



Dealmaking in Central Europe

A closer look at Share Purchase Agreements

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Foreword

The sale and purchase agreement (“SPA”) in M&A transactions marks the pinnacle of the entire transaction process. This procedure can often span several months, beginning with the initial phase, continuing through buyer due diligence, and culminating in the negotiation, signing, and closing of the agreement itself.

The SPA captures a variety of inputs derived from the entire transaction journey, including the distribution of the economic benefits and risks related to the target company or group between the seller and the buyer.

Since the emergence of modern M&A transactions in Central and Eastern Europe in the early 1990s—similar to the continental Western Europe decades earlier—this market has embraced the contractual standards established by the Anglo-American M&A transactional framework, albeit with modifications adapted to the continental codified legal system. Consequently, many concepts traditionally utilized in Anglo-American M&A agreements, when viewed in terms of their function, are similarly applied to transactions within Central and Eastern Europe.

This study follows up on our previous analysis

Dealmaking in Central Europe published in 2022, i.e. shortly after the end of COVID-19 lock-down related disturbances on the markets. Shortly after publishing our 2022 work, our region faced the onset of another period of uncertainty and concern, caused by the Russian invasion of Ukraine.

After giving the markets three years to absorb this period of uncertainty, we decided to prepare a new edition for 2025. In this edition, we were more selective regarding the SPAs analyzed. We focused on major share-deal transactions representing 100% of target’s capital. The reason for narrowing our analysis is that in 100% share-deals the SPA terms and the allocation of risk between parties are not distorted by the seller remaining as a shareholder with a minority share post-closing or by the buyer having been a shareholder in the target prior to the deal. Consequently, we also eliminated MBO transactions from our analysis.

The Deloitte Legal network comprises over **2,500** legal professionals in more than **75** jurisdictions around the globe. In Central Europe, Deloitte Legal spans **25** offices within **14** jurisdictions with more than **300** legal professionals. This position has enabled us to collect sufficient data from SPAs across main Central European jurisdictions, in which our Central European practices have been involved from 2022 up to mid-2025.

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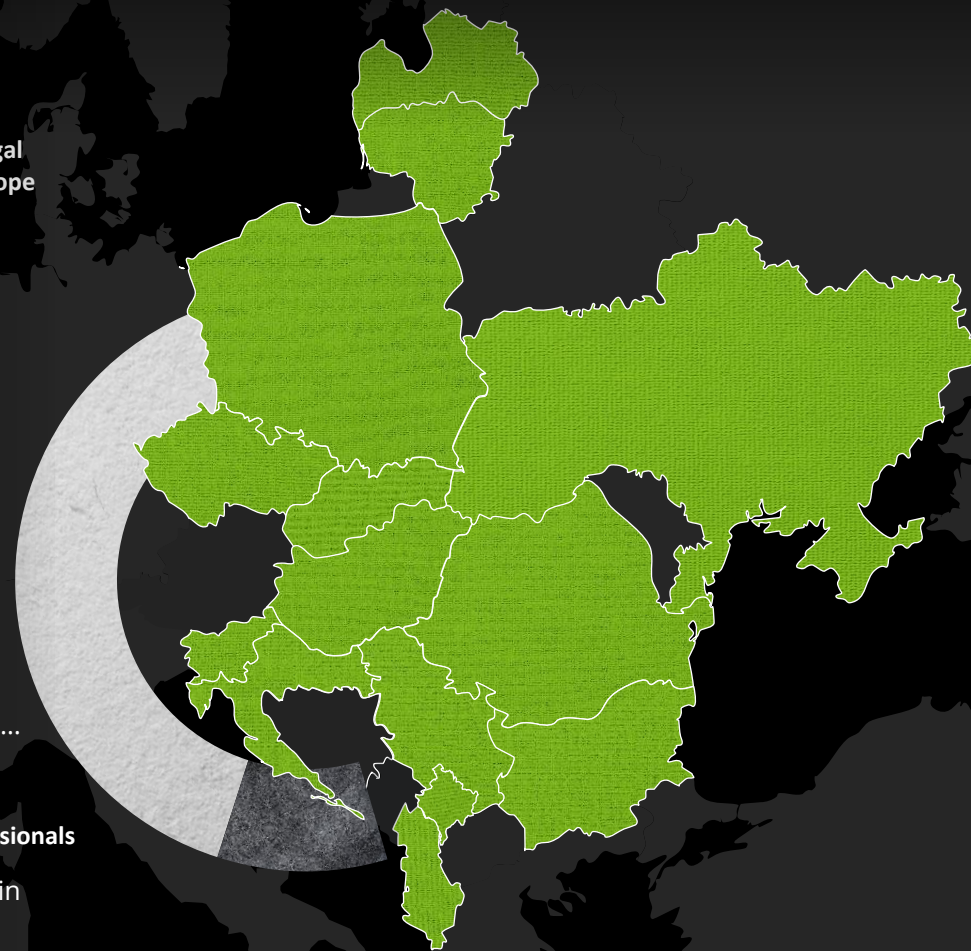
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Foreword

In many aspects, the usual SPA terms have shifted significantly since 2022.

Although we do not wish to overestimate the transactions we analyzed as definitive criteria for market standards, we believe this publication will be a valuable tool for negotiating SPA terms for both legal and non-legal professionals involved in the management of strategic or financial investors or sellers.

I express my gratitude to the editorial team, which includes over twenty lawyers and business professionals from our Central European legal practices, for their excellent collaboration on this study. I am confident that their contributions will serve as a valuable addition to the M&A expert community.



Petr Suchý

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Purchase Price Mechanism

Closing accounts or locked box?

In the M&A transactions analyzed in our study, the locked box purchase price mechanism was preferred (56%) over the closing accounts mechanism, reversing the trend observed in our study in 2022. A closer examination reveals significant variation in purchase price mechanism preferences among countries in the region. Smaller markets notably favor the locked box approach, likely due to the relatively smaller size of the deals, where the straightforward benefits of the locked box principle outweigh its potential drawback of discrepancies between the target company's value and the purchase price at closing.

56%

of the analyzed SPAs include the locked box purchase price mechanism

Closing Accounts

In M&A transactions, purchase prices are typically adjusted after closing based on any differences between financial parameters (usually net debt and working capital) identified during the buyer's due diligence, and those same financial parameters determined as of the closing date based on closing accounts (often referred to as "completion accounts" or special purpose transaction accounts). Such accounts are typically prepared according to specific policies agreed upon in the SPA, the target's past practice and the applicable accounting standards. The SPA usually also stipulates a mechanism involving independent experts to finally resolve potential disputes regarding the closing accounts, thereby avoiding a lengthy general dispute resolution process.

