NautaDutilh Belgium's Private Equity & Venture Capital Barometer Q4 2017

This is NautaDutilh Belgium's thirteenth Private Equity & Venture Capital Barometer. After our spring 2014 Interim Report, we decided to survey, on a quarterly basis, a select group of private equity and venture capital players, asking about current and expected trends in their practice. This issue shares highlighted results from the fourth quarter of 2017 (Q4 2017).

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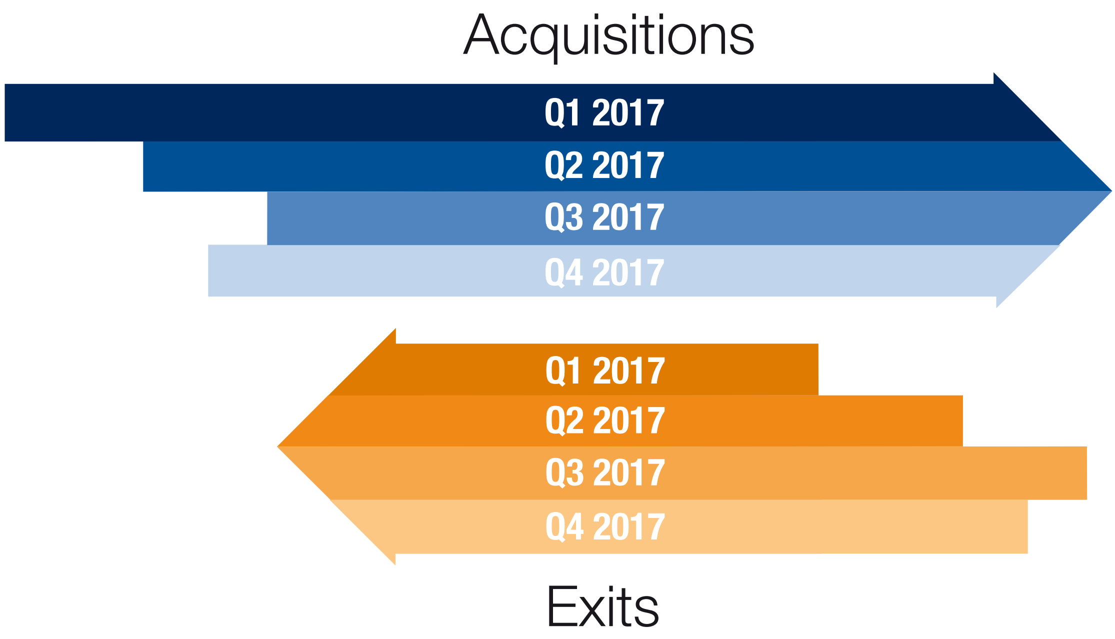
The Q4 2016 Barometer refers to NautaDutilh Belgium's ninth Private Equity & Venture Capital Barometer, available at https://www.nautadutilh.com/globalassets/barometerbelgiumq4_2016_a4.pdf
The Q1 2017 Barometer refers to NautaDutilh Belgium's tenth Private Equity & Venture Capital Barometer, available at https://www.nautadutilh.com/siteassets/documents/brussels/barometerbelgiumq1_2017_a4.pdf
The Q2 2017 Barometer refers to NautaDutilh Belgium's eleventh Private Equity & Venture Capital Barometer, available at https://www.nautadutilh.com/globalassets/barometerbelgiumq2_2017_a4.pdf
The Q3 2017 Barometer refers to NautaDutilh Belgium's twelfth Private Equity & Venture Capital Barometer, available at https://www.nautadutilh.com/siteassets/documents/brussels/barometerbelgiumq3_2017_a4.pdf

Exits now account for 45% of reported transactions



There has been a steady rise in exits, from 28% of reported transactions in Q4 2016 to 45% in Q4 2017. As these figures indicate, exits still lag behind acquisitions by 5%. Indeed, according to our barometers, acquisitions have exceeded exits since Q4 2015. Further, a substantial number of reported exits relate to a secondary buyout, meaning the target company is sold between private equity players. By way of example, large Belgian PE player GIMV (with 53 holdings in its portfolio) reported a very active half-year in terms of transactions, with five new investments and three divestments.[1]

