Skadden

10 Themes for 2018

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Tax reform, shifting international dynamics, Trump administration goals and a potentially strong market for transactions all seem likely to impact business activity in 2018. Below are 10 areas to explore in our 10th annual *Insights* publication.

1. Tax Reform Takes Center Stage

The most comprehensive tax reform in the United States since 1986 made its way into law just before the end of 2017, bringing with it a range of potential effects, from its influence on M&A and capital markets activity to sector-specific issues like the health insurance mandate and the expensing of capital purchases. However, changes to the treatment of multinational corporations could make it more difficult to achieve global consensus, as Europeans pursue ways to counter aggressive tax planning by these companies. Individuals and family offices also may increase their gift planning and use of trusts in order to take advantage of changes under the new law.

2. Optimistic Outlook for Transaction Activity

Strategic activity continued to be a key driver of M&A deals globally and in the U.S. in 2017, helping corporations grow earnings and better position themselves to compete in the global marketplace. The factors that contributed to market confidence last year — stable equity markets, attractive financing, strong balance sheets — continue to point to a robust environment in 2018. Deal scrutiny likely will remain challenging, as Congress proposes changes to toughen CFIUS reviews, Europe continues to push novel theories of antitrust enforcement and jurisdictions around the globe focus on tightening foreign investment controls.

The reduction of corporate taxes combines with favorable market conditions to fuel optimistic expectations for the U.S. capital markets in 2018, and new regulatory tweaks at the SEC could further encourage IPOs. We also look at the slowing of restructurings and financial distress across most sectors in the U.S. and examine the flexibility asset-based loans offer borrowers with international businesses.

3. Governance and the #MeToo Era

Social responsibility is becoming an increasingly important focal point for corporations. Amid this governance landscape, boards must focus on composition and diversity as well as communication and connection with investors. Compensation-related issues and key areas of Delaware corporation law were further clarified in the courts in 2017, and the #MeToo movement shined a light on workplace harassment, giving employers an opportunity to evaluate how strongly their culture supports professionalism and respect.

4. European Trends Worth Watching

This year's focus on Europe features more than a dozen Skadden attorneys discussing their perspectives on a range of issues impacting businesses. From the current state of M&A and capital markets activity to Brexit to developments in the regulatory and enforcement environments, we share our insights on legal and business developments in the U.K., France, Germany and throughout the EU.

5. Enforcement Priorities Take Shape Around the World

Although companies should expect continued vigorous enforcement from U.S. regulatory authorities, public statements from officials at these agencies indicate a desire to better target enforcement actions while continuing to rely on cooperation and self-reporting. We also

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offer a closer look at the SEC's priorities in year two of the Trump administration. Increased collaboration among agencies also seems to be on the radar, a development that would be welcomed by multinational companies, which can face enforcement actions in multiple jurisdictions, including in China (where the government issued guidance to state-owned entities advising them to control overseas enforcement risks) and throughout Europe (where tightly enforced anti-corruption laws, the use of deferred prosecution agreements and individual accountability are all on the rise).

6. China and Its Growing Global Presence

Now that President Xi Jinping consolidated his hold on power at the Chinese Communist Party National Congress, his priorities will play a significant role in Chinese policy for years to come. This likely means an increasingly muscular China on the world stage, limited liberalization within the country and measured opportunities for foreign investors. Our attorneys examine what this means for M&A activity, infrastructure development, the capital markets and enforcement.

7. Litigation Risks Continue Unabated

In its current term, the U.S. Supreme Court will address constitutional protections, class actions and other corporate liability issues. That the John Roberts Court tends to take more securities cases than its predecessors may be welcome news to public companies, which face record-high securities class action filings that show no signs of slowing. Trade secret litigation also is on the rise, thanks in part to how easy technology makes it for former employees to walk away with significant amounts of company data. Technology threats don't always come from former employees, however: Often insiders with privileged access to proprietary systems are a threat to cybersecurity. Our authors also highlight recent international arbitration trends, namely the increased use of arbitration to resolve financial institution disputes and the challenges of enforcing "home country" clauses in commercial contracts.

8. US Regulatory Action … and Inaction

By signing tax reform legislation into law just before the end of 2017, President Trump and Congressional Republicans claimed a significant regulatory achievement in the president's first year in office. Elsewhere on the regulatory front, legislation has been proposed to make national security reviews under CFIUS more thorough and lengthy, a development that could impact cross-border investment. President Trump also moved to roll back climate change initiatives enacted by his predecessor and imposed a temporary trade barrier that is expected to have significant implications on the solar industry.

Meanwhile, health care and infrastructure did not achieve the large-scale policy changes the Trump campaign promised. Instead, incremental adjustments to streamline permitting (infrastructure) and the removal of the health insurance mandate (through the tax law) carried the day. We look at the status of these initiatives, as well as areas where FERC could take steps to deregulate as President Trump has asked agencies to do.

9. The Evolving Financial Regulation Landscape

The Financial Choice Act was another anticipated regulatory change that didn't transpire in 2017. Instead, various agencies addressed specific issues that will continue to be relevant to financial institutions: The CFTC is working to achieve clarity on international derivatives clearing, the CFPB is expected to bring welcome changes to rulemaking and enforcement after the contested appointment of a new director, the SEC chairman is seeking public comments on standards of conduct for investment advisers and broker-dealers, and New York state's cybersecurity regulations impacting financial institutions (including foreign banks) took effect, with additional requirements coming into play in 2018.

The growth of technology in this sector presents additional challenges for financial institutions. Conflicting cultural dynamics often shape deal negotiations in fintech M&A, making legal, regulatory and compliance issues particularly critical. And while bitcoins garner the bulk of the public's attention when it comes to virtual currency, the growing adoption of blockchain technology and the use of initial coin offerings to raise capital have brought additional legislative and regulatory scrutiny to this area.

10. Social Responsibility and the Rise of In-House *Pro Bono*

As indicated in our governance discussion, social responsibility is becoming more important for businesses. In-house *pro bono* programs can provide corporations another way to give back to the communities in which they live and work. We share our insights on creating successful programs that are dedicated to bringing the culture of skills-based volunteering to in-house legal departments.

— Robin Davidson, Marketing and Communications