



2020

DLA Piper Private Equity Intelligence CEE Focus Report



Introduction

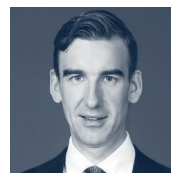
Welcome to the 2020 DLA Piper Private Equity Intelligence – CEE Focus Report. This Report is the result of a survey completed by our clients and contacts in Poland and selected CEE countries in the last quarter of 2019. The respondents included leading investors and managers representing a number of major private equity houses and investment firms.

The aim of the survey was to take a snapshot of the private equity market that could be used as a benchmark and point the way to possible future trends. Needless to say, as lawyers we are particularly interested in the legal aspects of private equity transactions, which play a key role in striking a successful deal.

We would like to express our gratitude to all the respondents who took the time to share their market knowledge.



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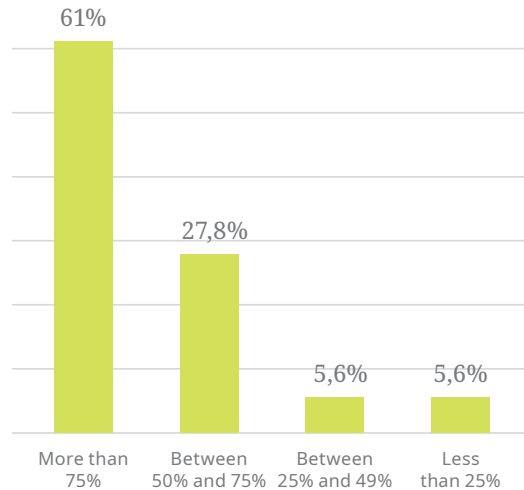


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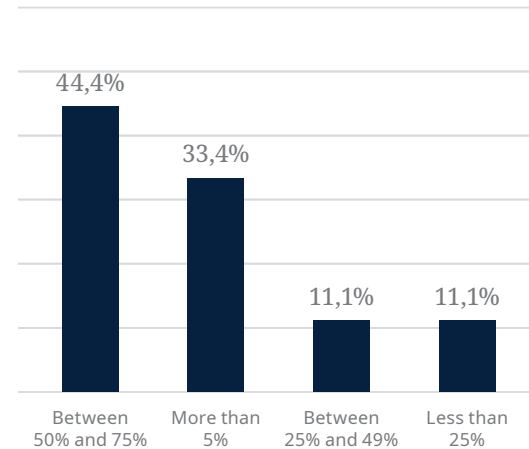
1.1 Deal process: auctions vs non-auction

Auctions continue to be a common feature of medium-sized and large deals.

What percent of your sell-side in the last 24 months were auctions?



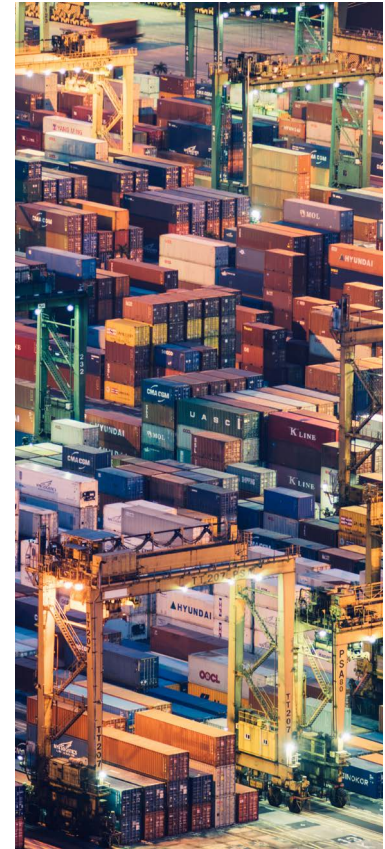
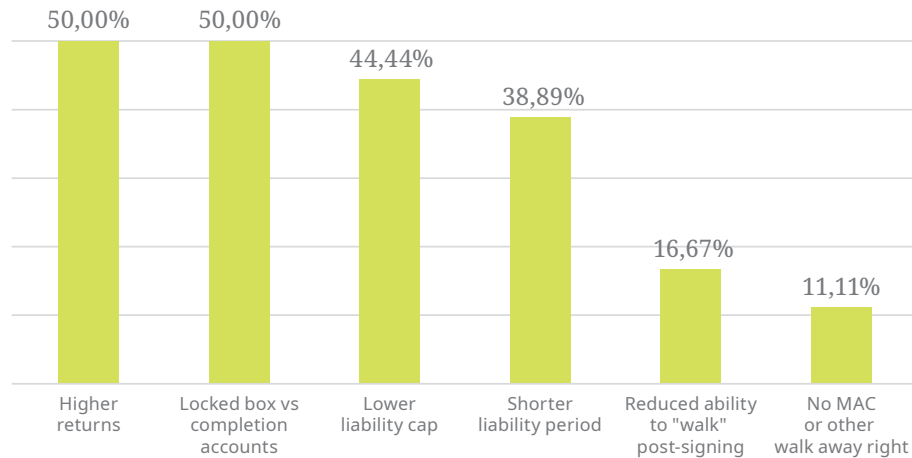
What percent of your buy-side in the last 24 months were auctions?