While it is difficult to draw conclusions from the increasing number of exits, a partial explanation could be that a number of closed-end funds came to an end and their investors may prefer to realise a capital gain rather than reinvest the proceeds straight away, as multiples are increasing due to high seller expectations. This explanation was recently floated at a number of events attended by members of our PE team, such as the IBA's Private Equity Transactions Symposium held on 16 November 2017 in London and the 9th Russia CIS M&A Conference. Targets are currently being sold at multiples in excess of 10, which puts increasing pressure on PE players to carefully select their acquisitions. In this regard, PE players are faced with three main difficulties: (i) seller expectations are historically high in a growth economy with low interest rates; (ii) multiples are high (above 10); and (iii) the number of PE players on the Belgian market has risen to over one hundred (including PE funds, holding companies, family offices and private investors). Thus, competition for quality assets is fiercer than ever. The foregoing is confirmed by *PitchBook's 2018 PE Crystal Ball Report*,[2] in which respondents cite high transaction multiples and deal sourcing/lack of quality assets on the market as the most important challenges facing PE dealmakers in 2018. Given that substantial amounts of dry powder are available and interest rates are low, access to financing was ranked as least important.

[1] See http://www.gimv.com/en/media-and-news/press-releases/growth-at-portfolio-companies-and-capital-gains-on-exits-lead-to-excellent-portfolio-return-and-a-strong-net-half-year-result-of-eur-626-million.
[2] The full paper is available at https://files.pitchbook.com/website/files/pdf/PitchBook_2018_PE_Crystal_Ball_Report.pdf?pdf=repromote.

Another trend we've noticed since late 2016 is that fewer transactions are being reported. This seems to be in line with the global trend towards fewer but larger transactions. Since 2015, both our own M&A practice and other sources have confirmed increasing investment in start-ups and scale-ups in Belgium (more than EUR 300 million on an annual basis). Private equity players are increasingly providing growth capital, especially to scale-ups.

In this respect, several respondents and a number of our contacts in the PE sector indicate that as targets become larger and multiples increase, consolidation (of funds) could be a solution. It should be noted that teaming up or consolidation is still more of a theoretical possibility which has not yet been confirmed in practice. However, with respect to Belgian capital rounds in particular, *De Tijd* recently reported that although the number of transactions has increased, the average amount of capital raised has fallen (from EUR 5 million in 2013 to EUR 3.3 million in 2017). Our colleague Leo Groothuis beat the 2017 Dutch M&A record with three deals (Thales, Unibail Rodamco and McDermott International, Inc.) valued in total at EUR 24 billion.[3] In 2017, the Belgian M&A market was valued at over EUR 20 billion,[4] with PE players holding an increasing share.

Sectors with the most PE/VC activity[5] - the technology and IT sector is still hot

Whilst prior to Q4 2016, the sectors with the most PE/VC activity varied considerably from one quarter to the next, starting in Q1 2017 our barometers revealed fewer surprises.

In Q4 2017, the four sectors with the most PE/VC were: (i) technology and IT, (ii) life sciences, (iii) manufacturing and (iv) business and professional services. In Q3 2017, the results were (i) manufacturing, (ii) technology and IT, (iii) retail and (iv) life sciences.

The major difference in 2017 compared to 2016 is the comeback of the manufacturing sector, which was consistently ranked in the top four.

Respondents to our survey continue to report substantial PE/VC activity in the ***technology and IT*** sector (65% in Q2 2017, 48% in Q3 2017, and 58% in Q4 2017). However, while mentioned by many respondents, few deals in the sector received press coverage. The most important deals covered by *MergerMarket* and the press included:

- Jurgen Ingels' acquisition of a stake in Bright Analytics, a start-up providing software analysis and reporting tools for financial and operational results (undisclosed value);
- Capricorn Venture Partners' acquisition of a EUR 1.6 million stake in Arkite, the Belgian developer of the Human Interface Mate, a digital assistant for the manufacturing industry;
- FPIM & the Antwerp Port's contribution of EUR 5.2 million to NxtPort, whose objective is to unlock the potential for data sharing amongst the port's players;
- Fortino Capital II's acquisition of a EUR 20 million majority stake in MobileXpense, a Belgian provider of expense management software solutions;
- GIMV's highly publicised sale of Luciad, a Belgian provider of geospatial software solutions, to Swedish company Hexagon for an undisclosed amount.

