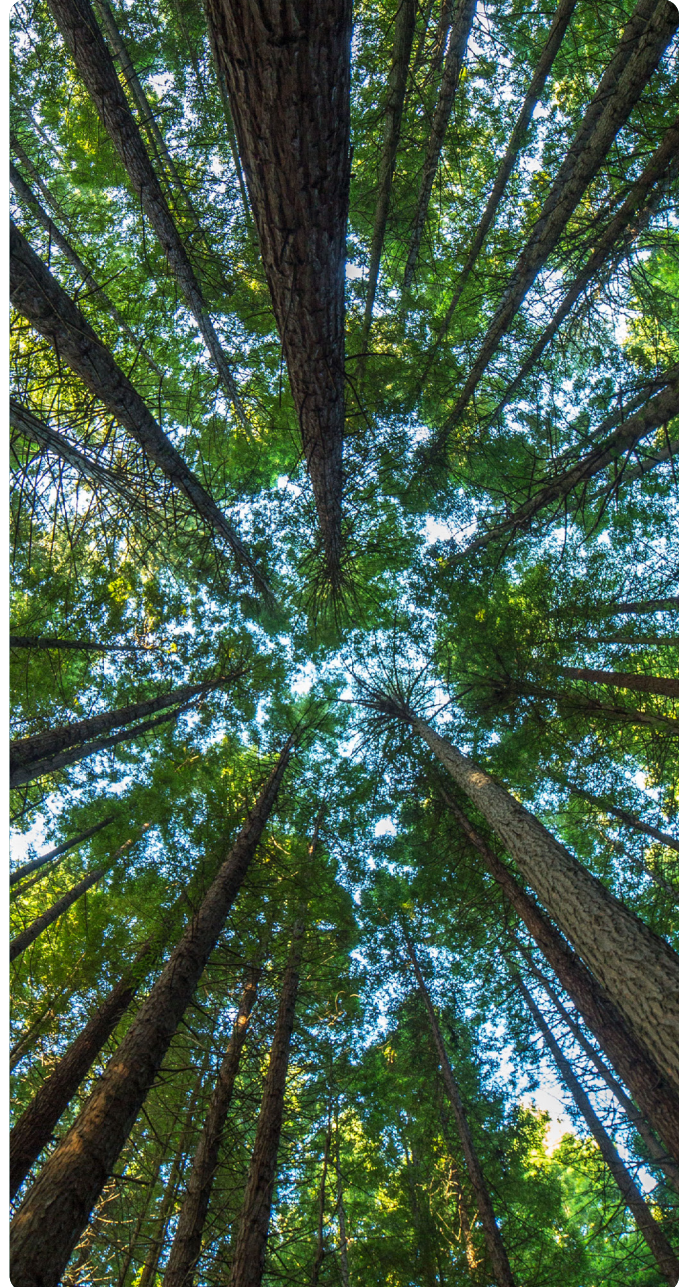
Our research revealed a jump in financial services disputes—an area that is likely to remain a hotspot—while areas such as financial technology (FinTech), energy and technology saw declines from 2023 dispute activity over the past year. Yet this reprieve is unlikely to last, as respondents predict an uptick in disputes for *every industry category* in 2025 as M&A expectations improve.

Amidst continued fallout from the 2023 banking crisis, 43% of respondents saw an increase in financial services M&A dispute activity in 2024—a 10-percentage-point increase from what was reported in last year’s [M&A Disputes Report 2024](#). At the same time, 41% saw increased dispute activity in the FinTech and digital asset sector over the past year, a decrease of 10 percentage points from 2023 levels.

Financial services M&A activity was largely muted in 2024 as the Biden administration worked to limit concentration in the financial sector to prevent another “too big to fail” disaster, according to BRG Managing Director Paul Noring. The largest financial services merger of 2024—Capital One’s \$35.3 billion [purchase](#) of Discover—is still awaiting approval and has [drawn criticism](#) from US lawmakers. Yet the same efforts to install regulatory guardrails could also explain the drop in FinTech disputes last year. Noring said increased FinTech oversight helped minimise disputes concerning cryptocurrency fraud and financial crime.

These guardrails are likely to relax under the second Trump administration, said Noring, causing “the merger floodgates to open globally, since other countries will need to be more accommodating to reach comparable scale to US financial institutions”. But this could also generate a “significant pickup in transaction-related merger disputes”, he said, in addition to ongoing disputes stemming from Biden administration actions.

Respondents predict an uptick in disputes for *every industry category* in 2025 as M&A expectations improve.



Respondents agree: nearly half (45%) anticipate an increase in dispute activity for the financial services sector in 2025, compared to just 27% the year before. The same share (45%) expects to see FinTech disputes increase over the coming year, on par with last year's predictions, as the sector continues to grapple with novel regulatory and legal challenges globally.

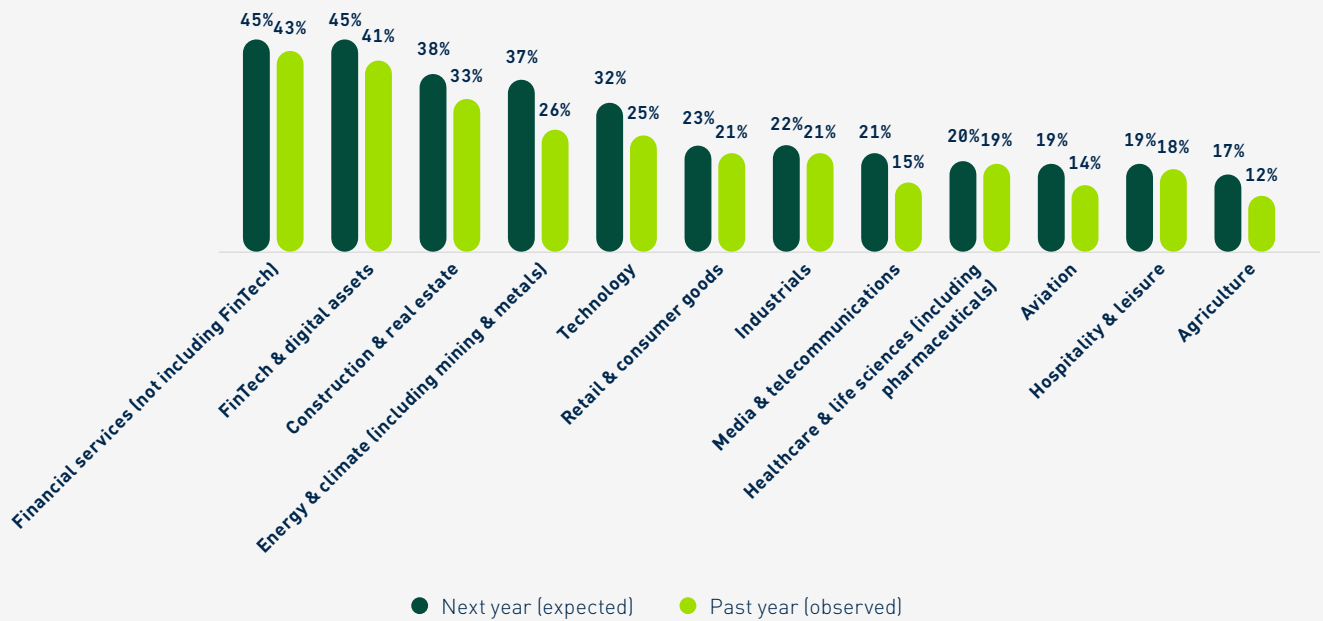
Construction and real estate also stood out as the industry contends with ongoing post-pandemic challenges. One-third of respondents saw an increase in construction and real estate disputes in 2024—and an even larger share (38%) anticipates an increase in 2025. This could reflect hurdles including declining demand for office space globally, lingering supply chain snags and labour shortages hampering some construction segments. Additionally, as many real estate companies' pandemic-era, ultra-low-interest-rate loans started to **come due** in 2024, the financial challenges of refinancing under higher rates could have contributed to disputes.

