



BAHR

Norwegian Private M&A Survey
Statistics and Trends

2020 Edition

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Norwegian M&A at a glance – 2019 in review



Norwegian targets
Second highest volume ever recorded

42% of deals had **foreign bidders** in 2019, down from 45% in 2018 (43% in 2017)

Most active sectors

- # 1: TMT (22.2%)
- # 2: Business Services (17.7%)
- # 3: Industrial & Chemicals (12.6%)

Most valuable sectors

- # 1: Energy, Mining and Utilities (US\$10.9bn)
- # 1: TMT (US\$3.7bn)
- # 3: Financial Services (US\$3.7bn)

Deal value increased by 90% from 2018



Source: Mergermarket

FOREWORD

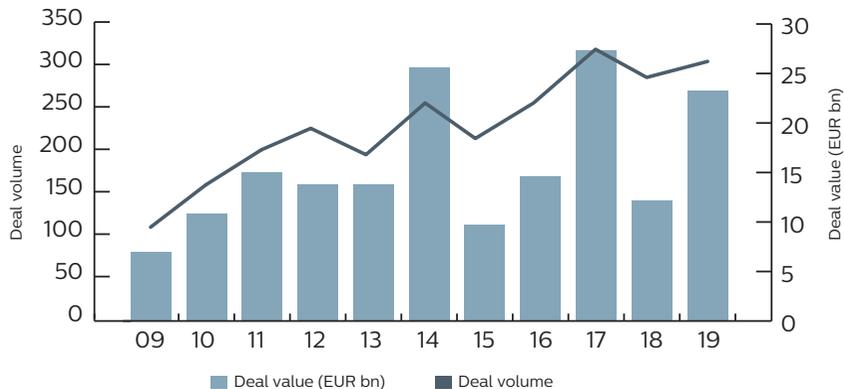
Welcome to the 2020 edition of BAHR's Norwegian Private M&A Survey. In this report, we examine the latest developments on key terms and market trends in the Norwegian M&A market.

Following an unparalleled 2017 and a strong 2018, overall activity in the Norwegian M&A market continued the positive momentum in 2019, posting a deal count increase of approximately 6 per cent from the preceding year. Deal value was up 90 per cent from 2018, almost reaching the record level of 2017, albeit a few big-ticket deals contributed heavily to this climb.



Øystein Guvåg, Partner and Head of BAHR's Corporate M&A group

Norwegian targets: Development in deal volume and value over the last decade



Source: Mergermarket

While the broader European market has seen a recent drop in activity on the back of continued geopolitical uncertainties, trade wars and growth stagnation, domestic and in-bound M&A in Norway has largely been shielded from similar slowdown effects.

The appealing dealmaking environment continues to be driven by low interest rates, attractive bond markets, large cash reserves and private equity (PE) firms looking to deploy vast amounts of

available capital. This has also bolstered competition for the most attractive targets and contributed to persistent high equity valuations.

From the deals where BAHR acted as adviser during 2019, we observe a strong interest both from PE firms looking to acquire from entrepreneurs or other PE firms, and industrial players seeking consolidations. This indicates that there is general confidence in the market with respect to continued growth.

Over the past few years, the Norwegian M&A market has seen a considerable number of deals and consolidations in the oil & gas sector, covering both production and infrastructure. Moreover, a strengthened focus on technology and sustainability is emerging across a multitude of sectors, and we are increasingly often retained to advise on deals where tech assets are the predominant value drivers. Attention on the healthcare sector is also on an upward trajectory and will likely generate more M&A opportunities going forward.

With 2020 having just kicked off, we continue to see a steady demand and the favourable market conditions remain intact. We therefore have an optimistic outlook for the year ahead, and we anticipate yet another year of high deal appetite in Norway.

BAHR's position continuously allows us to advise both on the key transactions and on a large number of deals in total. This equips us with deep insight with respect to market terms and prevailing trends, and we actively seek to employ this experience to provide up-to-

date and value-add advice and services to our clients.

