



3rd Annual

Private Investment in Public Equity (PIPE)

Canadian PIPE Deal Point Study

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FASKEN

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3rd Annual Fasken PIPE Deal Point Study

This is Fasken's third annual Canadian Private Investment in Public Equity (PIPE) Deal Point Study and covers transactions completed in 2021. PIPE transactions can be distinguished from a typical private placement through: (i) the number of investors (a PIPE transaction will involve only a single or small group of investors); (ii) the percentage of the public company acquired (in a PIPE transaction, a meaningful percentage of the issuing company's securities will be acquired); and (iii) the presence of certain additional bespoke features (such as negotiated shareholder rights).

This edition focuses on PIPE transactions completed in the 2021 calendar year in Canada, compares the results seen in 2019 and 2020, and looks ahead to what we may expect in 2022.



2021 CANADIAN PIPE DEAL POINT STUDY

1. Survey Sample and Methods

Fasken conducted a review of the 2021 Canadian PIPE deals having a deal size of greater than \$10 million and whose deal details are publicly available¹. Our usable sample produced a list of 11 deals (collectively, the “2021 Sample”). For each of these deals, documentation regarding the transaction was sourced from SEDAR².

Each of the deals in the 2021 Sample was reviewed for:

1. basic characteristics of the target, the investor(s) and the deal (including market capitalization of the target, industry and transaction amount);
2. attributes of the acquired securities; and
3. the investor and issuer rights granted pursuant to the deal.

The following is a list of investor/issuer rights we examined:

Redemption Rights at the Option of the Issuer or the Investor

We examined if the securities issued could be redeemed at the option of the issuer or the investor, including when such securities could be redeemed.

Anti-Dilution/ Pre-Emptive Rights

We examined if pre-emptive purchase rights or other types of anti-dilution rights were negotiated. Pre-emptive purchase rights generally include the right to purchase additional securities in order to maintain the investor’s pro rata ownership of the company.

Board Rights

We examined whether the investor had any board rights, including if an investor had the right to nominate a director or an observer to the board (and if there were any minimum holding thresholds to retain such rights).

Voting Rights

We examined if negotiated voting rights were included; customary voting rights that attached to common shares were not included in our review.

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1. The PIPE deals we reviewed were sourced from Capital IQ, using the following criteria: transaction type (PIPE), target type (public company), geographic location of the target (Canada), transaction value (greater than \$10 million), definitive agreements signed and transaction closing date between January 1, 2021 and December 31, 2021. A PIPE deal did not qualify for our study if only material change reports, early warning reports and/or press releases were publicly available, without any other definitive agreement also being publicly available.
 2. The documentation that we reviewed included (as applicable and available) subscription agreements, investor rights agreements, registration rights agreements, material change reports, early warning reports, and press releases.

Registration Rights

We examined if registration rights were included generally, but specific types of registration rights were not considered.

Standstill

We examined if standstill restrictions were included generally (for example, restrictions on the investor's ability to acquire additional securities of the issuer above a certain percentage, or the investor's ability to engage in certain 'hostile' actions including solicitation of shareholder proxies or launching of a take-over-bid).

Information Rights

We examined if negotiated information rights were included.

Lock-Up

We examined if lock-up or hold periods during which the investor could not sell or otherwise transfer the securities were prescribed.

Other Business Rights

We examined if any additional ancillary business arrangements or agreements were entered into as conditions of the PIPE transaction.

2. Summary Findings

The 2021 Sample³ revealed the following key findings:

- The majority of the deals, approximately 69%, involved common equity.
- The most prevalent rights negotiated were dilution protection rights (100% of deals reviewed).
- Board nomination rights were also common (approximately 82% of deals reviewed).
- The least common rights granted were redemption rights at the option of the investor, which were not granted in any of deals reviewed in the 2021 Sample.
- The average market capitalization of target companies in the 2021 Sample was \$509.7 million, which was approximately 72% smaller than the 2020 sample. The average transaction size was \$112.75 million, which was approximately 18% larger than the 2020 sample. However, on average, deals in the 2020 sample included more shareholder rights than the 2021 Sample, including redemption rights by the issuer, voting rights and information rights.

