CMS European Private Equity Study 2024

Contents

Introduction

We are pleased to present the third edition of our CMS European Private Equity Study, which analyses the private equity deals ("**PE deals**") that CMS advised on in 2023. Last year was another challenging year for the M&A market, with inflationary headwinds, rising interest rates, slow growth and geopolitical conflicts creating a lot of uncertainty in the market. However, the number of PE deals remained relatively stable compared to 2022, and deal flow picked up in the last quarter of 2023.

In this new edition, we have analysed data, including key contractual terms of transaction documents, from over 100 PE deals that CMS advised on in 2023, and compared the most recent data with that from hundreds of PE deals in previous years. We also looked at the differences between PE M&A deals and trade M&A deals (which we also refer to as "**non-PE deals**"). Our study is based on the analysis of deals we have advised on, unless otherwise stated.

As in 2022, most of the PE deals we analysed were new investments (69%). The add-on acquisition trend also continued, with half of all PE deals being part of a buy-and-build strategy. In addition, deals with a PE investor on the sell-side have increased significantly compared to 2022. Secondary buy-outs (i.e. deals with a PE investor on both the sell-side and the buy-side) have doubled. When asked, many PE funds confirmed that they are about to start exit processes and we have indeed seen a small increase in auctions and bidding processes in 2023, which hopefully will turn into a growing trend in 2024.

In terms of purchase price mechanisms, the number of PE deals with earn-outs has decreased but remains at a relatively high level compared to pre-Covid pandemic levels and is also higher compared to non-PE deals. It will be interesting to see how this develops next year. The decline in the use of earn-out provisions also indicates greater confidence in underlying valuations. We have also seen the market become slightly more buyer-friendly from a contractual risk allocation perspective.

While uncertainties remain in the market, we are optimistic about deal activity in Europe in 2024. Confidence in the debt markets is growing, inflation is falling and there is a significant investment backlog, which are good conditions for more deal activity in the PE market.

Once again, special thanks go to our team of authors, namely Valentina Santambrogio, Jessica Mohaupt and Patrick Lühr, who reviewed 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
Co-Head of CMS
Private Equity Group

Jason Zemmel
Co-Head of CMS
Private Equity Group

Executive summary

- **Deal Activity.** Despite a challenging market environment with high inflation and interest rates, as well as geopolitical conflicts, deal activity remained fairly stable in 2023 compared to 2022.

- **New investments vs exits.** As has been the case in more recent years, there were far more new investments than exits. However, the gap is narrowing: 69% of the deals we analysed were new investments, compared to 78% in 2022. The remainder were exits (17%) and secondary buy-outs (14%). This suggests that exits are slowly coming to fruition for PE investors and are on the rise. Half of the transactions analysed by us were add-on transactions, which shows that buy-and-build strategies remain important for PE investors.

- **Bidding processes.** In 2023 there were more auctions and bidding processes than in 2022 (31%, an increase of around ten percentage points), and these were also more successful in creating more competition between bidders by leading to parallel negotiations (70% compared to 52% in 2022).

- **Deal Drivers.** "Entry into new markets" remained the most common deal driver, but only just at 32%, which is half the percentage it reached in 2022. The deal drivers that became more important were "acquisition of a competitor" (30% compared to 14% in 2022) and "acquisition of a supplier" (11% compared to 4% in 2022), which fits well with the trend that many transactions are add-on deals.

- **Sector Activity.** Most of the deals we analysed were again in the Technology, Media and Telecoms (TMT) sector (24%), which is stable compared to 2022, followed by Life Sciences and Consumer Products (both 15%). The sectors that grew the most were Consumer Products, Energy & Utilities and Infrastructure & Project Finance.

- **MAC-Clauses.** The use of MAC-clauses has slightly increased again - MAC clauses were used in 12% of the deals in 2023, compared to 10% in 2022, which is a buyer-friendly development, but should be looked at in the context of 69% of all deals reviewed having the private equity investor on the buy-side.

- **Arbitration Clauses.** A trend seems to be emerging showing increased use of arbitration clauses in PE deals. While in 2020 only 22% of deals used arbitration clauses, this figure has gradually risen to 51% in 2023, showing that more and more PE investors are willing to settle disputes before an arbitration panel rather than a court or tribunal. Arbitration brings a number of advantages, including having disputes resolved by experts, faster resolution times and confidentiality, but may be more expensive.

- **FDI-Procedures.** In 2023 we saw many more PE deals where the parties sought FDI approval (21% compared to 8% in 2022) and also more FDI procedures that were considered legally required by the parties (82% compared to 56% in 2022), which is not surprising as we have seen a trend towards tighter approval regimes in many jurisdictions. The duration of FDI processes has also increased: in 15% of cases, the process took between three and six months (in 2022, only 10% of cases took this long). It is becoming even more important for PE investors to consider FDI-procedures early-on in the transaction process to avoid uncertainty and unnecessary delays.

- **W&I insurance.** W&I insurance remained a key feature in PE deals. The likelihood of W&I insurance being used increases exponentially with deal value, and W&I is more prevalent in PE deals than in non-PE deals. For PE deals with a value of EUR 25–100m, W&I insurance was used in 52% of cases, while for PE deals with a value of more than EUR 100m, W&I insurance was used in 61% of cases. The most typical coverage is 20-30% of the purchase price. In the vast majority of the cases the premium is paid by the buyer.

- **Purchase price adjustments.** Purchase price adjustments are only agreed in a minority of deals (35%), as PE investors prefer deal certainty and mechanisms that allow the return of proceeds to their investors without delay. In most PE deals, a locked box mechanism is agreed (i.e. the purchase price is fixed at signing, with no adjustments after completion).

- **Earn-outs.** After the previous year's peak in the use of earn-outs, we saw a decline in the use of earn-out provisions on PE transactions, which were agreed in only 29% of cases (compared to 37% in 2022). However, this figure is almost 10 percentage points higher than in 2020 and remains higher for PE deals than for non-PE deals. This is possibly due to the high proportion of add-on acquisitions, which often are smaller transactions involving high-growth businesses and therefore more likely to justify earn-out provisions.

- **ESG.** ESG-considerations have become much more mainstream and all PE funds now have ESG reporting requirements to some degree. In at least half of the PE-deals we acted on the buyer carried out some ESG-focussed due diligence, whereas in non-PE-deals this was only the case in 38% of the transactions.

- **Management Share Incentive Schemes.** 2023 saw some slight manager-friendly developments, most notably shorter vesting periods and more generous leaver provisions (e.g. good leavers being allowed to retain vested shares and not forced to sell them at time of departure, leaver provisions applying only to the sweet equity and not also to the ordinary equity).

- **Sellers' and buyers' negotiation strength.** Overall there was little movement in many deal metrics compared to the previous year. In some cases (e.g. fewer PE-deals with "*de minimis*" or "basket" provisions, longer limitation periods), we have seen buyer-friendly developments, but those may be in part due to the use of W&I on the relevant transactions.

Outlook

Cautiously positive market outlook

It is not entirely clear to which extent the macroeconomic challenges in many European countries might shift towards opportunities for increased PE deals in 2024. It is expected that the macroeconomic environment will favour increased transaction activity in 2024, as the rise in inflation and interest rates across Europe appears to have either slowed or stopped and interest rates are anticipated to decrease by mid-2024. Despite some remaining macroeconomic uncertainties, an optimistic outlook is supported by the expectation that postponed portfolio company exits from 2023 will boost deal activities. General partners will face increasing pressure from their LPs to deploy capital and realize investments, leading to potential upticks in exit activities.

"The ongoing challenges in 2024 could lead to a shift towards smaller deals (mid-market transactions with potentially smaller valuation gaps and easier access to financing might become more attractive) and an increased focus on operational improvements (PE firms prioritising value creation within their existing portfolio companies given macro difficulties and increased competition for unique selling points between PE funds: as more funds compete for the same LP base, the USP of each fund (value creation story) becomes more relevant)." CMS PE Client

"Exits will need to happen in 2024, as investors are pushing for distributions. This offers opportunities for secondary buyouts. Moreover, primary deal flow should accelerate as well, as entrepreneurs are more open to partner with financial investors." CMS PE Client

Little change in sectors and transaction size

Deal activities in 2024 are likely to focus largely on the same sectors as in 2023. Especially the areas of Technology, Media & Telecoms (TMT), Life Sciences and Consumer Products will likely remain favoured. Furthermore, the Energy & Utilities sector (already fast growing in 2023) is anticipated to gain more importance, in particular renewable energies.

"All sectors that are not specifically affected by margin pressure nor by decreasing demand will be particularly interesting for PE funds (i.e. companies that are able to pass on price increases (e.g. resulting from higher wages) to customers without this leading to a decline in demand)." CMS PE Client

Similarly, the typical PE transaction sizes in 2024 are expected to be in the small- and mid-cap range, a trend that we have already seen in the previous year. Large cap deal activity is still expected to be moderate though a slight increase is expected to occur.

Across sectors, investments in supply chain targets are likely to increase, driven by the ongoing geopolitical disruptions and natural disasters.

"The technology sector is expected to continue growing, driven by digital transformation and demand for innovative solutions. Sub-sectors like SaaS, cybersecurity, AI, and cloud computing offer high growth potential and recurring revenue streams." CMS PE Client

AI and Technological Innovations

So far, PE funds have deployed technological innovations mostly at the portfolio company level. In 2024, the implementation of AI solutions will most likely further increase, both at the portfolio company level and within the funds themselves. AI is expected to significantly impact and enhance portfolio management and operational efficiency of PE funds. Moreover, the EU AI Act is providing a regulatory framework that is expected to boost investment confidence.

"The digitalization of processes should affect every portfolio company in the sense that, with the right tools, productivity can be increased. We promote 'best-practices' amongst our portfolio companies and challenge management teams with regards to these topics. As an investor, AI is helping us in making proprietary deal flow activities more efficient and productive." CMS PE Client

"We leverage AI-powered tools for deal sourcing, identifying potential targets, and conducting due diligence. These tools can help us analyse vast amounts of data and identify promising investment opportunities. We also consider the target company's technology and digital capabilities as part of the overall M&A evaluation process. This allows us to assess the potential value creation opportunities associated with integrating technologies or leveraging AI for post-acquisition growth strategies." CMS PE Client

Succession opportunities

Due to Europe´s aging population, there will be an increase in succession opportunities for SMEs and family-run businesses. PE investors have already become an important factor in facilitating business succession in Europe through their buy-out activities. In 2024, those PE funds which already have a track record of buying family enterprises, will find a growing number of acquisition opportunities.

Varying outcomes in different countries/regions

While the European market presents often similar traits on a macro level, inevitably there are differences across the region. Despite the overall positive trends, the DACH region and France are thought to experience the strongest growth, while Central and Eastern Europe may see only modest improvements.

We have included the take from some of our teams on the ground in Europe and beyond on what is in store for 2024.

"Equity minority deals and "flex equity" financing have developed in 2023 and should continue in 2024. In addition, certain changes expected in 2024, such as more attractive financing conditions (lower interest rates), the end of the energy crisis and lower inflation, should encourage a sustained upturn in the private equity market in 2024." CMS France

"There are still a number of interesting assets in the market, but parties tend to be a bit more cautious in kicking off sales processes, with auction processes taking longer and the universe of potentially interested bidders being handled somewhat more restrictively." CMS Austria

"Even though deal-activity was down elsewhere in the world, activity within the PE market in the Middle East region remained relatively buoyant. The Abraaj collapse is now many years behind, and confidence is returning. The market continues to mature, and a thriving and more diversified economy means greater deal opportunities generally. LPs are therefore becoming increasingly interested in allocating funds to the region itself, and the outlook feels bright. Activity broadly consists of PE deals within the Middle East (especially in KSA and the UAE), but there is also a significant amount of 'outbound' PE activity, especially from the Sovereign Wealth Funds looking to deploy capital to other parts of the Globe (as LPs themselves, or by doing direct deals)." CMS Middle East

"In 2024 we expect some more of what we have seen in 2023: restructuring and distressed transactions will be a focus; there should be an increase in activity levels, particularly in the second half of the year and in the mid-market space, propelled by the adjustment of sellers' pricing expectations and a decrease in interest rates. Capital markets transactions should also start to increase. It is expected that the same sectors that attracted most investments in 2023 will continue to do so in 2024, including in the renewables and TMT sectors." CMS Spain

"In 2023, we noted a shift from new platform deals or (larger) exits to smaller (add on) transactions. We also saw fewer structured (auction) processes and more deal discontinuation in case of red flags in the due diligence process. This year we expect a certain pressure for PE houses to initiate exits given there have been considerably fewer exits in the last 18–24 months. Since the rise of inflation and interest rates seems to have stopped, the macroeconomic environment might support increased deal activity (including larger exits) in the second half of 2024." CMS Switzerland

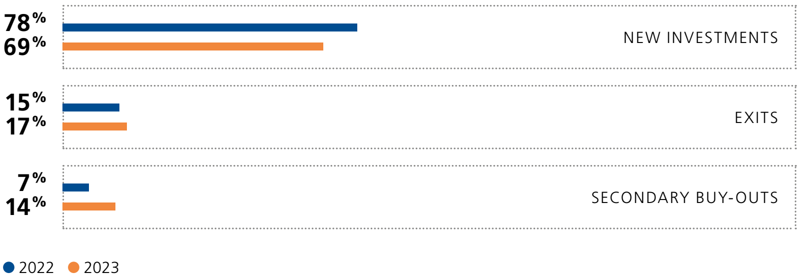
Overview

Deal activity and overall market trends

In a challenging M&A market with rising interest rates, high inflation and geopolitical challenges in Europe, the number of PE deals remained stable in 2023 compared to 2022.

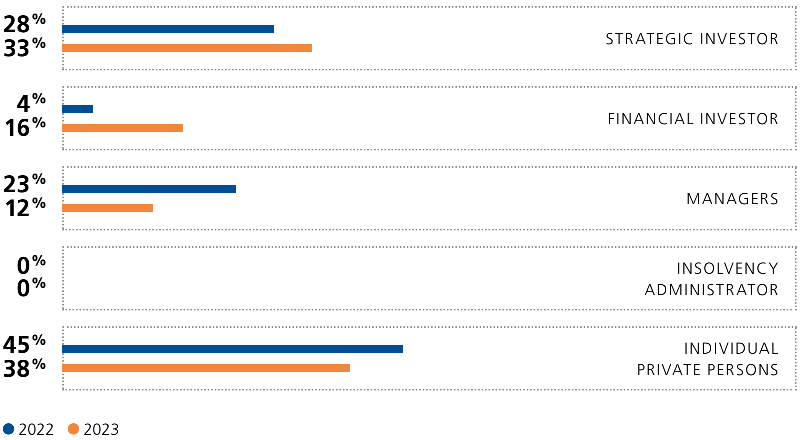
PE investors continue to make more new investments than exits. However, the gap is narrowing slightly as PE investors become more active on the sell-side again. In 2023, the number of secondary buy-outs has more than doubled and we have also seen a slight increase in regular exits. As the rise of inflation and interest rates seems to slow down, we expect a certain pressure for PE houses to initiate exits. For 2023 the percentage of new investments remained high at 69%.

