

M&A Trend Analysis
Fifth edition: 2025

fladgate



We are delighted to publish the fifth edition of our M&A trend analysis. This publication analyses data from a broad sample of M&A transactions on which Fladgate has advised over the last couple of years.

Introduction

Our analysis, which spans 14 data points, highlights how some deal terms have remained consistent, whereas other terms have evolved over the last couple of years. The analysis also demonstrates how there isn't always a "market" position on certain deal terms.

As well as analysing those data points, we have also included a series of forward-looking articles on M&A in professional services; insolvency law developments; breach of warranty claims; and an interesting article on Business Interest Relief.

This publication will be of interest to anyone engaged in or considering M&A activity, including funds, HNWs, entrepreneurs and corporates, as well as intermediaries including corporate finance advisers and reporting accountants. If you would like to discuss this publication further, please do get in touch with us or your usual Fladgate contact.



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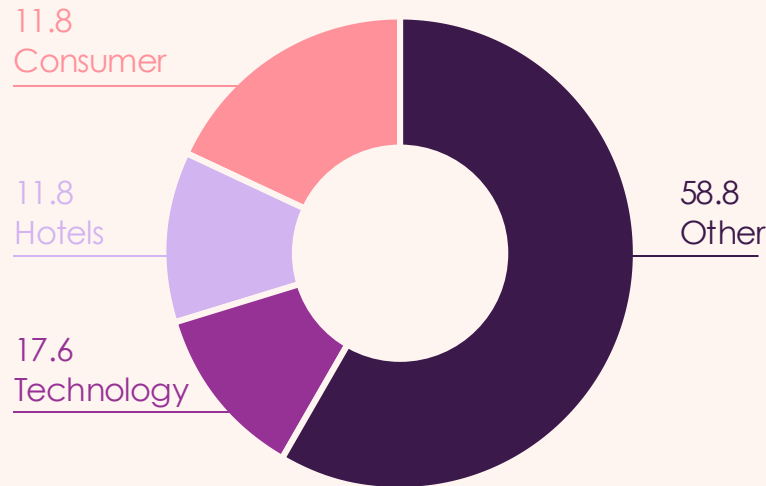
Sectors

The deals analysed for this publication broke down into the following sectors.

The technology sector represented the largest proportion of deals in both 2023 and 2024, which is not surprising given the number of business sectors being revolutionised by significant technological change, as well as the fact that technology companies continue to attract high valuations relative to other sectors.

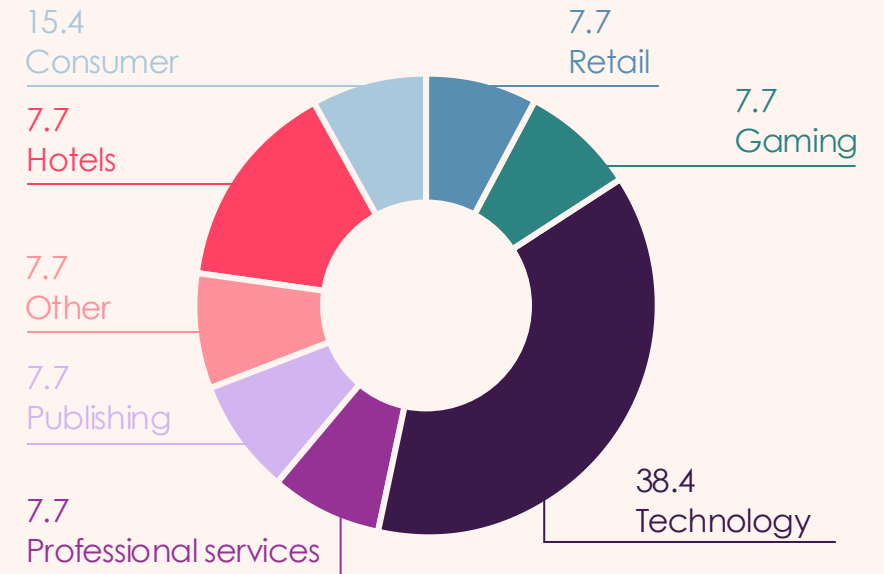
Deals by sector
(number of deals)

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2023



Deals by sector
(number of deals)

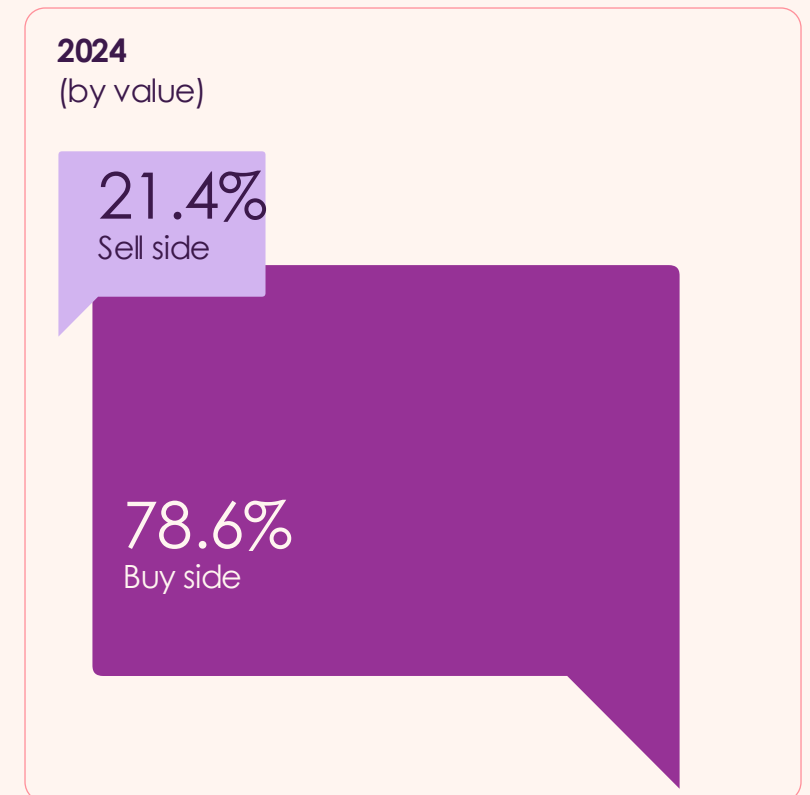
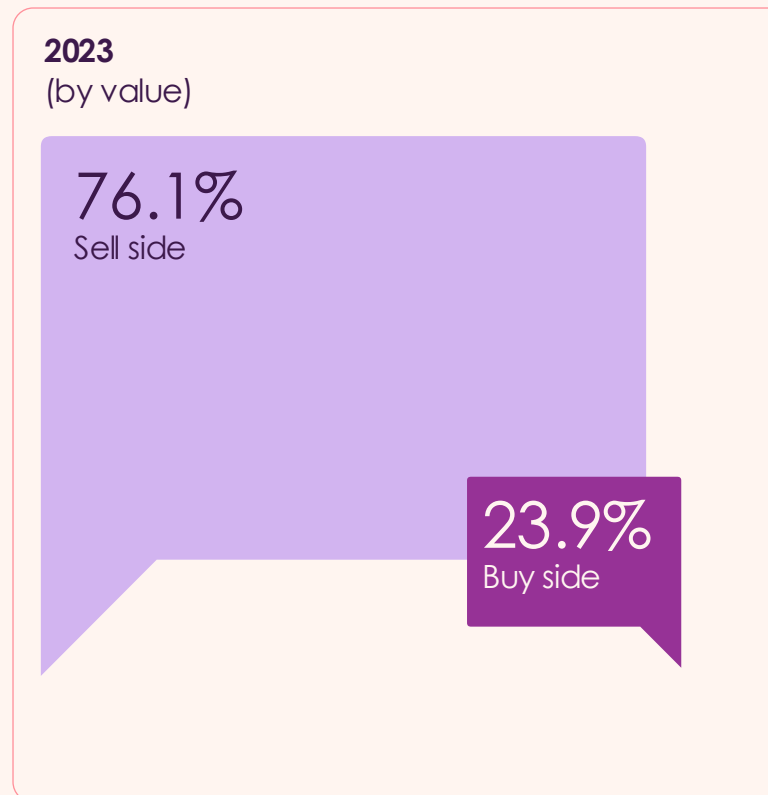
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2024