The energy sector appears poised for more challenges too: 37% of respondents expect more disputes over the next 12 months as zero-emissions targets approach and the energy transition proceeds, albeit unevenly.

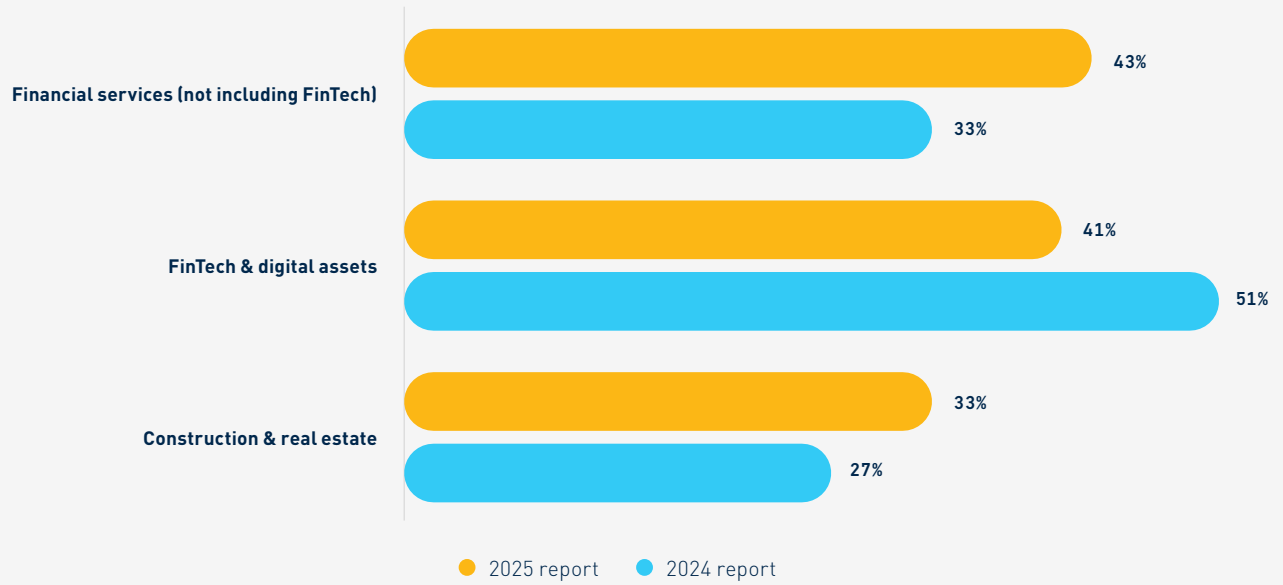
“Energy transition policies will impact a lot of stranded fossil fuel investments which may lead to disputes”, said Jonathan Lim, a London-based complex international disputes partner at WilmerHale. “The oil and gas sector is going through significant transition, particularly in Asia, with many big players undergoing combinations and privatisations, while governments prioritise the urgent need to construct transmission infrastructure—all this activity inevitably leads to disputes as well”.

Renewables are also likely to spark disputes in 2025, according to McClure of Herbert Smith Freehills: “Many deals connected to the renewables sector are perhaps not going as well as people had hoped. The government support is not there the way it once was, so the economics of these projects are changing, and that's causing disputes”. In the US, for example, the new Trump administration is looking to roll back Biden-era incentives and funding for renewable energy projects, potentially disrupting deals dependent on earlier frameworks.

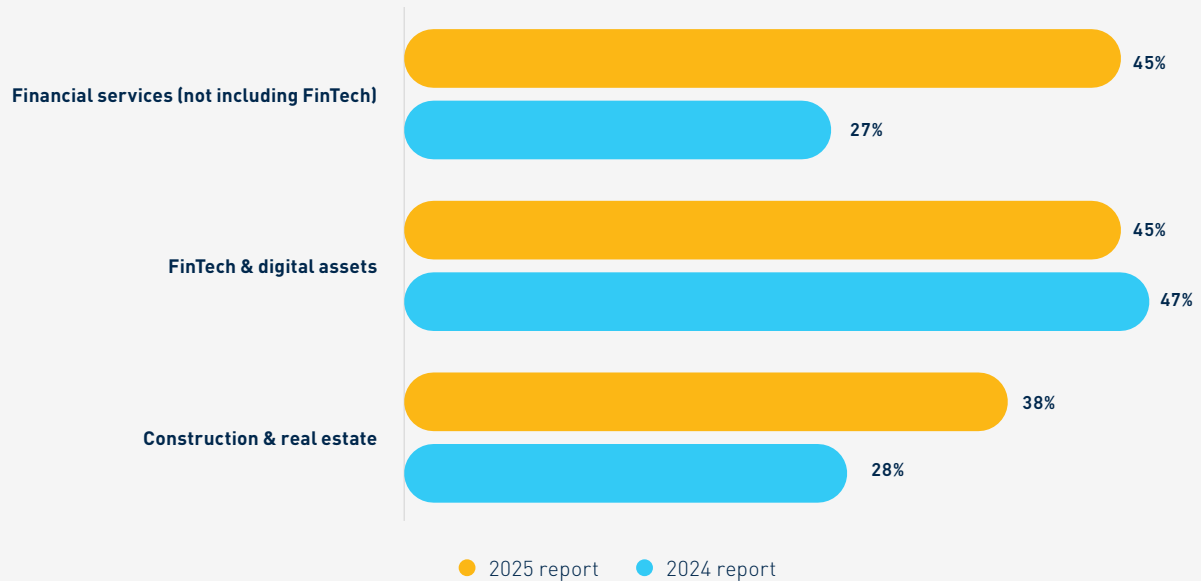
### Uptick in Disputes by Industry: Next Year versus Past Year



## 2025 Report versus 2024 Report: Industries That Experienced an Uptick in Disputes (Past Year)



## 2025 Report versus 2024 Report: Industries Expected to Experience an Uptick in Disputes (Next Year)





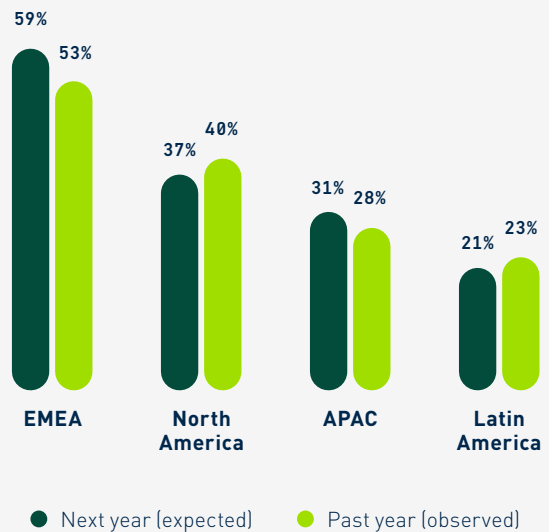
# Regional Outlook: EMEA Drives Increase in Global Dispute Activity

More than half (53%) of respondents cited Europe, the Middle East and Africa (EMEA) as the leading region driving the 2024 increase in global dispute volume, extending the trend noted in last year's report. Respondents expect this activity to continue into 2025, with 59%—and notably 93% of those located in EMEA—expecting the region to predominantly drive dispute volume in the coming months, thanks to factors like regulatory and compliance structures within the European Union's (EU) competition framework. However, M&A dispute activity still increased slightly across all other regions surveyed—Asia-Pacific (APAC), Latin America and North America.

