



DENTONS

Beyond Borders

Private equity fund managers' survey
of current topics in cross-border M&A

Grow | Protect | Operate | Finance

December 2023

Contents

3	...	Foreword & Key Findings
5	...	Methodology & Respondent Profile
6	...	Part 1: State of Play
6	...	Recent trends
8	...	UK-style seller-friendly features
9	...	Deal drivers
10	...	Lessons learned: post-deal integration and pre-closing due diligence
12	...	Part 2: Incentive Structuring
12	...	Management rolls
14	...	Incentive pools
16	...	Earn-outs
18	...	Indemnity profiles
19	...	Part 3: The Road Ahead
19	...	M&A forecast
21	...	Sectors
23	...	Risks
27	...	LP scrutiny
28	...	Dentons by the numbers
30	...	About Dentons

Foreword & Key Findings

2022 was a difficult year for private equity (PE) dealmakers, and 2023 has hardly been any easier. Cross-border dealmaking has been hit particularly hard, reflecting stiff geopolitical and macroeconomic headwinds.

Notwithstanding these challenges, this survey shows that dealmakers are navigating these obstacles. So, what are the secrets of successful cross-border dealmaking in the current climate—and what might the next 12 months have in store?

The purpose of this survey is to answer those and other questions. In the first part, we review 2022 and the year-to-date, including the factors driving deals. Against this background, respondents reveal the things that they wish they had known a year ago.

Next, we dive into the subject of incentives and safeguards—an increasingly important feature of cross-border dealmaking. We examine how respondents are carefully crafting management rollovers and incentive pools to de-risk acquisitions. We also evaluate the growing magnitude of earn-outs and how dealmakers are using them to their advantage.

In the final section, we look ahead to the coming 12 months. Respondents point to an expected uptick in dealmaking, along with larger transaction sizes. But they are mindful of where the dangers lie. Our survey concludes with a candid evaluation of the risks and the steps respondents are taking to avoid them.

Key Findings

Most respondents (78%) expect to undertake 1-3 cross-border transactions over the next 12 months, and 16% forecast undertaking 4-6, surpassing their recent deal activity. Respondents also expect the size of the average transaction in which their organization is involved over the next 12 months to increase. Almost half expect transaction values to increase somewhat (41%) or increase significantly (4%).

Technology, media & telecoms (TMT) is by far the most appealing sector for cross-border M&A in the eyes of our respondents, garnering 78% of votes when dealmakers were asked to select up to three focus industries.

The most important factors driving survey participants' cross-border dealmaking strategy over the last 12 months were the desire to acquire intellectual property (27%), expanding into new growth markets (22%), and pursuing digital transformation (18%).

According to our total respondent pool, Western Europe is the most appealing region in the world for buy-side cross-border M&A activity (76%), followed at some distance by the US (55%) and Southeast Asia (47%). Conversely, the least appealing region is thought to be China (69%, by far the largest such share). Survey participants cited unexpected regulatory hindrances in various jurisdictions as impeding deals.

Despite economic headwinds, dealmakers are continuing to see time pressure on their ability to do due diligence, and seller-friendly UK-style deal terms. Risk is being pushed out to the future, with practically all respondents (99%) saying their most recent M&A deal included an earn-out. Of these, the largest share (61%) say the earn-out represented 10%-20% of the potential deal value.

The greatest risk factors identified by our survey participants that may negatively impact their cross-border dealmaking plans are the intertwined dangers of persistent inflation (25% of first-choice selections) and elevated interest rates (26%).



Methodology & Respondent Profile

In Q2 2023, Dentons' research provider interviewed 150 PE fund managers with assets under management (AUM) of at least US\$250 million and experience with cross-border M&A. All respondents, none of whom are first-time fund managers, recently completed a cross-border deal and expect to participate in at least one cross-border acquisition/investment over the next 12 months. The respondent pool was divided between acquirers based in the US, Canada, and elsewhere in the world (i.e., outside North America), including:

- 10 acquirers from Canada of targets based in the US
- 10 acquirers from Canada of targets based elsewhere in the world
- 15 acquirers from the US of targets based in Canada
- 40 acquirers from the US of targets based elsewhere in the world
- 10 acquirers from elsewhere in the world of targets based in Canada
- 65 acquirers from elsewhere in the world of targets based in the US

Part 1: State of Play

Cross-border dealmakers are forging ahead in the face of stiff headwinds.

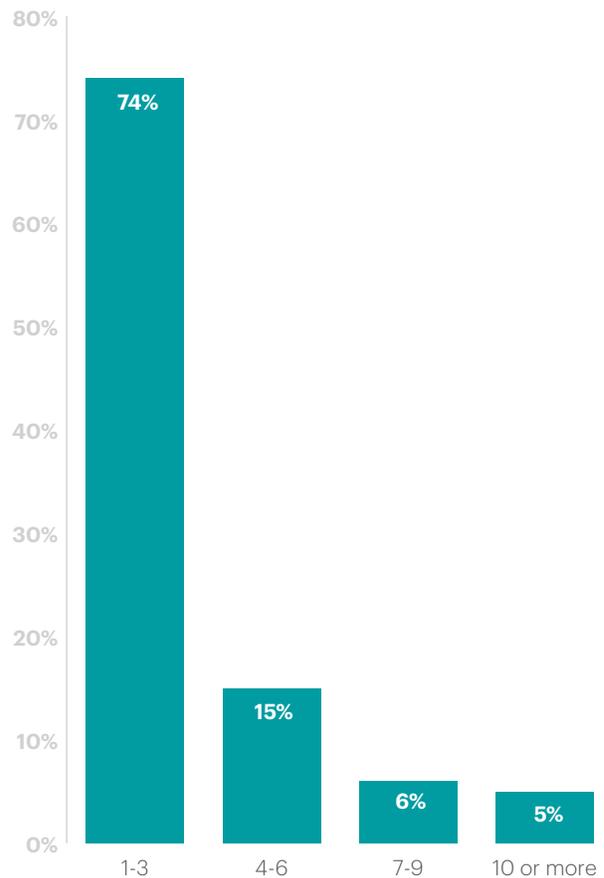
2022 was one of the toughest years on record for PE dealmaking, with both volume and value heavily impacted by soaring inflation, higher borrowing costs, geopolitical disruptions, and ever-tighter foreign investment scrutiny. Through 2023, these headwinds have caused aggregate PE deal values to flatten even further, with deal volumes also failing to recover. In Q3 2023, 1,949 PE deals were announced globally, according to Mergermarket data, the lowest quarterly total since Q4 2015 (1,939).

Dealmakers have proved themselves to be resilient in the face of all this turbulence. Nearly three-quarters of participants in our survey (74%) were involved in 1-3 cross-border deals over the last 12 months, while a further 15% participated in 4-6 international transactions. A small proportion (5%) were involved in 10 or more deals over the past year.

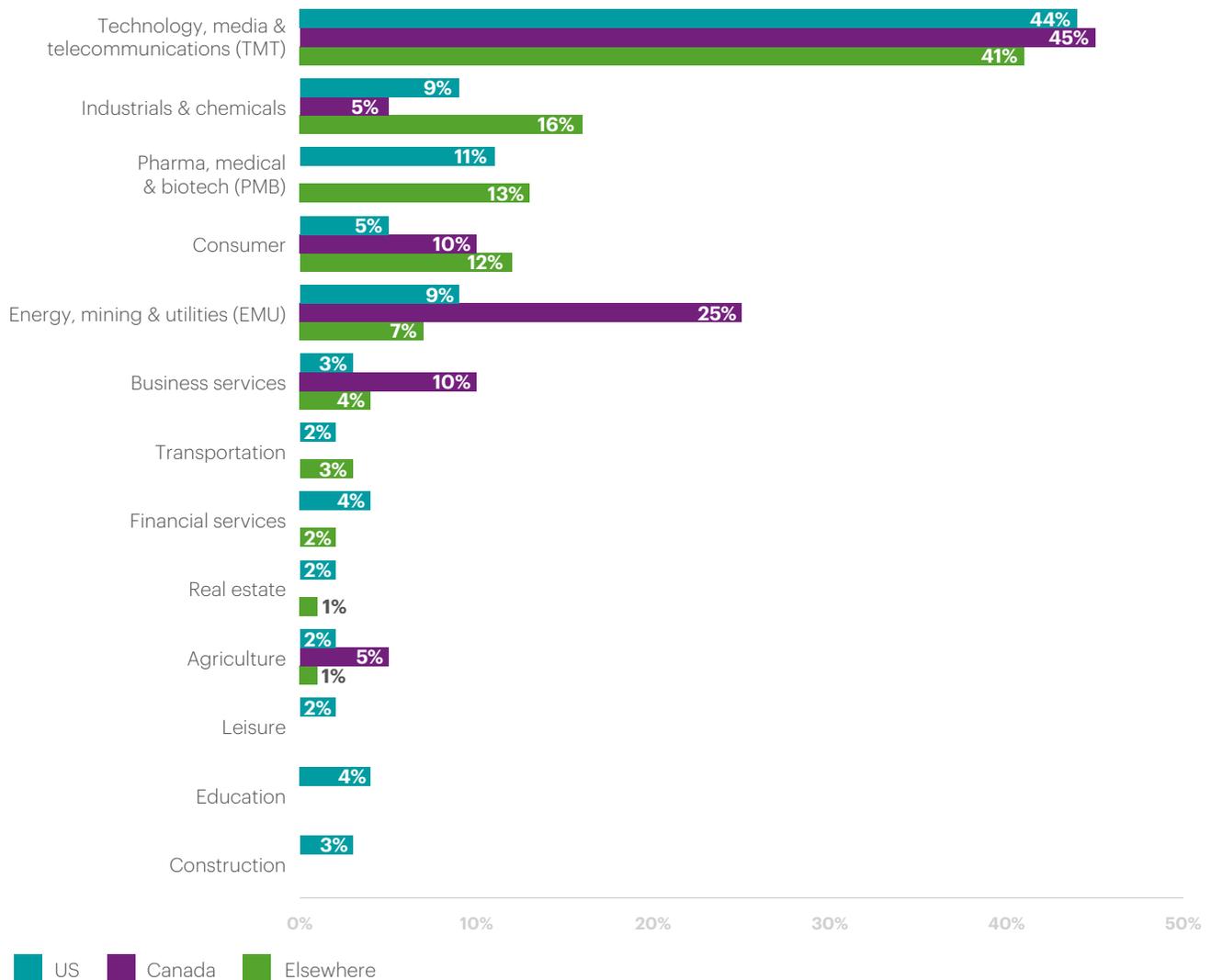
Focusing on sectors, technology, media & telecoms (TMT) stands out as the biggest deal generator by far across all geographies: 43% of respondents overall say that the target of their most recent cross-border deal operated primarily in the TMT industry.

Canadian dealmakers are noticeably more likely to have targeted energy, mining & utilities (EMU) companies in their latest cross-border deal (25%, versus 9% of US-based respondents and 7% of respondents based elsewhere in the world). US dealmakers, meanwhile, are casting the net widely and are the only respondent group to have targeted companies in all 13 sectors covered in our survey.

