

The background of the slide is a dark, grayscale photograph of a desk. On the desk, there is a spiral-bound notebook with the 'BAHR' logo on its cover, a pen, and a glass of water. The 'BAHR' logo is prominently displayed in large, white, stylized capital letters on the left side of the slide.

BAHR

Norwegian Private M&A Survey Statistics and Trends

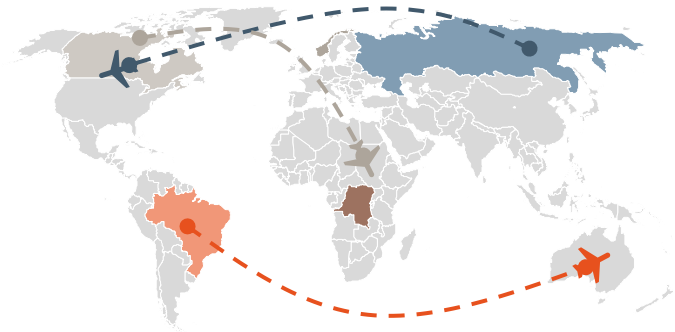
2019 Edition

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Norwegian M&A at a glance – 2018 in review

Norwegian targets
Second highest volume
ever recorded



45% of deals had **foreign bidders**
in 2018, up from 43% in 2017

Most active sectors



#1: *Industrials
& Chemicals*
(11.4%)



#2: *Business
Services*
(10.3%)



#3: *TMT*
(10.1%)

Most valuable sectors



#1: *Energy, Mining
and Utilities*
(US\$3.7bn)



#2: *TMT*
(US\$3.2bn)



#3: *Financial
Services*
(US\$1.5bn)

Deal value decreased by 53% from 2017

2018

€12.1bn

2017

€26.8bn

Foreword

Welcome to the 2019 edition of BAHR's Norwegian Private M&A Survey. In this report we examine the latest development on key terms and market trends in the Norwegian M&A market.

Following a buoyant 2017, the Norwegian M&A market had yet another strong year in 2018 and deal volumes reached the second-highest ever recorded, only surpassed by 2017. Active private equity funds, an abundance of available capital in the market, low financing costs, volatile oil and gas prices, high equity valuations and a strong focus on technology all contributed to the deal making environment.

2018 was also another very active M&A year for BAHR, and for the second year in a row, we advised on more Norwegian deals, and on deals with a higher total value, than any other law firm. To conclude 2018, BAHR was also awarded Norway M&A Legal Adviser of the Year by Mergermarket.

BAHR's leading position in the Norwegian M&A market continuously allows us to advise both on key transactions and on a large number of M&A deals in total. This ensures that we always have extensive and deep insight with respect to market terms and trends in the Norwegian M&A market.

In this latest edition of our report, we provide you with our analysis of key terms and conditions used in recent private M&A deals in Norway, and present the latest market trends as we observe them. Our survey is based on close to 70 sale and purchase agreements (SPAs) signed in 2018 and 2017 involving parties advised by BAHR. This includes representation of both sellers and buyers as well as entrepreneurs, industrials and financials.



Head of Corporate M&A, Øystein Guvåg and Deputy Head, Lars Kristian Sande

Our selection of SPAs is based on what we consider to be a representative sample of the Norwegian M&A market, excluding, inter alia, pure asset-based transactions. Further, our selection has been limited to SPAs governed by Norwegian law.

Enjoy the read. Don't hesitate to reach out if you want to dig deeper into the details.

The Norwegian M&A market 2018 - Mergermarket league tables

Rank	Lawfirm	Value (US\$m)
1	BAHR	6,690
2	Thommessen	5,963
3	Schjodt	5,945
4	Wikborg Rein	4,561
5	Latham & Watkins	4,124
6	Plesner	3,503
7	White & Case	3,497
8	Wiersholm	3,490
9	Karanovic Partners	3,440
10	Schoenherr	3,440

Rank	Lawfirm	No. of deals
1	BAHR	62
2	Schjødtt	55
3	Thommessen	47
4	Wikborg Rein	46
5	Selmer	46
6	Wiersholm	40
7	CLP	29
8	DLA Piper	24
9	Arntzen de Besche	22
10	Haavind	16



BAHR named "Norway Legal Adviser of the Year" at Mergermarket European M&A Awards 2018