The ***life sciences*** sector is now in second place. For the past two years, this sector has been in the top four. Noteworthy deals included:

- Capricorn's participation in the capital increase of Virovet, a company active in the development of disruptive and innovative technologies for the control of viral diseases in livestock, for EUR 1.5 million;
- the declaration of intent by LRM, PMV and Vesalius Biocapital to acquire a stake in biotech company Apitope through a planned IPO (pending);

[3] See https://mena.nl/artikel/de-man-van-24-miljard.
[4] *De Tijd*, 23 December 2017 (www.tijd.be).
[5] This information is based on press coverage or obtained from www.mergermarket.com. Please note that unless expressly stated otherwise, acquisition/sale means the acquisition/sale of a stake in/all shares of the target company.

- Epimede and SRIW's participation in the capital increase of biotech company Ncardia, a company that develops, produces and commercializes highly predictive human cellular assay systems for safety and efficacy testing, for EUR 6.25 million;
- FPIM's (Federal Participation & Investment Company) participation in the capital increase of biotech company MasterCell (specialising in the full cell therapy value chain), for EUR 5 million;
- the Nasdaq Global Stock Market listing by Argenx, a clinical-stage biopharmaceutical company focused on creating and developing differentiated therapeutic antibodies for the treatment of cancer and severe autoimmune diseases, of 5,106,000 American depositary shares (ADS) worth approximately USD 231 million (USD 52 per ADS).

The largest Belgian capital round of 2017 took place in Q4. NautaDutilh assisted VIB, a life-sciences research institute conducting basic research with a strong focus on translating scientific results into pharmaceutical, agricultural and industrial applications, with the incorporation of Aelin Therapeutics, a privately held Belgian biotherapeutics company which secured a EUR 27 million investment to create a completely new class of antibiotics and first-in-class therapeutics for use against high-value undruggable human targets. The technology, known as Pept-ins,™ harnesses the power of protein aggregation to specifically induce functional knockdown of a target protein.

The ***manufacturing sector*** (which held the top place in Q3 2017) fell to third place in terms of the number of deals mentioned by respondents. However, the highest deal values were reported in this sector. Important deals covered by *MergerMarket* and the press included:

- Waterland's sale of Ipcom (a company active in the thermal insulation sector) to French investment fund Alpha, for an undisclosed amount but reported to be approximately EUR 250 million;
- Ergon's acquisition of German company SVT, a specialist in fire retardant systems composed of mineral fibre boards, for an undisclosed amount;
- Sofina's acquisition of a 7% stake in Deceuninck, the Belgian PVC window frame manufacturer, for an undisclosed amount;
- the highly publicised acquisition by Clayton, Dublier & Rice of a 40% stake in Belron (Carglass), for EUR 1 billion.

Finally, the ***business & professional services*** sector came in fourth place. Noteworthy deals indicating consolidation in the sector included:

- Down2Earth Capital's sale of Vio Interim, a temporary agency in the logistics and sales sector, to SD Worx for an undisclosed amount;
- Straco's acquisition of a majority stake in Forum Jobs, a Belgian employment agency, for an undisclosed amount;
- the MBO by Value Plus of Hudson's recruitment and talent management operations in the Benelux for EUR 25 million.

Family owned companies continue to attract PE players

In previous barometers, we noted the importance of family owned businesses in Belgium. Many owners/managers of these companies will reach retirement age in the coming years and are therefore actively examining exit strategies. While preference is usually given to other family members, private equity funds in search of interesting targets are another option. NautaDutilh's M&A and Private Equity Teams have extensive experience assisting both sellers and private equity funds that wish to acquire a family business.

