









EVERSHEDS SUTHERLAND





BALTIC M&A

DEAL POINTS STUDY 2018



Baltic M&A Deal Points Study 2018

This fifth edition of the Baltic M&A Deal Points Study is conducted by the legal and regulatory committees and working groups of the:

- Estonian Private Equity and Venture Capital Association
- Latvian Private Equity and Venture Capital Association, and
- Lithuanian Private Equity and Venture Capital Association together with contributions from the following Baltic M&A law firms and alliances:











Transactions Analysed



- The study analyses 91 M&A transactions completed during the period January 2016 – December 2017.
- This 2018 study compares the results to similar 2016 and 2013 studies.
- The transactions included in the survey have the following characteristics:
 - The survey covered M&A and joint venture transactions, i.e. acquisition or merger of businesses via share or asset transactions, corporate statutory mergers, joint venture agreements or in any other way.
 - Only Baltic transactions were studied, i.e. M&A transactions involving targets operating in one or more of the Baltic States: Estonia, Latvia and Lithuania.
 - Transactions had a deal value over EUR 1 million and were completed during the two year period January 2016 – December 2017.
 - No additional limitations applied as to deal value, the nature of the parties or the target or the sale procedure of the transaction.



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The Parties

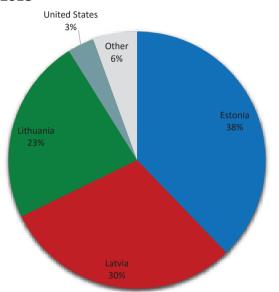
General Transaction Characteristics



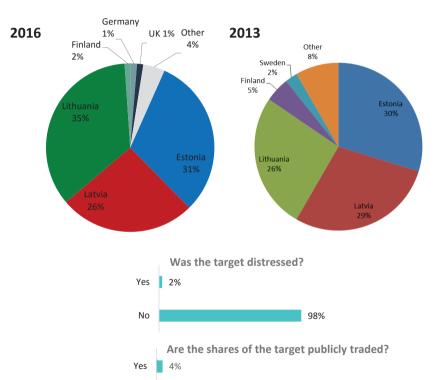


Country of the Target's Head Office





 Targets in the submitted transactions were predominantly Baltic, with Estonia providing 38% of them.

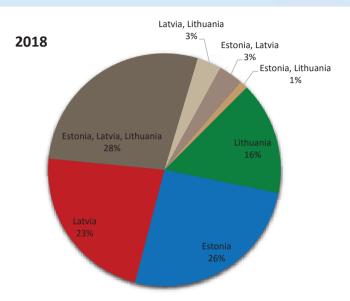


96%

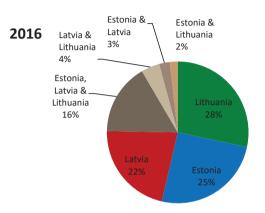
No



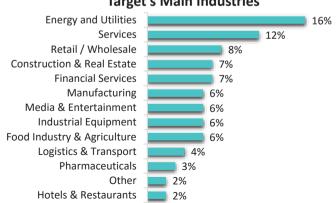
Baltic States Where the Target Operates



- Unlike previous periods, significant proportion of the transactions (28%) involve targets operating in all three Baltic countries.
- Targets' geographical focus outside the Baltics includes Finland, Germany, Poland, United Kingdom, the United States and Russia.

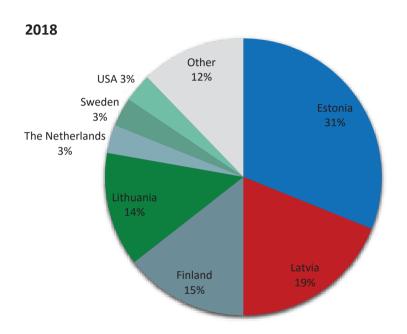




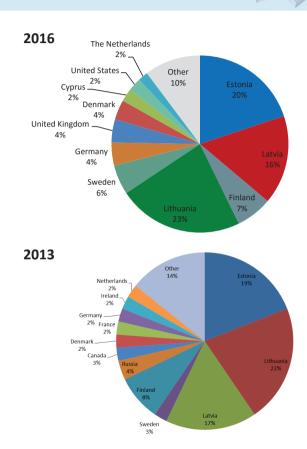




Country of the Seller

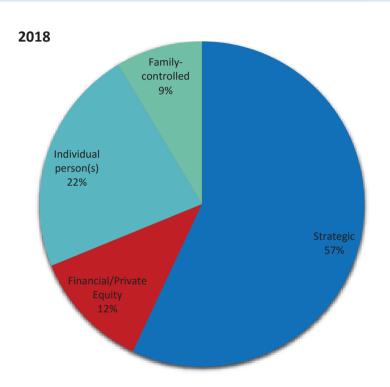


 Similarly to all previous studies, the majority of the sellers are from Baltic states, whereas Estonian sellers comprise 31% and Finnish sellers (15%) are the main sellers outside of the Baltic countries.

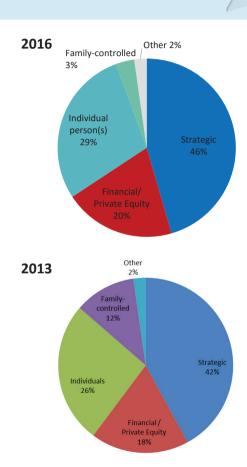




Nature of the Seller



• Over half of the sellers are strategic. Private equity exits constituted only 12% of the transactions.





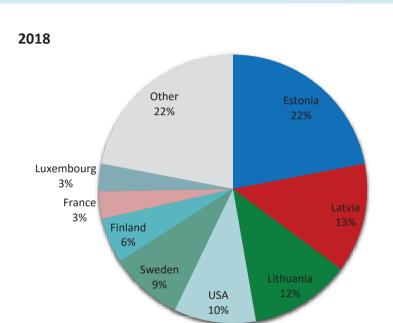
Geography of Sellers and Targets

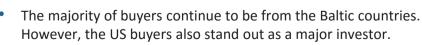
Country of the Seller's group head office									
Country of the Target's head office:	Estonia	Latvia	Lithuania	Finland	Netherlands	Sweden	United States	Other	Total
Estonia	25			7	1	1		2	36
Latvia	1	17	1	4				6	29
Lithuania	3	1	12	3	1	2		2	24
Finland				1					1
United States							3		3
Other								3	3
Total	29	18	13	15	2	3	3	13	96

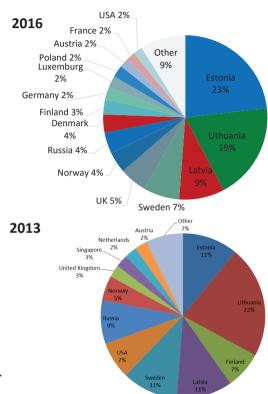
• The seller's group head office and target's head office are mainly in the same country.



Country of the Buyer



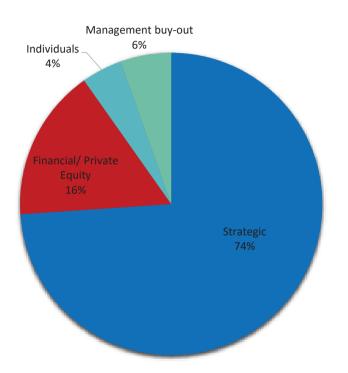




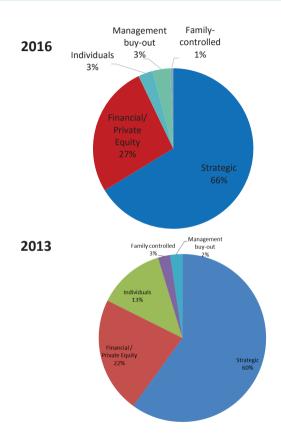


Nature of the Buyer





 The proportion of the strategic buyer has increased and now comprises ¾ of all transactions.