EMEA's 2024 dispute activity appears to have been concentrated amongst large transactions. More than three in five respondents (63%) in the region reported an increase in disputes in deals over \$500 million in 2024 as the EU took a tougher stance on antitrust issues. This runs contrary to the trend in all other regions, which saw much of the dispute increase concentrated around smaller deals. More than 8 in 10 (81%) respondents in Latin America, for example, saw disputes rise in deals under \$50 million, with none saying the same of deals above \$1 billion in value.

Looking ahead, the majority of Latin American respondents expect both dispute volume (86%) and average dispute value (82%) to increase in their region into 2025. This comes as investors are "raising concerns about the political and economic stability of Latin America's two largest economies, Brazil and Mexico", said Alejandro Martinolich, a BRG associate director based in Buenos Aires. While Latin America offers abundant opportunities for M&A activity, "Global investors have always approached the region with a certain caution, given its intricate macroeconomic conditions and political fluctuations".

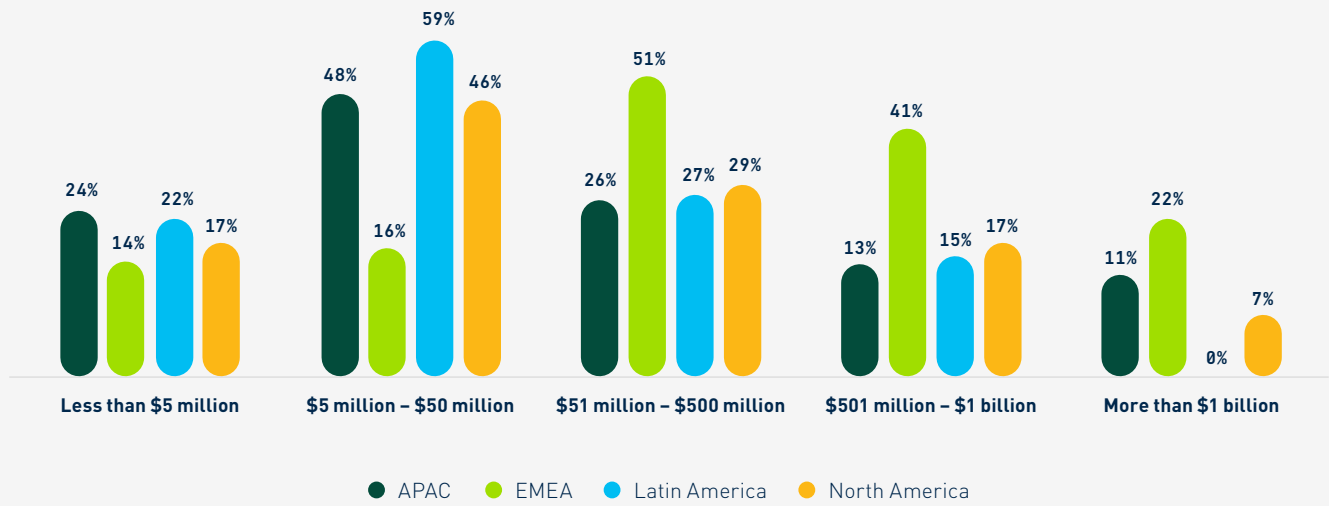
## M&A Dispute Volume: Regions Expected to Drive Increase versus Regions Where Increase Was Observed



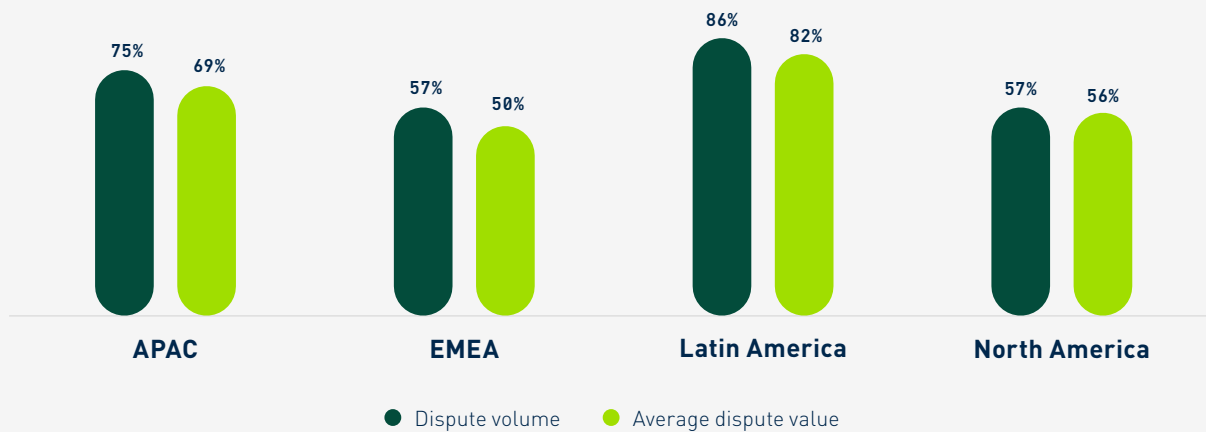
Similarly, in APAC approximately three-quarters of respondents are bracing for a rise in dispute volume (75%) and average value (69%) in the coming year, compared to fewer than 60% who say the same in North America or EMEA.

"People are not giving up on the China market" despite recent geopolitical tensions, said Skadden's Yeoh. "Instead, they are realigning their priorities and prerogatives and diversifying their production capabilities and portfolios, giving rise to new sources of disputes".

## By Region: Deal Size Ranges That Experienced Uptick in M&A Disputes



## By Region: Increase in Dispute Volume and Value



## Regional Dispute Factors

Apart from financial and operational performance—the primary dispute driver across all regions in 2024—leading M&A dispute catalysts reflected regionally specific concerns.

In EMEA, which once again drove dispute volume globally, regulation and compliance structures were top of mind as EU regulators took a more aggressive stance towards antitrust and environmental, social and governance (ESG) issues last year. ESG deals can involve “variable regulatory pressures” across borders “that can create potential for disputes, especially in Europe”, said Rozycka of Clifford Chance.

“ESG impacts due diligence”, added Lacreata of Mayer Brown. “It’s a very tricky regulatory environment, particularly with cross-border deals that introduce new regulations”. In fact, challenges with ESG-related regulatory reporting requirements could help explain why nearly half (47%) of EMEA respondents cited due diligence issues as amongst the most prevalent in 2024 disputes in their region.

In APAC, on the other hand, the geopolitical environment was the second-most common dispute contributor. This potentially reflects the impact of rising tensions between the US and China, particularly as reciprocal tariffs between the two countries raise concerns about a trade war.

