

PRIVATE EQUITY

UPDATE

Q1 2021

Trends in Minority Investments

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The Trend for Minority Investments by Private Equity Sponsors

Although the established model of majority or control investment continues to constitute the majority of private equity investment activity, it has become increasingly common for sponsors to participate in transactions by making co-investments alongside other investors or by making minority or non-control investments into businesses where existing shareholders retain an overall majority or a significant holding. 98% of PE firms surveyed by Mergermarket last year indicated that they had made minority investments and of those firms, 85% said that the level to which their firm targeted minority investments (or retention of a minority stake when exiting from a portfolio company investment) had remained consistent or increased over the last 12 to 24 months.

What are the Drivers of Minority Investments?

There are a limited number of buyout opportunities available in an increasingly competitive environment across Europe, the U.S., and Asia. With a limited supply of transactions relative to the demands of sponsors looking to invest their dry powder, the market has seen sponsors finding ways to invest through more diverse strategies. We've seen increased activity in particular types of minority investing in recent times (and expect this to continue going forward), in particular growth capital investments into earlier-stage businesses and, although outside of the focus of this analysis, more LP co-investment (which has gone hand in hand with the growth of the \$1bn+ 'mega-deal').



Looking forwards, there is potential for minority investment activity to increase in light of the current economic circumstances, as businesses who may not previously have considered private equity investment look to alternative financing options or lead sponsors seek co-investments in financing the increasingly common mega deals. Minority investments often involve a smaller amount of leverage compared to traditional buyouts or no leverage at all, so deals flow can continue irrespective of the debt markets (something we saw in the early months of the Covid-19 pandemic).

To What Extent and How Do Private Equity Sponsors Maintain Control of Their Minority Investments?

Compared with control buyout structures, minority investments present an obvious governance challenge to sponsors. Without overall control of the investee companies, different mechanisms must be incorporated into the structure to cater for a range of matters, including two key areas: governance and liquidity. Increasingly, particularly in the U.S. with respect to co-investments, we are seeing lead sponsors require minority investors to invest indirectly through vehicles controlled by the lead sponsor as opposed to alongside the lead sponsor to provide the lead sponsor with maximum control, including "in-together, out-together" liquidity constructs and a single investor face to Management.

We have included below a summary of certain key terms related to governance and liquidity which are commonly seen in minority and non-control investments in Europe, the U.S., and Asia. The summary below also identifies significant differences in the rights that sponsors can expect to receive where their equity holdings are less than 25% compared to holdings between 25% and 50%.

Key Observations

- Minority investments are more situation-specific/ custom-made to fit both the sponsor investor and the investee business than full leveraged buyouts. The terms of minority investments also vary by reference to the goals of the specific investor, the size, nature and stage of development of the investee business, the industry in which the business operates, the size of the investment, and the nature of the shareholder base (individual or institutional).
- This more bespoke nature means that there are fewer specific regional trends than might be seen from a similar comparison of other types of acquisition or investment activity, for which more recognized regional norms have become established. Regardless of jurisdiction, minority investors have significant flexibility in which to negotiate deal terms within a wider market framework.
- Across Europe, the U.S., and Asia, minority investors holding more than 5-10% of the equity should still
 generally expect to maintain reasonable protections and a degree of control over their investments through
 minority representation on the board and a negotiated set of reserved matters that require their consent.
- Liquidity is maintained through transfer rights, which usually apply after an initial lock-up and are subject to rights of first offer/refusal and/or consent by any majority shareholder. Minority shareholders holding more than 25% of the equity will typically have stronger structured liquidity rights (for example, the right to force an IPO, a sale, or a put option with the other shareholders).
- As a general matter, the rights that a minority investor might have in a growth capital investment into an earlier-stage business varies significantly from minority rights in a co-investment or an established business.



• In addition, where liquidity is being provided to existing investors, a new investor can often negotiate stronger rights.

Review Findings

The table below summarizes customary contractual rights and protections related to governance and liquidity typically seen in recent minority and non-control transactions across Europe, the U.S., and Asia. The focus of this table is on rights in co-investments and/or investments into established business, as opposed to rights in connection with growth capital investments into earlier-stage businesses (unless otherwise stated).

