

CMS European
Private Equity
Study 2025



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Introduction

We are pleased to present the fourth edition of our CMS European Private Equity Study, which analyses private equity deals that CMS advised on in 2024. Despite the ongoing challenges faced by the PE industry and the broader M&A market, including economic uncertainty, geopolitical tensions, and limited exit opportunities, the number of PE deal flow we have seen slightly increased in 2024 compared to 2023.

As in previous editions, we have analysed data, including key contractual terms of signed transaction documents, from over 120 PE deals that CMS advised on in 2024 and compared the most recent data with that from hundreds of PE deals reviewed in previous years. We also looked at the differences between PE M&A deals and trade M&A deals.

As in 2023, buy & build strategies remain prevalent, with 44% of all the buy-side PE deals we analysed being add-on acquisitions, although this is a significant decline compared to 55% just two years prior. Secondary buy-outs (i.e. deals with a PE investor on both the sell-side and the buy-side) have marginally increased to 17% when compared to 2023 and, while most of the PE deals we analysed were new investments (68%), we also observed a small increase in exits in 2024 by two percentage points. It will be interesting to see how this develops next year and whether these trends will gain some momentum in 2025.

The majority (24%) of the transactions we analysed involved the Technology, Media and Communications sector, which has consistently continued to attract investment over the last four years, followed by the Energy & Climate sector (19%), which climbed by 8 percentage points compared to 2023 and seems to be on an upwards trajectory after a slump in 2022. Meanwhile, consumer products saw a decline in activity in 2024, compared to earlier years. It will be interesting to see whether deal flow of real estate transactions picks up again next year after two consecutive less active years.

From a purchase price perspective, the number of PE deals with earn-outs has remained stable, but is still higher compared to non-PE deals, while the use of price adjustment mechanics has seen an increase by 7 percentage points compared to 2023. This indicates a more buyer-friendly approach in 2024 from a contractual risk-allocation perspective, which is consistent with PE predominantly being on the buy-side. The earn outs are very popular in Benelux (50% in 2022, 2023 and 57% in 2024) and are also widely used in German-speaking countries.

While uncertainties remain in the market and the most recent geopolitical developments have dampened optimism, we remain positive about deal activity in Europe in 2025. Confidence in the debt markets has been growing since the second half of 2024, inflation has been slowly falling, integration of advanced technologies, such as AI, is picking up pace, all of which will hopefully be conducive to more deal activity for PE investors, who are still grappling with a significant investment backlog.

Once again, special thanks go to our team of editors, Valentina Santambrogio, Jessica Mohaupt-Schneider and Patrick Lühr, who in collaboration with Ben Booker-Moore, Jennifer Ross, Ben McParland, Hanna Heimrath and Nina Fink, thoroughly analysed the data and prepared this study.

We hope you enjoy reading our study and find it a useful insight into market practice. Please help us improve future editions by providing feedback to your CMS contact or via our website.



Jacob Siebert
Head of CMS
Private Equity Group

Executive summary

- **Deal Activity.** Despite various challenges, there has been an increase in the number of private equity transactions in 2024 compared to 2023.
- **New investments vs exits.** Although private equity investors are still engaging in more new investments than exits, the disparity has lessened compared to 2023, with investors becoming somewhat more active in divestments. The rise in secondary buyouts in 2024, while not as marked, remains noticeable. Nevertheless, with 63% of all activity being new investments, this continued to be the predominant focus for private equity investors throughout 2024.
- **Bidding processes.** The number of auctions or bidding processes for private equity deals in 2024 has decreased compared to 2023, reverting to levels observed in 2022. Furthermore, the prevalence of auctions or bidding processes that culminate in negotiations with multiple interested buyers has also returned to levels comparable to those in 2022, at 56%.
- **Deal Drivers.** In 2024, the primary driver for private equity deals was entering new markets, with the percentage doubling compared to 2023. Acquiring a team of employees rose from 7% in 2023 to 23% in 2024, while acquiring competitors also remained an important factor.
- **Sector Activity.** The Technology, Media & Communications sector continued to dominate, accounting for 24% of all deals analysed very much like in prior years. The Energy & Climate Change sector experienced notable growth, increasing by eight percentage points. Conversely, there was a significant decrease in deal activity within the Consumer Products sector, which declined by ten percentage points. Deal activity in Real Estate showed an increase of two percentage points, following a substantial decline in 2023.
- **MAC-Clauses.** In 2024, MAC-clauses were used in just 7% of cases, a drop even below 2022 levels. This trend favours sellers.
- **Arbitration Clauses.** In recent years, the inclusion of arbitration clauses in PE transactions has experienced an upward trend. However, 2024 witnessed a notable reduction in their application. Despite this decrease, the advantages of arbitration clauses remain significant for PE investors, as demonstrated by their presence in over one-third of the PE deals reviewed in 2024. It is yet to be determined whether this decline will develop into a continuing trend or if it is simply a temporary fluctuation.
- **FDI Procedures.** The proportion of deals requiring foreign investment approval remained steady at 21%, reflecting ongoing protectionist trends with stricter FDI notification requirements. Despite this, the FDI approval process has shown efficiency gains, with all reviewed deals clearing within three months of application submission. Filings' motivations have shifted, with a notable 29% increase in applications aimed at pre-empting potential post-completion issues, possibly driven by expanded FDI regulation and/or a degree of uncertainty as to their application to the specific activities of the target business.

"In 2024, the private equity (PE) market in the Middle East remained relatively buoyant despite global challenges. The region saw a resurgence in confidence following the collapse of Abraaj, with the market continuing to mature and diversify. This maturation, coupled with a thriving economy, led to greater deal opportunities. Limited Partners (LPs) showed increasing interest in allocating funds to the region, and there was significant 'outbound' PE activity, particularly from Sovereign Wealth Funds deploying capital globally." CMS Middle East

- **W&I insurance.** The adoption of W&I insurance in private equity M&A transactions increased significantly from 30% in 2023 to 44% in 2024. Notably, the number of high value deals (over EUR 100m) taking up W&I insurance soared to 83% in 2024 (from 61% in 2023), while smaller deals (under EUR 25m) also experienced a substantial rise to 19% (from only 5% in 2023). Additionally, the insured sum in PE deals has trended upwards, with 56% exceeding 30% of the purchase price in 2024.

“While Warranty & Indemnity (W&I) insurance is not as commonly used in the Middle East as in other regions, it is becoming more frequent within the PE sector. This trend reflects a growing emphasis on mitigating risks associated with transactions.”

CMS Middle East

- **Purchase price adjustments.** Purchase price adjustments saw a marked rise to 42% last year (up from 35% in 2023). This is in line with the overall trend in the M&A market across Europe and the data appears consistent with a PE market where exists are still lagging behind and buy-and-build strategies are prevalent.
- **Earn-outs.** Despite seeing a small increase in the number of exits and secondary buyouts (which do not typically involve earn-outs) and competition among private equity funds for high-quality assets (leading to seller friendly terms), we have seen a consistent use of earn-outs in private equity transactions, remaining at 32% of all transactions. The use of earn-outs in private equity deals continues to be higher than in non-PE transactions, but the gap has reduced slightly during 2024. The popularity of bolt-on transactions from founder sellers continues to ensure that earn-outs are frequently used in PE deals.
- **ESG.** Private equity firms have universally adopted environmental, social, and governance (ESG) credentials and reporting, reflecting a significant shift towards responsible investing. However, ESG considerations currently filter through to the legal workstream in only a minority of deals, with ESG-focused legal due diligence present in just 12% of reviewed PE deals in 2024.

“The European Corporate Sustainability Reporting Directive (CSRD) has broadened disclosure requirements. Moreover, the Sustainable Finance Disclosure Regulation (SFDR) imposes significant reporting obligations on both companies and private equity firms. Meeting these standards demands additional legal expertise in an area that has traditionally been less regulated – a factor that is crucial for private equity firms given the increased focus on ESG in their investments.” CMS Sweden

- **Management Incentive Schemes.** Management incentive arrangements in reviewed transactions predominantly took the form of equity schemes (e.g., ‘sweet’ or ‘sweat’ equity), with a slight uptick in option schemes, while exit bonuses remained uncommon. Notably, 71% of deals retained existing management teams in some capacity post-transaction, indicating sustained confidence from sponsors in the acquired assets’ leadership.
- **Sellers’ and buyers’ negotiation strength.** Sellers have maintained a relatively strong negotiation position, as evidenced by the prevalent use of *de minimis* provisions (71% in PE deals) and liability caps (73% of deals > EUR 100m had caps < 10% of purchase price), which limit their potential post-transaction liability. Buyers have gained some ground, with a trend towards more buyer-friendly terms, including longer limitation periods for warranty claims (23% of deals now exceed 24 months), purchase price adjustments and a slight decrease in the use of “excess only” baskets, potentially increasing their ability to recover claims, especially in deals with W&I insurance.

Outlook

A mixed horizon

While 2024 has seen PE funds continuing their re-balancing exercise against the rapidly changing economic and market conditions and finding new and dynamic ways of adapting, 2025 started on a hopeful and positive outlook. Deal activity had been up in Q4 the previous year, interest rates started to reduce and stabilise, leading to the prospect of more large cap deals coming to market. The geopolitical environment, however, shifted again with the start of the Trump administration and is creating new uncertainties for investors to take into account. This may lead to a slower start to deal flow in 2025 than may have been originally anticipated.

This said, the pressure to deploy capital and exit investments is at an all time high, after the continuing fundraising challenges faced by LPs. Valuations seem to be going in a gently upwards direction, which is expected to start bridging the gap between buyers and sellers expectations and may lead to quicker and more successful execution of transactions, which in 2024 had been still predominately stop and start.

The private equity industry has time and again proven its adaptability and responsiveness and looks like it will need a lot of both to navigate what is to come in 2025.

“The market faces several challenges that impact overall transaction activity. Political and economic uncertainties related to EU-US relations, the war in Ukraine, regulatory changes, and increased competition from other investors are key factors that may reduce private equity activity in 2025. However, the situation is very dynamic, and it is possible that these issues will be resolved in 2025 in a manner that provides long-term stability for CEE and unlocks potential of the region.” CMS Poland

“Deal activity for new acquisitions is expected to pick up moderately, particularly in sectors benefiting from strong fundamentals such as healthcare, while exits may remain subdued until market conditions stabilise, potentially improving in the second half of the year if interest rates fall as expected and the geopolitical outlook improves.” CMS Germany

Sectors and investment ticket size

Deal activity in 2025 is likely to focus largely on the same sectors as in 2024. Life sciences/healthcare and technology, media & telecoms (TMT) seem to remain most favoured among PE investors, thanks to their non-cyclical nature and proven track record, with energy & utilities, business services and logistics, infrastructure and industrial anticipated to follow closely behind in terms of levels of interest.

“Our focus on healthcare and high-tech industrials is driven by attractive megatrends such as demographic changes and technological advancements. The healthcare sector, for instance, is expected to grow at a compound annual growth rate (CAGR) of 7% through 2025, fuelled by aging populations and increased healthcare spending. In the industrials sector, the DACH region offers a rich pool of target companies that are market leaders across various segments.” CMS PE Client

In terms of deal size, small-cap and mid-cap are expected to continue to dominate as in the last few years, although large cap transactions should also see at least a small increase thanks to the improving interest rates which have started to enable again leveraged deals. Secondaries will be more likely as a result, while the IPO market looks still unable to offer a reliable avenue for exits this year.

Artificial intelligence

As expected, the implementation of AI solutions saw a material uptake in 2024, with most funds having now undertaken some degree of roll-out of AI-powered software, enabling faster and more thorough deal sourcing and due diligence processes. We expect these tools will be embedded across investment teams in the course of 2025 and that PE funds will start looking more closely at how their portfolio companies are capitalising on the power of AI. Adoption at portfolio company level, where the target is not itself a tech company leading on these advancements, will likely be a growing focus, as PE funds look to ensure value creation and cost efficiencies across their investments during these difficult market conditions.

“Technology and AI are increasingly relevant for our portfolio companies, offering opportunities to streamline processes and enhance efficiency. We are implementing AI within our fund itself to automate company analysis and improve decision-making.” CMS PE Client

“Our sourcing methods have been strongly influenced by new AI tools and technologies, it has become something we use daily. We are currently looking at methods to efficiently implement similar tools in our portfolio companies.” CMS PE Client

Access to debt capital

With lowering interest rates, access to debt appears to be finally stabilising. This will be a very positive step towards promoting deal flow, as it will not only benefit the large cap deals in need of leveraged finance, but also the broader low-to-mid market segment, giving more flexibility with deal structuring and also allowing PE funds some interim recaps and proceeds distributions pending the long-awaited exits. Access to debt is also becoming more flexible, with a rising number of debt-focussed PE funds offering an ever-growing range of alternatives to mainstream banks, operating in a much more nimble fashion, albeit at a more expensive price point. 2025 is therefore likely to see a rise in the private debt offering and the launch of new debt funds trend that started in 2024 to continue.

“We expect financing conditions to remain stable in 2025, allowing for reasonable leverage levels where appropriate.”

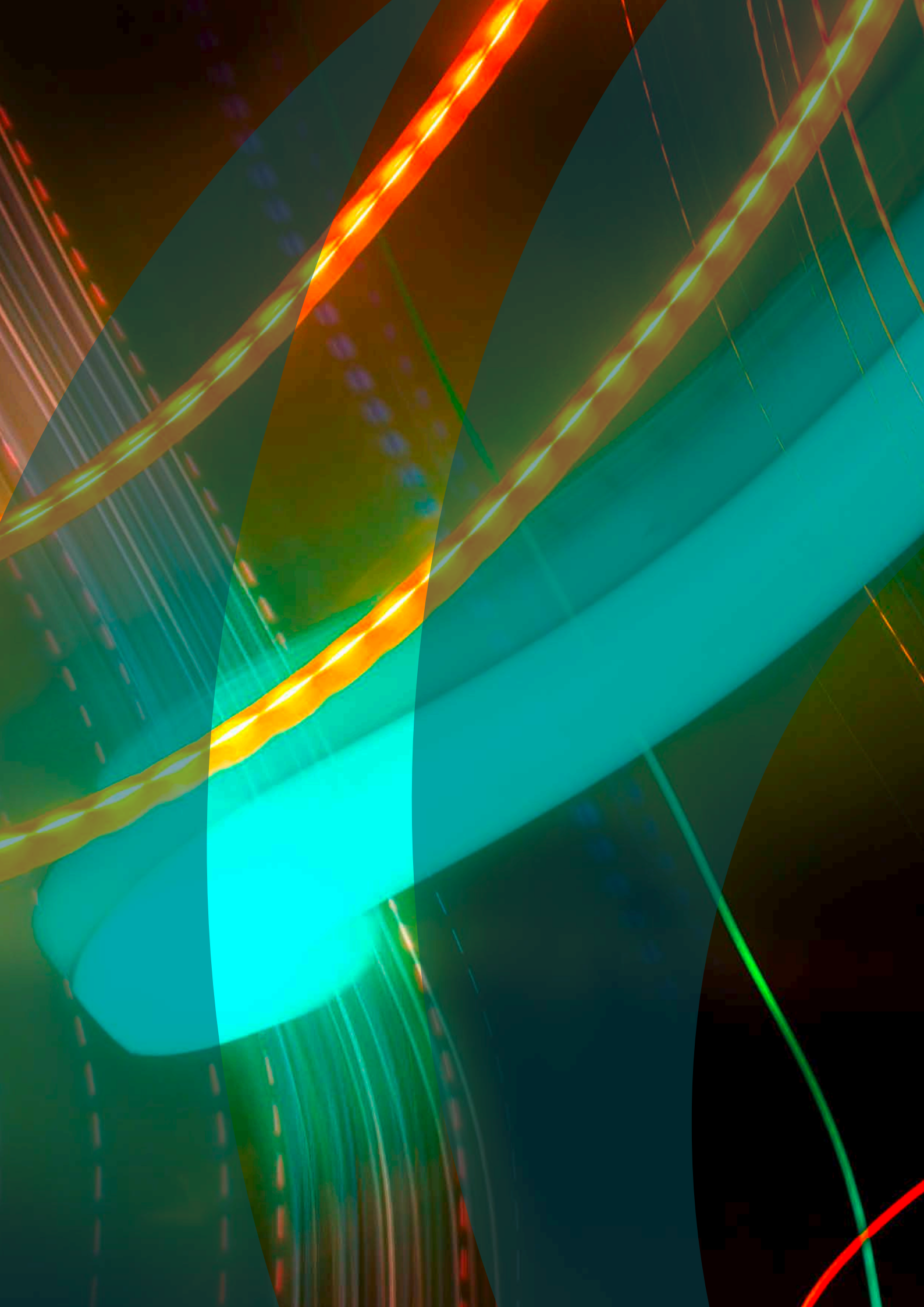
CMS PE Client

“We believe that debt financing will become cheaper over the course of 2025 (see Q.1), which should alleviate cash flows for new investments planned for this year.”

CMS Austria

Sharing value creates value

PE funds have always been acutely aware of the importance of aligning interests with management and investing in the teams that are in charge of the day-to-day running of their investments. In recent years we have seen private equity funds looking more holistically at portfolio companies' employees and widen the pool of recipients of the incentives/promoting the set-up of employee incentives targeted at the wider workforce, rather than just the management team. It will be interesting to see whether 2025 will see a continued push by LPs to have part of carry submitted to performance under certain KPIs and the alignment between carry performance KPIs and management KPIs in turn. The range of options available to implement incentives is becoming more flexible and tailored, from the classic share scheme, to bonuses allowing to use part of the proceeds to buy shares, to profit-sharing schemes linked to EBITDA results. PE funds will be making sure they partner with a management team that looks after the employees and will then empower them to find the best way to share and boost commitment and engagement, which will ultimately deliver value.