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



In the buy-side PE deals we analysed, sellers were mostly founders/high net worth individuals and strategic investors, with an increase in buy-outs by strategic investors and financial investors compared to 2022, as detailed in the graph:

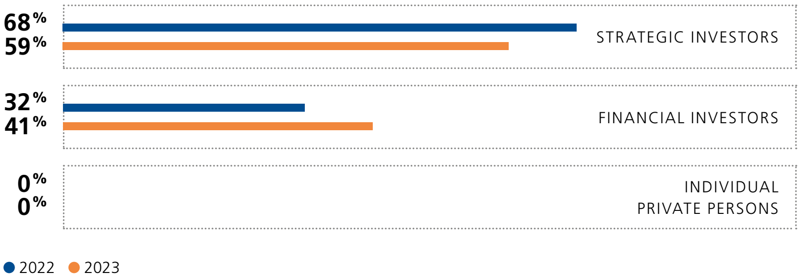
Sellers' background (PE is the buyer)



100% = all evaluated transactions

With regards to the sell-side PE deals we reviewed, we saw an increase in sales to financial investors (41% in 2023 compared to 32% in 2022) and a decrease in sales to other strategic investors (59% in 2023 compared to 68% in 2022):

Buyers' background (PE is the seller)

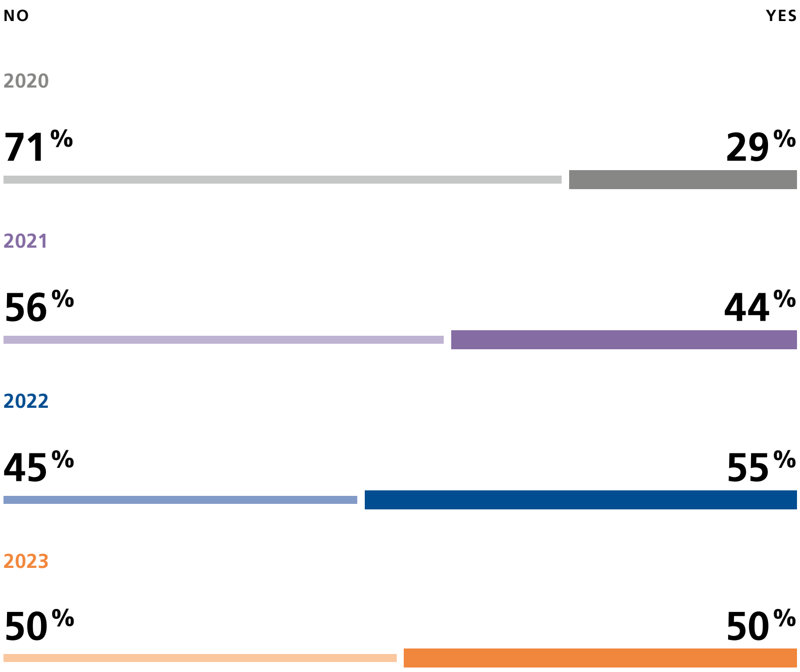


100% = all evaluated transactions, multiple nominations possible in several transactions parties from more than one particular group of sellers' or buyers' were involved.

Similarly to 2022, almost all of the deals we analysed (97%) were structured as share deals (as opposed to asset deals) and in most cases (around 89%) the buyer acquired the majority or all of the shares in the target company.

In 2023, we again saw a lot of add-on acquisition activity. Around 50% of the PE buy-side deals were add-ons (after 55% in 2022, 44% in 2021 and 29% in 2020). This shows that buy-and-build strategies remain important for PE investors.

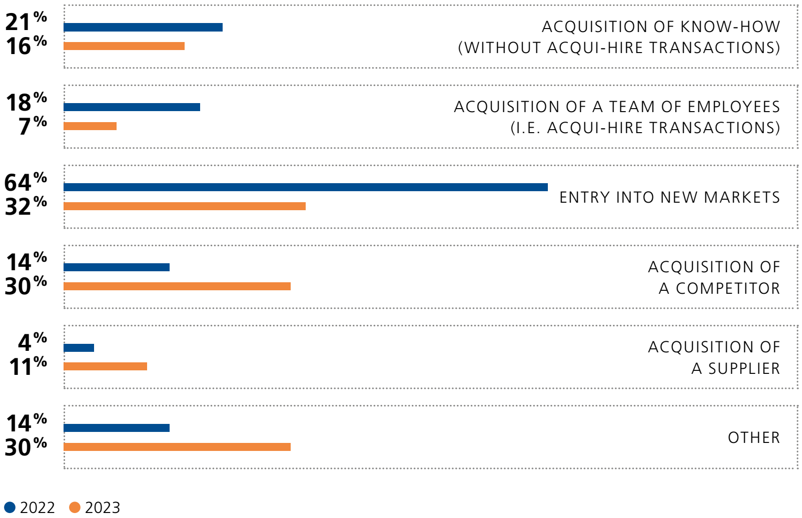
Was the transaction an add-on acquisition: time trend



Main deal drivers

In 2023, entry into new markets remained the main deal driver, but only just, with 32%, which is half the percentage it reached in 2022). Acquisition of a competitor (now 30% compared to 14% in 2022) and acquisition of a supplier (now 11% compared to 4% in 2022) are the two other deal drivers that have become more relevant. This is in line with the buy-and-build trend, as these deal drivers appear to be key reasons for the selection of add-on targets. More details on the deal drivers can be found in the chart.

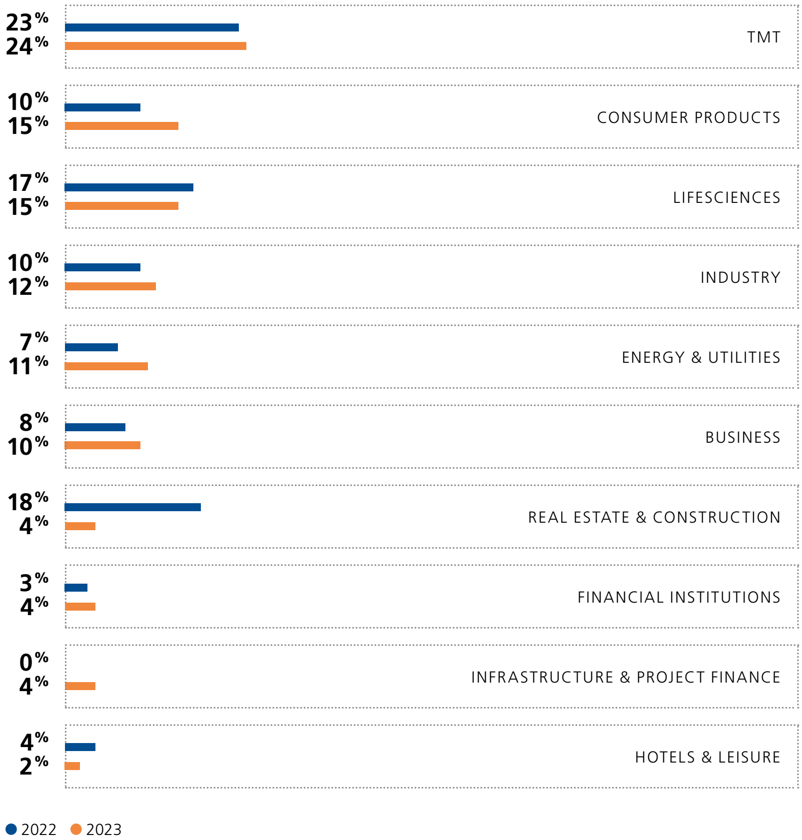
Main deal drivers

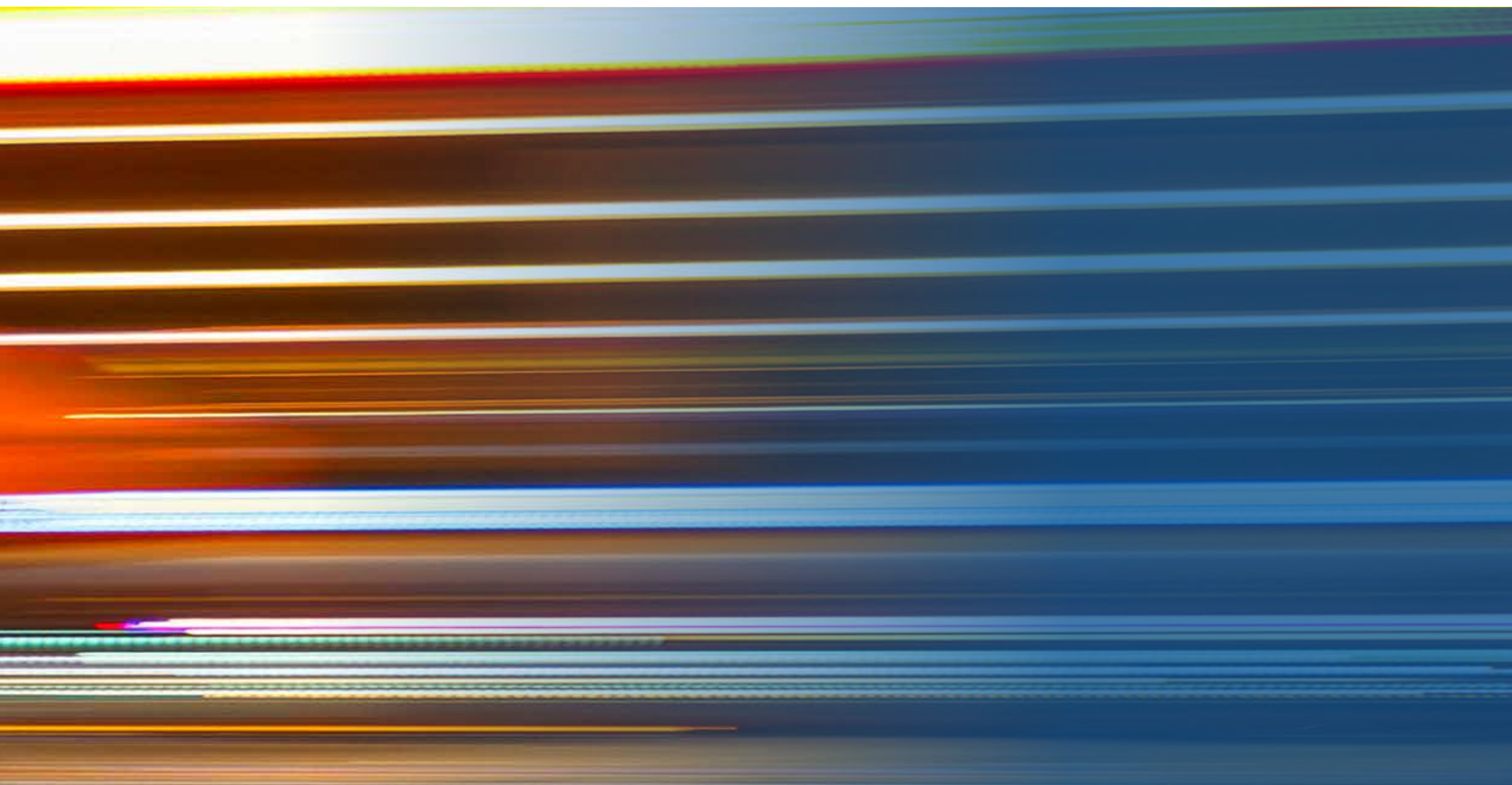


Sectors

In 2023, most of the deals we analysed involved the Technology, Media and Telecoms (TMT) sector (24% of all deals we reviewed). The next busiest sectors were Consumer Products (15%) and Life Sciences (15%). The sectors that grew most compared to 2022 were Consumer Products (by 5 percentage points), Energy & Utilities and Infrastructure & Project Finance (each by 4 percentage points). We saw a clear decrease in deal activity in the Real Estate & Construction (by 14 percentage points) and the Hotels & Leisure (by 2 percentage points) sectors.

Sector spread for PE deals by number of deals

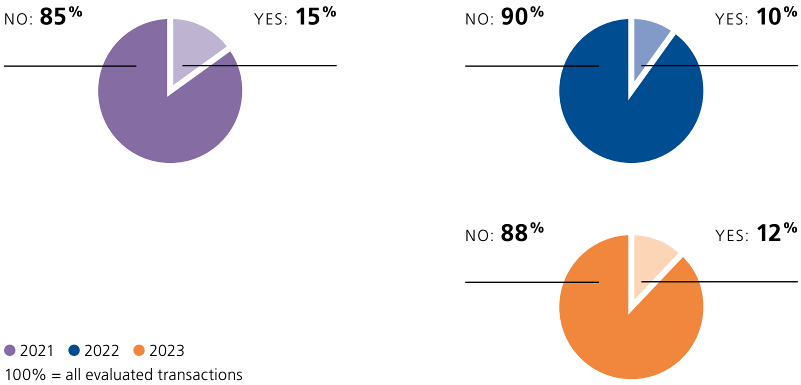




Use of MAC-clauses

MAC-clauses were used in 12% of the cases, which is an average value compared to recent years and slightly more than in 2022 and on the same level as in 2021, so a buyer-friendly development.

MAC-clauses: time trend



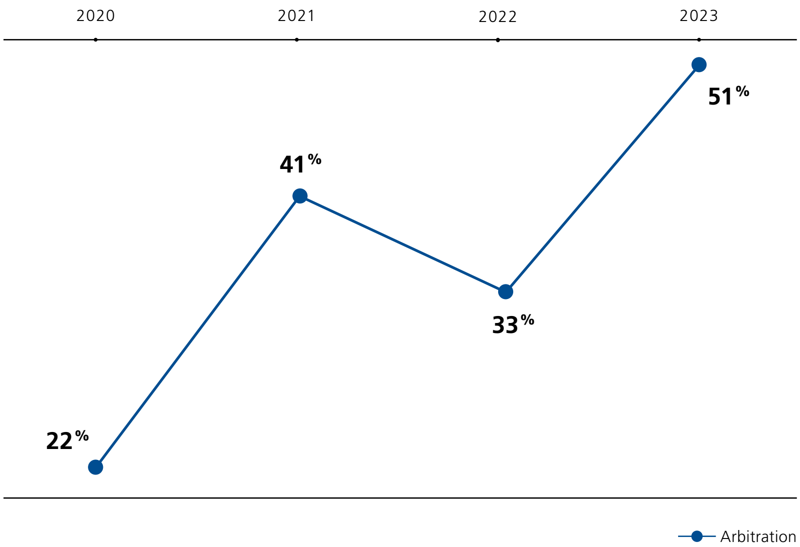
A comparison with the US shows that the situation there is exactly the opposite: MAC-clauses are very much the standard and feature in almost every US deal (97% of the cases).

MAC-clauses: Europe/US 2023

Use of Arbitration clauses

In recent years we have seen an upwards trend towards the use of arbitration clauses in PE deals. With an arbitration clause, the parties refer future disputes to an arbitration panel/tribunal. The main advantages of arbitration proceedings over court litigation proceedings are (i) that the parties can choose the arbitrators to a certain extent, thereby ensuring that their dispute is resolved by experts, (ii) that the resolution of the dispute is likely to take less time and (iii) that the dispute can be kept confidential. In 2023, arbitration clause was agreed in more than half of the PE deals we reviewed.

Arbitration: Trend index 2020–2023



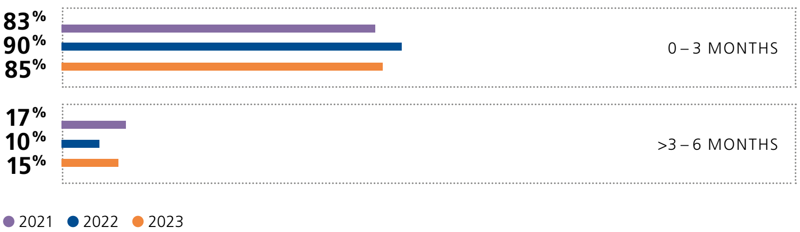
Foreign investment control

In terms of seeking approval for foreign investment, there was a significant increase between 2022 and 2023. In 2023, approval was sought in 21% of deals, compared to 8% in 2022. The reason for this is that in many jurisdictions we have seen a trend towards tighter approval regimes for direct and indirect foreign investment and an increase in regulatory interventionism.

Were any FDI approvals or clearances sought?

The following graph shows that the duration of FDI approval procedures has also increased: In 2023, in 15% of cases, the procedure took between three and six months. By comparison, in 2022, 10% of the cases took more than three months.

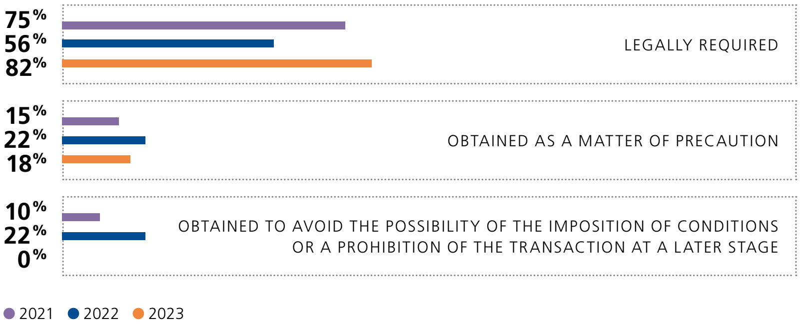
Time between application and approval or clearence



100% = all deals with any approvals or clearances pursuant to foreign investment control laws sought

We have also seen significant changes in the motives for FDI filings. In 82% of the cases, the filing was considered to be legally required, which is a sharp increase compared to 2022, when only 56% of the filings were considered to be legally necessary. Accordingly, fewer applications were made as a precautionary measure and no applications were made to avoid the possibility of subsequent conditions or prohibitions. This underlines the trend towards more stringent authorisation regimes.

