CUATRECASAS

Market Trends in Iberian Private Equity Transactions

2022 EDITION

Contents

Cuatrecasas overview

Through our highly specialized legal teams with extensive knowledge and experience, we advise on all areas of business law. We help our clients with the most demanding matters wherever they are based.

TALENT

A multidisciplinary and diverse team of over **1,200 professionals across 26 nationalities**. Our people are our strength and we are committed to being inclusive and egalitarian.

INNOVATION

We foment an innovation culture applied to the legal activity, which combines **training, procedures and technological resources** to contribute greater efficiency.

EXPERIENCE

We have a **sectoral approach** and focus on all types of business. With extensive knowledge and experience, we offer our clients **the most sophisticated advice**, covering ongoing and transactional matters.

SPECIALIZATION

We offer optimal value thanks to our highly specialized teams who apply a **cross-sectoral approach** to our clients' business to offer efficient solutions.

THE LAWYER

Law firm of the year: Iberia, 2020

INNOVATIVE LAWYERS 2019 WINNER

Most innovative law firm in continental Europe, 2018 and 2019

Chambers AND PARTNERS · IFLR1000 · LATIN LAWYER 250 · The LEGAL 500

Recommended in the main areas of law in Europe and Latin America

LACCA

Fifth most popular international law firm in Latin America, 2020

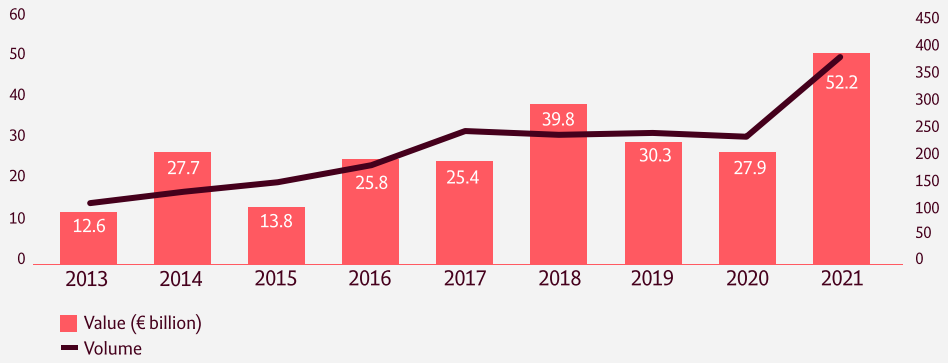
Private Equity market outlook in Iberia 2021

SPAIN

General summary of the market evolution

After having achieved record figures in 2018 and then stalling for the next two years with the coronavirus crisis, the market evolved spectacularly in 2021 with a remarkable growth in transaction volume and value, reaching a record high in private equity transactions.

Spanish private equity transactions 2013-2021
(source: Mergermarket)



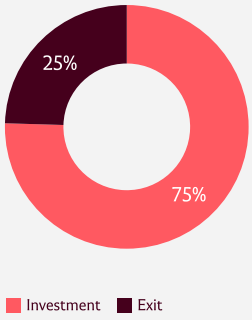
According to data produced by Mergermarket in Spain, 387 transactions were registered in 2021, totaling €52,220 million, representing a 87% increase in transaction value and a 63% increase in the volume of those transactions.

Other registers, such as TTR, show this same trend with a 82% growth in value and 41% in volume. In its annual report, the Spanish Venture Capital & Private Equity Association (ASCRI) also signals 2021 as one of the best recorded levels in the history of Spanish private equity.

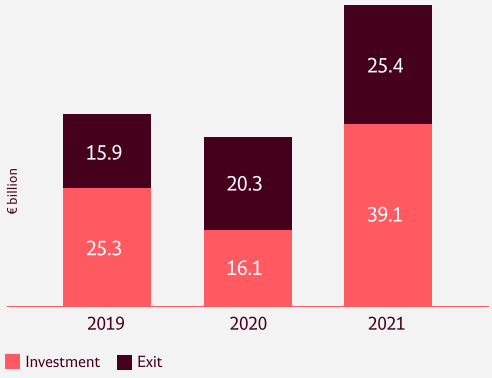
Several factors contributed to this success: the investor appetite of cash-rich international funds in Spain, an increase in the weight of major transactions, and particularly middle market drive.

In 2021, we returned to an identical proportion between investors and sales by value compared to the year before the coronavirus crisis. In terms of transaction volume, over these last two years the weight of investments slightly increased jointly, standing at 75% of all transactions.

Volume of private equity transactions in Spain in 2020-2021. Investment vs Exit
(source: Mergermarket)



Value of private equity transactions in Spain. Investment vs Exit
(source: Mergermarket)



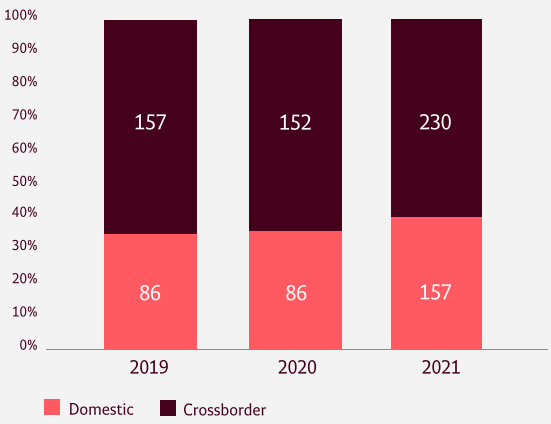
Source of investment

In terms of the investment source, the market is still dominated by crossborder transactions: both in number (59%) and value (93%), although domestic transactions increased from 2019.

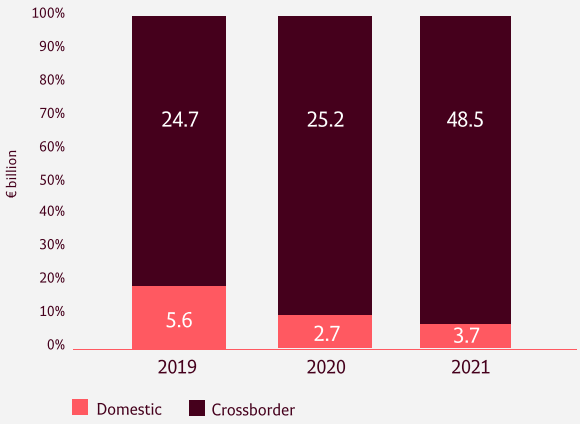
As in previous years, international investors continue to focus on high-value transactions, while national players participate in more lower-value transactions.

International investors are focusing more on large deals

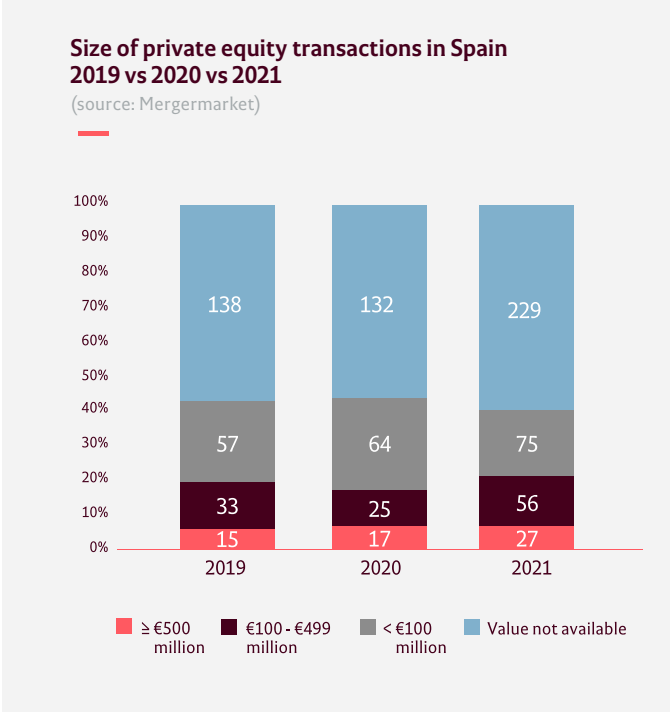
Source of private equity transactions in Spain (by volume) 2019 vs 2020 vs 2021
(source: Mergermarket)



Source of private equity transactions in Spain (by value) 2019 vs 2020 vs 2021
(source: Mergermarket)



Type of transactions



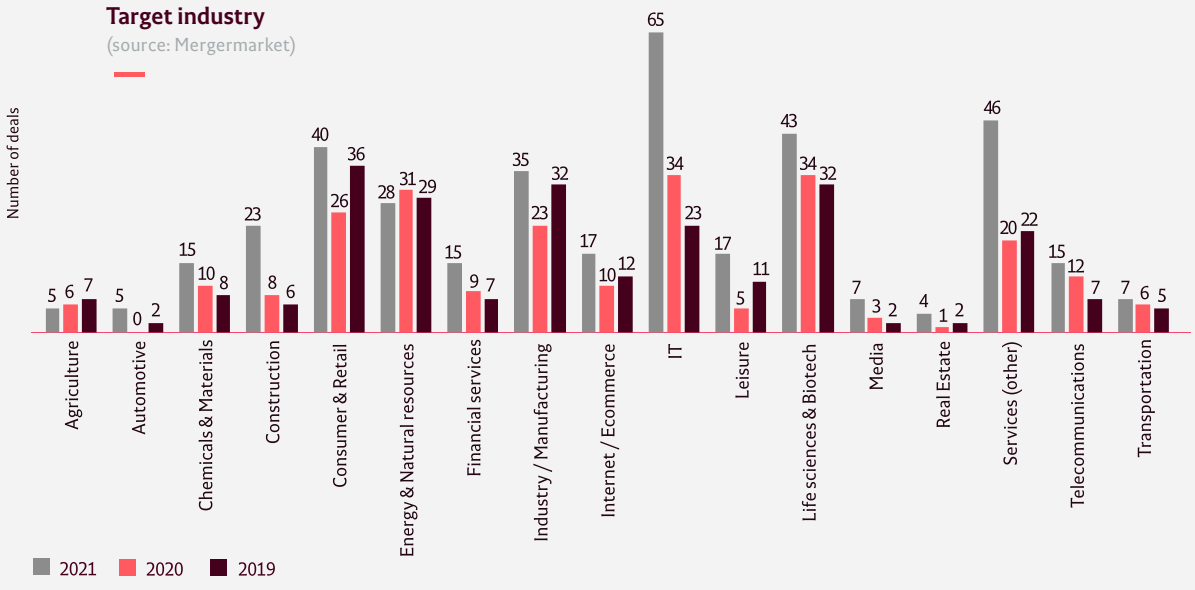
Size

In terms of transaction size, the market grew in all segments, but particularly in transactions of over €100 million.

