



Belarus M&A Deal Points Study 2019



The Belarus M&A Deal Points Study 2019 aims to explore current practices in the Belarusian M&A market, as well as to detect directions and opportunities for further development.

The Study was organised by the joint efforts of ten leading Belarusian law firms, with due account taken of analogous projects in the Baltic states.

Transactions Analysed

The Belarus M&A Deal Point Study 2019 is based on information about 59 M&A deals closed between January 2016 and December 2018.

Transactions falling within the scope of the Study share the following characteristics:

- The transaction is an M&A deal;
- The target is a Belarusian business (company, joint venture, assets);
- **The transaction value exceeds EUR 500,000** or equivalent at the time of closing;
- The transaction was closed between **01.01.2016** and **31.12.2018**.

While providing data for the Study, the participants were bound by confidentiality obligations and client-attorney privilege. For this reason, the findings of the Study are based on analysis of fewer deals than the total examined in the framework of the Study.



Terms

- **M&A Deal** means a transaction aimed at acquisition or disposal of a business, including share and asset transactions, reorganisations in the form of mergers or take-overs, joint venture transactions, and other deals.
- **Target** means a business that is acquired, disposed of, or created in the framework of an M&A deal, for example, a legal entity, assets, new joint venture.
- **Seller** means a person or a group of persons selling a business in an M&A deal.
- **Buyer** means a person or a group of persons acquiring a business in an M&A deal.
- **Closing** means a condition, a set of conditions, or a point in time in regard to which an M&A deal or a significant part of it is considered to be completed and control over the Target is transferred to the Buyer.

The background of the slide is a dark blue gradient. It is decorated with numerous thin, light teal lines that radiate from various points, some ending in small teal dots. There are also several rectangular areas filled with a fine grid of small teal dots, creating a textured effect. The overall aesthetic is modern and technological.

The Parties

Target

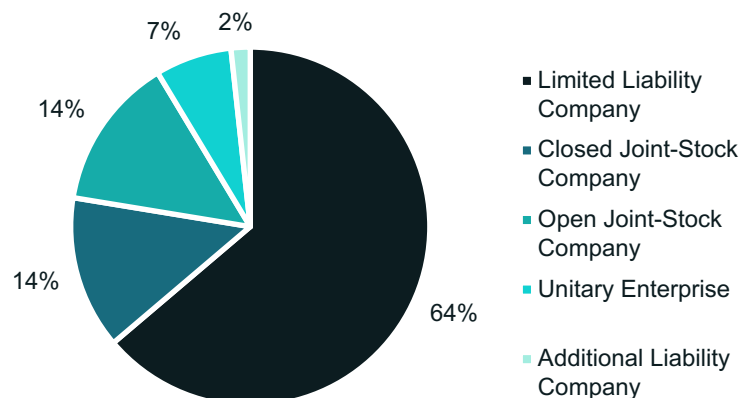
In most cases (47%), the Target operates in the technology, food processing, or agriculture sectors.

All Targets operating in the spheres of logistics, energy, industrial production, as well as most of the Targets in the food industry are located outside the capital city – Minsk.

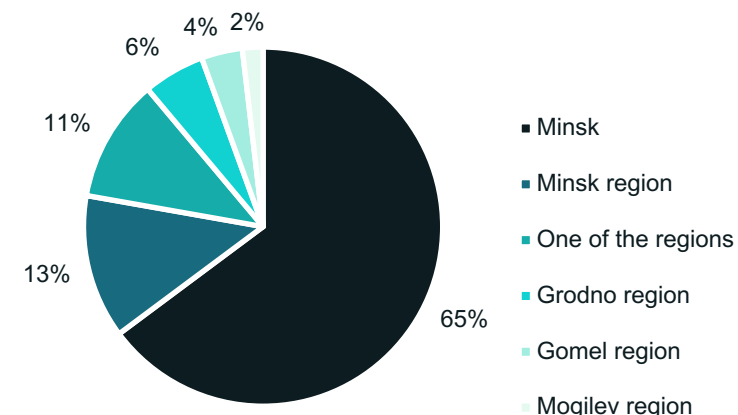
All Targets specialising in financial services and technology are located in Minsk.

A Target operating abroad is most often operating in Russia.

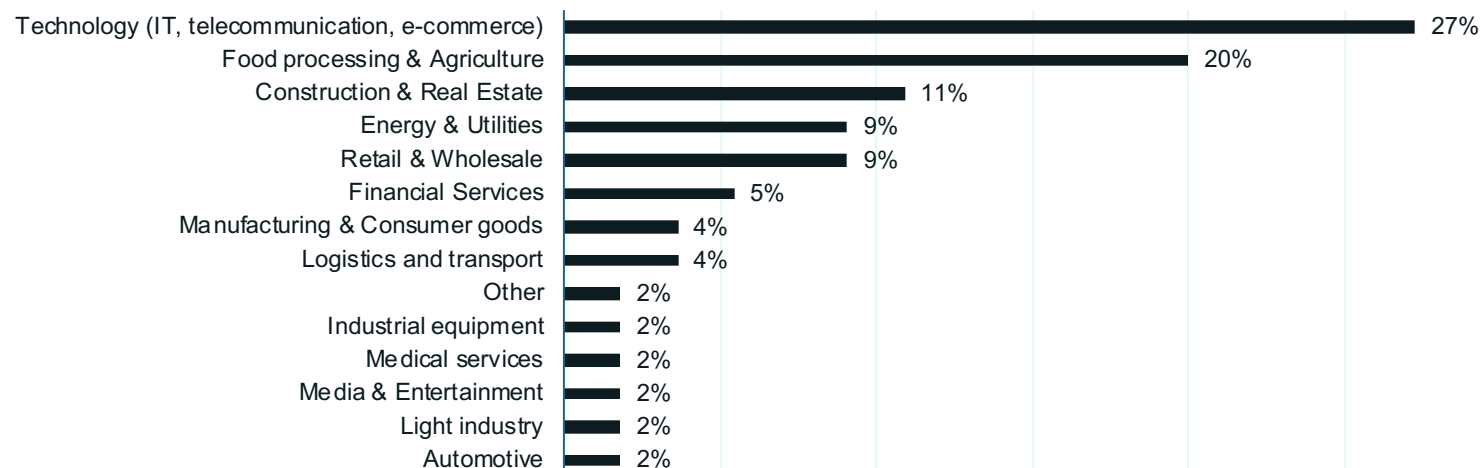
Company form of the Target



Geography of the Target



Industry of the Target

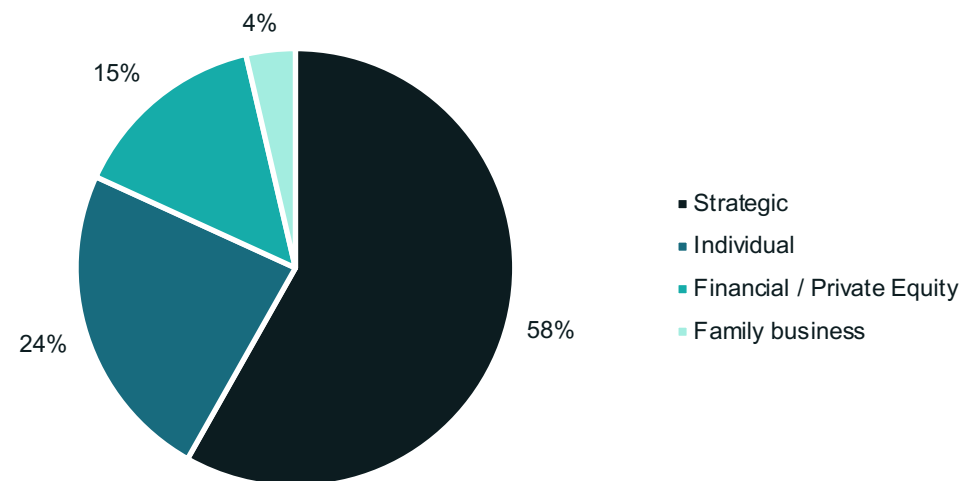


Seller

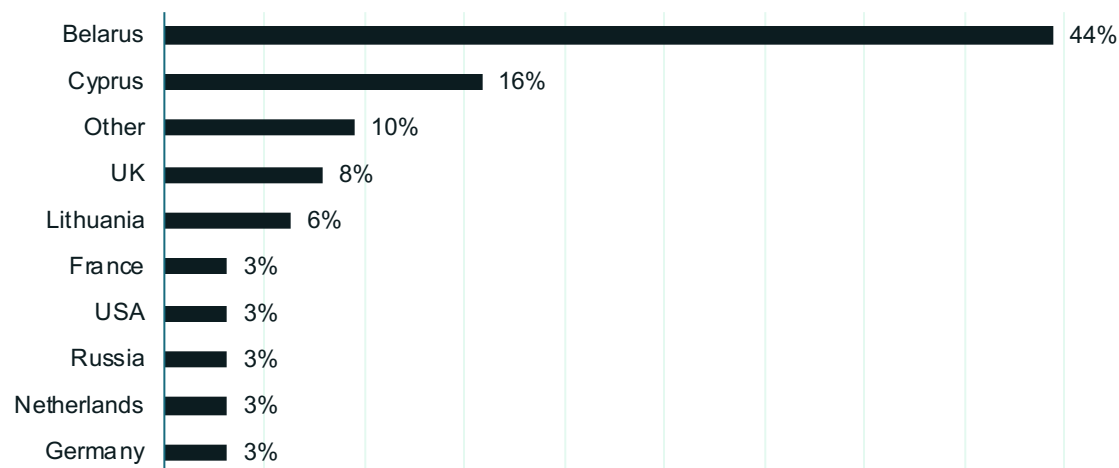
Usually the Seller is of Belarusian origin (44%).

The significant number of Cypriot Sellers (16%) may be due to use of Cypriot companies in structuring the Seller's company group.

Nature of the Seller



Seller's head office country

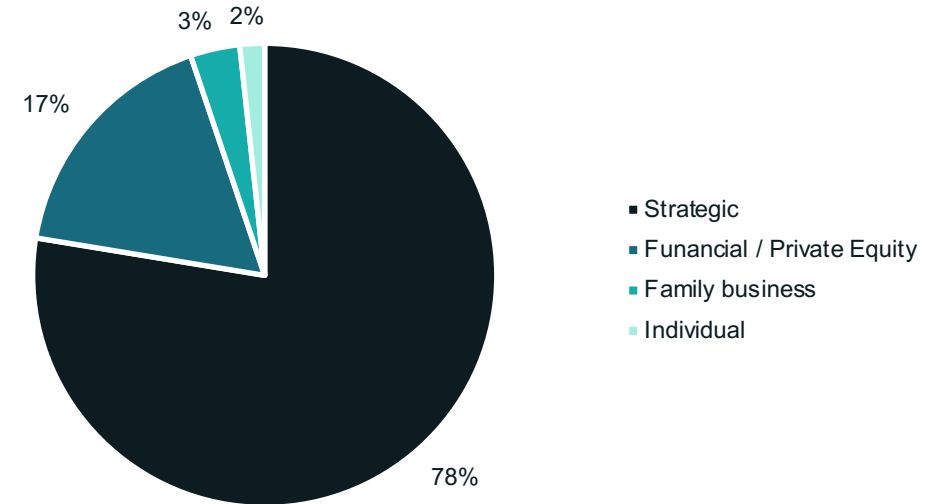


Buyer

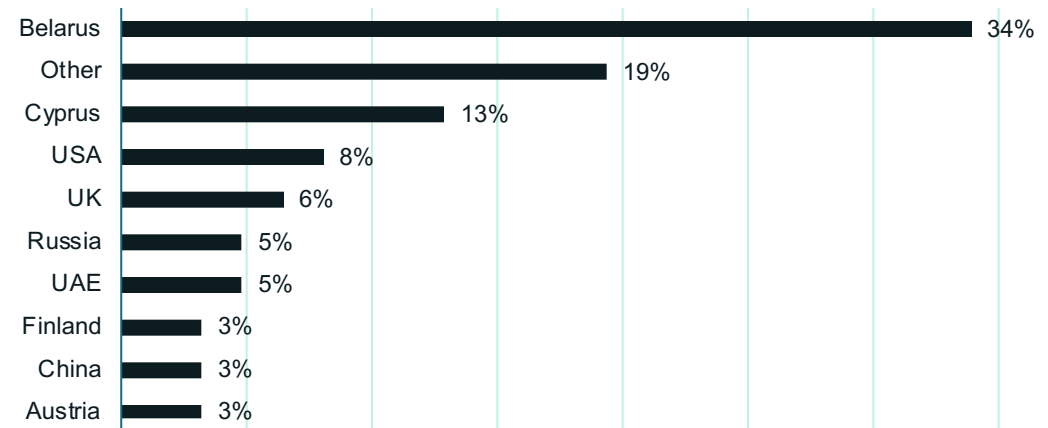
In one-third of cases, Belarus is the Buyer's country of origin; Cyprus also has a significant share (13%).

