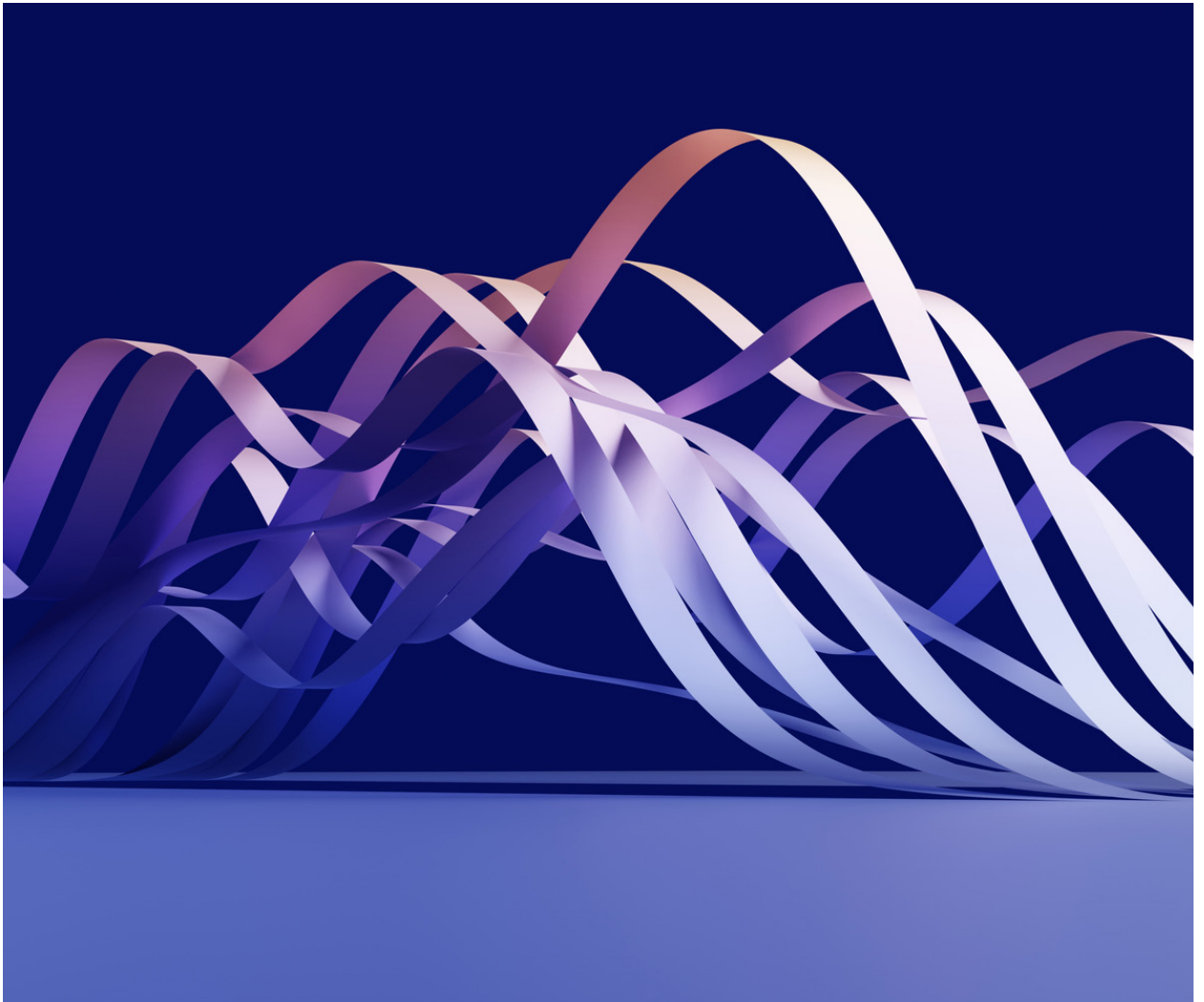


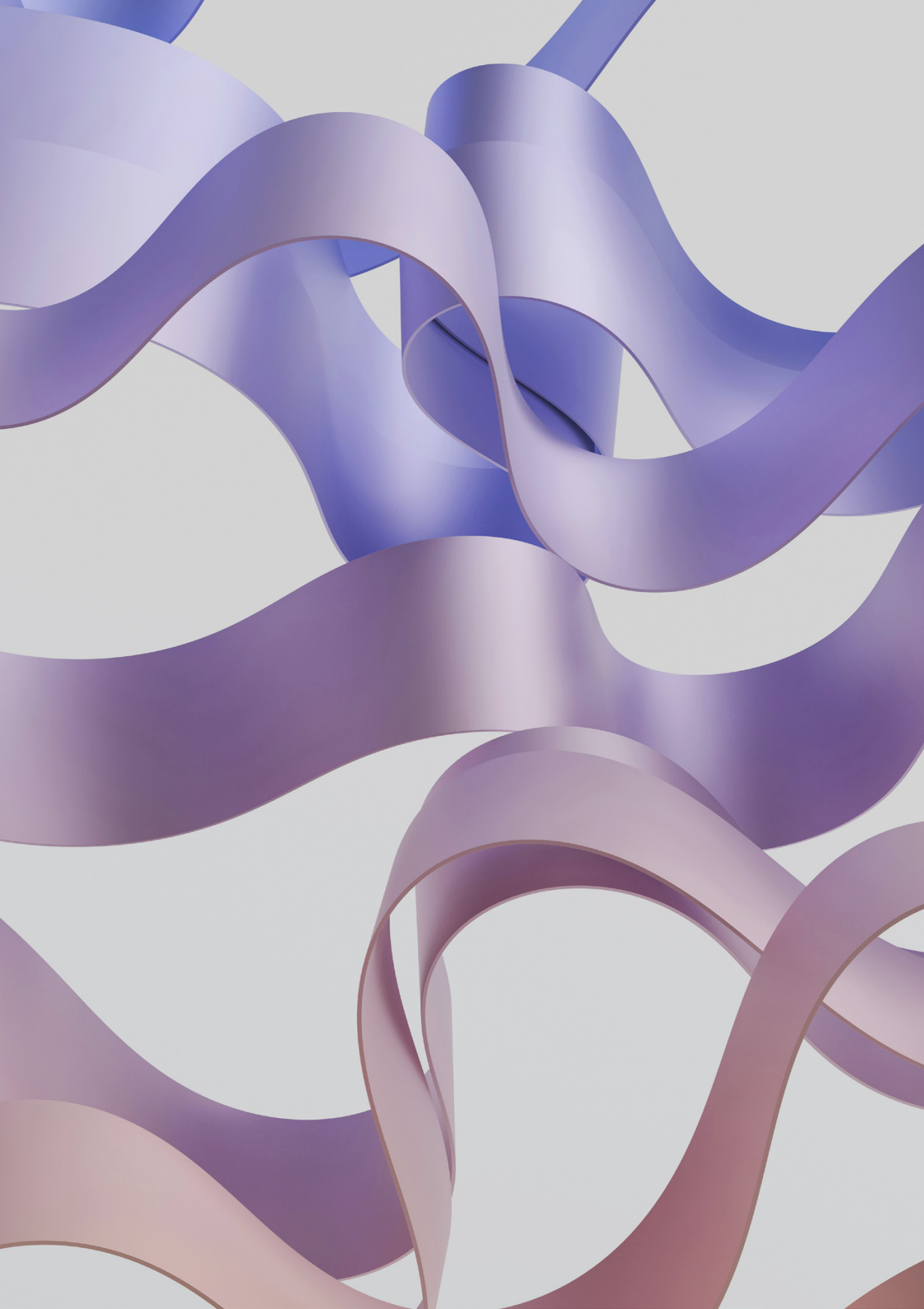


CUATRECASAS

# Market trends in Iberian private equity transactions

2025 EDITION





# Contents

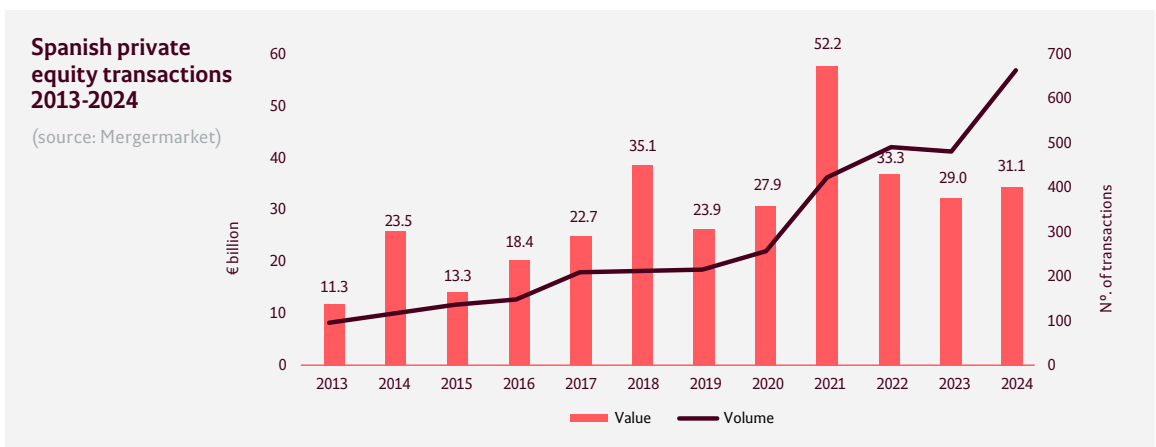
|   |           |
|---|-----------|
| <b>Private equity market outlook in Spain 2024</b>    | <b>4</b>  |
| General summary of the market                         | 4         |
| Source of investment                                  | 5         |
| Type of transactions                                  | 6         |
| <b>Private equity market outlook in Portugal 2024</b> | <b>8</b>  |
| General summary of the market                         | 8         |
| Source of investment                                  | 10        |
| Type of transactions                                  | 11        |
| <b>Market trends in Spain and Portugal</b>            | <b>13</b> |
| <b>SPAIN 2024 Market trends at a glance</b>           | <b>14</b> |
| <b>Study overview</b>                                 | <b>16</b> |
| <b>PORTUGAL 2024 Market trends at a glance</b>        | <b>37</b> |
| <b>Study overview</b>                                 | <b>38</b> |
| <b>Our private equity practice</b>                    | <b>50</b> |
| <b>Cuatrecasas at a glance</b>                        | <b>51</b> |

# Private equity market outlook in Spain 2024

## SPAIN

### General summary of the market

The private equity market in Spain experienced significant growth in 2024, demonstrating a rebound from previous years, particularly in number of transactions.



According to data generated by Mergermarket, the number of private equity transactions reached 600, a substantial increase compared to the 439 transactions recorded in 2023. This represents a notable 37% rise in the volume of transactions. The market saw a significant increase in market value. In 2024, private equity transactions totaled €31.1 billion, compared to €29.0 billion in 2023, indicating a 7% increase. Other sources, such as TTR, also reported growth (although applying different criteria), with 430 transactions valued at €27,620 million.

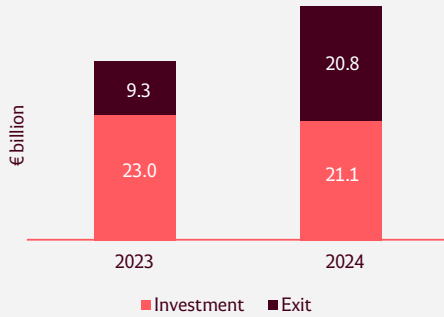
The number of investment deals rose from 400 in 2023 to 537 in 2024 and exit transactions also increased notably in 2024: from 58 in 2023 to 104 in 2024. It is notable that the exit value significantly increased to €20.8 billion in 2024 from €9.3 billion in 2023, reflecting a 124% increase.



### Value of private equity transactions in Spain

Investment v. Exit

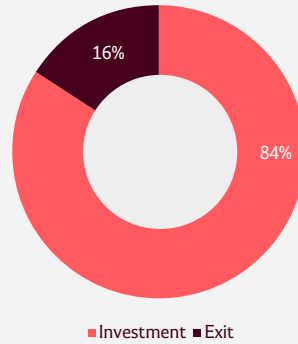
(source: Mergermarket)



### Volume of private equity transactions in Spain in 2024

Investment v. Exit

(source: Mergermarket)

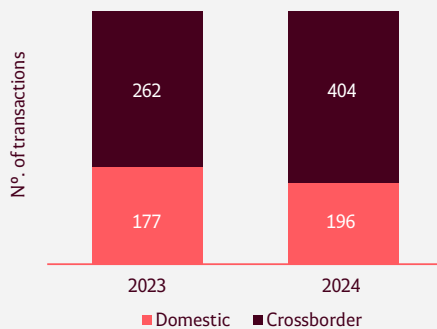


## Source of investment

While domestic activity increased, it was the substantial growth in crossborder transactions that significantly boosted the overall market performance in 2024.

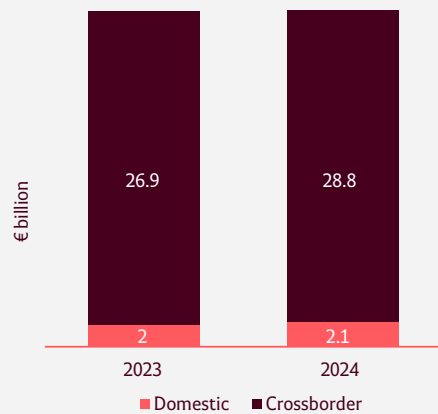
### Source of private equity transactions in Spain (by volume) 2023 v. 2024

(source: Mergermarket)



### Source of private equity transactions in Spain (by value) 2023 v. 2024

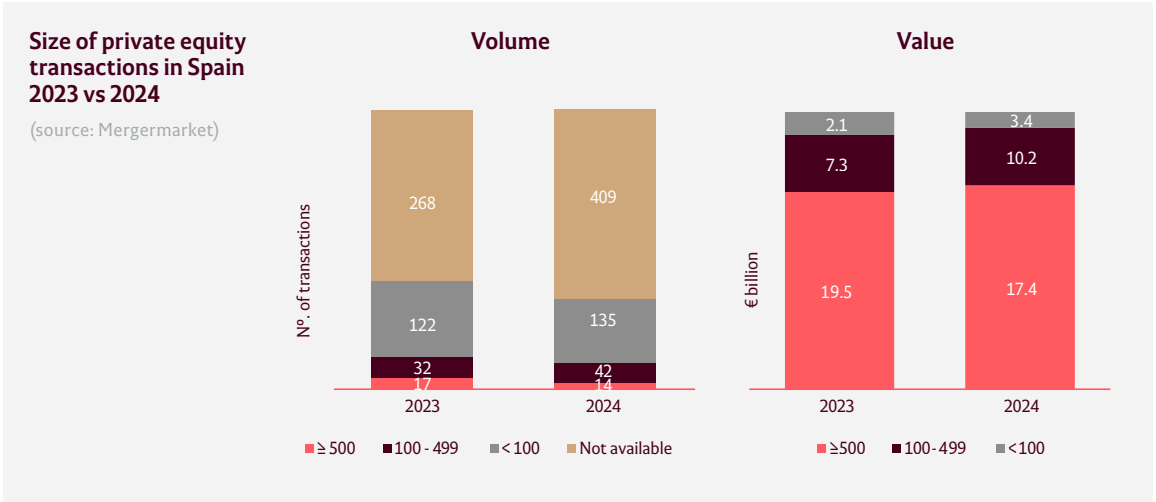
(source: Mergermarket)



International investors continue to focus on high-value transactions, while national players participate in lower-value transactions. US, UK, and France-based private equity investors led inbound transactions in Spain.