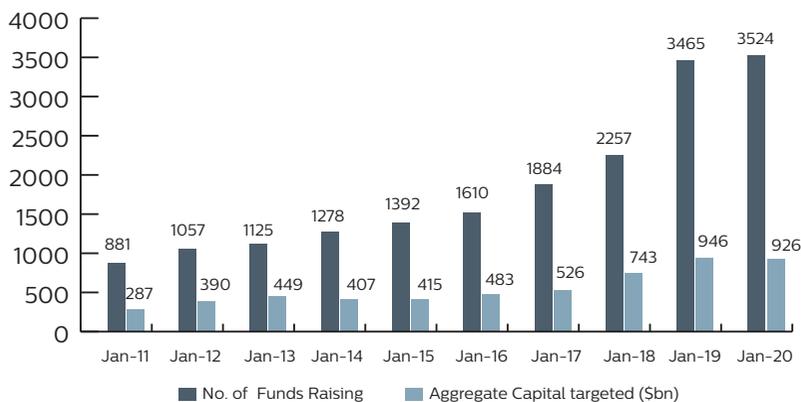
In this latest edition of our report, we provide you with our analysis of key terms and conditions used in recent private M&A deals in Norway, and present the latest market trends as we observe them. Our survey is based on over 100 sale and purchase agreements (SPAs) signed in the period from 2017 through 2019 and involving parties advised by BAHR. This includes representation of both sellers and buyers as well as entrepreneurs, industrials

and financials. Moreover, the selection includes SPAs concluded both on the basis of auction and bilateral processes.

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.

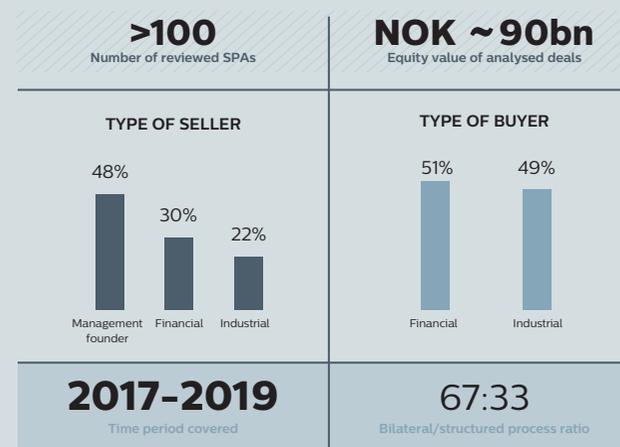
Enjoy the read. Don't hesitate to reach out if you want to dig deeper into the details.

Private equity funds in market, 2011-2020 (globally)



Source: Preqin Pro

About the selection

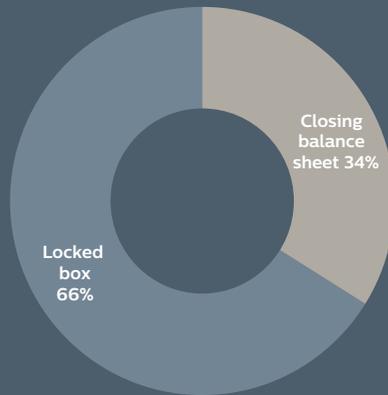




Trends in **NORWEGIAN SPAs**

Locked box is the dominant pricing mechanism

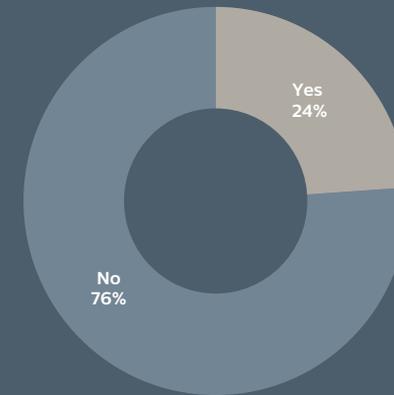
66% USE A LOCKED BOX MECHANISM



- In a locked box deal, the target is priced based on a historical balance sheet, providing certainty of price at closing and effectively transferring economic exposure to the buyer before 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
- The size of the locked box interest varies significantly without any apparent trend
- A small number of deals include “hybrid” mechanisms, e.g. reference accounts prepared after signing but before closing
- The locked box mechanism is often perceived as more seller friendly, and it completely dominated in deals with financial parties on both sides of the table (94%)
- Deals between industrials displayed the opposite trend, relying on closing balance pricing in 71% of the reviewed agreements