Buyside vs Sellside

Compared to 2023, 2024 saw a shift towards acting on the buy side as opposed to the sell side, with 78.6% of deals by value being on the buy side in 2024 compared to 23.9% in 2023.

We think this trend has been driven by acting for an increasing number of investment funds with dry powder; and a more buoyant market in 2024 relative to 2023 with market participants looking to capitalise on buying opportunities that will generate value over the next investment cycle.



Private equity and the professional services industries

Anthony Shatz, Partner

Our team has advised on a series of professional services deals in the last year, including Shipleys (an accountancy firm) on its sale to Moore Kingston Smith (another accountancy firm); Burford (a listed litigation finance business) on its strategic investment in Kindleworth (a business providing various back office, IT and other support services to a broad spectrum of start up and other law firms); and the sale of a boutique law firm to mid-market private equity (this last deal at the time of writing being not yet announced and therefore confidential). This deal activity is indicative of private equity increasingly running its slide

rule over professional services businesses, including law firms.

These transactions, with private equity taking either a minority or controlling interest in a law firm, are very different to the wave of IPOs that the legal market has witnessed over the last decade. Those IPOs have been very mixed in outcome, and include Gateley and Keystone (which both retain their listings but with share prices oscillating significantly); DWF (which has now been taken private by Inflexion); and RBG Group (whose shares have been suspended from trading).

A recent article in the Lawyer concluded that, out of the five fastest growing firms in the UK's 200 largest law firms, four were backed by private equity: Stowe (backed by Investcorp); Horwich Farrelly (backed by CBPE); Fletchers (backed by Sun Capital Partners); and Setfords (backed by Phoenix Equity Partners).

For law firms considering external investment from private equity, here are some of the key issues they will need to address:

1. What will be the use of funds, and in particular how will that be split between (A) proceeds to the partners and (B) investment in the business? If the allocation to (B) is not large enough, the next generation of talent in the business will be concerned about the viability of the deal.

2. How will the proceeds to partners be allocated? This will be a key issue, and if the formula is perceived as unfair there is a risk of destabilising the partner cohort. One has to bear in mind that a law firm is very much a people business. At some point, it is likely that PE will focus on larger law firms, and one of the key issues will be to work out how to agree an allocation of proceeds between a large number of partners.
3. How will investment proceeds be expended? The PE firm will expect a detailed three year business plan explaining how such proceeds will be expended on recruitment, target acquisitions, technology investments, international expansion (or perhaps strategic retrenchment); and a plan to improve financial efficiency.
4. Ownership by PE will result in a high level of financial scrutiny. Does the law firm have the management infrastructure in place to deliver meaningfully on financial efficiency improvements, for instance by driving down lock up days, and driving up key metrics such as revenue and profit per partner and fee earner? And will the firm be able to meet stringent monthly, quarterly and annual financial reporting requirements?
5. What is the capital structure of the business going forward? on deals we have seen, PE will often want to incorporate loan notes into the deal that carry a "mezz level" interest rate. That capital structure will need to be modelled carefully to ensure there is no risk of future default, and after factoring in the costs of the firm's growth plans and trajectory.
6. What will the management structure be going forward? will the PE firm actually appoint an investor director to the board? And will the business appoint any non-executive directors?
7. Which regulatory approvals will be required? For UK deals, the UK SRA will need to approve the deal; and the firm will need to obtain "ABS" status if it is not one already.
8. Does the firm have operations or offices outside of the UK? Cross border deals will need to consider regulatory requirements in other countries, and this could require the business to be restructured in a number of ways.
9. What are the tax and accounting implications on the partners and the business of the structure shifting from a partnership to a company?
10. Culturally, is the firm and its partnership ready to take on external investment, and potentially give up independence and control in exchange for capital to grow exponentially faster?

This is now a fast moving market, and despite the challenges inherent in such deals we are expecting more deals in this space to be announced in the next few years. In particular, it will be fascinating to see if and when a large UK firm finalises a deal with private equity.



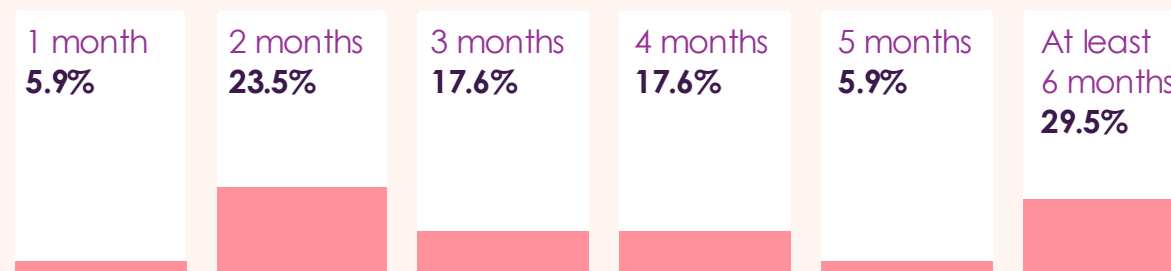
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Time to closing

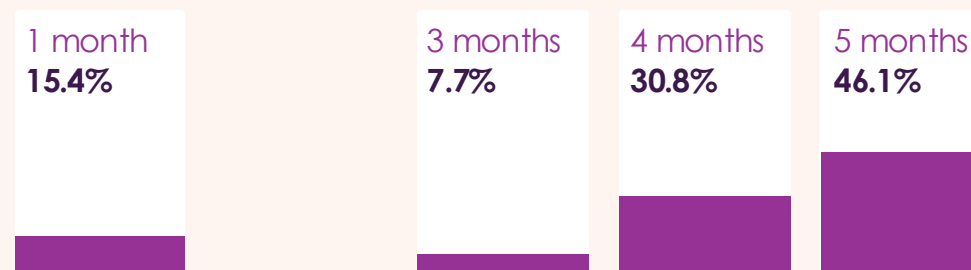
Compared to 2024, 2023 witnessed more deals being closed quicker, with 47% of deals by number closing within three months, compared to 77% of deals by number taking at least four months to close in 2024.

However, 2023 would appear to be an outlier against a longer term trend, where we have seen it start to take longer to close deals as evidenced by M&A Trend Analyses from prior years. As highlighted previously, this may be because deal terms are becoming more complex, gaps in pricing between buyer and seller having to be bridged by earnouts or deferred consideration mechanisms and deals becoming subject to more regulatory and other closing conditions.