How many cross-border deals were you involved in over the last 12 months? (Select one)

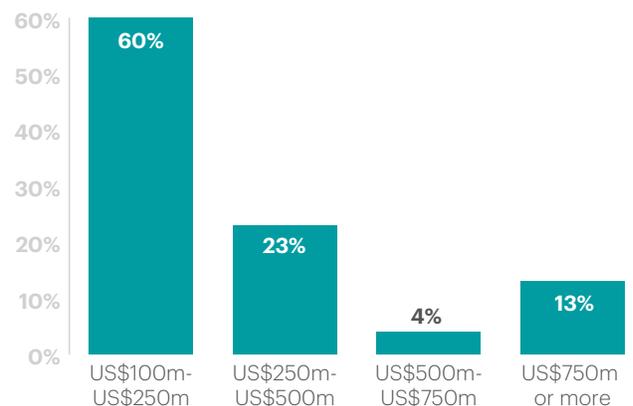


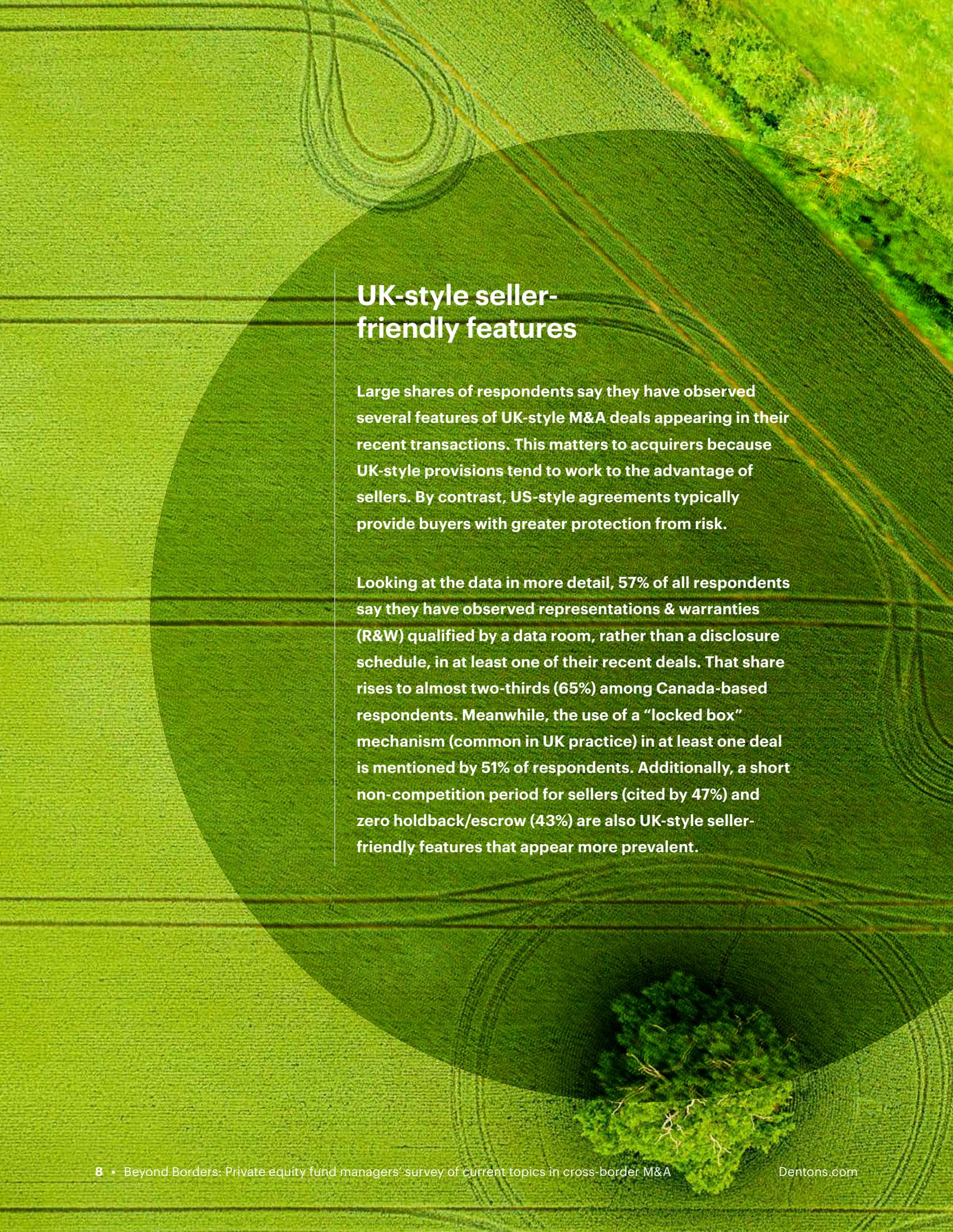
In your most recent cross-border deal, in what sector did the target primarily operate? (Select one)



In most cases (60% across all survey participants), the enterprise value of respondents’ most recent target fell within the US\$100m-US\$250m range. A further 23% report the enterprise value of their most recent targets as being between US\$250m-US\$500m.

In your most recent cross-border deal, what was the approximate enterprise value of the target company? (Select one)





UK-style seller-friendly features

Large shares of respondents say they have observed several features of UK-style M&A deals appearing in their recent transactions. This matters to acquirers because UK-style provisions tend to work to the advantage of sellers. By contrast, US-style agreements typically provide buyers with greater protection from risk.

Looking at the data in more detail, 57% of all respondents say they have observed representations & warranties (R&W) qualified by a data room, rather than a disclosure schedule, in at least one of their recent deals. That share rises to almost two-thirds (65%) among Canada-based respondents. Meanwhile, the use of a “locked box” mechanism (common in UK practice) in at least one deal is mentioned by 51% of respondents. Additionally, a short non-competition period for sellers (cited by 47%) and zero holdback/escrow (43%) are also UK-style seller-friendly features that appear more prevalent.

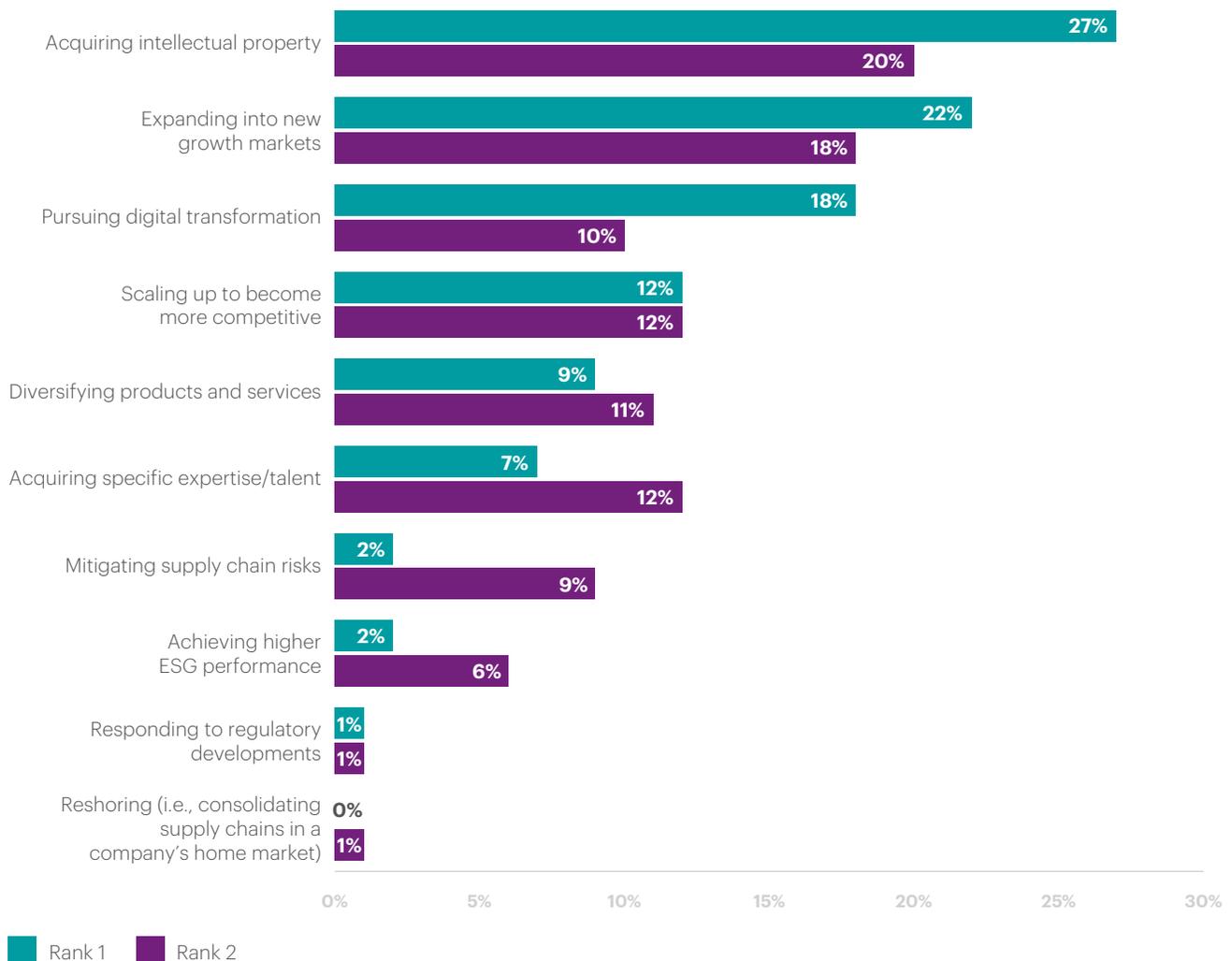
Deal drivers

Acquisition of intellectual property (IP) stands out as the number-one deal motivator over the past 12 months, our survey shows. This aligns broadly with the fact that the bulk of respondents' most recent acquisitions focused on the IP-rich TMT sector.

More than a quarter of respondents (27%) identify IP acquisition as their primary motivator, while a further 20% cite it as a key secondary driver. Close behind are expanding into new growth markets (22% of first-choice selections) and pursuing digital transformation (18%).

"IP-driven acquisitions require a distinct approach to due diligence and risk allocation," says Andrea Johnson, global co-head of Dentons' PE group and a member of Dentons' global board. "A close dialogue is necessary to understand whether business value is underpinned by patents and trademarks, trade secrets or know-how in the sense of skill or expertise of the target's workforce, as the mix will greatly influence the approach to the deal."

What were the most important factors driving your cross-border dealmaking strategy over the last 12 months? (Select top two and rank 1-2, where 1=most important)



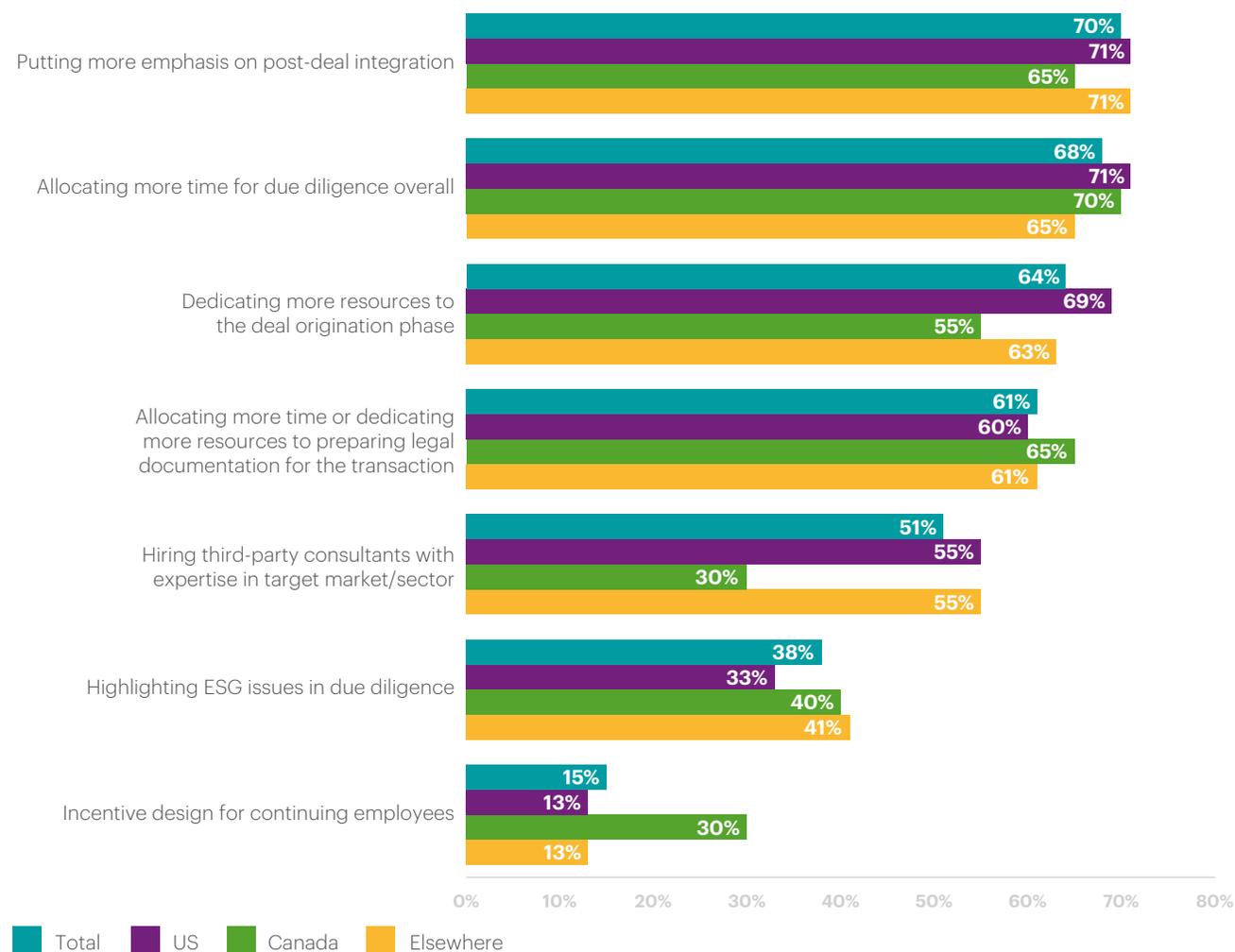
Lessons learned: post-deal integration and pre-closing due diligence

