

M&A TRENDS REPORT

2019



Contents

02

INTRODUCTION

04

SECTOR
ACTIVITY

08

PUBLIC M&A
PERSPECTIVE

10

CROSS-
BORDER M&A

11

DEVELOPMENTS
IN W&I
INSURANCE

12

A HARDENING
IN DEAL
TERMS?

14

WHAT COULD
POSSIBLY GO
WRONG?

14

EARN OUTS

15

REGULATORY
RISKS

15

IT TRANSITION
RISKS

16

ABOUT US –
A SELECTION OF M&A
TRANSACTIONS

18

M&A TRENDS
DATA SET

Introduction

We are delighted to present our M&A Trends 2019 report, looking back at some of the key themes we saw in 2018 based on analysis of over 120 M&A transactions that we had the pleasure of advising clients on, and looking ahead to the developments we might expect to see over the coming months.

Despite the backdrop of market and political uncertainty across the globe, M&A activity held up incredibly well throughout 2018. This activity was fuelled by a combination of drivers. Numerous deals saw fiercely competitive processes as corporates and financial investors sitting on the spoils of recent, record high fundraising rounds battled it out for the most attractive assets, empowering sellers to capitalise on their strong hand and achieve favourable deal terms.

Equally striking has been the way M&A has engaged with the very significant, rapid and fundamental changes that are taking place in many sectors, particularly those engaging directly with consumers and those driven by technology. This environment has resulted in corporate failure and distressed deals but has also created one-off opportunities for buyers who were able to act quickly to acquire assets, brands and businesses, and with them market share, scale, geographical reach and diversification. As well as presenting acquisition opportunities, these challenges have also acted as a spur to innovation, with new product classes developed and categories previously seen as niche coming to mainstream prominence.

In the following pages, we identify some of the more notable features of M&A deals in 2018 and explore the reasons for the trends we have seen. We consider what changes might be on the horizon for M&A in the next 12 months, and highlight some of the common areas where problems can arise if issues are not adequately considered and prepared for as part of the M&A process, to help businesses deliver on the strategic objectives of their acquisitions or disposals.

About Addleshaw Goddard

Ranked Tier 1

for mid-market private equity Legal 500

Ranked Tier 1

Ranked Tier 1 for M&A (£50m-£250m) Legal 500

Their subject matter expertise combined with their practicality makes them exceptionally valuable advisers.

SECTORS AND SERVICE LINES



Retail & Consumer



Real Estate



Energy & Utilities



Financial Services



Corporate & Commercial



Litigation



Industrials



Transport



Digital



Health



Finance & Projects



Real Estate

Sector activity



Retail & Consumer:

Seismic change continues to define the sector and unsurprisingly restructuring transactions were the predominant feature of 2018: CVAs, store closures and administration processes are all a reflection of fast-changing consumer behaviours, numerous challenges to the bricks and mortar model and retailers that have simply not kept up.

This trend of course also represented growth and consolidation opportunities for other businesses, with Bestway able to make a fast step-change through its acquisition of Bargain Booze following the Conviviality break up, Sports Direct expanding its portfolio with the acquisitions of House of Fraser and Evans Cycles and, into early 2019, Sunrise Records acquiring HMV.

The Sainsbury's-Asda merger may have been blocked on competition grounds, but the proposed deal reflected the need, and the appetite, for significant reinvention and change in the grocery sector (with 2019 bringing the Ocado-M&S JV).

That change in the grocery landscape is also one of the drivers in reshaping the food and FMCG world: 'branded or bigger' is a prominent theme across food manufacturers, in large part seeking to reflect supermarket scale and desire for supplier synergies and also an element of Brexit-driven 'Made in Britain' (e.g. Samworth Brothers' acquisition of the 2 Sisters sandwich business, Cranswick investing heavily on a new continental meats factory in Manchester and William Jackson investing in a new bakery).

Incubating brands innovation is an even more widespread theme than last year, with FMCG businesses looking for new, fast-growth products that appeal to Millennials, have strong social media engagement, use new multichannel and subscription models and often that attract a premium margin. There are signs that the incubation model is now moving into a new phase, as successful starter brands are moved into mainstream portfolios (e.g. Diageo/Belsazar). Innovation investment is also driving growth in new segments, e.g. premium non-alcoholic drinks, clean energy bars and drinks, with M&A pricing reflecting the significant growth potential, rather than established profitability.

'Branded or bigger' is a prominent theme across food manufacturers, in large part seeking to reflect supermarket scale and desire for supplier synergies.

Radical times have also driven radical thinking and reassessment, such as Terra Firma's evaluation of the Wyevale Garden Centres business, unlocking value through individual site sales, sometimes for redevelopment, sometimes to build smaller garden centre portfolios (for example with a more regional concentration or with a greater emphasis on leisure).



Key healthcare trends:

<i>further consolidation and increasing presence of the corporates</i>	<i>high profile mergers (including Medic X and PHP)</i>	<i>smaller regional operators looking to expand</i>	<i>challenger banks and alternative sources of funding providing new opportunities</i>	<i>rise of assisted living versus traditional residential care</i>
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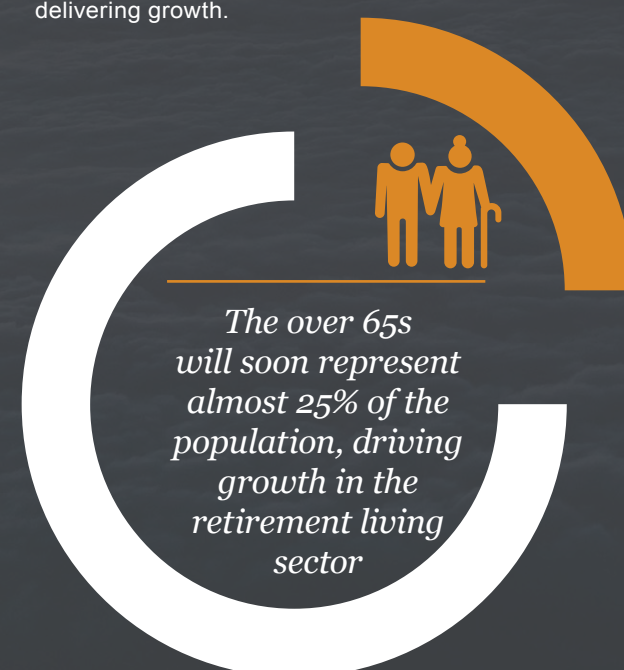
Healthcare

- Despite challenges within the healthcare and life sciences industry, including funding pressures and increasing demand on services, opportunities are plentiful as the market changes. Digital healthcare technologies are having positive and disruptive effects, whilst increasing interaction between the public and private sectors and the growth of the retirement villages market has continued due in part to these market challenges.
- As the UK continues to experience high levels of population growth, and UK residents are living longer and healthier, the over 65s will soon represent almost 25% of the population. Accordingly, the retirement living sector represents a clear opportunity for investment as it continues to grow. Notable trends in this sub-sector include the rise of assisted living versus traditional residential care and increased adoption of digital technology for back office functions and day to day activities such as service user care plans.
- We saw increased M&A activity in the sector throughout 2018, driven in part by incumbents putting into practice consolidation strategies to bring in smaller local providers into their portfolio, and equally some players looking to exit or reduce their presence in sub-sectors and undertaking a series of disposals.



Health & Beauty

- At the boundary between the health and retail and consumer sectors, 2018 saw a number of deals involving health and beauty brands. Such brands and retailers have not been immune from the wider pressures on the high street, with personalisation and the brand voice being notable features of those companies rising above these pressures and delivering growth.



As technology plays an ever more significant role in transforming the energy sector, M&A and investment activity around energy tech, such as battery storage and the related supply chain, continues to grow.



Energy

- There have been large transactions in the utilities sector, most notably the asset swap between RWE and EoN announced in March 2018, which involves generation assets (including the renewables assets) of the two groups being consolidated within RWE with the networks and retail businesses being consolidated within EoN. There are likely to be further deals of this nature, which will result in a structural shift in the utilities sector away from vertical integration and the creation of stand-alone retail businesses focused on customer solutions.
- Activity in upstream oil & gas remained steady but not spectacular. Activity in the North Sea slowed to some extent from 2017, although the trend continues of the majors selling mature assets to smaller players, including PE backed players, and the recent successful hostile bid by DNO for Faroe is also notable. There also continues to be steady alignment of downstream and midstream assets such as storage terminals and pipelines as companies look to optimise logistical efficiencies in their downstream business. With the improvement in oil prices, M&A and investment activity in oil & gas Africa is also showing nascent signs of revival.
- The oil majors, particularly those headquartered in Europe, have maintained their focus on investing in low carbon assets both in power generation and alternative transport fuels, such as BP's acquisition of electric vehicle charging business Chargemaster.
- As technology plays an ever more significant role in transforming the energy sector, M&A and investment activity around energy tech, such as battery storage and the related supply chain, continues to grow.



Financial Services

- Two prominent features of FS activity in 2018 were the rapid growth of fintech and continued consolidation, particularly of asset and wealth management businesses. New entrants to the fintech market increase competition whilst increasing the scope for established operators in the sector, including the traditional banks, to expand their fintech presence through M&A. Banks are supporting fintech growth in light of customer demand, through a combination of in-house development, incubator programmes and acquisitions. The payments sector has seen the most activity, with buyers attracted by the opportunities that fintech provides in enabling consumers to transact more efficiently, and with PayPal's acquisition of iZettle being a notable deal in this sector. In the asset management space, increasing regulatory requirements support consolidation, with notable transactions including Rathbones' acquisition of Speirs & Jeffrey. 2018 was also a particularly active year for M&A in the insurance sub-sector, with both private equity investors and corporates fuelling activity levels throughout the year.



Industrial

- Activity in the Industrials sector fell slightly in 2018 compared to the previous year, as a result of a significant reduction in deal volumes in H2. A key trend in the sector was the disposal by large conglomerates of non-core assets or business divisions, an approach adopted by Akzo Nobel, ThyssenKrupp and GE amongst others. This trend is fuelled by the drive towards digitization within the sector as manufacturers look to invest in new technologies to improve efficiencies and functionality. Cross-border activity remains a feature within the sector, somewhat surprisingly given the wider macro-economic climate and the backdrop of trade wars between the US and China and protectionist policies, although the continued strength of the dollar against sterling is a catalyst for a number of these cross-border deals.

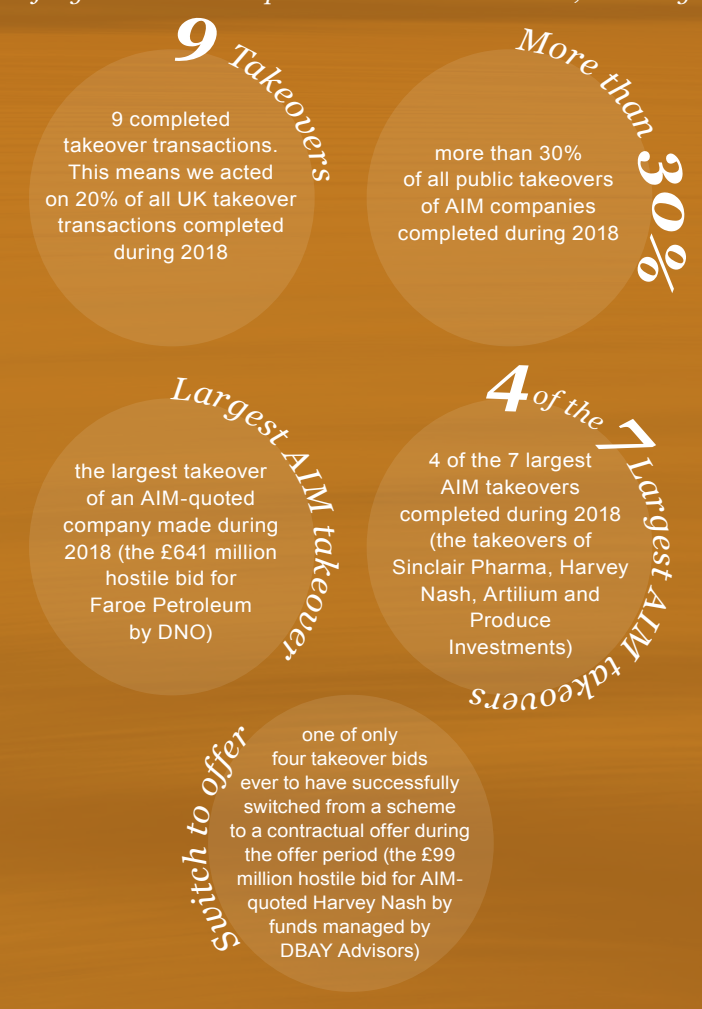
The public M&A perspective

Public M&A activity in 2018 remained broadly consistent, with 45 completed bids, compared to 43 in the previous year. The average deal size was larger, with 16 bids having a value in excess of £1bn (compared to 12 the previous year). TMT and Financial Services were the most popular sectors, accounting for approximately half of these bids.

The trend for all-cash deals is indicative of a decline in UK-based offerors who in recent years have generally preferred to carry out all-share M&A in the search for synergies rather than pay knockout cash premia. As a consequence in 2018, over three-quarters of all bidders were domiciled overseas, and approximately 40% were based in the USA, taking advantage of a strong dollar. We see the trend for US-led private equity interest in public M&A continuing, but there are some signs of UK sponsor activity increasing in 2019. While the larger deals attract the headlines, we anticipate continued deal flow in the mid-market – where comparatively lower liquidity among potential target companies means share prices are less susceptible to Brexit-related exchange rate movements.