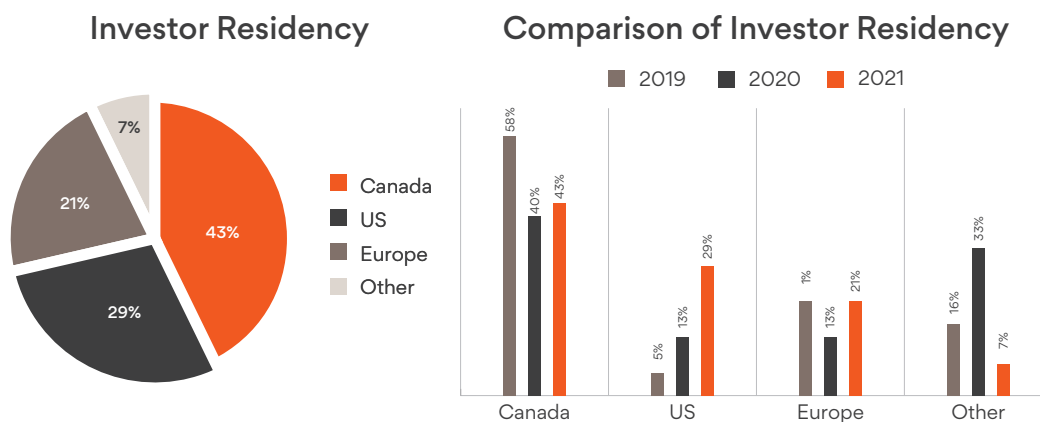
3. For more information regarding the 2020 sample, please refer to Fasken's [2020 Canadian PIPE Deal Point Study \(March 2021\)](#). For more information regarding the 2019 sample, please refer to Fasken's [Canadian PIPE Guide and 2019 Deal Point Study \(Spring 2020\)](#). The comparison of trends herein presumes that the number of deals with publicly available information is a similar proportion of the overall deals in each year.

3. Market Survey Results

i. Characteristics of the Deal, Investor and the Company

Investor Characteristics: The characteristics of the investor considered were (i) country of residence, and (ii) whether the investor was a strategic or financial investor.

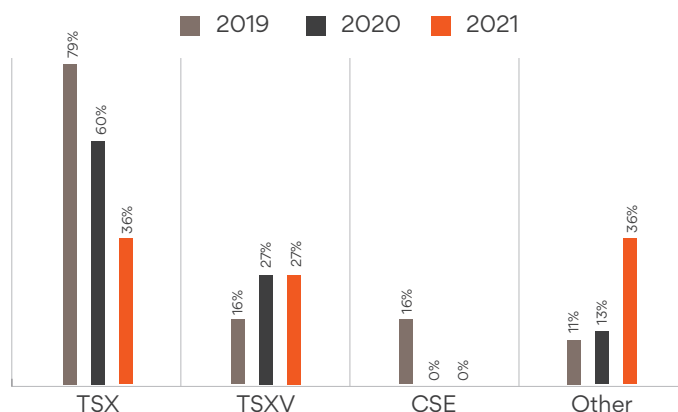
Of the 2021 Sample, based on the number of deals, 43% involved investors from Canada, 29% involved investors from the United States, 21% involved investors from Europe and 7% involved investors from other jurisdictions such as Guernsey, Israel, Cyprus and Switzerland. Some of the transactions in the 2021 Sample included multiple investors from different jurisdictions. The total sample included 14 investors. There has been a steady increase in the number of US investors from the 2019 sample and 2020 sample.



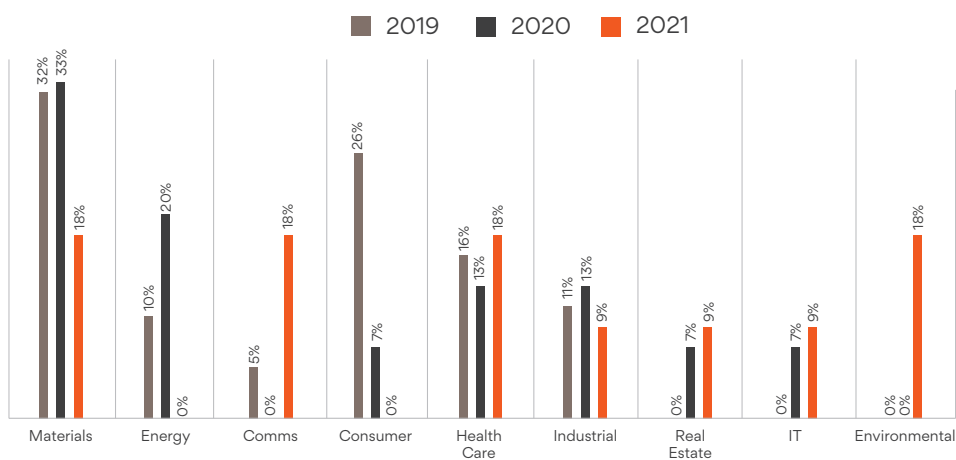
Approximately 36% of investors were strategic investors. These investors already operated in the same, or in an adjacent, industry sector. The remaining investors were financial investors.