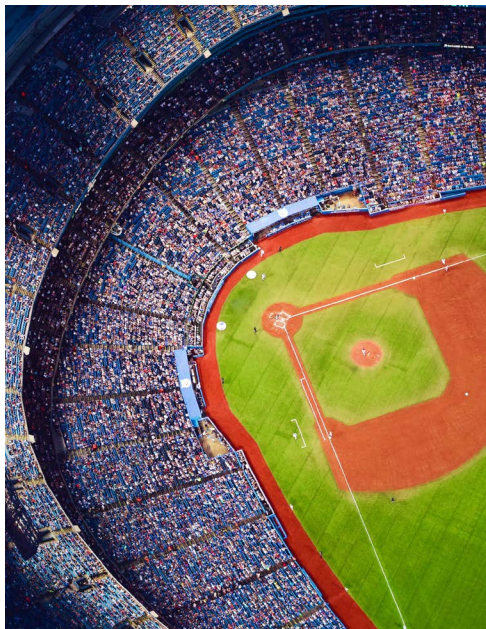
1.2 Deal process: auctions vs non-auction

Auctions offer sellers more friendly SPA terms
– especially price certainty and clean exits.

What features did you notice in auctions?

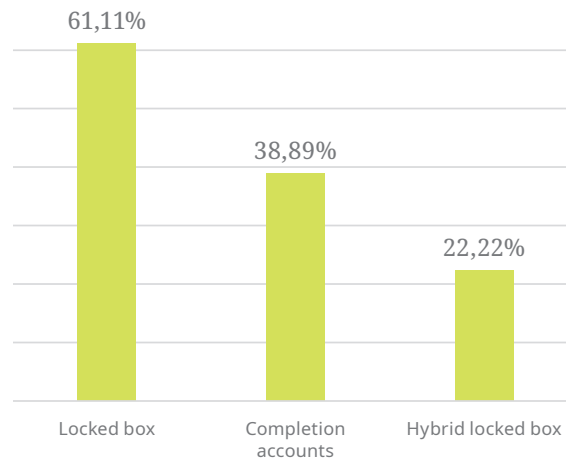


2. Closing mechanism: completion accounts (price adjustment) vs locked-box – auction and non-auction



Locked-box mechanism is becoming the prevailing pricing structure – especially for medium-sized and large deals.

What closing characteristics did you notice in the last 24 months?

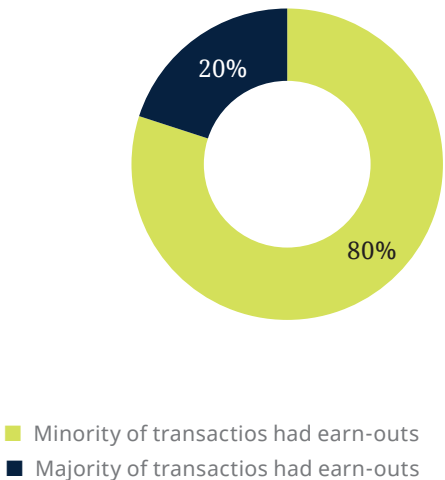




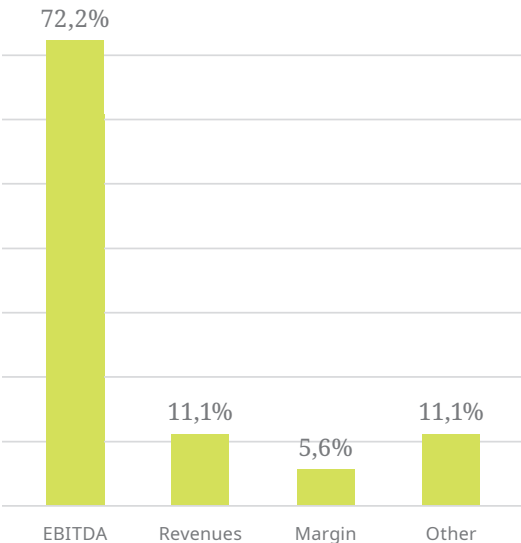
3.1 Use of earn-outs, periods and criteria

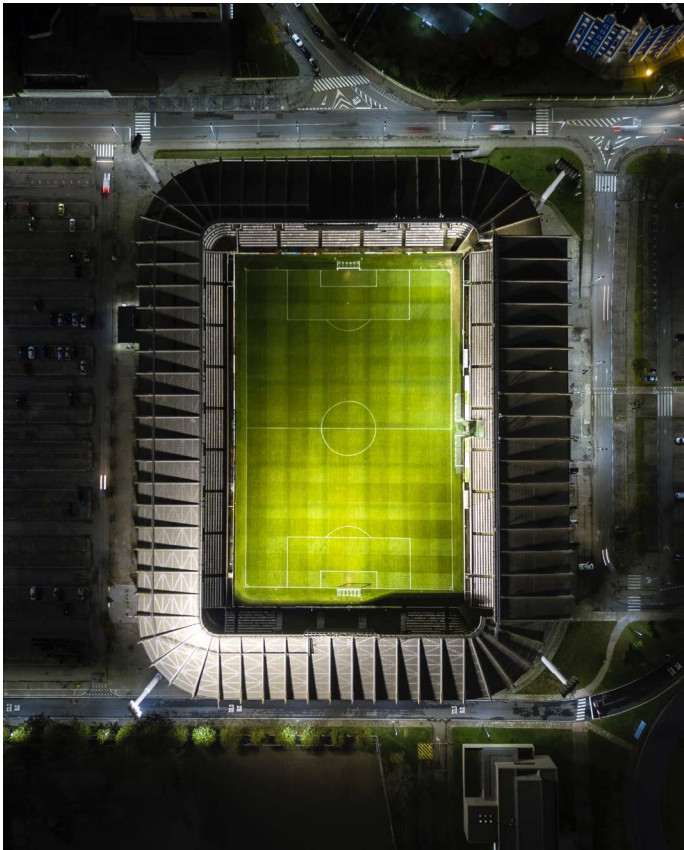
Earn-outs help to close discussions over purchase price.