Overview

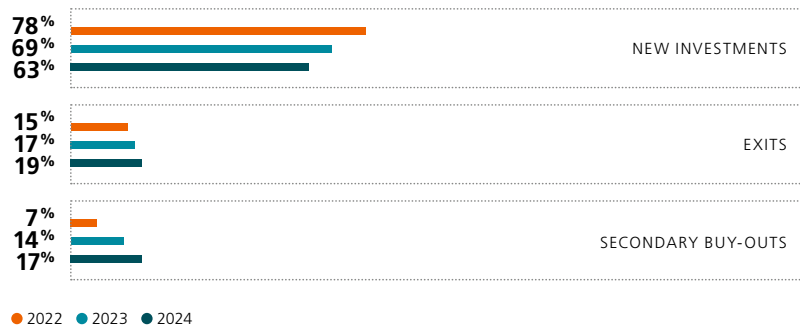
The background of the slide is a photograph of a bridge at night, likely the Golden Gate Bridge, with its lights reflecting on the water below. The image is overlaid with a semi-transparent orange filter. The bridge's structure, including its towers and suspension cables, is visible against the dark sky. The water in the foreground shows some reflections and a few small lights. The overall mood is serene and urban.

Deal activity and overall market trends

Although the M&A market still faces many challenges, the number of PE deals in 2024 has increased compared to 2023.

While PE investors have continued to make more new investments than exits, the gap has been reducing compared to 2023, with PE investors becoming a little more active on the selling side. The increase in secondary buyouts in 2024 compared to 2023 is less significant, but still noticeable. However, at 63%, new investments continue to be the most important mode of operation for PE investors.

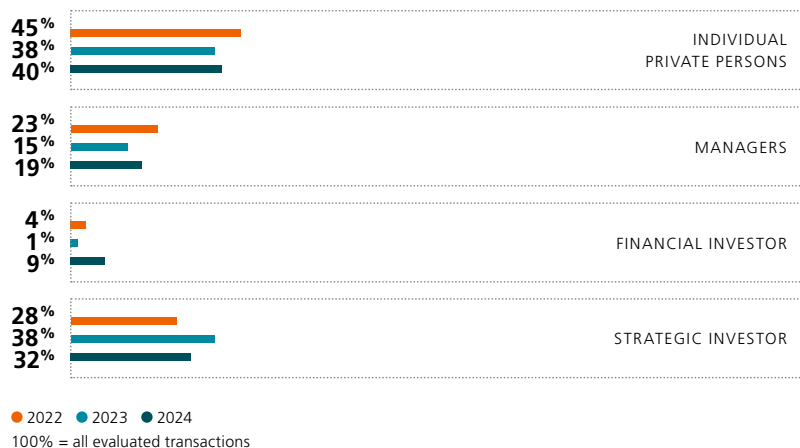
PE M&A activity: new investments, exits or secondary buy-outs



“We have seen a strong resilience and signs of recovery in the deal activity with an increase in deal volume for Q4 2024.”
 CMS Sweden

Looking at only the buy-side PE deals analysed, in 2024 the sellers remained predominantly founders/high net worth individuals and strategic investors. However, we observed a significant increase in both buy-outs from managers and financial investors, the latter with a substantial jump from 1% to 9%.

Sellers’ background (PE is the buyer)

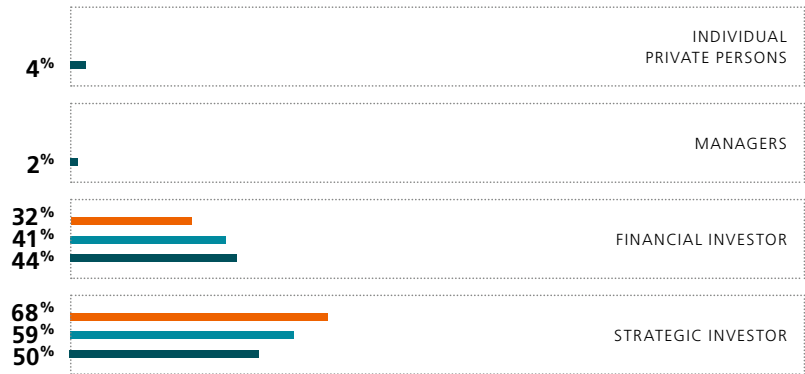


“Sellers are responding to market uncertainty by allowing more investors to participate in later stages. This approach is meant to protect or improve the chances of successfully signing the transaction. By involving more investors, sellers aim to reduce the risk of the transaction failing and increase the likelihood of securing the necessary funds.” CMS Poland

In case of the sell-side PE deals we reviewed, in 2024 there was a slight increase in sales to financial investors and a more noticeable decrease in sales to strategic investors compared to 2023: This is consistent with the slight uptake in secondaries.

As in 2023, almost all of the deals we analysed in 2024 (93%) were structured as share deals (as opposed to asset deals), and in most cases (89%) the buyer acquired the majority or all of the shares in the target company.

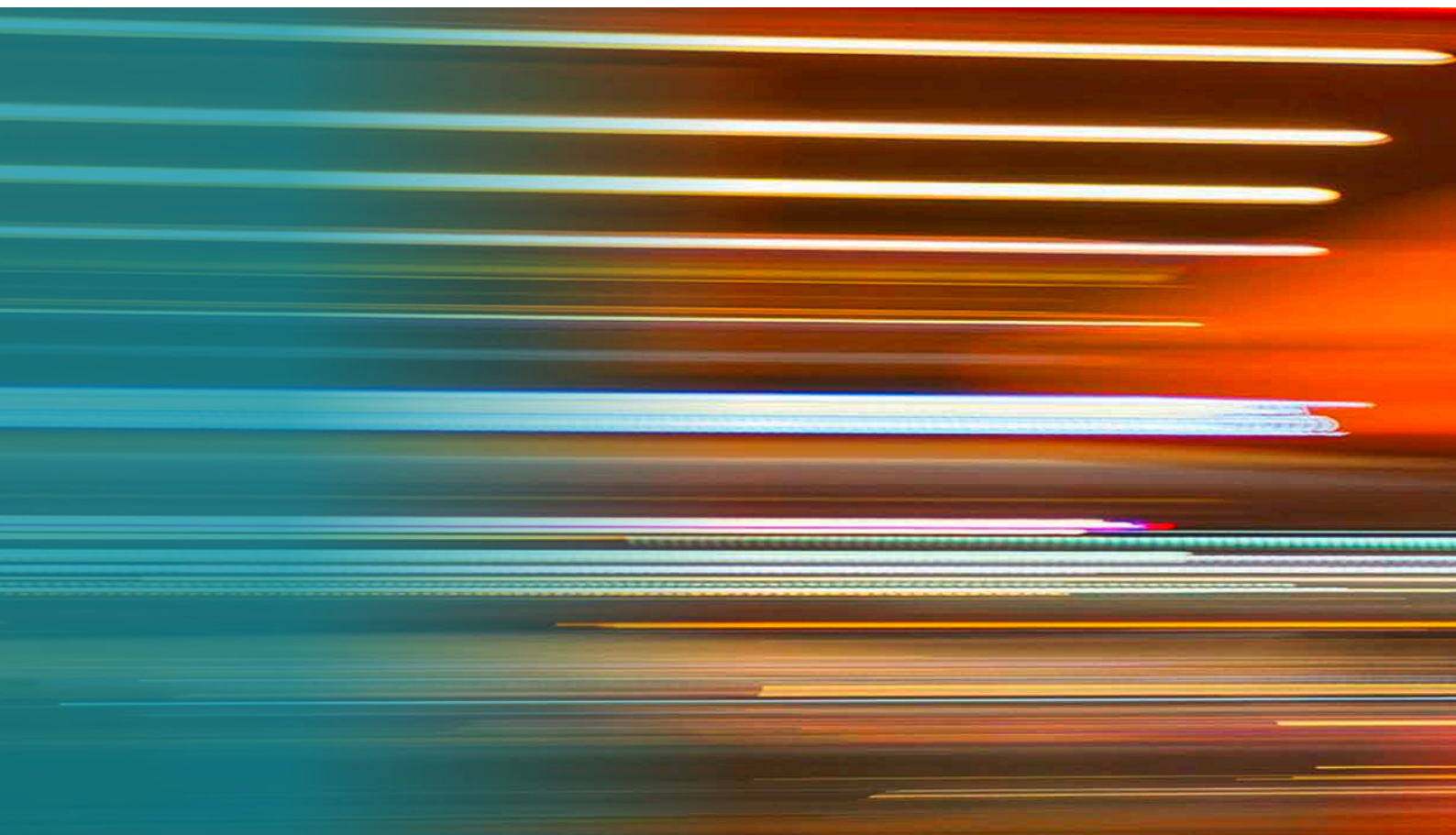
Buyers' background (PE is the seller)



● 2022 ● 2023 ● 2024

100% = all evaluated transactions, multiple nominations possible

In several transactions parties from more than one particular group of sellers' or buyers' were involved.



2024 still saw a significant amount of add-on acquisition activity, but there is a clear downwards trend unfolding: while around 55% of PE buy-side deals in 2022 were add-ons, this dropped to 50% in 2023 and 44% in 2024.

Was the transaction an add-on acquisition: time trend

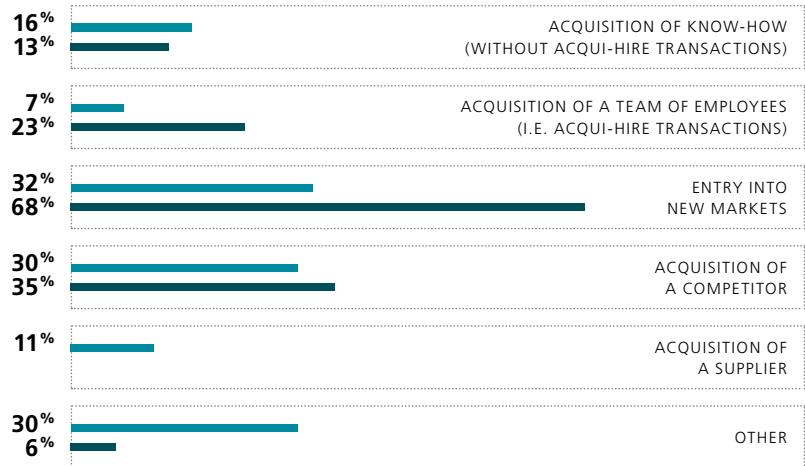


“The Swedish PE market has during 2024 been showing signs of recovery from macroeconomic challenges and a period of elevated inflation and interest rates. While we have seen economic headwinds (e.g., delayed economic recovery and global economic fragmentation and uncertainties), there have also been indications of recovery and the PE market has been persistent. As the interest rates have been cut multiple times during 2024 by the Swedish Central Bank we are seeing a small but increasing rise in the activity of the PE market. We expect that the combination of the lower interest rates and a strong, export-driven economy will further enhance the attractiveness of the Swedish market.” CMS Sweden

Main deal drivers

By far the most important deal driver for PE deals in 2024 was entry into new markets, with the percentage doubling compared to 2023. Another significant increase in percentage was observed for the acquisition of a team of employees (from 7% in 2023 to 23% in 2024). Acquiring a competitor was also cited as an increasingly important driver for PE deals.

Main deal drivers



● 2023 ● 2024

100% = all evaluated transactions, multiple nominations possible

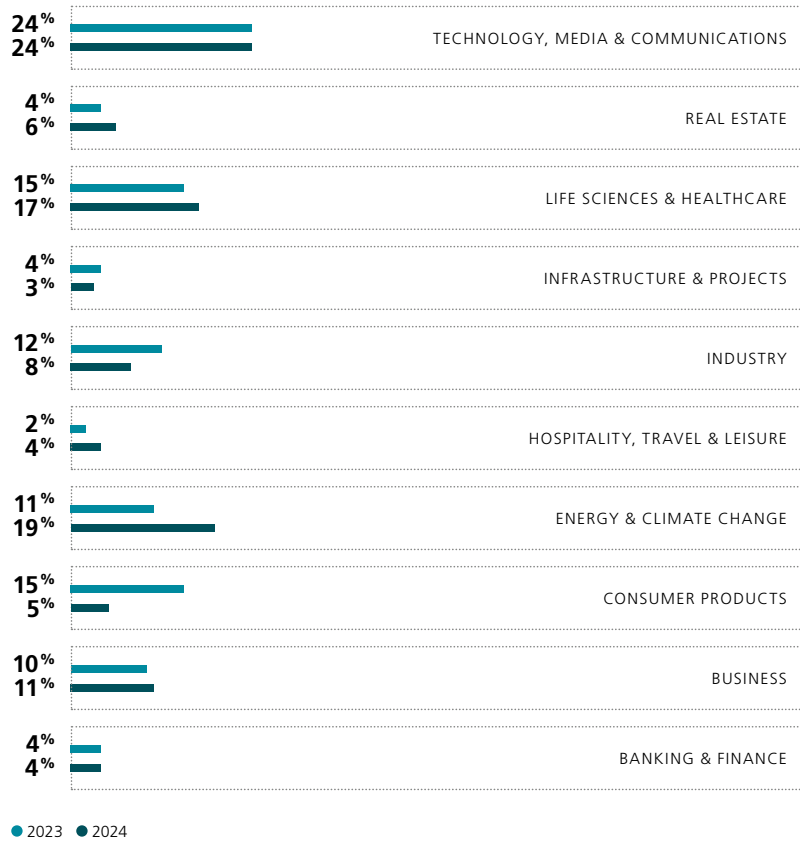
“As the PE market matures, competition among PE funds for high-quality assets may intensify, potentially driving up valuations and making it harder to find attractive deals.”
CMS Middle East



Sectors

Similar to 2023, most of the deals we analysed were in the Technology, Media & Communications sector (24% of all deals we analysed). The next busiest sector, and the one that grew the most compared to 2023, was Energy & Climate Change (up eight percentage points). There was a significant decline in deal activity in the Consumer Products sector (down ten percentage points). Deal activity in Real Estate increased by two percentage points, after a significant decline in previous years. More details on the sector distribution can be found in the chart:

Sector spread for PE deals by number of deals

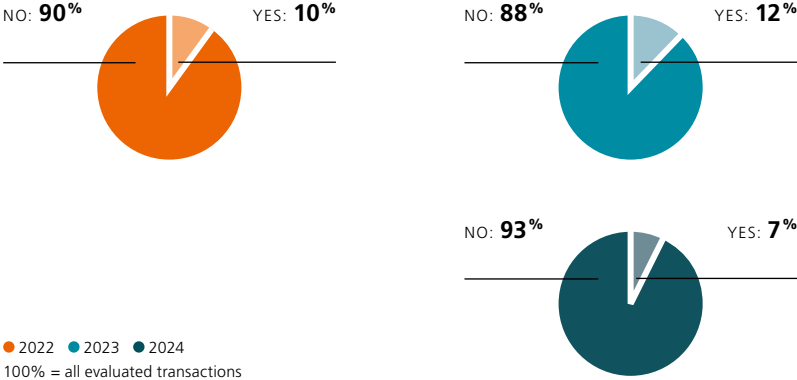


“The key question is whether ongoing economic uncertainty will continue to dampen market sentiment. This will depend to some extent on how geopolitical conflicts can be managed and how quickly a new government can be formed and provide positive economic impetus. These impulses could come from increased investment in defence and infrastructure (including power plants, networks, transport and healthcare), tax cuts, cutting red tape, reducing energy costs and creating investment incentives, to name but a few items on the political agenda. The current environment, with its remaining uncertainties, may lead to a focus on value creation and operational improvements, with longer holding periods due to less predictable exit opportunities.” CMS Germany

Use of MAC-clauses

The use of MAC-clauses decreased significantly in 2024, even below the 2022 level – they were used in only 7% of cases, which is a seller-friendly development.

MAC-clauses: time trend



In the US market, however, the situation has been quite the opposite for years: MAC-clauses are very much the norm and are included in almost every US deal (98% of cases, up one point on last year).

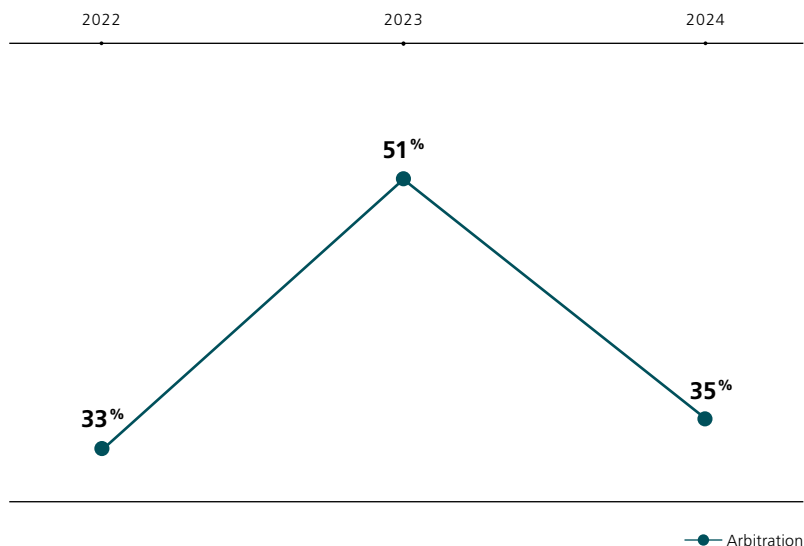
MAC-clauses: Europe/US 2024



Use of Arbitration clauses

After an upward trend in the use of arbitration clauses in PE deals in recent years, the number of such deals decreased significantly in 2024. With an arbitration clause, the parties refer future disputes to an arbitration panel/tribunal. The main advantages of arbitration over litigation are that (i) the parties can choose the arbitrators to a certain extent, thereby ensuring that their dispute is resolved by experts, (ii) the resolution of the dispute is likely to take less time and (iii) the dispute can be kept confidential. These benefits are still important to PE investors, as an arbitration clause was agreed in more than a third of the PE deals we reviewed in 2024. However, it will be interesting to see whether this decline becomes a trend or is just a one-off fluctuation.

