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# BALTIC M&A DEAL POINTS STUDY 2016

 SORAINEN  
ESTONIA LATVIA LITHUANIA BELARUS

TARK  
GRUNTE  
SUTKIENE

 GLIMSTEDT

TRINITY  
TALLINN RIGA VILNIUS

C O B A L T

PRIMUS

EVERSHEDS

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# Baltic M&A Deal Points Study 2016

This new 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 & Venture Capital Association, and
- Lithuanian Private Equity and Venture Capital Association

together with contributions from the following Baltic M&A law firms and alliances\*:

- SORAINEN
- TARK GRUNTE SUTKIENE
- COBALT
- GLIMSTEDT
- ELLEX
- EVERSHEDES
- TRINITI
- PRIMUS

\* These firms and alliances contributed in all three Baltic States, except for Primus, who contributed in Estonia and Latvia.



# Transactions Analysed

- The study analyses 168 M&A transactions completed during the period July 2013 – December 2015.
- This 2016 study compares the results to similar 2013 and 2011 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 and a half year period July 2013 – December 2015.
  - 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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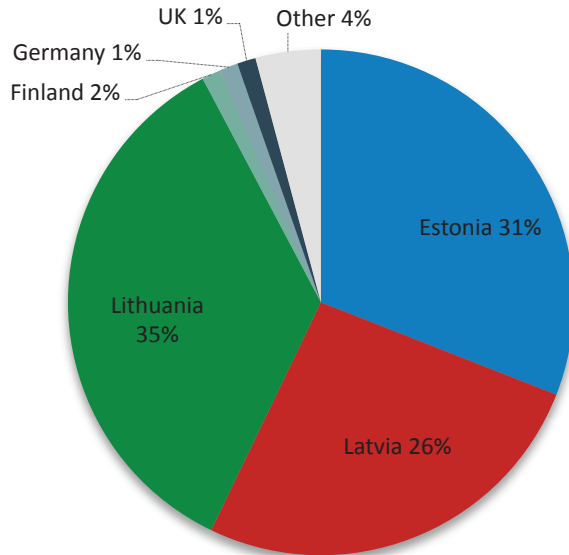
- I. The Parties
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- X. Covenants
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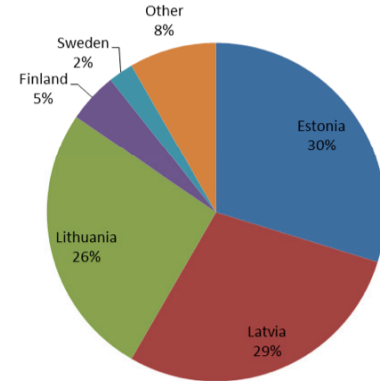
# **The Parties**

General Transaction  
Characteristics

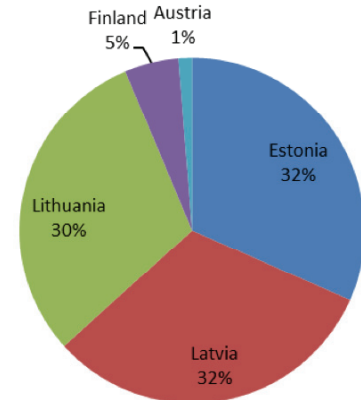
# Country of the Target Head Office



2013

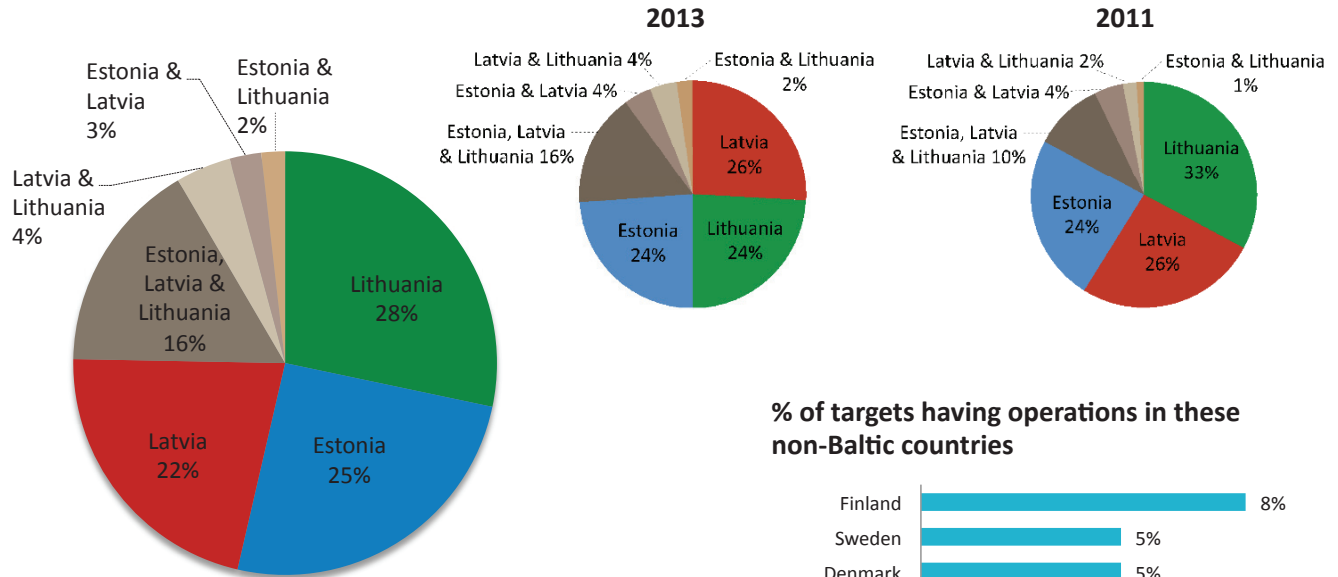


2011

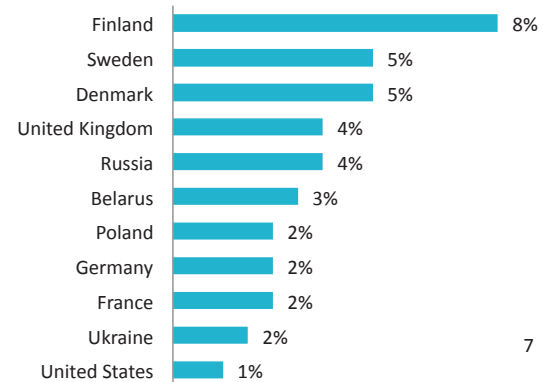


- Targets in the submitted transactions were predominantly Baltic, with Lithuania providing 35% of them.

# Baltic State Where the Target Operates

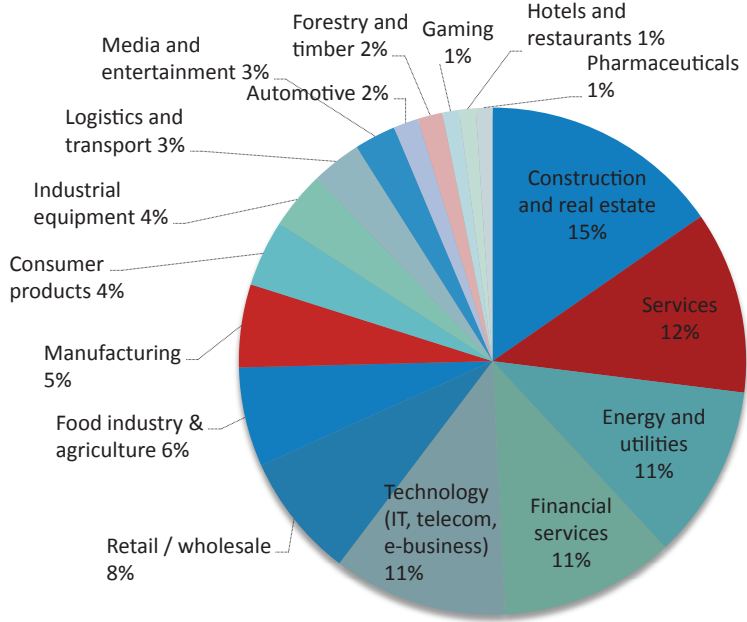


## % of targets having operations in these non-Baltic countries

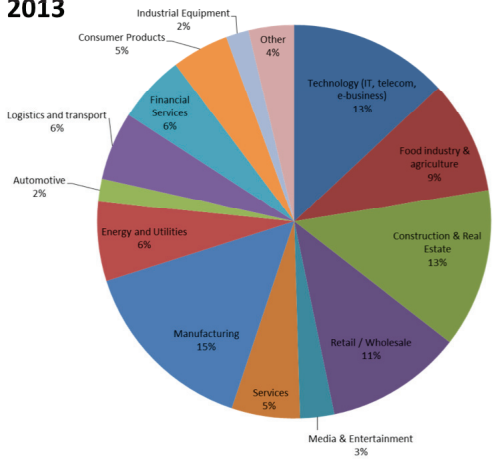


- Similarly to previous periods, the majority (75%) of transactions involved targets operating in only one Baltic State. A quarter of the transactions include targets operating in all or two of the Baltic States.
- Targets' geographical focus outside the Baltics includes Finland, Denmark, Sweden and Russia.

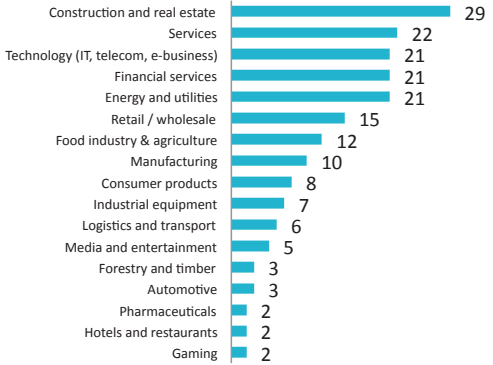
# Target's Main Industries



## 2013



## Targets operating in each industry

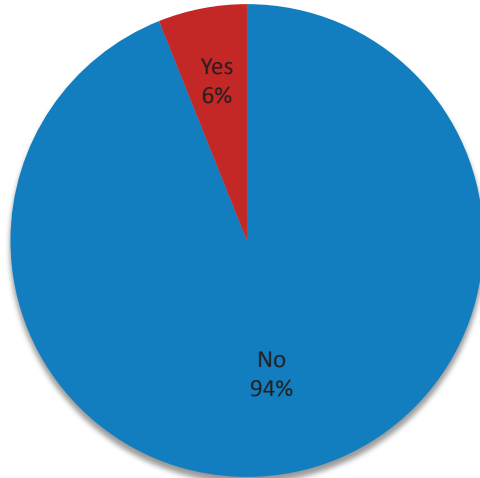


- Increased activity in Construction & Real Estate and decreased activity in Manufacturing as compared to the 2013 study.
- Services, Technology, Financial Services and Energy & Utilities were also active M&A sectors during the period.

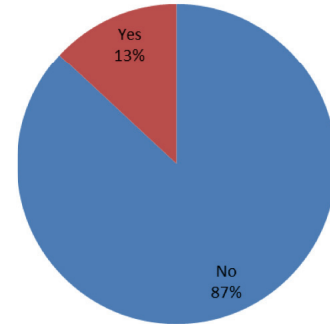


# Other Characteristics of the Target

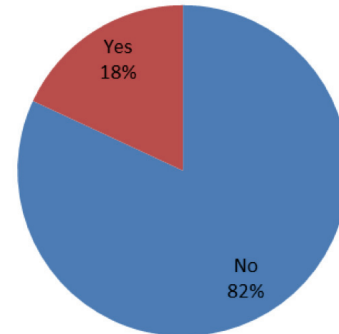
Was the Target distressed?



2013



2011

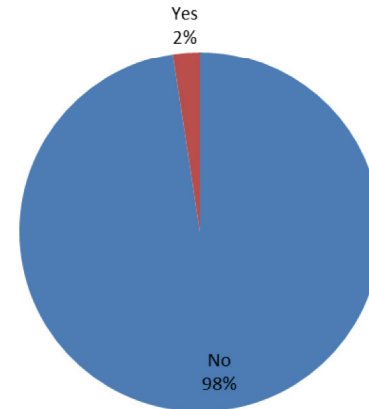
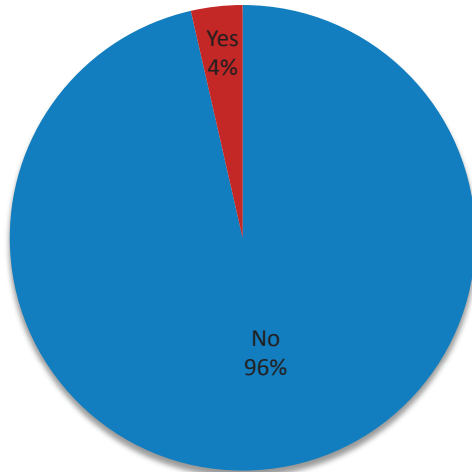


- Fewer distressed targets compared to both the 2011 and 2013 studies, which can be explained by the macroeconomic cycle.

# Other Characteristics of the Target

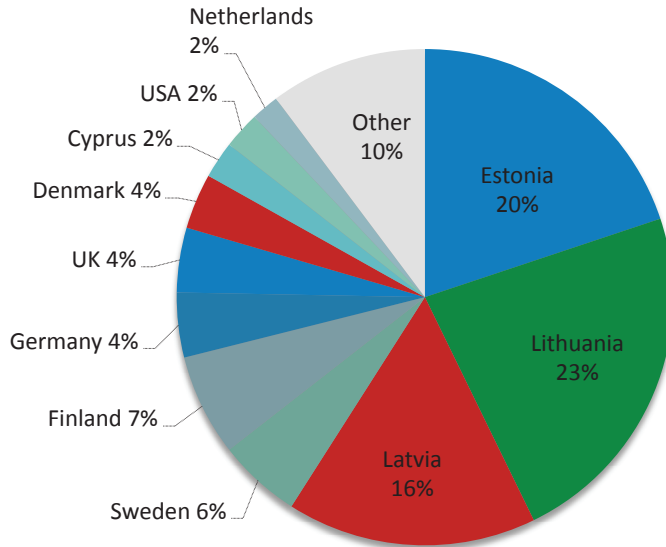
Are the shares of the Target publicly traded?

2013

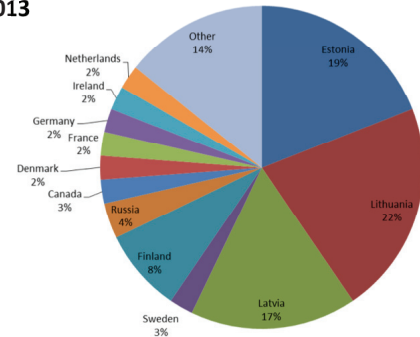


- The proportion of targets listed on the stock exchange doubled to 4% compared to the 2013 study, while there were no listed targets in the 2011 study.
- Listed targets remain in single digits because listed companies are few in the Baltic States as a whole.

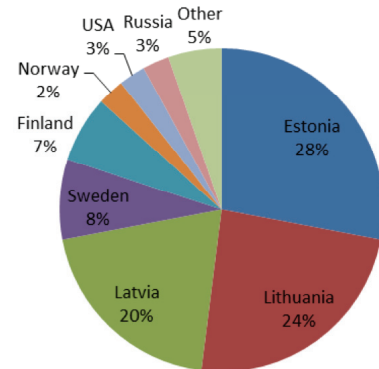
# Country of the Seller



2013



2011



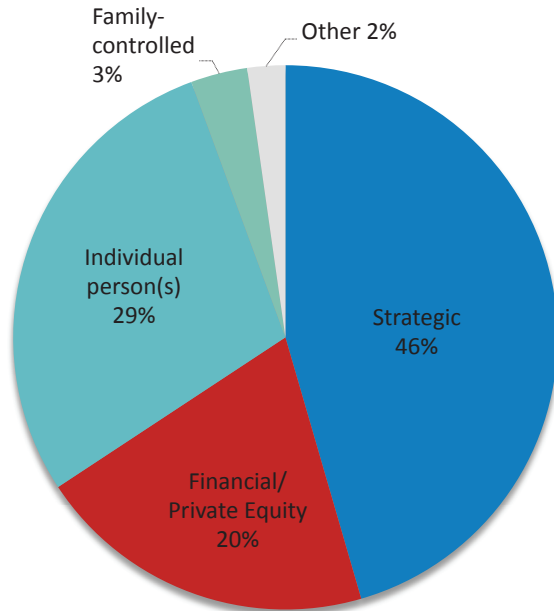
- The majority of the sellers are from the Baltic States, similarly to all previous studies.