Purchase price adjustments serve as a kind of "true-up" of the target's value and protect the buyer from the value erosion of the target until the closing date. At the same time, they allow the seller to enjoy the economic benefit of the business until the closing.

Closing accounts are frequently employed when the buyer has less confidence in the financial statements, or the accounting policies and systems of the target.

They are also utilized when there is a significant gap between the last balance sheet date and the closing. Additionally, buyers often favor closing accounts if they anticipate a downturn in the target's business due to factors like seasonality, volatility, or market disruptions. ➔

Benefits of closing accounts:

- The economic risk and reward are transferred at closing.
- The "true-up" of the target valuation is based on a post-closing purchase price adjustment.

Downsides of closing accounts:

- Reduced price security due to the post-closing adjustment.
- Increased complexity and reduced time and cost efficiency as additional special purpose accounts are required.
- Risk of disputes regarding the closing accounts or of de facto renegotiation of the purchase price.



Purchase Price Mechanism

Locked Box

This is a popular purchase price mechanism for M&A transactions in Central Europe due to its simplicity and price certainty. Under the locked box mechanism, the purchase price is fixed and is typically based on the most recent financial results of the target (as of the so-called "locked box date"), which were subject to buyer's due diligence.

Locked box mechanisms typically include strict pre-completion covenants and indemnities of the seller protecting the buyer against any leakage of value to the seller (and its affiliates) in the period between the last balance sheet date and the date of closing, ensuring an ordinary course of business until closing. Typically, the SPA anti-leakage clauses prohibit profit or equity distributions, significant related-party transactions, investments and property disposals, waivers of receivables, third-party debt guarantees or collaterals, and other irregular transactions. A breach of anti-leakage clauses entitles the buyer to financial compensation for any losses incurred by the target.

While the locked box provides price certainty to the parties, buyers are likely to conduct more extensive due diligence, and to request more comprehensive seller's warranties to address the risks of a deterioration of the business between the locked box date and closing.

Our analysis indicates that the locked box is the preferred purchase price mechanism in Central Europe, particularly in smaller markets or for smaller-size deals.

Benefits of locked box:

- Offers simplicity, as well as time and cost efficiency, since there's no need for additional special-purpose accounts.
- Provides purchase price certainty, minimizing the risk of disputes or de facto renegotiations at closing.

Downsides of locked box:

- Economic risk and reward are transferred from the locked box date without a "true-up" of the target's value. Depending on the target's trajectory, this may benefit either the seller or the buyer in certain cases.
- Relies on historical accounts.
- Requires detailed discussions on no-leakage commitments, other pre-completion covenants, and more comprehensive seller warranties.



Purchase Price Security

The use of holdback, earn-out and escrow on the rise



HOLDBACK

A holdback is a portion of the purchase price that is withheld at closing. Through a holdback, the buyer seeks protection by “holding back” funds, which represent a portion of the purchase price at closing. The holdback amount is often placed in an escrow account managed by a third party. A holdback typically amounts to around 10% of the total deal value. This amount is retained for a specific period post-closing to address potential risks or obligations that may arise.

Buyers particularly demand significant holdbacks when the purchase price will be distributed post-closing to the seller's equity holders or when multiple selling shareholders are involved. In such cases, the buyers require

assurance that the purchase price proceeds are easily accessible to cover a claim, avoiding the need to pursue claims against multiple individuals who may have already further gifted or spent the proceeds.

A deferred payment element in an SPA postpones settlement of a part of the purchase price to an agreed date, or dates, post-closing (including consideration withheld in an escrow account) and is typically held for 6 to 24 months post-closing. Indemnity holdbacks are relatively common in deals. Our research indicates that **58% of the SPAs reviewed** incorporate this mechanism, representing a substantial increase compared to previous years and analyzed transactions.



Purchase Price Security

The use of holdback, earn-out and escrow on the rise



EARN-OUT

An earn-out is a mechanism that provides a contingent additional purchase price based on the company's post-closing performance. Typically, an earn-out is structured as one or more post-closing payments, payable if certain specified benchmarks are met within defined periods. Benchmarks may be based on financial metrics, such as revenue or EBITDA, or on achieving specific other performance milestones, such as the number of new customers or the completion of a core product. If the target company fails to meet the specified benchmark within the defined period, the buyer is relieved from making the contingent payments or pays a reduced amount of additional purchase price.

An earn-out element represents a contingent payment of a portion of the purchase price for the buyer, a trend particularly notable during the COVID-19 pandemic. It is useful in cases of negotiation deadlock and helps to bridge the gap between the seller's and buyer's price expectations. Our research indicates that **23% of the SPAs reviewed** incorporate this mechanism, reflecting a slight increase compared to our 2022 analysis.

Incorporating an earn-out into a deal structure may enable a seller and a buyer to reach an agreement that might otherwise be unattainable due to their fundamental disagreement over the company's value. Such disagreements often stem from uncertainties regarding the company's future prospects and the parties' differing levels of optimism. It is also an effective motivational tool for the seller to realize the potential future business value, especially if the seller retains their management board roles in the target post-closing.



Purchase Price Security

The use of holdback, earn-out and escrow on the rise



ESCROW

In M&A transactions, an escrow refers to a financial arrangement where a portion of the purchase price is held by a third-party on behalf of other parties that are in the process of completing a transaction.

Escrow accounts are managed by an escrow agent, typically a bank or another financial institution. The agent releases the assets or funds only after fulfilling predetermined contractual obligations or upon receiving appropriate instructions. Money, securities, funds, and other assets can all be held in escrow. Escrow can provide an added layer of security for different parties to transactions that involve large amounts of money. Escrow arrangements essentially offer mutual protection to the buyer and seller, minimizing the risk of counterparty non-completion.

Our research indicates that **43% of the SPAs reviewed** incorporate this mechanism, which also shows a slight

increase compared to the results of the 2022 analysis.



Representations and Warranties (R&W)



Function

Representations and warranties (R&W) in M&A transactions continue to play a central role in the allocation of risk between the involved parties. R&W provisions in M&A transactions typically include **materiality** and **knowledge qualifiers**, as well as defined survival periods. These elements function as mechanisms to distribute risk among the parties. Materiality qualifiers limit liability by narrowing the scope of what constitutes a breach, while knowledge qualifiers restrict claims to matters of which the seller had actual or constructive awareness.



Limited by Knowledge Qualifier (Seller's Knowledge)

The “knowledge qualifier” is a contractual limitation often embedded in the R&W section of SPAs to restrict the seller's liability. This qualifier ties the accuracy of certain statements to the seller's actual or constructive knowledge at the time of signing, thereby reducing exposure to unknown risks. By doing so, it shifts part of the due diligence burden onto the buyer, who must evaluate the extent and reliability of the seller's stated knowledge. While this clause helps protect sellers from unexpected risks, it can also weaken the guarantees for buyers and make the deal less certain. This type of limitation is widely adopted in the region, with our research indicating that **approximately 80% of the reviewed SPAs** incorporate a knowledge qualifier clause.