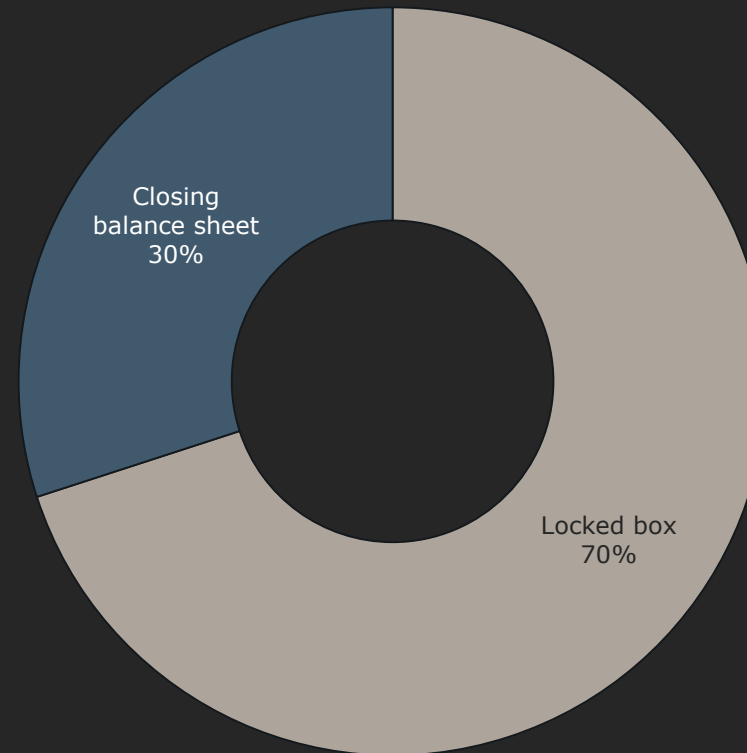


Trends in Norwegian SPAs

Locked box is the dominant pricing mechanism

70% USE A LOCKED BOX MECHANISM

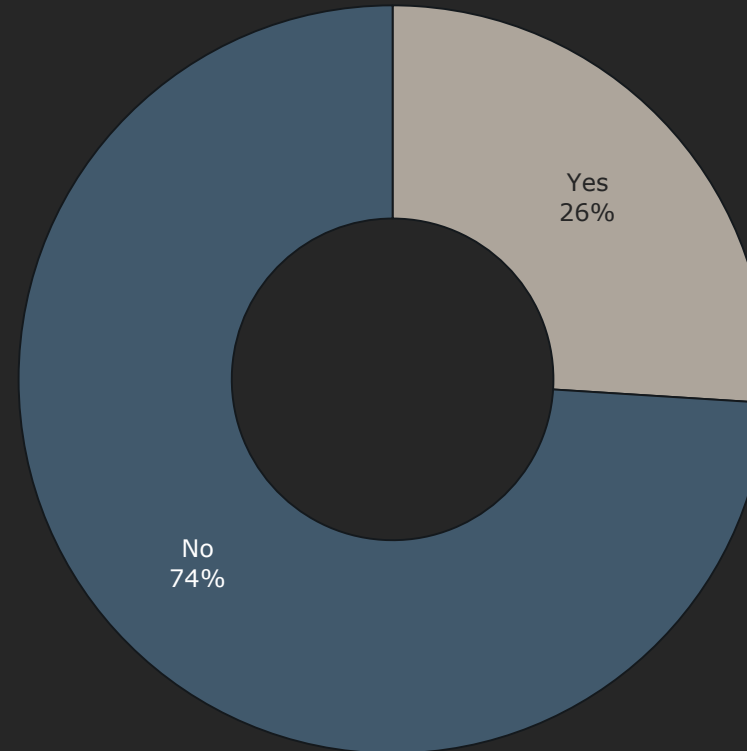
- Locked box accounts continues to be the preferred pricing mechanism
- In a locked box deal, the target is priced based on a historical balance sheet, providing certainty of price at closing
- Locked box pricing is often paired with interest (or other top-up element) on the equity price from the reference date to closing, particularly if the target is profitable (this trend is less prevalent in smaller transactions)
- A small number of deals include “hybrid” mechanisms, e.g. reference accounts prepared after signing but before closing (such variations are not shown in the diagram)



Earn-out and other deferred contingent payments

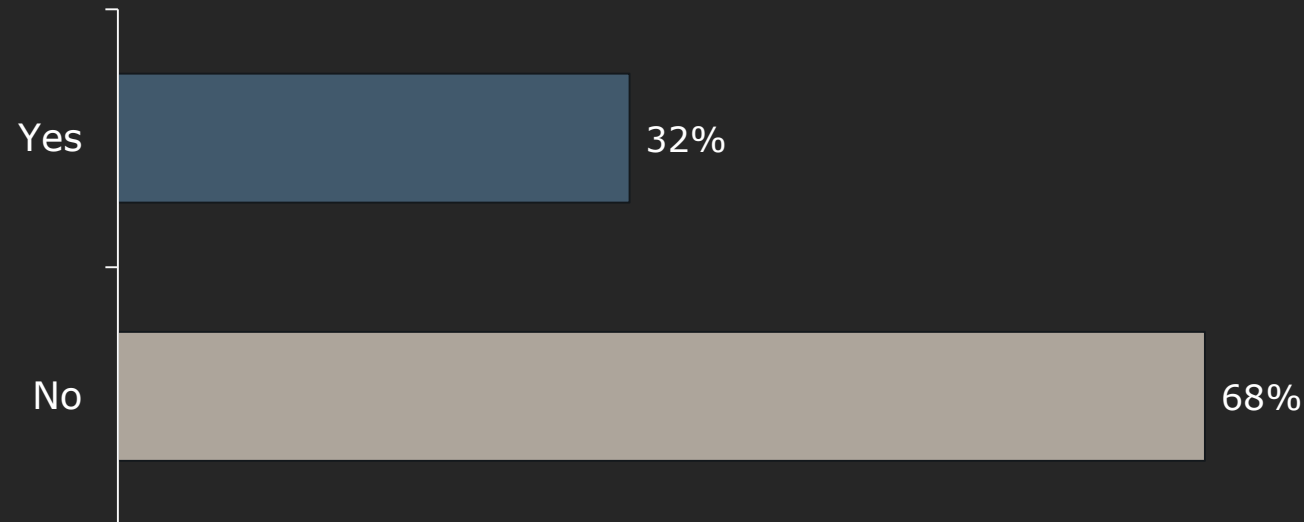
26% INCLUDE AN EARN-OUT
OR DEFERRED
CONTINGENT PAYMENTS

- One in four deals includes some type of earn-out or deferred contingent payment regime
- Divergent views between buyers and sellers on future prices and/or earnings explain such regimes, especially in the energy sector
- Earn-out clauses are most commonly linked to the EBITDA level of the target company for the current or subsequent financial year
- On a standalone basis, the use of such regimes declined from 33% in 2017 to 20% in 2018