# Geography of Sellers and Targets

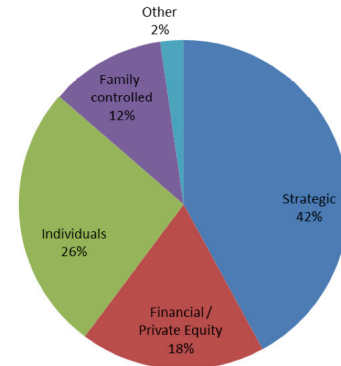
Country of Seller's group head office													
Country of the Target's head office:	Estonia	Lithuania	Latvia	Sweden	Finland	Germany	United Kingdom	Denmark	Cyprus	United States	The Netherlands	Other	Total
Lithuania	2	38		2		3	1	1		3		8	58
Estonia	29		1	2	8	1	2	3	1		2	2	51
Latvia	2		26	4	1	1	2	1	2		1	4	44
Finland					2								2
Germany						2							2
United Kingdom							2						2
Other				1				1	1	1		3	7
<b>Total</b>	<b>33</b>	<b>38</b>	<b>27</b>	<b>9</b>	<b>11</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>17</b>	<b>166</b>

Country of Seller's group head office													
Baltic States where the Target operates	Estonia	Lithuania	Latvia	Sweden	Finland	Germany	United Kingdom	Denmark	Cyprus	United States	The Netherlands	Other	Total
Estonia	24			2	6	2	2	2	1		1	1	41
Estonia & Latvia	2					1						1	4
Estonia, Latvia & Lithuania	2	4	5	1	4	1	2	2		1	1	4	27
Estonia & Lithuania	1						1				1		3
Latvia	2		22	4	1	1	1	1	2			2	36
Latvia & Lithuania		6		1									7
Lithuania	2	28		1		2	1	1	1	2		8	46
<b>Total</b>	<b>33</b>	<b>38</b>	<b>27</b>	<b>9</b>	<b>11</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>16</b>	<b>164</b>

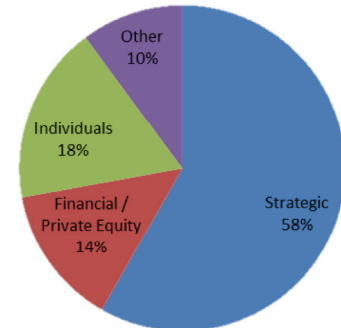
# Nature of the Seller



2013

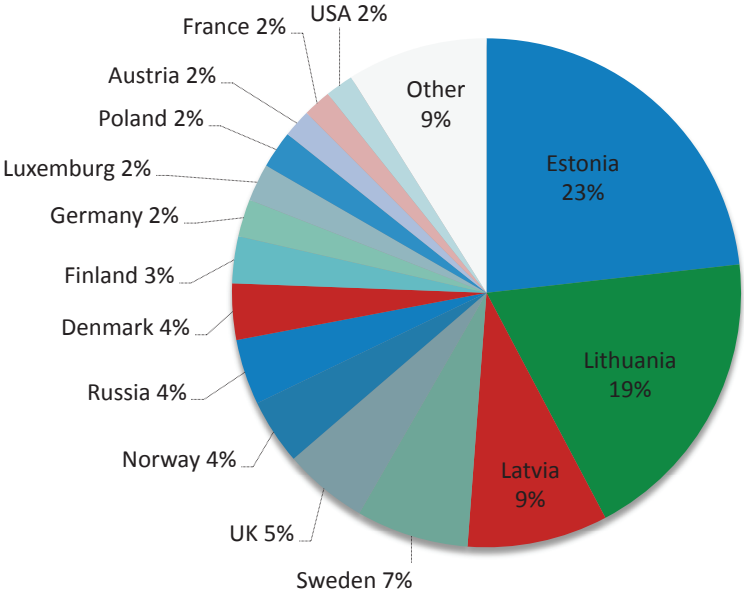


2011

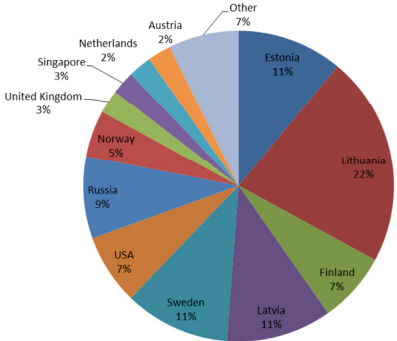


- The study shows a continuous concentration of individual and financial/private equity sellers compared to previous studies.

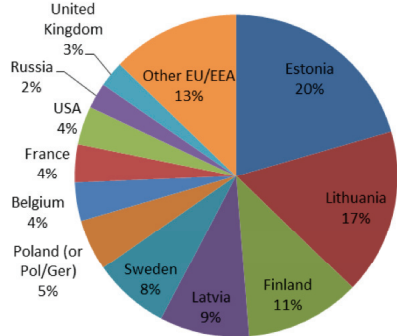
# Country of the Buyer



2013



2011



- The majority of buyers come from the Baltic States and Nordic countries. However, Finnish, Russian and US buyer numbers are notably down, while the proportion of Estonian buyer numbers is up, along with the diversity of buyer origins in general.

# Geography of Buyers and Targets

Country of Buyer's group head office																	
Country of the Target's head office:	Estonia	Lithuania	Latvia	Sweden	United Kingdom	Norway	Russia	Denmark	Finland	Germany	Luxemburg	Poland	Austria	France	United States	Other	Total
Lithuania	6	<b>25</b>	1	6	3	2	1	1	1	1	1	3	2			6	59
Estonia	<b>23</b>	3	1	5	2	1	3	2	3	3	2			3	1		52
Latvia	6	3	<b>13</b>	1	2	4	1	1			1	1	1		2	8	44
Finland								1								1	2
Germany	1						1										2
United Kingdom					1											1	2
Bulgaria									1								1
Cyprus							1										1
Denmark	1																1
Netherlands		1															1
Russia	1																1
Sweden								1									1
Switzerland					1												1
<b>Total</b>	<b>38</b>	<b>32</b>	<b>15</b>	<b>12</b>	<b>9</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>5</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>16</b>	<b>168</b>

- Most Baltic buyers acquired targets in their own countries.
- Swedish and UK buyers preferred Lithuanian targets, whereas Norwegians preferred Latvian targets and Russians preferred Estonian ones.

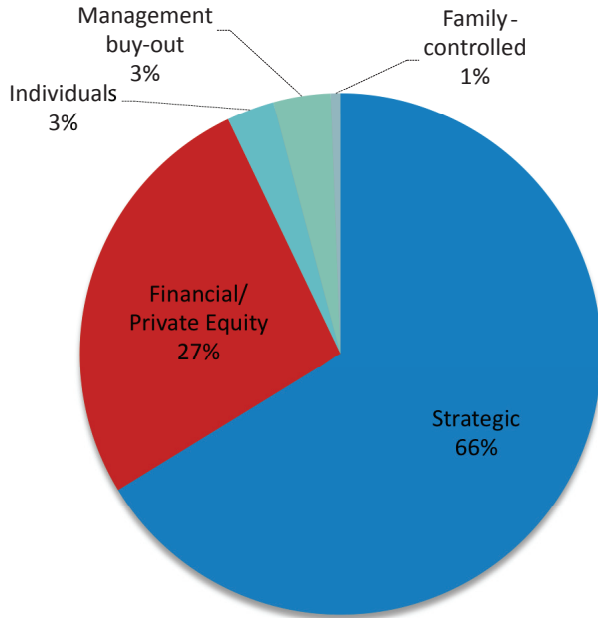
# Geography of Buyers and Sellers

Country of Buyer's group head office	Country of Seller's group head office												Total
	Estonia	Lithuania	Latvia	Sweden	Finland	Germany	United Kingdom	Denmark	Cyprus	United States	The Netherlands	Other	
Estonia	11	2	3	4	5	1	1	5	1		1	4	38
Lithuania	1	18	2	1	1	2		1		2		3	31
Latvia	3		7	1	1	2			1				15
Sweden	3	4		2								2	11
United Kingdom	2	3	2				1					1	9
Norway			3							1		3	7
Russia	2		1		1	1			1			1	7
Denmark	2	1		1	1						1		6
Finland	1	1			1	1						1	5
Germany	2	1					1						4
Luxemburg	1								1	1	1		4
Poland		2					2						4
Austria		2	1										3
France	3												3
United States	1		2										3
Other		4	6		1		2					2	15
<b>Total</b>	<b>32</b>	<b>38</b>	<b>27</b>	<b>9</b>	<b>11</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>17</b>	<b>165</b>

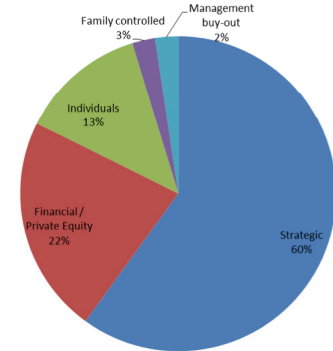
- As regards the origin of both buyers and sellers, foreign investors buying from local Baltic sellers constituted 30% of all transactions (highlighted in green). This was followed by intra-Baltic M&A (both parties Baltic) with 28% of transactions.
- In 37 transactions (22%) foreign sellers sold targets to Baltic buyers (highlighted in orange), almost three fifths of them to Estonian buyers.
- Targets changed hands among foreign parties in 18% of transactions.



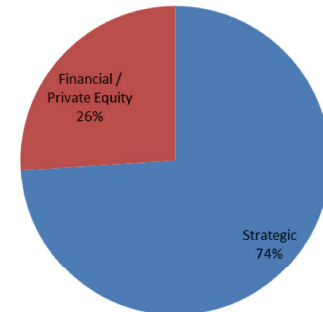
# Nature of the Buyer



2013



2011



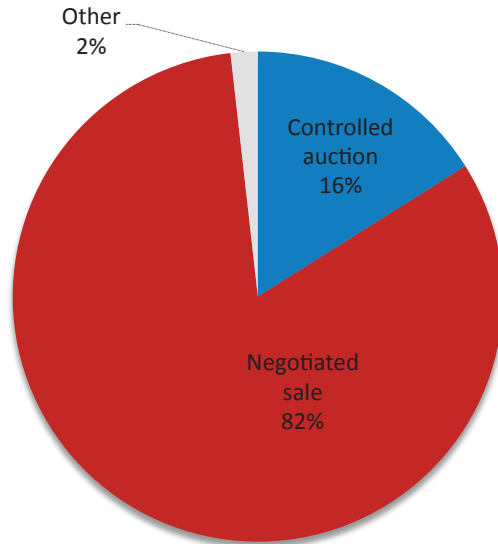
- The proportions of the strategic buyer and financial/private equity buyer have increased somewhat in comparison with the 2013 study, while the proportion of individuals has decreased substantially.



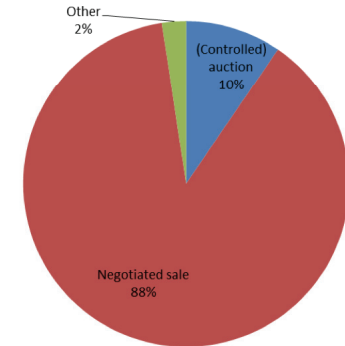
# **Sales Process and Form of Transaction**

General Transaction  
Characteristics

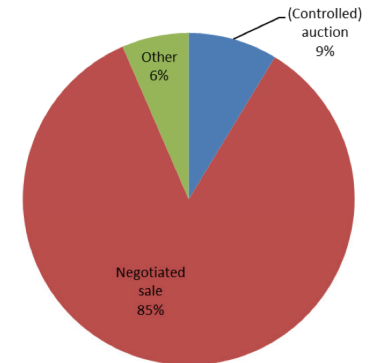
# Nature of the Sales Process



2013

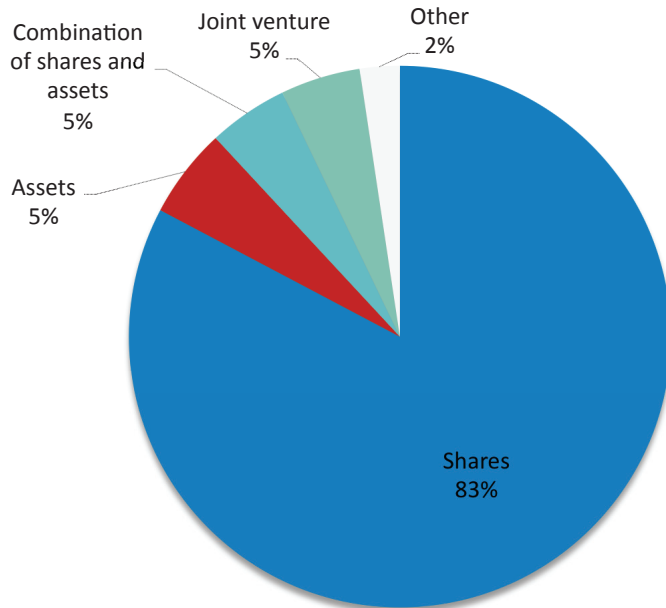


2011

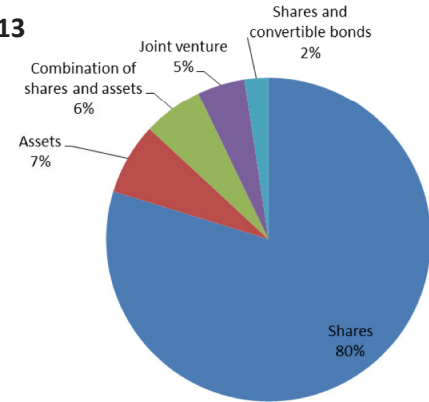


- The percentage of negotiated sales continues to be consistently higher than 80% in all studies.
- While still a small proportion, controlled auctions have increased in popularity.

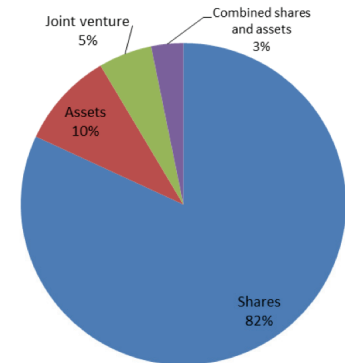
# Form of Transaction



**2013**



**2011**



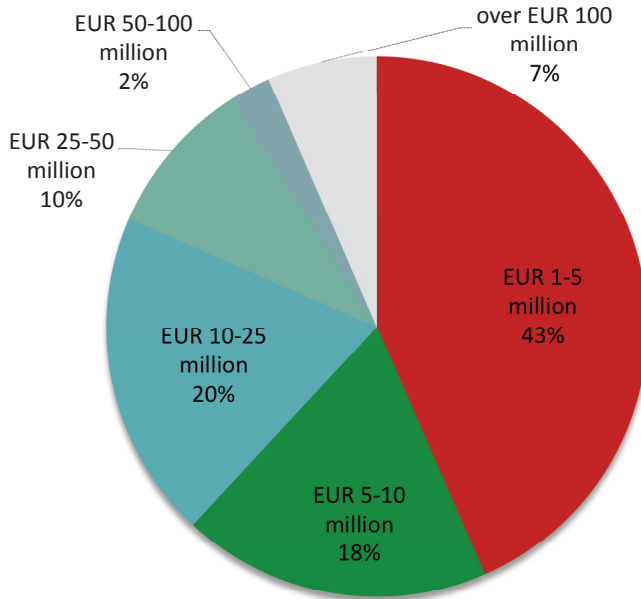
- As in all previous studies, most transactions in the Baltics are share deals.



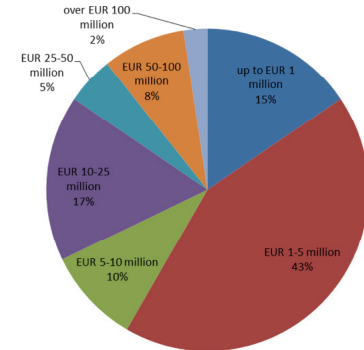
# **Transaction Value and Payment**

General Transaction  
Characteristics

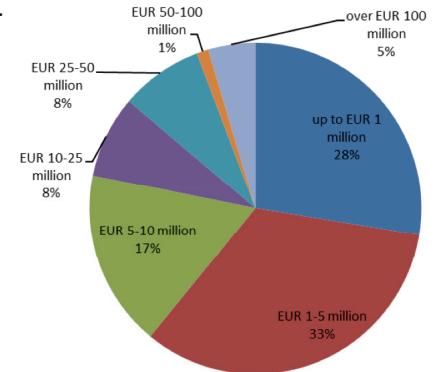
# Transaction Value



2013



2011



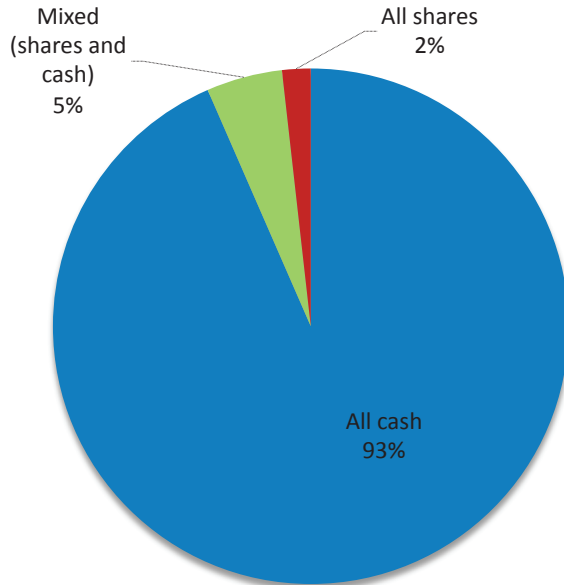
- The value of a typical Baltic M&A deal remains in the EUR 1-5 million bracket.