Time from initial instruction to closing in 2023
(by number of deals)



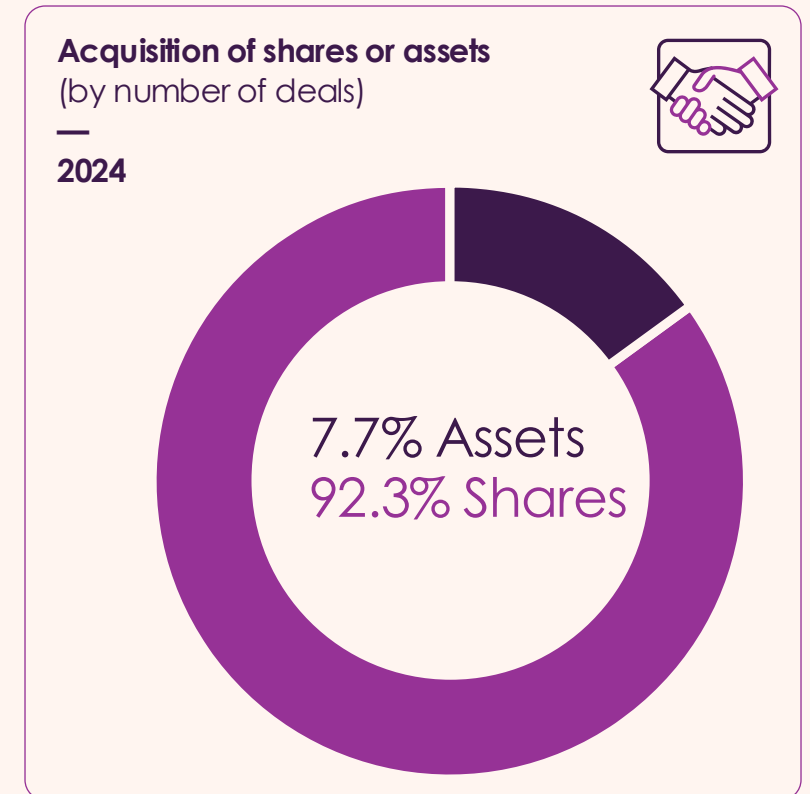
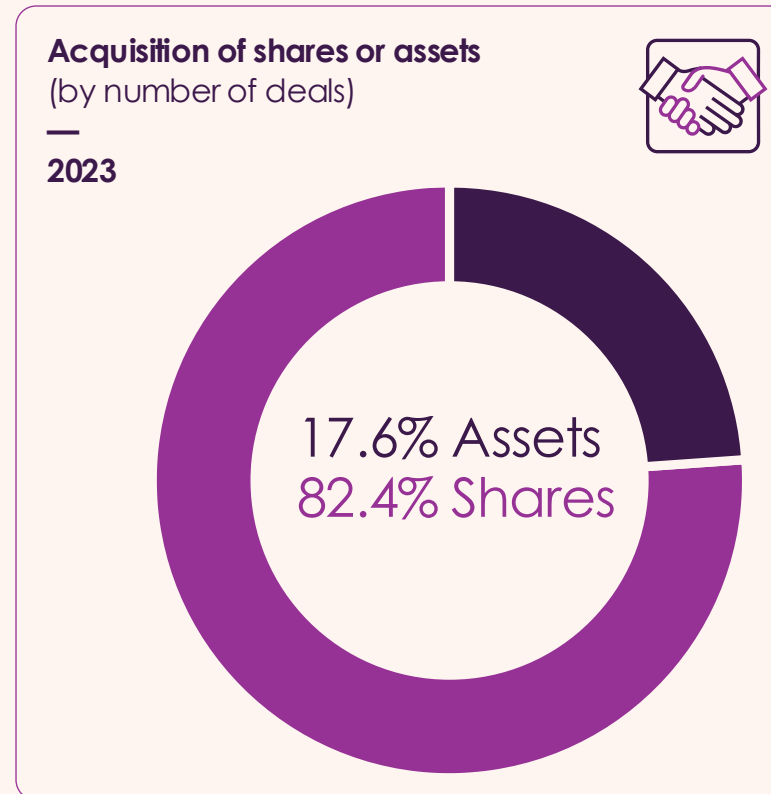
Time from initial instruction to closing in 2024
(by number of deals)



Share vs Asset Transactions

By number of transactions, the percentage of transactions structured as an acquisition of assets as opposed to an acquisition of shares decreased from 17.6% in 2023 to 7.7% in 2024.

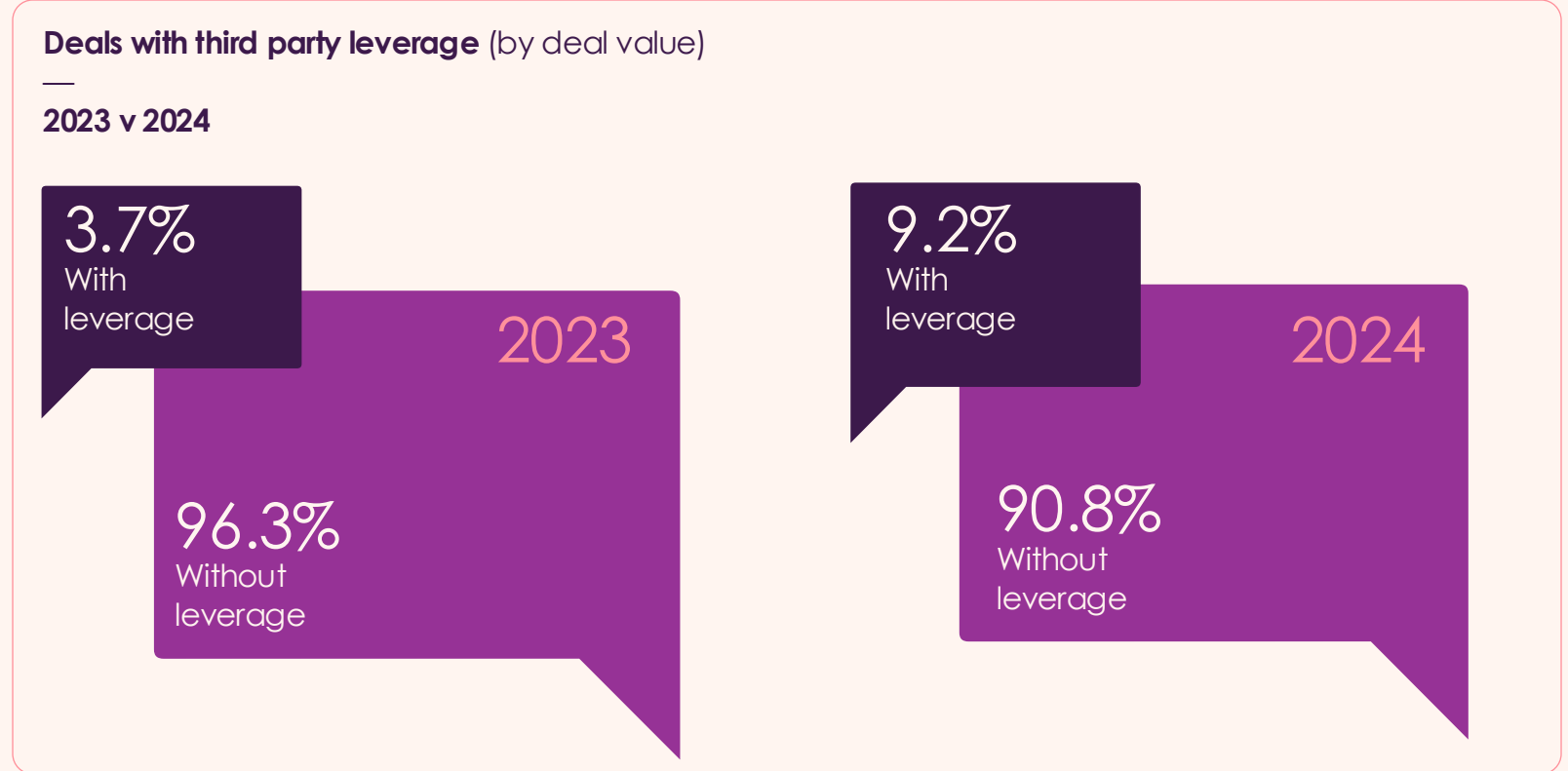
Deals tend to be structured as share as opposed to asset deals, with there usually being a specific structuring or tax reason to opt for an asset purchase as opposed to a share purchase; with asset purchases generally being messier and more complex to implement (for instance in relation to price adjustment mechanisms).