“Some companies are pursuing a ‘China Plus One’ strategy to reduce reliance on supply chains based in China amidst geopolitical uncertainty”, said BRG’s Qiu. “Beneficiaries of this trend include countries in Southeast Asia—they have so far not been the target of recent rounds of tariff hikes, though this could change in the future”.

Indeed, “With business that may have gone to China now shifting somewhat to Vietnam, the significant associated influx of capital positions that jurisdiction for a likely increase in disputes in the years to come”, added Manthi Wickramasooriya, a London-based commercial arbitration and litigation partner at Quinn Emanuel.

“Some companies are pursuing a ‘China Plus One’ strategy to reduce reliance on supply chains based in China amidst geopolitical uncertainty. Beneficiaries of this trend include countries in Southeast Asia—they have so far not been the target of recent rounds of tariff hikes, though this could change in the future”.

**Calvin Qiu**  
Director, BRG



Chinese companies are amongst the leading providers of foreign direct investment in Southeast Asia—and they're also pursuing M&A strategies in the region, notes Bangkok-based BRG Managing Director Vorapong Sutanont. "As major APAC financial centers like Singapore tighten know-your-customer and anti-money laundering regulations for incorporating companies, Chinese companies are evaluating M&A deals as a way to avoid these requirements while remaining active in these growing markets", he said.

As dealmakers grapple with geopolitical uncertainty and shifting economic conditions in the region, more than half (52%) of APAC respondents said material adverse change and effect clauses were frequently at issue in 2024.

For respondents in North America, tax policies were the second-most salient dispute factor after financial and operational performance—likely due to the complexity of dealing with US federal, state, local and cross-border taxes.

"With each new retroactive tax policy that comes online in the US, dealmakers go back to the paperwork and look for opportunities to maximise the benefits for their tax structures, even if these policies weren't in place when the deal was struck", said BRG's Dery. "Parties end up fighting over whether there's an obligation to file amended tax returns, and this often results in a dispute".

However, foreign exchange (FX) volatility is the second-most cited dispute driver in Latin America, which saw steep drops in the value of the Mexican peso and Brazilian real earlier in 2024.

“In countries where there has been an FX crisis—as a result of the rate cycle or the pandemic, or in some cases both—many deals are now in distress”, said Wickramasooriya of Quinn Emanuel. “That’s because investors may have deployed capital during the boom, but those investments are now worth less in dollar terms”.

Reflecting this regional volatility, the most common dispute drivers in Latin America in 2024 included contract provisions for managing economic uncertainty, such as PPAs and true-ups (54%) or put and call options and redemption rights (58%). Continuing this trend, one-half of Latin American respondents also expect put and call option and redemption rights to be prevalent in disputes over the next 12 months.

“With highly valuable assets and continuous political and regulatory changes, not to mention macroeconomic uncertainty, Latin America has ideal conditions for a dispute”, said BRG’s Martinolich. “Dealmakers are aware of this, so it’s common practice to introduce put and call options into the deal to account for material changes. While this can help close a deal, it opens a door for future price adjustment discussions and, eventually, disputes”.

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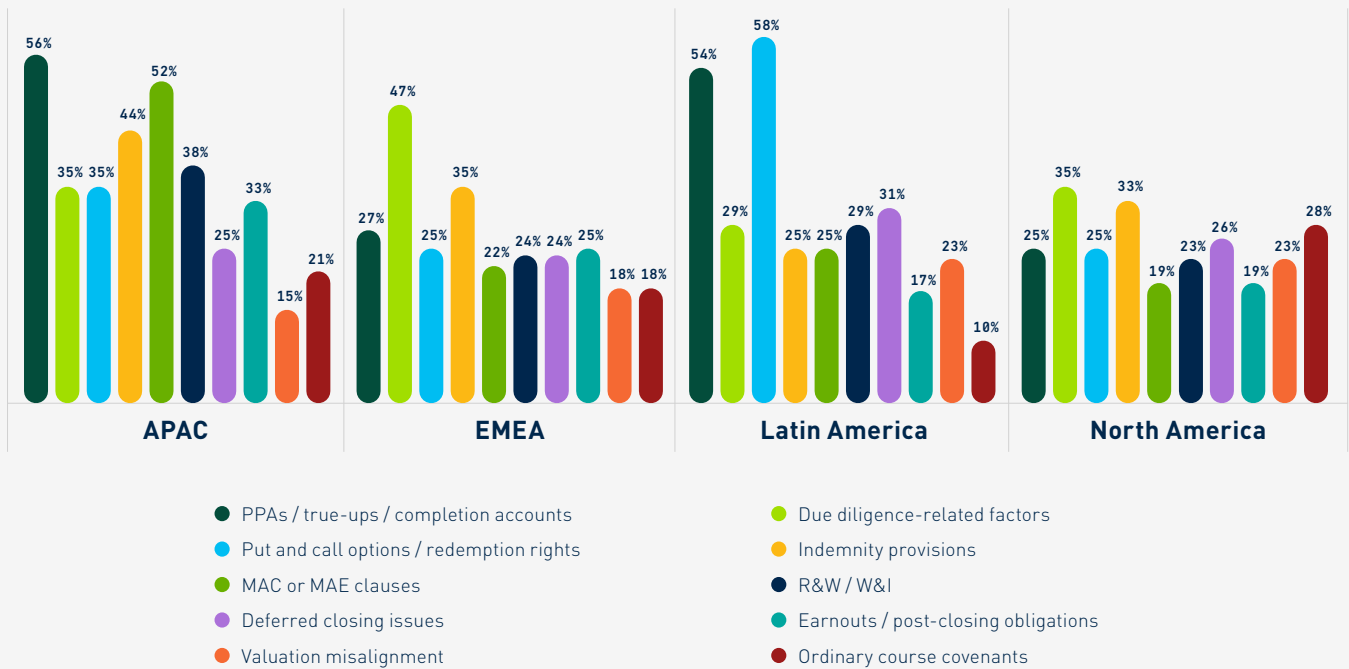
**Alejandro Martinolich**  
Associate Director, BRG

