Q1 2022

UK Private Company Director

Welcome to the April 2022 issue of UK Private Company Director, the quarterly newsletter for directors of owner-managed, family and private equity backed businesses.

We cover financial, legal, tax, wealth management and similar issues crucial to both building and realising the value of your business, while Corbett Keeling's report on deal activity in the private equity markets provides a clear insight into investor appetite.

In this issue, we address some of the current key topics for directors of privately owned businesses:

- The strong deal making momentum from last year continued into the first quarter, but owners contemplating a sale should realise that conditions can't remain so favourable forever (pages 2 to 4).
- The risks from cyber-attacks were already increasing even before the invasion of Ukraine. We look at what companies can do to mitigate and respond to the threats (page 5).
- The sale of a business can bring challenges as well as rewards. A thoughtful, patient approach can help the seller to get the most from an exit, both financially and psychologically (page 6).

All the best!

Megan Peel

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Corbett Keeling Corporate Finance
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The tide hasn't turned yet

At the end of last year, we asked whether the exceptional strength in the UK private transactions market would last into 2022. The answer is a clear yes – so far, at least. However, as Jim Keeling of corporate finance advisor Corbett Keeling argues, there are several reasons not to delay if you are considering selling a business.

Over the first three months of 2022, the momentum set last year has remained strong. Even though there has been some tightening of debt markets, particularly for the very largest deals, we are still seeing a lot of interest from buyers with plenty of cash to put to use.

However, as we have been arguing for some time, buyers who are contemplating a sale of their business would do well to do so before the tide turns. After all, market conditions cannot remain so supportive indefinitely, and we see several reasons to be concerned about the outlook.

First, it is uncertain exactly what the long-term ramifications of the war in Ukraine will be. The hope clearly is that it doesn't escalate beyond Ukraine's borders, but if the war drags on for years, it would lead to shortages of some commodities, which could slow economic growth and add fuel to already rising inflation. Certain sectors are likely to lose out as a result, even if others (energy and defence, for example) may benefit.

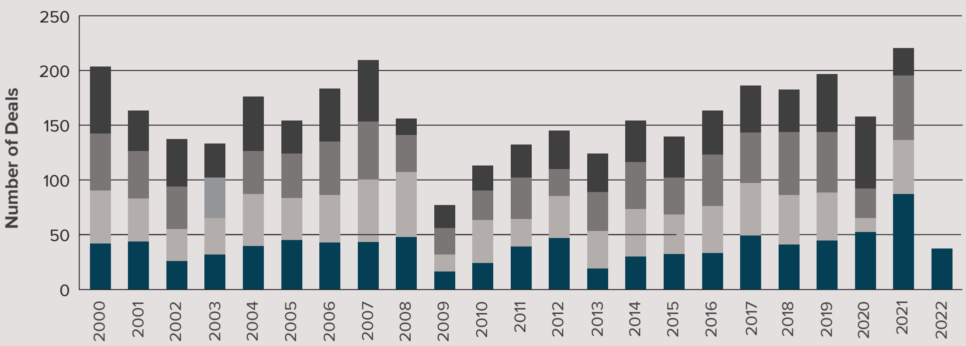
This comes at a time when the Bank of England has already been raising interest rates to combat the highest inflation for decades, and government finances are stretched by two years of pandemic-related lockdowns. And, as we have noted before, an eventual rise in Capital Gains Tax is a potential source of funding to help repair the gaping hole in the Chancellor's balance sheet.

For now, however, conditions remain highly positive, as the figures for the first quarter will show. There's still time, if you are thinking of an exit, to do so before the tide turns.

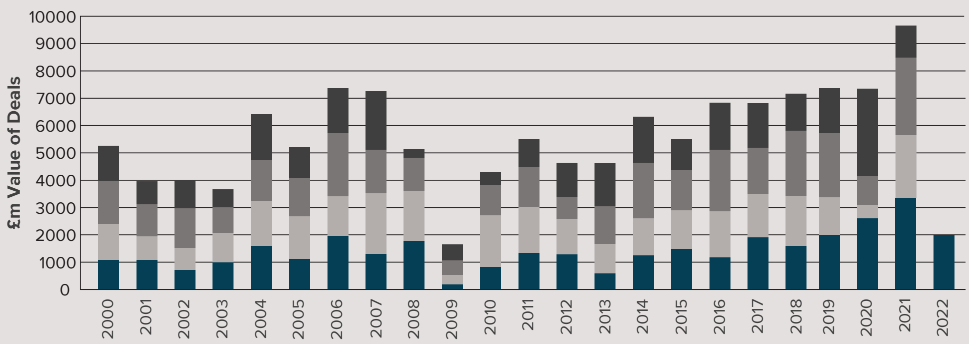
Assessing the deal data

After losing some momentum in the final quarter of 2021, activity in the **smaller buyouts** sector (transactions with enterprise value of less than £150 million) re-accelerated in the first three months of this year. The volume of deals rose from 25 to a still relatively subdued 37, though their aggregate value jumped from £1.2 billion to just over £2.0 billion.

