

2022

BALTIC PRIVATE M&A DEAL POINTS STUDY

ESTVCA / ESTONIAN PRIVATE EQUITY
AND VENTURE CAPITAL ASSOCIATION

LVCA | LATVIAN PRIVATE EQUITY
AND VENTURE CAPITAL
ASSOCIATION

LT VCA Lithuanian Private
Equity and Venture
Capital Association

SORAINEN

EVERSHEDS
SUTHERLAND

C O BALT

TGS
BALTIC

Ellex[®]

W A L L E S S

TRINITI
TALLINN RIGA VILNIUS

The seventh edition of the Baltic Private M&A Deal Points Study has been conducted under the auspices of:

- The Estonian Private Equity and Venture Capital Association
- The Latvian Private Equity and Venture Capital Association
- The Lithuanian Private Equity and Venture Capital Association

Together with contributions from the following Baltic M&A law firms and alliances:

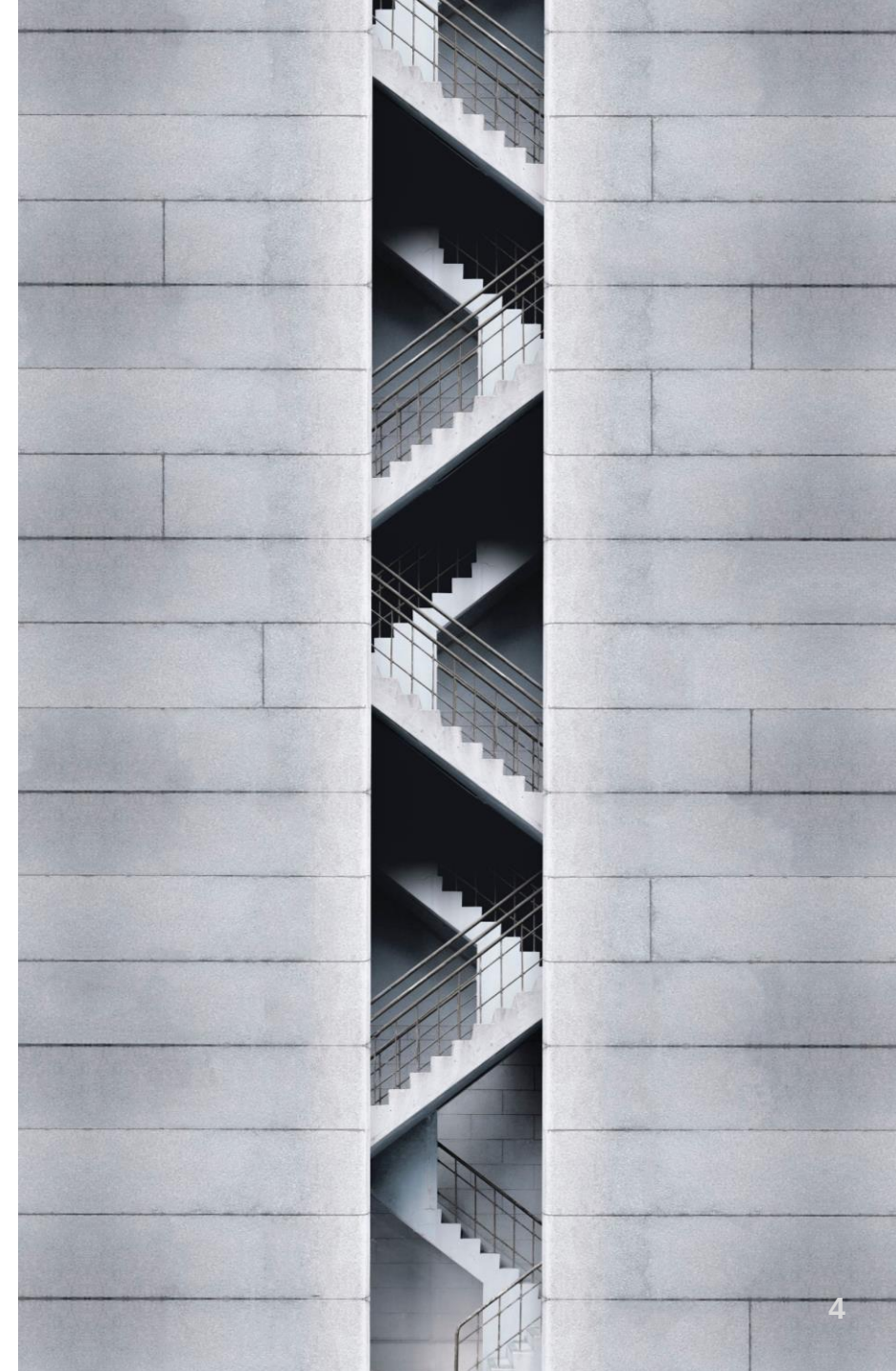
- SORAINEN
- COBALT
- TGS BALTIC
- ELLEX
- WALLESS
- EVERSHERS SUTHERLAND
- TRINITI

Transactions Analysed

- The study analyses 155 private M&A transactions completed during the period April 2020 – March 2022, i.e. the period of the COVID-19 pandemic until the effects of the invasion of Ukraine.
- This 2022 study compares the results to similar studies in 2020 and 2018.
- The transactions included in the survey have the following characteristics:
 - The survey covered M&A transactions, i.e. acquisition or merger of businesses via share or asset transactions, corporate statutory mergers or in any other way, excluding, however, fundraising campaigns and joint ventures which did not trigger transfer of control.
 - 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.
 - The transactions had a deal value over EUR 1 million and were completed during the period April 2020 – March 2022.
 - The study focuses on private M&A transactions, i.e. excluding takeovers of public listed companies as well as venture capital or other minority investments.
- No additional limitations applied as to deal value, the nature of the parties or the target or the sale procedure of the transaction.

Contents

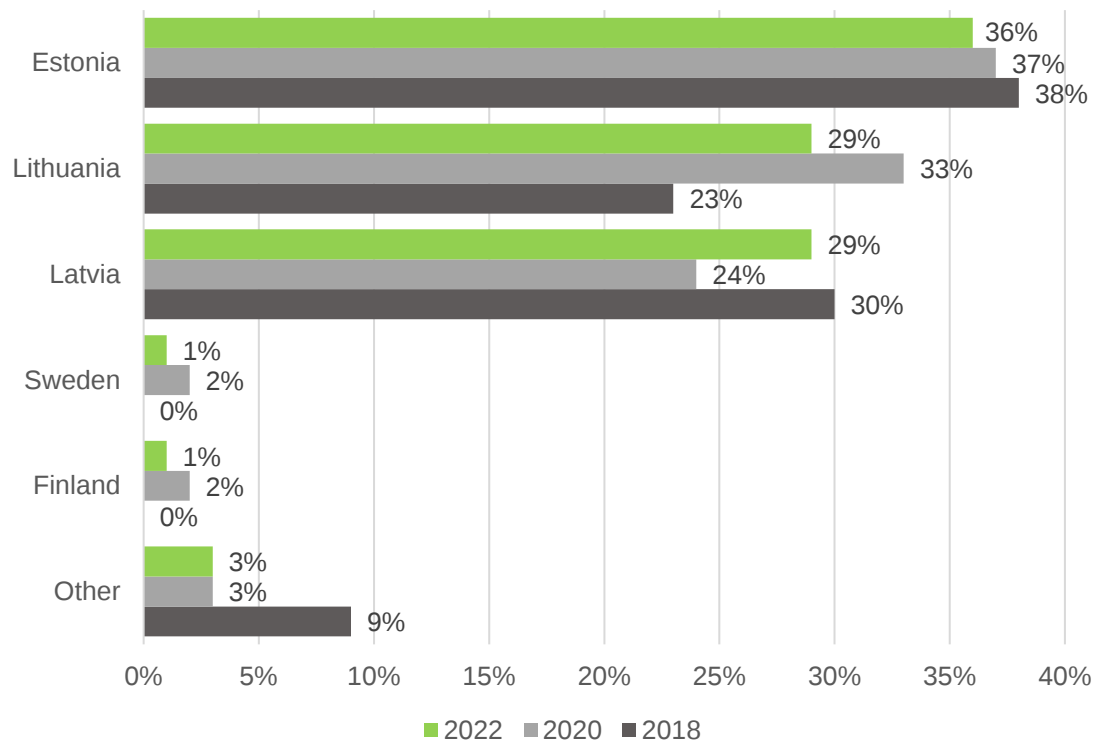
- 5. The Parties
- 10. Sales Process and Form of Transaction
- 12. Transaction Value and Payment
- 18. Governing Law and Dispute Resolution
- 21. Warranties
- 26. Closing and Conditions Precedent
- 31. Liability and Indemnification
- 40. Covenants
- 45. Due Diligence
- 47. Letters of Intent and Length of Transaction Process
- 51. Contacts





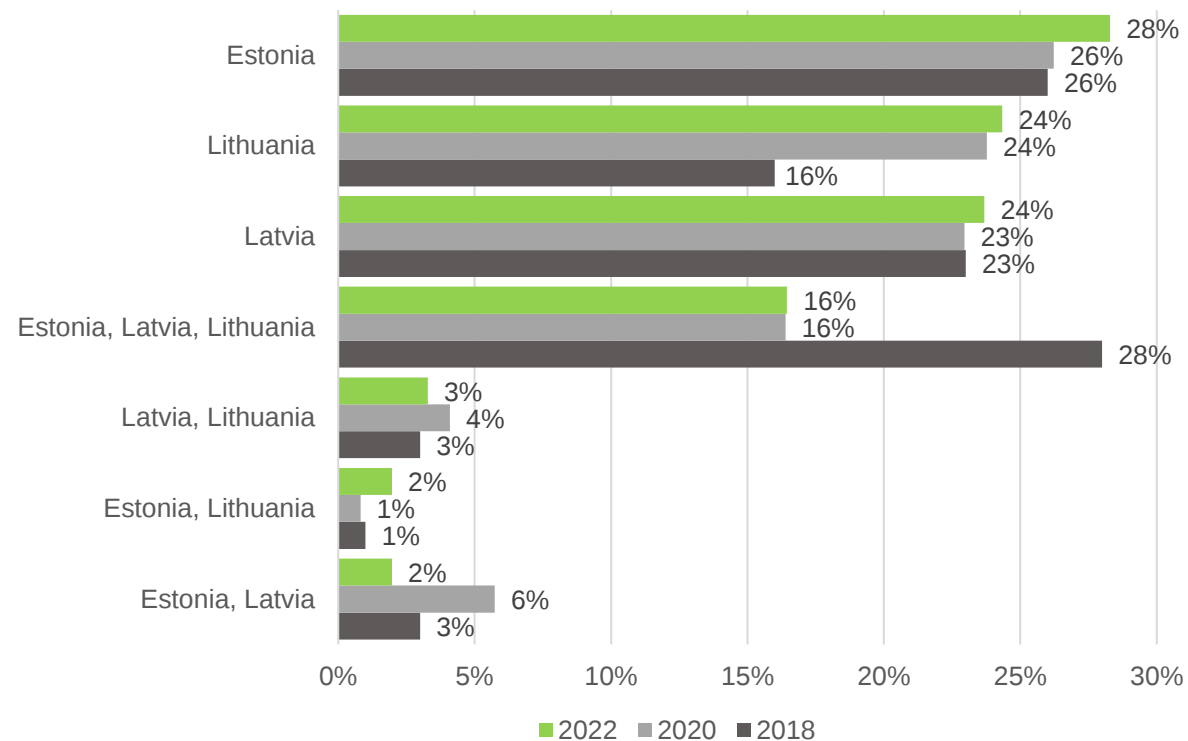
The Parties

Country of the Target's Head Office



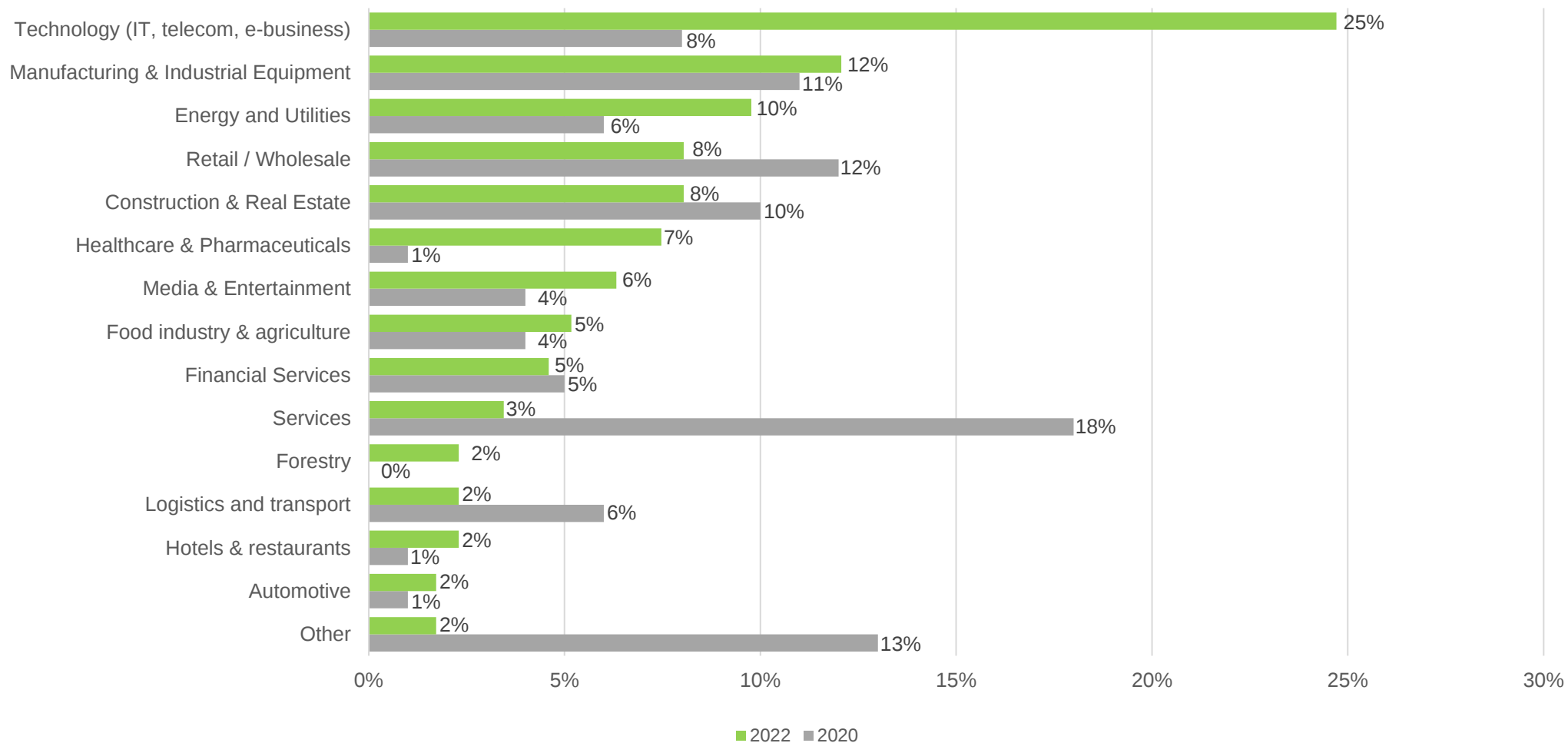
Targets in the submitted transactions were predominantly Baltic, with Estonia providing 36% (similarly to 2020).

Baltic States where the Target operates



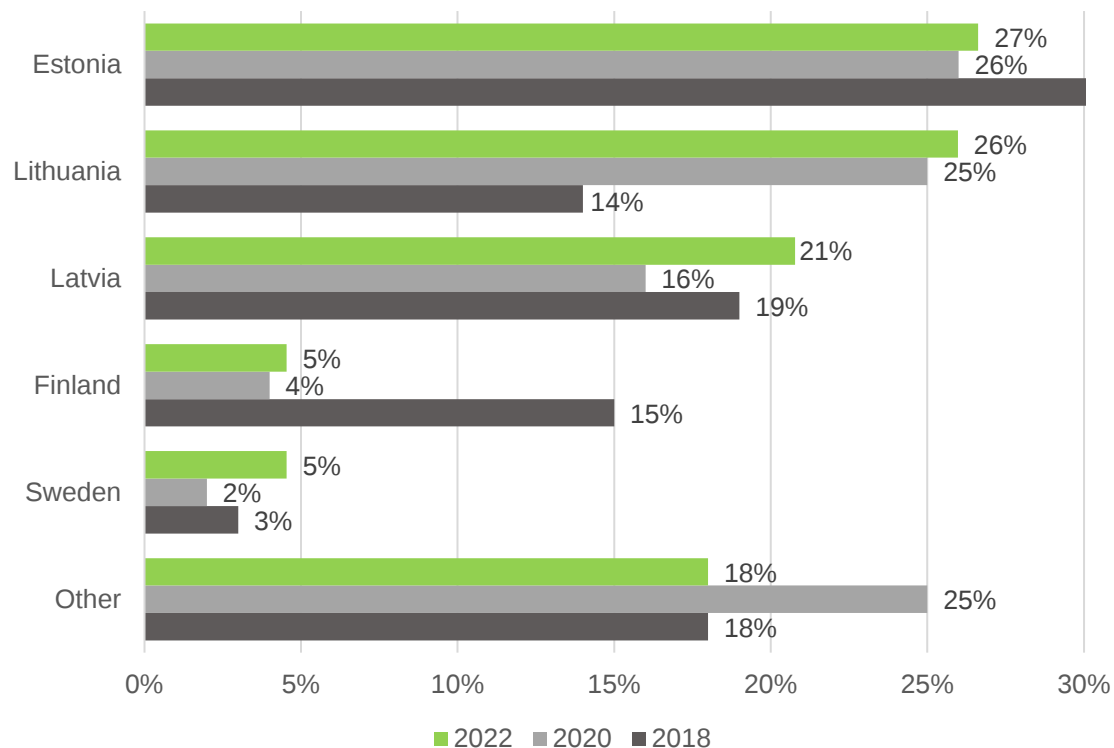
Similarly to previous periods, a majority of the Targets operate in only one Baltic country. However, the share of pan-Baltic targets has remained unchanged from the 2020 study.

Target's main sectors



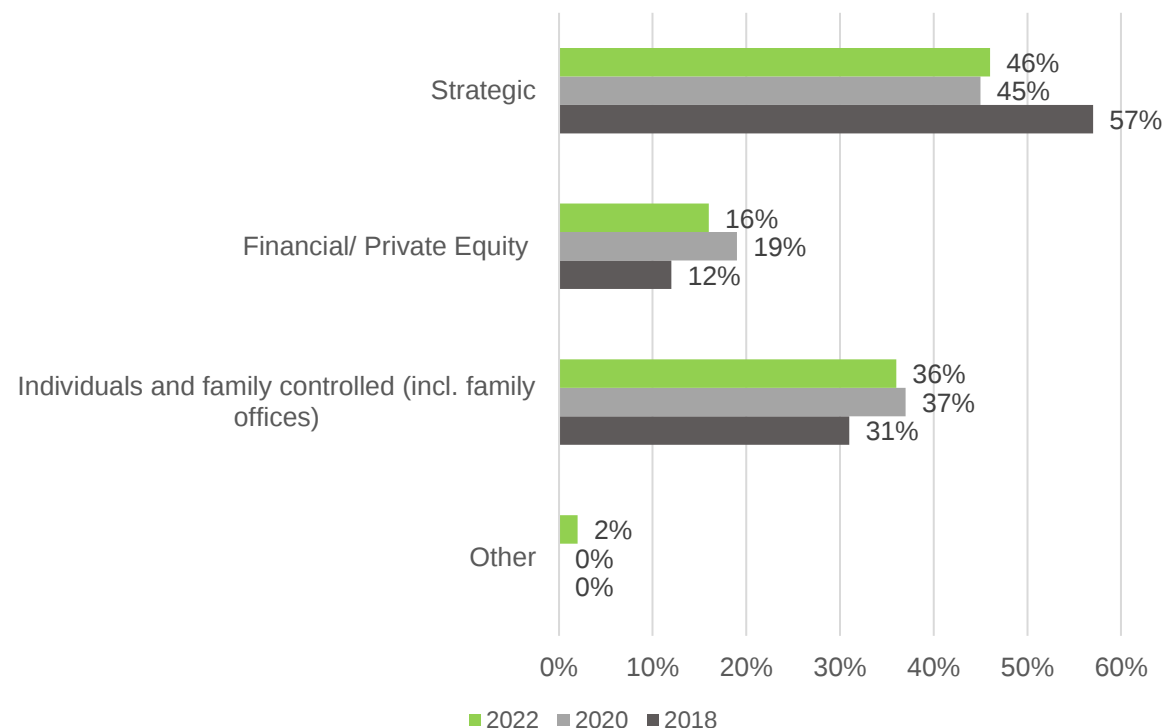
Due to the rapid growth of the tech sector, this sector was also the most active in M&A transactions during the period. The other active sectors were industrial and energy.

