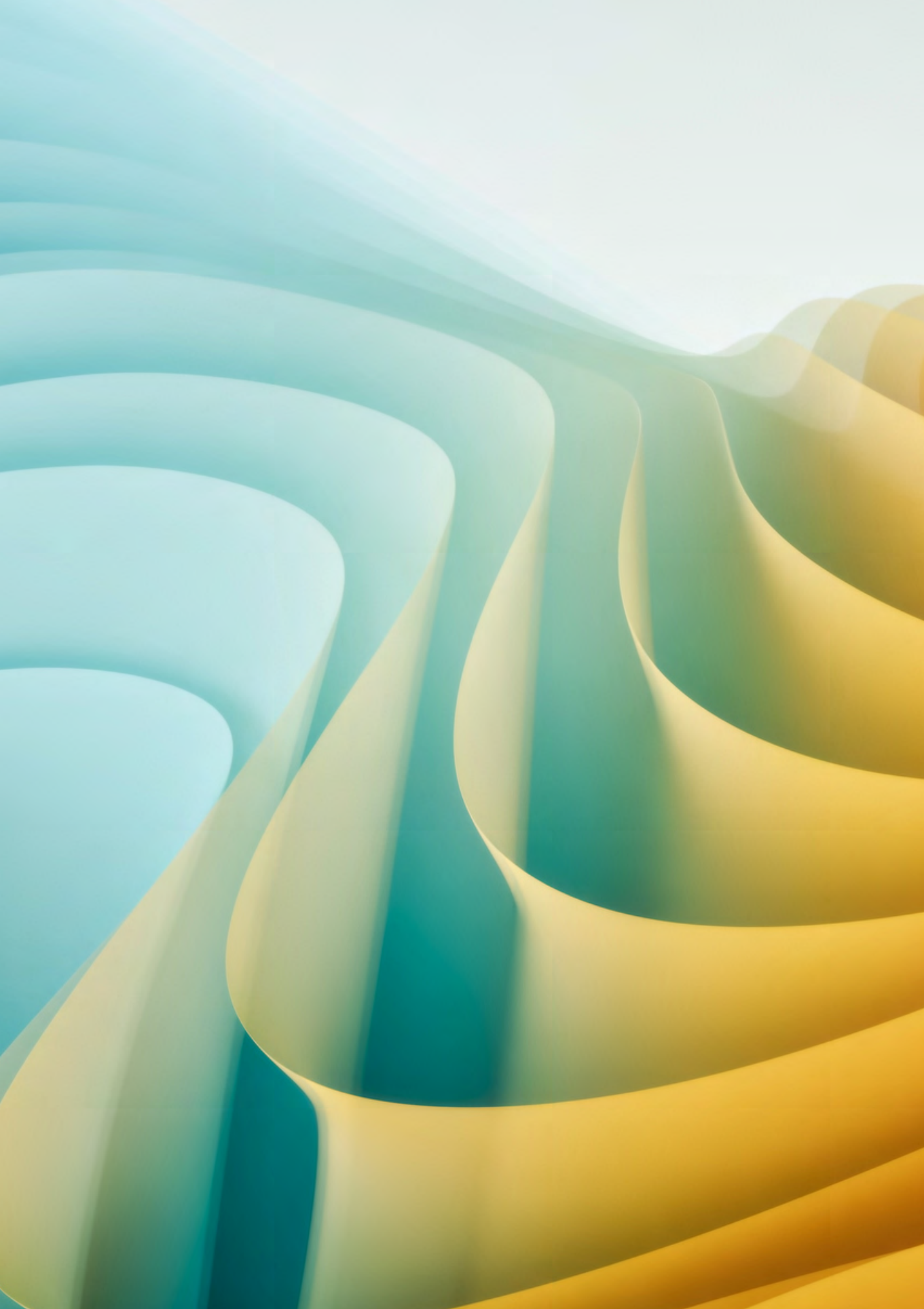


10 keys to venture capital transactions in Portugal

March 2025







Bibi Sattar Marques
Partner & Board Member,
BuenaVista Equity Partners



"Building a strong and competitive Venture Capital ecosystem in Portugal requires a shared commitment to best practices that enhance transparency, efficiency, and trust in transactions. Clear, widely accepted principles not only attract capital but also create an environment where investors and founders can engage with confidence and transparency, leading to more successful, long-term partnerships. The potential in Portugal is undeniable, but realizing it fully requires a collective effort. Investors, entrepreneurs, legal partners and policymakers must actively contribute to shaping a dynamic, internationally competitive ecosystem that not only supports innovation but also encourages sustainable growth and global expansion."