What percent of transactions in the last 24 months had earn-outs?



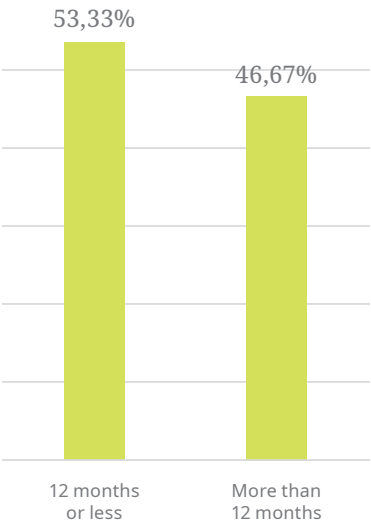
What were the earn-out criteria in the last 24 months?

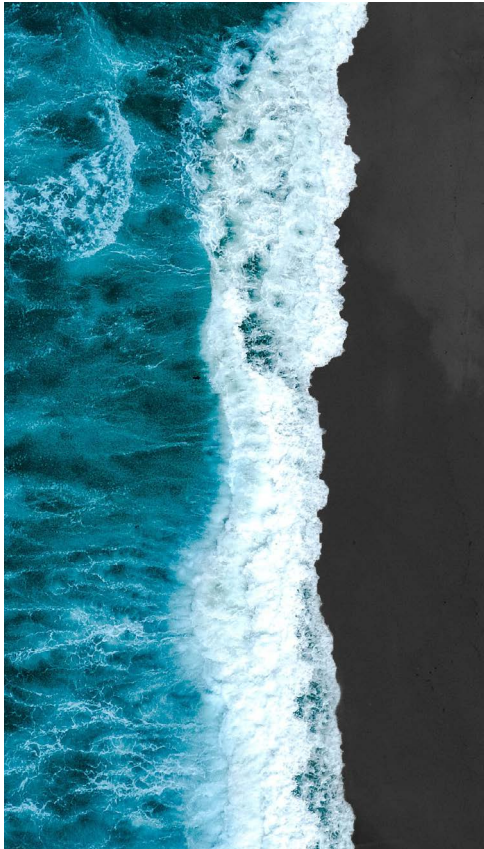




3.2 Use of earn-outs, periods and criteria

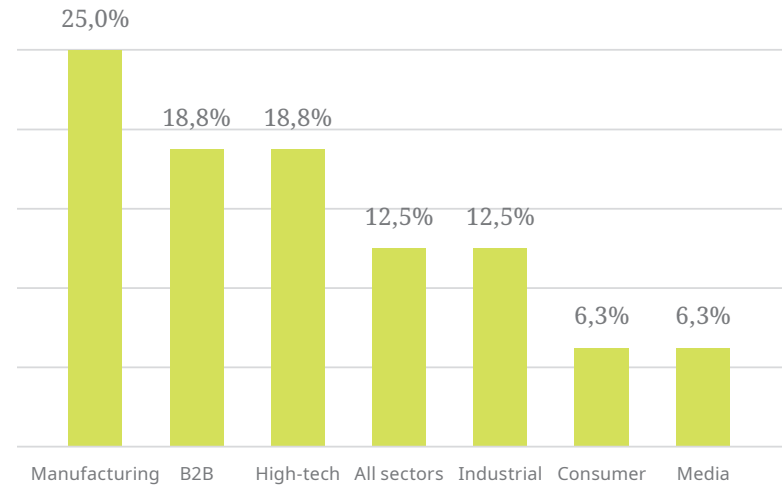
In most cases, earn-outs are agreed for a relatively short period of time.

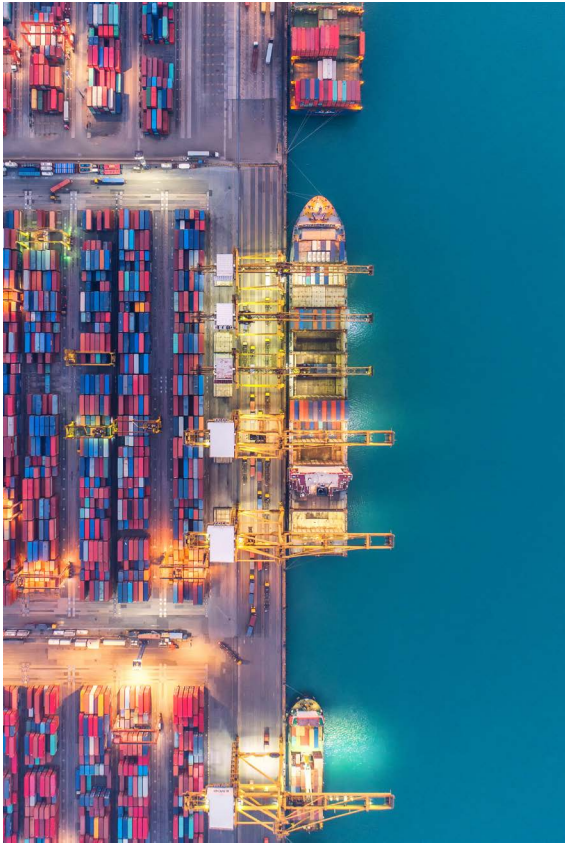




4. Use of earn-outs

In which sectors were earn-outs prevalent?