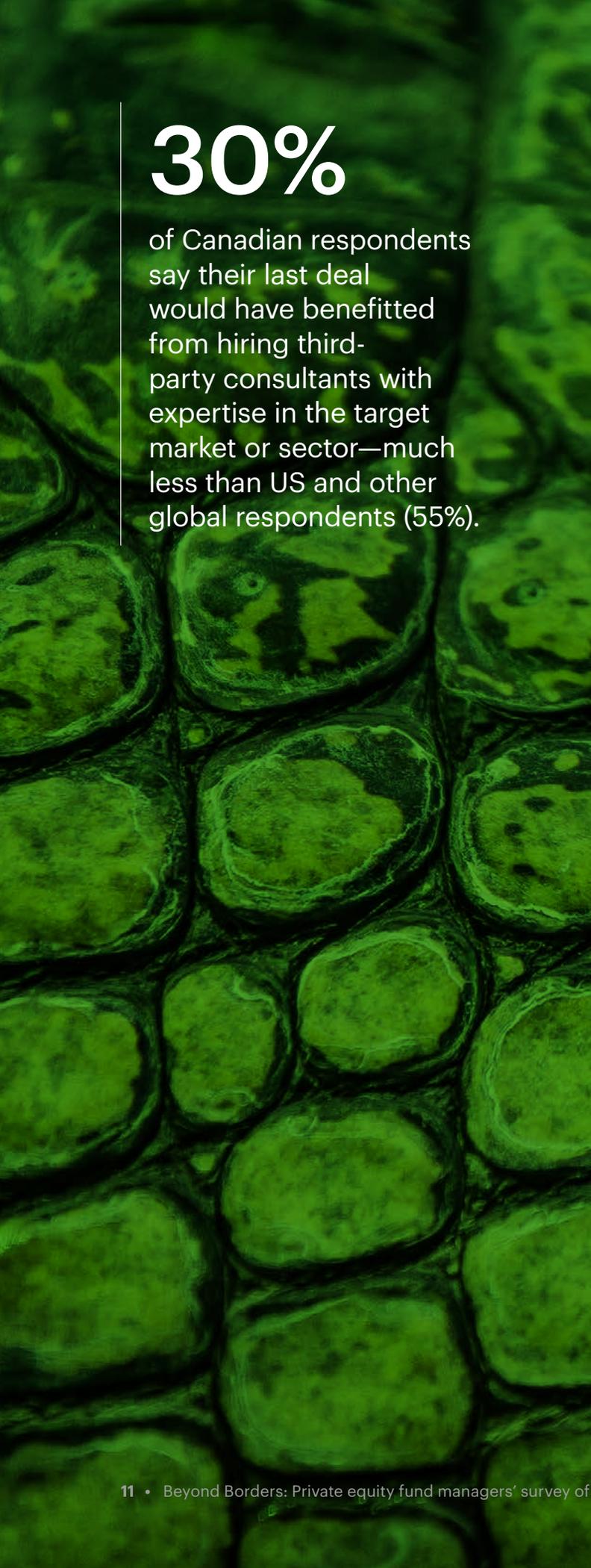
Respondents broadly agree on areas for improvement in the cross-border deal process. The largest share (70%) says that they wish they had put more emphasis on post-deal integration. “This would have helped us to understand the revenue-generating challenges better,” says the managing director of a US-based PE firm that recently made a cross-border investment in Canada. “We did not allocate enough time to integrate the target systematically. We might have lost the opportunity to generate more revenue or focus on new solutions.”

Almost as many respondents (68%) say they ought to have allocated more time to due diligence overall. Deciding what to prioritize is no easy matter in the current climate, particularly with geopolitical and macro factors increasingly in play and resources stretched ever-more thinly—a point noted by more than one respondent.

“Time management was a concern during the previous deal. We were dealing with regulatory and interest rate hike uncertainties. There was less time allocated for due diligence and preparation of legal documentation due to these uncertainties,” says the managing director of a US buyout firm that recently made a cross-border investment in Brazil.

What additional measures do you think should have been taken to improve the M&A process overall in your most recent cross-border deal? (Select all that apply)



A vertical strip on the left side of the page features a microscopic image of green plant cells, likely from a leaf, showing their characteristic hexagonal structure and chloroplasts. The image is in shades of green and serves as a background for the text on the left.

30%

of Canadian respondents say their last deal would have benefitted from hiring third-party consultants with expertise in the target market or sector—much less than US and other global respondents (55%).

Rushing due diligence is potentially costly—a point highlighted by the partner of a UK-based buyout firm that recently made a cross-border investment in the US: “There was a lot of information that could not be reviewed. We might have to settle for a higher valuation than the company was worth.”

Given the intense time pressures facing dealmakers, it is perhaps not surprising that more than half say they wish they had sought the help of third-party advisors. “We should have hired experts who knew about the regulatory restrictions and overall conditions in local markets,” says the managing director of a Swiss PE firm that recently made a cross-border investment in Canada. “They could have provided us with insights before we faced regulatory hindrances. Addressing environmental due diligence challenges should have been prioritized.” Interestingly, Canadian respondents (30%) were much less likely than US and other global respondents (55%) to say their last deal would have benefitted from hiring third-party consultants with expertise in the target market or sector.

Placing more importance on incentive design for continuing employees is referenced by the smallest share of respondents overall (15%), although Canadian dealmakers are conspicuously more likely to cite this (30%, versus just 13% of their peers in the US and elsewhere in the world). Talent retention can be as simple as better communication with the target, explains the partner of a US buyout firm that recently acquired a Netherlands-based company: “Many talented employees left fearing job security. This could have been avoided if we’d reassured them about their position within the organization after the deal was complete.”

Part 2: Incentive Structuring

Incentives and earn-outs are playing an increasingly important role in safeguarding deals—and there are some distinct differences in regional approaches.

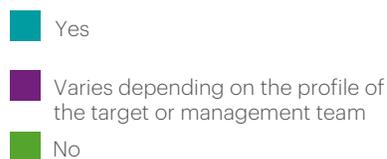
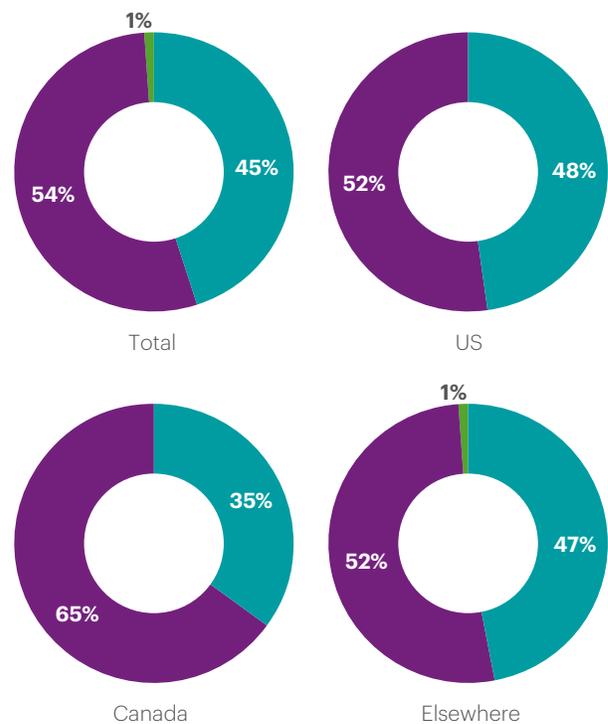
Incentives play a critical part in de-risking any acquisition. But there is no such thing as a one-size-fits-all approach. Moreover, our survey shows that methods for ensuring that counterparties have skin in the game have a notably regional character—potentially creating an expectation gap between buyers and sellers.

“Incentive structures have taken center stage in recent years, playing a pivotal role in minimizing the inherent risks associated with acquisitions. However, it’s important to recognize that there’s no universal formula,” warns Dan Shea, national practice group leader of Dentons’ Canadian corporate group and a member of the firm’s national management committee. “The approach must be tailored to the unique circumstances of each deal—hence the importance of working with a knowledgeable legal team.”

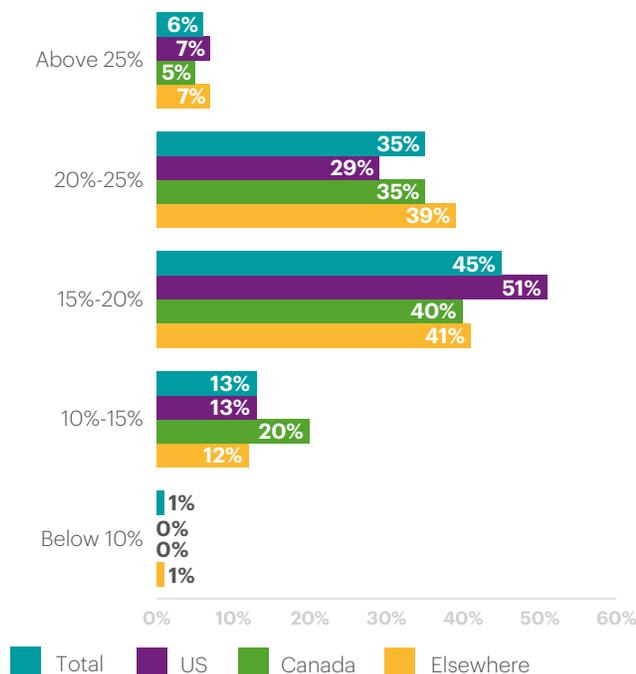
In the event of a deal where the sponsor takes control of the target company, 45% of respondents across all geographies say they always require a management rollover or reinvestment. But the largest share of respondents (54%) say this decision is largely dependent on the profile of the target or management team.

Interestingly, Canadian survey participants are the least outspoken on this front and are more likely to weigh up the need for a management rollover based on the merits of each case: only 35% of Canada-based respondents always require a management roll

In your deals where the sponsor is taking control of a company, do you require a management roll or reinvestment? (Select one)



Where a roll or reinvestment is required, what is your minimum size of equity roll for a management group that is key/highly engaged?
(Select one)



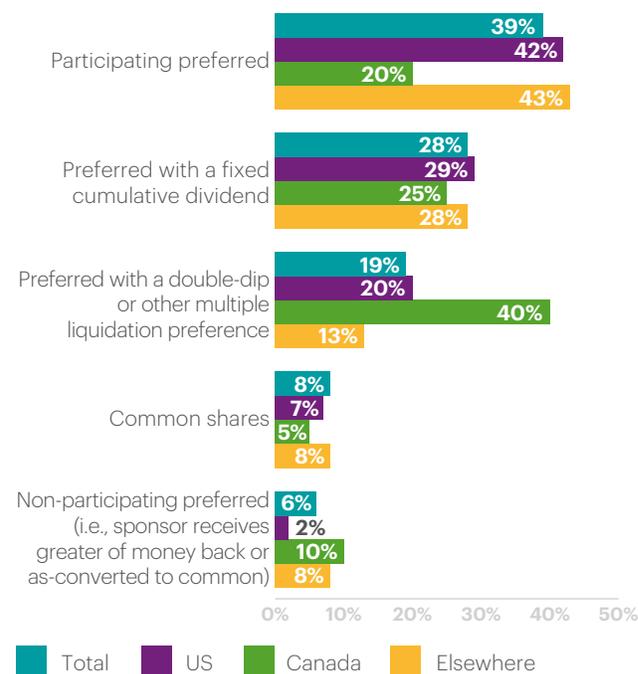
or reinvestment, versus 48% of US respondents and 47% of those based elsewhere in the world.

In cases where a management rollover or reinvestment is required, the largest share of respondents (45%) expect a key or highly-engaged management group to contribute an equity roll of 15%-20% of the proceeds of the transaction, while a further 35% of survey participants require an equity roll of 20%-25%.

Rollover requirements vary somewhat depending on the region in which the buyer is based. Canadian sponsors are more likely than their peers to entertain a smaller minimum equity roll of 10%-15%, while US dealmakers are the group most likely to be looking for a 15%-20% commitment. Meanwhile, buyers from elsewhere in the world are more likely to drive higher roll percentages, in the 15%-20% or the 20%-25% range.

