

# When Private Equity transforms business and fosters innovation

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# Structuring the Deal – M&A and Finance Terms in 2021



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- **Introduction: Overview of the current Private Equity environment**
  
- **Very active market** in Europe (best opening quarter of the year since 2007) <sup>(1)</sup>
  
- Two types of assets are currently on the Private Equity market:
  - companies which have not been negatively impacted by the Covid-19 outbreak or sometimes positively impacted;
  
  - companies of good quality but that have been negatively impacted by the Covid-19 outbreak.
  
- Key is **finding creative terms** to achieve a successful sale or acquisition process in an economic environment affected by the Covid-19

# Structuring the Deal – M&A and Finance Terms in 2021

## ▪ Main trends in the M&A terms

- **Price Mechanisms:** purchases prices of PE deals remain based on locked-box mechanisms, although earn-out provisions are on their rise, to capture the potential recovery of a target affected by the Covid-19;
- **Long Stop Date:** ability for the purchaser to extend the Long Stop Date becomes quite common, notably when the Covid-19 outbreak/crisis is likely to impact the target or when regulatory processes are likely to enter into a Phase 2 (i.e., in-depth review)
- **Interim covenants between Signing and Closing:** they are more and more exceptions to the ordinary course of business clause (e.g., extraordinary events likely to affect the target);

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## ▪ Main trends in the M&A terms (cont'd.)

- **Foreign Direct Investments:** as many other jurisdictions, France recently strengthened its FDI regime of control, especially since the Covid-19 outbreak to protect potential vulnerable French targets:
  - The French Ministry of Economy is increasingly rigorous and may request strong rights from the foreign investors (e.g. ROFO), notably when they are non-EU investors
  - This trend increases competition between Sponsors (non-EU Sponsors may have a disadvantage in a Sale process)
  - Sellers may request Hell or High Water commitments from the Sponsor in connection with the FDI process, but such commitments are difficult to make, given the great uncertainty around the undertakings the French Ministry of Economy may request
- **Shareholders' Agreements:** the PE market remains favourable to Sellers' and to Managers of the target, especially where the business successfully passed the Covid-19 crisis. Managers ask in particular to be revocable only in case of underperformance and there are thus strong negotiations on the definition of underperformance

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## ▪ Main trends in the Financing Arrangements

- **French State Backed Loans** (*“Prêts Garantis par l’Etat”*): a significant number of targets have French State Backed Loans in place at the time of the Sale process:
  - Levels of covenants differ depending on the amount and the entity to which the PGE was granted (e.g. general terms in small loans entered into by local entities of the target’s group **v.** complex financing arrangements when the PGE is at the level of the target)
  - Maintaining these loans for more than one (1) year can be costly for the target (i.e., fees, guarantees) and the management could thus be reluctant to extend their term;
  - Sponsors may be reluctant to keep these loans as they may fear that they will allow the French State to oversight certain activities of the target (e.g. dividend distribution).
- **Healthy financing market:** there is an extensive amount of available dry-powder and discussions mainly focus on whether the financing should be put in place through unitranche debt or through bank arrangements



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