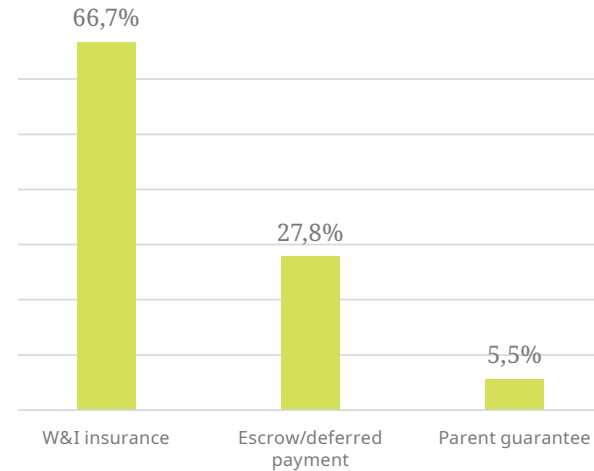




5. Warranty security

After being introduced into the Polish M&A market 12 years ago, W&I insurance has become the preferred form of security for warranty claims.

What was the preferred method of warranty security in your transactions?

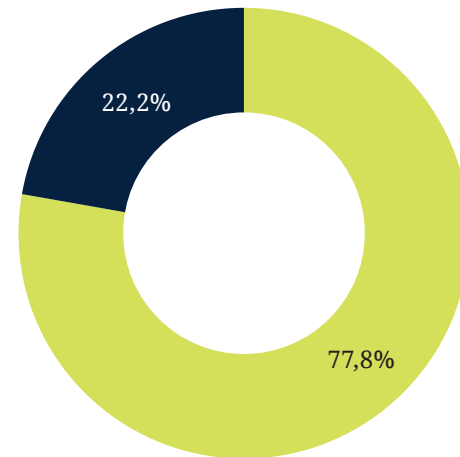


6. Type of security for claims against the buyer

Escrow/deferred payment is becoming less and less popular.



What percent of transactions had escrow/deferred payment as a buyer security?

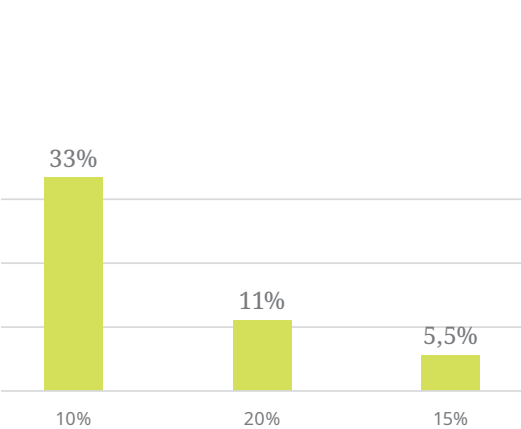


- 25% or less transactions had escrow/deferred payment
- More than 25% transactions had escrow/deferred payment

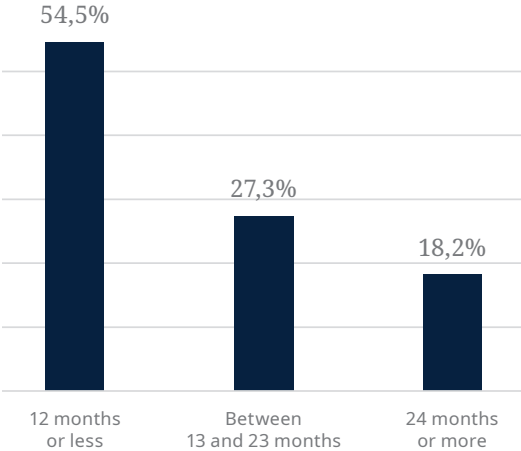
7. Warranty security – escrow/deferred payment

If used, escrow/deferred payment is agreed for a relatively small percent of the purchase price and for a short period of time.

What was the most common value of escrow/deferred payment?



What was the most common escrow/deferred payment period?

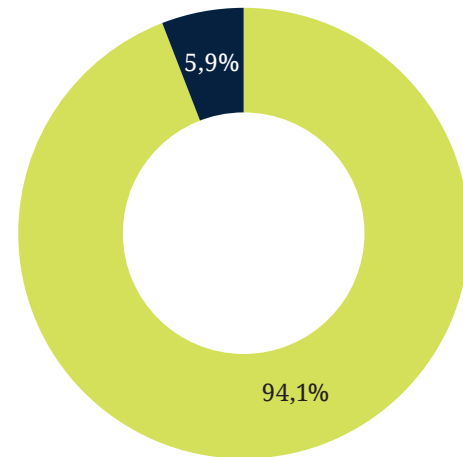


8. Warranty security – parent guarantee (ECL)

Parent guarantee remains unpopular.