Country of the Seller



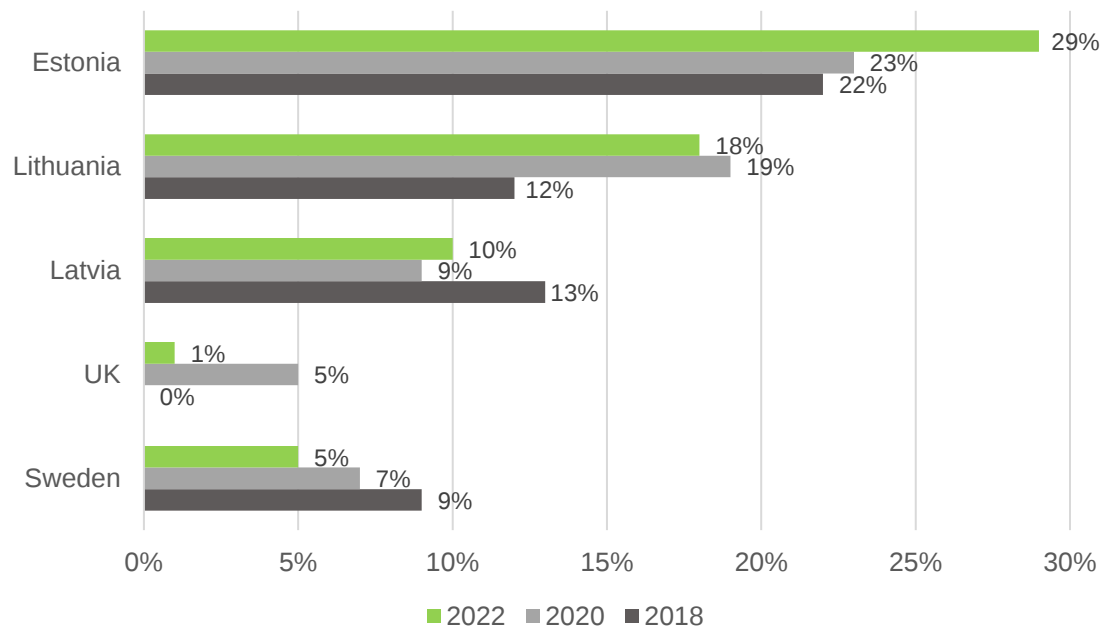
Local sellers continue to dominate the market with Nordic sellers the most visible among the foreign counterparties.

Nature of the Seller



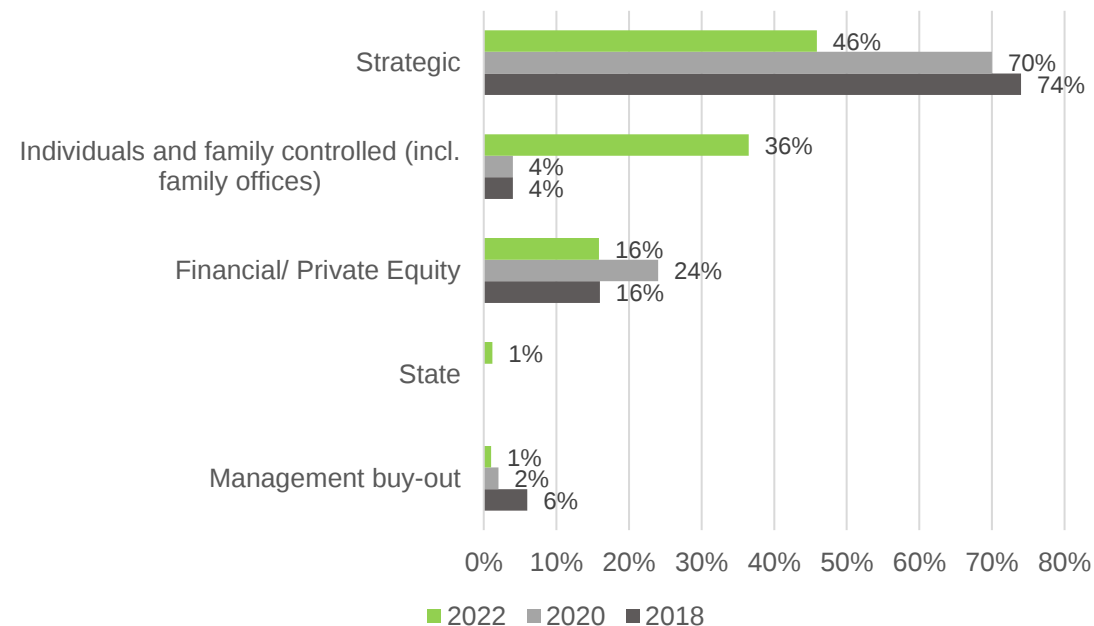
Exits by strategic investors and families are at the same level as during the previous 2-year period. Private equity exits saw a slight decline during the period covered.

Country of the Buyer's head office



Similarly to previous periods, Estonians continue to be the most active buyers within the Baltics and their activity has grown even higher. Among foreign investors from outside the Baltics, Swedish buyers stand out as having a high level of activity.

Nature of the Buyer



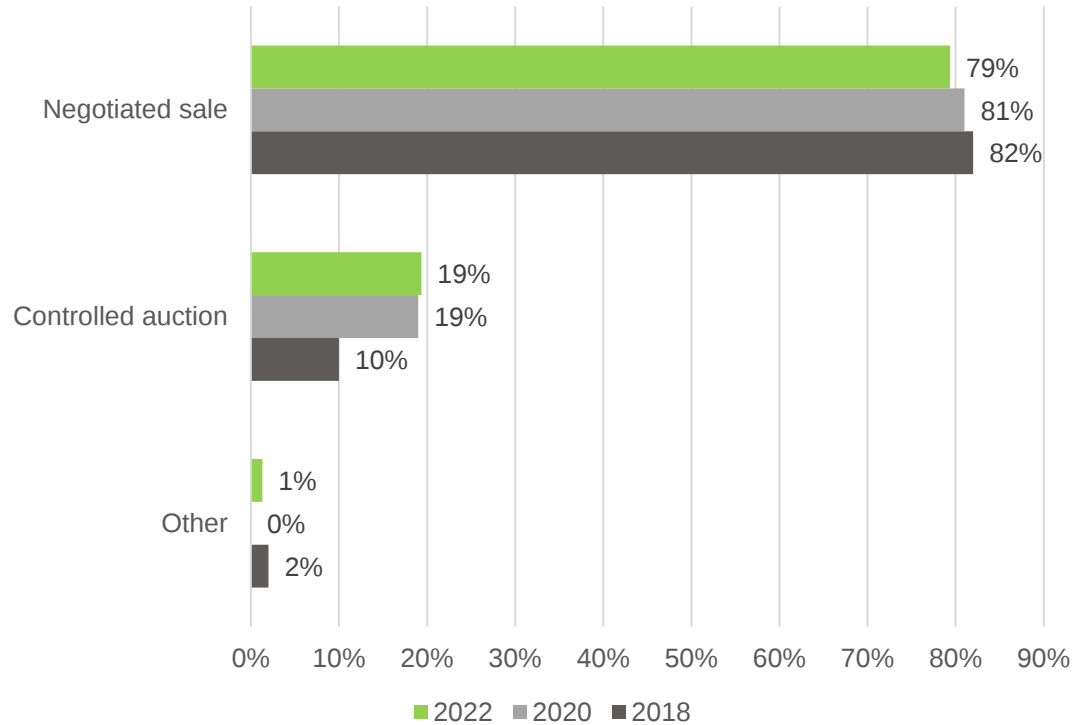
Interestingly, individuals and family offices have become much more visible among the M&A buyers, while the share of strategic and financial investors have slightly declined.



Sales Process and Form of Transaction

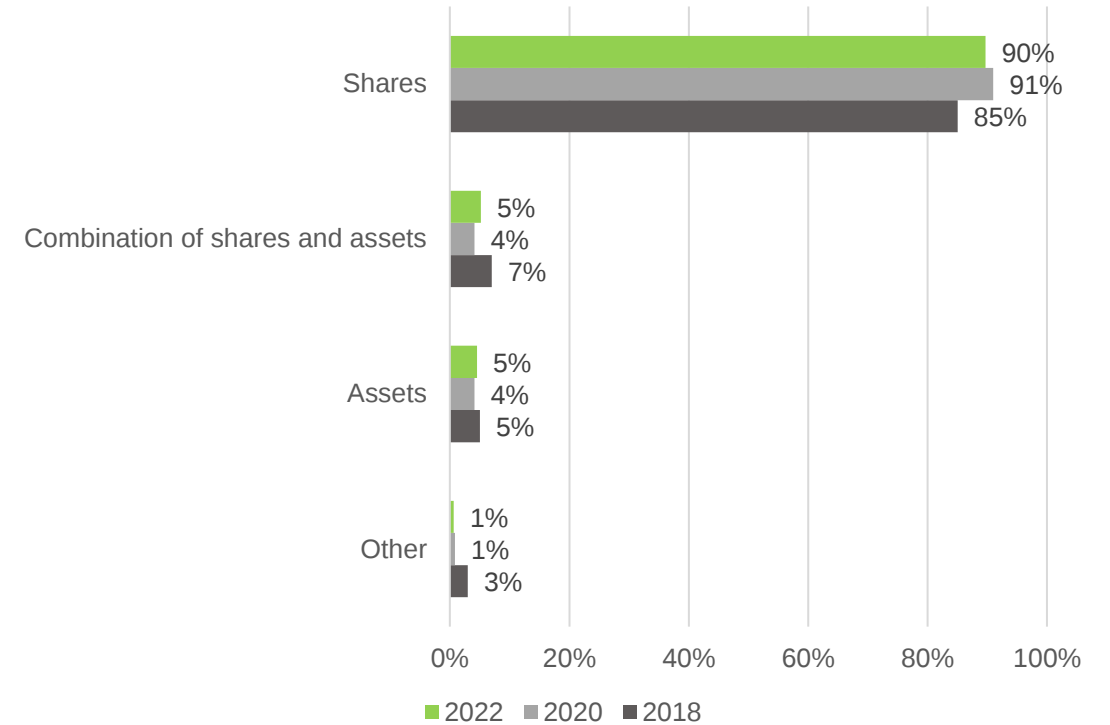
General transaction characteristics

Nature of the sales process



Negotiated sales continue to dominate the market over controlled auctions.

Form of transactions



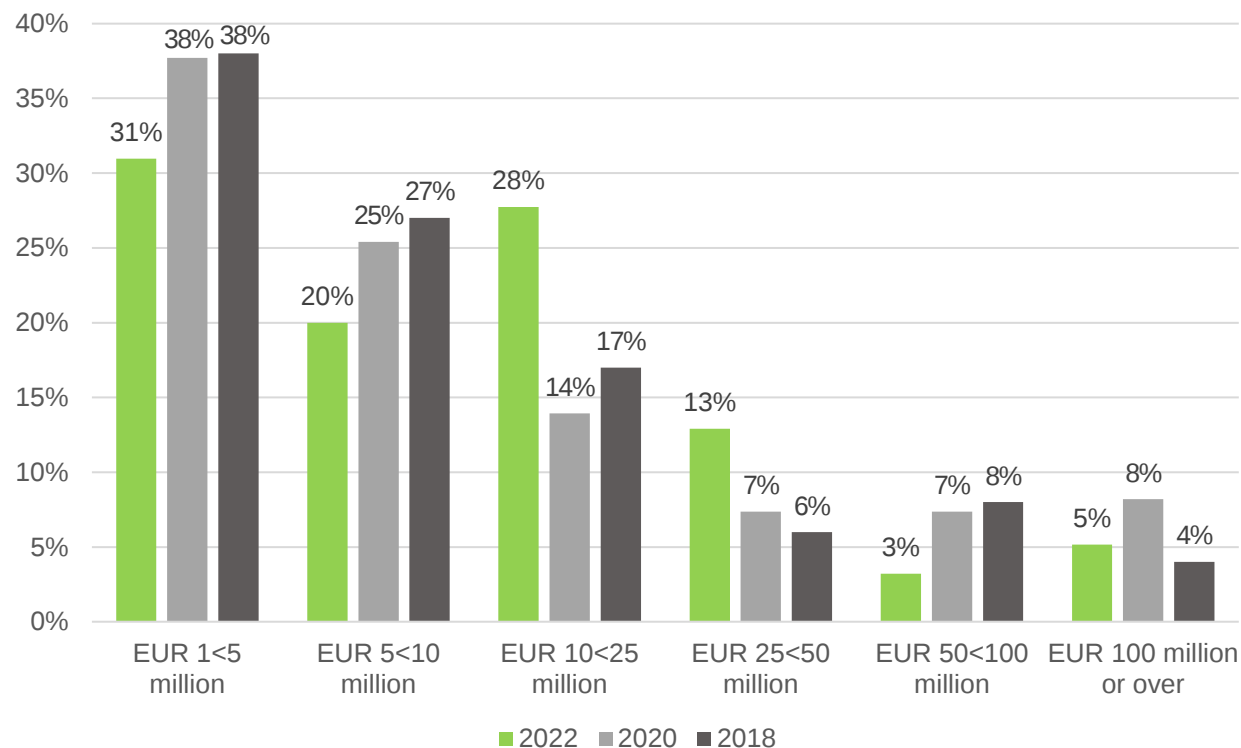
As in previous studies, most transactions in the Baltics are share deals.



Transaction Value and Payment

General transaction characteristics

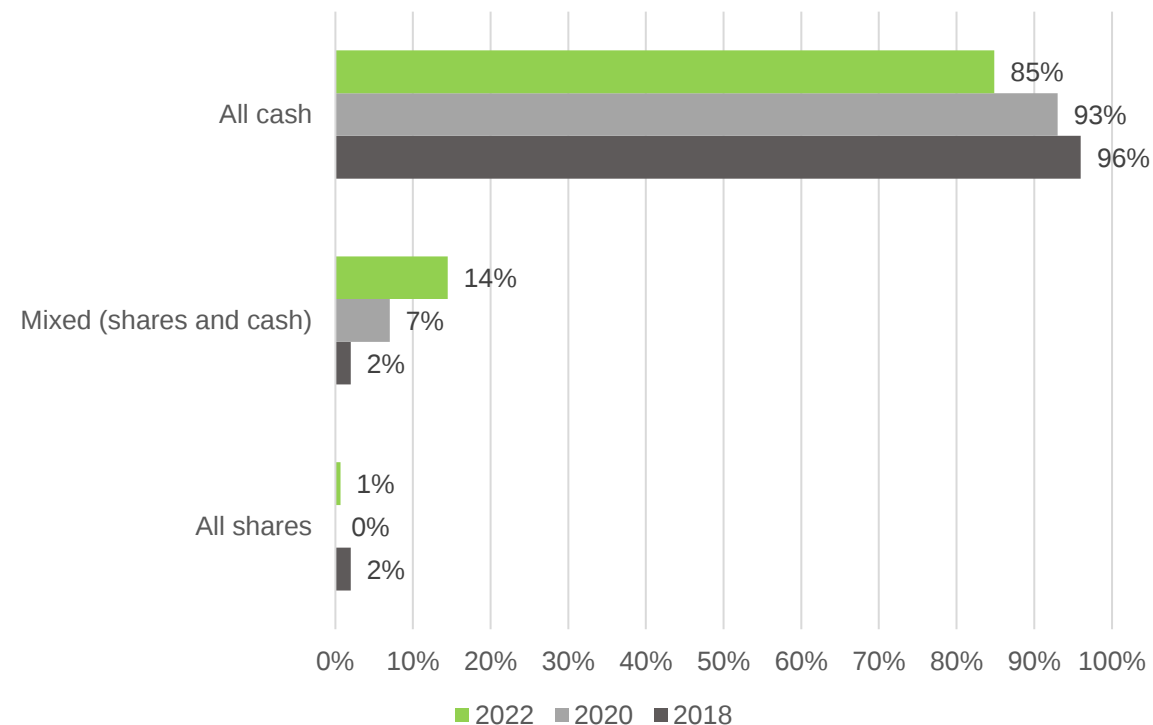
Transaction value



The value of M&A transactions is slightly moving towards the mid-market of EUR 10-25 million, although half of the transactions are still under EUR 10 million.

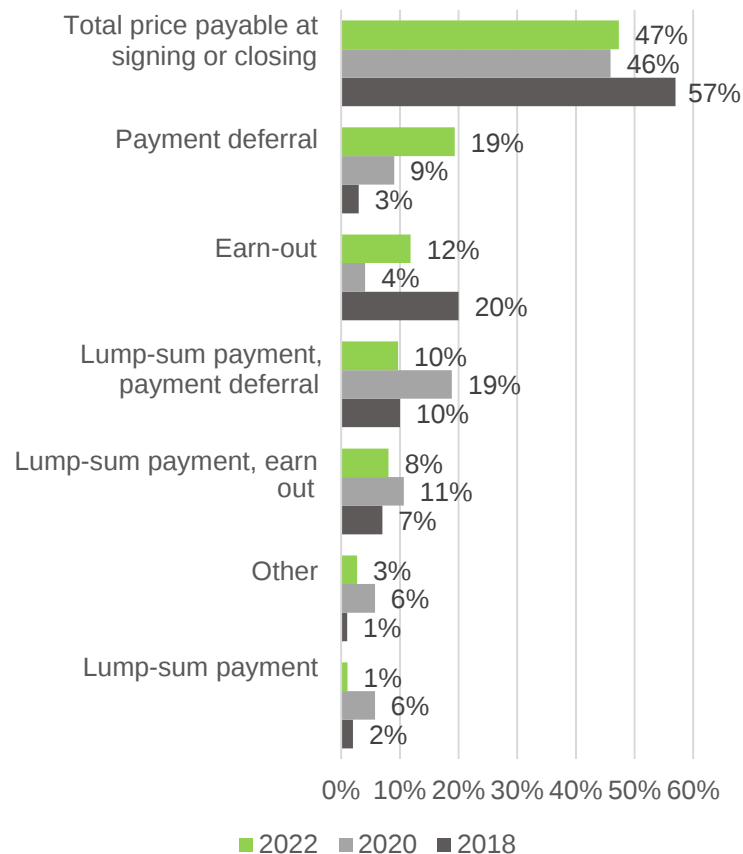
At the same time, the share of megadeals (over EUR 100 million, even those between EUR 50–100 million) has decreased.

Form of consideration

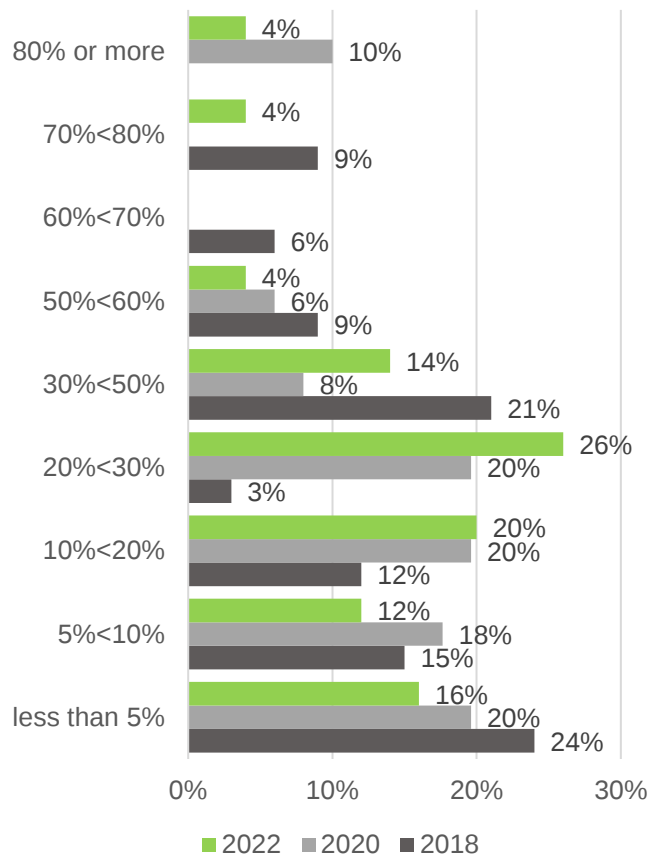


Similarly to previous studies, the vast majority of the transactions involve cash considerations. However, the share of mixed transactions involving both shares and cash have increased.