Earn-out and other deferred contingent payments

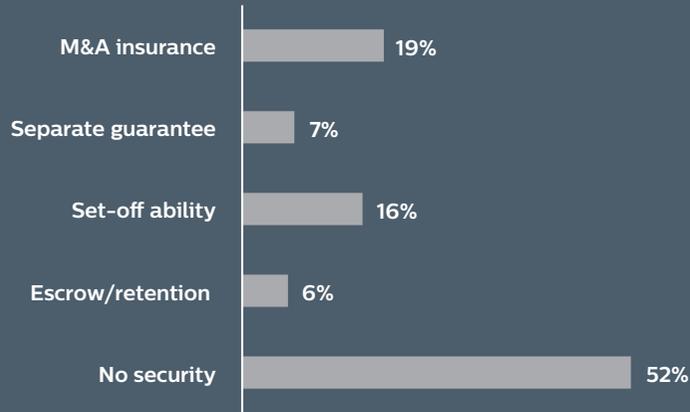
24% INCLUDE AN EARN-OUT OR DEFERRED CONTINGENT PAYMENTS



- 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 performance 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, but can also be linked to specific future events
- Comparing the standalone statistics for 2017 with 2019, the use of such regimes has dropped from 33% to 20%, suggestive of a competitive market

Warranty insurance or other security relatively common

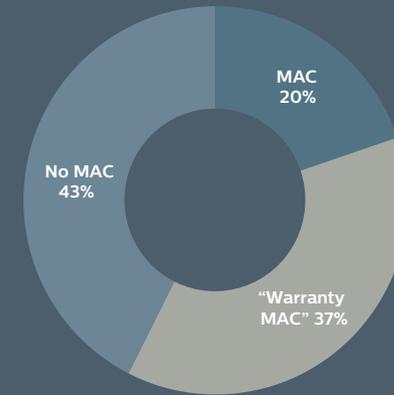
48% INCLUDE SOME TYPE OF SECURITY FOR WARRANTY CLAIMS



- Approximately 40% of the secured deals were insured through an M&A insurance policy
- Apart from M&A insurance, security is typically established in the form of a retention or escrow arrangement or separate guarantee(s)
- The size of the retained/escrow amount varies significantly
- Despite its convoluted nature, a buyer's ability to set off deferred or contingent (including earn-out) payments against the seller's liability for warranty breaches can represent important security in practice (set-off is normally justified unless expressly prohibited in the SPA, and effectively shifts the procedural burden to the seller)
- The use of, and distribution among, different security types has remained stable during the recent years

No material adverse change as a condition for closing

57% INCLUDE A TRUE MAC OR "WARRANTY MAC" CLAUSE

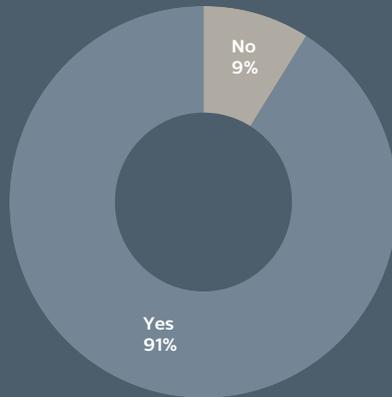


- A true MAC clause provides the buyer with an option not to close the deal if there has occurred any material adverse change in, or material adverse effect on, the target company between signing and completion
- In most cases, the "MAC out" is a "target business MAC" only, not a "market MAC" or "industry MAC"
- In addition to true MAC clauses, which traditionally have been rare in Norway, 37% of the deals were conditioned upon the seller's warranties remaining materially true and correct at closing
- The use of MAC and equivalent clauses is often driven by conditions attached to the buyer's debt financing and/or the exclusion of coverage for matters arising between signing and closing in M&A insurance policies

Extensive use of general disclosure warranties

91%

INCLUDE A GENERAL DISCLOSURE WARRANTY



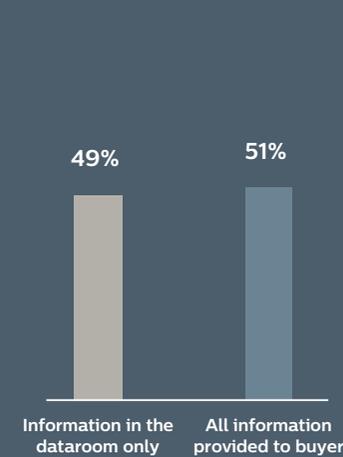
- Our survey confirms that there is a clear market practice in Norway for inclusion of general disclosure warranties, with only negligible variations between different types of sellers
- Disclosure warranties typically include knowledge - and/or materiality qualifiers
- The trend is likely fuelled by 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