## By Region: Factors That Most Often Led to M&A Disputes over Past Year

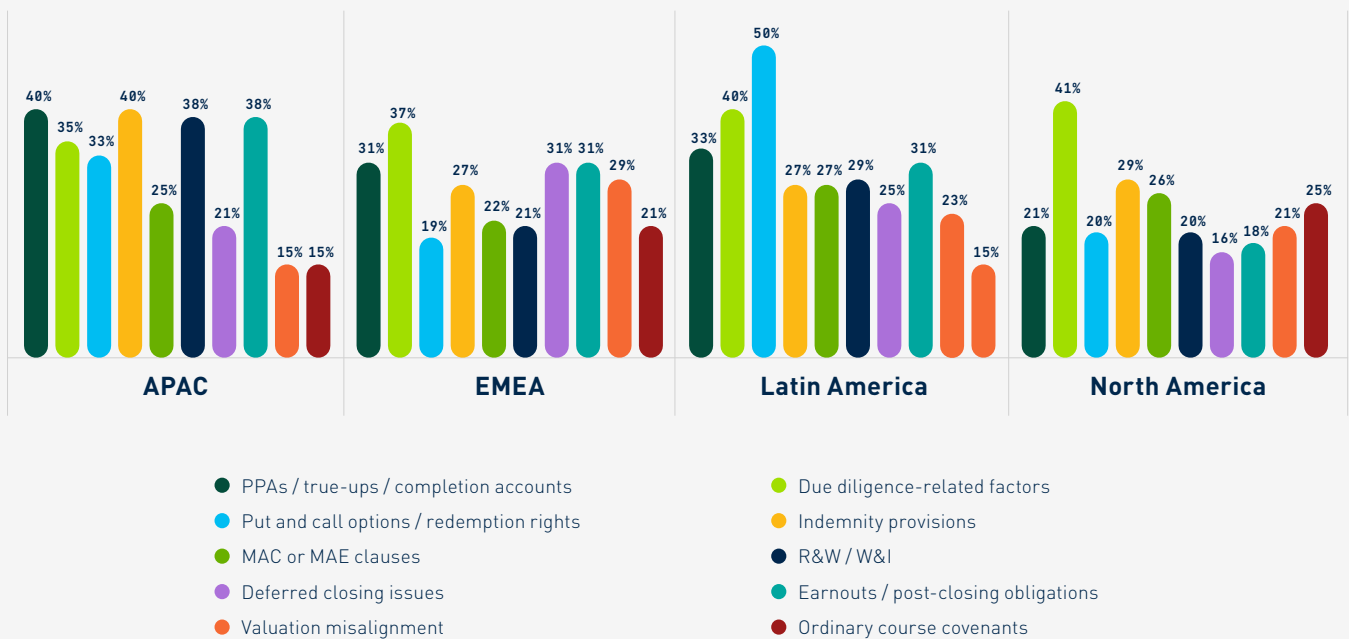
Rank	APAC	EMEA	Latin America	North America
1	Financial / operational performance	Financial / operational performance	Financial / operational performance	Financial / operational performance
2	Geopolitical environment	Regulation and compliance structures	FX volatility Local / national political environment <i>(tie)</i>	Tax policies



## By Region: Most Prevalent Deal Terms, Contractual or Process-Related Factors in Disputes over Past Year



## By Region: Most Prevalent Deal Terms, Contractual or Process-Related Factors Expected in Disputes over Next Year



# Dispute Resolution and Mitigation

## Preferred Dispute Resolution Venues Vary, But Courts Lead the Way

Preferences vary widely when it comes to venues for handling M&A disputes, reflecting the diverse needs and considerations of dealmakers. Respondents were generally split between court (38%), arbitration (36%) and alternative dispute resolution (ADR) methods other than arbitration (26%), with each offering unique advantages depending on the factors at play.

Respondents who prefer court venues—such as corporate finance respondents and disputes lawyers—overwhelmingly cite judicial authority (57%) as a key benefit when resolving a dispute, with roughly one-third also noting enforceability (37%), structured procedures (33%) and precedent (30%).

Those who prefer arbitration do so primarily because of its speed and efficiency (47%), coupled with confidentiality (44%), though there are also enforceability benefits across borders (21%).

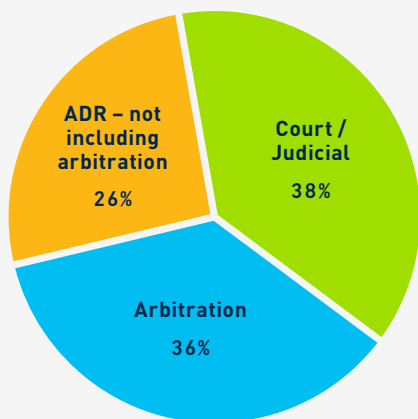
“With cross-border deals, if parties have a dispute about a business located in Country A and resolve the matter in the courts of Country A, it could prove difficult to enforce the judgement in Country B if that’s where the losing party does business or has assets”, said BRG’s Hadi. “With arbitration, awards are enforceable in any country that’s a signatory to the New York Convention, which can offer real benefits to dealmakers over courts”.

Arbitration also brings consistency and predictability, noted Lacreta of Mayer Brown: “One of the main benefits of arbitration is getting to select your arbitrators. Having the right arbitrators could change the case’s outcome”.

Similarly, proponents of ADR appreciate having control over the process (41%), as well as the cost effectiveness (37%) and speed benefits (35%) ADR offers—perhaps explaining why it is the preferred method for PE respondents.

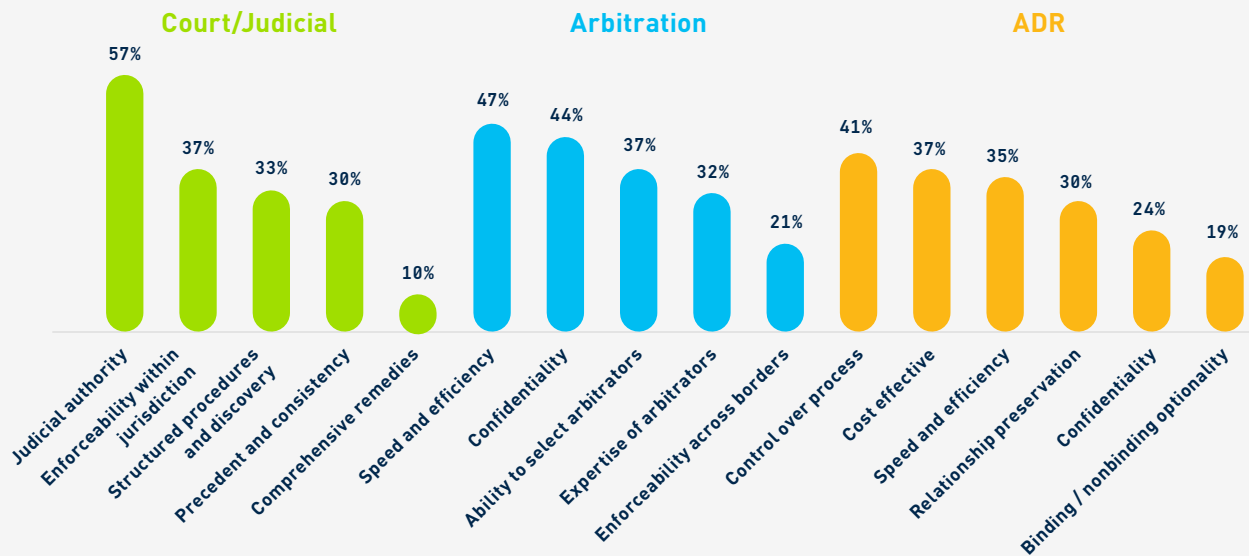
“Generally, PE firms believe that if they are able to make a strong fact-based argument in front of smart people, they have the best chance to win the dispute”, said BRG Managing Director Brian Murphy.

### Preferred Venue or Process for M&A Dispute Proceedings



Preferred Venue			
APAC	EMEA	Latin America	North America
Arbitration	Court / Judicial	Court / Judicial	Court / Judicial
Corporate Finance	Disputes Lawyers	Private Equity	
Court / Judicial	Court / Judicial	ADR	

## Reasons for Preferring Selected Venue/Process



## Private Equity Adds Complexity to the Dealmaking Process

Nearly three-quarters (73%) of respondents—including 78% of PE respondents—agree that PE involvement in M&A transactions increases the likelihood of disputes. This could reflect increased litigiousness amongst PE firms after the pandemic, as nearly the same proportion (72%) of respondents agree that over the last three years PE has become more willing to advance to formal proceedings such as litigation and arbitration.