# Type of transactions

## Size

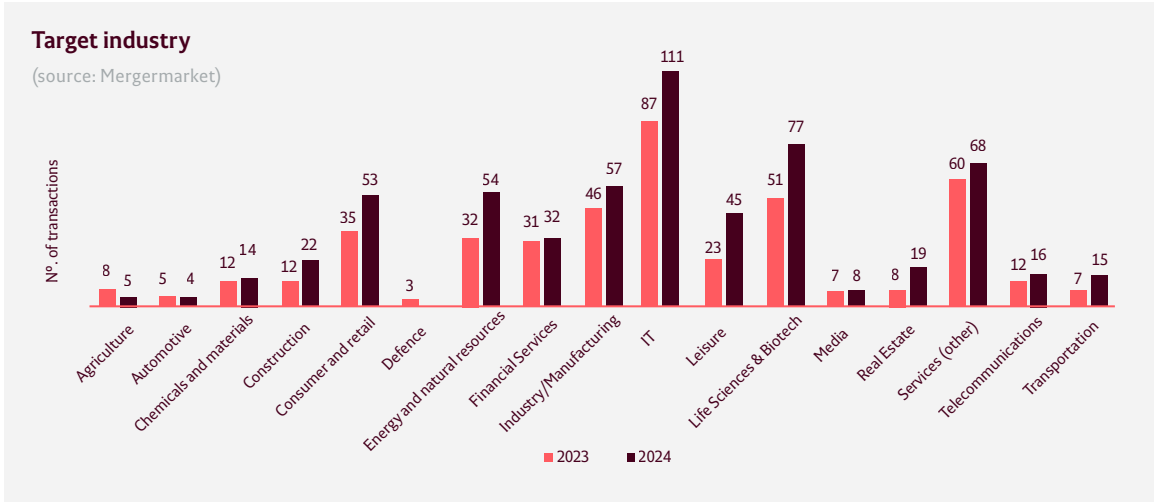


The private equity market in Spain showed growth across all deal sizes, except for large transactions (of €500 million or more), where the number of deals dropped. The average value of mid-sized and small transaction increased, while it slightly decreased for large transactions.



## Industries

The volume of transactions by industry remains concentrated in the technology sector, which is the outstanding leader with 19% of private equity transactions. This is followed by life sciences (13%), services (11%), and industry (10%).



A positive trend is observed in most sectors, with particular emphasis on real estate, transportation, consumer/retail, leisure, and construction. However, agriculture dropped by 38%, and the automotive sector also declined by 20% in 2024

# Private equity market outlook in Portugal 2024

## PORTUGAL

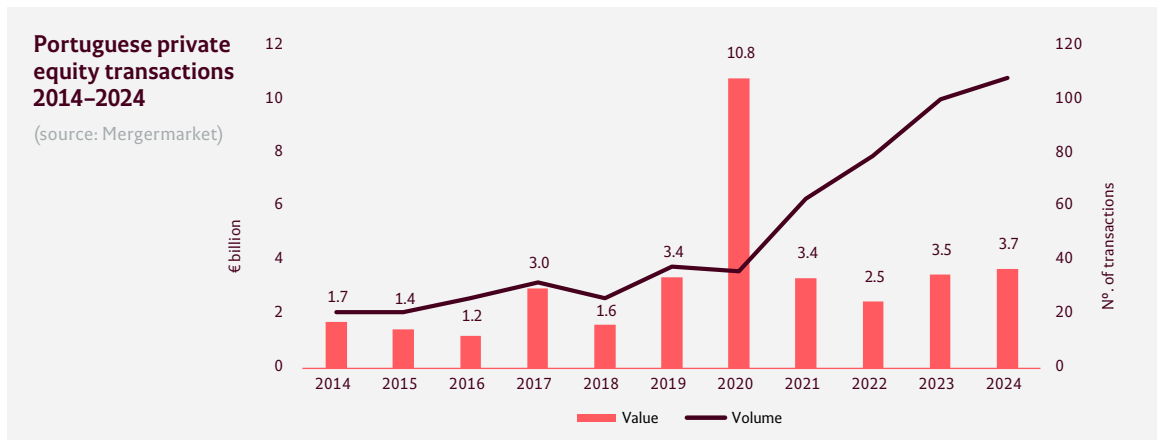
### General summary of the market

In 2024, the private equity market in Portugal reached new heights, with 108 in deal volume (the highest figure of the decade) and an aggregate deal value of €3.7 billion.

According to Mergermarket's research, the number of private equity transactions where the target, bidder or seller had Portugal as their dominant geography grew by 8% in volume and 6% in value compared to 2023.

In 2024, the private equity market in Portugal reached new heights in deal volume

Despite fluctuations, over the past decade, the Portuguese market has shown positive trends, with a compound annual growth rate of 17.8% in volume and 7.9% in value. Although deal values peaked in 2020 and then dropped to pre-pandemic levels in 2021 and 2022, they have been trending upward ever since. Deal volume dipped in 2018 and again in 2020 (-5%) but has since tripled from 36 to 108 deals.





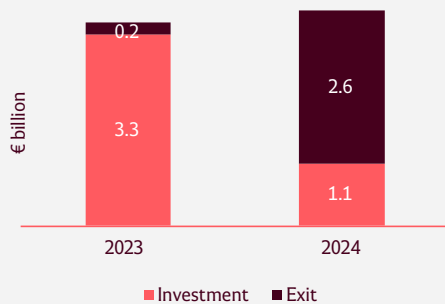
TTR, despite applying different criteria, reported fewer transactions in Portugal in 2024 (70) compared to 2023 (84). However, the total aggregate value of €3.6 billion aligns closely with Mergermarket's findings.

In 2024, there were 19 exit deals, only one more than the previous year. However, the aggregate value of these deals surged tenfold from €0.2 billion to €2.6 billion. Although the exit-investment volume ratio was unchanged from last year (18% exits to 82% investments), the value ratio shifted significantly: in 2023, the value of exits had represented only 6% of the total capital involved, while in 2024, they accounted for 71%, with investments at only 29%.

### Value of private equity transactions in Portugal

Investment v. Exit

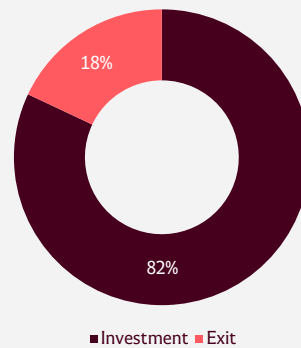
(source: Mergermarket)



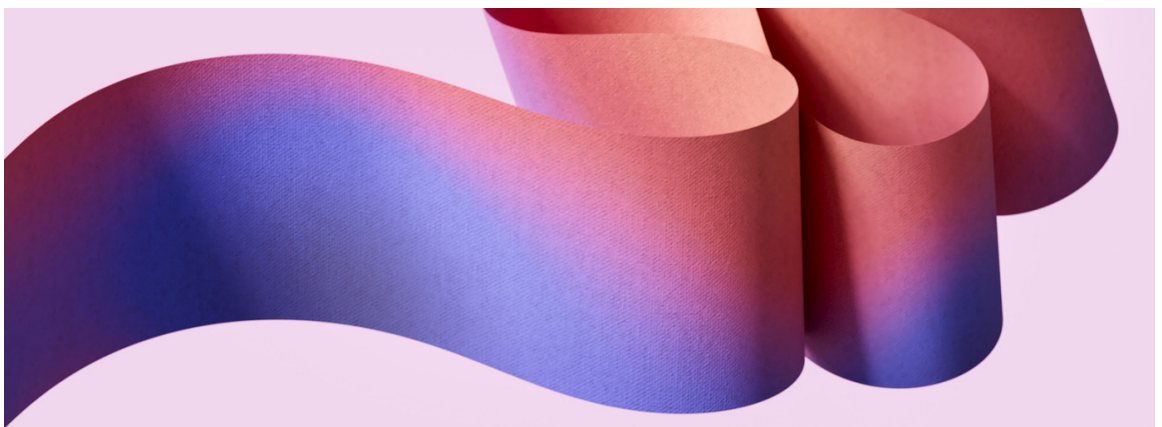
### Volume of private equity transactions in Portugal in 2024

Investment v. Exit

(source: Mergermarket)



A minority number of exits represented the large majority of the deal value



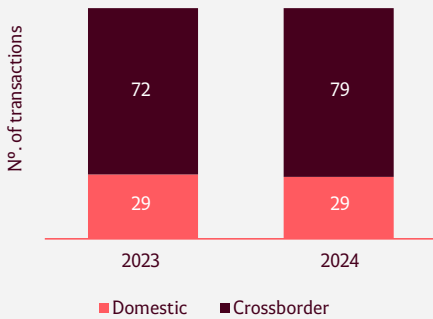
## International investors continue to drive high-value deals

## Source of investment

Crossborder deals, despite comprising only 73% of the total deal volume in Portugal, accounted for 98% of the total transactional value, amounting to €3.6 billion across 79 deals. This indicates that international investors continue to drive high-value deals, while national players are participating in lower-value deals, a trend that has persisted in the Portuguese market for several years.

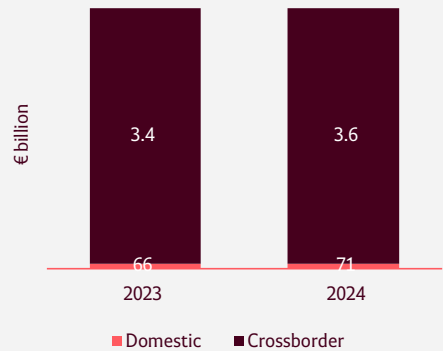
### Source of private equity transactions in Portugal (by volume) 2023 v. 2024

(source: Mergermarket)



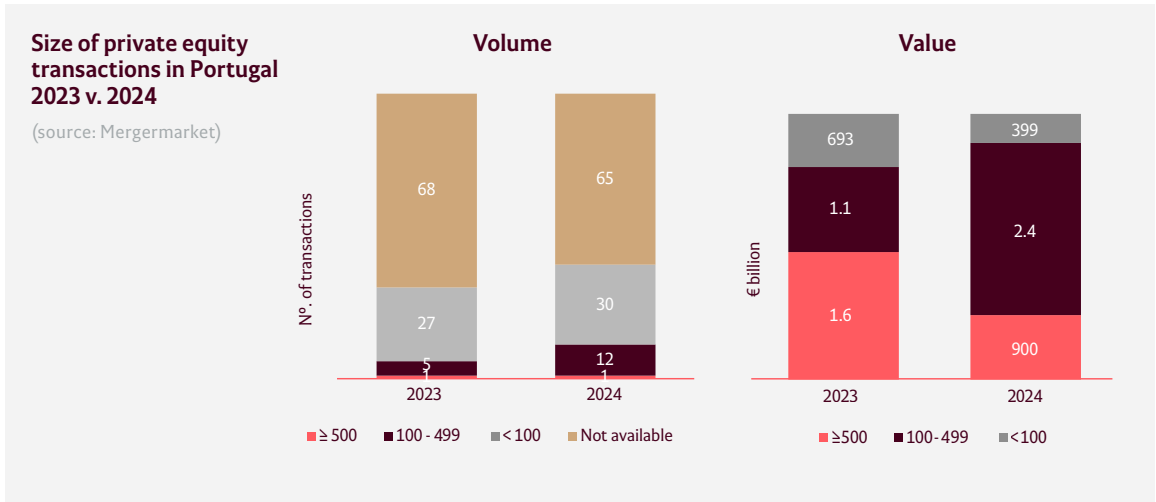
### Source of private equity transactions in Portugal (by value) 2023 v. 2024

(source: Mergermarket)

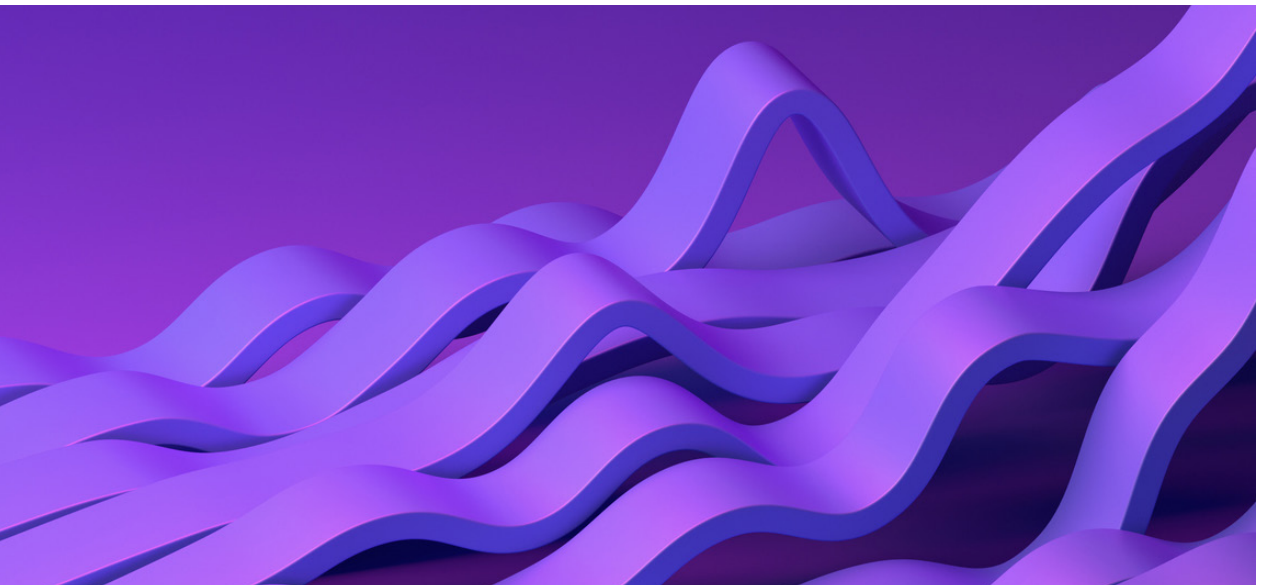


## Type of transactions

### Size

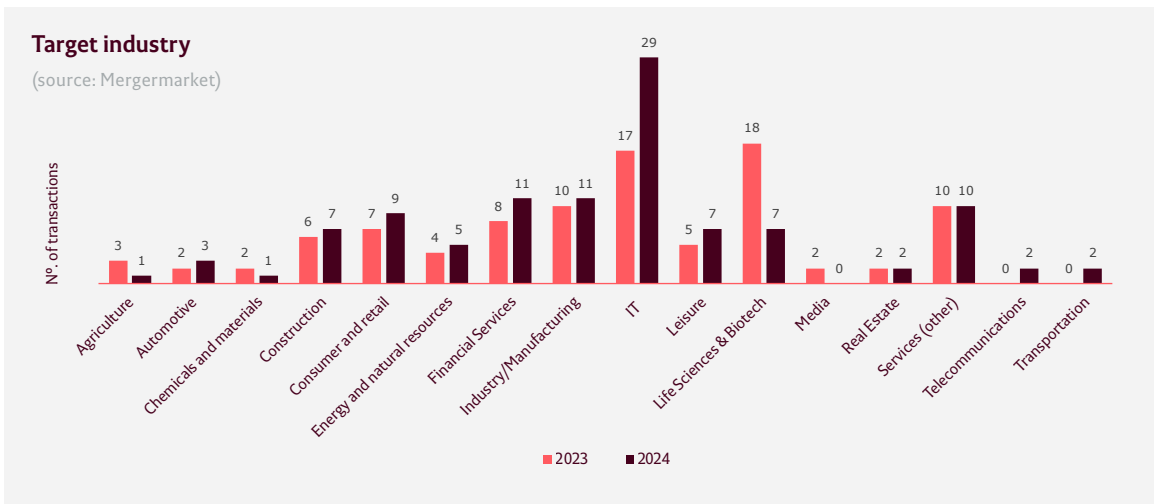


Sixty percent of deals in Portugal have undisclosed values, complicating an analysis of deal size variation. High-end deals are rare, with only one per year in the past three years. The acquisition of Fairjourney Biologics by Partners Group, which was valued at over €900 million, represented 24% of the year's total capital mobilized by private equity transactions. Both the number and value of mid-market deals increased.