Target Characteristics: The characteristics of the target considered were (i) exchanges on which it was listed, (ii) market capitalization on the day prior to the announcement of the PIPE transaction and (iii) the target's industry, as categorized by the Global Industry Classification Standard.

Number of Deals by Target Exchange Listing



Number of Deals by Target Industry



Based on number of deals, PIPE deals in the 2021 Sample were less diverse compared to the 2020 sample as there were no deals in the energy, communications or consumer goods sectors. Consumer goods has steadily decreased from 26% of deals in the 2019 sample to no deals in the consumer goods industry in the 2021 Sample. In the prior samples, the majority of PIPE deals were seen in the materials sector, however in the 2021 Sample, the level of PIPE deals in the materials sector decreased from 33% in 2020 to 18% in 2021. The 2021 Sample contains one new category in environmental and facilities services with 18% of deals in the 2021 Sample as compared to no deals in that sector in the prior samples.

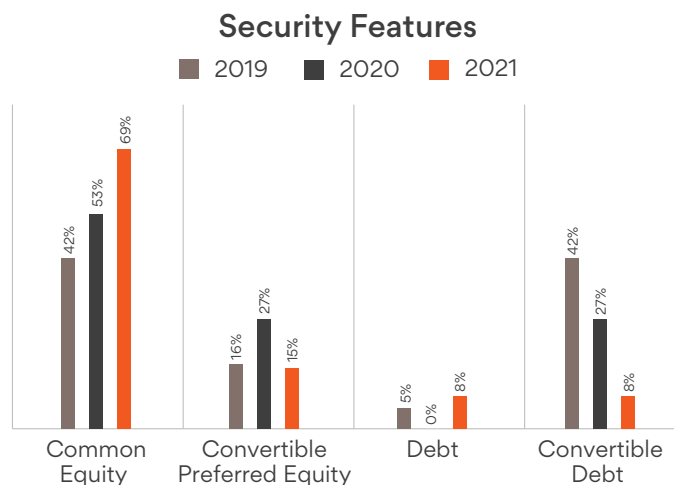
The average market capitalization of the targets in the 2021 Sample was \$509.7 million, with the company with the smallest market capitalization surveyed in the 2021 Sample was \$9.84 million and the largest was \$2.03 billion. The 2021 Sample market capitalization data was on average significantly smaller than the 2020 sample, where the average market capitalization was \$1.82 billion, but was similar to the 2019 sample, where the average market capitalization was \$519.6 million.

Transaction Amount: The average transaction size in the 2021 Sample was \$122.8 million, the smallest was \$4 million⁴ and the largest was \$752 million. The transaction size for the 2021 Sample on average was larger than the prior samples, where the average transaction size was \$104 million in the 2020 sample and \$86 million in the 2019 sample. This may be illustrative of the volatility and intensity of the current market, and the fact that PIPE transactions allow keen investors to acquire a large stake of a company in a relatively quick and simple manner.

Percentage of Target Acquired⁵: In the 2021 Sample we observed that the percentage of the equity of the target acquired by the investors ranged from approximately 1% to approximately 46% of the issued and outstanding common shares of the company, which resulted in a post-acquisition position ranging from approximately 8% to approximately 46%.

ii. Security Features

The 2021 Sample involved the issuance of common equity, convertible preferred equity, and convertible debt, or a combination of these securities. The different types of securities were each issued in the following percentage of deals:



4. The full transaction size for this deal was over \$10 million, however the transaction size of the PIPE portion was \$4 million.

5. The percentage of the target acquired and the percentage held post-acquisition was not reported in all of the deals reviewed in the 2021 Sample. The results noted herein are based on a subset of the 2021 Sample for which the percentages were available.