Offerors use schemes of arrangement as the structure of choice for implementing takeover offers, being used in 76% of all deals in 2018. Two offers in 2018 switched from a scheme to an offer in light of competition or opposition to the initial bid. 'Switching' has been relatively uncommon to date but such a high proportion of offers now being carried out by scheme, together with a rise in shareholder activism, suggests that more offerors may well switch in the future to counter opposition to a bid. The Panel will allow a switch, provided the revised deal is no less deliverable, but it will be keen to ensure the offeree company does not remain under siege for longer than is necessary.

During 2018, the Addleshaw Goddard team acted on a host of high value and complex takeovers transactions, including:



30%

of bids with a private equity element



16

bids having a value in excess of £1bn



76%

of offers entirely in cash



76%

of takeovers implemented by way of scheme



3/4

of bidders domiciled overseas



93%

of offers contained a cash element

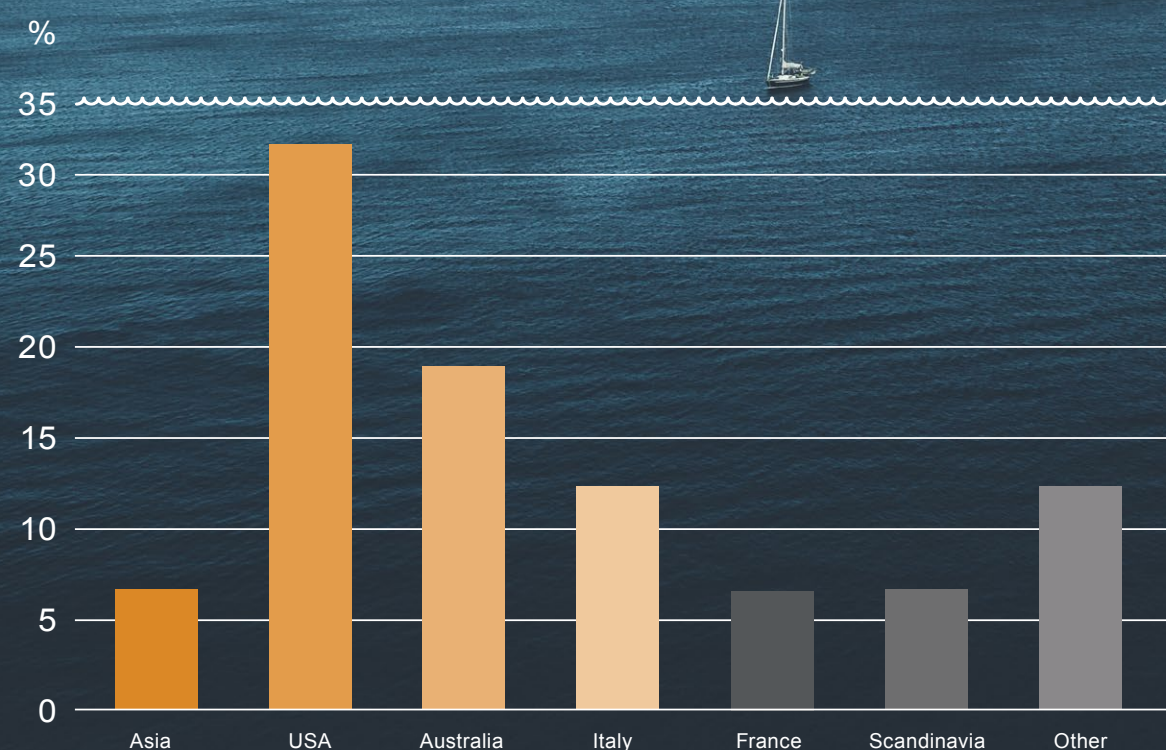


30% of all bids had a private equity element, and this bolstered the number of offers which were entirely in cash (76%) – and 93% of all bids contained an element of cash, as all-share deals became less popular than they have been in recent years.

Cross-border M&A

As we anticipated in last year's report, 2018 saw a slight decrease in the percentage of cross border deals in our sample. Recent years have seen a significant number of transactions involving buyers from outside of the UK, notably China. Chinese investment in the transport and utilities sectors, previously leading sectors for such investment, reduced in 2018 as the sector spread of Chinese investment into the UK and across Europe became much more balanced. The adoption of protectionist policies by a number of countries, including the Chinese government imposing restrictions on outbound investment in certain sectors, plus the escalating trade war between China and the U.S. and, of course, Brexit uncertainty has led to conditions that are far from ideal for cross-border transactions.

JURISDICTION OF OVERSEAS INVESTORS INTO THE UK



Developments in W&I Insurance

We continue to see W&I insurance being used on a range of deals for a number of reasons, although there is some evidence that buyers are pushing back on, or at least limiting, its use to ensure that sellers/management teams have some meaningful level of risk under the warranties being given on a sale process.

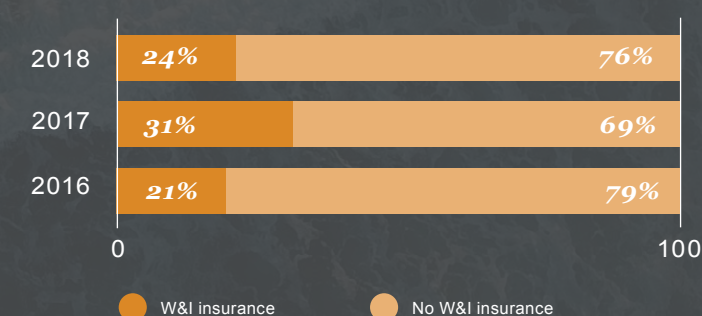
2018 also saw a few instances of buyers pushing for the sellers to "go back on the hook" for any breach of warranty in respect of which cover was excluded under the W&I insurance policy. Whilst this has a certain attraction for buyers as it allows them to attempt to plug the gaps in the policy, it can cause confusion and therefore lead to disputes between buyers, sellers and underwriters as to who bears the risk of a particular loss, together with delays and additional complexity as buyers need to negotiate two sets of liability limitations. If such an approach is adopted, care needs to be taken to make clear what the "excluded risks" are for which the sellers are providing meaningful warranty cover.

There is still demand in the underwriting market to place policies and an increasing level of flexibility is being offered around pricing, with some underwriters even willing to provide cover with no retention at all.

There has been a pronounced move towards the use of US style policies. A standard UK market policy will, in addition to the specific exclusions, exclude anything which is 'known' – meaning that there is a risk upon a claim being made that there will be disagreement as to whether the matter being claimed for was known or not. Under a US style policy only specific matters are excluded, and commonly due diligence reports and the contents of the data room are not generally disclosed. Whilst there is an additional cost to a US style policy, it can offer a practical solution where certainty, as opposed to just additional financial cover, is important to the insured – but deal teams will still need to sign no claims declarations, so anything that they are aware of having read through the reports will still prevent a claim.

Around 13% of policies see a claim notification, typically in the first 6 months following completion and notifications are most commonly made in respect of alleged breaches of the financial statements, material contracts or compliance with laws warranties.

DEALS INVOLVING W&I INSURANCE: ALL DEALS



Around
13%
of policies see a claim notification, typically in the first
6 months
following completion

A hardening in deal terms?

Whilst 2018 remained, on the whole, a seller's market, there were signs that the balance was shifting a little with buyers starting to take more robust positions on deal terms – e.g. asking for higher liability caps, more extensive indemnity cover and a notable increase in deals featuring earn-outs, with buyers looking to make some of the purchase price linked to post-completion performance of the acquired business.

- For the most attractive assets there remains healthy competition, particularly those assets that are suited to private equity investment. PE funds are sitting on near-record high levels of capital that needs to be deployed, meaning investors are still willing to transact on seller-friendly terms – including being prepared to exchange without W&I insurance place on the basis of a NBI report suggesting cover should be available and then putting cover in place in a short period following the deal, as well as funding the acquisition with their own bridging facility before looking to refinance post completion.
- The level of competition for prized assets is also reflected in the liability caps seen, particularly on deals involving private equity investors (whether as buyers or sellers). More than half of all deals involving a private equity investor involved a liability cap of less than 25% of the total purchase price. In contrast, 46% of deals that did not involve a private equity investor had a liability cap equal to the total purchase price.

More than half of all P.E. deals had a liability cap of

<25%
of the purchase price

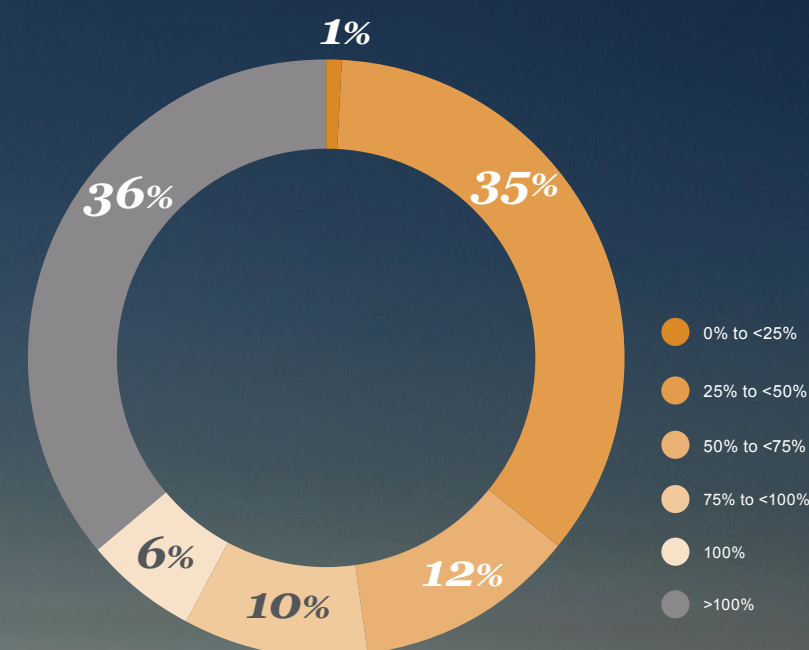
18%

of private equity deals had a cap of

<5%
of the purchase price

- 2018 saw another increase in the percentage of deals containing indemnities from sellers in favour of buyers, with two thirds of deals featuring indemnities. The most common issues covered by indemnities continue themes we have identified in previous years.
- Employment-related issues were identified during due diligence on a majority of deals, with a string of recent decisions ranging from calculation of holiday pay and issues in the “gig economy” needing to be considered by sellers as they prepare their businesses for sale. Another recent case emphasises the risks of owner-managers taking a low salary that is topped up with substantial dividends (a relatively common occurrence), with the need to ensure that the business has sufficient distributable reserves to pay the proposed dividends and the risk that this arrangement may actual result in a breach of minimum wage legislation.
- Issues with a target company's share capital history (whether as a result of share buy backs not being undertaken correctly, poor record keeping or otherwise) continue to be a common issue that requires reconstitution of statutory books, the need for indemnity cover and potentially a delay to the transaction timetable.

LIABILITY CAP
(AS % OF THE PURCHASE PRICE)



2018 saw another increase in the percentage of deals containing indemnities from sellers in favour of buyers, with two thirds of deals featuring indemnities.

DEALS WITH SPECIFIC INDEMNITIES

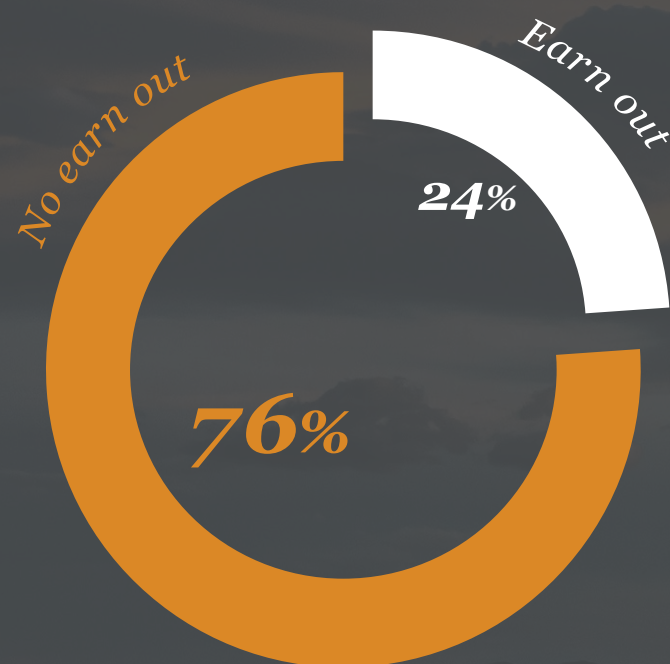


What could possibly go wrong?

Whilst buyers and sellers might enter into M&A deals with clear goals in mind and carefully crafted strategic plans for how they will develop the acquired business (in the case of the buyer) or reinvest the sale proceeds into other ventures (in the case of the seller), how often are those plans fully realised in practice and what are the areas where things can easily go wrong? Aside from the risk of warranty claims, which tend to arise primarily due to alleged breaches of the accounting or finance warranties, what other aspects of M&A can give rise to issues post completion and potentially lead to protracted disputes and litigation?