In all other cases, investors were from 18 other countries.

Nature of the Buyer



Buyer's head office country



Geography of Seller and Buyer

- **14% - internal transactions**
(transactions where there was at least one Belarusian resident on each of the Seller's and the Buyer's side)
- **19% - transactions involving a foreign Seller**
- **29% - transactions involving a foreign Buyer**
- **39% - transactions between foreign Sellers and Buyers**

Buyer's head office country	Seller's head office country										Total
	Belarus	Germany	Cyprus	Lithuania	Netherlands	Russia	United Kingdom	United States	France	Other	
Belarus	10	1	5			1	2		1	3	23
Germany	1										1
Cyprus	6			1	1					1	9
Lithuania				1							1
Netherlands											0
Russia	3				1						4
United Kingdom	1		1				1				3
United States	2		2					1	1		6
France	1										1
Other	6	1	6	2		2	2	1		2	22
Total	30	2	14	4	2	3	5	2	2	6	70

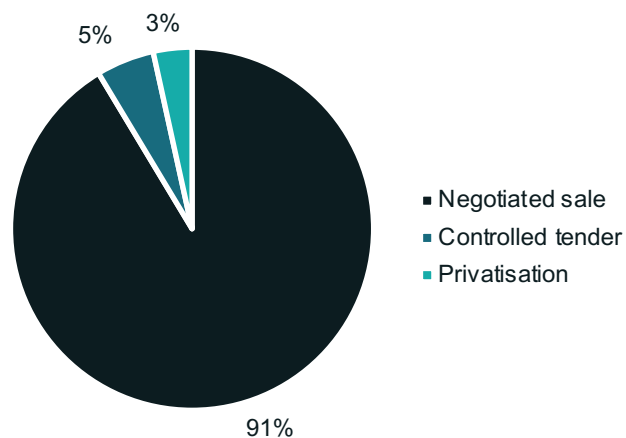


General Transaction Characteristics

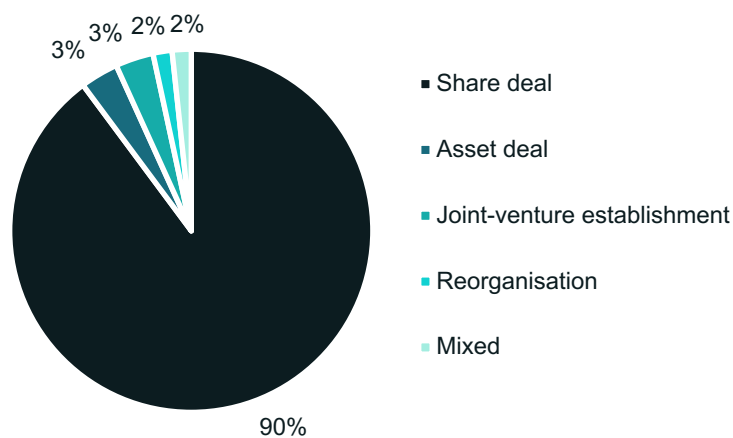
General Characteristics of an M&A Deal

Most often, transactions are based on the results of negotiations and provide for acquisition of a majority share.

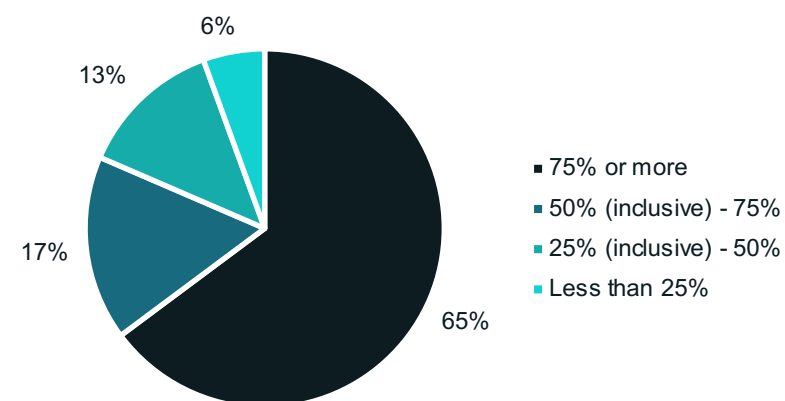
Nature of the sales process



Transaction type



Acquired level of control

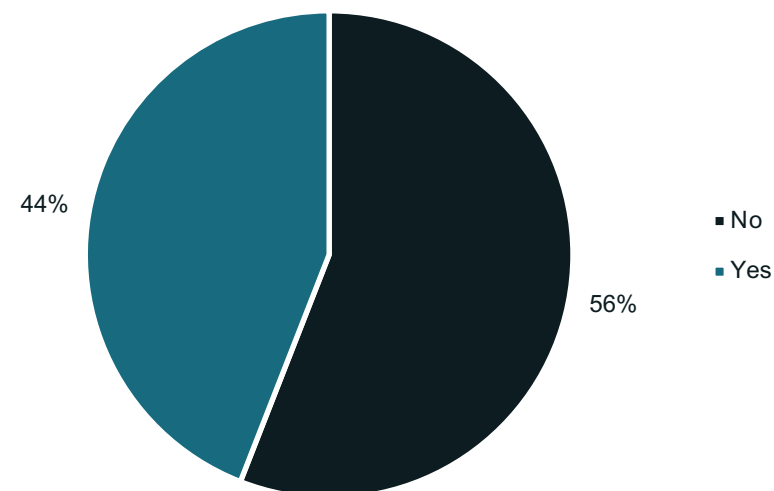


Merger Clearance

Merger clearance was required in slightly less than 50% of transactions.

In all cases when merger clearance was required, consent had to be obtained from the Belarusian antimonopoly authority. Only in one case was consent of foreign antimonopoly authorities (Macedonia and Serbia) also required in addition to the Belarusian authority.

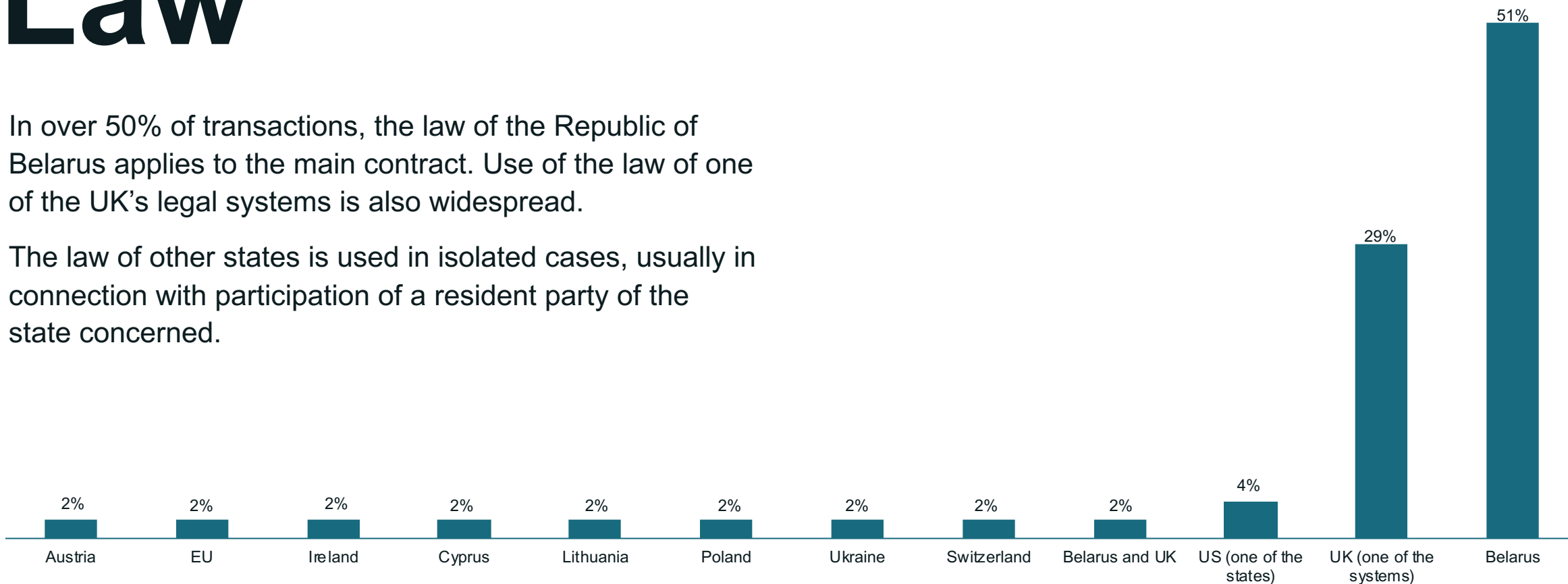
Was the merger clearance required for the transaction?



Governing Law

In over 50% of transactions, the law of the Republic of Belarus applies to the main contract. Use of the law of one of the UK's legal systems is also widespread.

The law of other states is used in isolated cases, usually in connection with participation of a resident party of the state concerned.

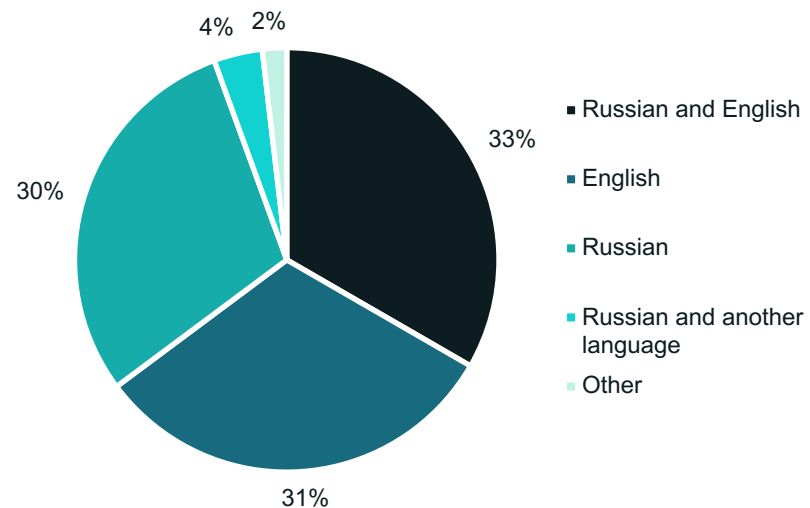


Language of the Agreement

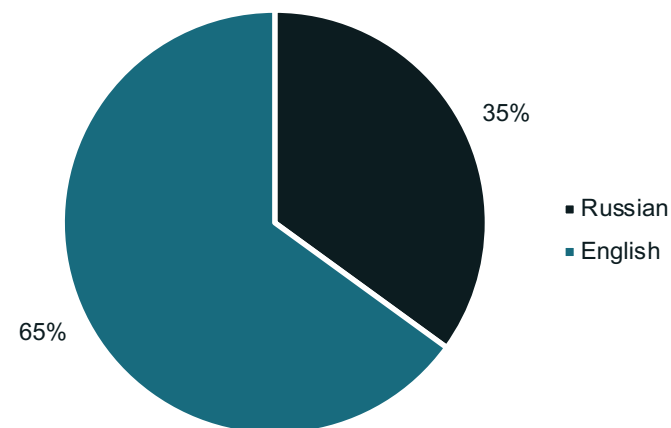
Most often, the main contract is drawn up in Russian and/or English (94%).

If the contract is in two languages, English is usually prevalent.

Language of the agreement



Prevailing language



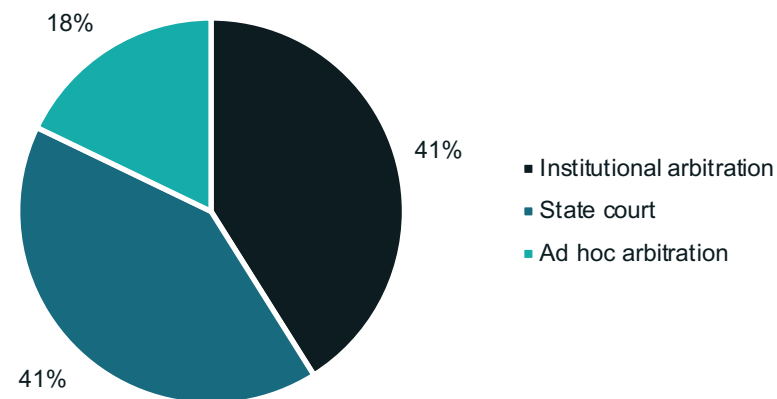
Dispute Resolution

Arbitration is the most popular dispute resolution mechanism, with parties preferring institutional arbitration.