Gil Azevedo
Executive Director,
Unicorn Factory Lisboa



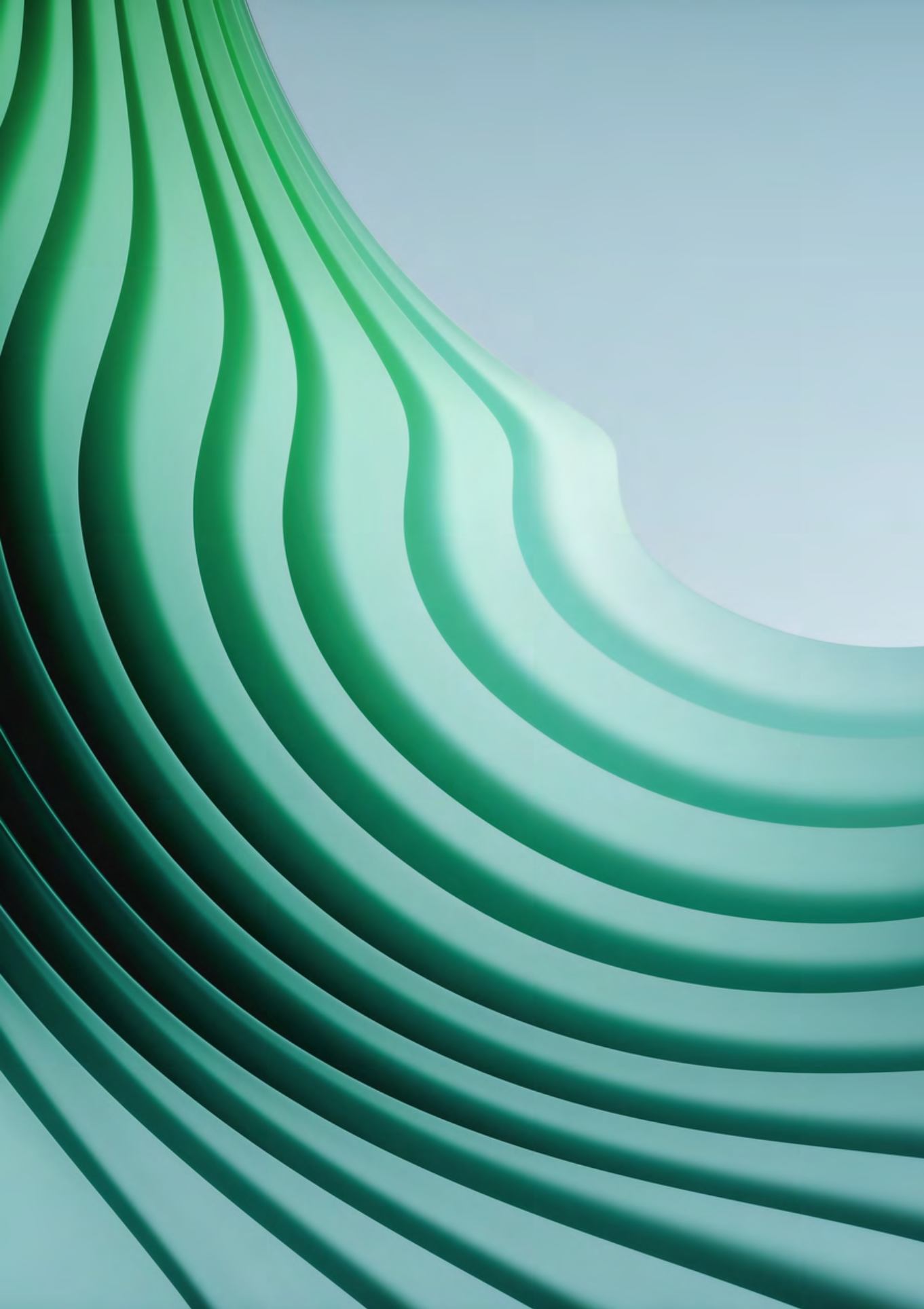
"Venture capital in Portugal has shown remarkable resilience, and sustaining this momentum requires fostering a strong pipeline of new startups, easing the process with standard legal principles and strengthening founders' fundraising capabilities, such as with our ScalingUp Program, with Cuatrecasas as one of the partners."



Pedro Cruz Morais
Co-founder & Co-CEO,
MyCareforce



"Every venture capital deal comes with its own specifics, but setting up a standard set of guidelines benefits everyone involved - especially in VC where speed is key. Besides, standard norms not only streamline the current round but also the diligence for later ones, making the process more predictable for both investors and founders. It's a win-win!"



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Introduction

Venture capital transactions are distinct from private equity and traditional M&A deals, primarily because investors typically acquire only minority stakes in the target companies. This unique characteristic means special rights need to be implemented to protect the investors' interests, often adding layers of complexity to the legal frameworks employed. Unlike majority acquisitions, venture capital investments require meticulous structuring to ensure that investors can safeguard their stakes while fostering the growth and innovation of startups.

To navigate these complexities, it is essential to adopt standard market principles that facilitate smoother venture capital transactions. These principles help streamline the process, making it more efficient and predictable for all parties involved. By adhering to established norms, investors and startups can better align their expectations and mitigate potential conflicts, thereby enhancing the overall success of the investment.

This publication aims to summarize the 10 key elements of venture capital transactions, providing a comprehensive guide for anyone involved in the startup ecosystem. By clarifying these concepts, we hope to make the particulars of venture capital more accessible, enabling entrepreneurs, investors, and advisors to navigate the landscape with greater confidence and understanding.

General market overview

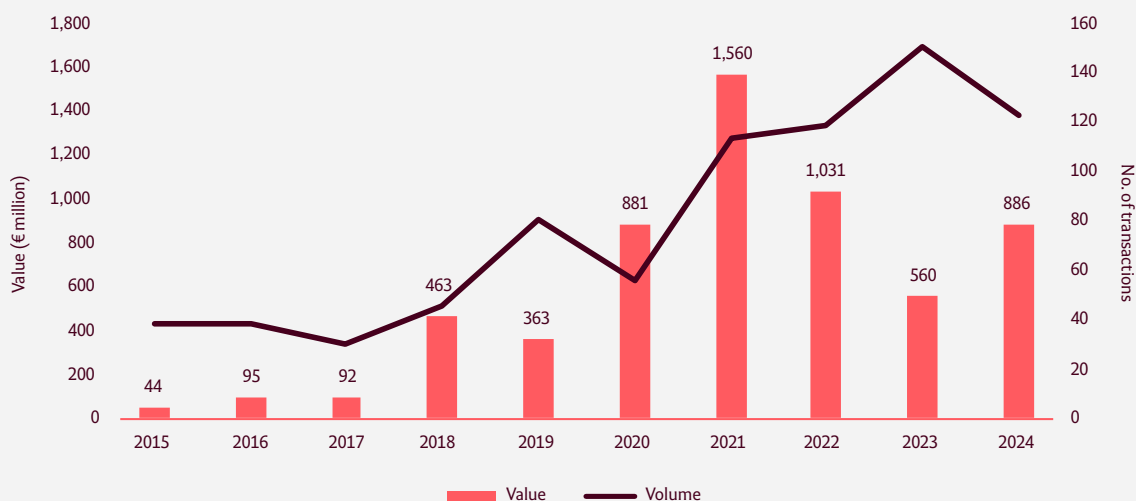
Market evolution

In 2024, the Portuguese venture capital (“VC”) market exhibited mixed signals, showing a 19% decrease in the number of transactions compared to the previous year, yet a 58% increase in the total value of those transactions, according to TTR. In fact, the actual value was likely higher than the €886 million shown on the graph, as the values of 27% of the deals were not disclosed.

Analyzing the market evolution over the past decade, the transaction volume has tripled, and the total value of transactions is now more than 20 times greater than it was in 2015.

2015-2024 Portugal VC transactions

(Source: TTR)



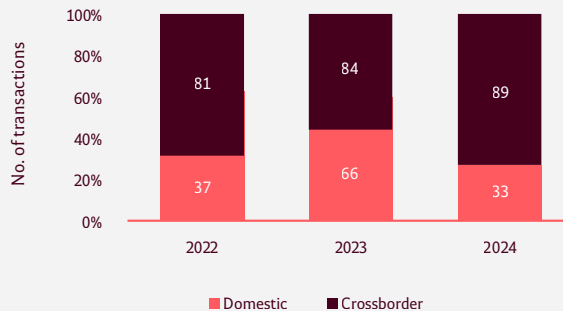
Source of investment

Domestic VC transactions in Portugal, which are only 27% of the annual volume, dropped to half in 2024. However, their total value increased 158% compared with 2023.