Right or	Findings for Smaller Minority	Findings for Larger Minority
Protection	Investments (Less than 25%)	Investments (25% to 49%)
Ability to appoint directors and vote at board meetings	 Typically, investors holding at least 7-15% may appoint a fixed number of directors to the board, but usually no more than one Board representation above 15% often proportionate to size of shareholding Investors holding less than 7% generally are not represented on the board, but often will be entitled to an observer seat; in certain limited circumstances, including growth capital investments, investors holding as low as 5% may hold a board seat Each director has one vote at meetings, with decisions made by a simple majority (though some decisions may require investor approvals (see 'veto rights' below) Investor-appointed directors often also entitled to representation on board committees 	 Similar position to that for smaller minority investments As size of shareholding increases, proportionate representation on the board tends to increase, as does representation on board committees Independent directors may be appointed jointly by the lead sponsor and the minority investors As well as representation on committees, investors often also entitled to representation on any subsidiary boards where the lead sponsor has representation



Right or Protection Board meeting quorum requirements	Findings for Smaller Minority Investments (Less than 25%) In some cases, at least one director appointed by the minority investor is required for a board meeting to reach a quorum, but more common is that a quorum may be achieved without the attendance of the minority investor director	Findings for Larger Minority Investments (25% to 49%) In almost all cases, at least one director appointed by the minority investor is required for a board meeting to reach a quorum As with smaller minority investments, repeated non-	
	• If a quorum is not reached due to the absence of a particular director, the adjourned meeting does not require a non-controlling investor director to achieve a quorum (i.e., the minority investor cannot frustrate a decision by absence)	attendance of a director appointed by the minority investor can rarely frustrate a decision	
Veto rights	 Smaller minority investors in this range tend to only have veto rights over limited fundamental matters that impact the value of the investee business or protect the structure of the investment, such as changing the nature of the business, non-pro rata dividends and share repurchases, changes to tax or corporate structure or adverse changes to organizational documents As size of shareholding increases, veto rights tend to increase in scope but are still limited to fundamental matters, such as selling the company below a certain threshold, material acquisitions and dispositions, increased borrowing, increasing the size of the options pool 	 Generally have consent rights over a broader set of operational matters and reserved matters than those in smaller minority investments (e.g., generally more operations-level reserved matters) Minority investors should carefully consider with counsel what operational matters it may have consent over, as certain consent rights may result in the minority investor being considered under ex-U.S. regulatory regimes (e.g., European Commission) to have "joint control" of the business and trigger a number of ex-U.S. regulatory filings, even in circumstances where the target business and investors are based in the U.S. 	



Findings for Smaller Minority Investments (Less than 25%)

- In investments where there are a number of minority investors or growth capital investments, veto rights may be held by minority investors as a group exercised by majority as opposed to individual minority investors and/or their directors. In these circumstances, minority investors will often receive a broader set of veto rights (albeit exercised through the majority construct, rather than unilaterally)
- Veto rights are less common
 (although still relatively
 widespread) in relation to
 operational matters, such as settling
 annual budgets, material litigation,
 changing accounting policy, or
 capex expenditure but sometimes
 minority investors are able to
 negotiate for consultation rights
- Most investment documentation also provides for additional, transaction-specific reserved matters, such as consent to begin considering an IPO or sale process that would be below certain return thresholds

Findings for Larger Minority Investments (25% to 49%)

- In certain jurisdictions outside the United States, shareholders with a stake of 25% or more may also veto certain decisions in their shareholder capacity (e.g., by voting against special resolutions which require supermajority shareholder approval) without such matters being designated as reserved veto rights
- Minority investors should carefully consider the implications of veto rights being held by their directors (who in certain structures and jurisdictions may be subject to fiduciary duties) as opposed to in their capacity as equity holders

Control reduction provisions

- Reduction or withdrawal of board control rights and veto rights should ownership percentage of minority investor fall below a certain threshold
- Generally, most veto and other governance rights are lost when shareholding falls below 5-10%
- In certain transactions, particularly those where the minority investor holds a preferred series of shares, no minimum shareholding thresholds apply to governance rights

- Similar position to that for smaller minority investments
- Usually limited to reduction through share transfers, not as a result of dilution