## Industries

The IT sector once again led the way in private equity deals in 2024, continuing its five-year trend. The energy and natural resources industry, along with the financial services industry, also attracted investors, followed closely by the services industry and the consumer and retail industry. Together, these top 5 industries accounted for 70% of all private equity deals in Portugal in 2024. In contrast, the life sciences and biotechnology sector, which had been markedly active in recent years, saw a 60% decrease in transactions, with only 7 deals in 2024.

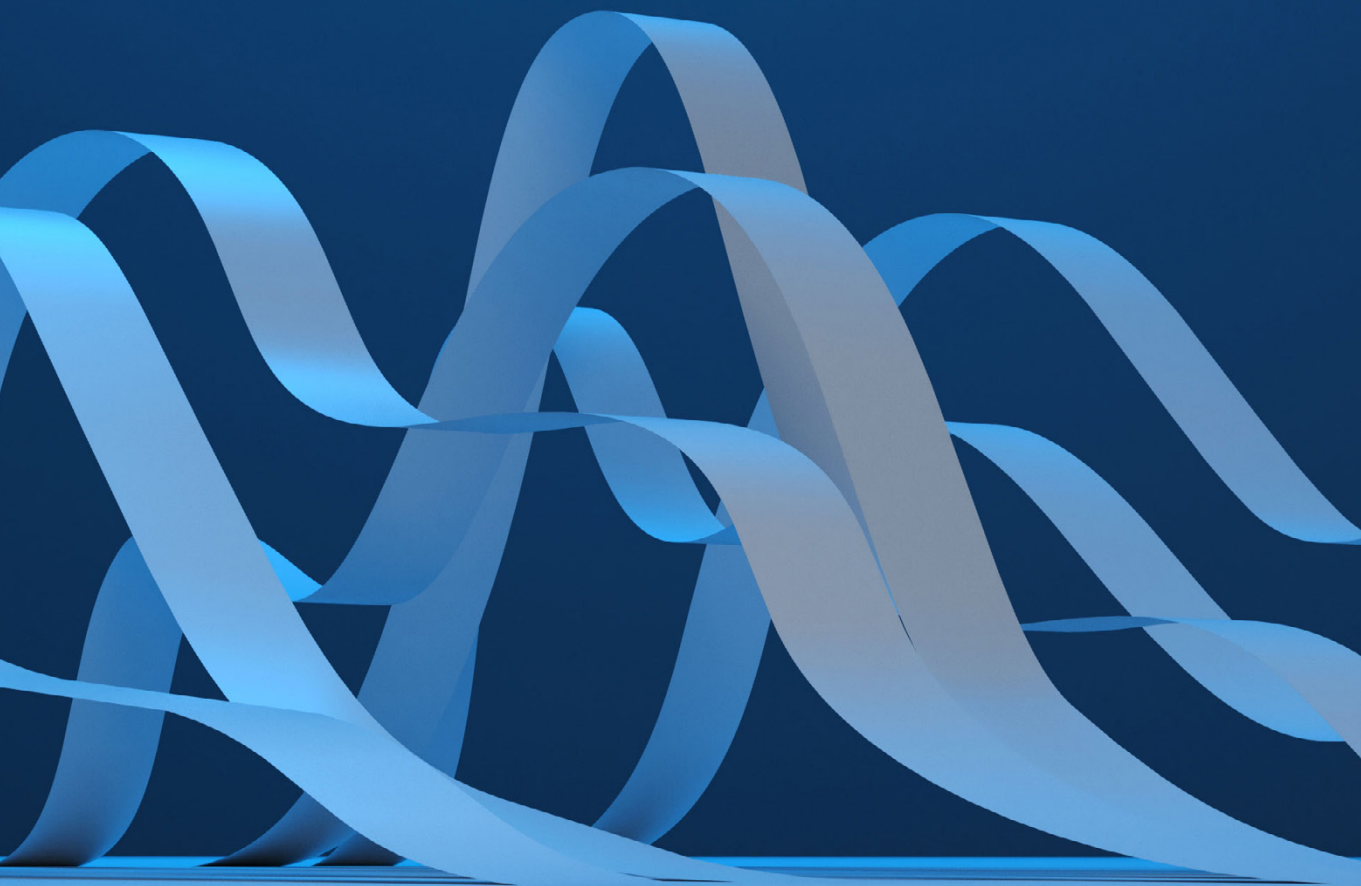


# Market trends in Spain and Portugal

## 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 45 private equity deals signed in 2023 and 2024 (30 in Spain and 15 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 2023 and 2024.



## SPAIN

# 2024 Market trends at a glance

1. There was a rebound in disinvestments of private equity funds, encouraged by moderating inflation and lower interest rates and longer holding periods of portfolio companies.
2. Once again, transactions focused on the energy and TMT sectors, while the life sciences and chemistry sector was reactivated.
3. Roll-over transactions were the rule for majority shareholding acquisitions.
4. The number of private equity transactions run as auctions continued to grow in 2024.
5. Only half of the transactions included a condition precedent, which is less than usual.
6. The Spanish government is increasingly imposing more conditions for FDI authorization, and a more extensive and stringent application of controls on FDI and FSR is foreseeable.
7. Antitrust and obtaining third-party waivers were the most common conditions precedent agreed.
8. Break-up fee penalties were particularly high in 2024.
9. Locked-box mechanism remained the most used pricing mechanism in 2024, but to a lesser extent than in 2023.
10. Equity ticker usage dropped considerably in 2024, while the practice of adding interest to the leakage amount is on the rise.



- 
- 11.** Working capital was the most used financial parameter for the post-closing adjustment.
  - 12.** In 2024, the use of the completion accounts mechanism was again far more prevalent in M&A transactions led by corporations than in PE-driven deals.
  - 13.** The use of earn-outs continued to increase, as they help parties reconcile differing expectations about a company's future performance, which becomes crucial in times of uncertainty.
  - 14.** Joint and several liability for breach of business warranties was prevalent.
  - 15.** A 24-month limitation period was the most used for business warranties.
  - 16.** Excluding clean exits, the most used liability cap for business warranties was between 10% and 20% of the purchase price, leaving behind a trend of slightly higher percentages seen in recent years.
  - 17.** In exits or SBO transactions, the private equity fund was either not held liable for breach of business or tax warranties, or its liability was notably low.
  - 18.** Half of the SPAs that included an anti-sandbagging clause concerned only information that was "fairly disclosed".
  - 19.** W&I insurance continued to be the most used buyer's remedy in 2024.
  - 20.** Arbitration proceedings were mostly managed by the International Court of Arbitration of the ICC.

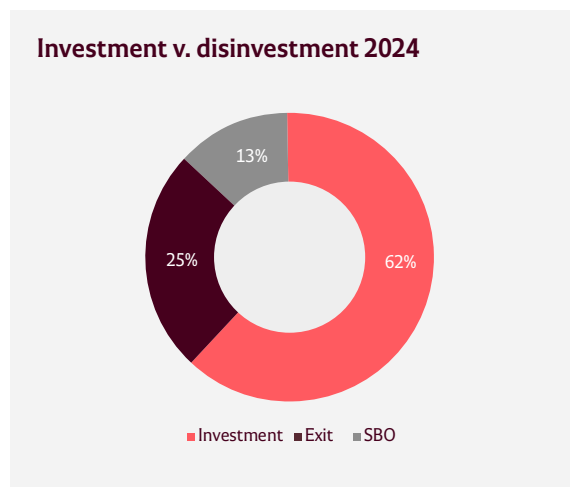
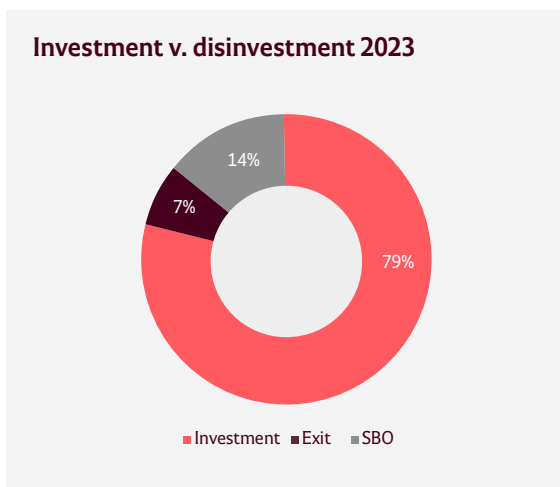
# Study overview

The M&A market faced a challenging year in 2023. However, the final quarter showed a slight increase in investor appetite, with parties becoming more open to negotiations.

This trend continued into 2024, with significant growth in the M&A sector, particularly in private equity, mostly reflected in operation values. This growth occurred despite stubbornly high financing costs and ongoing geopolitical uncertainty.

There was a rebound in disinvestments of private equity funds, encouraged by moderating inflation and lower interest rates

Moderating inflation and lower interest rates likely contributed to this shift, which may continue to narrow substantial valuation discrepancies between parties. Consequently, there has been a rebound in divestments by private equity funds, which were notably low throughout 2023, when nearly 80% of deals were pure investments. During that time, many funds postponed their exits, with the expectation of better outcomes while they focused on maximizing their portfolios. However, in 2024, exits and secondary buyouts (SBOs) accounted for 38% of transactions, a trend that we expect to continue during 2025.

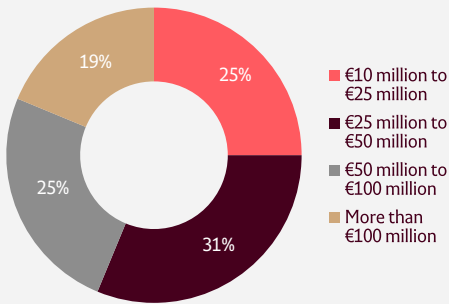


Once again, comparing private equity deals with all M&A transactions we advised on in 2024 (including private equity and non-private equity deals), private equity deals had a higher average value. In 2024, M&A deals valued between €10 and €25 million accounted for 40% of all transactions, while in the private equity sector, deals valued over 50 million were 44% of all transactions.

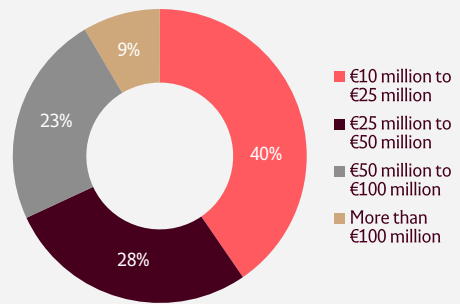




### Transaction value 2024 (PE)



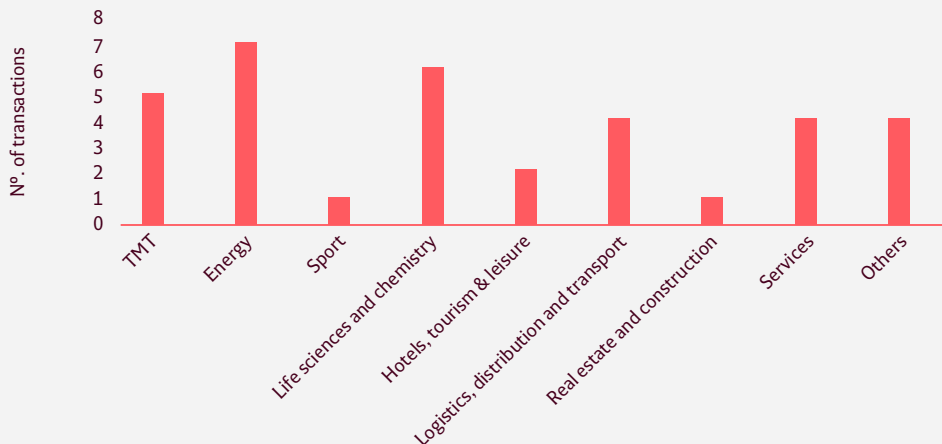
### Transaction value 2024 (M&A)



Once again, transactions focused on the energy and TMT sectors, while the life sciences and chemistry sector was reactivated

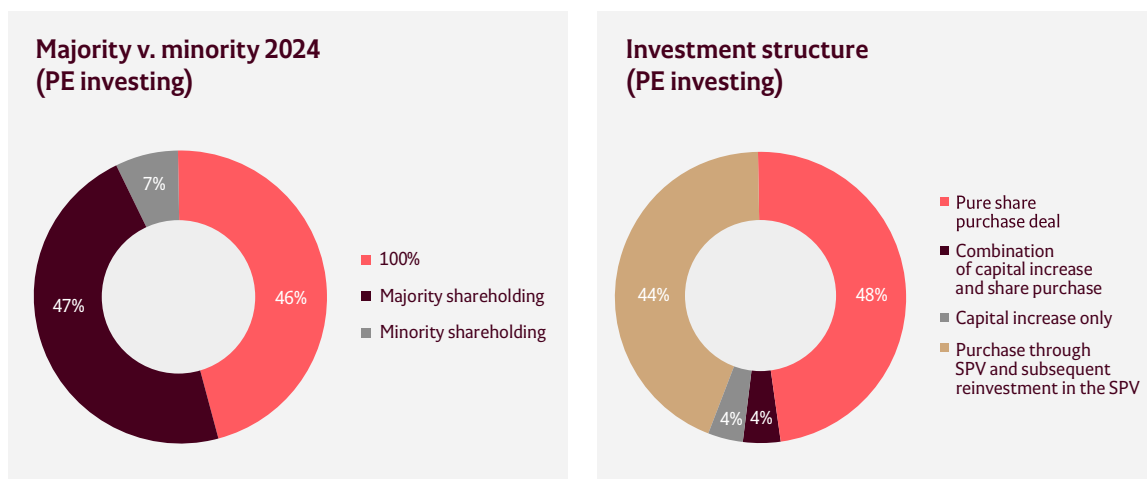
Although slightly less diversified than in previous years, investors showed interest in a wide range of sectors. Transactions primarily focused on the technology, media, and telecommunications (TMT), energy, and life sciences and chemistry sectors, reflecting data from Spain's global private equity market.

### Target industry



## Investment structure

When a private equity fund invests, the most common transaction continues to be one where it buys 100% of the target company's capital stock or acquires a majority stake in a roll-over transaction, as explained below. This contrasts with venture capital transactions, where pure share purchase deals are rare—instead, the fund usually acquires a minority shareholding in the company through a capital increase.



### Roll-over transactions were the rule for majority shareholding acquisitions

When the fund acquires a majority stake, the deal almost always follows a roll-over formula. Instead of acquiring a majority shareholding directly, the private equity fund acquires the target company through a special purpose vehicle (SPV). The seller then reinvests in the SPV, usually through a capital increase. This approach is favored because it simplifies the regulation of relationships among the shareholders in the vehicle that owns the target company's entire capital.