# Distribution of Transaction Value by Buyer and Sales Process

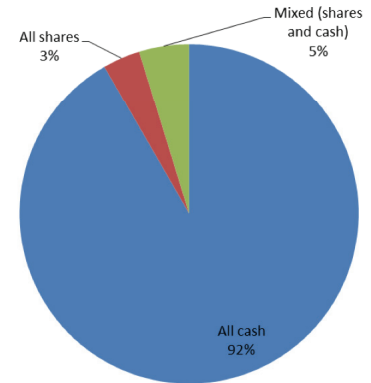
Transaction value	Nature of Buyer						Total
	Strategic	Financial/ Private Equity	Individuals	Management buy-out	Family controlled	No response	
EUR 1-5 million	52	13	5	2	1	1	74
EUR 5-10 million	18	10		4			32
EUR 10-25 million	20	13					33
EUR 25-50 million	12	4					16
EUR 50-100 million	3	1					4
over EUR 100 million	7	4					11
<b>Total</b>	<b>112</b>	<b>45</b>	<b>5</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>170</b>

Transaction value	Sales process			Total
	Negotiated sale	Controlled auction	Other	
EUR 1-5 million	66	6	1	73
EUR 5-10 million	26	4	1	31
EUR 10-25 million	26	7	1	34
EUR 25-50 million	11	4		15
EUR 50-100 million	3	1		4
over EUR 100 million	6	5		11
<b>Total</b>	<b>138</b>	<b>27</b>	<b>3</b>	<b>168</b>

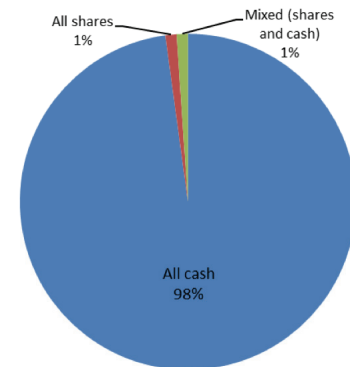
# Form of Consideration



**2013**



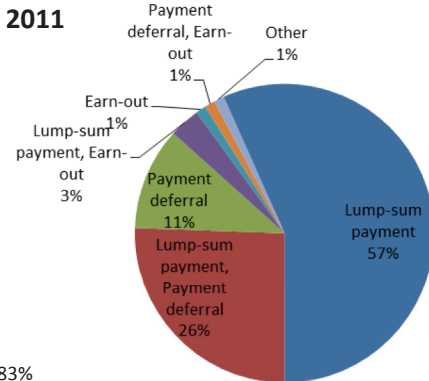
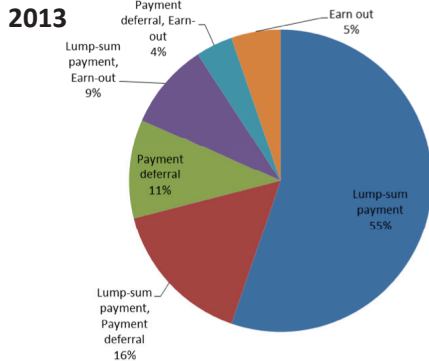
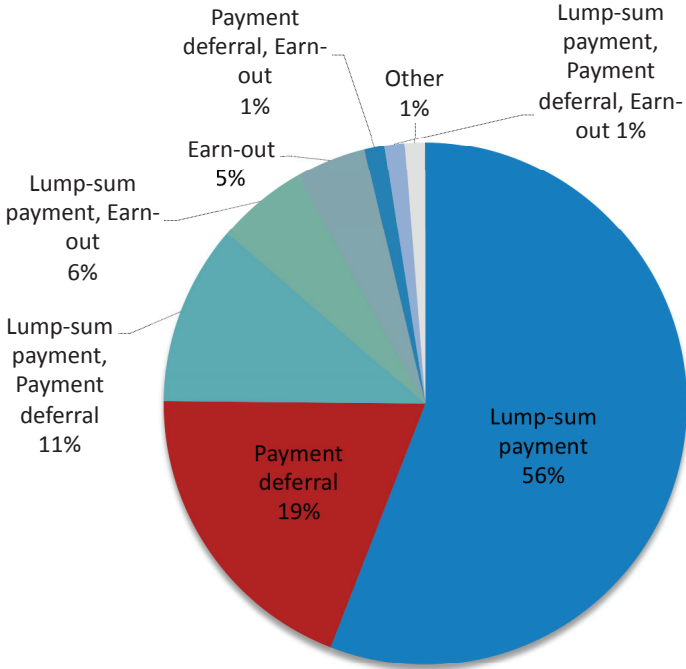
**2011**



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

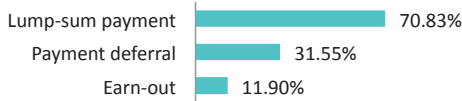


# Payment Terms



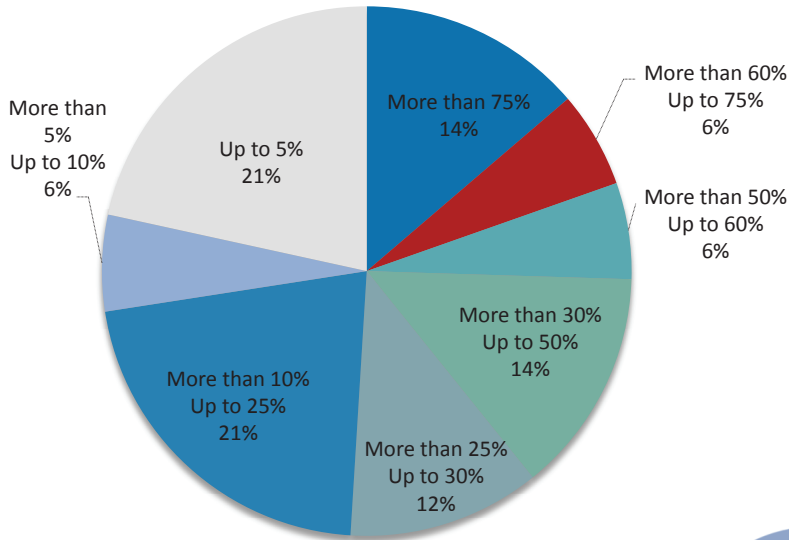
- Lump-sum payment is by far the most widely used form of payment in Baltic transactions.

### Incidence of each payment term

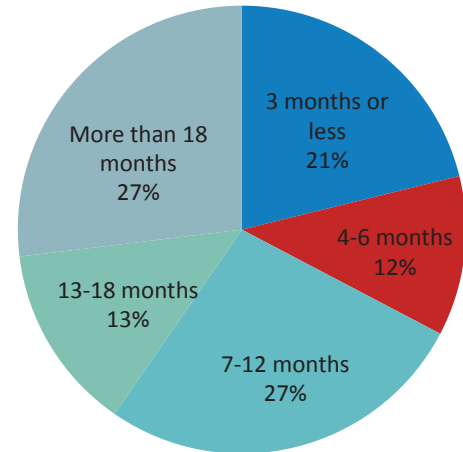


# Payment Terms (cont)

## Percentage of price deferred (if deferred)

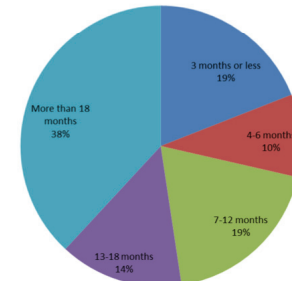
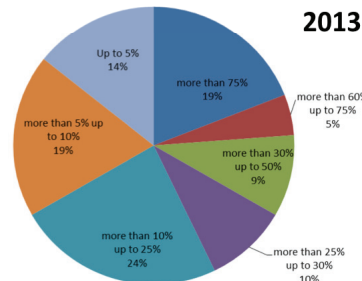


## Length of deferral

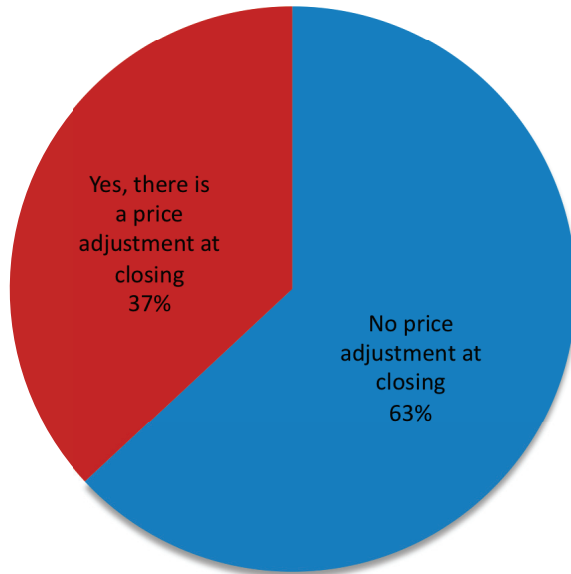


• Although similar to the 2013 numbers, deferred payment proportions have decreased, while deferral periods have shortened.

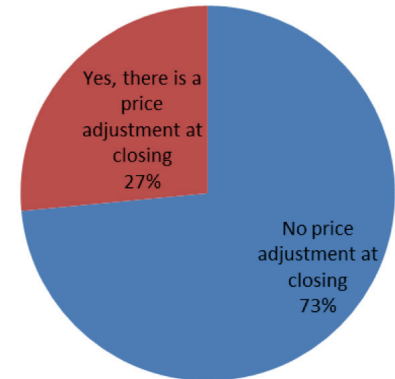
**2013**



# Price Adjustment at Closing

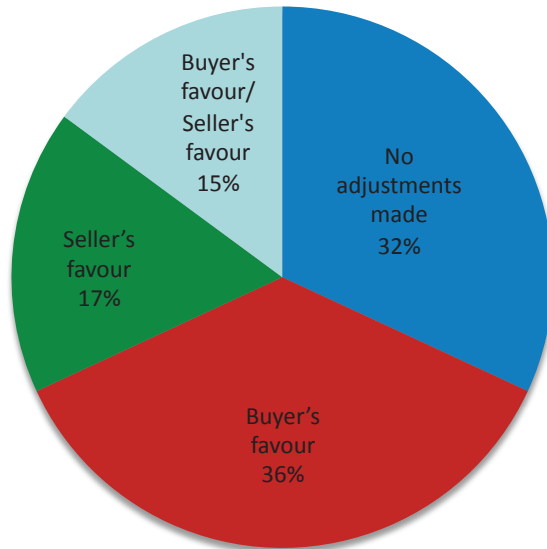


2013



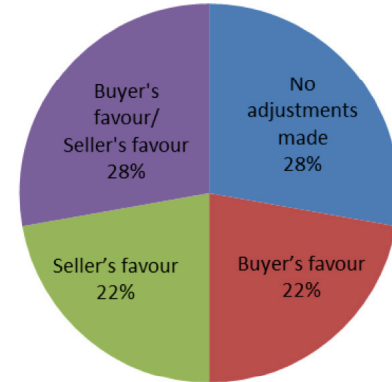
- Despite a significant increase in transactions with price adjustment, their number remains in the minority.

# Price Adjustment at Closing (cont)

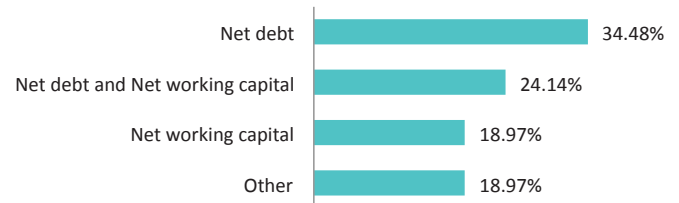


- More adjustments favoured the buyer compared with the 2013 study.
- The most popular adjustment base is net debt.

2013

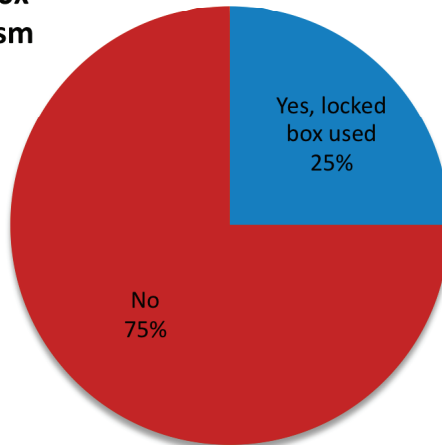


## Adjustment based on:

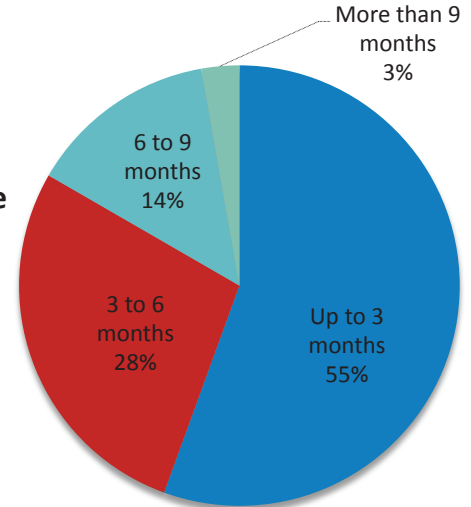


# Locked Box Mechanism

## Locked box mechanism used

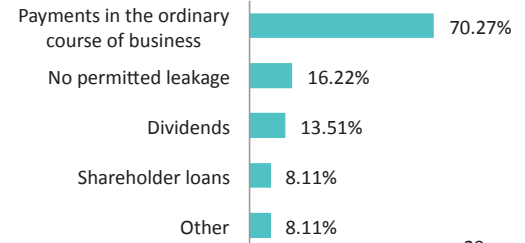


## Time between the locked box balance sheet date and the closing date



- A quarter of transactions used a locked box mechanism, mostly with a locked box term of up to three months until closing.
- 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 quarter of cases did the buyer pay interest from the locked box date until closing.

## Permitted leakage

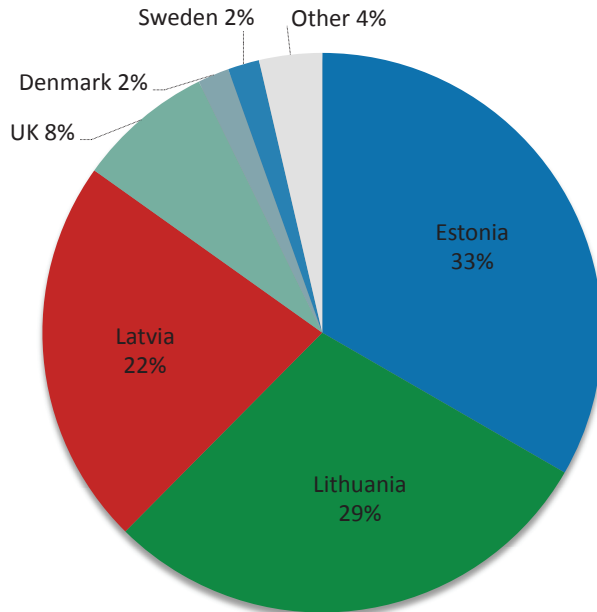




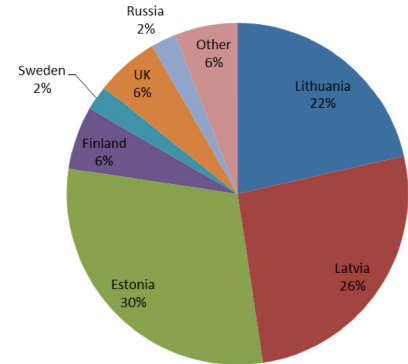
# **Governing Law and Dispute Resolution**

General Transaction  
Characteristics

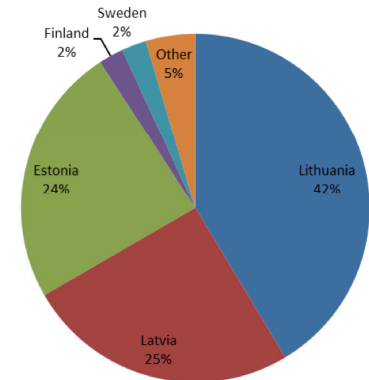
# Transaction Governing Law



2013

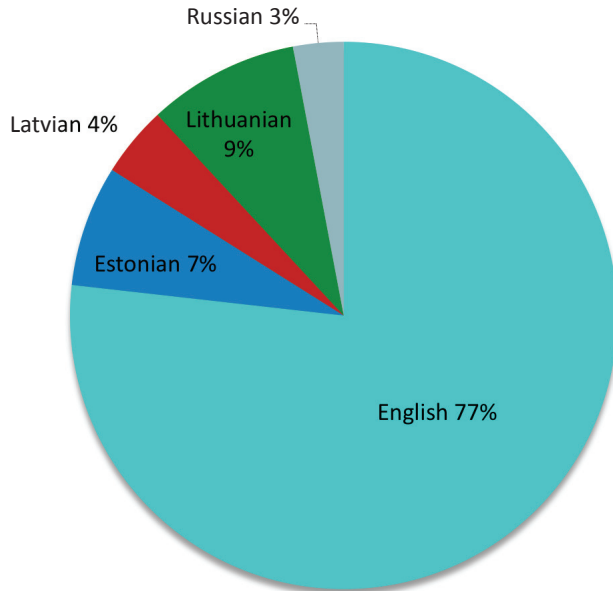


2011



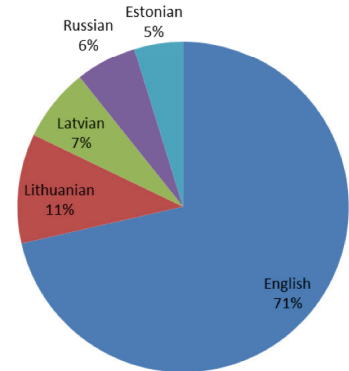
- Most Baltic M&A transactions are governed by the local laws of the Baltic States. However, there is a significant incidence of UK law governance.

# Main Agreement Language

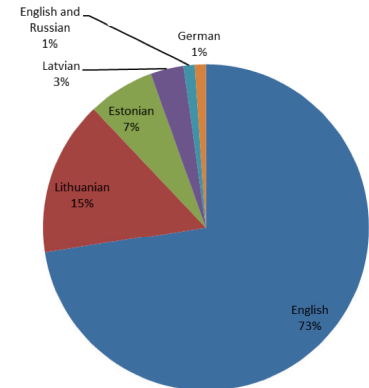


- As in previous studies, English is by far and increasingly the predominant language.
- Russian is the only other foreign language used in the Baltics besides English and local languages.