According to the largest share of respondents overall (39%), sponsors are most likely to take

In your average deal in this fiscal year that includes a management roll or reinvestment, which of the following types of shares/stock is the sponsor most likely to take? (Select one)



“participating preferred” shares in the average deal in this fiscal year that includes a management roll or reinvestment. The next most popular response is preferred shares with a fixed cumulative dividend (28%), followed by preferred shares with a double-dip or other multiple liquidation preference (19%). Common shares (8%) and non-participating preferred shares (6%) are notably out of favor.

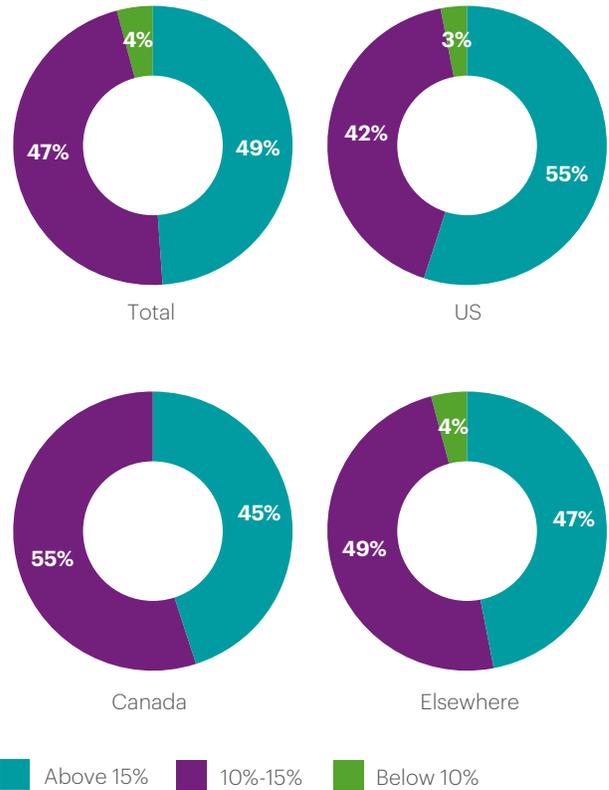
Canadian respondents are considerably less likely to reference “participating preferred” shares (20%) than their peers in the US (42%) or elsewhere in the world (43%). Instead, the bulk of Canadian dealmakers (40%) reference preferred shares with a double-dip or other multiple liquidation preference, versus just 20% and 13% of respondents in the US and elsewhere in the world, respectively. This may suggest a heightened Canadian focus on deals for distressed companies where the acquirer can drive buyer-friendly terms.

Incentive pools

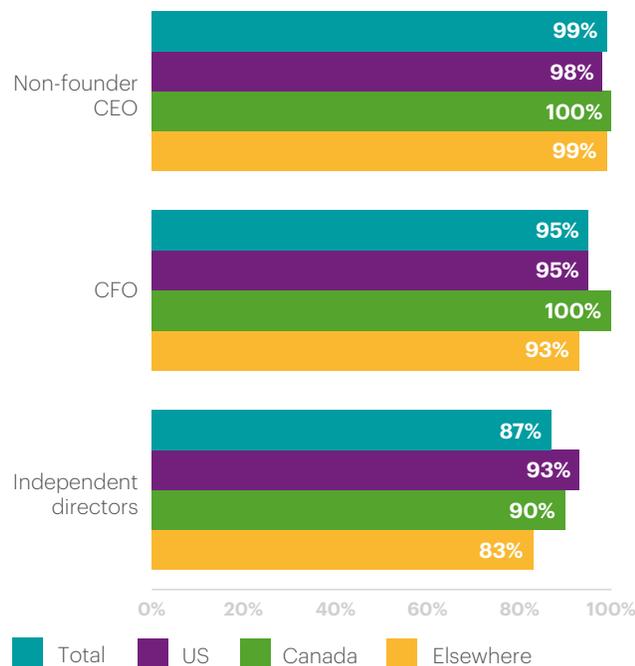
Reserving an equity pool for the purposes of incenting a target company's management and employees is a key element in PE acquisitions. Just under half of all respondents in our survey (49%) say the average size of the management and employee equity incentive pool established in their control deals is above 15% of the target company's total equity. A further 47% say the pool is 10%-15%.

Almost all respondents say their portfolio companies offer target equity to non-founder CEOs (99%), as well as to CFOs (95%) and, in most cases, to independent directors as well (87%). To non-founder CEOs, our respondents' portfolio companies offer on average 8.0% of target equity; to CFOs 4.8%; and to independent directors (as a group) 4.0%. While there is little regional variation, North American deal sponsors are marginally more likely to offer target equity to independent directors than those elsewhere in the world.

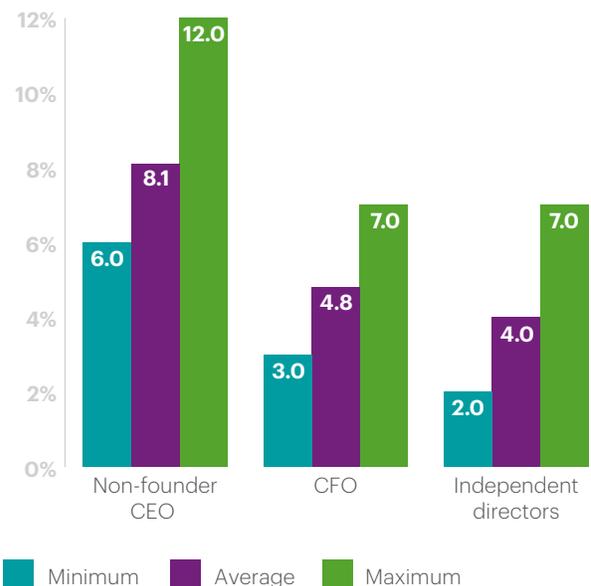
What is the average size of the management and employee equity incentive pool established in your control deals? (Select one)



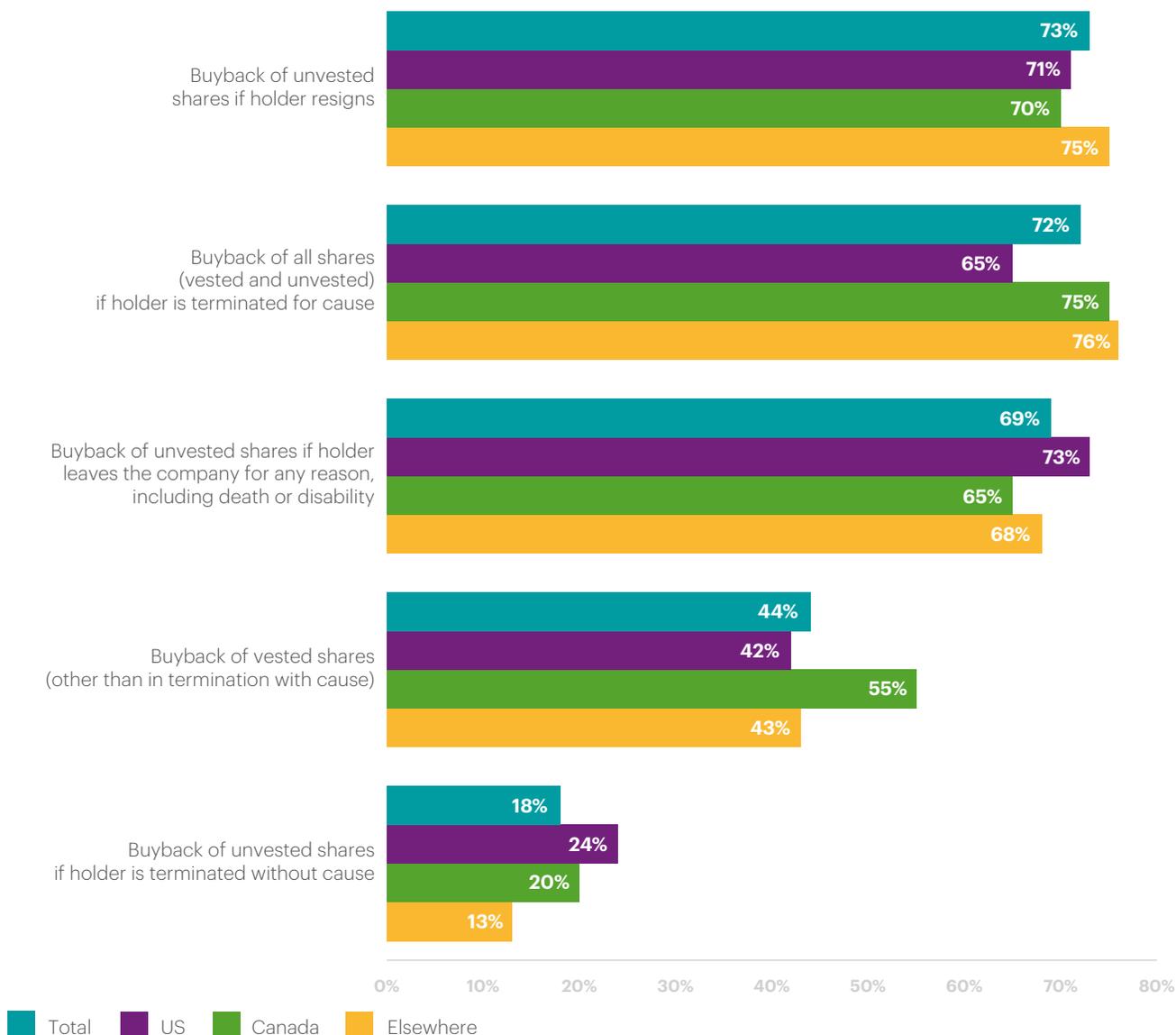
Do your portfolio companies offer target equity to...? (Select all that apply)



And approximately what percentage?



In the most common/typical situation, which terms does your organization impose on rolled equity?
 (Select all that apply)



Focusing on the terms typically imposed on rolled equity, almost three-quarters of respondents employ buybacks of unvested shares if the holder resigns (73%) or otherwise leaves the company for any reason (69%). Almost three-quarters of respondents also expose vested shares to buyback if the holder is terminated for cause, with the exposure of vested shares to buyback dropping to 44% of responses in situations other than termination for cause.

There seems to be reticence among respondents to buybacks of unvested shares if a holder is terminated without cause (18%), which is commonly considered a “good leaver” situation. Notably, the percentage of respondents imposing buybacks over unvested shares rises to 24% among US respondents.

Earn-outs

Dealmakers are increasingly using earn-outs to bridge valuation gaps, a trend amplified by current economic uncertainty. Almost all respondents in our survey (99%) say their most recent M&A deal included an earn-out.

By far the largest share of these (61%) says the earn-out represented 10%-20% of the potential deal value, while just under a quarter (24%) say it was more than 20%. Only a minority (14%) say that the earn-out amounted to less than 10% of the overall potential deal value.

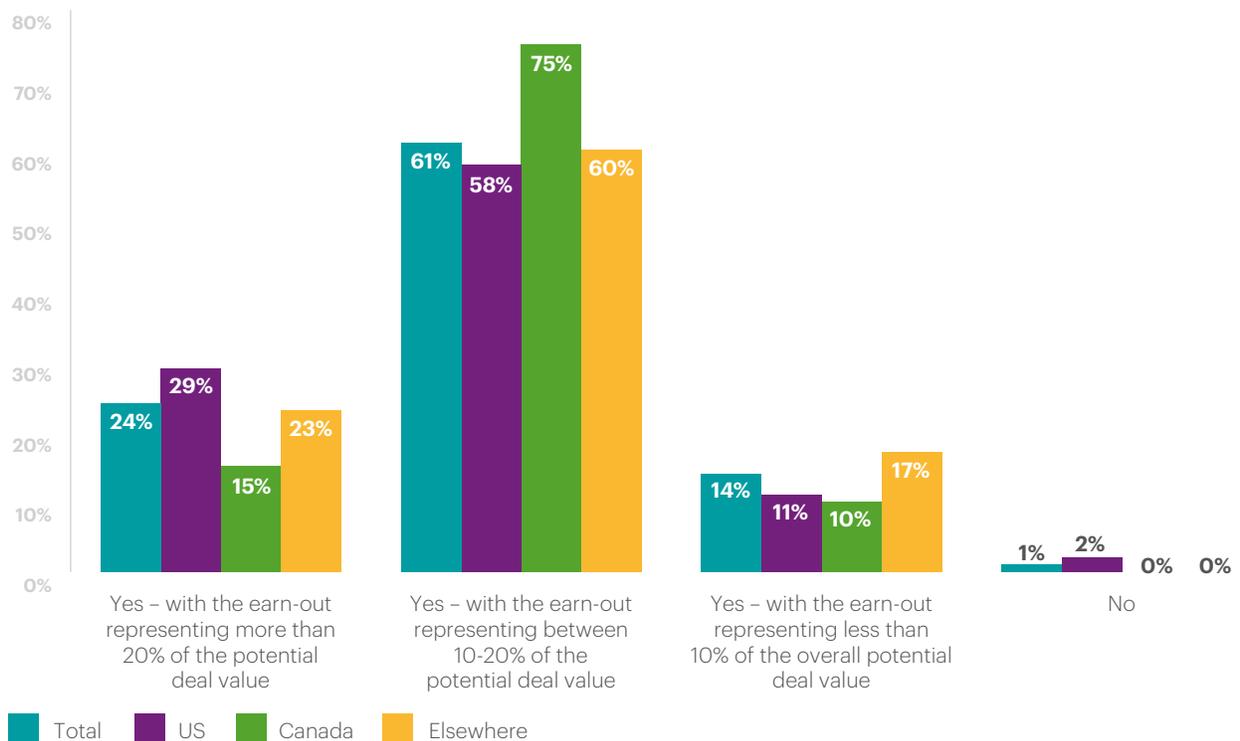
Canadian respondents tend toward moderate-sized earn-outs and US respondents are more likely to demand or offer larger earn-outs. Compared to their peers, Canadian dealmakers are the group most likely to say that their most recent deal included an earn-out of 10%-20% (cited by 75%) and the least likely to specify an earn-out of more than 20%. US acquirers are the most likely to seek an earn-out representing more than 20% of the potential deal value.