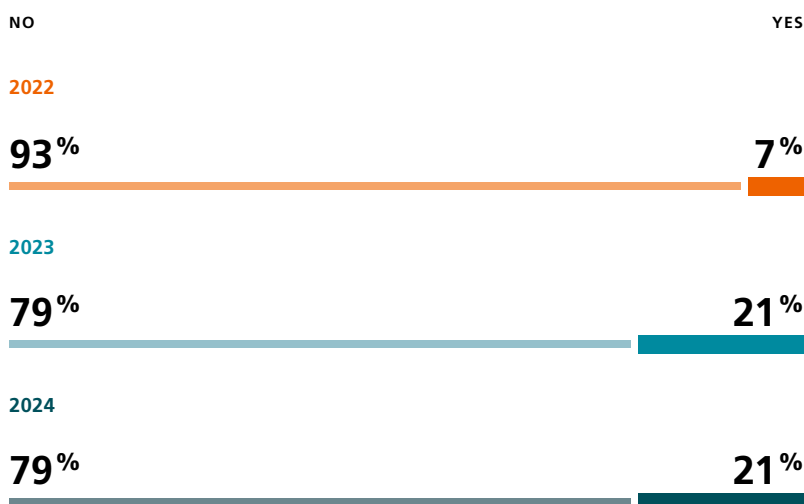
Arbitration: Trend index 2022–2024



Foreign investment control

The number of deals in 2024 which sought approval for foreign investment has remained consistent with 2023 at 21% and reflects the ongoing global trend towards greater protectionism. This has manifested in a number of different ways, including stricter mandatory FDI notification requirements and increased powers of relevant authorities to intervene in a transaction at various deal stages.

Were any FDI approvals or clearances sought?



The following chart shows that the duration of FDI approval procedures has decreased since 2023, suggesting efficiencies in the approval process as the FDI regime continues to mature. In all of the PE deals that we reviewed, clearance was provided within three months of submission of the application for approval.

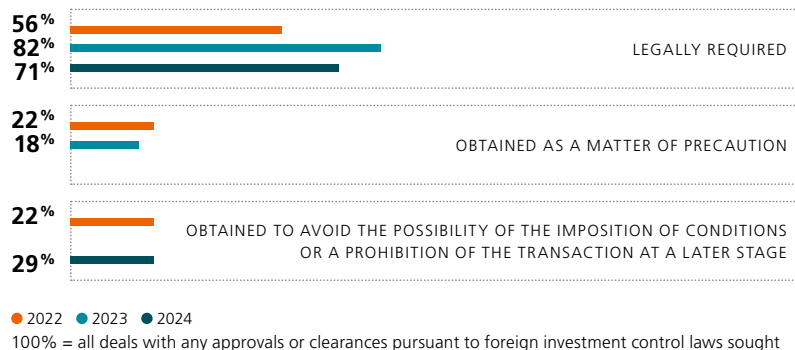
Time between application and approval or clearance



“While the number of PE deals subject to FDI filings has steadily increased over the past few years, private equity investors are not usually in the spotlight of government scrutiny of FDI regimes, so deals tend to be approved.”
 CMS Germany

The motives for FDI filings have continued to evolve in 2024 as shown in the chart. In 71% of cases, the filing was considered to be legally required, which is a slight decrease compared to 2023 in respect of which 82% of the filings were considered to be legally necessary. Interestingly, there was also a decrease in the number of filings that were made in 2024 as a precautionary measure but this was coupled with a 29% increase in the number of applications that were made to avoid the possibility of subsequent conditions or a subsequent prohibition. This increase may be a consequence of the expansion of the sectors in which FDI regulation applies or may indicate a shift in the risk appetite of investors who wish to avoid the possibility of a transaction being “called in” and potentially unwound after completion.

The FDI clearance/approval was:

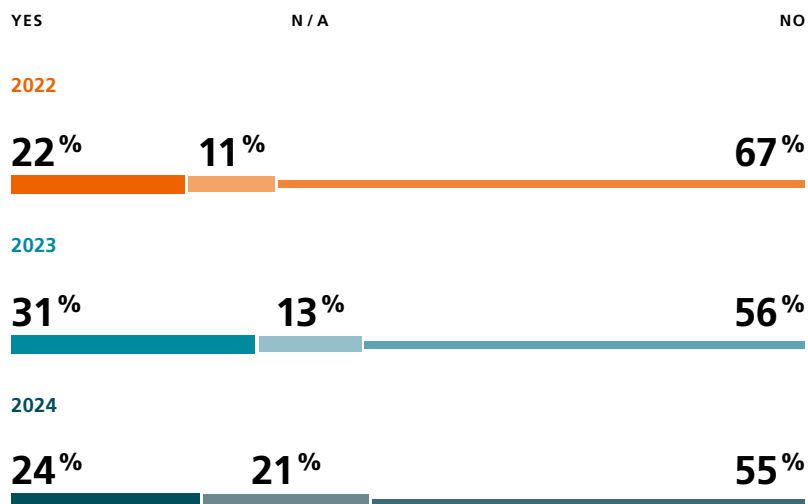


“The regulatory landscape for investments in Sweden has during 2024 shifted towards stricter control by authorities and increased regulatory review. A more stringent foreign directive investment regime was introduced in December 2023 leading to a substantial increase in regulatory review by authorities of transactions on the Swedish market during 2024. The new FDI regime entails that even a small 10% minority investments may trigger regulatory review as long as the business of the target is considered to have a function “vital to society” (e.g. energy, telecoms, healthcare, high-tech). This means that PE firms need to be more foresighted and apply a more generous time plan when making investments in certain businesses.” CMS Sweden

Transaction Process

2024 saw a decrease in the number of auctions or bidding processes for PE deals compared to 2023, with numbers returning to 2022 levels.

Was the sale of the target company preceded by an auction or bidding process?



“Private equity investors are being more careful about investing substantial resources on transactions because the process takes a long time. This caution is due to the uncertainty of whether the transactions will be completed. Investors prefer to wait until it is more certain that the transaction will be signed before incurring significant costs.” CMS Poland

We examined the impact of auctions or bidding processes on competition between interested buyers. After a significant increase in 2023, the number of auctions or bidding processes leading to negotiations with several interested buyers returned to levels similar to 2022 (56%).

Were parts of the transaction conducted in parallel with several interested buyers?

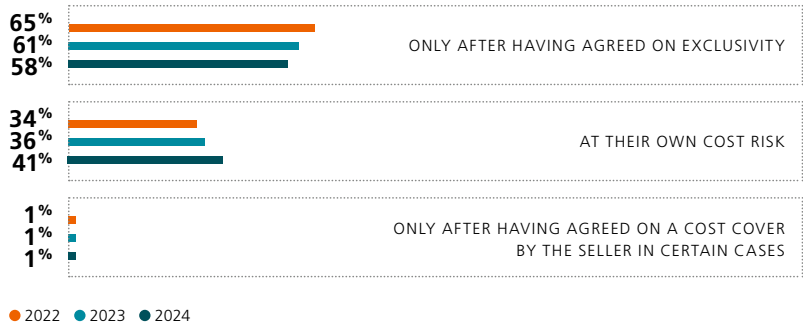


All deals where sale of the target company preceded by an auction or bidding process.



Looking at buy-side PE deals only and the preconditions demanded by buyers before starting due diligence, the most important precondition for buyers (58% in 2024) remains to start due diligence only after agreeing on exclusivity with the seller. Again, only in very few cases (1% in 2024) did due diligence start after the seller had agreed to some form of cost recovery. Following an increase in 2023, there was also a slight increase in 2024 in the number of cases where buyers started due diligence at their own cost and risk (and without any assurances from the seller). This shows how investors are making every effort to explore possible opportunities in an environment where good assets are not easy to come by and undertaking some level of due diligence is necessary to take a final view on whether to commit or not to an acquisition.

Did the buyer commence the due diligence?



“In the execution phase clients tend to be more prudent than in the past, even the small/moderate issues are faced directly as to avoid any risk.” CMS Italy





Liability

This chapter of our PE study provides an overview on how sellers most commonly seek to contractually limit their liability in respect of the company or business they have sold and what limitations are most commonly agreed between the parties. If warranties and indemnities (W&I) insurance coverage was obtained for the transaction, this obviously has a direct effect on the liability clauses included in the sale and purchase documents, as the policy will supersede anything agreed between buyer and seller in the contract and in some cases the sale and purchase agreement will be aligned with the policy excess and limits, while in other cases the sale and purchase agreement may simply limit liability to a nominal amount on the basis that if needed the buyer will have recourse via the insurance policy. For the purpose of the below analysis, unless otherwise expressly stated, PE deals covered by W&I were included as part of the overall PE data pool, which means that the results may be somewhat skewed towards the seller-friendly side as a result of W&I cover (i.e. in the absence of W&I, a more buyer-friendly limitation may have been agreed).

W&I

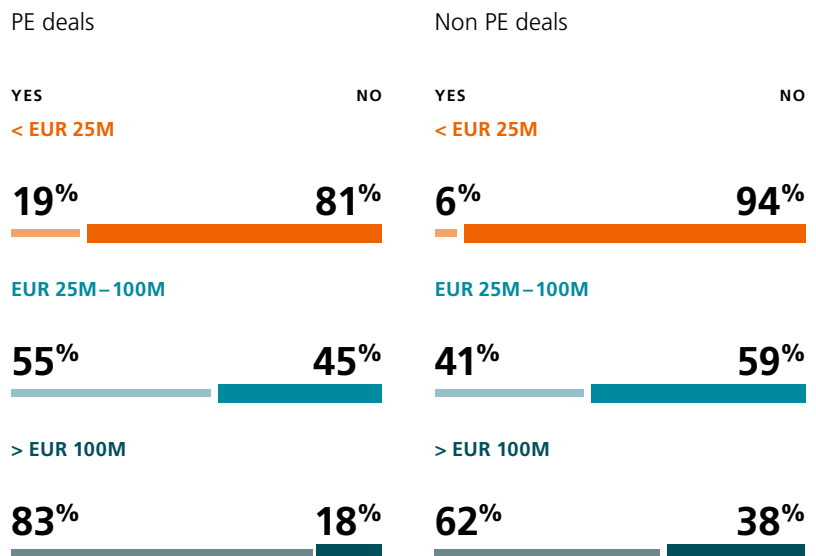
Once again, our PE study shows that W&I insurance plays an important role in PE M&A transactions. The number of PE transactions analysed in which W&I insurance was taken out increased by 14 percentage points, from 30% in 2023 to 44% in 2024 – an even more significant increase than from 2022 to 2023 (eight percentage points).

Was W&I insurance used on the transaction?



Our data not only continues to show that W&I use in general became more popular over the last years but also that W&I use increases exponentially with deal value, and this is still even more the case for PE deals than non-PE deals. In deals with a value of more than EUR 100m, W&I insurance was used in 83% of PE transactions in 2024 (a significant increase compared to 61% in 2023 and also to 73% in 2022), while in trade M&A deals in the same value bracket 62% used insurance (which is also a significant increase compared to 37% in 2023 and 57% in 2022). W&I insurance remained less common on small deals (where deal value was below EUR 25m), however the use of insurance on small deals increased from only 5% in 2023 to 19% in 2024, possibly due to economic uncertainties in the market.

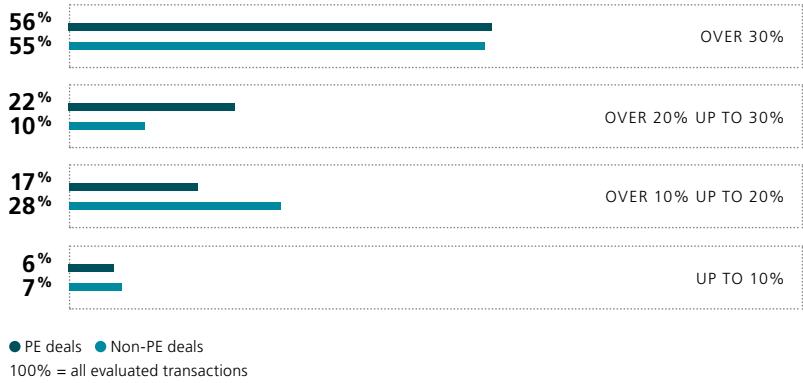
Deals with W&I insurance by purchase price



100% = all evaluated transactions

The insured sum has also increased across PE deals. In the majority of cases (56%), the insured sum in was more than 30% of the purchase price, which is a considerable increase compared to 2023 where such figure was 29%. The data is in line with that for non-PE deals with W&I insurance in 2024, where such figure was 55%. In only 22% of the PE deals, the insured sum was between 20% and 30% of the purchase price in 2024 (10% in non-PE deals).

Level of coverage as a % of the purchase price



Where known, the level of premium does not exceed 1% of the purchase price in 42% of the cases (which is almost equal in non-PE deals, at 48%). Consistent with 2023, none of the premiums in the PE deals analysed exceeded 2% of the purchase price. Contrary to 2023, where 21% of the non-PE deals analysed exceeded 2% of the purchase price, none of the premiums in the non-PE deals analysed exceeded 2% of the purchase price in 2024. This clearly shows an overall reduction in the cost of W&I compared to two years ago, which is encouraging.

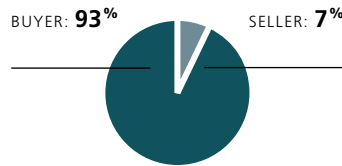
Level of premium as a % of the purchase price



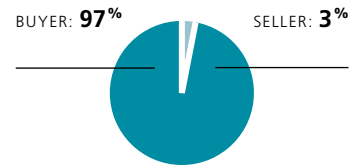
In the vast majority of cases, the buyer continues to take on the cost of the insurance policy. Contrary to 2023, the number of cases where the seller paid the insurance premium was lower in non-PE deals compared to PE deals (only 3% in non-PE deals in 2024 vs. 7% in PE deals in 2024). This marks a change in ratio from 2023, where the number of cases in which the seller paid an insurance premium was lower for PE deals compared to non-PE deals.

W&I premium paid by?

PE deals



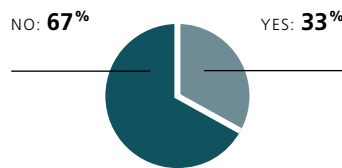
Non-PE deals



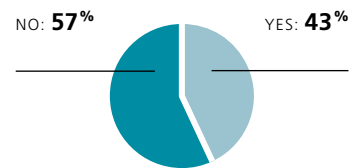
In the majority of PE deals (67 %) the non-purchasing party still did not bear a portion of the W&I insurance costs. However, this figure considerably decreased compared to 2023 (87%). This might be a result of the buyer-friendly market. In non-PE deals the percentage of deals in which the non-purchasing party had to bear a portion of the cost in 2024 slightly increased to 57% compared to 2023 and was at a similar level to PE deals in 2024.

Did the non-purchasing party bear a portion of the costs?

PE deals



Non PE deals



"In the Middle East, W&I insurance is less common compared to other regions. PE funds in the Middle East often invest using equity only, with acquisition financing being relatively rare. This contrasts with the general trend in Europe, where W&I insurance is more prevalent, especially in high-value deals. The focus in the Middle East is more on creating value through operational improvements rather than financial engineering." CMS Middle East

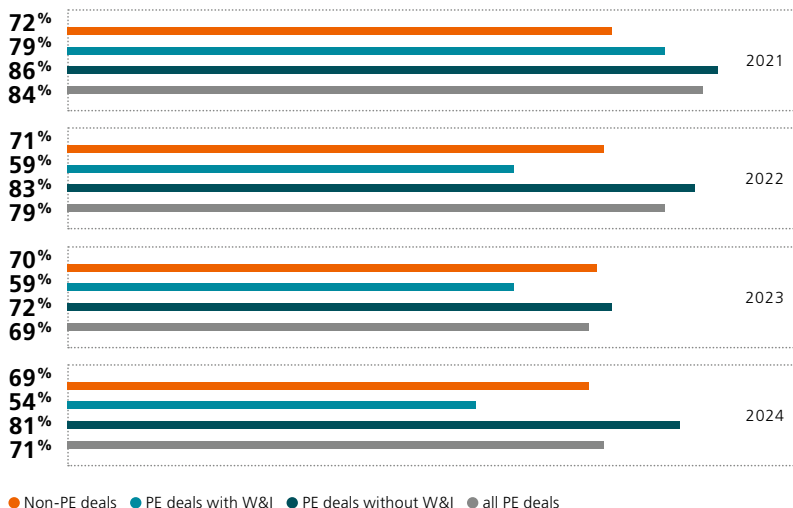


De minimis

Most M&A agreements include a so-called *de minimis* provision, i.e. they provide that the buyer cannot assert certain warranty claims if their value falls below an agreed minimum amount. If the amount of a warranty claim is lower than the *de minimis* amount, then the claim is automatically excluded. The seller is thus protected from potential liability for small claims. However, agreeing on a *de minimis* may not be appropriate for deals with full W&I insurance cover, as the W&I insurance policy itself will govern how small value claims are dealt with if they are excluded.

While the use of *de minimis* in non-PE deals slightly decreased from 2023 to 2024 (from 70% to 69%), there had been a slight increase in the use of *de minimis* in PE deals from 2023 to 2024 (from 69% in 2023 to 71% in 2024).

