DEAL FLOW 3.0

European Venture Capital Deal Term Review 2022

2022 STANDOUT FOR INNOVATION USING DATA (EUROPE)

FT INNOVATIVE LAWYERS

FINANCIAL TIMES

orrick

DEAL TERM REVIEW 2022
EUROPEAN VENTURE CAPITAL

Foreword

Despite a shift to economic headwinds, investors injected more than $95B into the European tech market in 2022, the second-largest amount ever. To see how deal terms changed, Orrick developed new technologies and processes to analyse more than 500 transactions we closed for our clients in Europe in 2022 with an aggregate value of more than $12B.

5 Things We Learned About European Tech Deal Terms in 2022

1. **Market instability led to a shift towards more investor-friendly terms, including**:
    - Founders were required to stand behind warranties in 44% of venture deals despite wide agreement of less need for founders to be financially liable for warranties. We expect this to change now that new British Private Equity & Venture Capital Association (BVCA) model forms in greater circulation confirm a market norm of requiring company-only warranties.
    - Only 47% of equity financings included a top-up to the option pool – as companies became more cautious of hiring in difficult times and investors were more reluctant to suffer the dilutive impact.
    - A pushback against the surge in founder veto matters that were so frequently accepted in 2021.
2. **Average deal size dropped whilst deal volume remained high:**
    - **Company-side venture deals:** average size **declined 42.7%** (from $20.8M in 2021 to $11.9M in 2022).
    - **Investor-side venture deals:** average size **declined by 34.9%** (from $52.2 M in 2021 to $33.9M in 2022).
3. **We saw an uptick in the volume, size and value of venture debt transactions with an increased level of competition between lenders.**

We analysed over
500
Venture Financing Deals
IN 2022
totalling
$12B+
ACROSS EUROPE

Ranked
#1
PitchBook
FY 2022
VC Law Firm in Europe
FOR 7 YEARS IN A ROW

completing more than
2x
THE NUMBER OF DEALS THAN ANY OTHER FIRM

4. **FinTech continued to be our top sector for investment activity, though FinTechs took the brunt of rising inflation and reduced investment budgets, leading to a 21% drop in investment levels across Europe in 2022.[1]**

5. **SaaS & Platforms saw the largest growth in deal volume (x1.5 increase) whilst investments into Retail & Marketplaces fell by 65% last year after booming in 2021.**

Broader Market Trends

- In response to geopolitical and macroeconomic events in Europe, funding slowed in the second half of the year, the debt market grew, and we saw a decline in unicorn creation and mega rounds that had ballooned in 2021.
- Institutional investors increasingly started to track ESG metrics within their portfolio companies – it's quickly becoming a requirement of respected European funds, but the details of these requirements remain broad. There is some evidence of divergence between the US and Europe, with a higher number of funds in Europe making this a priority.
- Some of our findings on broader market trends parallel conclusions in The State of European Tech, the most comprehensive data-driven analysis of the tech sector in Europe. We are proud to support that report and grateful to Atomico for creating it.
- We hope Deal Flow 3.0 proves a valuable supplement to that important work by offering investors and tech companies actionable insights based on a review of real-world deals. We are proud to help the most agile and creative minds in the tech community achieve responsible growth and drive change.

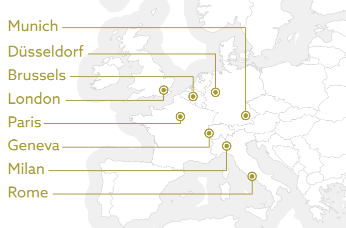
Click here to read our thoughts on the six things founders should bear in mind as they navigate an uncertain future.

Behind the Numbers

Orrick
Analytics

Our Orrick Analytics & Innovation teams with help from our attorneys, designed and utilised a proprietary tool to automate the collection of European deal data to help produce these unique data-driven insights into some of the most diverse and innovate high-growth companies and investors.

Deals have been analysed across our offices in key European hubs:



1 *Fintech* 2022 Report (Dealroom & ABN AMRO Ventures).

DEAL TERM REVIEW 2022

EUROPEAN VENTURE CAPITAL

Contents

SECTOR COLOUR KEY USED THROUGHOUT THIS REPORT

- **Blockchain & FinTech** includes BaaS, Blockchain, Crypto, Digital Currency, InsurTech and NFTs.
- **Cyber, Data & Privacy** includes Big Data, Compliance, Cybersecurity, Data Analytics, Data Centres, Data Privacy, IoT and Risk Management.
- **Energy & Infrastructure** includes AgTech, Aviation, CleanTech, Climate Tech, Electric Vehicles, Mobility, Renewable Energy, Sustainability, Telecoms, TransportTech and Utilities.
- **Health** includes Biopharmaceutical, BioTech, HealthTech, Life Sciences and MedTech.
- **Marketplaces** includes E-Commerce, Fashion, Food & Drink, FoodTech, Media, Manufacturing, PetTech and Retail.
- **SaaS & Platforms** includes Cloud-based Solutions, EdTech, Enterprise Software, Gaming, HR, MarTech, Online Hosting Platforms, PropTech, Real Estate and Software.
- **Technology** includes AI, AR, Communications, DeepTech, Image Recognition Technology, IT, QuantumTech, Semiconductors, SpaceTech, VoiceTech and Web Browsers.

▶ Deal values all in US$ using GBP/USD fx rate of 1.2332; EUR/USD fx rate of 1.0794; *Based on FT FX Rates of 3 Feb 2023.*

DEAL TERM REVIEW 2022
KEY INSIGHTS

A View from the Market

- 2022 was a turbulent year for the innovation economy, but Europe remained resilient with **$95B+ invested across the region[2] in 2022**, just short of 2021's historic levels.
- A new market environment brought **increased scrutiny from investors** and a **change of pace in investment activity** with increased diligence periods and a slower time to execute transactions.
- The year started off strong with the second highest investment levels on record in Q1. However, the ripple effects of a slide in the valuation of tech stock and a frozen IPO window, coupled with higher interest rates were felt in H2, with **investors deploying less capital**.
- Tech market valuations declined and the **number of European tech companies scaling to unicorn ($1B+) plummeted by 52%[3]** in 2022 after a record year in 2021.
- **Significant decline (39%) in mega rounds** of $250M or more.[4]
- As we focus on building a sustainable future, investments in purpose-driven tech companies continue to rise — with **"planet-positive" investments** capturing **19% of total European funding[5]** in 2022.
- Founders turned to debt, with a **huge increase in debt activity** in 2021 and 2022, growing 4x within the past five years.[6]
- **FinTech startups continued to dominate**, raising $22B across Europe.[7] However, this is down 21% from 2021, showing a slowdown of investments into the sector.
- **The IPO markets have "closed"** with only two tech IPOs with a market cap in excess of $1B in Europe – down from 25 in 2021.[8]

$95B+

Investment in European Tech

IN 2022 (**NOT FAR BEHIND 2021's RECORD-BREAKING LEVELS**)

$1B+

52%

Tech Companies Scaling to Unicorn

21%

FinTech Investment

WITH NEARLY **$22B** INVESTED ACROSS EUROPE

2-4 2022 Dealroom data.
5,6,8 *2022 State of European Tech*.
7 *Fintech 2022 Report* (Dealroom & ABN AMRO Ventures).

DEAL TERM REVIEW 2022
KEY INSIGHTS

A View from Orrick

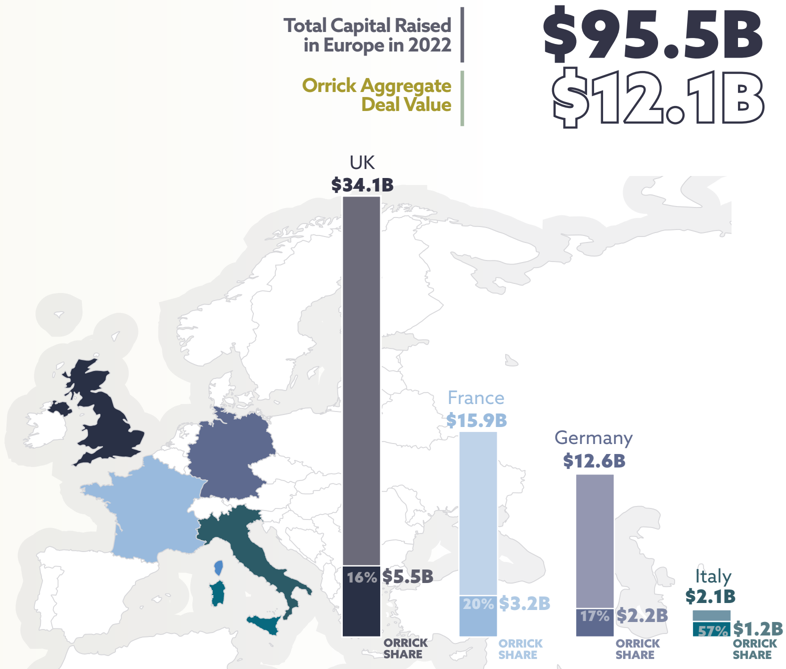
- #TeamOrrick helped raise **more than $12B across Europe in 2022**.
- Orrick's teams have a physical presence in **three of the top five tech hubs** for capital invested (London (1st), Paris (2nd) and Munich (5th)). We are also on the ground in Milan, which falls within the top 10 for both deal volume and value.[9]
- On average, Orrick represented **over 25% of the capital raised** in our **core European markets**.
- Here are some key insights from each of our teams across the region.

A Word from...

The UK

- The UK tech ecosystem continues to be Europe's most funded, receiving **35%**[9] of the total capital invested in the region in the last five years.
- However, we saw a **slowdown in investment levels** in 2022 and companies experienced a **longer fundraising journey** due to increased caution from investors and an attempt from founders to delay or **'raise smart'** while markets fluctuated.
- Despite many challenges faced by the market in 2022 – escalating inflation rates, the energy and cost of living crisis and the war in Ukraine – our London Technology team saw a **5% increase in deal volume in 2022** and a **48% increase** over the **last five years**.