NautaDutilh recently signed a Prime Foundation Partnership Agreement with the Centre for Mergers, Acquisitions & Buyouts of the Vlerick Business & Management School.[6] Further to this agreement, **Elke Janssens** (M&A and private equity partner at

[6] For more information about the Centre, please visit https://www.vlerick.com/en/research-and-faculty/research-in-action/accounting-finance/centre-for-mergers-acquisitions-and-buyouts/partners.

NautaDutilh) will participate in the Vlerick Exit Academy (designed for entrepreneurs that wish to sell their business or transfer it to the next generation) and give two presentations, on 3 and 22 May 2018, on the transaction process and negotiations.

Finally, on 13 December 2017, we participated in a conference on two possible exit strategies from family businesses, with practical testimonials.[7] The high attendance rate of PE players indicates their interest in this type of target.

Record amounts of dry powder for institutional and private investors

Low interest rates on the financial markets have two consequences: first, debts are cheaper to service (causing the value of targets to rise) and, second, investors are more inclined to entrust their money to other market players (such as unregulated financial institutions and shadow bankers). GIMV believes this could lead to a new bubble.[8] According to the Belgian Financial Services and Markets Authority (FSMA), shadow banking in Belgium is currently valued at EUR 128 billion.

While the Belgian household savings rate declined to approximately 12% in 2017, according to figures published by *De Tijd*, 2017 was a record year in terms of money transferred to savings accounts. Total savings rose by EUR 5 billion to over EUR 237 billion. Savings accounts are still considered to be a safe haven (with a capital guarantee of up to EUR 100,000 for private savings) and tax friendly investment. A new tax exemption of up to EUR 800 is available since 1 January 2018 for dividends. Moreover, the current tax shelter for start-ups will be extended to growth companies. The purpose of these measures is to encourage individuals to convert savings into risk capital.

Belgium as an innovation hub and the importance of the life sciences and manufacturing sectors

In December, the European Patent Office published a report on the fourth industrial revolution.[9] According to this report, the term «industrial revolution» is used in order to reflect the pervasiveness and disruptive potential of the latest technological developments. While previous industrial revolutions led to the automation of repetitive physical work, the fourth industrial revolution (4IR) goes much further: it will lead to the large-scale automation of entire groups of tasks, including repetitive intellectual tasks previously performed by human beings. According to the report, Belgium has a relatively high share of 3D systems. Of the ten Belgian applicants for the most patents (headed by Solvay), five are related to universities: IMEC, VIB, Ugent, VITO and KU Leuven. According to *De Tijd*, 2017 was also a record year for patent applications with 1,173 applications, an increase of 7%. Private equity players are playing a more important role. NautaDutilh's M&A and Private Equity Teams were involved in the two largest life sciences deals in the past eighteen months:

- NautaDutilh advised the underwriters (BofA Merrill Lynch, Cowen and Company, LLC, Canaccord Genuity and BTIG) on all Belgian legal aspects of the initial public offering in the US by TiGenix NV (Euronext Brussels: TIG), an advanced biopharmaceutical company focused on developing and commercializing novel therapeutics, of 2,300,000 American depository shares (ADS), representing 46,000,000 ordinary shares, at a price of USD 15.50 per ADS totalling USD 35.65 million in gross proceeds. In November 2015 and March 2016 we assisted the underwriters with private placements by TiGenix valued at EUR 8.7 million and EUR 23.75 million, respectively. We also act as counsel to the underwriting banks for Japanese company Takeda's EUR 520 million intended public takeover bid for TiGenix.

[7] More information can be found at https://www.vlerick.com/nl/events/events/overdracht-of-verkoop-van-uw-bedrijf?utm_source=overdrachtverkoopbedrijf20171213-event-&utm_medium=email&utm_campaign=overdrachtverkoopbedrijf&_cldee=Y2xvZS5kZW1vb3JAdmxlcmljay5jb20=&recipientid=contact-e690100a1d8bdf118a58005056a64c14-d79636f6376142ce874b45aa11730ff2&esid=13b19523-8fb8-e711-b428-005056a760af&urlid=0
[8] See *De Tijd*, 23 November 2017.
[9] The full report is available at http://documents.epo.org/projects/babylon/eponet.nsf/0/17FDB5538E87B4B9C12581EF0045762F/$File/fourth_industrial_revolution_2017__en.pdf.