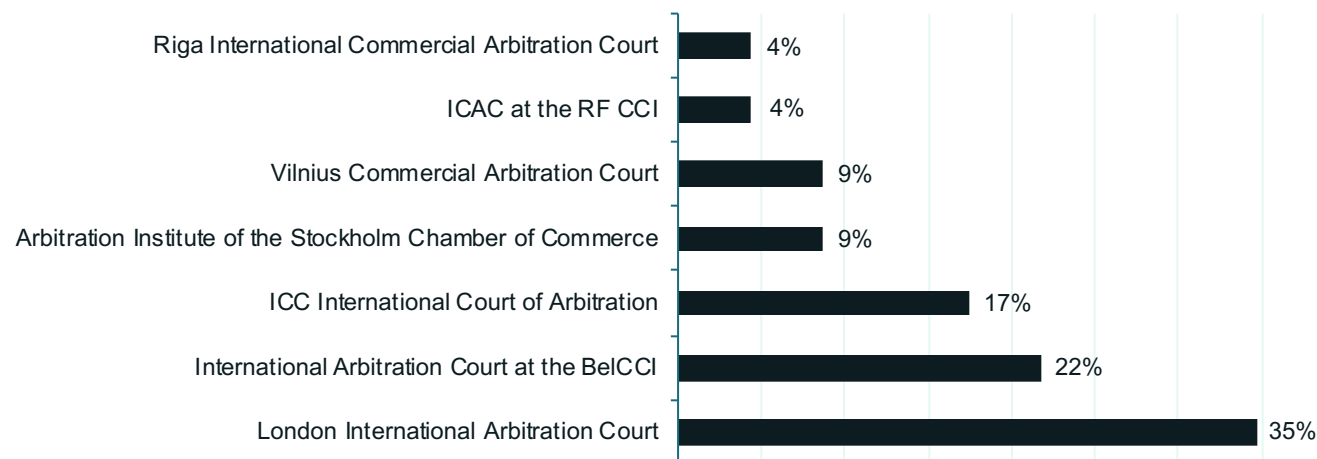
The most popular arbitration institutions are the London Court of International Arbitration, the International Arbitration Court at the BelCCI, and the ICC International Court of Arbitration.

None of the transactions resulted in disputes.

Dispute resolution mechanism



Arbitration institution





Purchase Price and Payment Terms

Purchase Price

Purchase price rarely exceeds EUR 25 million and is usually in the range of EUR 1 to 5 million.

Purchase price does not clearly depend on Buyer type.



Transaction value	Buyer Type				Total
	Strategic	Financial / Private Equity	Family business	Individual	
Less than EUR 1 million	11	3			14
EUR 1-5 million	12	3	2		17
EUR 5-10 million	12	2			14
EUR 10-25 million	6	1		1	8
EUR 25-50 million					0
EUR 50-100 million		1			1
over EUR 100 million	2				2
Total	43	10	2	1	

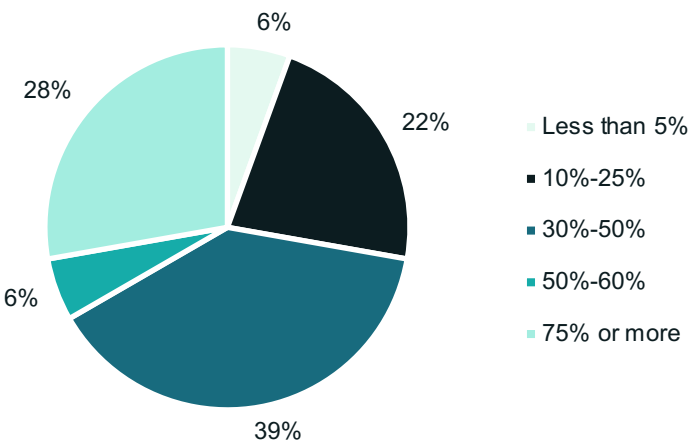
Payment Terms

In all transactions, only cash was used as a form of payment.

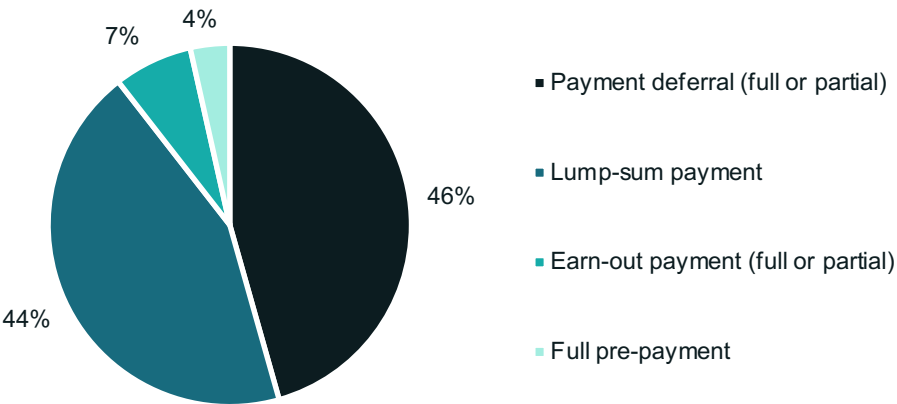
Installment payments (46%) are widely used, with the parties often agreeing on installment payments of over 30% of the purchase price (73%).

The most common reasons for installments are the financial constraints of the Buyer and the need for risk allocation.

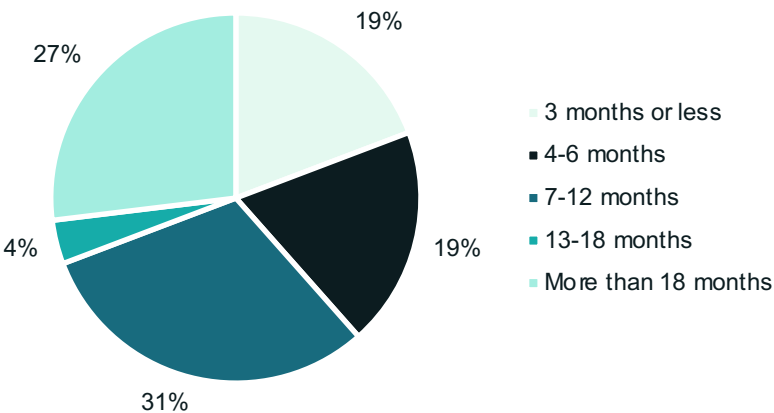
Percentage of the price deferred



Payment terms



Length of deferral

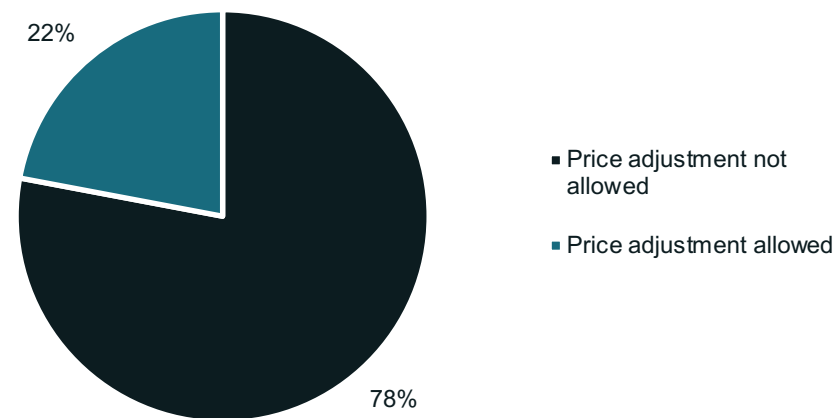


Price Adjustment at Closing

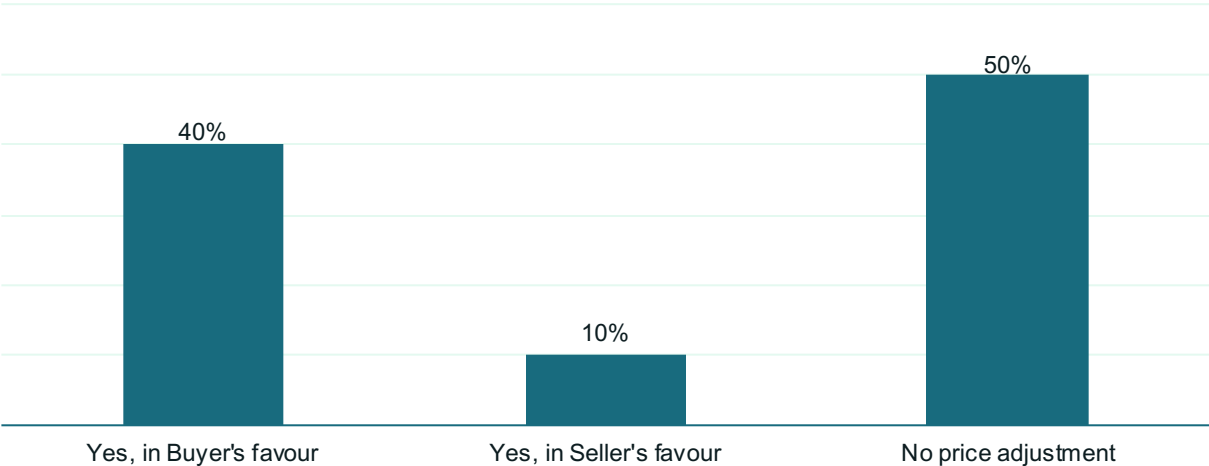
The parties rarely use the opportunity to adjust the price at closing (22%).

The available data do not yet provide a prevailing basis used for price adjustment, although net debt is used slightly more often than others.

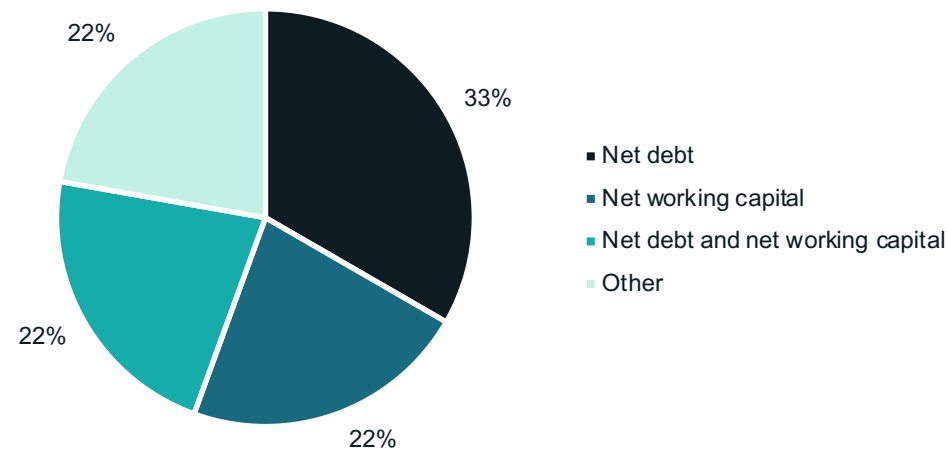
Possibility of price adjustment



Has an actual price adjustment taken place?



Basis for the adjustment



Locked Box Mechanism

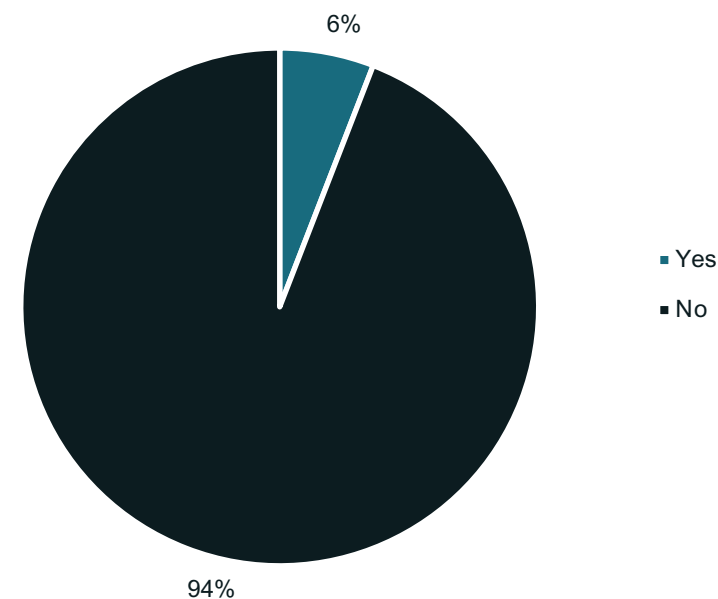
*A mechanism providing for calculation of the purchase price based on financial statements prepared on the agreed date prior to the signing of the contract, whereby the Seller guarantees the Buyer protection against a "leakage" of business value between the date of the financial statements and the closing date, except for "permitted leakage" agreed with the Buyer.