Total capital raised in Europe and Orrick's share of deals*



Europe totals based on 2022 Dealroom data. Orrick results are representative of data received by our European offices located in the UK (London), France (Paris), Germany (Düsseldorf and Munich) and Italy (Milan and Rome).

Over
500
VC DEALS COMPLETED ACROSS EUROPE IN 2022

>2x
the # of deals
COMPARED TO ANY OTHER FIRM

9 *2022 State of European Tech.*

DEAL TERM REVIEW 2022
KEY INSIGHTS

A Word from...

France

- In 2022, France experienced **another record year in terms of capital invested in French startups**, with only a slight decrease in the number of transactions compared to 2021. French **SaaS** and **CleanTech** companies experienced the highest increases in investment compared to the previous year.
- The number of **French unicorns** now stands at 27, with **eight new companies gaining this status in 2022**, including seven in H1 2022.
- In the second half of the year, we saw an **increase in the number of transactions with a liquidation preference multiple higher than 1x**, as well as participating liquidation preferences. A higher number of transactions also included a debt component with a milestone-based conversion valuation.
- Venture debt has also become a more popular alternative financing option with **new lenders on the French market** in 2022, resulting in increased competition.

Germany

- Dealmaking declined in Germany with **cumulative capital invested down 43%** year-on-year vs 2021.[10]
- Although we saw a significant drop against the record year of 2021, in 2022, **overall deal volume was still ahead of pre-pandemic levels**.
- **Deal activity shifted away from mega rounds** to early-stage and early growth-stage deals.
- There was a shift towards **more investor-friendly terms** with respect to lock-ups, founder vesting, protective provisions and control rights.
- Actual down-rounds were relatively rare, but we saw **an increased use of >1x liquidation preference** and **KPI- or milestone-based floating valuations** to support (slight) up-rounds. Existing investors resorted to internal rounds (often through convertible loans) to avoid a priced financing round.

Italy

- In 2022, **a new record was hit for Italian equity investments in startups** – over $2.1B. This was made possible due to the **impact of public investment policies** supported by **dedicated intervention tools**, which allowed the enhancement of relations between public and private investors, universities, research institutes, incubators and companies, capable of promoting innovation.
- The goal, moreover, has been achieved thanks to the **crucial role played by international investors**, who for the first time have decisively entered the Italian market.
- Italy is still far from international benchmarks in terms of invested volumes, but the positive trend recorded in recent years is confirmed (2022 total investment volume tripled the €694M invested in 2019, before the three-year crisis, and almost doubled the prior record year of 2021, which saw investments totalling $1.38B).
- Industries, such as **FinTech**, where the ongoing transformations require the full revision of operating models, are skyrocketing.

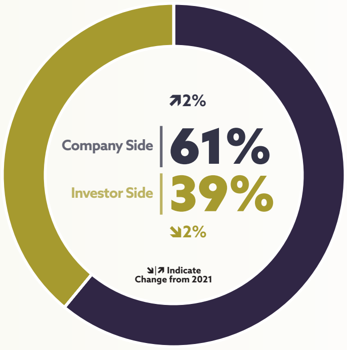
We remain optimistic about what lies ahead – click here to read our predictions for 2023.

10 *2022 State of European Tech*.

DEAL TERM REVIEW 2022
KEY INSIGHTS

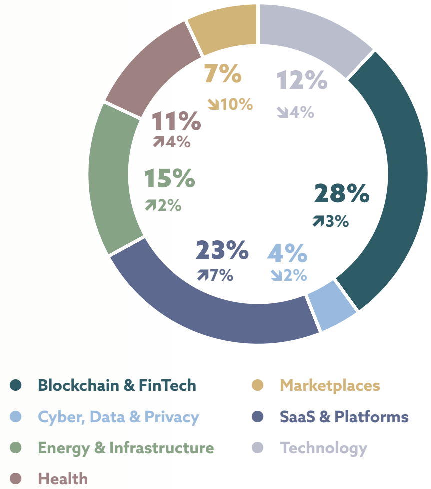
- There has been a **further increase in company-side mandates** that have held the majority in our portfolio in recent years.
- A volatile market has created a **need for tech companies to fund innovation faster to stay afloat**, which (coupled with a large number of "internal rounds") may explain the increase in company-side transactions.
- The majority of our deals were those in the Blockchain & FinTech and SaaS & Platform space, with a **collective market share of 51%**.
- Aggregate **deal value fell** significantly last year, whilst **deal volume remained high**.
- Average deal size dropped by **40.5%** in our company-side venture deals, and by **36.5%** in our investor-side venture deals.

Total Deals

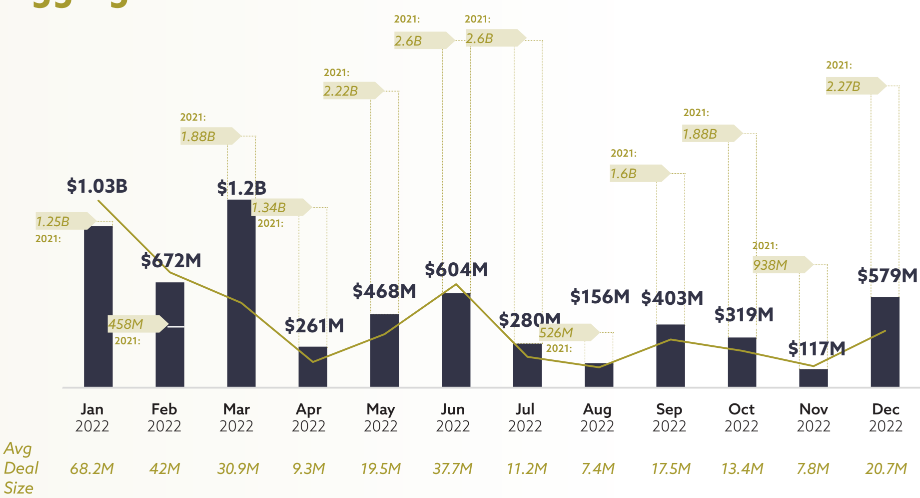


Venture Financings and Convertible Loan Notes (CLNs) combined

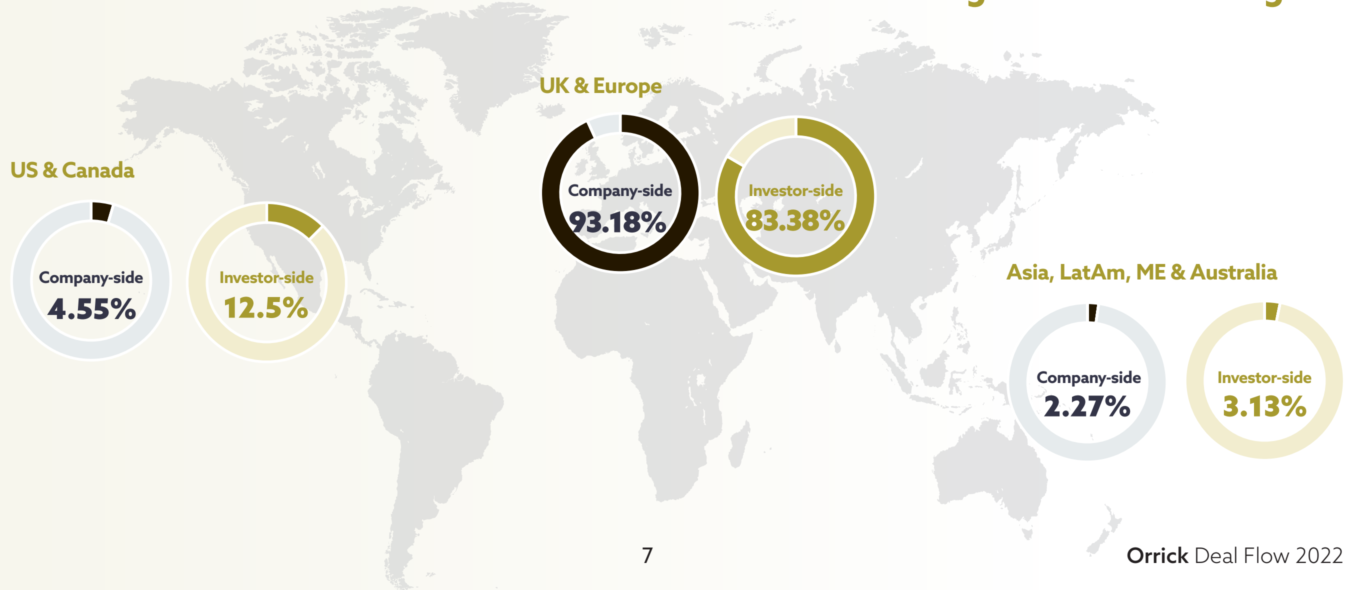
Total Sectors



Aggregate Deal Value 2022



Where investments were coming from and flowing to



1 DEAL TERM REVIEW 2022
VENTURE FINANCINGS

Spotlight

Venture debt investment in the UK and European tech market in 2022 has **jumped more than 200%** in terms of total capital invested when compared to 2020.

Venture Debt

As a result of lower valuations and contracting equity markets, we have seen **founders search for alternative financing options**, particularly in H2 2022. Read on for **key insights** from the venture debt transactions Orrick advised on in Europe in 2022.

A market cooldown led to a **longer journey to capital for technology companies** in 2022. From Q2, the **average length of time between funding rounds stretched**, hitting those raising the slowest the hardest.