Focusing on the anatomy of earn-outs, earn-outs that are exposed to indemnity claims are the most widely reported: earn-outs of this sort are cited by 76% of respondents.

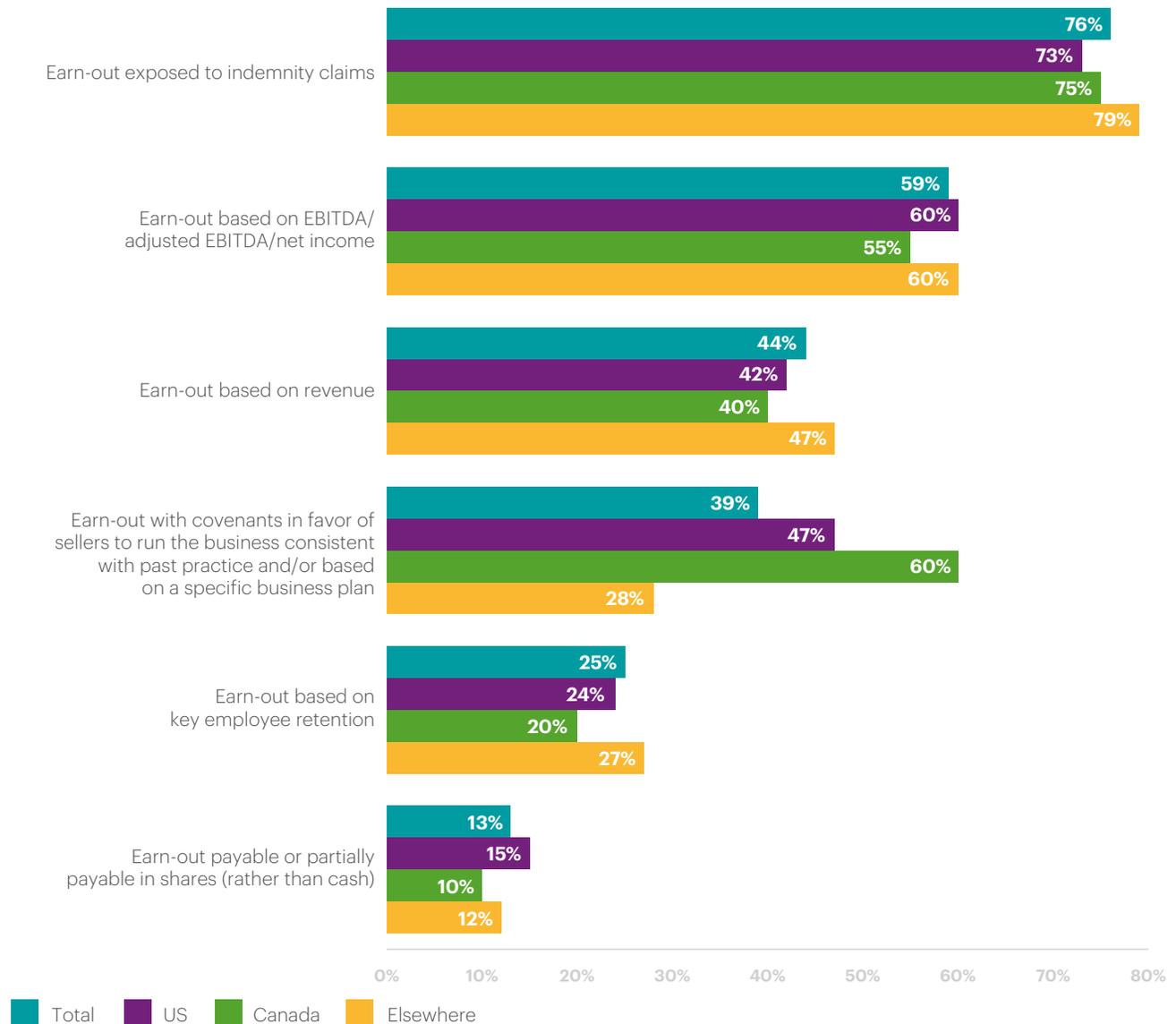
“After the financial crisis, the underlying risks associated with a company’s operations have increased greatly,” says the managing director of a UK-based PE firm that recently made a cross-border investment in the US. “Buyers are unwilling to proceed with the usual indemnity agreement—they want to tie-in the earn-out to make their expectations clear.”

Earn-outs exposed to indemnity claims are popular in deals where legal liabilities and risks are higher, a point noted by the partner of a Sweden-based buyout firm that recently made an acquisition in the US: “Buyers often use this feature when the due diligence process has been rushed and all the possible risks have not been explored fully.”

Did your most recent M&A deal include an earn-out? (Select one)



Which of the following features of earn-outs are you currently seeing? (Select all that apply)



As for earn-out metrics, earn-outs based on EBITDA/adjusted EBITDA/net income are widely cited (59%), although earn-outs based on revenue are also common (44%).

“Sellers who are confident about future financial performance tend to push for the earn-out based on EBITDA,” says the managing director of a US PE firm that recently made a cross-border investment in Canada. “Since revenues can be influenced slightly by the buyers, using EBITDA calculations are a favorable way to measure the performance of the seller during the earn-out period.” Adjusted EBITDA

has the added attraction of being relatively simple to calculate: “It’s easier to measure compared to other terms that may be somewhat ambiguous,” says the managing partner of a French PE firm that recently made an acquisition in the US.

For earn-outs based on revenue (44%), speed and simplicity are key attractions: “It’s been the go-to structure because negotiations can be headed in a more straightforward manner, and concluding the earn-out terms is done sooner,” says the managing partner of a US-based firm that recently made an acquisition in Canada.

Earn-outs with covenants in favor of the seller to run the business consistent with past practice and/or based on a specific business plan are mentioned by 39% of respondents. These can be of real value in cross-border transactions, particularly if the buyer is unfamiliar with the target region. This point is taken up by the managing director of a Canadian PE firm that recently made a cross-border investment in the US: “If there is room for improvement or some disturbance with the supply chain, the seller would know the best ways to resolve issues. Since they’re accustomed to the business practices in the region, we can expect their decisions to be more practical.”

No noticeable differences emerge when dividing the respondent pool by location, except that 60% of Canadian survey participants have observed earn-outs with covenants in favor of sellers to run the business consistent with past practice and/or based on a specific business plan. Fewer than half of US respondents (47%) and just 28% of their peers elsewhere report currently seeing this feature.

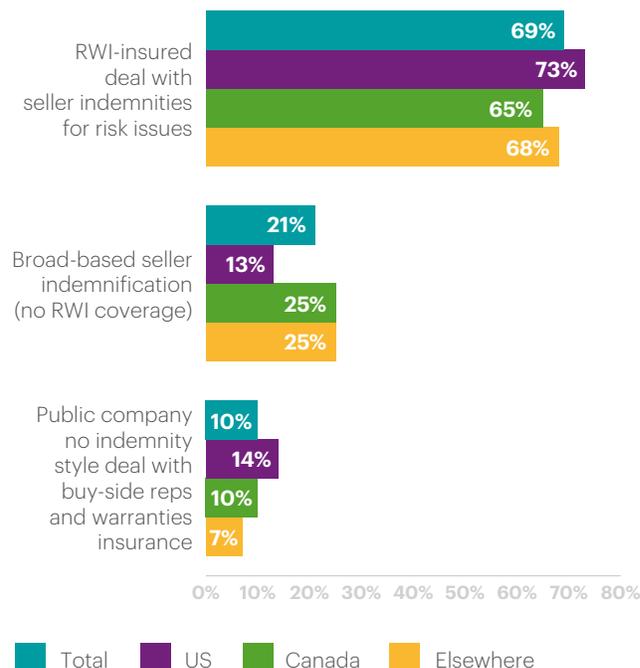
Indemnity profiles

Asked to describe the current indemnity profile of their typical buyout/majority recap deal, more than two-thirds of respondents (69%) say these are RWI-insured deals with seller indemnities for risk issues. Meanwhile, just over a fifth (21%) say they employ broad-based seller indemnification without RWI coverage.

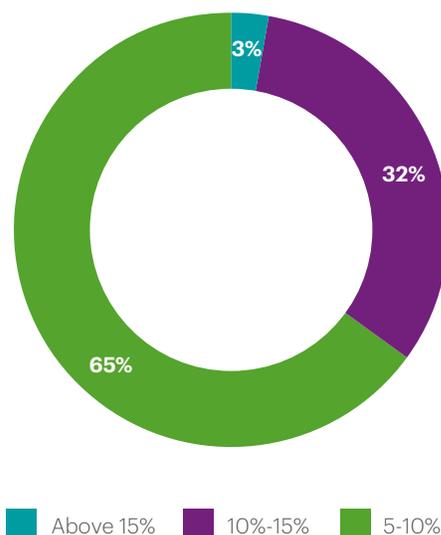
US respondents have embraced public company-style RWI deals, which enable potentially earlier distributions to limited partners. US respondents (73%) were more likely to favor RWI deals than other respondents (65% for Canada and 68% for rest of world), and also notably less likely to do a deal with broad-based seller indemnification and no RWI coverage.

Among those who cite broad-based seller indemnification (no RWI coverage), the majority (65%) say the related escrow fund is 5%-10% of the purchase price. Just under a third (32%) say the fund is 10%-15%.

What is the current indemnity profile of your typical buyout/majority recap deal? (Select one)



[If “Broad-based seller indemnification”] Is the escrow fund... (Select one)



Part 3: The Road Ahead

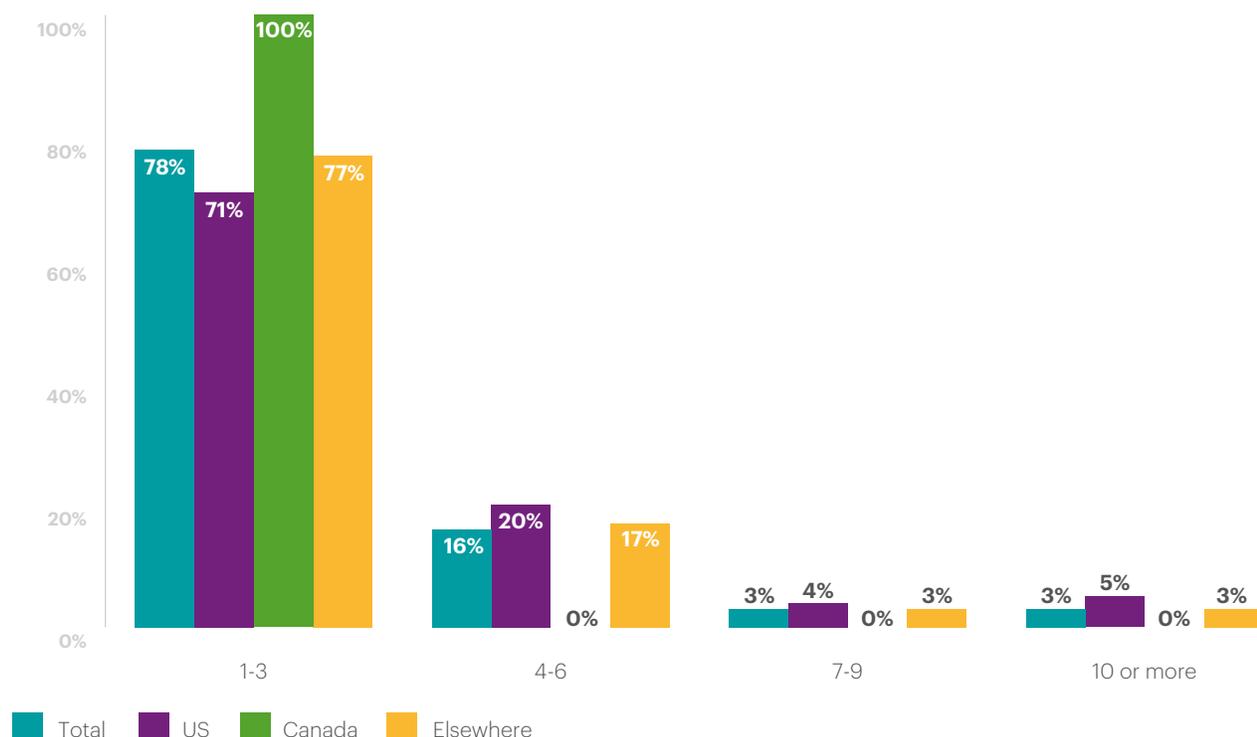
Dealmakers point to green shoots of recovery and predict an uptick in cross-border activity over the coming 12 months.