Right or Protection	Findings for Smaller Minority Investments (Less than 25%)	Findings for Larger Minority Investments (25% to 49%)
	• Minority investors may negotiate for protection to limit circumstances where they fall below thresholds and potentially lose their control rights as a result of new issuances as compared to a sell-down. We see this more frequently in the U.S. market and we are starting to see it more in the European market	
Drag and Tag Rights		
Tag-along right	In the U.S. and Asia, tag-along rights typically apply to any transfer of shares by the lead sponsor or founder shareholders, and often by larger minority investors in this range	 Similar position to that for smaller minority investments with tag-along rights typically apply to transfers by the minority investor
	In Europe, tag-along rights are usually applicable provided the proposed sale is for a certain 'threshold' percentage of shares (usually 30-50%) or would result in the third-party purchaser holding that threshold as a result of the transfer	
Right to drag other shareholders	 Smaller minority investors in this range generally do not have the ability to drag other investors in a sale 	 In some circumstances, a large minority stockholder may have a drag right, especially in founder/non- institutional investors- controlled companies or in connection with liquidity rights (discussed below)
		 The drag is generally exercisable after an initial lock-up period and often subject to certain conditions (see 'Drag conditions' below) — in some cases certain conditions may only apply for a specified period of time



Right or Protection	Findings for Smaller Minority Investments (Less than 25%)	Findings for Larger Minority Investments (25% to 49%)
Right of other shareholders to drag minority investor	 Minority investors' shares may generally be dragged in a sale by a lead investor Drag rights will often (but not always) be subject to certain conditions (see 'Drag conditions' below) for the minority investor to be dragged, at least for a certain period of time 	Similar position to that for smaller minority investments
Drag conditions	 Generally, drag rights may only be exercised over the minority investor provided the sale is a "change of control" transaction for at least a majority of the equity and/or voting interests in the investee company 	Similar position to that for smaller minority investments
	• Minority shareholders sometimes receive a minimum price protection so that the minority investor may only be dragged if it would obtain a certain minimum IRR threshold and/or or multiple of return on invested capital through the proposed sale. This is likely where a new investor has significantly different cost basis than existing investors	
	 In some investments, the level of minimum price protection is higher for earlier years of the investment and decreases over time 	



Findings for Smaller Minority Investments (Less than 25%)

Findings for Larger Minority Investments (25% to 49%)

Transfer Restrictions and Liquidity Rights

Lock-up period/ general transfer restrictions

- Generally, lead and minority investors are both subject to an initial lock-up period of between two and five years, where share transfers by all shareholders are prohibited, save for certain 'permitted' transfers to affiliates
- In some investments, the lead investor (and in certain cases, particularly in Asia, the minority investor) is not subject to the initial lock-up so long as tag-along rights apply and ROFR/ROFO applies
- After the lock-up period, minority investors may sell their shares, subject to certain conditions (see 'Right of first refusal/right of first offer' below)

- Similar position to that for smaller minority investments
- Increasingly, we are seeing lead investors and larger minority investors push for "fund-to-fund" transfers to be considered "permitted transfers" that can be effected without being subject to transfer restrictions

Right of first refusal/ right of first offer

- Following any lock-up, minority investors may sell their shares, subject to ROFO or ROFR (each seen with similar frequency with a ROFO being preferable for minority investors) and tag rights in favor of other shareholders (i.e., other shareholders may still tag on a sale if it does not exercise its ROFO/ROFR)
- As with smaller minority investments, transfer rights following any lock-up are usually subject to tag rights in favor of other shareholders. Larger minority shareholders may also benefit from ROFO or ROFR rights
- Right to transfer may also be subject to consultation with or approval of the board and/or the lead investor (which is sometimes also a requirement in smaller minority investments)



Other exit/liquidity rights

Findings for Smaller Minority Investments (Less than 25%)

Europe

- Investors often acknowledge a shared intention to work toward an exit following the initial lock-up period
- Investors usually agree to consider the merits of an IPO as an exit strategy

U.S.

- Larger minority investors in this range are more frequently receiving the right a force the company to provide liquidity after a certain period of time (typically, 5-8 years) by either, at the lead investor's option, (i) purchasing or causing the Company to redeem all of the investors shares, or (ii) causing an IPO or sale of the company
- Unlike in Europe, most U.S.
 investment documents do not
 contain an acknowledgment among
 investors of an intention to work
 toward an exit
- For shareholdings of 5-10% or more, demand and piggy-back registration rights are common as part of the investor shareholders' exit package where IPOs are contemplated

Findings for Larger Minority Investments (25% to 49%)

Europe

- As with smaller minority investments, investors usually acknowledge an intention to work toward an exit (including through an IPO)
- Larger minority investors may have the right to require the board to consider a sale. There may also be a hard liquidity put right, which the minority shareholder may exercise to realize its investment
- Larger minority investors sometimes have the ability to force an IPO, a so-called 'Qualifying IPO,' depending on factors such as price, the exchange on which the IPO may be listed, the underwriters that may be used, size of float, etc.

U.S.