Debt: Only one deal contained debt (which was convertible into common shares of the issuer) in the 2021 Sample. This debt was not secured but did accrue interest. By comparison, we saw significantly more debt deals that were secured in the prior samples. This may signal an increasingly cautious attitude towards debt, given the current economic climate in light of the COVID-19 pandemic, inflation and other current events.

Warrants: Common share purchase warrants were issued in 45% of the deals reviewed. The primary security issued in these deals was common equity (60% of the time), followed by convertible preferred shares (40% of the time for each). The term of warrants ranged from two to five years.

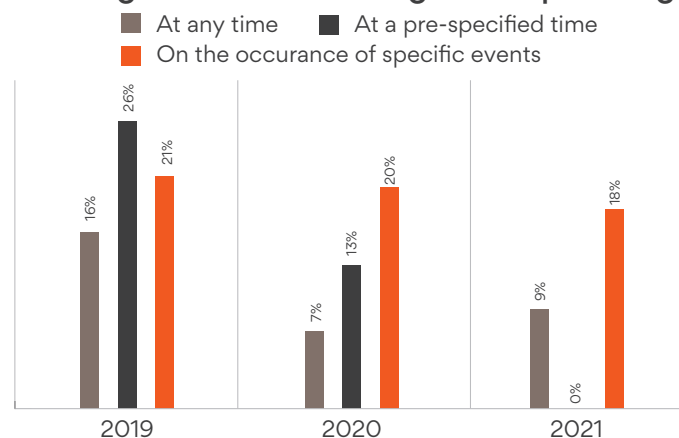
Convertible Securities: 27% of the deals surveyed included convertible securities, all of which are convertible into common shares. One transaction involved convertible debt (as discussed under “Debt” above) and two deals involved convertible preferred equity.

Interest/Dividends: Only the one transaction with debt securities (as discussed under “Debt” above) contained a provision for interest.

iii. Securityholder Rights

Redemption Rights at the Option of the Issuer: In 18% of the deals reviewed, the issuer had the right to redeem the securities at any time, at a pre-specified time and/or on the occurrence of certain specified events, which is less than the 33% of deals containing similar rights in the 2020 sample. The timing of the redemption right in those deals providing for such a right is illustrated in the following chart:

Percentage of Deals Including Redemption Rights

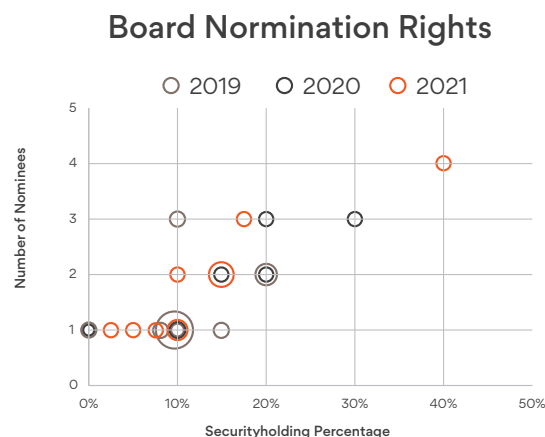


Redemption Rights at the Option of the Investor: There were no deals in the 2021 Sample that provided for redemption rights at the option of the securityholder. By comparison the 2020 sample had one deal in which the investor had the right to redeem securities and the 2019 sample had 58% of deals in which the investor had the right to redeem. There appears to be a clear shift in the market on the provision of redemption rights at the option of the investor.

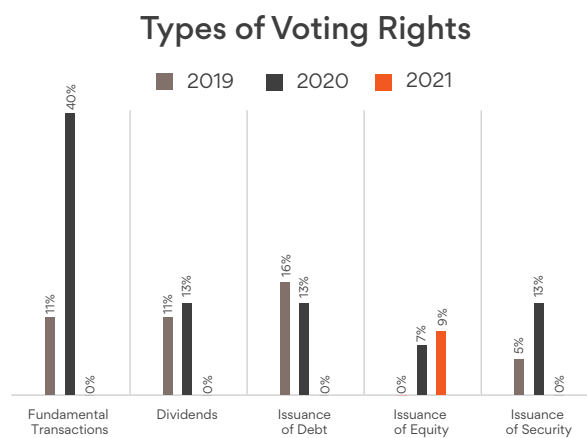
Dilution Protection: All of the deals we reviewed in the 2021 Sample contained at least one type of dilution protection provision. 82% of deals reviewed included pre-emptive purchase rights and 27% included other anti-dilution protections, including adjustments made to the number of common shares to be issued pursuant to warrants acquired in connection with the PIPE transaction or adjustments made to the price of those securities to account for subsequent common share issuances. This is significantly higher than the 2020 sample which contained 27% of deals with pre-emptive purchase rights and 13% of deals with other anti-dilution protections. This may show an increasing importance in having dilution protection, likely due to the volatile economy.