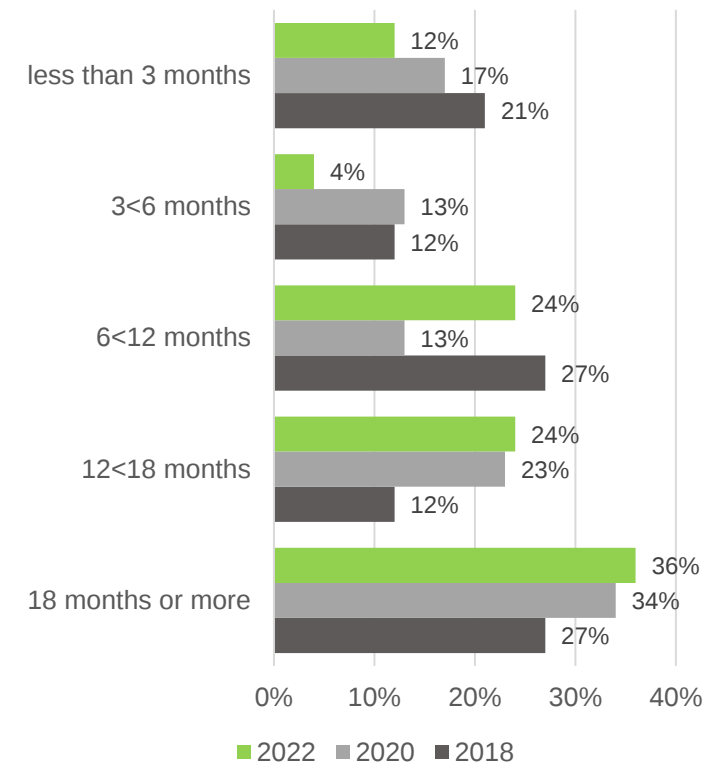
Payment terms



Percentage of price deferred (if deferred)



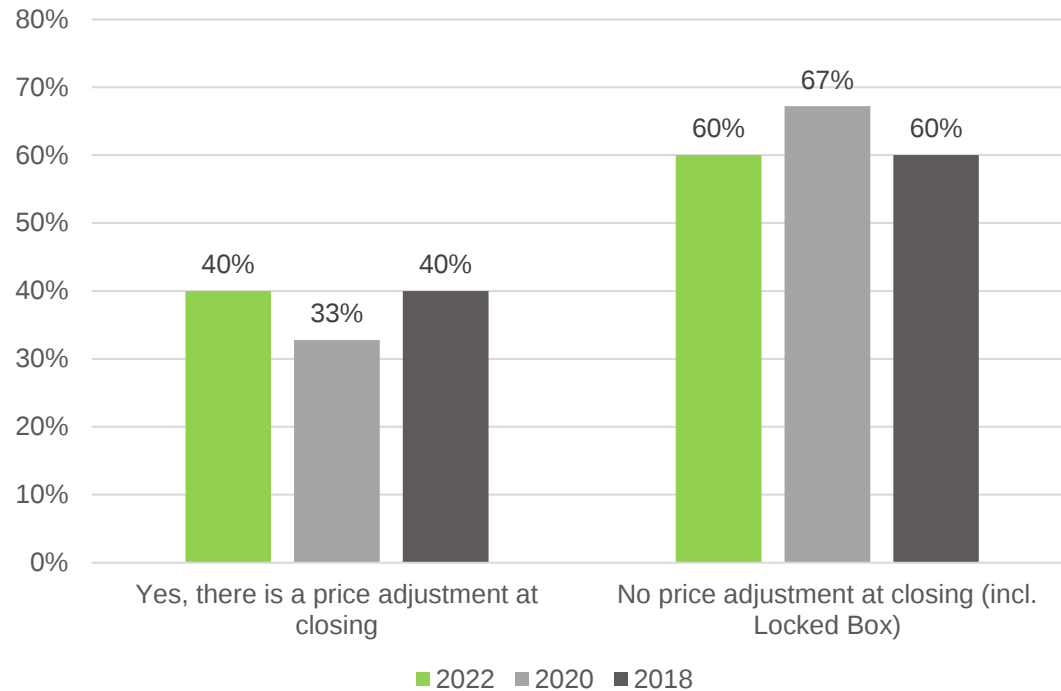
Length of deferral



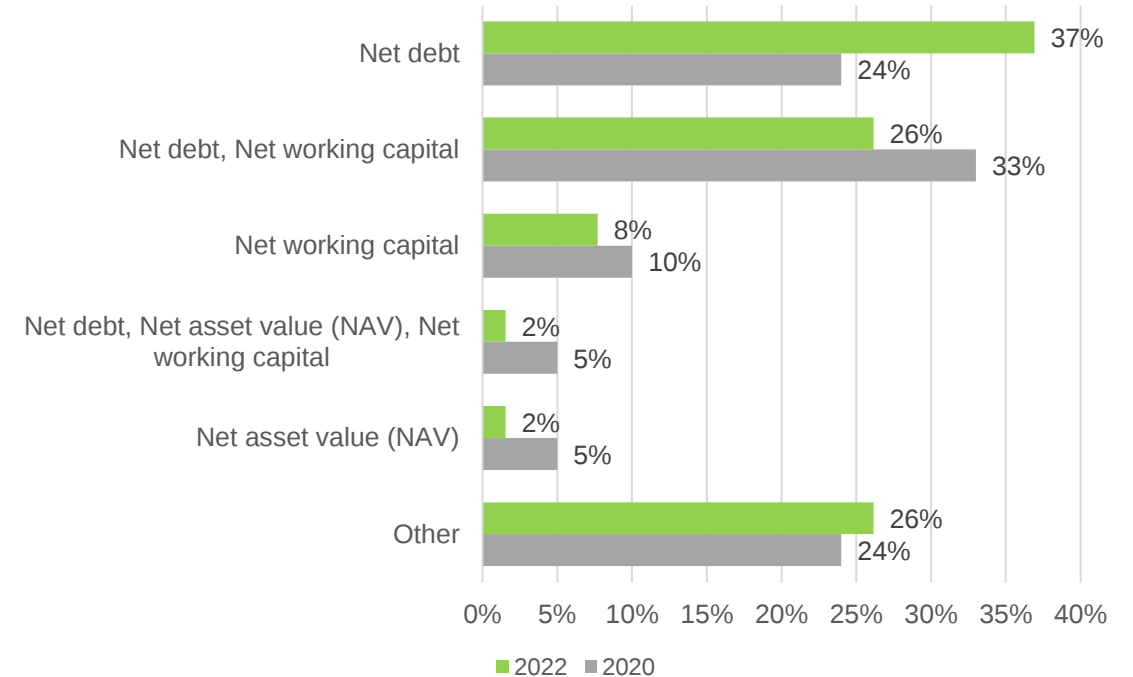
“Total price payable at signing or closing” continues to be by far the most common of all choices.

Payment deferral has been used increasingly often, and, when used, the deferred amount has stayed roughly the same as in previous studies. At the same time, the length of the deferral has kept increasing compared to previous studies.

Price adjustment at closing



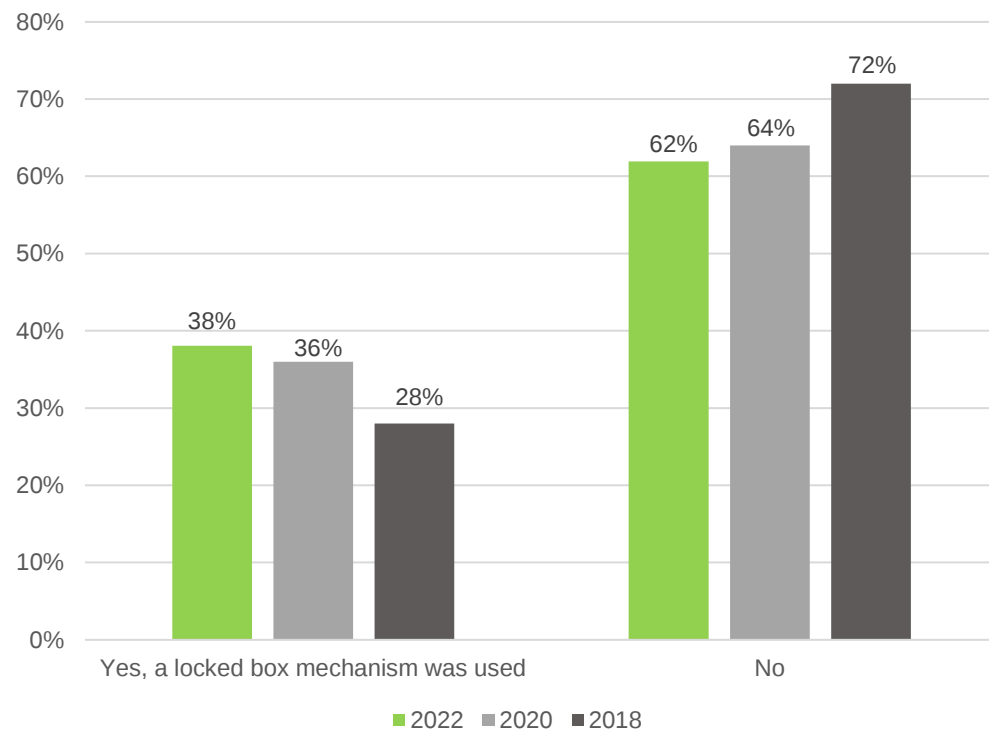
What was the adjustment based on?



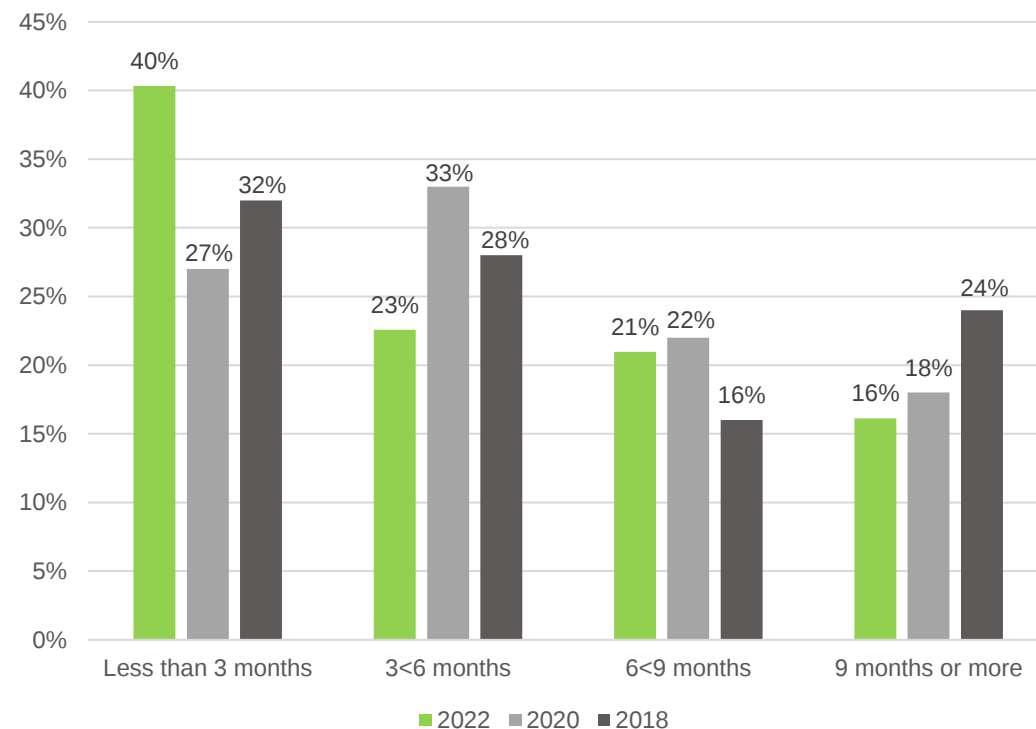
Applying price adjustment at closing continues at the same level as during previous periods.

Similarly to the previous study, more than half of the price adjustments (if applied) are based on net debt and/or net working capital.

Usage of locked box



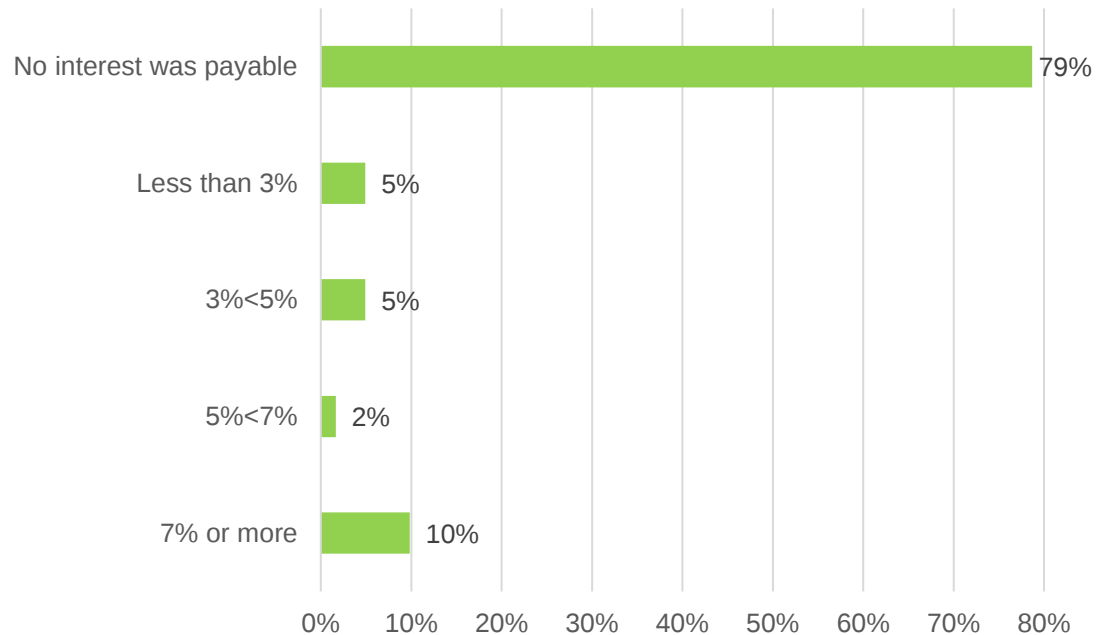
Time between the locked box date and the closing date



Like in previous studies, the locked box mechanism was used in less than half of the transactions. However, its usage continued to rise.

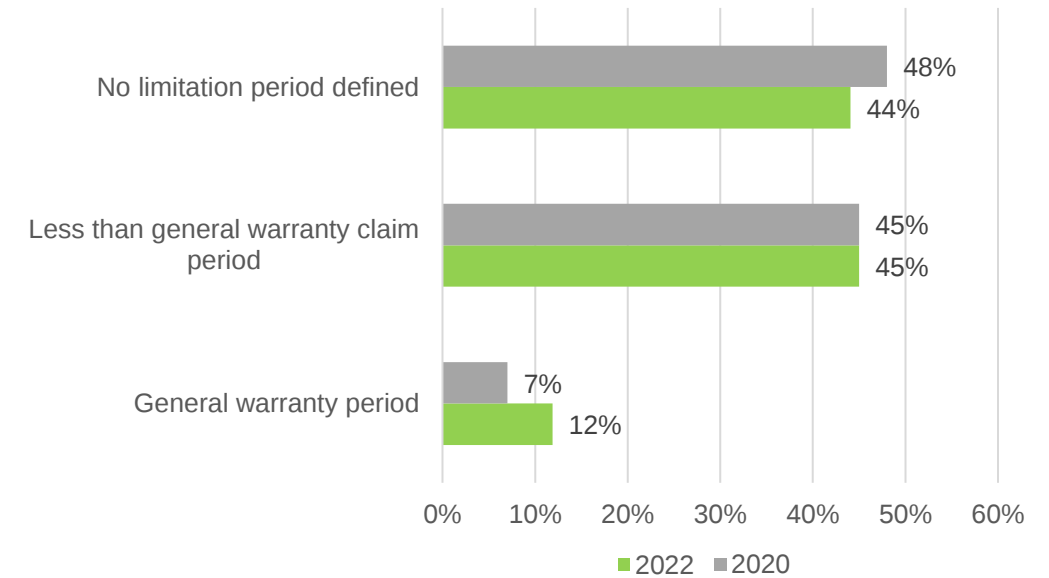
The amount of time between the locked box date and the closing date seems to be rather evenly distributed across a period of nine months, although we saw substantially more transactions with a smaller window between the two dates than in the 2020 study.

Annual rate of interest paid from the locked box date to the closing date



In the majority of locked box arrangements, no interest rate was applied. However, when applied, the interest rate level was divided almost evenly between under and above 7%.

Time period when leakage can be claimed by the Buyer



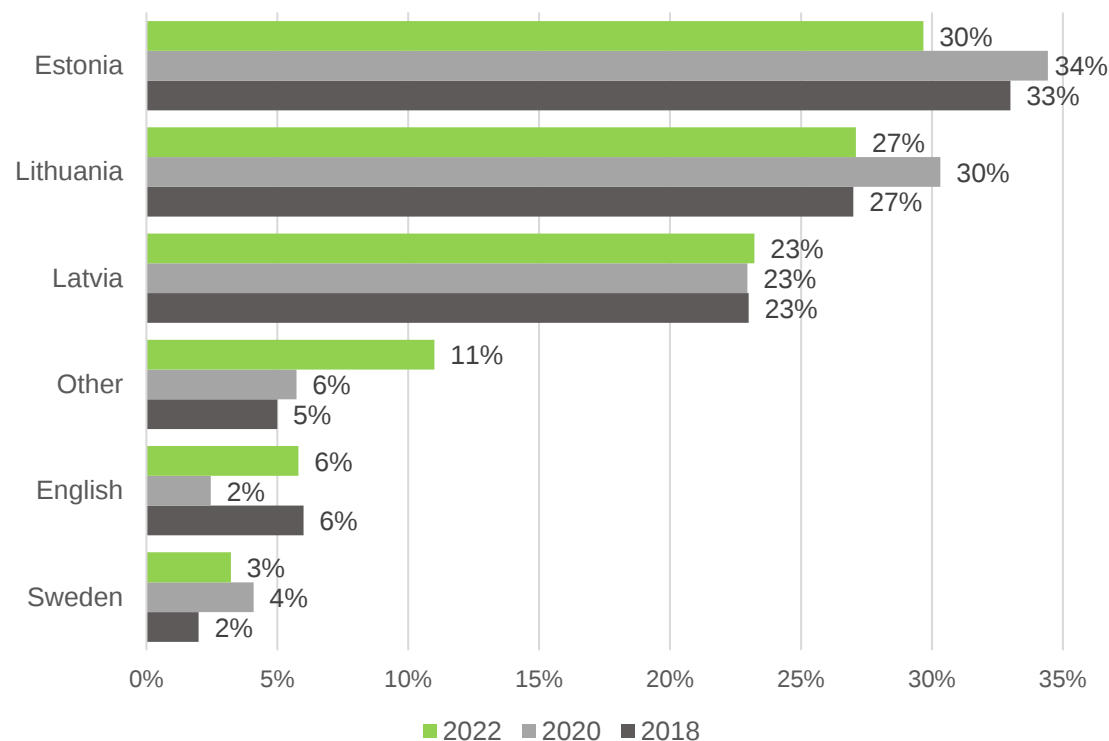
Similarly to the previous period, no limitation period was defined for claiming leakage in almost half of the occasions. If defined, the claim period tends to be less than the general warranty claim period.



Governing Law and Dispute Resolution

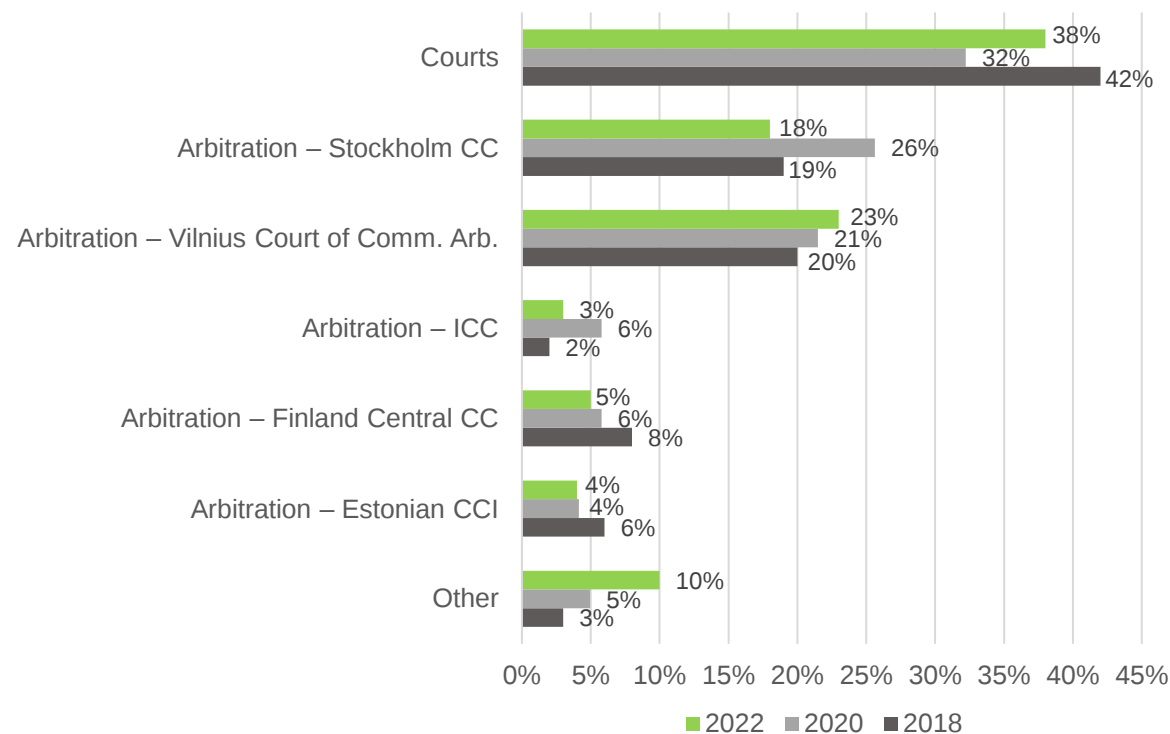
General transaction characteristics

Transaction governing law



Similarly to previous studies, most Baltic M&A transactions are governed by the local laws of the Baltic countries.

Dispute resolution mechanism

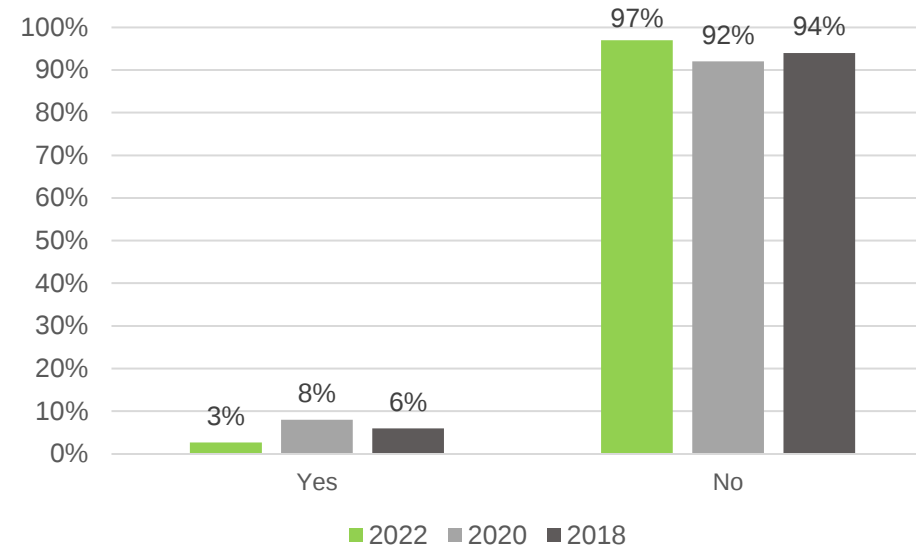


Arbitration continues to be preferred over courts in Baltic M&A transactions.

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

Dispute Resolution: Existence of Disputes

Did the transaction give rise to any disputes?