Limited by Disclosure through Disclosure Letter

The inclusion of a Disclosure Letter as a mechanism to limit the seller's liability under the representations and warranties is becoming increasingly popular across the region. Our research indicates that **65% of the reviewed SPAs** incorporate this mechanism, marking a significant increase compared to the 2022 analysis. The primary function of the Disclosure Letter is to shield the seller from future claims by formally communicating specific facts or risks related to the target company to the buyer prior to closing. By revealing these matters, the seller effectively neutralizes potential liability on the grounds that the buyer proceeds with full awareness.



Limited by Disclosure through (Virtual) Data Room

An increasingly adopted approach in M&A transactions is the use of virtual data rooms to limit the seller's liability under representations and warranties. By making relevant documents accessible in the data room, sellers effectively disclose key information, which may later serve as a defense against warranty claims. This practice shifts the burden of due diligence onto the buyer, who is deemed to have had the opportunity to review the disclosed materials. The use of (virtual) data rooms has become a widely accepted and increasingly common market practice. In fact, it now features in nearly every transaction. Based on our review, **87% of the examined SPAs** expressly provide that documents made available in the data room qualify as disclosures.



Limited by Disclosure through Public Registers

The use of public registers as a means to limit the seller's liability under representations and warranties is becoming an increasingly common feature in transactional practice. Our analysis shows that **70% of the reviewed SPAs** now include clauses that exclude liability for matters that are publicly available through official registers—a notable increase compared to previous years. This trend reflects a growing expectation that buyers, assisted by professional advisors, conduct due diligence not only through data rooms but also via publicly accessible sources, thereby reducing the seller's post-closing exposure.



Material Adverse Change (MAC)

MAC clauses generally grant the buyer the right to, in the event of a material adverse change ("MAC" for short), either withdraw under certain conditions from the already signed but not yet closed purchase agreement, or to establish corresponding guarantee claims.

The legal forms of MAC clauses can be very different. They are often negative, thus becoming subsequent closing conditions, the occurrence of which depend on the non-existence of a MAC event up to the time of closing. This closing condition is usually accompanied – as are any other closing conditions – by a right to withdraw from or rescind the agreement, allowing the purchaser to refrain from closing the transaction and to withdraw from the purchase agreement if not all the closing conditions have been fulfilled by a certain date (the long stop date).

A MAC clause may be designed as a guarantee given by the seller, which, in case of a MAC event occurring between the signing and closing, gives rise to a claim for the purchaser under the representations and warranties.

Our study shows that MAC clauses are used in **47%** of the analyzed M&A transactions in the Central European region. This represents a slight decline compared to our 2022 findings, in which the figure stood at 63%. Such a decrease may be attributed to increased market stability and investor confidence, which reduce the perceived need for such protective provisions.

For example, in Romania, MAC clauses are used in **67%** of the analyzed transactions. Interestingly, Romania is the only country in our study where the prevalence of MAC clauses has increased since the last edition of the study.

MAC Clauses at a Glance

47%

of the analyzed M&A transactions in the Central European region use MAC clauses.





Material Adverse Change (MAC)

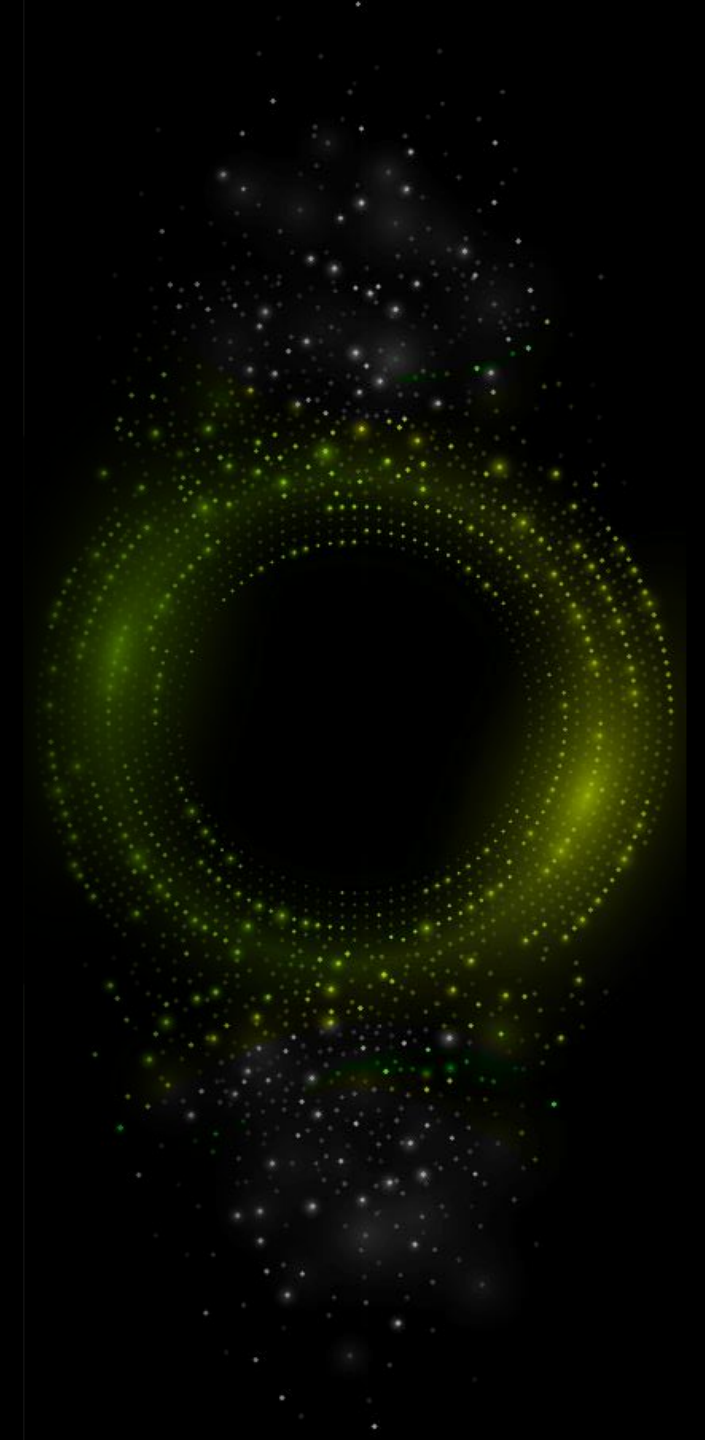
In Bulgaria, the trend of using MAC clauses aligns with the overall trend observed across Central Europe, with 50% of the analyzed transactions including such provisions. A similar pattern is evident in Slovakia. This consistency may indicate a balanced approach to risk allocation in these markets. It suggests that dealmakers in these markets are adopting a balanced approach to risk — the environment is neither too unstable to necessitate frequent use of MAC clauses, nor stable enough to do without them altogether.