2013

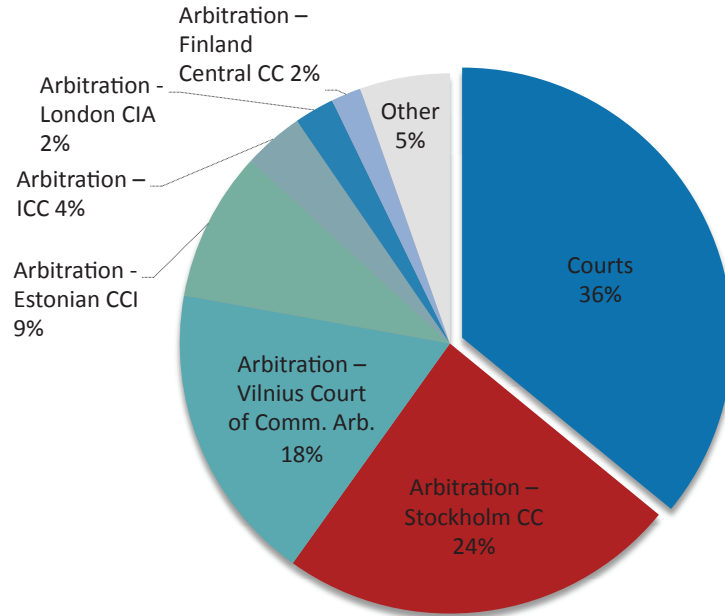


2011

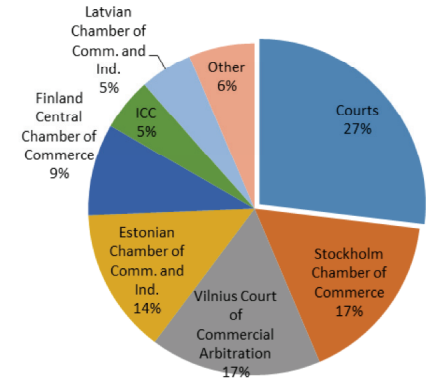




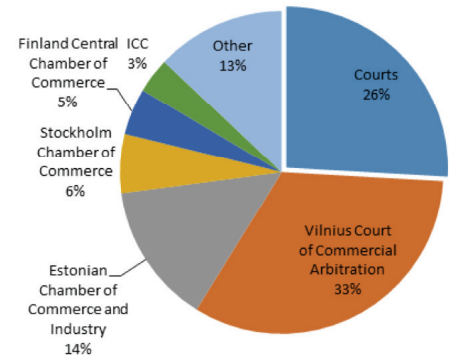
# Dispute Resolution Mechanism



2013



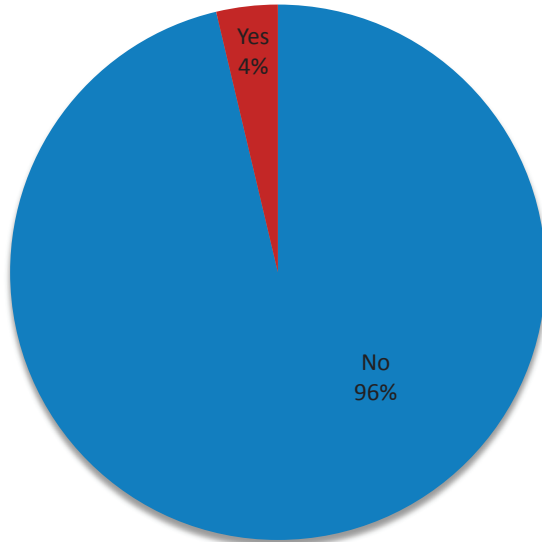
2011



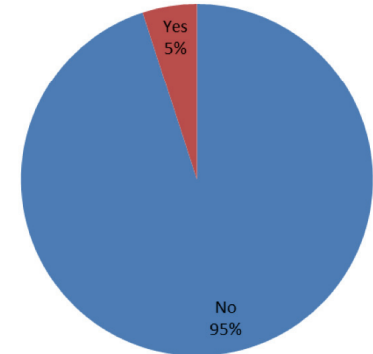
- Arbitration is still the most popular form of dispute resolution, although a significantly higher proportion of transactions use local courts as compared with previous studies.
- Among arbitral venues, the Stockholm Chamber of Commerce tribunal is the most widely used in the period studied.

# Dispute Resolution: Existence of Disputes

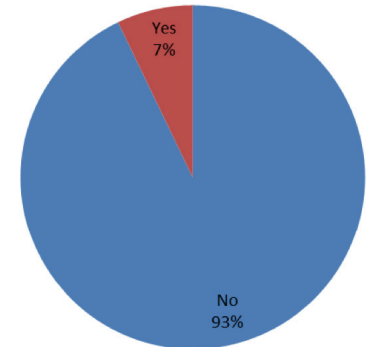
Did the transaction give rise to any disputes?



2013



2011



- The proportion of M&A disputes continues to be very small and keeps getting smaller.

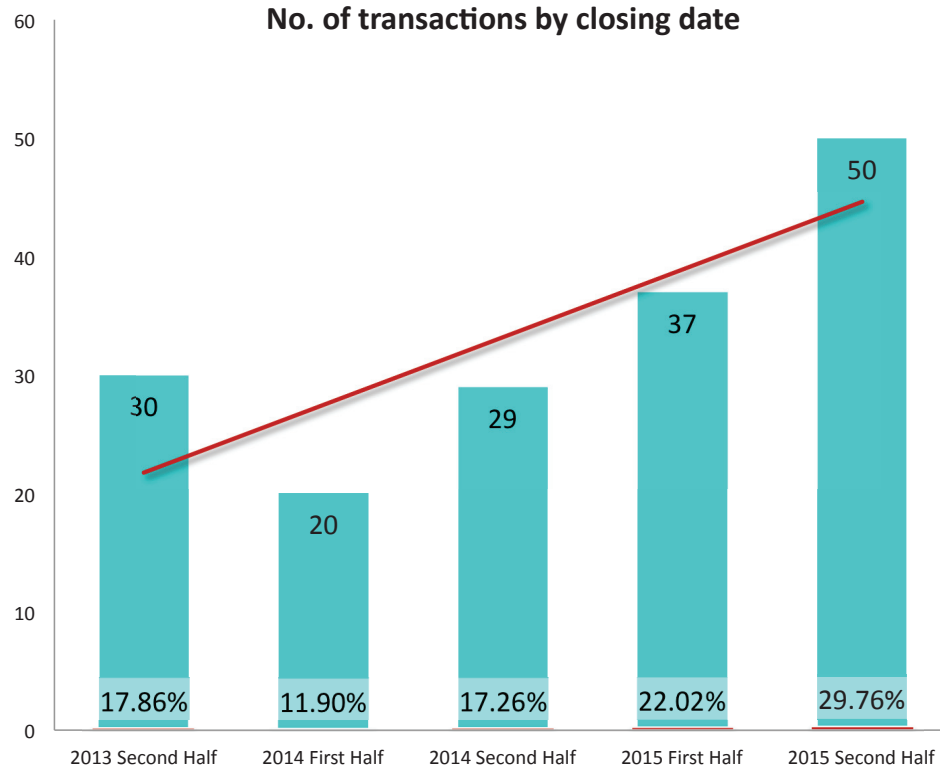


# Timeline

General Transaction  
Characteristics

# 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.



# Time Distribution of Transactions by Deal Value and Geography

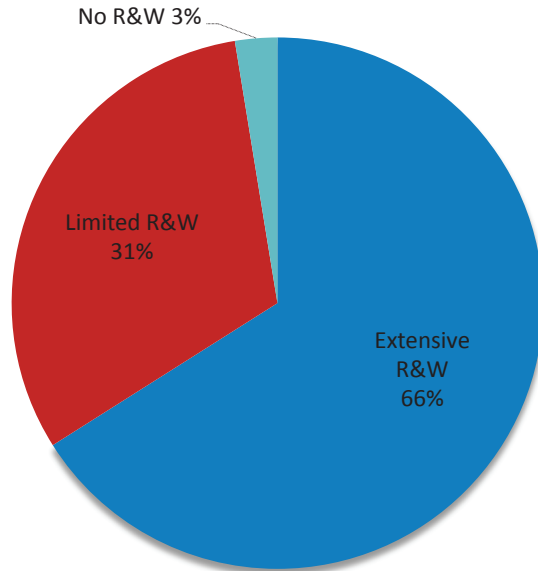
Closing date						
Transaction value	2013 Second Half	2014 First Half	2014 Second Half	2015 First Half	2015 Second Half	Total
EUR 1-5 million	16	8	11	14	24	73
EUR 5-10 million	4	3	6	10	8	31
EUR 10-25 million	5	7	6	3	11	32
EUR 25-50 million	3		4	6	3	16
EUR 50-100 million	1	1		1	1	4
over EUR 100 million	1	1	2	3	3	10
<b>Total</b>	<b>30</b>	<b>20</b>	<b>29</b>	<b>37</b>	<b>50</b>	<b>166</b>

Closing date						
Baltic States where the Target operates	2013 Second Half	2014 First Half	2014 Second Half	2015 First Half	2015 Second Half	Total
Estonia	6	6	9	12	9	42
Estonia, Latvia	1	1		2		4
Estonia, Latvia, Lithuania	2	2	6	10	5	25
Estonia, Lithuania	2				1	3
Latvia	6	6	6	4	14	36
Latvia, Lithuania	1	2	1		3	7
Lithuania	12	3	6	9	17	47
<b>Total</b>	<b>30</b>	<b>20</b>	<b>28</b>	<b>37</b>	<b>49</b>	<b>164</b>

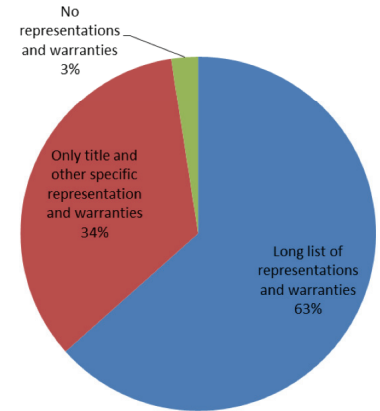


# **Representations and Warranties**

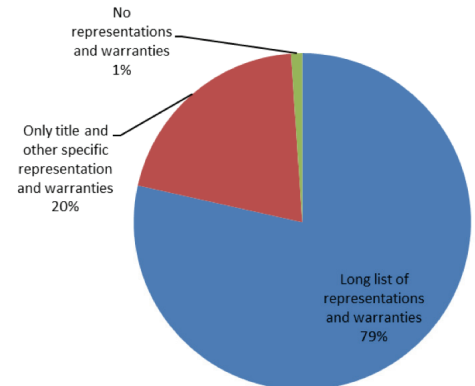
# Seller's Representations and Warranties



2013



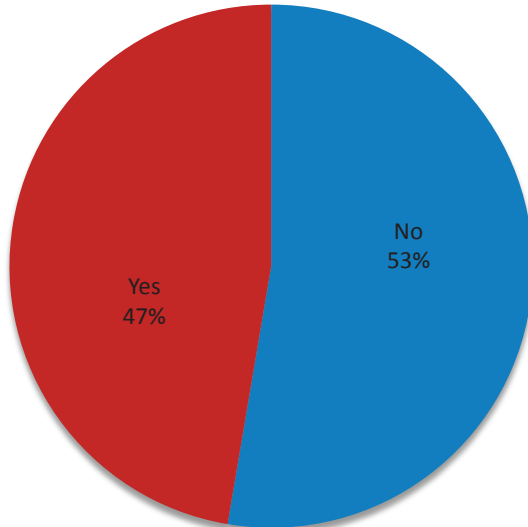
2011



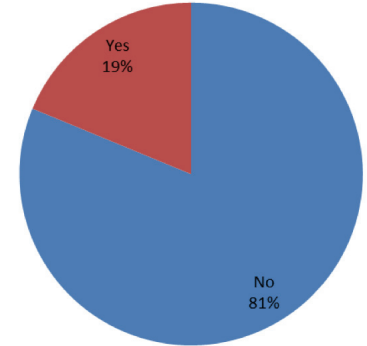
- As in the 2013 study, the proportion of transactions with limited warranties (i.e. only title and specific R&W) remained at around one third, while the other two thirds had a long list of R&W.

# Seller's Representations and Warranties

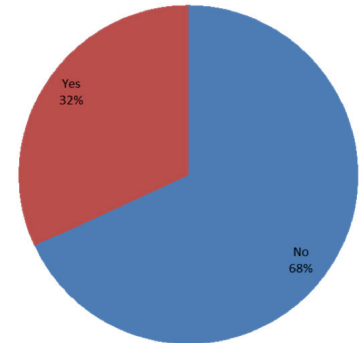
Do the Seller's R&W include a general knowledge qualification?



2013



2011



- Transactions with a general knowledge qualification of the warranties show a substantial increase.



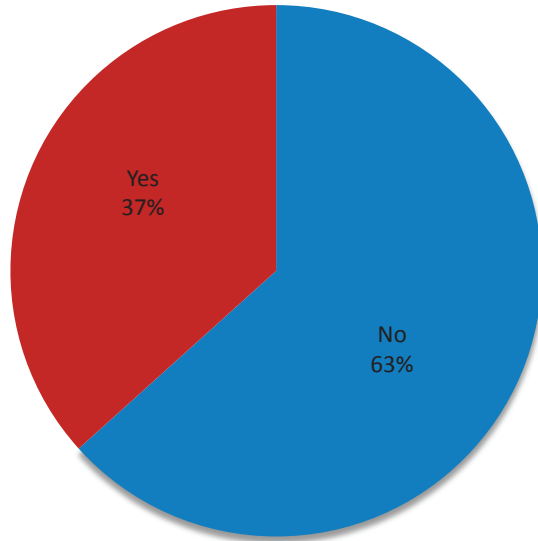
# Seller's R&W Knowledge Qualification

Nature of the seller						
Is a general knowledge qualification applicable to most seller R&W?	Strategic	Individual person(s)	Financial/Private Equity	Family-controlled	Other	Total
Yes	38	20	13	2	3	76
No	34	27	20	4		85
Total	72	47	33	6	3	161

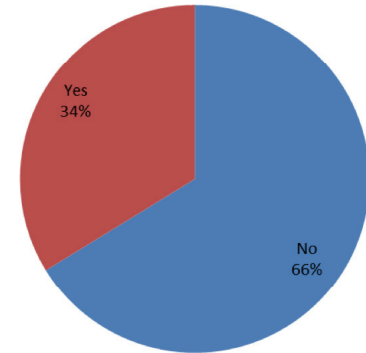
Closing date						
Is a general knowledge qualification applicable to most seller R&W?	2013 Second Half	2014 First Half	2014 Second Half	2015 First Half	2015 Second Half	Total
Yes	12	6	11	20	21	70
No	16	14	14	9	26	79
Total	28	20	25	29	47	149

- While in the 2013 study individual sellers were more interested in qualifying warranties by their knowledge, this time strategic sellers are qualifying their warranties the most.

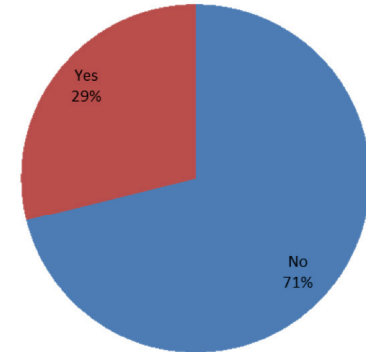
# Usage of Disclosure Letter



2013

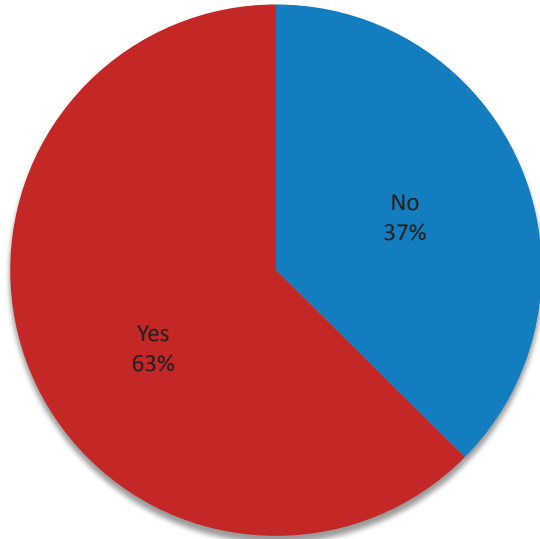


2011

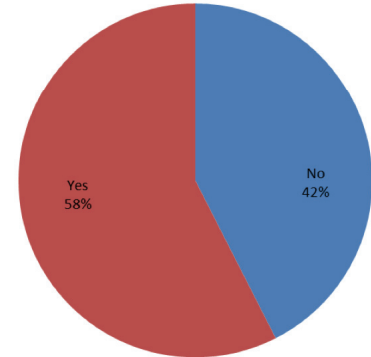


- The proportion of transactions using a disclosure letter continues to increase.

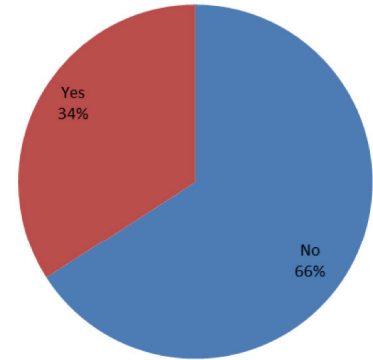
# Due Diligence Disclosures Considered General Qualification to R&W



2013



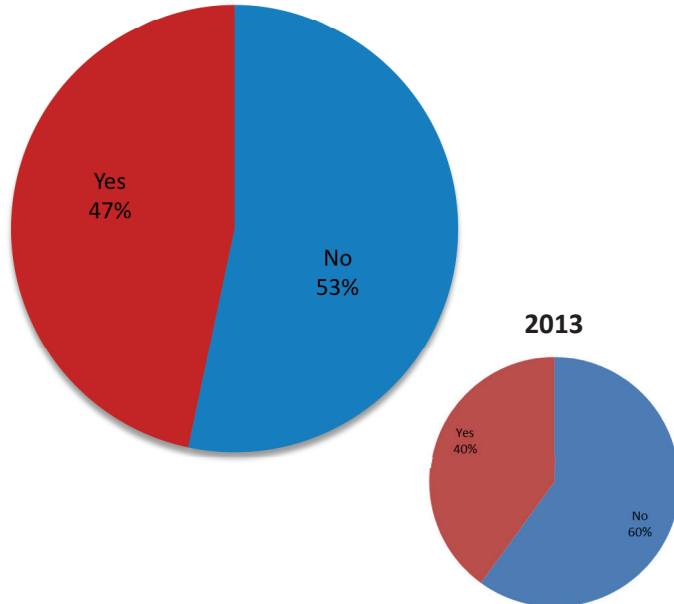
2011



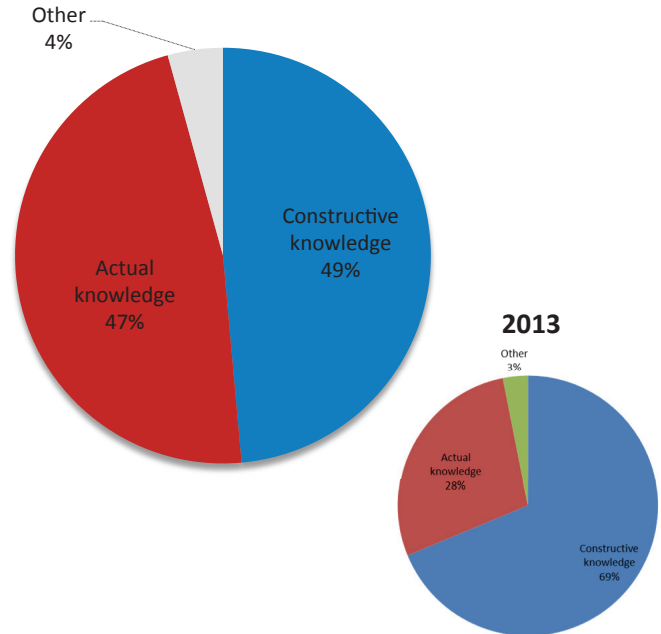
- The trend of viewing due diligence as an alternative to R&W has continued.