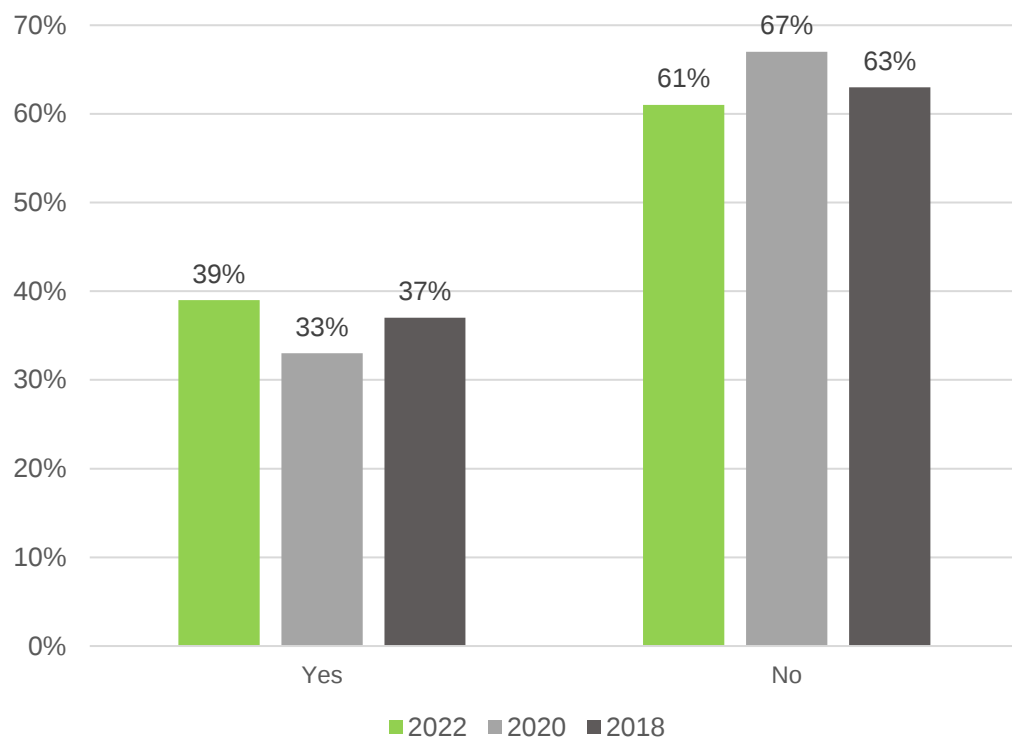


The occurrence of M&A disputes continues to be rare and was lower compared to any previous periods.



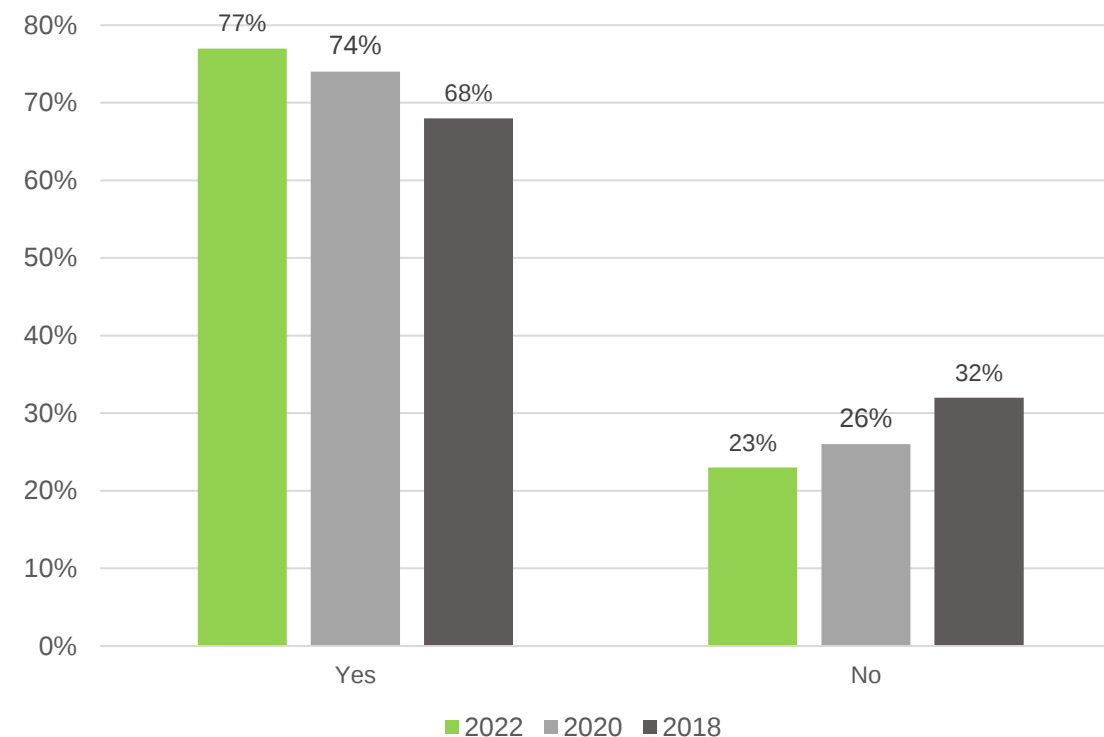
Warranties

Usage of a disclosure letter



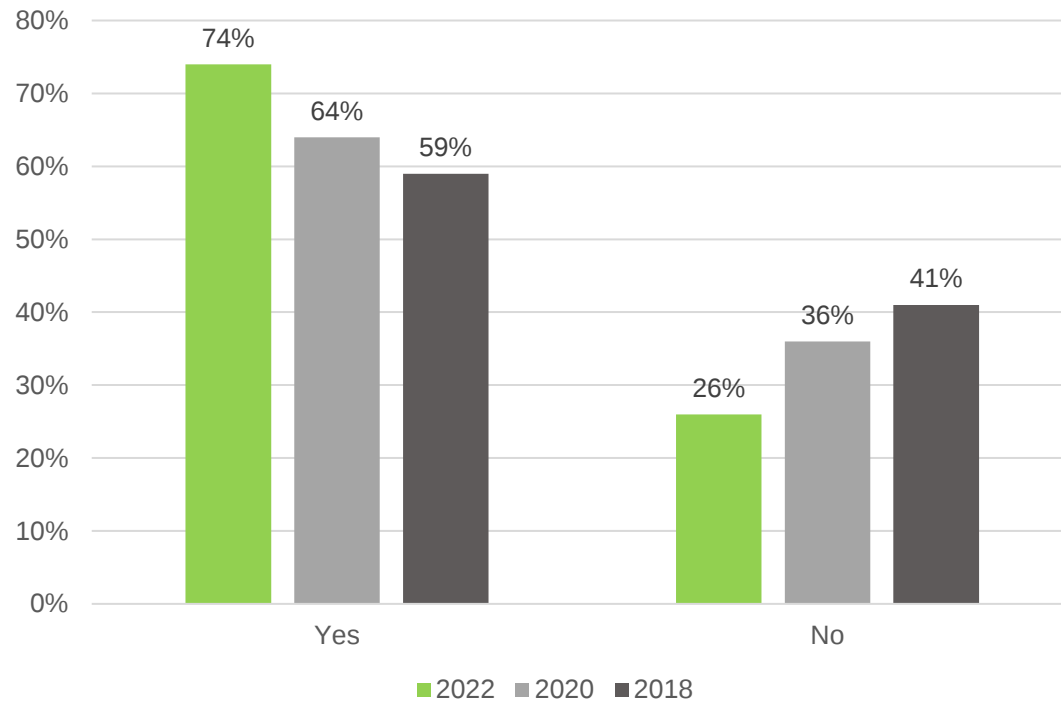
Usage of a disclosure letter is slightly on the rise, however, it is still less used compared to Anglo-American countries.

Due diligence disclosures considered general qualification for warranties



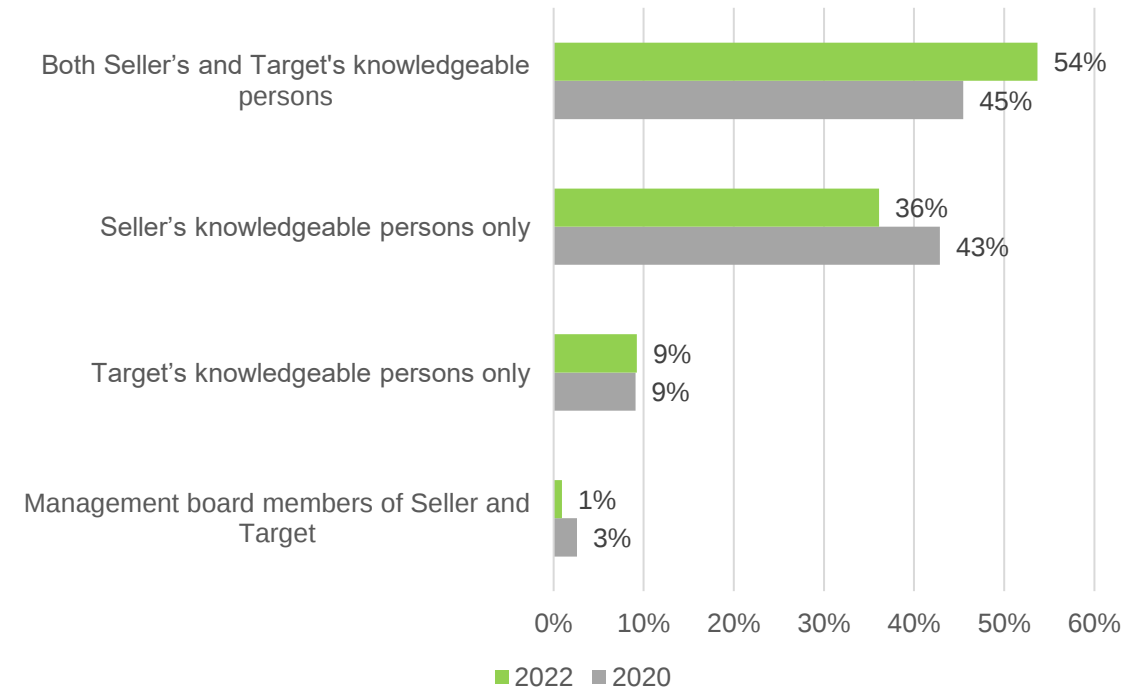
Instead of a disclosure letter, Baltic transactions increasingly use the “fair disclosure” principle, where the due diligence disclosures qualify warranties.

Is there a definition of the Seller's or the Target's knowledge?



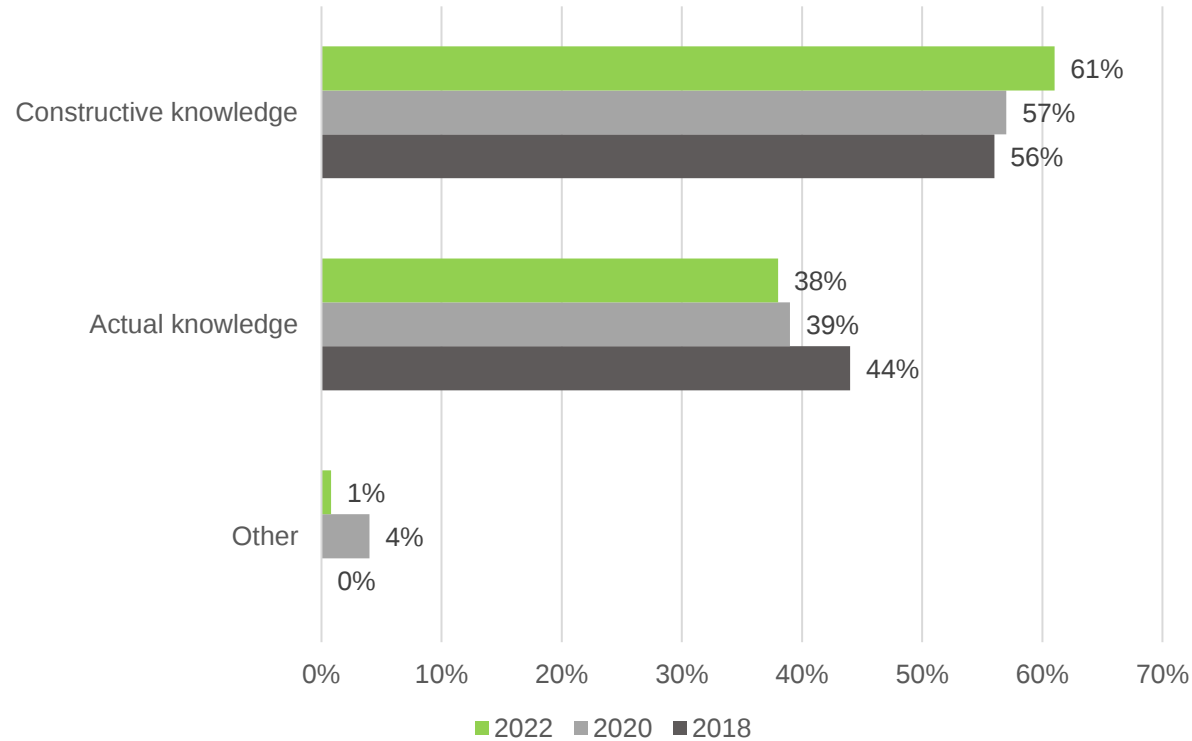
Baltic M&A transactions are becoming more sophisticated by defining the applicable Seller's knowledge for the warranty qualifications.

Whose knowledge does it include?

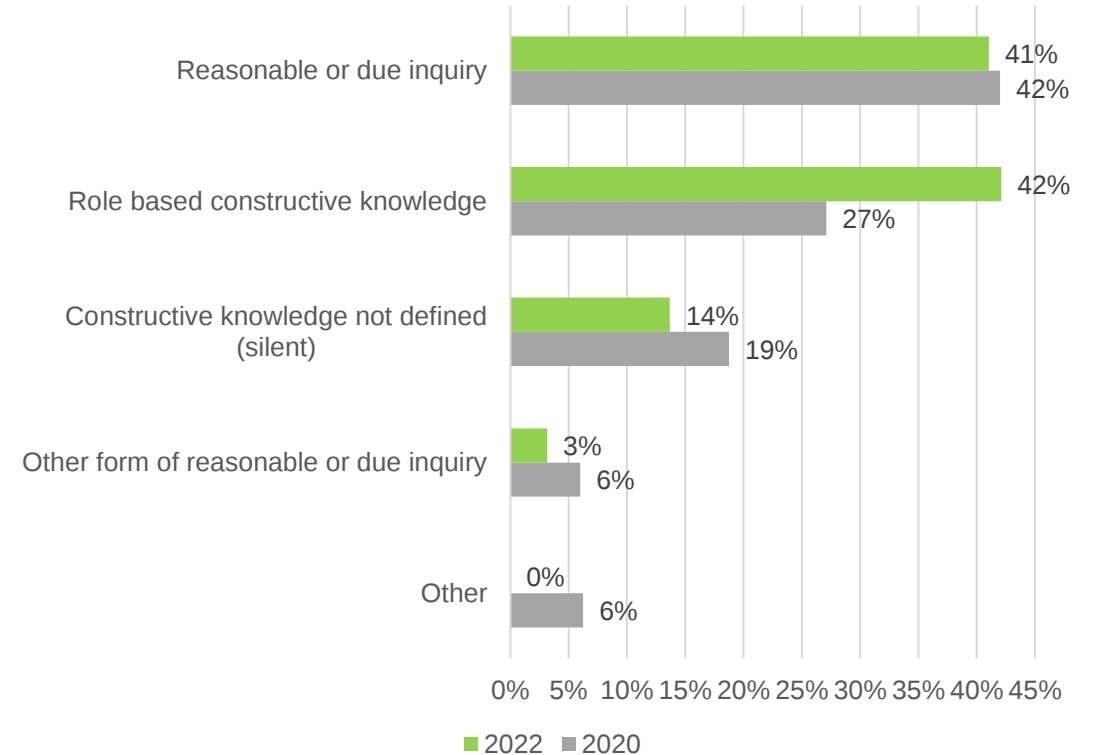


In addition to the Seller's persons, the Target's persons' knowledge is increasingly used.

Standard of knowledge



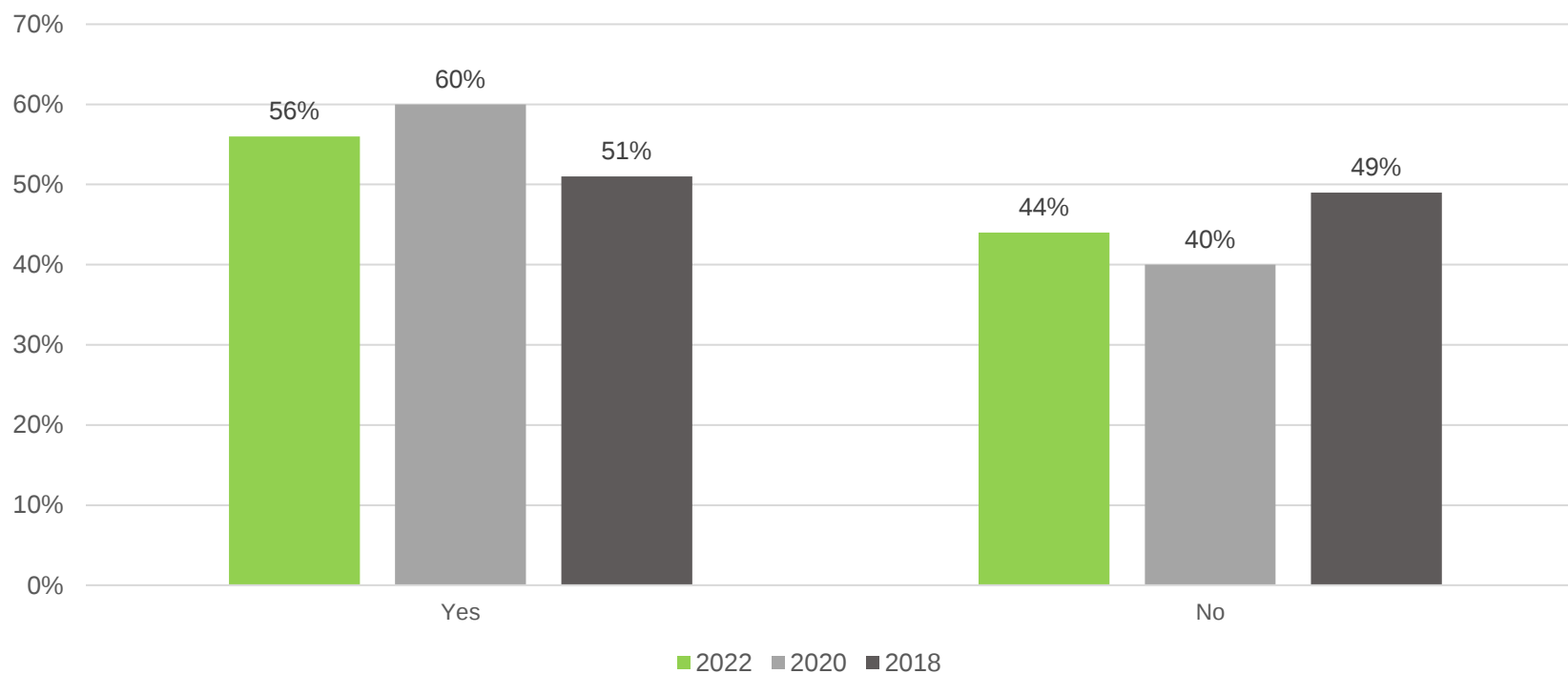
Standard of constructive knowledge



Constructive knowledge has been increasingly used as a definition of “knowledge”.

If constructive knowledge is used, role-based knowledge and reasonable due inquiry are used as standards.