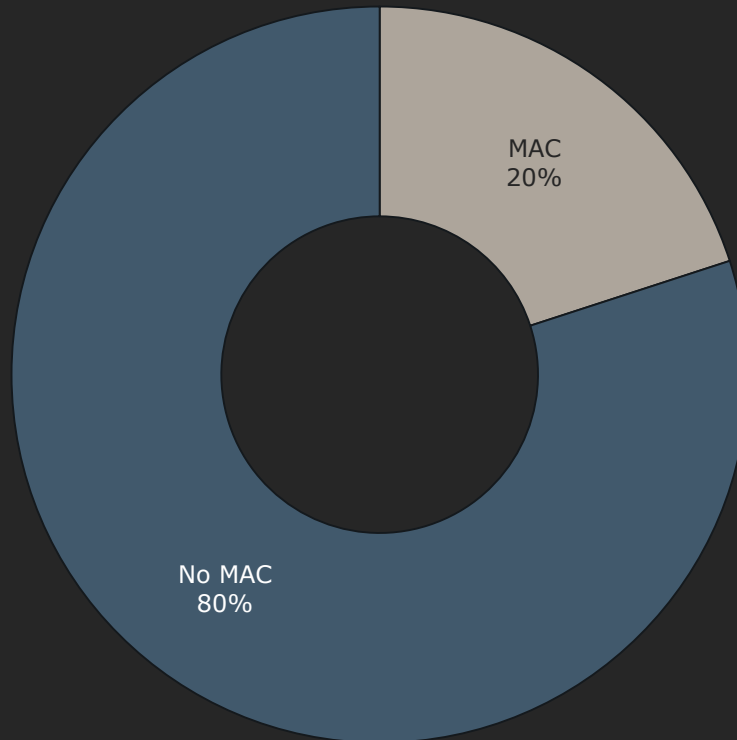
Warranty insurance or other security relatively common

32% INCLUDE SOME SORT OF SECURITY FOR WARRANTY CLAIMS



- Apart from M&A insurance (approx. one-third of secured deals were insured), security is typically established in the form of a retention or escrow arrangement or parent company guarantee
- The size of the retained/escrow amount varies significantly
- The diagram excludes deals that had an earn-out or contingent deferred payments only, although in practice such arrangements may function as security (absent any set-off prohibition)
- No significant development in the use of security observed from 2017 to 2018

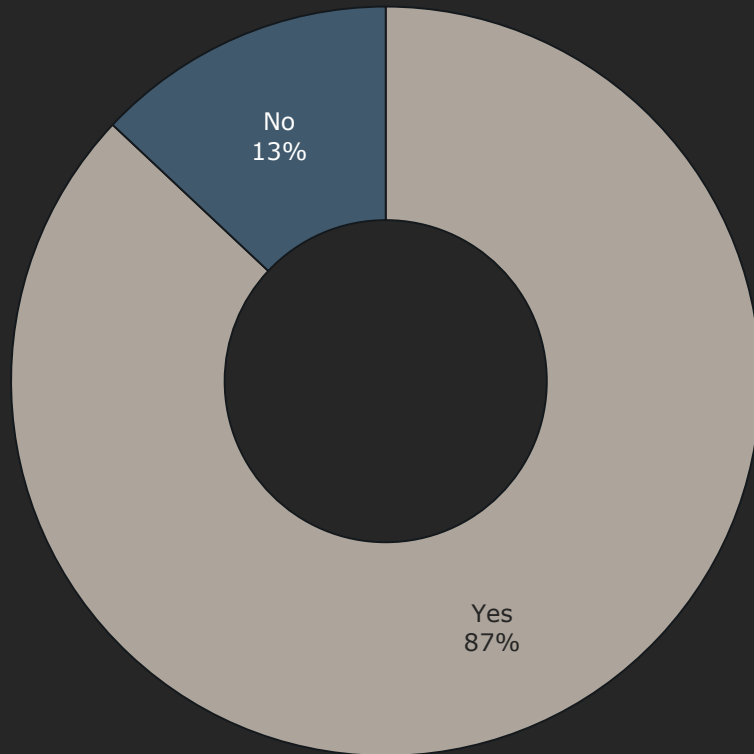
No material adverse change as a condition for closing



20% INCLUDE A
MAC CLAUSE

- Completion of the offer by the bidder being subject to the absence of any material adverse change in, or material adverse effect on, the target company between signing and completion is prevalent
- In most cases, the “MAC out” is a “target business MAC” only, not a market or industry MAC. These and other variations are not shown in the diagram
- Historically, Norwegian SPAs have rarely contained MAC clauses