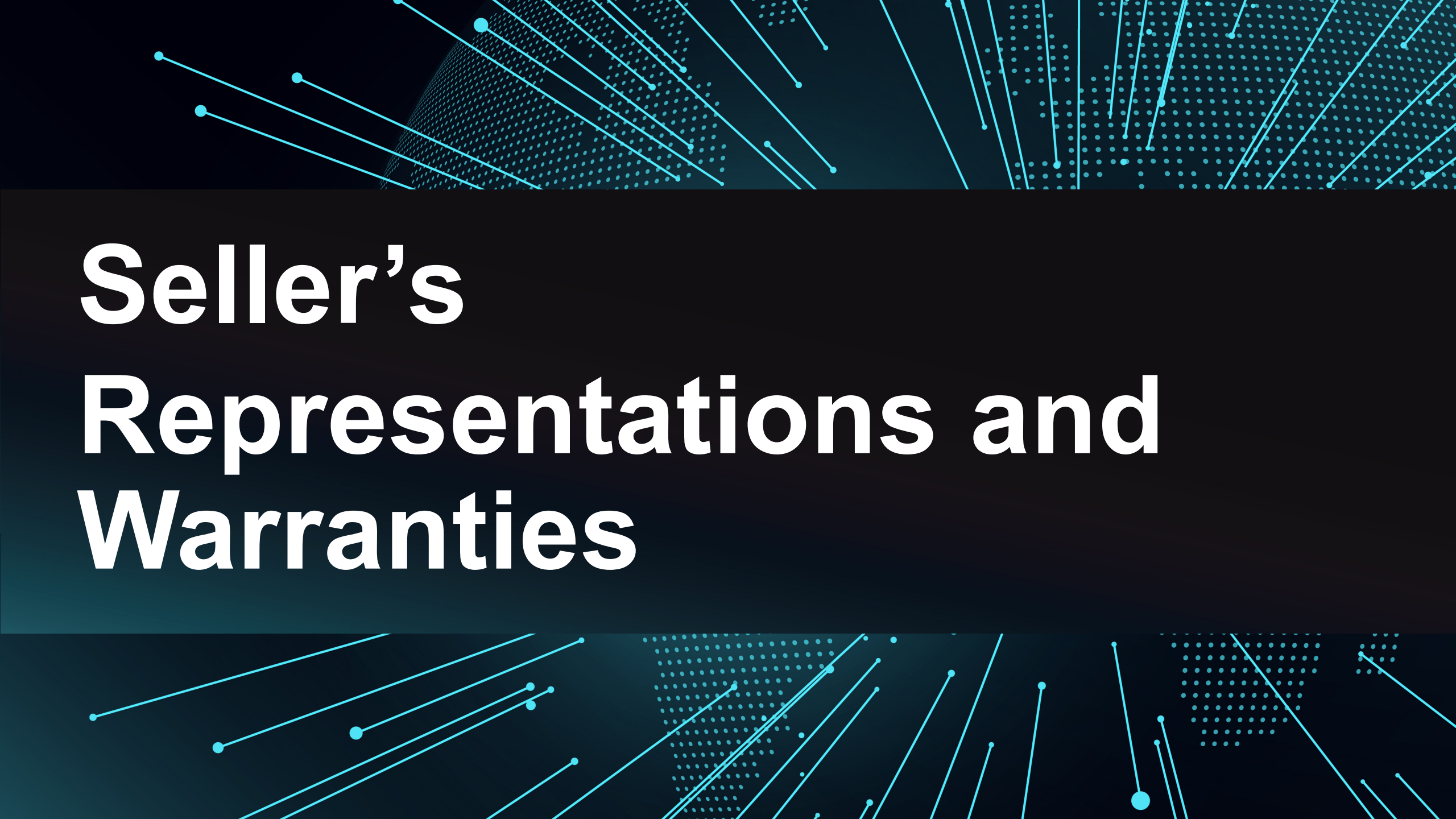
When using the Locked Box mechanism on the closing date, only the presence of "leakages" is checked, while accounting reporting and price adjustments are not required.

The *Locked Box* mechanism is not yet popular in Belarus. It has only been used in 3 transactions, with details only available for 2 of them:

- In the first transaction, 3 months passed between reporting and the closing and permitted leakage was not provided.
- In the second transaction, 3 to 6 months elapsed between reporting and closing, and permitted leakage included transactions in the ordinary course of business.

Whether the *Locked Box* mechanism was used?





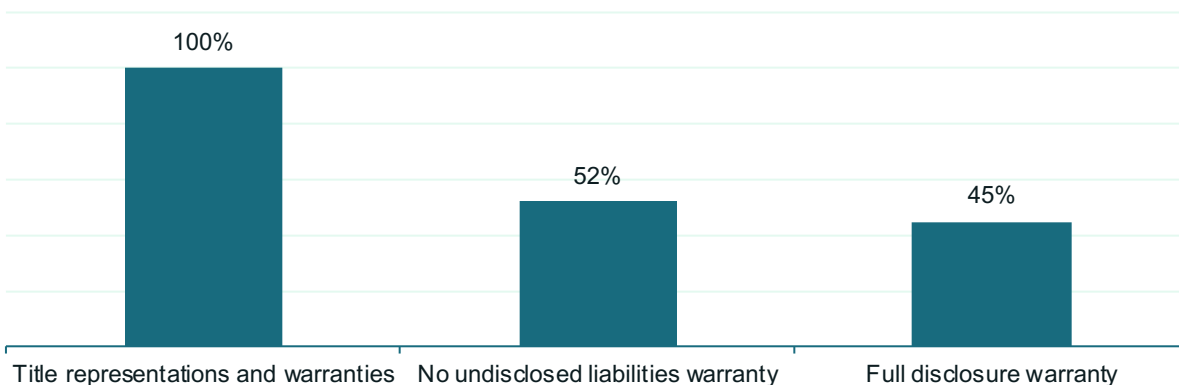
Seller's Representations and Warranties

The Seller's Representations and Warranties

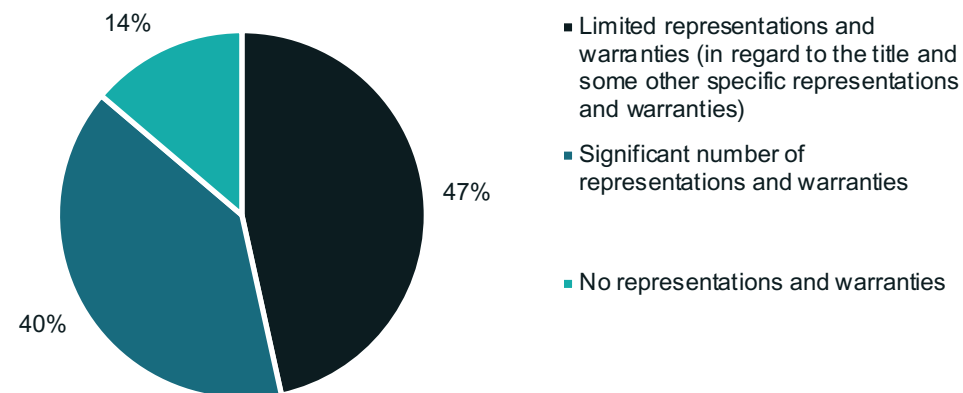
In a relatively large number of cases the contract does not include representations and warranties (14%).

If representations and warranties are used, they always include title representations and warranties.

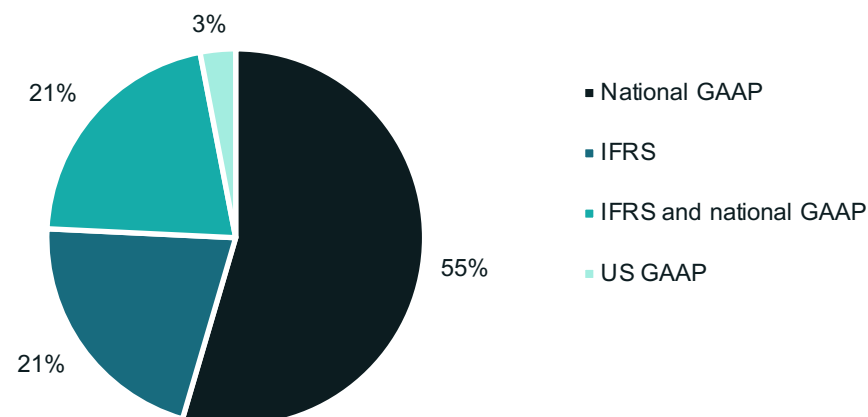
Use of certain representations and warranties



Scope of the Seller's representations and warranties



What accounting standards are used for the purposes of the Seller's representations and warranties?

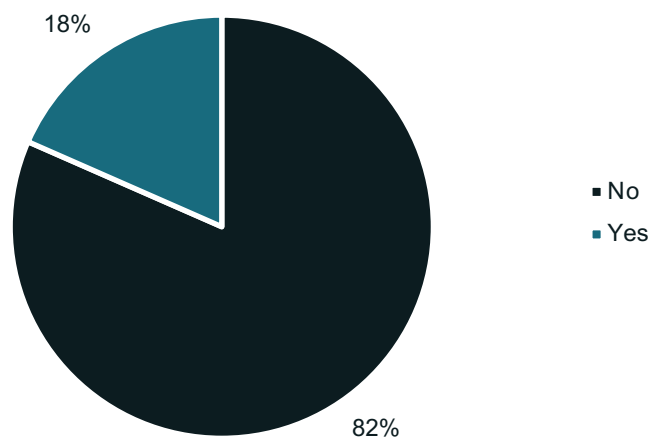


General knowledge qualification of the Seller's representations and warranties

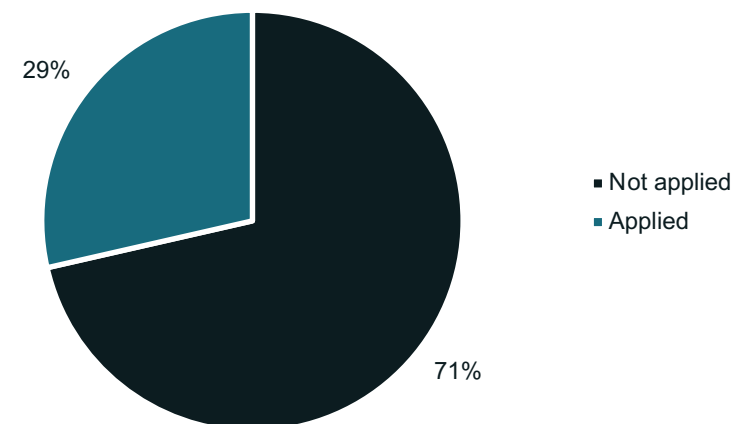
*A general knowledge qualification of the Seller's representations and warranties means that the Seller's representations and warranties apply only to circumstances that are known (actual knowledge) or should be known (constructive knowledge) to the Seller.

General knowledge qualification is used rarely.

Are the “full disclosure” and “no undisclosed liabilities” warranties knowledge qualified?



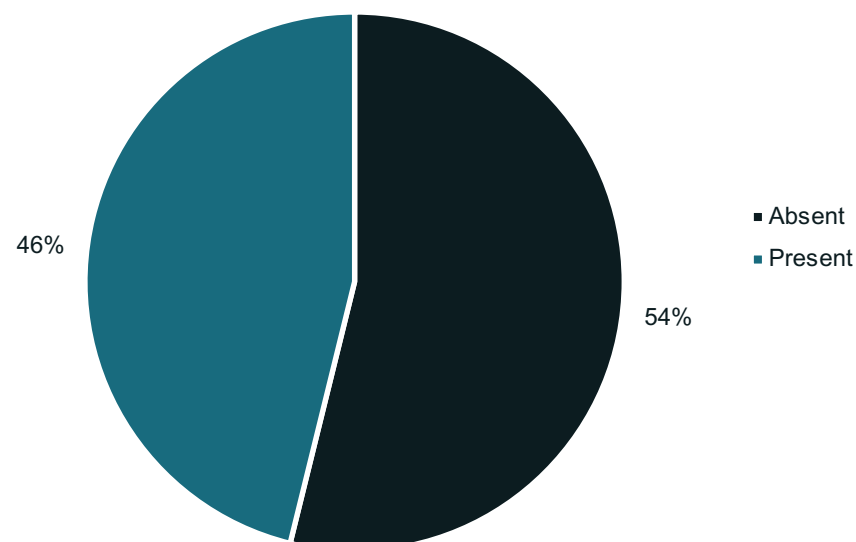
Do the Seller's R&W include a general knowledge qualification?



