



Business & Legal Developments in Silicon Valley



Happy New Year Friends!

The beginning of a new calendar year brings a sense of new ... new beginnings, new challenges, and a new start. But despite a feeling of new, the reality we are facing hasn't changed much since 2022. There are still concerns of a potential recession, global economic issues facing startups and investors in all sectors, and the slower pace of dealmaking.

Despite those concerns, venture capital and private equity has never had a mountain of dry powder as high as they do today. Earlier stage startups that can demonstrate stability and potential for substantial growth are favored because their perceived risk of under-performance is lower. This means they should prepare now for the possibility of more difficulty securing funding down the road.

Technology is still a hot area of investment. According to [Woodside Capital Partners](#), in 2022, Industrial Tech, IoT, and Artificial Intelligence were the top areas of tech when it came to deals closed and transaction value. The promise of ChaptGPT has made generative AI the place to be in new business ideas. PitchBook data shows a 425% jump in investment from 2020 to now, with \$2.1B invested in 2022 alone.

The FTC just announced a proposed new rule that could result in the abolition of employee noncompete agreements across the United States (with an exception for the sale of a business). This will impact all businesses and we are monitoring this development closely. We'll continue to share updates as they become available. You can read up on the proposal and get answers to some of the most common questions [here](#).

Only time will tell what 2023 will bring, but most experts predict this depressed valuation environment will last at least through the first half of the year. Smart founders will continue to operate as efficiently as possible, using their funding in the most strategic ways to weather the new season in venture capital. Has the playbook changed? Or are we just on pause? Time will tell...

In the meantime, your full-service Foley team is always available to brainstorm business and legal challenges, foster new connections, and help you build.

As we look back at last year and look forward at the road ahead, we are grateful for the trust and confidence of our clients and friends.

Your Foley & Lardner Silicon Valley team ([Natasha Allen](#), [Eric Chow](#), [Brandee Diamond](#), [Alicia Dorner](#), [Louis Lehot](#), [Lyman Thai](#), [André Thiollier](#), and [Alidad Vakili](#)).

FTC Proposes Sweeping Federal Ban on Employee Noncompetes

On January 5, 2023, the Federal Trade Commission (FTC) [announced a proposed regulation](#) that, if adopted, would essentially abolish employee noncompetes across the United States. A proposed FTC regulation on employee noncompetes has been anticipated since July 2021, when President Biden signed an [Executive](#)

[Order](#) calling on the FTC to exercise its “statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of noncompete clauses and other clauses or agreements that may unfairly limit worker mobility.

Although the proposed regulation will not go into effect imminently and ultimately may be delayed or invalidated by the courts, businesses should begin preparing now for a future without employee noncompetes. This might mean requiring employees who would normally sign a noncompete agreement to also sign a non-disclosure agreement, a customer non-solicit agreement, or an employment contract.

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2023 M&A Outlook

There was great speculation that the decreased valuations of 2022 would lead to a surge in M&A activity; however, activity this year has been much lower than anticipated. A multitude of factors have slowed down M&A this year – inflation, unrest abroad, and rising interest rates are just a few of the issues that have negatively impacted transactions over the past few months.

Everyone is left to wonder what the M&A forecast for 2023 will look like. Will we see an uptick in activity, or will we continue to see a much more cautious approach from buyers and targets? There are many predictions for the new year, which vary widely. Below, we round up a few that are making headlines.

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A Look at Series A Financing Amidst the Downturn

In the global Silicon Valley, 2022 was all about the early stage in tech. Strong headwinds in financial markets, compressed multiples leading to substantially lower valuations, accelerating inflation and higher interest rates, war, pandemic and supply disruption, have been only some of the uncertainties that made 2022 such a challenging year. Like other parts of the world, these factors have impacted every facet of the venture capital and innovation world with diminished valuations and a slowdown in investment. But has it impacted certain funding rounds differently? [Crunchbase](#) recently took a deep dive into how the downturn is impacting Series A financing, and the findings are quite interesting.

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Why Venture Capital Investors Are Betting on Generative AI

While we might have seen a pullback in venture capital investment in 2022, one area where investors are not slowing down is betting on artificial intelligence – specifically directing their investment in companies working with generative AI. According to data from PitchBook, investment in generative AI has considerably increased since 2020. Their data shows a 425% jump from 2020 to now, with \$2.1B invested in 2022 alone.

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Global M&A Trends: A Wider Slowdown but Still on Track to Surpass Pre-Pandemic Activity

We have seen a reduction in M&A activity this year in response to global economic uncertainty. Everything has slowed down from the fevered pitch of 2021, so it's not surprising that deal activity has as well. So, how much of a slowdown are we seeing on a global scale? And will this slowdown continue into 2023?

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Tech M&A Outlook: What Types of Deals are Getting Done?

Despite the past year's economic downturn, M&A transactions in the tech sector are still getting done. It might be at a different level than 2021, but deals are happening, particularly in certain sections of the tech industry.

[Woodside Capital Partners](#) recently analyzed what types of deals in the tech sector are moving forward, looking at transactions from August through the end of October. One of the most important takeaways from this analysis is that buyers are getting increasingly strategic. They are looking for emerging growth companies that are operating highly efficiently during this time and have incredible potential when we come out of this downturn. That day is coming, and smart founders will be preparing and planning now to be well positioned to take advantage of the M&A boom many are predicting to come in 2023.

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What's Next for Blockchain and Crypto?

While the story of the first ten months of 2022 was surviving crypto winter, there was also some optimism that better times were coming. But then the month of November saw some of the smartest and most prolific digital investors in the world hit by a case of frost-bite.

CB Insights just released its Q3 2022 State of Blockchain Report. Below are some recent highlights of dealmaking, funding, and exits by private market blockchain and crypto companies. The good news is that deals are still getting done, with global funding and deals on track for a record year. And while the report does show that the average global deal size is down 23% so far this year, the median deal size is at record levels in the United States and Europe.

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Events, Deal Announcements, and Quotables

- [A New Era of Technology in the Private Markets](#)
- [Foley Represents TCG Crossover as Lead Investor in KalVista Pharmaceuticals \\$58M Direct Offering](#)
- [Foley Partner André Thiollier Moderates Global Venture Market Session at BayBrazil Conference](#)
- [Foley Represents Connect Ventures in \\$20M Investment in Deep Voodoo](#)
- [Louis Lehot Discusses 2022 Energy Deal Market](#)
- [Foley Attorneys Discuss M&A Activity Going Into 2023](#)
- [Episode 3: The Future Powered By Hyperscale Cloud Computing with David Sloan of Microsoft](#)
- [FAQs About Bias In Artificial Intelligence \(AI\) – Avoiding the Dystopian Potential of a Utopian Tool](#)

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