Geography of Buyers and Targets

Country of the Buyer's group head office										
Country of the Target's head office:	Estonia	Latvia	Lithuania	United States	Sweden	Finland	France	Luxem- bourg	Other	Total
Estonia	17	1	2	3	3	3			5	34
Latvia	4	11	1	2			1	2	6	27
Lithuania	1		9	3	4	2		1	4	24
United States				1			2			3
Denmark					1					1
Finland		1								1
Japan									1	1
Switzerland				1						1
Total	22	13	12	10	8	5	3	3	16	92

Most Baltic buyers acquired targets in their own countries.



Geography of Buyers and Sellers

Country of the Seller's group head office									
Country of the Buyer's head office:	Estonia	Latvia	Lithuania	Finland	Netherlands	Sweden	United States	Other	Total
Estonia	12	3		4					19
Latvia	1	4		4				3	12
Lithuania	3	1	4	2		1			11
United States	3	2		1		1	1	1	9
Sweden	3	1		1	1	1		1	8
Finland	3		2						5
France		1					2		3
Luxembourg					1			2	3
Other	5	4	3	1	1			3	17
Total	30	16	9	13	3	3	3	10	87

- As regards the origin of both buyers and sellers, intra-Baltic M&A (both parties Baltic) was the most common with 32%. This was closely followed by foreign investors buying from local Baltic seller, which constituted 31% of all transactions (highlighted in green).
- In 14 transactions (16%) foreign sellers sold targets to Baltic buyers (highlighted in orange), almost three fifths of them to Estonian buyers.
- Targets changed hands among foreign parties in 20% of transactions.

Sales Process and Form of Transaction

General Transaction Characteristics



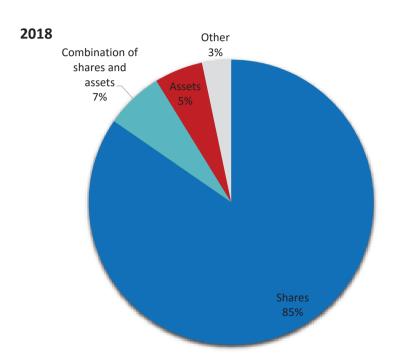


Nature of the Sales Process

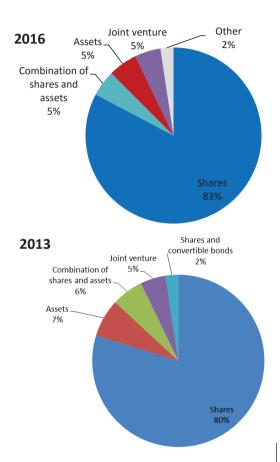




Form of Transaction



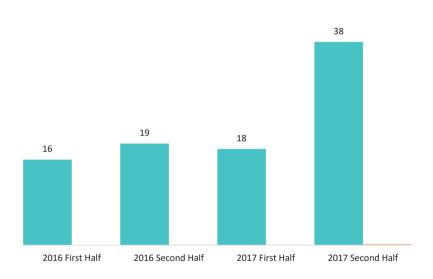
 As in all previous studies, most transactions in the Baltics are share deals.



Timeline of Transactions

 The proportion of transactions submitted is greater towards the end of the period surveyed.
 This, however, does not necessarily show deal activity during the period.

Number of transactions by closing date



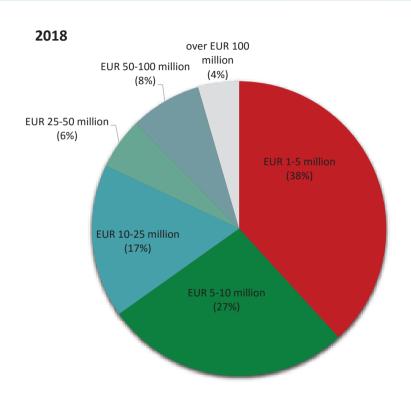
Transaction Value and Payment

General Transaction Characteristics

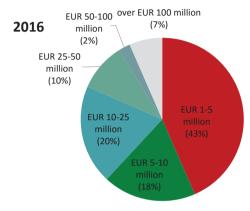




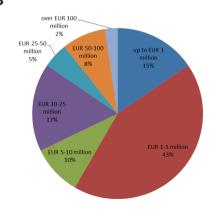
Transaction Value



 The value of a typical Baltic M&A deal remains in the EUR 1-5 million bracket, although the proportion of transactions in the 5-10 million bracket has increased.









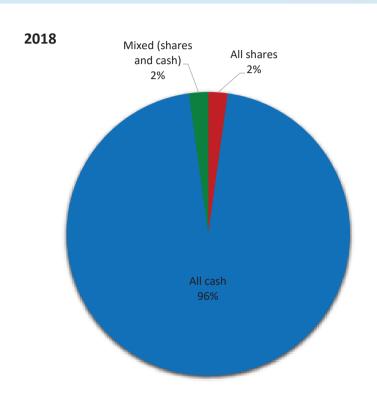
Distribution of Transaction Value by Buyer and Sales Process

Nature of the Buyer								
Transaction value	Strategic	Financial/ Private Equity	Individuals	Management buy-out	Total			
EUR 1-5 million	29	1	2	2	34			
EUR 5-10 million	15	7	1	2	25			
EUR 10-25 million	10	4	1		15			
EUR 25-50 million	5				5			
EUR 50-100 million	6	1			7			
over EUR 100 million	3	1			4			
Total	68	14	4	4	90			

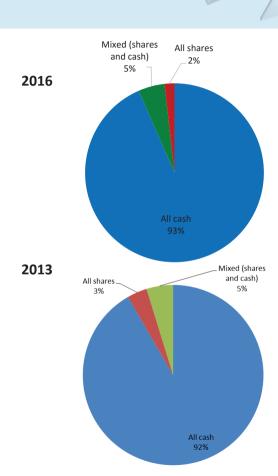
Sales process								
Transaction value	Negotiated sale	Controlled auction	Other	Total				
EUR 1-5 million	32		2	34				
EUR 5-10 million	22	2		24				
EUR 10-25 million	12	3		15				
EUR 25-50 million	4	1		5				
EUR 50-100 million	4	2	1	7				
over EUR 100 million	3	1		4				
Total	77	9	3	89				



Form of Consideration

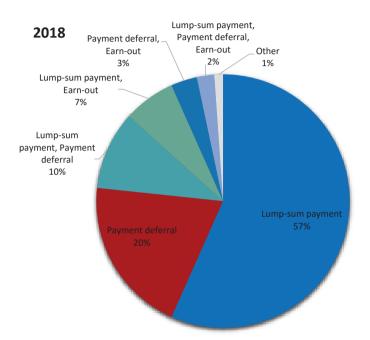


 Almost all transactions involve cash as consideration, in line with all previous studies.

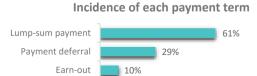


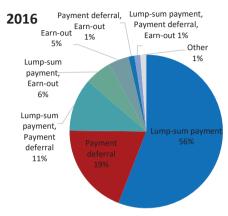


Payment Terms

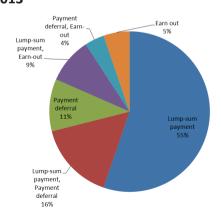


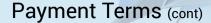
 Lump-sum payment is by far the most widely used form of payment in Baltic transactions.