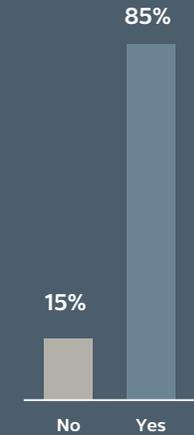
Scope of disclosure warranties and effect of buyer's knowledge

SCOPE OF DISCLOSURE WARRANTIES



- The inclination to accept the broader scope of the disclosure warranty is more pronounced among founder/entrepreneurial sellers (62%) than it is among financial sellers (44%)
- Limiting the warranty to information in the data room facilitates control and makes it easier for the seller to correct information that is wrong or inaccurate
- In addition to warranting that disclosed information is true and

INCLUSION OF AN ANTI-SANDBAGGING PROVISION



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

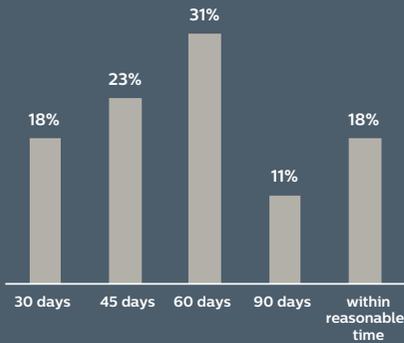
53d

AVERAGE NOTICE PERIOD

Buyer's time to react on warranty claims

50%

USE A 18 MONTHS WARRANTY PERIOD FOR GENERAL WARRANTIES

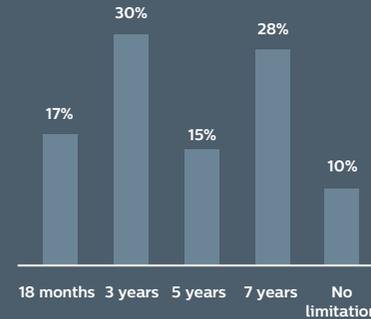


- Time limits for bringing claims were agreed in all transactions
- An average 18 months general warranty period from closing allows the buyer at least one audit-cycle to be completed post-transaction
- Pursuant to some SPAs, failure to notify within the notice period does not bar the buyer from bringing the claim, however excess loss resulting from the delay is not recoverable
- The warranty period for fundamental warranties, such as title, are invariable longer (see next page)
- General warranty periods of 24 months are becoming increasingly frequent, especially among financial sellers (40%), and this trend correlates with the increasing use of M&A insurance (where 24 months has become the standard)