- NautaDutilh, together with Weil, Gotshal & Manges, is assisting global biopharmaceutical company Sanofi (listed on Euronext and NYSE) with its takeover of Belgian biotech company Ablynx (listed on Euronext Brussels and Nasdaq). Sanofi will acquire all outstanding ordinary shares of Ablynx, including American depositary shares (ADS), warrants and convertible bonds, which represent aggregate equity value of approximately EUR 3.9 billion.

When discussing the conclusions of our Q3 2017 barometer, we called your attention to the renewed importance of the manufacturing sector. A number of recent articles in *De Tijd* have confirmed this heightened interest.[10] Artificial intelligence and blockchain technologies play an important role in this regard. In Q4 2017, substantial funds flowed to the sector, including from the new Fortino Capital Fund II (with over EUR 150 million in investment capacity), and several captains of industry announced they would invest more in the sector.

Take-aways from the IBA Private Equity Transactions Symposium 2017

Our office participated in the November 2017 IBA Private Equity Transactions Symposium in London. Below we briefly set out four general takeaways and important trends for the private equity sector.

First, FTSE 100 companies report a 44% increase in political risk. Brexit has created substantial uncertainty as to the balance of power within the European Union. We know that certain headquarters will be moved. According to the private equity website *real deals*,[11] UK-domiciled private equity firms should think about moving to another jurisdiction given the current status of Brexit negotiations between the EU and the UK.

NautaDutilh has already assisted large companies with Brexit issues. For example, we advised QBE, one of the world's top 20 general insurance and reinsurance companies, on the establishment of a new Belgian subsidiary to carry out its EU activities post-Brexit.

Second, participants noted the increasing importance of litigation and regulatory proceedings in private equity transactions and portfolio company investments. They mentioned conflicts of interest between PE firms and their investors and the potential liability of PE firms for issues relating to portfolio companies. While in Belgium such issues are still rather rare, our Litigation Team reports a rise in the number of such questions referred to it.

Third, technology plays an increasingly important role in M&A deals involving PE players, in particular high or disruptive technologies related to cybersecurity, artificial intelligence and big data. Fintech, a sub-sector of financial services, continues to generate significant interest from PE players. The interest in AI was also confirmed by a recent PitchBook report, showing increasing attention to machine learning and smart commodities (in 2017, an all-time European peak was reached with 309 deals worth EUR 1.2 billion),[12] especially in the UK and Northern Ireland.

NautaDutilh recently acted for the seller with respect to the finalisation of a successful bid by French financial services company Natixis for over 50% of the shares of Dalenys, a Belgian company active in B2B support operations and B2C digital content services. This deal received substantial press coverage.

Last but not least and as already mentioned in past barometers, there is increasing internationalisation on the PE/VC market. This finding was confirmed by a recent PitchBook analysis,[13] showing a surge in US VC activity in Europe to 17.3% in 2017 from 12.8% in 2016. On the other hand, Chinese PE players were much less active than expected in 2017.

[10] See *De Tijd*, 3 January 2018 (www.tijd.be).
[11] https://realdeals.eu.com/news/2017/10/18/uk-private-equity-invest-europe-brexit/?utm_source=rd_newsletter&utm_medium=threeads&utm_campaign=rd_newsletter_135655&utm_content=rd_story_headline.
[12] To read the full article, please see https://pitchbook.com/news/articles/13-charts-explaining-europes-vc-industry.
[13] To read the full article, please see https://pitchbook.com/news/articles/13-charts-explaining-europes-vc-industry.