Longer Fundraising Journey

On average, it took 6 months more for the slowest early-stage companies to raise their next round, compared to 2 months more for those raising the fastest. This contrast is even starker for later-stage companies with an increase of more than 6 months for the slowest, compared to only one month for the fastest companies.[11]

In 2021, valuations skyrocketed with over 100 European tech companies scaling to $1B, exceeding any prior record year by 2.5x.[12]

Unicorns

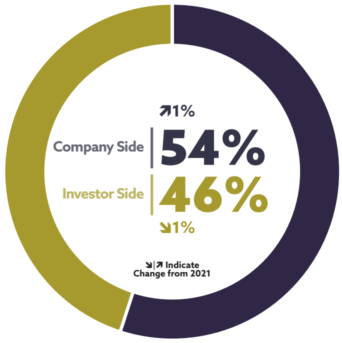
However, 2022 saw a **sharp decline in unicorn creation** with **only 47 companies** joining the unicorn herd in Europe, a figure similar to the years preceding 2021.

11-12 *2022 State of European Tech*.

1 DEAL TERM REVIEW 2022
VENTURE FINANCINGS

This data looks at our closed 2022 European venture financings raised by and on behalf of startups and high-growth companies.

Company vs. Investor

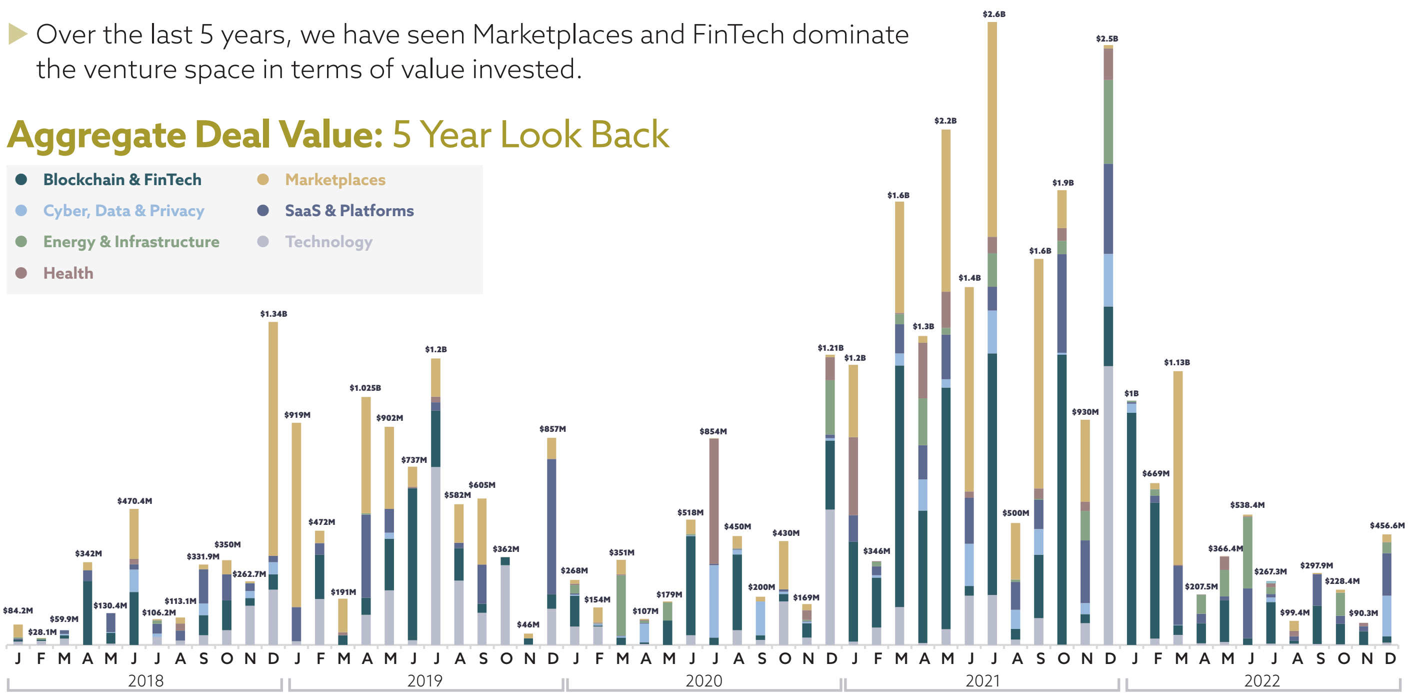


- The increase in our company-side mandates is a reflection of:
  - **companies needing to raise financing faster**, often through bridge rounds which keep companies afloat in distressed scenarios;
  - **a focus on convertibles and similar instruments** such as SAFEs and ASAs with the completion of traditional priced equity rounds taking longer in 2022 as **investors became more selective** with the allocation of new capital; and
  - investors being more cautious in 2022 and remaining on the sidelines for the majority of the year.
- Despite the reduction in investor-side mandates, the **historic high levels of 'dry powder'**, estimated to be in excess of **$500B** globally, give us optimism for the future.[13]

Aggregate Deal Size

- Last year we saw a slow-down in March as investors considered appetite for the year ahead following the **economic impact of Russia's invasion of Ukraine**, resulting in reduced deal volume and value throughout the rest of 2022.
- There was a noticeable pause in November whilst investment committees pondered on the state of the European venture market. However, we saw a **405% increase** in aggregate deal value in December compared to the prior month as investors looked forward to 2023.
- Over the last 5 years, we have seen Marketplaces and FinTech dominate the venture space in terms of value invested.

Aggregate Deal Value: 5 Year Look Back



* *Representative weighting of transactions—not reflective of actual number of transactions completed.*

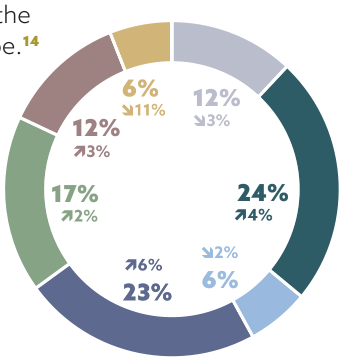
13 2022 State of European Tech.

1 DEAL TERM REVIEW 2022
VENTURE FINANCINGS

Sectors

Marketplaces: Largest slowdown in investment, **down 65% in volume and 11% in market share** from 2021 when we had previously reported the largest growth in this sector. This is reflective of the wider market, which has recorded a **48% fall in capital invested year-on-year** in the Retail & Consumer sector across Europe.[14] This could be due to **a third of retail companies in Europe lacking a website** and nearly 60% of businesses with at least 10 employees not being in the cloud.[14]

Energy: Slight increase in market share. Purpose-driven companies are amongst those thriving in the current market conditions with **$10.3B invested in "planet-positive" tech** in 2022. Climate tech investment has increased 6.7x since 2018 as the tech community works to combat climate change.[14]



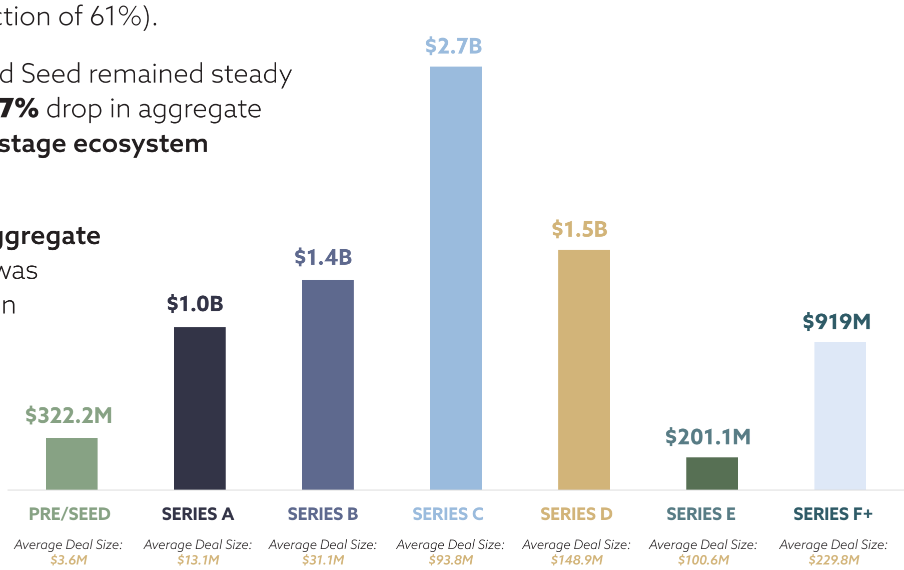
Health: Steady increase in deal volume. Fundraising across the sector hit **nearly $22B globally** in 2022 – second only to 2021's record-setting levels.[15]

Blockchain & FinTech: Continues to maintain its leading position (24%) in our deal portfolio. However, FinTech investment in Europe fell by 21% in 2022 as FinTechs were hit by rising inflation, reduced investment budgets and sparser startup funding.

SaaS & Platforms: The **second largest share of our deals** (23%) and 1.5x increase in volume.

Rounds by Deal Value

- At each stage, we have seen a **reduction in aggregate deal value**, with the most dramatic fall in later-stage deals (Series E reduction of 92% and Series D reduction of 61%).
- Aggregate deal value at Pre-Seed and Seed remained steady in comparison to 2021, with only a **17%** drop in aggregate deal value, as **investors in the early-stage ecosystem still remain active**.
- As with 2021, we saw the **highest aggregate deal value at Series C**. However, as was consistent across all stages (except in the early stages), the aggregate deal value fell by 43%.