As for crossborder VC transactions, which account for 73% of the total deal flow, their number increased slightly (6%) and their total value increased by 42%. The fact that around two-thirds of the total capital is invested in crossborder deals is a steady trend in Portugal, indicating a sustained preference for international investment opportunities.

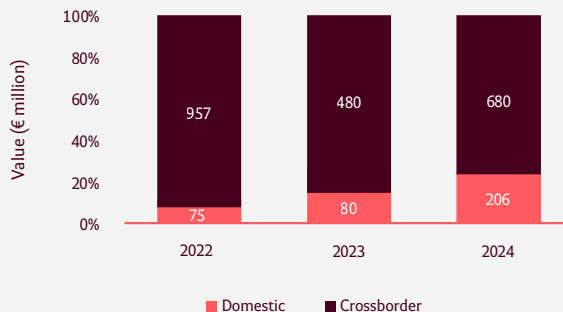
**Source of VC transactions in Portugal
(by volume) 2022 v. 2023 v. 2024**

(Source: TTR)



**Source of VC transactions in Portugal
(by value) 2022 v. 2023 v. 2024**

(Source: TTR)



Most active sectors

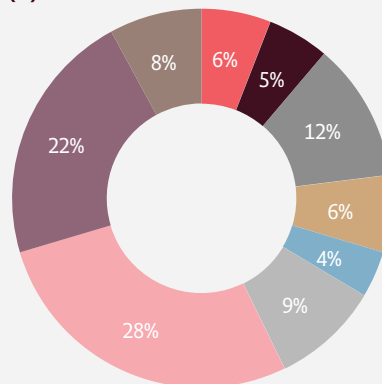
The IT sector is by far the most active sector in VC in Portugal. Within this sector, deals related to internet, software and IT services are the most numerous (42 deals), followed by other tech subsectors such as industry-specific software, computers and electronic components (33 deals). Together they account for 50% of the total 2024 deal flow.

The top five sectors for VC in Portugal have not changed between 2023 and 2024: internet, technology, consumer and retail, energy, and healthcare. Although the internet, healthcare and consumer sectors remained some of the most active, they experienced significant decreases in the number of transactions last year: -21%, -67% and -22%, respectively.

The sector with the highest growth in number of deals (75%) in 2024, compared with the previous year, has been the industrial sector, with a particular emphasis on the waste management and transportation subsectors, with three deals each.

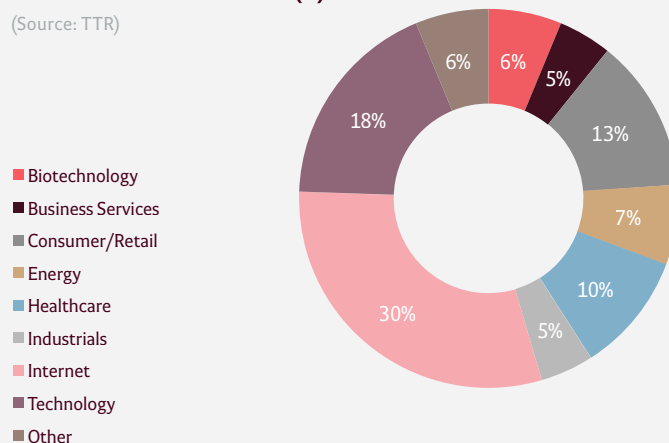
Most active sectors in 2024 (%)

(Source: TTR)



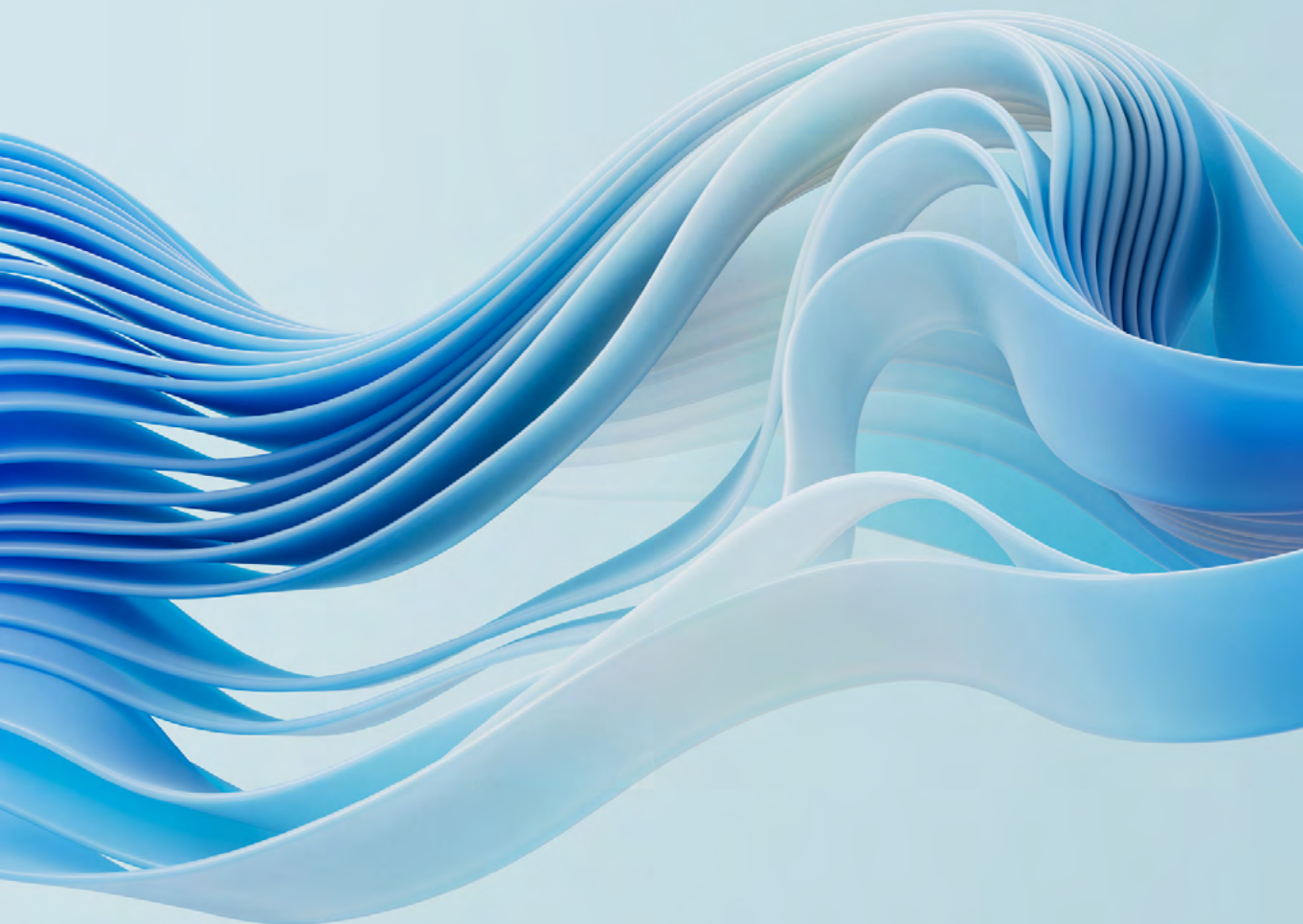
Most active sectors in 2023 (%)