Sub-£150m Buyouts by Volume



Sub-£150m Buyouts by Value



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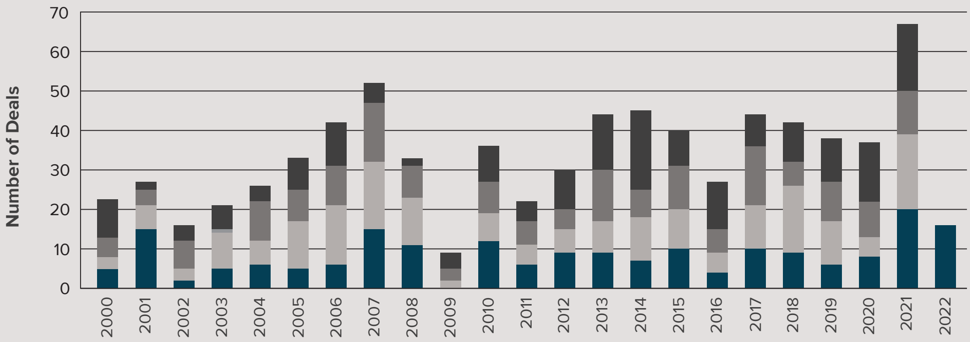
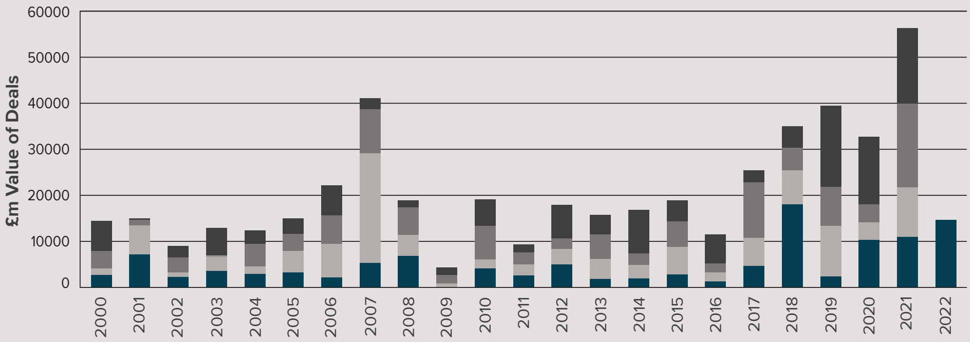
Q4
Q3
Q2
Q1

The **larger buyouts** sector (enterprise value of £150 million or above) pretty much kept pace with the strong level of activity at the end last year. The number of transactions inched down from 17 to 16, while their overall value also remained high at £14.8 billion, compared with £16.6 billion in the previous quarter. This represents the second strongest start to a year since our records began.

£150m+ Buyouts by Volume



£150m+ Buyouts by Value



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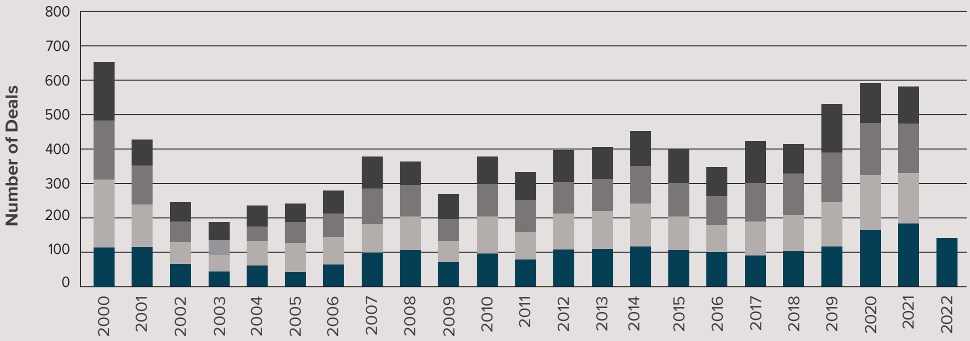
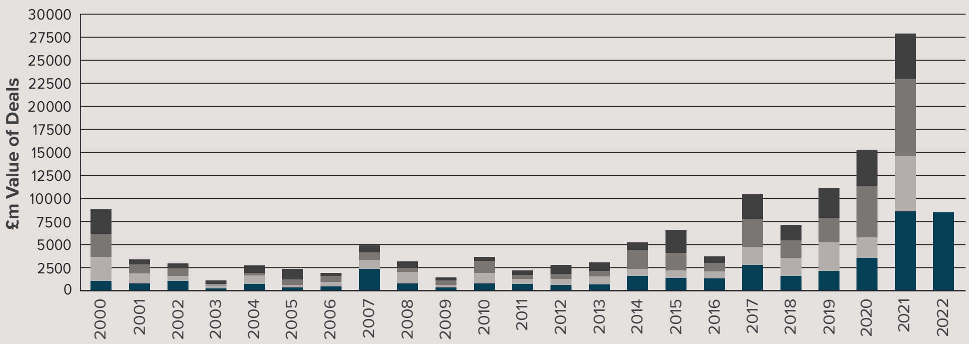
Early-stage and expansion capital deals also had an excellent start to the year. The number of transactions increased markedly, from 108 the previous quarter to 153. But the real strength was in the average valuation achieved on sale, as the overall value of deals rocketed from £4.9 billion to over £8.6 billion, eclipsing the record set in last year's first quarter.