Similar to Slovakia and Bulgaria, the analyzed transactions in Poland continue to show a relatively clear and consistent approach to using MAC clauses, with their application appearing in approximately **47%** of transactions. This steady usage suggests a balanced market perception of risk, where MAC clauses remain a common tool for addressing uncertainty in dealmaking. It may also reflect established legal practice within the Polish M&A market.

In the Czech Republic, where the largest number of M&A deals were analyzed, MAC clauses have been included only in **25%** of the SPAs, marking a significant decline from 52% in 2022. This drop may reflect a shift toward other contractual protections or evolving negotiation practices in the country.

Hungary remains a jurisdiction in which the majority of transactions included in the study have MAC clauses along with other unspecified contractual instruments. Notably, this pattern has remained unchanged since 2022. The same applies to Slovenia, whereby MAC clauses have also been used in **100%** of M&A transactions, again mirroring the 2022 results. In both countries, the use of MAC clauses appears to be a standard practice, often complemented by other contractual protections to reinforce deal certainty.

In contrast, Lithuania and Croatia reported no use of MAC clauses in the transactions analyzed. However, it is important to note that the number of Lithuanian and Croatian transactions included in the study was on the lower end, with fewer cases analyzed compared to other countries which may influence the representativeness of this finding.





Indemnities

Seller indemnities included more often

Once the purchase price has been agreed upon by the parties, the most heavily negotiated aspect of an M&A transaction typically concerns the liability associated with the sold business. The core of this negotiation lies in the parties' opposing interests: sellers seek to minimize their post-closing liability, while purchasers aim to secure the broadest possible protection against risks related the acquired company, both known and unknown.

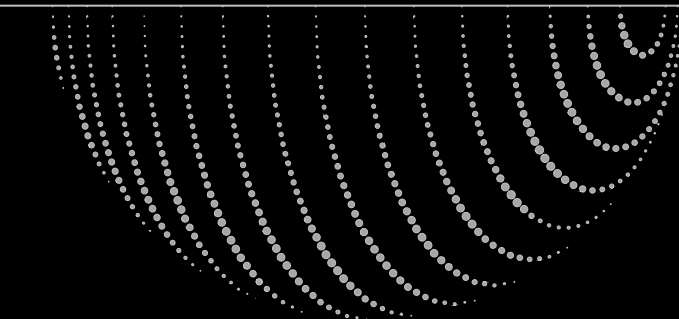
Unknown risks – those not revealed during due diligence – are generally covered by the seller's representations and warranties. Known risks, identified during due diligence, are typically addressed through specific indemnities, which obligate the seller to compensate the buyer for any future losses resulting from these identified issues. These indemnities are usually subject to agreed caps that limit the seller's financial exposure.

Sellers are naturally hesitant to accept indemnities, as they increase their post-closing liability. Buyers, however, are equally unwilling to bear the economic consequences of risks that relate to the period prior to their investment. This fundamental misalignment creates a recurring point of friction in deal negotiations.

Our 2025 study reveals that **90%** of examined SPAs included some form of seller indemnities granted to the buyer – a notable increase from 63% in 2022. This trend reflects a broader shift in market dynamics from seller-friendly to buyer-friendly deal terms.

In 2022, many of the deals closing at that time had been negotiated prior to the Russian invasion of Ukraine, during a period of robust M&A activity and strong seller leverage. Since then, however, the market has cooled significantly. Weaker global economic conditions, higher interest rates, and rising financing costs have dampened acquisition appetite. Consequently, sellers are facing a smaller pool of potential buyers, many of whom are more price-sensitive and cautious.

This change in market sentiment has shifted negotiating power toward buyers, who are now more frequently able to dictate protective contractual terms. The increased prevalence of indemnities in SPAs is a clear indicator of this trend, aligning with our broader observations of a more buyer-driven M&A landscape.





Warranty & Indemnity Insurance

More frequent use of W&I Insurance

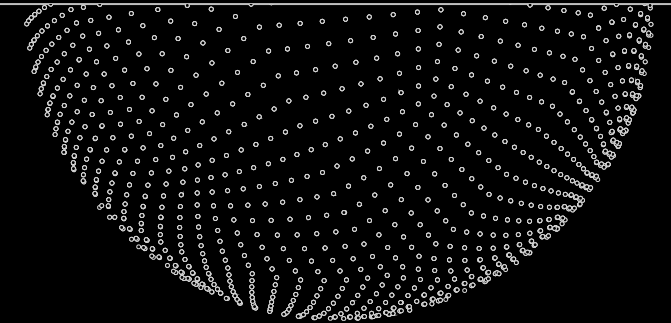
Warranty and Indemnity Insurance (W&I) has become an increasingly popular transactional tool in the Central and Eastern European region. It offers sellers a practical way to significantly reduce their liability in M&A transactions by transferring much of that risk to a third-party insurer. In deals where W&I insurance is implemented, buyers direct their claims under the representations and warranties (sometimes also under specific indemnities) to the insurer, rather than to the seller.

While W&I insurance does involve additional cost, the current market is highly competitive. Insurers are generally willing to offer attractive policy terms and pricing, making it a viable option for many transactions. The primary benefit for sellers – limiting their post-closing liability – is clear. However, buyers also see value in this arrangement. It often simplifies negotiations around liability, allowing the parties to expedite the process and shift focus to other key deal elements. Moreover, buyers may feel more secure knowing that their potential claims can be pursued against a reputable financial institution, rather than private individuals or smaller sellers.

Historically, Central and Eastern European (CEE) countries were slower to adopt W&I insurance compared to their Western European counterparts. However, in recent years, the region has caught up significantly. Today, W&I insurance is a well-established feature in many M&A transactions across CEE.

Our study confirms this upward trend. The proportion of transactions using W&I insurance rose from 12% in 2022 to **17%** in 2025. It's important to note that adoption rates are even higher in deals involving certain types of investors, such as private equity funds, where W&I insurance is often considered a best practice.

Looking ahead, we expect this trend to continue. W&I insurance is well on its way to becoming a commodity – and potentially a market standard – in M&A transactions across the Central and Eastern European region.





Limitation of Liability for Breach of R&W

Pragmatic concentration on substantial matters

De-minimis

A de-minimis clause is a crucial component in SPAs as it provides important protections and benefits to both parties involved in a share sale transaction. It provides legal certainty, allocates risk effectively, promotes efficiency, and protects both buyers and sellers from trivial disputes. Its importance lies in creating a more balanced and practical approach to managing potential breaches in complex share sale transactions.