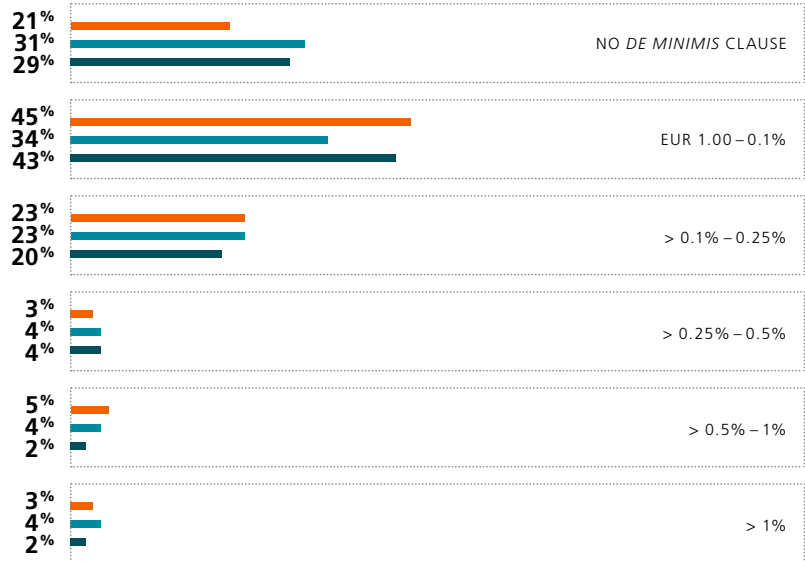
Use of *de minimis* trend



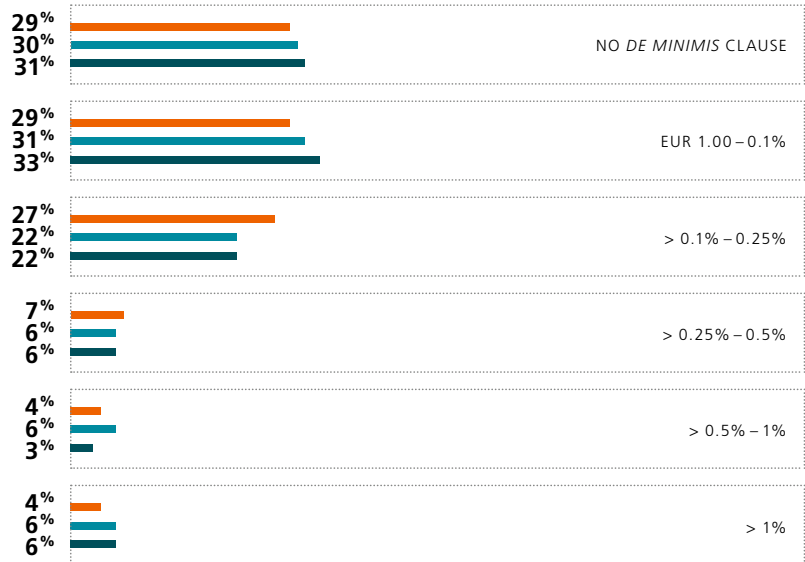
Where a *de minimis* was agreed, in PE deals the amount was between EUR 1.00 and 0.1% of the purchase price in 43% of the transactions (a considerable increase compared to 34% in 2023), and in another 20% of PE deals it ranged between >0.1% and 0.25% of the purchase price (a slight decrease compared to 2023), with an overall 28% of transaction with a *de minimis* above 0.1%. In contrast, non-PE deals achieved a *de minimis* of less than 0.1% of the purchase price in 33% of transactions, leaving 37% of deals with a *de minimis* in excess of 0.1% of the purchase price, a much more buyer-friendly position. This may be indicative of the lower risk profile of the targets attracting PE investment, which translates in overall better terms for sellers.

De minimis amount (as a % of the purchase price)

ALL PE DEALS



NON-PE DEALS



● 2022 ● 2023 ● 2024

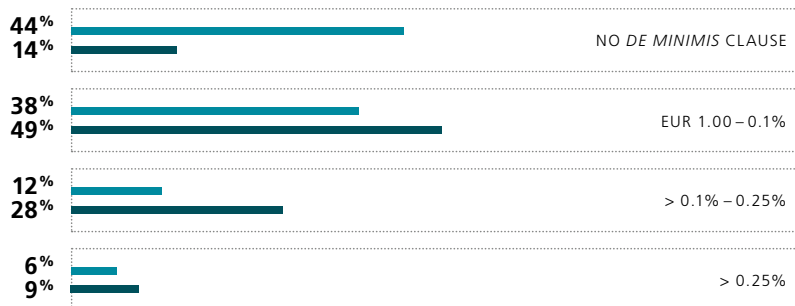
“It is worth noting that many PE funds are under pressure to sell portfolio companies as their respective funds reach the end of their lifecycle. There is also a lot of dry powder in the market. Both factors point to a backlog of deal activity, which is bound to lead to more deals in the near future.”
 CMS Germany

In nearly half of PE deals with W&I insurance (44%) in 2024, the parties did not agree a *de minimis* at all. This, we assume, would have been on the basis that the W&I policy would have been left to deal with *de minimis* thresholds where applicable and the parties wanted to avoid any conflicting provisions or any possible cutting across more favourable terms (from a buyer’s perspective) provided within the W&I policy.

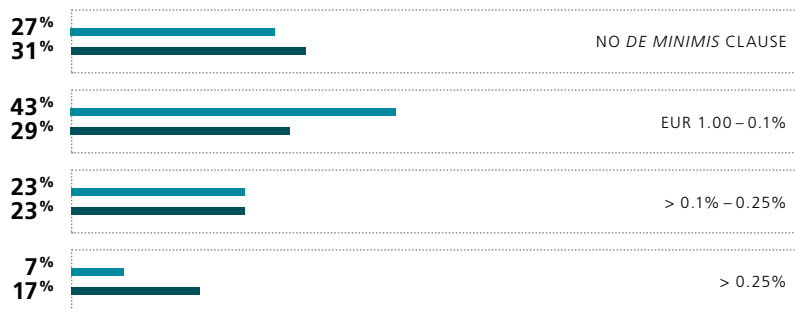
Where *de minimis* and W&I was agreed, the amount was between EUR 1.00 and 0.1% of the purchase price in approximately 38% of the transactions (a slight decrease compared to 45% in 2023), and in another 12% of PE deals it ranged between >0.1% and 0.25% of the purchase price (a considerable decrease compared to 23% in 2023).

**De minimis amount (as a % of the purchase price):
W&I deals vs non-W&I deals**

ALL PE DEALS



NON-PE DEALS



● W&I deals ● non-W&I deals

“Buyers have generally had a tendency of a cautious approach in the negotiations of transactions. This has been evident in both the due diligence process and the valuation and payment mechanisms used. We have also seen a rise in the use of W&I insurances in Swedish PE transaction which further implies that buyers have a more cautious approach.” CMS Sweden

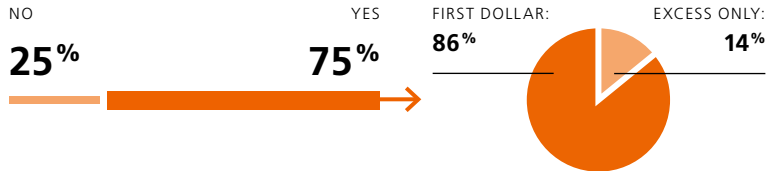
Baskets

Most M&A agreements have a basket provision, which prevents warranty claims from being made where the total amount claimed in respect of all warranties is less than an agreed 'basket' amount. This is often agreed as a percentage of the purchase price. With a 'first dollar' basket, the buyer can recover the whole amount subject of the claim once the claim exceeds the basket amount. In contrast, an 'excess only' basket provides that the buyer is entitled to recover only the part of the claim that exceeds the basket amount. For deals with full W&I insurance cover a basket provision may not be required, as this is reflected in the W&I insurance policy itself. The overall use of baskets has decreased in 2024 compared to 2023 and the share of "excess only" vs. "tipping" (also referred to as "first dollar" basket) has also slightly decreased in 2024, after having remained stable over the previous three years.

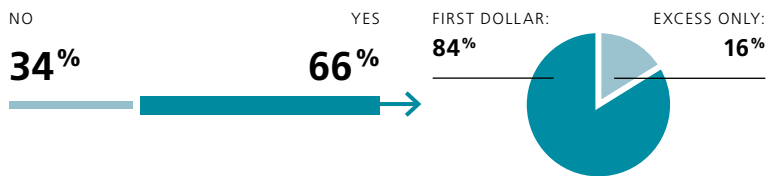
Where a basket was agreed, parties in the majority of PE deals agreed on a basket amount over 0.5% and 1.5% in 2024, similar to 2023, although last year saw a decrease in the lower end of the percentage and a sharp spike in the 0.75% to 1% range. On the other hand, cases where parties have agreed baskets above 3% of the purchase price have significantly decreased (only 3% in 2024 compared to 7% in 2023).

Use of basket trend

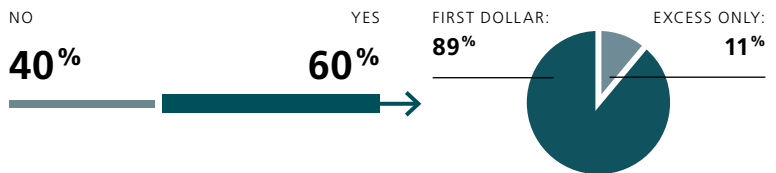
2022



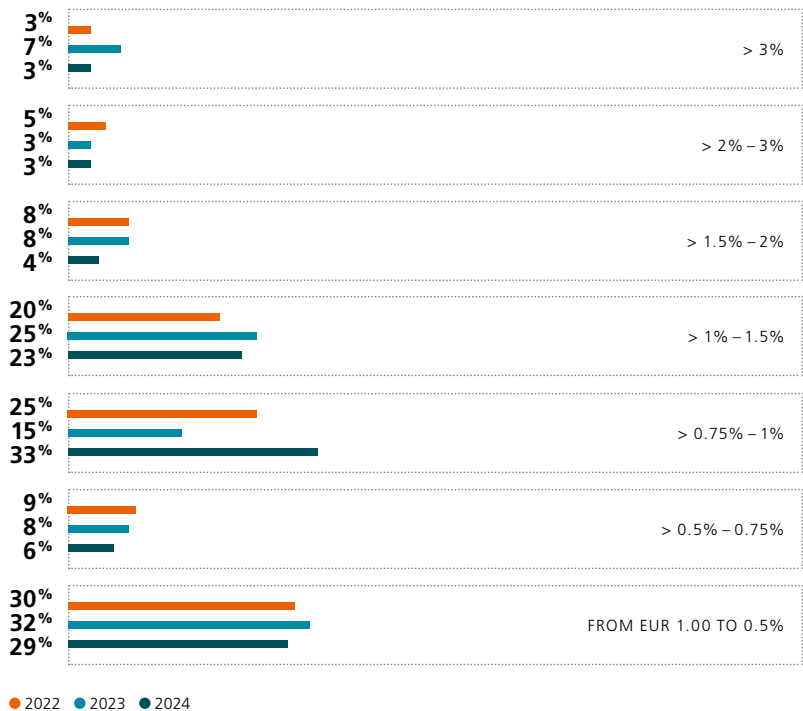
2023



2024

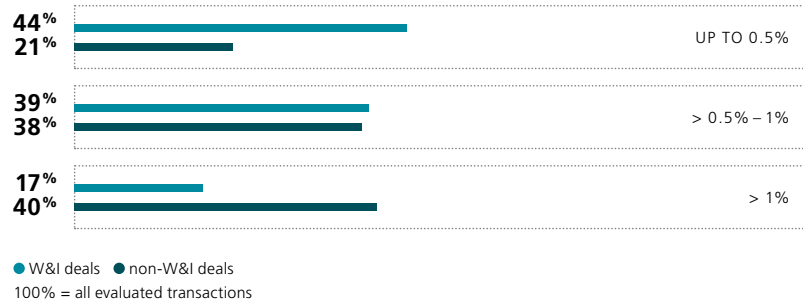


Basket amount (as a % of the purchase price)



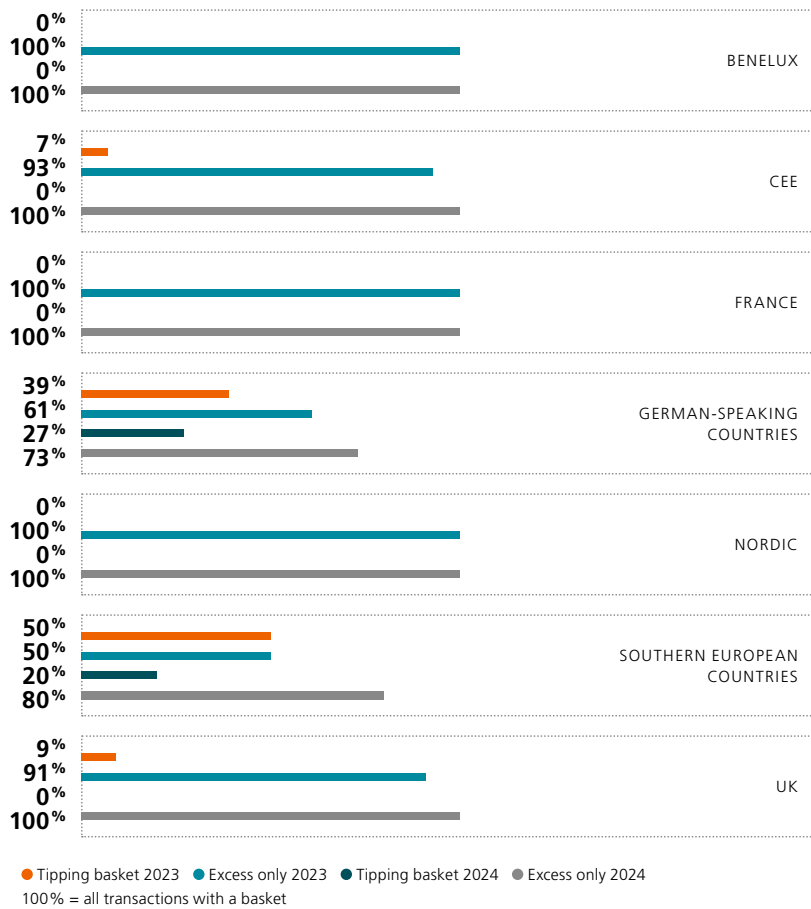
Baskets in deals where W&I was secured have continued to be lower than in PE deals without W&I insurance (which might correlate with the fact that baskets are generally relatively higher in deals with a lower transaction value).

Basket thresholds: W&I deals vs non-W&I deals



The share of “excess only” baskets continues to be significantly higher than “tipping” baskets across all geographies, with all of our Benelux, France, CEE, UK and Nordic deals and the vast majority of our deals in Germany – and now also Southern European countries – featuring a “excess only” basket.

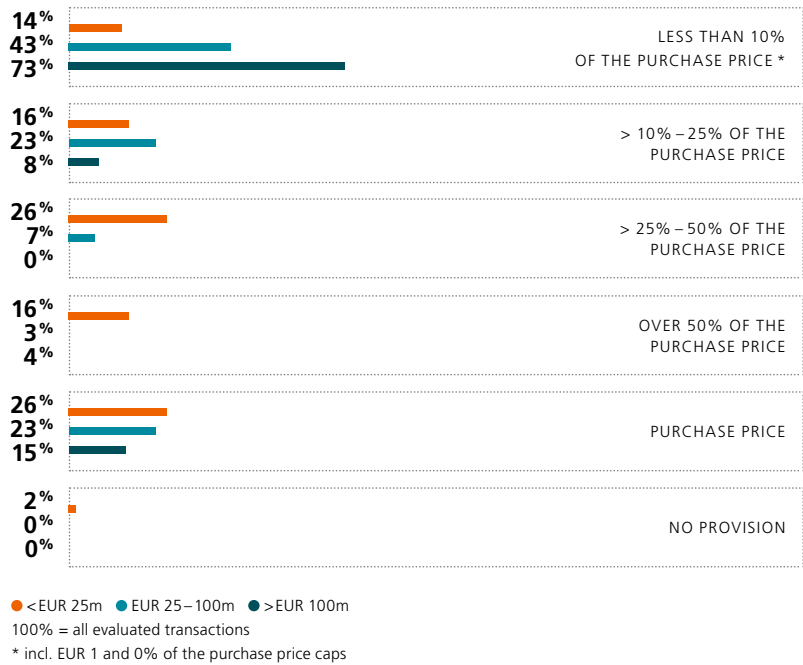
Excess only basket vs tipping basket by geography



Liability Caps

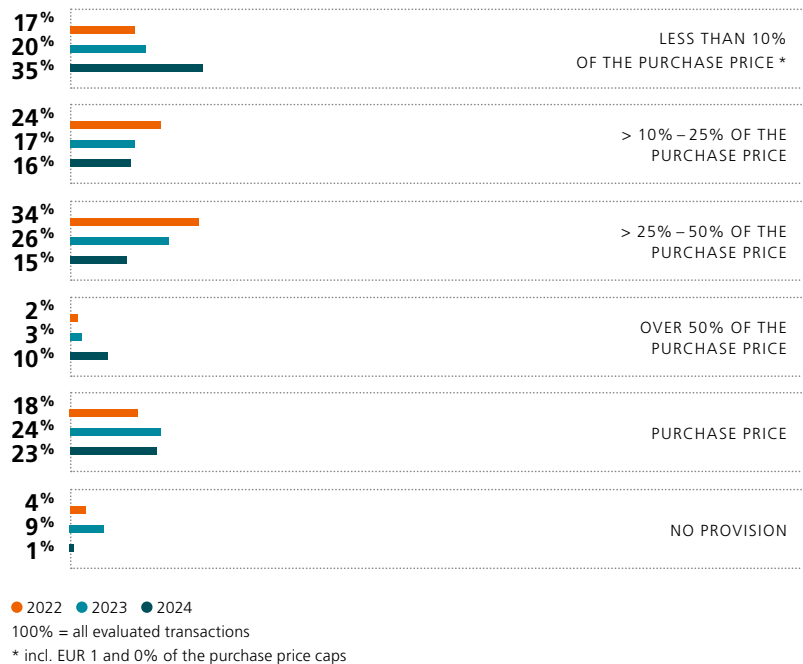
When it comes to monetary liability caps, the 2024 data confirmed again that there is a direct correlation between deal value and cap amount. Specifically, the higher the purchase price, the lower the percentage of the cap. In 73% of the deals with a purchase price higher than EUR 100m, the cap was lower than 10% of the purchase price (compared to 48% in 2023 and 60% in 2022).