Use of Leverage

In both 2023 and 2024, the vast majority of deals were completed without leverage (although in many cases leverage would have been incorporated into the capital structure following closing).

This is typical in mid-market deals where the buyer is “trade” or a family office, which in our view is much less likely to utilise acquisition finance compared to PE.



Turning up the heat on directors: the impact of Sequana, Wright v Chappell and Hunt v Singh

Jeremy Whiteson, Partner

A trio of recent court cases have breathed new life into the concept of directors' fiduciary duties to creditors. This adds to an already complicated and onerous position for company directors.

Advice to directors of distressed companies on their personal exposure will often start with a consideration of wrongful trading. That can lead to personal liability for directors. The main requirements are, essentially, that (a) the company has reached the position where directors ought to know that liquidation or administration is inevitable; and (b) have then failed to do everything they could to protect creditors.

However, the advice would then typically go on to consider a long list of other considerations, involving possible challenges to company transactions or liabilities of directors.

So hardly a situation crying out for a new and complicated level of legal complexity!

Sequana v BTI was a UK Supreme Court decision in 2022 challenging a company dividend. At the time of the dividend there was a risk of liability for an environmental indemnity, although the directors believed they were adequately insured. Unfortunately, that was not the case and the company entered

insolvent liquidation. Action was brought against the directors and the parent company (as recipient of the dividend) claiming breach of fiduciary duty in paying the dividend, even though the Companies Act procedures for payment of that dividend had been followed.

In a long and inconsistent decision, it was established that there are directors' fiduciary duties to creditors which arise when a company is unable to pay its debts or insolvency is close. Ambiguity was left as to exactly when the duty arose, its scope, and how to apply it. However, it was made

clear that, when a possible liability is in sight which could leave a company insolvent, directors must consider the interests of creditors.

Wright v Chappel arose from the dramatic collapse of BHS. The enormous losses could have been lessened if trading had ceased earlier; and the liquidators took action to make directors liable for wrongful trading (see above). They added a claim for breach of the fiduciary duty to creditors. This was applied, not to question whether particular business decisions were in breach of duty, but to the whole decision as to when to stop trading, in what was termed

“trading misfeasance”. This was accepted by the court as an addition to wrongful trading and, in this case, triggered the duty at an earlier point (with higher liability for directors) than would arise from wrongful trading alone.

Hunt v Singh arose from an unsuccessful corporate tax structuring. An aggressive structure was adopted, which directors were consistently advised by accountants to be robust - until it failed. The resulting liability left a big liability to HMRC. Directors were found to be in breach of duty. Tax liabilities were treated as different to normal claims against the company and, in effect, a much higher threshold is needed for directors to act in a way which risks a tax liability of a size that would leave the company insolvent, than would be the case with other claims.

So where are we left?

Directors must consider the interests of creditors if there is a risk of any material claim against the company, particularly if it relates to tax or which would leave the company unable to pay its debts. It is also clear that the duties can arise despite the fact that advice has been taken and statutory procedures applied.

It should also be remembered that directors' duties can apply to all persons who occupy the position of directors, even if not formally appointed. Investors and board observers who participate in active company decision making may be equally exposed, and this could be particularly relevant in the context of private equity owned portfolio companies.



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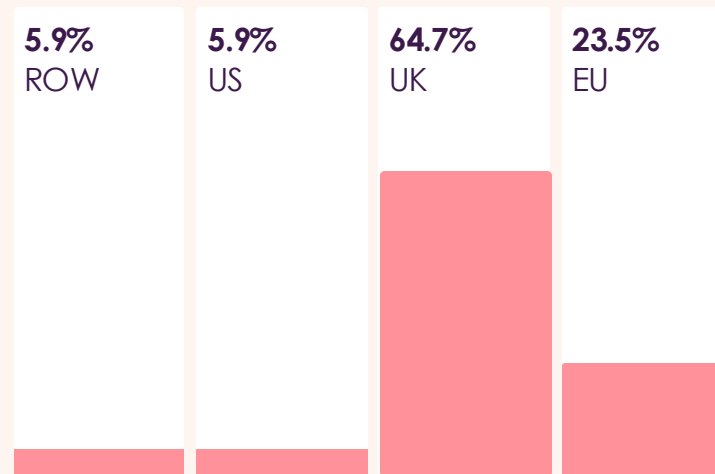
Geographic Location of Buyers

By number of deals, the UK accounted for the majority of buyers in both 2023 and 2024, which is consistent with prior years.

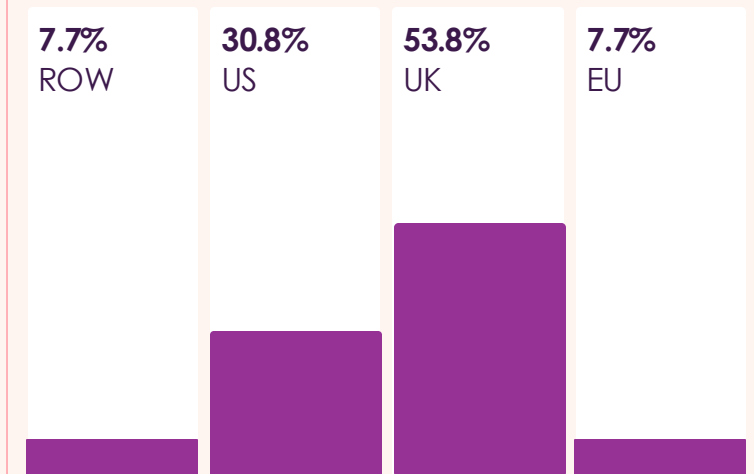
However, the proportion of deals with a US-based buyer increased significantly, from 5.9% in 2023 to 30.8% in 2024. This demonstrates how US-domiciled buyers continue to be a significant feature of the UK M&A market.

Going forward, it will be interesting to see the extent to which US buyers are acquisitive in the UK. On the one hand, UK companies will seem cheap given the relative out-performance of the US economy and corporate earnings; but against that there is an argument that US companies (in products as opposed to services) may be less expansionist as they seek to develop manufacturing hubs within the continental United States because of the new tariff environment.