“We have seen a stark change in private equity and M&A disputes”, said Skadden’s Yeoh. “About 10 years ago, not many PE outfits were willing to pursue formal proceedings, be it arbitration or litigation. Now that’s being viewed as a cost of doing business” while firms maintain a mindful approach to time, exposure and other considerations.

“For PE, there used to be more of a focus on reputational risks associated with pursuing arbitration or litigation”, said BRG’s Dery. “Now firms are more comfortable pursuing an accounting arbitration as a way to enforce the contract language they negotiated for”.

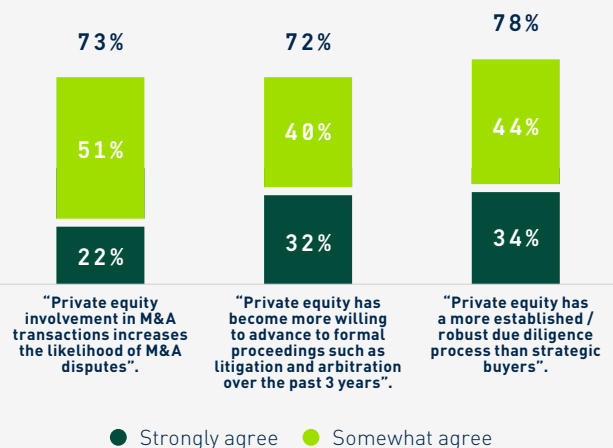
This could change as the wave of post-pandemic disputes recedes. “Fewer deals means fewer disputes. We went through a period where PE was chasing deals, particularly post-COVID when PE firms were looking to find a place for their money”, said Caroline Moran,

a Maples dispute resolution partner based in the Cayman Islands. “There were some bad deals, and people got burned, but that’s slowed now. Throughout 2024, PE seemed to be proceeding with more caution”.

At the same time, nearly 8 in 10 (78%) respondents say that PE has more established and/or robust due diligence processes than strategic buyers, reflecting firms’ depth of experience in dealmaking.

“Generally speaking, PE buyers do better due diligence than your average buyer because they’ve got that aspect of deals professionalised”, said O’Neil of Winston & Strawn.

## Level of Agreement



# Best Practices for Mitigating Disputes in 2025



“The best practice is to frontload some of the dispute planning, even when it’s happy days”.



**Jonathan Lim**  
WilmerHale

“Be careful about what you write. So many parties can tie themselves in knots in the first 48 hours when they’re sending emails without the lawyers involved”.



**Mike McClure KC**  
Herbert Smith Freehills

“Have a litigator look at the contract because we notice things that transaction lawyers do not necessarily see. We look at deal agreements from a completely different perspective since we have seen the things that lead to disputes. Sometimes it’s as simple as changing a word here or there to avoid an issue”.



**Isabela Lacreata**  
Mayer Brown

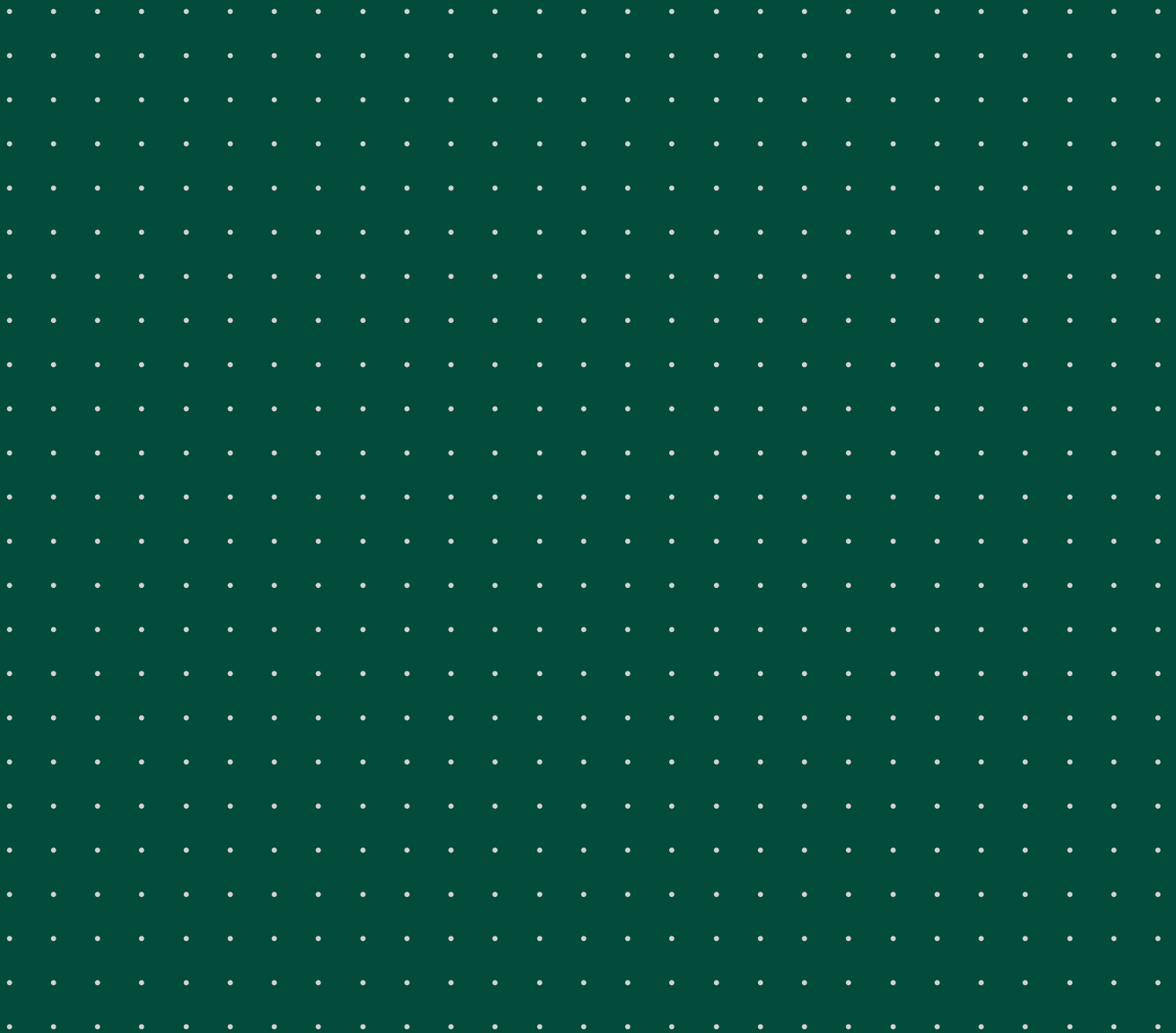


“Once a deal is closed, everyone goes off to celebrate, and they move on, but if people did a postmortem right after closing—saying here’s a memo showing how the transaction was valued and purchased—dispute lawyers’ lives would be a lot easier”.

**William O’Neil**  
Winston & Strawn



# Methodology and Contributor Biographies



# Methodology

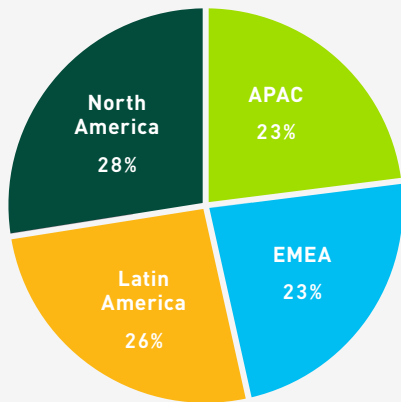
BRG's 2025 M&A Disputes research initiative was conducted in two major phases: (1) in-depth qualitative interviews and (2) a quantitative online survey. BRG's annual M&A Disputes survey fielded in November 2024. Participation was anonymous. A total of 209 respondents completed the survey, which included 83 lawyers (private practice or in-house), 60 private equity professionals and investors and 64 corporate finance advisors.