Liability caps by purchase price



The number of deals with a cap of less than 10% of the purchase price has considerably increased between 2023 and 2024 from 20% to 35%. This likely correlates with the increased use of W&I insurances in 2024 compared to 2023.

Liability caps time trend

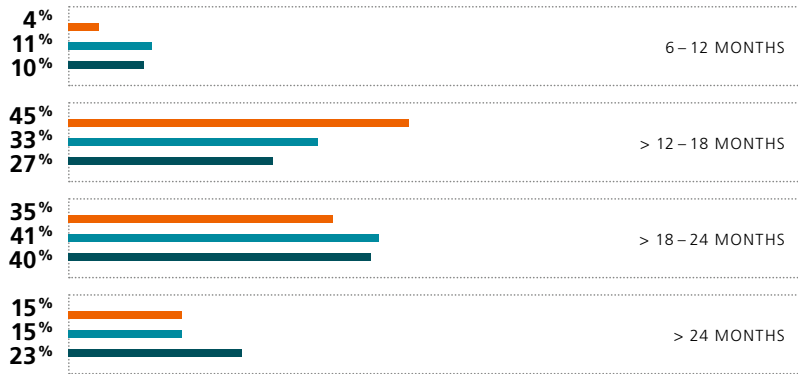


Limitation Periods

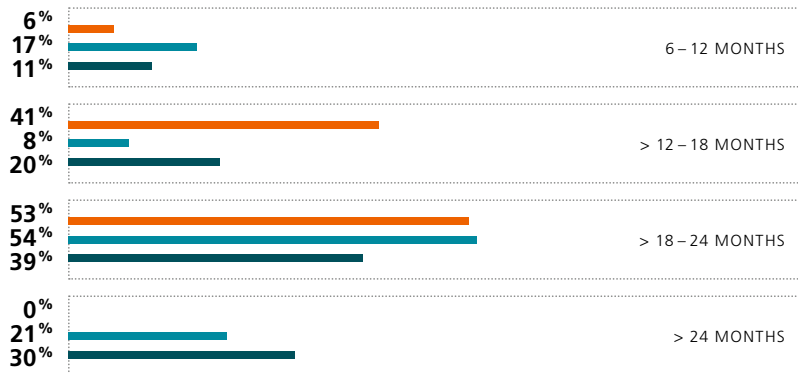
Time limitations are the final key element of a seller’s limitation of liability package, particularly in the absence of W&I insurance. Traditionally, the limitation period for business warranty claims in PE deals (in particular where a PE is the seller) were – and still are – shorter than in non-PE deals. Our data continues to show a ‘buyer friendly’ trend towards longer limitation periods, with an increase in the number of limitation periods longer than 24 months (23% in 2024 compared to 15% in 2023), while the majority of transactions continued to have a 18–24 months’ limitation period (40% in 2024 vs 41% in 2023), with slightly longer limitation periods in deals with W&I insurance.

Limitation periods for warranty claims: time trend

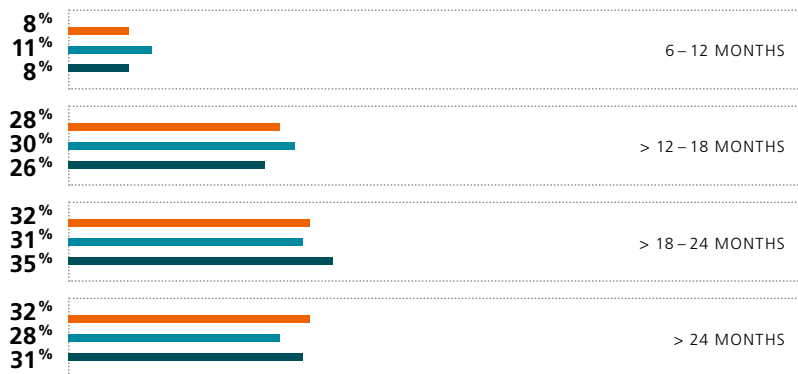
ALL PE DEALS



PE DEALS WITH W&I



NON-PE DEALS

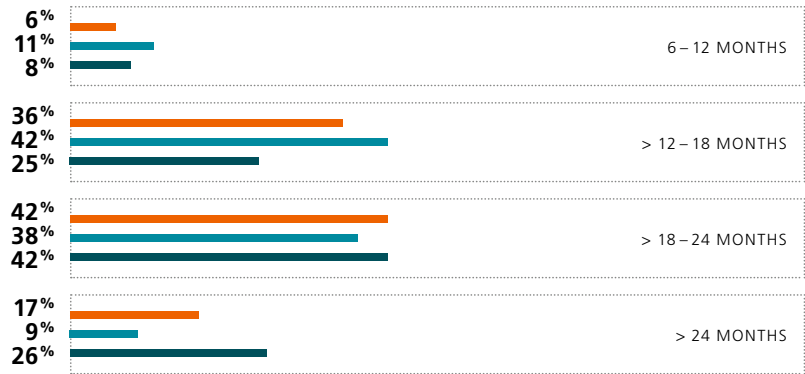


● 2022 ● 2023 ● 2024
100% = all evaluated transactions

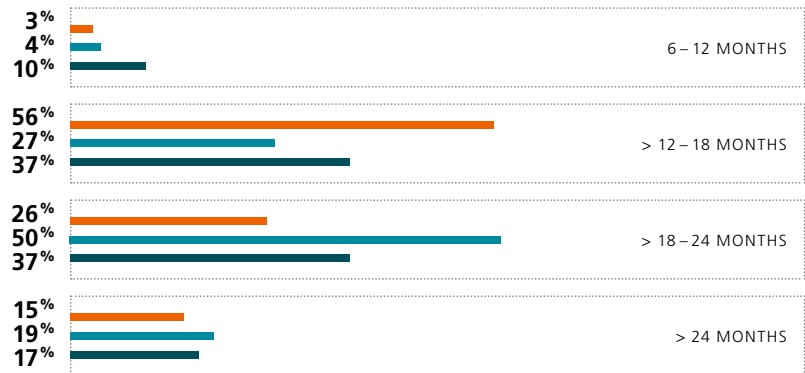
Looking at potential differences across deal sizes, the overall trend towards longer limitation periods continued in 2024. For transactions with a purchase price below EUR 25m, in 2023, the majority of PE deals (42%) had a limitation period of 12 to 18 months. In 2024, this shifted, with the majority of PE deals (42%) having a limitation period of 18 to 24 months, and 26% having a limitation period exceeding 24 months. For PE deals with a purchase price between EUR 25m and 100m, 37% of the transactions had a 12-to-18-months limitation period and 37% of the transactions had an 18-to-24-months limitation period (compared to 27% and 50% respectively in 2023). The figures for PE deals with a purchase price exceeding EUR 100m remained largely stable.

Limitation periods for warranty claims by purchase price

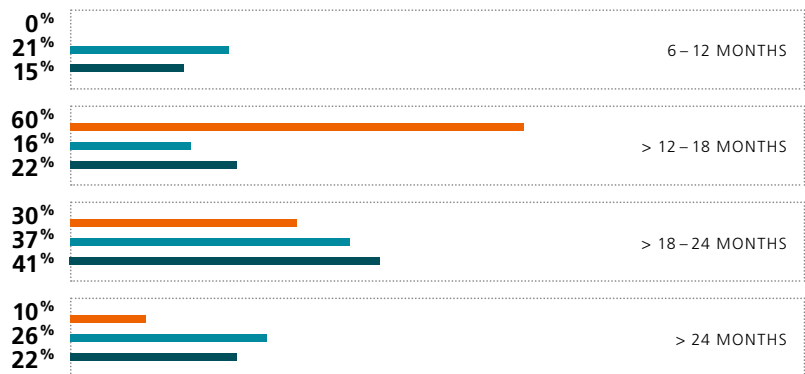
PURCHASE PRICE < 25M



PURCHASE PRICE EUR 25 – 100M



PURCHASE PRICE EUR > 100M



● 2022 ● 2023 ● 2024

Tax

While our data had shown a trend of a slightly declining use of tax indemnity clauses before, the percentage of deals in which a tax indemnity clause has been agreed increased by 12 percentage points, from 55% in 2023 to 67% in 2024.

Tax indemnity agreed?



In 2024, sellers on a PE deal were equally successful as in 2023 in negotiating the right to actively participate in a future tax audit on the target (38% in 2023 and 39% in 2024).

Participation right at a future tax audit agreed?



Deal value was also a significant factor in 2024. In PE deals where the purchase price was below EUR 25m or above EUR 100m, 73% and 71% of sellers, respectively, successfully negotiated the right to actively participate in a future tax audit of the target. In contrast, only 32% of sellers in PE deals with a purchase price between EUR 25m and EUR 100m managed to secure this right.

Tax indemnity by purchase price

Tax indemnity agreed?

YES NO
< EUR 25M



EUR 25M – 100M



> EUR 100M



Participation right at a future tax audit agreed?

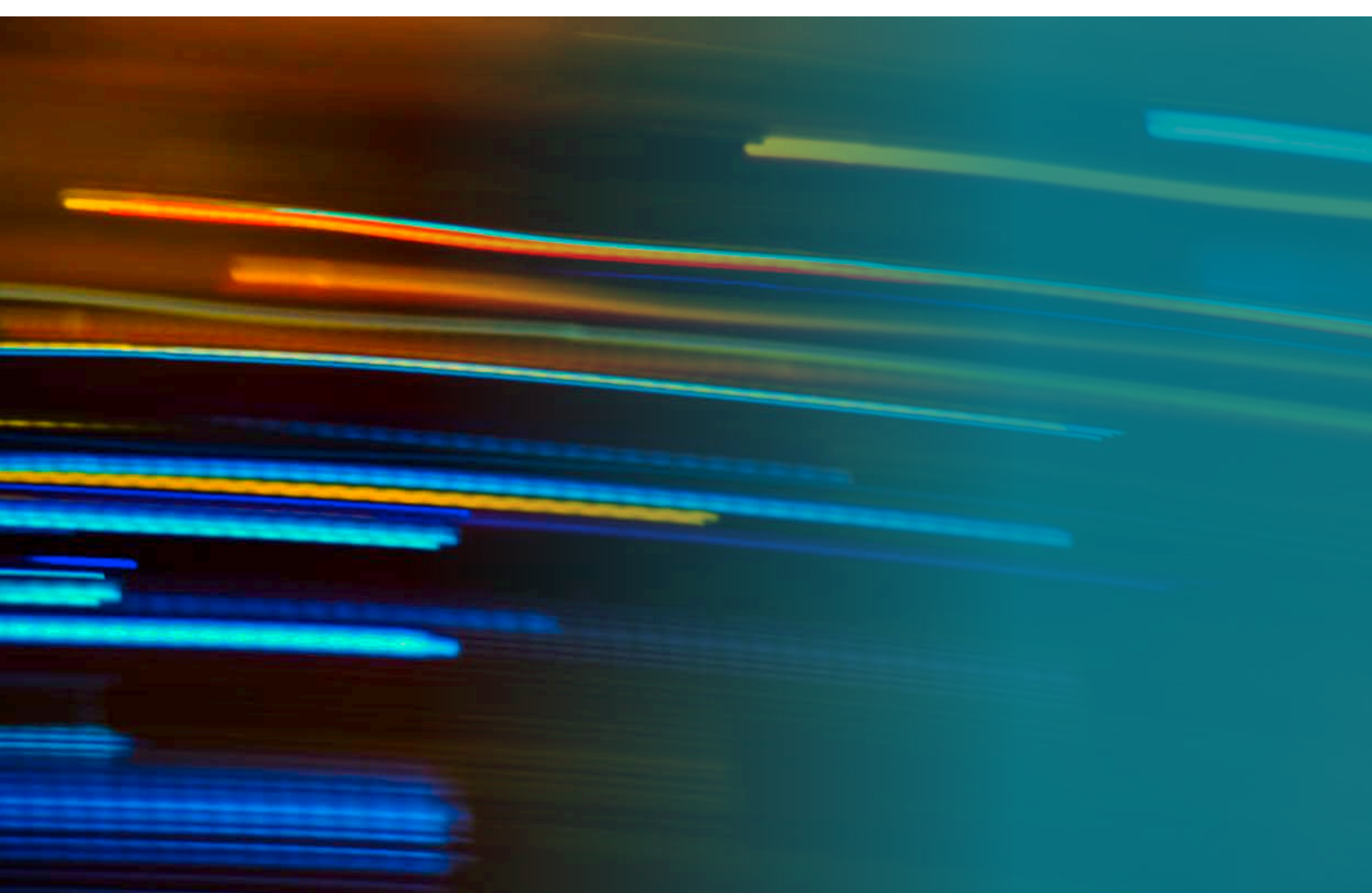
YES NO
< EUR 25M



EUR 25M – 100M

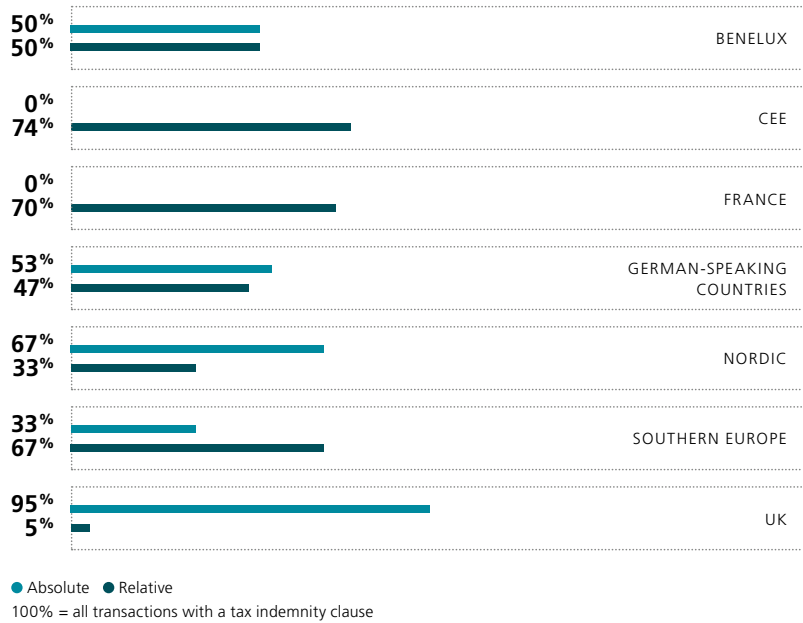


> EUR 100M



Our data continues to reveal a huge difference between geographies with respect to whether an absolute (i.e. a fixed number of years post-completion) or relative (i.e. a certain period of time following the final determination of taxes post-completion) limitation period was agreed regarding the tax indemnity. Whereas an absolute limitation period is still standard in the UK, the trend in CEE, France and, to a lesser extent, Southern Europe lean towards agreeing to the, buyer-friendly, relative time limitation. In 2024, while Benelux countries have moved towards equally agreeing on both absolute and relative limitation periods, German-speaking countries have shifted from predominantly agreeing on relative limitation periods to slightly favoring absolute limitation periods. The Nordics seem to also have a preference for absolute limitation periods.

Tax indemnity: absolute vs relative limitation period by geography



The time period agreed for an absolute limitation in most cases was still more than five years after completion. In the case of a relative limitation periods, the tax indemnity was in the vast majority of cases time-barred within a period of up to 12 months after the relevant decision of the tax authorities.