Volume of Early-Stage / Expansion Deals



Value of Early-Stage / Expansion Deals



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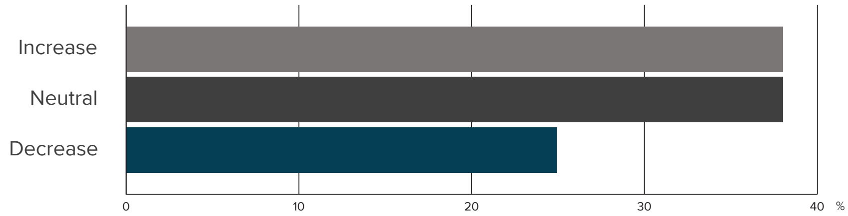
Corbett Keeling Corporate Finance

So what does our latest survey suggest?

While the data for the first quarter showed continued strength, the mood in the market appears somewhat subdued. One contributory factor is the Russian invasion of Ukraine, though our survey participants remained in fairly sanguine mood overall.

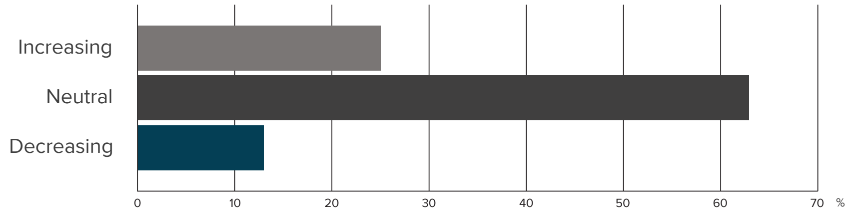
1 Do you expect deal volumes to increase or decrease?

The majority of respondents still expected that deal volumes would either increase (38%) or stay roughly the same (38%). Yet the proportion predicting a decrease rose from 18% to 25%.



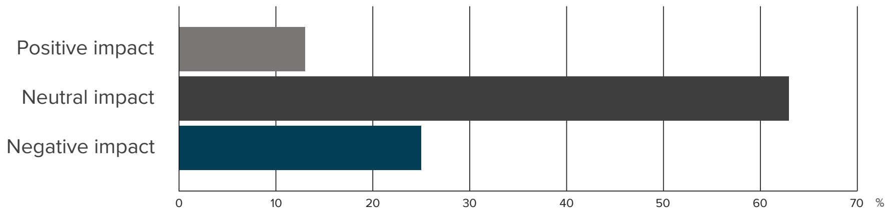
2 Is debt availability increasing, decreasing or neutral?

Despite rising inflation and central bank interest rates, the market appears marginally more positive on the availability of debt. The percentage of respondents expecting lower availability fell from 18% to 13%, while 63% thought it would remain broadly unaltered.



3 Has Russia’s invasion of Ukraine had an impact on your portfolio companies?

A quarter of respondents said that the invasion of Ukraine has had a negative impact on portfolio companies. Interestingly, 13% reported a positive impact, reflecting the different implications across sectors. Nearly two thirds said there had been little or no impact.



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Increased data privacy risk expected in 2022

In the wake of the Russian invasion of Ukraine, the US Cybersecurity and Infrastructure Security Agency has issued a "shields up" notice warning of increased risk of malicious cyber-attacks. At the same time, companies face increasing regulation of data privacy and cybersecurity and claims for losses relating to data breaches and privacy violations. Here, Jon Little of law firm Jones Day explores the risks and how UK private companies can respond.

Cyber risk is increasing. Facing pressure from government investigations and regulation and class actions and other litigation, companies are now being asked on a routine basis to demonstrate that they have taken the necessary cybersecurity compliance steps.