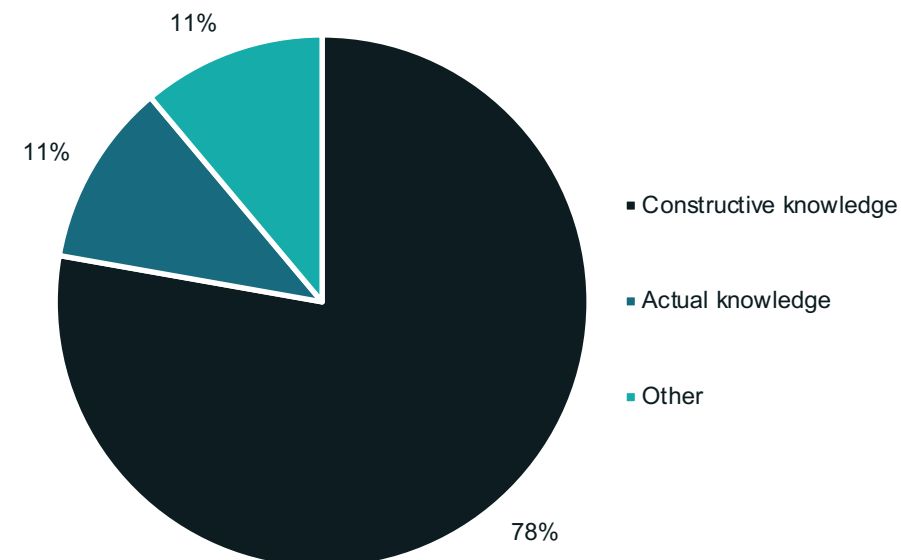
Standard of Knowledge

If the general knowledge qualification is applied, the parties define knowledge in 50% of cases. Most often the definition is based on the standard of constructive knowledge.

Whether the contract includes definition of the Seller's knowledge?



Standard of knowledge

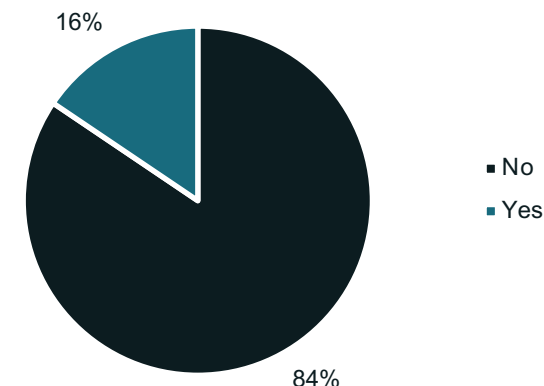


Other limitations on the Seller's representations and warranties

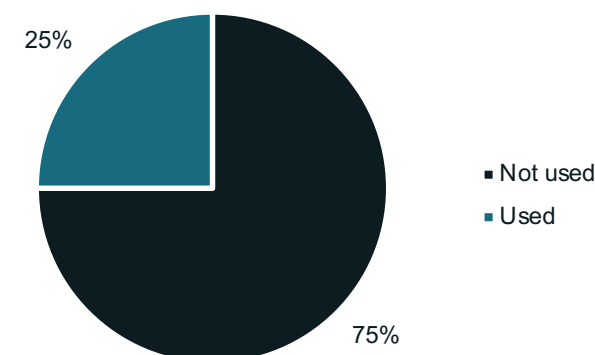
Other limitations on representations and warranties of the Seller, including limitations based on the results of the due diligence or in accordance with the disclosure letter, are also used infrequently (in total in 29% of cases).

A Disclosure Letter is a document in which the Seller discloses to the Buyer information about itself and the Target for limiting representations and warranties.

Are the Due Diligence disclosures considered a general qualification to R&W?



Use of a disclosure letter



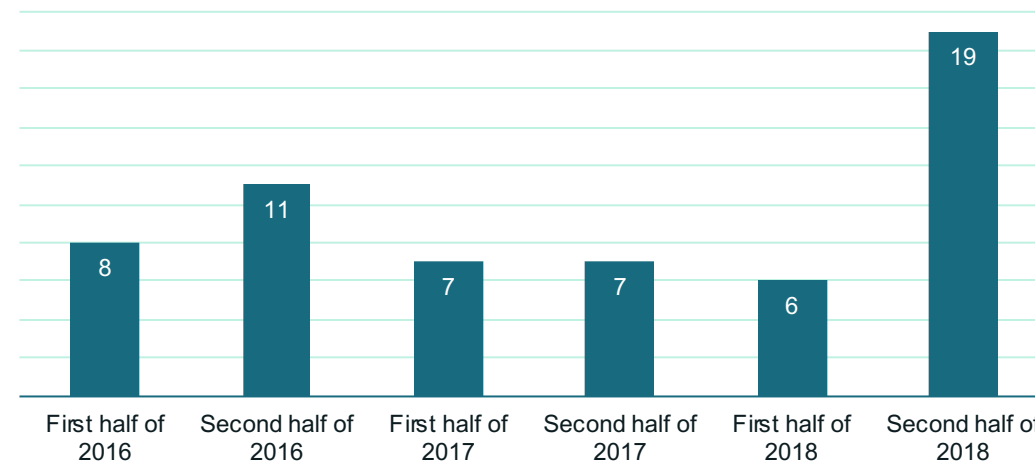
The background of the slide is a dark blue gradient. It is decorated with numerous thin, light teal lines of varying lengths and orientations. Many of these lines have small teal dots at their endpoints. There are also larger, semi-transparent teal circles with a fine dot pattern inside, scattered across the background. The word "Closing" is centered in the middle of the slide in a large, white, sans-serif font.

Closing

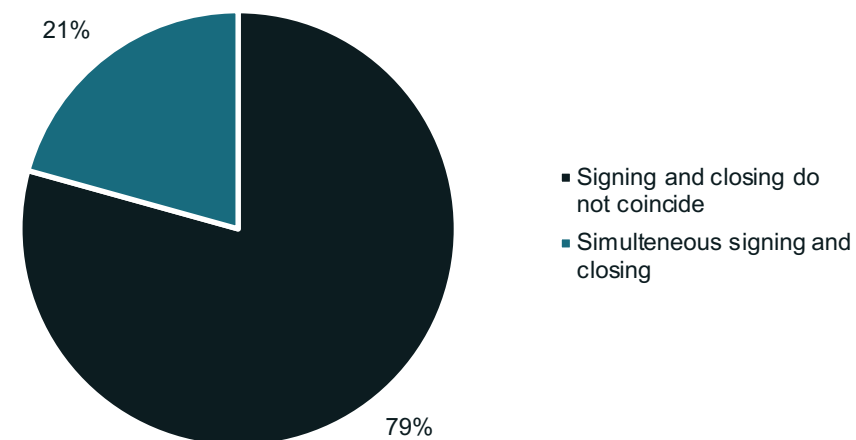
Timing of Closing

Most closings took place in the second half of 2018. At the same time, the fact of a greater number of closings does not necessarily indicate higher M&A activity in the period.

Closing Date



Moment of Signing and Closing

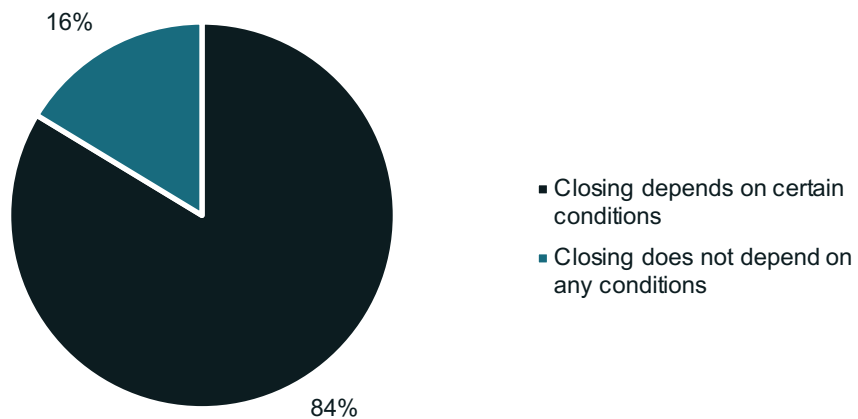


Conditions Precedent

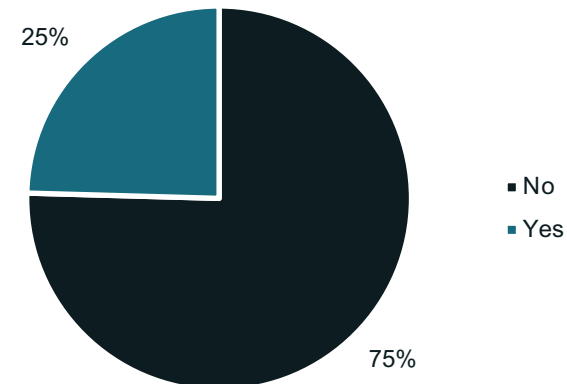
In most cases (84%), closing is subject to conditions precedent. These conditions usually do not include the requirement of accuracy of representations and warranties.

If such a requirement is present, it is most often relied on only by the Buyer.

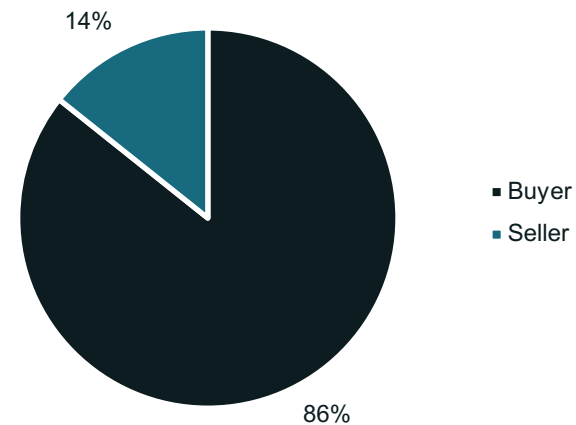
Does the closing depend on fulfilling conditions precedent?



Is closing subject to accuracy of representations?



Who may rely on the accuracy of representations?

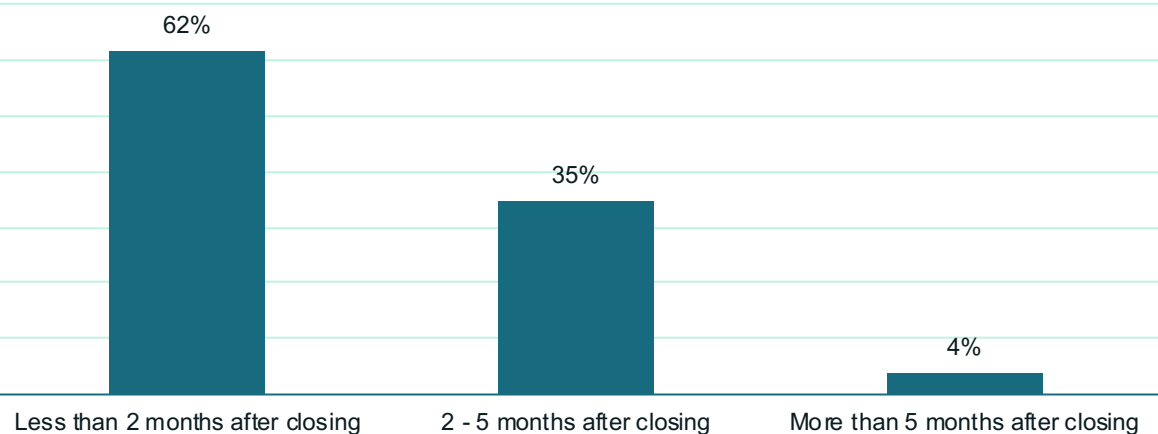


Long-Stop Date

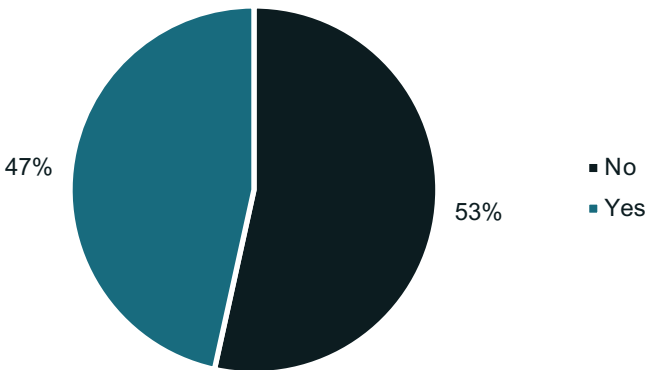
The long-stop date is a moment in time set for fulfillment of the conditions precedent. After the expiry of the closing period the obligation of the parties to close the transaction is terminated, and the parties are entitled to withdraw from the contract if the closing conditions have not been met.

The contract sets a long-stop date in about half of cases (47%). The closing period is relatively short and in most cases less than 2 months from the signing date (62%). At the same time, the parties often do not provide for liability for failure to comply with the conditions precedent (60%).

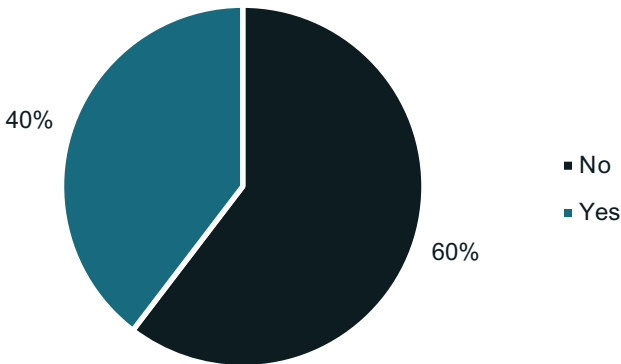
What is the duration of the closing period?