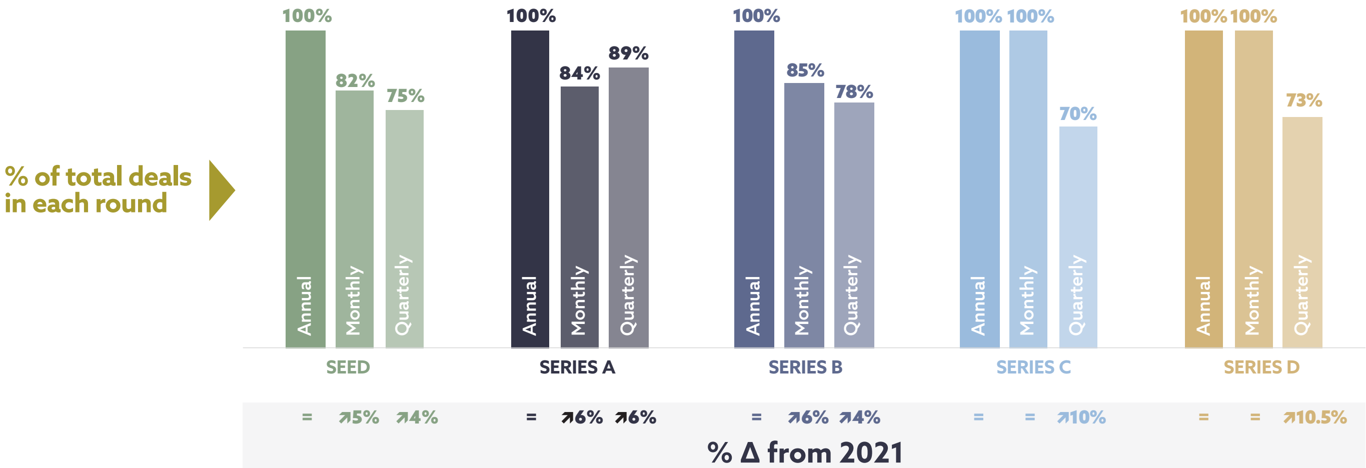
14 *2022 State of European Tech*.

15 *SVB Healthcare Industry Trends 2022 Annual Report*.

1 DEAL TERM REVIEW 2022
VENTURE FINANCINGS

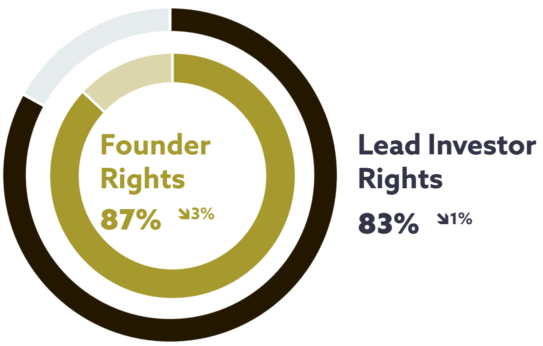
This section looks at the specific deal terms across venture financings, including rights, preferences and protections for companies, founders and investors.

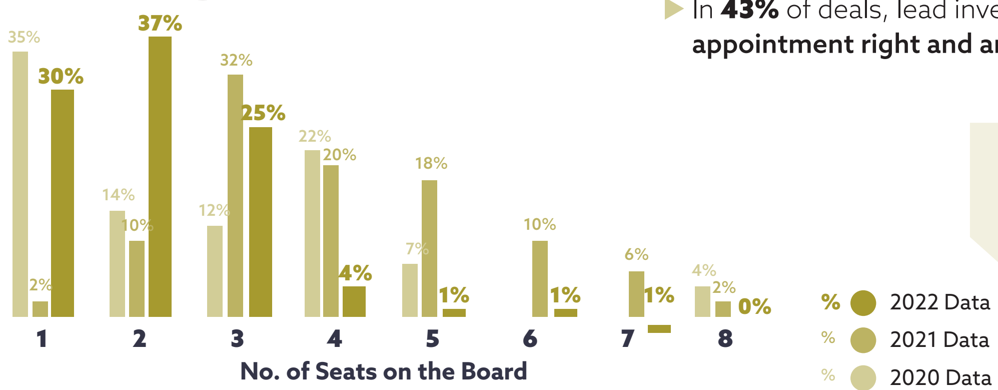
Information Rights



- All deals include Information Rights (delivery of information and preparation of reports) on an annual basis. In addition, the majority of deals also feature Information Rights on a quarterly and monthly basis.

Board Rights





- In 2022, we saw founders being able to appoint two directors on average, which was similar to 2021. We, therefore, didn't see a huge shift in founder representation on boards as **companies still hugely value and require founder input**.
- We saw an increase in a number of board observer seats being taken up by investors, with **64% of all deals including board observer rights** for investors. This is reflective of investors wanting to have more oversight on the day to day management of their portfolio companies.
- In **43%** of deals, lead investors had **both a board appointment right and an observer right**.

In the UK, companies remain focused on keeping **nimble and productive boards** that add value to the early-stage growth trajectory.[16]

16 Unlike UK Boards, in Continental Europe the concept of a Board tends to refer to an advisory (purely supervisory) body, which tends to be bigger, usually 3-5 voting members up until Series B and potentially even bigger beyond with the founders often losing the majority on the advisory board around that time as well. In the UK, advisory boards are unusual, so references to the "Board" are to a governing (decision-making) Board, which Founders are keen to keep nimble.

1 DEAL TERM REVIEW 2022 VENTURE FINANCINGS

Rights, Preferences and Protections

Liquidation Preferences

- We are still seeing the traditional **1x non-participating liquidation preference** as the norm. Of the transactions that did have a liquidation preference, **83%** had a **1x non-participating preference**. Outlier transactions saw up to a **5x** liquidation preference.

Anti-Dilution Preferences

- We are seeing **more aggressive and creative anti-dilution protection** being negotiated by investors. In particular, we are seeing anti-dilution protection remaining in force for longer in later stage companies.
- We have seen **investors play with narrow-based weighted average anti-dilution protection** and the introduction and retention of most favoured nation / pull up clauses.
- Approximately **57%** of the total transactions we have seen this year still use the **traditional broad-based weighted average**, with that percentage climbing to 69% of the deals which had anti-dilution protection. The majority of deals that did not feature anti-dilution protection were at the early/ Seed stage.

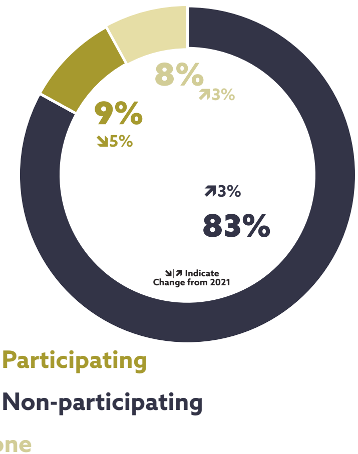
Investor Protections

- The number of deals between Series A – Series C which included at least one board observer seat is consistent. In **84%** of the deals which included **observer appointment rights**, the lead investor had both a board seat and the right to appoint a board observer.

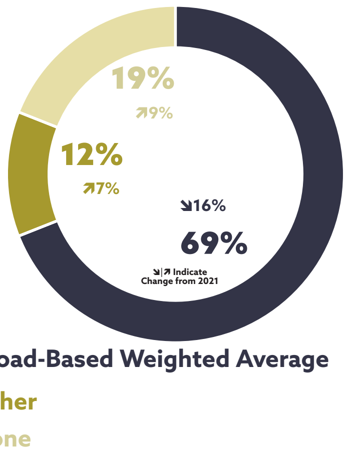
Rights

- Overall, **95%** of deals included **consent rights**: investor majority consent (IMC) only (32%) / investor director consent (IDC) only (2%) / both (52%) / other (14%).
- There has been a **shift in later stages** to having a **simple majority (75%) for drag**, *i.e.*, not requiring "stacked consents" from junior preference classes.
- **100% of the deals** at each financing stage feature a **drag threshold of 50% or higher**.
- The vast majority of our deals have **drag-along rights**, with founder veto prevalent in earlier stages and dropping off in later stages. However, compared to 2021, in 2022 we saw **fewer earlier-stage deals include a founder veto**.

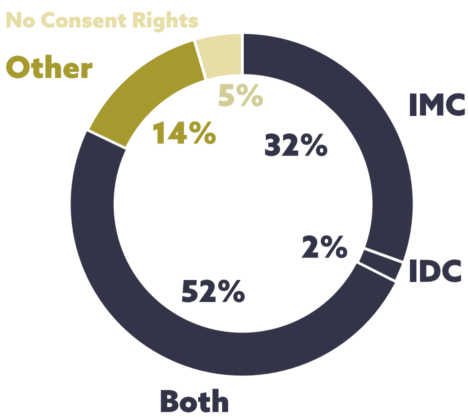
Liquidation Preferences



Anti-Dilution Protection



Rights



Rights, Preferences and Protections

ESG

- The highest proportion of deals which included **ESG provisions** was at Series B. This is not surprising given the **growing trend among European institutional investors to track ESG metrics** within their portfolio companies, which is quickly becoming a requirement of respected funds. The requirements of these funds are still developing so we hope to see a more standardised approach and common understanding of meaningful metrics in 2023.

Option Pool

- In our 2022 deals, we saw only **47% of equity financings** include a **top-up to the option pool**. This is consistent with the market trend of companies being more cautious of hiring and investors being more reluctant to endure greater dilution in difficult times.
- In 2021, we saw **unallocated option pools** being slightly higher (8-10%) as companies were more bullish with their hiring agendas. In 2022, we saw the unallocated option pool percentages drop to 5-10% which is more reflective of pre-2021 market conditions.
- In 2022, as companies settled into their growth journey at Series B, larger option pools allowed them to make the key hires they needed to boost their growth and expansion.
- At **Series B**, we saw **81% of deals include an option pool top-up** as part of the fundraising, as compared to other stages of the startup growth journey, where under **50% of deals** at each stage included an option pool top-up as part of the fundraising. This is different from what we saw in 2021, where companies were more bullish throughout their lifecycle.

Warranties

- In the UK, although we saw the market move away from **founder-backed warranties** in 2021, in 2022, we have seen **investors shift back** to requiring founders to stand behind the warranties on investment rounds on the pretense that they fully engage with the disclosure process and provide investors with the information they need to assess their investment. This is especially prevalent in the early stages (**52% at Series Seed**), where the perception is that more of the value of the business lies with the founders, with this dropping off in later stages. We expect to see this trend reverse following the recent introduction of the updated BVCA model forms which feature company-only warranties, tailored for proper disclosure.
- In Germany, this observation held true only for the later-stage financings while most investors insisted on founder warranties in the early rounds.