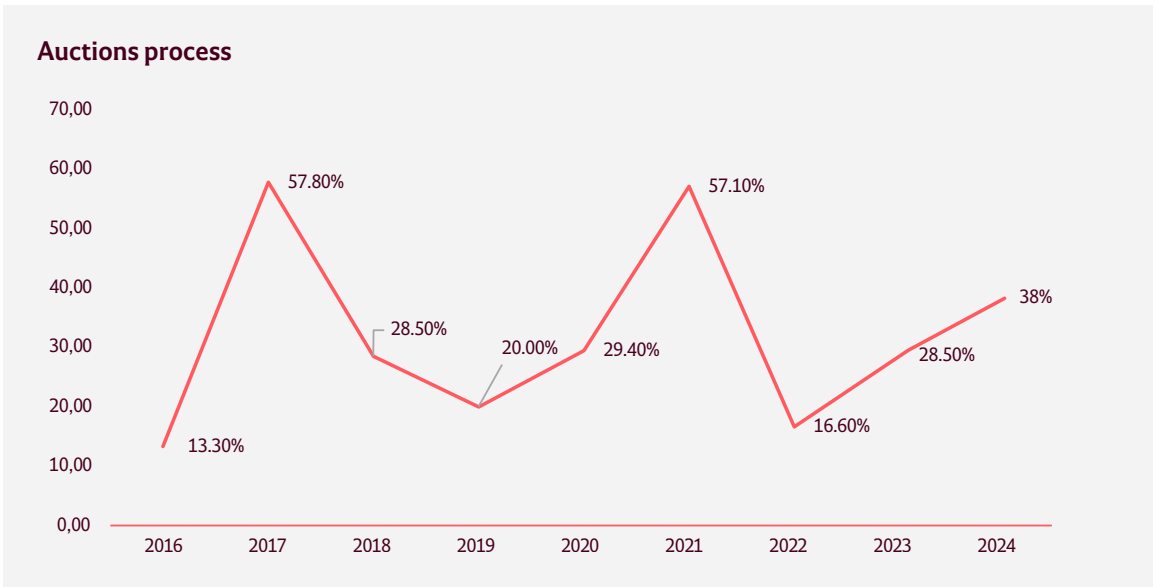
## Deal process

Since a significant drop in 2022, the number of private equity transactions run as auctions has been increasing. In 2022, only 17% of deals were beauty contests with multiple prospective bidders, all within the framework of an SBO process. This decrease was primarily due to the uncertainty caused by the war in Ukraine.

In 2023, this figure increased slightly to nearly 30%, returning to more typical levels. It continued to grow in 2024, reaching 38% of the transactions.



## The number of private equity transactions run as auctions continued to grow in 2024



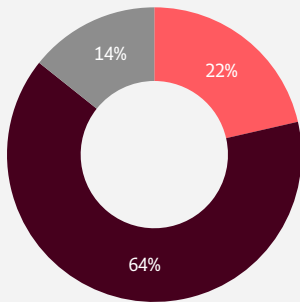
In 2024, the number of transactions that included a condition precedent was lower than usual, with only half of the deals including one

In 2021, transactions with conditions precedent returned to more typical percentages, reversing the trend seen during the first year of the pandemic. During that period, uncertainty likely led parties to prefer faster transactions with simultaneous signing and closing, unless conditions precedent were essential. This growing trend continued until 2023, when almost 80% of deals included conditions precedent.

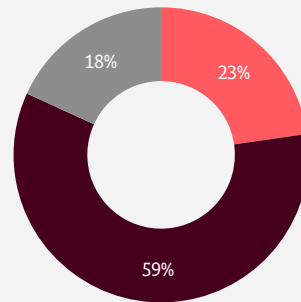
However, in 2024, only half of the transactions had a deferred closing due to the fulfillment of conditions precedent, despite a wave of economic protectionism that often increased the need for regulatory authorization.

In any case, all mega deals had deferred signing and closing that included a regulatory condition, typically involving foreign direct investments (FDIs), antitrust conditions precedent, or both, and sometimes an FSR—as defined below—condition.

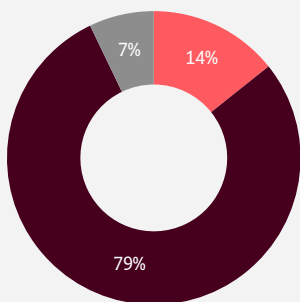
**Simultaneous signing and closing v. deferred closing 2021**



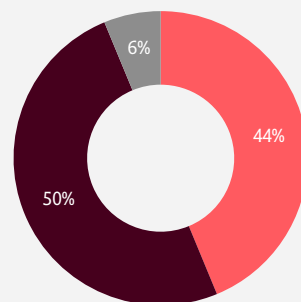
**Simultaneous signing and closing v. deferred closing 2022**



**Simultaneous signing and closing v. deferred closing 2023**



**Simultaneous signing and closing v. deferred closing 2024**



■ Simultaneous signing and closing ■ Conditions precedent ■ Deferred closing without conditions precedent

The current geopolitical situation has led to a paradigm shift, where the emphasis on investment freedom in a globalized world has given way to a more polarized one, which has brought with it a wave of economic protectionism driven by strategic interests. In the M&A market, particularly within the private equity sector, this protectionism is reflected in the need, in many cases, to require regulatory authorization for deals with investors from third countries.

This trend began with FDIs. Under certain circumstances, either due to the investor's profile or because the FDI involves a target company operating in a strategic sector, government authorization is necessary for these transactions. In Europe, sectors such as energy, technology, and infrastructure are markedly active in the current M&A and private equity market, making them areas of particular concern.



The Spanish government is increasingly imposing more conditions for FDI authorization, such as future covenants to maintain the company's viability and continued presence in Spain

The market has gradually been internalizing the implementation of a prior authorization system for FDIs. This is especially true for the private equity sector, where a preliminary analysis was needed for most deals involving international parties, given funds' interest in strategic sectors.

This authorization process affects transaction timelines, which have been particularly extensive in recent years mostly due to broad valuation discrepancies. Also, while the Council of Ministers previously approved them with minimal restrictions, it is increasingly imposing more conditions for their authorization, such as future covenants to maintain the company's viability and continued presence in Spain. However, the average resolution time for procedures has decreased to approximately three to four months.

Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, also known as the Foreign Subsidies Regulation (FSR), entered into force on January 12, 2023, with prior notification requirements for obtaining authorization for concentrations applying from October 12, 2023. Consequently, authorization may have to be obtained from the European Commission if one of the parties involved in an M&A transaction received financial contributions (such as a subsidy) from a third country.

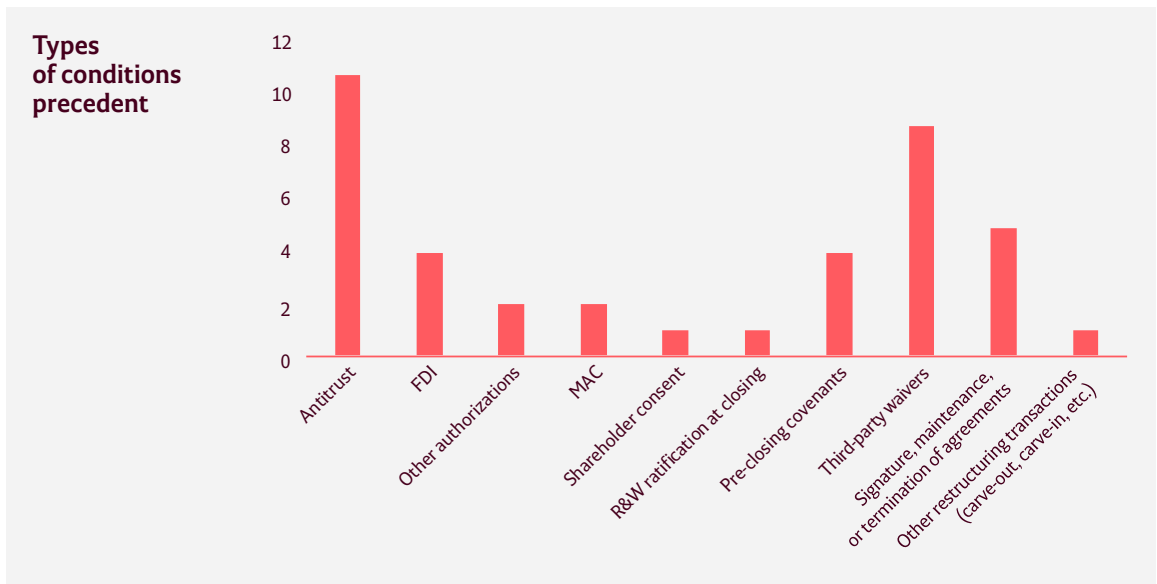
Even if few deals have required FSR conditions to date, the publication of the Commission's decisions suggests that a more extensive and stringent application of controls on direct investments or foreign subsidies is likely. For this reason, this matter may need to be analyzed further.

A more extensive and stringent application of controls on direct investments or foreign subsidies is likely

More than 40% of transactions requiring regulatory approval included a hell or high-water clause, which is a provision that obligates the buyer to accept all conditions imposed by the authorities to complete the deal. However, some of these agreements stipulated that the parties must accept these conditions only if they were not overly burdensome or did not exceed certain limits.

The most common conditions precedent agreed are regulatory approvals (mainly antitrust) and obtaining third-party waivers, such as consent from lenders, suppliers or other parties due to change of control clauses.

## Antitrust and obtaining third-party waivers were the most common conditions precedent agreed



From 2019 to 2021, there was a progressive decrease in the use of break-up fees in case the closing did not occur, or the closing obligations were breached (30%, 25% and 0%, respectively). However, in 2022, 2023 and 2024, the use of break-up fees rebounded to approximately 25% of transactions with deferred closing. Although the percentage of the purchase price to be paid as a penalty varied, in 2024, some penalties exceeded 10% of the purchase price, reaching as high as 17.5%.

### Break-up fee penalties were particularly high in 2024

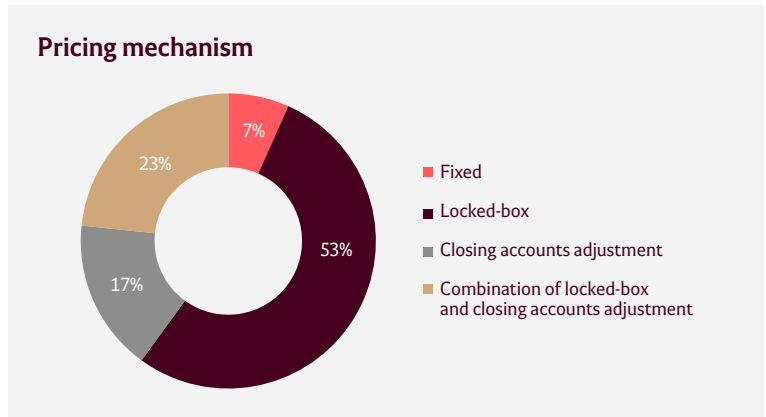
Conditions subsequent are typically uncommon because, once a transaction is closed and the property is transferred, returning to the pre-purchase stage is difficult. Although surprisingly more than 15% of deals included such conditions in 2022 and 2023, this trend did not continue in 2024, when only one deal included a condition subsequent.

### Consideration and pricing mechanisms

As in traditional private M&A transactions, completion accounts or closing accounts adjustments and locked-box mechanisms are the most commonly used, together with the fixed-price mechanism (although to a much lesser extent).

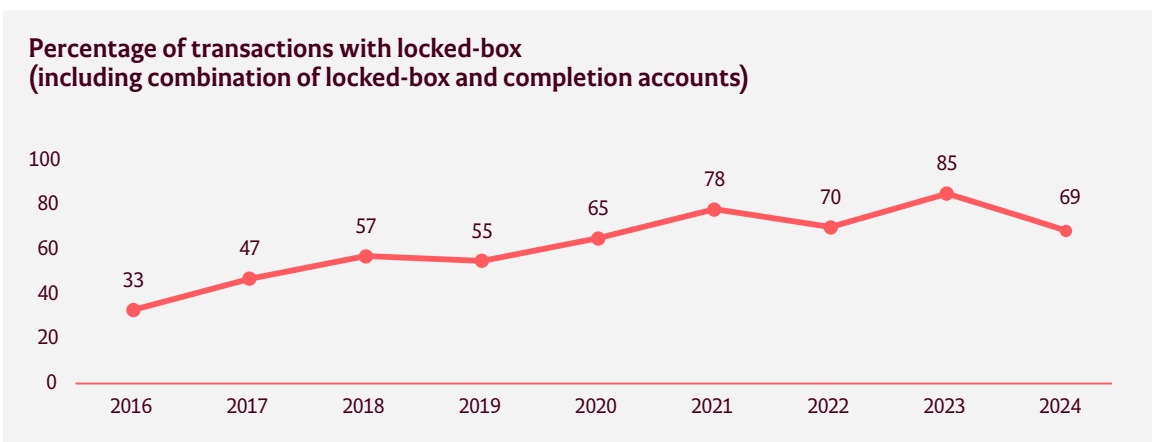


Although both the completion accounts and locked-box mechanisms have their pros and cons for both parties, the completion accounts mechanism is generally considered buyer friendly, while the locked-box mechanism is considered seller friendly. However, in recent years, the locked-box mechanism has become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



In 2023 and 2024, 53% of transactions used a pure locked-box mechanism, 17% the completion accounts mechanism, 7% the fixed-price mechanism, and 23% a mechanism combining the locked-box and completion accounts mechanisms (mostly in more complex transactions and those of higher value).

However, if we break it down by year, even though the locked-box mechanism remained the most used pricing mechanism in 2024, its usage decreased compared to 2023, returning to levels similar to those seen in 2022.



Locked-box mechanism remained the most used pricing mechanism in 2024, but to a lesser extent than in 2023

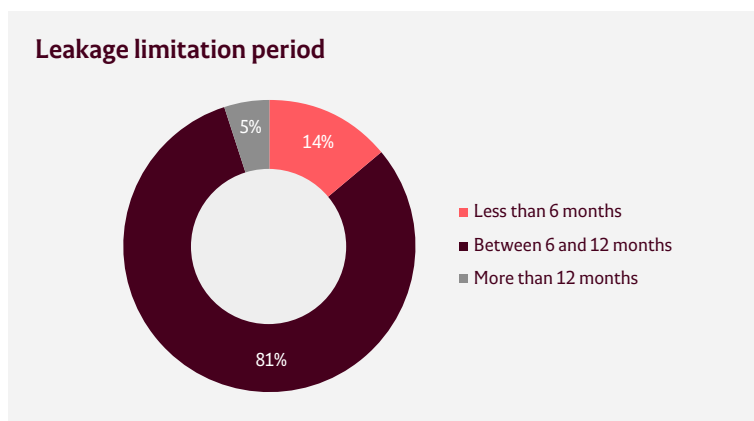
Within the locked-box mechanism, the financial risk is transferred to the purchaser on the locked-box date. As the purchaser can benefit from the profits generated from that date while the price is paid at closing, the seller typically seek compensation, usually through using equity tickers or ticking fees. These are usually structured as a fixed daily amount from the locked-box date or signing date until the closing date, or as a fixed daily rate, typically between 5 and 7% per annum.

Although negotiating an equity ticker was previously uncommon in Spain, an increase could be seen from 2021 to 2023, with approximately 30% of locked-box transactions doing so. However, it was rarely seen in 2024.

Conversely, in more than 30% of locked-box deals, leakage was increased by the agreed interest accrued from the leakage date, a practice that was rare until 2022.

The most common leakage limitation period is 6 to 12 months. Transactions with a limitation period exceeding 12 months are uncommon.

Equity ticker usage dropped considerably in 2024, while the practice of adding interest to the leakage amount is on the rise

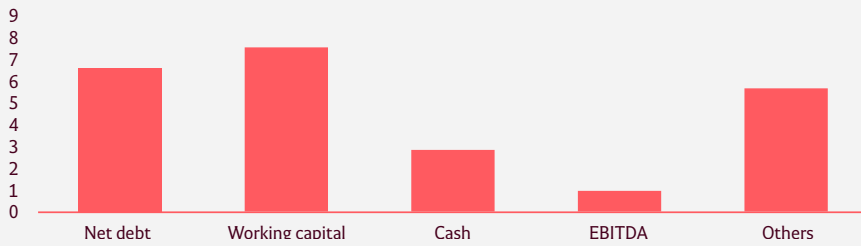


Even though the locked-box mechanism has become the most used pricing mechanism, the completion accounts mechanism was still used in 40% of deals in 2023 and 2024 (if a combination of locked-box and completion accounts transactions are included). In these deals, net debt and working capital were the most widely used financial parameters for the post-closing adjustment.