Board Rights: 82% of the deals reviewed included a board nomination right. The number of board members which investors had the right to nominate, as well as the security holding percentage required to maintain this right varied across the deals surveyed. 44% of deals which included board nomination rights included the right to nominate a single board member, and 56% included the right to nominate a certain number of board members based on different security holding thresholds, with four being the greatest number of directors being appointed. For example, one deal allowed the nomination for one director with a 10% holdings threshold and two directors with a 15% holdings threshold.

In the 2020 sample, only 33% of the deals contained board nomination rights; therefore the 2021 Sample results demonstrate a significant change and indicate an increasing appetite in investors wanting to be actively involved in the issuer's operations. In the 2019 sample, approximately 74% of deals included board rights, which is similar to the results from the 2021 Sample.



Voting Rights: 9% of the deals reviewed provided the investor with a voting right regarding the issuance of equity only. This is significantly less than voting rights in the 2020 sample in which 40% of the deals provided for investor voting rights regarding approval of certain fundamental transactions, an issuance of debt, an issuance of equity, an issuance of security and/or the declaration of dividends. The percentage of the deals surveyed having each of these specific voting rights was as follows:



Registration Rights: 55% of the deals included registration rights which is similar to the 47% of deals that included registration rights in the 2020 sample.

Standstill: 27% of the deals surveyed included a standstill, this is the same figure from the 2020 sample, indicating a consistent trend overtime.

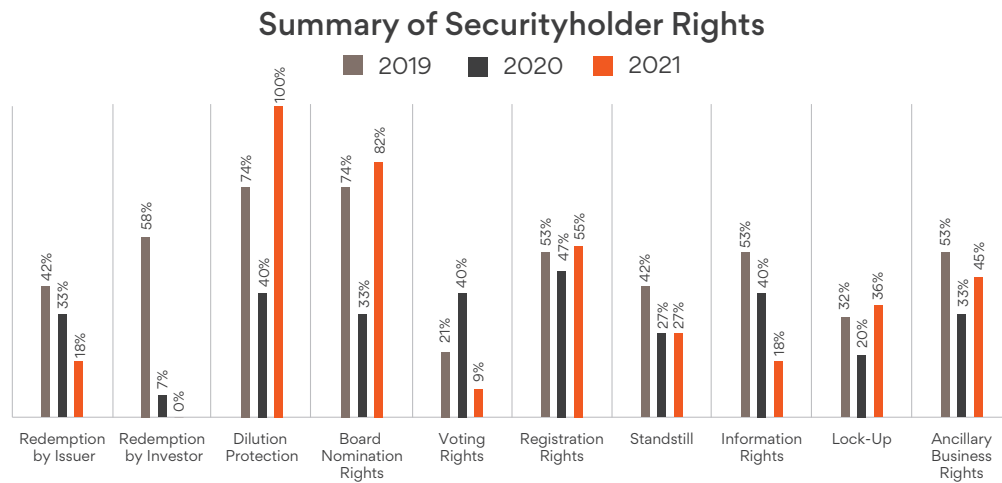
Information Rights: 18% of the deals surveyed granted the investor rights to certain information over and above regular disclosure required to be made to securityholders, such as rights to review monthly financial statements and operational reports, the right to receive notice of certain transactions, and rights to visit and inspect certain facilities. This is markedly less than in the 2020 sample in which 40% of the deals surveyed granted similar rights.

Lock-Up: 36% of the deals included lock-ups on the sale of investor shares (not including those securities subject only to a four-month re-sale restriction mandated by securities laws). The lock-ups ranged from one year (in 27% of the deals in the 2021 Study) to five years (in 9% of the deals in the 2021 Study). This is an increase from the lock-up rights provided for in the 2020 Study, being 20%.

Other Business Rights: 45% of the deals included ancillary business rights or arrangements. Some such business rights included: the right to participate in, and acquire up to 20% of, any stream, forward sale, prepay, royalty, off-take or similar transaction between specified parties; royalty payments; the right to appoint persons to an audit committee and corporate governance committee; piggyback notice and rights; a lockbox arrangement; top-up rights; participation agreements with

subsidiaries; and share buyback restrictions. This is an increase from the other business rights from the 2020 Study, which were 33%.