To accommodate for the disparity in responses by region and role, regional crosstabs appear in the report in cases where relevant. Analysis also includes comparisons between this year's survey (referred to as "2025 report" in charts) and findings from BRG's 2024 annual M&A Disputes survey (referred to as "2024 report" in charts) which fielded in November 2023.

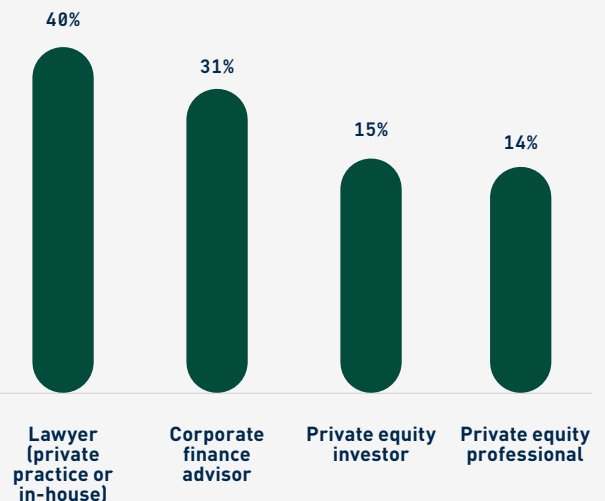
In October 2024, 11 qualitative interviews of deal and disputes lawyers around the world took place. Verbatim input and analysis are incorporated into the report narrative.

Due to rounding and questions asking for more than one response selection, data may not add to 100%.

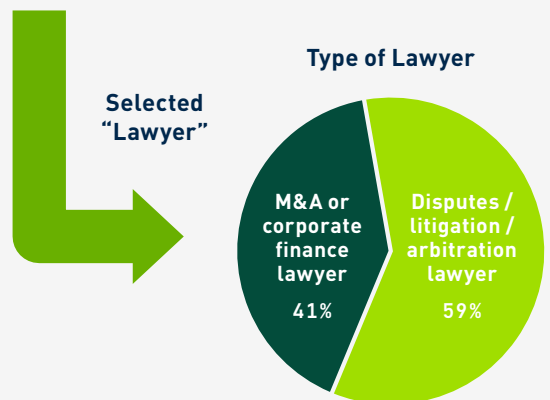
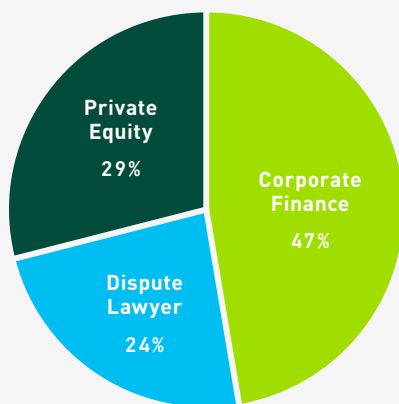
Respondent Region



Respondent Title or Role



Respondent Area of Focus



# Contributor Biographies

## Contributors

### Isabela Lacreta

**Counsel, Mayer Brown**

PARIS

Isabela Lacreta is a member of the Paris, Lisbon and São Paulo Bars. She regularly represents clients in commercial and investment arbitrations arising from different economic sectors, namely energy and construction projects and commercial agreements. She has acted as counsel for states, investors and companies in over a dozen international arbitrations. She also sits as an arbitrator and has acted as administrative secretary of arbitral tribunals.

### Jonathan Lim

**Partner, WilmerHale**

LONDON

Jonathan Lim is a triple-qualified English solicitor, Singapore advocate and New York lawyer with a focus on complex international disputes. He has a broad practice representing private-sector and government clients in all types of commercial and investment treaty arbitrations seated in common law and civil law jurisdictions worldwide. His experience also includes ad hoc and institutional arbitrations under various rules.

### Mike McClure KC

**Partner, Herbert Smith Freehills**

LONDON

Mike McClure is a King's Counsel solicitor advocate with expertise in arbitration, court and expert determination proceedings; and particular experience in the energy, construction, infrastructure and financial services sectors. He advises clients on arbitrations under the auspices of several arbitral institutions. He is the global co-chair of Herbert Smith Freehills' Korea Group.

### Caroline Moran

**Partner, Maples Group**

CAYMAN ISLANDS

Caroline Moran is co-head of Maples Group's global Dispute Resolution & Insolvency team. She advises on all aspects of cross-border and domestic insolvency and restructuring issues, including contentious and noncontentious restructurings, liquidations, schemes of arrangement and fund wind-downs. She advises debtors and key stakeholders in financially distressed circumstances and has extensive commercial litigation experience in financial services disputes.

### William O'Neil

**Managing Partner, Winston & Strawn**

CHICAGO

William O'Neil concentrates his practice on high-stakes trial work. An adept problem solver, he serves as a strategic advisor to some of the largest US corporations and private equity (PE) funds. Widely regarded as a preeminent merger and acquisition (M&A) litigator in the US, he is an accomplished trial lawyer who litigates and facilitates resolution of high-stakes business disputes.

### Martin Roth

**Partner, Kirkland & Ellis**

CHICAGO

Martin Roth is a trial lawyer whose diverse litigation practice spans M&A disputes, privacy class actions, employment matters and many other complex commercial disputes across a wide array of industries. He has led numerous post-M&A disputes, including purchase price adjustments, earnouts, valuation disputes, employment matters, trade secrets and commercial disputes involving PE sponsors and their portfolio companies.

## **Karolina Rozycka**

**Counsel, Clifford Chance**

PARIS

Karolina Rozycka's practice focuses on international commercial arbitration as well as annulment proceedings and enforcement actions in France. Her experience encompasses a range of dispute types and business sectors, with a focus on post-M&A disputes, commodities and mining, energy, aerospace and defence, construction and general commercial disputes.

## **Chad Schiefelbein**

**Shareholder, Vedder Price**

CHICAGO

Chad Schiefelbein has broad experience in a wide variety of litigation matters, including financial institution litigation, fair debt collection practices, commercial disputes, directors' and officers' liability, fiduciary duty, unfair competition, restrictive covenant enforcement and defence, trade secrets, shareholder actions, intellectual property litigation, products liability and distributor disputes. He appears in US federal and state courts at both the trial and appellate levels.

## **Manthi Wickramasooriya**

**Partner, Quinn Emanuel**

LONDON

Manthi Wickramasooriya specialises in international commercial arbitration and litigation, with over a decade of experience managing complex and high-stakes disputes. He has litigated at all levels of the English courts and managed international arbitrations under all major arbitral rules. His work spans a broad range of sectors, with particular expertise in M&A-related disputes and disputes arising from cross-border investments.

## **Friven Yeoh**

**Partner, Skadden**

HONG KONG & SINGAPORE

Friven Yeoh is a leading commercial arbitration practitioner and head of Skadden's International Litigation and Arbitration Group in Asia. He has extensive experience in the resolution of complex, bet-the-company business disputes across industries as a solicitor advocate and lead counsel in international arbitrations throughout Asia.



