

A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The sun is setting or rising behind the buildings, creating a warm, golden glow and long, soft shadows. The sky is a mix of blue, purple, and orange. The buildings are arranged in a way that they seem to converge towards the top of the frame.

Blakes

Canadian
Private Equity
Deal Study

Third Edition

sample

Blakes Private Equity Practice

Blakes has one of the strongest and most experienced private equity practices in Canada. As a national team, we drive innovative transactional structures and their strategic implementation, with a depth of industry knowledge and perspectives from across the country.

Our Private Equity team spans various specialty areas, including M&A, capital markets, competition, foreign investment review, tax, financial services, real estate, intellectual property, pensions, benefits and executive compensation. We provide strategic advice and legal counsel at each stage of the investment lifecycle: fund formation, fund management and governance, financing, acquisitions and investments, management of portfolio companies, and exit strategies.

For more information on our Private Equity practice, visit www.blakes.com.

Contents

01	Overview	01
1.1	Foreword	02
1.2	Focus	03
1.3	Snapshot	04
1.4	Players	05
1.5	Dynamics	06

02	Process	07
2.1	Interim Period	08
2.2	Management Rollover	09
2.3	Options	10

03	Financial Terms	11
3.1	Escrows	12
3.2	Earnouts	15
3.3	Purchase Price Adjustments	17

04	Qualifiers	19
4.1	Definition of Material Adverse Effect	20
4.2	Definition of Knowledge	21

05	Representations and Warranties (R&Ws)	22
5.1	Noteworthy R&Ws	23
5.2	Fundamental R&Ws	25
5.3	Ringfencing	27
5.4	Disclosure Schedule Update	28

06	Closing Conditions	29
6.1	R&W Bring Down	30
6.2	No Material Adverse Change	31
6.3	Competition Act Approvals	32
6.4	Other Conditions	33

07	Indemnification	34
7.1	Damages Covered	35
7.2	Survival of R&W	36
7.3	Stand-Alone Indemnities	39
7.4	Sandbagging	40
7.5	Other Limitations	41
7.6	Remedies	42
7.7	Materiality Scrapes	43
7.8	Eligible Claim Thresholds	44
7.9	Baskets	45
7.10	Caps – General R&Ws	47
7.11	Exclusions from Monetary Limitations	49

08	Other	50
8.1	Interim Period Covenants	51
8.2	Termination Fees and Expenses	54
8.3	Dispute Provisions	55
8.4	Miscellaneous	56
8.5	R&W Insurance	57

09	Blakes Private Equity	59
9.1	Representative Matters	60

01

Overview

Foreword

This third edition of our *Canadian Private Equity Deal Study* proved to be both the most volatile and expansive version to date, as it captures what was an initially uncertain yet surprisingly short pause in market activity due to COVID-19 during the spring of 2020, as well as the rapid return to deal-making that followed, which has not relented since. Deal terms were initially continuously tested and updated — from forensic scrutiny of MAE clauses to lengthening of interim periods and a refashioning of earnouts — before returning to a new normal. What was true before COVID and remains the case now includes, at least, the following: first, Canadian private equity is robustly healthy and growing and second, this Study represents the most in-depth analysis of Canadian private equity buyout and investment transactions in the legal industry, allowing for the identification of recent trends and developments and an understanding of “what is market” in Canadian private equity.

Recognized as

**Law Firm
of the Year**

in Corporate Law by
Best Lawyers 2022.

Focus

Private Equity Nucleus

Unlike private M&A deal studies that source their data from publicly available sources such as SEDAR* and are, therefore, based on private transactions involving public companies, this Study focuses on transactions involving private equity funds, sponsors or portfolio companies as sellers, buyers, investors and/or targets. Among the many novel perspectives presented in this Study is a focus on differences in dynamics and terms between domestic and cross-border deals and those involving founders or strategic companies opposite private equity investors.

Canadian Nexus

This Study focuses solely on transactions involving Canadian private companies or their assets.