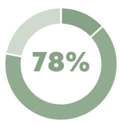
Secondaries

- We saw a **reduction in the volume of secondary transactions** at the early stages vs 2021.
- **16%** of the deals we saw included a secondary transaction.

1 DEAL TERM REVIEW 2022
VENTURE FINANCINGS

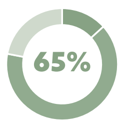
Seed

LIQUIDATION PREFERENCES



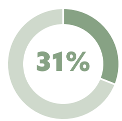
22% did not have a liquidation preference, of those that did have a preference **17%** 1x participating preference, **83%** 1x non-participating

ANTI-DILUTION PROTECTIONS



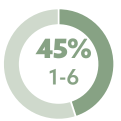
35% had no AD protection, **65%** broad-based AD protection

DRAG-ALONG RIGHTS



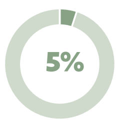
31% of deals where the drag threshold includes a founder veto

BOARD OF DIRECTORS



Ranged from **1 to 6** seats. **Over 45%** of Seed deals had **4 or 5** Board members

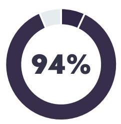
SECONDARY*



5% had a secondary

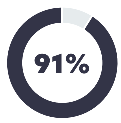
Series A

LIQUIDATION PREFERENCES



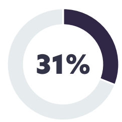
6% did not have a liquidation preference, of those that did have a preference **87%** 1x non-participating, **7%** 1x participating, **1 deal** with a "burn-off" after 3x return (*i.e.* preference tapers).

ANTI-DILUTION PROTECTIONS



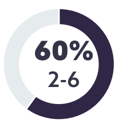
9% had no AD protection, **91%** broad-based AD protection.

DRAG-ALONG RIGHTS



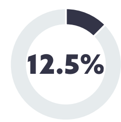
31% of deals where the drag threshold includes a founder veto

BOARD OF DIRECTORS



Ranged from **2 to 6** seats. **Over 60%** of Series A deals had **4 or 5** Board members

SECONDARY*



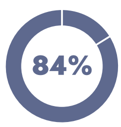
12.5% had a secondary

Series B

LIQUIDATION PREFERENCES

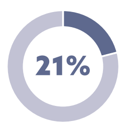
100% of deals had a liquidation preference, **12%** 1x participating, **88%** 1x non participating

ANTI-DILUTION PROTECTIONS



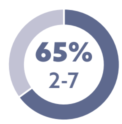
16% had no AD protection, of the deals that did **83%** broad-based AD protection

DRAG-ALONG RIGHTS



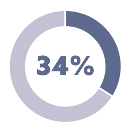
21% of deals where the drag threshold includes a founder veto

BOARD OF DIRECTORS



Ranged from **2 to 7** seats. **Over 65%** of Series B deals had **5 or more** Board members

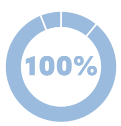
SECONDARY*



34% had a secondary

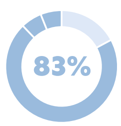
Series C

LIQUIDATION PREFERENCES



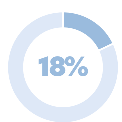
100% of deals had a liq pref, **11%** 1x participating, **83%** 1x non-participating, **1 deal** with 2x non-participating

ANTI-DILUTION PROTECTIONS



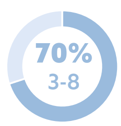
17% no AD protection, **70%** deals had broad-based AD protection, **1 deal** had full ratchet if down round in first year, **1 deal** had narrow-based AD protection on most senior class of share

DRAG-ALONG RIGHTS



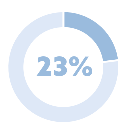
18% of deals where the drag threshold includes a founder veto

BOARD OF DIRECTORS



Ranged from **3 to 8** seats. **Over 70%** of Series C deals had **5 or 6** Board members

SECONDARY*



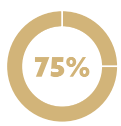
23% had a secondary

Series D and Beyond

LIQUIDATION PREFERENCES

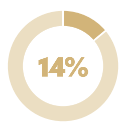
Only **1** of the 2 Series D deals had a liq. pref. (1x non-participating)
Beyond Series D:
100% of deals had a liq. pref., **25%** 1x participating, **75%** 1x non-participating

ANTI-DILUTION PROTECTIONS



Series D: **25%** had no AD protection, **75%** broad-based weighted average,.
Beyond Series D: **75%** broad-based weighted average, **25%** no AD protection

DRAG-ALONG RIGHTS

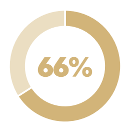


14% of deals where the drag threshold includes a founder veto

BOARD OF DIRECTORS

100% of Series D+ deals had between **3 and 9** seats.

SECONDARY*

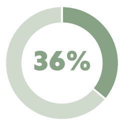


Series D: **66%** had a secondary
Beyond Series D: **no secondaries**

Note **16%** of the deals we saw included a secondary transaction.

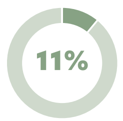
Seed

OBSERVER RIGHTS



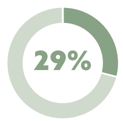
36% had at least one observer seat

ESG



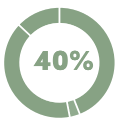
11% of deals have ESG undertakings

OPTION POOL



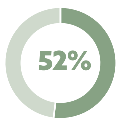
Pre-Seed/Seed: **29%** of these deals had a top-up to the option-pool as part of the transaction

CONSENT RIGHTS



IMC (44%)
IDC (3%)
both (40%)
other (13%)

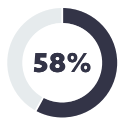
WARRANTIES



52% of deals founders stood behind the warranties

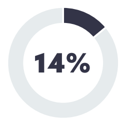
Series A

OBSERVER RIGHTS



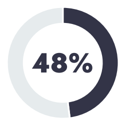
58% had at least one observer seat

ESG



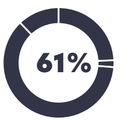
14% of deals have ESG undertakings

OPTION POOL



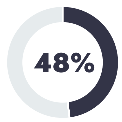
48% of these deals had a top-up to the option-pool as part of the transaction

CONSENT RIGHTS



IMC (24%)
IDC (2%)
both (61%)
other (12%)

WARRANTIES



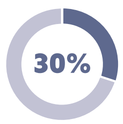
48% of deals founders stood behind the warranties

Series B

OBSERVER RIGHTS

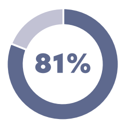
55% had at least one observer seat

ESG



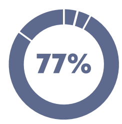
30% of deals have ESG undertakings

OPTION POOL



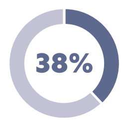
81% of these deals had a top-up to the option-pool as part of the transaction

CONSENT RIGHTS



IMC (4%)
IDC (4%)
both (77%)
other (15%)

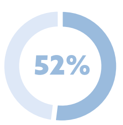
WARRANTIES



38% of deals founders stood behind the warranties

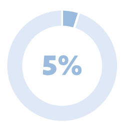
Series C

OBSERVER RIGHTS



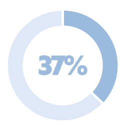
52% had at least one observer seat

ESG



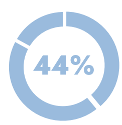
5% of deals have ESG undertakings

OPTION POOL



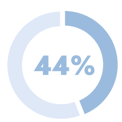
37% of these deals had a top-up to the option-pool as part of the transaction

CONSENT RIGHTS



IMC (39%)
IDC (0%)
both (44%)
other (17%)

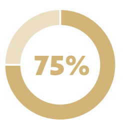
WARRANTIES



44% of deals founders stood behind the warranties

Series D and Beyond

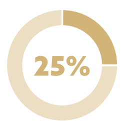
OBSERVER RIGHTS



Series D:
75% had at least one observer seat

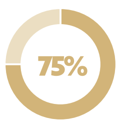
Beyond Series D:
50% had at least one observer seat

ESG



Beyond Series D: **25%**

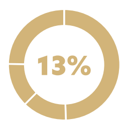
OPTION POOL



Series D: **75%** of these deals had a top-up to the option-pool as part of the transaction

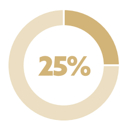
Beyond Series D: **25%** of these deals had a top-up to the option-pool as part of the transaction

CONSENT RIGHTS



IMC (50%)
IDC (13%)
both (13%)
other (25%)

WARRANTIES



25% of deals founders stood behind the warranties

Note **46%** of total deals included at least one observer seat.
14% of total deals included ESG provisions.

2 **DEAL TERM** REVIEW 2022

VENTURE DEBT FINANCINGS

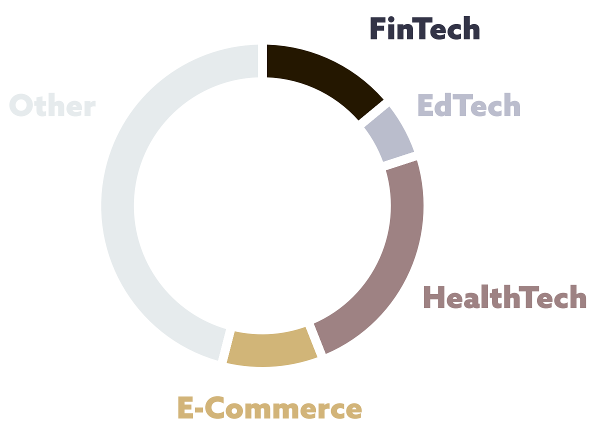
This data looks at our closed 2022 venture debt financings. Venture debt will not typically rely on the revenue of the business or the working capital assets of the borrower, but instead is traditionally aligned with the equity of the borrower and relies on equity capital to fund the continued growth of the company and to service debt repayments.