Extensive use of general disclosure warranties



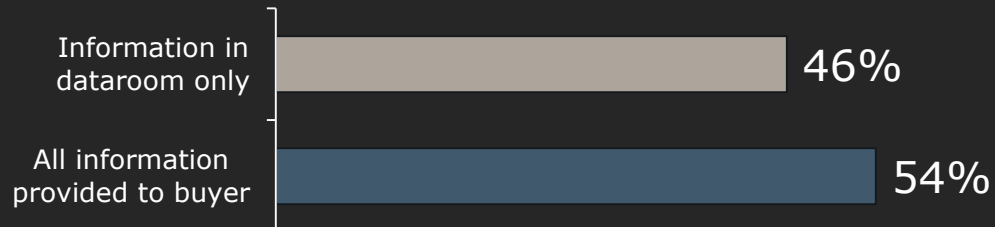
87%

INCLUDE A GENERAL
DISCLOSURE
WARRANTY

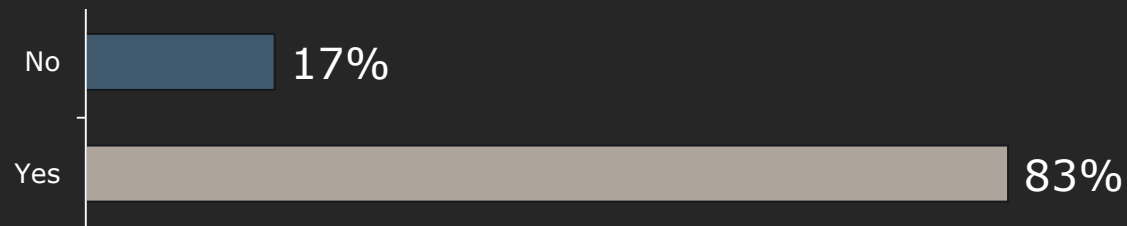
- Our survey confirms that there is a clear market practice in Norway for inclusion of general disclosure warranties
- Disclosure warranties typically include knowledge- and/or materiality qualifiers
- The trend is likely fuelled by legal tradition and applicable background law in Norway, pursuant to which sellers of an undertaking (including shares) will be subject to a statutory duty of disclosure towards the buyer
- Application of background law is normally explicitly excluded and replaced by exhaustive representations and warranties in SPAs, however some SPAs are silent on the matter and thus potentially subject to the principles of background law

Scope of disclosure warranties and effect of buyer's knowledge

Scope of disclosure warranties



Inclusion of an anti-sandbagging provision

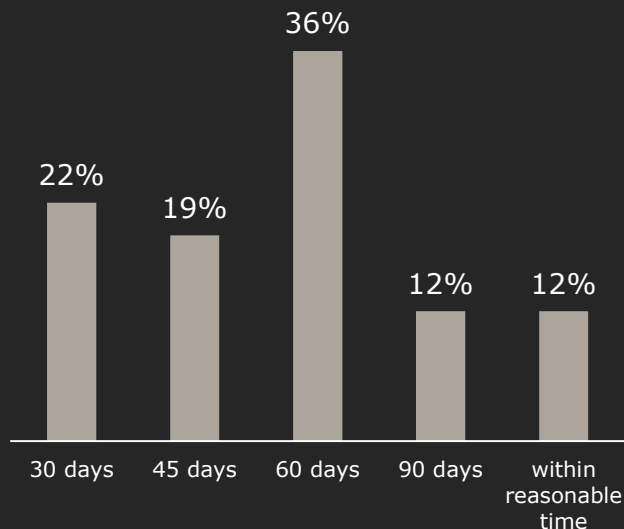


- In 2017, the majority (52%) of disclosure warranties were limited to information provided in the data room and through Q&A
- In 2018, the trend shifted in favour of buyers, with 58% of the disclosure warranties also covering information provided outside the data room and Q&A procedure
- In addition to warranting that disclosed information is true and accurate, sellers also commonly warrant (usually with a knowledge qualifier) that the disclosed information is complete
- A clear majority of deals include “anti-sandbagging provisions” barring claims based on matters known to the buyer at signing
- Most SPAs exclude seller liability if the matter had been “fairly disclosed” prior to signing