While cross-border buyouts continued to slide in Q1 2023, Q2 saw dealmaking stage a modest recovery, with volume edging higher and value jumping 44% quarter on quarter. Against this background, our survey data suggests that brighter times could be just around the corner.

Dealmakers are broadly optimistic about the coming 12 months, with majorities pointing to a

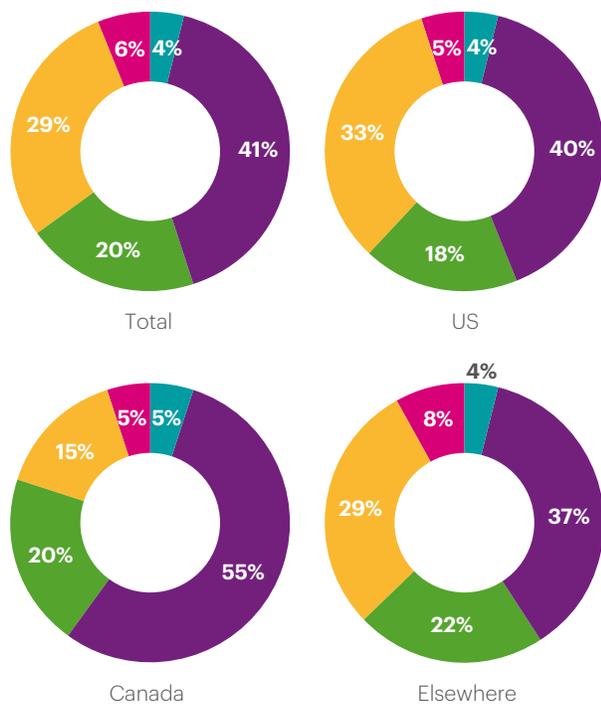
modest uptick in activity. Overall, respondents expect to become somewhat busier compared to last year in terms of the number of cross-border deals they will undertake over the next 12 months. Most (78%) project undertaking 1-3 international transactions, and 16% forecast making 4-6 cross-border deals. All Canadian respondents expect to undertake 1-3 deals. Deal size matters—and our survey shows that nearly two-thirds of respondents

How many cross-border deals do you expect to be involved in over the next 12 months? (Select one)





To what extent do you expect the size of the average transaction in which your organization is involved either to increase or decrease over the next 12 months as compared to the preceding 12 months? (Select one)



- Increase significantly
- Increase somewhat
- No meaningful change
- Decrease somewhat
- Decrease significantly

expect the average transaction in which their organization is involved either to stay the same or increase in size over the next 12 months. More than two-fifths (41%) expect deal values to increase somewhat while 4% predict a significant rise.

Our Canadian respondents are the most optimistic with 60% expecting the average transaction size to increase over the next 12 months. Notably, only 20% think they will decrease. By contrast, 38% of US respondents and 37% of those from elsewhere in the world predict that transaction size will shrink.

“While challenges in cross-border deals may persist, the overall sentiment among dealmakers is one of cautious optimism,” says Jason Saltzman, partner in the corporate group at Dentons and co-leader of the firm’s national M&A group in Canada. “As legal advisors to international organizations, we remain agile and ready to navigate the evolving landscape of cross-border transactions to ensure our clients can seize the opportunities that lie ahead.”

Focusing on sources of leverage, our survey shows that buyout firms are casting the net more widely than ever. While nearly two-thirds of respondents (65%) anticipate using bank lenders with whom they have an existing relationship, a significant share (56%) are looking to alternative lenders (e.g., private debt providers). In addition, 42% expect to establish new bank lending relationships. Against this background, just over a third (35%) are looking to pay back or reduce their reliance on debt.

Canadian dealmakers are notably less likely to make use of alternative debt (45%) than their peers in the US (55%) and elsewhere in the world (60%). Moreover, they are more likely to emphasize paying back/reducing their reliance on debt (45%) than investors in other regions. By contrast, 35% of US respondents and 32% of participants elsewhere in the world expect to do the same.

Sectors

TMT stands out as by far the most appealing sector for cross-border M&A in the eyes of our respondents, garnering 78% of votes when dealmakers were asked to select up to three industries for commendations, far ahead of second-placed industrials & chemicals with 44%. Given the TMT sector's strong anti-cyclical characteristics, this vote of confidence is perhaps unsurprising.

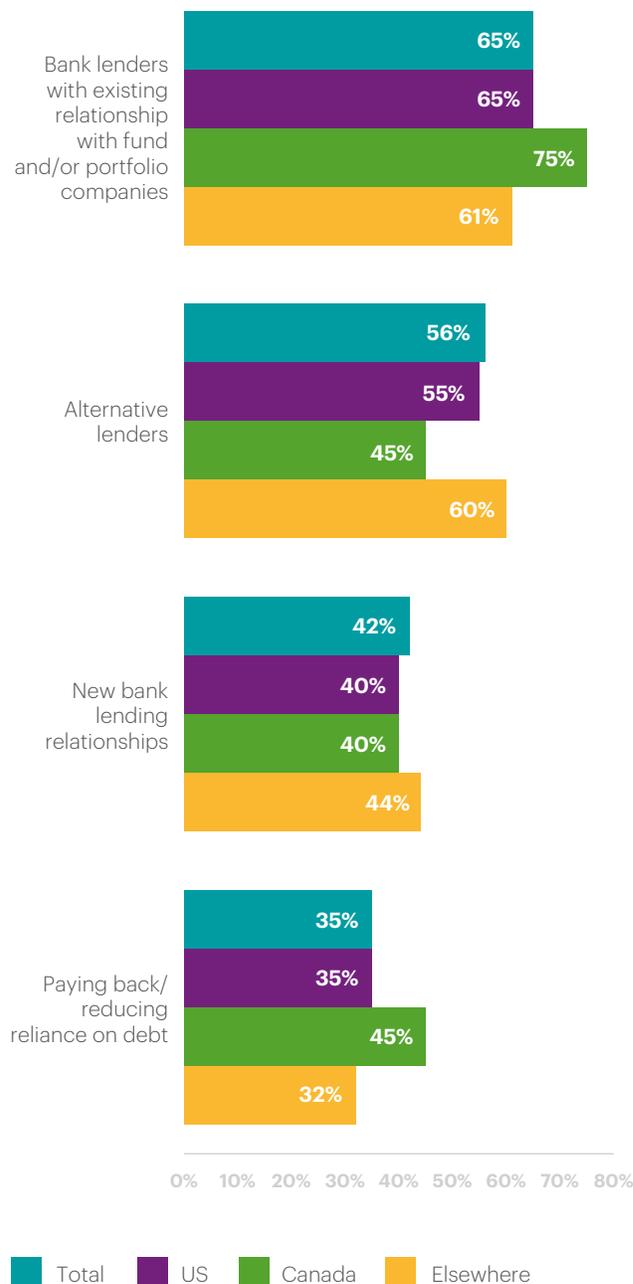
Macroeconomic turbulence has taken the shine off several other sectors, however. The least appealing sectors overall are thought to be real estate (42%), business services (also 42%), financial services (51%) and transportation (61%).

Focusing on regional preferences, Canadian respondents are considerably more likely than their peers to describe the industrials & chemicals sector as appealing (60%, versus 33% of US cross-border dealmakers and 49% of their peers elsewhere in the world). Beyond this, dealmakers are broadly aligned on what constitute the most and least attractive sectors.

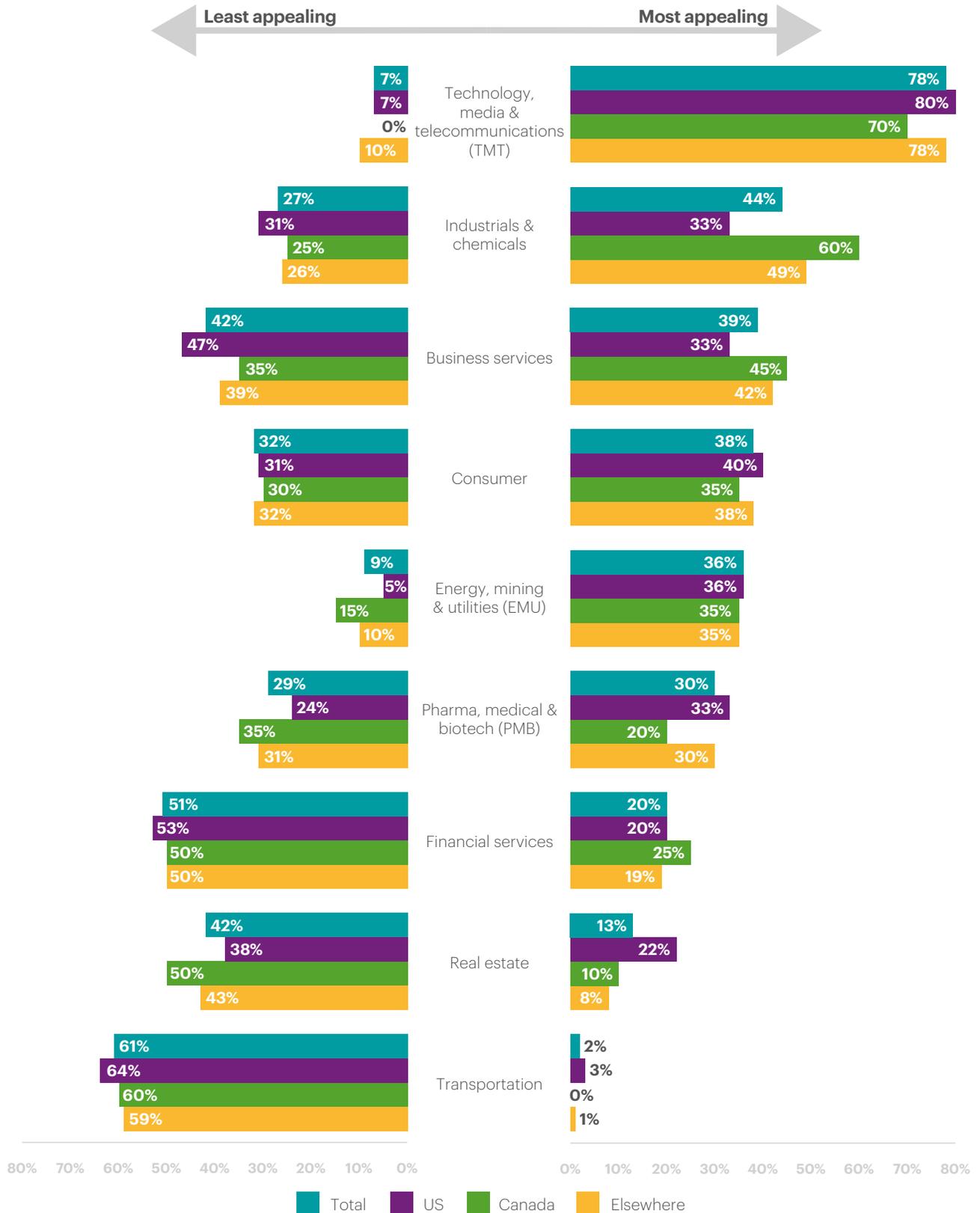
78%

of respondents cite TMT among their top three most appealing sectors for cross-border M&A opportunities.