Earn outs

- ▶ From our experience, earn outs can be a fertile ground for disputes unless careful thought is given to how the relevant earn out metrics will be calculated and how the business will be operated during the earn out period. There is an inevitable tension between the buyer's desire (or potentially, depending on whether the business is in a regulated sector, regulatory requirements) to integrate the acquired business and thereby change certain practices that existed pre-completion, and the common belief amongst sellers that the best way to meet the earn out targets is not to interfere in the running of the business for the duration of the earn out period.
- ▶ Whilst some tension between the buyer's and the seller's interests is inevitable, the risk of this resulting in disputes can be mitigated by giving careful thought when negotiating the earn out to what integration is expected to involve in practice. For example, where a smaller business is acquired by a large group it may well be that the process for taking on board new clients or pitching for new business is more protracted and burdensome than the seller is used to. Will this jeopardise delivery of growth projections, and can it be managed in any way in the earn out mechanics?



Regulatory risks

- ▶ Another theme that carried over into 2018 from previous years was the need for regulatory approvals, an area that we still see overlooked by buyers, sellers and their advisers. The change of control process that must be completed where a target business has an FCA authorisation can result in frustrating delays to a transaction timetable if the issue is not identified and planned for at an early stage; this is another issue that sellers and all of their advisers should be alive to from the very earliest stages of planning for a sale.
- ▶ There were also plenty of cautionary tales regarding merger control and competition law more generally in 2018, including buyers being fined for breaching initial enforcement orders imposed by the CMA whilst they investigate the potential impact on competition of completed transactions and even the notable case of a buyer being ordered to dispose of the acquired business.

Technology is at the core of the buyer's integration of the target to its existing businesses. Buyers need to know what its existing businesses can do for target and what if any technology and dedicated technology services and products will form part of the sale, to plan for the integration.

IT Transition Risks

- ▶ Technology issues in M&A transactions have received a lot of press following the failure last year of TSB's project to migrate its customers from one IT platform to another, after Lloyds sold TSB to Sabadell. This incident has highlighted how damaging technology issues can be to a company's reputation and the importance of allocating sufficient time and resources in M&A transactions to technology, and whilst it is perhaps the most extreme example given the nature of the business and information involved, technology issues can affect businesses of all shapes and sizes across all sectors.
- ▶ Technology is at the core of the buyer's integration of the target to its existing businesses. Buyers need to know what its existing businesses can do for target and what if any technology and dedicated technology

services and products will form part of the sale, to plan for the integration. Focussed due diligence in this area is key to identifying gaps in service provision and contract issues. If there is bespoke technology, with knowledge held by key personnel, their retention or access to them prior to and post-sale could be extremely important.

- ▶ These issues are not the sole concern of the buyer though. In the majority of M&A transactions involving the sale of a business out of a corporate group, the seller will provide services to the buyer/target for a transitional period. The seller will often need to use third party IT products to provide these services and the buyer/target may also need continued access to the seller's IT systems. In providing these services and access, the seller could be in breach of its third party contracts with IT providers and, because software is often protected by copyright and a breach of copyright is a criminal offence, could be breaking the law if it knows or had reason to believe that copyright would be infringed. Allowing time to get appropriate consents in place and the negotiation of a TSA is more important than ever.
- ▶ For both parties sufficient time and resource needs to be given at the outset to identify the relevant IT systems required to provide the services and how the parties will transition from those services to the buyer's replacement IT systems. Most issues arise at this stage due to poor planning and insufficient time to allow for dress rehearsals or phased migrations and rigorous testing. Migration of data is a key factor, particularly in the retail and consumer and financial services sectors, and specific planning and processes will need to be in place to guard against loss or corruption of data during migration. The buyer's key risk is ensuring that the exit from transitional services to the alternative provision that it puts in place for the target, is dealt with efficiently and without interruption to its own and the target's ongoing business.
- ▶ When a company or part of a business is sold out of a larger group, the seller may have contracts with IT suppliers that require amendment post sale, for example if a contract contains volume licensing commitments, these may not be achievable post sale. The seller should review its contracts with IT suppliers, particularly software licences, to identify any such issues and seek to address those with its third party suppliers. It may be possible to divide scope and volume agreements between existing and new agreements, if the buyer/target requires the same IT service/product post completion/transition.

About us

*A selection of
our 2018 M&A
transactions*

SALE OF KELLING GROUP

Advised Elysian
and other selling
shareholders



SALE OF CONCEPT LIFE SCIENCES

Advised Equistone
and other selling
shareholders



ACQUISITION OF THE NECTAR BUSINESS

Advised J Sainsbury plc



ACQUISITION OF W.E. DOWDS (SHIPPING)

Advised Associated
British Ports



TAKEOVER OF PRODUCE INVESTMENTS

Advised Produce
Investments



ACQUISITION OF WHP TELECOMS AND PARAGON TELECOMS

Advised Equistone



SALE OF QTS TO RENEW HOLDINGS

Advised selling
shareholders



ACQUISITION OF ARNOLD LAVER

Advised Northern
Timber Group



SALE OF M BEAUTY AND MAKE MONEY (T/A EYEKO)

Advised sellers



ACQUISITION OF RIGHT CHOICE INSURANCE BROKERS

Advised LDC



ACQUISITION OF RIBA ENTERPRISES

Advised LDC



ACQUISITIONS OF WELLOCKS AND BELAZU, AND SALE OF AUNT BESSIE'S

Advised William Jackson
Food Group



SALE OF UK POWER RESERVE

Advised Equistone,
Inflexion and other
selling shareholders



SALE OF BE AT ONE

Advised Piper (PE)
and other selling
shareholders



WYEVALE GARDEN CENTRES DISPOSAL PROGRAMME

Advised Terra Firma



SALE OF SEABROOK CRISPS

Advised LDC



TAKEOVER OF HARVEY NASH GROUP PLC

Advised DBAY Advisors



ACQUISITION OF SANDWICH MANUFACTURING BUSINESS

Advised Samworth Brothers



ACQUISITIONS OF HEALTHCIRCLE ADVERTISING AND BLUE LATITUDE

Advised Fishawack



SALE OF CLOSERSTILL GROUP

Advised selling
shareholders

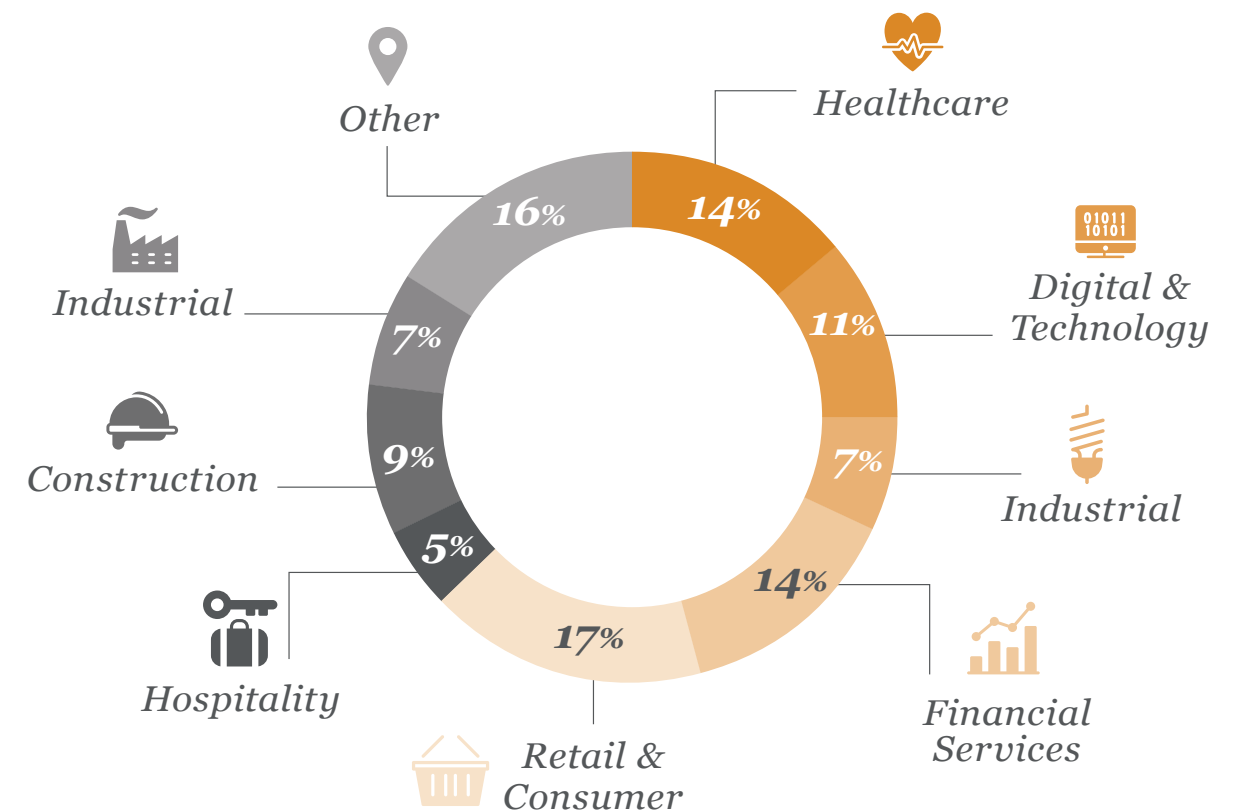


M&A trends data

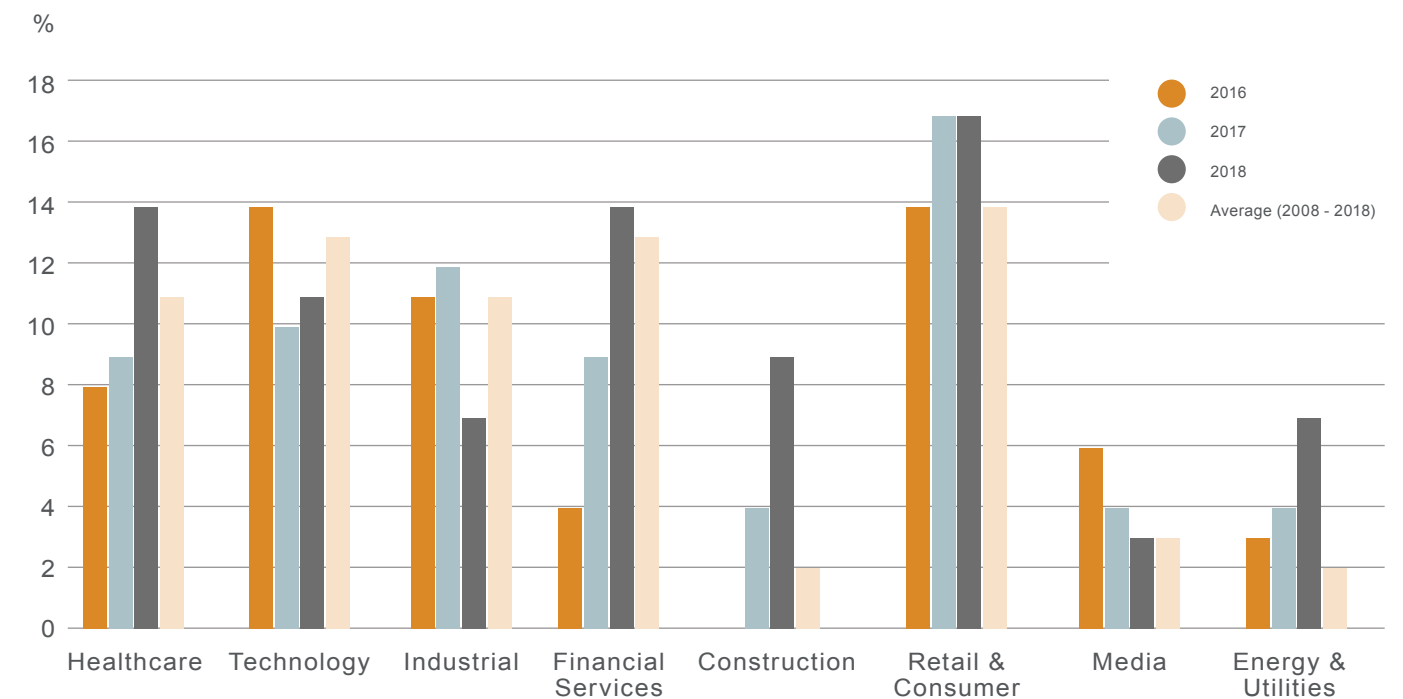
We capture and analyse data across a range of M&A negotiation points to identify emerging trends. Our full data analysis is presented on the following pages.