Full disclosure warranty by the Seller or Target

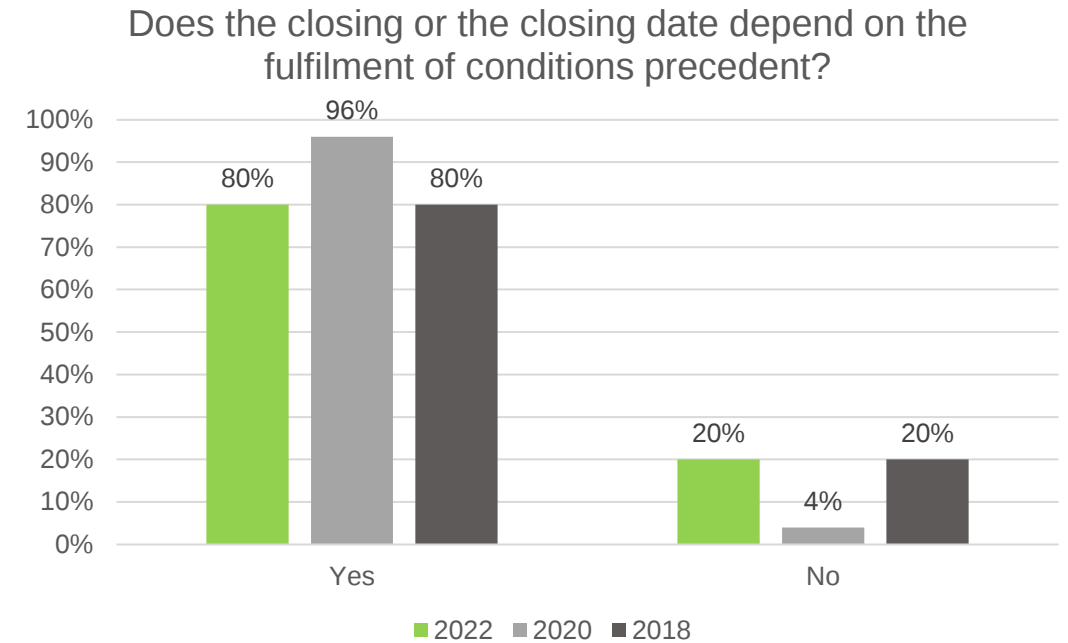
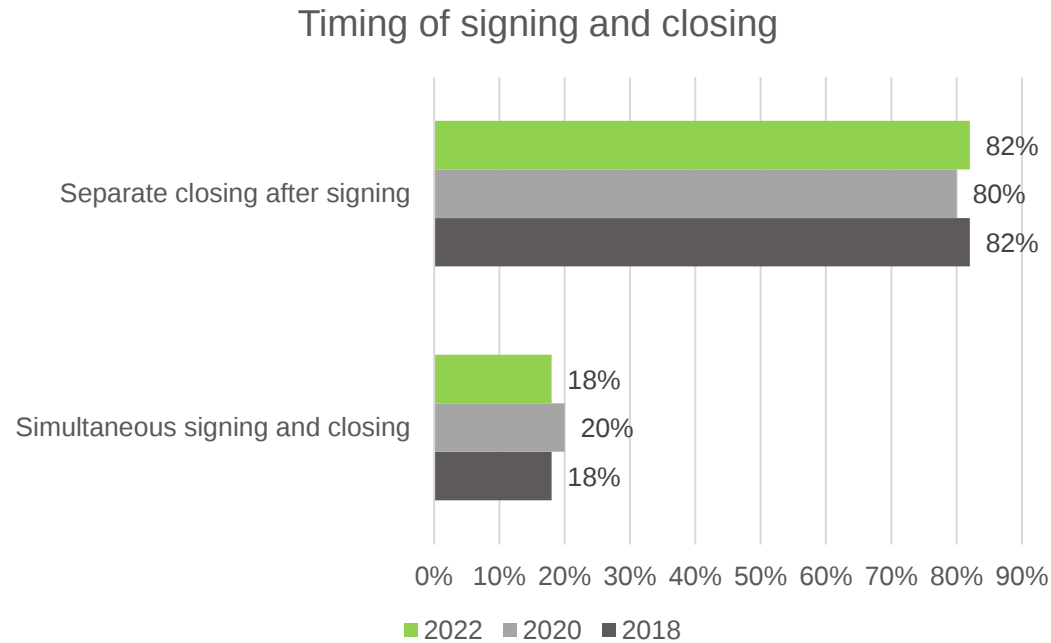


Similarly to previous periods, the full disclosure warranty was included in slightly more than half of the transactions.



Closing and Conditions Precedent

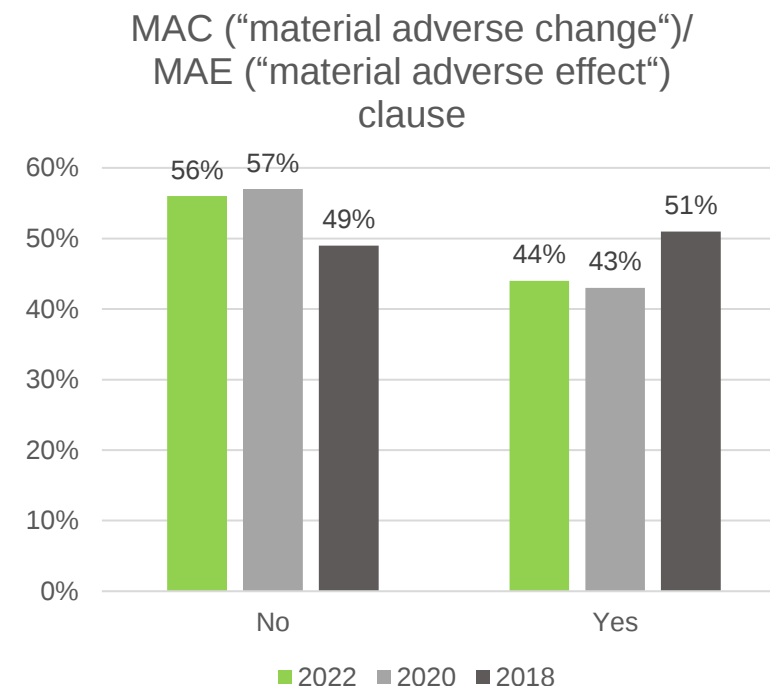
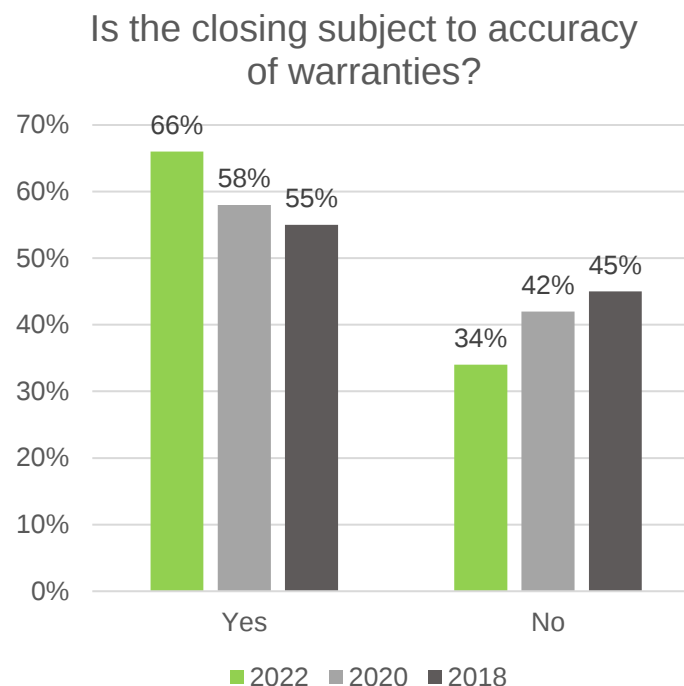
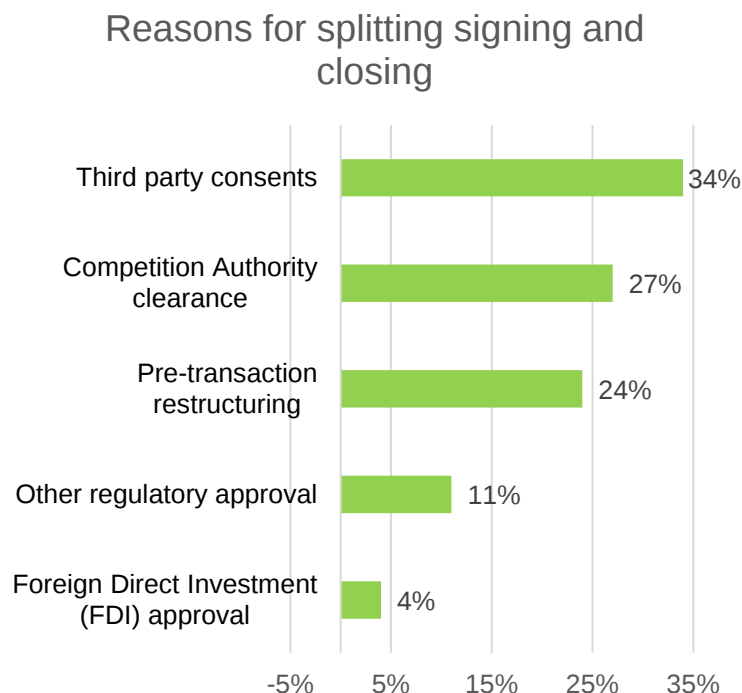
Splitting signing and closing



Similarly to previous periods, closing is deferred in the vast majority of transactions.

In 80% of the transactions, closing is not just deferred, but also subject to agreed conditions precedent.

Conditions precedent

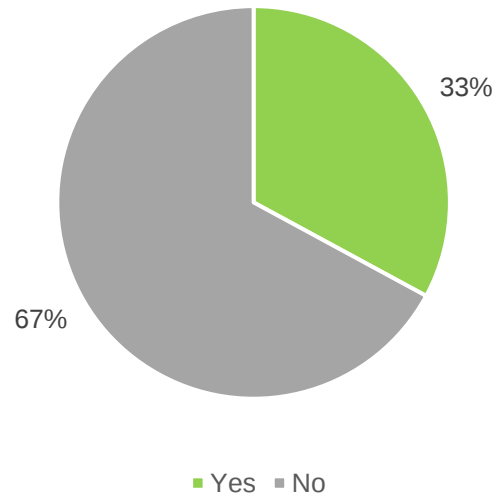


Third-party consents and merger clearance are the main reasons for splitting the signing and closing. In almost a quarter of transactions, the transactions also required some restructuring prior to the closing.

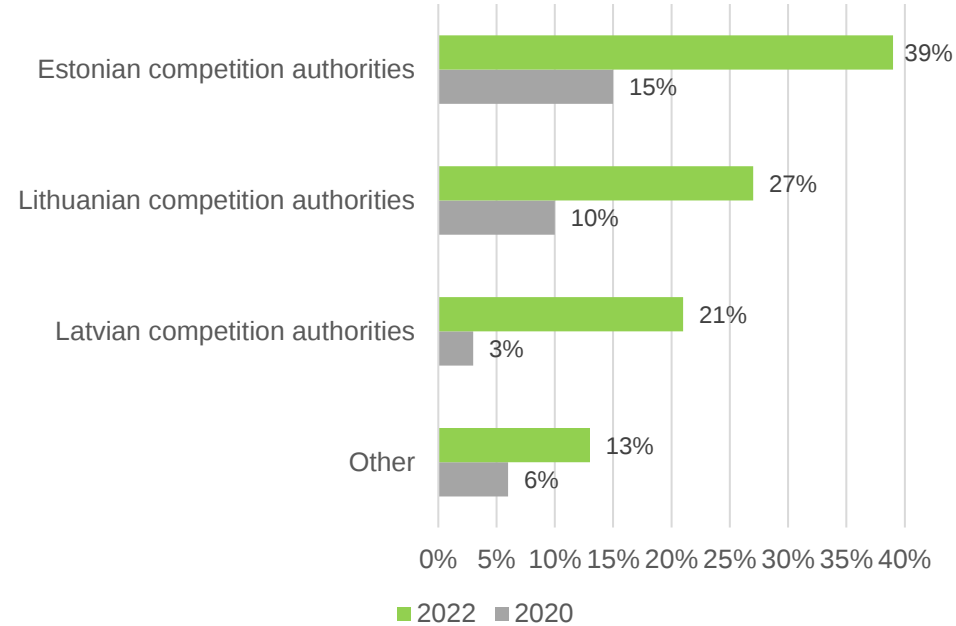
Accuracy of warranties and MAC/MAE conditions continue to be commonly used in Baltic M&A transactions, but not yet as a norm.

Competition clearance

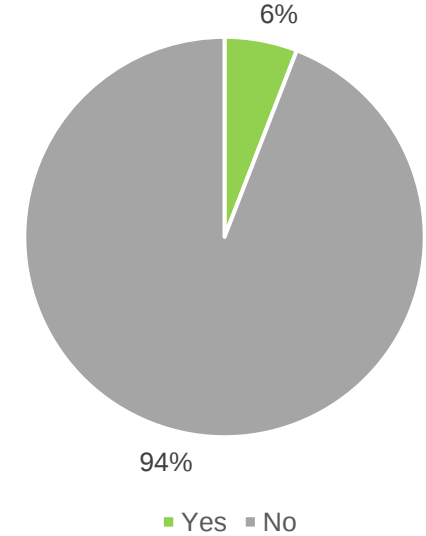
Was the transaction subject to approval by competition authorities?



Competition authorities



Hell or high water clause

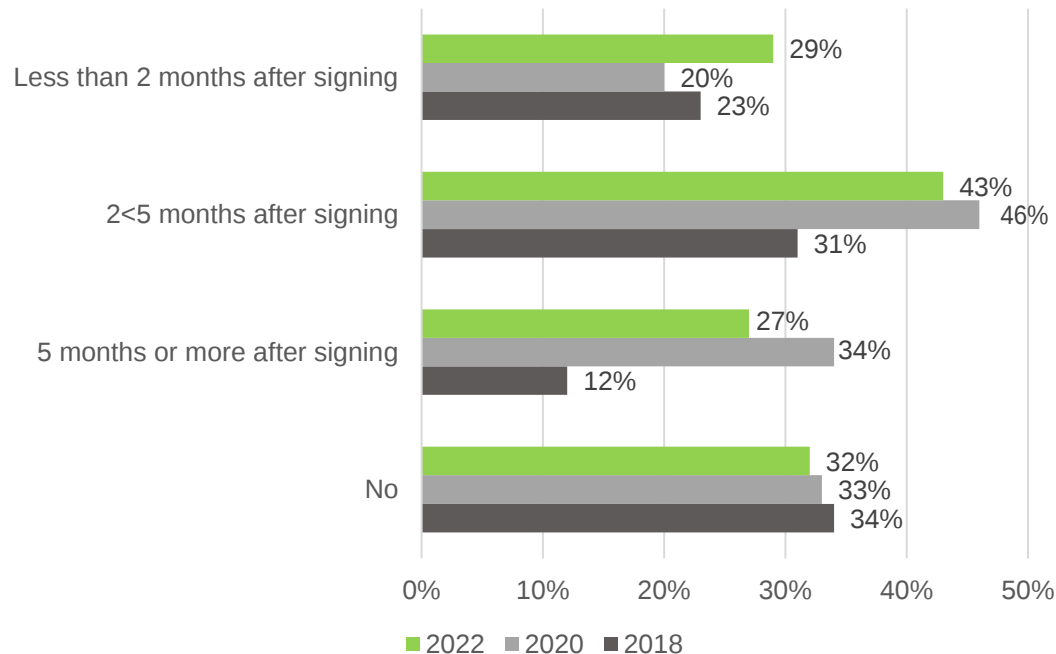


If merger clearance is needed, the most common jurisdictions are in line with the Target's headquarters (i.e. The Estonian competition authorities are slightly more common than the others).

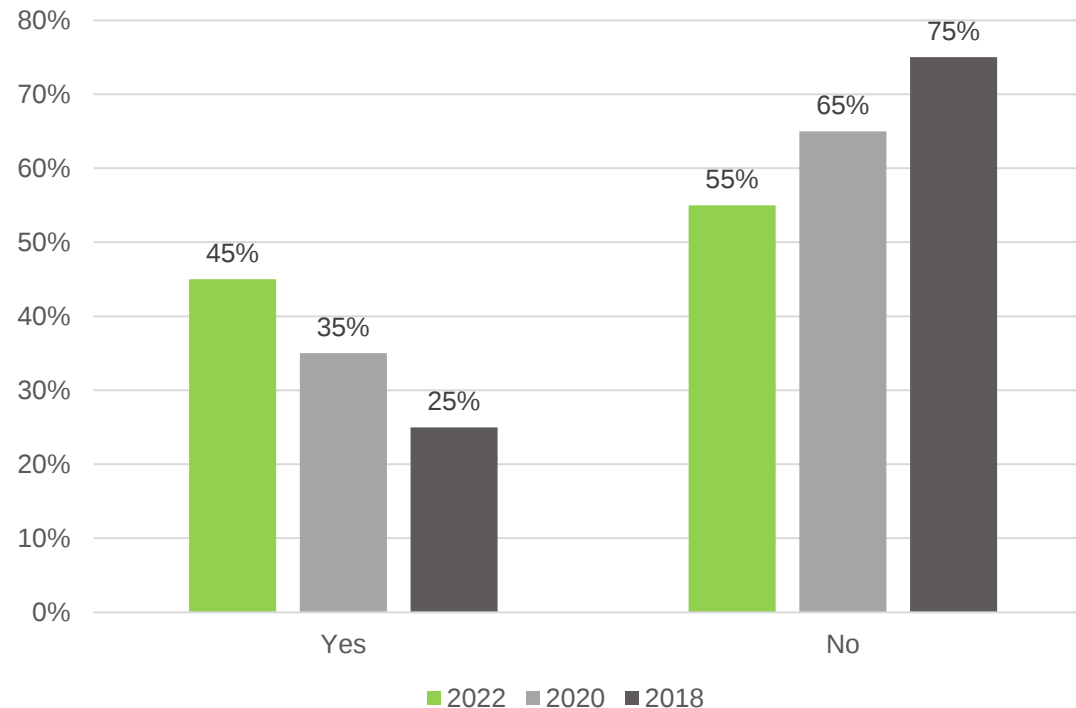
A hell or high water clause is rarely used, i.e. in only 6% of the transactions.

Long stop date

Was a long stop date used, and if yes, how long was the period?



Is there a break fee or exit penalty?



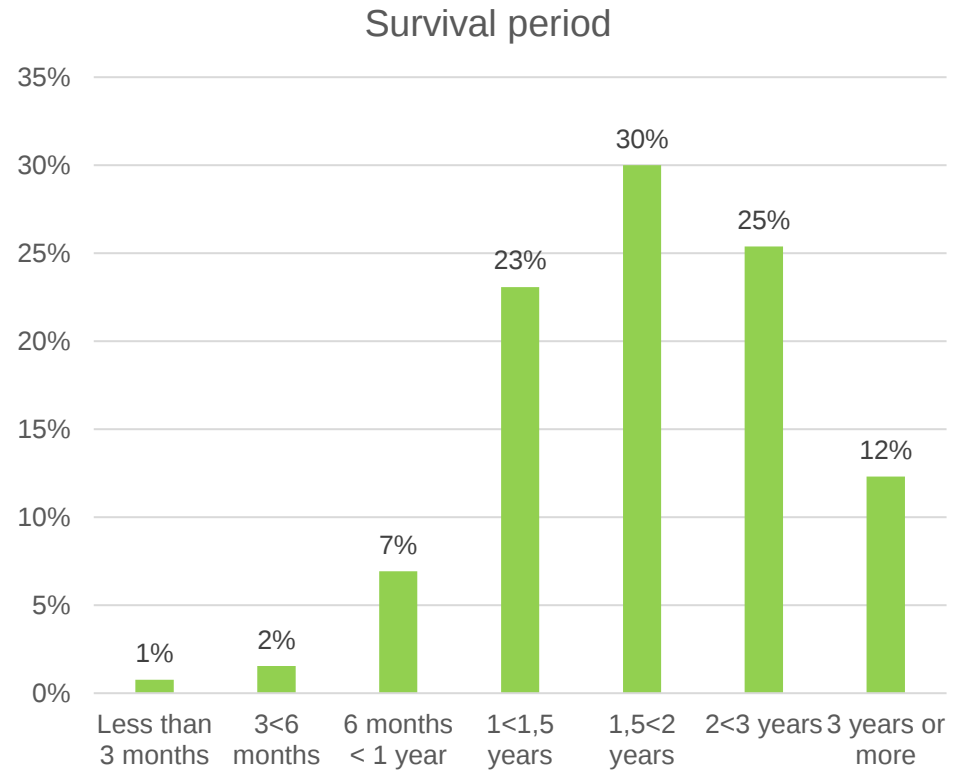
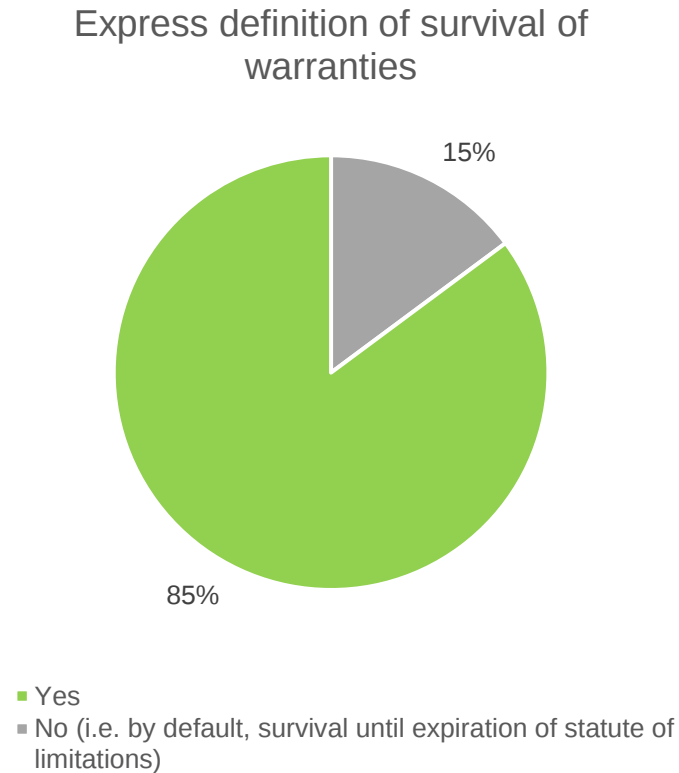
Use of long stop date has remained quite similar across the periods studied and remains at the level of two thirds of the analysed transactions. The most commonly used long stop period continues to be 2-5 months.

On the other hand, usage of a break fee (for not meeting the long stop date), has been on the rise and prescribed in almost half of the occasions.