Overall, other than information rights, voting rights and redemption rights at the option of the issuer, the securityholder rights remained similar or significantly increased as compared to the 2020 Study. This shows 2021 PIPE investors as having less control and less protection in certain areas (information, voting and redemption) but having more significantly more control and more protection in other areas (board nomination and other business rights). This may indicate that investors are willing to give up certain rights in exchange for other rights (for example, giving up voting rights but increasing board nomination rights to still have input in issuer decision making).





Outlook for 2022

With COVID-19, the war in Ukraine, inflation and worldwide supply shortages creating continued uncertainty in the economy, capital markets are expected to continue to be volatile well into 2022. Although in 2021 we saw the use of PIPEs decrease from 2020, we expect the use of PIPEs to rebound in 2022 given the significant benefits to a PIPE - from the perspective of an investor, a PIPE can provide downside protection, an effective say in the business and upside gains and for issuers, a PIPE can act as an effective financing while securing a strategic partner, and in the case of those issuers facing tough times, allows for the raising of significant capital without selling the entire business at a depressed value - particularly in volatile markets.

Fasken's Approach to Mergers & Acquisitions

Our transaction-focused and goal-oriented M&A team offers:

- A **national** platform
- **Subject** matter and **industry** expertise
- **Global** experience
- Representation of capital market participants, both domestic and foreign, in **all aspects of M&A transactions**
- Advice to **acquirors, target companies,** and **shareholders**
- Experience with large and complex **cross-border** transactions
- Expertise in **corporate governance**, including advising boards of directors and special committees
- Expertise in **contested situations**, including shareholder activism, proxy contests and contested M&A

Our clients range from startups to industry leaders, and include foreign and domestic public and private companies, private equity, pension plans and hedge funds, and global and boutique investment banks.

We are consistently ranked in M&A League tables as one of the most active law firms in Canada for both domestic and cross-border transactions.

We structure transactions to meet your objectives. The knowledge we have gained from the execution of thousands of transactions across the firm allows us to identify creative solutions to issues that may arise during the course of a transaction.

Our M&A expertise is supported by our expertise in complimentary practice areas:

Anti-trust	With members of our team from the Competition Bureau, we anticipate and handle the most complex anti-trust issues.
Corporate Finance & Banking	Our lawyers are renowned for their extensive capital markets banking, lending and financing expertise.
Foreign Investment	Clients from around the world have relied on us to help them navigate foreign investment review and national security issues.
Litigation	With one of the largest litigation groups in Canada, we have their skill set to call upon at any time they are needed.
Tax	Our tax specialists can help develop tax-efficient structures for every type of transaction in all Canadian jurisdictions.

Awards, Rankings & Clients

Our international excellence and broad industry expertise consistently garner accolades and top rankings worldwide from renowned guides published by *Chambers & Partners*, *International Financial Law Review's Guide to the World's Leading Financial Law Firms*, *Legal 500 UK* and *Legal Experts* published by *Legal Business*, and the *Canadian Legal Lexpert Directory*.

Fasken held the No. 1 spot in several benchmark M&A league tables for 2021, capping an exceptional year for the firm's deal advisory team. *Mergermarket*, *Refinitiv* (formerly *Thomson Reuters*) and *Bloomberg* all placed Fasken at the forefront of M&A legal advisors in a half-dozen key categories.

While we take pride in each of these acknowledgements, we take our greatest satisfaction from clients who continue to entrust us with their most pressing matters.

Our Expertise

Clients rely on our teams of top-ranked lawyers in a wide range of practices.

Antitrust/Competition & Marketing	Insurance
Asia Pacific	International Arbitration
Banking & Finance	Investment Products & Wealth Management
Class Actions	Labour, Employment & Human Rights
Communications	Life Sciences
Construction & Procurement	Litigation & Dispute Resolution
Corporate/Commercial	Mining
Energy, Environmental, Climate Change & Regulatory	Privacy & Information Protection
Financial Institutions & Services	Private Equity
Forestry	Product Liability
Government Relations & Ethics Health	Real Estate
Indigenous Law	Securities and Mergers & Acquisitions
Infrastructure & Public-Private Partnerships	Taxation
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