In general, the de-minimis clause sets a threshold below which the seller will not be liable for breaches of warranty or other obligations. This protects sellers from being penalized for minor or insignificant issues. On the other side, it effectively prevents buyers from pursuing claims for trivial matters, which could otherwise lead to unnecessary disputes and litigation.

By establishing a clear threshold for claims, the de-minimis clause provides legal certainty to both parties. It creates a "safety zone" or "safe harbor" within which the parties can operate without fear of infringing upon the agreement. This certainty facilitates smoother transactions and reduces the risk of post-completion disputes.

The inclusion of a de-minimis clause helps in allocating risk between the buyer and the seller. It ensures that the seller is not held responsible for every minor discrepancy, while still protecting the

buyer's interests regarding more significant breaches. This balanced approach to risk allocation can facilitate negotiations and lead to more equitable agreements. It encourages both parties to focus on material issues rather than getting bogged down in minor details, resulting in more productive negotiations and a more efficient due diligence process. Knowing that minor issues will not lead to claims, sellers may be more inclined to disclose small discrepancies or potential issues during the due diligence process. This can lead to greater transparency and trust between the parties.

Our study shows that the parties to the SPAs in the Central and Eastern European region tend to agree on higher de-minimis thresholds compared to those observed in the study in 2022. Higher de-minimis thresholds generally favor sellers, as they provide greater protection against small claims. This means that sellers' interests are now more protected than they were three years ago. Consequently, with higher thresholds, buyers are assuming more risk for minor issues or discrepancies that fall below the increased de-minimis level. Higher thresholds might also indicate a growing preference for concentrating on more substantial matters in transactions, encouraging parties to overlook minor discrepancies that are unlikely to significantly impact the deal's value. The higher de-minimis thresholds provide sellers with greater security against minor claims, shifting more risk to buyers.



Limitation of Liability for Breach of R&W

Greater Protection for Sellers' Interests

Basket

Similar to de-minimis clause, basket clauses play a vital role in SPAs by providing a balanced approach to risk allocation. They promote efficiency in the transaction process and protect both buyers and sellers from the burden of multiple minor claims.

The basket clause establishes an aggregate threshold that must be exceeded before the seller becomes liable for any claims. This protects sellers from being burdened with multiple small claims that, while individually insignificant, could collectively become onerous. It effectively creates a buffer zone for minor issues, enabling the transaction to proceed smoothly without constant disputes over trivial matters.

In some cases, a basket clause can protect against unintended consequences resulting from multiple minor breaches. For example, it could prevent a series of small breaches from triggering a right to terminate an agreement, thereby avoiding disproportionate consequences for the parties involved.

With a threshold for claims in place, buyers are incentivized to conduct more thorough due diligence to identify potential issues that might collectively exceed the basket amount. This approach can lead to a more comprehensive understanding of the business being acquired.

By establishing a clear threshold for claims, basket clauses provide both parties with greater predictability regarding potential post-closing liabilities. This clarity is particularly valuable for sellers in managing their financial exposure and for buyers in assessing the overall risk of the transaction.

Basket clauses often work in conjunction with other protective clauses, such as de-minimis clauses and caps on liability. This interplay creates a comprehensive framework for managing potential claims and liabilities, providing a more holistic approach to risk management in the SPA. Our study reveals a significant increase in the number of cases where the parties to SPAs in Central and Eastern Europe have agreed on a basket clause exceeding 3% of the purchase price (increase from 8 to **22%** of all SPAs reviewed).

The increased basket thresholds offer sellers greater security against claims, thereby shifting more risk to buyers (as the sellers are less likely to face liability for smaller claims or a series of minor issues that collectively fall below the higher threshold). However, it's important to note that the overall balance of an agreement depends on many factors, and this single aspect doesn't necessarily mean that the entire agreement favors sellers. This trend underscores the importance of careful negotiation and due diligence for buyers, who may need to be more vigilant about potential issues that could fall below the higher thresholds.

For sellers, although this trend is generally favorable, it might lead to more intense scrutiny from buyers during the due diligence process as they seek to compensate for the higher thresholds.

Cap

In the M&A transactions concluded in the Central and Eastern European region, there is a tendency showing that the cap (the maximum amount to be claimed) of the fundamental and title R&W ratio to purchase price amounts to 100%. Our study shows that **93%** of the analyzed transactions have a ratio to purchase price that most commonly amounts to 100%. More rarely, it is not applicable or equals 50% or even less of the purchase price.

As for the ratio to purchase price of the cap of the other and ordinary R&W, the results are definitely diverse. The most common amounts (63%) are ranging from 21% to 40% of the purchase price. Also, 21% of transactions included a liability cap ranging from 11% to 20% of the purchase price. It should be mentioned that only 8% of the transactions are with a liability cap ranging from over 51% of the purchase price.

The cap of the tax R&W -ratio to purchase price is most commonly lower than that for the fundamental R&W.



Time Limit

Time limit to raise claims from breach of Fundamental, Ordinary and Tax R&W

In M&A transactions, it is a standard market practice for sellers to seek to limit their post-closing liability under the SPA. This is typically achieved by structuring R&W into distinct categories: (i) Fundamental R&W, which cover critical matters such as title to shares and ownership of core assets; (ii) Tax R&W, addressing potential tax exposures related to the target business; and (iii) Ordinary R&W, which relate to the general operations of the business. Sellers often impose temporal limitations on their liability for these R&W, aiming to balance the buyer's need for risk protection with the seller's interest in achieving a clean exit and avoiding long-term exposure to claims.

Our analysis indicates that such limitations of liability are agreed upon in most of the transactions reviewed, conclusion that is consistent with our last study performed in 2022.

While time limitations applicable to the buyer's right to raise claims from the breach of R&W are included in most of the deals in the

region where the study was performed, differences arise with respect to the specific period (starting from the closing date of the transaction) within which the buyer is entitled to notify a claim under the SPA.

Our study has revealed that in the region there is a degree of consistency as regards the time limits applicable to the categories of the R&W, as outlined below:

- Most deals (**71%**) imposed time limits between 1 and 5 years for Fundamental R&W, whereas only **29% exceeded the 5-year** threshold. Notably, no transaction imposed a time limit of less than 1 year, indicating that the minimum baseline for buyer protection is at least 1 year. The findings are generally consistent with our 2022 study.
- Consistent with our 2022 findings, the vast majority of transactions (**74%**) set time limits between 1 and 2 years for Ordinary R&W, confirming this range as the prevailing market standard. Only one transaction exceeded the 3-year time limit, underscoring the broader market view that such extended timelines are rare. This trend also reflects the statute of limitations in the relevant jurisdictions, which is typically a maximum three years, combined with sellers' natural reluctance to assume long-term liability for representations related to the day-to-day operations of the business.
- For the Tax R&W, the data shows a rather balanced split between shorter periods (less than 3 years) and longer periods (exceeding 3 years). Almost half of the transactions (**45%**) applied time limits of 3 years or less, while the rest extended liability to more than 3 years — including **30% in the 3 to 5-year range and 25% exceeding 5 years**. This split is consistent with our 2022 findings, reflecting a slight shift in favor of time limits exceeding 3 years compared to the previous study.