Industries

Transaction volume by industry continued to be similar to that of recent years, with two thirds of all the activity concentrated in the technology sector (the outstanding leader with 17% of private equity transactions), services (12%), health sciences (11%), retail & consumer (10%), industry (9%) and energy (7%).

All industries grew compared to 2020, except for energy and agriculture. This growth was particularly outstanding in some industries such as leisure (240%), construction (188%), media (133%), services (130%), and IT (91%).



PORTUGAL

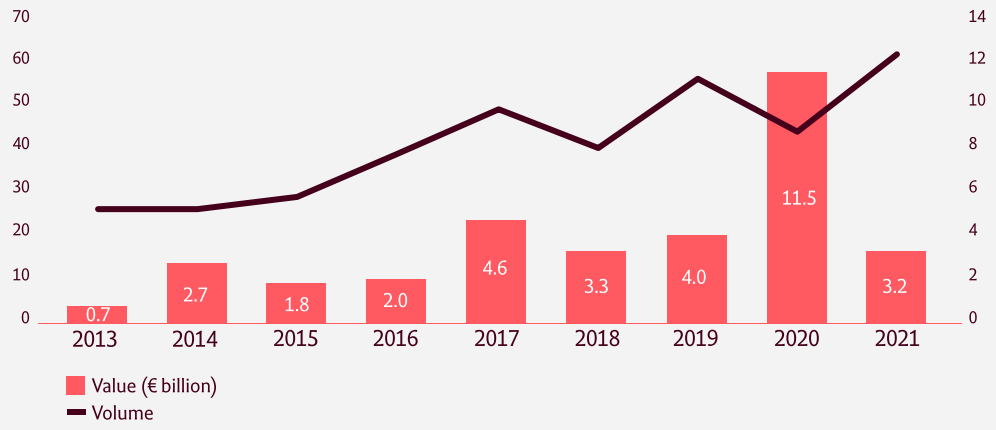
General summary of the market evolution

In 2021, the Portuguese private equity deal volume increased exponentially, reaching a record number of private equity deals (62). However, the aggregate deal value dropped to €3.2 billion after the all-time high of €11.5 billion in 2020.

In addition to Mergermarket criteria and sources, TTR also reports that private equity deal volume in Portugal increased 31% in 2021 to 51 deals, while deal value dropped 66% (to €2.32 billion) compared to 2020.

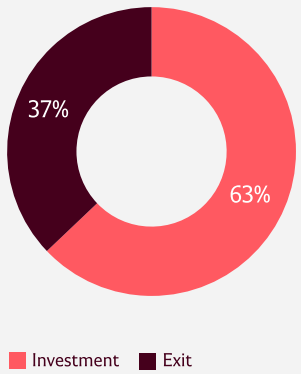
Portuguese private equity transactions 2013-2021

(source: Mergermarket)



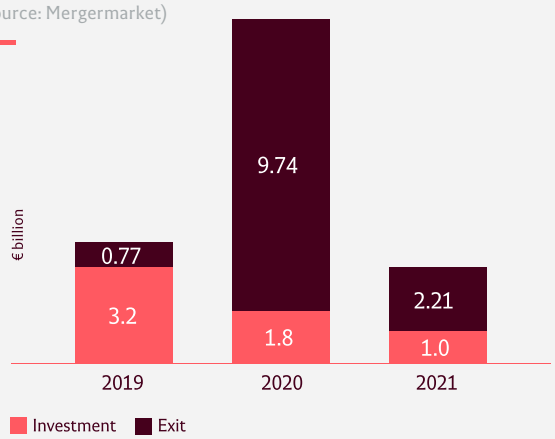
Volume of private equity transactions in Portugal in 2021. Investment vs Exit

(source: Mergermarket)



Value of private equity transactions in Portugal. Investment vs Exit

(source: Mergermarket)



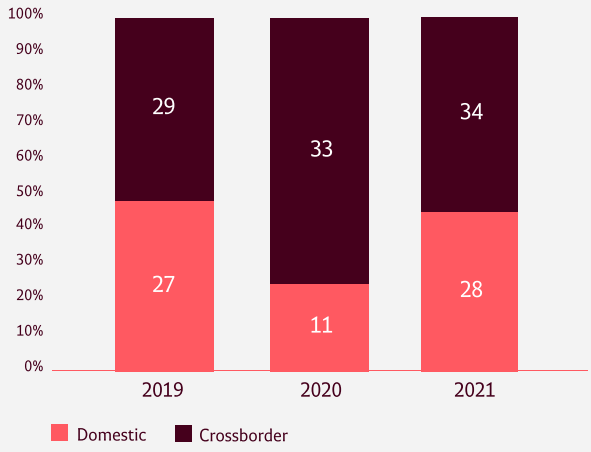
As in the 2019 and 2020, exit deals in 2021 remained a minority of the deal volume (37%). However, in contrast to pre-pandemic times, they represented the majority (68%) of the deal value, which amounted to approximately €2.2 billion.

Source of investment

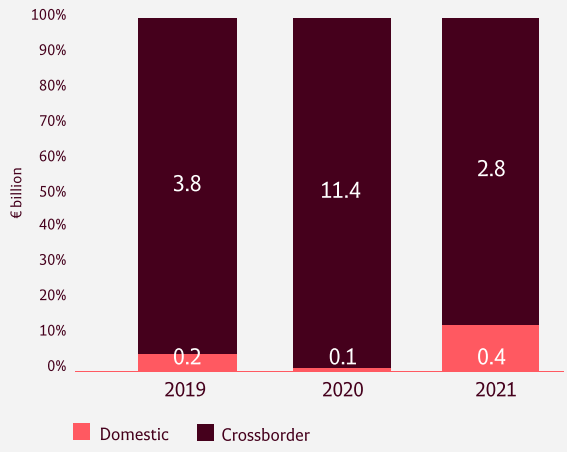
Regarding the investment source, the Portuguese market is still dominated by crossborder transactions, both in number (55%) and value (87%), although domestic transactions increased more than twofold in volume and threefold in value.

Size: 39% of the deals in 2021 with disclosed value were above €100 million

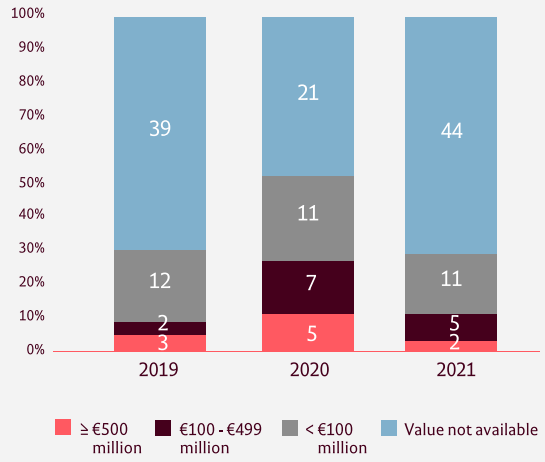
Source of private equity transactions in Portugal (by volume) 2019 vs 2020 vs 2021
(source: Mergermarket)



Source of private equity transactions in Portugal (by value) 2019 vs 2020 vs 2021
(source: Mergermarket)



Type of transactions



Size of private equity transactions in Portugal 2019 vs 2020 vs 2021
(source: Mergermarket)

Size

In terms of transaction size, the two deals in Portugal of over €500 million that took place in 2021 represented nearly two thirds of the total value.