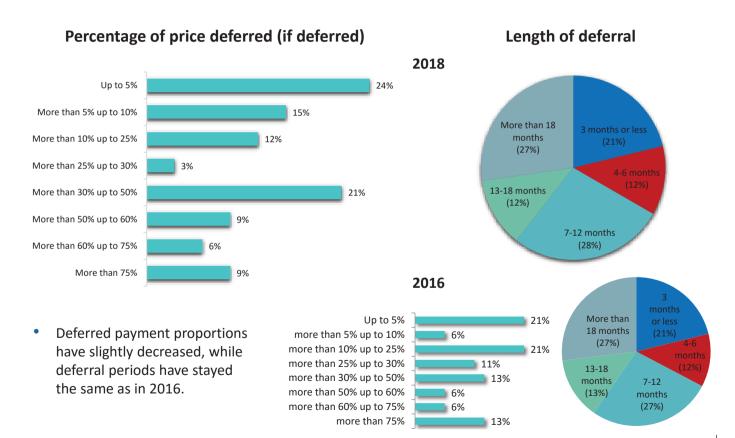


2013



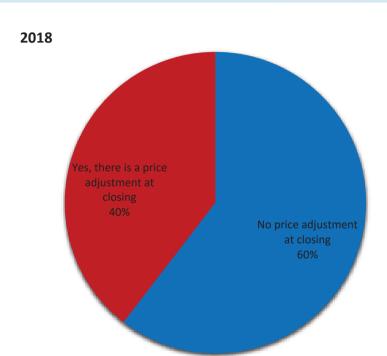




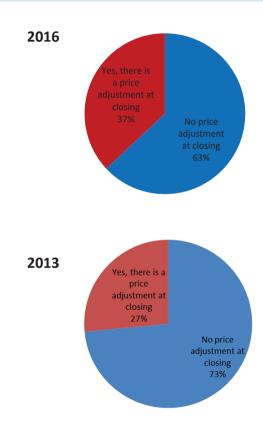




Price Adjustment at Closing



 Despite a slight increase in transactions with price adjustment, their number remains in the minority.

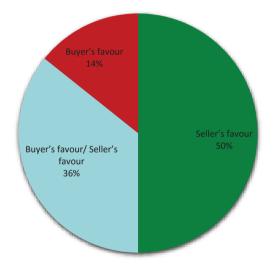




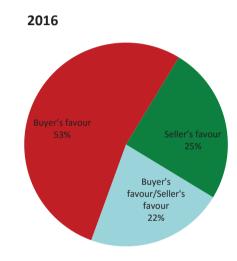
Price Adjustment at Closing (cont)

If price adjustment was made, in whose favour?

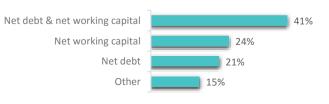
2018



- Compared to the 2016 study, there were significantly more cases were no adjustments were made.
- The most popular adjustment base is net debt and net working capital combined.



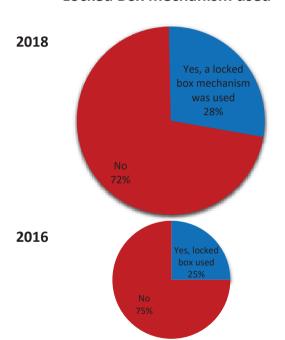
Adjustment based on





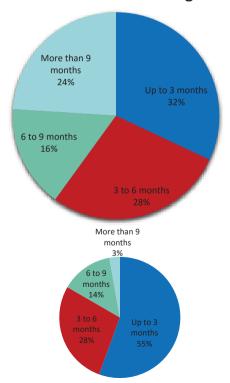
Locked Box Mechanism

Locked Box mechanism used



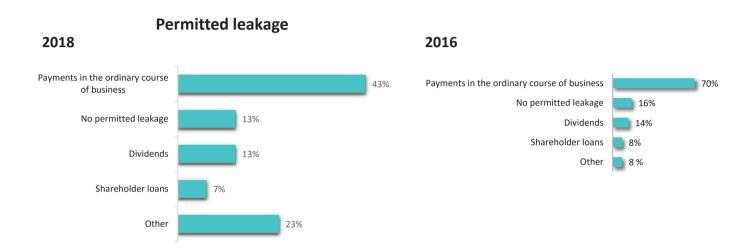
 Similarly to the 2016 survey, about a quarter of transactions used a locked box mechanism. However, the locked box term increased significantly.

Time between the locked box balance sheet date and the closing date





Locked Box Mechanism (cont)



- Similarly to the 2016 survey, most mechanisms allowed only payments in the ordinary course
 of business as permitted leakage. Other leakage forms (dividends, shareholder loans)
 were seldom permitted.
- In less than a 10% of cases did the buyer pay interest from the locked box date until closing.

Governing Law and Dispute Resolution

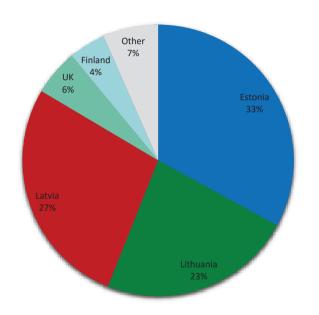
General Transaction Characteristics



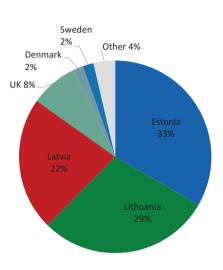


Transaction Governing Law





2016

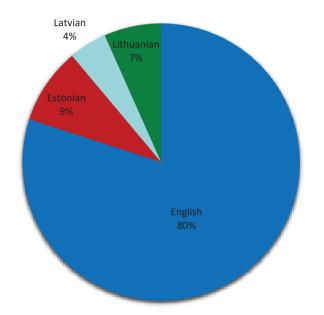


• Most Baltic M&A transactions are governed by the local laws of the Baltic States.



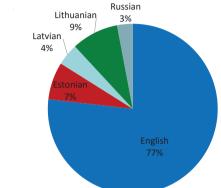
Main Agreement Language



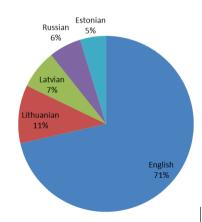


• As in previous studies, English is by far and increasingly the predominant language.



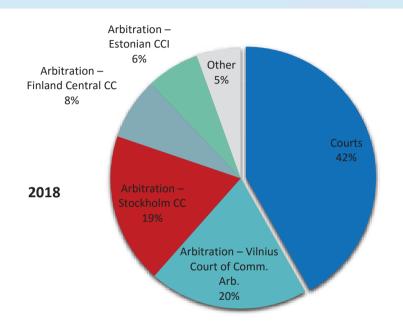


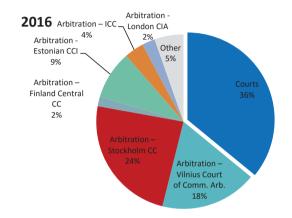
2013





Dispute Resolution Mechanism

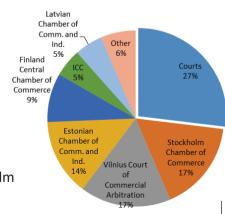




2013

Arbitration is still the most popular form of dispute resolution, although there has been a slight increase in occasions where courts have been used as a dispute settlement venue.

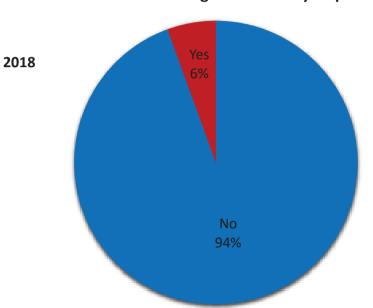
 Vilnius Court of Commercial Arbitration continues to be the most reliable arbitration institution within the Baltic countries and Stockholm Chamber of Commerce is the most preferred choice outside Baltics.