Trends

- In this market, Orrick's cross-border venture debt practice has seen a notable **uptick in the volume, size and value of venture debt deals**. Globally, Orrick advised on debt transactions with an aggregate transaction value of **$576.3M** in 2022 alone and expects this figure will grow over 2023 if equity markets continue to contract.
- The year 2022 has also seen **increased competition between lenders**, with new funds and banks breaking into the European market, including venture debt funds from the US taking a leap across the pond. Orrick predicts continued growth in the venture debt market, with there still being sufficient room for more venture debt providers.

By Sector

- Leading sectors accessing venture debt in 2022 on which Orrick advised included **HealthTech and Life Sciences** (24%), **FinTech** (14%), **EdTech** (10%) and **E-Commerce** (10%).



Key Takeaways

- **Interest Rates.** There were no dramatic changes in pricing, as global and UK interest rates held steady between 9-12%. However, in Q3 and Q4 of 2022, interest rates on fixed rate loans tended to be on the mid-high end of the expected spectrum. We have seen more floating rate loans with a floor on loans that would historically have been fixed.
- **Payment Penalties.** Although a regular feature in venture debt financings, companies heavily negotiated the prepayment and end of loan fees. Although lenders have retained these concepts, we have seen a wider variation of fees applicable and with prepayment being ratcheted down over the life of the loan.
- **Board Observer Rights.** Board observer rights are now not unusual in the venture debt market. We have witnessed a number of borrowers rejecting this request at first instance and, in certain instances, borrowers have negotiated that board observer rights kick-in following an Event of Default only.
- **Minimum Return Covenants.** Increasingly, lenders are considering the minimum return amount expected from venture deals. The approach has been to look at the expected return between the debt and any warrant kickers more holistically to ensure a minimum return on the aggregate investment.
- **Reccurring Revenue.** Increasingly, lenders are using reccurring revenue as a monitoring and funding release mechanic in-between equity financings.
- **Minimum Cash Covenants.** Lenders are increasingly concerned about cash leakage, especially with highly acquisitive companies or companies using acquisitions of companies and assets to achieve growth.

3

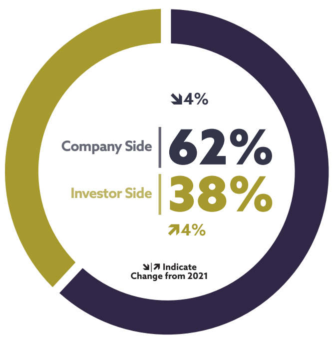
DEAL TERM REVIEW 2022
CONVERTIBLE DEBT FINANCINGS, SAFEs AND ASAs

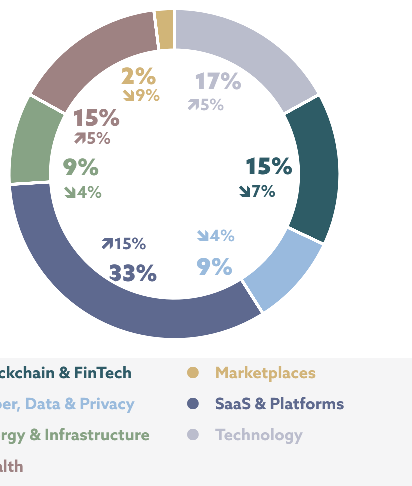
This data looks at our closed 2022 convertible debt financing rounds undertaken by startups and high-growth companies. For the purposes of this section, we have grouped data relating to simple agreements for future equity (SAFEs), advance subscription agreements (ASAs) and conventional convertible loan notes (CLNs).

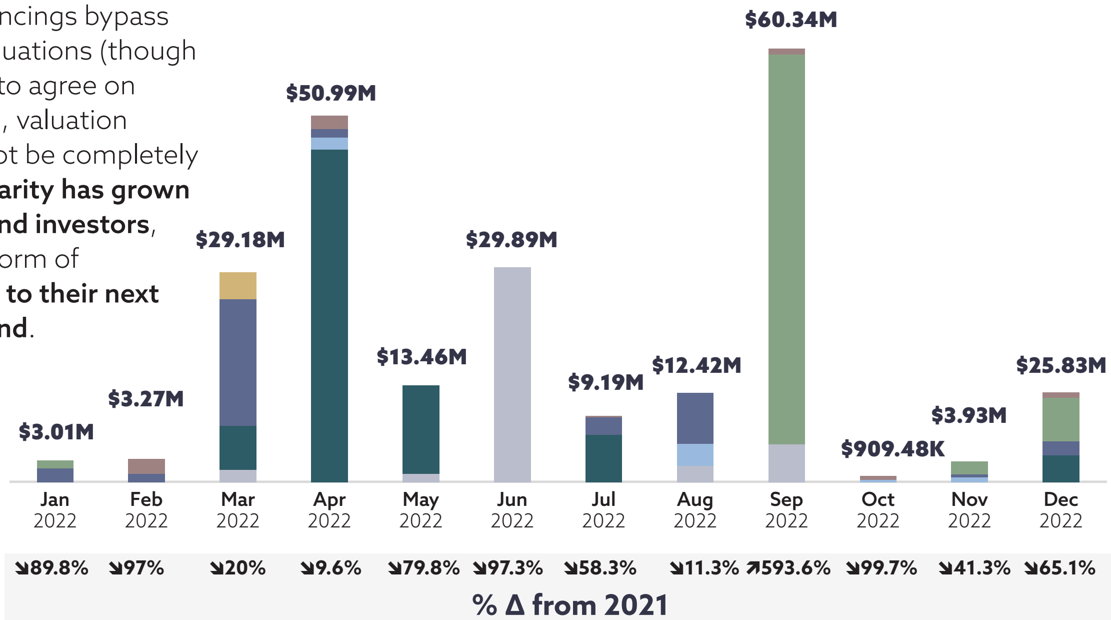
Convertible securities such as CLNs, SAFEs and ASAs are increasingly used as funding instruments, as they can provide companies with short-term capital that can be converted into equity based on the company's future valuation. The year 2022 saw an increase in convertible debt financings by existing investors to avoid priced financing rounds and hope that uncertainties around and downward pressure on valuations might subside.

Aggregate Number of Convertible Debt Financing Deals

- In 2022, we saw a **47% increase in the number of convertible debt financings** from 2021. This was due, in part, to the difficulty in establishing valuations for private companies in changing economic environment and the fact that convertible debt financings are **quicker and cheaper to execute** as compared to priced rounds, resulting in **faster access to capital for companies in a time of need**.
- Due to market conditions, founders have been reluctant to agree to lower valuations for their businesses. As convertible debt financings bypass the need for fixed valuations (though parties will still have to agree on a reasonable cap, *i.e.*, valuation considerations cannot be completely ignored), their **popularity has grown amongst founders and investors**, who have used this form of financing as a **bridge to their next equity financing round**.







** Representative weighting of transactions—not reflective of actual number of transactions completed.*

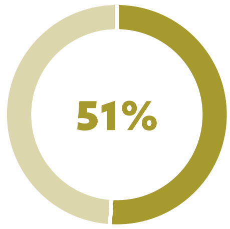
DEAL TERM REVIEW 2022

CONVERTIBLE DEBT FINANCINGS, SAFEs AND ASAs

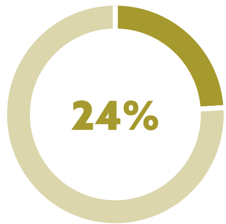
Investor Protections

- Just over half **(51%)** of the convertible debt financings we saw in 2022 included **pre-emption rights**, giving the investor the right to participate in the company's next equity financing.
- **24%** of the convertible debt financings included **consent rights for the investors**. Convertible debt investors have traditionally not obtained consent rights on their convertible investment as they are not equity shareholders at the time of the investment. So, the fact that nearly a quarter of all convertible debt financings we saw included consent rights for investors is an indicator of the move towards **more investor-friendly terms** in 2022.
- **29%** of the convertible debt financings we saw in 2022 **included either director or observer appointment rights for the investors**, which is a sign that being able to accurately **track and influence company performance is at the forefront of investors' minds** during choppier economic waters.
- In Germany, with its different (advisory) board concept, incoming investors under their convertible loan terms sometimes received observer rights, while (at least beyond the very early stages) **information rights were common and consent rights were also on the rise**.
- The discounts we saw ranged between **15% – 35%**, with the upper end being a noticeable uplift from the upper end in 2021 (which was closer to 20%).
- Interest rates on CLNs ranged between **6% – 10%**.

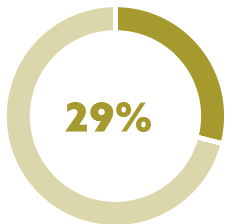
Pre-emption Rights



Consent Rights



Director/Observer Appointment Rights



Discounts

Interest Rates

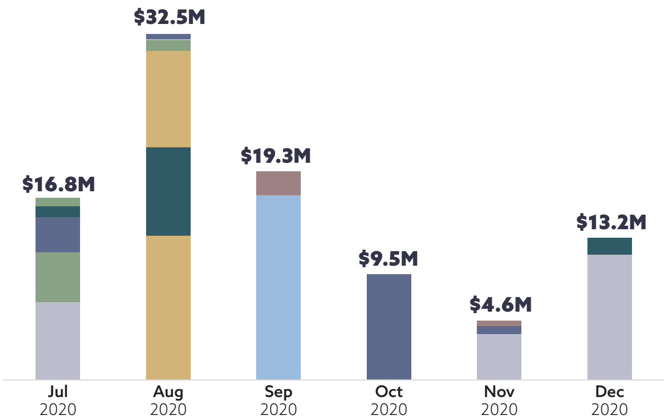
4 DEAL TERM REVIEW 2022
UK FUTURE FUND FINANCINGS

This data reviews our closed 2020 UK Future Fund Convertible Loan agreements and provides analysis on what happened to those deals. We advised HM Treasury on the design and implementation of the Future Fund in response to the COVID-19 pandemic. The scheme has helped to finance thousands of startups.