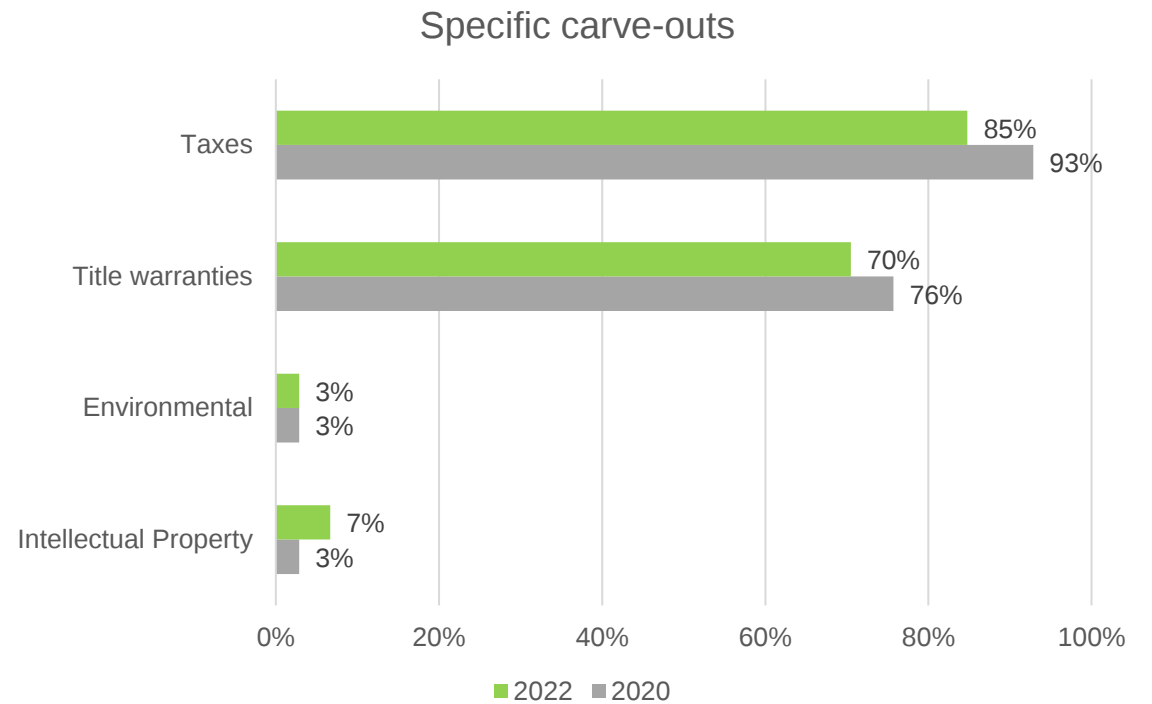
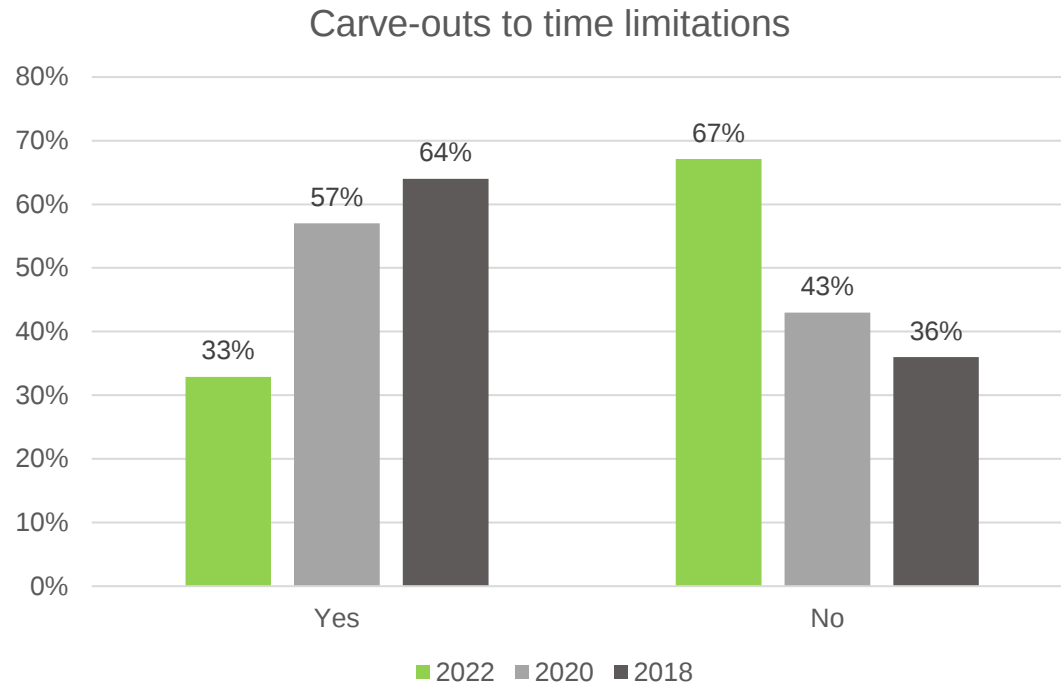
Liability and Indemnification

Survival of warranties



In vast majority of the transactions, the survival period of warranties is defined and limited. The median survival period of such a kind was between one and two years.

Survival of warranties carve-outs

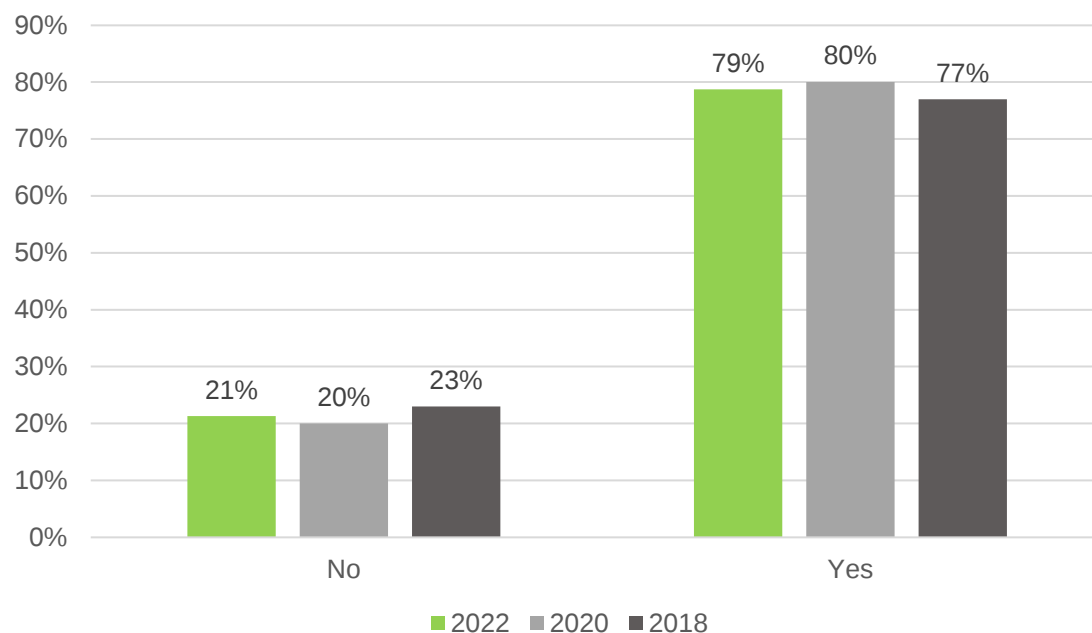


The use of carve-outs from general time limitation of warranties has lessened significantly compared to previous periods.

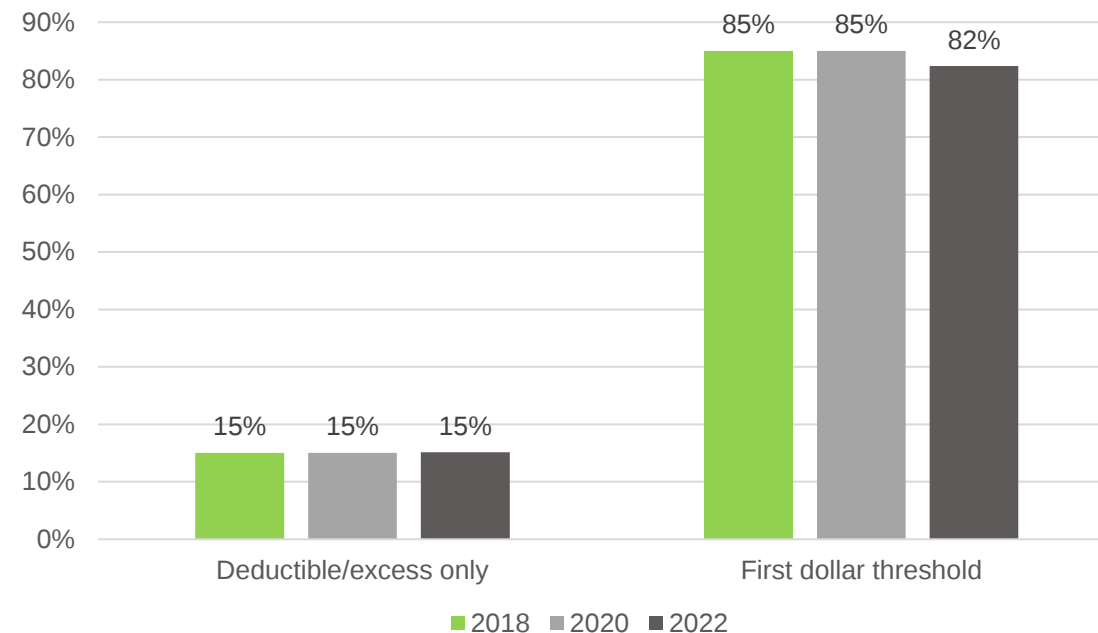
Tax and title warranties remain the most common carve-outs.

Baskets and thresholds

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



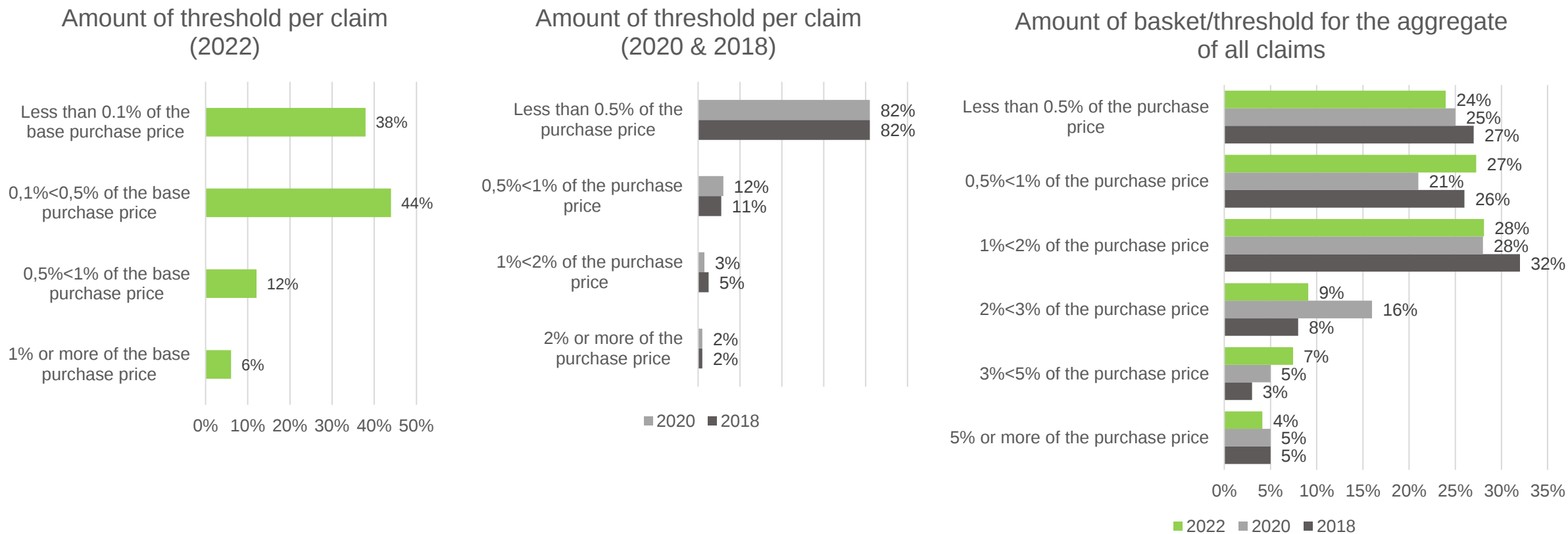
Excess only or first dollar threshold



The use of baskets/thresholds continues to be a common practice.

Typically, baskets/thresholds in the Baltics are *first dollar* (not deductible), as has been the case in all previous studies.

Thresholds for claims and baskets

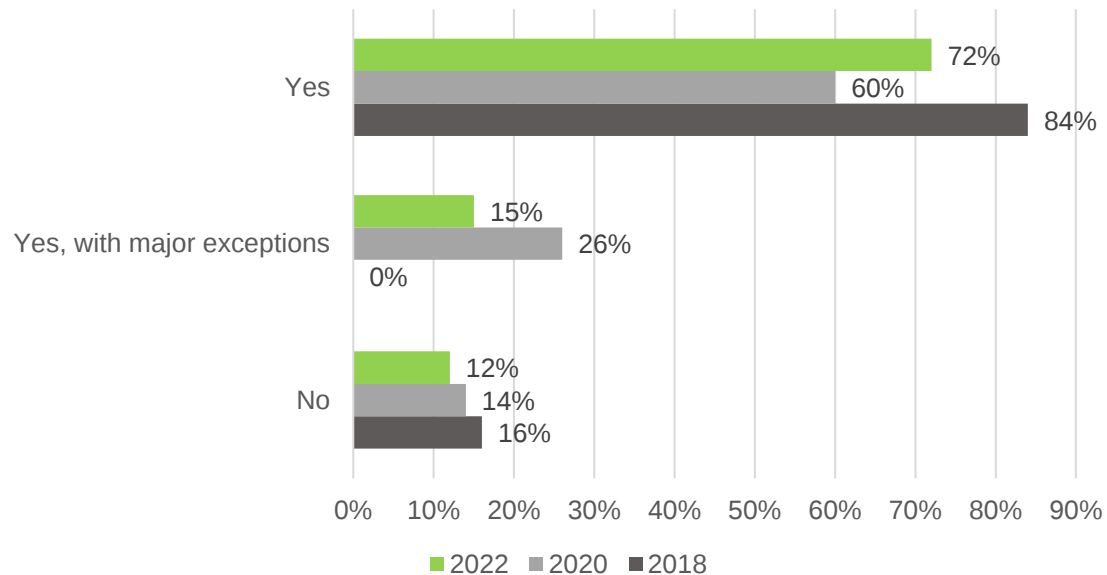


If used, the claim threshold was predominantly less than 0.5% of the purchase price, the median being around 0.1% of the purchase price. Similar statistics for previous periods are shown on a separate graph, because the response options were different.

The median for the claims basket continues to be around 1% of the purchase price.

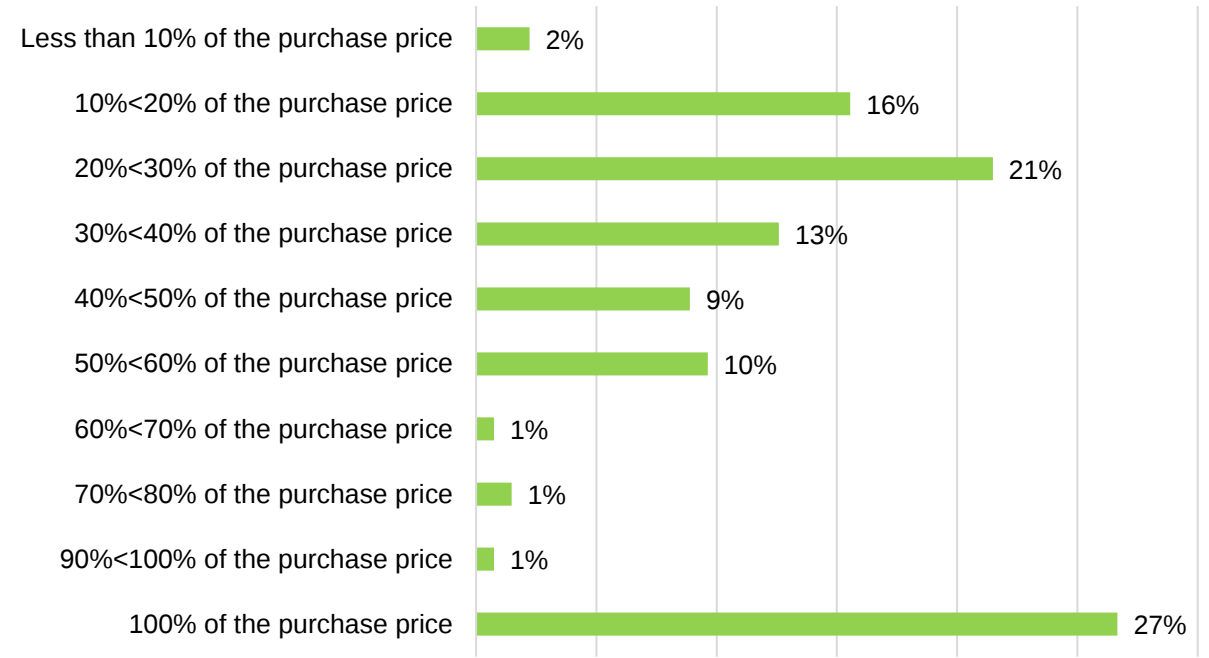
Overall cap on liability

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



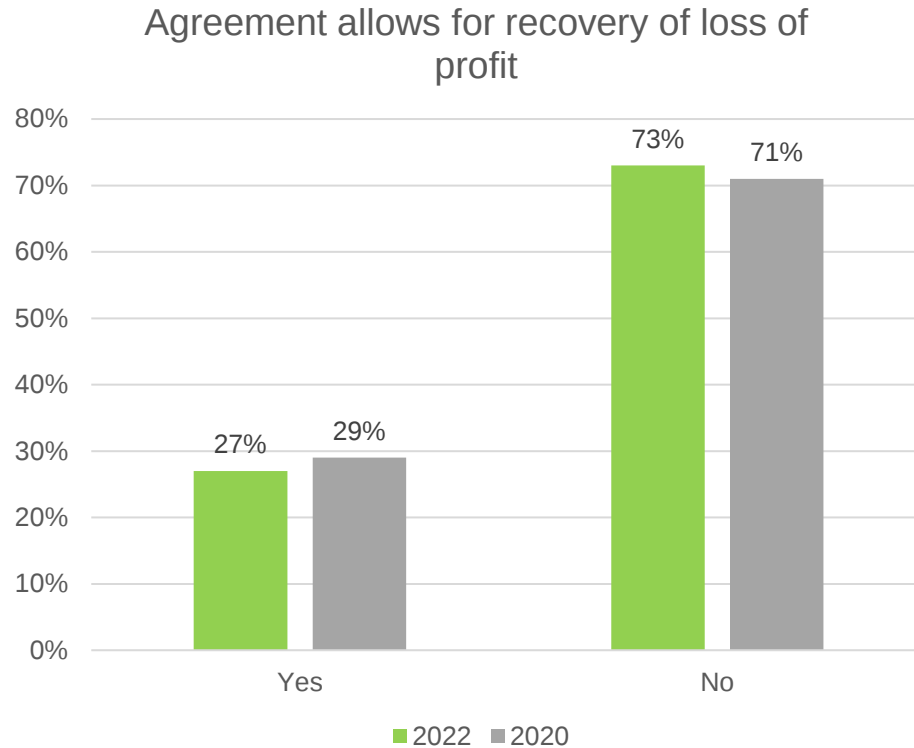
The liability cap continued to be prescribed. In some cases it was prescribed with major exceptions (e.g. title or tax warranties).

Amount of cap on liability

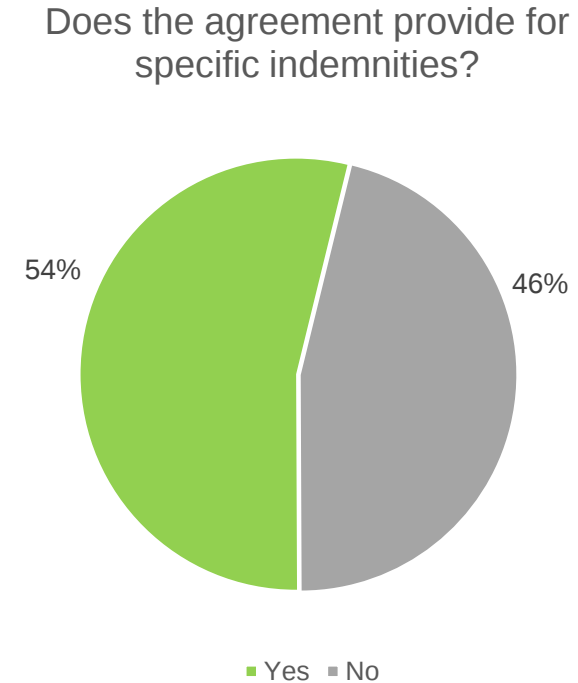


The overall liability cap was predominantly 10%-60% of the purchase price or 100% of the purchase price.

Losses and specific indemnities

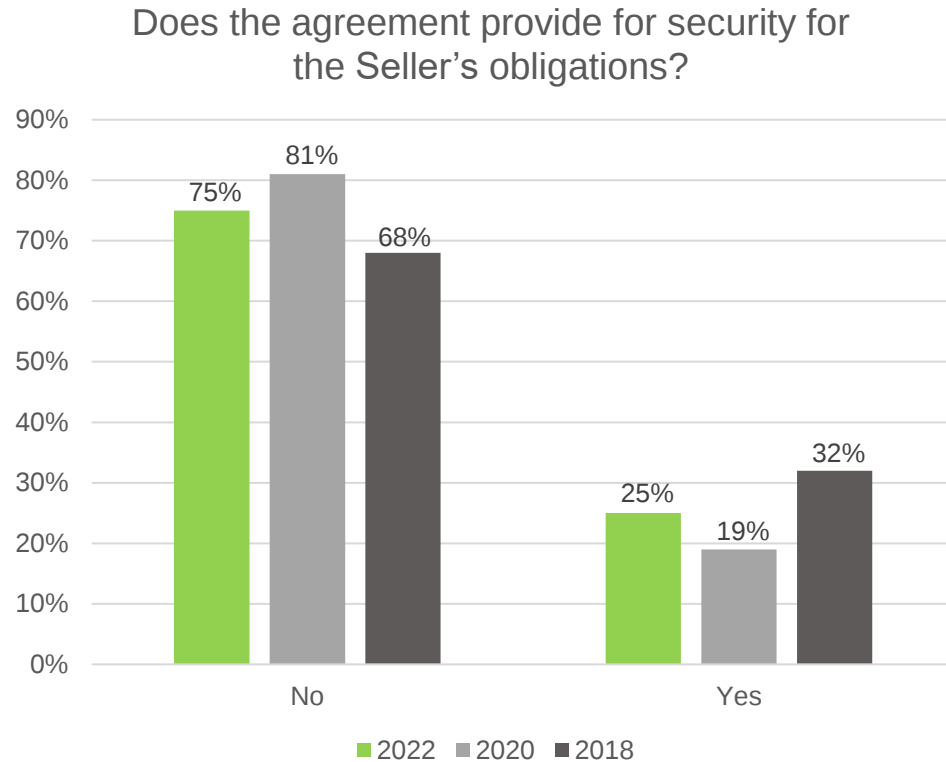


In the vast majority of the transactions, the agreement provides for restrictions on recovering lost profit, similarly to the previous period.