# BRG Contributors

## Mustafa Hadi

### Managing Director

HONG KONG & SINGAPORE

Mustafa Hadi is BRG's Asia-Pacific (APAC) regional lead. He is a market leader in addressing the most complex issues in the M&A and PE disputes fields. He founded BRG's annual *M&A Disputes Report* in 2020.

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## Frank Dery

### Managing Director

CHICAGO

Frank Dery is a Certified Public Accountant and Certified Fraud Examiner with experience providing litigation support services for public and private clients and performing accounting investigations. His litigation work focuses on transaction-related disputes, including working capital disputes, earnout disputes and claims of breaches of representations and warranties.

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## Kevin Hagon

### Director

LONDON & HONG KONG

Kevin Hagon is a former investment banker with experience in investment analysis, principal finance and credit risk management. At BRG, he utilises his extensive transaction advisory expertise in a disputes context.

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## Alejandro Martinolich

### Associate Director

BUENOS AIRES

Alejandro Martinolich has wide experience performing business and assets valuation for M&A, litigations, divestitures, joint ventures, accounting registrations, taxes and other matters. He has a track record in damages valuation for disputes resolutions, financial and M&A advisory and debt restructuring agreements.

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## Brian Murphy

### Managing Director

BOSTON

Brian Murphy brings 35 years of experience, including over 23 years as an operating executive with two leading global PE firms. His experience with PE investments spans all forms of deals, including equity growth, corporate carve-outs, sponsor buyouts and public-to-private transactions.

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## Paul Noring

### Managing Director

WASHINGTON, DC

Paul Noring is a leader of BRG's Financial Institution Advisory practice. He has over 32 years of banking, consumer finance and capital markets expertise, specialising in helping financial institutions solve pressing business issues.

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## Calvin Qiu

### Director

SINGAPORE & HONG KONG

Calvin Qiu is an economist and director in BRG's Disputes and International Arbitration practice. He applies analytical methods in finance, economics and statistics to conduct valuations and assessments of damages in complex commercial disputes, primarily in the APAC region.

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## Vorapong Sutanont

### Managing Director

BANGKOK

Vorapong Sutanont has over 20 years of experience in complex corporate investigations, cybercrime investigations, dispute analysis, fraud risk management, enterprise risk and governance and process optimisations, both in the US and across ASEAN (Association of Southeast Asian Nations).

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# About BRG

BRG combines world-leading academic credentials with world-tested business expertise, purpose-built for agility and connectivity, which sets us apart—and gets our clients ahead.

Our top-tier experts include experienced industry leaders, renowned academics and leading-edge data scientists. Together, they bring a diversity of proven real-world experience to economics, disputes and investigations; corporate finance; and performance improvement services that address the most complex challenges for organisations across the globe.

Our unique structure nurtures the interdisciplinary relationships that give us the edge, laying the groundwork for more informed insights and more original, incisive thinking from diverse perspectives that, when paired with our global reach and resources, make us uniquely capable to address our clients' challenges.

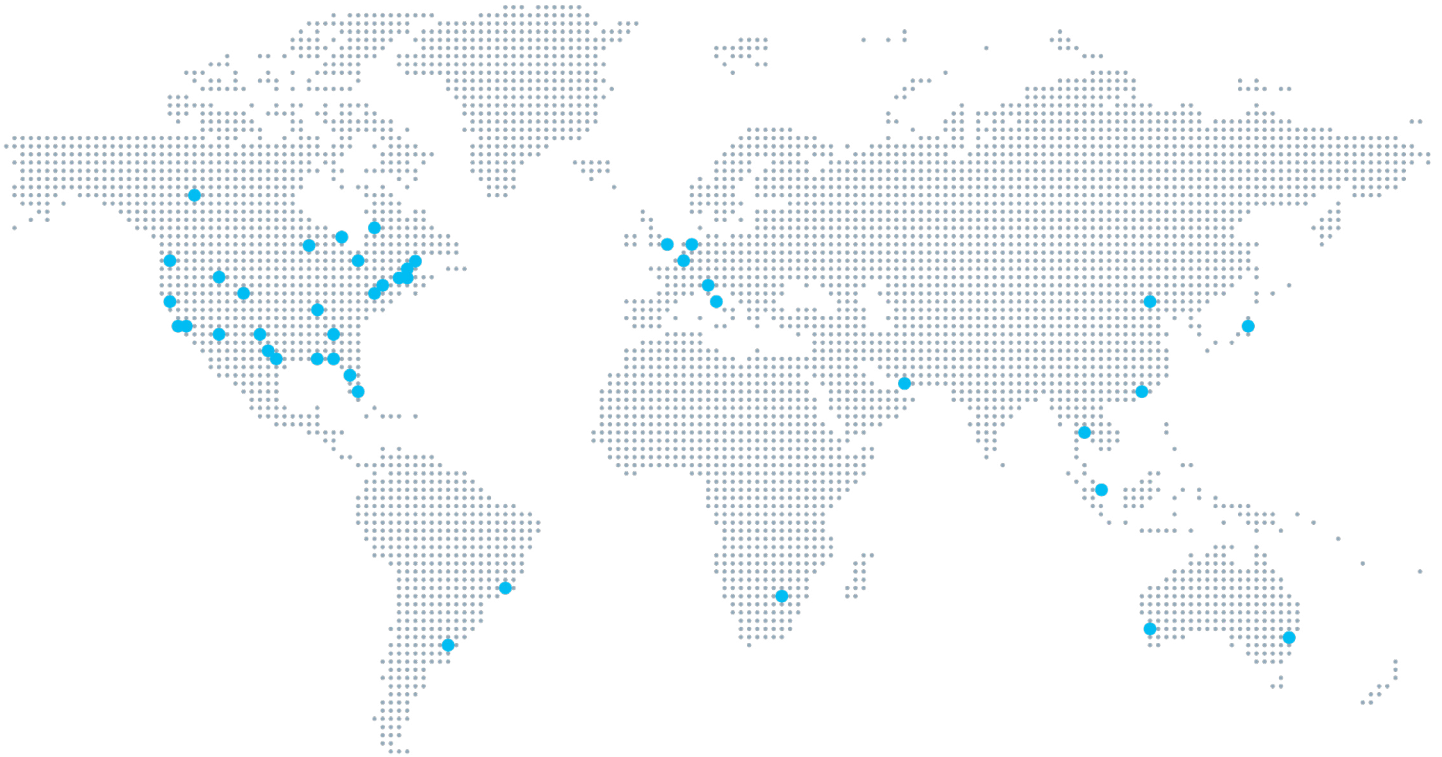
## Our Expertise - M&A Disputes

The complex nature of M&A disputes makes them uniquely fertile ground for our approach. In addition to the traditional accounting expert role, we bring a commercial understanding of the transaction and an appreciation of the perspectives of all parties involved. We unpick the commercial drivers and behaviours of parties in order to navigate the dispute and decipher the relationship between the complaint and underlying issues. Our industry practitioners bring an intuitive view which is combined with our team's analytical rigour and understanding of the dispute resolution process.



VISIT [THINKBRG.COM](https://thinkbrg.com) TO LEARN MORE.

# Our Global Locations



## North America

Atlanta	Houston	Pittsburgh
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Denver	Philadelphia	Washington DC
Detroit	Phoenix	

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## APAC

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Sydney  
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