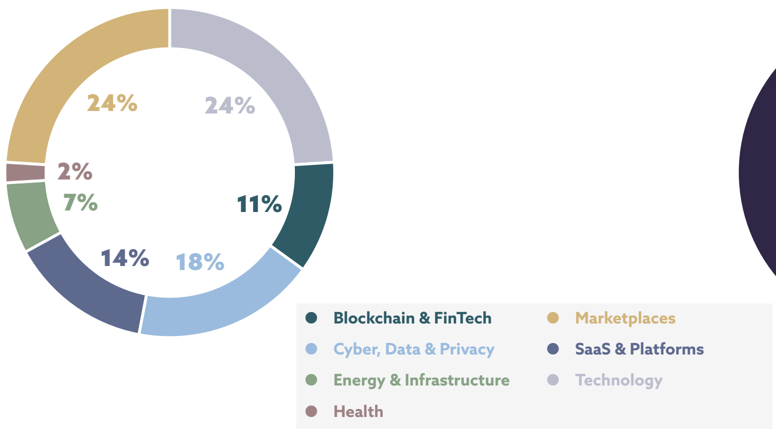
Looking Back: 2021

- As a route to gain access to financing in a very short period, the Future Fund **worked well to support high-growth companies** through a global pandemic and the challenges it presented.
- Since its inception and up to close, **50% of our deals converted in 2021** through new financings (of the same amount or more) or sales, a positive sign for the UK tech and venture ecosystem indicating that companies are able to continue raising capital.

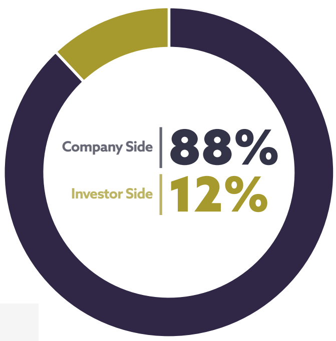
2020 Future Fund Financings by Aggregate Deal Size



2020 Future Fund Deals by Sector

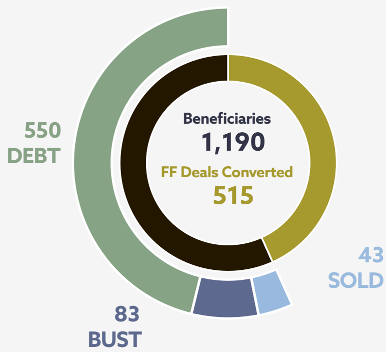


2020 Future Fund Deals



Two Years On: 2022 – Where Are We Now?

OF THE **1,190** BENEFICIARIES OF THE FUTURE FUND, **515** HAVE CONVERTED, **43** HAVE BEEN SOLD AND **550** REMAIN AS DEBT, **83** OF WHICH HAVE GONE BUST[17]. WE'VE SEEN A SHIFT WITH AN INCREASING NUMBER OF COMPANIES CARRYING FUTURE FUND DEBT STRUGGLING TO RAISE ON FAVOURABLE TERMS.



17 Reported in *The Times*, 27 January 2023

5 DEAL TERM REVIEW 2022
PREDICTIONS FOR 2023

UK

The **aggregate number of deals and deal value will be higher in H2 2023** than H1 2023, as the companies which raised large rounds in 2021 reach the end of their runway and come to market to raise further capital.

We will see **a reduction in the number of bridge rounds** compared with 2022, as investors will be reluctant to back underperforming companies.

We will see **the prevalence of the traditional 1x non-participating preference come under pressure** as investor uncertainty brings the use of coupons and innovative structures in liquidation preferences.

There will be **continued pressure on the size of option pools** as companies' hiring plans continue to be put on hold.

The percentage of **deals which include ESG undertakings will increase** as investors focus more time and attention on ESGs within their portfolios.

We might see an **increase in the use of performance-based warrant instruments**, giving investors greater protection in poorly performing companies.

We also **expect longer diligence processes** following the likes of FTX and the continuation of 2022 new norms to reflect the increased prevalence of venture debt and the comparative stability at Pre-Seed/Seed stage in terms of volume/deal size compared to later stages.

Italy

The path to maturity is still long, and what has been done until now needs to be consolidated in the years to come.

The potential for future growth is given by the interventions in a systemic way both by private funds and by the role played by the public.

In this regard, it should be emphasized that CDP Venture Capital Sgr plans to invest a further €2.5B by 2025. The injection of so much liquidity into the innovation ecosystem, together with the entry of international investors into the Italian market, represent **fuel for further development and continuous growth of the ecosystem**.

Various initiatives also connected to the PNRR – Piano Nazionale di Ripresa e Resilienza – including those which promote research and innovation systems – pursue targets that can allow venture capital to reach a further level of maturity. At the same time, all the players should try as much as possible to ensure that the public institutions also do everything to reduce bureaucracy, and thus accelerate the process of growth and internationalisation of the Italian startups and scaleups.

5 DEAL TERM REVIEW 2022
PREDICTIONS FOR 2023

Germany

While we saw a significant drop against the record year of 2021, deal activity in 2022, as well as overall deal volume, was still ahead of pre-pandemic levels. Overall deal activity shifted away from mega rounds to early-stage and early growth-stage deals in most recent quarters. A trend that we anticipate to continue in the first half of 2023.

The **shift towards more investor-friendly terms** with respect to lock-ups, founder vesting, protective provisions and control rights etc. will continue.

While we expect to continue to see internal-led rounds or convertible note financings, we also **expect an eventual increase in down-rounds** or at least rounds with more structuring. In the growth stages, we expect even **more aggressive liquidation preferences** to support up- or at least flat-rounds. Some companies might also offer **KPI- or milestone-based valuations with a true-up mechanism after six to twelve months**; we already saw such structures in late stage deals in 2022.

France

While 2022 was another record year for French tech, the overall number of transactions slightly decreased compared to 2021. We expect that this trend will continue, with **investors focusing on their existing portfolio companies**.

The shift from founder-friendly terms towards **more investor-friendly terms** will persist. In late-stage transactions, we **expect to see more liquidation preferences with a multiple higher than 1x**. Valuations may be further challenged based on revenue KPIs and profitability, which will therefore result in an **increased use of valuation adjustment mechanisms** in transactions.

Due diligence processes will become longer and may, in certain instances, trigger valuation adjustments late in the fundraising process.

The number of transactions including **convertibles or venture debt with equity kickers will increase** as investors will want to limit their risk.

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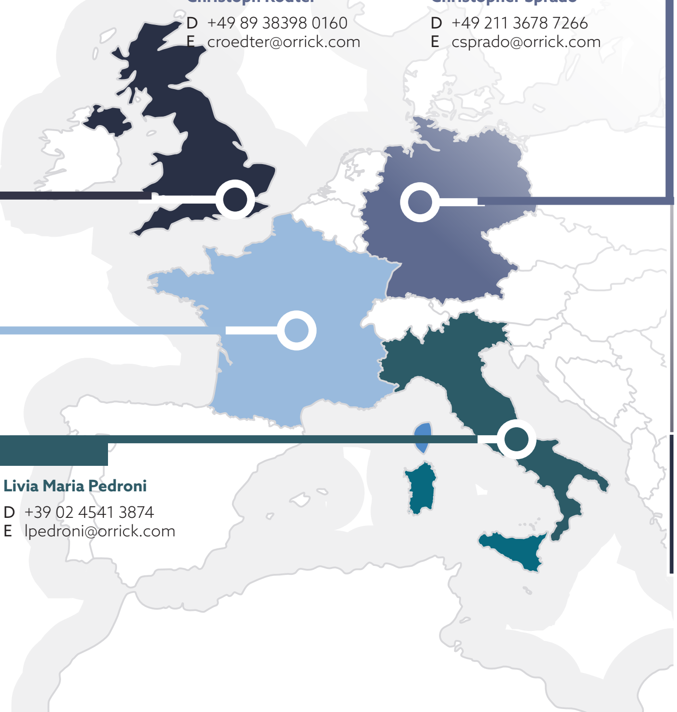

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#1 VENTURE CAPITAL FIRM IN EUROPE
PitchBook
FY 2022 – 28 CONSECUTIVE QUARTERS

BAND 1 FOR PRIVATE EQUITY: VENTURE CAPITAL INVESTMENT
Chambers
UNITED KINGDOM
2023 EDITION

TIER 1 FOR VENTURE CAPITAL
The LEGAL 500
UNITED KINGDOM
2023 EDITION

BAND 1 FOR PRIVATE EQUITY & VENTURE CAPITAL
GERMANY
JUVE
2022/23

BAND 2 FOR PRIVATE EQUITY – VENTURE CAPITAL
Chambers
FRANCE
2023 EDITION

LAW FIRM OF THE YEAR — VENTURE CAPITAL
ITALY
Be Beez PBV Monitor
2021 EDITION OF PRIVATE CAPITAL TAX & LEGAL AWARDS

STARTUP TEAM OF THE YEAR
ITALY
LEGALCOMMUNITY AWARDS
Forty under 40
LEGALCOMMUNITY FORTY UNDER 40 AWARDS 2022

About Orrick

Creators. Visionaries. Underdogs. The Daring.

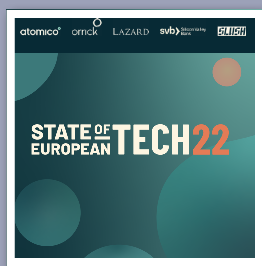
Nothing inspires us more than helping tech companies develop novel strategies and push boundaries. We're passionate about entrepreneurship and guiding the success of early ventures. Through our extensive client portfolio, deal volume and relationships in the tech ecosystem, we provide commercial and legal insight to companies and investors, from incubation to strategic exit and future growth opportunities.

Our sector focus. Because our clients need legal solutions informed by commercial insight, we focus on serving the three sectors driving the global economy: technology & innovation, energy & infrastructure and finance. We counsel nearly 4,000 high-growth tech companies, including 100+ unicorns and 10 of the 15 largest public tech companies, as well as more than 300 active venture investors worldwide.