No seller accepted more than 24 months general warranty period

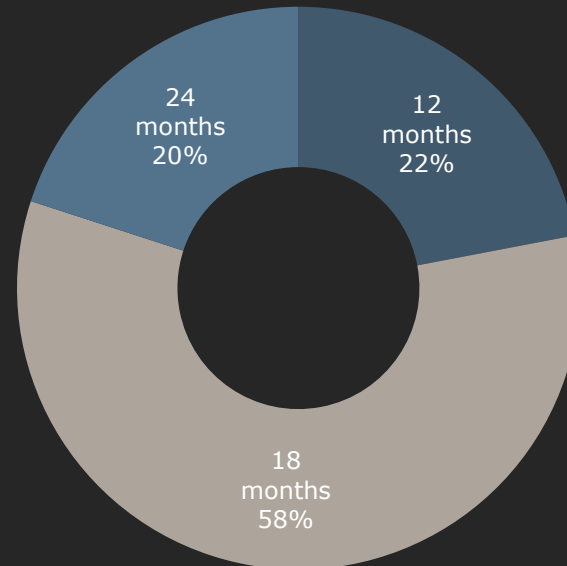
53_d

AVERAGE
NOTICE PERIOD
Buyer's time to react
on warranty claims



58%

USE A 18 MONTHS
WARRANTY PERIOD
FOR GENERAL
WARRANTIES

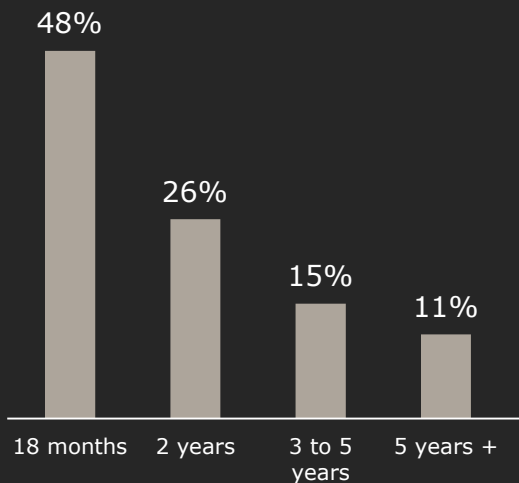


- Time limits for bringing claims were agreed in all transactions
- An average 18 months general warranty period from closing allows the buyer one audit-cycle to be completed post-transaction
- Pursuant to some SPAs, failure to notify within the notice period does not bar the buyer from bringing the claim, however excess loss resulting from the delay is not recoverable
- The warranty period for fundamental warranties, such as title, are invariably longer (see next page)
- No significant trend change from 2017 to 2018

Environmental, fundamental and tax warranties last longer

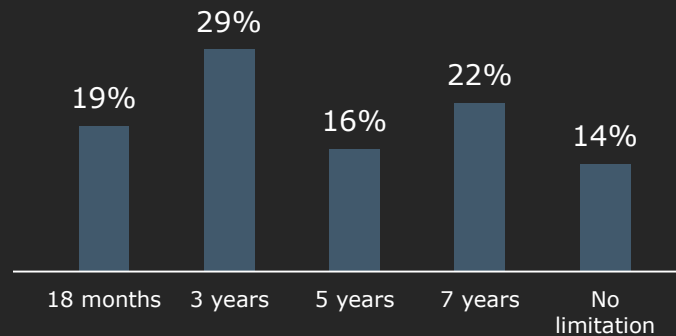
ENVIRONMENTAL WARRANTIES

Often in line with period for general warranties, however more common with longer warranty periods