1. DEAL SECTORS

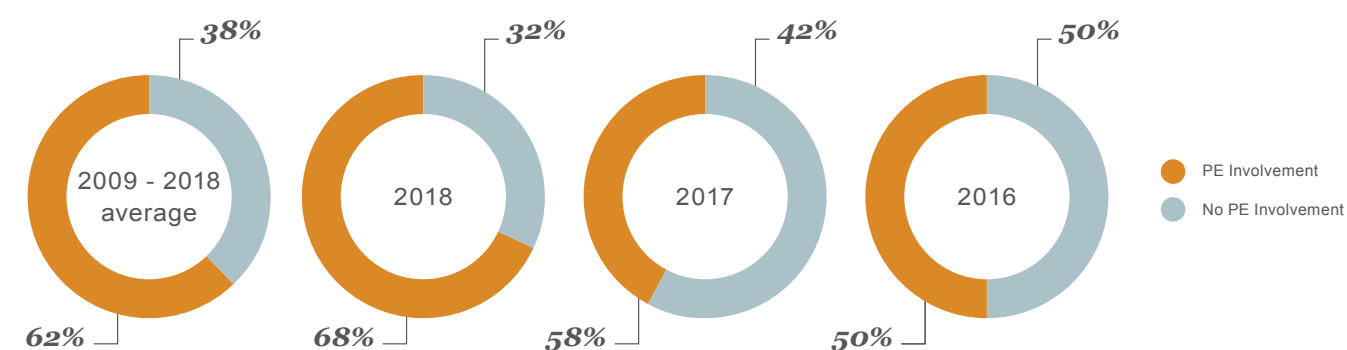
MOST ACTIVE SECTORS FOR M&A: 2018



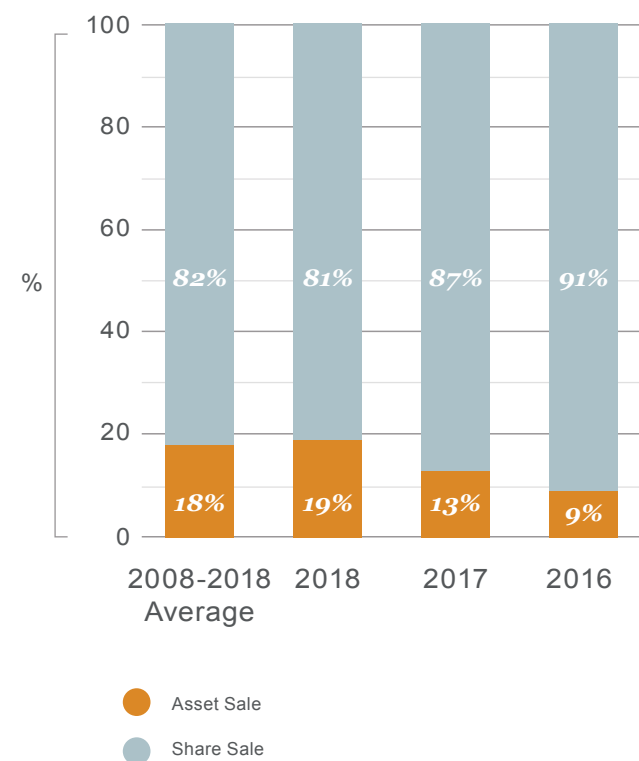
ACTIVITY LEVELS BY SECTOR: 2008 TO 2018



2. TRANSACTIONS INVOLVING PRIVATE EQUITY

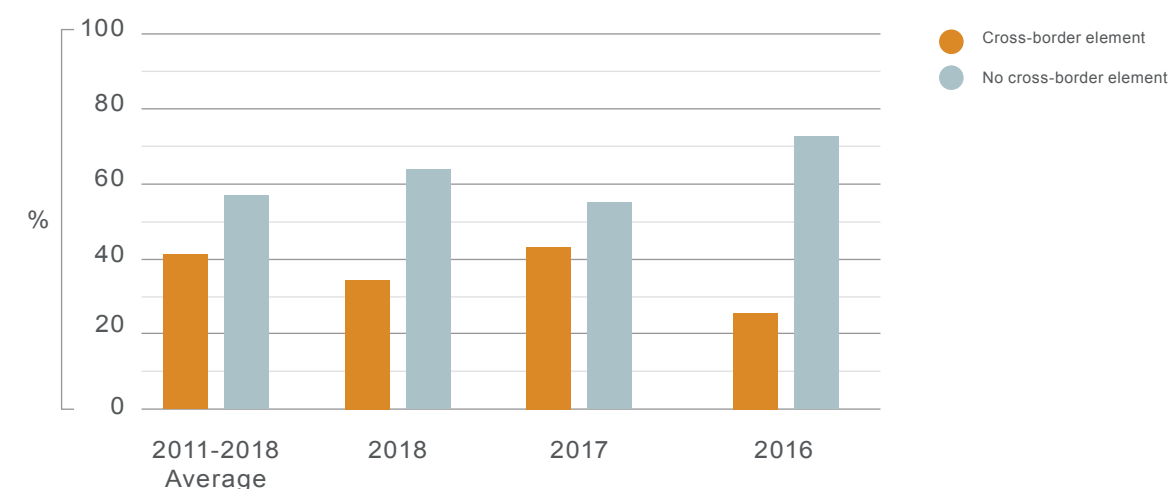


3. ASSET SALE OR SHARE SALE

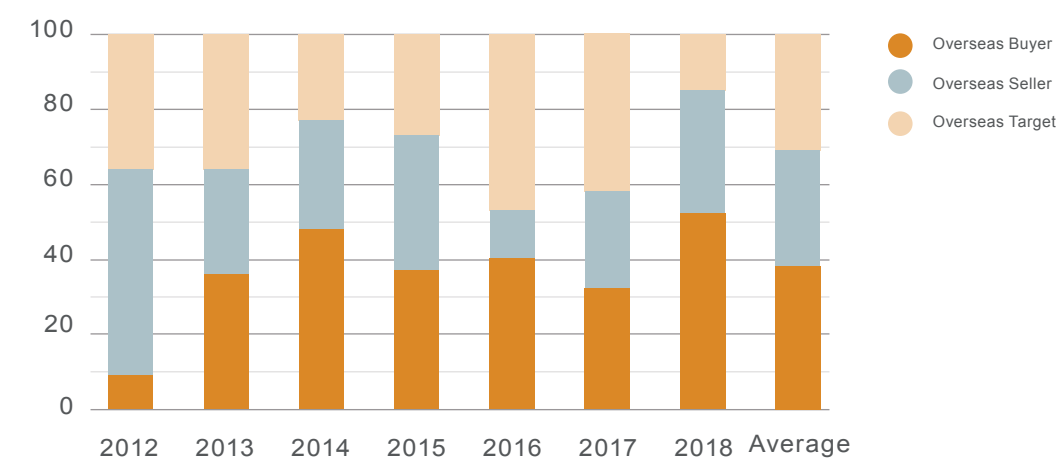


Private equity investors fresh from record-breaking fundraisings continue to be active players in both private and public M&A transactions.

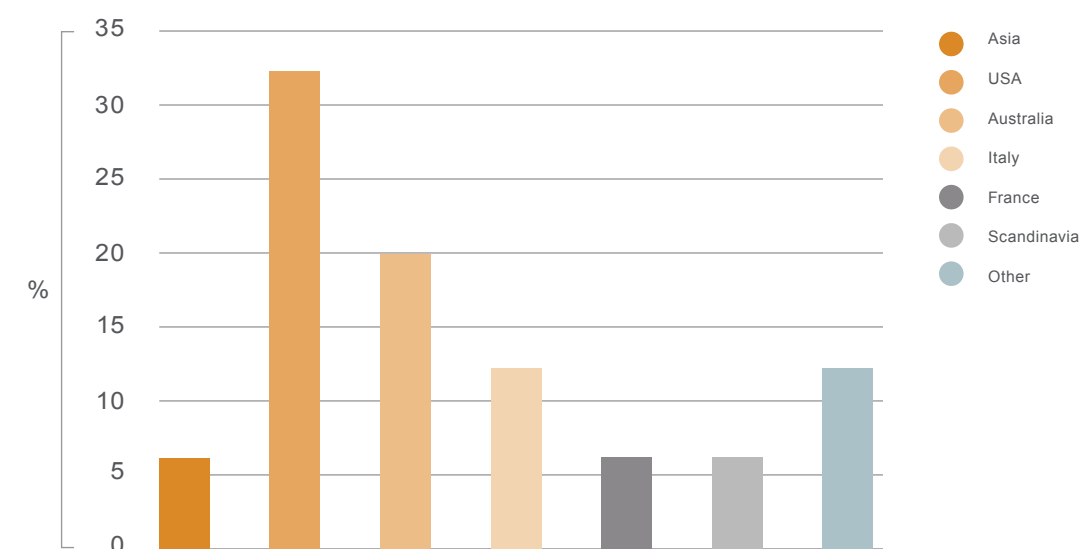
4. CROSS-BORDER TRANSACTIONS



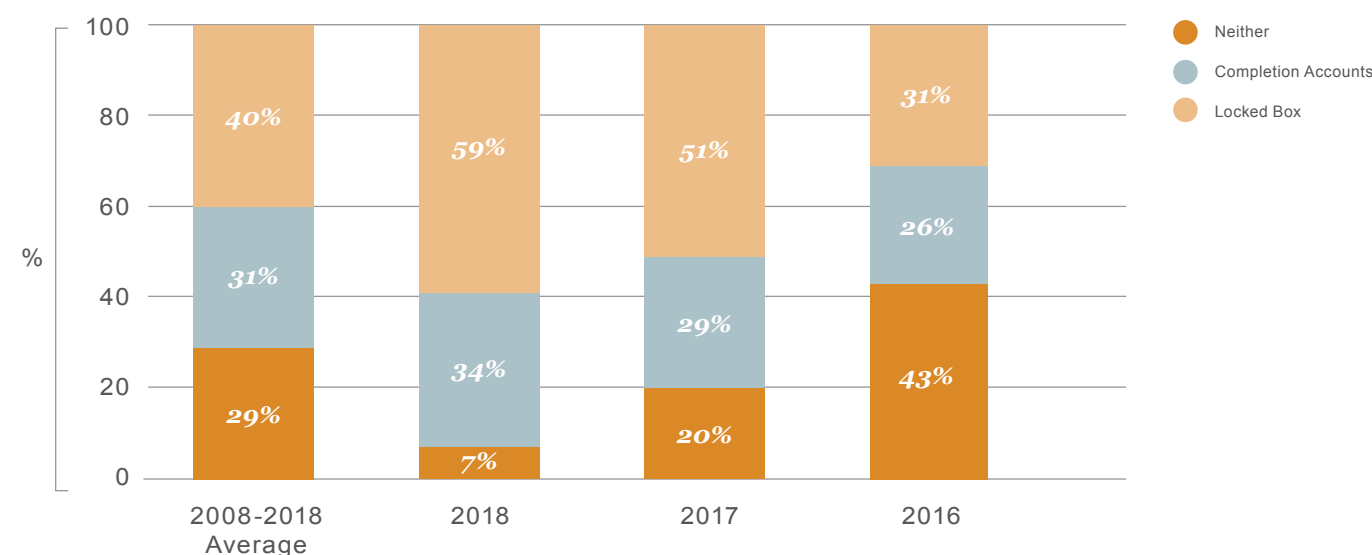
ROLE OF OVERSEAS ENTITIES



JURISDICTION OF OVERSEAS INVESTORS INTO UK

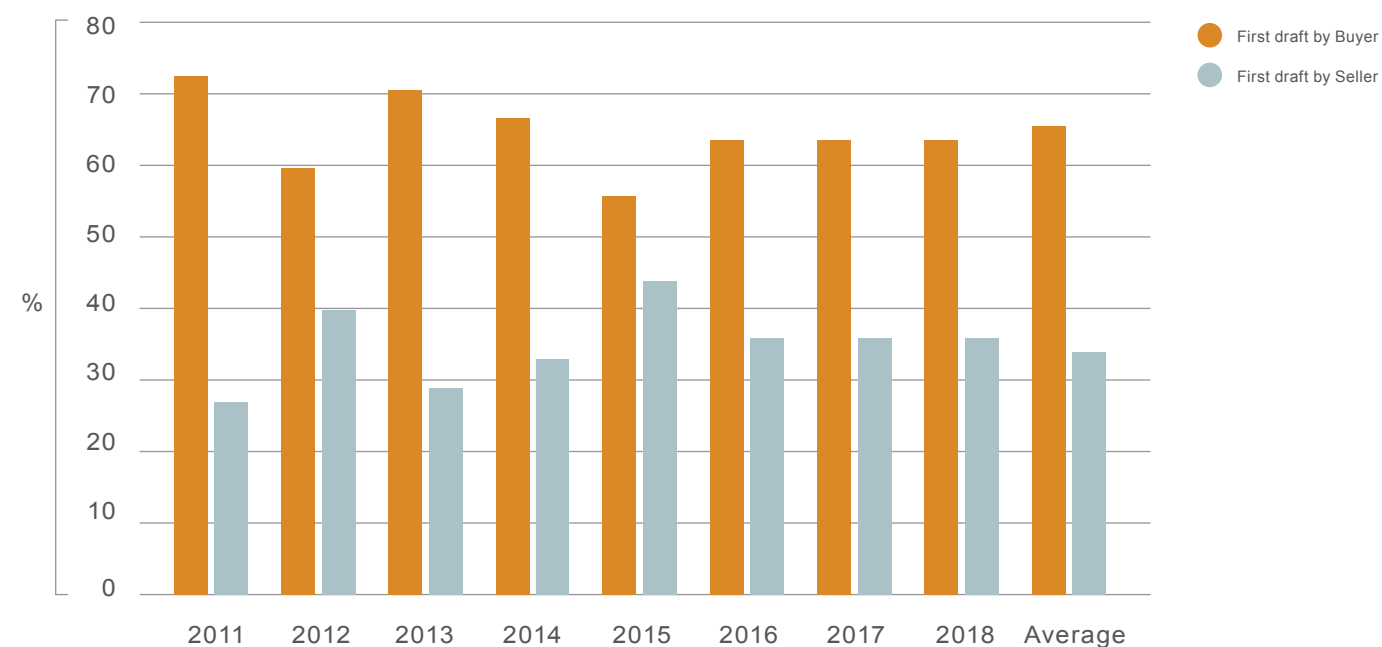


5. PRICE ADJUSTMENT MECHANISM

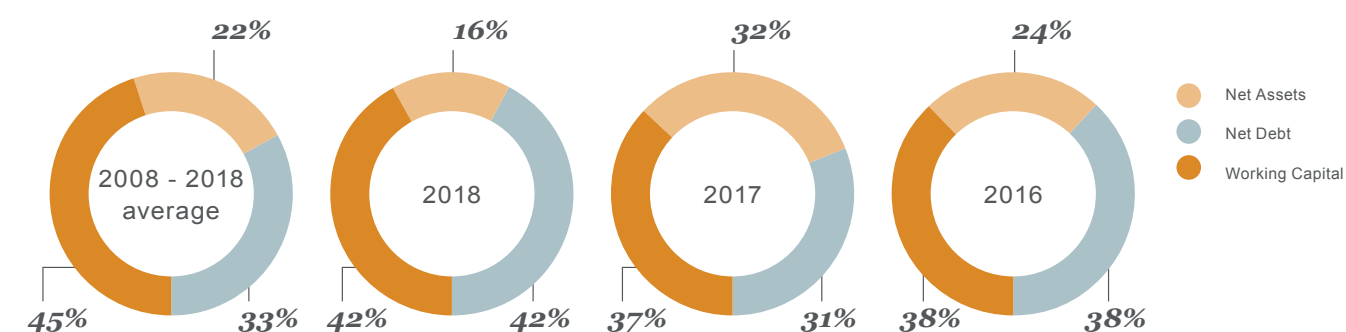


6. COMPLETION ACCOUNTS

A) WHO PREPARES FIRST DRAFT?