(Source: TTR)



- Biotechnology
- Business Services
- Consumer/Retail
- Energy
- Healthcare
- Industrials
- Internet
- Technology
- Other

10 keys to negotiate VC transactions



10 keys to negotiate VC transactions

1

Structure and steps of transactions

Equity rounds

Most transactions adopt the form of equity rounds (also known as priced rounds), through which the investors subscribe and pay for preferred shares of the target company in cash in the context of a share capital increase, while founders remain the holders of ordinary shares.

Convertible instruments

As an alternative to equity rounds, transactions can also be structured as convertibles, in particular SAFEs (simple agreement for future equity) as traditional convertible notes have fallen into disuse. SAFEs were designed as a simple way to obtain investment at a very early stage and were initially exclusively used in pre-seed investments. However, SAFEs are becoming more common as a typical instrument to be used in bridge rounds, notably between Seed and Series A equity rounds, as a way to overcome different views on the pre-money valuation of the company between founders and investors. SAFEs are usually converted into company shares upon the following equity round (qualified equity financing) but may also be converted in case of an exit (liquidity event) or the liquidation of the company.

Structure and timeline

VC transactions are usually faster and more dynamic than regular M&A deals and the first step is the negotiation of the term sheet. Then, investors typically initiate the due diligence and the long form agreements (e.g., investment and shareholders agreements) are negotiated in parallel, with the closing of the investment round usually coinciding with the signing of these agreements.



Term sheets

It is customary to sign a term sheet outlining the main terms and conditions of the transaction. Term sheets used to cover only the main financial terms of transactions but nowadays, it is common to address the vast majority of the matters to be included in the long form agreements, sometimes in significant detail. Other than in relation to provisions such as exclusivity pertaining to the negotiation of the transaction, confidentiality and costs, term sheets are usually non-binding on the parties.

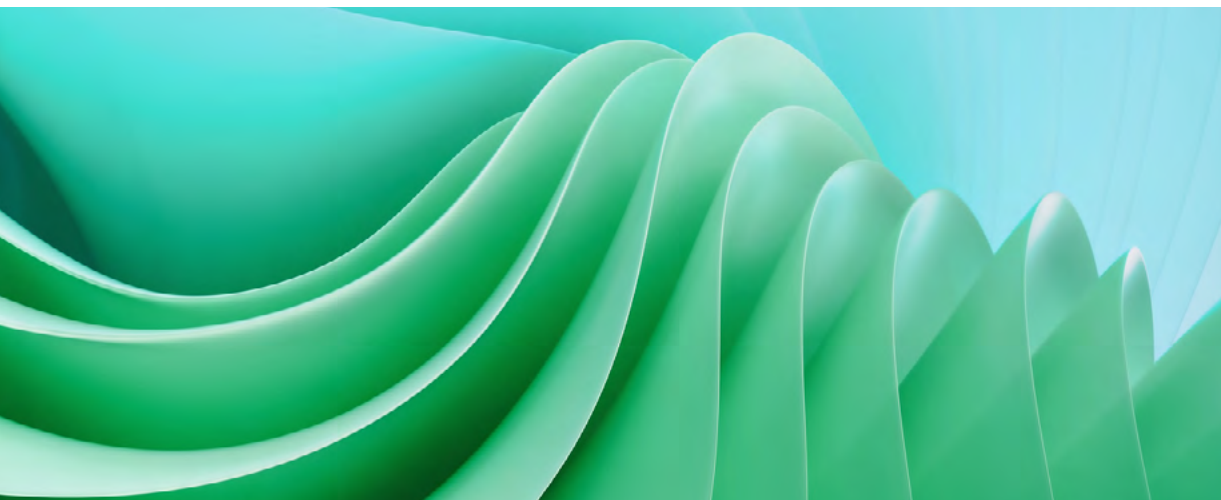
Due diligence

In VC, due diligence processes are often simpler and have a narrower scope than in other transactions. Companies usually have a track record of just a few years of activity with limited resources. In addition, investors are mostly interested in confirming that the company has no major red flags on corporate and labor aspects, intellectual property (“IP”), TMT and previous financing terms.

Regarding due diligence on startup's IP, please refer to [key 10](#) on Intellectual Property.

Long form agreements

The typical VC agreement package includes (i) an investment agreement (or subscription agreement), and (ii) a shareholders agreement. However, in case of convertible instruments, usually only a SAFE is executed in pre-seed. Nonetheless, when SAFEs are executed at a later stage of the startup lifecycle, it is also common to adopt shareholders agreements substantially identical to the ones pertaining to equity rounds.