Non-Compete Clause

A growing emphasis on post-transaction protection

A non-compete obligation is a covenant that limits the seller (and its related parties) for a certain time period from:

- i. competing with the target company or the acquired business, and
- ii. soliciting customers and/or employees from the target company or the buyer.

Key aspects of each non-competition covenant are:

- protect the economic rationale of the acquisition (e.g., allowing the buyer enough time to take over and stabilize the business so that it can fully utilize the acquisition), and
- balance the time and geographical limits appropriate to the characteristics of the relevant transaction and the market.

In contrast to the findings in our 2022 analysis— where non-compete covenants appeared in **42%** of the M&A transactions analyzed — our 2025 study shows a significant market increase, with **72%** of deals including such provisions.

This substantial rise suggests a growing emphasis on post-transaction protection of business value, especially in transactions involving strategic assets, goodwill, or key individual involvement. Several factors may explain this trend: heightened competition in certain industries, a

rise in entrepreneur-driven deals where the risk of re-entry is higher, and an overall tightening of buyer-side risk management practices. Additionally, the increase may reflect greater awareness of enforceability parameters across Central and Eastern European jurisdictions, leading to more confident and consistent drafting of non-compete clauses in SPAs.

As in our 2022 study, non-compete covenants in the 2025 analysis are most commonly limited to periods of 2 or 3 years, confirming their continued role as the standard duration across M&A transactions in the region. However, our latest findings show a slight broadening of market practice, with some agreements including shorter 1-year restrictions, especially in transactions with lower competitive risk or more limited geographic scope. Longer durations of 4 to 5 years were observed in a small number of deals and continued to represent exceptions tied to highly specific deal structures, such as those involving sensitive intellectual property, founder retention risks, or niche market segments.

To that end, given the applicable anti-trust regulations and publicly available practices in Central and Eastern Europe, any non-compete covenants exceeding a 3-year period should be methodically analyzed and carefully drafted. Our 2025 study confirms that such extended periods appear only in a minority of transactions, typically those involving unique commercial justifications.

When drafting non-compete covenants, parties should sufficiently restrict competitive business activities to those of the target. In particular, it should be assessed whether the restricted business activities are properly defined by listing the relevant product markets and whether the non-compete covenant covers the whole territory of the target's (core) business. Overly broad or imprecise non-compete provisions risk not only unenforceability but also scrutiny under competition law regimes, especially in jurisdictions where buyer protections must be balanced against market fairness and employee mobility concerns.



Governing Law

Many M&A transactions involve significant international elements. This may occur when the parties are not all situated in the same jurisdiction, and the target company is in a different location than the buyer or the seller. It also arises when the governing law of the SPA differs from the jurisdiction of any of the parties involved. Such scenarios necessitate that the governing law clause in the SPA is drafted clearly to ensure the governing law is easily ascertainable, leaving no room for doubt among the parties or the courts.

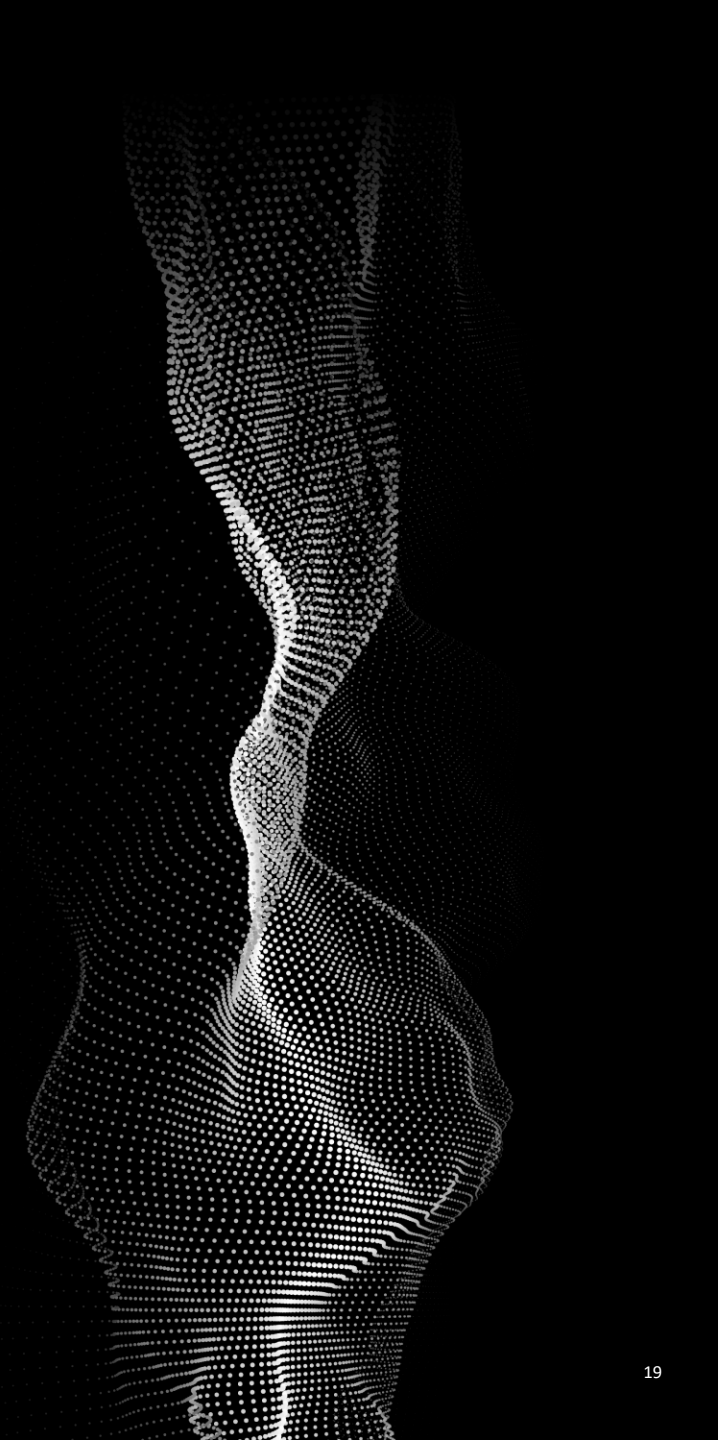
A governing law clause specifies which law will govern the SPA, covering not only the interpretation of its clauses but also its validity, effects, and termination. It should also dictate the parties' non-contractual rights. Generally, parties can select the governing law of their choice in the SPA, and this choice is usually respected by the courts where the dispute is adjudicated. Based on our experience, clients seek advice to ensure the chosen governing law clause will function effectively in the event of a dispute.