Fundamental, tax and environmental warranties last longer

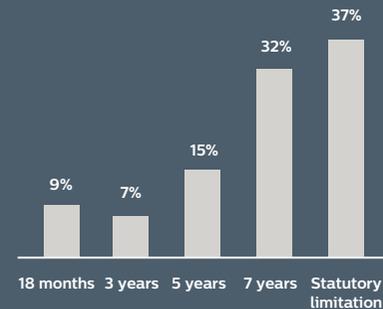
FUNDAMENTAL WARRANTIES

Vary significantly, but generally longer than for general warranties



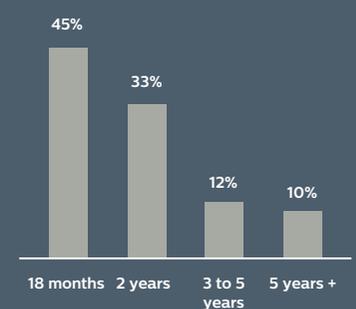
TAX WARRANTIES

Most common to link tax warranties to statutory limitation periods



ENVIRONMENTAL WARRANTIES

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

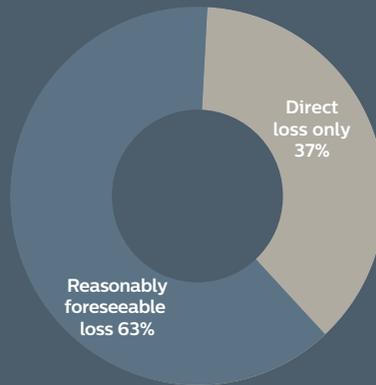
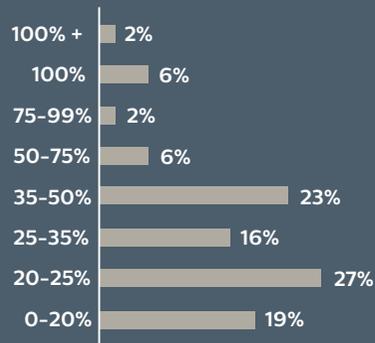


Not common for sellers to accept uncapped liability

32% AVERAGE WARRANTY CAP
21% weighted average

37% LIMIT LIABILITY TO DIRECT LOSSES

WARRANTY CAP IN PERCENTAGE OF PURCHASE PRICE



- 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

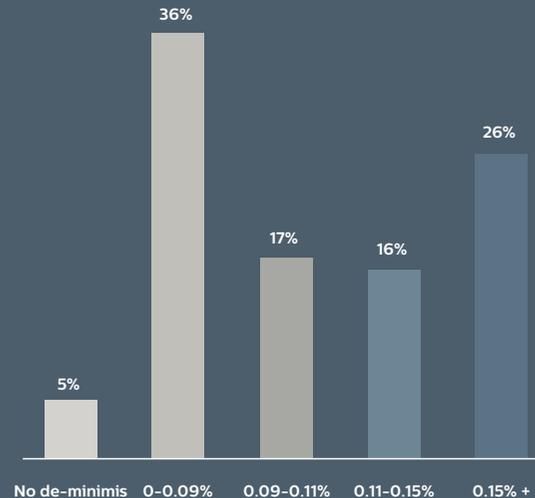
- A majority of the sellers accepted liability for reasonably foreseeable (direct and indirect) loss suffered by the buyer, and among founders/entrepreneurs 80% accepted such broader liability

De-minimis typically 0.1% of purchase price

0.18% AVERAGE DE-MINIMIS THRESHOLD

0.1% WEIGHTED AVERAGE DE-MINIMIS THRESHOLD

DE-MINIMIS IN PERCENTAGE 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 percentage of the purchase price) are generally lower than for transactions with lower deal value

Basket typically 1% of purchase price

Non-compete and non-solicitation restrictions are common

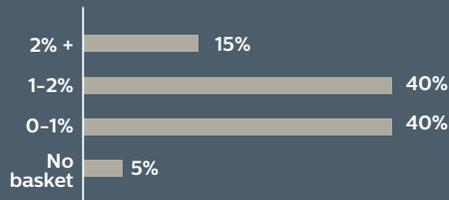
1.34% AVERAGE BASKET IN % OF PURCHASE PRICE

1.01% WEIGHTED AVERAGE BASKET IN % OF PURCHASE PRICE

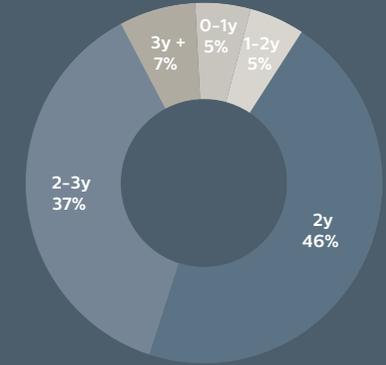
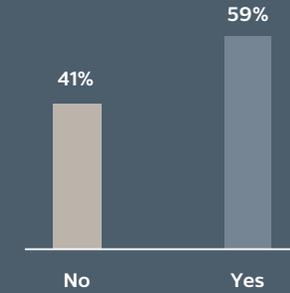
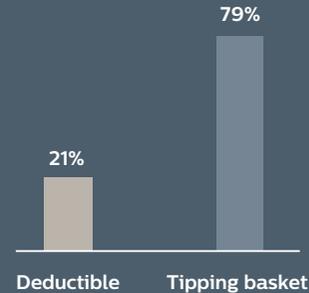
59% INCLUDE NON-COMPETE RESTRICTIONS