- Similar to smaller minority investors but if the company does not provide liquidity (i.e., does not complete an IPO/sale process or redeem a minority investors shares) within a certain period of time, some larger minority investors have the right to force and control an exit though an explicit ability to force a sale or IPO (often subject to minimum IRR and/or multiple of return thresholds) and require other shareholders (including the lead investor) to sell their shares through the drag-along rights
- There has been a recent trend in competitive deals for the company to determine how to satisfy a liquidity request once it has been made



Findings for Smaller Minority Investments (Less than 25%)

Findings for Larger Minority Investments (25% to 49%)

- Again, demand and piggy-back registration rights and rights of redemption are relatively common
- While forced redemption rights were prevalent in the past, they are much rarer and have significant legal limitations

Asia

- Many investment documents
 contemplate a specific IPO timeline
 and include efforts-based covenants
 (ranging from 'commercially
 reasonable efforts' to 'best efforts')
 given by the main shareholders to
 consummate a defined 'Qualified IPO'
 within such timeline
- For shareholdings of 5-10% or more, demand and piggy-back registration rights are common as part of the investor shareholders' exit package where U.S. IPOs are contemplated
- Rights of redemption and put rights against founder/ majority shareholders are also common exit rights in Asia

Asia

- As with smaller minority investments, most investment documents contemplate a specific qualified IPO timeline
- Occasionally, larger minority investors have the right to force an IPO (rather than an efforts-based covenant from the company or founder/majority shareholders to effect an IPO)
- Again, demand and piggy-back registration rights and rights of redemption are relatively common



Right or Protection	Findings for Smaller Minority Investments (Less than 25%)	Findings for Larger Minority Investments (25% to 49%)	
Pre-Emption Rights			
Pre-emption rights on further issuance	 All non-controlling investors receive pre-emption rights on future (i) equity issuances to any person and (i) debt issuances (although in the U.S., typically only to the lead investor) 	Similar position to that for smaller minority investments	
	 Carve outs to pre-emption rights common for: (i) acquisition issuances; (ii) management incentive plan issuances or other board- approved matters; (iii) issuances under the terms of convertible securities; and (iv) "equity kickers" on debt financing are often included 		
	 In Europe (but not typically in Asia), there is typically a carve out for (i) emergency share issuances to fund liquidity shortfalls or avoid breaches under debt documents, and/or (ii) accelerated issuances with rights to 		

* * *



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REPRESENTATIVE 2021 TRANSACTIONS



merger of



\$3,000,000,000 Pending

Apollo Global

acquisition of .endlease (US) Telecom Holdings LLC (n/k/a Parallel Infrastructure)

October 2020

Berkshire Partners

majority recapitalization of **ENCS**

Undisclosed December 2020

Churchill Capital Corp III

merger with

MultiPlan \$11,000,000,000 Pending

EQT Infrastructure sale of

SYNAGRO

Undisclosed December 2020

Gores Holdings IV, Inc.

with

UWM

\$16,100,000,000 January 2021

J.C. Flowers majority stake acquisition of

Undisclosed Pending

Ontario Teachers' Pension Plan Board and TA Associates

majority stake sale of

FIPXPIA Undisclosed March 2021

Providence Strategic Growth

acquisition of a majority interest of

N@FRAUD Undisclosed

November 2020

Snow Phipps Group Brook & Whittle's



Undisclosed June 2020

Advent International

stake acquisition of RxBenefits

Undisclosed January 2021

Aterian Investment

Partners Pioneer's acquisition of **IPI**

Undisclosed December 2020

The Blackstone Group sale of

vivint.Solar

\$3,200,000,000 October 2020

Churchill Capital

Corp IV take-public merger with

\$11,750,000,000 Pending

EQT Partners sale of

DORNUR

\$485,000,000 Pending

Gores Holdings V. Inc. business combination

with ArdaghGroup 👍

\$8,500,000,000

Pending

Lee Equity Partners

stake acquisition of SIMPLICITY

Undisclosed December 2020

Ontario Teachers' Pension Plan Board stake acquisition of NVISION

Undisclosed November 2020

Providence Strategic Growth

together with Vista Equity Partners minority stake sale of

inhabit

Undisclosed December 2020

Snow Phipps Group

Brook & Whittle's acquisition of substantially all of the assets of

Tri Print LLC

Undisclosed October 2020

Advent International

Fortress Value Acquisition Corp. II

ATI

\$2,500,000,000 Pending

Aterian Investment

Partners Vander-Bend's acquisition of

SPM Undisclosed November 2020

The Blackstone Group stake acquisition of

Undisclosed October 2020

Cornell Capital KDC/ONE's acquisition of



April 2020

Genstar Capital acquisition of

☆ORION

Undisclosed September 2020

Gores Holdings VI. Inc.