Does the contract contain a long-stop date?



Does the contract provide for liability in case of failure by the party to fulfil conditions precedent?

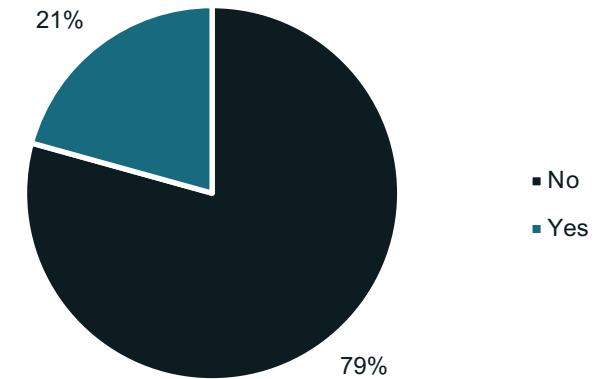


Material adverse effect (MAE) / Material adverse change (MAC) clause

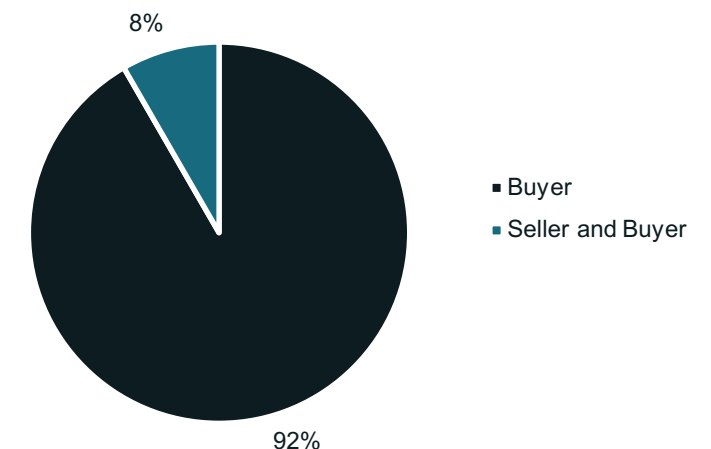
Material Adverse Change / Material Adverse Effect – MAC/MAE entitles one party to withdraw from the contract before closing in the event of circumstances that have a significant negative impact on the Target or the transaction as a whole.

The parties rarely include the MAC/MAE condition (79%) in the contract, but if it is present, it can usually be relied on only by the Buyer (92%).

Does the contract contain a MAC/MAE condition?



Which party can refer to the MAC/MAE condition?





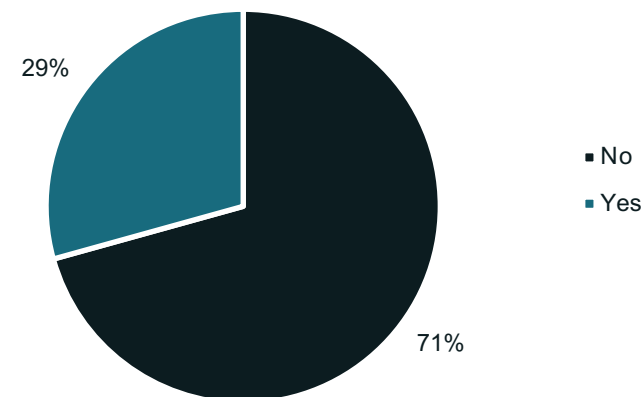
Liability of the Parties

Survival period of representations and warranties / claims

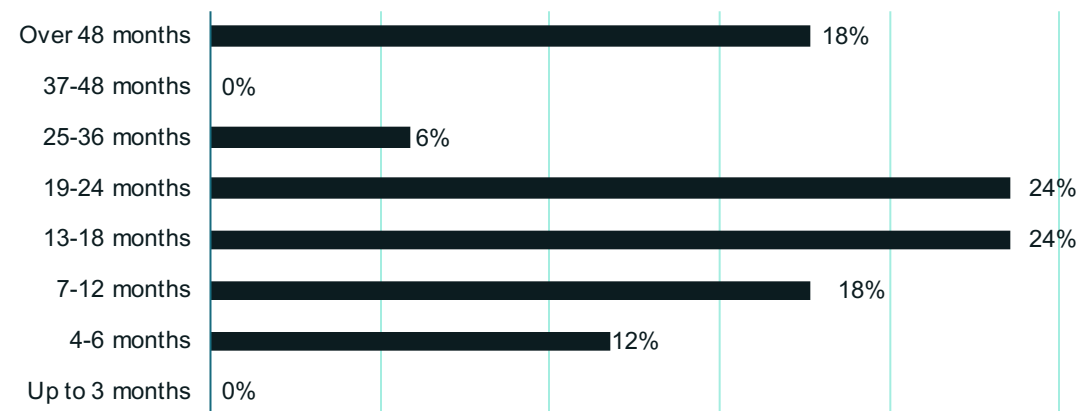
The parties generally do not establish a survival period of representations and warranties, and do not change the standard time for claims arising out of their breach (71%).

If such a period is established, it will most often be 1-2 years (48%).

Was there a general survival period of representations and warranties?



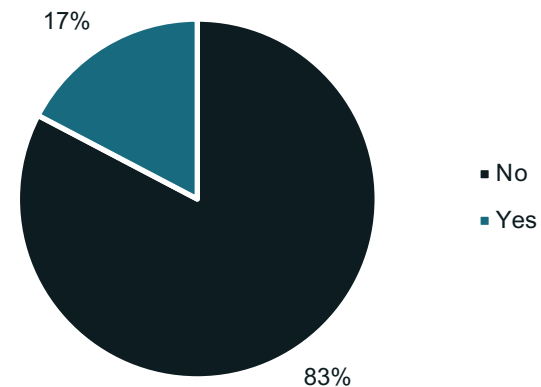
Survival period of representations and warranties / claims



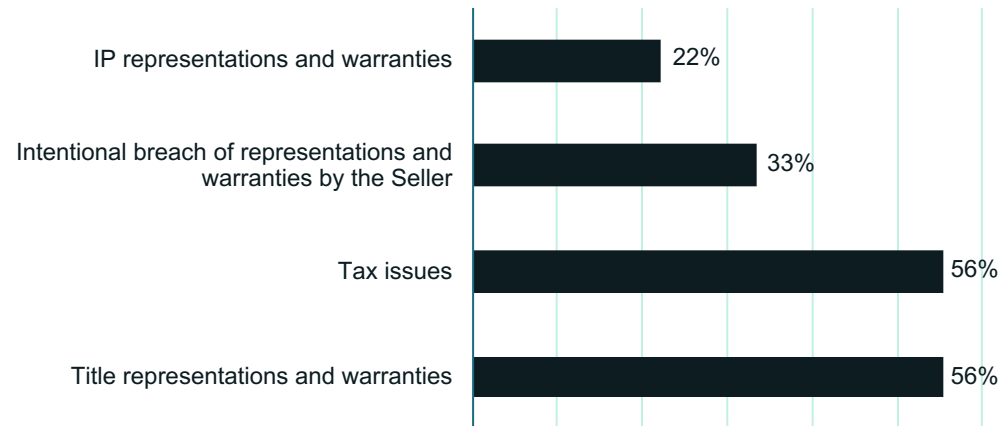
Survival of Representations and Warranties / Claims Carve-Outs

Carve-outs to general survival period of representations and warranties / claims established by the contract are also rare (17%) and most often apply to tax matters and to representations and warranties with respect to the title (referred to in 56% of the contracts providing for carve-out to the general term).

Does the contract provide for carve-outs to general survival period of representations and warranties / claims?



When are these carve-outs applied?

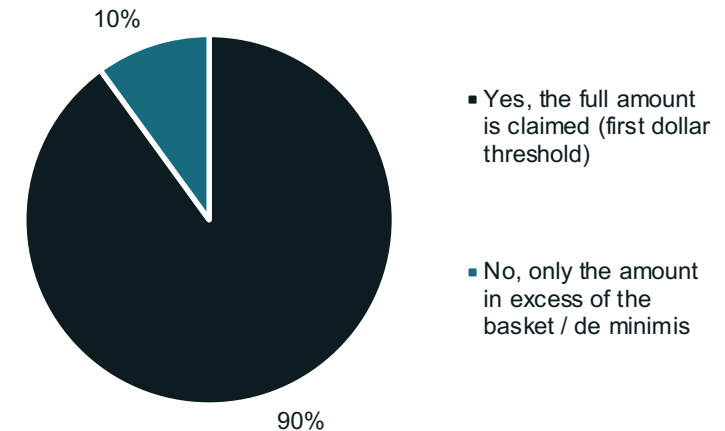


Baskets and *De Minimis*

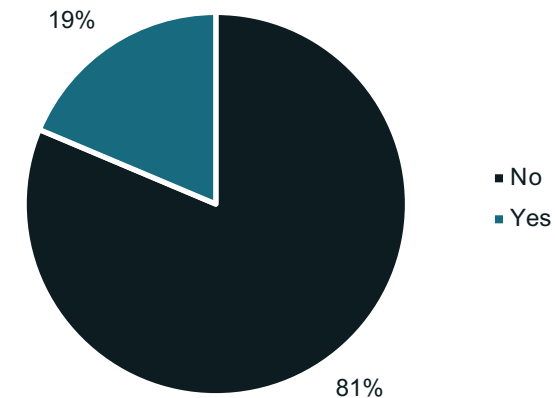
De minimis is a limitation on the amount of the Buyer's claims, setting the minimum allowable amount of an individual claim. Basket is a limitation of the total minimum amount of all claims that can be made against the Seller.

Baskets and *de minimis* were applied only in 19% of all transactions. When using baskets and *de minimis*, the parties usually agree on the possibility of collecting the full amount of claims, without deducting the size of the basket / *de minimis*.

Is the amount of the *de minimis* / basket collected?



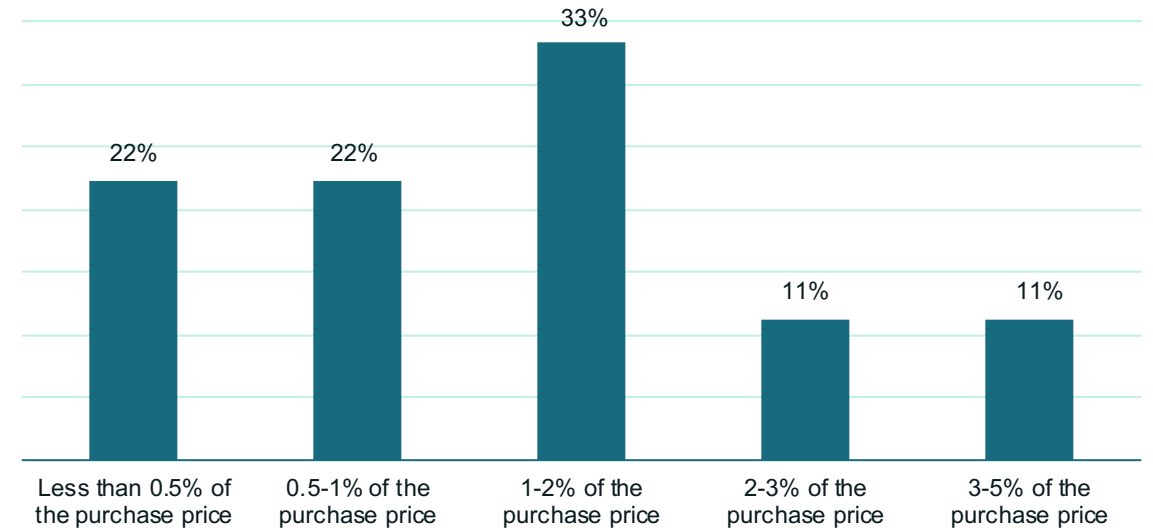
Does the contract provide for baskets and *de minimis* on the Buyer's claims from representations and warranties?



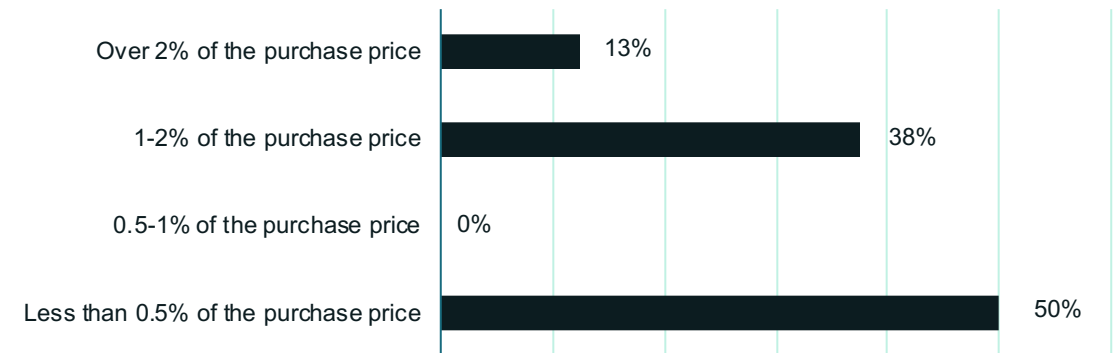
Amount of Baskets and *De Minimis*

Taking into account the small number of transactions in which baskets and de minimis were used, it is not possible to establish an objective pattern of use of certain amounts of basket and de minimis.