# Standard of Knowledge

## Definition of Seller's/Target's knowledge



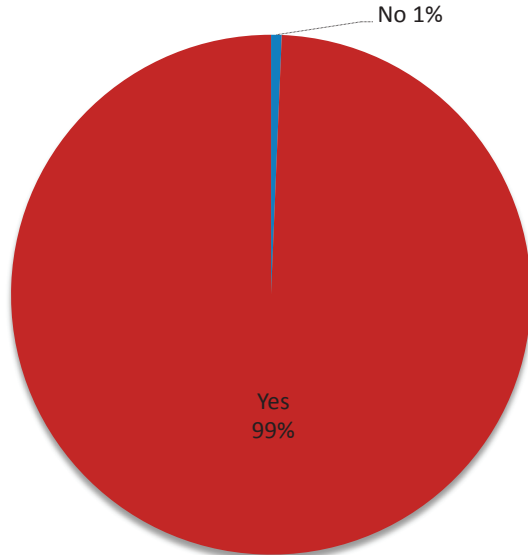
## Standard of knowledge



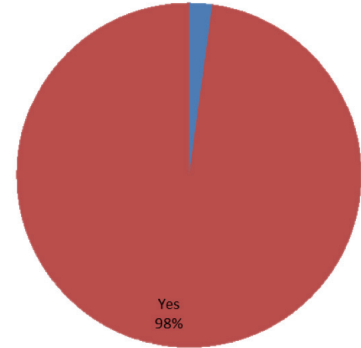
- Seller's/target's knowledge is defined in almost half of transactions.
- In a shift from the 2013 study, the standard of knowledge is almost equally divided between actual and constructive knowledge.

# Title Warranties

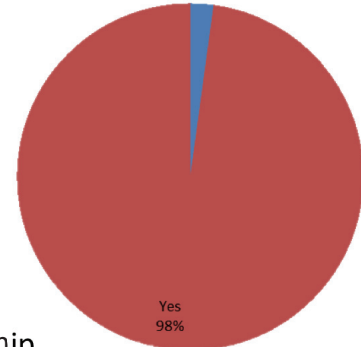
Does the seller give any title warranties?



2013



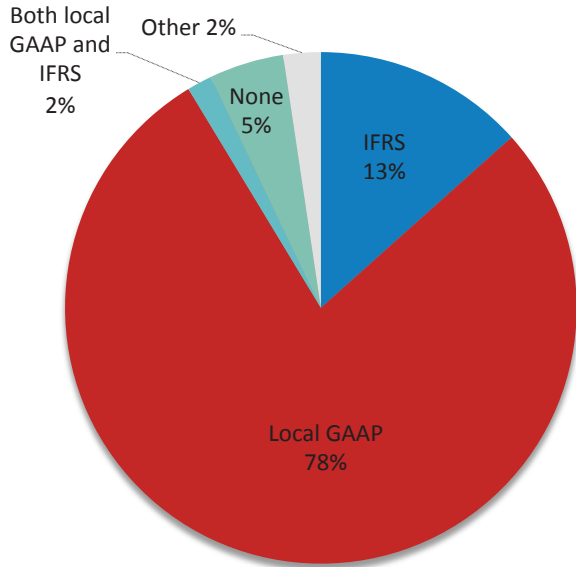
2011



- Title warranties are given by the seller with respect to title, ownership and encumbrance of the sales object in virtually all transactions.

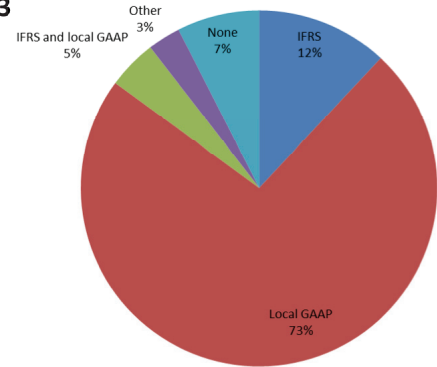
# Warranties: Accounting Standards

## Accounting standards used

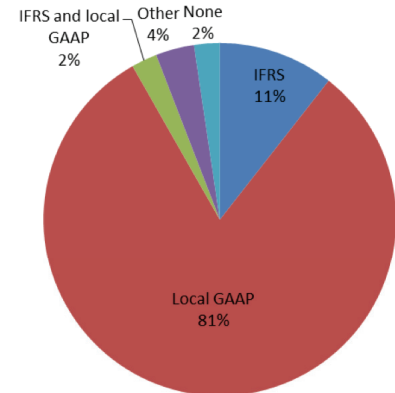


- Local accounting standards are still predominantly used in warranties.

## 2013

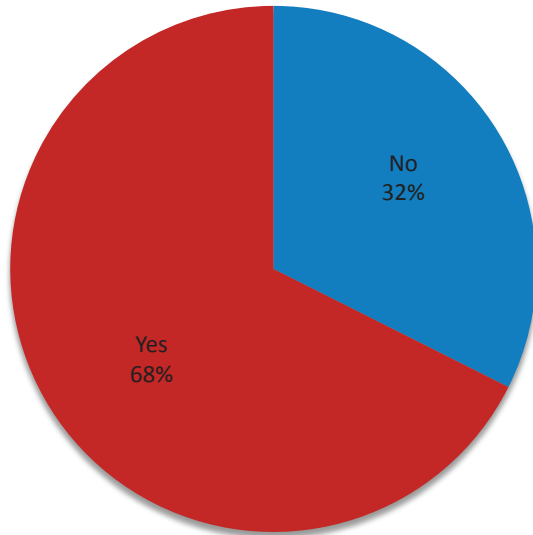


## 2011

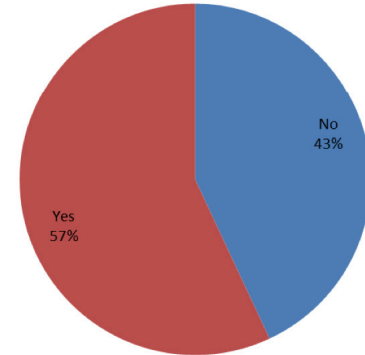


# No Undisclosed Liabilities Warranty

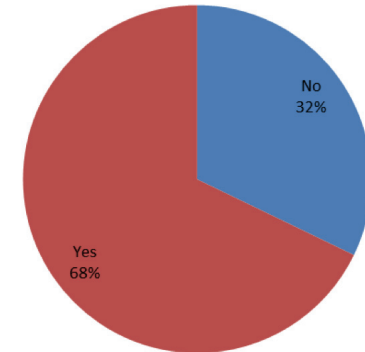
## No undisclosed liabilities warranty by Seller or Target



2013



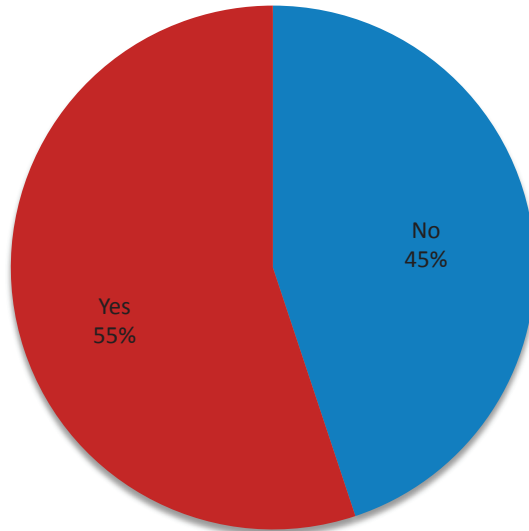
2011



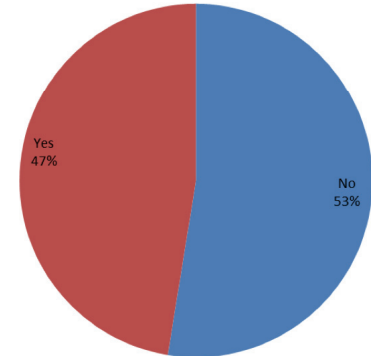
- The *no undisclosed liabilities* warranty is back to the level seen in the 2011 study after a dip in the 2013 study.

# Full Disclosure Warranty

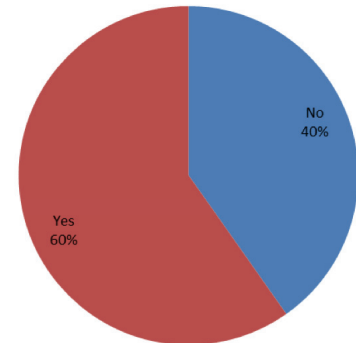
## Full disclosure warranty by Seller or Target



2013



2011

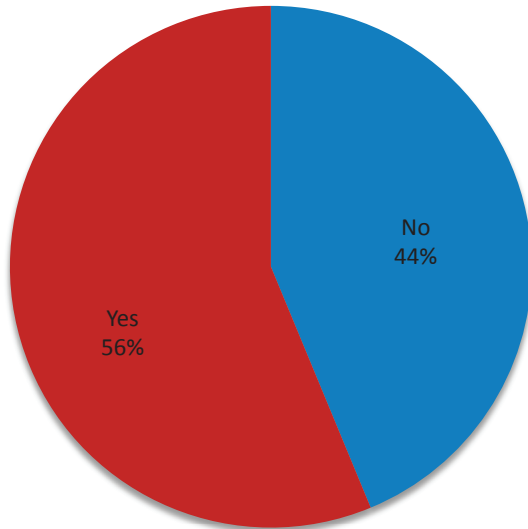


- After dipping to 47% of transactions in the 2013 study, the *full disclosure* warranty is again present in a majority of transactions, although at a somewhat lower level than in the 2011 study.

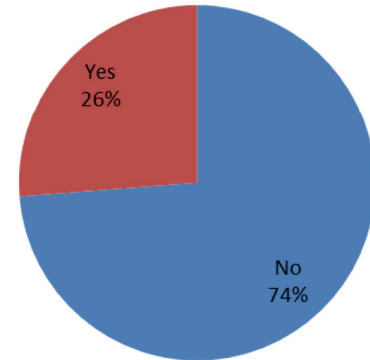


# Full Disclosure Warranty

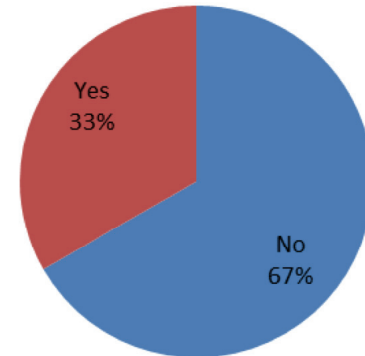
Is it knowledge qualified?



2013



2011

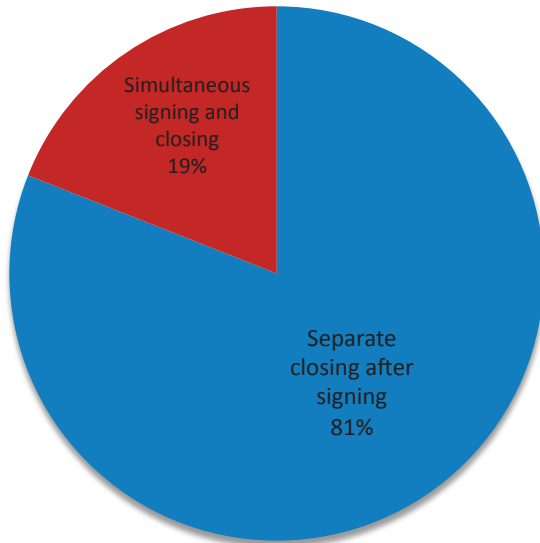


- The trend has reversed and now the majority of *full disclosure* warranties are knowledge qualified.

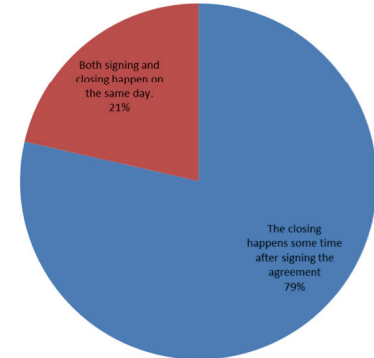


# **Closing and Conditions Precedent**

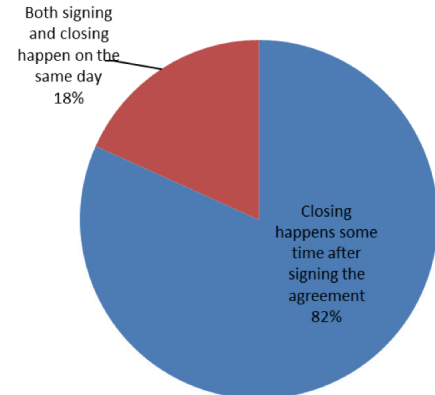
# Timing of Signing and Closing



2013

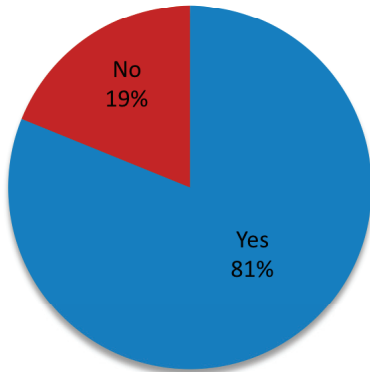


2011

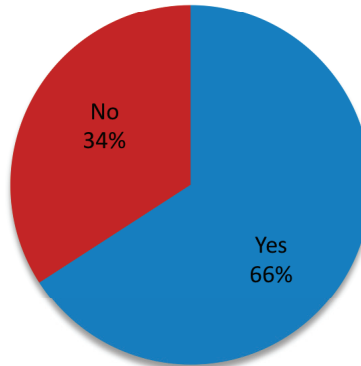


- Closing is deferred in the vast majority of the transactions analysed.

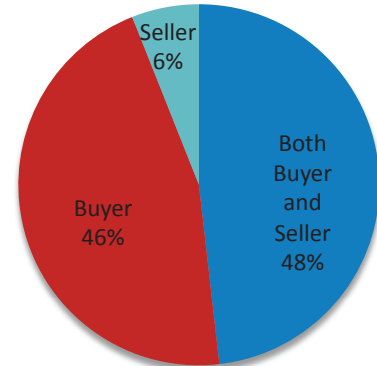
**Does closing or its date depend on fulfilling conditions precedent?**



**Is closing subject to accuracy of representations?**

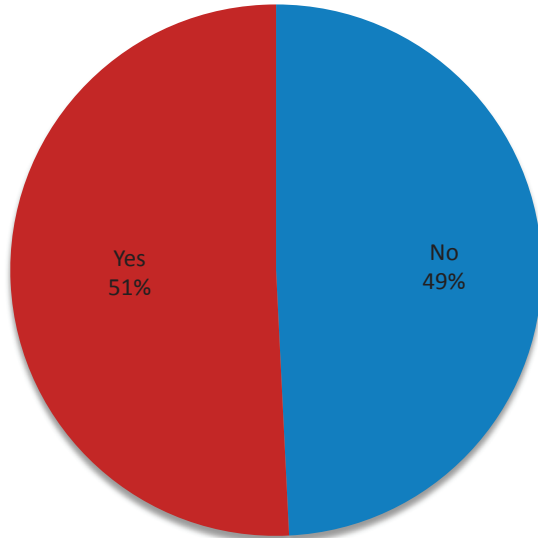


**Who may rely on the accuracy of representations?**

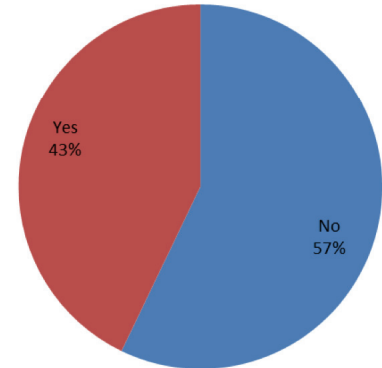


- In the vast majority of transactions closing depends on fulfilment of conditions precedent.
- In most transactions closing is subject to accuracy of representations and both the buyer and seller can rely on the accuracy of representations.

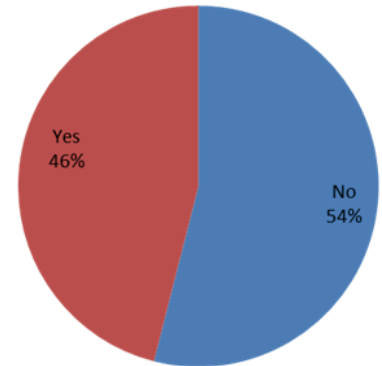
# MAC (“material adverse change”)/ MAE (“material adverse effect”) Clause



2013



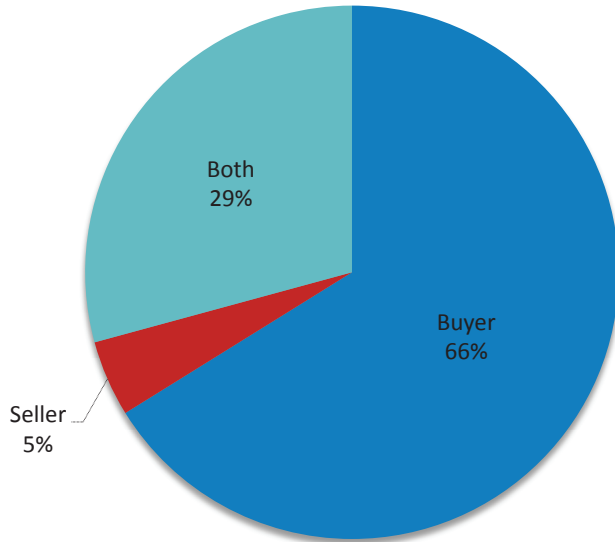
2011



- MAC clauses, which make closing conditional upon nothing material changing for the worse, seem to have bucked the trend of previous studies and become more popular in the transactions analysed.