A unique global platform. Based in 27+ markets globally, we possess deep experience across offices in many of the major global technology hubs. We specialise in high-value external growth transactions, flips, mergers and acquisitions, IPOs, direct listings, SPACs and cross-border exits.

A commitment to innovation. We are transforming the delivery of legal services. That's why *Financial Times* has named Orrick among the Top 3 Innovative Law Firms in North America for seven years in a row (2016-2022). Through Orrick Labs, we're developing new legal technologies. Through Orrick Analytics, we're applying AI and other tools to solve clients' problems and save them money. And through creative staffing at our Global Operations & Innovation Center, we're streamlining legal processes for efficiency.

Attracting and retaining top talent. Because our clients value top quality, consistent and diverse teams, we're focused on transforming the BigLaw talent model by being the best firm to work for and the most diverse firm among our peers. We are able to attract and retain top quality teams for each of our clients. For the seventh year in a row, *Fortune* has named Orrick as one of the "100 Best Companies to Work For" and the top law firm on the list.



UK Founder Series

Orrick's Founder Series offers monthly top tips for UK startups on key considerations at each stage of their lifecycle, from incorporating a company through to possible exit strategies. The Series is written by members of our market-leading London Technology Companies Group (TCG), with contributions from other practice members. Our Band 1 ranked London TCG team closed over 320 growth financings and tech M&A deals totalling $9.76B in 2022 and has dominated the European venture capital tech market for 28 consecutive quarters (*PitchBook*, FY 2022).

The Orrick Legal Ninja Series

With the Orrick Legal Ninja Series (OLNS) we deep dive on legal topics that are particularly relevant for startups and their investors in Germany.
This Series is co-authored by a multidisciplinary team of attorneys from our national and international offices.

It is our goal to tap into the rich reservoir of the venture capital and technology law know-how of our international platform and make it available to the exciting German entrepreneurship and innovation scene.

OLNS #1 — Venture Debt for Tech Companies
May 2019

Venture Debt is a potentially attractive complement to equity financings for business start-ups that already have strong investors on board.

This is a highly flexible instrument with very little dilutive effect for founders and existing investors.

OLNS #2 — Convertible Loans for Tech Companies
August 2019

Due to their flexibility and reduced complexity compared to fully-fledged equity financings, convertible loans are an important part of a start-up's financing tool box. In a nutshell: a convertible loan is generally not meant to be repaid, but to be converted into an equity participation in the start-up at a later stage.

OLNS #3 — Employment Law for Tech Companies
January 2023 (this revised edition replaces Dec 2019 issue)

Young technology companies are focused on developing their products and bringing VC investors on board. Every euro in the budget counts, personnel is often limited, and legal advice can be expensive. For these reasons, legal issues are not always top of mind. But trial and error with employment law can quickly become expensive for founders and young companies.

OLNS #4 — Corporate Venture Capital
March 2020

Corporates are under massive pressure to innovate to compete with new disruptive technologies and a successful CVC program offers more than capital – access to company resources and commercial opportunities are key features that justify CVC's prominence. This guide serves to share best practices for corporates and start-ups participating in the CVC ecosystem and also to ask important questions that will shape future direction.

OLNS #5 — Venture Financings in the Wake of the Black Swan
April 2020

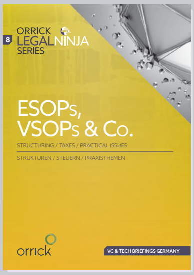
In the current environment, all market participants, and especially entrepreneurs, need to be prepared for a softening in venture financing and make plans to weather the storm. In this guide, we share some of our observations on the most recent developments and give practical guidance for fundraising in (historically) uncertain times. We will first provide a brief overview of the current fundraising environment, and then highlight likely changes in deal terms and structural elements of financings that both entrepreneurs and (existing) investors will have to get their heads around.

OLNS #6 — Leading Tech Companies Through a Downturn
May 2020

Steering a young technology company through a downturn market is a challenging task but if done effectively, the start-up can be well positioned to benefit once the markets come back. While OLNS#5 focused on raising venture financing during a downturn, in this guide, we want to give a comprehensive overview of the legal aspects of some of the most relevant operational matters that founders may now need to deal with, including monitoring obligations and corresponding liabilities of both managing directors and the advisory board, workforce cost reduction measures, IP/IT and data privacy challenges in a remote working environment, effective contract management and loan restructuring.

OLNS #7 — Flip it Right: Two-Tier US Holding Structures for German Start-ups
January 2021

Operating a German technology company in a two-tier structure with a US holding company can have great advantages, most notably with respect to fundraising in early rounds and increased exit options and valuations. However, getting into a two-tier structure (be it through a "flip" or a set-up from scratch) requires careful planning and execution. This guide shows you what to consider and how to navigate legal and tax pitfalls.

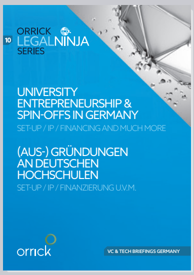


OLNS #8 — ESOPs, VSOPs & Co.: Structuring / Taxes / Practical Issues
June 2021

OLNS#8 provides a comprehensive overview of the equity-based and Employee-ownership programs (or in short "ESOPs") play a critical role in attracting and retaining top talent to fledgling young companies. Stock options reward employees for taking the risk of joining a young, unproven business. This risk is offset by the opportunity to participate in the future success of the company. Stock options are one of the main levers that start-ups use to recruit the talent they need; these companies simply can't afford to pay the higher wages of more established businesses. With OLNS#8, we want to help start-ups and investors alike to better understand what employee ownership is, structure them in a way that is congruent with incentives, and implement them cleanly.

OLNS #9 — Venture Capital Deals in Germany: Pitfalls, Key Terms and Success Factors Founders Need to Know
October 2021

Founding and scaling a tech company is a daunting challenge. OLNS#9 summarizes our learnings from working with countless start-ups and scale-ups around the world. We will give hands-on practical advice on how to set up a company, how (not) to compose your cap table, founder team dynamics and equity splits, available financing options, funding process, most important deal terms and much more.



OLNS #10 — University Entrepreneurship & Spin-offs in Germany – Set-up / IP / Financing and Much More
November 2022

German universities are increasingly becoming entrepreneurial hotbeds, but university spin-offs face some unique challenges, some of which could – with the right support systems and policies in place – be considerably less stressful. OLNS#10 helps founders by providing them with an overview of how to get a university-based start-up off the ground. We will discuss founder team composition and equity-splits, the composition of the first cap table, important considerations for the initial legal set-up (founder HoldCos and U.S. holding structures) as well as financing considerations. We will also return again and again to the specifics of IP-based spin-offs, especially when it comes to how a start-up can access the university's IP in an efficient manner.

Diversity, Equity & Inclusion

Our goal is to be the most diverse and inclusive firm among our law firm peers – and our results are driven by focused work in three areas:

At Our Firm

- Increasing inclusive hiring through the Mansfield Rule to ensure candidate pools are at least 30% diverse, a partnership with Legal Innovators to recruit from nontraditional law schools, and 1L split summer programs with legal departments.
- Expanding our focus on career development and access to opportunities by pairing experienced Black and Latinx associates with senior leader sponsors, developing bias interrupter programs, and providing up to 50 hours of bonus-eligible credit for associates to work on DEI.
- Sponsoring the Bay Area Diversity Career Fair and Veterans' Legal Career Fair for roles at Orrick, clients and peer firms.
- Promoting a culture of inclusion, belonging & flexibility through training, support and accountability.

With Our Clients

- Using a bespoke approach to client team metrics so partners and clients can compare the diversity of client teams to the pool of diverse lawyers in the practice groups serving the client.
- Driving conversation and benchmarking with clients through our Inclusion Conversation Series, featuring leading thinkers on justice, equity and inclusion and our DEI and Women's advisory boards, which include senior leaders of legal departments and industry experts.
- Connecting diverse talent with clients through Diversity Lab's Focused Five program, where in-house lawyers coach our diverse rising star partners and offering experienced associates a confidential job board that features client opportunities.

In Our Communities

- Committing for four years to the Orrick Racial Justice Fellowship Program, allowing experienced Orrick lawyers to work full time, at full pay, at partner organisations. In response to Dobbs, one fellowship will focus on the intersection of race, privacy and reproductive healthcare.
- Supporting community contribution with partner board positions at leading professional and impact organisations (LCLD, Legal Momentum, IILP, Legal Outreach and others) and a 98%+ lawyer participation in pro bono, including matter and clinic collaborations with clients.

Mansfield Rule™ Boosting Diversity In Leadership

Mansfield Certified Plus
Diversity Lab, 2022—5th year in a row

Human Rights Campaign
100% on The Corporate Equality Index, 2022—16th year in a row

YLW Yale Law Women

Yale Law Women
Top Firm for Agency & Flexibility and Diversity, 2022—10th year in a row

MCCA™

Thomas L. Sager Award
Minority Corporate Counsel Association (3rd time); 4 Partners in the last 5 years on MCCA's Rainmakers list

seramount BEST LAW FIRM FOR WOMEN 2022

Seramount
Best Law Firms for Women, 2022—14th time

2022 INCLUSION CHAMPION Powered by DIVERSITY LAB

Diversity Lab
Inclusion Champion, 2022

LAW360®

Law360
Top 10 on the Glass Ceiling Report for Highest Representation of Women in Equity Partnership, 2022—10th year in a row

Women in Law Empowerment Forum

Women in Law Empowerment Forum
Gold Standard Firm, 2022—10th year in a row

OUR RESULTS TO DATE

Our Lawyers: **55%** diverse	Partnership: **39%** diverse	U.S. Lateral Associates, last 5 years: **70%** diverse
Board & Management Committee: **50%** diverse	New Partner Classes, last 5 years: **50%+** diverse	2022 Summer Associate Class: **92%** diverse

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www.orrick.com/en/Practices/Technology-Companies-Group

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