What percent of transactions in the last 24 months had a parent guarantee (ECL)?



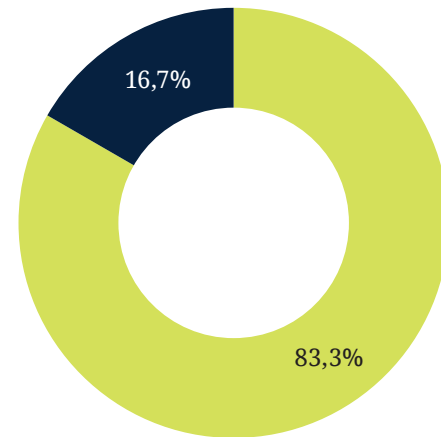
- 25% or less transactions had parent guarantee
- More than 25% transactions had parent guarantee

9.1 MAC Clause

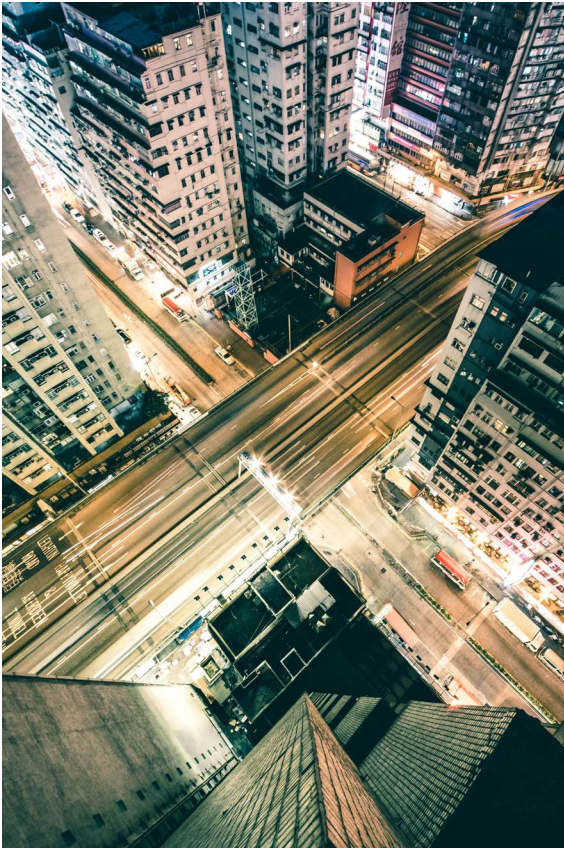
MAC clauses still dominate in M&A transactions in Poland and CEE.



What percent of transactions in the last 24 months had a MAC clause?



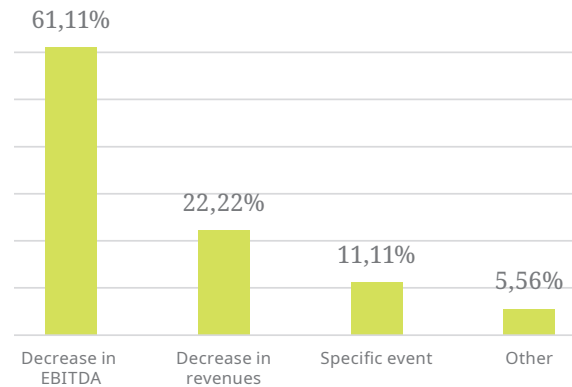
- 50% and more transactions had a MAC
- Less than 50% transactions had a MAC



9.2 MAC Clause

Broad MAC is no longer in use.

What is the most common basis for a MAC clause?

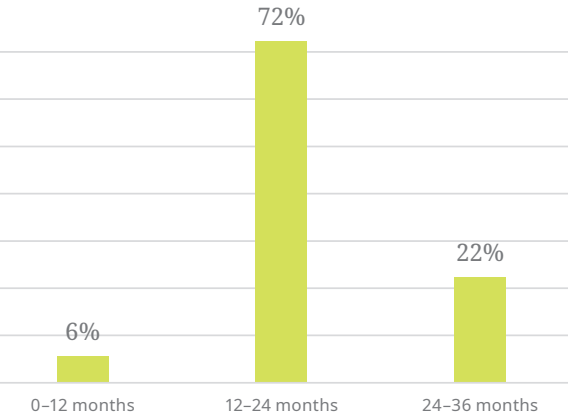


10. Commercial warranties – time limit and liability cap

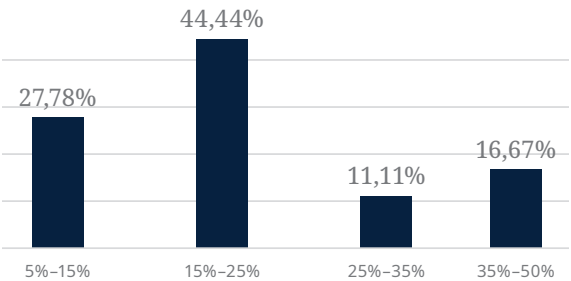
Market competitiveness is driving liability caps for commercial warranties down.

