

M&A and PE Deals: Drafting Covenants That Actually Hold Up

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A fundamental concern for any buyer is safeguarding the value of their investment.

Restrictive covenants in share purchase agreements can be a powerful tool to contractually limit a seller's ability to remove value from an acquired business, by restricting their ability to compete with, solicit clients or employees from, or otherwise interfere with the target enterprise. However, restrictive covenants – such as non-compete and non-solicitation clauses – are often the subject of intense negotiation and can lead to expensive disputes after completion.

Below, we outline key considerations for drafting, negotiating and enforcing restrictive covenants. We explain how PE sponsors and other corporate buyers can manage the risks involved, and ensure that their restrictive covenants actually provide the intended protection when their enforceability is tested before a court.

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Trainee Solicitor Christopher Hull also contributed to this article.

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