The FDI clearance/approval was:

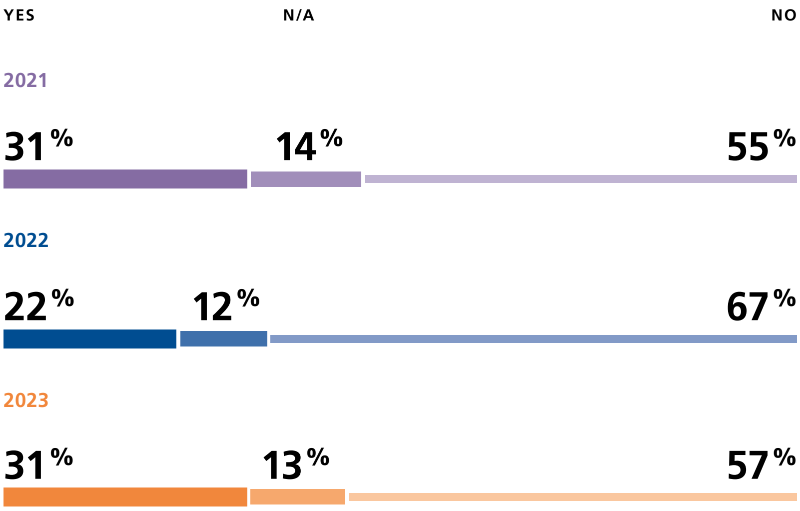


100% = all deals with any approvals or clearances pursuant to foreign investment control laws sought

Transaction Process

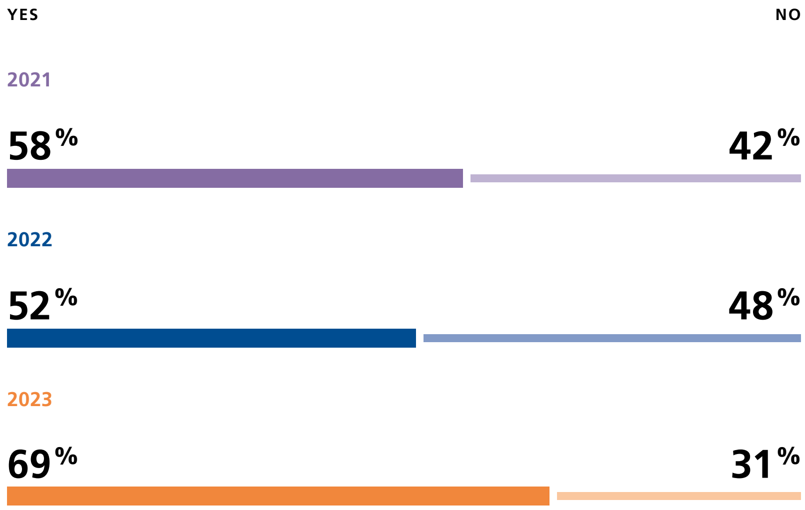
Overall, in 2023 there were fewer auctions or bidding processes on sell-side PE deals compared to 2022 (a decrease of roughly ten percentage points).

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



We analysed the impact of auctions or bidding processes on competition between interested buyers. In 2023, 69% of auctions or bidding processes were successful in leading to negotiations with several interested buyers. In 2022, this figure was lower (52%). This development shows that in 2023 the competition on the buy-side significantly increased where the seller conducted an auction or bidding process. Therefore, while there were fewer auctions and bidding processes in 2023 compared to 2022, these were 17% more successful in creating competition than they had been the previous year.

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

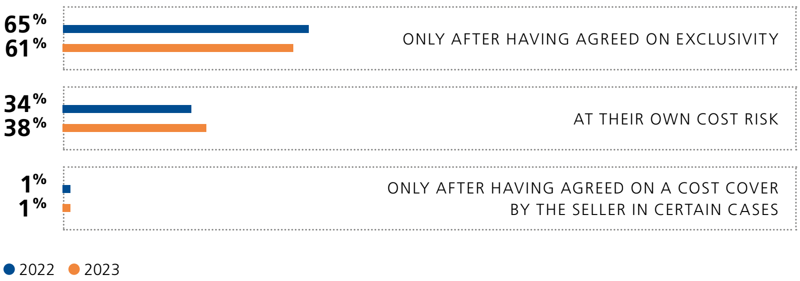


All deals where sale of the target company preceded by an auction or bidding process.

"In the majority of the PE deals we have acted on in Austria, PE buyers tended to conduct legal due diligence despite not having been awarded full exclusivity."
CMS Austria

Looking at the preconditions buyers demanded before commencing due diligence (buy-side PE deals only): in most cases (61% in 2023), the buyer only started due diligence after agreeing on exclusivity with the seller; in 38% of cases (in 2023), buyers started due diligence at their own cost and risk (and without any assurances from the seller); in very few cases (1% in 2023), due diligence started after the seller had agreed on some type of cost cover. 2023 therefore saw a slight shift towards more buyers starting their due diligence at their own cost compared to 2022.

Did the buyer commence the due diligence?



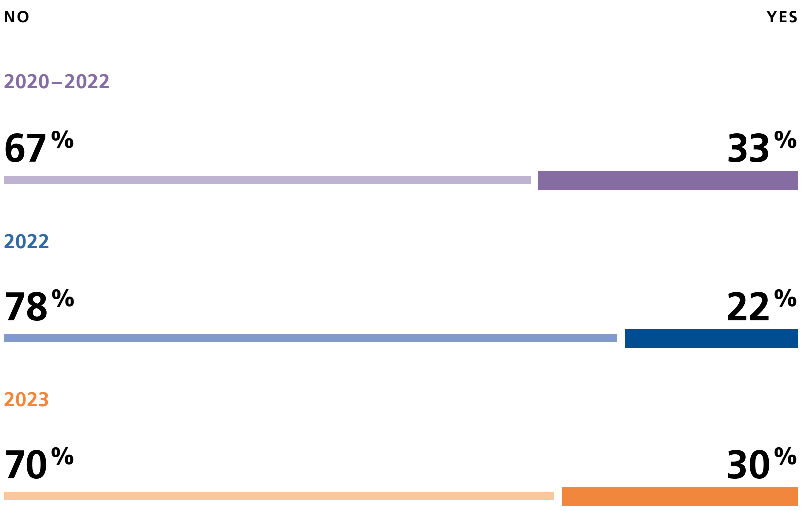
Liability

This chapter of our PE study provides an overview of 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 upon between the parties. If warranties and indemnities (W&I) insurance coverage was obtained for the transaction, this 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. 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

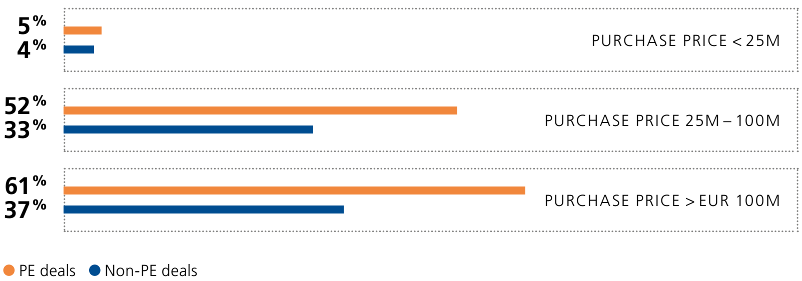
Once again, our PE study shows that W&I insurance plays an important role in PE M&A transactions. The number of PE transactions analysed in which W&I insurance was taken out increased by 8 percentage points, from 22% in 2022 to 30% in 2023.

W&I insurance used on the transaction?



Our data continues to show that the use of W&I insurance 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 61% of PE transactions in 2023 (which marks a decrease from 73% in 2022 and 74% in 2021). In contrast, trade M&A deals in the same value bracket, used insurance only in 37% of cases (which is also a lower percentage compared to 2022 figures). W&I insurance remained less common on small deals (at only 5% where deal value was below EUR 25m). This is possibly due to the cost of the premium being disproportionate in light of the deal value.

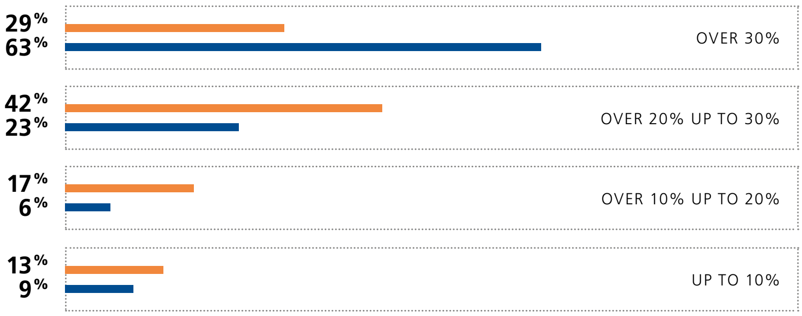
Deals with W&I insurance by purchase price



"Warranty & Indemnity insurance is not yet as commonly used in the Middle East as it is elsewhere. Within the PE sector however W&I is used more frequently. One of the key differences between PE in the Middle East as compared to elsewhere is that funds tend to invest using equity only. Acquisition financing is comparably rare. As a consequence PE funds are looking to create value through operational improvements, more so than via financial engineering."
CMS Middle East

In most cases, the insured sum in PE deals continues to be more than 20% of the purchase price (71% of PE deals compared to 86% of non-PE deals with W&I insurance). In 29% of PE deals, the insured sum was more than 30% of the purchase price in 2023 (63% in non-PE deals, which is a considerable increase compared to 2022 where such figure for non-PE deals was 39%).

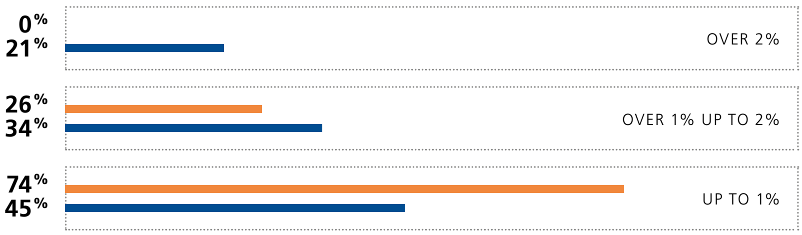
Level of coverage as a % of the purchase price



● PE deals ● Non-PE deals
100% = all evaluated transactions

The level of premium is up to 1% of the purchase price in 74% of the cases (compared to only 45% in non-PE deals). Contrary to 2022, where in 15% of the PE deals the premium was higher than 2% of the purchase price, none of the premiums in the PE deals analysed exceeded 2% of the purchase price (whereas 21% of the non-PE deals had a premium exceeding 2% of the purchase price).

Level of premium as a % of the purchase price



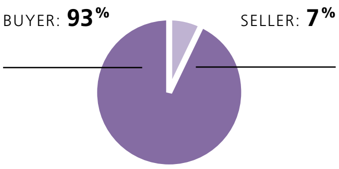
● PE deals ● Non-PE deals
100% = all evaluated transactions

In the vast majority of cases, the buyer continues to bear the cost of the insurance policy. In 2023, the number of cases where the seller paid the insurance premium was lower in PE-deals compared to non-PE deals (7% in PE deals vs. 13% in non-PE deals). Conversely, in 2022 the number of cases when a seller paid the insurance premium was higher for PE deals, compared to non-PE deals. While PE deals shifted ten percentage points towards even more buyers bearing the cost of insurance (93% in 2023 vs 83% in 2022), non-PE deals instead saw an 11 percentage points increase in the seller bearing the cost of the W&I policy (2% in 2022 vs 13% in 2023).

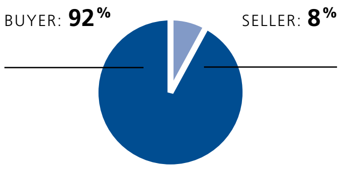
Where PE was on the sell-side, it was less willing to take on the W&I insurance cost compared to 2022 (8% of all sell-side deals reviewed vs 30% in 2022).

W&I premium paid by?

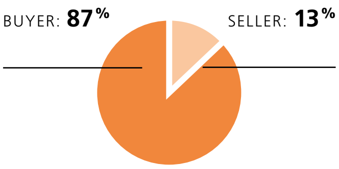
All PE deals



Only deals where PE is a seller

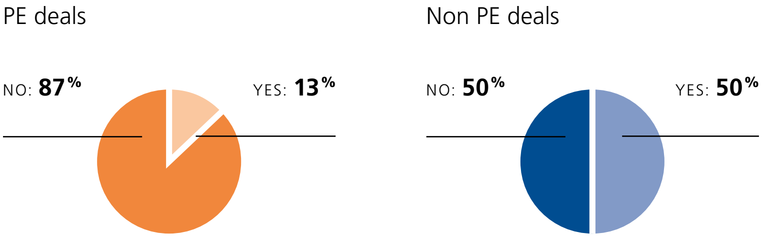


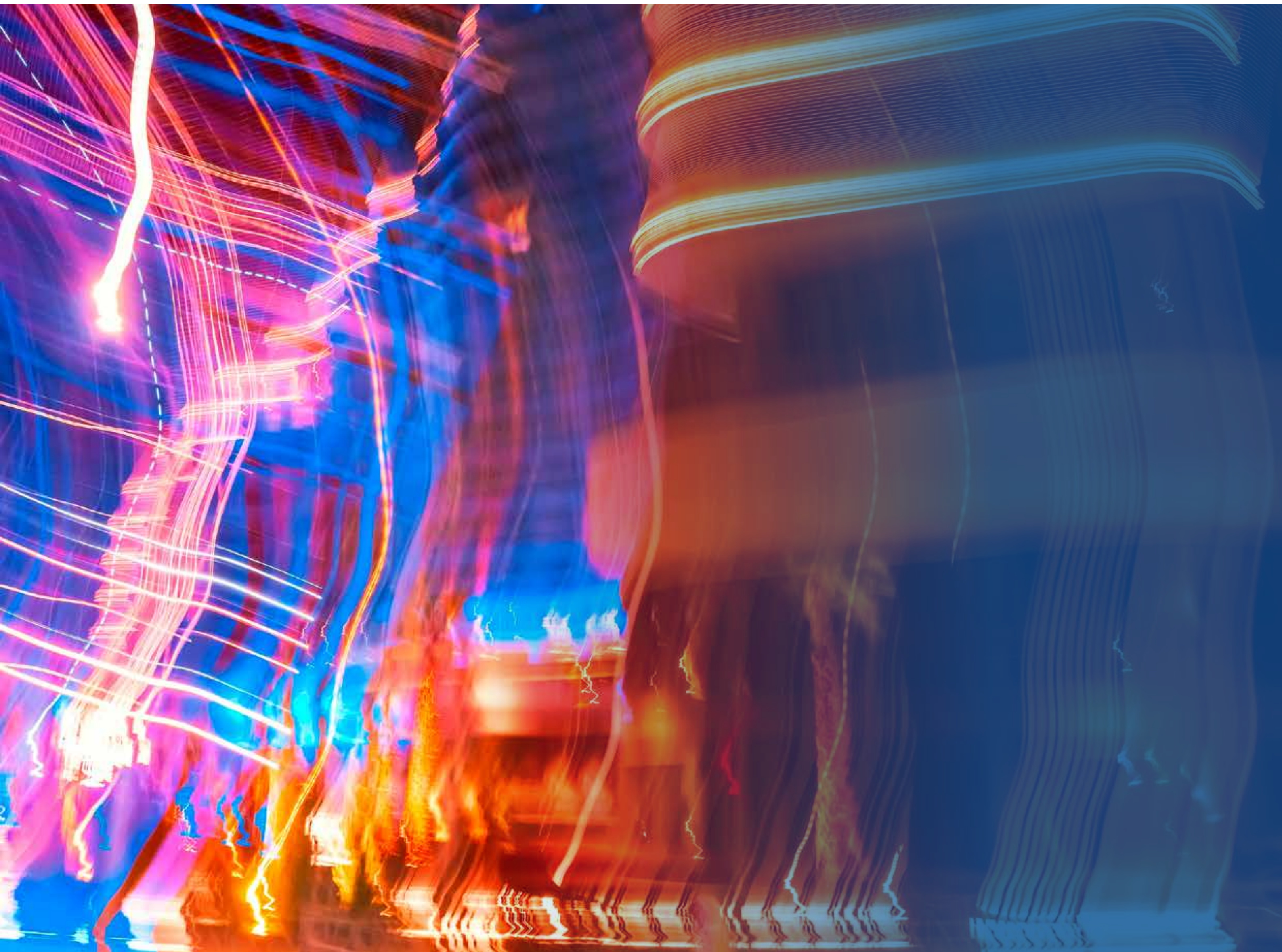
Non-PE deals



In the vast majority of PE deals (87%) the non-purchasing party did not bear a portion of the W&I insurance costs. This figure slightly increased compared to 2022. In non-PE deals the percentage of deals in which the non-purchasing party had to bear a portion of the cost in 2023 was significantly higher than in PE transactions (50% vs 13%).