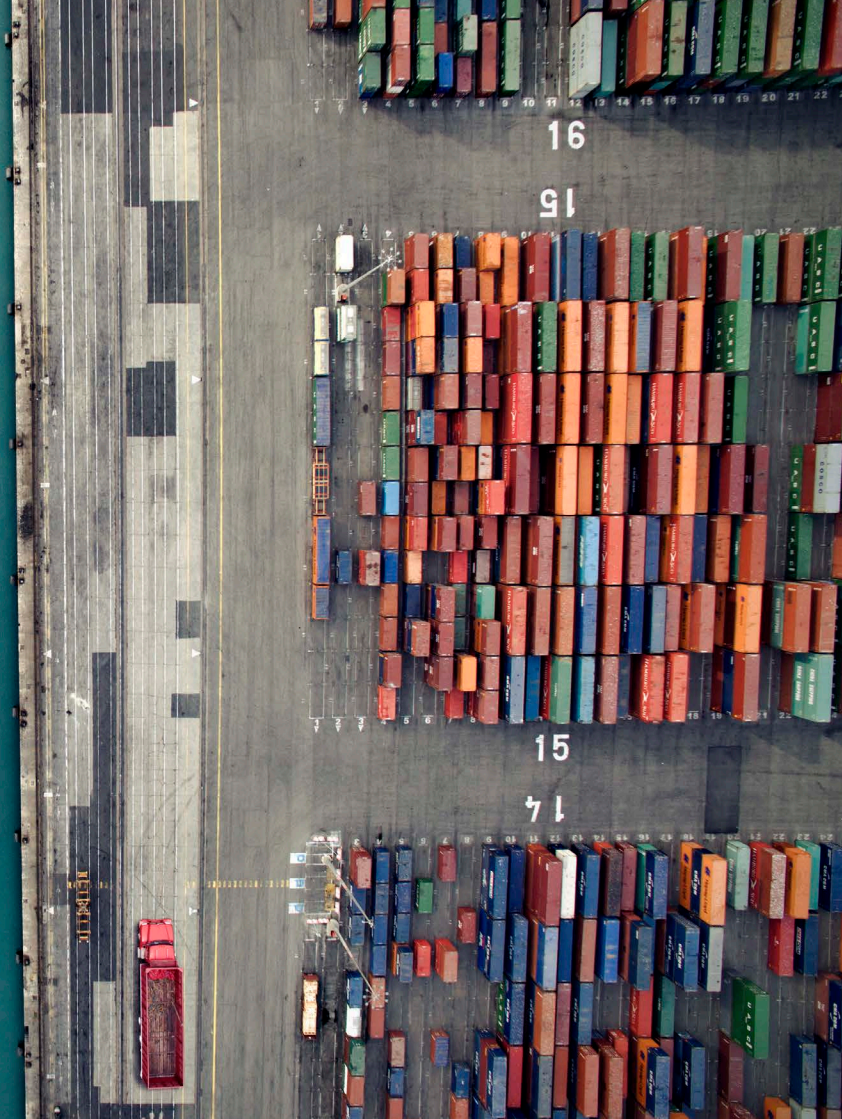
Duration and liability cap is consistently decreasing.

What was the standard time limit for commercial warranty claims?



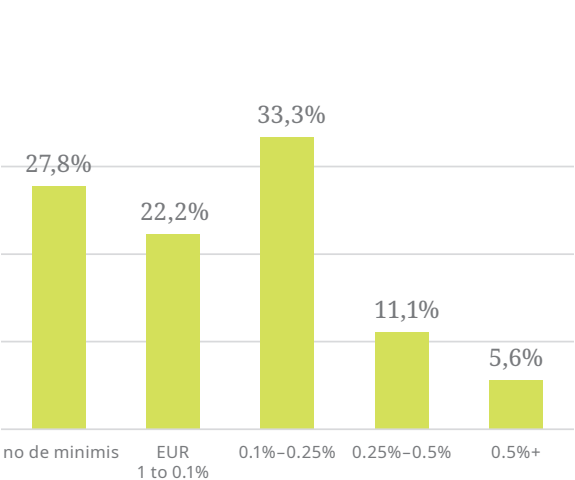
What was the standard liability cap for commercial warranty claims?





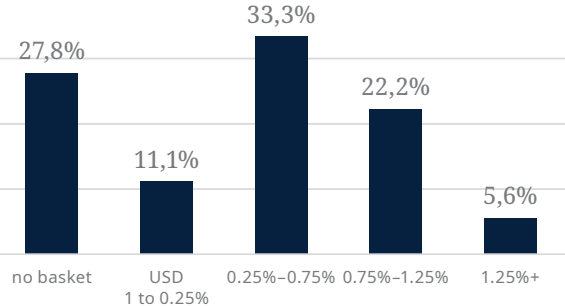
11. De minimis values

What was the standard de minimis value in the last 24 months?

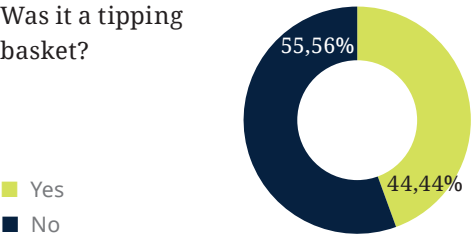


12. Basket values

What was the standard basket value in the last 24 months?



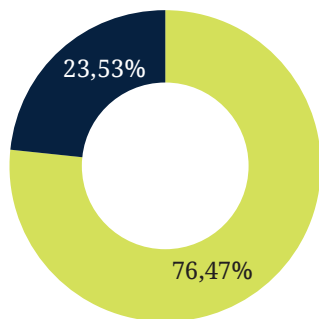
Was it a tipping basket?