Location of buyer in 2023
(by number of deals)



Location of buyer in 2024
(by number of deals)



Breach of Warranty claims in the UK: Recent case law insights and key considerations for clients

Harry Stewart and Dani Hertz

Breach of warranty claims continue to be a cornerstone of post-transactional litigation in the UK. Over the past 18 months, the courts have handed down a series of decisions that have emphasised the uncompromising approach taken to procedural compliance. From notice requirements to limitation considerations, the theme emerging from case law in 2024 and 2025 is that precision in contract drafting is paramount.

Understanding Breach of Warranty

A breach of warranty occurs when a party is unable to deliver the promised attributes of a good or service, leading to a potential claim if there is resulting financial loss for the injured party. Warranties can be explicit, articulated within the contract, or implicit, based on the nature of the sale and the expectations of the parties involved. In legal terms, breach of warranty claims fall under the scope of contract law, allowing the aggrieved party to seek damages.

Recent Case Law Developments

Several recent cases have touched on important factors in breach of warranty claims in England and Wales.

Notice Clauses: Strict Construction Prevails

The importance of strict compliance with contractual notice provisions has been reinforced repeatedly by the courts. In *Decision Inc Holdings v Garbett* [2024], the Court of Appeal dismissed a buyer's breach of warranty claim for multiple breaches due to what might be considered an immaterial defect in the notice. The SPA required the buyer to specify the alleged loss per individual breached

warranty; instead, the buyer issued a single aggregated claim. Despite the substantive claim appearing credible, the court held that failure to meet the express requirements of the agreed notice provision was fatal.

This approach contrasts with *Drax Smart Generation Holdco Ltd v Scottish Power Retail Holdings Ltd* [2024], where the Court upheld a notice that was found to contain "reasonable detail" in line with the contract's requirements. The difference in outcome was not about the severity of the alleged breach or the scale of loss, but the technical adequacy of the notice itself. The message from the courts is clear: a compliant notice is a necessary preliminary step in establishing a valid claim.

Limitation Periods

Another recurring issue is the time limit for bringing claims in respect of contingent or unascertained losses. In *Onecom Group Ltd v Palmer* [2024], the High Court addressed when the limitation period for a breach of warranty claim begins to run. The dispute arose in the context of an earn-out mechanism, where the loss could not be assessed until an independent expert had issued a valuation. The court concluded that the limitation period did not commence on completion of the transaction, but only once the loss became reasonably quantifiable.

This decision is significant for clients involved in transactions featuring earn outs or deferred consideration. In such scenarios, contracts should be carefully drafted to ensure that time limits for bringing claims reflect the commercial reality of when the loss may actually materialise or be ascertainable.

Insurance and the Evolving Standard for Causation

Warranty and indemnity (W&I) insurance continues to be a common feature in M&A transactions. However, recent case law has introduced greater clarity on the level of causation required for an insurer to refuse claims based on breach of warranty. In *Mok Petro v Argo* [2024] and more recently *Lonham Group Ltd v Scotbeef Ltd* [2025] the courts affirmed that, under the Insurance Act 2015 (Act), an insurer cannot rely on technical breaches of warranty to reject claims unless those breaches are material to the risk. These cases adopt a more commercially sensible interpretation of section 11 of the Act, moving away from narrow causation tests and towards a more risk-based approach.

From a practical perspective, this development benefits insured parties but necessitates careful review of policy terms. Parties should ensure that insurance clauses are not unduly onerous and that warranties are drafted to avoid triggering policy exclusions for immaterial breaches.

Key Considerations for Clients

These examples from the recent case law reveal a consistent judicial emphasis on technical compliance with contractual formalities and clarity of drafting in the context of breach of warranty claims. Parties would be well advised to ensure that drafting is clear and robust, particularly around notice mechanics, limitation triggers and insurance coverage.

Litigants should not assume that substantive fairness or commercial logic will rescue them from deficiencies in contractual compliance. As the courts have made abundantly clear, in warranty claims - as in much of English contract law - form is function.

Conclusion

Breach of warranty claims continue to pose significant implications for both buyers and sellers in the UK. By staying informed about recent case law and employing practical strategies, buyers and sellers can strengthen their contractual agreements and better protect their interests. As the legal landscape continues to evolve, proactive measures at the time of drafting sale agreements will continue to be key to minimising risks associated with warranty breaches in M&A deals.



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Price adjustment mechanisms

By deal value, 2024 saw a significant increase in deals with a locked box as opposed to completion accounts mechanism, with the percentage for locked box deals increasing from 17.7% in 2023 to 62.3% in 2024.

After five years of tracking M&A data, we have seen the market swing from locked box to completion accounts, and now back again to locked box, which demonstrates how there isn't necessarily a market standard for price adjustment mechanisms.

Price adjustment mechanisms 2023 v2024 (by value)

2023



2024



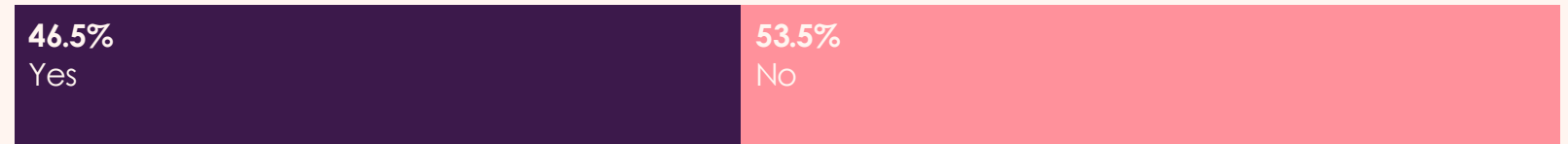
Split exchange and completion

2024 saw a small decrease in deals with a split exchange and completion.

As in prior years, it continues to be the case that there will always be a significant proportion of transactions that require a split exchange and completion due to the requirement for financing, regulatory, shareholder and/or other approvals.

Split exchange and completion (by deal value)