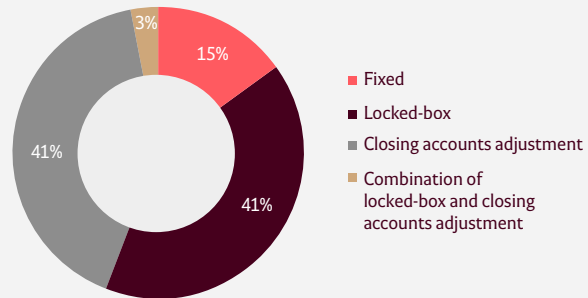
## Closing accounts adjustment - Financial parameters



When comparing the data of M&A transactions we advised on in 2024 (excluding PE deals), the pure completion accounts and locked-box mechanisms were used equally.

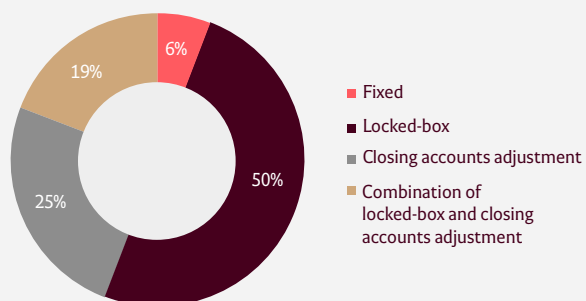
In 2023 and 2024, working capital was used as the financial parameter for the post-closing adjustment in two-thirds of deals

### Pricing mechanism M&A 2024 (without PE)



In 2024, the use of the completion accounts mechanism was again far more prevalent in M&A transactions than in PE transactions

### Pricing mechanism 2024 (private equity)

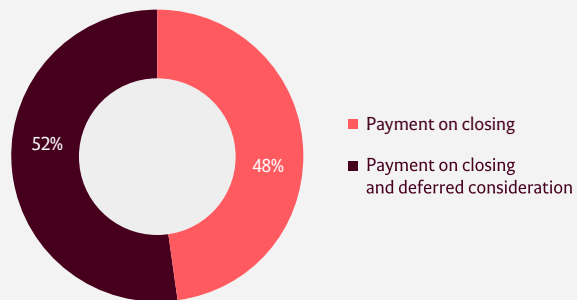


During times of uncertainty, transactions typically include payment of deferred consideration. This trend was clearly observed in both 2022 and 2023, when half of the transactions included deferred consideration. This trend continued in 2024, with 52% of deals including it. Earn-outs were agreed in 81% of deals, with deferred consideration helping parties reconcile differing expectations about a company's future performance. When earn-outs were agreed, more than half of the deals included covenants to protect the seller.

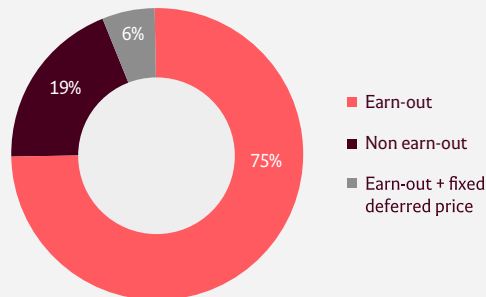
Most earn-outs are linked to EBITDA or, more generally, to the company's profits. Occasionally, they also depend on achieving specific milestones.

The use of earn-outs continued to increase, as they help parties reconcile differing expectations about a company's future performance, which becomes crucial in times of uncertainty

### Payment on closing v. deferred consideration



### Earn-out

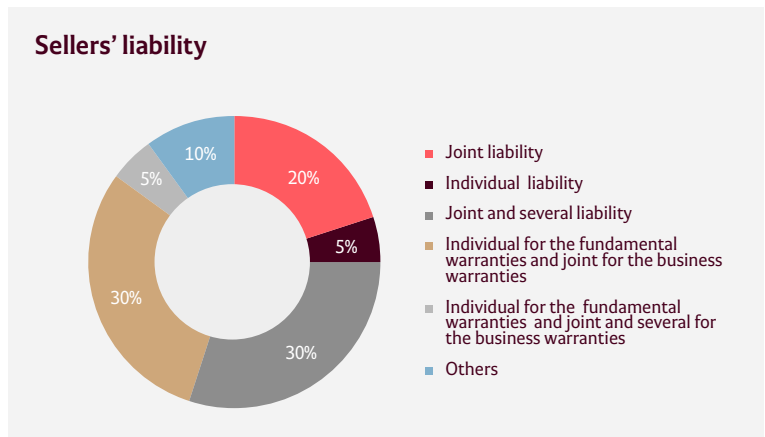


## Warranties

Representations and warranties (R&Ws) are negotiated in share 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 2023 and 2024, when there was more than one seller, half of the transactions included joint liability for breach of business warranties. This was usually combined with individual liability for breach of fundamental warranties.

Joint liability for breach of business warranties was agreed in half of the deals in 2023 and 2024



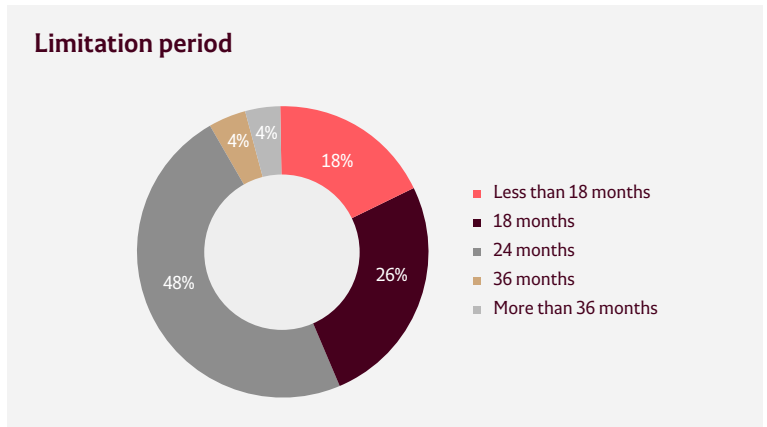
Unlike venture capital transactions, where indemnification can sometimes be in cash or, at the investor's discretion, in the target company's shares, warranty payments in private equity transactions are almost always made in cash.

## Warranty limitations

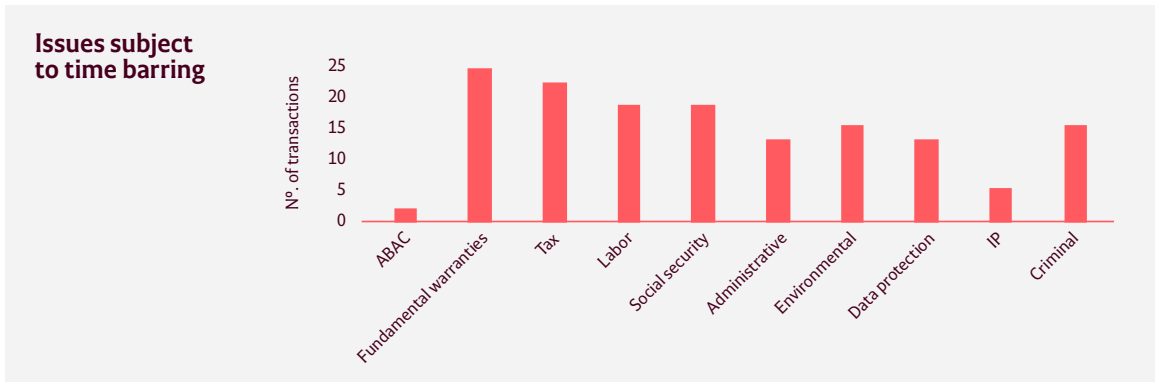
SPAs are usually limited quantitatively and temporally. However, those limits differ depending on whether there is an investment or an exit and whether warranty and indemnity (W&I) insurance is taken out.

Since the pandemic and until 2022 (inclusive), the seller was usually liable for an 18-month period after closing. In 2023, the trend shifted back to longer seller liability periods, with a 24-month period agreed in over 40% of deals. This trend continued in 2024, when similar figures can be seen.

A 24-month limitation period was the most used for business warranties



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



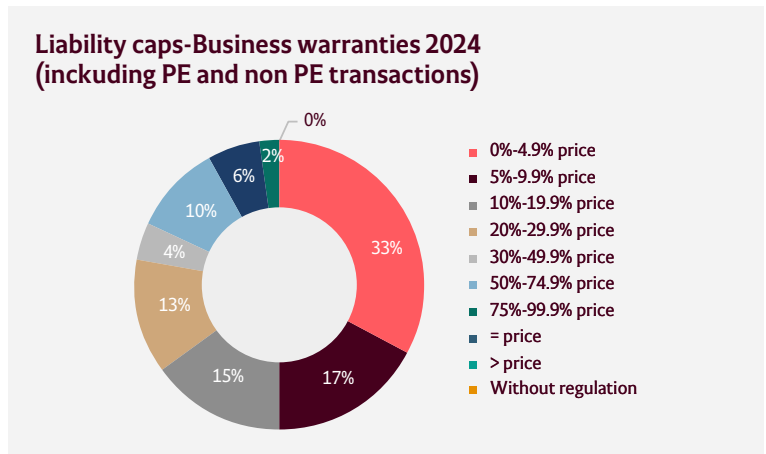
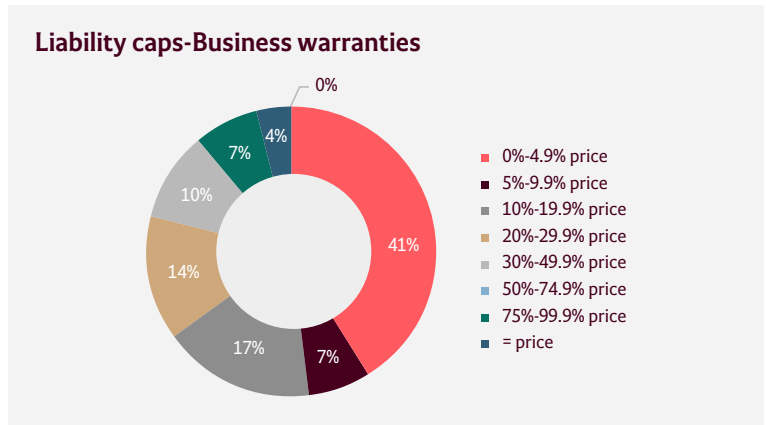
Typically, there are upper and lower limits on monetary limitations.

In most cases in 2023 and 2024, liability for business warranties was generally capped at under 50% of the purchase price. In contrast, liability for fundamental warranties was usually limited to the purchase price (63%) or not limited at all (30%). As in 2022 and 2023, during 2023 and 2024, 65% of transactions had a liability cap for breach of business warranties under 20% of the purchase price. However, in 2023 and 2024, the most common liability cap for business warranties dropped to between 10% and 20% of the purchase price, rather than the previous 20% and 30%. This is without considering clean exits, which have increased considerably in recent years.



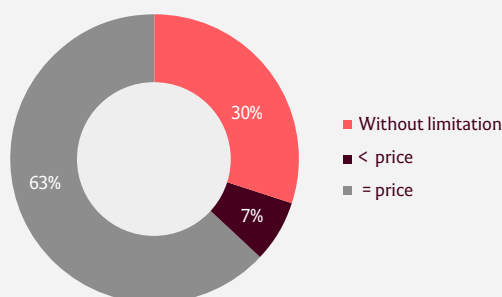
Occasionally, parties agreed on different liability caps depending on the specific R&W breached, typically for breach of tax warranties.

Excluding clean exits, the most used liability cap for business warranties was between 10% and 20% of the purchase price, leaving behind a trend of slightly higher percentages seen in recent years



In the broader context of M&A, including both private and non-private equity transactions, there were fewer clean exits in 2024 compared to pure private equity deals. However, the most common liability cap for breach of business warranties was between 5% and 10% of the purchase price, closely followed by other common ranges (e.g., 10–20%).

## Liability caps-Fundamental warranties



Regarding exits or SBO transactions, in most cases, private equity funds were not held liable for breach of business or tax warranties due to the agreement of a W&I insurance. Alternatively, the liability was capped at less than 10% of the purchase price without the agreement of a W&I insurance.

Another trend gaining traction in clean W&I insurance transactions is for the seller—usually a private equity fund—to only grant and only be liable for fundamental warranties in the SPA. Business and tax warranties are provided in a separate document known as the management warranty deed, which is executed between the target management (as warrantors) and the buyer. This is because private equity funds, being financial investors, consider the management team better placed to grant business warranties that accurately reflect the day-to-day running of the company, even if the management team's liability is often capped at a symbolic €1 in the management warranty deed.

In exits or SBO transactions, the private equity fund was either not held liable for breach of business or tax warranties, or its liability was notably low

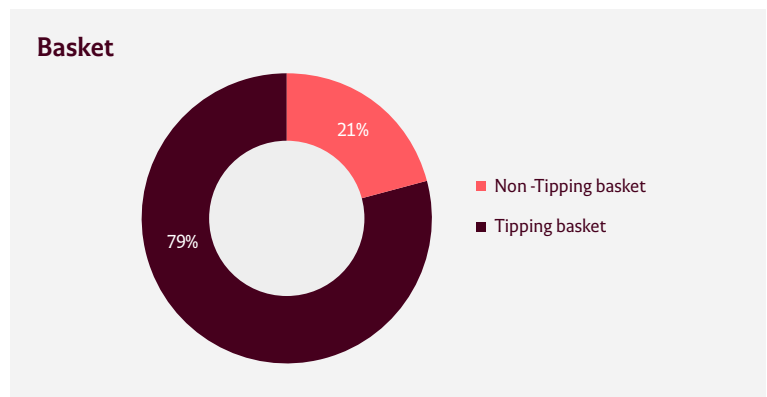
As usual, in all transactions in which private equity funds invested, either industrial sellers granted business and tax warranties, or W&I insurance was agreed.

Regarding lower limits (and excluding W&I insurance 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) almost all deals included a basket or threshold. 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/threshold amount.

Tipping baskets were seen in most transactions, meaning the seller is liable for the entire amount and not merely for the excess if the aggregate of claims exceeds the basket amount—79% took the form of tipping baskets and 21% of non-tipping baskets.

The basket/threshold amount is still usually below 1% of the purchase price, averaging 0.26% for non-tipping baskets (where the seller is liable only for the excess) and 0.49% for tipping baskets (where the seller is liable for the whole amount).

The *de minimis* amount was at an average of 0.106%. Typically, when a *de minimis* amount is agreed, the series of claims arising from facts, natures or circumstances that are substantially the same can be accumulated.



### Buyer's knowledge

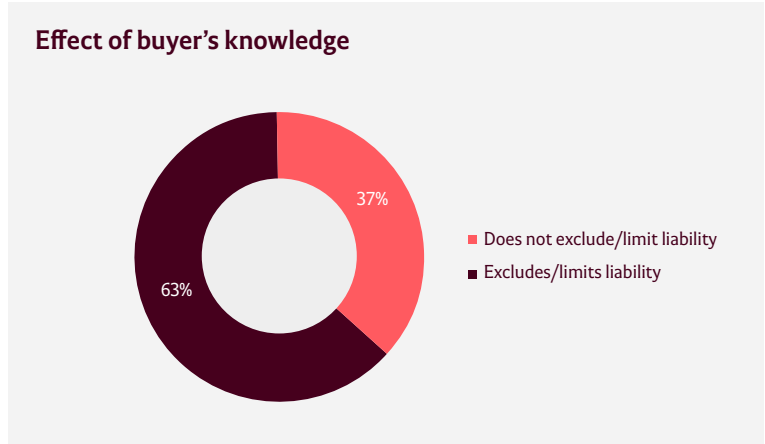
In Spain, the impact of a buyer's actual or deemed knowledge on claims for breach of warranties is usually negotiated under SPAs. Almost all of the SPAs stated whether the buyer's knowledge of an inaccuracy in R&Ws limits the seller's liability for breach of warranties. In 63% of transactions, the buyer's knowledge excluded or limited the seller's liability. The other 37% 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 become more pronounced in favor of anti-sandbagging clauses. Occasionally, the effect of the buyer's knowledge depends on whether it is a direct claim or a third-party claim.