Tax indemnity: duration of limitation period

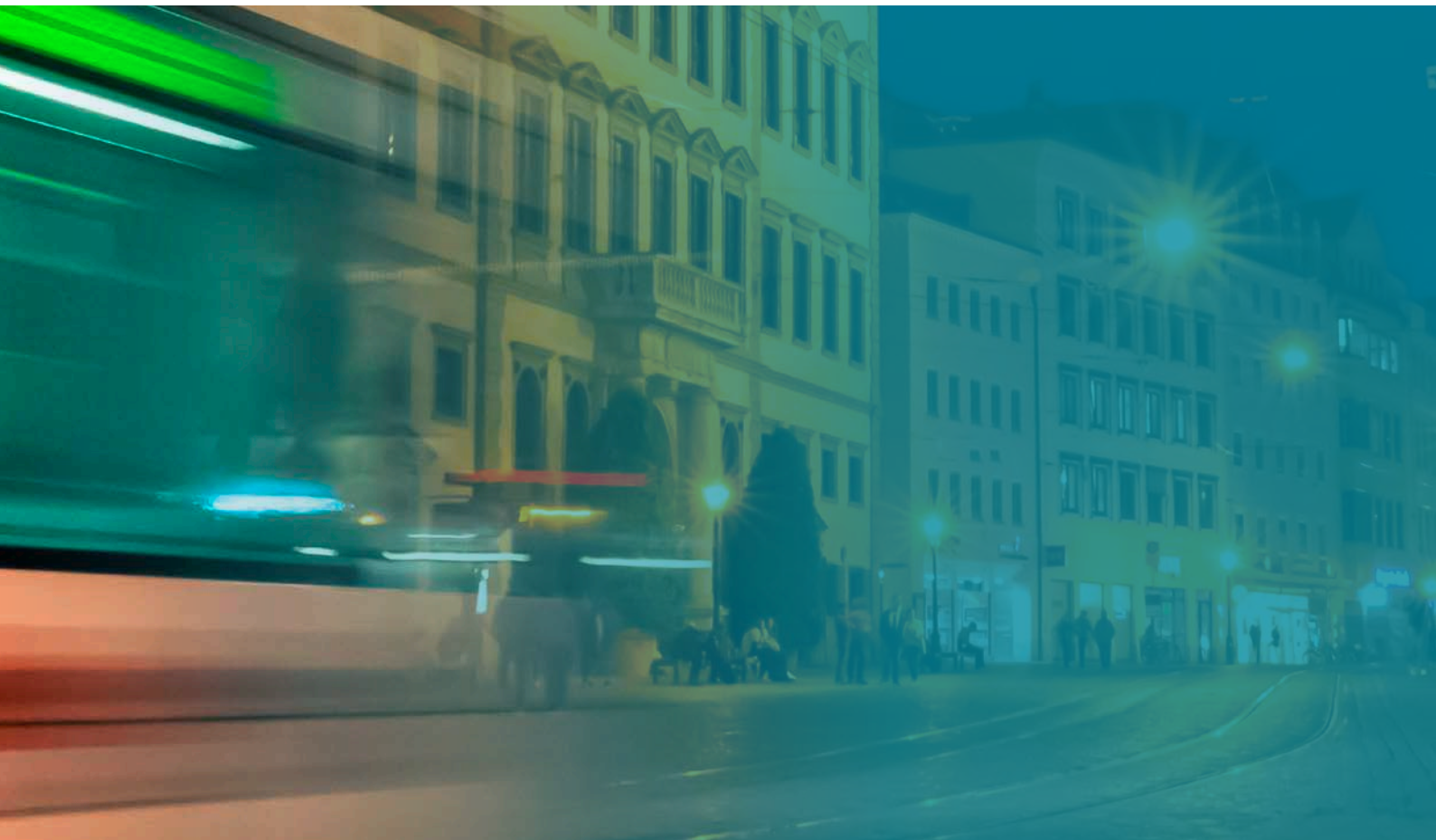
ABSOLUTE LIMITATION PERIOD



RELATIVE LIMITATION PERIOD



100% = all evaluated transactions with a tax indemnity clause.





Purchase price adjustments/ Earn-out

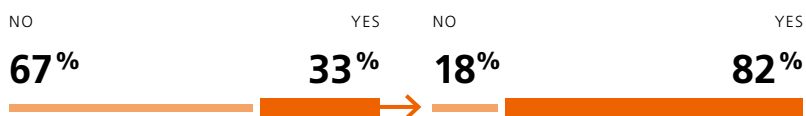


Purchase Price Adjustments

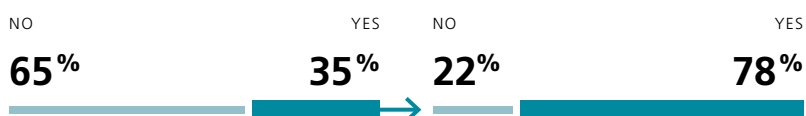
2024 saw a marked rise (from 35% in 2023 to 42%) in the use of purchase price adjustments to determine the final price payable by the buyer on or after completion, notwithstanding that locked box retained its position as the preferred structure where no purchase price adjustment is contemplated (with 82% of deals adopting locked box). The data appears consistent with a PE market where exits are still lagging behind and buy-and-build strategies are prevalent.

PE deals with PPA?

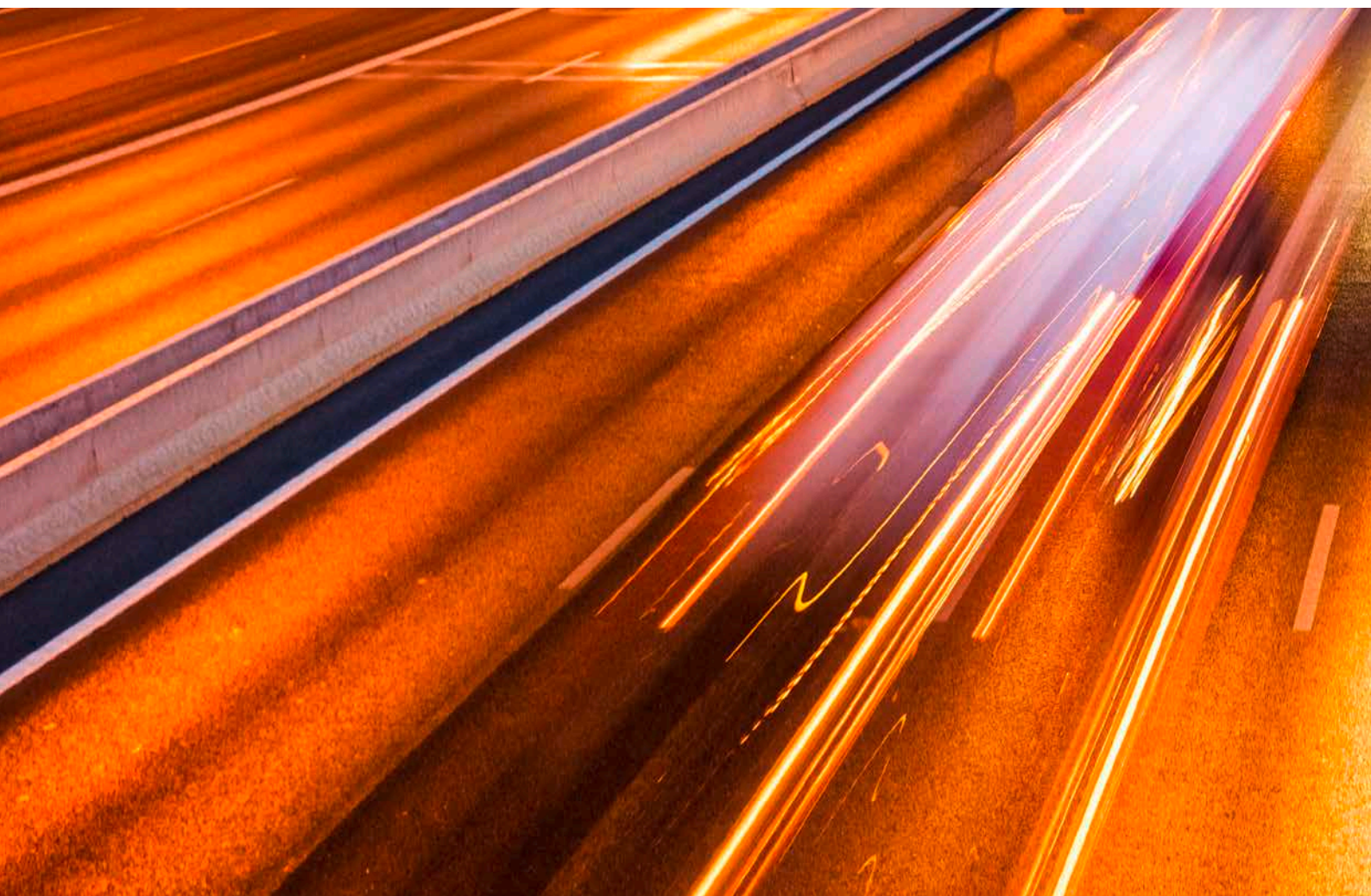
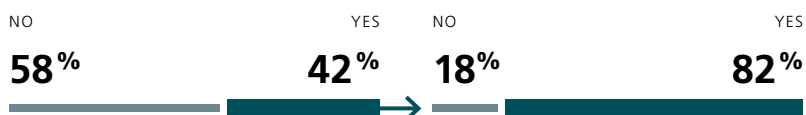
2022



2023

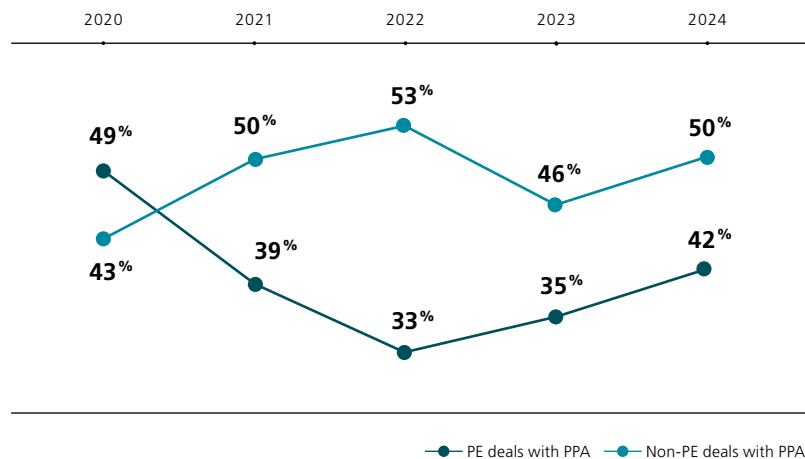


2024



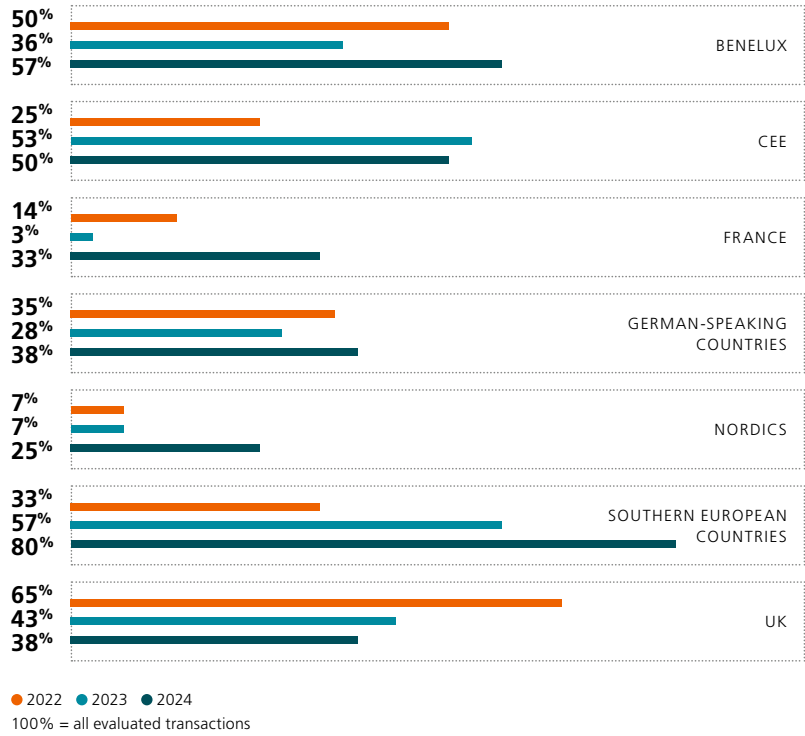
Unlike last year, where there was an opposing trend between PE deals (increased use of purchase price adjustments) and non-PE deals (decreasing use), in 2024 purchase price adjustments have seen an uptake across the entire M&A market. The graph illustrates how the upwards trend has continued for PE deals (to 42% in 2024) and reversed for non-PE deals, which are returning towards a more buyer-friendly approach (with 50% of all transaction including purchase price adjustments).

Purchase price adjustment time trend: PE deals vs Non-PE deals



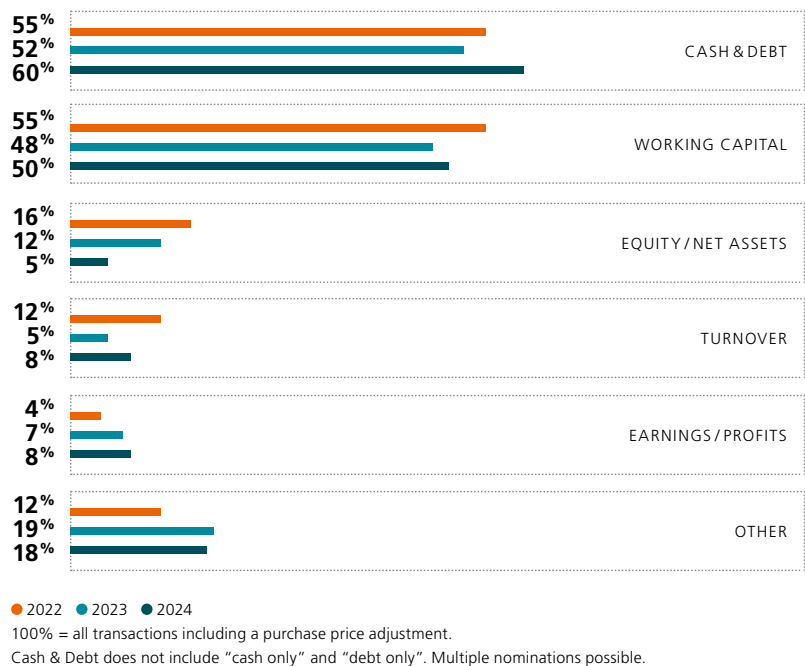
While the trends summarised so far look at Europe as a whole, there are quite material differences in approach depending on country or region. As illustrated by the chart, purchase price adjustments are very much favoured in Southern Europe, for example, and far less common in the Nordics and France. However, the trend, even on this more granular analysis, remains broadly upwards, with only CEE and the UK having experienced a rather small decrease in the use of purchase price adjustment compared to 2023.

Purchase price adjustment time-trend by geography



When it comes to the criteria chosen to determine the price adjustment, cash, debt and working capital remained the preferred options as in all previous years, with cash and debt being used in over 70% of all PE deals reviewed.

Purchase price adjustment criteria

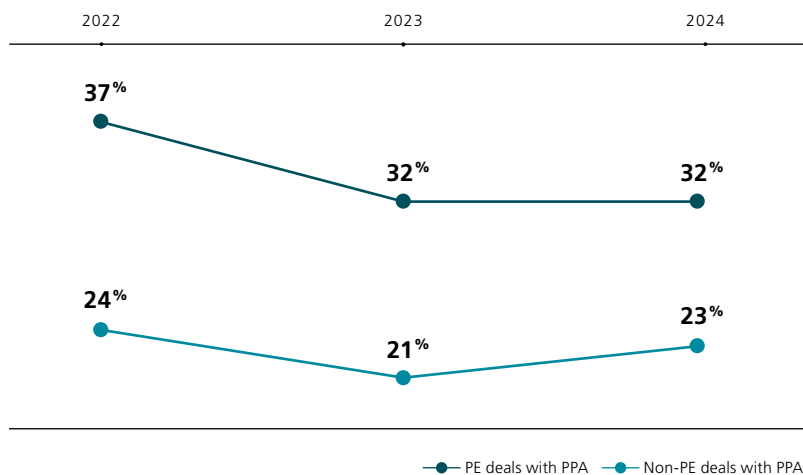


Earn-out

The use of earn-outs in private equity transactions in 2024 remained consistent with the previous year.

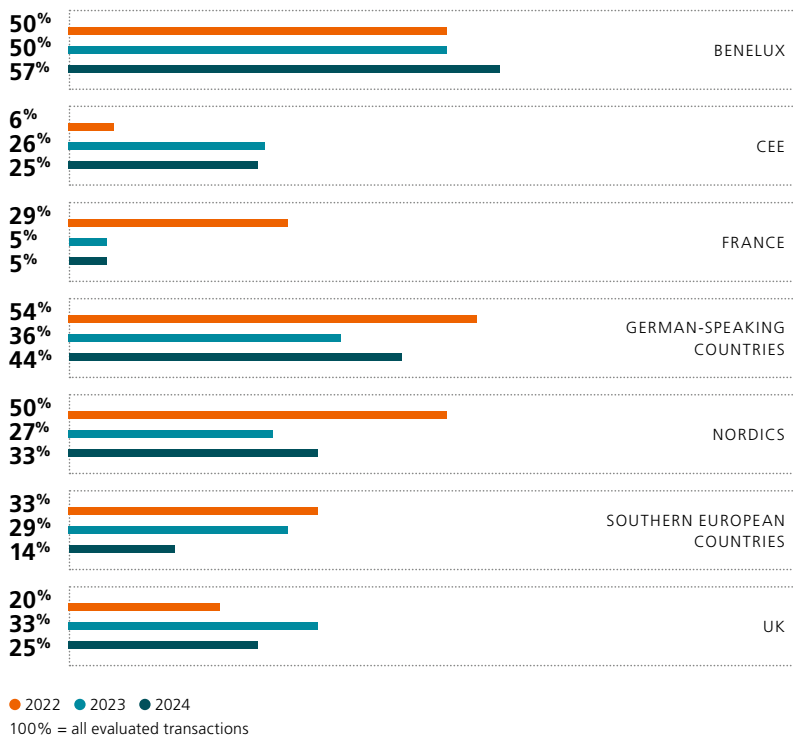
We continue to experience earn-outs being included in one in every three PE transactions, despite the fact that we have seen a slight increase in exits and a more significant increase in secondary buyouts, which would materially decrease the use of earn-out provisions (as PE funds, as financial investors usually looking for a full exit, will not accept an earn-out when on the sell-side). Whilst PE transactions have remained consistent in the use of earn-outs, we have experienced a minor increase in the use of earn-outs in non-PE transactions, particularly in the infrastructure and projects industries.

Earn-out time trend: PE deals vs Non-PE deals



Interestingly, the use of earn-outs is not consistent when considered on a geographical basis. As identified in the graph, in 2024, transactions in France do not seem to favour the earn-out concept at all and southern European countries only include earn-outs in 14% of transactions, which is a stark contrast to Benelux, where more than half of transactions include earn-outs, and German-speaking countries, where earn-outs are used in 41% of transactions, following a rise from 2023. Most jurisdictions have experienced varying degrees of fluctuations in recent years, with there being no general trend upwards or downwards, showing that trends are jurisdictional specific.