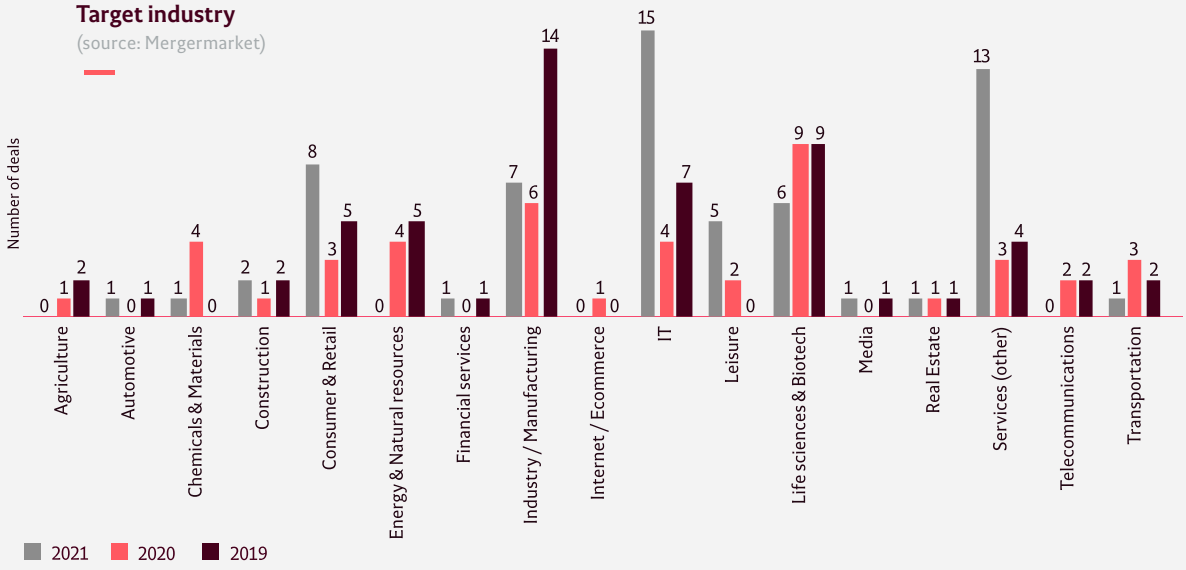
There were fewer transactions of over €100 million than in 2020 but slightly more than in 2019, while the volume of lower-value transactions leveled off.

Industries

In Portugal, like in Spain, information technology (IT) was the leading industry, with 15 private equity transactions. The combined deals in IT (24%), services (21%), consumer and retail (13%), industry & manufacturing (11%), and life sciences & biotech (10%) represented nearly 80% of the market.

Growth was particularly pronounced in the IT, leisure, services, and consumer and retail industries.

Target industry
(source: Mergermarket)



Our Private Equity practice

One of the most active teams with multidisciplinary capacity and extensive experience in private equity transactions

Our large and specialized team advises clients on designing, negotiating, and implementing private equity investments and acquisitions, as well as on private equity recapitalization transactions and divestments. Our team also includes experts in setting up funds, the financing of portfolio companies and restructuring transactions. We place special emphasis on designing innovative strategies and implementing investment and divestment structures that are optimum and efficient from a tax and commercial perspective.

We regularly advise national and international private equity firms and funds, fund sponsors, management companies, investors, portfolio companies, and banks and financial institutions on all aspects and stages of a wide range of investment, financing, and acquisition transactions.

Chambers, 2021
"Has a large market share in private equity deals"

Chambers, 2020
"High-quality lawyers with strong commitment to their clients"

Large market share: In 2021, we were involved in over 70 private equity and venture capital transactions.

Relevant experience: We have participated in some of the largest and most complex transactions in recent years.

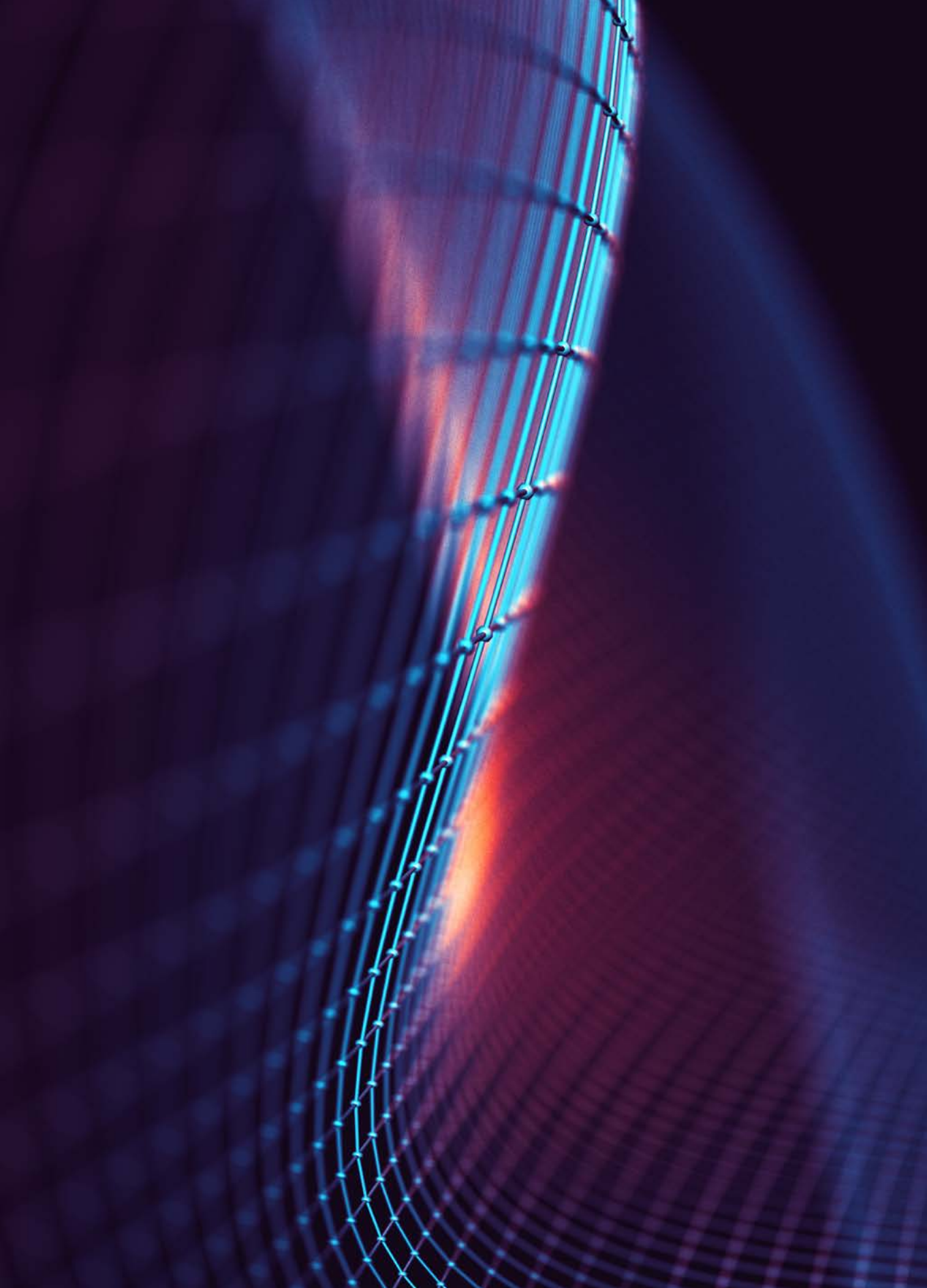
Crossborder vision: We regularly advise major international private equity firms on their investments in several jurisdictions, particularly in Spain, Portugal and Latin America.

Highly recommended firm in Private Equity (Spain and Portugal)

Chambers AND PARTNERS

LEADERS LEAGUE

The LEGAL 500



Significant trends in Cuatrecasas deals

This study, an overview of market trends in private equity transactions in Spain and Portugal, analyzes the most significant deals on which Cuatrecasas advised.

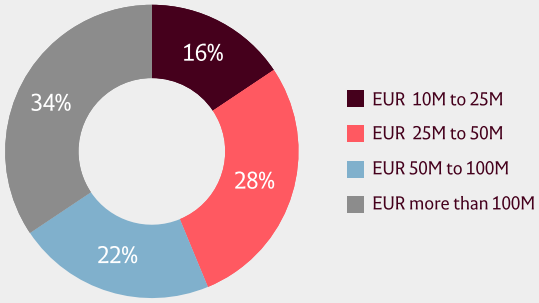
The study analyzes 42 private equity deals signed in 2020 and 2021 (32 in Spain and 10 in Portugal) with transaction values over €10 million in Spain and without limitation in Portugal. It does not include venture capital transactions, as they have their own features and market trends. Unless otherwise specified, all the charts include the figures for 2020 and 2021.

Study overview

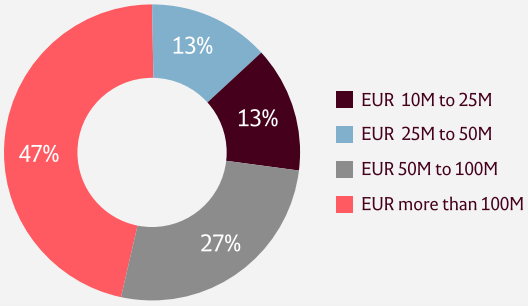
Although the deal values were more varied during 2020, during 2021 (as in 2019), almost half the transactions on which Cuatrecasas advised were deals valued at over €100 million, and 74% of them over €50 million.

In 2021, almost half the transactions were deals valued at over €100 million

Transaction value

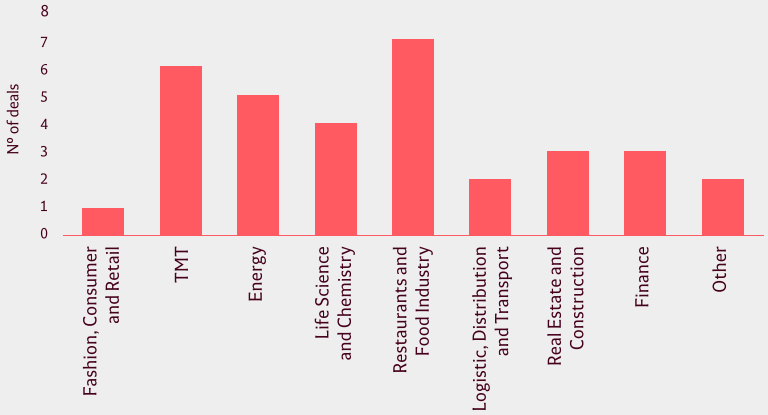


Transaction value in 2021



Although investment was again distributed among different sectors, the food industry and technology, media, and telecom (TMT) sectors were particularly active. The energy sector, which dropped off in 2019, rebounded in 2020 and 2021 with 5 transactions, most of which were valued at over €100 million.