2

Governance and majorities

Board of directors

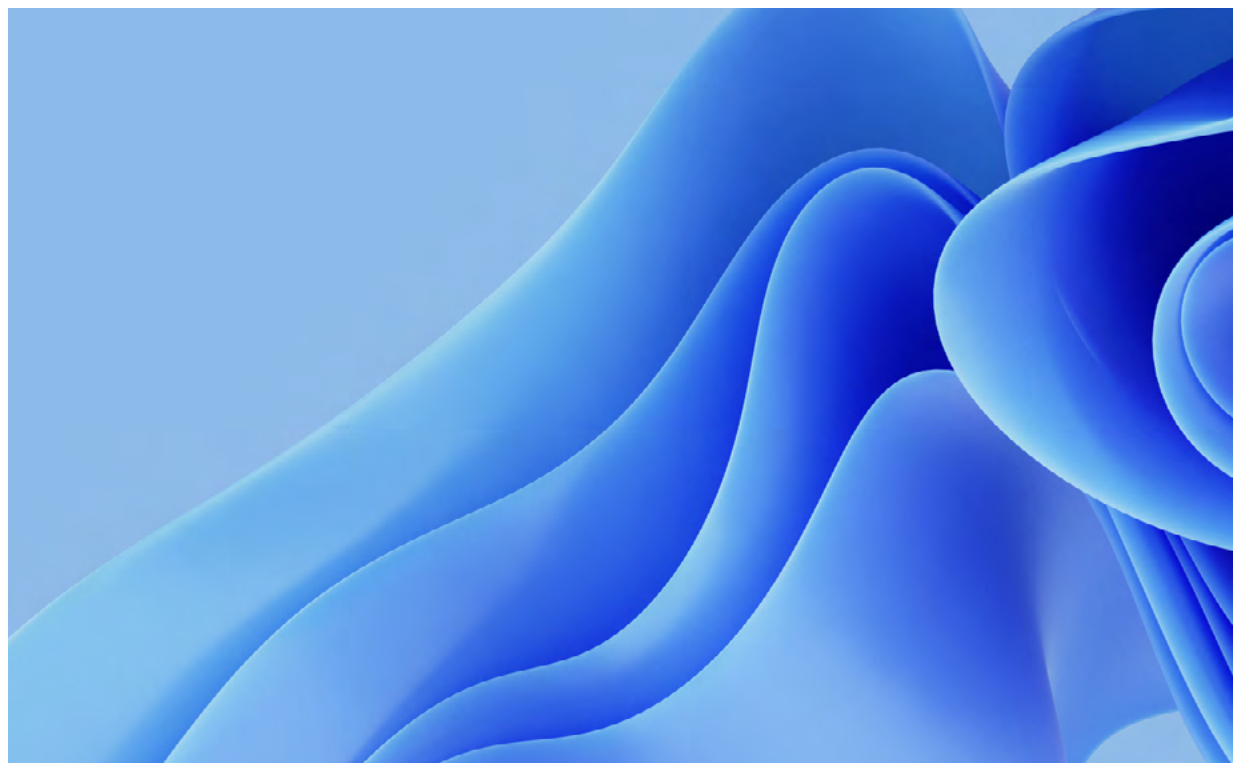
Founders usually maintain control over the board of directors by appointing the majority of its members, but investors are entitled to appoint one company director, who usually assumes a non-executive role and has veto rights over decisions on certain matters (board reserved matters).

In a recent trend, a relevant number of VC investors are requiring that companies have D&O insurance policies in force. As an alternative or in addition to the appointment of directors, some investors are granted with the right to appoint observers to the board who are entitled to attend, and sometimes to participate in the board meetings with a similar level of information as directors, but with no voting rights.

Shareholders assembly

At the level of the shareholders assembly, veto rights on certain matters are granted to the holders of the special classes of shares (shareholders assembly reserved matters).

For that purpose, it is customary to agree that shareholders resolutions on certain matters require the favorable vote of either (i) the holders of the special class of shares created in the last round or, in later stages, (ii) a combined majority comprising several classes of preferred shares created in the company's several past rounds. Combined majorities are a good way to divide the veto power amongst investors that joined the company in different rounds and avoid the concentration of veto power in just one or two directors.



3

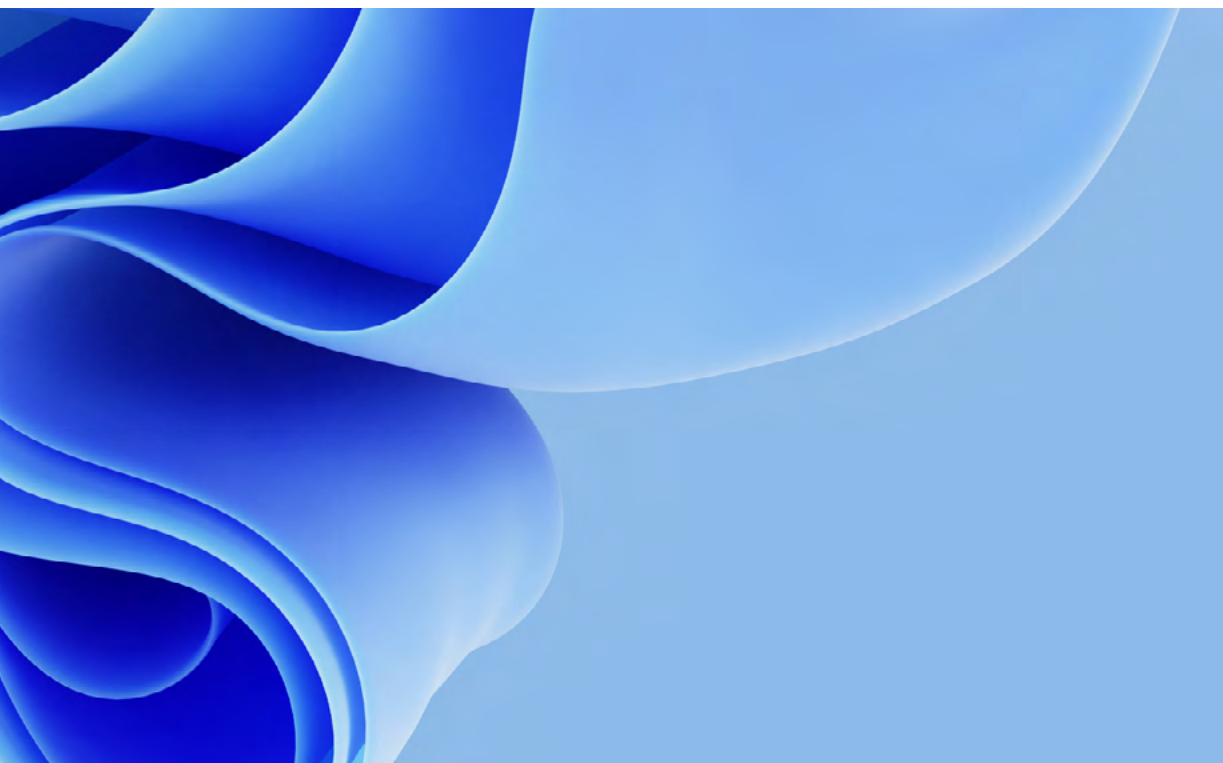
Milestones and pre-money valuation adjustments

Milestones and tranches

It has become common for investors to divide the investment into tranches and to link the performance of tranches of the investment to the achievement of certain milestones (e.g., minimum ARR in a certain period, minimum number of clients or amount of sales in a certain region or country or successfully obtaining a certain patent). Milestones allow investors to commit greater investment amounts and allow founders to negotiate larger rounds.