13. Non-compete and non-solicitation clauses

More than 75% of respondents stated that all their transactions had a non-compete clause.

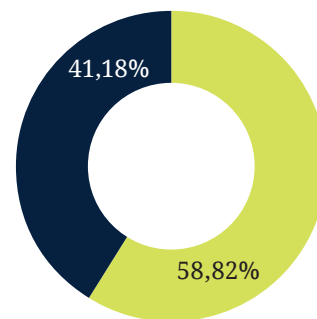
What percent of transactions in the last 24 months had a non-compete clause?



- 100% had a non-compete clause
- 75% or less had a non-compete clause

Almost 60% of respondents stated that all their transactions had a non-solicitation clause.

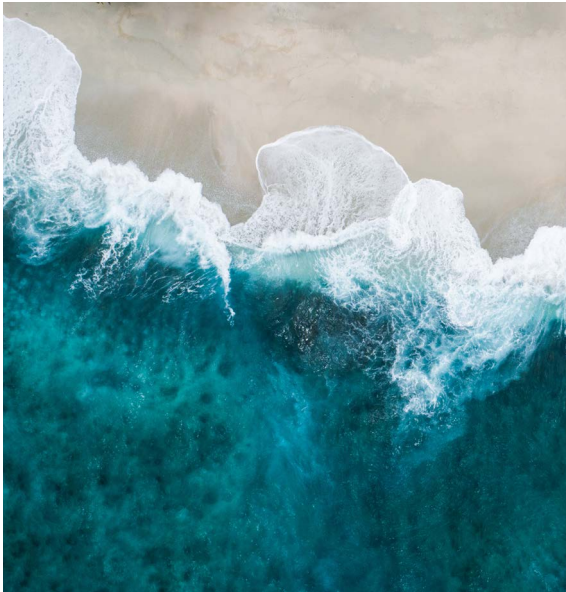
What percent of transactions in the last 24 months had a non-solicitation clause?



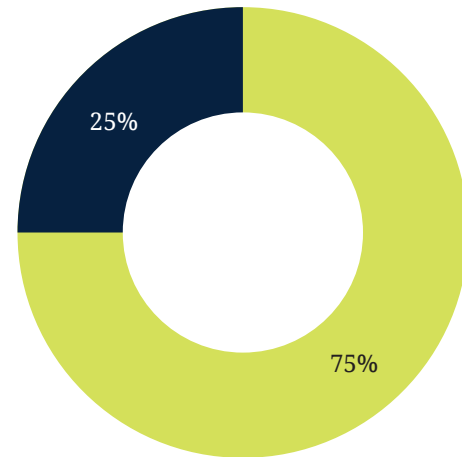
- 100% had a non-solicitation clause
- 90% or less had a non-solicitation clause

14. Arbitration vs common courts

Arbitration remains the preferred procedure for dispute resolution.



What percent of transactions in the last 24 months had arbitration/common courts as a dispute resolution mechanism?



■ Arbitration
■ Common courts

15. Post-completion claims and/or disputes

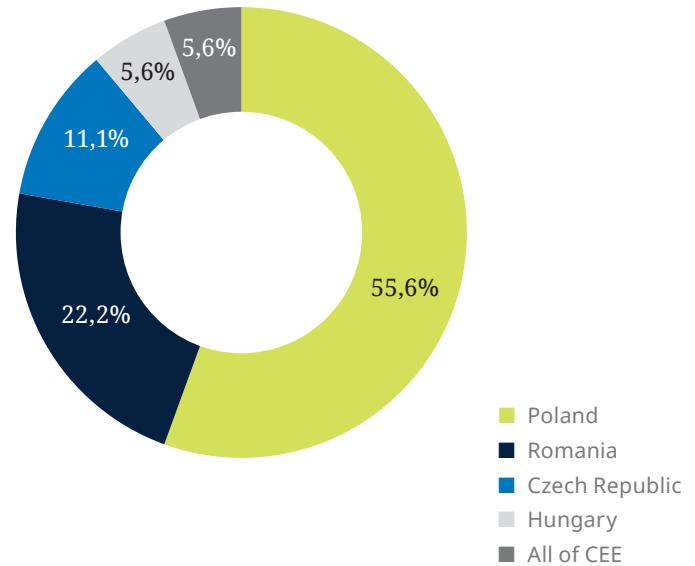
More than half the respondents stated that there were no post-completion claims and/or disputes, including those which have been resolved without the participation of the courts.





16. Interesting CEE markets

What markets in the CEE region do you perceive as interesting from the transactional perspective?







About DLA Piper: Private Equity

With one of the world's leading private equity practices, DLA Piper has the market knowledge and exposure to help you achieve your goals throughout the investment life cycle. Our practice is global, with private equity lawyers across the Americas, Asia Pacific, Europe and the Middle East.

Because we are a global firm steeped in private equity, our clients benefit from the breadth and depth of our private equity experience and our key sector-based legal experience.

We represent private equity institutions, management teams, debt providers and – very importantly – portfolio companies throughout all stages of the private equity life-cycle.

The strength and depth of our private equity practice is acknowledged with consistent top tier rankings in the key legal directories and M&A league tables as well as numerous industry awards. Our 2018 rankings by Mergermarket include placing us #1 globally in overall deal volume for the 9th consecutive year. PitchBook recognized DLA Piper as the second most active private equity law firm by global, US and Europe deal volume in 2018.