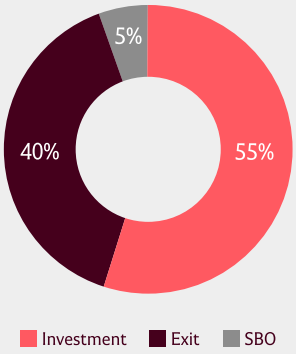
Target industry



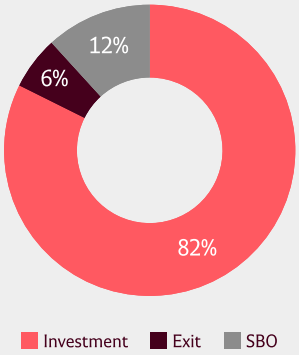
In 2020, there was a clear change in trend, and investments were once again dominant with 82% of the transactions (more than 84% if we consider secondary buyouts (SBOs), where a private equity firm sells its investment to another private equity firm). Although exits grew in 2021, they still did not reach the levels seen in 2019, when they experienced significant growth, and SBOs increased exponentially.

Eighty-two percent of transactions in 2020 were investments

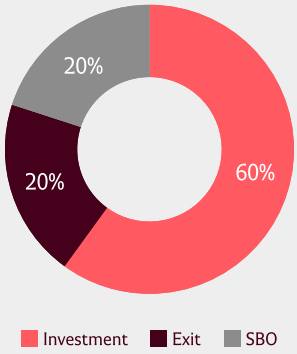
Investment vs Exit 2019



Investment vs Exit 2020



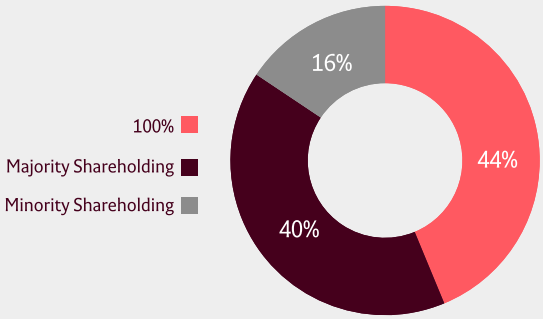
Investment vs Exit 2021



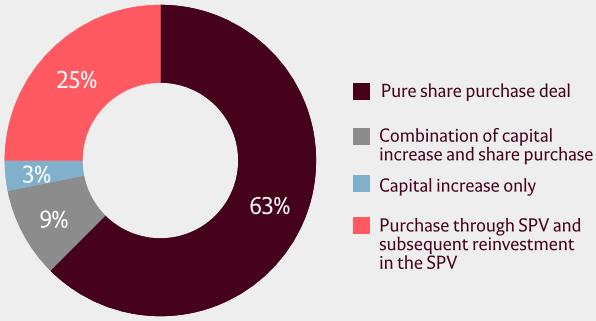
In recent years, an increasing number of private equity funds and financial sponsors are adopting alternative investment strategies to buyouts. In this scenario, some traditional funds have sought to diversify their strategies and products. These alternative strategies often result in innovative structures and instruments such as minority investments, as they are more flexible and can be adapted to the company's needs and to the risk profile.

However, when a private equity fund invests, the most common transaction continues to be one in which it buys 100% of the target company's capital stock or takes a majority shareholding through a pure share purchase deal. This contrasts with venture capital transactions, where pure share purchase deals are rare and where the fund usually takes a minority shareholding in the company through a capital increase.

Majority vs Minority



Investment structure



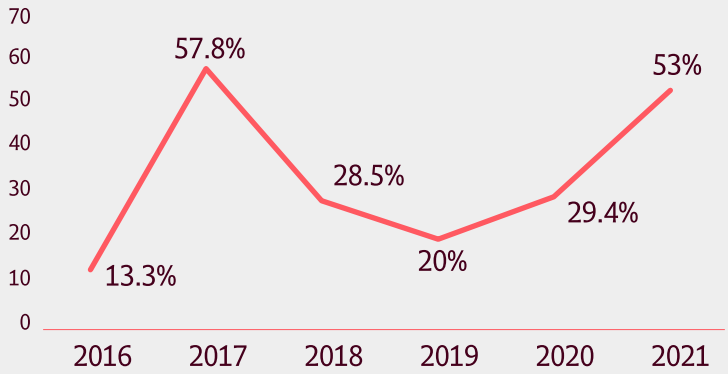
Approximately one-quarter of transactions continue to be ones in which the private equity fund, instead of buying a majority shareholding directly, buys the target company through a special purpose vehicle ("SPV"), after which the seller reinvests in the SPV, usually through a capital increase. Although this happens for many reasons, tax, indebtedness and regulatory reasons are the most common.

Deal process

The number of private equity transactions run as auctions increased considerably, amounting to more than half the transactions in 2021. If we focus only on exit transactions (excluding SBOs), the percentage of beauty contests with multiple potential bidders rises to 75%. This is probably because the market has focused on attractive assets with strong competition. Due to the pandemic, the deadlines in auction processes have been much tighter, which had already happened in other countries (e.g., the UK) before the pandemic.

In 2021, more than half the transactions were auctions with tighter deadlines due to the pandemic

Auction process

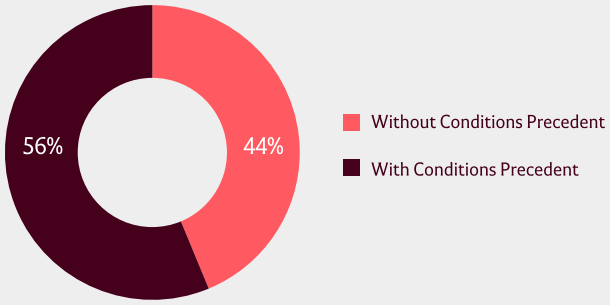


During the first year of the pandemic, there were fewer transactions with conditions precedent (47% in 2020). In our experience, this is probably because, unless conditions precedent were strictly necessary, the uncertain circumstances made parties prefer fast transactions with simultaneous signing and closing. In 2021, transactions returned to more usual percentages: 66.6% included conditions precedent. This figure was also due to the need for regulatory approvals, particularly foreign direct investment (FDI) screening.

Although the transactions included a range of conditions precedent, the most common were:

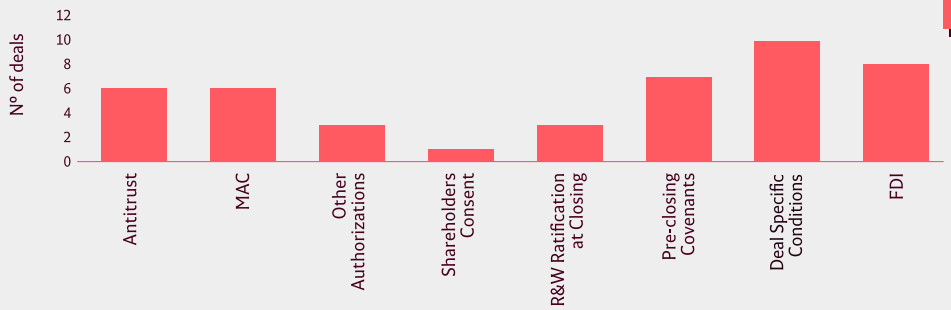
- approval by the antitrust authorities;
- FDI or other regulatory authorizations;
- fulfillment of pre-closing covenants (such as corporate restructuring, carve-outs, entry into force of certain agreements, or termination of contracts);
- absence of material adverse changes (MAC) during the interim period; and
- more ad hoc conditions precedent related to the deal, third-party waivers (i.e., lenders, suppliers or other parties' consent due to change of control clauses), the execution of financial, shareholder or other agreements or the fulfillment of financial agreement conditions, the delivery of specific documents, and the absence of legal proceedings or court rulings that may jeopardize the transaction.

Transactions with conditions precedent vs those without



The most remarkable aspect is the authorization of FDI, which is explained below. However, apart from this new condition precedent, which became increasingly regulated due to the pandemic, the negotiation and regulation of interim periods have not been as affected by the pandemic as was previously expected.

Types of CPS



The most remarkable aspect is the authorization of FDI

Unlike in previous years, when almost half the transactions requiring regulatory approval included a hell or high water clause, this was rarely the case in 2020 and 2021, when only around 12.5% of the transactions included them. Instead, the most common practice was to establish that the conditions the regulatory authorities could impose had to be assumed unless they were especially burdensome or exceeded certain limits.

In 2021, no transaction included a break-up fee in case the closing did not occur or there was a breach of the closing obligations

Although the opposite could have been expected, there was a progressive decrease in the use of break-up fees in 2020 and 2021 in case the closing did not occur or there was a breach of the closing obligations (30% in 2019, 25% in 2020 and 0% in 2021). The percentage of the purchase price to be paid as a penalty varied, but it was always below 10% of the purchase price.

The use of conditions subsequent was again scarce (less than 10%). This is mainly because, once the transaction is closed and the property is transferred, returning to the pre-purchase stage is difficult.