Pre-money valuation adjustments

Another recent trend is to make the pre-money valuation of equity rounds dependent on the achievement of specific milestones. In that scenario, upon the non-fulfillment of the milestone, the pre-money valuation would be decreased and, consequently, the investors of that same round would be granted with additional shares of the company for no additional consideration. This allows founders to negotiate higher valuations and add some flexibility to equity rounds.



4

Reverse vesting of the founders

Reverse vesting

To incentivize the founders' commitment to the company and its project, all or the vast majority of the company's shares held by the founders are commonly subject to reverse vesting. This means that if the founders leave their management role in the company, they may be obliged to sell all or part of their shares to the company or even to the remaining shareholders.

Vesting calendar

The reverse vesting calendar of the founders is usually four years, and the model with one-year cliff and then a linear monthly vesting across the remaining three years is often used.

Shares subject to vesting

Founders usually negotiate that not all their shares are subject to reverse vesting, in particular in later stages of the startup life cycle when several investment rounds have already taken place, and they have been subject to reverse vesting before.

Bad and good leaver

If a founder resigns from the respective management role at the company without just cause or is dismissed by the shareholders with just cause, the founder would be typically regarded as a bad leaver and would be obliged to sell the respective unvested shares (and frequently, the vested shares) for their nominal value.

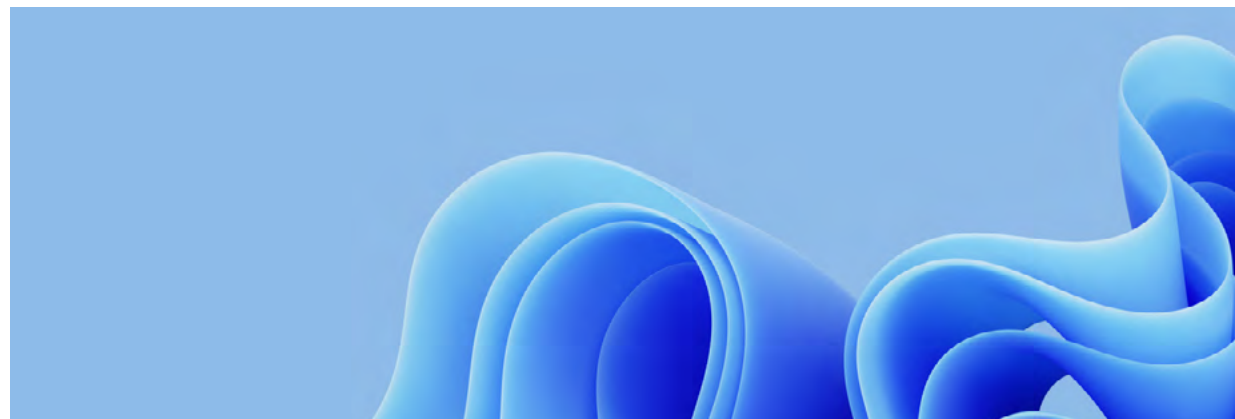
On the other hand, if a founder resigns based on serious medical reasons or is dismissed by the shareholders with no cause, the founder would be qualified as a good leaver. That founder would usually be obliged to sell the respective unvested shares at their market value with discount or at their nominal value, and to keep or sell the vested shares for an agreed price, generally the last financing round share subscription price.

Exclusivity

Usually, the reverse vesting is also associated with exclusivity undertakings from the founders, under which they agree to maintain full-time dedication to the company throughout the vesting period and sometimes beyond.

Lock-up

To ensure the enforceability of reverse vesting provisions, it is mandatory that the relevant vesting period is covered by a lock-up clause under which the founders undertake not to sell their shares in the company during that period.



5

Stock option pools and plans

Stock option pool creation

Upon investment rounds, it is common for new investors to require the existing shareholders (founders and investors from previous rounds) to create or reinforce at their expense a stock option pool (virtual or not) to be allocated in the future to company employees (or advisors). The main rationale of these allocations is to create an incentive for the company's key employees, allowing them to participate in the future earnings upon a sale or an IPO of the company, and at the same time to retain the best talent, as the right to receive stock options' earnings is usually associated with the permanence of its beneficiary in the company.

Stock option plan

To allocate the options within the stock option pool, the company already has in place (or the shareholders will undertake to approve) a stock option plan that will foresee the rules of that allocation, including (i) vesting calendars, (ii) attribution rules and forms, (iii) exercise rules and forms, (iv) bad leaver and good leaver provisions, and (v) expiry conditions.

It is a common market practice nowadays that options are represented by virtual or phantom shares, which grant some economic rights to its beneficiaries, in particular the right to receive the proceeds resulting from the sale of the relevant shares from the stock option pool but exclude the right to receive dividends and political rights, in particular the right to vote in general assemblies.

Stock options granted to founders (recapitalization)

When the founders carrying out management positions are already considerably diluted for the phase the company is in, new investors occasionally require that a stock option pool is specifically created to be allocated to founders to ensure they remain committed to the company. As a result of this recapitalization, existing investors will be further diluted. Due to legal limitations of the treasury shares' percentage, usually these pools are created only with virtual shares.



6

Founders liability towards investors

Representations and warranties

As in regular M&A transactions, where sellers are required to give some representations and warranties to the purchasers, investors also expect founders to represent and warrant on fundamental matters (e.g., title and capacity) and business matters (e.g., corporate, taxes, IP, data protection, labor, and compliance).

Regarding IP representations and warranties, please refer to [key 10](#) on Intellectual Property.

Joint liability

The founders' liability is usually joint and several with the company itself, who will also be liable in case a representation is considered to be incorrect, inaccurate, untruthful or incomplete.

Limitation of liability

Other than in cases of willful misconduct and fraud, the company's liability arising from a misrepresentation is usually capped by the aggregate investment amount of the round, with the founders' liability being capped by a lower amount, which sometimes corresponds to a multiple of the founders' annual salary.

Payment in shares

In case of a breach of representations and warranties, it has become frequent that founders are allowed to compensate investors by delivering company's shares instead of being required to pay cash. This mechanism allows the founders to effectively pay compensation that they would not be able to pay otherwise.