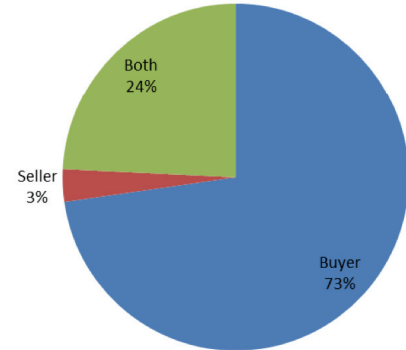
# MAC (“material adverse change”)/ MAE (“material adverse effect”) Clause

Who may invoke the MAC clause?

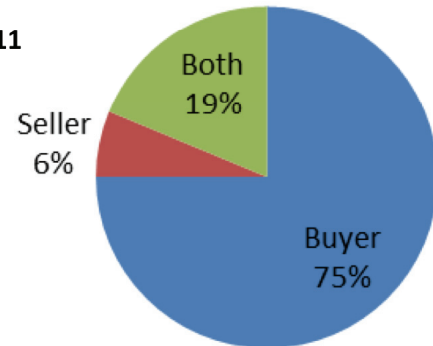


- Although the buyer continues to be the main party who may invoke the MAC/MAE clause, it has become slightly more popular to give both parties the opportunity.

2013

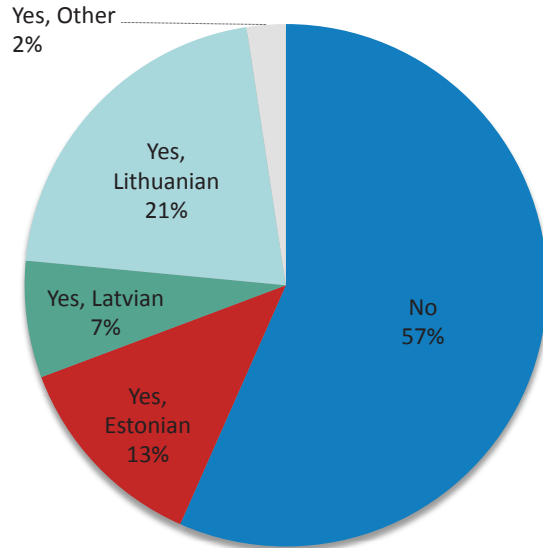


2011



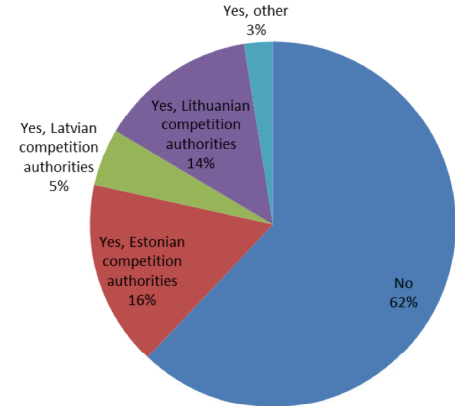
# Competition Clearance

## Did the transaction require approval by the competition authorities?

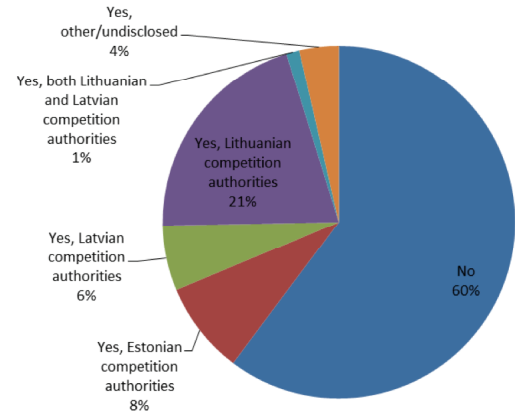


- The proportion of transactions subject to competition authority approval has remained about the same in all studies.

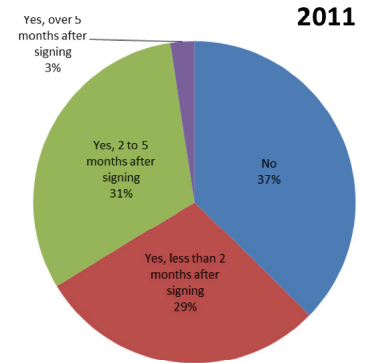
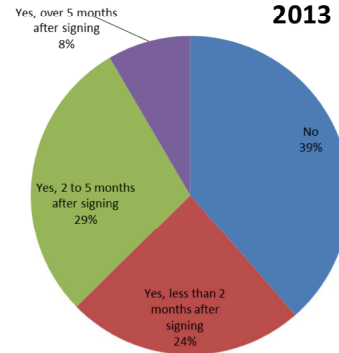
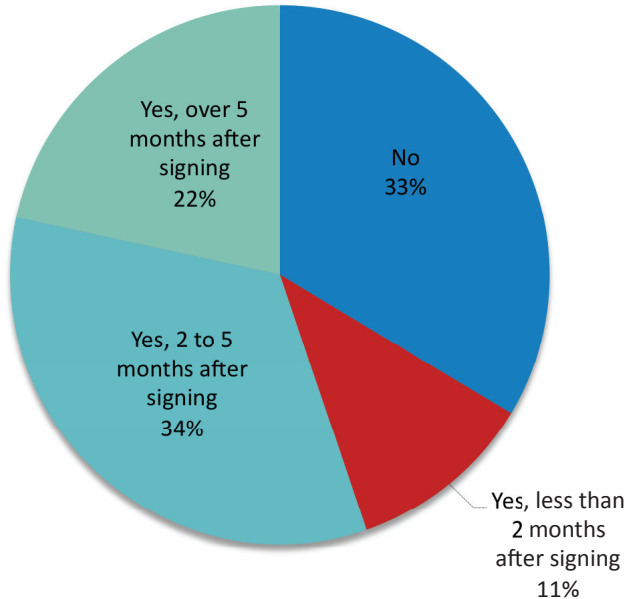
2013



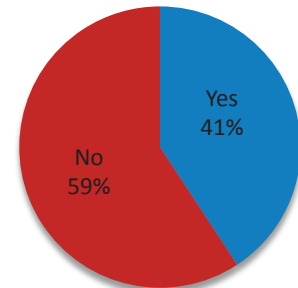
2011



# Long-Stop Date



## 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. However, longer periods have progressively gained popularity.
- 41% of transactions analysed imposed a break fee or exit penalty.

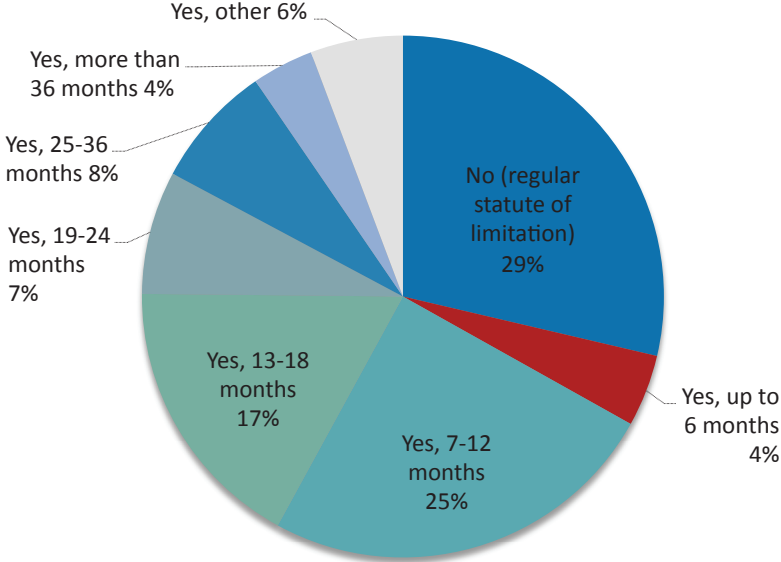




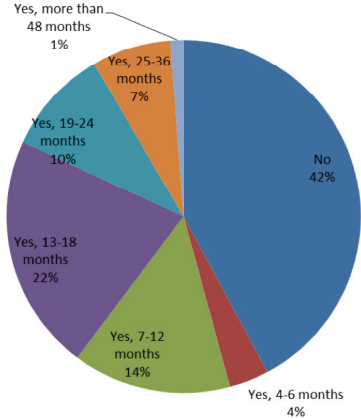
# Liability and Indemnification

# Survival of Warranties

## Establishment of general survival period of warranties



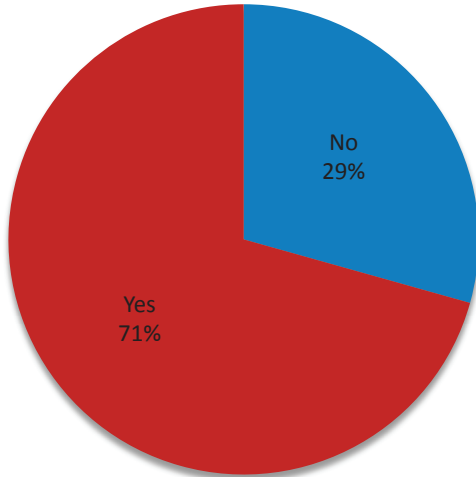
## 2013



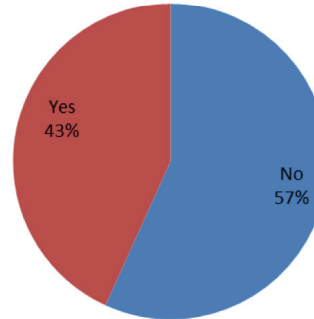
- An increase has occurred in setting explicit general survival periods for R&W compared to the 2013 study.
- In general, R&W survival periods are comparable to those in the 2013 and 2011 studies.

# Survival of Warranties Carve-Outs

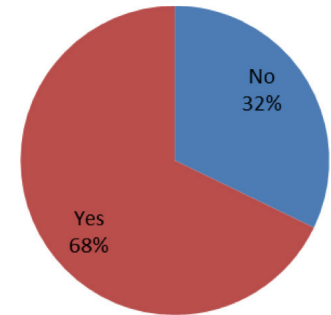
## Carve-outs to time limitations



## 2013

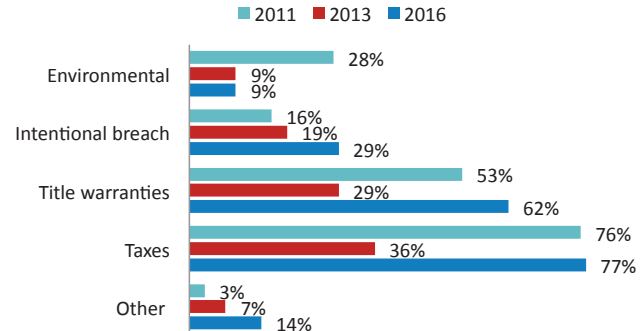


## 2011



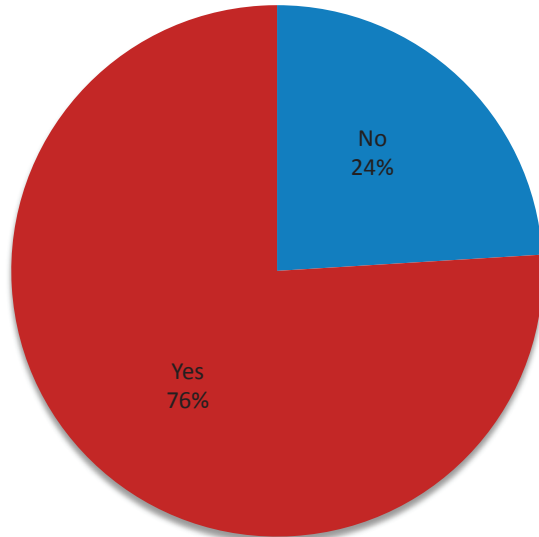
- A significant increase has occurred in the use of carve-outs since the 2013 study, surpassing the level of the 2011 study.
- Taxes and title warranties are the most common carve-outs.

## % of positive responses with specific carve-outs

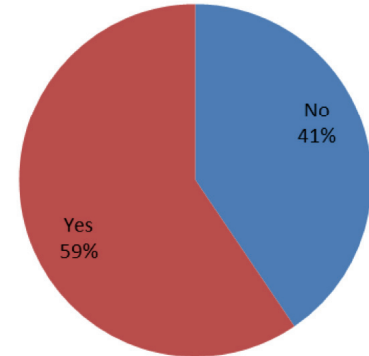


# Baskets and Thresholds

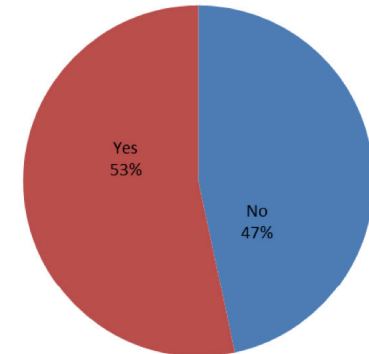
Baskets, *de minimis* or thresholds for asserting claims under the warranties?



2013



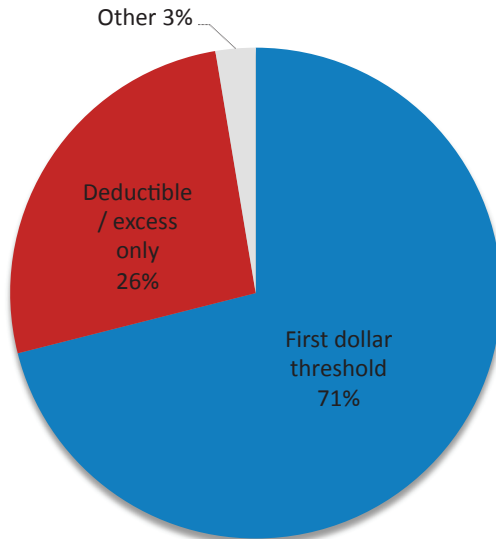
2011



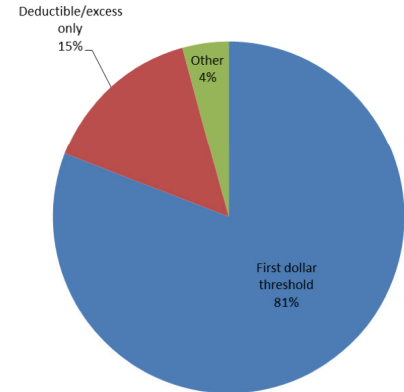
- A significant increase has occurred in the use of baskets/ thresholds compared to the 2013 and 2011 studies.

# Baskets and Thresholds (cont)

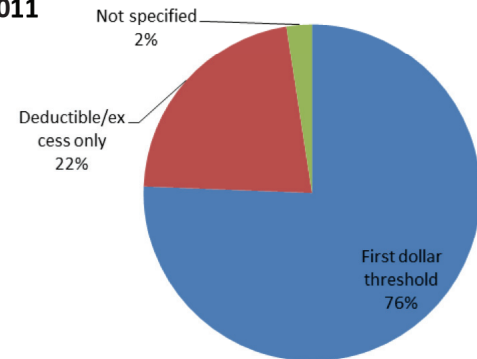
## Basket/threshold *deductible/* *excess only* or *first dollar*



2013



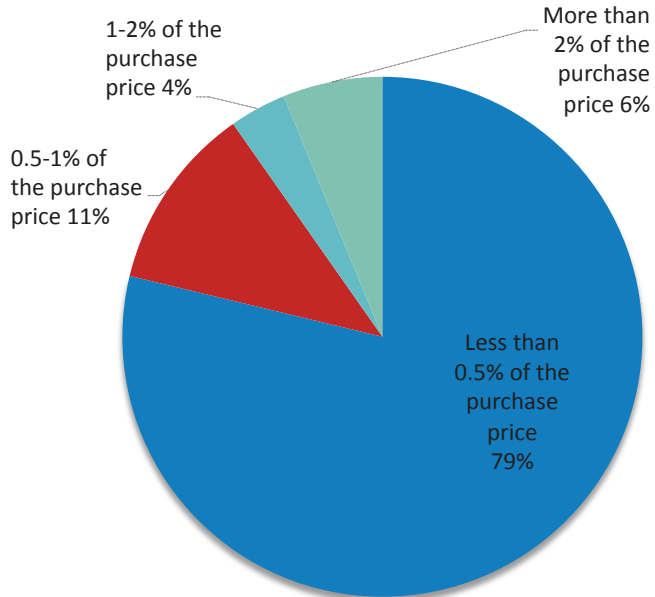
2011



- Typically, baskets/thresholds in the Baltics are *first dollar*, as has been the case in all studies. However, *deductible/excess only* baskets/thresholds have regained popularity and account for a quarter of transactions with baskets/thresholds.

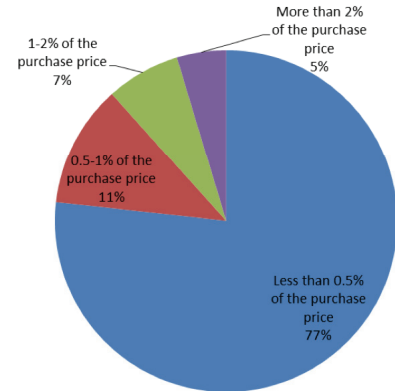
# Baskets and Thresholds (cont)

## Amount of threshold per claim

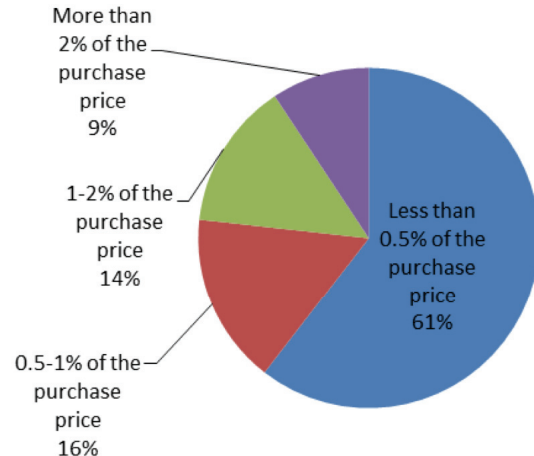


- Typically, the threshold is less than 0.5% of the purchase price per claim, which reinforces the trend of thresholds being progressively lower than seen in the 2013 and 2011 studies.