FDI authorization

Until March 2020, Spain had a liberalized system for foreign investments, except in regulated sectors (such as defense). However, in March 2020, Spain followed the trend of other European countries (e.g., France, Germany and Italy) and, in line with Regulation (EU) 2019/452 (the so-called "FDI Regulation") and the EU Commission's guidance—which called on all EU Member States to set up a full-fledged FDI screening mechanism—, it implemented a prior authorization system for FDIs—namely those made by non-EU and non-EFTA investors—that are likely to affect security or public order. Spanish FDI screening considers two main criteria:

- when the target company operates in one of Spain's strategic sectors (e.g., critical infrastructure, technologies and inputs, such as energy or raw materials, and access to sensitive information and personal data); or
- the foreign investor's profile (e.g., controlled by the government of a third country).

A transitional authorization system for EU investors also applies until December 31, 2022, but it only applies to investments in:

- Spanish listed companies that carry out their business in a strategic sector, and
- unlisted companies if the value of the investment exceeds €500 million and they also carry out their business in a strategic sector.

Under the new framework, some investments are subject to authorization granted by the Spanish Council of Ministers.

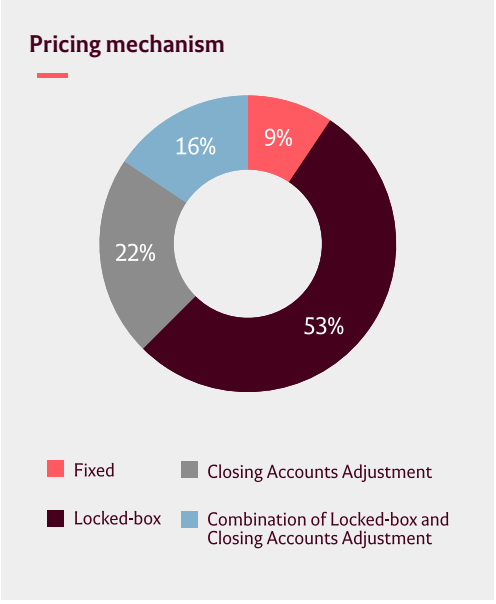
In March 2020, Spain implemented an authorization system for FDIs, either because the investment is made in a strategic sector or because of the investor's profile

Due to funds' interest in strategic sectors, an FDI analysis was needed in most transactions

Despite the initial concern and uncertainty as to how the new regulation would affect the implementation of M&A deals (mainly owing to the regulation's being unclear), in practice, it has not discouraged investment. However, due to funds' interest in strategic sectors, an FDI analysis was needed in most private equity transactions. In 2021, 60% of the transactions that included conditions precedent required an FDI condition precedent, and a preliminary analysis was needed in almost all deals.

Based on our experience, during 2020, the Council of Ministers was quick to authorize FDIs (between one to two months). However, during 2021, this period was increased to a minimum of four months. Despite this, the market has adapted seamlessly to the new authorization system due to the rising global trend to adopt similar systems in other countries (particularly European countries). In 2022, a new regulation implementing the FDI screening mechanism in Spain is expected. As the new rules will probably reduce the cases where the authorization of the Council of Ministers is needed, we expect the period to obtain FDI clearing in M&A transactions to be shorter than it was in 2021.

Consideration and Pricing Mechanisms



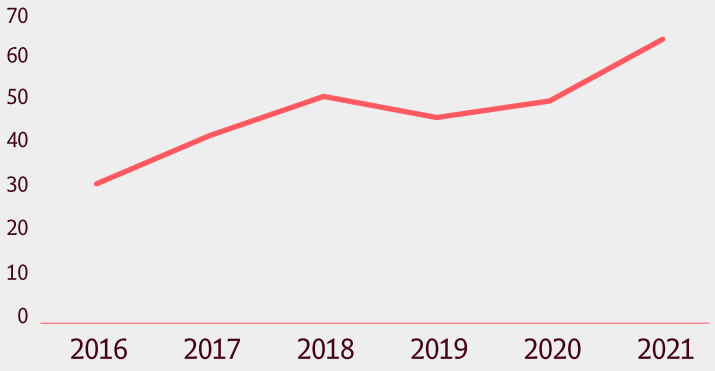
Locked-box mechanism is consolidated in 2021 as the most used pricing mechanism (66% of transactions)

As in traditional private M&A transactions, the completion accounts or closing accounts adjustment and locked-box mechanisms are used most commonly, together with the fixed-price mechanism.

Although the completion accounts and locked-box mechanisms have their pros and cons for both parties, the completion accounts mechanism has been considered buyer friendly, while the locked-box mechanism has been considered seller friendly. However, in recent years, the use of the locked-box mechanism has significantly increased and has been consolidated as the most used pricing mechanism, regardless of whether it is a sell-side or buy-side transaction.

During 2020 and 2021, 53% of transactions used a pure locked-box mechanism, 22% the completion accounts mechanism, 9% the fixed-price mechanism, and 16% a mechanism combining the locked-box and completion accounts mechanisms.

Percentage of transactions using locked box

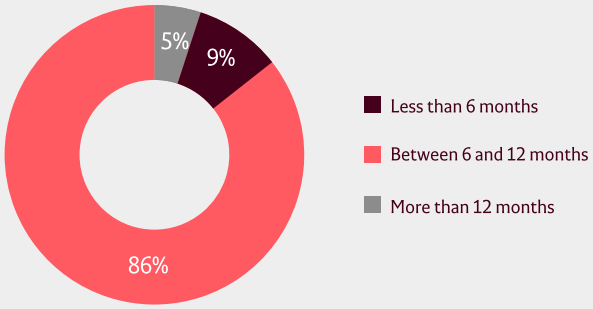


As the financial risk is transferred to the purchaser on the locked-box date within the locked-box mechanism, and because the purchaser can benefit from the profits generated from that date while the price is paid at closing, the seller will try to seek compensation, usually by using equity tickers typically structured as a fixed daily amount from the locked-box date or signing date until the closing date or, less commonly, as a fixed daily rate (always below 10%). Although negotiating an equity ticker was previously uncommon in Spain, it is increasingly used. During 2018 and 2019, it was used in 25% of the deals, and this trend continued in 2020 and 2021, when almost 28% of locked-box transactions included an equity ticker.

The seller's liability under leakage compensation is either capped at the leakage amount effectively received, or expenses and taxes are added. Only in 13% of transactions was leakage increased by the agreed interest accrued from the leakage date. Although the percentage depends on the specific circumstances of the transactions, it was always below 8%. The most common limitation period is 6 to 12 months.

The use of equity tickers continues to grow, and structuring it as a fixed daily amount is more common than setting a fixed daily rate

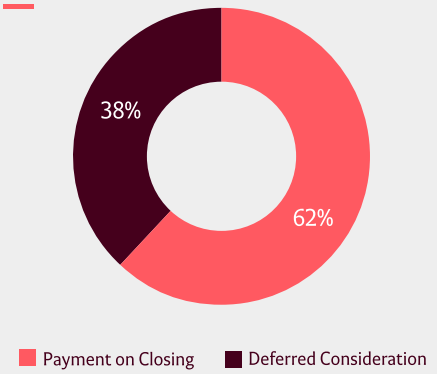
Leakage limItation period



Even though the locked-box mechanism has become the most used pricing mechanism, the completion accounts mechanism was still used in 32% of the deals (if a combination of locked-box and completion accounts transactions are included), in which net debt and working capital were the most widely used financial parameters for the post-closing adjustment. In transactions with the completion accounts mechanism within the energy sector, ad hoc systems were used.

In 2021, net debt and working capital were used in 75% of the deals as the financial parameters for the post-closing adjustment

Payment on closing vs deferred consideration



As in previous years, up to 38% of transactions included payment of deferred consideration, which were in all cases earn-outs or a combination of fixed deferred price and earn-outs. Following a trend that started in 2018, no transaction had only a fixed deferred price. When an earn-out is agreed, there are sometimes covenants to protect the seller, but this is uncommon. Most earn-outs are linked to EBITDA or, in general, to the company's benefits.

All transactions with deferred consideration were earn-outs or a combination of fixed deferred price and earn-outs

Warranties

Representations and warranties (R&Ws) are negotiated in share and purchase agreements (SPAs) under standard M&A practice. The agreed remedies for a breach of R&Ws are the buyer's only remedies against the seller if fundamental or business warranties are breached. In 2020 and 2021, when there was more than one seller, their liability was usually joint or individual, or a combination of both (individual for the fundamental warranties and joint for the business warranties). Joint and several liability was hardly seen.

Unlike venture capital transactions, where indemnification can sometimes be in cash or, at the investors' discretion, the target company's shares, warranty payments in private equity transactions are almost always cash.

In 85% of transactions with a deferred closing, the seller was considered to repeat the R&Ws on completion.

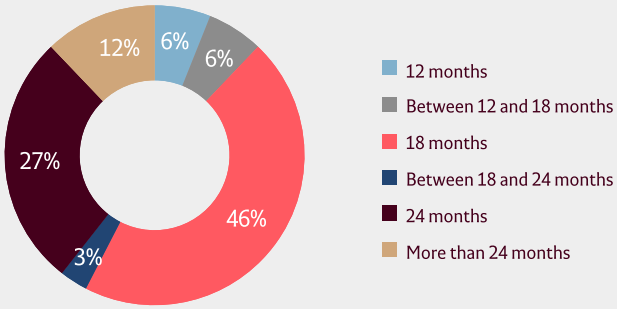
Warranty limitations

SPAs are usually limited quantitatively and temporarily. However, those limits differ depending on whether there is an investment or an exit and whether warrant and indemnity (W&I) insurance is taken out.