Blakes Involvement

This Study is a proprietary analysis of Canadian buyout and minority investment transactions in which Blakes was involved. Derived from our exclusive database containing hundreds of precedents, this Study examines over 100 transactions signed between 2017 and 2020. By reporting aggregated data, we ensured no confidential information is disclosed.

Data Presentation

Medians are used instead of means to eliminate distortion to averages resulting from outliers. Due to rounding, actual figures may be plus or minus 1%. In most cases, percentages have been rounded to the nearest whole percentage. Unless otherwise stated, monetary values are presented in Canadian dollars. Portfolio companies are included among private equity parties. Transactions include buyouts and minority investments.

Transaction Terms

Where transaction terms are not directly comparable, we used our judgment and discretion in summarizing, categorizing and reflecting them in this Study. The results do not reflect the views of Blakes, and accordingly, whether or not a specific term is appropriate for any transaction depends on, and merits close consideration based on, the facts and circumstances of such transaction.

Legend



Upward Trend



Downward Trend



Insight



Explanatory



Informative



Subset

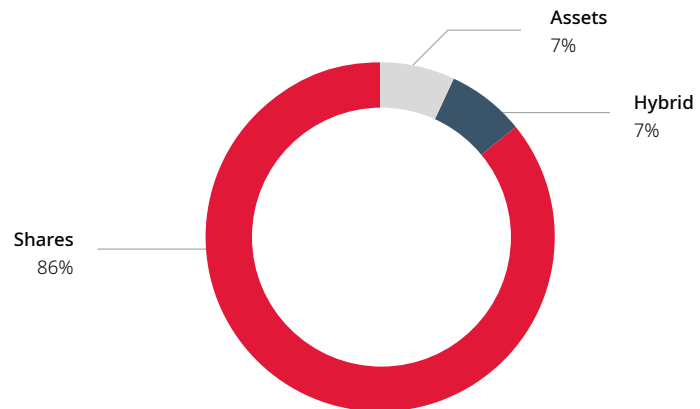


COVID-19

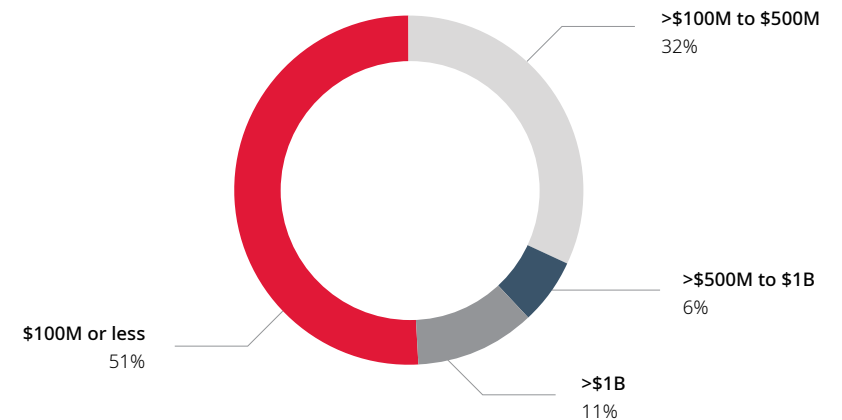
* SEDAR is the System for Electronic Document Analysis and Retrieval maintained on behalf of the Canadian securities regulatory authorities for use by reporting issuers.