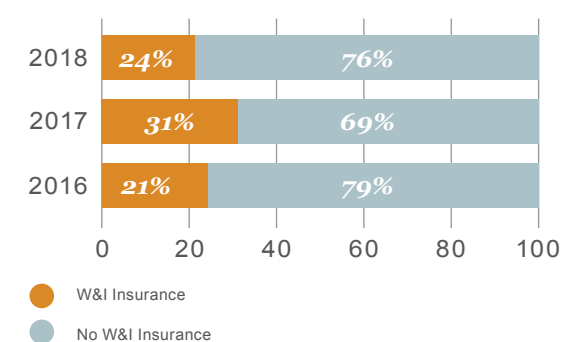


B) WHAT METRICS ARE USED?

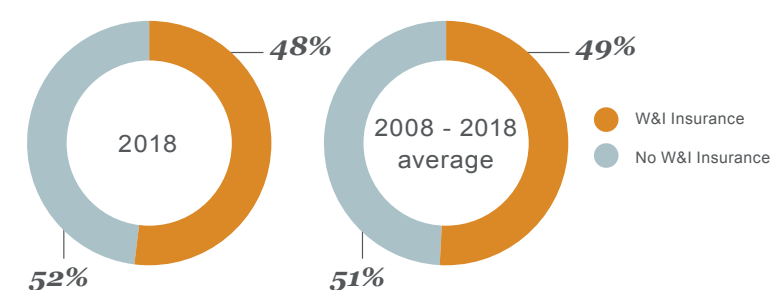


7. W&I INSURANCE

DEALS INVOLVING W&I INSURANCE: ALL DEALS

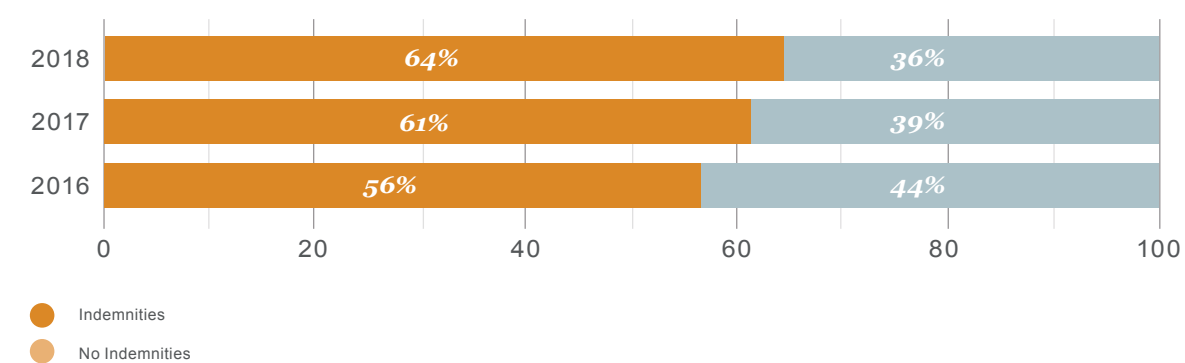


PE DEALS INVOLVING W&I INSURANCE

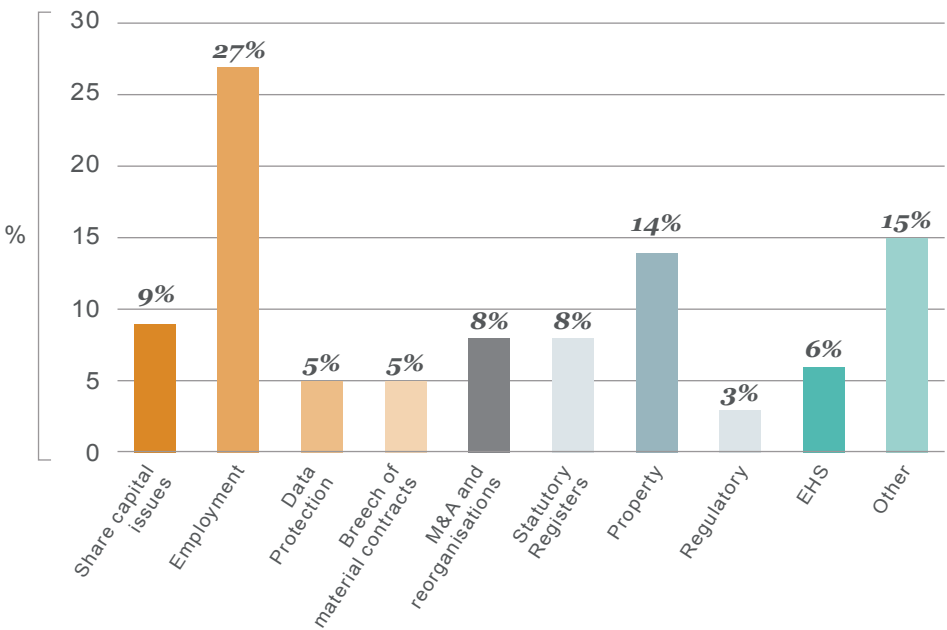


8. INDEMNITIES

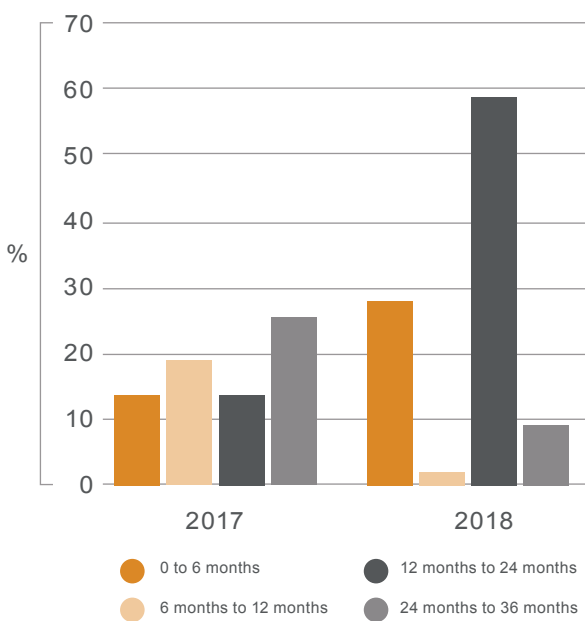
A) DEALS WITH SPECIFIC INDEMNITIES



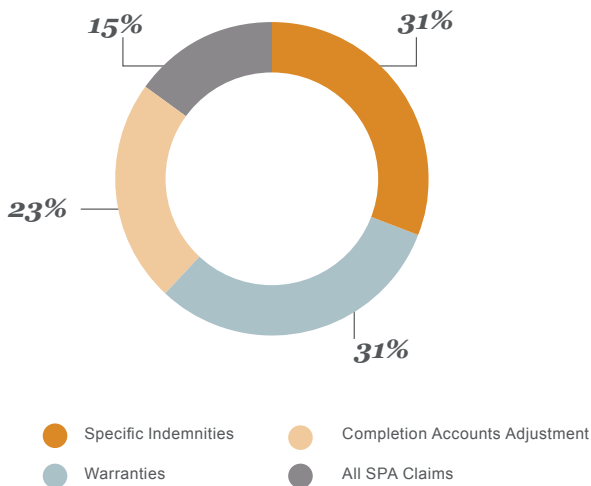
B) WHAT DID THE INDEMNITIES RELATE TO?



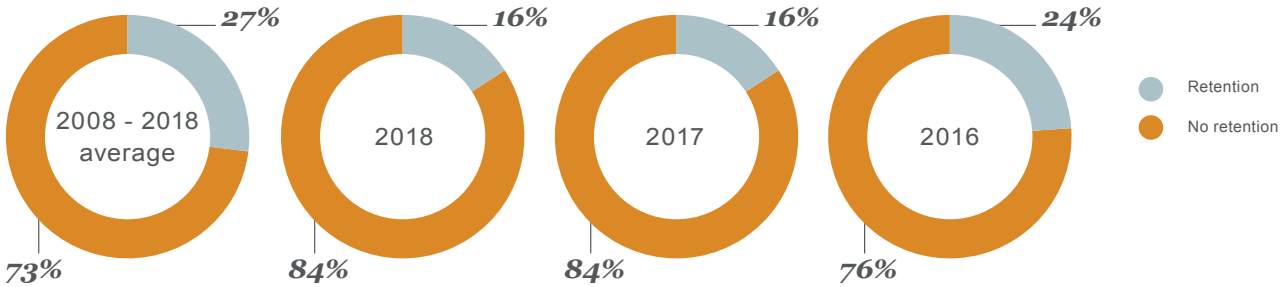
DURATION



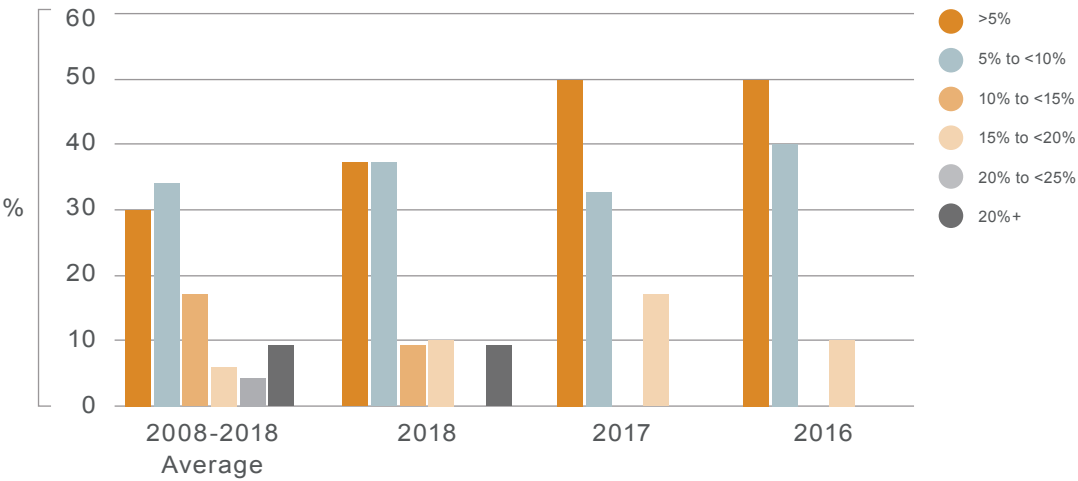
WHAT WAS THE RETENTION SUM HELD AGAINST?