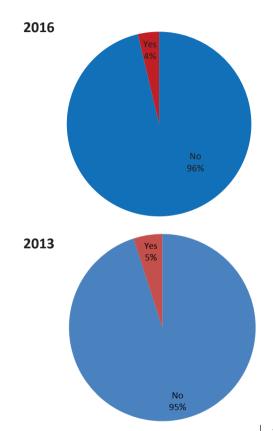


Dispute Resolution: Existence of Disputes

Did the transaction give rise to any disputes?



The proportion of M&A disputes continues to be very small.

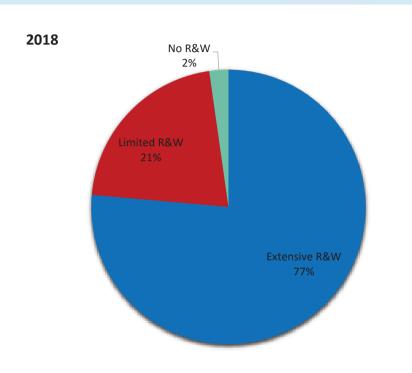


Representations and Warranties

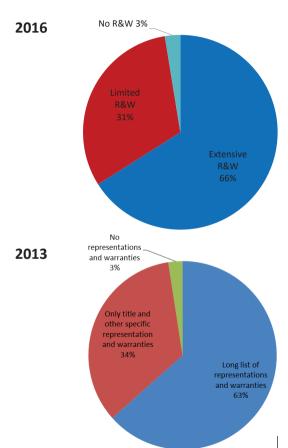




Seller's Representations and Warranties



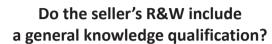
 The proportion of transactions with limited warranties (i.e. only title and specific R&W) has slightly decreased compared with earlier surveys.

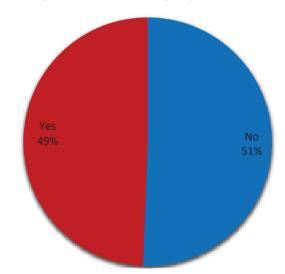




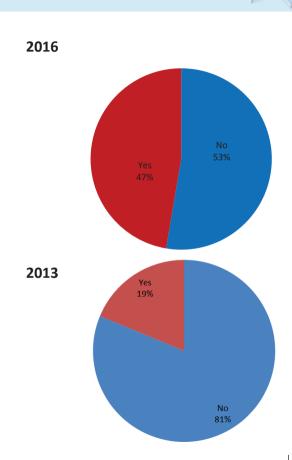
2018

Seller's Representations and Warranties (cont)



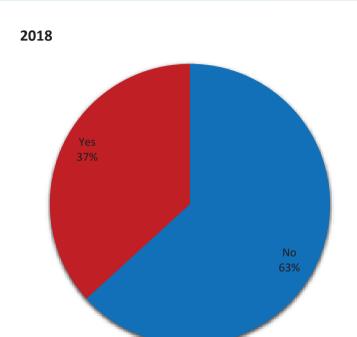


 The proportion of transactions with a general knowledge qualification of the warranties has remained the same as in the 2016 survey.

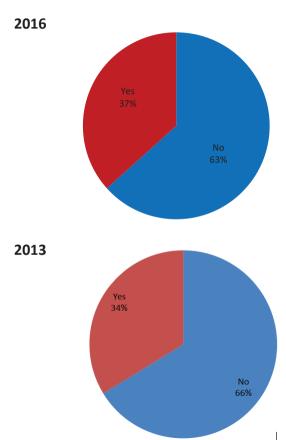




Usage of Disclosure Letter

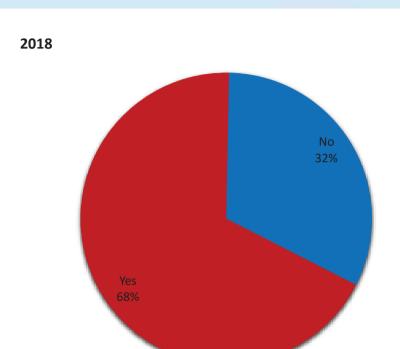


• The proportion of transactions using a disclosure letter has remained the same as in the 2016 survey.

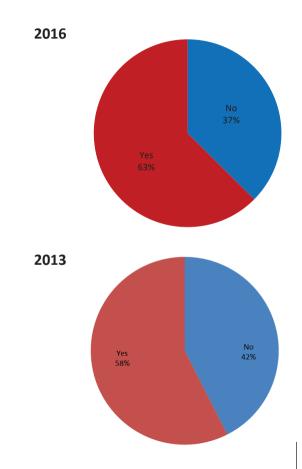




Due Diligence Disclosures Considered General Qualification to R&W

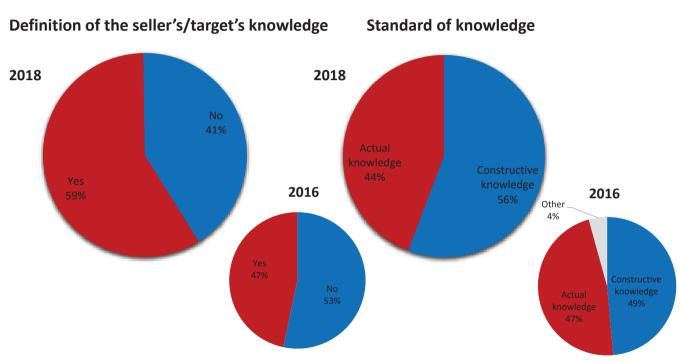


 The trend of viewing due diligence as an alternative to R&W has continued.





Standard of Knowledge

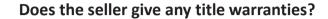


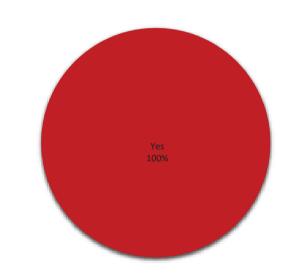
- The seller's/target's knowledge is defined in more than half of transactions.
- The standard of knowledge continues to be almost equally divided between actual and constructive knowledge.



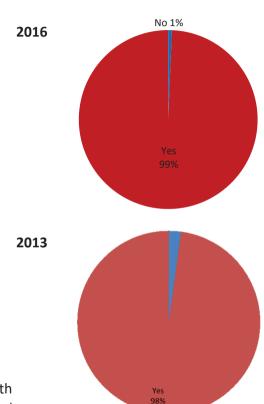
2018

Title Warranties



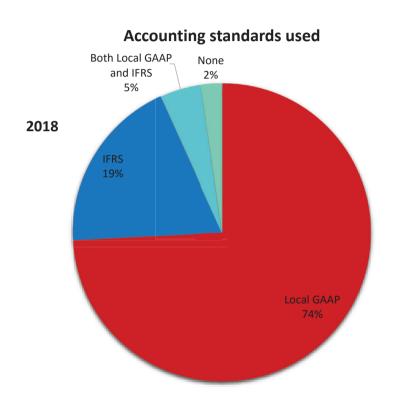


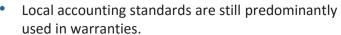
In all transactions, title warranties were given by the seller with respect to title, ownership and encumbrance of the sales object.