2023



2024



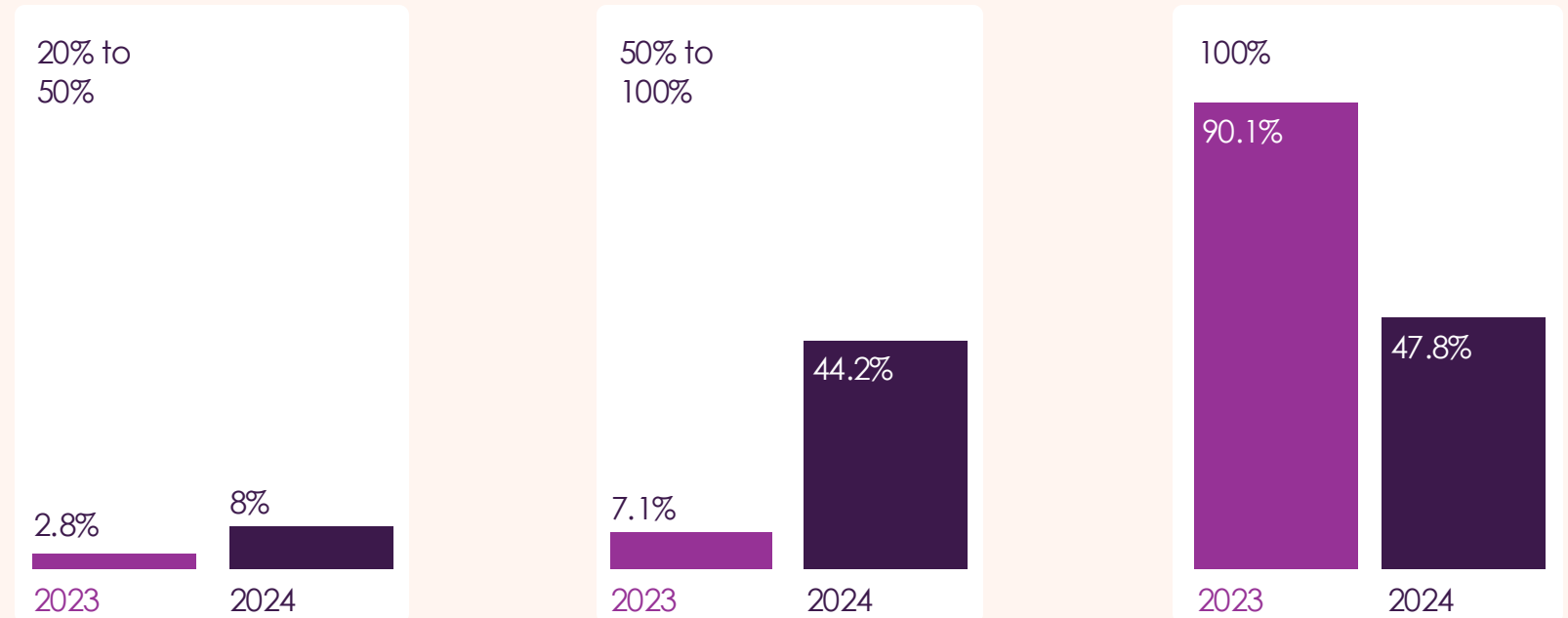
Liability caps for warranty claims

Notably, the percentage of deals (by value) where the liability cap for warranty claims was set at 100% of the consideration declined from 90.1% in 2023 to 47.8% in 2025.

Over several years now, we have seen this M&A deal term fluctuate in a way that is quite unpredictable, and which ultimately is a function of the relative negotiating power between buyer and seller.

Downside protections:

total cap on liability as % of consideration- 2023 v 2024
(by value)



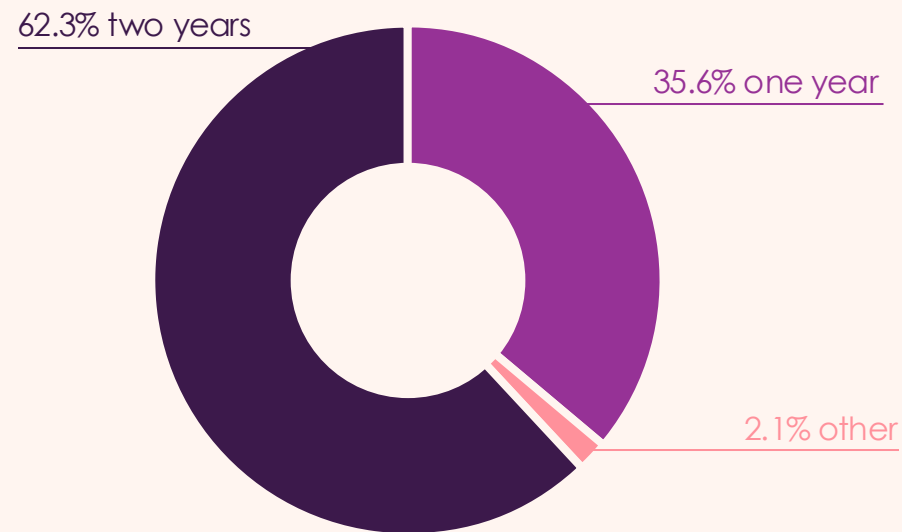
Time limits for warranty claims

There was little change from 2023 to 2024, with a majority of deals (by value) featuring a two year time limit for non-tax warranty claims. This has been an established feature of the UK M&A market for many years now.

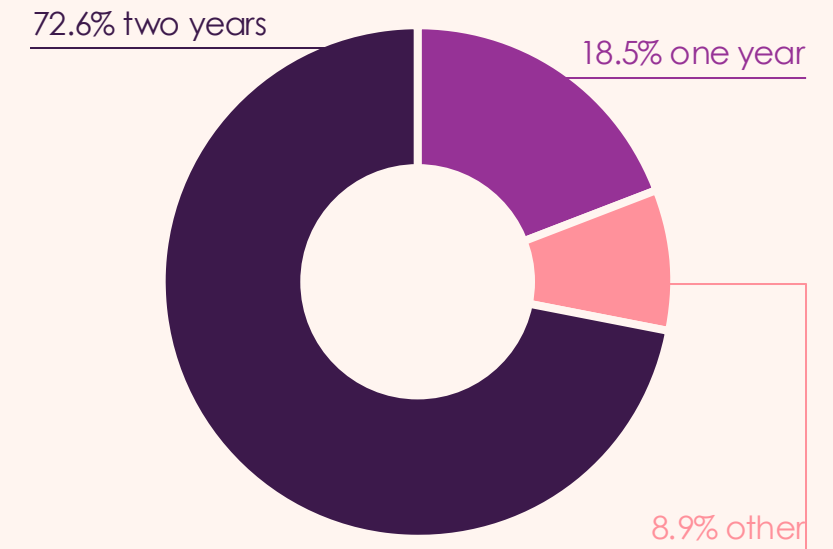
Downside protections:

time limit for non-tax warranties
2023 v 2024
(by deal value)