In slightly more than half of the transactions, the agreement provided for specific indemnities in addition to warranties.

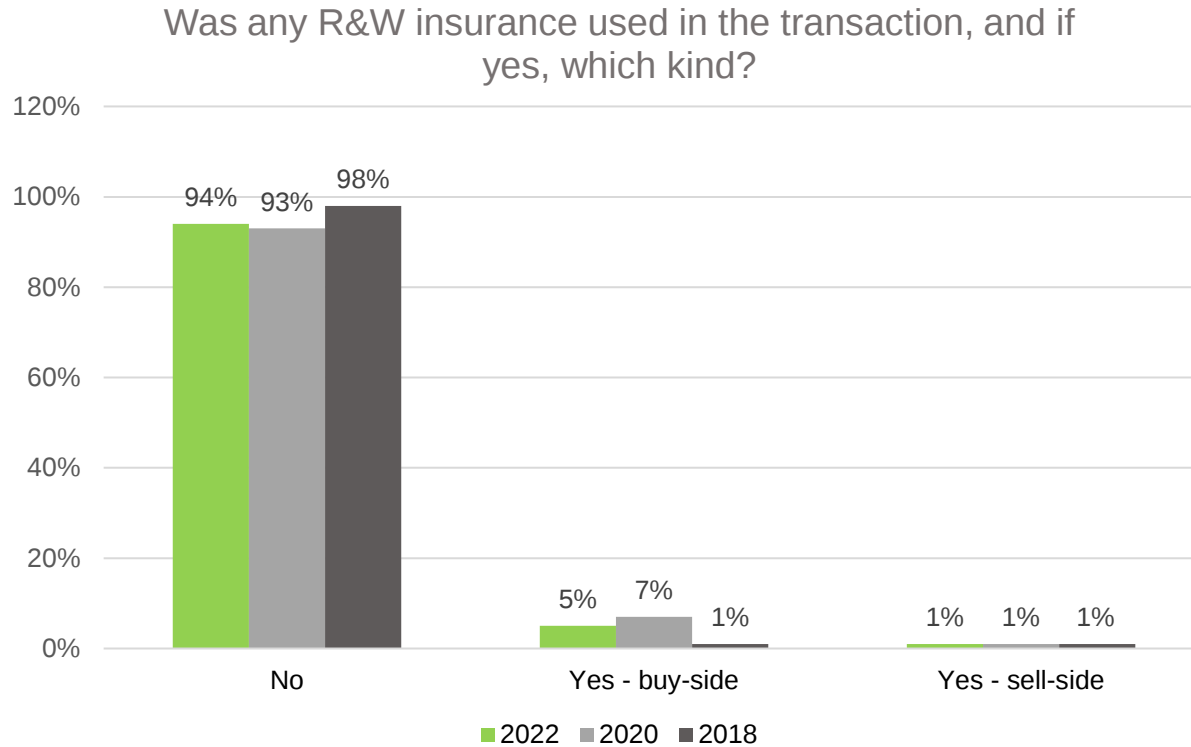
Security for Seller's Obligations



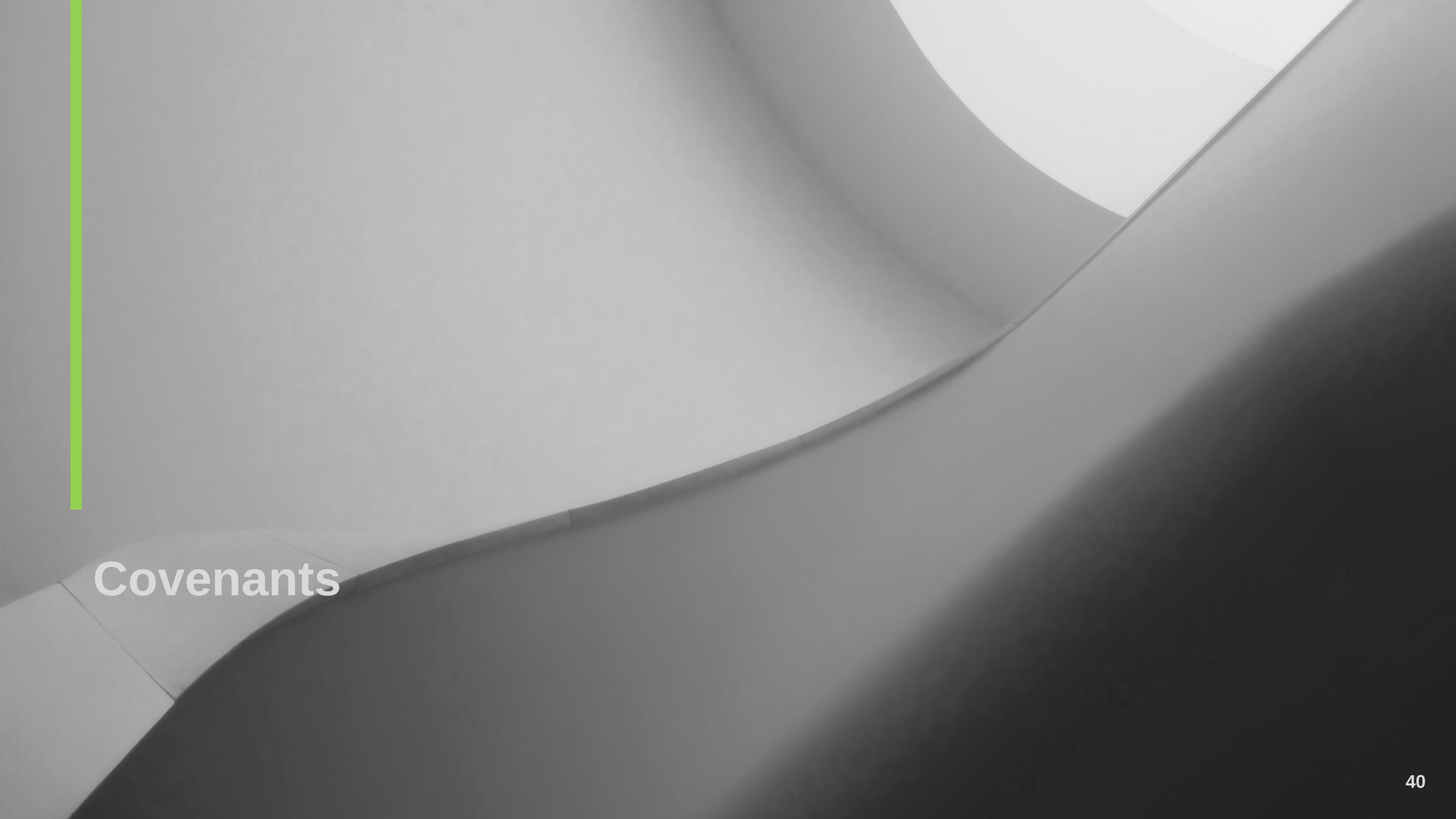
Similarly to previous periods, the Baltic M&A transactions do not commonly provide for security for the seller's obligations.

If security was used, escrow and deferred payment were most commonly used, although less so than in previous periods.

M&A insurance

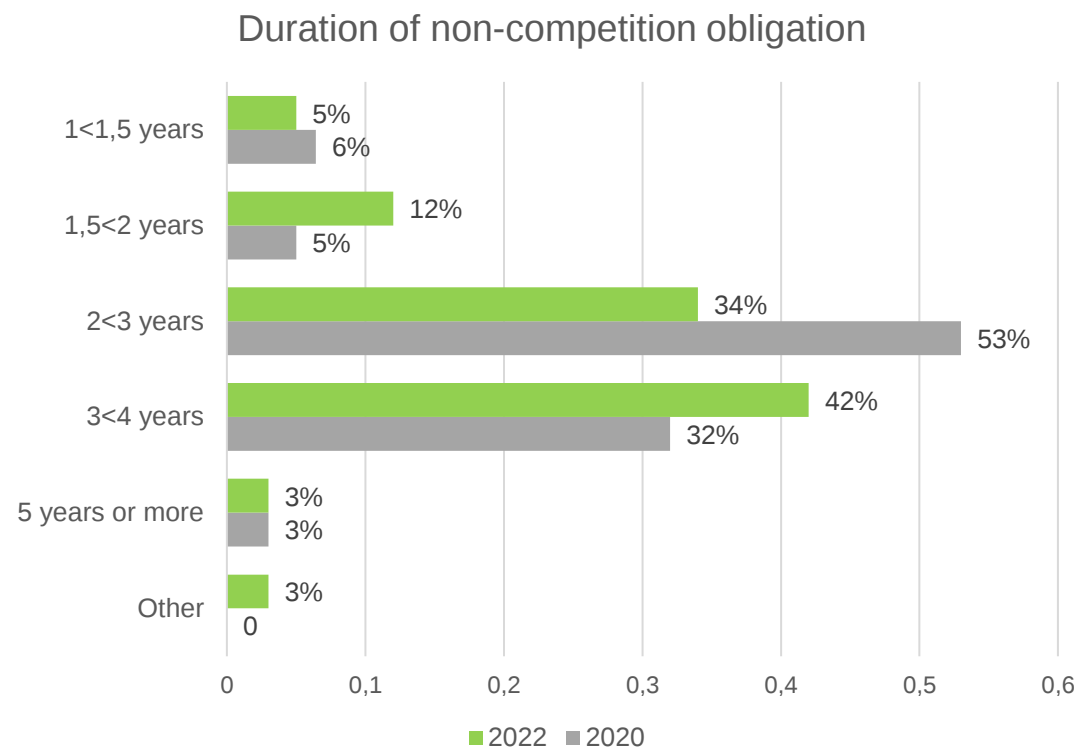
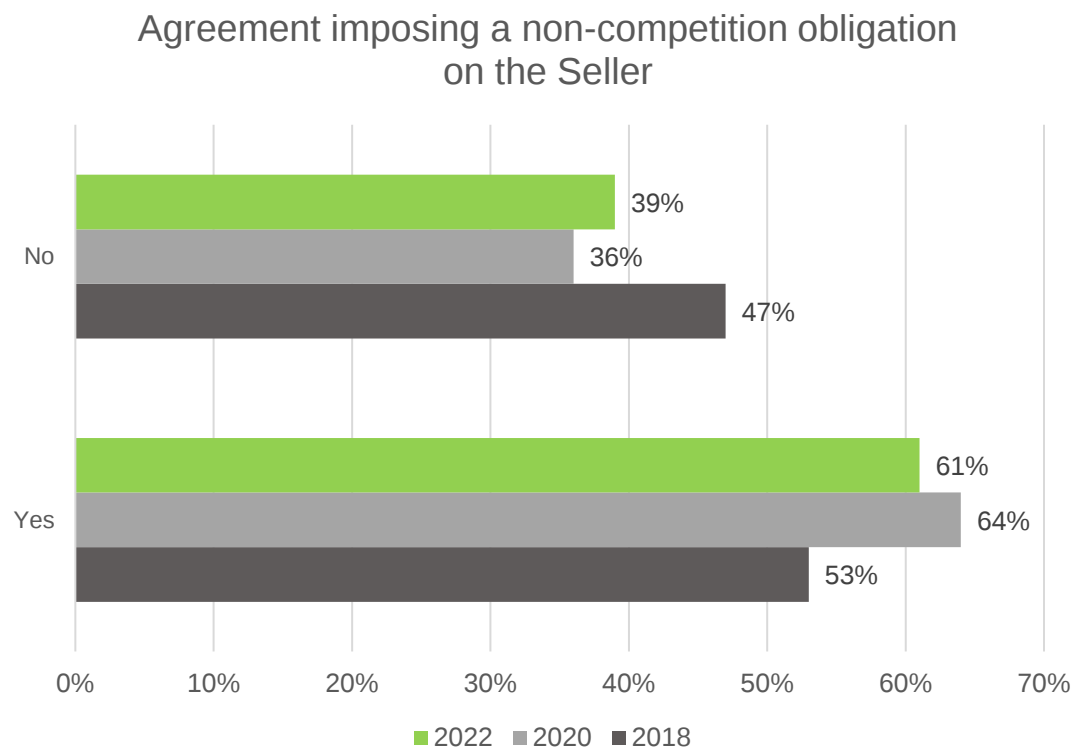


The usage of W&I insurance in Baltic M&A transactions remains rather uncommon.



Covenants

Seller's non-competition obligation

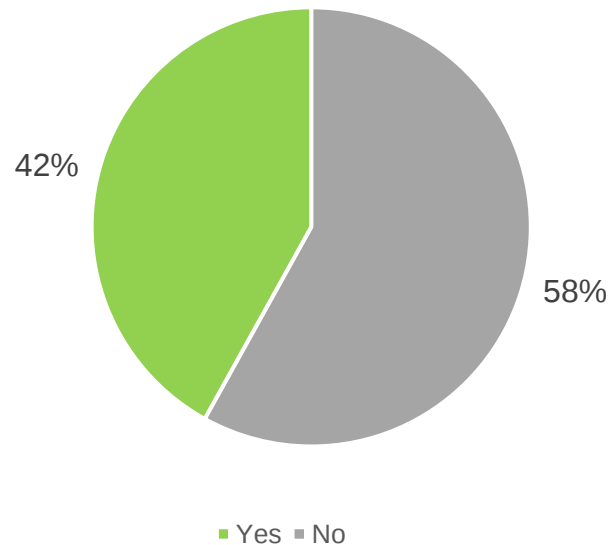


More than half of the analysed transactions prescribed a non-competition obligation on the seller.

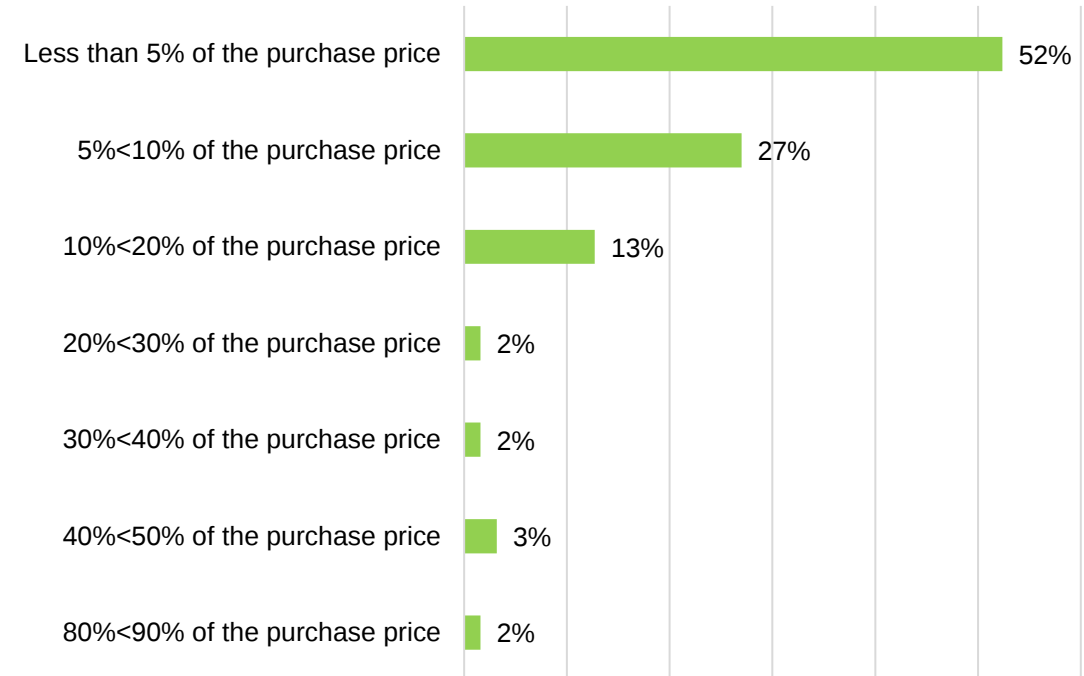
If prescribed, the length of the non-competition obligation was commonly two or three years.

Seller's non-competition obligation

Penalty for non-competition breach

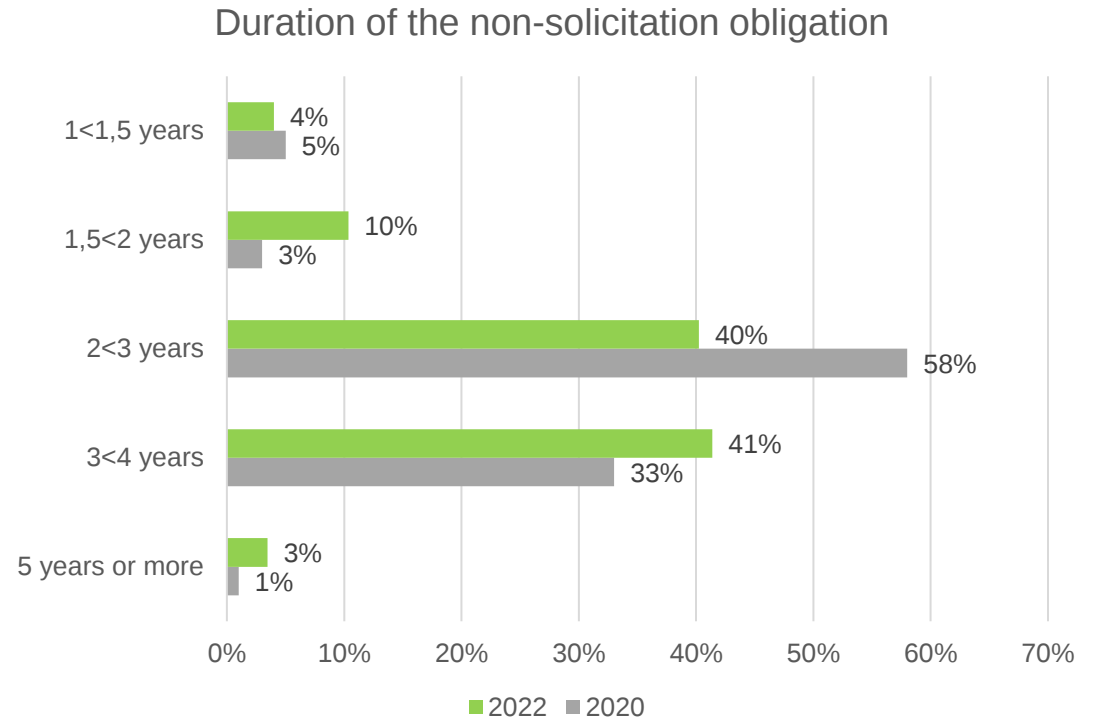
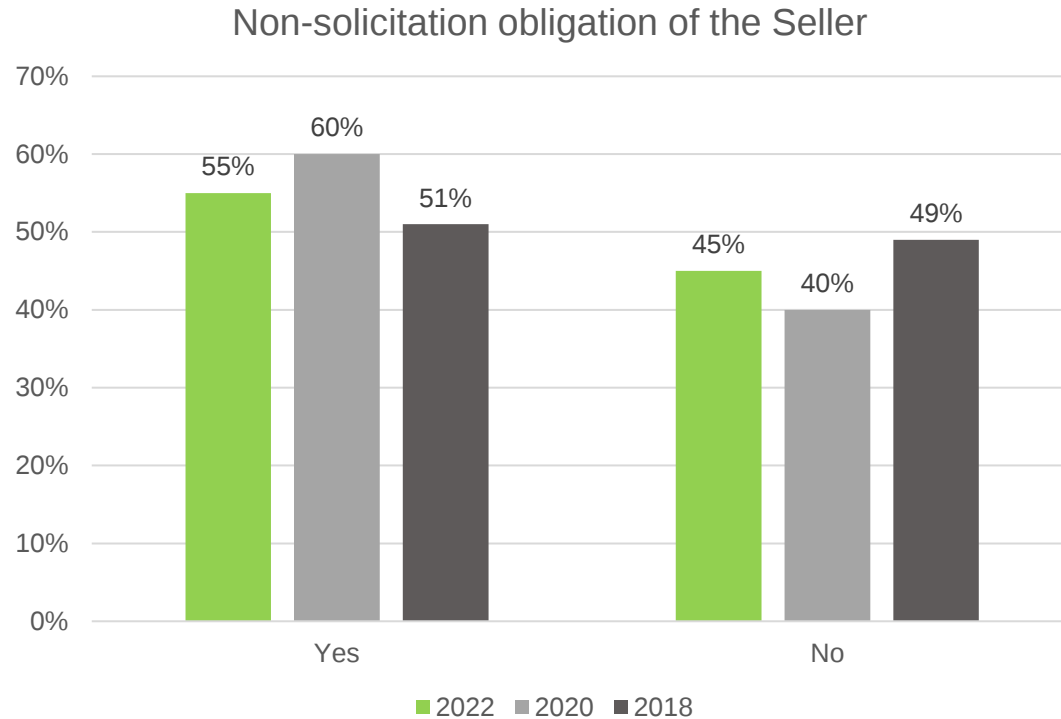


The amount of the penalty



Penalty for the non-competition obligation breach was included in less than half of transactions. If included, the amount was commonly less than 5% or 5–10% of the purchase price.