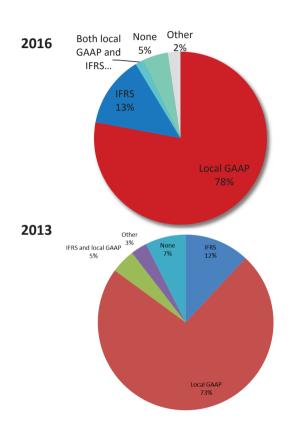




Warranties: Accounting Standards

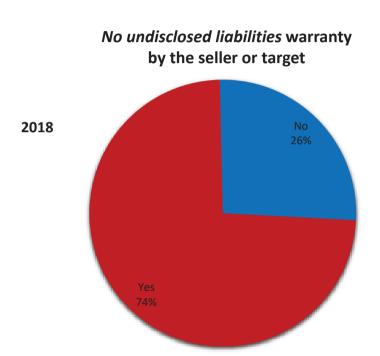




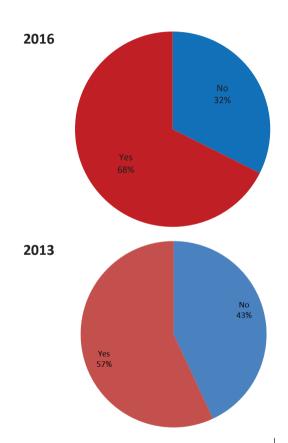




No Undisclosed Liabilities Warranty



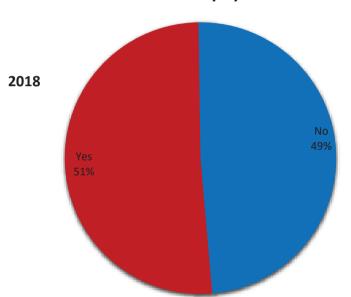
• The proportion of deals using the *no undisclosed liabilities* warranty has increased steadily.



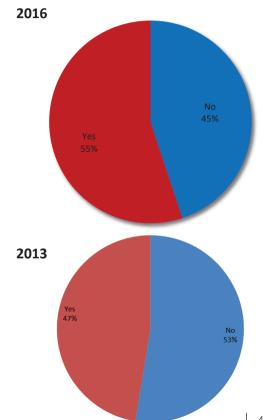


Full Disclosure Warranty

Full disclosure warranty by the seller or target

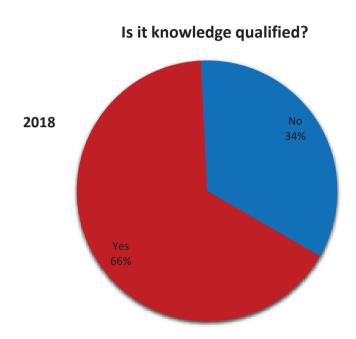


• The *full disclosure* warranty continues to be used in half of transactions.

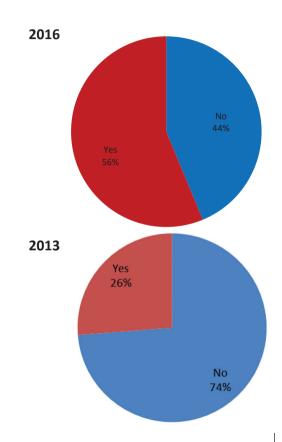




Full Disclosure Warranty (cont)



• The proportion of *full disclosure* warranty that is knowledge qualified has increased steadily.

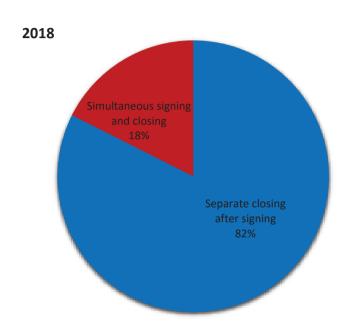


Closing and Conditions Precedent

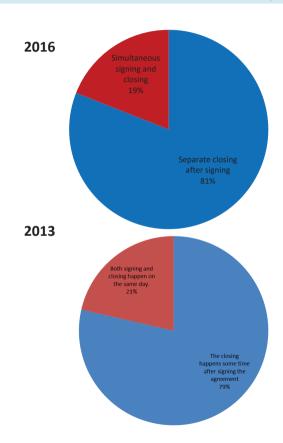




Timing of Signing and Closing



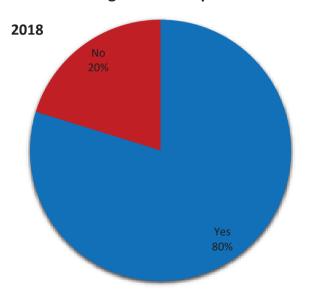
 As in the previous surveys, closing is deferred in the vast majority of the transactions analysed.

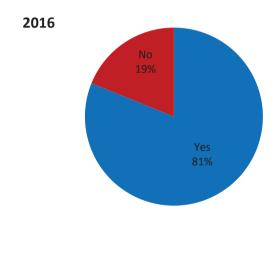






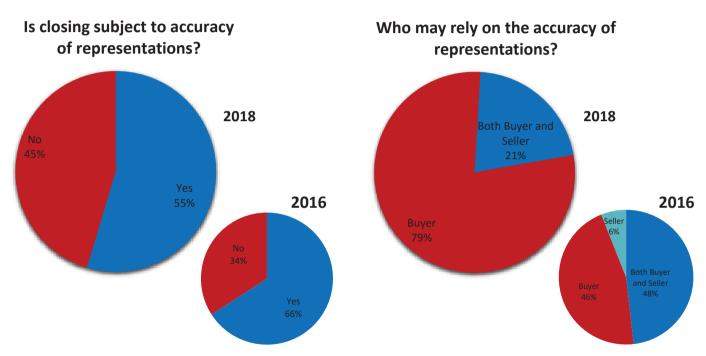
Does closing or its date depend on fulfilling conditions precedent?





In vast majority of transactions closing depends on fulfilment of conditions precedent.

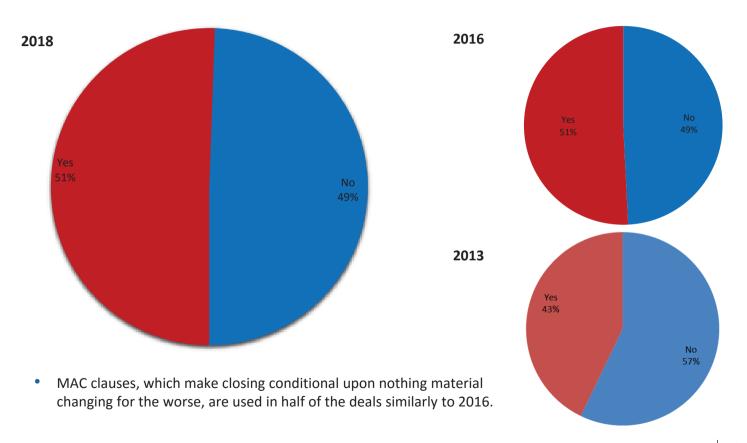




- In most transactions closing is subject to accuracy of representations.
- Unlike earlier studies, in most cases only the buyer can rely on the accuracy of representations.



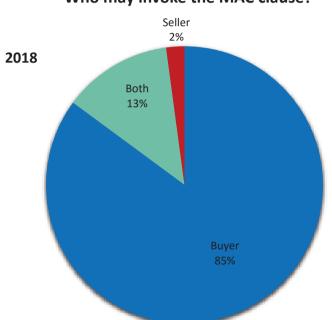
MAC ("material adverse change")/ MAE ("material adverse effect") Clause



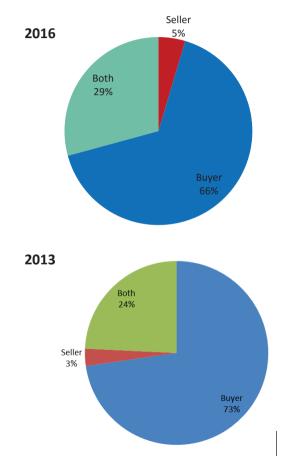


MAC ("material adverse change")/ MAE ("material adverse effect") Clause (cont)





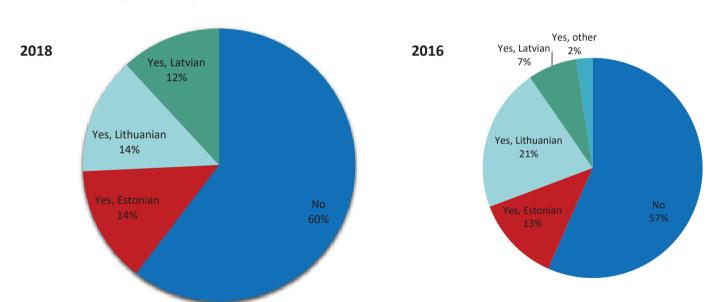
 The buyer continues to be the main party who may invoke the MAC/MAE clause.