Although in 2018 and 2019 the seller was usually liable for a 24-month period after closing, during 2020 and 2021, an 18-month limitation period became the most used (in 46% of the transactions).

Limitation period

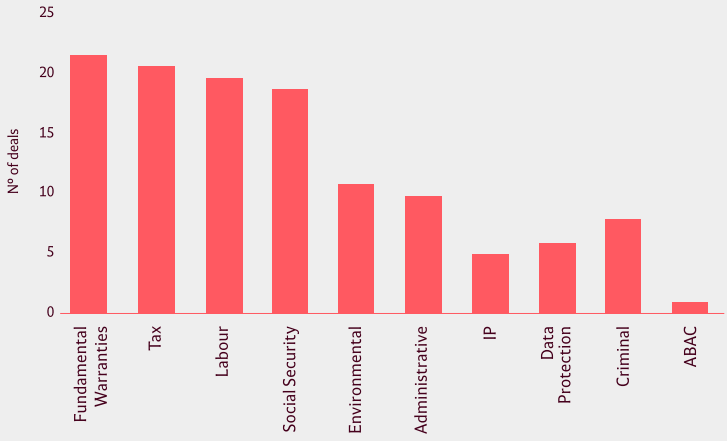
In 2020 and 2021, an 18-month limitation period became the most used, abandoning the trend of longer periods in previous years



Subjecting specific issues to time barring as provided by law or regulations is common practice, mainly in tax, labor and social security matters, as well as damages related to the breach of a fundamental warranty. However, it is also common in criminal, environmental, administrative, data protection, intellectual property, and anti-corruption matters.

There are usually upper and lower limits on monetary limitations

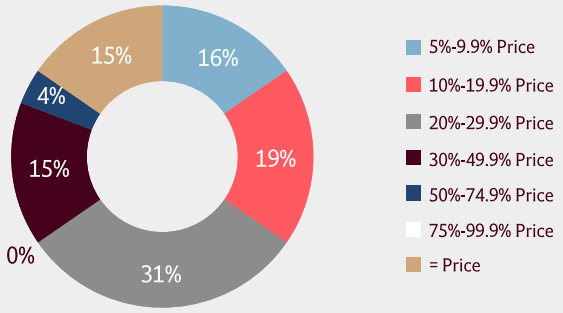
Issues subject to time barring



Unless a W&I insurance was agreed, all deals had lower and upper limits

Liability for business and tax warranties was generally capped (usually under 50% of the purchase price), in contrast to fundamental warranties, which were either limited to the purchase price (56.25%) or not limited at all (40.62%). In 2018 and 2019, the most common liability cap for business and tax warranties was between 10% and 20% of the purchase price. In 2020 and 2021, it increased slightly to 20% to 30% of the purchase price.

Liability caps-Business warranties

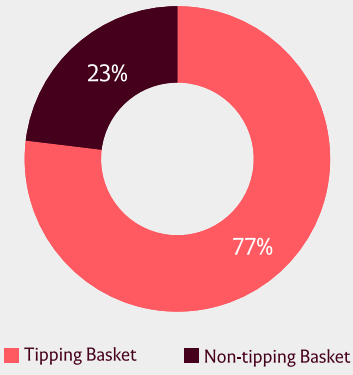


The most used liability cap for business and tax warranties has increased slightly and is now 20% to 30% of the purchase price

During 2020, in all exit transactions, the private equity fund was not liable for the breach of business or tax warranties because a W&I insurance had been agreed. However, during 2021, this happened only in 40% of the transactions. However, as usual, in all transactions in which private equity funds invested, industrial sellers granted business and tax warranties, or W&I insurance was agreed.

Regarding lower limits (and excluding W&I transactions), (i) the seller was not usually obliged to indemnify for losses if each loss, considered individually, was less than a certain amount (de minimis exclusion or de minimis amount), and (ii) all the deals included a basket. In these cases, the seller is not liable for damages unless the aggregate amount of the claim, together with all the claims (each over the de minimis amount), exceeds the basket amount.

Basket



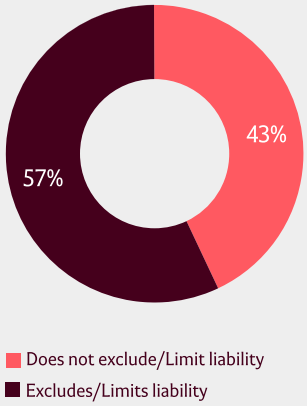
In cases where a basket is agreed, 77% took the form of tipping baskets and 23% of non-tipping baskets. The basket amount is still usually below 1% of the purchase price (0.8% on average for non-tipping baskets and 0.51% for tipping baskets). The de minimis amount was significantly lower in 2020 (0.02% on average) than in 2021 (0.118% on average).

Buyer's knowledge

In Spain, the impact of a buyer's actual or deemed knowledge on claims for breach of warranties is usually negotiated under SPAs. Up to 87.5% of the SPAs stated whether the buyer's knowledge of an inaccuracy in R&Ws limits the seller's liability for breach of warranties. Of this 87.5%, in 57% of transactions, the buyer's knowledge excluded or limited the seller's liability. The other 43% of transactions did not include limitations on the buyer's remedies if the buyer was previously aware of an inaccuracy or breach.

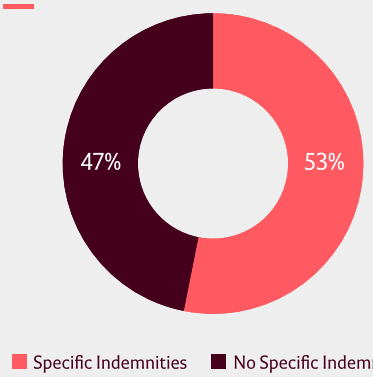
Although in previous years the percentage of the so-called pro-sandbagging clauses (not excluding liability) versus anti-sandbagging clauses (excluding liability) was more or less the same (with anti-sandbagging clauses being slightly more common), the difference has since then become more pronounced in favor of anti-sandbagging clauses, particularly in 2021.

Effect of buyer's knowledge



There have been more transactions with an anti-sandbagging clause than with a pro-sandbagging clause

Specific indemnities



Specific indemnities

Specific indemnities are ad hoc indemnity remedies negotiated when the risk of a specific loss is high, but not 100% certain. They are not usually subject to any limitation and do not have to follow the claim procedure negotiated under the SPA. For several reasons, specific indemnities were included in 53% of transactions. This number increased (44% in 2018 and 2019) and was almost always included in transactions where W&I insurance was not agreed and a private equity fund was investing.

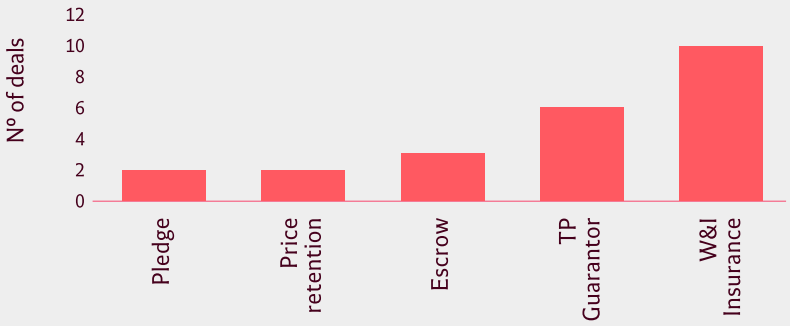
Buyer's remedies against seller's liability

To seek security against the seller's liability, including a buyer's remedy in the SPA is common. However, although in 2020 more than 82% of SPAs included a buyer's remedy, this percentage dropped to 60% in 2021. In general, during 2021, funds have been less demanding in the seller's guarantees, either because they were buying highly demanded assets or because the valuation was beneficial and there was no need for further guarantees.

Regarding classic buyer's remedies, third-party guarantors were the most used, exceeding escrows, which were the most used in the past 5 years. This is probably because, as money was cheap, some escrow agreements were charging interest instead of giving it, discouraging parties. That no transaction used a bank guarantee as a seller's guarantee is remarkable.

W&I insurance continues to be the most used buyer's remedy in private equity, albeit less markedly so than in the past.

Types of seller's guarantees



In 77.28% of transactions where W&I insurance was not agreed, specific indemnities were regulated

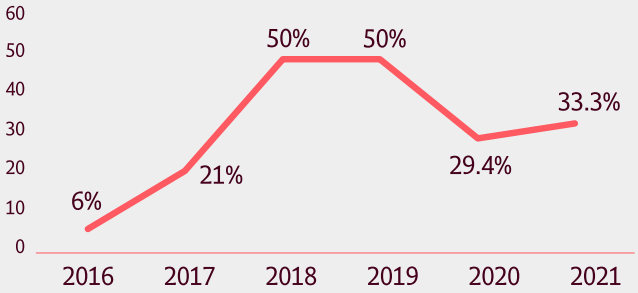
W&I insurance

Since 2016, the Spanish market followed the latest trend in the M&A market worldwide: seeking warranty remedy through W&I insurance.

Even though the number of M&A transactions where a W&I insurance was agreed has decreased, it is clearly consolidated as the most used buyer's remedy and not only within the framework of an exit (50% of the transactions were investments, 30% exits and 20% SBOs). Therefore, the use of W&I insurance has become widespread, both when private equity funds are investing and disinvesting, but its use has focused on clean exits (90% of W&I transactions).