Changes to the Company Code and the Income Tax Code that will impact the private equity sector

On 21 November 2017, our Corporate M&A and Private Equity Teams organised a seminar on upcoming changes to the Income Tax Code and the reform of the Company Code and how these changes will impact the private equity sector. **Dirk Van Gerven** and **Elke Janssens** presented the most important consequences for the sector. These changes relate to the following topics, amongst others:

- amendment of the articles of association;
- the civil law entity without required capital;
- put options at a fixed strike price;
- the possibility to carry out a capital increase with shares below par value;
- the removal of directors in a public limited company;
- the rules on director's liability;
- the payment of dividends and the exercise of voting rights.

Ken Lioen, head of our Brussels tax department, briefed the audience on the tax consequences of the federal government's 2017 summer agreement. The most important modifications as of 1 January 2018 are the following:

- taxation of capital gains on the sale of shareholdings in the hands of the shareholder if the latter does not own at least 10% of the distributing company or if the acquisition value was below EUR 2.5 million; it should be noted that this tax is only applicable to corporate shareholders, not natural persons;
- a gradual decrease in the corporate tax rate from 33.99% to 25% (and even 20% for SMEs) by 2020;
- abolition of the separate tax of 0.412% on capital gains on shares realized by large companies;
- elimination of the possibility to set off tax losses carried forward against future profits without limitation;
- as of 2019, the progressive introduction of corporate tax consolidation into Belgian law;[14]
- reform of the rules governing the *privak*;
- incremental calculation of the notional interest deduction;
- implementation of ATAD2 (hybrid mismatches, limitation on interest deductibility to 30% of EBITDA, introduction of CFC rules, exit tax).

One tax measure that received substantial press coverage is the amended tax treatment of capital decreases. As a general rule, before 1 January 2018, the paid-in capital of a Belgian company could be distributed to its shareholders in a tax-neutral way, provided certain conditions were met. Paid-in capital is defined in Article 184 of the Income Tax Code and can include share premiums and subscriptions for profit-sharing certificates. Tax-neutral repayment of capital implies that shareholders receive back only their original investment. If shareholders receive more than their original investment, the excess is generally considered a dividend, subject to withholding tax (in principle at a rate of 30%).

The legislature recently amended the definition of paid-in capital to exclude (to a certain extent) capital created as a result of a contribution in kind of shares. Further to this change in the law, a contribution in kind of shares, even if it leads to an increase in capital for company law purposes, is (in certain situations) only partially considered paid-in capital for tax purposes. The remainder is considered a reserve which, upon distribution, will be categorised and potentially taxed as a dividend.

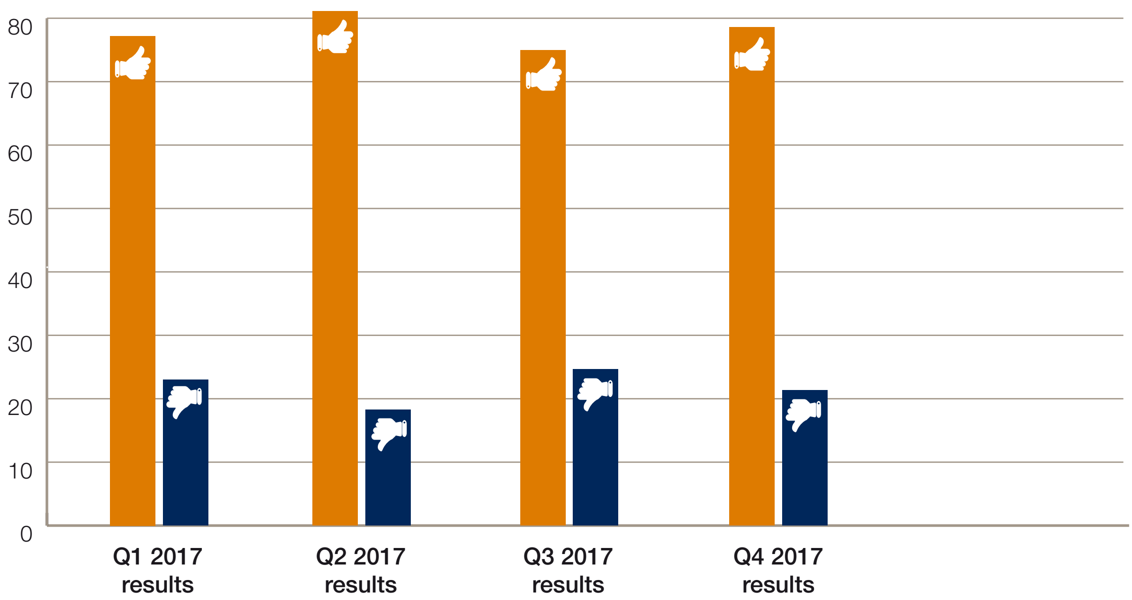
Consequently, a capital decrease is no longer tax neutral and may trigger withholding tax or even corporate tax (to the extent untaxed reserves are deemed distributed). Since the capital indicated on the company's balance sheet will not necessarily correspond to the paid-in capital for tax purposes, taxpayers will need to keep track of the paid-in capital separately. The same rules apply to foreign companies. Hence, if a foreign company reduces its capital, the Belgian parent company will need to assess the extent to which the capital repayment