Other penalties

Founders may also be liable before investors in case of a breach of material provisions (e.g., non-compete, exclusivity, and confidentiality) for the amount corresponding to the damages incurred, or, in case specific penalties were agreed between the parties, for the respective amount.



Exit provisions and liquidation preference

Exit clauses

To ensure the liquidity of their investment, investors normally request to include exit clauses in the agreements. These clauses foresee that, if a liquidity event (e.g., sale of the company or IPO) does not occur until a certain date, the company will hire an investment bank or M&A advisor for the purpose of selling the company in a competitive bid process.

Drag-along rights

Drag-along rights are important legal tools according to which certain shareholders are allowed to force the remaining shareholders to sell their shares in the company along with the shares they hold and, consequently, ensure the sale of 100% of the company. In addition to the majority required to exercise those rights, drag-alongs may also be subject to other limitations such as valuation floors or specific time periods for their exercise (e.g., after the fifth anniversary of the investment).

Walk-away right

Sometimes investors are granted with a put option to sell their shares to the founders for the aggregate price of €1. This right is usually only exercised when investors no longer expect to get any return from their investment, which typically occurs when the liquidation or insolvency of the company becomes imminent.

Liquidation preference

In terms of liquidation preference, classes of shares subscribed by the new investors rank more senior than shares subscribed by early investors and, ultimately, the founders' shares. Nowadays, the standard market practice is having 1x (one time) non-participating liquidation preference, meaning that the investor is entitled to receive whichever amount is higher between the 1x (one time) the investment amount and the proceeds pro rata to its shareholding percentage.

Hence, “double dipping” clauses that entail participating liquidation preferences and multiples higher than 1x (one time) have become rare.



SIFIDE tax incentive

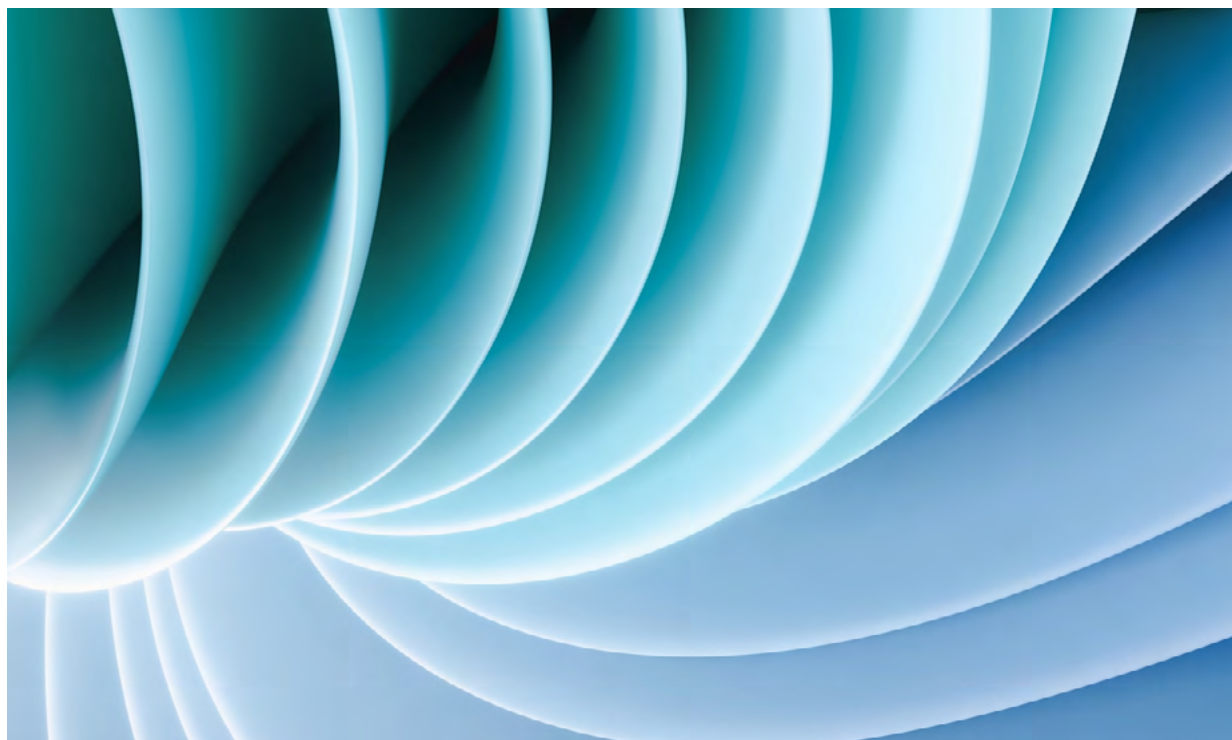
The incentive regime for business research and development (SIFIDE, *Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial*), is a legal initiative designed to encourage Portuguese companies to invest in research and development (“R&D”).

This system provides tax incentives to companies that engage in R&D activities or invest as limited partners in VC funds that, in turn, invest in these types of companies, aiming to foster innovation, enhance competitiveness, and stimulate economic growth.

SIFIDE provisions

When there are SIFIDE-backed VC funds among the investors of a certain round, specific provisions have to be agreed, in particular regarding (i) use of proceeds aimed at R&D expenses, (ii) specific information rights, (iii) liability regime in connection with SIFIDE, and (iv) allocation of R&D expenses (when there are several SIFIDE-backed VC funds).

When companies have not yet been recognized and certified by *Agência Nacional de Inovação* (ANI) as companies suitable (*idóneas*) for R&D, this certification may be framed as a condition precedent to the investment.



Roll-over mechanisms

The existence of transnational VC financing rounds has become more and more common where investors, usually SIFIDE- or PRR-backed VC funds (legally committed to deploy most of their capital in Portuguese based startups) want to invest in foreign companies (usually with UK or USA HoldCo's) via a subsidiary in Portugal dedicated to R&D.

In these cases, the investment is deployed in the Portuguese subsidiary, generally through a SAFE or other type of convertible to be swapped at a later stage by equity at the HoldCo, upon the evidence that the R&D expenses (in case of SIFIDE VC funds) were effectively made by the company resourcing to the funds from the investment or, in case of a liquidity event, at the HoldCo level, whichever occurs first.

The legal structures commonly used to swap the investment's consideration are the convertible + Exchange Agreement or SAFE + Warrant, depending on the jurisdictions involved.