Although it is not a strict rule, we see it as a good practice to align the governing law with the jurisdiction of the general courts chosen by the

parties. It is important to note that general courts are expected to apply the law chosen by the parties. However, selecting a foreign law (different from the law of the country where the dispute is being resolved) may extend the duration of the dispute, often lasting months or years due to the complexity of the case. This situation arises because the general court must familiarize itself with a foreign law that is not commonplace in the respective jurisdiction.

Most SPAs in our study (87%) were governed by the local laws where the target or one of the parties is located. Generally, the parties opt for the target's local law, ensuring no provision of the target's local law contradicts the SPA. Occasionally, parties select the governing law of a country where one party has substantial activities and business connections, rather than the jurisdiction where the target is situated. In cases where all parties and the target are from different jurisdictions, they sometimes select English law.

Irrespective of the governing law chosen by the parties, it is crucial to ensure that no provision of the SPA contradicts the mandatory provisions of the chosen law. It is also essential that when the SPA is drafted in a language different from the official language of its governing law country, typically in English, the terms and concepts used in the SPA are aligned with their local language through a corresponding SPA interpretation clause.





Dispute Resolution Mechanisms

Arbitration as the new dispute resolution mechanism of choice

When negotiating M&A transaction documents, the parties often include specific provisions to address how potential controversies should be resolved. One of the key decisions in this context is the choice of dispute resolution mechanism – whether to resolve disagreements before regular state courts (in which case the courts of a particular jurisdiction are typically selected) or through arbitration (which may be domestic or international, and either ad hoc or institutional).

Although seemingly procedural, this choice plays a central role in shaping the post-signing risk landscape. It directly influences the neutrality and expertise of the forum, the applicable procedural rules, the duration and confidentiality of proceedings, the enforceability of decisions, and ultimately, the efficiency with which disputes are handled.

Arbitration is often perceived as offering greater certainty, sophistication, and confidentiality – especially in cross-border transactions or in deals involving states or state-owned entities. It allows the parties to select arbitrators with relevant expertise, apply a neutral procedural law, and avoid perceived impartiality issues, unpredictability or delays of certain court systems. However, these

benefits come with higher costs and a level of procedural complexity, which may not be justified in smaller or domestic transactions, where litigation before familiar courts can be both more straightforward and cost-effective.

Our 2025 study indicates a notable shift in how these trade-offs are assessed. In **62%** of the reviewed SPAs the parties opted for arbitration clauses, while only 38% designated common courts as the forum for dispute resolution. This marks a reversal from our 2022 findings, where a slight majority (52%) preferred state courts. The change suggests growing confidence in arbitration across the Central European M&A landscape, likely driven by the increasing sophistication of deal parties and their desire for greater procedural control.

Supporting this trend, Deloitte Legal's global report New Roads to Dispute Resolution (2023) identified arbitration as the most preferred formal dispute resolution method among corporate respondents worldwide, with a particular preference for domestic arbitration over international forums. The top three factors influencing this choice were ease of case management, enforceability of decisions, and familiarity with the process. The same report also revealed that the majority of companies had experienced both an increase in the volume (64%) and the complexity (55%) of disputes since 2020. Against this backdrop, the predictability and perceived efficiency of arbitration have become increasingly attractive.

Dispute Resolution Mechanisms at a Glance

62%

of the reviewed SPA agreements included arbitration clauses





Dispute Resolution Mechanisms

Arbitration as the new dispute resolution mechanism of choice

This shift is further corroborated by the latest statistics from leading international arbitration institutions. Both the International Chamber of Commerce (ICC) in Paris¹ and the Vienna International Arbitral Centre (VIAC)² have reported consistently high volumes of arbitration proceedings in recent years. Meanwhile, the London Court of International Arbitration (LCIA)³ registered a 13% year-on-year increase in new referrals in its most recent report. Notably, 18% of the LCIA's caseload involved shareholder, joint venture, or partnership disputes—issues frequently arising in the M&A context. Another notable development is the rising number of arbitration proceedings involving states or state-owned

entities: in 2024, 45 states and 143 state-owned entities were parties to ICC cases, accounting for 19% of new filings.

While state courts remain the preferred option in certain contexts—particularly for purely domestic deals or where parties are more comfortable with local judicial systems—the broader trend in Central European M&A is clear: arbitration is becoming the dispute resolution mechanism of choice. As transactions become more complex and international in nature, dealmakers increasingly favor arbitral mechanisms for their neutrality, control, and efficiency.

Looking ahead, we expect arbitration clauses to continue gaining ground, particularly in cross-border transactions or those involving strategic or institutional investors. Much like other evolving features of SPA drafting, the dispute resolution clause is no longer a boilerplate provision—it is a deliberate, strategic choice that reflects the parties' priorities, expectations, and appetite for managing legal risk.



¹<https://iccwbo.org/news-publications/news/unveiled-2024-icc-arbitration-and-adr-preliminary-statistics/>

²<https://www.viac.eu/wp-content/uploads/2025/01/2024-Statistics-for-Web-2.pdf>

³<https://www.lcia.org/media/download.aspx?MediaId=1032>



Regulatory Approvals

Merger Control and Foreign Direct Investment (FDI) Screening

In cross-border M&A transactions, early-stage analysis of regulatory clearance requirements is essential to avoid delays and mitigate deal uncertainty. Two main categories of approvals are particularly relevant: (i) merger control approvals, and (ii) foreign direct investment (FDI) screening, each governed by distinct legal frameworks across the region if required at national level.

Merger Control Notifications

Merger control regimes generally apply when certain turnover thresholds or market share criteria are met. These thresholds vary across jurisdictions and may be triggered even in the absence of a market presence or assets within a country, when the buyer and/or the target has/have local revenues. Therefore, a timely jurisdictional assessment is critical.

Importantly, clearance by national competition authorities can take several weeks to months, depending on whether the transaction raises substantive concerns. While Phase I reviews may be completed within 5-7 weeks in many jurisdictions. However, Phase II, which is triggered in more complex or sensitive cases, can significantly extend the process.

Delays in obtaining merger control clearance can materially affect the transaction timeline and closing schedule, particularly in deals involving multiple jurisdictions.

Moreover, **substantive concerns** raised by competition authorities—such as risks of dominance—may result in structural remedies (e.g., divestments) being required as a condition for approval. These remedies can materially alter the deal economics and should therefore be anticipated as early as possible during negotiations and transaction structuring.