Over the next 12-24 months, what sources of debt do you anticipate using for new leveraged deals or to refinance existing portfolio companies? (Select all that apply)



Which of the following sectors do you believe offer the most and least appealing opportunities for cross-border M&A? (Select up to three sectors per column)



Risks

Our survey shows that there are marked differences in the challenges reported by dealmakers in domestic versus cross-border deals. Focusing first on domestic transactions, the vast majority of respondents overall (85%) say that issues relating to employees or employee benefits have required special attention or caused deal friction. More than half say the same of tax-related issues (59%) and of privacy and data security (52%).

Some interesting differences arise when dividing our respondent pool by location. Canadian dealmakers are somewhat more likely than their peers to say tax issues have caused deal friction in domestic transactions (70%, versus 56% of US respondents and 59% of dealmakers elsewhere in the world). However, they are considerably less likely to cite ESG-related issues (30%, versus 42% and 47%, respectively) and government approvals (just 15%, versus 42% and 32%) as demanding special attention.

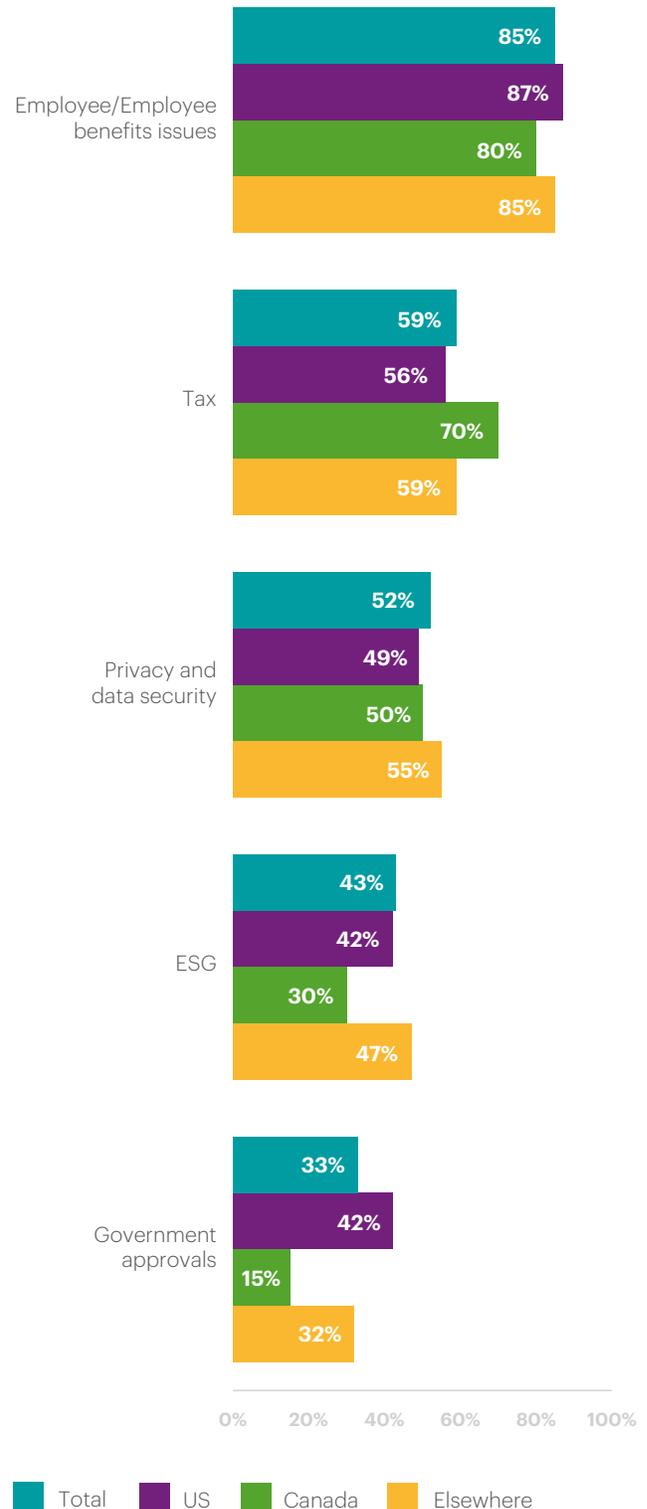
Looking at cross-border challenges, all of the issues raised in our questioning—from tax to ESG—have caused deal friction for most respondents. Employee-related issues have weighed more heavily on Canadian and US cross-border dealmakers (70% and 71%, respectively) than on those elsewhere in the world (59%).

“Employees already feel insecure about their position in the company after the deal,” notes the partner of a US-based PE firm that recently made a cross-border investment in the UK. “Many are not flexible to change, and this increases the stress on buyers to maintain a positive environment for continued work.”

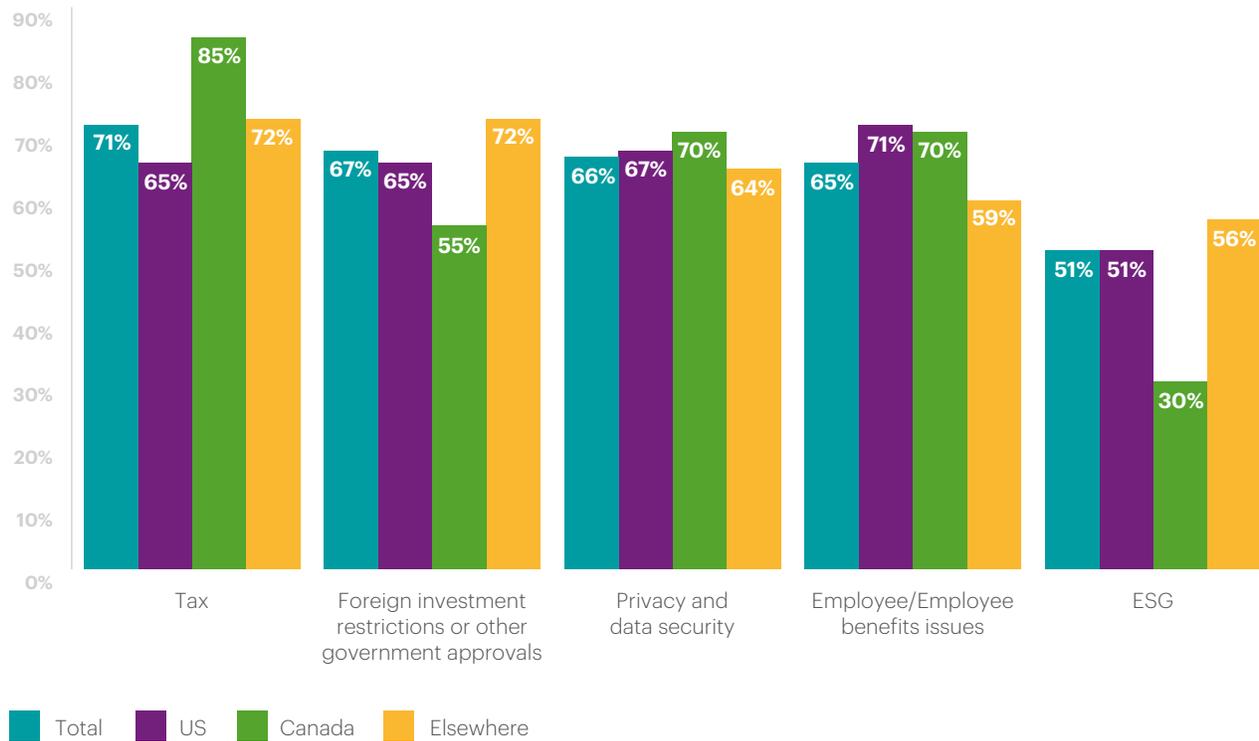
Foreign investment restrictions are a red-hot topic and are widely mentioned by respondents as a source of friction. Interestingly, respondents from outside North America (72%) are more likely than their Canadian and US peers (55% and 65% respectively) to cite this as requiring special attention.

While foreign investment scrutiny is primarily intended to safeguard national security interests, it is widely perceived as being used to shore up local businesses instead. “The process of getting

In domestic deals, which of the following issues have required special attention or caused deal friction? (Select all that apply)



In cross-border deals to acquire or invest in targets outside your home jurisdiction, which of the following issues have required special attention or caused deal friction? (Select all that apply)



approvals for deals can be quite challenging,” says the managing partner of a France-based PE firm that recently took part in a cross-border deal in the US. “There is local government influence in deals where they try to be more supportive of local businesses. Sometimes their arguments are against globalization and development. The local population can also protest to prevent the deal from happening.”

Tax-related issues are front of mind for many, and for Canadian respondents in particular (85%). “Learning about the taxation policies in the jurisdiction is very important,” says the partner of a Canada-based PE firm that recently made a cross-border investment in the US. “We have to structure the deal to avoid payment of excessive taxes over time. The tax implications are understood better when we hire experts to calculate the taxes of the transaction or from setting up operations in our name.”

Compliance with privacy and data security regulations is another area in which cross-border

85%

of respondents say that issues relating to employees or employee benefits have required special attention or caused deal friction.

investors can easily become stuck, which explains why it is highlighted by nearly two-thirds (66%) of respondents overall. “We are accustomed to the practices in our home country, and when completing deals in new markets, it’s best to hire local advisors,” says the partner of a US PE firm that recently made a cross-border investment in Brazil. “Experts are available to avoid non-compliance issues when it comes to privacy and data security.”

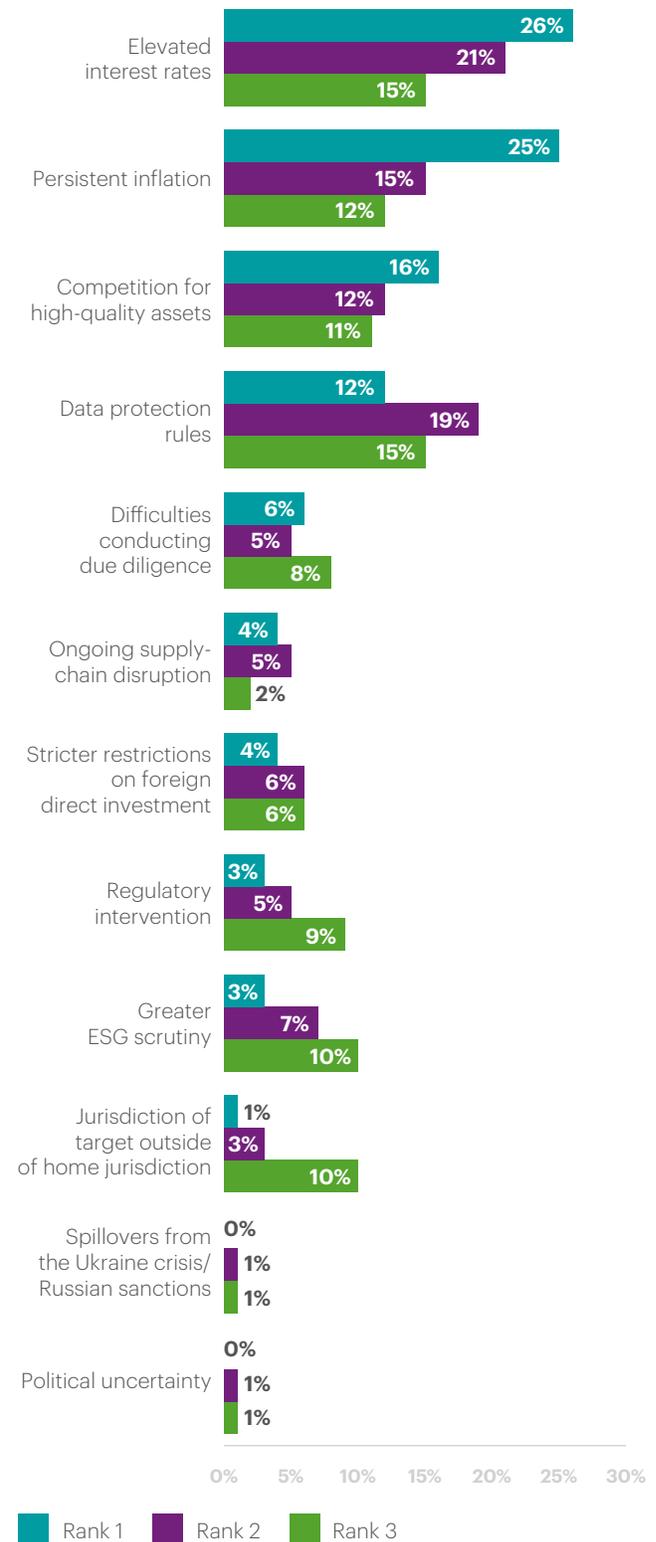
ESG is conspicuously less frequently mentioned by Canadian dealmakers (30%) than those in the US (51%) and elsewhere in the world (56%). Those who commented on this topic highlight stumbling blocks including missing information, poorly defined goals, and protracted assessment processes. “Since there are no standard reporting requirements that are followed by all countries, ESG usually causes deal friction,” says the managing director of a UK-based PE firm that recently made a cross-border investment in the US.