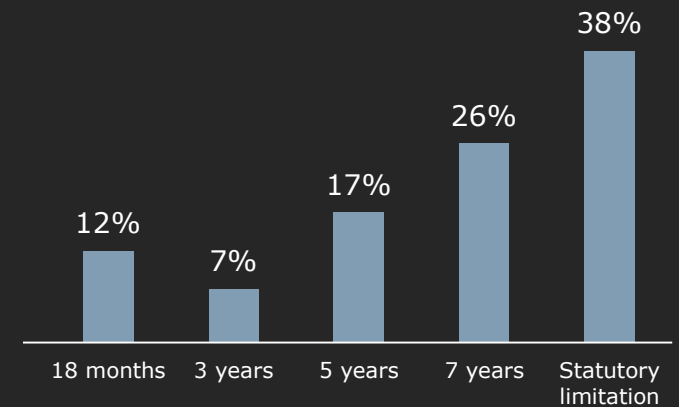
FUNDAMENTAL WARRANTIES

Vary significantly more than warranty periods for general warranties



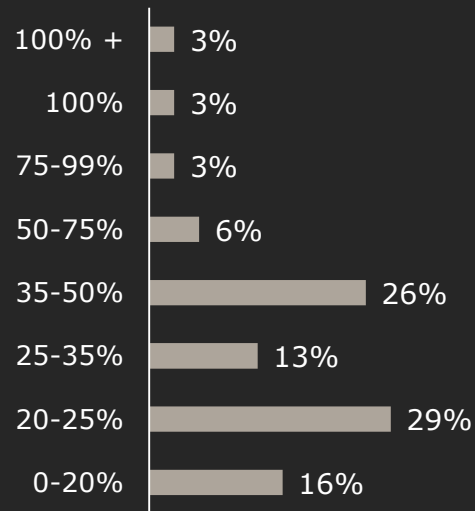
TAX WARRANTIES

Most common to link tax warranties to statutory limitation periods

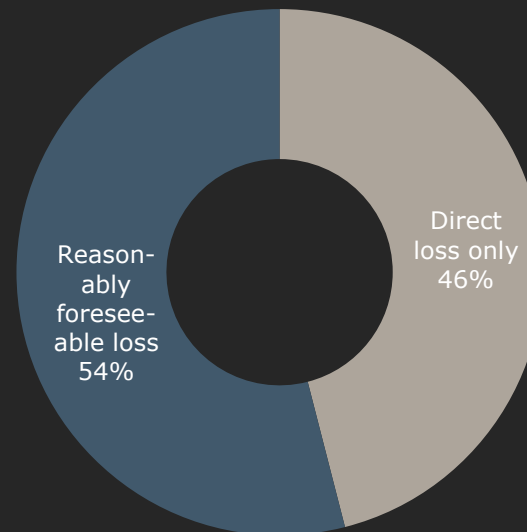


Not common for sellers to accept uncapped liability

32% OF PURCHASE PRICE
IS THE AVERAGE
WARRANTY CAP
23% weighted average



46% LIMITS LIABILITY TO
DIRECT
LOSSES

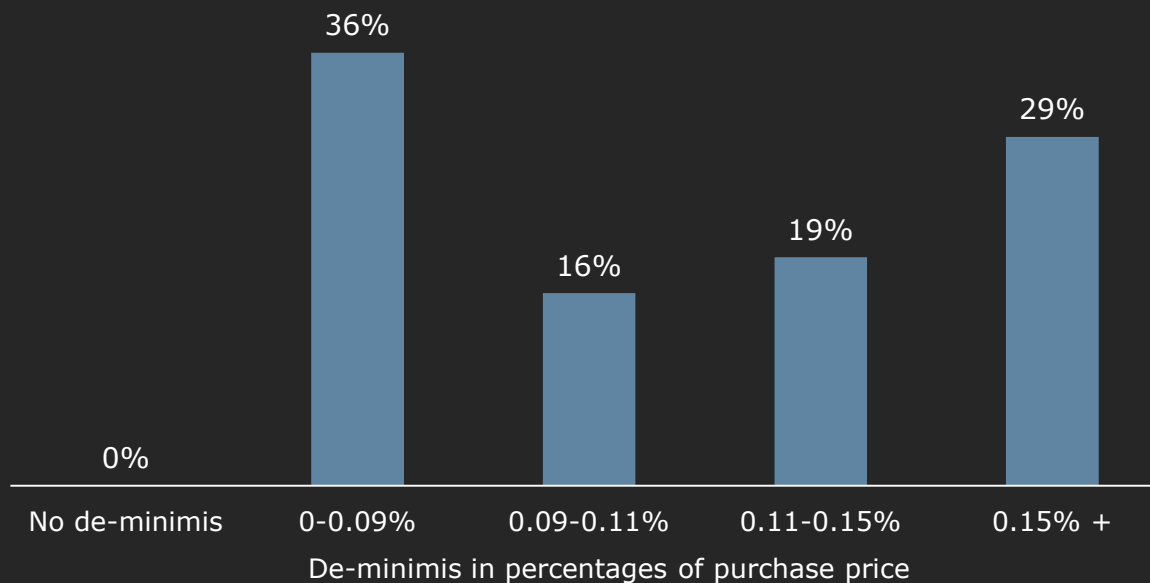


- A cap on the seller's liability was agreed in all transactions
- However, breach of fundamental warranties or specific indemnities was typically excluded from the caps or subject to a separate cap at 100% of the purchase price
- The trend is that liability caps are linked to a percentage of the purchase price, and that deals with a higher value have a lower liability cap (in percentage of purchase price) compared to deals with lower values
- A majority of the sellers accepted liability for reasonably foreseeable (direct and indirect) loss suffered by the buyer
- No significant trend change from 2017 to 2018

De-minimis typically 0.1% of purchase price

0.12% AVERAGE DE-MINIMIS OF PURCHASE PRICE

0.07% WEIGHTED AVERAGE DE-MINIMIS OF PURCHASE PRICE

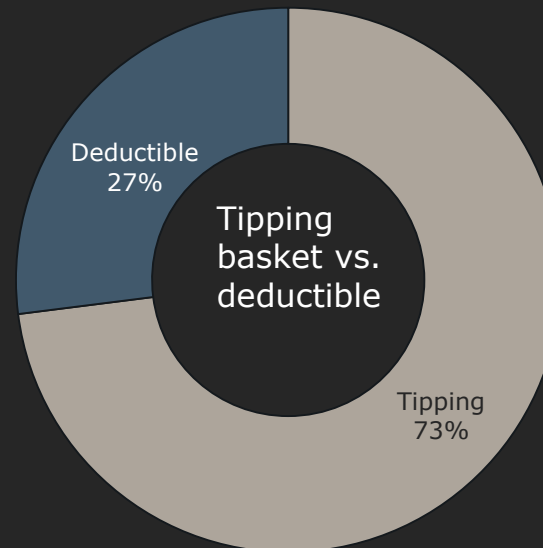
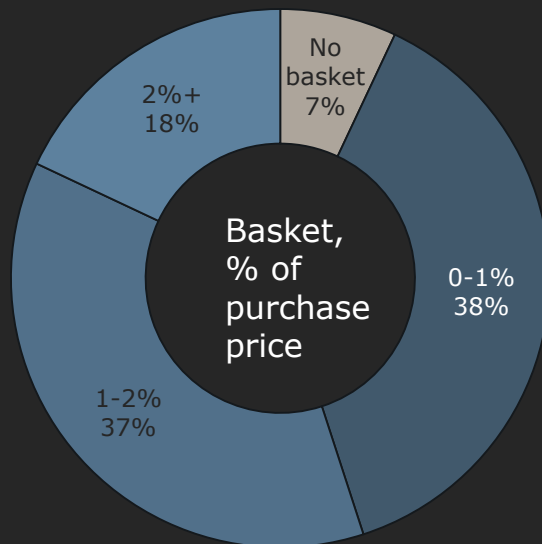


- Most SPAs contain protection against liability for insignificant losses
- The usual starting position for de-minimis threshold is 0.1% of the purchase price, but our survey shows widespread variations
- As with the warranty cap, for transactions with large purchase prices, de-minimis liability thresholds (as percentages of purchase price) are generally lower than for transactions with lower deal value
- 2018 levels in line with those seen in 2017