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



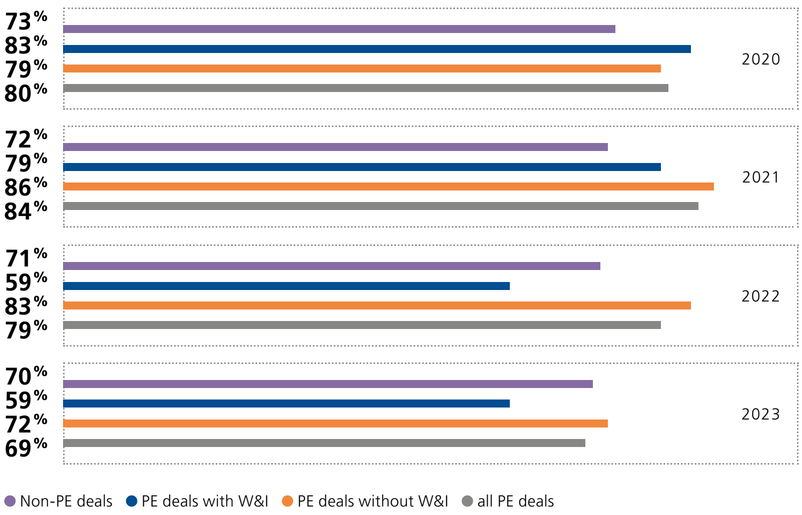


De minimis

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.

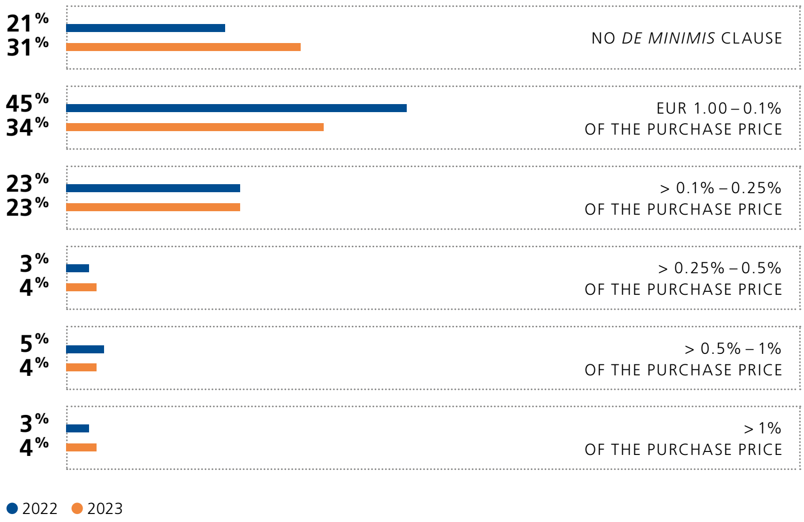
While there had been a slight increase in the use of *de minimis* on PE deals from 2020 to 2021 (from 80% in 2020 to 84% in 2021), this decreased to 79% in 2022 and even further to 69% in 2023. The use of *de minimis* in non-PE deals slowly decreased from 2020 to 2023 (from 73% to 70%).

Use of *de minimis* trend



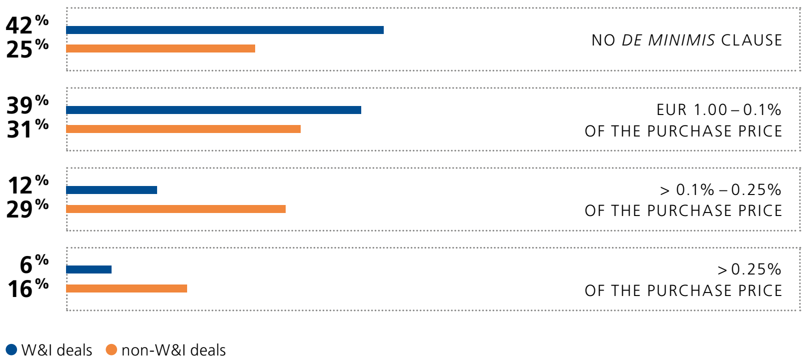
Where a *de minimis* was agreed in PE deals, the amount was between EUR 1.00 and 0.1% of the purchase price in approximately 34% of the transactions (a significant decrease compared to 45% in 2022), and in another 23% of PE deals it ranged between >0.1% and 0.25% of the purchase price (consistent compared to 2022).

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



In nearly half of PE deals with a W&I insurance (42%) in 2023, the parties did not agree a *de minimis* at all. This, we assume, would have been as a result of a 1 EUR/GBP liability cap being agreed and on the basis that the W&I policy would have been left to deal with *de minimis* thresholds, if applicable. Doing so also avoids having any conflicting provisions in the transaction documents and the W&I policy or the transaction documents cutting across more favourable terms (from a buyer's perspective) provided within the W&I policy.

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



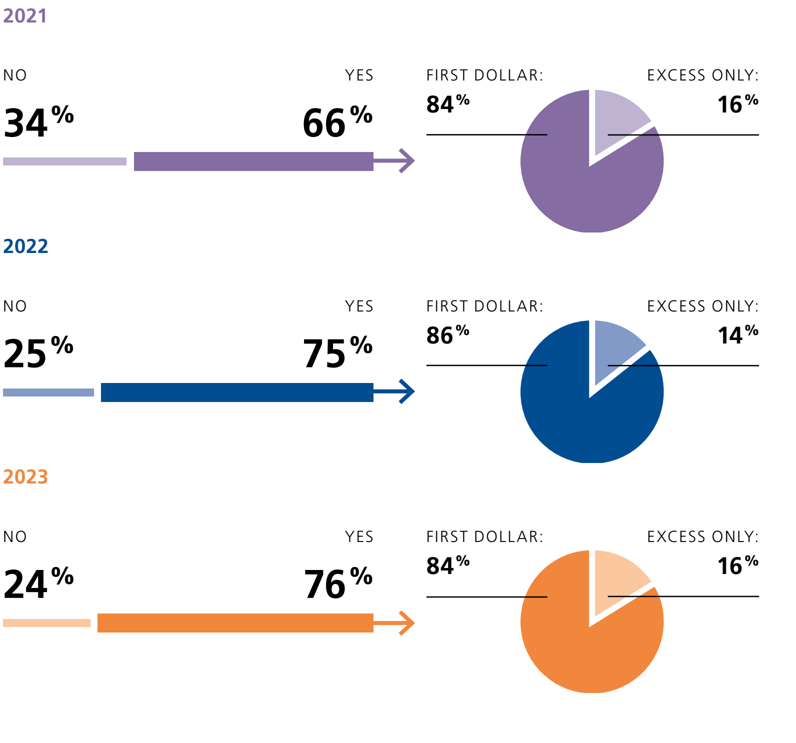
Baskets

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 upon as a percentage of the purchase price. With a 'first dollar' basket, the buyer can recover the whole amount claimed once the claimed amount 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.

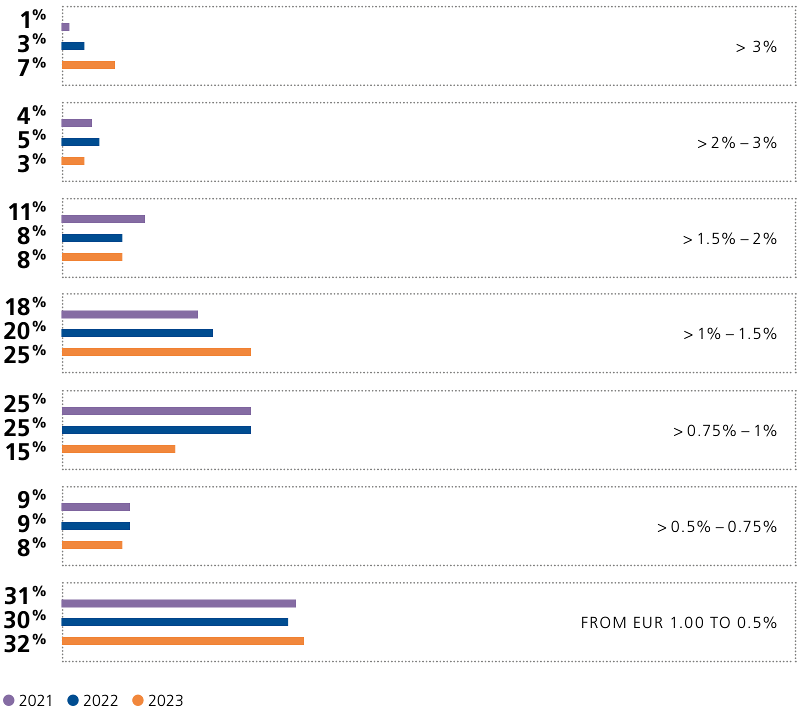
The graph shows a slight increase of one percentage point and the share of 'excess only' vs. 'tipping' (also referred to as 'first dollar' basket) has remained stable over the past three years.

While the former trend to use lower baskets, in particular baskets ranging from EUR 1.00 to 0.5% of the purchase price, had been interrupted in 2022, such trend picked up again in 2023. In 2023, there have further been increasingly more cases in which parties have agreed baskets above 3% of the purchase price.

Use of basket trend

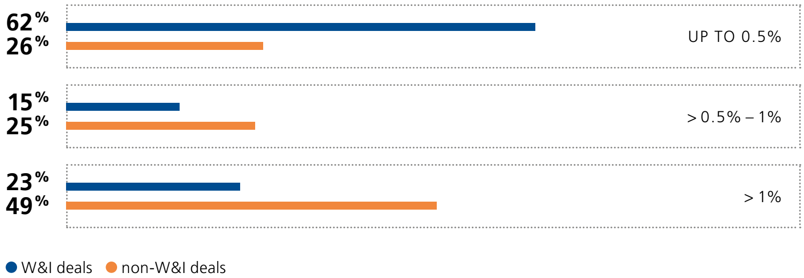


Basket amount (as a % of the purchase price)



Baskets in W&I deals 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

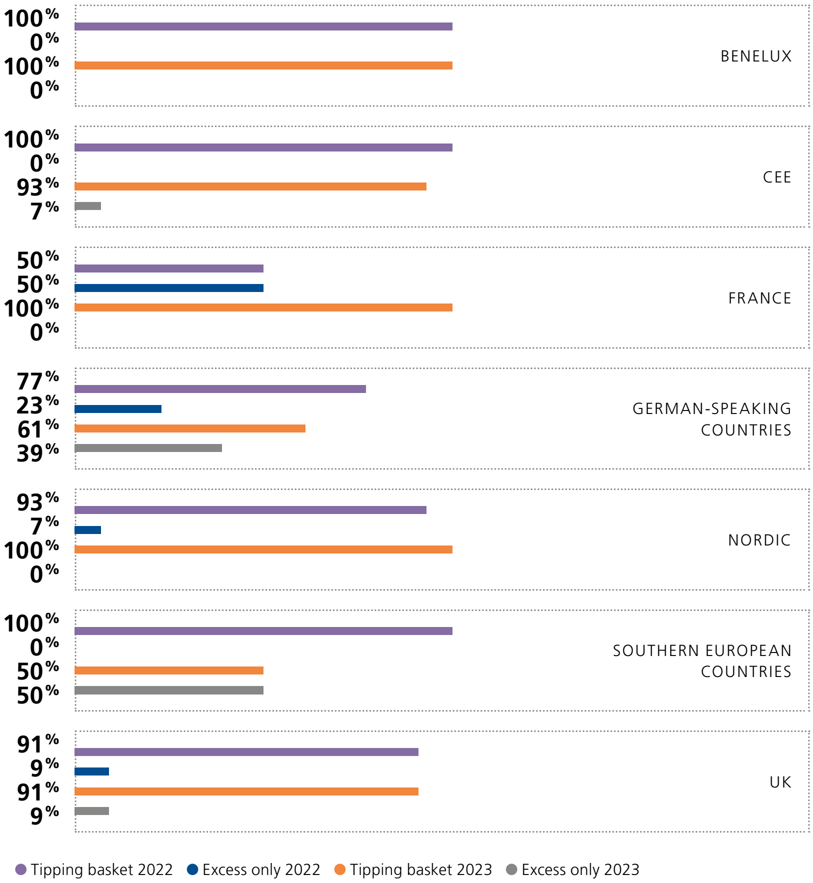


100% = all evaluated transactions

The share of "tipping" baskets was significantly higher than "excess only" baskets in all geographies analysed except for the Southern European transactions, with all of our Benelux, France and Nordic deals and almost all of our UK and CEE deals featuring a "tipping" basket.

"In Austria, whilst "excess only" baskets are almost always requested by sellers, the final agreements rarely include an "excess only" concept, therefore, the Austrian market does not align with the rest of the Germanic countries, where there is a higher incidence of excess only baskets being agreed." CMS Austria

Excess only basket vs tipping basket by geography

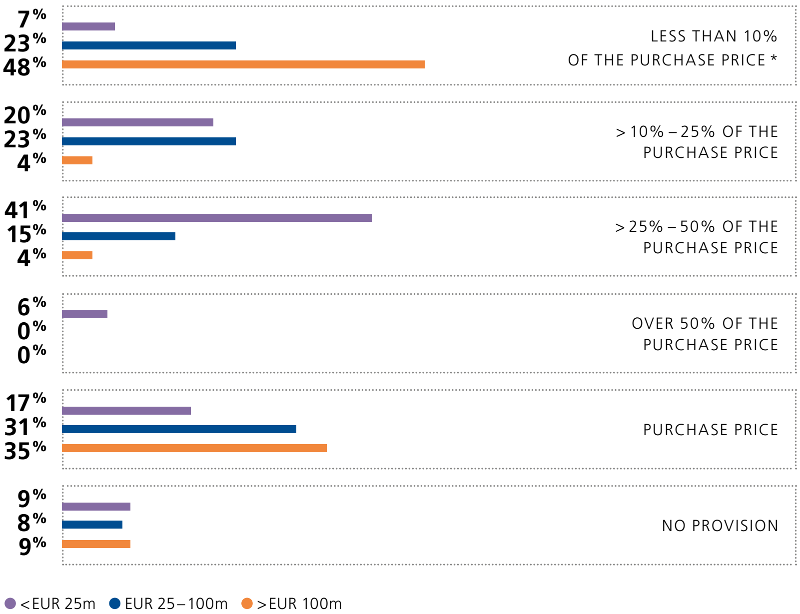


100% = all transactions with a basket

Liability Caps

When it comes to monetary liability caps, the 2023 data once more confirmed that there seems to be a direct correlation between deal value and cap amount, although such a correlation was not as obvious as in 2022. The higher the purchase price, the lower the percentage of the cap. In 48% of the deals with a purchase price higher than EUR 100m, the cap was lower than 10% of the purchase price (compared to 60% in 2022 and 54% in 2021).