Snapshot

Structure



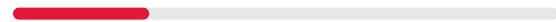
Size



Industry

Technology & Media

25%



Industrial Goods & Services

21%



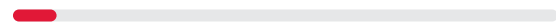
Life Sciences

10%



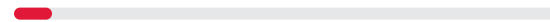
Financial Services

8%



Retail

7%



Food & Beverage

7%



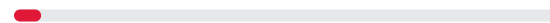
Chemicals & Natural Resources

6%



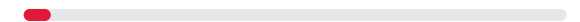
Oil & Gas / Energy

5%



Infrastructure

5%



Real Estate

3%



Transportation

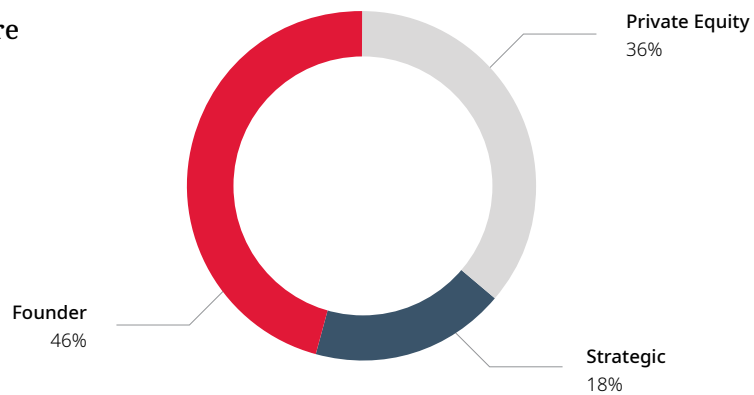
3%



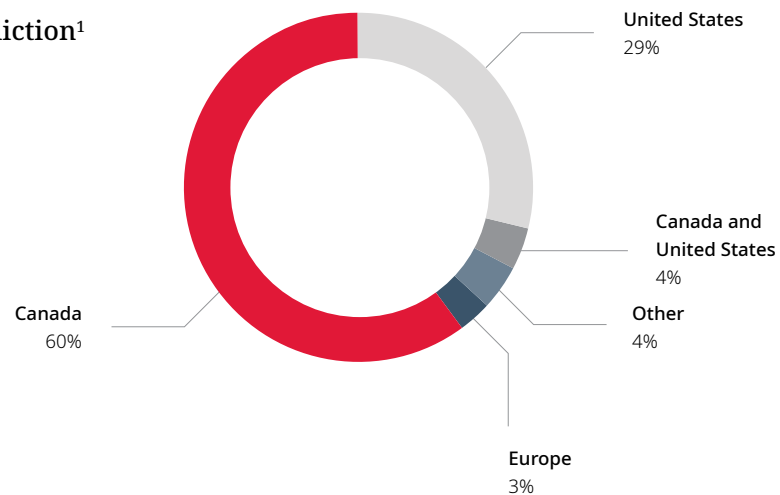
Players

Sellers

Nature



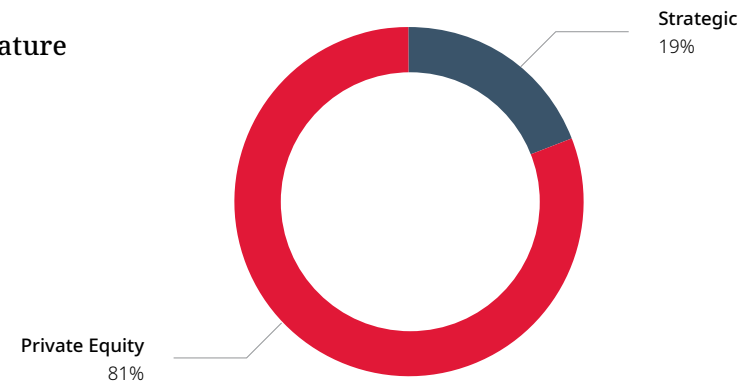
Jurisdiction¹



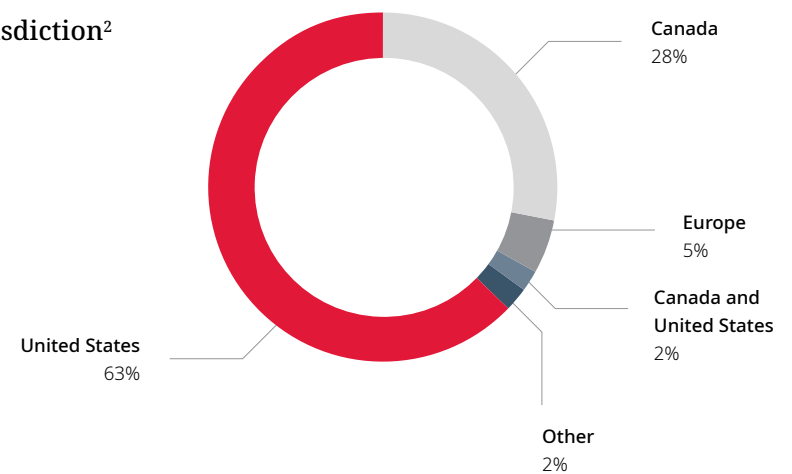
¹ Excludes management where management team members are also sellers.