Competition Clearance

Did the transaction require approval by the competition authorities?

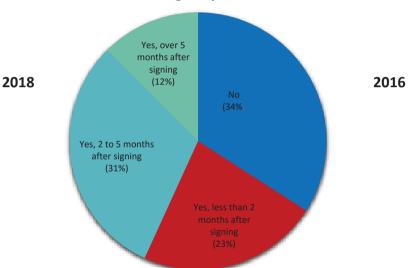


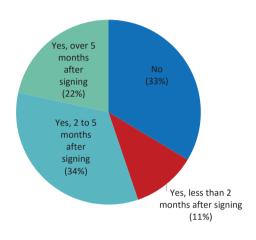
 The proportion of transactions subject to competition authority approval has remained about the same in all studies.





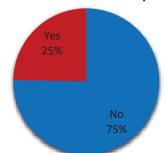






Is there a break fee or exit penalty?

- Use of a *long-stop date* has remained quite similar across all studies.
- The 2-5 month *long-stop date* continues to be the most popular term.
- 75% of transactions analysed imposed a break fee or exit penalty (compared to 41% in 2016).

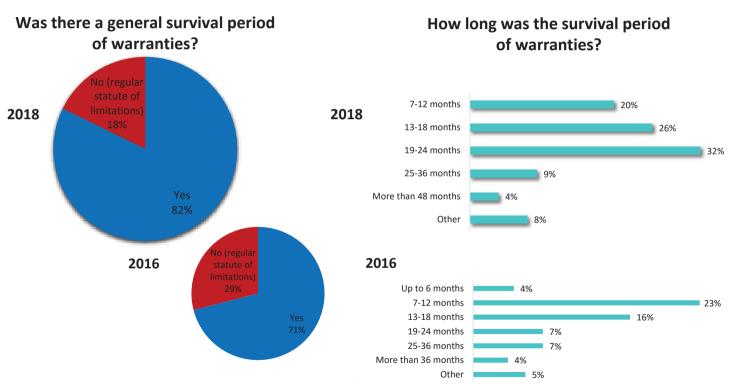


Liability and Indemnification





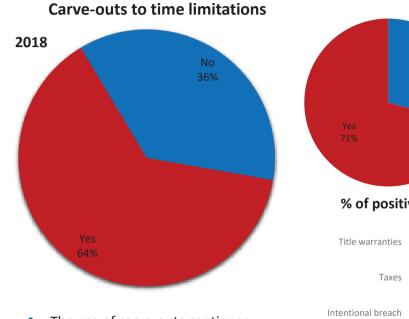
Survival of Warranties



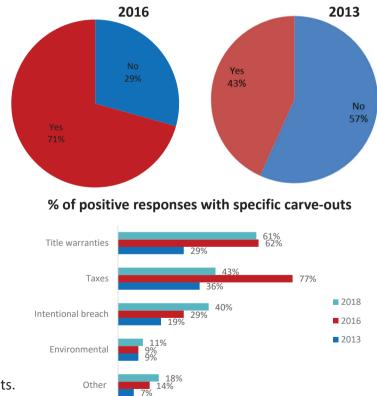
 An increase has occurred in setting explicit general survival periods for R&W compared to the 2016 study.



Survival of Warranties Carve-Outs

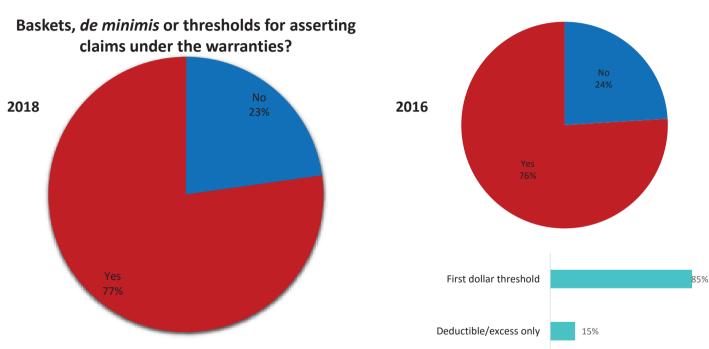


- The use of carve-outs continues to be popular.
- Title warranties, taxes and intentional breach are the most common carve-outs.





Baskets and Thresholds



- Compared to the 2016 study, the use of baskets/thresholds has remained the same.
- Typically, baskets/thresholds in the Baltics are first dollar, as has been the case in all studies.



Baskets and Thresholds (cont)

Amount of threshold per claim





Amount of basket/threshold for the aggregate of all claims



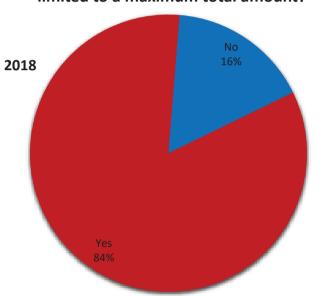


- Typically, the threshold is less than 0.5% of the purchase price per claim.
 The thresholds continue to be progressively lower.
- The amounts of basket/thresholds for the aggregate of all claims have risen in comparison to 2016.
- The most widely used amount of basket/threshold for the aggregate of all claims is 1-2% of the purchase price.

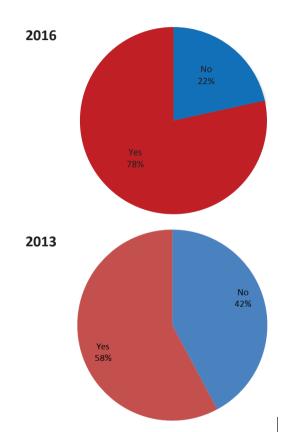


Overall Cap or Ceiling on Liability

Is the seller's liability for breach of warranties limited to a maximum total amount?

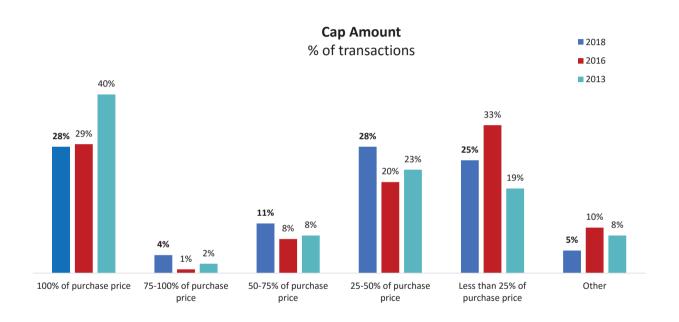


 The proportion of transactions with an overall cap on the seller's liability continues to increase.

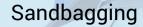




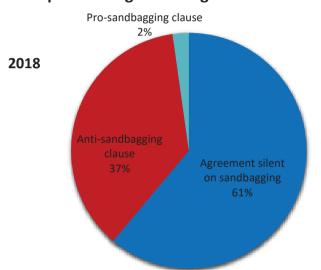
Amount of Cap on Liability

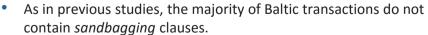


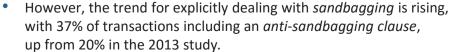
 Although caps set at 100% of the purchase price continue to be common, the proportion of caps set at 25-50% has increased.