What is the approximate minimum basket / de minimis amount for all claims in the aggregate?



What is the approximate de minimis for each individual requirement?



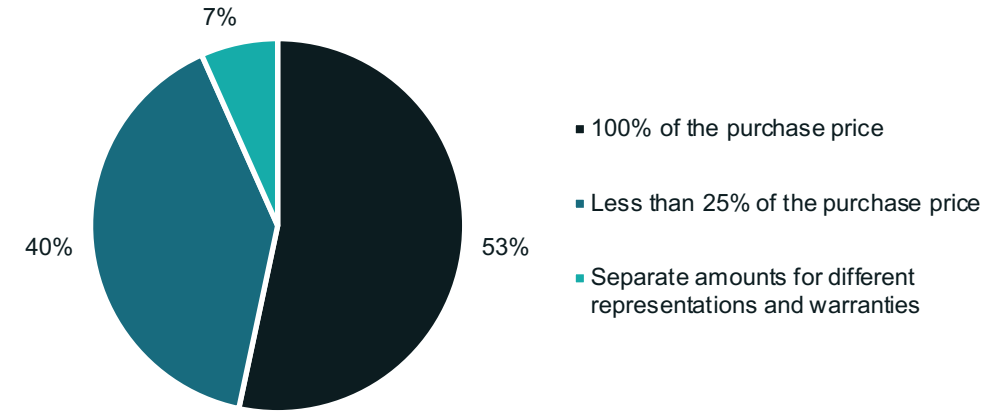
Limit of Seller's Liability

The parties usually do not agree on the maximum limit of the Seller's liability (71%).

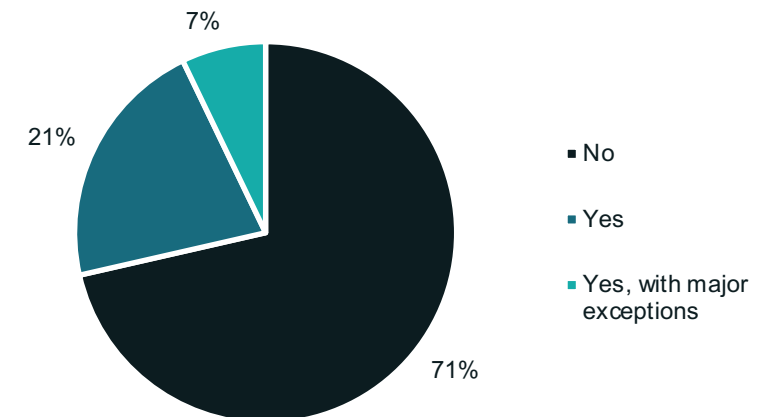
If this limit is set, it is most often 100% of the purchase price, although a limit of less than 25% of the purchase price is also common.

Exceeding the upper limit of the amount of liability can be admitted in case of intentional breach of representations and warranties or gross negligence by the Seller.

What is the amount of the upper limit of liability?



Is the seller's liability limited to a maximum total amount?

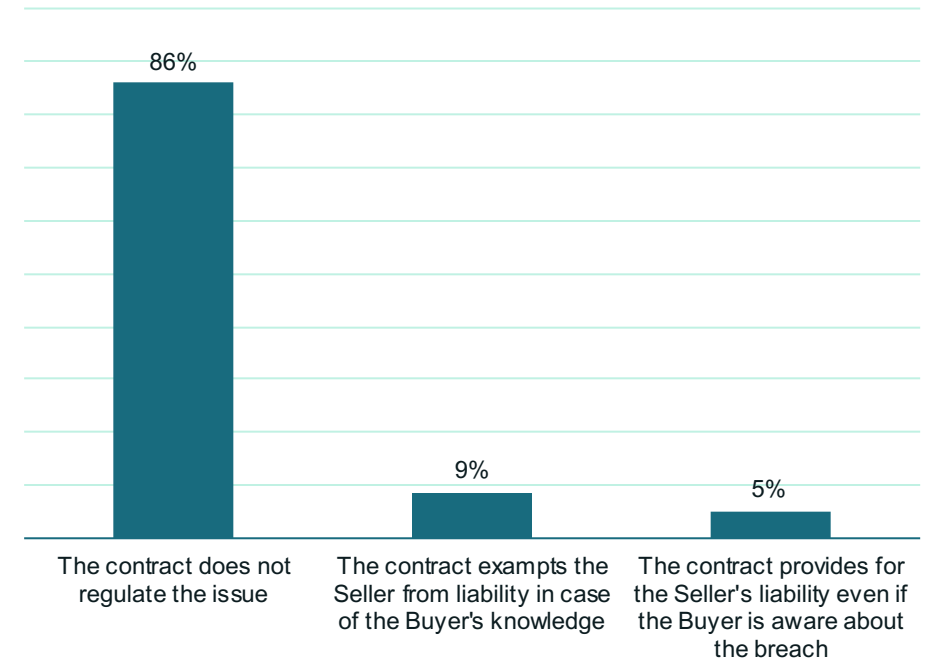


Sandbagging

Sandbagging means the Buyer's right to hold the Seller liable for breach of representations and warranties, even if the Buyer is aware of any inaccuracy or breach of representation or warranty at the time of signing or closing.

It is not yet common in Belarus to include in the contract 'sandbagging' provisions limiting the Seller's liability in the event of the Buyer's knowledge.

Does the contract contain a provision on the seller's liability in the event of the Buyer's knowledge?



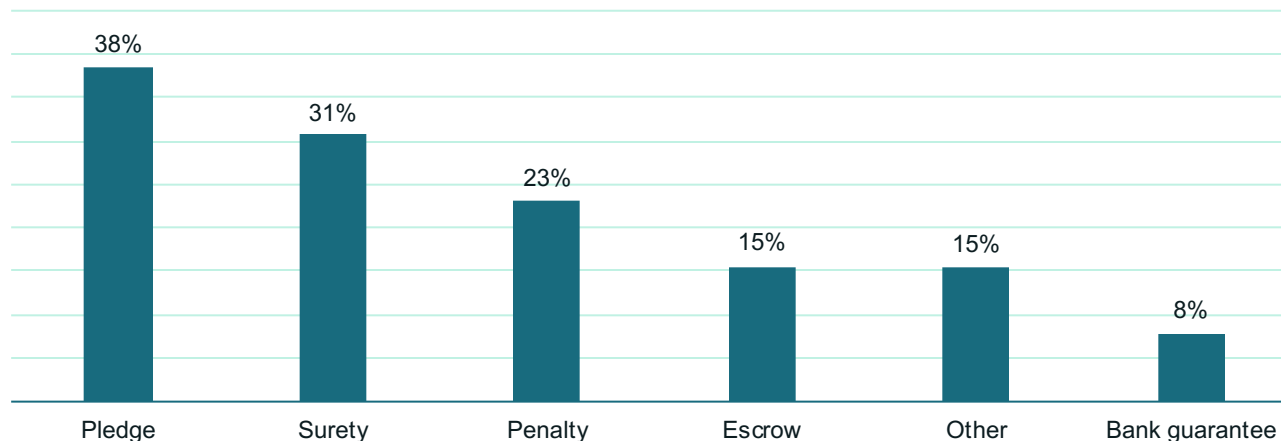
Security for Seller's Obligations

Security for Seller's Obligations was used only in 22% of cases.

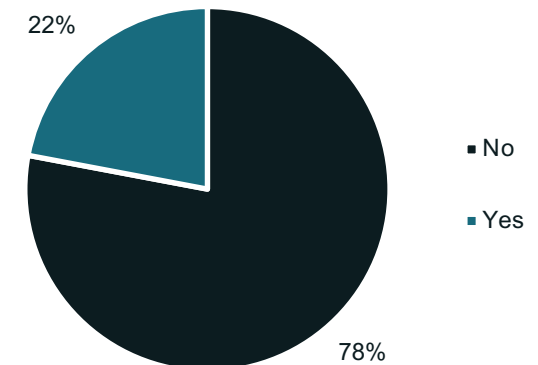
The most popular security measures were pledge (38% of transactions) and surety (31% of transactions).

The parties never resorted to representations and warranties insurance.

Form of security of Seller's obligations



Does the contract provide for security for Seller's obligations?





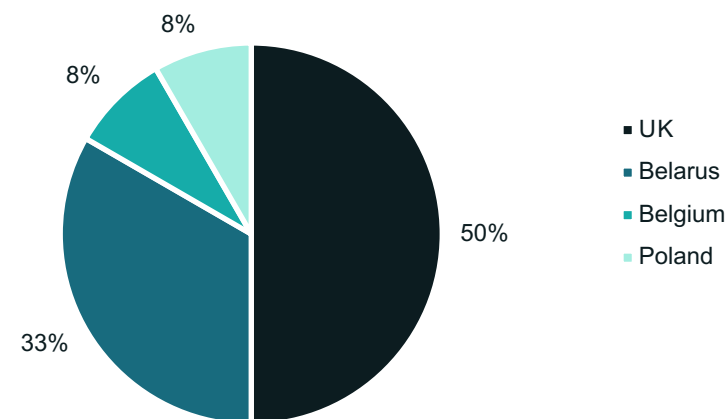
Shareholders Agreement

Shareholders Agreement (SHA)

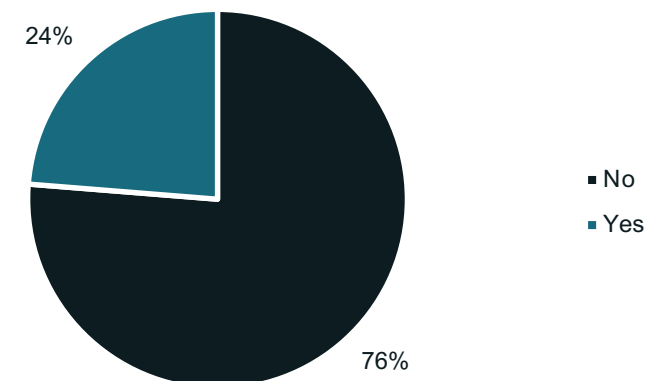
A shareholder's agreement was concluded between Seller and Buyer in relation to 24% of transactions.

In 50% of cases, the parties preferred to submit a shareholders agreement under the law of one of the United Kingdom's legal systems. This may be partly due to participation of the EBRD in some of the projects.

SHA Governing Law

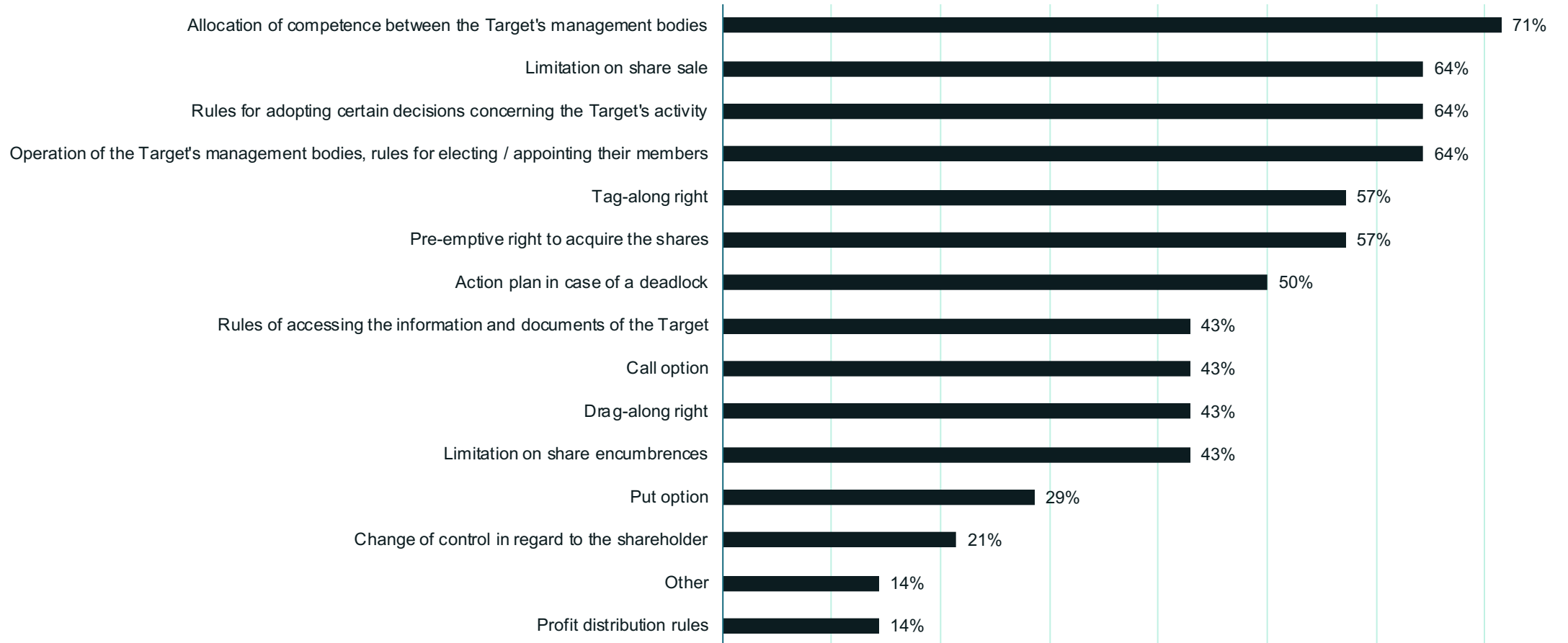


Have the parties concluded a shareholders agreement?