“It is crucial for dealmakers to adopt a proactive approach that prioritizes due diligence and expert advice to navigate complexities linked to cross-border transactions,” says Larry Nevsky, partner in Dentons’ national tax group in Toronto. “From issues relating to corporate structuring, employee benefits, tax-related matters, privacy and data security and foreign investment restrictions, we support clients to mitigate risk through our thorough understanding of domestic and international regulations.”

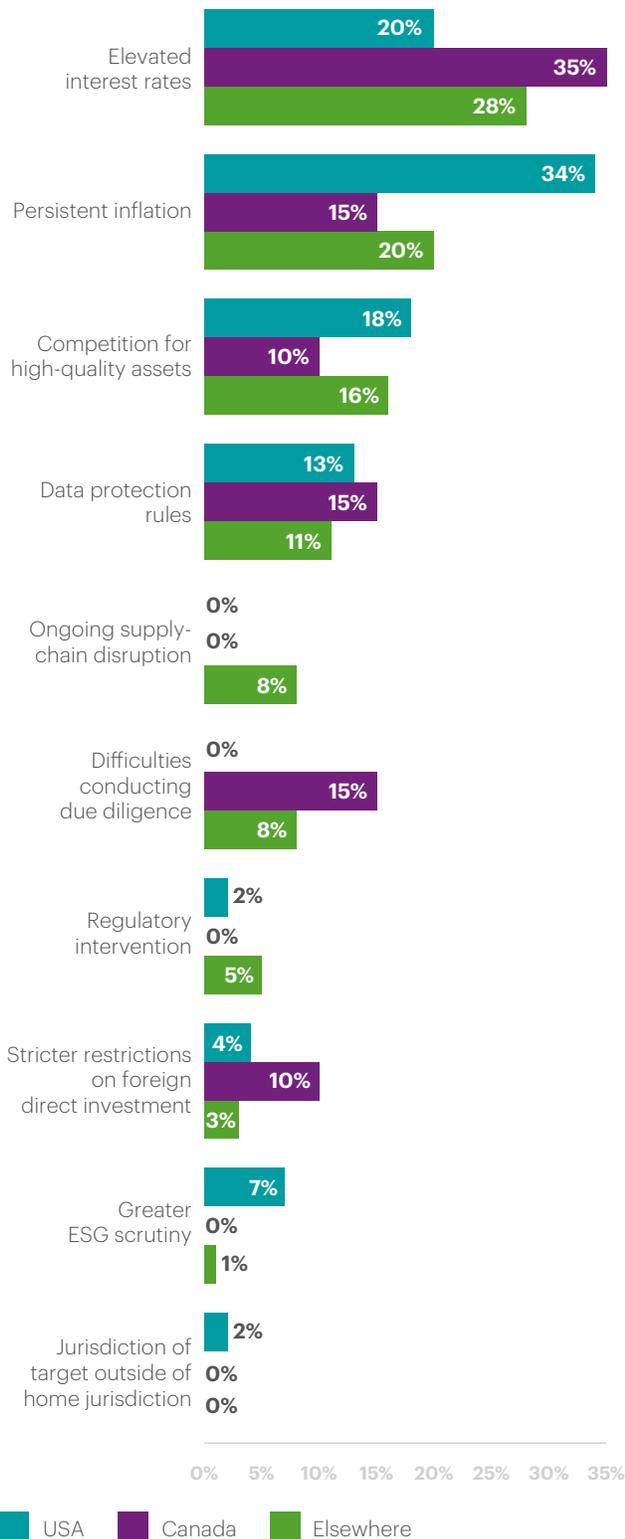
Delving deeper into risk factors, the intertwined dangers of persistent inflation (25% of first-choice selections) and high interest rates (26%) are seen as the biggest threats by our survey participants.

“Elevated interest rates will continue to impact dealmaking activity until the second quarter of next year,” predicts the managing director of a US-based PE firm that recently made a cross-border investment in Canada. “We cannot stop all cross-border dealmaking completely, so we have to think about a diversified approach, where we invest in low valuation targets, and also focus on divestments to raise funds.”

What are the greatest potential risk factors that may negatively impact your cross-border dealmaking plans? (Select top three and rank 1-3, where 1=greatest risk)



What are the greatest potential risk factors that may negatively impact your cross-border dealmaking plans? (Select top three and rank 1-3, where 1=greatest risk) – RANK 1



Competition for high-quality assets (16% of first-choice votes) and data protection rules (12%, plus 19% of second-choice votes, the largest such share) are also weighing heavily on respondents’ minds.

“The General Data Protection Regulation is spreading to new markets, as authorities are implementing their own versions of data protection. We have to conduct considerable research into the data protection norms and avoid any non-compliance issues and penalties,” says the managing director of a US PE firm that recently made a cross-border investment in Norway.

Canadian dealmakers specifically are most concerned with elevated interest rates (35%), while their peers in the US are most mindful of continuing inflationary pressures (34%). “Persistent inflation is a challenge for cross-border dealmaking,” says the managing director of a US-based PE firm that recently made a cross-border investment in India. “Deriving valuations from the financial and business information available will be tougher. The returns may seem lower at present, but once the inflation dies down, the conditions could be more favorable.”

While competition for high-quality assets is cited as a concern by just 10% of Canadian respondents, investors elsewhere are less sanguine. “Competition for high-quality assets will continue to increase,” believes the partner of a Swedish PE firm that recently made a cross-border investment in the US. “As the percentage of assets outperforming benchmarks is very low, dealmakers will all look to invest in high-performing assets. Since this is a small pool, we might need to be more flexible with our asset selection process.”

Canadian dealmakers are conspicuously more uneasy about difficulties conducting due diligence and greater scrutiny of inbound investment. “Foreign direct investment restrictions will increase in many regions, including Europe and Asia. Governments are implementing stricter norms to maintain adequate competition and prevent monopolistic behavior. This is mainly affecting investments in technology,” says the managing partner of a Canada-based PE firm that recently made a cross-border investment in Israel.

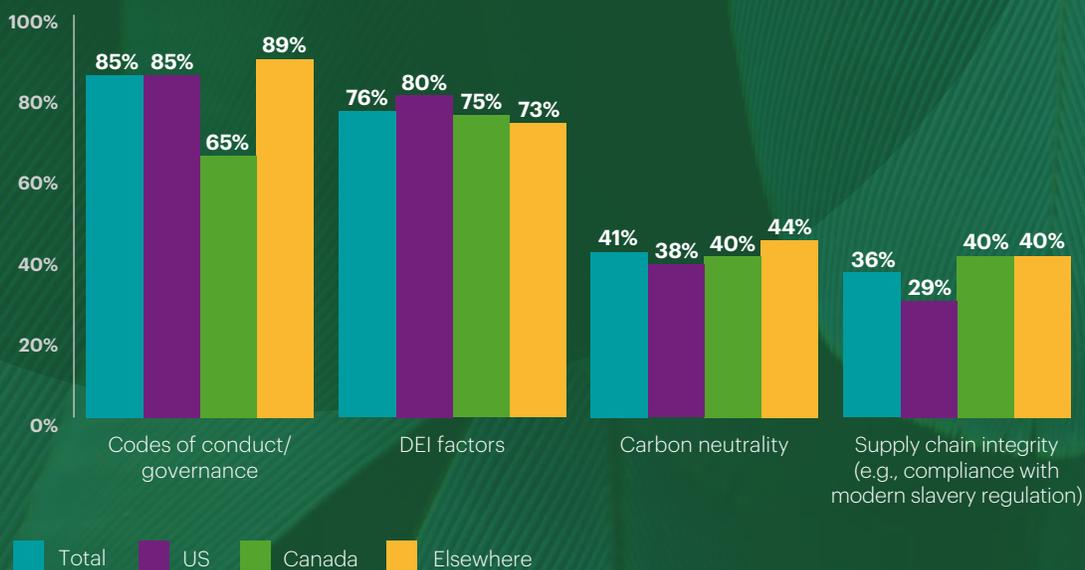
LP scrutiny

Dealing with LP scrutiny is part and parcel of the GP's role. But the scope of scrutiny is expanding rapidly.

Looking at this in more detail, large shares of respondents report that their investors/LPs are looking into their portfolio companies' codes of conduct/governance (85%), as well as diversity, equity & inclusion (DEI) factors (76%). Smaller shares say investors are scrutinizing portfolio companies' carbon neutrality metrics (41%) and supply chain integrity (36%).

Canadian respondents are less likely than their peers to say their investors are examining portfolio companies' codes of conduct (65%). Also of note: only 29% of US respondents say their investors are concerned with supply chain integrity at portfolio companies.

Are your investors/limited partners looking through to your portfolio companies on...? (Select all that apply)

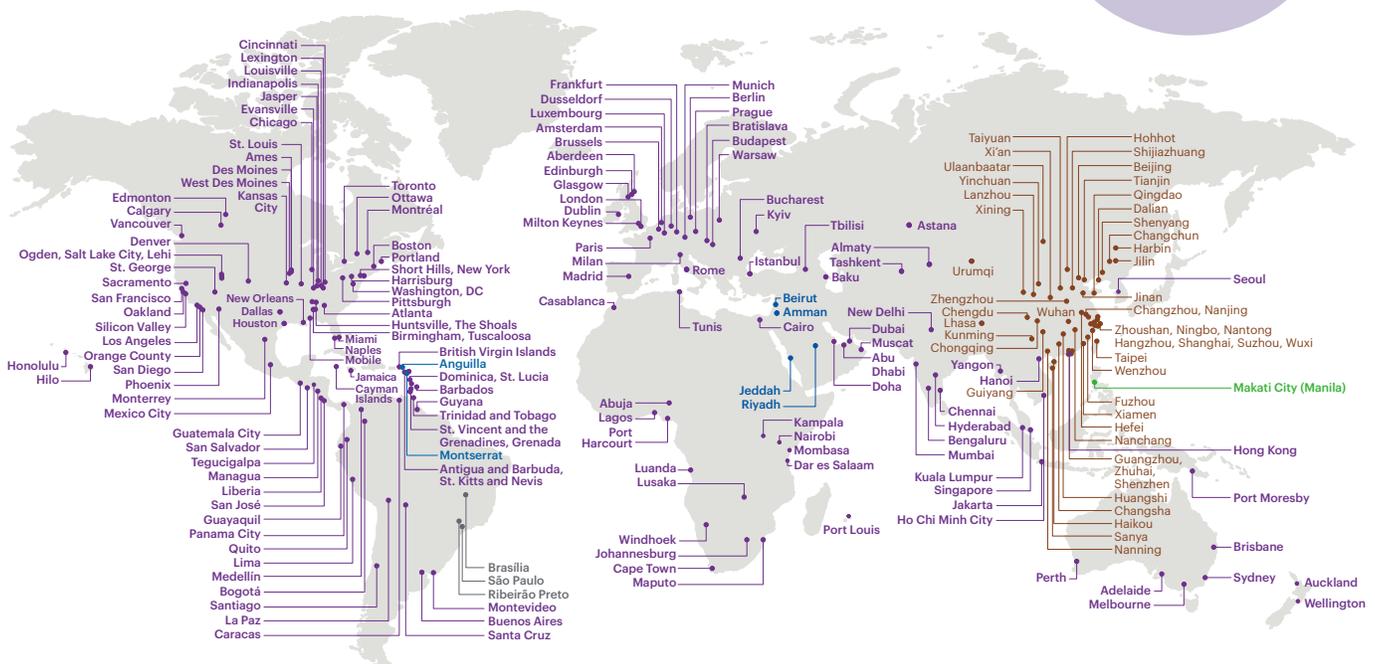


Dentons by the numbers 2023

DENTONS

200+

locations



Locations in purple represent Dentons offices.
 Locations in blue represent associate firms, offices, jurisdictions of practice from other Dentons' offices or special alliances as required by law or regulation.
 Locations in green represent approved combinations that have not yet been formalized.
 Locations in gray represent Brazil Strategic Alliance.
 大成 is Dentons' preferred law firm in China.

September 2023

12,500+

Total number of people



5,900+

Total number
of lawyers

80+

countries

80+

languages spoken

ABOUT DENTONS

Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you.

www.dentons.com