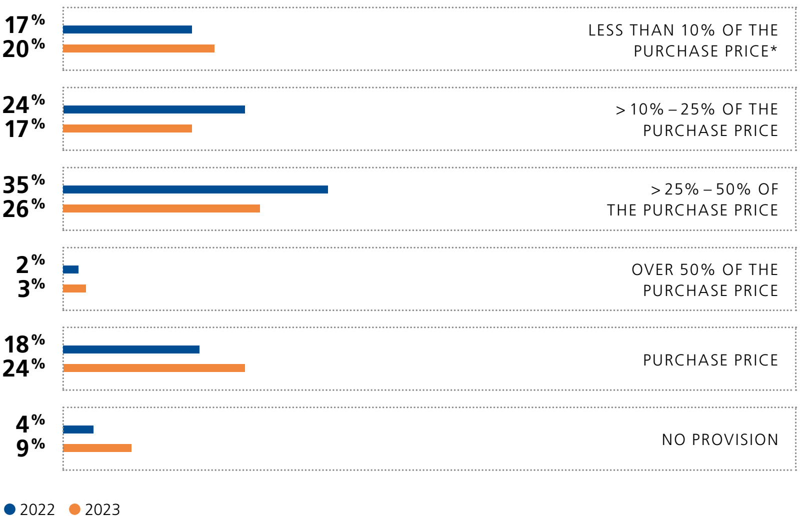
Liability caps by purchase price



100% = all evaluated transactions
* incl. EUR 1 and 0% of the purchase price caps

While the number of deals with a cap of less than 10% of the purchase price decreased between 2021 and 2022 from 31% to 17%, which might have been explained by the increased use of W&I insurance on deals in 2021 (compared to 2020) and its decreased use in 2022 (compared to 2021), such number increased again slightly to 20% in 2023. This correlates with the slightly increased use of W&I insurances in 2023 compared to 2022.

Liability caps time trend



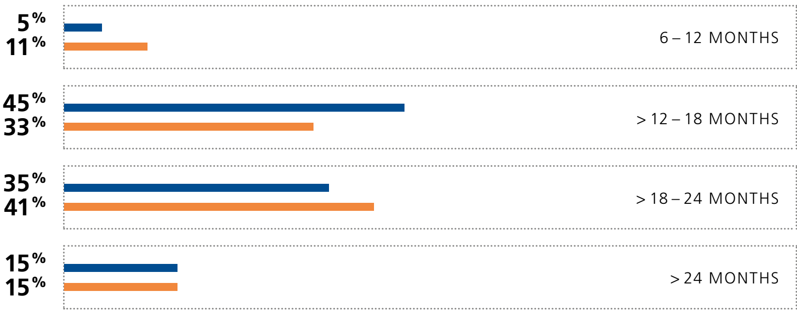
100% = all evaluated transactions
* incl. EUR 1 and 0% of the purchase price caps

Limitation Periods

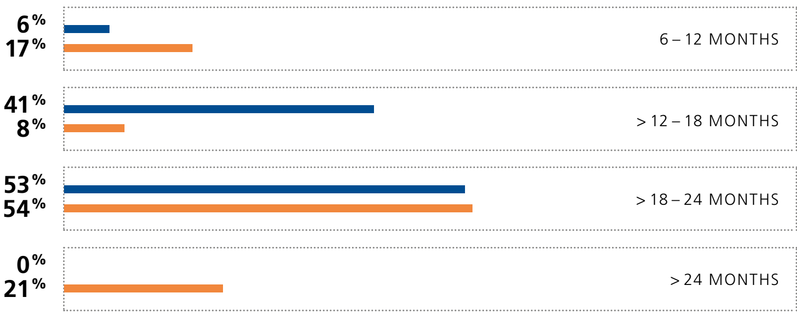
Time limitations are the final key element of a seller's limitation of liability package, particularly if there is no W&I insurance. Traditionally, the limitation period for business warranty claims in PE deals (in particular where a PE is the seller) was – and still is – shorter than in non-PE deals. The 2022 data showed a trend towards agreeing on a 12-to-18-months-time-limitation in the majority of the cases (45% in 2022 compared to 29% in 2021), with longer limitation periods in deals with W&I insurance. In 2023, while the percentage of deals with a limitation period longer than 24 months remained unchanged at 15%, we saw a growing 'buyer friendly' trend towards longer limitation periods and a shift from the majority of transactions having a 12–18 months limitation period (33% in 2023 vs 45% in 2022) towards the majority of transactions having an 18–24 months limitation period (41% in 2023 vs 35% in 2022), with even longer limitation periods in deals with W&I insurance.

Limitation periods for warranty claims: time trend

ALL PE DEALS

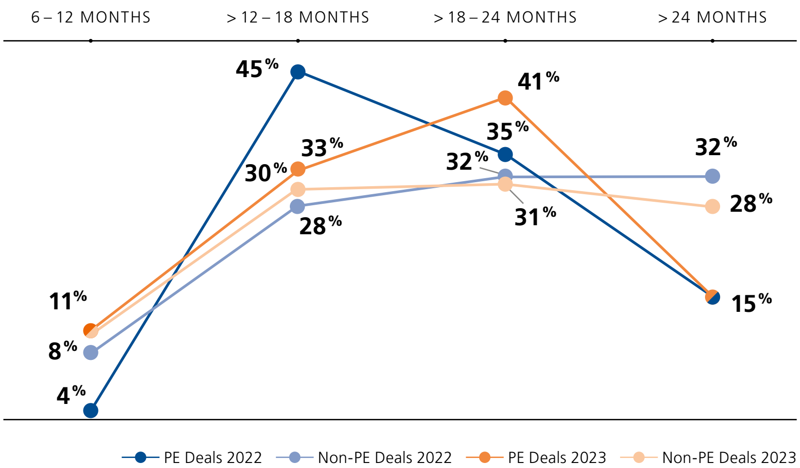


PE DEALS WITH W&I



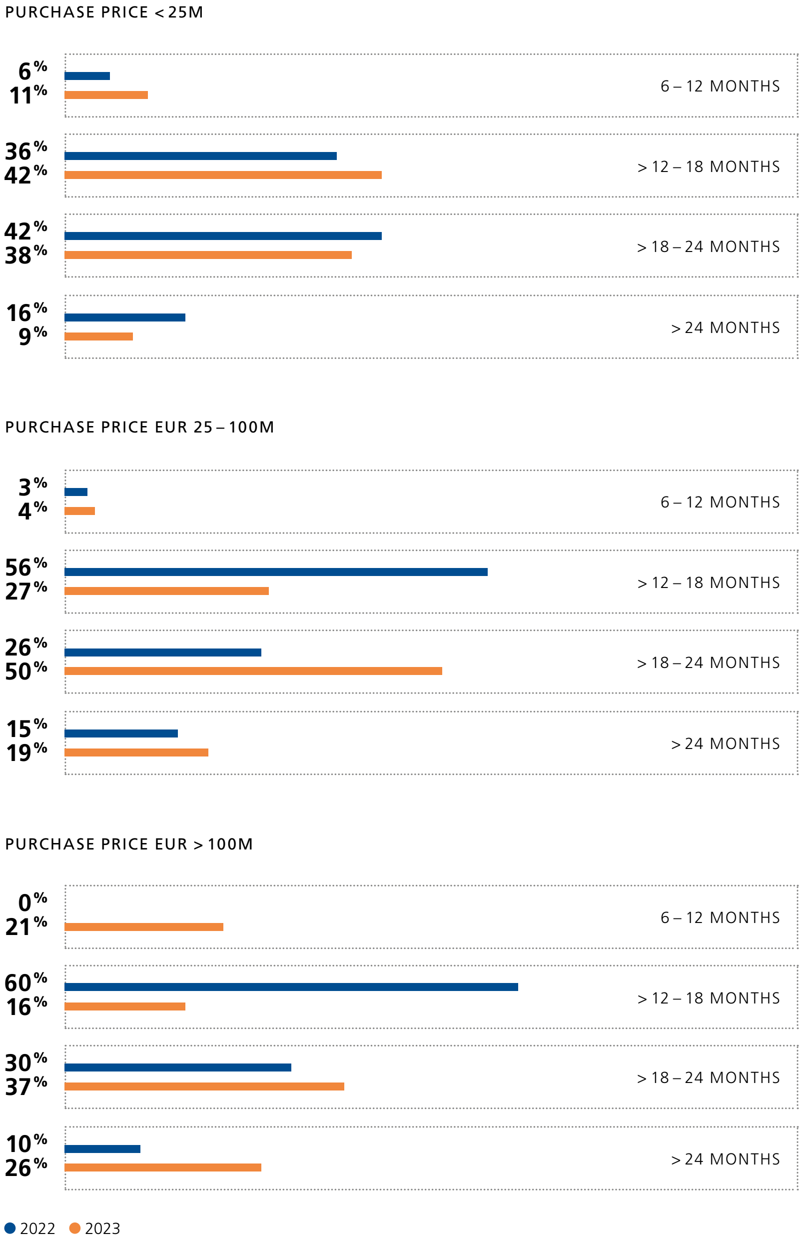
● 2022 ● 2023
100% = all evaluated transactions

Limitation periods for warranty claims: PE deals vs non-PE deals



Looking at potential differences across deal sizes, the overall trend towards longer limitation periods continued in 2023. However, on deals where the purchase price exceeded EUR 100m, while in 2022 the majority of deals (60%) had a 12-to-18-months limitation period, 63% of such deals had a limitation period longer than 18 months, in 2023 the majority of deals (37%) had a limitation period of 18–24 months, with 26% exceeding 24 months and the 12–18 months figure dropping to 16%. A similar trend can be seen for transactions with a purchase price between EUR 25 and 100m, while the figures for the transactions with a purchase price lower than EUR 25m remained largely consistent.

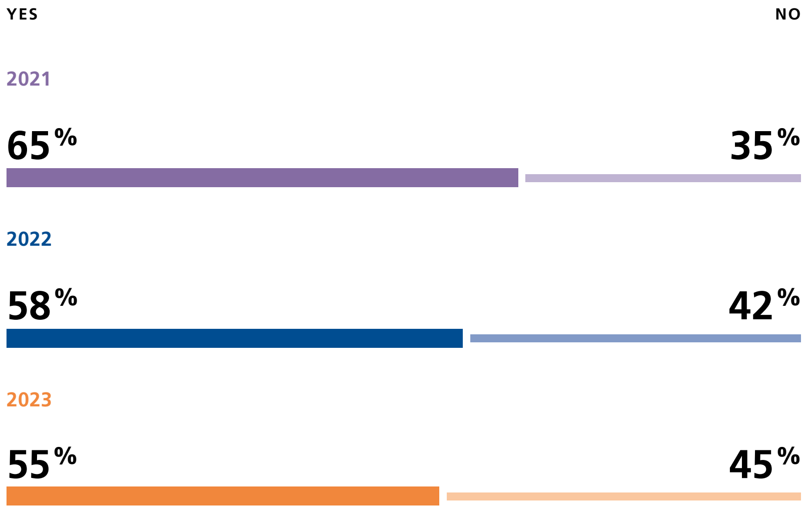
Limitation periods for warranty claims by purchase price



Tax

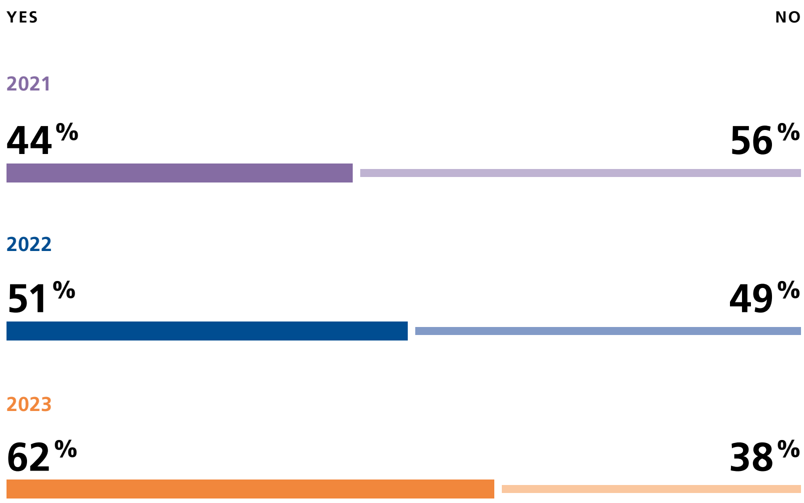
Overall, the trend of a slightly declining use of tax indemnity clauses has continued (65% in 2021, 58% in 2022 and 55% in 2023). This might however also be due to the increasing number of deals included in our study which were concluded in jurisdictions where typically no tax indemnity is given by sellers.

Tax indemnity agreed?

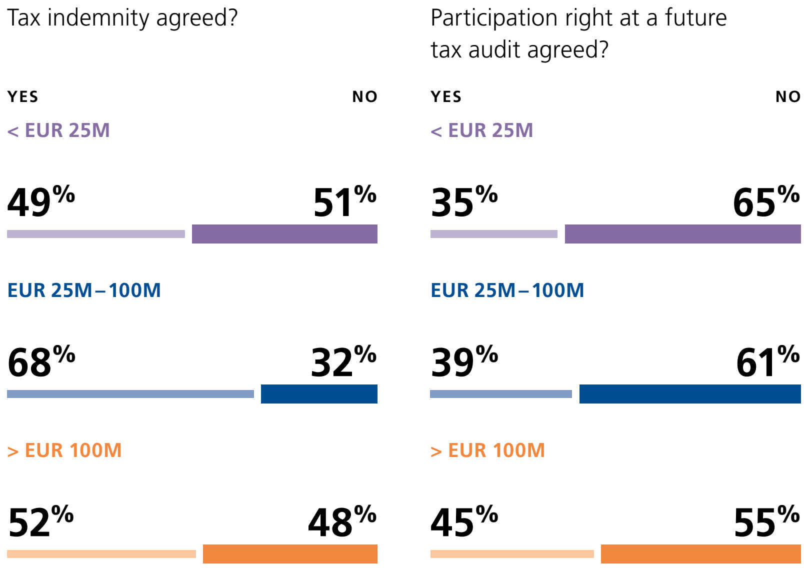


In 2023, sellers on a PE deal were significantly less successful than in 2022 in negotiating the right to actively participate in a future tax audit on the target (38% vs. 49%). While deal value was a significant factor in 2022 (where in the PE deals with a purchase price higher than EUR 100m, the seller had no such right in 83% of cases (88% in 2021)), such trend was not so obvious in 2023 (with a participation right agreed only in 45% of such transactions). This trend is in line with trade M&A deals and appears to be a buyer-friendly trend that is inconsistent with the overall decline in the inclusion of tax indemnities in deals referred to above.

Participation right at a future tax audit agreed?

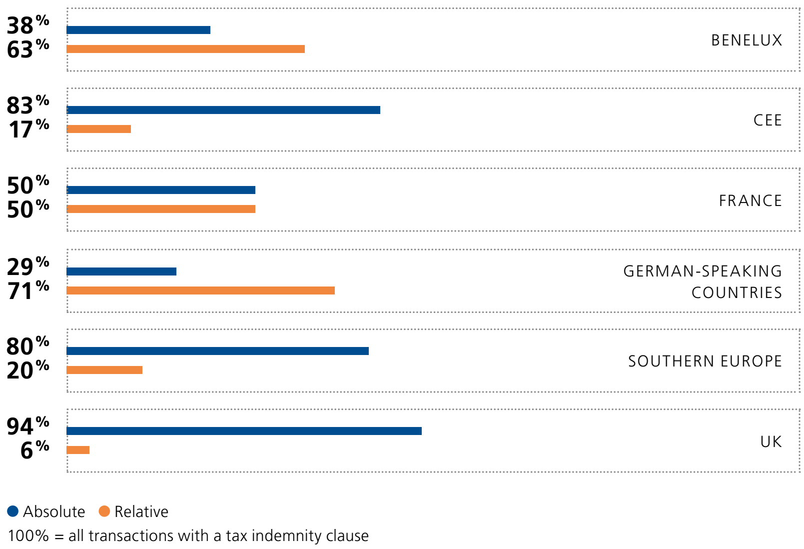


Tax indemnity by purchase price

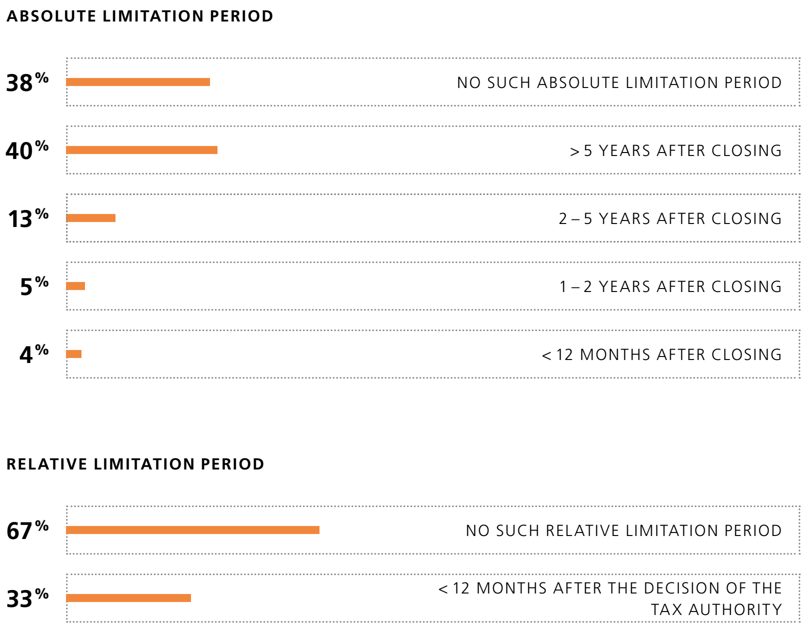


As in 2022, the data for 2023 reveals a huge difference between geographies with respect to whether an absolute (i.e., a fixed number of years post-completion) or relative (i.e., a certain period of time following the final determination of taxes post-completion) limitation period was agreed regarding the tax indemnity. Whereas an absolute limitation period is still standard in the UK, Southern Europe and CEE, in Germanic countries and Benelux, the trend is still to agree to the – buyer-friendly – relative time limitation. However, in France there seems to be no preference. The time period agreed for an absolute limitation in most cases was more than five years after completion. In the case of a relative limitation period, the tax indemnity was only time-barred within a period of up to 12 months after the relevant decision of the tax authority.