Buyers

Nature

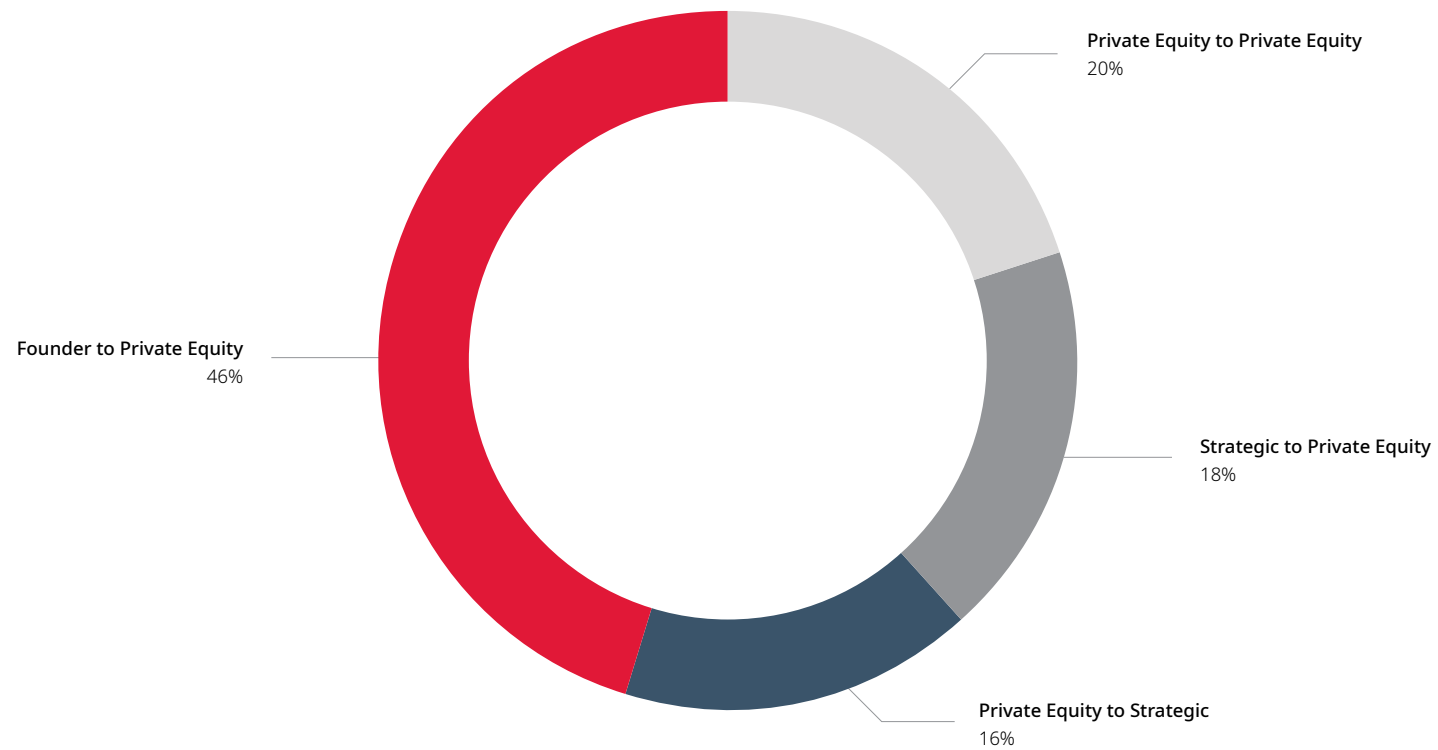


Jurisdiction²



² Reflects syndicates of non-controlling sellers.

Dynamics



Get the big picture.

To request the complete Study, email gary.nurse@blakes.com.