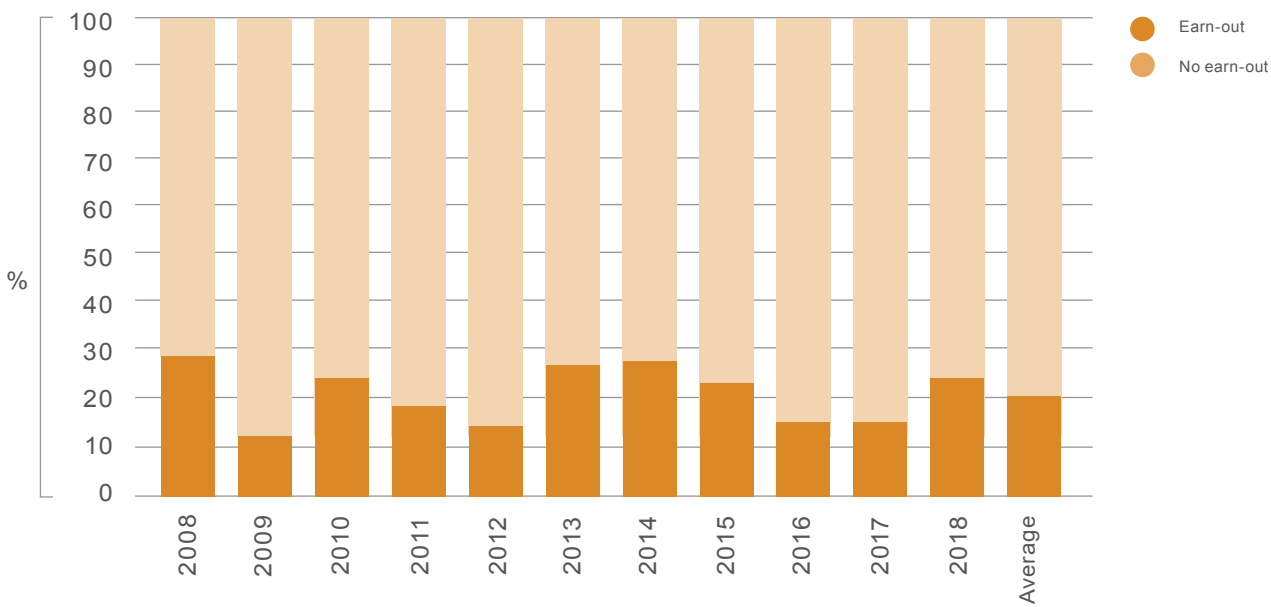
9. RETENTIONS



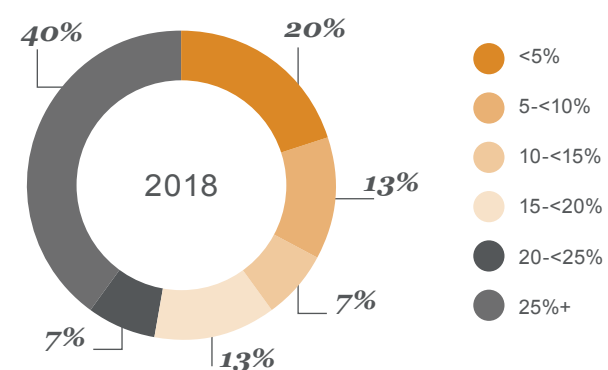
RETENTION AMOUNT AS A % OF PRICE



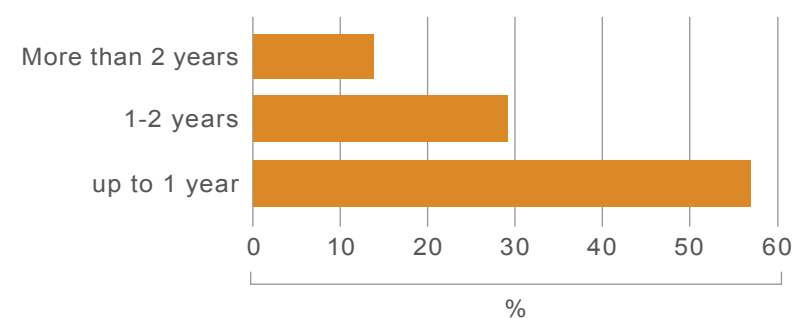
10. EARNOUTS



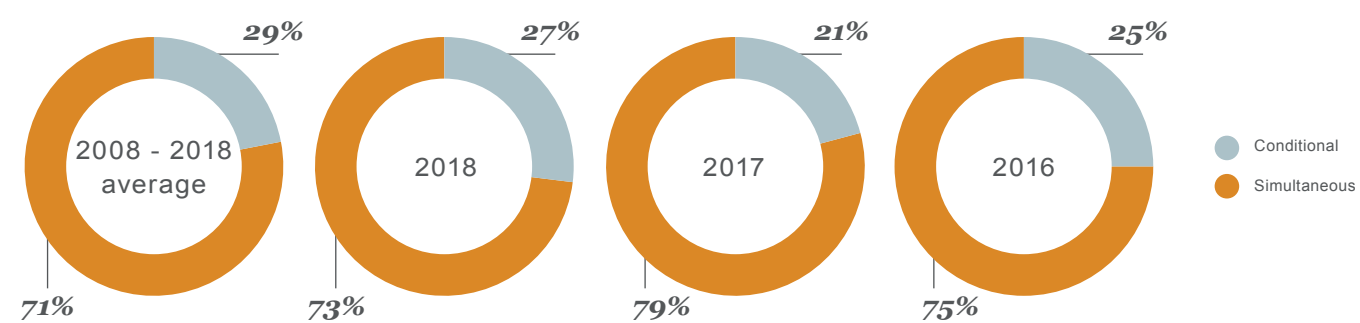
EARN OUT AS % OF TOTAL PURCHASE PRICE



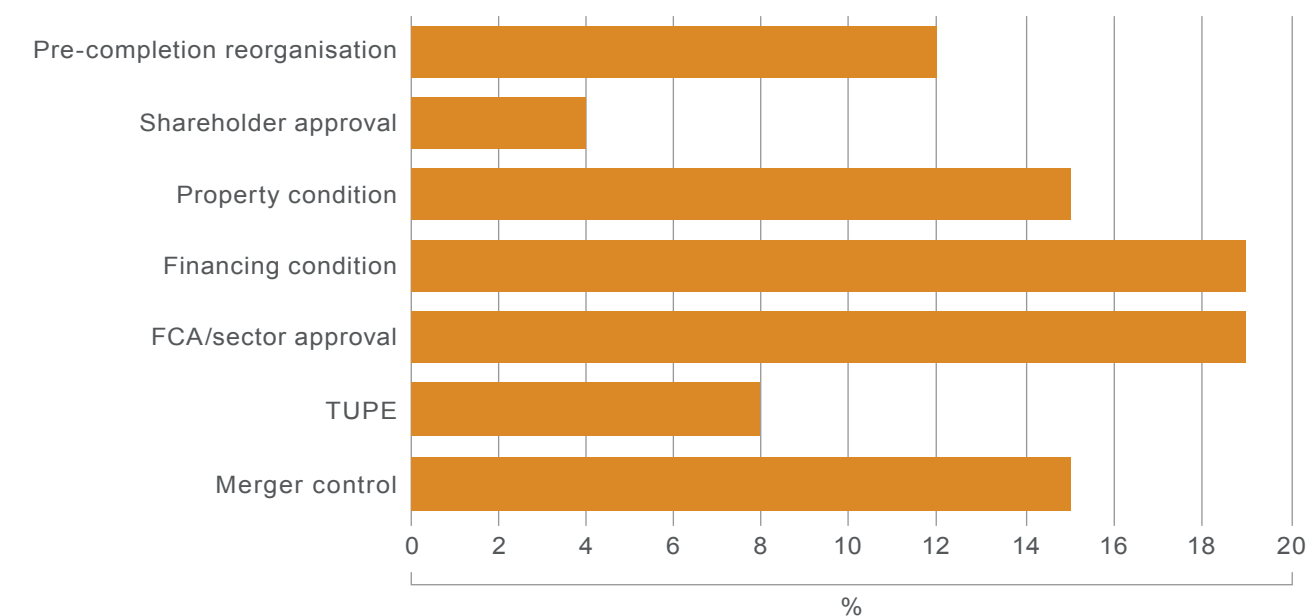
EARN OUT PERIOD



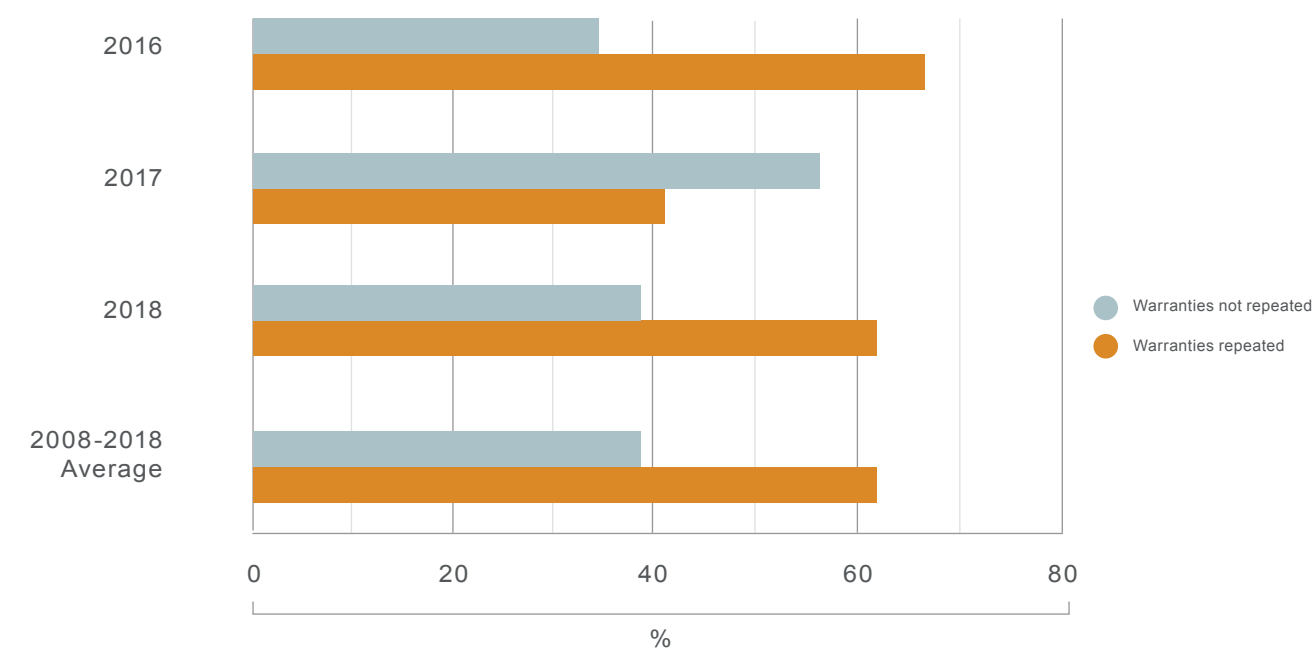
11. SPLIT vs SIMULTANEOUS COMPLETION



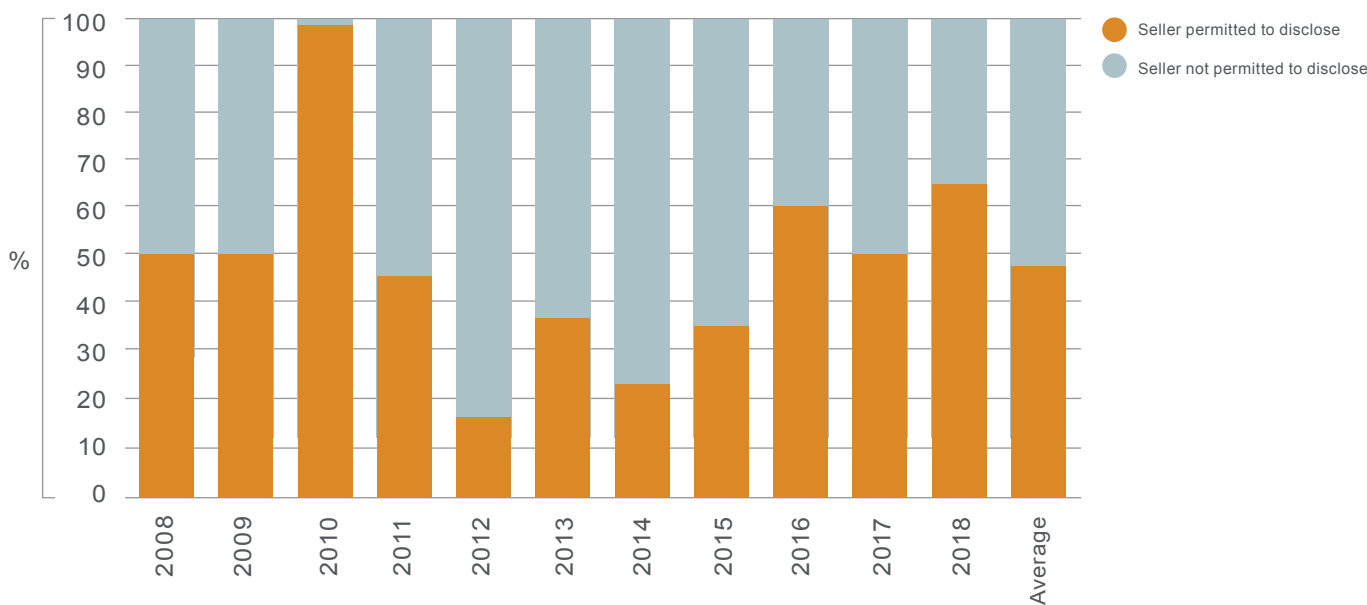
12. REASONS FOR CONDITIONAL DEALS



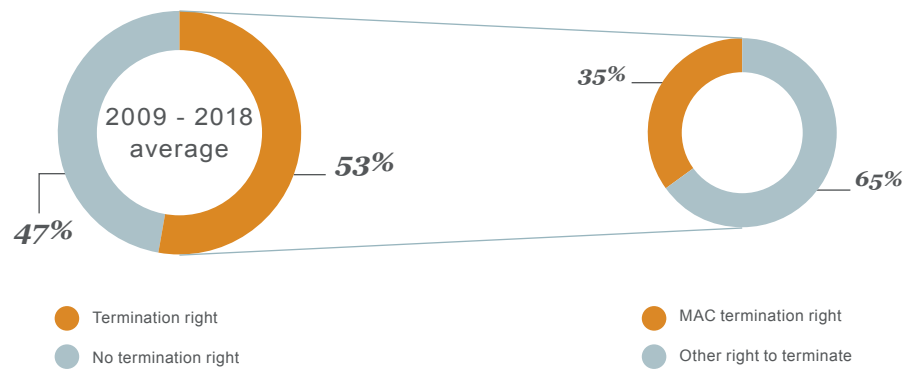
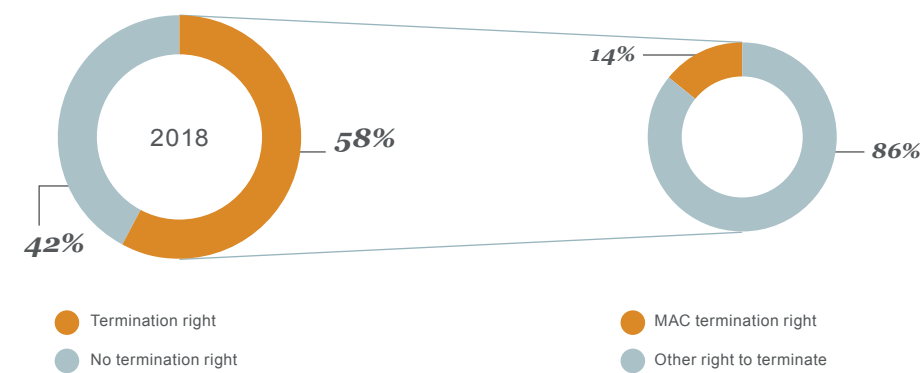
13. REPETITION OF WARRANTIES & UPDATED DISCLOSURE