Earn-out time trend by geography



“There has been a significant valuation gap between buyers and sellers during the last three years and even though the gap is gradually narrowing there remains a degree of caution among buyers. We are expecting this to continue during 2025 and continue to see a frequent use of alternative payment structures such as earn-outs and deferred payment mechanisms to secure deals.” CMS Sweden

There continues to be a strong correlation between deal value and earn-outs and in 2024, 48% of all deals reviewed with a purchase price of EUR 25m or less included earn-out provisions, which is an increase from 41% for the same metric in 2023. Higher value deals continue to see far fewer earn-outs, as these are more likely exits or secondary buyouts and this is also consistent with the likely use of the earn-out mechanism for the smaller bolt-on deals, which continue to be popular transactions for our clients.

Use of earn-out by deal purchase price

<25M



25-100M



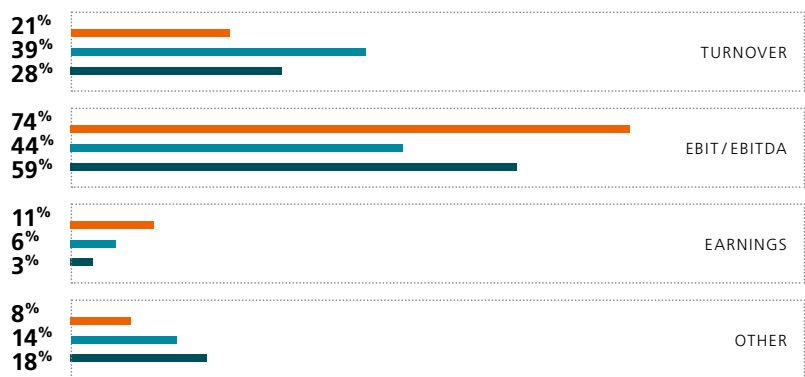
> 100M



100% = all evaluated transactions

2024 saw a significant shift in the choice of earn-out criteria, with a 15% increase in number of earn-outs that were based on EBIT/EBITDA metrics with a similar reduction therefore in revenue based earn-outs. When discussing earn-outs with clients, it is clear that with costs increasing in almost all aspects, clients' focus is on revenue being 'good revenue' (ie ensuring good and sustainable profit margins), which partly explains a shift to EBIT/EBITDA based earn-outs rather than simply basing future performance metrics on revenue alone.

Earn-out criteria



100% = all evaluated transactions. Multiple nominations possible

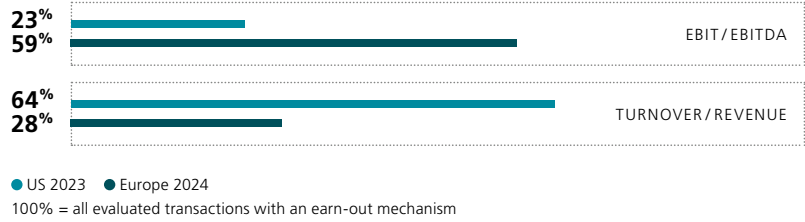
With respect to the time periods during which the earn-out is assessed (which is the length of time sellers need to wait before they can receive the balance of their consideration, depending on the target's performance against the earn-out criteria), the most commonly used time-period remained 12 to 24 months, but the gap between the length of earn-outs of 12 to 24 months and 24 to 36 months has been materially reduced, showing that buyers are more inclined now to seek a longer earn-out period, perhaps as a result of continuing economic uncertainty. Moreso now than in any of the previous years we have reviewed, there is closer parity between each time period we see for earn-outs, which suggests that there is no market normal position, but rather it is determined by the individual circumstances of each transaction.

**Time periods for assessment of Earn-out:
PE deals only**



An interesting comparison is drawn in this aspect of earn-outs when reviewing European transactions with those in the US or with US investors. The use of turnover/revenue based earn-outs is completely reversed, with such earn-outs being the overwhelming preference in US based earn-outs.

Earn-out Europe/US





Non-compete and non-solicitation clauses



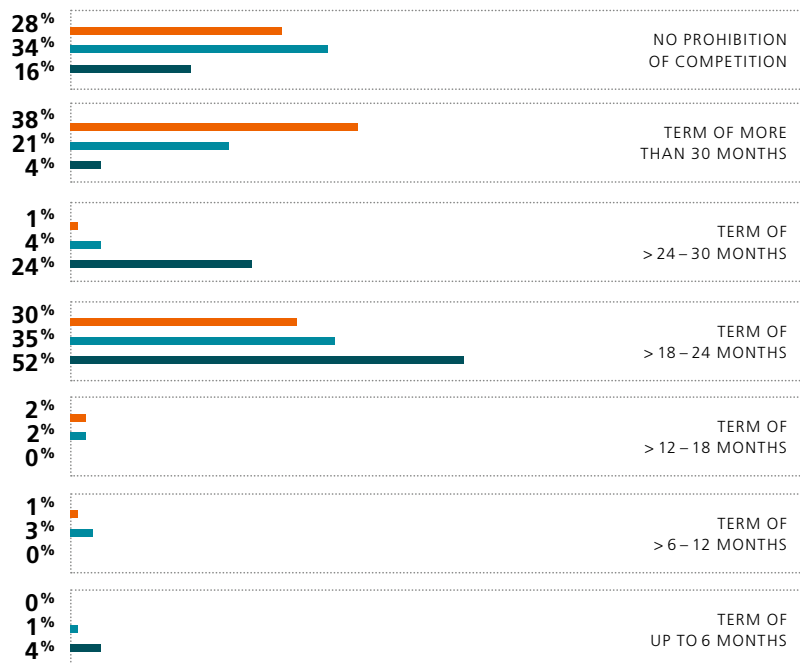
Non-Compete and Non-Solicitation Clauses

As in previous years, the majority of transactions included a non-solicit provision (78% in 2024, which is an increase from 66% in 2023), which is not specific to PE deals and is fairly standard across all types of M&A deals.

In 2024, 84% of all PE-related deals included a non-compete, however this figure dropped to 61% if the private equity fund or private equity backed portfolio company were on the sell-side, which is consistent with PE sellers taking the financial investor approach and pushing back on offering non-compete restrictions and the data pool including non-compete provisions that may have been offered by managers or portfolio companies.

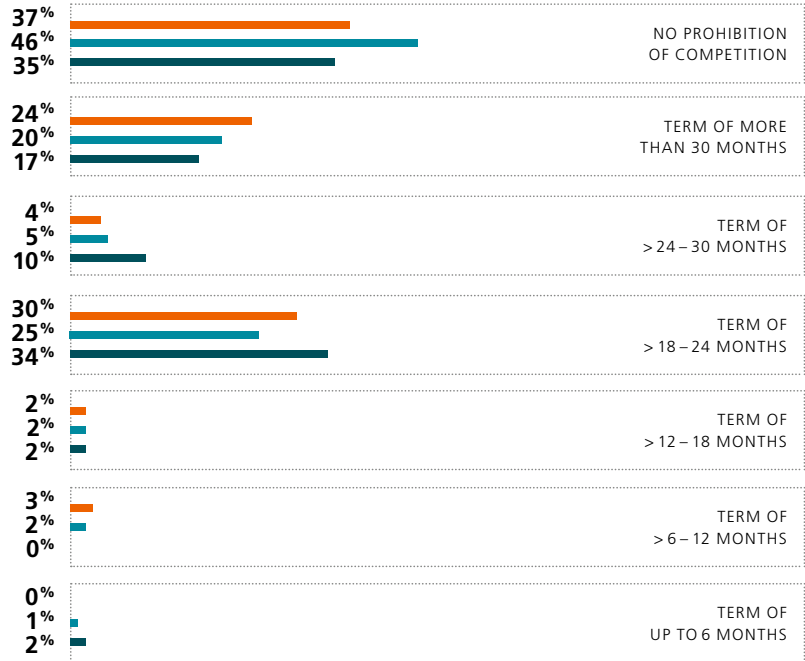
In terms of duration, 2024 saw a significantly lower incidence of long non-compete periods, with a significant decline of provisions restricting competition for longer than 30 months (4% in 2024 vs 21% in 2023) and a continuing material shift towards 18 to 24 months as the preferred duration (which was the case in 52% of all PE deals reviewed). This was consistent with duration preference in non-PE deals.

Duration of non-compete clauses: PE deals only



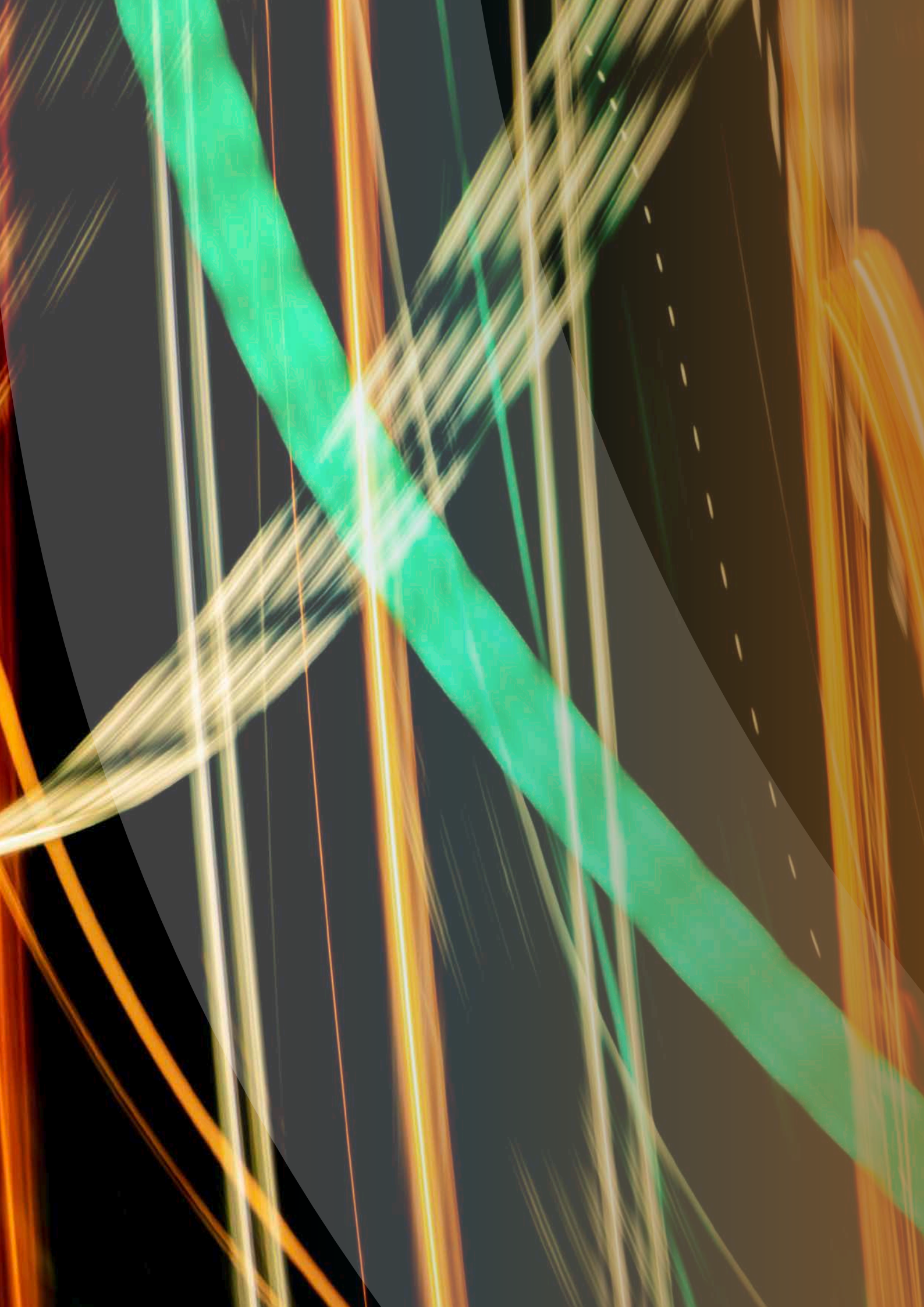
● 2022 ● 2023 ● 2024
100% = all evaluated transactions

Duration of non-compete clauses: PE on the sale-side



● 2022 ● 2023 ● 2024
 100% = all evaluated transactions





ESG

ESG (environmental, social and governance)

In the last few editions of our study, we have included a section on ESG (environmental, social and governance) and how responsible/impact investing are shaping the behaviour of private equity players and businesses looking to partner with them.

In recent years, there has been a transformational shift towards embedding ESG practices within investment criteria and all private equity firms now have a degree of ESG credentials and/or ESG reporting requirements. However, we do not yet have sufficient data from our transaction documents to assess whether ESG actually plays a material role in the sourcing of deals and investment decisions.

“It is our impression that Swedish PE firms have increased their focus on sustainable investments, particularly within renewable energy and green technology. Swedish PE firms tends to target investments not only for its economic growth potential but also for its alignment with sustainability targets and ESG principles.” CMS Sweden

ESG considerations have increasingly become part of the legal due diligence process, however, the scope of the ESG focus can vary between investors. The approach to incorporating ESG into transaction documents often depends on the risk tolerance and strategic priorities of the investor and our analysis showed that only 12% of the PE deals we reviewed in 2024 included some degree of ESG focussed due diligence by the legal team. By contrast, transactions not involving any private equity parties have undertaken ESG legal due diligence only in 5% of cases. This data would not account for ESG due diligence undertaken in-house by the PE fund and anecdotally, most PE funds have to report against a number of ESG metrics when presenting potential targets to IC/considering whether to proceed with an investment.

Specific ESG legal Due Diligence



Specific ESG Provisions in the SPA



“ESG considerations have increasingly become part of legal due diligence and are reflected in transaction documents. The scope of ESG focus can vary, but examples include: (i) environmental aspects, such as assessing potential liabilities for pollution, waste management practices, and compliance with climate change regulations, where a client might request a specific indemnity for environmental impairments or negotiate a post-closing remediation plan; (ii) social and governance elements, such as evaluating employment practices, human rights records in supply chains and executive compensation structures, in which cases a client may seek targeted warranties, such as that there are no unresolved disputes with employees or that the company has adhered to specific diversity and inclusion standards.” CMS Germany

“While ESG remains a relevant topic, we have observed a shift in priorities among investors – performance continues to take precedence over pure ESG excellence. Our perspective has always been pragmatic: ESG is not just about risk management but also about value creation and our ESG due diligence approach is tailored to each investment case, to aid establishment of a solid baseline for long-term improvements. We see ESG as a tool to enhance company performance.” CMS PE Client

“Although we have seen an increased focus on sustainability and ESG considerations with Swedish PE funds, we have not experienced any corresponding increase of requests for a specific ESG due diligence. A possible reason for this may be that such aspects could be covered by the commercial or financial due diligence. However, we expect the requests for specific ESG due diligences to increase as both investors and the regulatory environment moves in that direction.” CMS Sweden



Management incentives



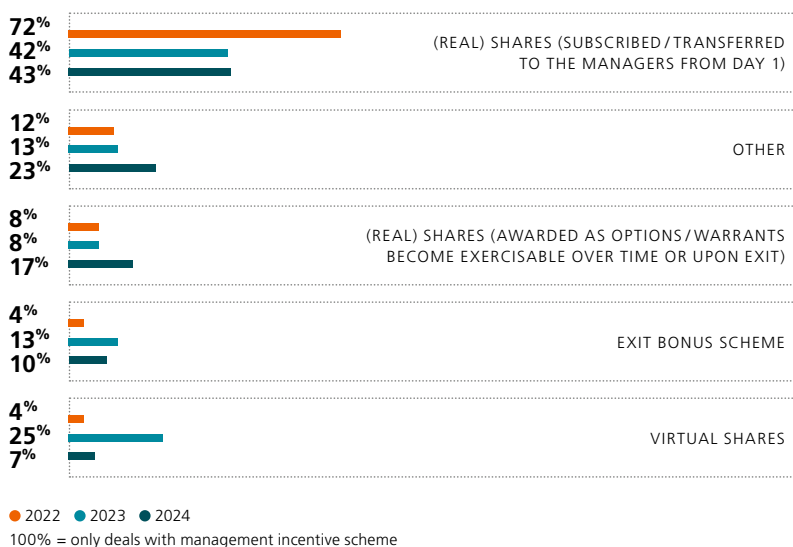
Overview

Once again, the majority of management incentive arrangements were incepted and issued on day one in the form of an equity arrangement (traditionally ‘sweet’ or ‘sweat’ equity depending on one’s view of the world). There was a slight increase in option schemes and other long-term incentive arrangements, with exit bonuses remaining very much in the minority.

“Virtual shares are very rarely used as an instrument to incentivise managers in a PE deal. Instead, real shares or exit bonus payments are much more common. Furthermore, in many cases, there are no vesting provisions, but only good leaver / bad leaver provisions (intermediate leaver provisions are also uncommon). This is, however, different in case of VC investments, where virtual shares and vesting provisions are customary.” CMS Germany

On the majority of transactions (71%) in the relevant data set, management continued to be employed or engaged in some capacity by the new group. Whilst optically this looks to be a downward trend the numbers are within 5–10% of each other demonstrating the continued faith sponsors have in the management teams of assets they are originating.

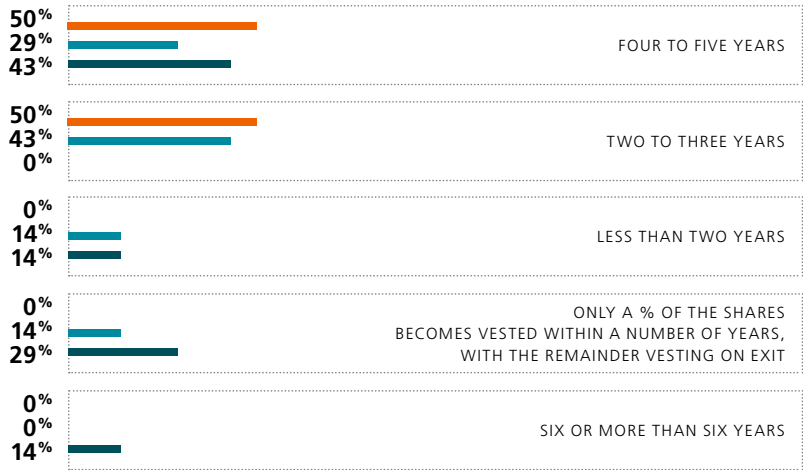
Management incentive scheme structure



Vesting

According to the data set, vesting only fully crystallises after four to five years or otherwise on exit, which is very much in line with market trends over the last few years. It is increasingly becoming a market staple for vesting to be capped at, for example, 80% and only become fully vested on exit. In the UK it is more common for this to apply only in Intermediate Leaver scenarios.