Basket typically 1% of purchase price

1.06% AVERAGE BASKET IN % OF PURCHASE PRICE

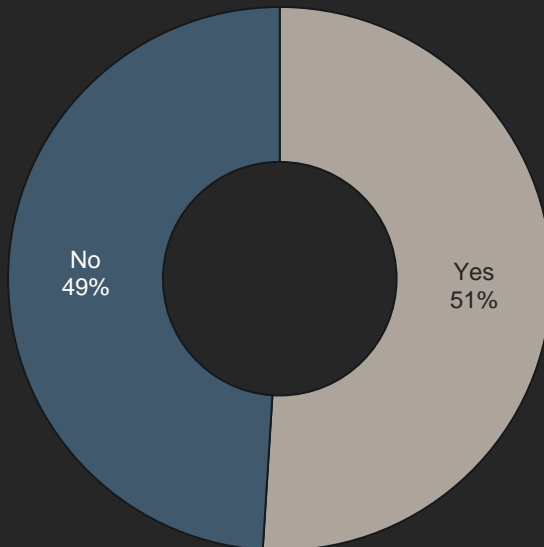
0.99% WEIGHTED AVERAGE BASKET IN % OF PURCHASE PRICE



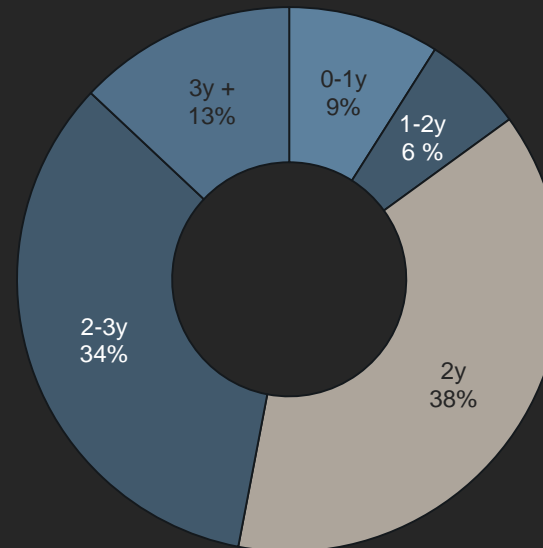
- Most SPAs contain a «basket» liability threshold to prevent buyers from claiming compensation unless their total loss exceeds a certain level
- Tipping baskets are predominant, meaning that if aggregate losses exceed the basket threshold, the seller will be liable for the full amount
- However, deductible baskets are also frequently used and seen in almost every third deal
- Figures for 2018 broadly in line with those for 2017

Non-compete and non-solicitation restrictions are common

51% INCLUDE NON-COMPETE RESTRICTIONS



2yrs IS THE MOST COMMON TIME PERIOD

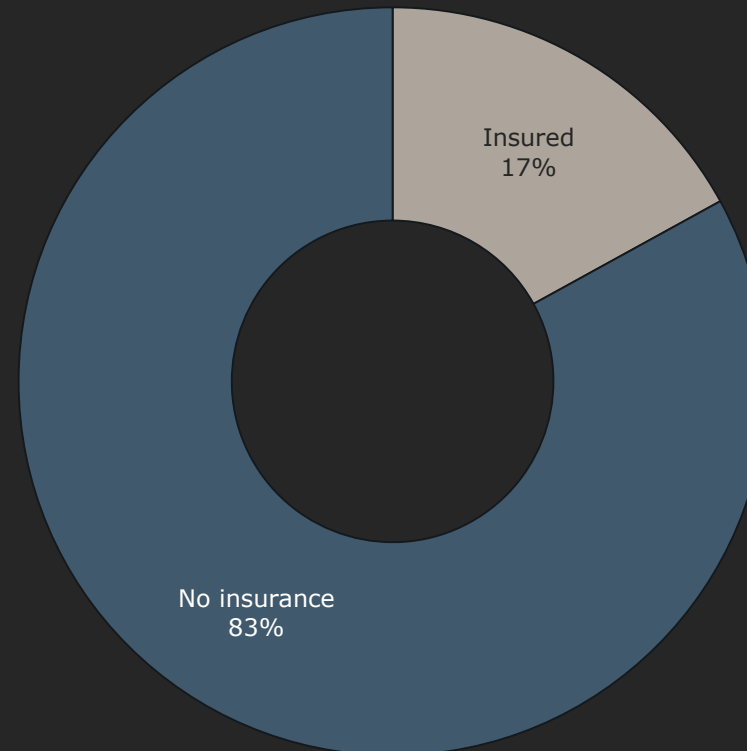


- The majority of the SPAs contain non-compete (preventing sellers from competing with the target business after completion) and/or non-solicitation (preventing sellers from approaching employees or customers) undertakings
- Most of the SPAs that contained a non-compete clause also contained a non-solicitation clause with a similar restrictive period
- Two years is the most common time period for non-compete and non-solicitation undertakings, however three years is also frequently applied
- Slight uptick in use of non-compete and non-solicitation clauses from 2017 (44%) to 2018 (55%)