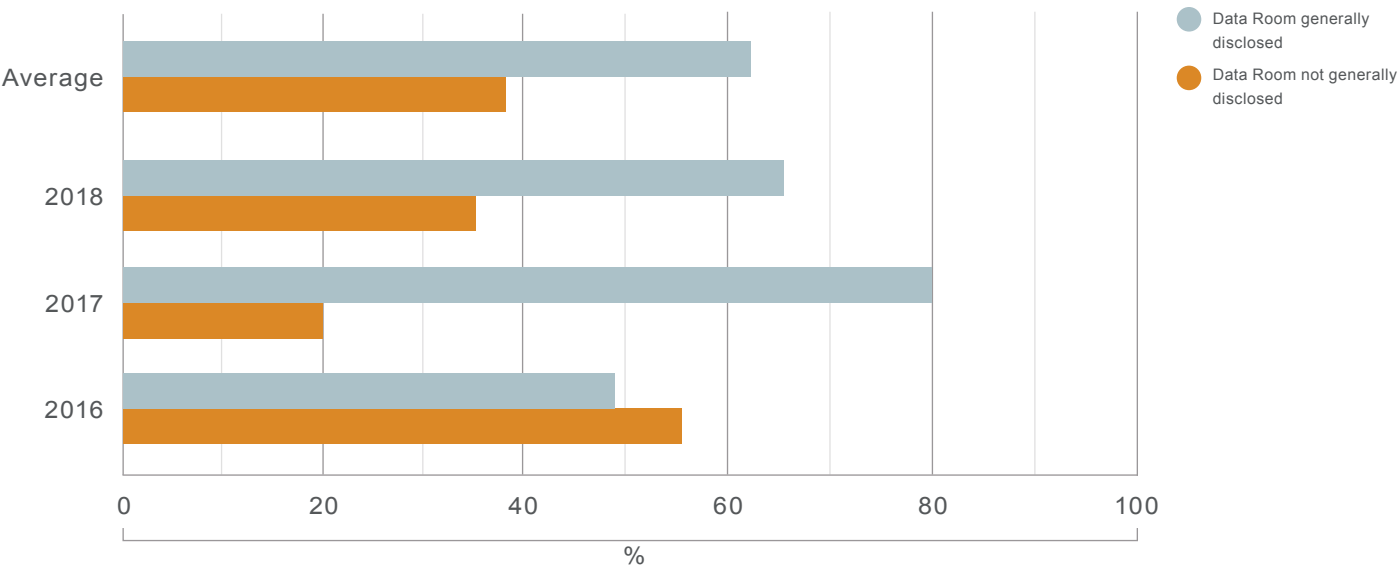
SELLER(S) PERMITTED TO UPDATE DISCLOSURES?



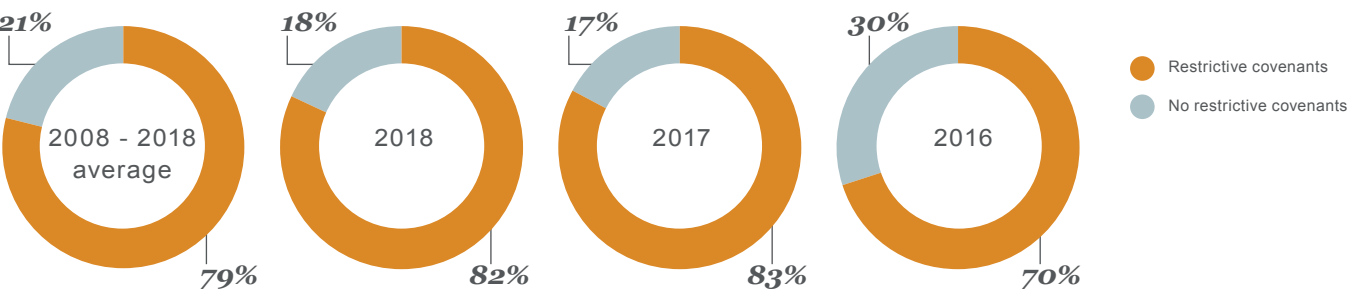
14. BUYER’S TERMINATION RIGHTS



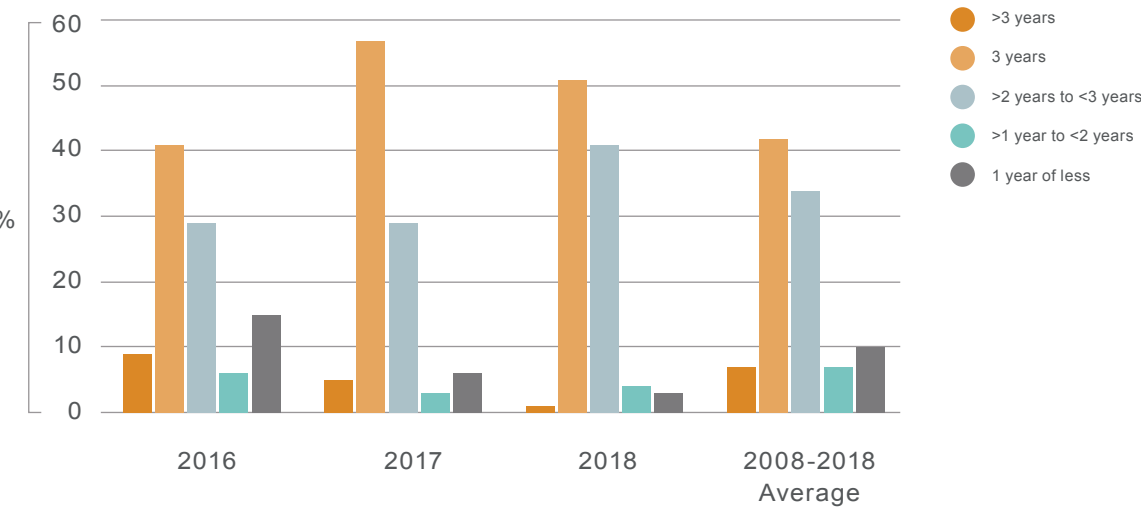
15. DISCLOSURE OF THE DATA ROOM



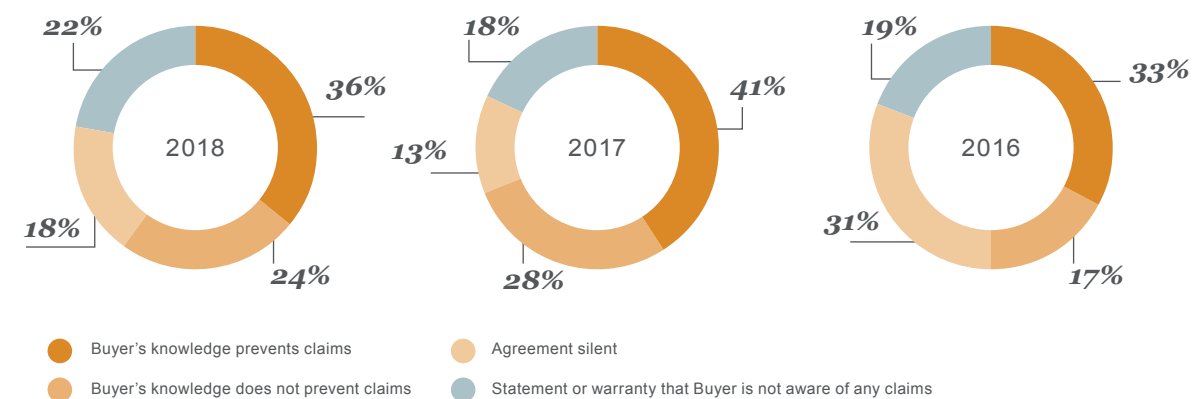
16. RESTRICTIVE COVENANTS



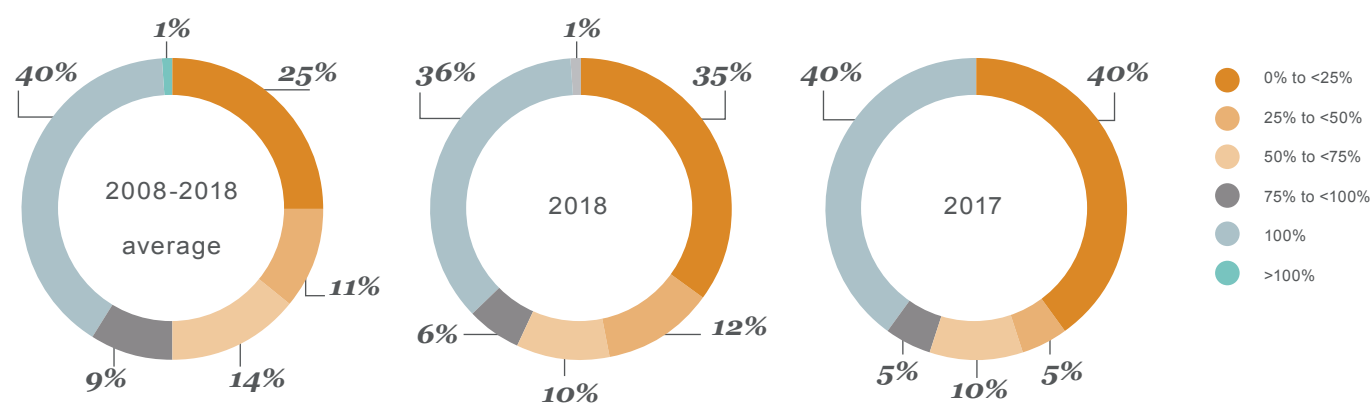
DURATION



17. BUYER'S KNOWLEDGE

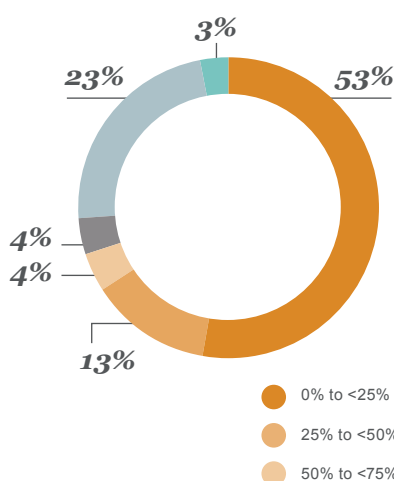


18. TOTAL CAP ON LIABILITY - AS % OF PURCHASE PRICE

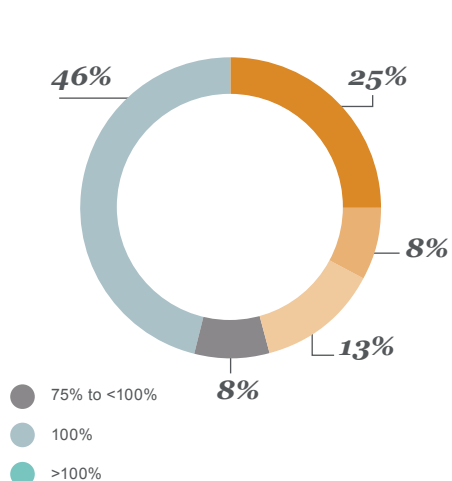


* Where the liability cap was less than 100% of the purchase price, the Fundamental Warranties (e.g. title and capacity) were typically excluded from the liability cap (though not on every deal) or a separate cap of 100% of the purchase price applied to those Fundamental Warranties

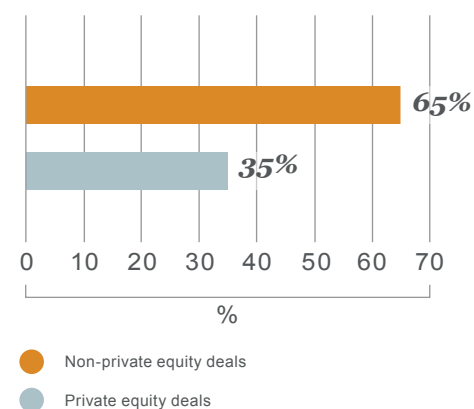
PRIVATE EQUITY DEALS:



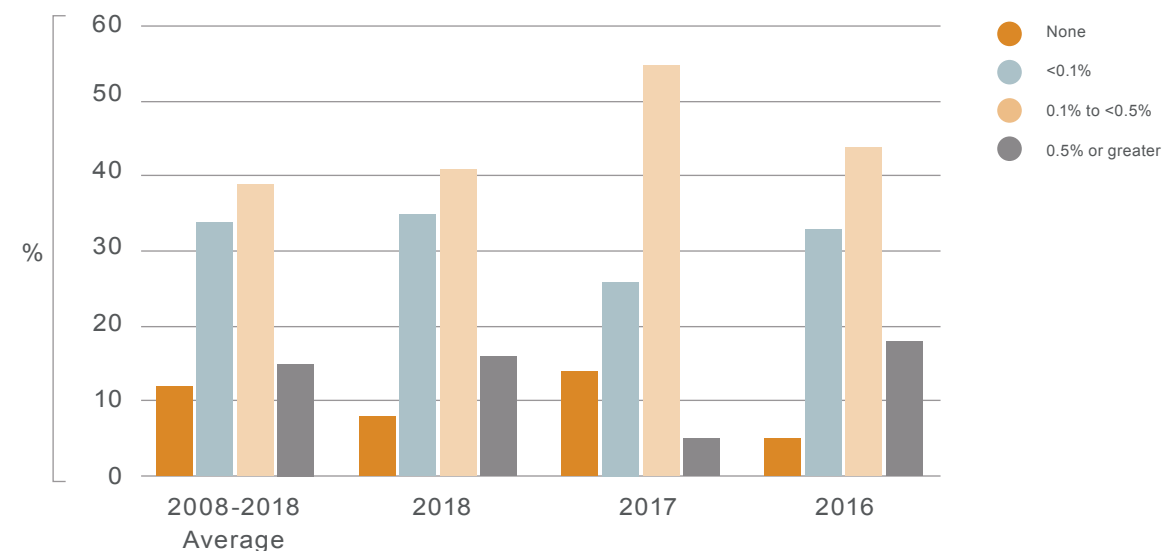
NON-PRIVATE EQUITY DEALS:



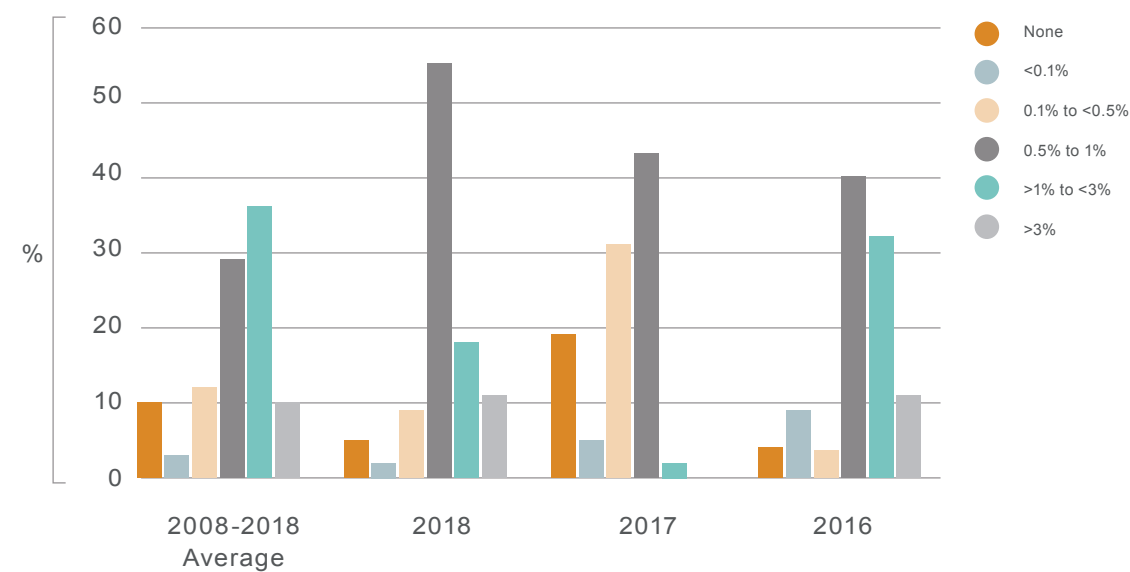
AVERAGE LIABILITY CAP AS % OF PURCHASE PRICE



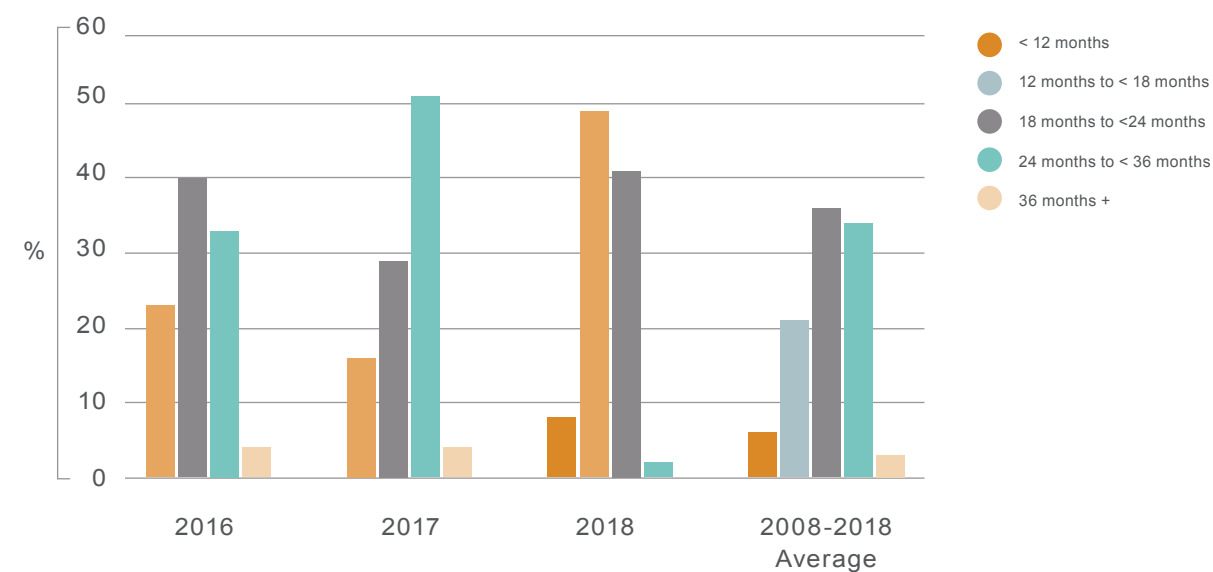
19. DE MINIMIS (AS % OF PURCHASE PRICE)



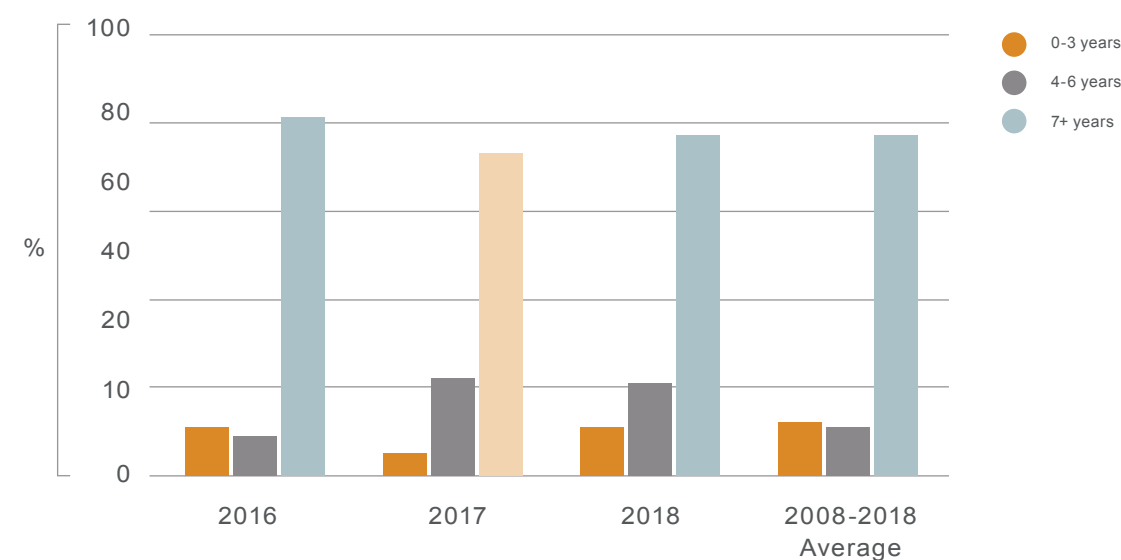
20. BASKET THRESHOLD (AS % OF PURCHASE PRICE)



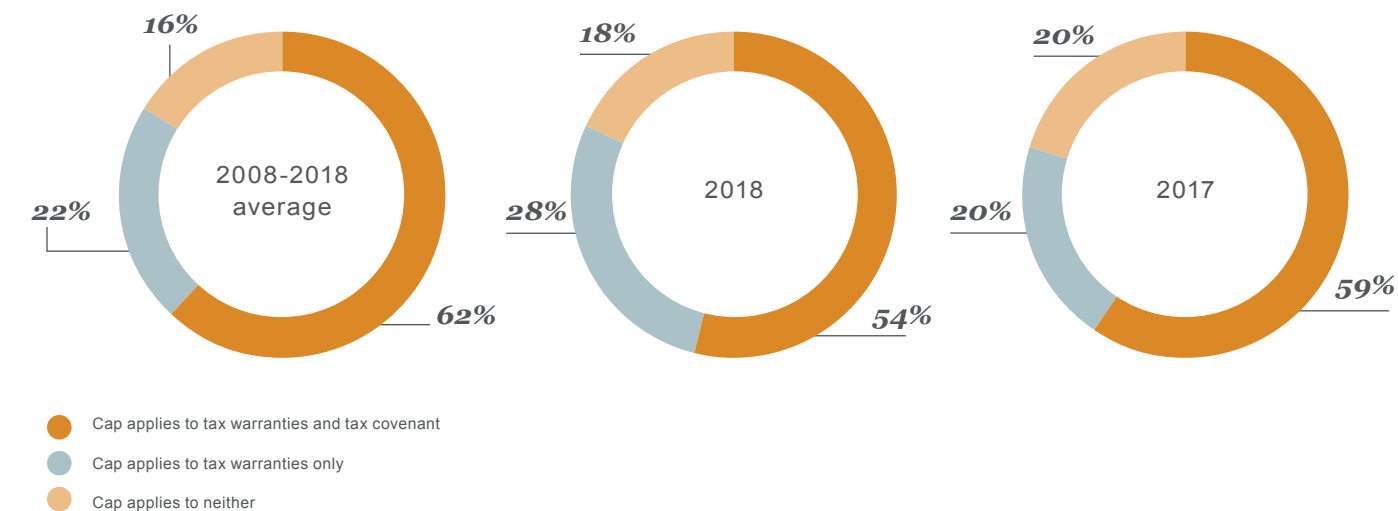
21. CLAIMS PERIOD: NON-TAX CLAIMS



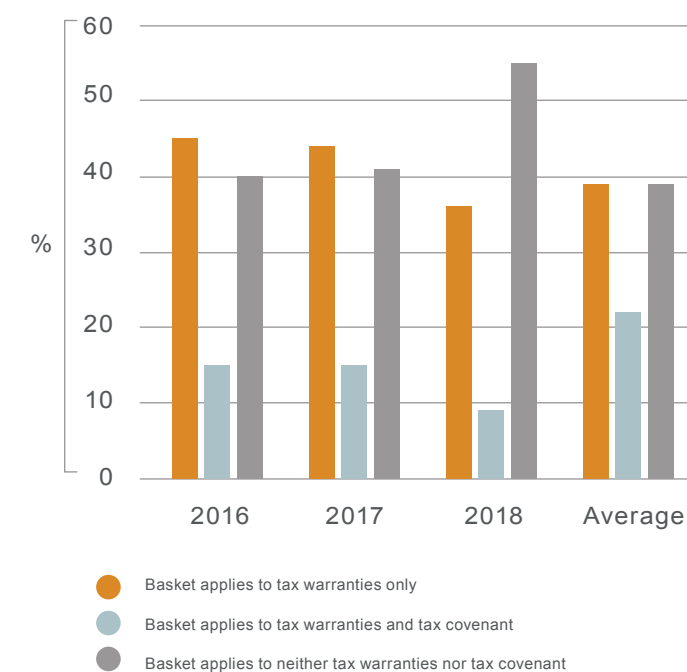
22. CLAIMS PERIOD: TAX CLAIMS



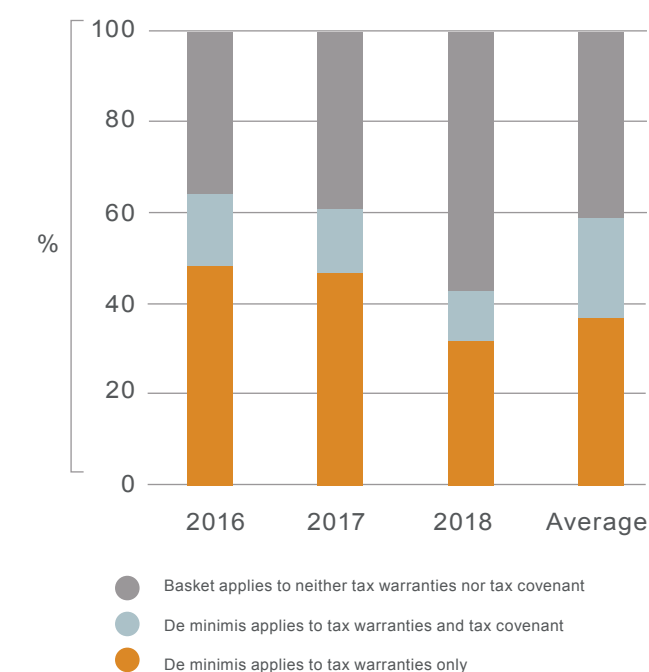
23. LIABILITY CAP: TAX CLAIMS



BASKET CLAIMS THRESHOLD



DE MINIMIS



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