2023



2024

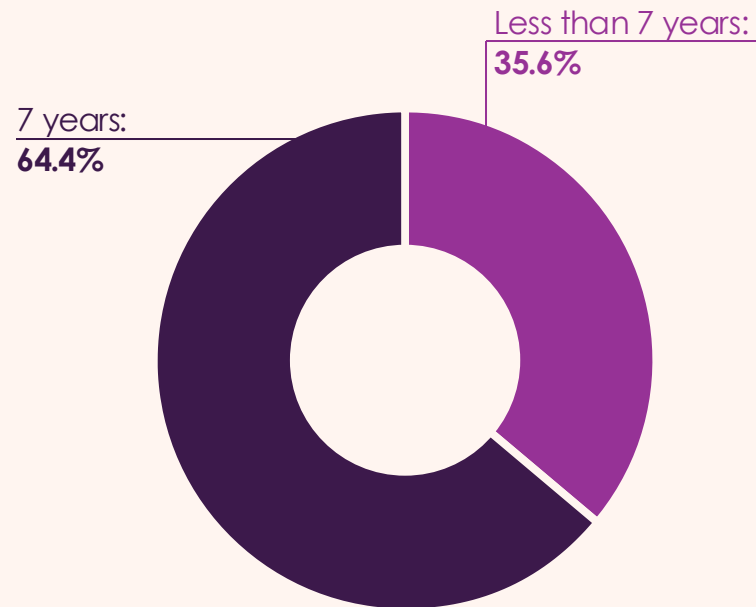


Tax claims

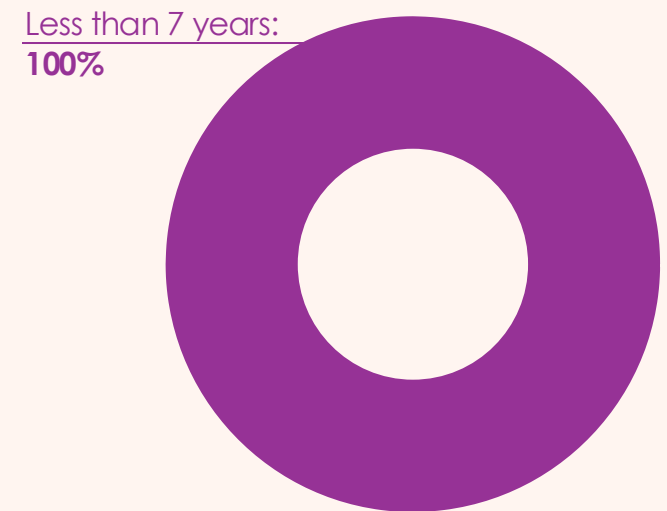
Year on year, the typical time limitation period for tax-related claims has been seven years. However, 2023 appeared to be an outlier, with 35.6% of deals (by value) in that year featuring a time limit of less than seven years.

Time limit for claims under tax deed
(by deal value)

2023

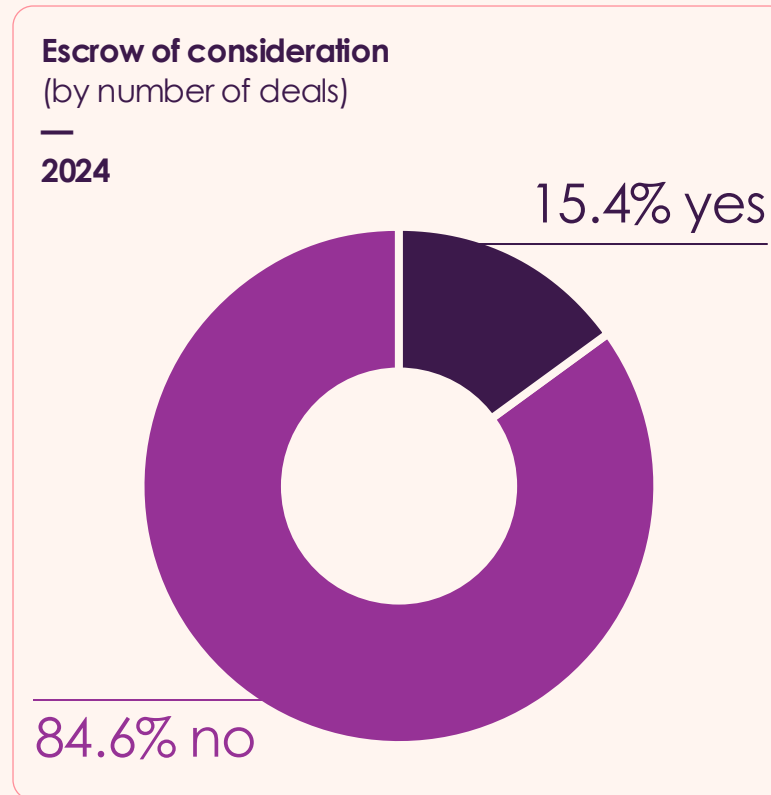
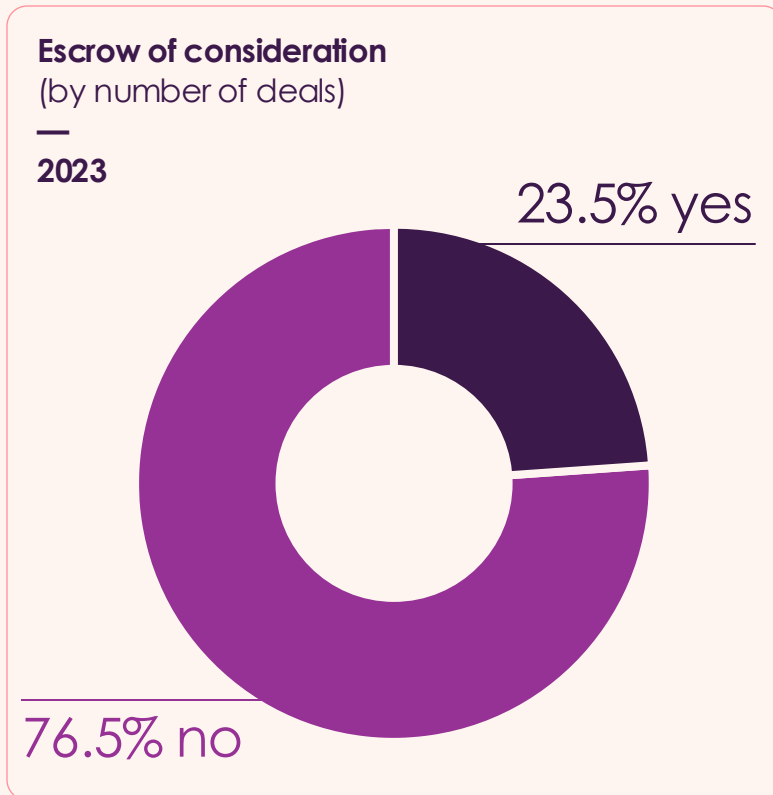


2024



Escrow mechanisms

2024 saw a small decrease in transactions (by number), where a proportion of the consideration was placed in escrow on closing.



Business Investment Relief: A Time-Limited Opportunity for Strategic UK Investment

Katya Vagner, Partner

Business investment relief (BIR) was introduced following the financial crisis to promote investment into the UK. It allows individuals who previously claimed the remittance basis of taxation the opportunity to bring pre-6 April 2025 foreign income and gains to the UK tax-free, provided the funds are invested in qualifying companies.

There is no limit to the amount that can be claimed under BIR, but various conditions must be met. Broadly speaking, these include:

- the investment must be in a private limited company which is carrying out a commercial trade and whose shares are not traded on a recognised stock exchange;
- the investment must be made in the form of shares or loans;
- the investment must be made within 45 days of bringing the offshore funds to the UK;
- when the investment is sold, the proceeds (up to the original investment amount) must be taken offshore or reinvested in another qualifying company within 45 days; and
- certain restrictions on the terms on which the investors can benefit from the investment (other than in respect of dividends and commercial payments), so some advice planning is recommended.

However, as part of the broader reforms to the non-dom regime, the UK government has announced that from 6 April 2028 it will no longer be possible to claim BIR on any new investments or reinvestments.

Following this announcement, we have seen a notable uptick in interest from international clients wanting to take advantage of BIR while it still remains available.

Key benefits of BIR include:

- The ability to invest offshore wealth tax-efficiently in UK start-ups, scale-ups or family-owned businesses.
- Advance assurance: HMRC provides a voluntary pre-investment clearance process so that taxpayers can check whether the proposed investment will qualify for BIR.
- There is no minimum investment threshold, allowing flexibility in the amount invested.
- BIR applies not only to direct investment by the taxpayer, but also to investment by any other relevant person (such as an offshore trust or company).