SHA Provisions

What were the provisions included in the SHA?



The background of the slide features a dark blue gradient. Overlaid on this are numerous thin, light teal lines of varying lengths and orientations. Many of these lines terminate in small teal dots. Additionally, there are several rectangular areas filled with a fine grid of small teal dots, creating a textured effect. The overall aesthetic is modern and technological.

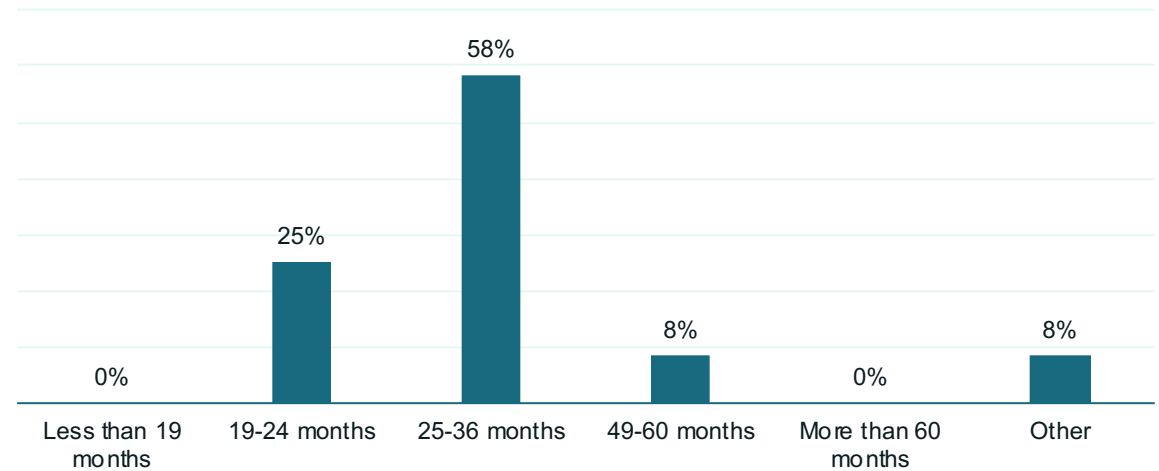
Covenants

Non-Compete Obligations

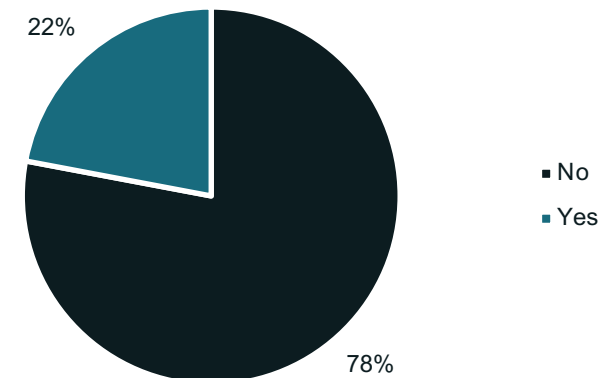
Non-compete obligations were included in the contract in 22% of cases.

The normal duration of a non-compete obligation is 2-3 years (58%).

Duration of the non-competition obligation



Does the contract contain a non-competition obligation?



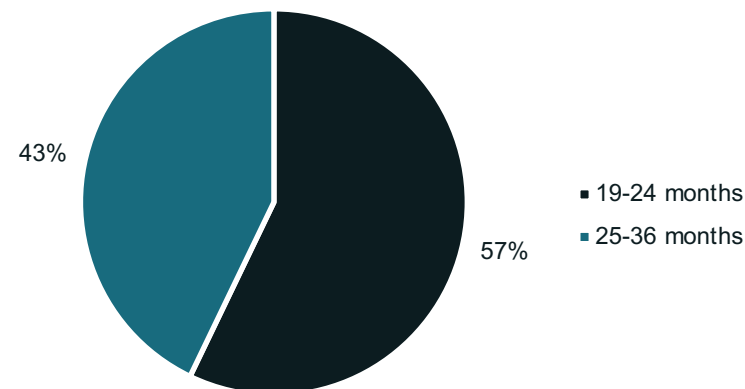
Non-Solicitation Obligations

A provision under which the Seller and other persons (usually key employees of the Target) undertake not to solicit employees, customers, or suppliers from the Target or the Buyer after signing or closing.

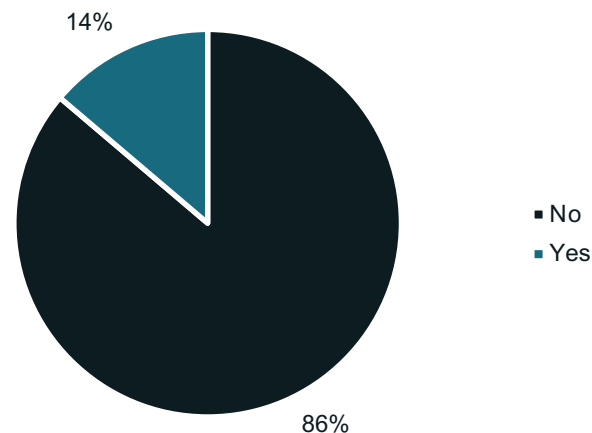
The obligation of non-solicitation is even rarer than the non-compete provision (14%) but is more common in transactions where the Target operates in the technology sector (50%).

The normal duration of such obligation is 1.5-2 years.

Duration of the non-solicitation obligation



Does the contract contain a non-solicitation obligation?





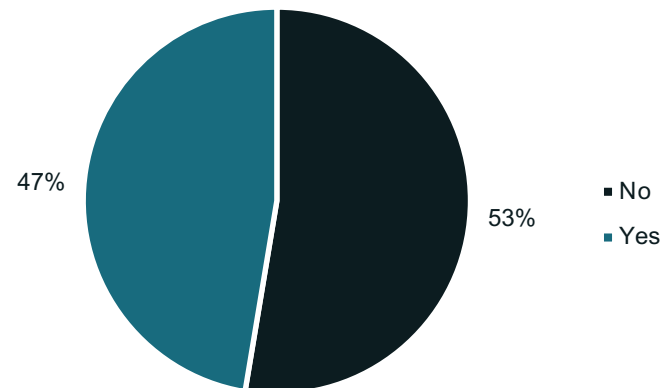
Duration of the Transaction

Duration of the Transaction

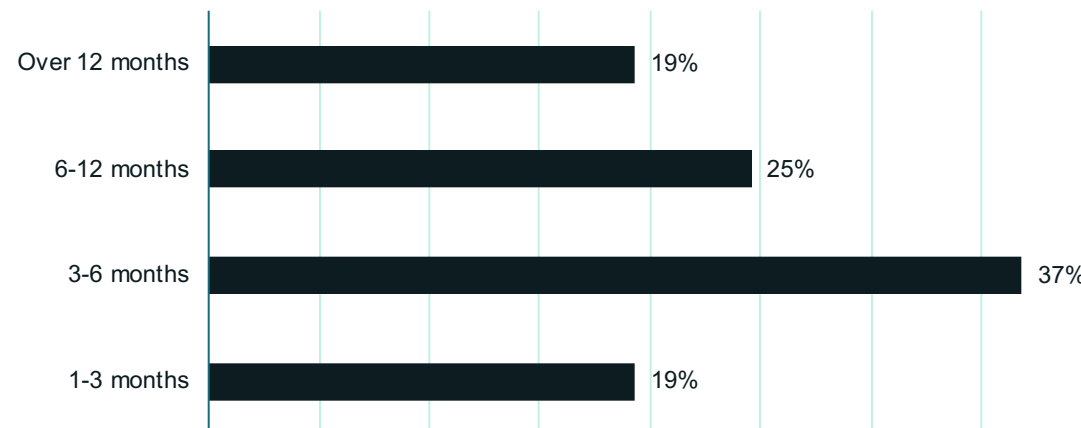
Usually a transaction lasts for 3-6 months from the beginning of active negotiations to the closing date (37%).

In about 50% of cases, the start of active negotiations is marked by signing a letter of intent (47%).

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



Duration of the transaction

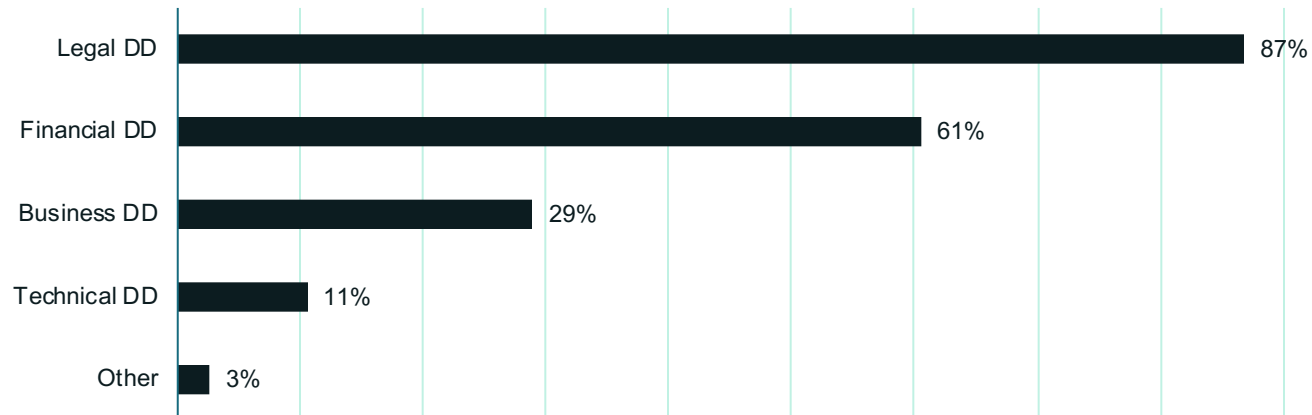


Due Diligence

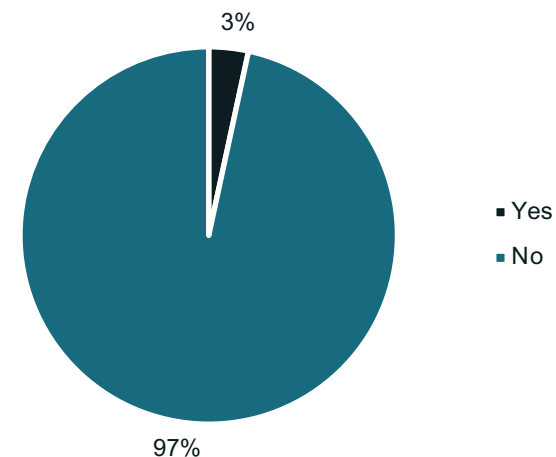
Target due diligence is usually carried out only by the Buyer (67%); vendor's due diligence is not so common (3%).

The most frequent types of due diligence are legal (87%) and financial (61%).

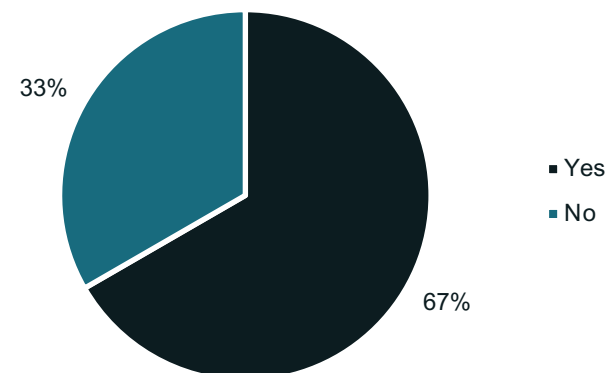
What were the types of due diligence performed by the Buyer?



Has the Seller conducted a due diligence?



Has the Buyer conducted a due diligence?



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