Tax indemnity: absolute vs relative limitation period by geography



Tax indemnity: duration of limitation period



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

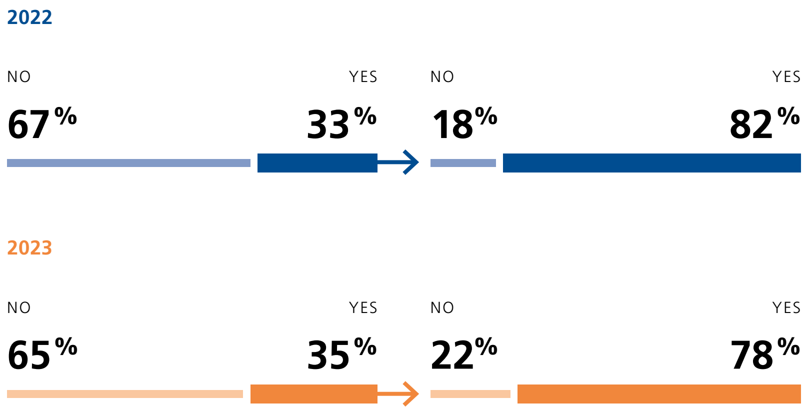
Purchase price adjustments/ Earn-out

Purchase Price Adjustments

As in previous years, the use of purchase price adjustments to determine the final price payable by the buyer on or after completion has remained used only in a minority of transactions (35% in 2023). This is consistent with PE funds' approach to deal certainty and their preference for mechanisms that will allow the repatriation of proceeds to the fund's investors without delay after completion.

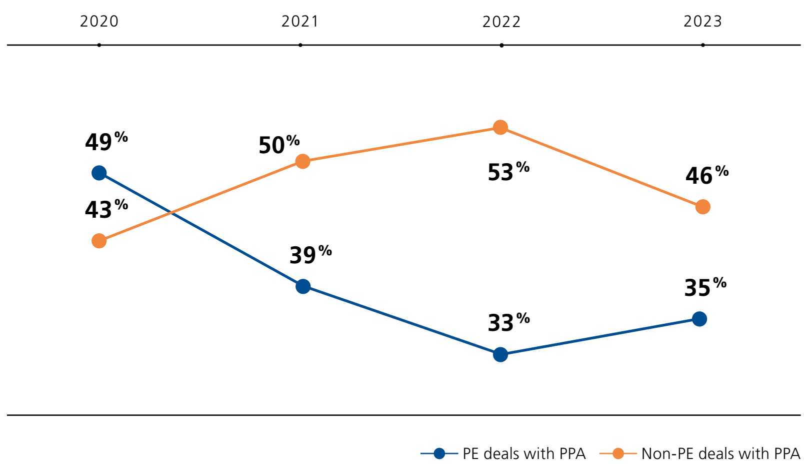
In this context, it is not surprising that where no purchase price adjustment was contemplated, locked box remained the preferred structure and was used in nearly 80% of all transactions reviewed.

PE deals with PPA? **Locked box? (out of deals with no PPA)**



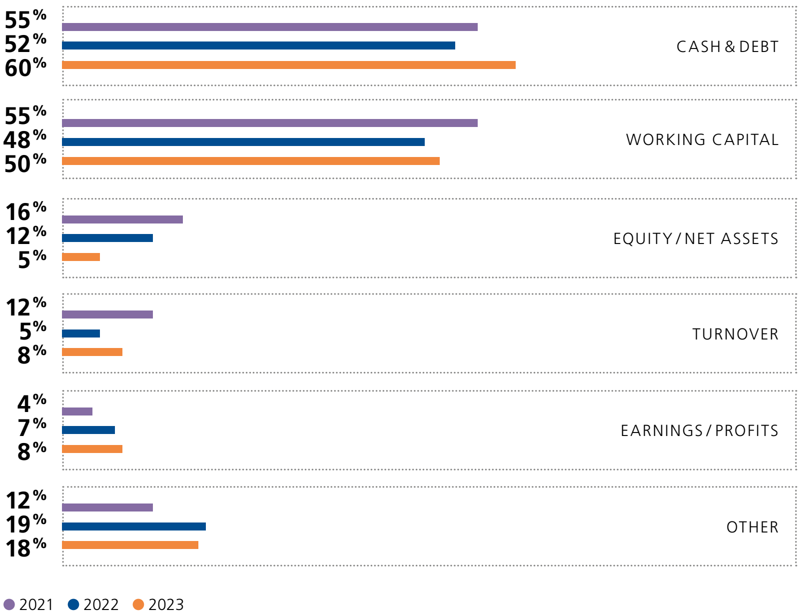
While based on our data since 2020 purchase price adjustments had been experiencing a downward trend on PE transactions and an upwards trend in non-PE deals, 2023 has seen non-PE deals starting to come back from their peak in the use of purchase price adjustments (in 2022 more than half of all transactions reviewed had a purchase price adjustment), while PE deals have remained stable, with only one third of all acquisitions involving a PE player not fixing the price from the outset.

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



When it comes to the criteria chosen to determine the price adjustment, cash, debt and working capital remain the preferred options as in all previous years, although 2023 saw a more stark inclination towards cash and debt, which were used in 60% of all PE deals reviewed (8% more than in 2022) over working capital, which was picked in half of all transactions (2% more compared to 2022).

Purchase price adjustment criteria



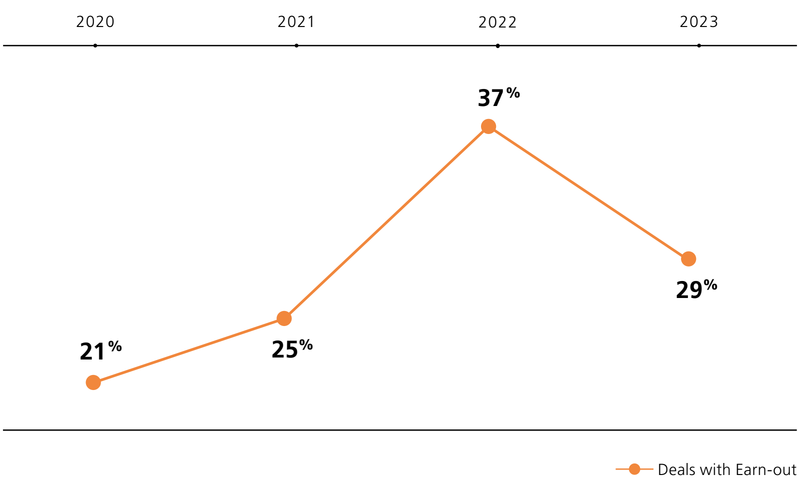
100% = all transactions including a purchase price adjustment.
Cash & Debt does not include "cash only" and "debt only". Multiple nominations possible.

Earn-out

After the previous year's peak in the use of earn-outs on private equity transactions, 2023 returned closer to the earlier average, with 29% of all PE deals reviewed including earn-out provisions.

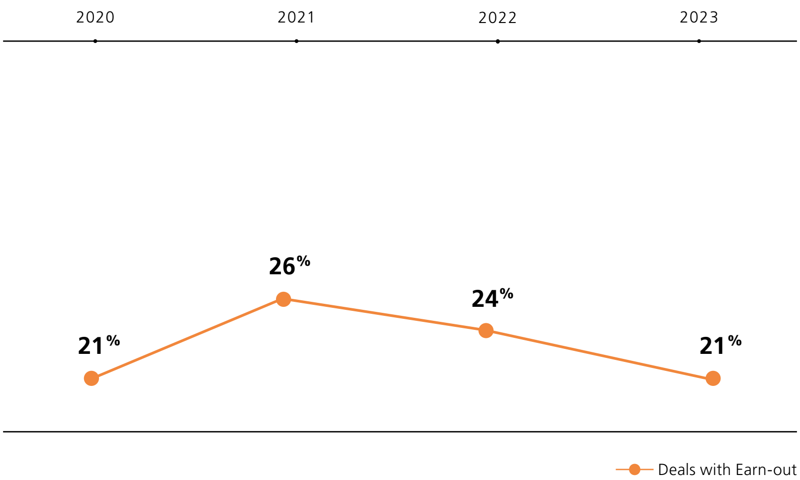
This is still nearly 10% above the incidence of earn-outs recorded in 2020, which may be explained by the continuing high number of add-on transactions which are part of our review pool, while the overall decline compared to 2022 is likely due to the slowly growing number of exits, which would materially decrease the use of earn-out provisions (as financial investors usually looking for a full exit, will not accept an earn-out when on the sell-side, unless there are manager/founder sellers alongside who will be retained in the business going forward in respect of whom earn-out provisions may be negotiated).

Earn-out time trend: PE deals



Interestingly, in 2023 the use of earn-outs on non-PE transactions has continued to experience a downwards trend and, after a sharpish rise in 2021, the incidence of earn-out provisions returned to 21%, the same level it was at three years earlier.

Earn-out time trend: non-PE deals



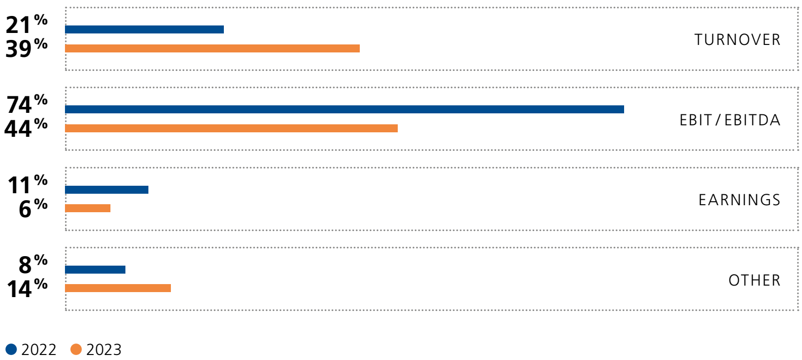
As it was apparent in previous years, there is a strong correlation between deal value and earn-outs and in 2023 41% of all deals reviewed with a purchase price of EUR 25m or less included earn-out provisions, while on higher value deals the percentage drops by half. This is also consistent with the likely use of the earn-out mechanism for the smaller bolt-on deals, which constituted 50% of all PE buy-side transactions reviewed in 2023 and 55% of those we looked at in 2022.

Use of earn-out by deal purchase price

100% = all transactions

2023 saw a shift in the choice of earn-out criteria. While EBIT / EBITDA remained the most popular one at 44%, this was a very sharp 30% drop compared to 2022. Conversely, the next most popular criteria, turnover, saw an increased use on deals in 2023, with an 18% rise to 39%.

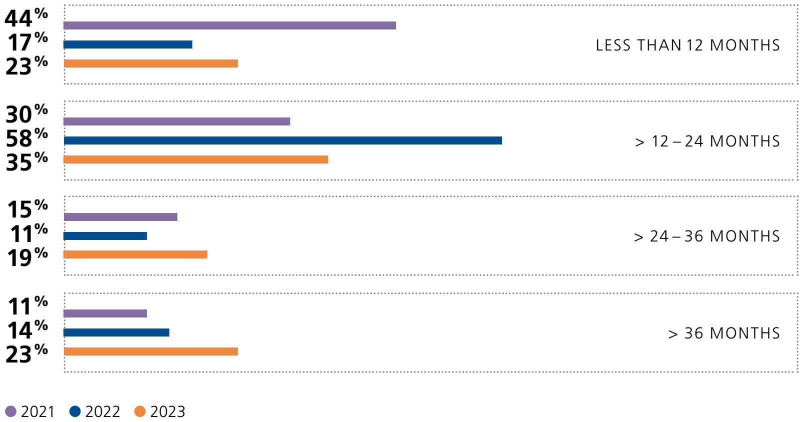
Earn-out criteria



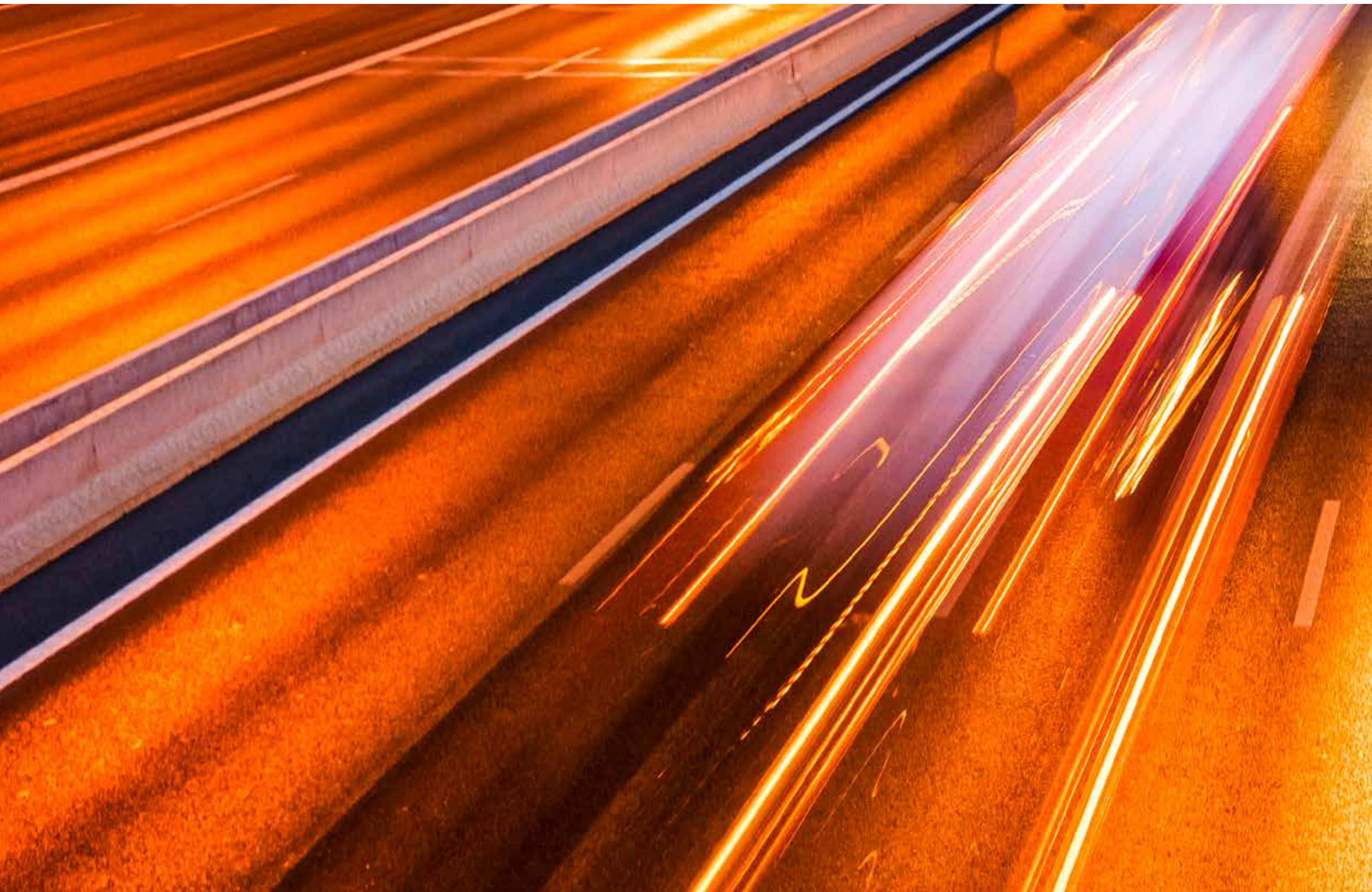
100% = all evaluated transactions. Multiple nominations possible

The same can be said about 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 only in 35% of all earn-out-featuring-transactions, a 23% drop compared to 2022. It would appear that 2023 saw a very wide spread of circumstances, resulting in the full range of options being more evenly utilised, from the short end of the spectrum (6 to 12 months) to the longest time period (over one and a half years), which both occurred in 23% of all deals including earn-out provisions that we reviewed.