It is becoming an upward trend to include an anti-sandbagging clause, but only as regards to the information “fairly disclosed” to the purchaser in the due diligence materials.

When the private equity fund sells, an anti-sandbagging clause was almost always agreed.

Half of the SPAs that included an anti-sandbagging clause concerned only information that was “fairly disclosed”



### Buyer’s remedies against seller’s liability

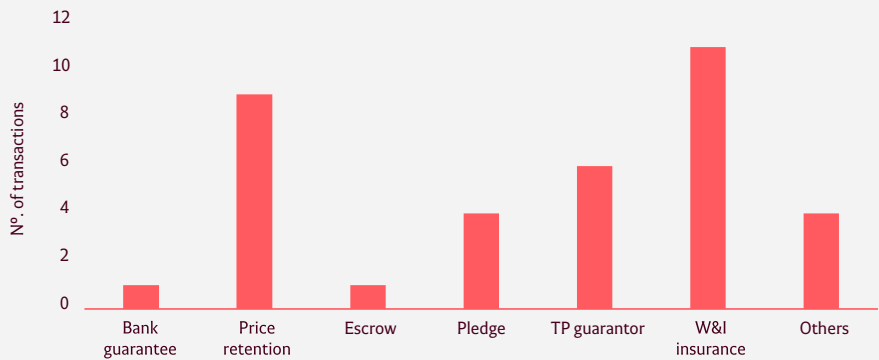
To seek security against the seller’s liability, including a buyer’s remedy in the SPA is common. Almost 75% of agreements included a seller’s guarantee in the event of a breach of its R&Ws.

Regarding classic buyer’s remedies, in 2022, escrows reclaimed their position as the most used option; however, they then lost it completely in 2023, when no deals included them despite the rise in interest rates, and their use remained markedly low in 2024. Bank guarantees, which were widely used some years ago, continue to be uncommon. In 2023 and 2024, purchasers have mostly used the option of retaining the deferred price as a guarantee.





## Types of sellers' guarantee



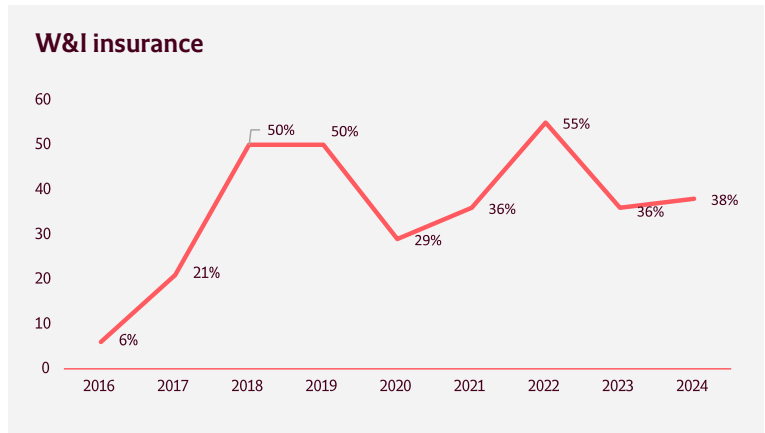
### W&I insurance

W&I insurance remains the most popular buyer's remedy in private equity. It is now well established not only in the context of exits (with 55% of transactions being investments, 18% SBOs and 27% exits), and it continues to be almost always used in auction processes.

Therefore, the use of W&I insurance has become widespread in private equity, both for investments and disinvestments, and parties opted always for clean exits, accounting for 100% of W&I insurance transactions. Also, its use is more common in transactions valued over €100 million, where it is almost always included. This is because W&I insurance premiums are high, meaning it is used more frequently in high-value deals.

Since in a clean exit the seller is not liable for any breach of business warranty, if there are 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. Therefore, the buyer would not be able to take any action against the seller, or any claims against the seller would be limited to €1. However, in a clean exit, the purchaser is generally able to take action against the seller in cases of fraud, willful misconduct and breach of fundamental warranties.

W&I insurance continued to be the most used buyer's remedy in 2024



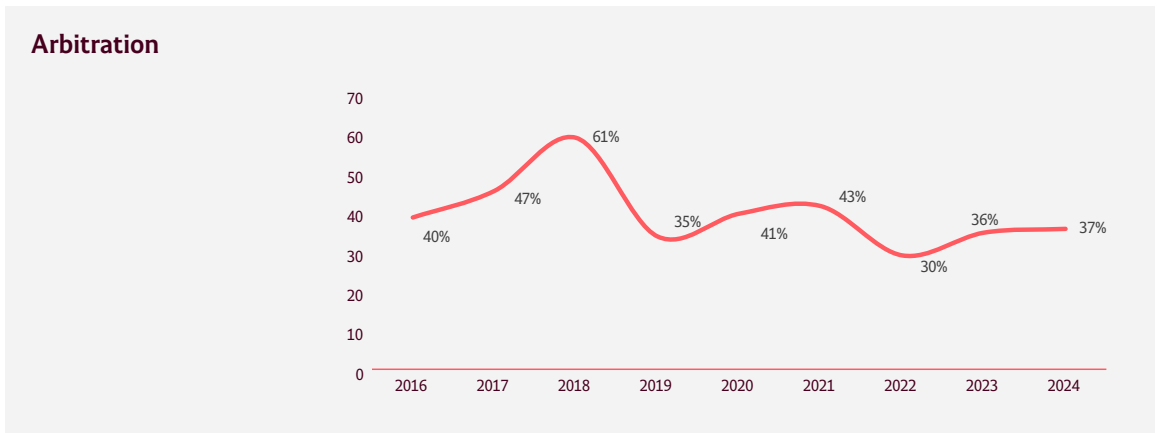
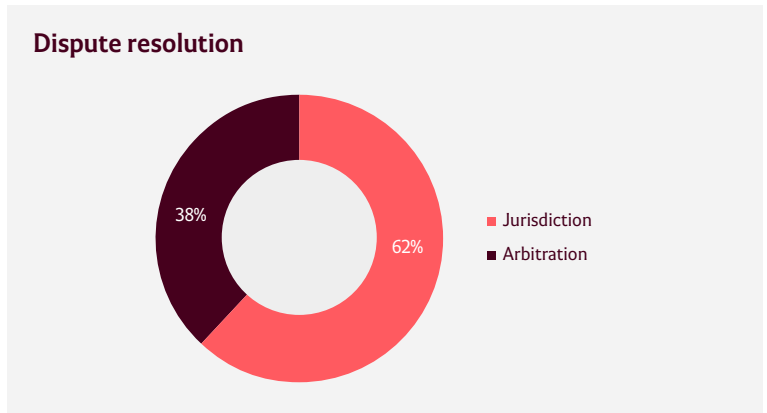
### Dispute resolution

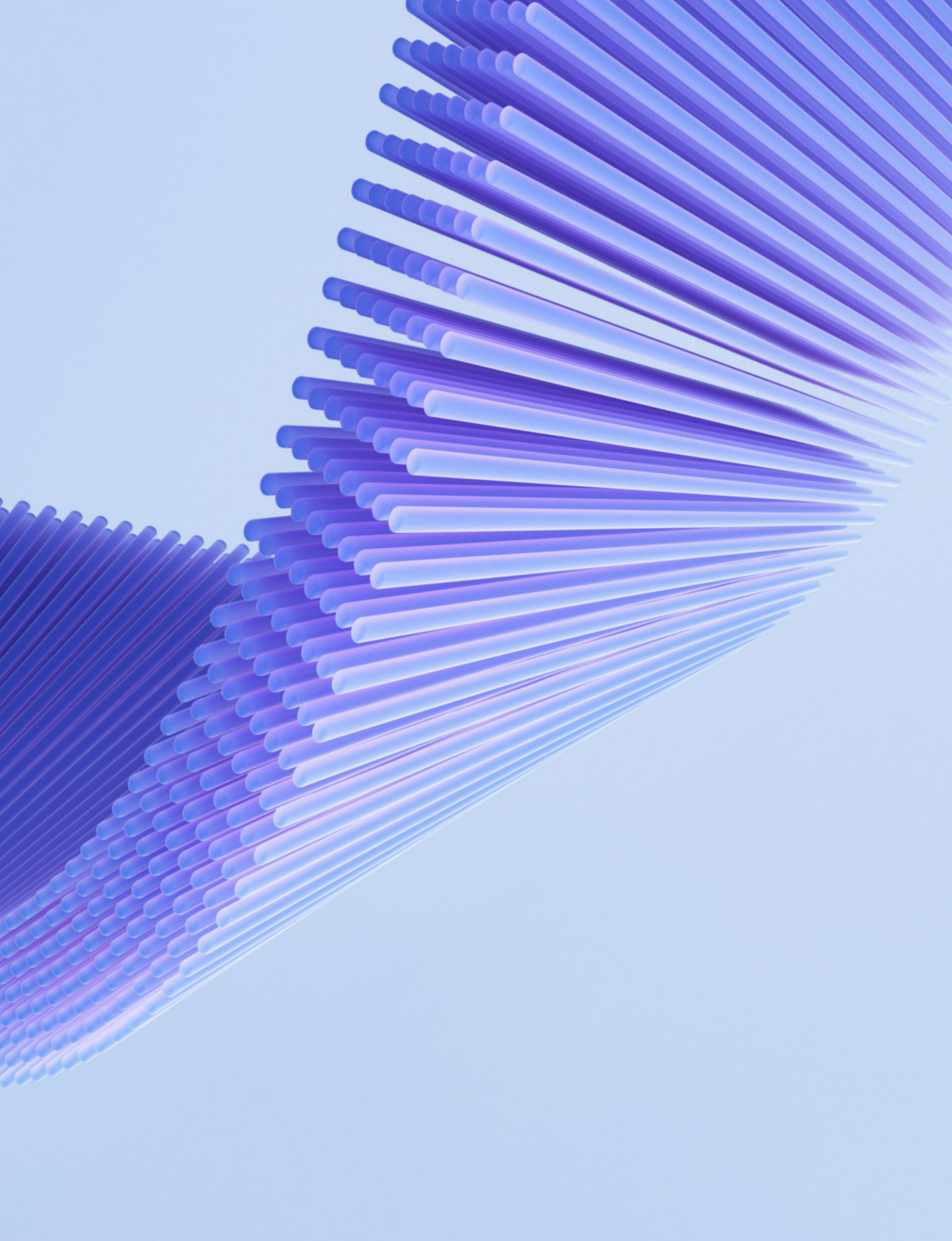
Since 2018, the use of arbitration as a dispute resolution mechanism to resolve disputes arising from agreements has been declining, with parties opting for this mechanism in only 35% of transactions on average since 2021.

In 2023, Madrid was the sole seat of arbitration. However, in 2024, parties equally chose between Madrid and Barcelona. Most arbitration proceedings were managed by the International Court of Arbitration of the International Chamber of Commerce (ICC).



Arbitration proceedings were mostly managed by the International Court of Arbitration of the ICC





## PORTUGAL

# 2024 Market trends at a glance

1. Forty percent of the deals Cuatrecasas advised on were transactions valued over €50 million.
2. The life sciences and TMT sectors were the most active.
3. The most common transaction continued to be the acquisition of 100% of a company's share capital. However, deals where a fund took either a majority or minority stake were evenly split, each accounting for 27% of the transaction volume.
4. Most transactions were bilateral negotiations. However, all deals over €100 million were carried out as auctions.
5. Most deals included conditions precedent, primarily due to the need to obtain waivers from counterparties in material contracts.
6. Completion accounts and locked-box pricing mechanisms were used equally.
7. Net debt and working capital were the most widely used financial parameters for the post-closing adjustment.
8. Despite the global uncertainty of 2023 and 2024, the use of earn-outs has decreased compared to previous years.
9. The most common limitation periods for the seller's warranties were 18 months and 2 years.
10. In most transactions, the liability for business warranties was capped at 30% or less of the purchase price.
11. Third-party guarantors and W&I insurance were the most used buyer's remedies.
12. Arbitration is the most common dispute resolution mechanism. Lisbon was the most commonly chosen seat of arbitration. All arbitration clauses referred to the rules of the Commercial Arbitration Center of the Portuguese Chamber of Commerce and Industry.

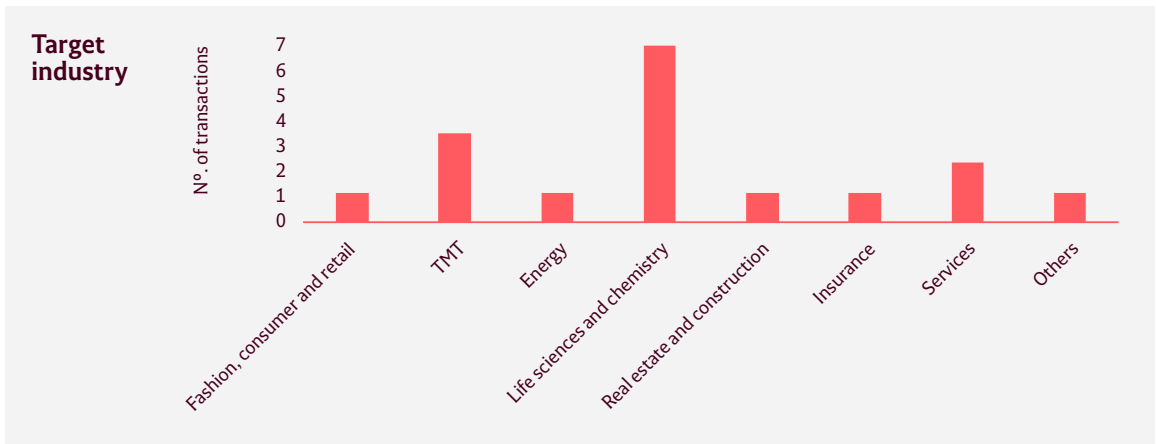
## PORTUGAL

# Study overview

Cuatrecasas was one of the most active players in providing private equity advice. Despite the prevalence of lower-value transactions in the market, 40% of the private equity deals Cuatrecasas advised on were transactions valued over €50 million.

Forty percent of the private equity deals Cuatrecasas advised on were transactions valued over €50 million

Although the private equity market in Portugal was diversified across multiple sectors, in our experience, private equity funds continue to show a clear preference for life sciences and TMT. Together, these sectors accounted for most of the transactions on which Cuatrecasas advised in 2023 and 2024.



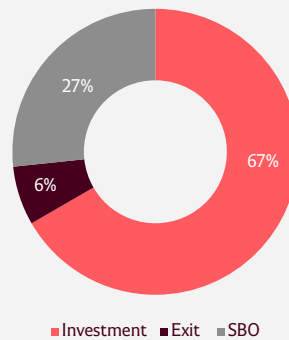
Private equity funds focused on the life sciences and TMT sectors

Investments were again clearly dominant

Once more, investments were clearly dominant, with pure investments comprising 67% of all transactions. This figure rises to 94% if we include secondary buyouts (SBOs). In contrast, divestment operations constitute a minority, representing only 6% of the total value of transactions.