## 2013

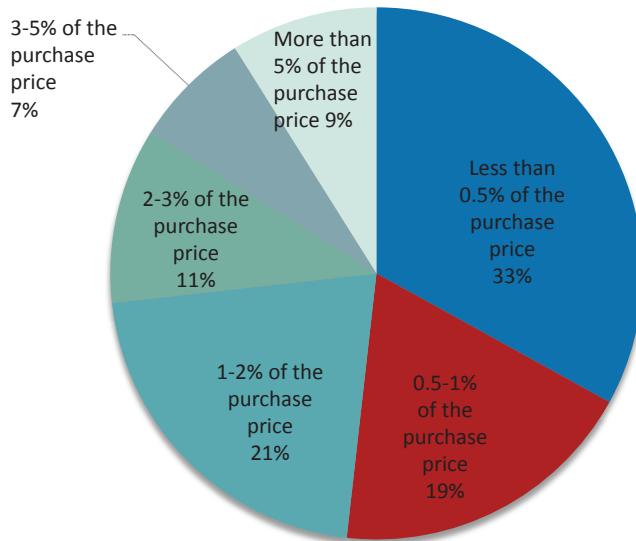


## 2011

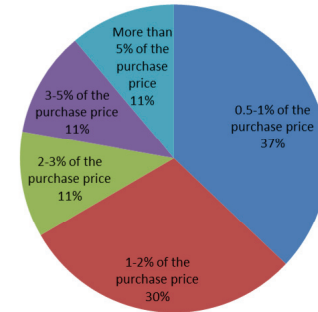


# Baskets and Thresholds (cont)

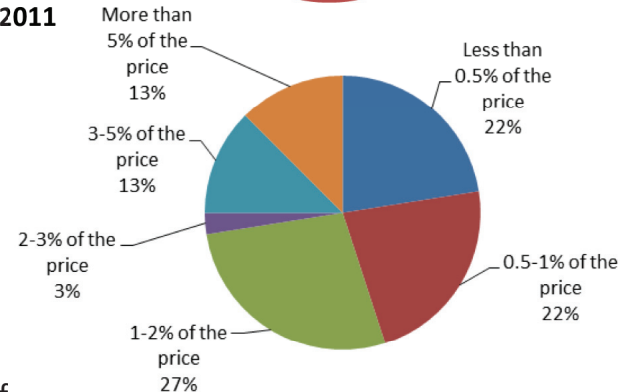
## Amount of basket/threshold for the aggregate of all claims



2013



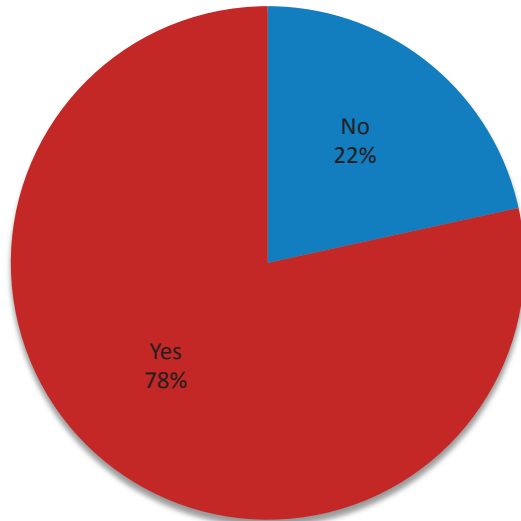
2011



- The amounts of basket/thresholds for the aggregate of all claims have lowered in comparison to 2013.
- The most widely used amount of basket/threshold for the aggregate of all claims is less than 0.5% of the purchase price.

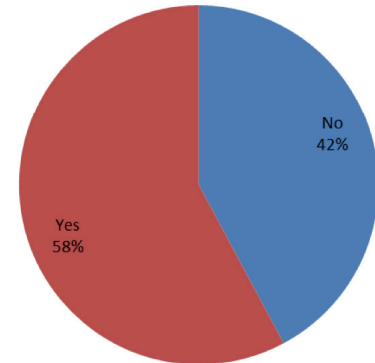
# Overall Cap or Ceiling on Liability

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

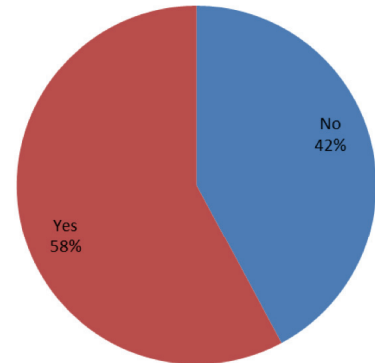


- A significantly larger number of transactions have an overall cap on seller's liability than those in the 2013 and 2011 studies.

2013

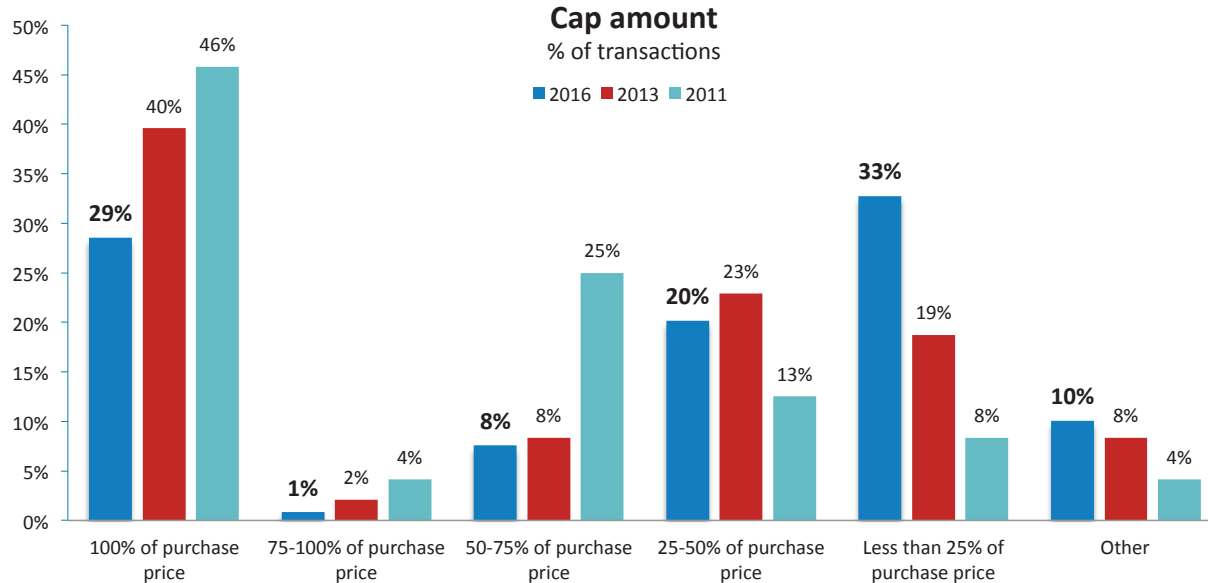


2011





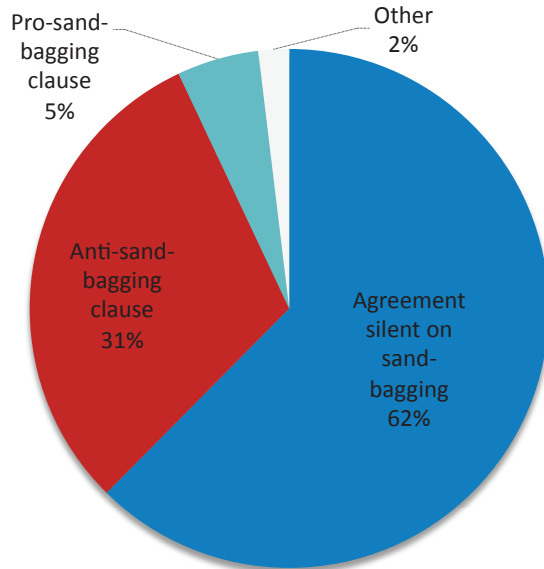
# Amount of Cap on Liability



- Although caps set at 100% of the purchase price continue to be common, the trend across studies has been to reduce these values, a trend reinforced in the current study.
- In the current study, a third of transactions have a cap of less than 25% of the purchase price, and a further fifth of less than 50%.

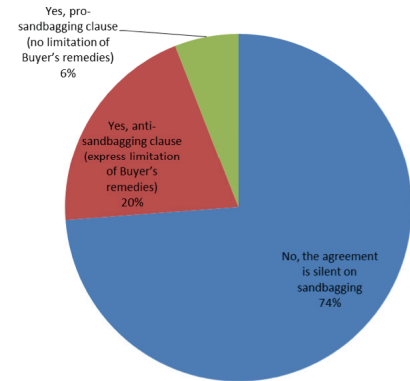
# Sandbagging

## Provisions limiting Buyer's remedies if Buyer has pre-existing knowledge of breach of warranties

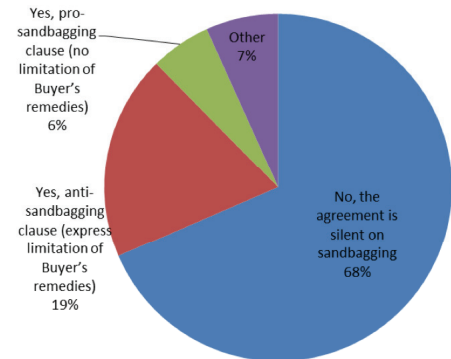


- As in previous studies, the majority of Baltic transactions do not contain *sandbagging* clauses.
- However, the trend for explicitly dealing with *sandbagging* is rising, with almost a third of transactions including an *anti-sandbagging clause*, up from a fifth in the 2013 study.

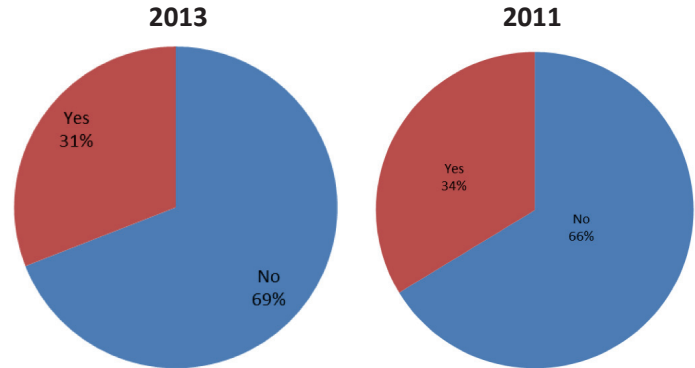
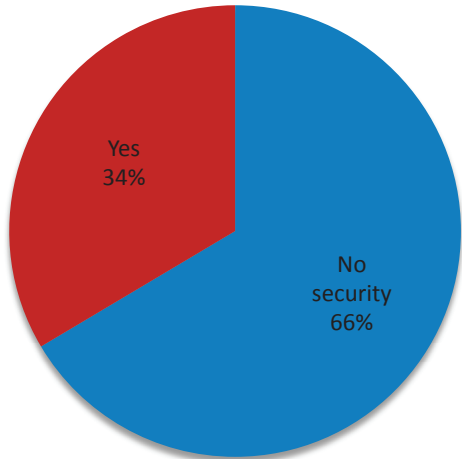
2013



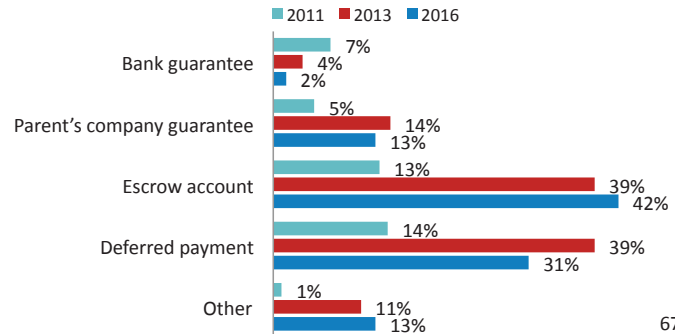
2011



# Security for Seller's Obligations



Form of security of Seller's obligations

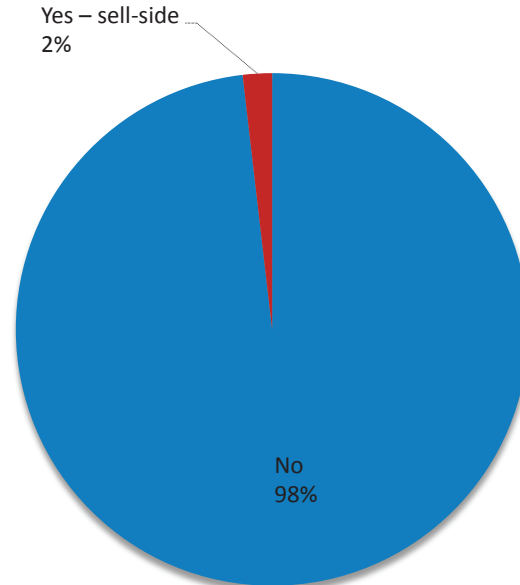


- A third of transactions established a form of security, in line with previous studies.
- The most popular forms of security continue to be escrow accounts and deferred payment.

# R&W Insurance

Was any R&W insurance used in the transaction?  
What kind (sell-side or buy-side)?

- We introduced a new question, asking if R&W insurance was used in transactions.
- Only three of the transactions studied used R&W insurance, all on the sellers' side.

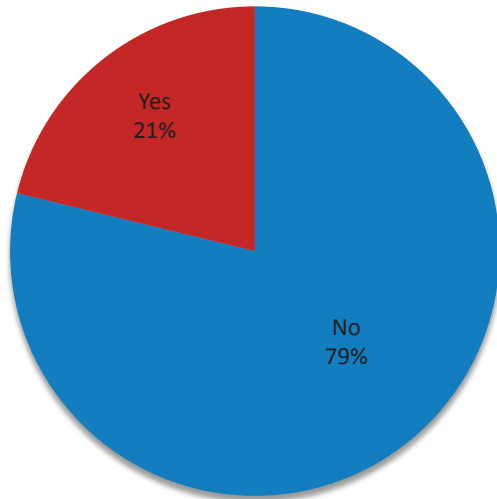




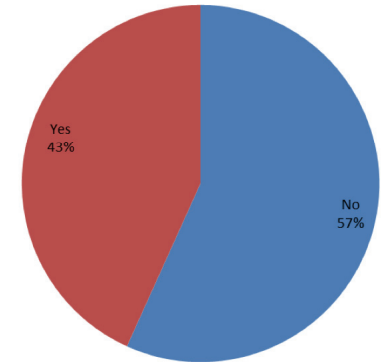
# **Joint Ventures and Shareholders' Agreements**

# Shareholders' Agreements (SHA)

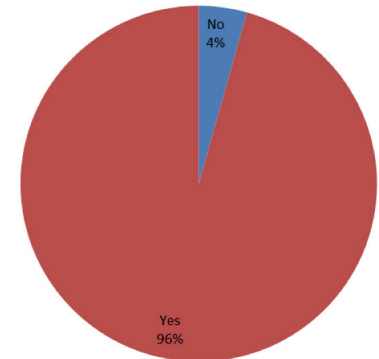
Is there a shareholders' agreement signed between the parties?



2013



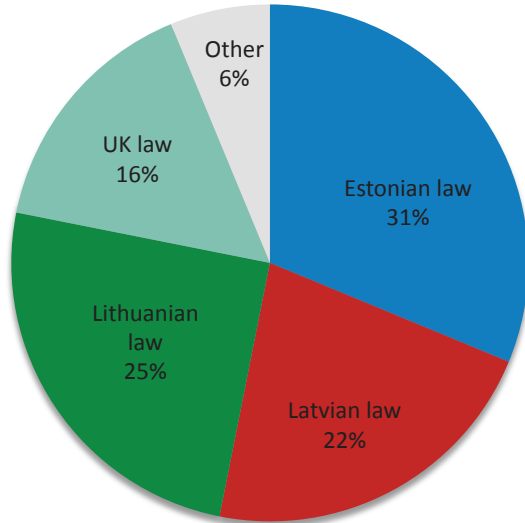
2011



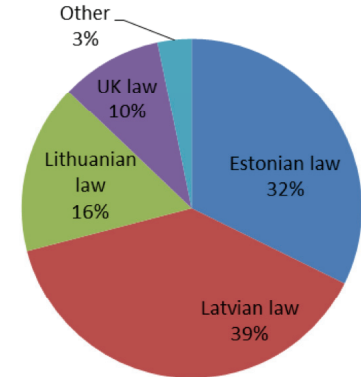
- Shareholders' agreements have significantly reduced in popularity since both the 2013 and the 2011 studies.