A clean exit is one in which the seller is not liable for the breach of any business warranty. Consequently, if there are any inaccuracies in the seller's R&Ws, the buyer's only remedy would be against the W&I insurer under the W&I insurance policy, and the buyer would not be able to take any action against the seller. However, in a clean exit, the purchaser is usually able to take action against the seller in cases of fraud, willful misconduct and breach of fundamental warranties.

W&I insurance

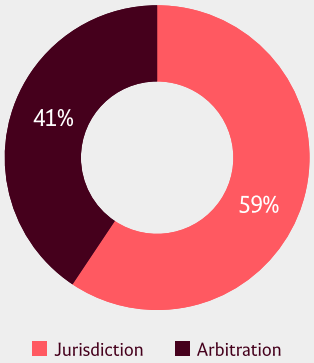


The use of W&I insurance has focused on clean exits (90% of W&I transactions)

W&I insurance continues to be the most used buyer's remedy and not only within the framework of an exit

Dispute resolution

Dispute resolution



In 41% of transactions carried out in 2020 and 2021, the parties opted for arbitration as the dispute resolution mechanism to resolve conflicts arising from the agreement.

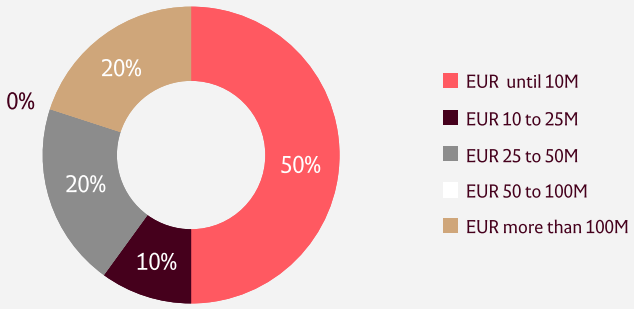
The most common seat of arbitration continued to be Madrid. Arbitration proceedings were mostly managed by the International Court of Arbitration of the International Chamber of Commerce (ICC), or by the Court of Arbitration of Madrid.

Study overview

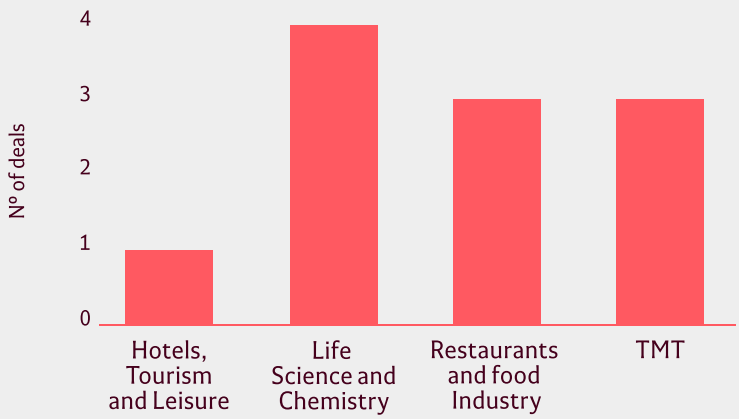
The private equity market in Portugal was focused on certain sectors, with private equity funds showing a clear preference for the life sciences, technology, media, and telecom (TMT), and food industry sectors. Most deals had a transaction value under €25 million. Regarding the megadeals over €100 million carried out, Cuatrecasas advised on two of them.

Almost all transactions were carried out within the life sciences, TMT, and food industry sectors

Transaction value



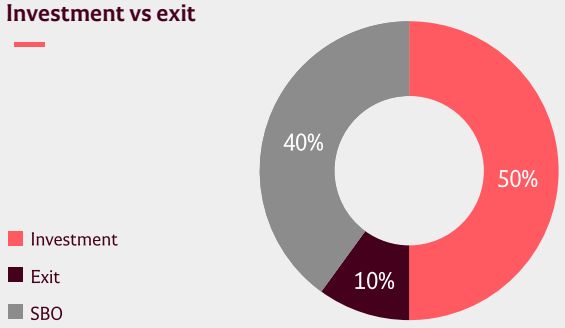
Target industry



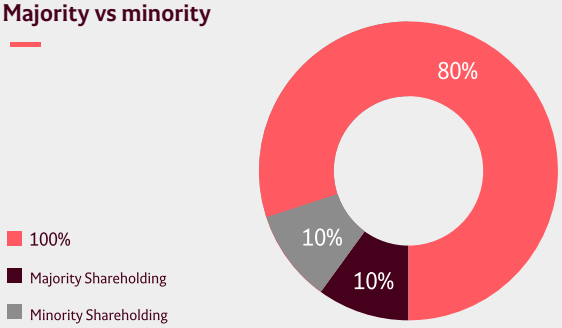
In most transactions, private equity funds either invested or there was a secondary buyout (SBO) (deals where a private equity firm sells its investment to another private equity firm). Pure exits were marginal.

The deal process does not vary substantially across Iberia, and when a private equity fund invests, the most common transaction is one in which it buys 100% of the target company's capital stock or takes a majority shareholding through a pure share purchase deal.

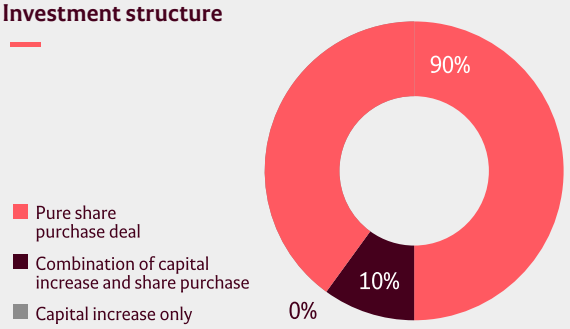
Investment vs exit



Majority vs minority



Investment structure



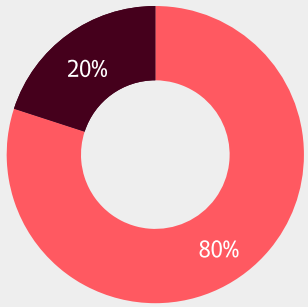
90% of the transactions were pure share deals

Deal process

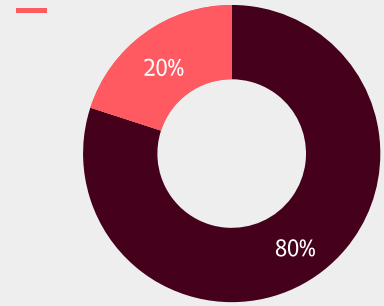
Most transactions were bilateral negotiations, except deals over €100 million, which were run as auctions

The number of private equity transactions run as auctions with multiple potential bidders was residual, and most of the deals were one-to-one transactions. However, if we focus only on transactions over €100 million, all of them were carried out within the framework of an auction process.

Auction process



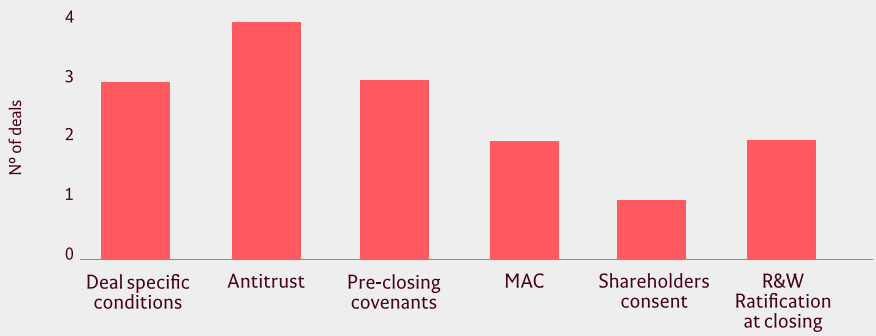
Simultaneous signing and closing vs Deferred closing



Most transactions (80%) had a deferred closing, mainly due to the fulfillment of conditions precedent. The transactions included the typical conditions precedent in M&A such as:

- antitrust clearance;
- absence of material adverse changes (MAC) during the interim period;
- ratification of the representations and warranties (R&Ws) at closing; and
- more ad hoc conditions precedent related to the deal, third-party waivers (i.e., lenders, suppliers or other party's consent due to change of control clauses), and the execution of agreements or the fulfillment of financial agreement conditions.

Types of conditions precedent



Portugal has not yet followed in the steps of other EU countries that have enacted specific regulations and toughened restrictions on foreign direct investments (FDIs). Indeed, in Portugal, the existing screening mechanism approved by Decree-Law no. 138/2014, of September 15, allows the Portuguese government to initiate an investigation and ultimately oppose (ex post) transactions, yet limiting these actions to strategic assets, particularly in sensitive industry sectors, based on reasons of national defense and security, or security of supply of services fundamental to the national interest. To our knowledge, none have been enforced to date.

Although Portugal did not adopt any COVID-19-specific legislation on monitoring foreign investments, the entry into force of the FDI Regulation and restrictions in other European countries has influenced the Portuguese market

However, the entry into force of Regulation (EU) 2019/452 (the so-called "FDI Regulation") and the increased awareness of authorities and players of the screening of direct foreign investment is causing the need to carry out a risk analysis on potential FDI when selecting bidders or preparing a bid for assets in strategic sectors, leading certain bidders to consider the possibility of carrying out a pre-notification, when applicable, to try to obtain a negative clearance. In any case, although analyzed in several transactions, including a condition precedent has not yet been necessary. In 2022, a new regulation amending the Portuguese screening mechanism may be approved.