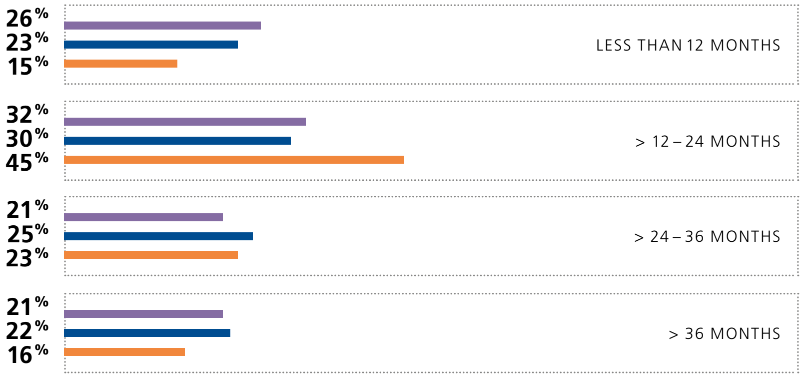
Time periods for assessment of Earn-out: PE deals only



100% = all transactions including an earn-out clause



Time periods for assessment of Earn-out: non-PE deals



● 2021 ● 2022 ● 2023
100% = all transactions including an earn-out clause

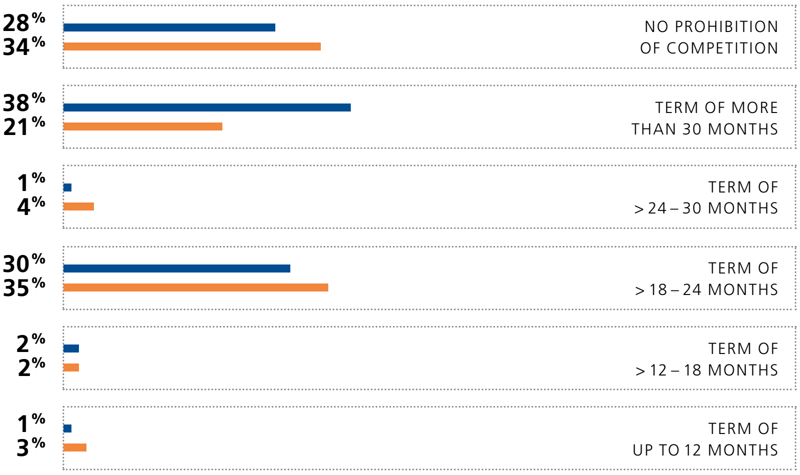
Non-compete and non-solicitation clauses

Non-Compete and Non-Solicitation Clauses

As in previous years, most transactions included a non-solicitation provision (67% in 2023, the same as in 2022), which is fairly standard across all types of M&A deals. In 2023, 66% of all PE-related deals included a non-compete provision, however this figure dropped to 47% where 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 a data pool including non-compete provisions that may have been offered by managers or portfolio companies.

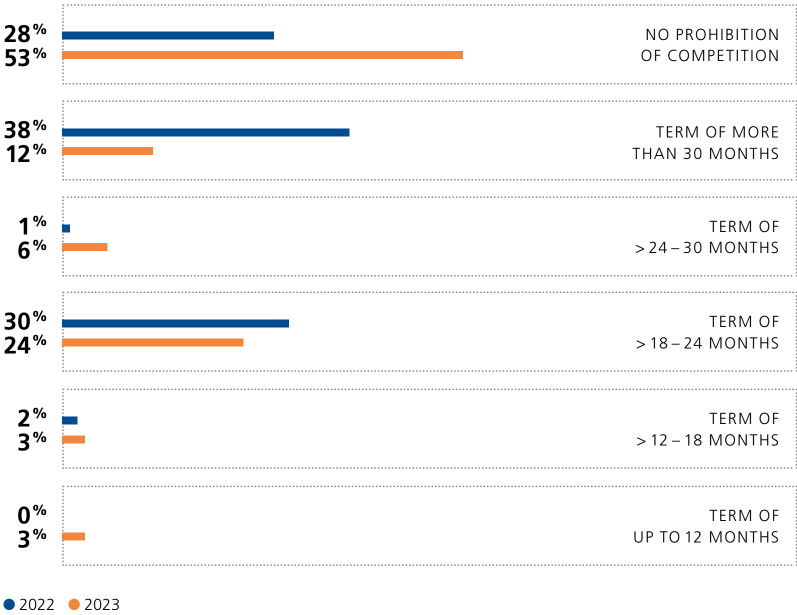
In terms of duration, 2023 saw a much lower incidence of long time periods, with a significant decline of provisions restricting competition for longer than 30 months (21% in 2023 vs 38% in 2022) and a material shift towards 18 to 24 months being the preferred duration (which was the case in 35% of all deals reviewed). This was consistent with duration preference in non-PE deals.

Duration of non-compete clauses: PE deals only

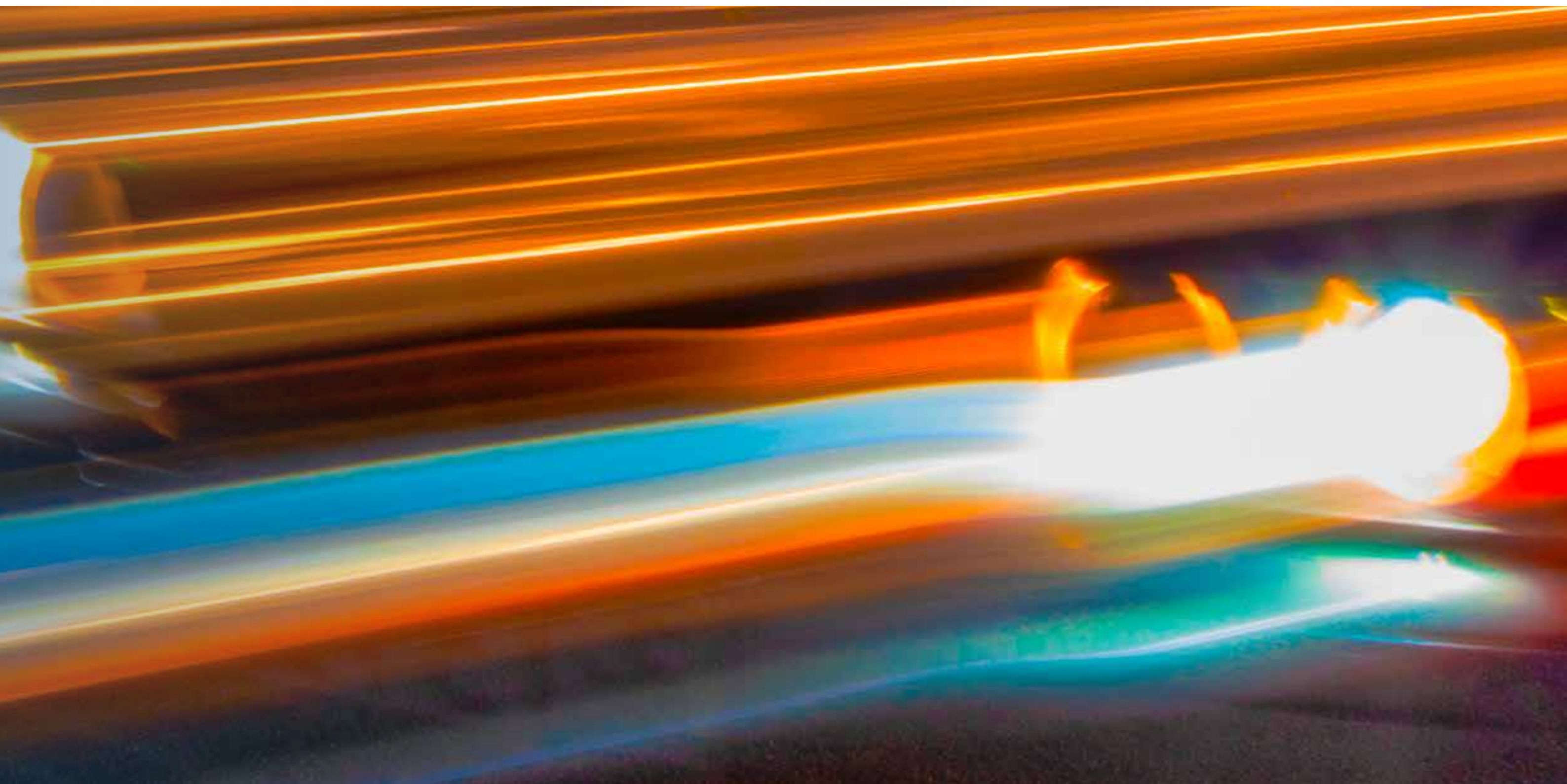


● 2022 ● 2023
100% = all evaluated transactions

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



100% = all evaluated transactions



ESG

ESG (environmental, social and governance)

In the last few editions of our study, we have started to look at ESG (environmental, social and governance) and how responsible/impact investing is shaping the behaviour of private equity players and businesses looking to partner with them.

In recent years, ESG has become much more mainstream and all private equity funds now have a degree of ESG credentials and/or ESG reporting requirements, however we do not yet have sufficient data from transaction documents to assess whether ESG actually plays a material role in the sourcing of deals.

"In France, while ESG due diligence is generally carried out by specialist firms and is not part of the legal due diligence scope, provisions requiring founders and managers to make ESG commitments are systematically included in shareholders' agreements. Some funds offer ESG-based MIP incentives in the form of preferred shares, the exit price of which depends on the achievement of certain ESG criteria. Although it is not yet market practice, the development of this type of instrument is likely to continue in 2024".
CMS France

What we have looked to establish is whether ESG factors are taken into consideration at the due diligence stage and, consistently with the private equity industry ethos on ESG, our analysis showed that at least half of all the PE deals we reviewed included some degree of ESG-focussed due diligence. By contrast, transactions not involving any private equity parties have looked at ESG due diligence only in 38% of cases, which is still a significant percentage compared to a few years ago, but somewhat lagging behind.

Specific ESG Due Diligence

100% = all evaluated transactions

Specific ESG Provisions in the SPA

100% = all evaluated transactions

"While we do not generally see ESG as a specific legal due diligence workstream yet in Spain, this varies from deal to deal and investments in certain sectors (such as renewable energy projects) usually involve a more stringent approach to ESG at the due diligence stage. Criminal compliance checks are being more often carried out as part of the legal due diligence, internally by the PE investor or (increasingly) via our CMS criminal team. We anticipate that the enactment of the EU Regulation on the Disclosure of Sustainable Finance will give rise to tighter monitoring in this sphere by PE investors, as without full compliance investments will not qualify as sustainable."
CMS Spain

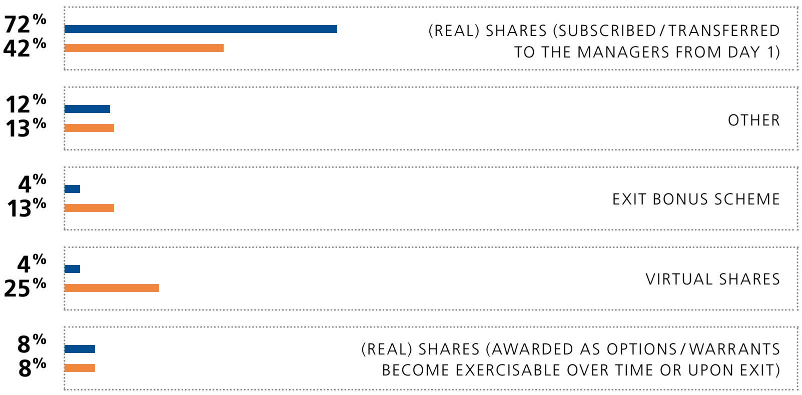
Management incentives

Overview

This section should be read in the context of the 2023 deal pool: the majority of the transactions analysed (>60%) saw the PE fund or PE-backed party on the sell-side, which means the data pool includes also incentive schemes set up by the incoming corporate or strategic investors on the buying-side.

In the majority of cases (76.5%), management continued to work for the company (slightly down from last year's 82.5%). As before, the most popular structure for incentive schemes remained awarding real shares from the start, although virtual shares rose by 21% as second most popular structure.

Management incentive scheme structure

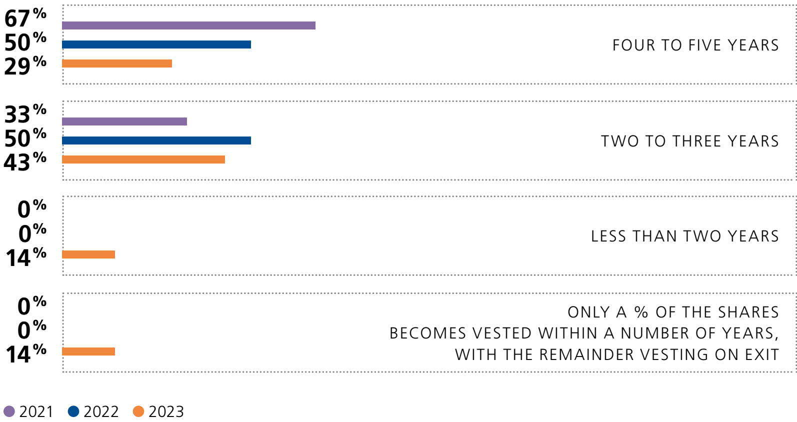


● 2022 ● 2023
100% = only deals with management incentive scheme

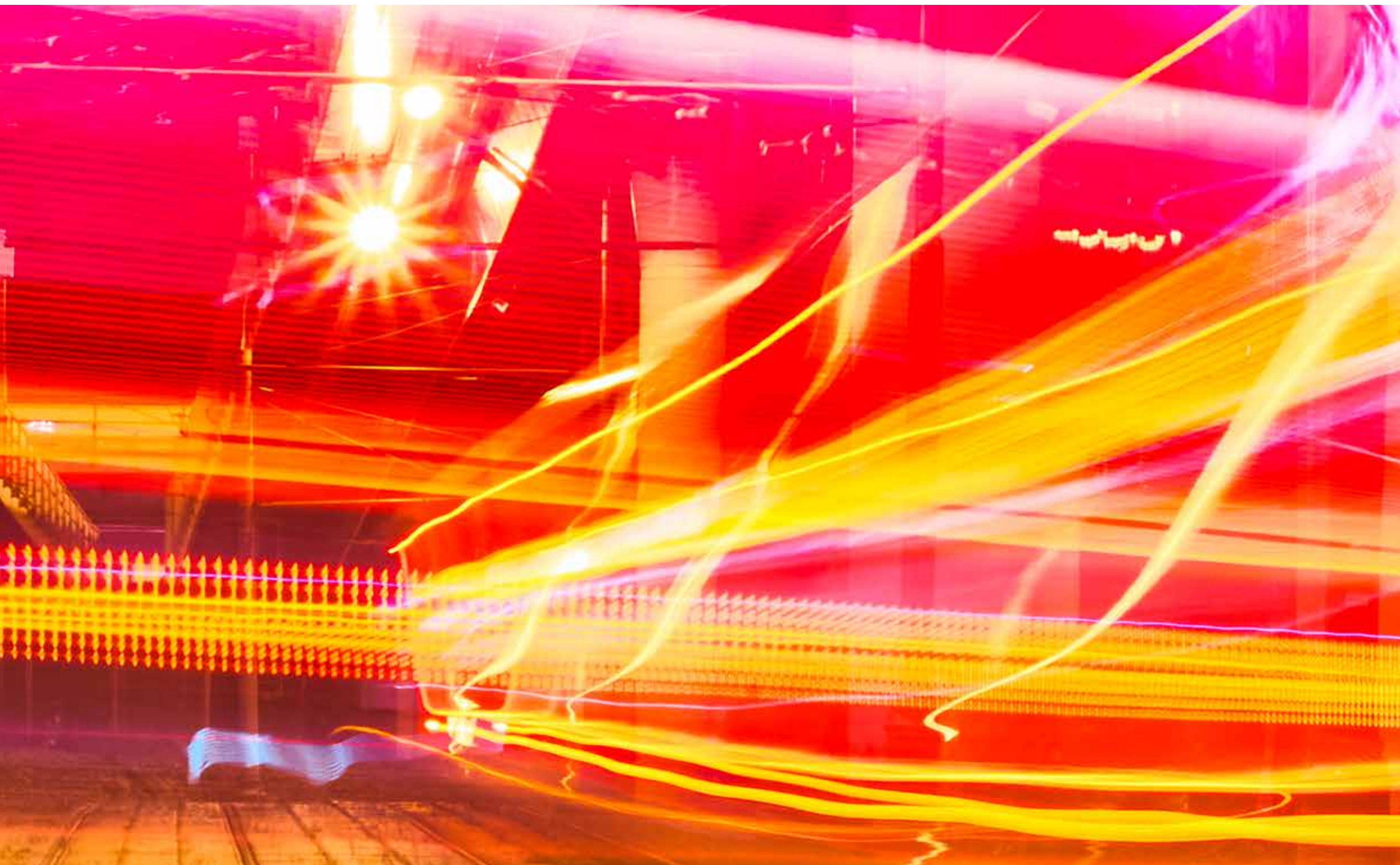
Vesting

Vesting periods appear to be shortening, a favourable trend for managers. Compared to last year alone, in 7% more schemes the vesting period was three years or less in 2023, with 14% of incentive schemes allowing managers to keep all their shares after just 2 years or less. However, an equal percentage of schemes allows full vesting only at exit, which provides an extra layer of motivation for managers to remain involved with the business at least until a sale or listing.