Ransomware

The number of ransomware attacks globally more than doubled in 2021 and there are concerns that the recent events in Ukraine could lead to further increases this year. These attacks require crisis-level management to restore operations, decide whether to pay any ransom, comply with legal notification obligations in a timely manner, and communicate effectively with internal and external stakeholders. Companies should assess their preparedness, update their business continuity and incident response plans and implement appropriate governance and controls.

Cloud Computing Security

Recent security breaches underline the risks of cloud computing. Company directors need to pay keen attention to the management of vendors, insider threats and supply chains. In particular, the allocation of responsibility for attacks between cloud providers and their customers is currently a key area of focus for regulators and litigation.

Legal Privilege

Judicial decisions raise important considerations for companies seeking to protect the results of internal investigations into cyber-attacks. For example, there have been a number of US court decisions holding that a forensic report generated by a consultant retained by outside counsel was not protected by legal privilege from disclosure to opposing parties in litigation. While similar concerns may not exist at present in the UK and all European jurisdictions, cyber-attacks often have global reach, which means documents produced in the UK or Europe may become relevant to US proceedings and therefore questions about whether those documents are protected by legal privilege and should be disclosed in any US proceedings might arise.

Privacy Litigation

Companies face increasing privacy litigation risk due to new laws aimed at protecting personal data. Management teams should be aware that recent cases in some jurisdictions have suggested that individuals will not need to prove damage when asserting a claim arising from a data breach. These cases are expected to fuel litigation, including burgeoning collective actions.

International Data Transfers

Data localisation laws and national security concerns are resulting in increased restrictions on cross-border data flows. These limitations present operational cost and legal risk for companies, and the need for a holistic strategy.

Increased Regulation of Emerging Technologies

Legislators and regulators have begun to focus on the rules and regulations that govern the use of emerging technologies, such as artificial intelligence (AI), biometrics and the internet of things (IoT). The EU is expected to adopt a number of legislative proposals as part of its digital agenda. Companies need to pay careful attention to both existing laws and regulatory trends.

Conclusion

Preparation and speed of response are key to dealing with cyber threats. Given the increased risks generally and the particular threat caused by the situation in Ukraine, companies should assess their preparedness, put appropriate policies and procedures in place and maintain an up to date plan for how to respond to incidents.

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The views and opinions set forth herein are the personal views or opinions of the author; they do not necessarily reflect views or opinions of the law firm with which he is associated.

How to manage a sale's proceeds

ARBUTHNOT LATHAM
Bankers since 1833

Selling your business is usually a cause for celebration. But coming into sudden wealth can also bring other, less positive emotions. As Spike Godwin of Arbuthnot Latham explains, taking your time to understand the impact of new wealth will help you to feel more in control.

A sizeable financial windfall marks an important step in life, and the sale of a business is often the culmination of an entrepreneur's life's work. But dealing with this sudden wealth can be a challenge, both financially and psychologically. People are often overloaded with information, tips and suggestions from friends and family, and working out what to do can be a confusing process. Failing to plan properly can limit your choices, so it is always best to think ahead to ensure you find the right solutions for your and your family's future.

How sudden wealth can affect people

For many people, sudden wealth comes as the result of great personal achievements and hard work is seen as a cause for celebration; for others, it can be overwhelming. Some people experience what we call sudden wealth syndrome where they feel guilty, worried and uncertain. It can make them less trustful of others.

Irrespective of how you feel about your recently acquired wealth, there are certain pitfalls to be aware of. Not everyone reacts in the same way, but it is important to have a clear wealth purpose to make sure you achieve what you want from your wealth.

Key considerations for dealing with sudden wealth

- **Patience and time**
  Don't rush into your next steps. Ignore anyone who offers instant solutions or requests quick decisions.
- **Discretion and confidentiality**
  Consider establishing a new relationship with expert professional advisers who are used to dealing with people in your circumstances.
- **Take the opportunity to celebrate the moment**
  Immediate purchases can be a great way to mark your success.
- **Get the right advice**
  Speak to family, friends and professional advisers about your ambitions.
- **What is your wealth purpose?**
  Do you want to spend it all before you die, use it to educate the next generation or start a legacy for social good? Take the time to think through what is most important to you.
- **Educate yourself on the options open to you**
  There is a massive distinction between an informative discussion and a sales pitch. Approach a range of providers – but not too many – to review your options. And initially focus on educating yourself, rather than making decisions. Take your time to develop an understanding of tax matters, investments, estate planning and new significant luxury items you may wish to buy.
- **Consider the now**
  Work out what your cash flow needs are, both now and for the future.
- **Communicate**
  Talk with those around you about the decisions you have made so that they know what you're doing and why.
- **Monitor and manage**
  Make sure you understand your financial plans and check in regularly to ensure things are working well for you.

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