with

Matterport

\$2,900,000,000

Pending

Montagu Private Equity couisition of the OEM and

tissue processing businesses of rti surgical

\$490,000,000 July 2020

Providence Equity

acquisition of



Pending

Undisclosed

Providence Strategic

Growth controlling interest sale of TRIBUTE TECHNOLOGY

Undisclosed October 2020

SoftBank Vison Fund sale of the Advanced

Uber

Technologies Group of

\$4 000 000 000 Pending

American Securities

take-private of



\$1,370,000,000 January 2021

Aterian Investment

Partners Vander-Bend's acquisition of

WTMK Undisclosed March 2020

Blackstone Growth

investment in

Undisclosed December 2020

CPP Investments najority acquisition o

lvtx.

Undisclosed January 2020

Genstar Capital

INFINIT®

Undisclosed March 2021

Gores Metropoulos,

merger with LUMINAR

\$3,400,000,000 December 2020

Mudrick Capital's

SPAC acquisition of

HYCROFT

\$537,000,000 May 2020

Providence Equity majority stake acquisition of

(365)

Undisclosed December 2020

PSP Investments ending combination o

TELESAT LORAL

Undisclosed Pending

Sumeru Equity Partners acquisition of

socialchorus \$100,000,000 July 2020

Q1 2021

Emerald Kalama* Chemical \$1.100.000.000 Pending

American Securities

Emerald's pending sal

to LANXESS AG

Bain Capital Kantar Health, LLC's sale by The Kantar Group Limited

KANTAR HEALTH \$375,000,000

Pending

Centerbridge Partners KIK Custom Products sale of

KIK Personal Care Business

Undisclosed August 2020

CPP Investments consortium's sale of

REFINITIV -

\$27,000,000,000 January 2021

GHK Capital Partners sale of a substantial

interest in S

Undisclosed March 2021

GreyLion Capital

majority stake sale oi **H**HYPHEN

Undisclosed October 2020

Oak Hill Capital Partners

sale of 📮 TriPlus

Undisclosed September 2020

Providence Equity Topgolf's merger of equals with Callaway Golf Company

> \$2,000,000,000 March 2021

PSP Investments of the Northwest

operations and assets of Frontier \$1,400,000,000

May 2020 TCV sale of

tastytrade

\$1,000,000,000 Pending

American Securities acquisition of the Interior Products Business of

BEACON

\$850,000,000 February 2021

Berkshire Partners

acquisition of CrossFit

Undisclosed August 2020

Charlesbank Capital

Bridges Consumer Healthcare's acquisition ηf

hermaCare® HeatWrap Undisclosed

November 2020 **CPP Investments**

merger of Ultimate **KRONOS**

\$22,000,000,000 April 2020 GI Partners

acquisition of **Wvast**

Undisclosed February 2021

J.C. Flowers acquisition of

Undisclosed November 2020

Oak Hill Capital, Galaway and **JenCap** together with The Carlyle Group majority stake

sale of GALWAY INSURANCE HOLDINGS, Undisclosed

December 2020 **Providence Equity**

sale of Zeni<mark>Max</mark>° \$7.500.000.000 Pending

Silver Lake Sumeru

sale of Vel@city Undisclosed January 2021

Thomas H. Lee Partners

stake sale of I IUVARE

acquisition of VET Undisclosed

American Securities

acquisition of

\$825,000,000

October 2020

Berkshire Partners

July 2020

Charlesbank Capital Rridaes Consumei Healthcare's

acquisition of Clarion Undisclosed

January 2021 CVC Capital Partners

acquisition of all of the interests of

FAIRFAX up to \$986,000,000 Pending

Goldman Sachs Merchant Banking

Division significant stake acquisition of

ZAXBYS Undisclosed Pending

J.C. Flowers Jefferson's acquisition

Ωf Canastream Holdings Ltd.

Undisclosed March 2020

OMERS acquisition of

TURNPOINT Undisclosed

November 2020 **Providence Equity** consortium's pending

take-private of MASMOV!L \$3,300,000,000 November 2020



Kelé Undisclosed February 2020

Trive Capital acquisition of

Valor

13

Undisclosed September 2020

Undisclosed July 2020



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