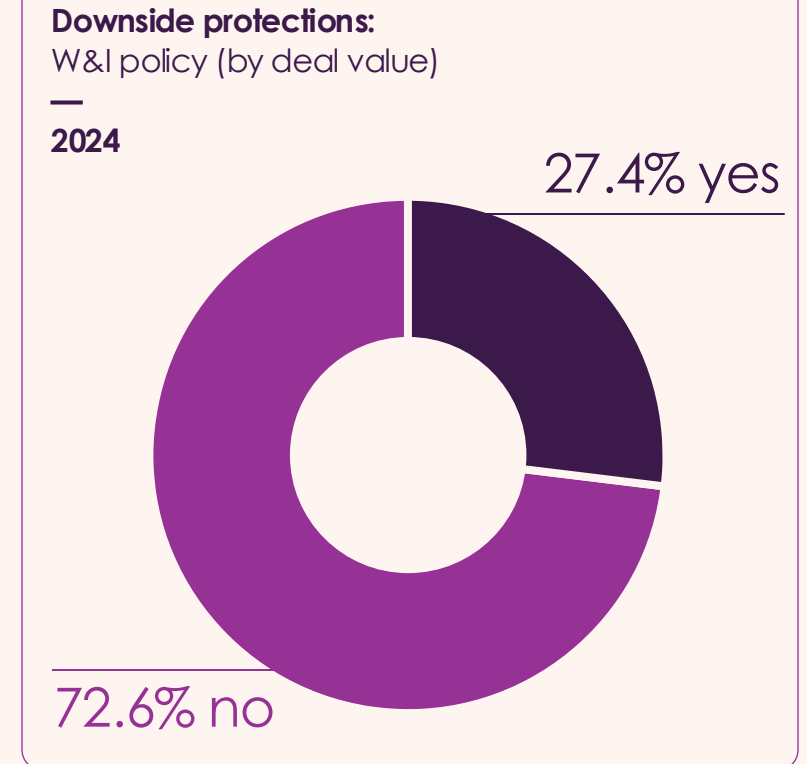
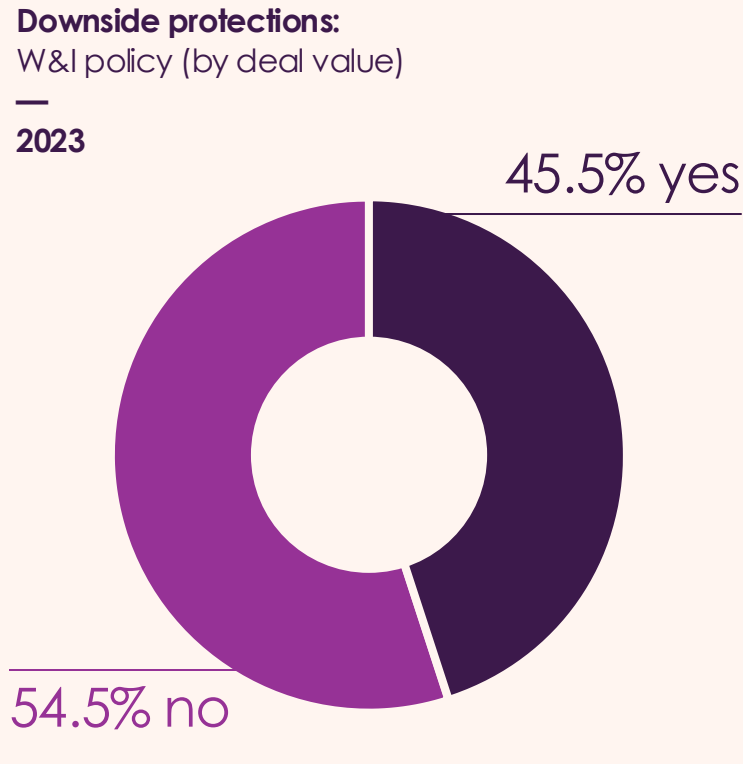


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Warranty and indemnity insurance

W&I policies featured on 45.5% of deals in 2023 (by value), but then only 27.4% of deals in 2024.

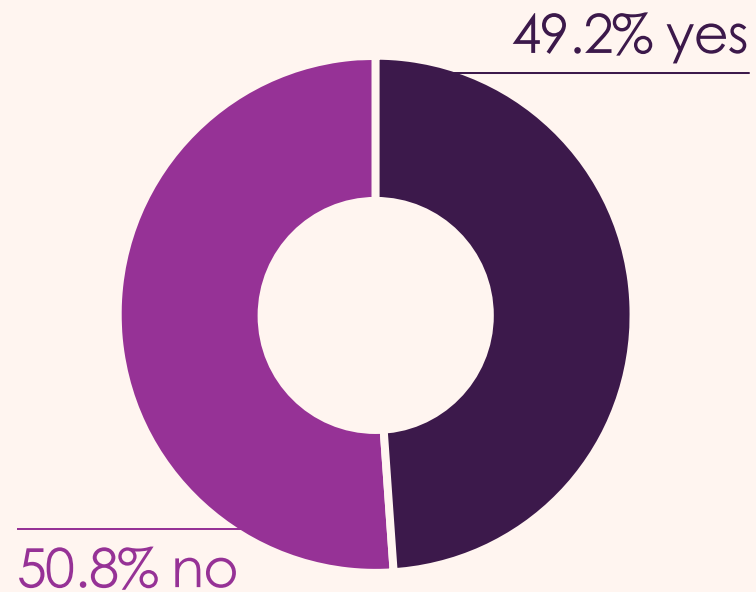
Although warranty and indemnity insurance is almost always a feature of PE-backed deals, it is arguably less common where the buyer is “trade” or a private capital entity such as a UHNW or family office.



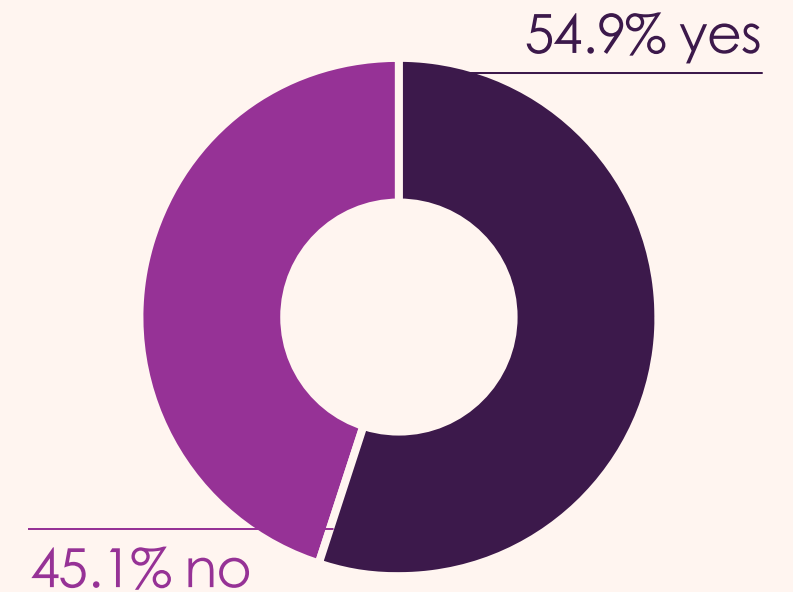
Disclosure of data room

There was little change between 2023 and 2024 in relation to whether the buyer conceded that the contents of the data room should be generally disclosed against the warranties in the share purchase agreement, with a broadly even split in each year; which evidences that there is not necessarily a market position on this issue.

General disclosure of data room 2023
(by deal value)



General disclosure of data room 2024
(by deal value)



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