Some transactions might fall under the jurisdiction of the European Commission due to significant impact across European Union and turnover thresholds. In such a case, the concentration having a community dimension would be notified directly to the European Commission and a specific procedural framework would apply.

FDI Screening Regimes

Several Central European countries have introduced or strengthened FDI screening mechanisms in recent years, largely influenced by the EU Regulation 2019/452 in the context of geopolitical developments. These regimes typically apply to acquisitions of control or other types of influence over local businesses by non-EU investors, in sectors deemed sensitive by local governments. In certain jurisdictions (e.g., Romania) even intra-EU transactions may be affected.

National authorities vary in their interpretation and application of the FDI Screening Regulation. Some Member States **systematically notify** every transaction involving non-EU investors, while others do so **selectively**, depending on the sector or risk profile. Similarly, **procedural timelines differ significantly across jurisdictions**. In general, FDI screening proceedings may last **several months** and often follow a **two-phase structure**: an initial review followed by a more detailed assessment, if required. Many regimes include **stop-the-clock mechanisms**, such as suspensions triggered by information requests or negotiations over mitigation commitments. The other big impact of the Screening Regulation is the **coordination mechanism** that it created. Through this, Member States reviewing a foreign investment at the national level will notify certain transactions, thereby alerting all other Member States, and the EC, of the deal.



Regulatory Approvals

Merger Control and Foreign Direct Investment (FDI) Screening



As a result,

of the FDI Screening Regulation and its implementation across Member States, **FDI clearance has become an increasingly common condition precedent** in SPAs. Parties to cross-border deals now routinely incorporate express provisions conditioning completion of the transaction on the successful completion of the applicable FDI screening process. This trend reflects not only heightened regulatory awareness but also the practical need to manage deal risk and avoid execution uncertainty. In jurisdictions with active FDI regimes, failure to secure prior clearance may result in administrative fines, unwinding of the transaction, or reputational consequences, further reinforcing the necessity of incorporating FDI approval into the contractual structure of M&A transactions.

Given the potential impact on the transaction structure and timeline, merger control and FDI considerations should be addressed early in the deal process. Parties should allocate sufficient time for engagement with specialized competition law counsels in each applicable jurisdiction. Where remedies or risks of prohibition may arise, these should be reflected in conditionality clauses, break fee mechanisms, or renegotiation triggers under the SPA.





The Role of AI in M&A Transactions

In recent years, the use of **generative AI-powered tools** has grown significantly across various legal services, including in **M&A transactions**. AI is rapidly reshaping the deal-making landscape by enhancing **speed, efficiency, and risk detection** throughout the transaction lifecycle. In an era of constant technological advancement, the integration of tailored AI solutions has become essential to improve **accuracy, agility, and insight** at every stage of the deal process.

The value of these tools is especially evident in the **automation of traditionally time-intensive tasks**—such as translating large volumes of documentation, drafting and reviewing contracts, identifying and extracting key clauses (e.g. change of control, non-compete, liability caps), and flagging legal risks during due diligence.

Larger markets benefit significantly from AI adoption due to the sheer volume and complexity of documentation involved, while in **smaller markets**, adoption remains more limited, reflecting lower data volumes and simpler deal structures.

Although AI remains in a **developmental phase**, its capabilities are evolving rapidly and are increasingly being explored within legal practice, including in the drafting and review of **SPAs**. As the technology matures, the role of AI in **legal due diligence, risk assessment**, and **document automation** is expected to expand substantially. In the near future, **AI tools are likely to become a standard component of transactional legal work**, driving greater consistency, speed, and cost-efficiency across M&A transactions.



End-to-end M&A Services Built Around Your Needs

Deloitte Legal blends legal advisory and transaction support for clients, both domestically and cross-border

Through a winning combination of traditional lawyering, multi-disciplinary skills, process innovation, advanced technology and global footprint, Deloitte Legal is the one-stop-shop for complex, cross-border deals.

We advise corporates and private equity funds in their most critical legal needs across the full spectrum of M&A transactions.

Our End-to-End M&A services include:

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- **Due Diligence**, including VDR management services
- **M&A contracts drafting and negotiation**, including share purchase agreements, business purchase agreements, merger agreements, private equity agreements, shareholders' agreements, investment agreements, joint-venture agreements, project agreements, W&I insurance policies
- **Government clearances**, including Anti-trust filing/merger control clearance, golden power clearances
- **Acquisition financing**, including financing agreements, bond issuance and security packages
- **Signing and closing assistance**



Leveraging our cross functional expertise

We align with our tax and finance colleagues to cover risks from all angles. We review the transaction with an investment case focus and provide end-to-end guidance.

Our key M&A products

Due Diligence Accelerator

We provide a more efficient approach to legal due diligence, since it is delivered through tech enabled platforms and combines process automation, machine learning and scaled human review, all within a digital project ecosystem. Outputs can be used to support clients throughout the lifecycle of the deal and beyond into PMI.



Industrialized M&A

We provide a full legal package across the M&A lifecycle – with a focus on delivering business value pre, during and post transaction, on a repeatable basis. It is made of three modules, that can be activated separately or in sync with each other: M&A Lifecycle transformation, M&A processes and documents standardization, a framework for repeatable M&A.



Post Merger Integration / Exit Readiness

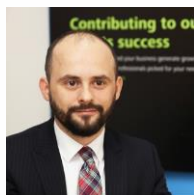
We work hands-on with clients to help them achieve the vision they have for their transactions.





Get in Touch

We are here to help. Contact us to arrange a meeting to discuss your organization's needs, respond to an RFP, or answer any other questions.



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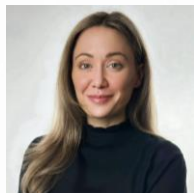
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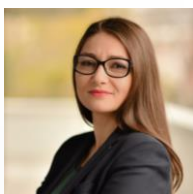
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About Deloitte

In this study, we have gathered information from 60+ M&A deals with which Deloitte Legal has been involved with from 2022 up to mid-2025. When gathering the information, we have relied on final drafts and, where not available, on advanced drafts of the relevant SPA. In order to compile this study, we needed to generalize certain legal elements of the available draft SPA. Although such generalization is possible to a certain degree, each of the deals had its specific features which cannot be fully reflected in this study. The figures and percentages in this study have been rounded. As a result, there may be rounding differences within and between charts. We focused on major share-deal transactions representing 100% of the target's capital. The reason for narrowing our analysis is that in 100% share-deals the SPA terms and the allocation of risk between parties are not distorted by the seller remaining as a shareholder with a minority share post-closing or by the buyer having been a shareholder in the target prior to the deal.

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