After what time period will all shares granted to the manager become fully vested?



● 2022 ● 2023 ● 2024

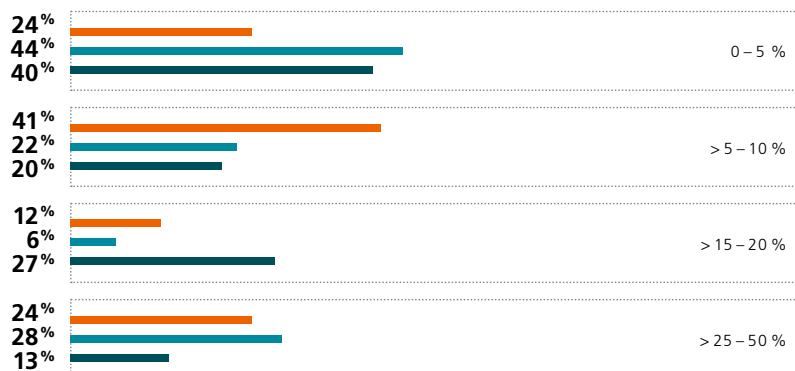
Only deals with management incentive scheme, shares and vesting



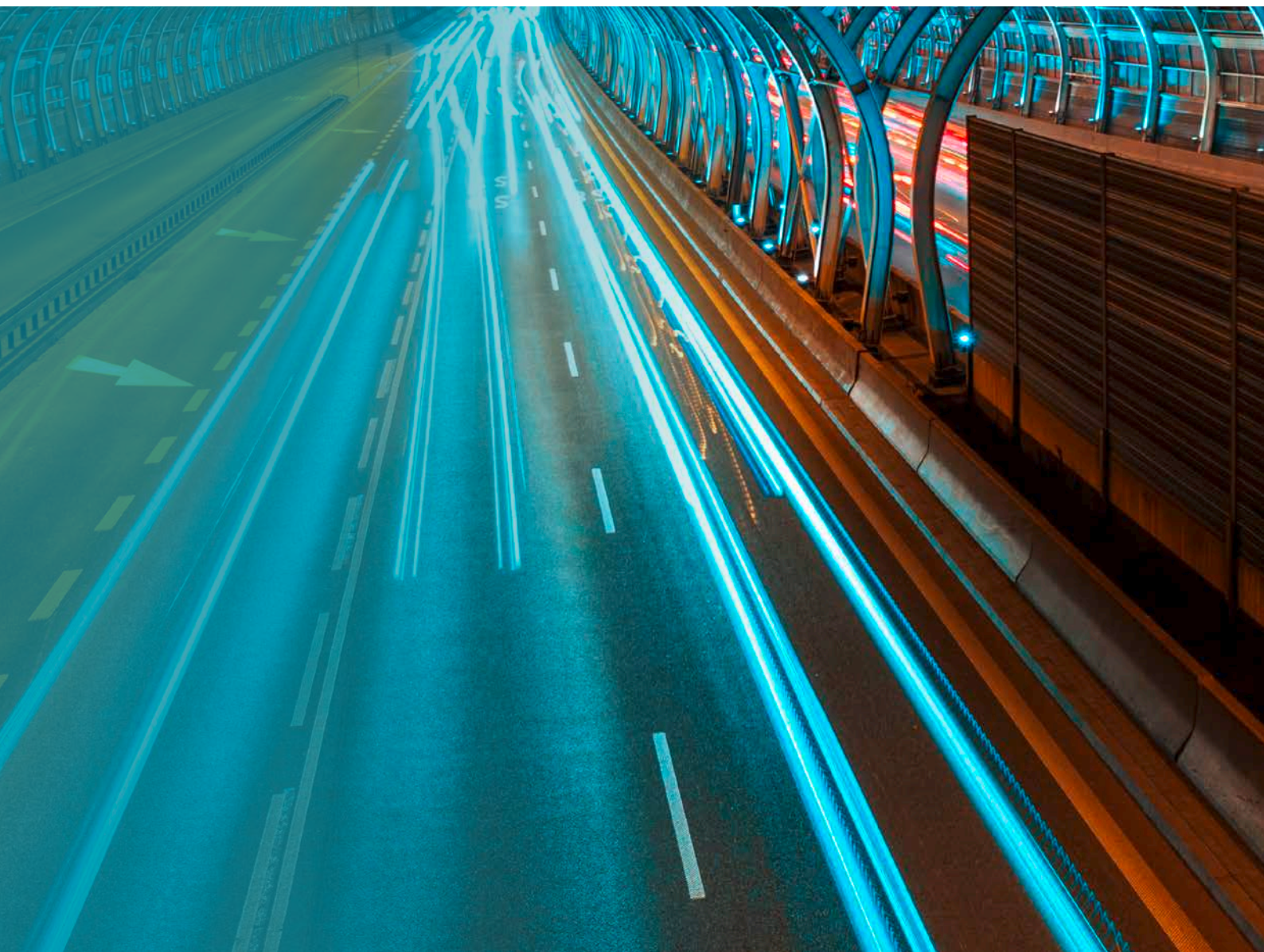
Economic Terms

Encouragingly for management teams, the percentage of schemes offering 5% or less has slightly decreased compared to 2023. However, there has been a sharp decline in the number of schemes offering more than 25% of proceeds. This has resulted in an overall rise of schemes delivering between 5% and 25% of proceeds to management (47% of the total in 2024, compared to 28% in 2023).

Percentage of share capital or proceeds allocated to the managers



● 2022 ● 2023 ● 2024
Only deals with management incentive scheme, shares and vesting

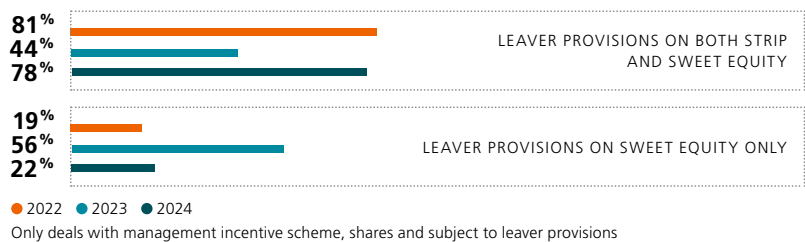


Leavers

Leaver provision have become an even greater management sensitivity over recent times. An increase of 34% in schemes applying leaver provisions to both sweet equity and strip is indicative of the emphasis sponsors are placing on retention.

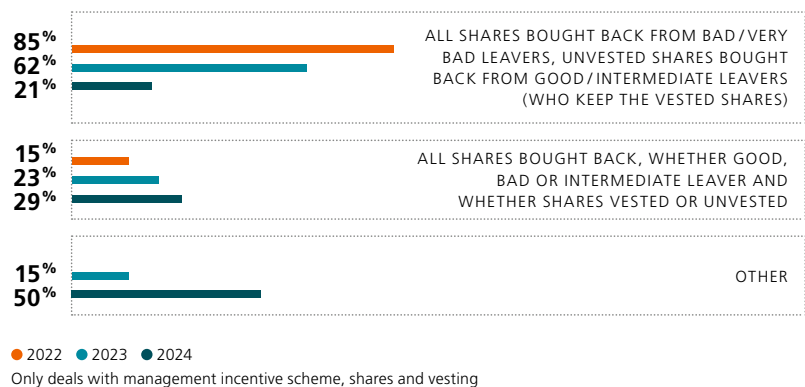
Whilst the application of leaver provisions to strip likely differs from the application to sweet equity, it is clear that value creation is being singled out for those that remain with the business. Interestingly sponsors and senior management teams are increasingly aligned on this position and we expect further entrenchment of this during 2025 and beyond.

Leaver provisions apply only to the sweet equity or also the strip (ordinary) equity?



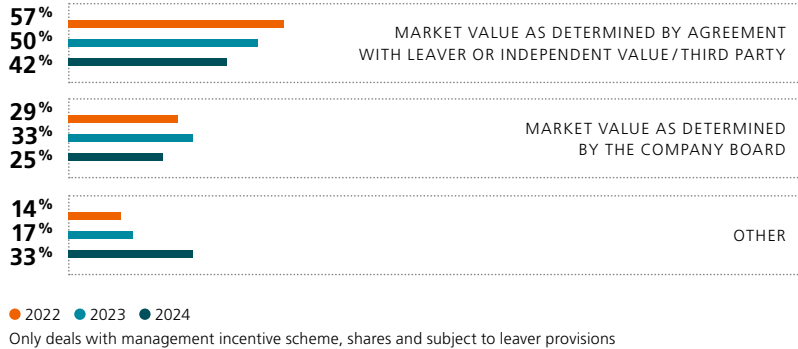
In 2024 there has been a further increase (6%) in the proportion of shares bought back irrespective of leaver status. This aligns with the proliferation of the use of leaver loan notes (or equivalent means of satisfying the purchase price for leaver equity) in recent times and is perhaps indicative of a greater need to recycle sweet equity when managers depart.

Are all shares bought back when a manager becomes a leaver or only the unvested portion?



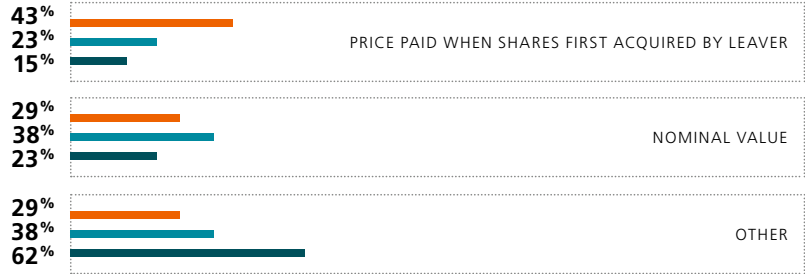
The price paid for good leavers' shares is split fairly evenly between being determined by either agreement between the leaver and the board (or failing that, an independent valuer), a price determined by the board (but without leavers having recourse to a disagreement mechanic) or a combination of the two. This aligns with an apparent mandate from sponsors to draw a line between 'real value' disputes and frivolous referrals. It is not unreasonable therefore to infer that this is a distinction between c-suite management and the wider management team and a combination of the two scenarios sits (at least theoretically) in assets where that divide is less stark.

What price are the shares of good leavers bought back at?



When it comes to the price at which bad leavers had equity repurchased, the trends seems to indicate a more aggressive approach to bad leavers from sponsors, which coincides with a steady expansion in the scope of bad leaver category.

What price are the shares of bad leavers bought back at?



● 2022 ● 2023 ● 2024

Only deals with management incentive scheme, shares and subject to leaver provisions



Global reach, local knowledge

The Americas

- Bogotá
- Cúcuta
- Lima
- Mexico City
- Rio de Janeiro
- Santiago de Chile
- São Paulo
- Silicon Valley*

- Casablanca
- Ebene
- Johannesburg
- Luanda
- Maputo
- Mombasa
- Nairobi

Africa

*Representative Office

Europe

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Amsterdam
Antwerp
Barcelona
Belgrade
Bergen
Berlin
Bratislava
Bristol

Brussels
Bucharest
Budapest
Cologne
Dublin

Duesseldorf
Edinburgh
Frankfurt
Funchal
Geneva
Glasgow
Gothenburg
Hamburg
Istanbul

Kyiv
Leipzig
Lisbon
Liverpool
Ljubljana
London
Luxembourg
Lyon
Madrid

Manchester
Milan
Monaco
Munich
Oslo
Paris
Podgorica
Poznan
Prague

Reading
Rome
Sarajevo
Sheffield
Skopje
Sofia
Stavanger
Stockholm
Strasbourg

Stuttgart
Tirana
Vienna
Warsaw
Zagreb
Zurich

Abu Dhabi
Dubai
Muscat
Riyadh
Tel Aviv*

Middle East

Beijing
Brisbane
Hong Kong
Shanghai
Singapore
Sydney

Asia-Pacific

Glossary

Basket

means the agreed aggregate minimum amount of (likely) losses due to one or several breaches by the seller of sale and purchase agreement which needs to be reached for the buyer to be able to assert any claims against the seller for the loss suffered. There are two different types of baskets which are commonly used: (i) in case of an “excess only” basket (also called a “deductible”), the buyer can recover only that proportion of any warranty claim or claims that exceed(s) the basket threshold, whereas (ii) with a “tipping” basket (sometimes also called “first dollar”), once the buyer has a claim or claims that reach the basket threshold, the buyer can recover the whole amount claimed.

Cap

means the upper monetary limit of the seller’s liability to the buyer under the purchase agreement. Above the cap amount a buyer will have no recourse to the seller (except in the case of fraud by the seller).

De minimis

means the agreed minimum amount of (likely) losses due to a breach by the seller of the sale and purchase agreement which needs to be reached for the buyer to be able to assert any claims against the seller for the breach of such warranties. This means that if the amount which can be claimed due to the breach is less than the agreed minimum amount, then the claim is automatically excluded. The seller is thereby protected from potential liability for small claims.

Earn-out

means the provision that provides for additional purchase price to be paid after completion of the sale and purchase, depending on whether certain conditions are fulfilled, typically by reference to the certain key performance indicators of the acquired business over an agreed period after completion. By doing this the seller and buyer share the risks and rewards of how the target business performs following completion.

Hurdle

means a threshold often expressed as an internal rate of return percentage or other metric to measure the return on the PE funds’ investment which needs to be reached for management to participate in the increase in value of the business, i.e. management becomes entitled to proceeds only if the minimum return on investment threshold is met.

Leaver Provisions

Such provisions describe the circumstances in which a manager ceases to be an employee of a company and the consequences vis-à-vis that manager’s participation in the management incentive scheme. There are two main types of leavers: (i) “Good leavers” are usually employees who leave their employment for good reasons (e.g. death or disability), whereas (ii) “Bad leavers” are usually employees who leave in circumstances justifying their dismissal (e.g. failure to perform to agreed standards) or in similar situations. If the management incentive scheme is structured as a share scheme, good leavers are usually either allowed to keep their vested shares or their shares are purchased backed by the PE fund at their fair market value, whereas bad leavers are usually required to return all their shares for a nominal amount.

Locked box

means the mechanism of fixing the purchase price payable on completion by reference to the target group’s balance sheet position (i.e., its net debt and working capital) at an agreed point in the past (the “locked box date”) and is an alternative pricing mechanism to completion accounts.

Purchase price adjustment

(also referred to as “completion accounts” or “closing accounts”) means the adjustment of the purchase price payable by the buyer for the target business by reference to the target company’s debt and cash position or to its working capital or overall net asset position at completion. Under this construct the buyer pays an estimated amount of the purchase price at completion and then an ad hoc set of accounts is prepared as of the completion date. Once adjustments are calculated, if any, either the buyer or the seller may have to pay an amount to/back to the other. The parties to the M&A agreement thereby achieve certainty that the final purchase price reflects the actual debt, cash, working capital or net asset position as at completion of the transaction.

Ratchet

means an anti-dilution protection mechanism whereby the equity stake held by founders, managers and/or employees may be altered depending on the occurrence of various future events post-investment, e.g. the matching of forecasts and projections or the investor’s target return.

Rollover

means the process whereby certain equity holders in the target company (including founders, and key members of the management team) carry a portion of their ownership stake over into the new equity capital structure put in place by the acquiring private equity firm in lieu of receiving cash proceeds.

Strip

refers to the aggregate capital provided by private equity investors when acquiring a new company. This capital may be provided as equity or in the form of (shareholder) loans or a mix of the two. Managers may be offered to also acquire these same equity and/or debt instruments (“strip”) and will pay the same (full) price for them as the PE fund.

Sweet equity

means shares in the target company issued to founders, managers and key employees usually for a price that is nominal or otherwise lower than the price of the other “strip” (ordinary) shares.

Vesting

means the process by which an employee, investor, or co-founder is rewarded with shares or stock options but receives the full rights to them over a set period of time or, in some cases, after a specific milestone is hit, usually one that is established in an employment contract or a shareholders’ agreement.

W&I insurance

means the transaction insurance that can be obtained by either the buyer or seller to cover against financial loss that may arise from a breach of warranty and/or claims under certain indemnities given by the seller in a sale and purchase agreement. If W&I insurance is taken by the buyer, then its primary recourse in case of claims will be to the insurance, rather than the seller. If W&I insurance is taken out by the seller, then the seller will remain liable vis-à-vis the buyer, but will then be able to claim back from the insurance.

Warranties vs indemnities

Warranties protect buyers from unknown issues that the buyer may become aware of after the contract is signed and/or the transaction completes. A breach of warranty will only give rise to a successful claim in damages if the buyer can show that the warranty was breached and that the effect of the breach is to reduce the value of the company or business acquired. The onus is therefore on the buyer to show breach and quantifiable loss.

An indemnity is a promise to reimburse the buyer in respect of a particular type of liability, should it arise. The purpose of an indemnity in an acquisition context is, broadly speaking, to shift the risk of a particular event or matter to the seller and to allow the buyer to recover on a pound-for-pound/ euro-for-euro basis in respect of that matter or event. Indemnities are often used where a warranty may not allow a buyer to recover, because the buyer is already aware of a specific issue at the time the contract is being signed.

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