DLA Piper Private Equity in CEE: rankings and recognitions

EUROPE



Ranked #1
for European
Private Equity
Buyouts and Exits

Mergermarket
2016–2018



Law Firm
of the Year
Transactions

Unquote Private Equity
Awards 2018



Ranked #1
for number of
Global M&A

Mergermarket
2010–2019



AUSTRIA



Band 4
for Corporate
and M&A

Chambers Europe
2019



Band 1
for Corporate
and M&A

Chambers Europe
2018–2019



András Posztl
Band 1 lawyer
for Corporate/M&A

Chambers Global
2019



Gábor Molnár
Band 2 lawyer
for Corporate/M&A

Chambers Global
2016–2019



POLAND



Marek Sawicki
Band 1 lawyer
in Private Equity

Chambers Europe
2017, 2018 & 2019



Band 3
for Corporate
and M&A

Chambers Europe
2019



Band 3
for Corporate
and M&A

Chambers Europe
2019



Marian Dinu
Eminent
Practitioner
in Corporate/M&A

Chambers & Partners



ROMANIA

DLA Piper Private Equity: key contacts in CEE



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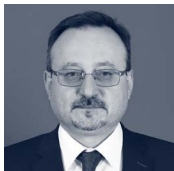


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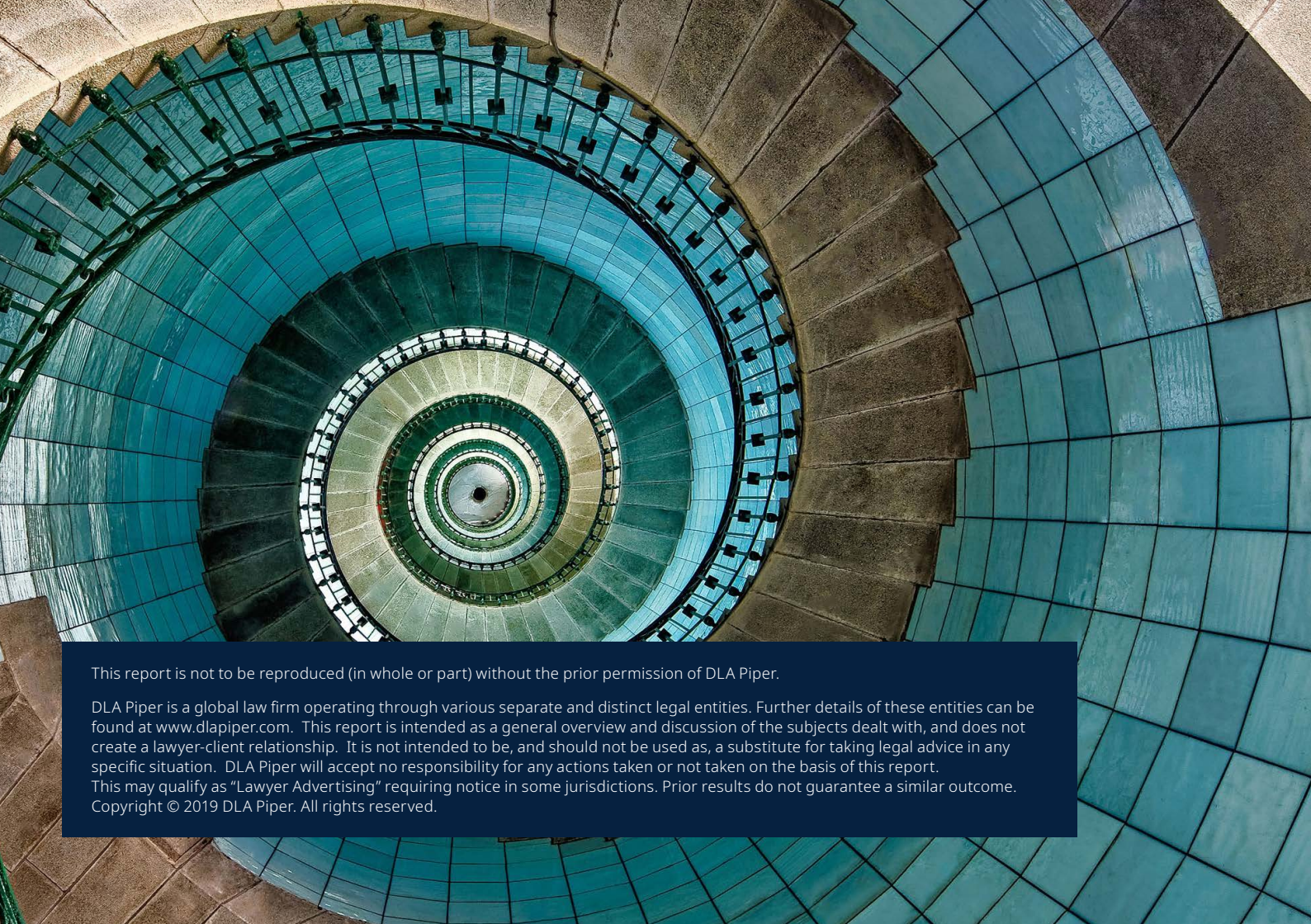


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