Thirty-seven percent of the transactions included a break-up fee in case the closing did not occur or there was a breach of the closing obligations

Transactions subject to the approval of the antitrust authorities do not usually include a hell or high water (HOHW) clause, and the purchaser can decide not to assume the conditions that the regulatory authorities impose.

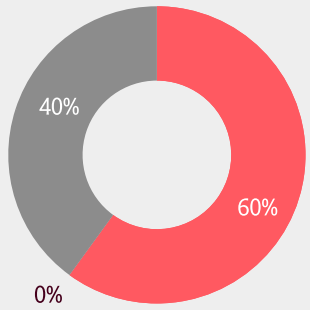
In 2020 and 2021, the use of break-up fees (in case the closing did not occur or there was a breach of the closing obligations) was common and was included in 37% of the transactions with deferred closing. The percentage of the purchase price to be paid as a penalty varied, but it was always below 7% of the purchase price.

Consideration and pricing mechanisms

As in traditional private M&A transactions, completion accounts and locked-box mechanisms were the two most used pricing mechanisms. The use of the locked-box mechanism increased significantly in 2021, with 75% of transactions using it.

Generally, locked-box regulations do not usually provide for equity tickers for the seller to be compensated for the financial risk transferred to the purchaser on the locked-box date. However, the leakage amount to be paid

Pricing mechanism



Use of the locked-box mechanism increased in 2021, with 75% of the transactions using it

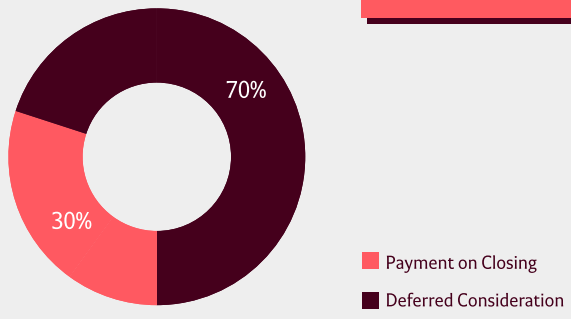
was increased by an agreed interest accrued from the leakage date in 50% of the transactions that included the locked-box mechanism. The most common limitation period for leakage claims is 6 to 12 months.

Even though the locked-box mechanism has become the most used pricing mechanism, the completion accounts mechanism was still agreed in 40% of the deals in which debt and working capital were the most widely used financial parameters for the post-closing adjustment.

Payment of deferred consideration was widely used (in 70% of the transactions), which are usually earn-outs. When an earn-out is agreed, there are sometimes covenants to protect the seller. In times of uncertainty, the earn-out mechanism was used to mitigate the risk.

Deferred payment

Seventy percent of the transactions had deferred consideration



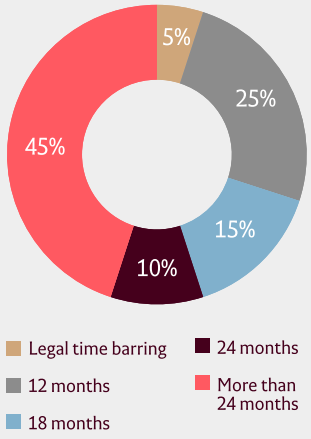
Warranties and specific indemnities

Regarding the seller's liability, the Portuguese market follows the usual M&A trends in crossborder investments: (i) R&Ws are negotiated in share and purchase agreements (SPAs); (ii) SPAs generally include a sole remedy clause for the breach of the seller's warranties (which may be subject to legal exceptions in certain circumstances); and (iii) the seller's indemnity for breach of warranties (except in case of fraud or willful misconduct) is usually limited quantitatively and temporarily.

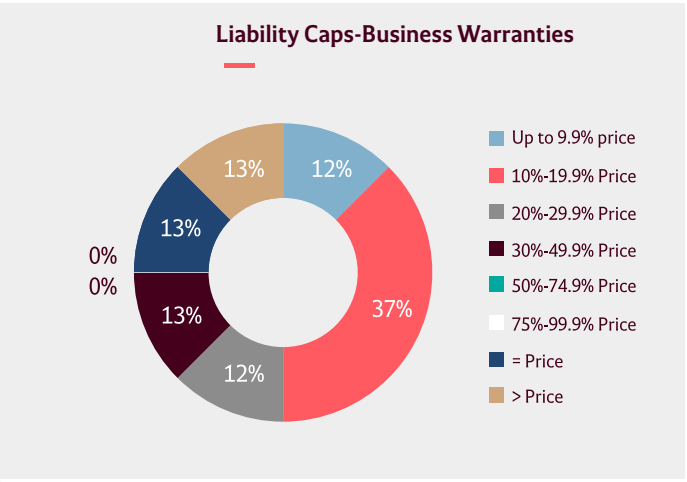
Most specific indemnities are negotiated on the basis of known contingencies. Generally, they are not subject to any limitation and do not have to follow the claim procedure negotiated under the SPA.

An 18-month limitation period for the seller's warranties was the most used, and subjecting specific issues to time barring as provided by law is common practice, mainly in tax and social security matters. It is also common to allow the legal statutory period for claims related to criminal and environmental matters.

Limitation period



Eighteen-month limitation period is also the most used



Liability for business and tax warranties is usually capped at an amount under 30% of the purchase price. The liability cap sometimes varies depending on the time elapsed from closing. The more time that passes, the lower the limit.

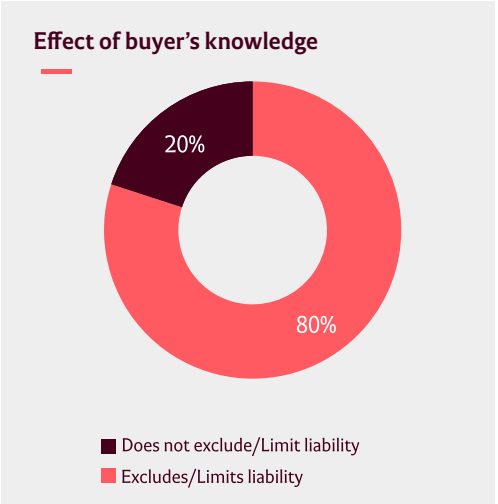
Indemnity for the breach of fundamental warranties was limited to the purchase price in 90% of deals.

Liability for business and tax warranties was generally capped at under 30% of the purchase price

Regarding lower limits (and excluding transactions involving warranty and indemnity (W&I) insurance), (i) the seller was not usually obliged to indemnify for losses if each loss, considered individually, was less than a certain amount (de minimis exclusion or de minimis amount), and (ii) almost all deals included a basket. In these cases, the seller is not liable for damages unless the aggregate amount of the claim, together with all the claims (each over the de minimis amount), exceeds the basket amount.

In cases where a basket is agreed, all of them took the form of tipping baskets, which means the seller is liable for the entire amount and not merely for the excess if the aggregate of claims exceeds the basket amount.

On average, the basket amount is usually below 1% of the purchase price (0.7% on average) and the de minimis below 0.1%. For both the basket and the de minimis, the agreement usually expressly excludes the breaches of fundamental warranties.



Buyer's knowledge

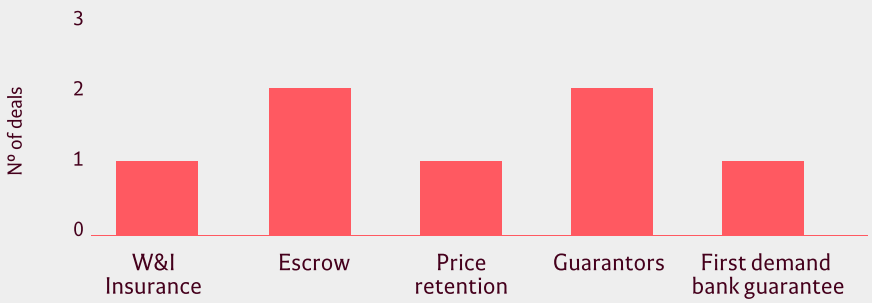
All deals stated whether the buyer's knowledge of an inaccuracy in R&Ws limits the seller's liability for breach of warranties. In 80% of the deals, the buyer's knowledge excluded or limited the seller's liability, and in 20% of the deals, the agreement did not include limitations on the buyer's remedies if the buyer was previously aware of an inaccuracy or breach.

Eighty percent of the deals provided for an anti-sandbagging clause

Guarantees or collateral to secure seller's liability

70% of the transactions included guarantees or other collateral to secure the seller's liability, with escrow arrangements with a bank and third-party or parent guarantors being the most used. The use of W&I insurance is limited to big transactions.

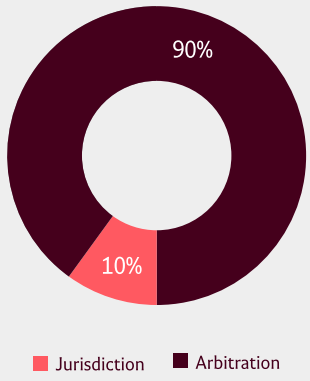
Types of seller guarantee



Escrows and parent guarantors were the most used buyer's remedies against the seller's liability

Dispute resolution

Dispute resolution



In Portugal, opting for arbitration as the dispute resolution mechanism to resolve conflicts arising from the agreement is common (90% of the transactions).

The most common seat of arbitration was Lisbon. The arbitration proceedings were mostly managed by the International Court of Arbitration of the International Chamber of Commerce (ICC), or by the Commercial Arbitration Centre of the Portuguese Chamber of Commerce and Industry.

Parties chose arbitration in 90% of the transactions

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