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



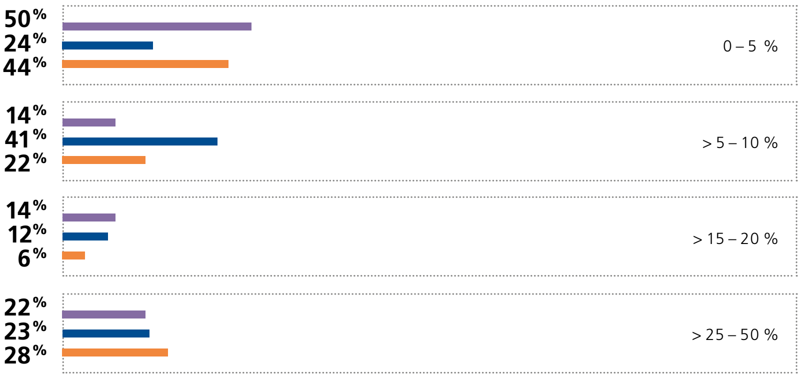
Only deals with management incentive scheme, shares and vesting



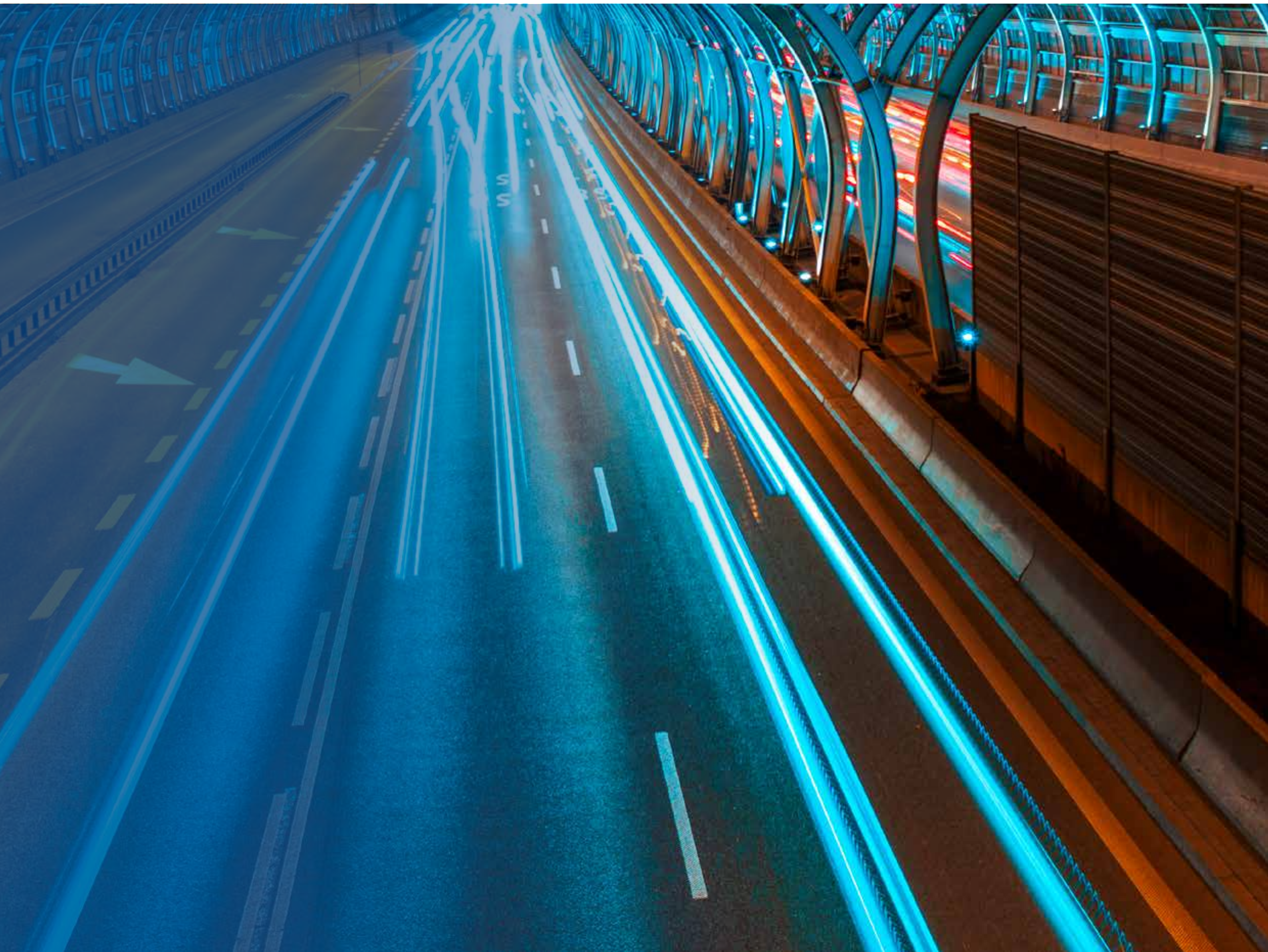
Economic Terms

While 2022 had seen an overall marked increase in management allocation, with over 75% of all schemes allocating more than 5% to managers, in 2023 there seems to have been some rebalancing: 44% of all incentive schemes reviewed allocated only up to 5% to managers. However, the percentage of schemes on the most favourable end of the spectrum (allocating over 25% of proceeds) increased by 5%.

Percentage of share capital or proceeds allocated to the managers



● 2021 ● 2022 ● 2023
Only deals with management incentive scheme, shares and vesting

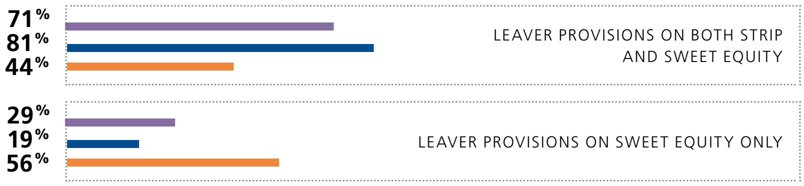


Leavers

Leaver provisions are a key element in all incentive schemes as they aim to boost retention by ensuring that managers can really make the most out of their shares if they remain with the business. If they leave early and/or before an exit, then the shares will be taken away from them, at least to a degree. It is quite interesting to see that in 2023 the trend on many of the highly negotiated terms of leaver provisions has shifted to varying degrees in favour of managers.

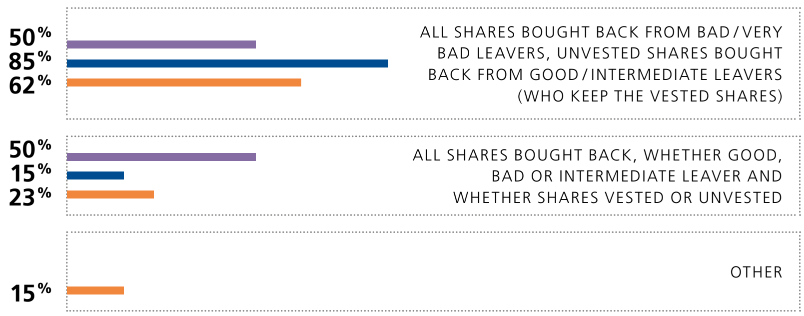
Firstly, in 2023 the majority of schemes applied leaver provisions only to the sweet equity and allowed leavers to retain their ordinary equity (i.e. the shares bought by managers at the same price as the private equity fund paid for them). This was quite a shift compared to 2021 and 2022, when in 71% and 81% of cases respectively leaver provisions applied to both strip and sweet equity.

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



2021 2022 2023
Only deals with management incentive scheme, shares and subject to leaver provisions

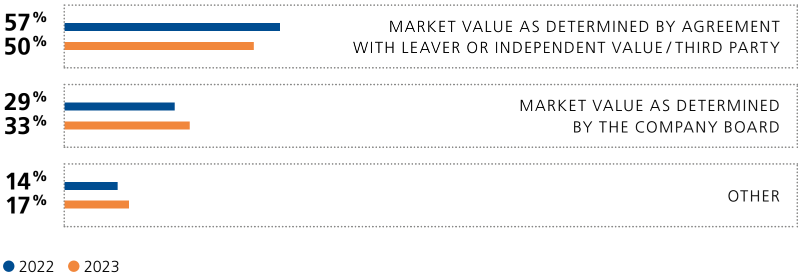
Are all shares bought back when a manager becomes a leaver or only the unvested portion?



2021 2022 2023
Only deals with management incentive scheme, shares and vesting

On the other hand, the price at which good and bad leavers sell their shares back took a less manager-friendly turn in 2023 compared to 2022. In 7% more schemes, good leavers had to accept a market value which was not independently determined or which they otherwise did not agree with.

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



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

Similarly, 20% fewer schemes allowed bad leavers to at least recover the price originally paid for the shares and 11% more schemes simply paid nominal value for the shares bought back from bad leavers.

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

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

Focus on French share incentive schemes – key differences with the more common trends across Europe

"As in many jurisdictions, the management incentive scheme (MIP) structure in France is heavily dependent on the local tax and social environment. However, following extensive case law over the last few years, the singularity of the structuring of these MIP in France became even more pronounced in 2023.

The main French MIP features to date are as follows:

Paid instruments: while according to our PE study in the majority of Europe schemes require managers to pay for the shares that they are due to acquire, in France the most widely used sweet equity instrument is the "free shares";

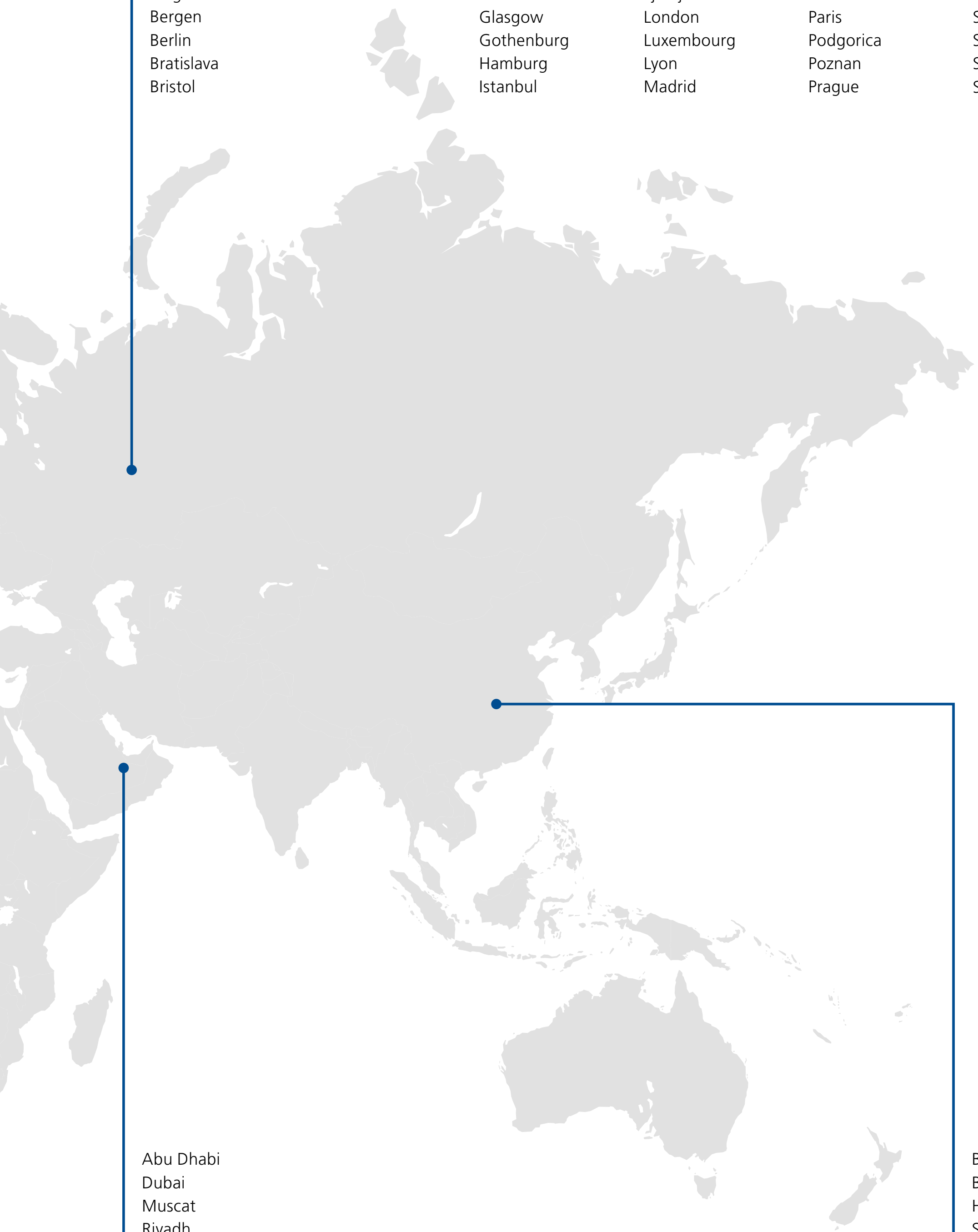
Valuation of MIP instruments: the valuation of instruments by an independent third party is almost mandatory in France (whereas such valuations are fairly rare throughout the rest of Europe);

Leaver provisions: it is now common not to include a leaver option on the strip component (a trend to which more of Europe seems to have aligned with in 2023). As far as the sweet component is concerned, there has been a shift away from bad and good leaver provisions to a simple leaver option at fair market value with no progressive vesting."
CMS France

Global reach, local knowledge

Europe

Aberdeen
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

Asia-Pacific

Glossary

Basket

means the agreed aggregate minimum amount of (likely) losses due to one or several breaches 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 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.

CMS Law-Now™

Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.
cms-lawnow.com

CMS locations:
Aberdeen, Abu Dhabi, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Brisbane, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Cúcuta, Dubai, Dublin, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Gothenburg, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Maputo, Mexico City, Milan, Mombasa, Monaco, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, São Paulo, Sarajevo, Shanghai, Sheffield, Singapore, Skopje, Sofia, Stavanger, Stockholm, Strasbourg, Stuttgart, Tel Aviv, Tirana, Vienna, Warsaw, Zagreb and Zurich.

cms.law