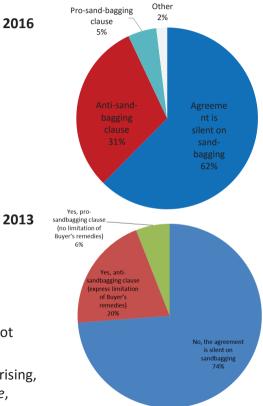


Provisions limiting the buyer's remedies if the buyer has pre-existing knowledge of breach of warranties



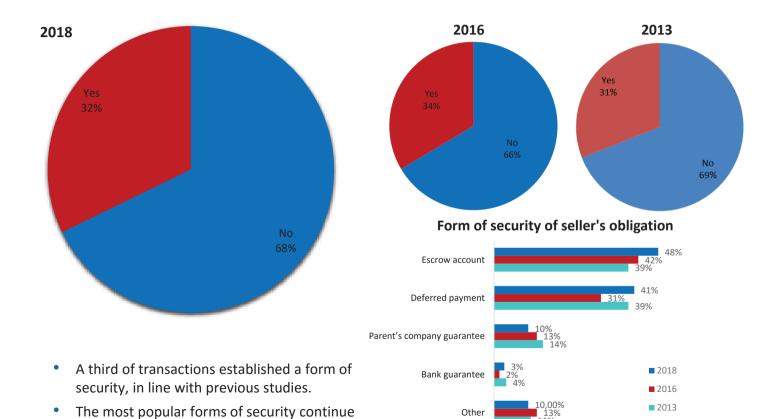






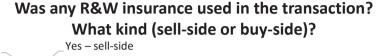


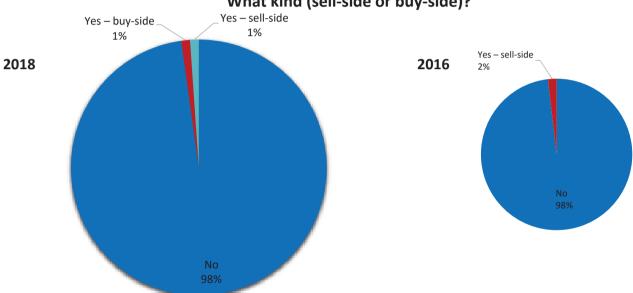
Security for Seller's Obligations



to be escrow accounts and deferred payment.







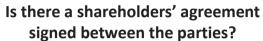
As in 2016, the use of R&W insurance is not yet common.
 R&W insurance was used in only 2 transactions.

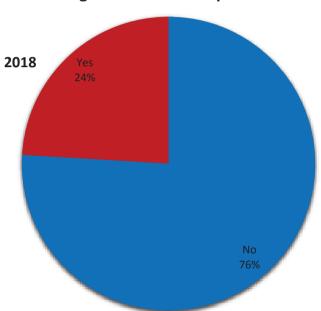
Joint Ventures and Shareholders' Agreements



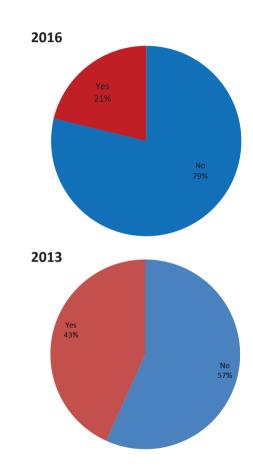


Shareholders' Agreements (SHA)



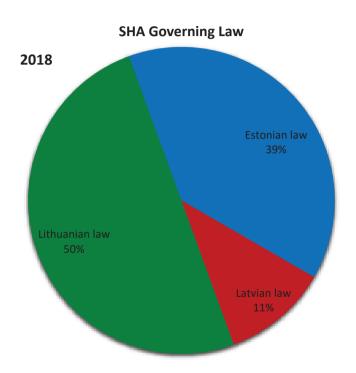


 The surveyed deals involved agreements between shareholders in 24% of cases.

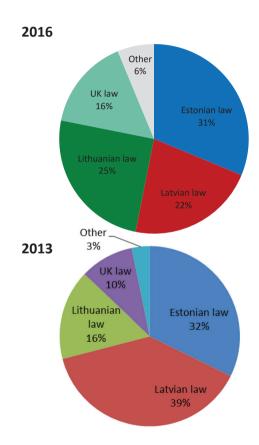




Shareholders' Agreements (SHA) (cont)



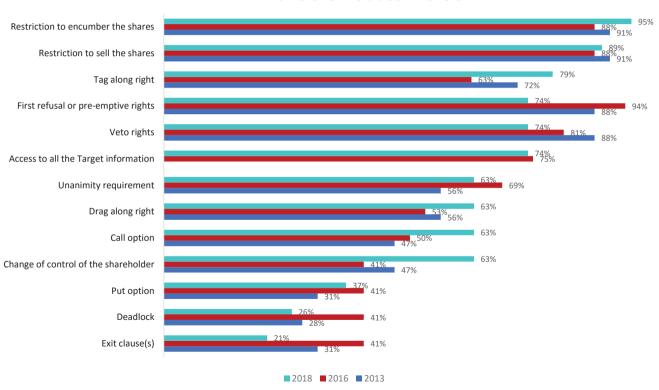
• Compared to previous studies, shareholders' agreements have only used local laws as governing law.





Shareholders' Agreements (SHA) (cont)

Provisions included in the SHA



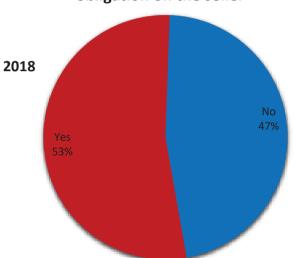
Covenants





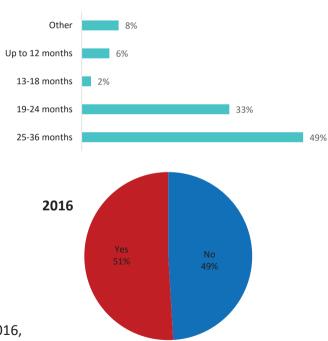
Seller's Non-Solicitation Obligation

Agreement imposing a non-competition obligation on the seller



- More than half of transactions included a non-competition obligation for sellers.
- The non-compete duration has remained similar to 2016, where the most used duration was 25-36 months, followed by 19-24 months.

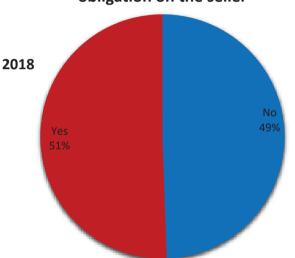
Duration of such obligation





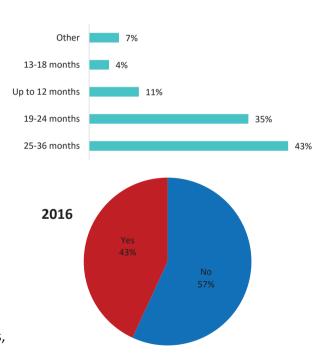
Seller's Non-Solicitation Obligation (cont)

Agreement imposing a non-solicitation obligation on the seller



- Almost half of transactions impose a non-solicitation obligation on the seller.
- The typical duration of the obligation is 25-36 months, which is the same as in the 2016 study, followed by 19-24 months.