However, the complexity resulting from the different jurisdictions involved has led investors to seek additional protective mechanisms, namely through the immediate acquisition of a limited number of HoldCo's preferred shares capable of granting them enforceable preferred rights adjusted to the level of protection they want, or the execution of warrant holders' agreements capable to provide them the same protection while the swap is not executed.



10

Intellectual Property

Due diligence

In VC transactions, conducting thorough due diligence on a startup's IP is crucial. Investors need to ensure that the company owns or has the right to use all the IP necessary for its operations. This includes patents, trademarks, copyrights, trade secrets, and any other proprietary technology or content. The due diligence process typically involves verifying the existence and ownership of IP assets, assessing the scope and validity of IP rights, and identifying any potential infringements or disputes. Ensuring that the startup has robust IP protection in place can significantly impact the valuation and attractiveness of the investment.

Representations and warranties

As part of the investment agreements, founders are often required to provide representations and warranties regarding the company's IP. These representations typically cover the ownership, validity, and enforceability of the IP assets, as well as the absence of any pending or threatened litigation or claims of infringement. Founders may also need to warrant that the company has taken all necessary steps to protect its IP, such as filing for patents or maintaining the confidentiality of trade secrets.

Covenants and post-closing obligations

To safeguard their investment, investors may impose certain covenants and post-closing obligations related to IP. These can include requirements for the company to maintain and enforce its IP rights, promptly address any IP disputes, and ensure that all employees and contractors have signed appropriate IP assignment agreements. Additionally, investors may require the company to implement policies and procedures for ongoing IP management and protection. By setting these expectations, investors aim to mitigate risks associated with IP and enhance the long-term value and competitiveness of the startup throughout its lifecycle.



Our VC practice

Team offering funds and investors a comprehensive and specialized service for VC transactions

We regularly advise national and international VC funds and investors, including corporate ventures, on all aspects of their activity: ranging from their early development stages incorporating the fund or vehicle, regulatory compliance, participation in financing rounds in startups and companies in all stages, to sales processes and exits.

Our team regularly advises on recapitalization transactions and divestments. We focus on designing and implementing innovative strategies and structures that are optimum and efficient from a tax and commercial perspective.

Through our VC team, made up of lawyers from all specialties (including corporate and commercial, intellectual and industrial property, data protection, labor and tax), we offer a wide range of services in the entrepreneurial ecosystem, understanding entrepreneurs' day-to-day challenges and sharing their business vision.

Market recognition



Leading law firm by deal volume in venture capital transactions in Portugal and Spain (2024)



One of the most active firms in venture capital transactions in Portugal and Spain (2024)

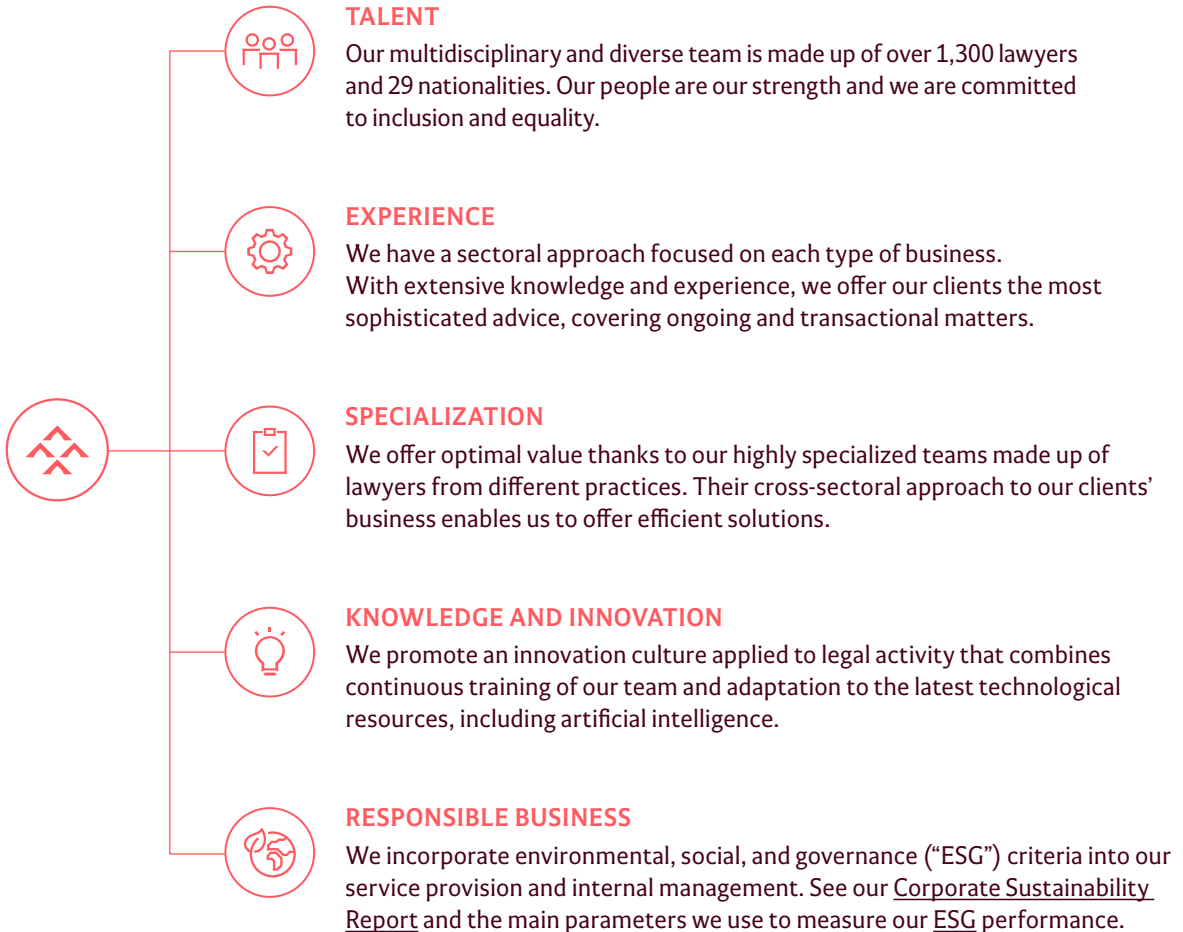
"The team has consistently provided strategic advice and tailored solutions that align with our business goals, ensuring that every deal is executed efficiently and with precision."

Chambers, 2024

"Cuatrecasas has a very experienced team."

Chambers, 2024

Cuatrecasas at a glance



Gold Rating – Ecovadis 2023



ISO 27001 certification for our information security management systems ("ISMS")



Key contacts

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