[14] It should be noted that consolidation will not impact the financial accounts and will take the form of a «group contribution». Under the new measure, consolidation will be achieved by allowing a profitable group company to make a tax-deductible payment to a loss-making group entity.

should be considered a dividend (potentially qualifying for the dividends-received deduction).

While tax issues are not a driving force of PE transactions, they remain an important factor in Belgium. Respondents continue to report high interest in the Ruling Commission (over 80% attach importance to ruling practice). The potential tax consequences of any decision taken by PE/VC players should be carefully examined, especially in light of the upcoming tax reform. While a recent PitchBook report mentioned regulation and/or tax policy as the least important driver,[15] it should be noted that this survey was conducted prior to the recent tax reform in the US.

Is Belgian ruling practice a factor when considering potential deals?



Deal speed

After having declined sharply from 19 to 14 (Q4 2015), the number of weeks needed to sign/close a deal (from receipt of the information memorandum) dropped further to 11 in Q1 2016 but rose to 17 in Q2 2016 and 21 in Q3 2017. Our latest barometer revealed an average deal time of 19 weeks.

The results of our Q3-Q4 2017 barometers appear to be confirmed by the Vlerick Monitor,[16] which reported an average deal speed of six months for domestic transactions, compared to 7.5 months for cross-border deals.

[15] See https://files.pitchbook.com/website/files/pdf/PitchBook_2018_PE_Crystal_Ball_Report.pdf?pdf=repromote.
[116] The 2017 M&A Monitor - Shedding Light on M&A in Belgium is available at https://www.vlerick.com/~/media/corporate-marketing/our-expertise/pdf/20170529MAMonitorpdf.pdf.

Post-closing issues

A more worrisome trend (noted for the first time in our Q3 2015 Barometer and confirmed by subsequent surveys) is that an increasing number of respondents report post-closing issues, while previously they stated that, in principle, they do not experience claims under the representations and warranties.

While we do not have detailed information about the underlying reasons for this trend, there are several possible explanations. *First*, parties are paying more attention to precisely formulated representations and warranties. *Second*, more clients and private equity players are requesting limited due diligence, which means potential issues may not be spotted. *Last but not least,* the markets in which certain companies operate (including the retail & wholesale and technology & IT sectors) are increasingly complex.

In previous barometers, **Sophie Jacmain** (Litigation & Arbitration, Restructuring & Insolvency Partner) mentioned two important factors. *First*, she has seen a change in mindset due to greater awareness of director's and shareholder liability. There is substantial case law on director's liability but few cases relating to shareholder liability. In addition, private equity players should be aware that the concept of wrongful trading has been included in the new Insolvency Code, which increases the potential liability of directors and de facto directors in the event of bankruptcy. *Second*, the markets are becoming more accustomed to dealing with distressed M&A funds and turnaround companies. In this regard, it is important to note a decision by the European Court of Justice of 22 June 2017, according to which certain types of pre-pack procedures can no longer be excluded from the scope of Directive 2001/23 on the transfer of undertakings, meaning that the employees of distressed companies can be automatically transferred, along with their rights and obligations.