2yrs IS THE MOST COMMON TIME PERIOD

BASKET IN PERCENTAGE OF PURCHASE PRICE



TIPPING BASKET VS. DEDUCTIBLE



- 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 fifth deal

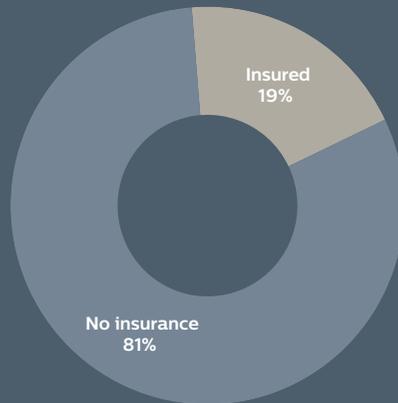
- The majority of the SPAs contain non-compete (preventing sellers from competing with the target business after completion) and/or non-solicitation (preventing sellers from approaching employees or customers) undertakings
- Most of the SPAs that contained a non-compete clause also contained

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

Use of M&A insurance

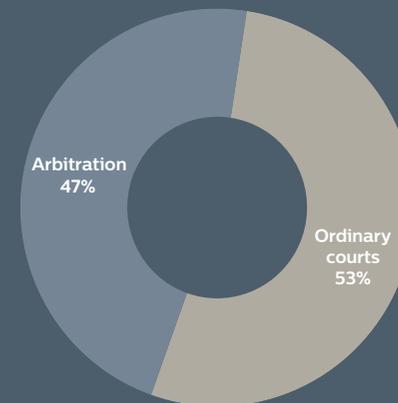
19% INCLUDE M&A INSURANCE



- More frequently used when financial parties were involved (36% M&A-insured deals for transactions with a financial seller)
- Allows for a “clean exit” and distribution of sale proceeds
- When looking at 2019 alone (19%), there is an increase in use compared to 2017 (14%), however slight reduction from 2018 (21%)

Ordinary courts the most used dispute resolution mechanism

53% 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 (when looking at 2019 alone, 55% of the deals had arbitration as agreed legal venue, compared to 38% in 2017 and 50% in 2018)



BAHR credentials

Recent transactions advised by BARR



Acquisition of Shell Olie-
Og Gasudvinding
Danmark B.V. from
Royal Dutch Shell Plc.

CORSAIR CAPITAL

Acquisition of majority
stake in Axo AS



Acquisition of Viking
Redningstjeneste

Nordea

Acquisition of Gjensidige
Bank ASA from
Gjensidige Forsikring SA



MINTRAGROUP
Unlocking the Power of Competence

Acquisition of Atlas
Knowledge Limited from
HgCapital



Acquisition Maersk
Olje-og Gas A/S

ABRY
PARTNERS

Acquisition of
Link Mobility Group ASA



HITECVISION
The Serial Entrepreneurs

Merger with Eni Norge

nets

Sale to
Hellman & Friedman LLC



Sale of Nordic
Entertainment and
Studio business to
TDC Group

ASSET BUYOUT
PARTNERS

Acquisition of Mongstad
Administration from EQT



Acquisition of Norske
Skogindustrier ASA

Norvestor

Acquisition of Cegal
Group AS



Acquisition of Quality
Intervention AS

Nordea

Acquisition of
SG Finans AS

3i Infrastructure plc



atp=

Acquisition of Tampnet
from EQT

Norvestor

Acquisition of
The North Alliance
from Capman



Sale of TTS to
MacGregor Group



Acquisition of
Kruse Smith Eiendom AS



Allianz

Sale of Solveig Gas



Restructuring and
ownership acquisition
of Eidsiva



Acquisition of Boreal
Norge from Cube
Infrastructure



Acquisition of Hess
Norge AS



Sale of 60% of
Luminor Group to
Blackstone

HITECVISION
The Serial Entrepreneurs

Sale of
CapeOmega to
Partners Group

AKASTOR

Sale of 50% of
AKOFS Offshore AS
to Mitsui



Acquisition of
Face2Face Creatives
International

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.

“an excellent combination of legal knowledge and market awareness” *Legal 500*

- 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.
- 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.

“

clear leader in Norway for M&A work in the private equity arena” *Legal 500*



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Disclaimer

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