Use of M&A insurance

17% INCLUDE M&A
INSURANCE

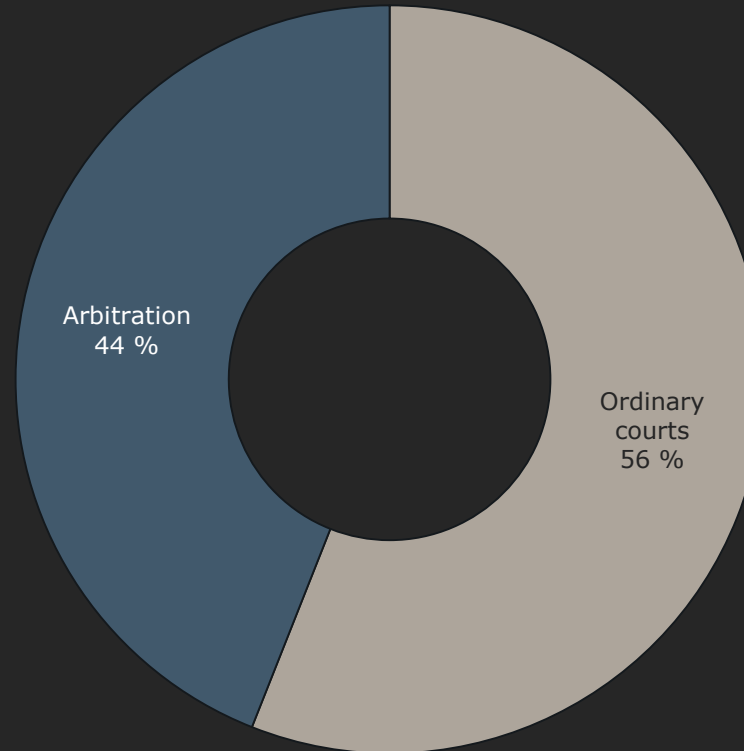
- M&A insurance is often considered
- More frequently used when financial parties were involved
- Allows for a “clean exit” and distribution of sale proceeds
- Increase in use in 2018 (21%) compared to 2017 (14%)



Ordinary courts the most used dispute resolution mechanism

56% AGREED TO USE
ORDINARY COURTS
























- Ordinary courts in Norway is the preferred dispute resolution mechanism
- Oslo District Court is the most common legal venue
- Increased appetite for arbitration as dispute resolution mechanism (up from 38% in 2017 to 50% in 2018)





BAHR Credentials

Recent transactions advised by BAHR

 <p>Acquisition of AGR</p>	 <p>Acquisition of Shell Olie- Og Gasudvinding Danmark B.V. from Royal Dutch Shell Plc.</p>	 <p>Acquisition of Gjensidige Bank ASA from Gjensidige Forsikring ASA</p>	 <p>Acquisition of Atlas Knowledge Limited from HgCapital</p>	 <p>Acquisition of iZettle</p>	 <p>Acquisition Maersk Olje- og Gas A/S</p>
 <p>Acquisition of Link Mobility Group ASA</p>	 <p>Sale of 60% of Luminor Group to Blackstone</p>	 <p>Sale of Nordic Entertainment and Studio business to TDC Group</p>	 <p>Acquisition of Mongstad Administration from EQT</p>	 <p>Acquisition of Norske Skogindustrier ASA</p>	 <p>Sale of Infratek to Vinci</p>
 <p>Merger with Eni Norge</p>	 <p>Sale of Investinors 49% share in Alpinco</p>	 <p>Acquisition of Tampnet from EQT</p>	 <p>Acquisition of The North Alliance from Capman</p>	 <p>Sale of TTS to MacGregor Group</p>	 <p>Sale to Hellman & Friedman LLC</p>
 <p>Sale of 50% of AKOFS Offshore AS to Mitsui</p>	 <p>Acquisition of Face2Face Creatives International</p>	 <p>95% stake in Løplabbet AS</p>	 <p>Acquisition of Boreal Norge from Cube Infrastructure</p>	 <p>Acquisition of Cflow Invest AS</p>	 <p>Acquisition of Hess Norge AS</p>

The Legal M&A Powerhouse in Norway

- Corporate M&A has formed the core of BAHR's practice since its inception over 50 years ago and transactional work is at the very heart of everything that BAHR does.
- Our M&A team has consistently been ranked Tier 1 by all leading rating agencies, and it remains so today. Our practice covers all types of private and public transactions, including private acquisitions, public takeovers, co-investments, other syndicated transactions, restructurings and exits, joint ventures, IPOs, mergers and demergers.
- The team draws on expertise from across the firm and all main industries to bring clients a comprehensive service with a commercial and tailored outlook. A seamless approach to large, complex and often multijurisdictional corporate transactions is among the hallmarks of BAHR's practice
- We believe well-organized and focused teams based on the "best person for the job" principle are best suited to efficiently work on complex matters. While we will never compromise on the staffing and resources required to do the job, we aim at a lean and cost-efficient approach, as evidenced by our slogan: "Small teams for big matters".

Chambers Europe & Legal 500:

"clear leader in Norway for M&A work in the private equity arena"

"an excellent combination of legal knowledge and market awareness"

"they are one of the strongest within their field of expertise, very competent and attentive"

"a flexible and accommodating results-oriented firm"

"a very high service level"

"I can always reach them and they answer precisely within whatever deadline I give them"

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