Duration of such obligation

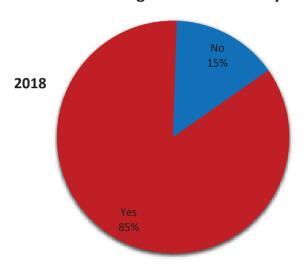


Due Diligence

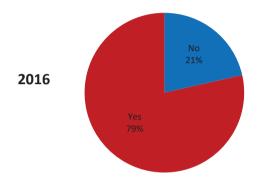


Due Diligence

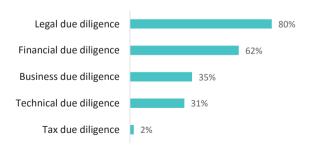
Was the due diligence conducted by the buyer?



- In line with previous studies, buyers conducted due diligence exercises in the vast majority of cases.
- Legal and financial continue to be the most popular types of due diligence performed.



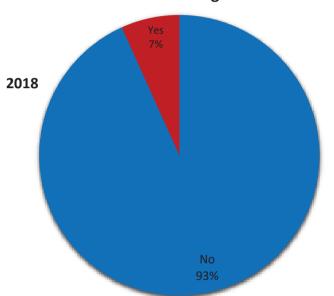
Types of buyer due diligence performed



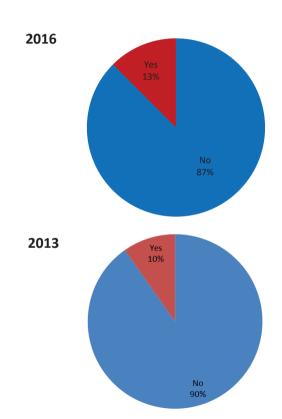








 While buyers routinely carry out a target due diligence, vendor's due diligence is still rare in the Baltic States.



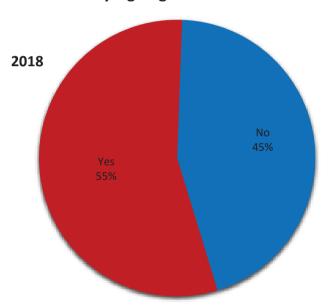
Duration of Transaction and Letters of Intent



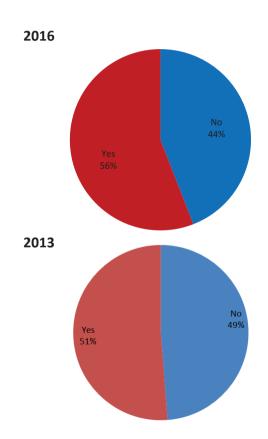


Use of Letters of Intent

Were the initial negotiations formalised by signing a letter of intent?

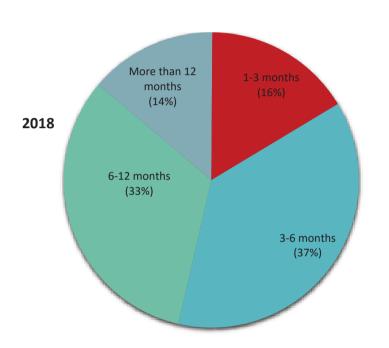


• More than half of transactions in the Baltics were formalised in the negotiations stage by a letter of intent.

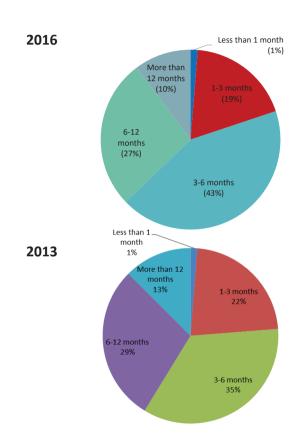


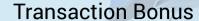


Duration of the Transaction



• As in previous studies, the majority (70%) of transactions take between 3 and 12 months from letter of intent or due diligence to closing.

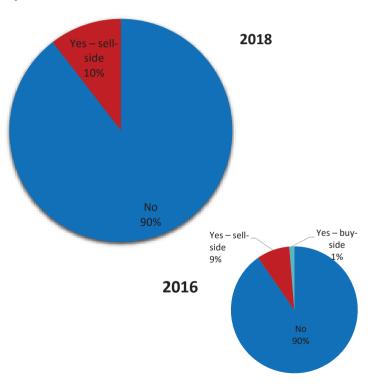






Were target managers granted any transaction bonuses?

- Similarly to 2016, only 10% of transactions reported using transaction bonuses.
- The number may be affected by underreporting, as deals were submitted by counsel to one of the parties, who may not have known of a bonus being paid by the counterparty.



Financing and Conditions Subsequent

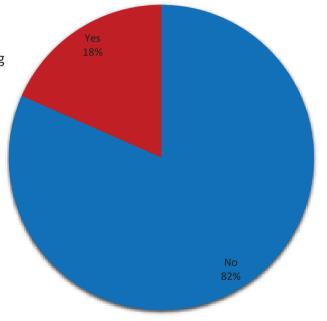






Was the transaction related to acquisition financing or refinancing of the business?

- We introduced a new question, asking whether the transaction involved financing or refinancing of the business.
- 18% of the transactions involved financing.



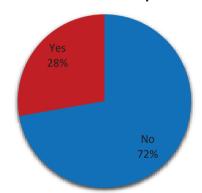


Conditions Subsequent

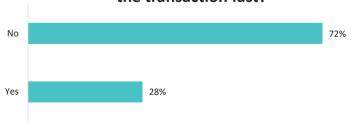
- We introduced a new question, asking whether the transaction contained any conditions subsequent and if the conditions subsequent were used because of a need to close the transaction fast.
- The majority of transactions did not use conditions subsequent.

 Also, the main reason for using conditions subsequent was not the need to close the transaction fast.

Did the transaction contain any conditions subsequent?



Were conditions subsequent used to close the transaction fast?



Final Remarks



- The survey analysed 91 M&A transactions.
- In 2016-2017, the most active economic sectors in the Baltic M&A market were Technology, Energy and Utilities, Services, Retail/Wholesale and Financial Services.
- Compared to previous periods, there are no major changes as to whether foreign or local shareholders are selling businesses in the Baltics.
- Although transaction values vary greatly, the value of most typical Baltic M&A transaction remains in the EUR 1-5 million bracket.
- It can be generalised that Baltic M&A counterparties are becoming more sophisticated in the use of internationally acknowledged transaction tools, such as price adjustments, MAC clauses, liability limitations (warranty limitation periods, overall caps, claim baskets and thresholds). However, R&W insurance is still very seldom used in Baltic M&A transactions.



CONTACTS

FOR MORE INFORMATION, PLEASE CONTACT MEMBERS OF THE WORKING GROUP.

	SORAINEN
ESTONIA	LATVIA LITHUANIA BELARUS





EVERSHEDS SUTHERLAND



ESTONIA

Toomas Prangli toomas.prangli@sorainen.com

Peeter Kutman peeter.kutman@cobalt.legal

Sven Papp sven.papp@ellex.ee

Maivi Ots maivi.ots@eversheds-sutherland.ee

Kadri Kallas kadri.kallas@tgsbaltic.com

I ATVIA

Jānis Bite janis.bite@sorainen.com

Guntars 7ile guntars.zile@cobalt.legal

Raimonds Slaidinš raimonds.slaidins@ellex.lv

Maris Vainovskis Maris.Vainovskis@eversheds-sutherland.lv

Andra Rubene andra.rubene@tgsbaltic.com

LITHUANIA

Sergej Butov sergej.butov@sorainen.com

Juozas Rimas juozas.rimas@cobalt.legal

Paulius Gruodis paulius.gruodis@ellex.lt

Rimtis Puisys Rimtis.Puisys@eversheds-sutherland.lt

Marius Matonis marius.matonis@tgsbaltic.com