### Investment v. disinvestment

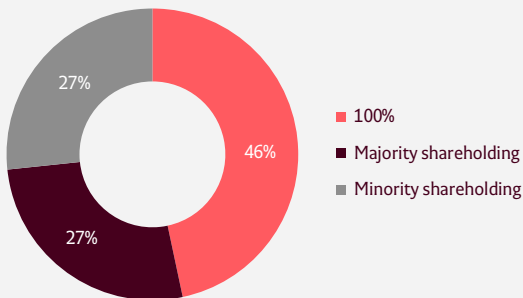


The deal process does not vary substantially across Iberia, and when a private equity fund invests, the most common transaction is one where it buys 100% of the target company’s capital stock or takes a majority shareholding through a pure share purchase deal.

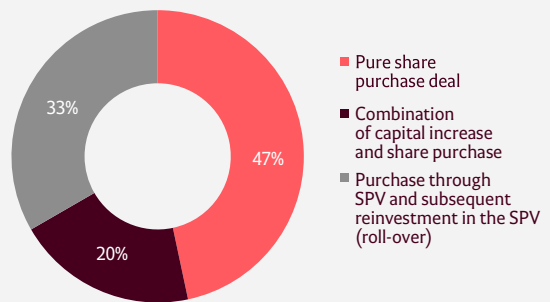
Deals where a fund took either a majority or minority stake were evenly split, each accounting for 27% of the transaction volume

In Portugal, the most common transaction in 2023 and 2024 was the acquisition of 100% of a company’s share capital. Deals where a fund took either a majority or minority stake were evenly split, each accounting for 27% of the transaction volume. In some of these deals, to structure the investment, sellers reinvested a portion of the sale proceeds in the holdco created by the private equity fund—known as roll-over transactions. Also, joint ventures remain an uncommon choice among the deals Cuatrecasas advised on in Portugal.

### Majority v. minority



### Investment structure

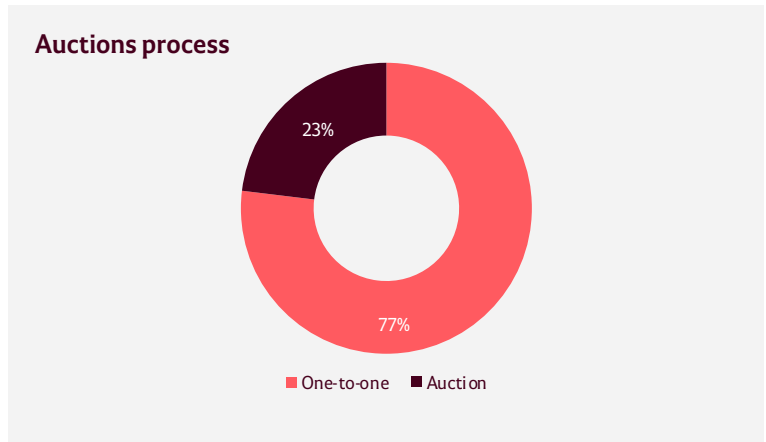


## Deal process

Most deals were bilateral negotiations.

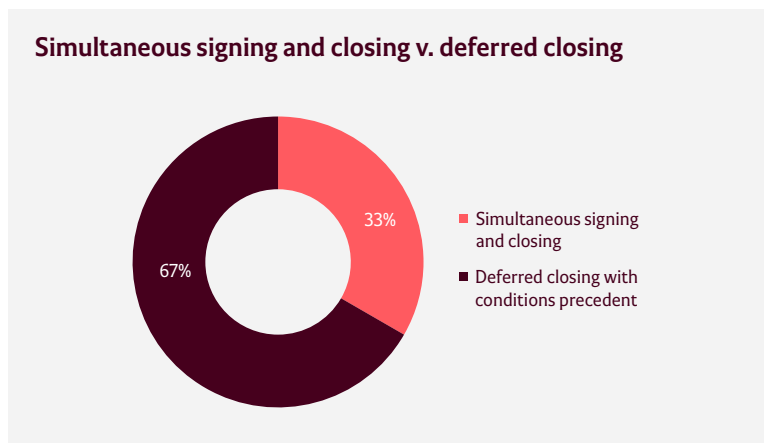
However, in all cases Cuatrecasas advised on, all transactions valued over €100 million were carried out as auctions.

Most transactions were bilateral negotiations. However, all deals over €100 million were carried out as auctions



During 2023 and 2024, most deals included conditions precedent, primarily due to the need to obtain waivers from counterparties in material contracts.

In most cases, deals with a transaction value of less than €25 million did not include conditions precedent.





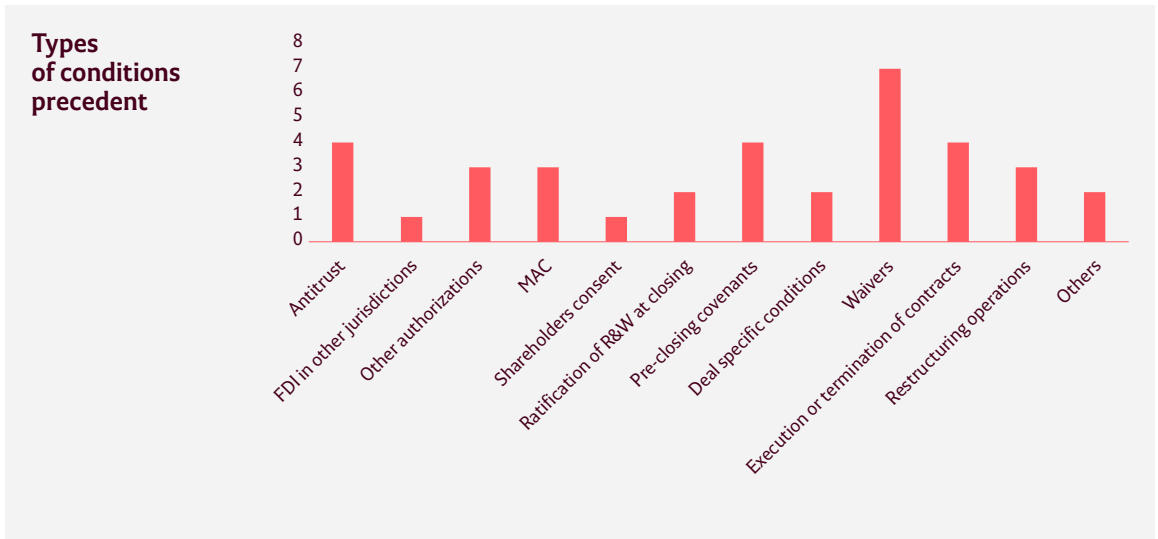
The current geopolitical climate has shifted from a focus on investment freedom in a globalized world to a more polarized environment characterized by economic protectionism driven by strategic interests. In Europe, this trend began with the entry into force of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 on foreign direct investments (FDIs), where government authorization is necessary under certain circumstances (e.g., due to the investor's profile or a target company's involvement in a strategic sector). This was followed by the entry into force of Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, known as the Foreign Subsidies Regulation.

Most Member States have implemented an FDI screening mechanism. However, Portugal has yet to fully implement specific regulations and tighten restrictions on FDIs. The existing screening mechanism, approved by Decree-Law no. 138/2014, of September 15, allows the Portuguese government to investigate and oppose (*ex post*)—if necessary—transactions involving strategic assets in sensitive industry sectors for national defense and security reasons or to secure services considered fundamental to the national interest. To date, this screening mechanism has not been enforced, and deals do not yet include conditions precedent for FDI clearance in Portugal.

Transactions subject to merger control clearance do not usually include a hell or high-water (“HOHW”) clause, and the buyer can decide not to assume the conditions that the competition authorities impose.

Aside from merger control clearance, the most common conditions precedent were (i) obtaining third-party waivers, such as consent from lenders, suppliers or other parties due to change of control clauses in material contracts; (ii) fulfilling pre-closing covenants, including securing the buyer's financing; and (iii) executing, maintaining or terminating certain agreements.

The most common conditions precedent agreed are antitrust, obtaining third-party waivers, fulfilling pre-closing covenants, and executing, maintaining or terminating certain agreements



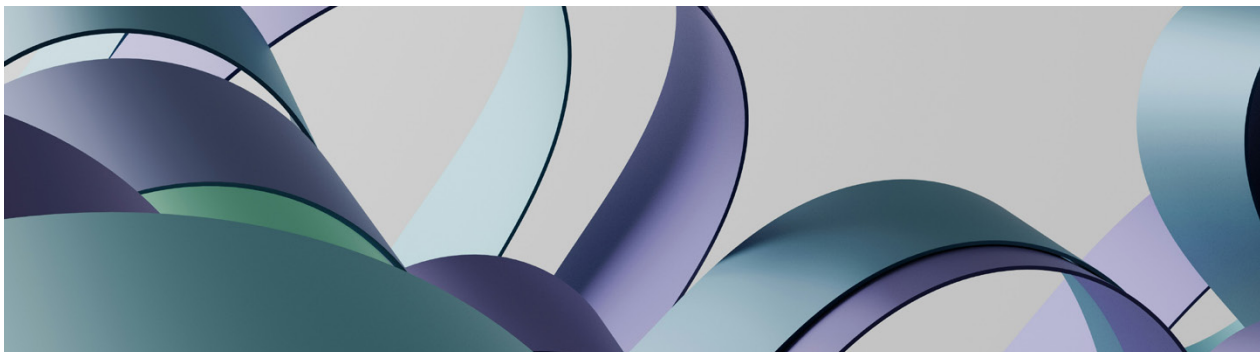
The use of break-up fees in situations where the closing did not occur or there was a breach of the closing obligations was markedly uncommon.

### Consideration and pricing mechanisms

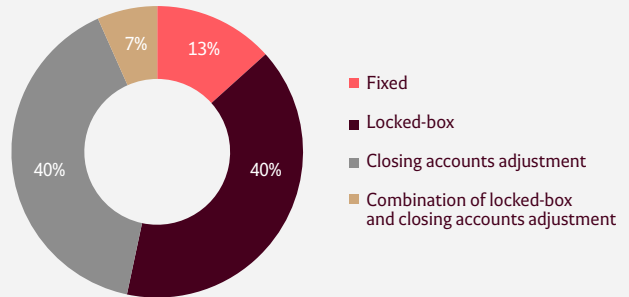
As in M&A transactions led by corporations, the completion accounts and locked-box mechanisms were the two most used pricing mechanisms.

**Completion accounts and locked-box pricing mechanisms were used equally**

In 2021, there was a clear preference for the locked-box mechanism. However, the completion accounts mechanism gained traction in 2022, a trend that continued into 2023. By 2024, it became apparent that over the past two years, both the locked-box and completion accounts mechanisms were used equally in the private equity deals on which Cuatrecasas advised.



## Pricing mechanism



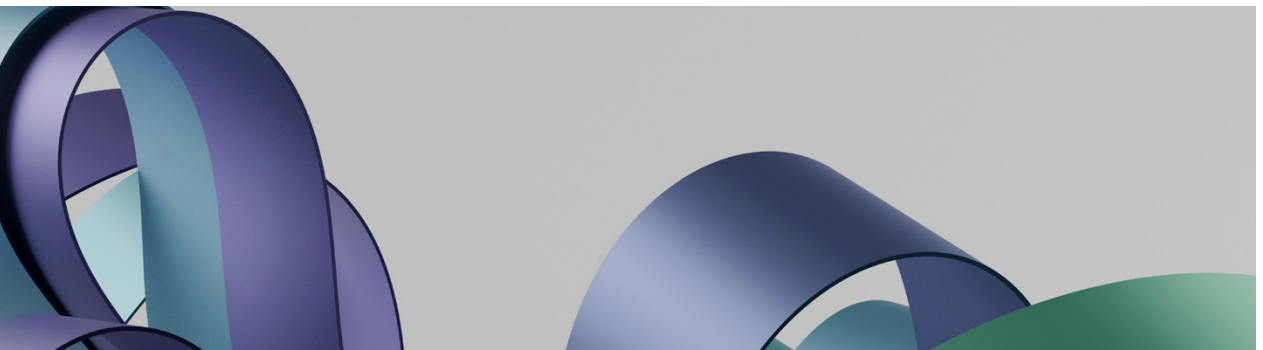
In 2023 and 2024, 40% of transactions used a pure locked-box mechanism, another 40% used a completion accounts mechanism, 13% used a fixed-price mechanism, and 7% used a combination of the locked-box and completion accounts mechanisms.

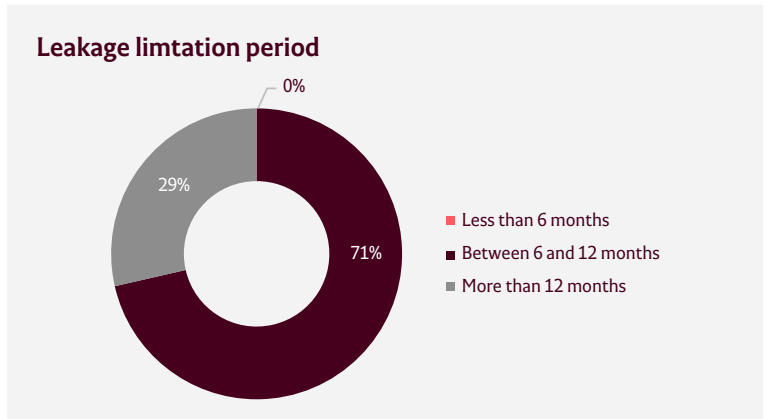
Generally, locked-box regulations did not include equity tickers to compensate the seller for profit or cash generated by the target group between the locked-box date and completion, except in one high-end deal valued over €100 million.

The seller's liability for leakage compensation is either capped at the actual leakage amount received or—more commonly—includes expenses and taxes. The latter approach was used in 86% of deals with a locked-box pricing mechanism, including those combining the locked-box and completion accounts mechanisms.

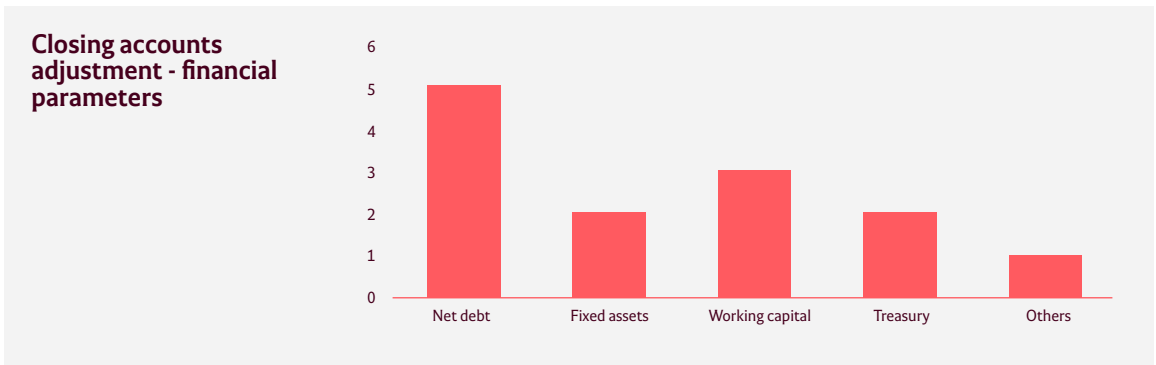
In 2023 and 2024, nearly half of the deals with a locked-box price mechanism—including those combining the locked-box and completion accounts mechanisms—included interest on leakage.

The most common leakage limitation period remains 6 to 12 months after completion.





When parties opted for the completion accounts mechanism, net debt and working capital were the most widely used financial parameters.