# Shareholders' Agreements (SHA)

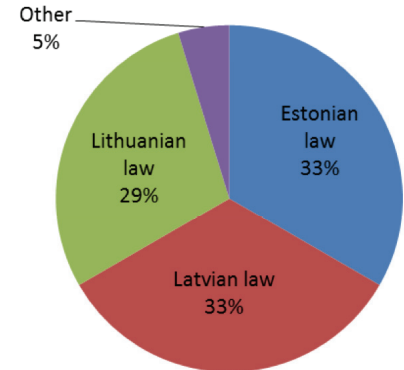
SHA Governing Law



2013



2011

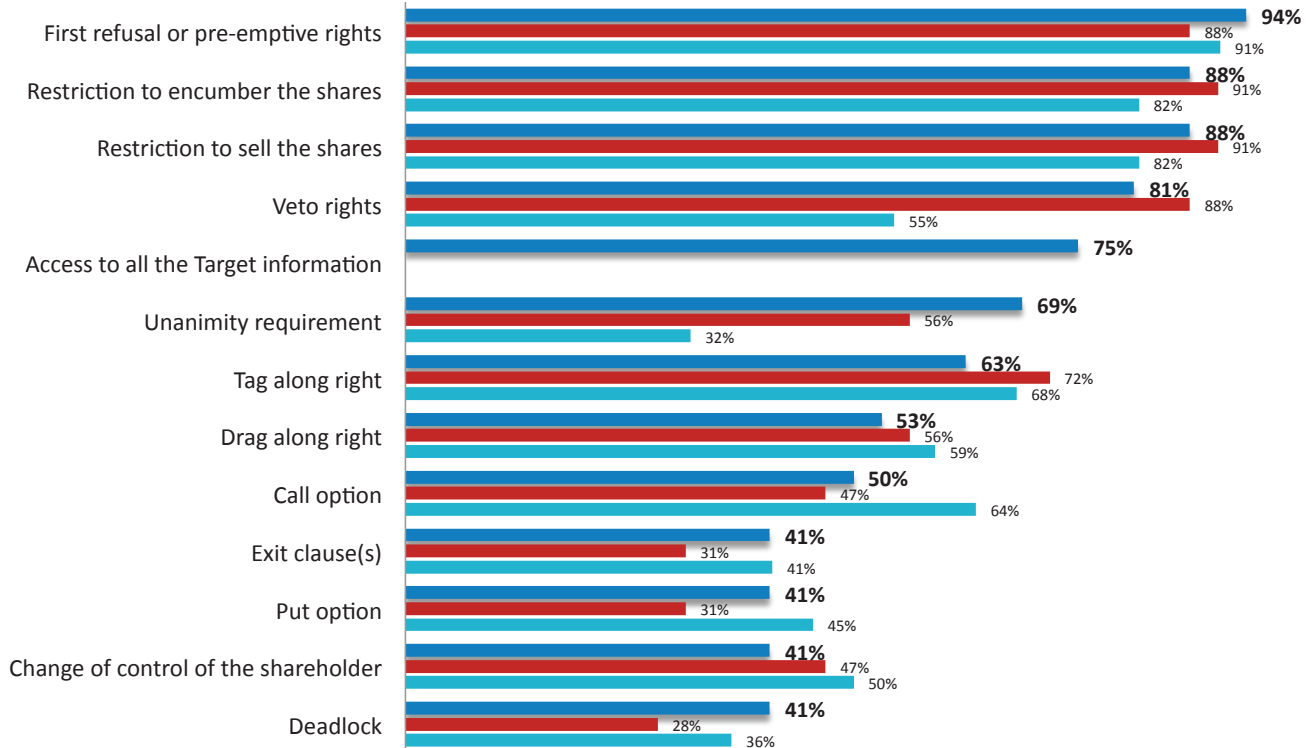


- Most shareholders' agreements have used local law as governing law, but UK law has increased its popularity.

# Shareholders' Agreements (SHA)

## Provisions included in the SHA

■ 2016 ■ 2013 ■ 2011



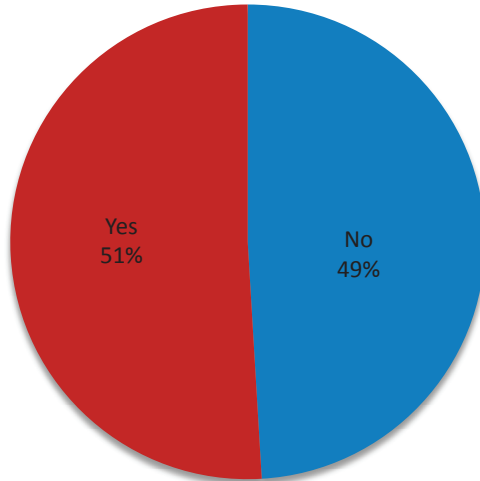




# Covenants

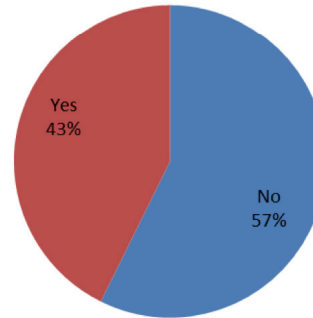
# Seller Non-Competition Obligation

## Agreement imposing a non-competition obligation on the Seller

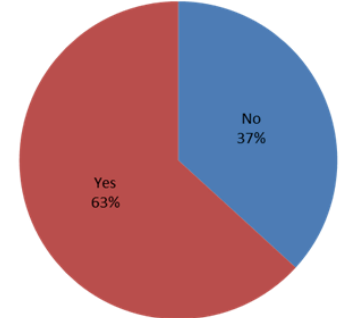


- Almost half of transactions included a non-competition obligation for sellers.
- When included, however, the non-compete duration was significantly higher than in 2013 (where the median duration was between 19 and 24 months).

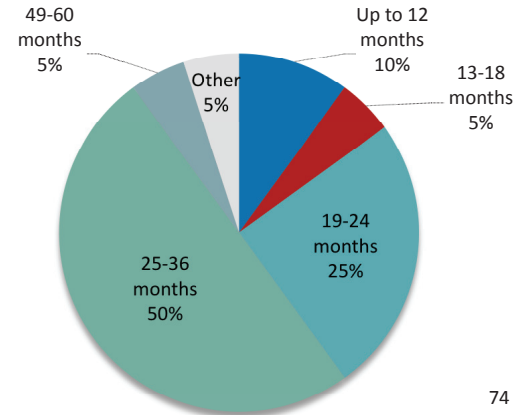
2013



2011

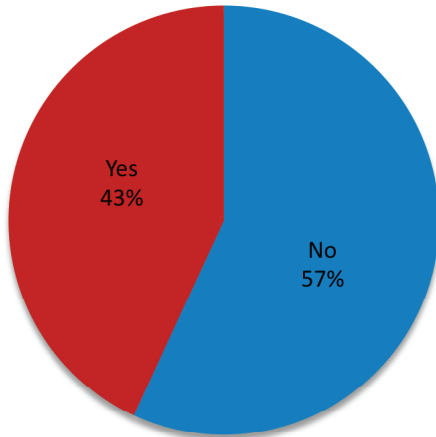


## Duration of such obligation

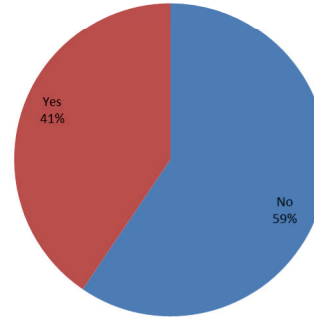


# Seller Non-Solicitation Obligation

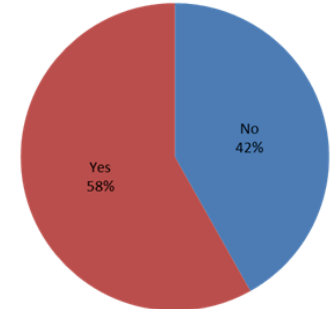
## Agreement imposing a non-solicitation obligation on the Seller



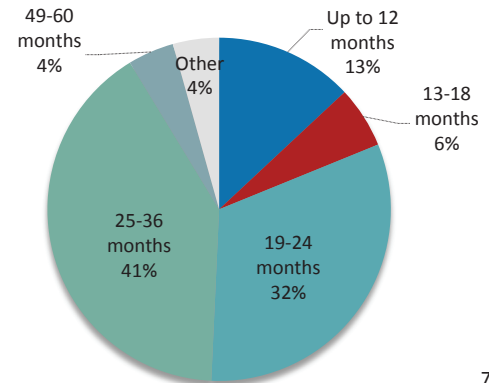
2013



2011



## Duration of such obligation



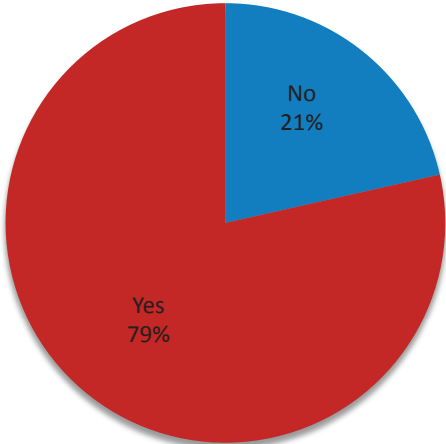
- The majority of transactions do not impose a non-solicitation obligation on the seller.
- The typical duration of the obligation is 25-36 months, which is higher than in the 2013 study (where the 19-24 months bracket accounted for 44% of instances).



# Due Diligence

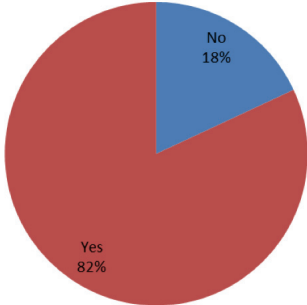
# Due Diligence

## Was the due diligence conducted by the Buyer?

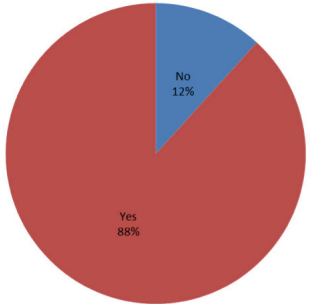


- In line with previous studies, buyers conducted due diligence exercises in the vast majority of cases. However, instances where this was not the case has increased to 21%.
- Legal and financial are the most popular types of due diligence performed.

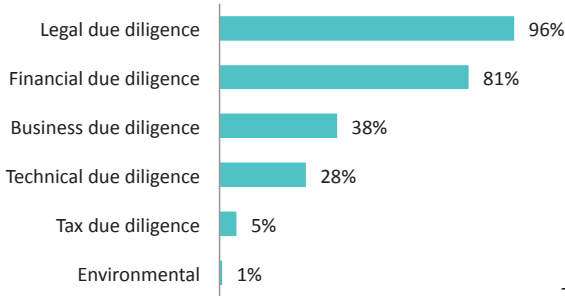
## 2013



## 2011

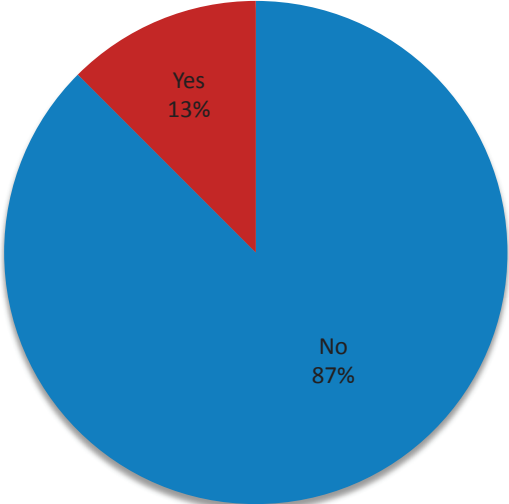


## Types of Buyer due diligence performed

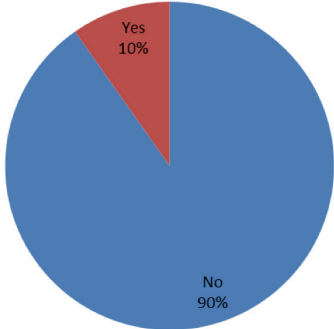


# Due Diligence

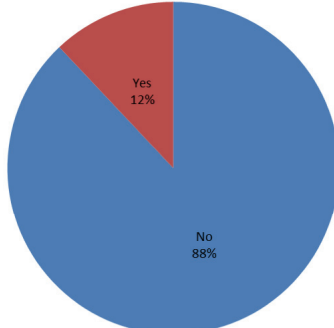
Was a vendor's due diligence conducted?



2013



2011



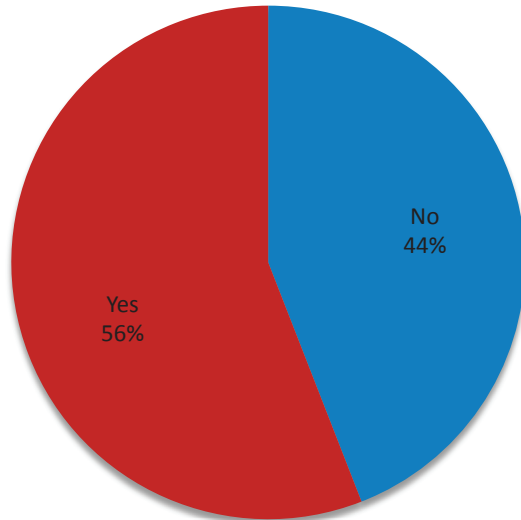
- While buyers routinely carry out a target due diligence, vendor's due diligence is still rare in the Baltic States.



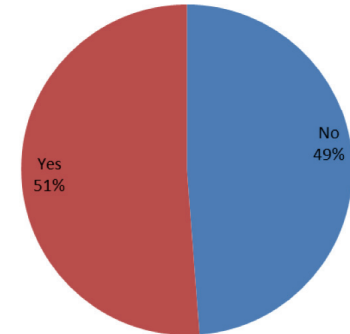
# **Duration of Transaction and Letters of Intent**

# Use of Letters of Intent

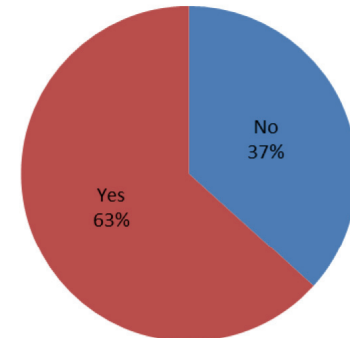
Were the initial negotiations formalised by signing a letter of intent?



2013



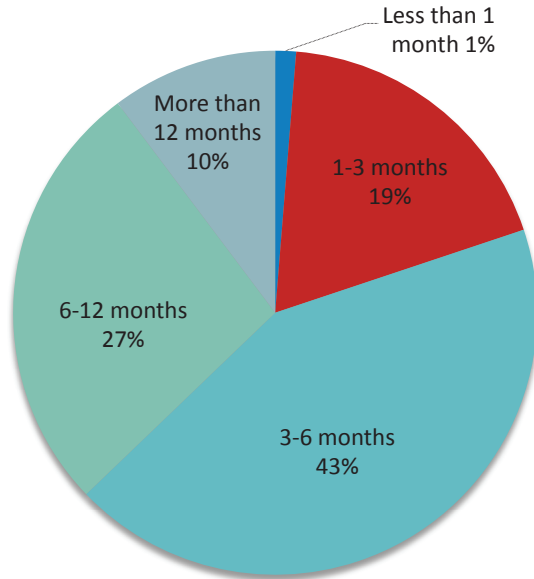
2011



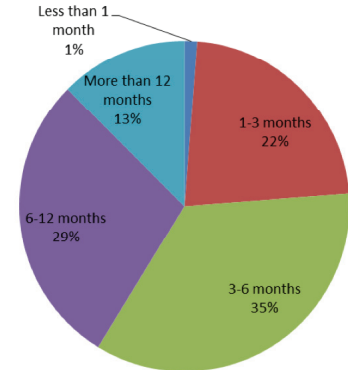
- More than half of transactions in the Baltics were formalised in the negotiations stage by a letter of intent.



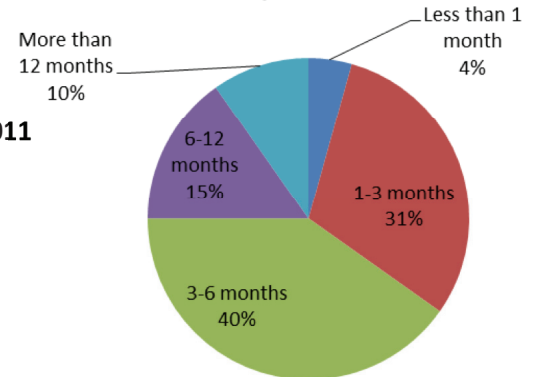
# Duration of the Transaction



**2013**



**2011**

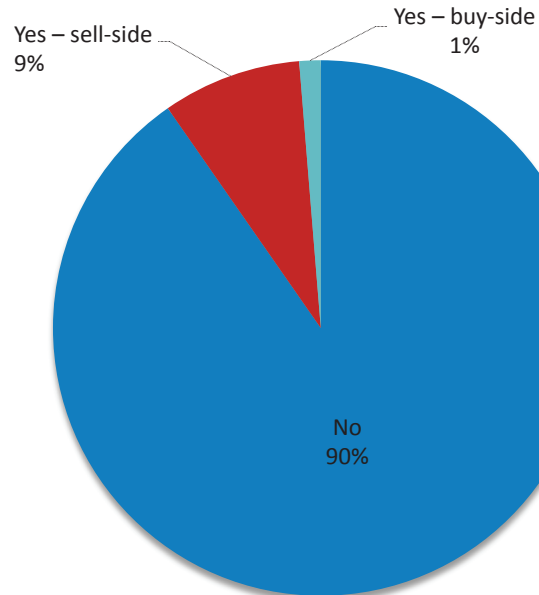


- The majority (70%) of transactions take between 3 and 12 months from letter of intent or due diligence to closing.
- The process is similar to the 2013 study figures, with the number in the 3-6 month bracket rising to 43%.

# Transaction Bonus

## Were Target managers granted any transaction bonuses?

- We introduced a new question, asking whether target managers were granted any transaction bonuses.
- Only 10% of transactions reported using transaction bonuses, which mostly consisted in monetary compensation. 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.



- The survey analysed 168 M&A transactions, a record for the study series. This was partially due to an active Baltic M&A market during the period July 2013 – December 2015, but also to more law firms participating as compared to previous studies.
- In 2013-2015, the most active economic sectors in the Baltic M&A market were Construction and Real Estate, Services, Technology, Financial Services, and Energy and Utilities.
- Compared to previous periods, there are no major changes as to whether foreign or local shareholders are selling businesses in the Baltics. However, it can be concluded that Estonian buyers have become noticeably more active in local M&A transactions, including buying out foreign capital.
- 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

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