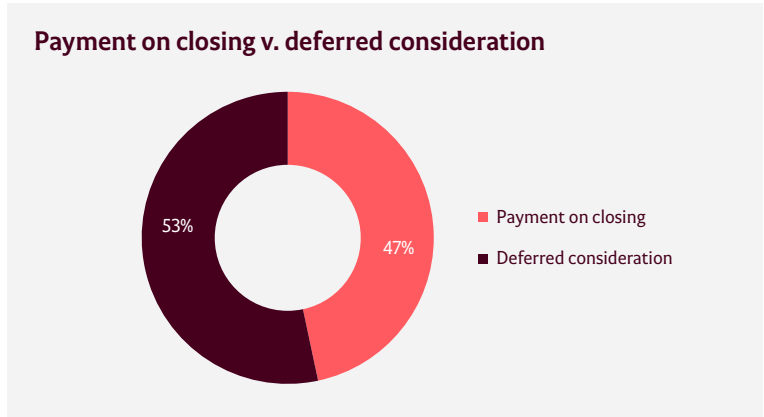


**Net debt and working capital were the most widely used financial parameters for the post-closing adjustment**

In both 2021 and 2022, 73% of transactions used deferred consideration, mainly in the form of earn-outs. Contingent payments are typically used to overcome parties' differing expectations about a company's future performance. However, despite the global uncertainty of 2023 and 2024, only 53% of private equity transactions Cuatrecasas advised on used deferred consideration. Most of these were in the form of earn-outs, typically linked to EBITDA or the company's overall profits.



Despite the global uncertainty of 2023 and 2024, the use of earn-outs decreased compared to 2021 and 2022

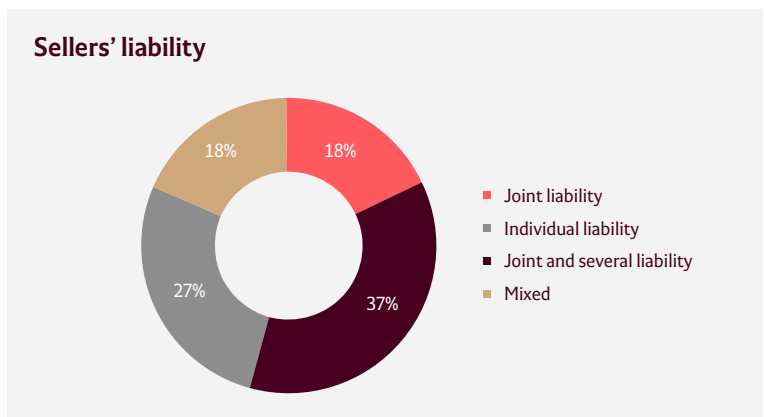


### Warranties and specific indemnities

Regarding the seller's liability, the Portuguese market follows the usual M&A trends in crossborder investments: (i) R&Ws are negotiated in share 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 temporally.

Most specific indemnities are negotiated based on known contingencies, such as tax, labor and other material contingencies identified during due diligence. Generally, these indemnities are not subject to any limitation but may occasionally have specific caps. In some deals, parties agree on a tax covenant to cover tax liabilities for financial years up to closing.

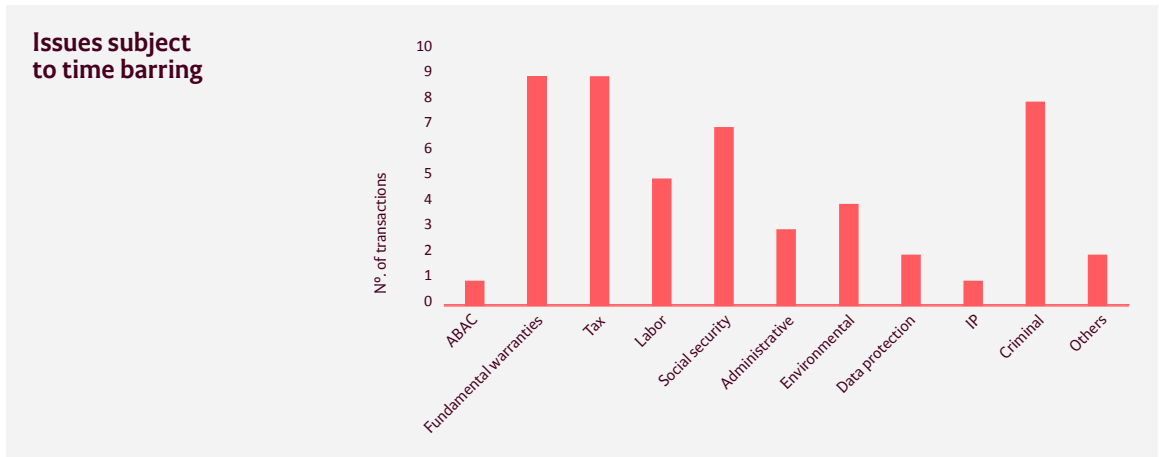
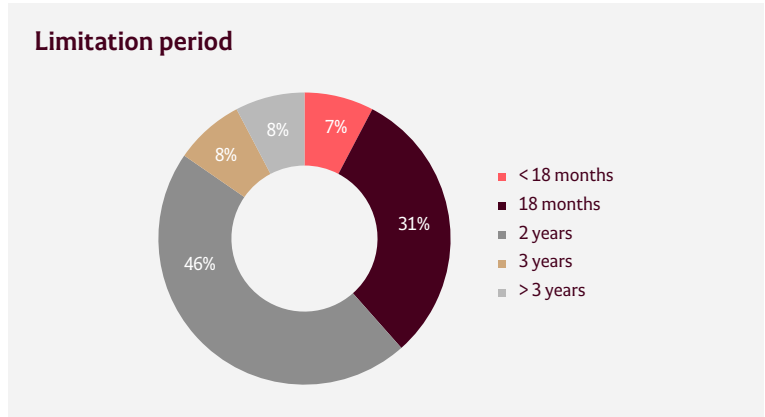
In 2023 and 2024, when there was more than one seller involved, they usually faced joint and several liability.



The most common limitation periods for the seller's warranties were 18 months and 2 years

### Warranty limitations

In 2023 and 2024, the most common limitation period for the seller's warranties was 2 years, followed by an 18-month period. Also, subjecting specific issues to time barring as provided by law remains common practice, especially for damages related to breaches of fundamental warranties, tax matters, and criminal and social security issues.

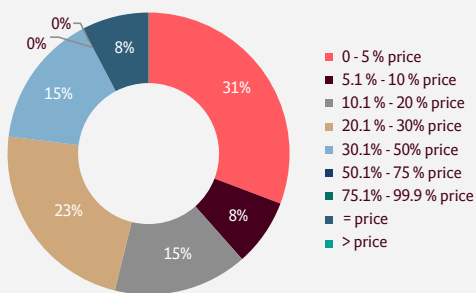


In most transactions, the liability for business warranties was capped at 30% or less of the purchase price

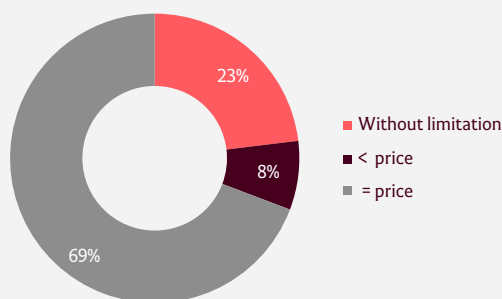
In contrast to fundamental warranties, which were typically limited to the purchase price the liability for business warranties was mostly capped at 30% or less of the purchase price. In very small transactions (below EUR 5 M) the cap of liability went up to 50% or more of the purchase price. In deals equal to or exceeding (i) €50 million or (ii) €100 million, the cap of liability for breach of business warranties did not exceed (i) 20% or (ii) 10%, respectively, and in cases involving W&I, the liability for breach of business warranties was limited to €1.



### Liability caps-Business warranties



### Liability caps-Fundamental warranties



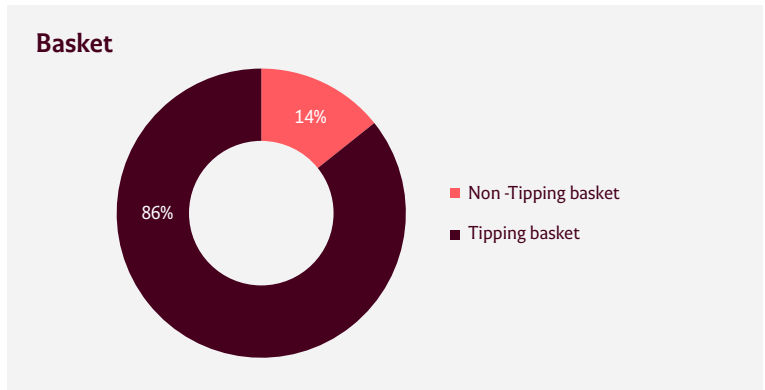
Regarding lower limits (and excluding transactions where there was buy-side W&I insurance), (i) the seller was not usually obliged to indemnify for losses if each loss, considered individually, was less than a certain amount (*de minimis* exclusion or *de minimis* amount), especially in high-end deals; and (ii) 47% of deals included a basket or threshold, most of which also correspond to high-end deals.

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/threshold amount.

In 40% of all transactions under analysis, tipping baskets were used, meaning the seller is liable for the entire amount and not merely for the excess if the aggregate of claims exceeds the basket amount. However, only 7% of all transactions used non-tipping baskets.

Specifically, 86% of the transactions with baskets used tipping baskets, while 14% used non-tipping baskets.

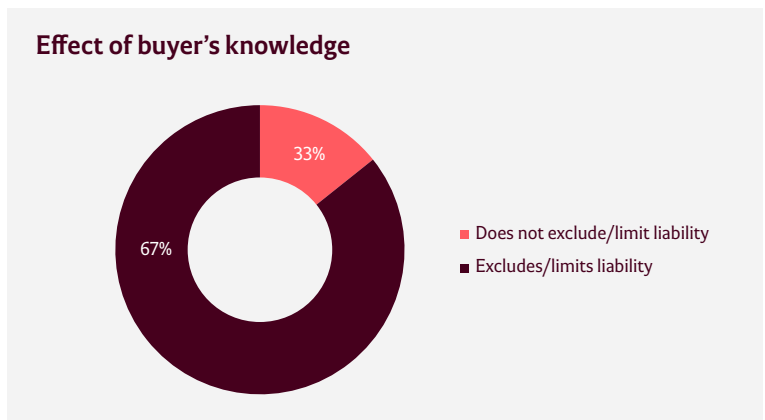
Usually, the basket amount is still below 1% of the purchase price.



### Buyer's knowledge

Although most deals opted for anti-sandbagging clauses, they were typically limited to “fairly disclosed” information

In 2023 and 2024, most deals opted for anti-sandbagging clauses, meaning the buyer’s knowledge excluded or limited the seller’s liability. However, these clauses were typically limited to information that was “fairly disclosed” to the buyer in the due diligence materials.



### Buyer's remedies against seller's liability

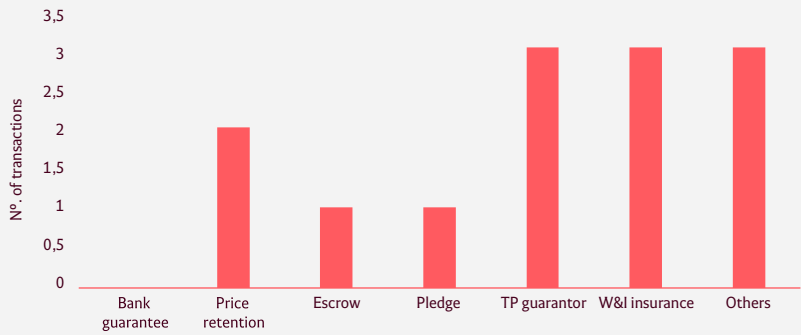
Third-party guarantors and W&I insurance were the most used buyer's remedies

In two-thirds of the transactions, guarantees or other collateral were included to secure the seller’s liability, with third-party guarantors and W&I insurance being the most used options, especially in transactions above €50 million. Other guarantees—such as cash maintenance obligations, withholding of payments and compensation of claims—were also included in the analyzed private equity transactions.





### Types of sellers' guarantee



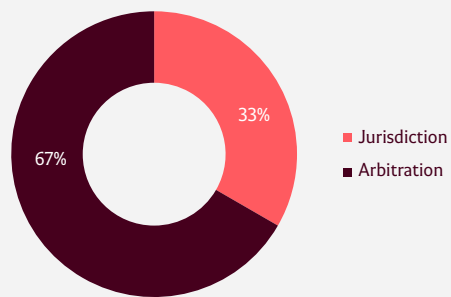
Arbitration is the most common dispute resolution mechanism

### Dispute resolution

In Portugal, arbitration is the most common dispute resolution mechanism, with 67% of transaction documents referring to arbitration to resolve conflicts arising from agreements in 2023 and 2024.

Lisbon was the most commonly chosen seat of arbitration, although Porto was chosen in some cases. All arbitration clauses referred to the rules of the Commercial Arbitration Center of the Portuguese Chamber of Commerce and Industry.

### Dispute resolution



# Our private equity practice

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

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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.

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## Market recognition



**Leading law firm by deal volume**  
in private equity and M&A  
transactions in Spain and Portugal  
(2022, 2023 and 2024)



**One of the most active firms**  
in private equity transactions  
in Spain and Portugal (2024)

**Deal of the year in Portugal (2024):**  
the acquisition of Fairjourney  
Biologics by Partners Group



**Highly recommended firm** in private equity in Spain and Portugal



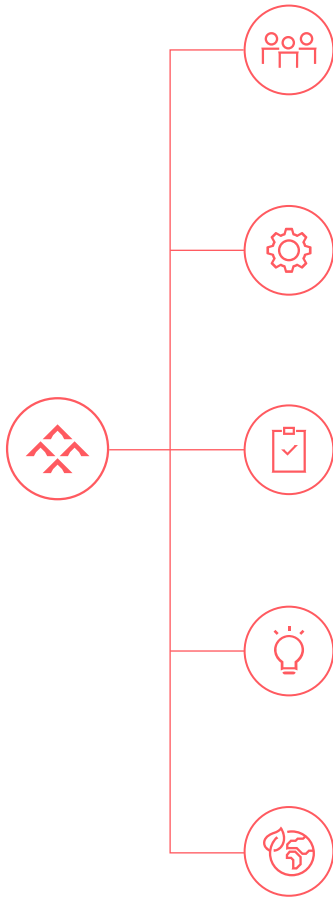
Chambers, 2024

*“They offer enormous professionalism, commitment and determination. The team conveyed a lot of confidence in their execution.”*

Chambers, 2023

*“The lawyers at Cuatrecasas have shown to be flexible and creative to find solutions to some complex issues.”*

# Cuatrecasas at a glance



## TALENT

Our multidisciplinary and diverse team is made up of over 1,300 lawyers and 29 nationalities. Our people are our strength and we are committed to inclusion and equality.

## EXPERIENCE

We have a sectoral approach focused on each type 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 made up of lawyers from different practices. Their cross-sectoral approach to our clients' business enables us to offer efficient solutions.

## KNOWLEDGE AND INNOVATION

We promote an innovation culture applied to legal activity that combines continuous training of our team and adaptation to the latest technological resources, including artificial intelligence.

## RESPONSIBLE BUSINESS

We incorporate environmental, social, and governance ("ESG") criteria into our service provision and internal management. See our [Corporate Sustainability Report](#) and the main parameters we use to measure our ESG performance.

Most Innovative Law Firm in Continental Europe, 2023

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

Highly Commended in Iberia, 2024  
Law Firm of the Year in Europe and Iberia, 2022

Fifth most popular international law firm in Latin America, 2023



Gold Rating – Ecovadis 2023



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



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# CUATRECASAS

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## Spain & Portugal

> Alicante > Barcelona > Bilbao  
> Girona > Lisbon > Madrid > Málaga  
> Palma de Mallorca > Porto  
> San Sebastián > Seville > Valencia  
> Vigo > Vitoria > Zaragoza

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## International

> Bogotá > Brussels  
> Casablanca\* > Lima > London  
> Luanda\* > Mexico City  
> New York > Santiago > Shanghai

*\* in association with the respective local law firm*