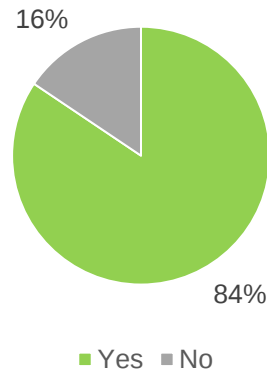
Seller's non-solicitation obligation



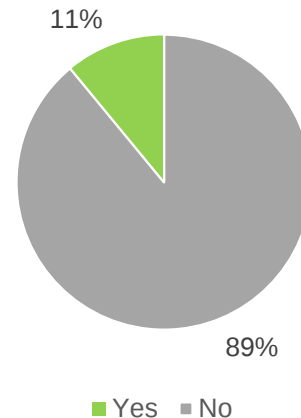
Non-solicitation obligation of the seller appears to be slightly more common than non-competition obligation. However, if used, the term of such obligation coincides with the term of the non-competition obligation (commonly two or three years).

Confidentiality obligation

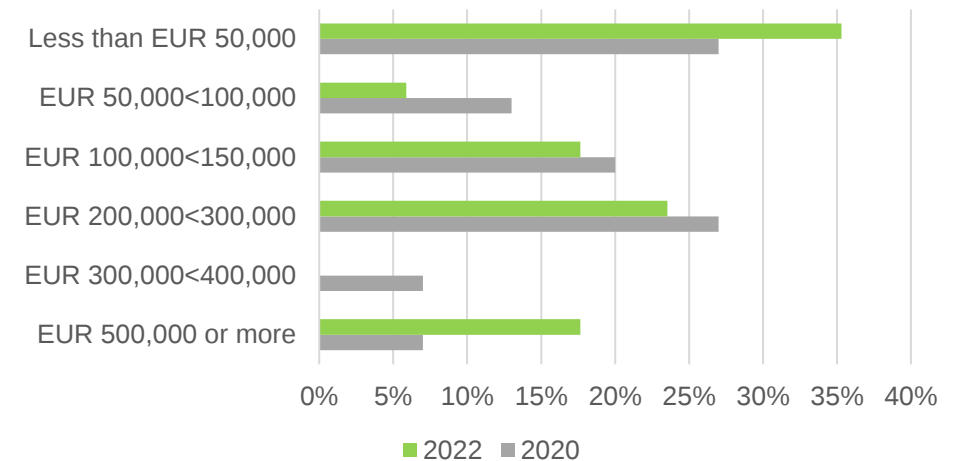
Agreement contains a confidentiality obligation on the seller to keep information regarding the Target confidential after closing



Agreement contains a penalty for breach of confidentiality



Amount of penalty (if included)

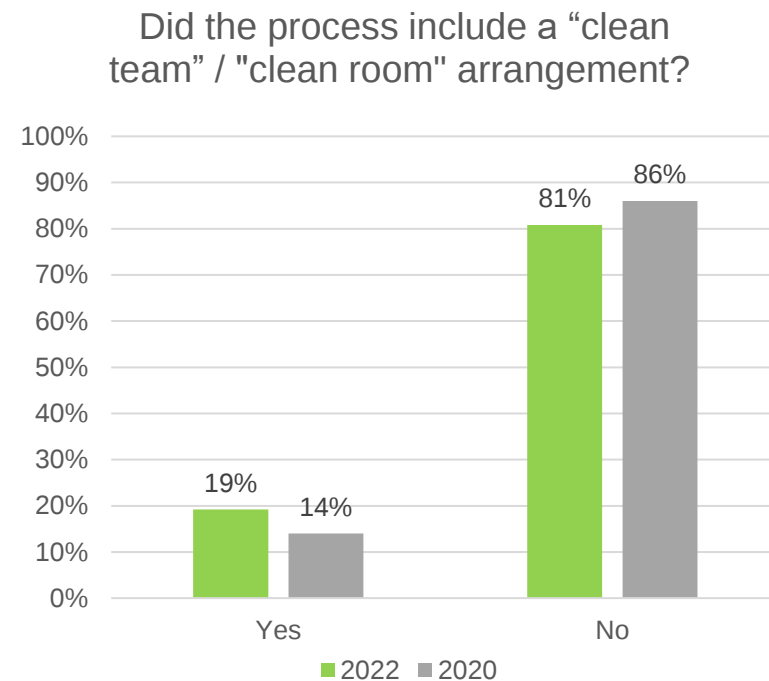
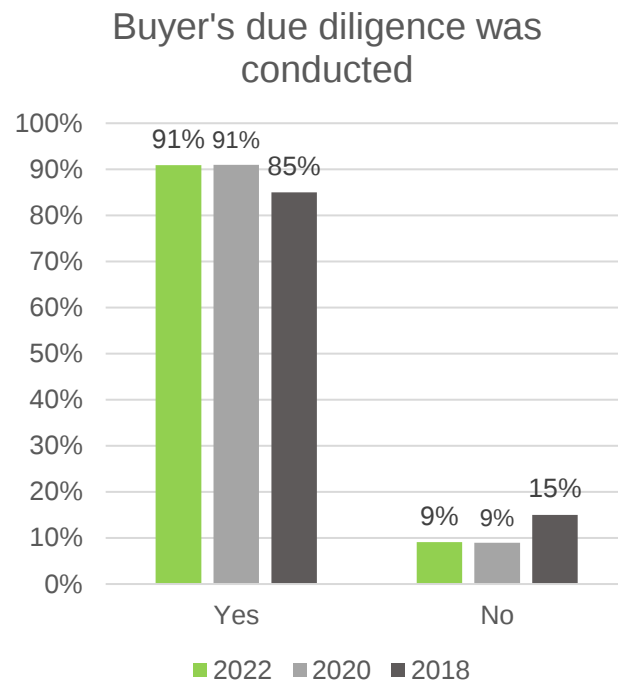
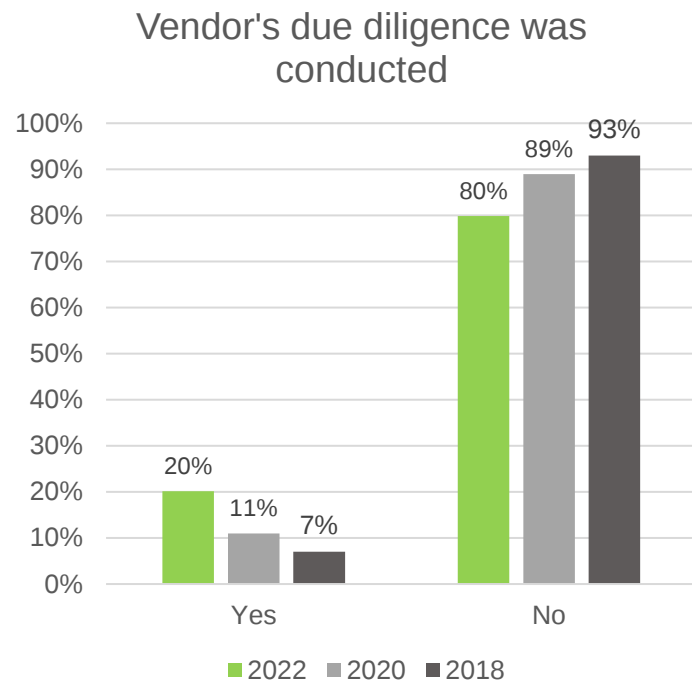


The vast majority of the transactions prescribe a specific confidentiality obligation for the seller; however, this is not commonly secured by penalty.



Due Diligence

Due diligence



In line with previous studies, buyers conducted due diligence exercises in the vast majority of cases. The trend for buyers to conduct due diligence has increased steadily over the period.

While buyers routinely carry out target due diligence, vendor's due diligence is still quite rare in the Baltic countries, although it is slowly gaining popularity. This is in line with the low usage of controlled auctions in the Baltics.

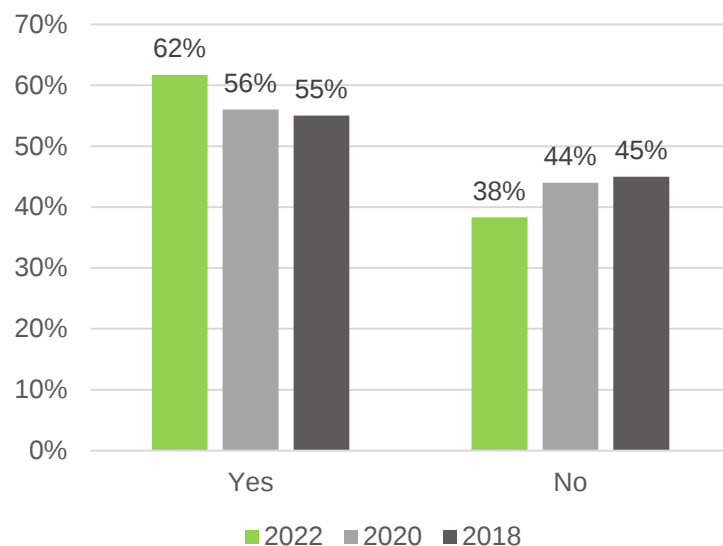
Clean team arrangements to secure the most sensitive information are still rarely used in the Baltic transactions, although their use increased slightly compared to previous period.



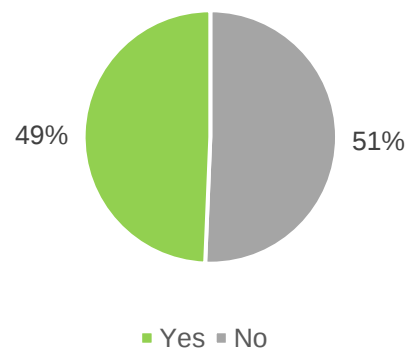
Letter of Intent and Length of Transaction Process

Letter of intent

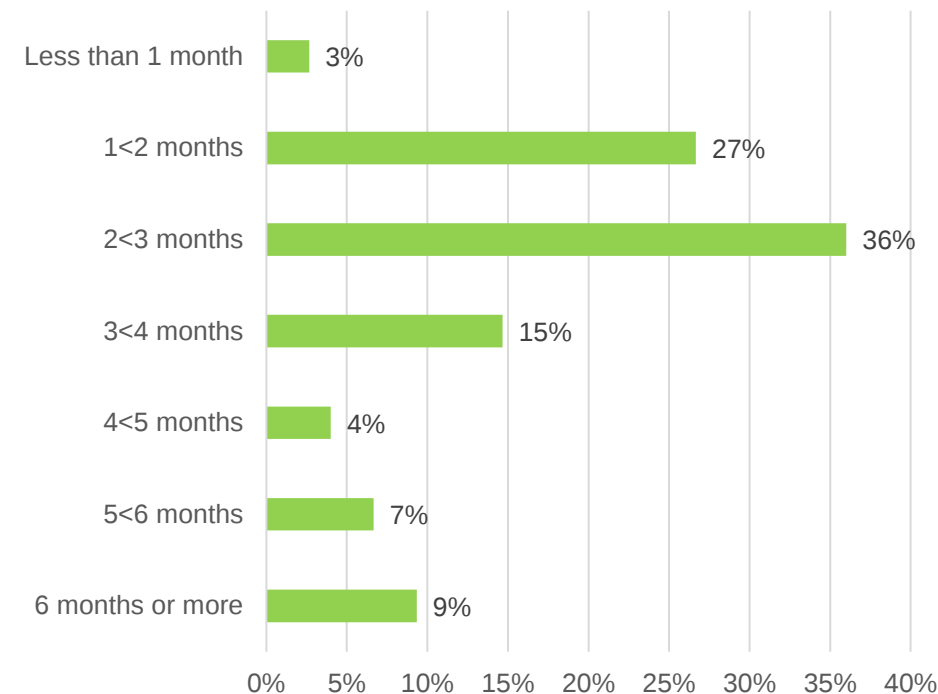
Were the initial negotiations formalised by signing a letter of intent, term sheet or similar document?



Does the letter of intent provide for exclusivity?



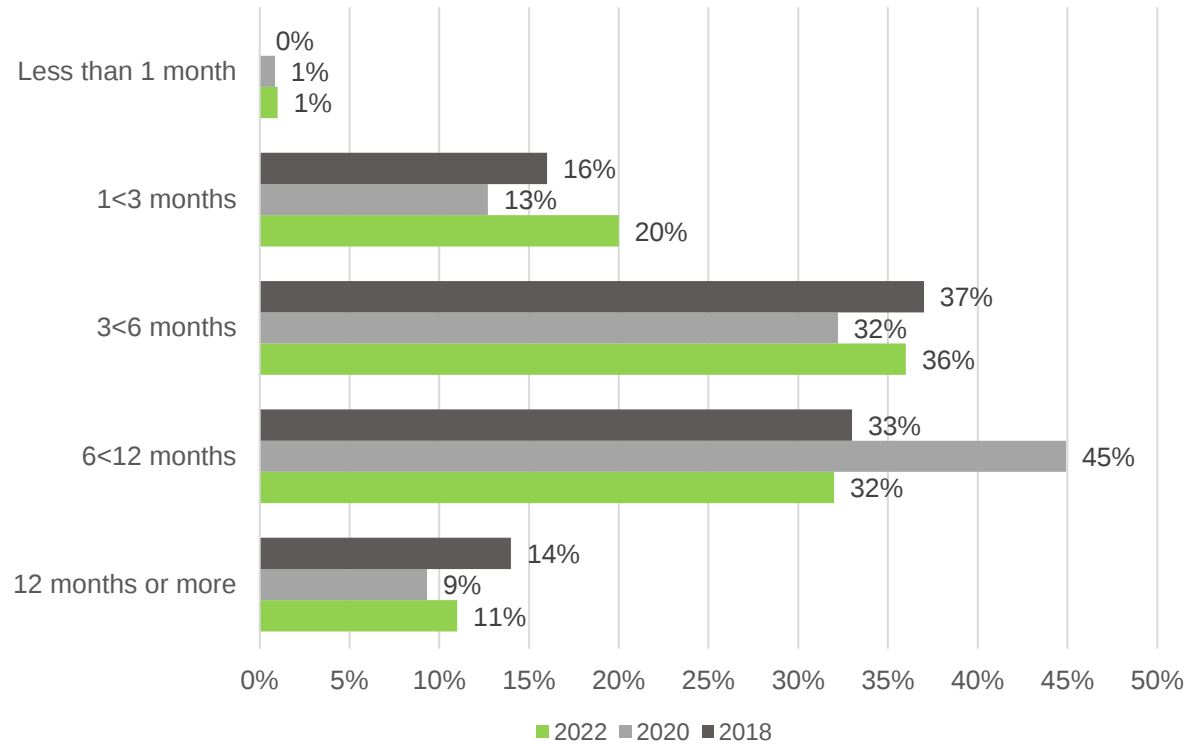
Period of exclusivity



The usage of letters of intent (or memorandums of understanding, term sheets) is steadily on increase.

The length of the exclusivity period, if used, was most commonly 1–4 months.

Length of transaction process



The average length of a transaction process is roughly half a year and has returned to 2018 levels.

Final remarks

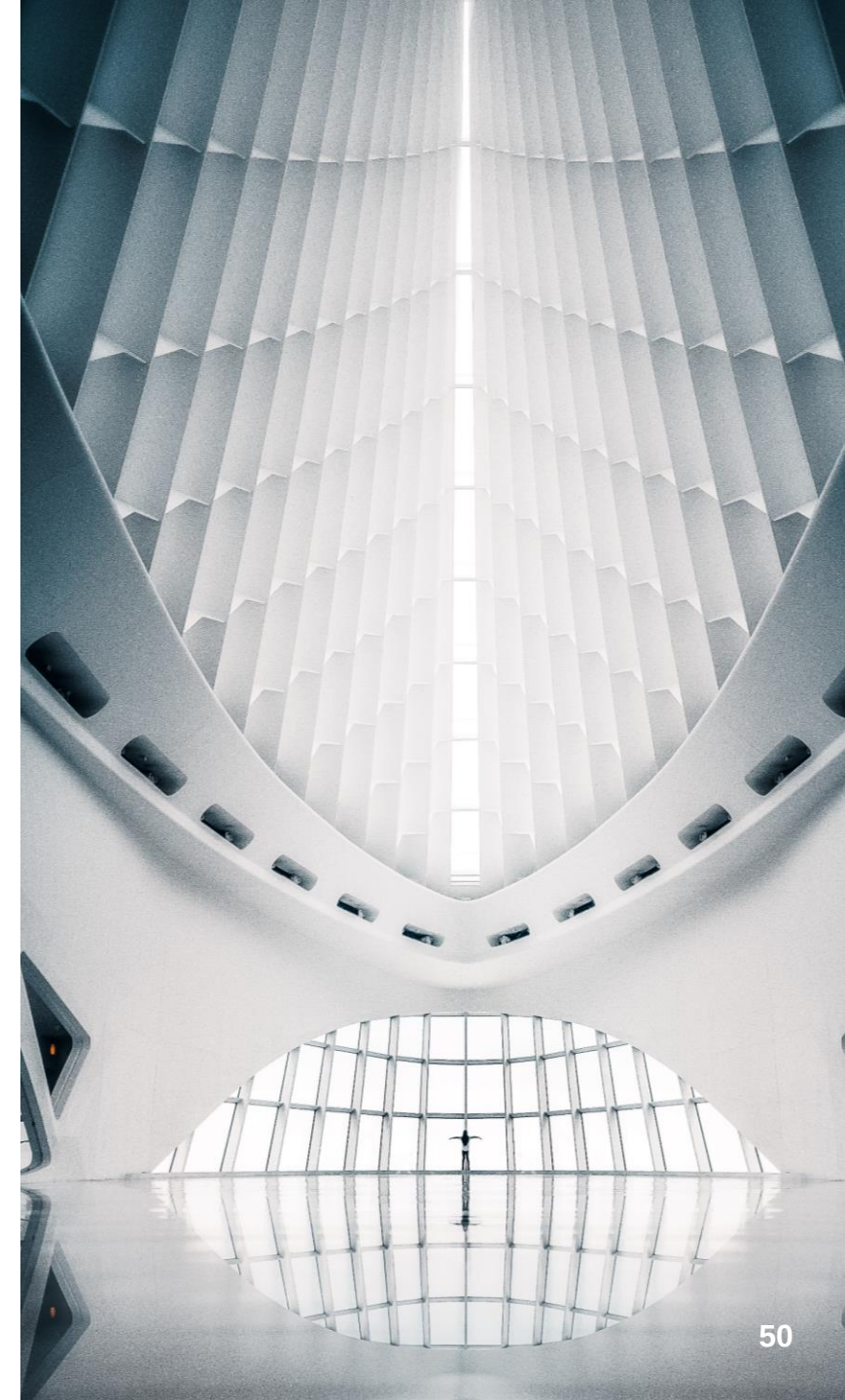
The survey analysed 155 private M&A transactions completed during the period April 2020 – March 2022. During the period, the Baltic M&A market was very active and the survey period started exactly when the first Covid-19 lockdown came into force.

In 2020–2022, the most active economic sectors in the Baltic M&A market were technology, industrials, and energy & utilities. The share of M&A transactions in the services sector dropped significantly.

Overall, there were no significant changes in M&A market practice during the Covid-19 pandemic compared to the previous period. Furthermore, there were no major changes as to whether it was foreign or local shareholders selling businesses in the Baltics. However, the share of pan-Baltic targets has continued to decrease. Interestingly, individuals and family offices played a more active role as M&A buyers compared to previous periods.

Although transaction values vary greatly, the value of the most typical Baltic M&A transaction has increased from the EUR 1–10 million bracket to the EUR 10–25 million bracket.

In 2020, we introduced a number of new questions in order to expand the amount of interesting data. It can be generalised that Baltic M&A counterparties are becoming more sophisticated in the use of internationally acknowledged transaction tools, such as price adjustments, MAC clauses, liability limitations (warranty limitation periods, overall caps, claim baskets and thresholds). However, R&W insurance is still very seldom used in Baltic M&A transactions.



Contacts

FOR MORE INFORMATION, PLEASE CONTACT MEMBERS OF THE WORKING GROUP

ESTONIA

SORAINEN

Toomas Prangli
toomas.prangli@sorainen.com

C O B A L T

Peeter Kutman
peeter.kutman@cobalt.legal

TGS
BALTIC

Kadri Kallas
kadri.kallas@tgsbaltic.com

Ellex

Sven Papp
sven.papp@ellex.legal

W A L L E S S

Rolan Jankelevitsh
rolan.Jankelevitsh@walless.com

EVERSHEDS
SUTHERLAND

Maivi Ots
maivi.ots@eversheds-sutherland.ee

TRINITY
TALLINN RIGA VILNIUS

Ergo Blumfeldt
Ergo.Blumfeldt@trinity.ee

LATVIA

Nauris Grigals
nauris.grigals@sorainen.com

Guntars Zīle
guntars.zile@cobalt.legal

Andra Rubene
andra.rubene@tgsbaltic.com

Raimonds Slaidiņš
raimonds.slaidins@ellex.legal

Zane Eglite-Fogele
zane.eglite.fogele@walless.com

Maris Vainovskis
Maris.Vainovskis@eversheds-sutherland.lv

Ugis Treilons
Ugis.Treilons@trinity.lv

LITHUANIA

Mantas Petkevičius
mantas.petkevičius@sorainen.com

Juozas Rimas
juozas.rimas@cobalt.legal

Aurimas Pauliukevičius
aurimas.pauliukevicius@tgsbaltic.com

Paulius Gruodis
paulius.gruodis@ellex.legal

Dovilė Burgienė
dovile.burgiene@walless.com

Rimtis Puisys
rirtis.puisys@eversheds.lt

Giedrė Čiuladienė
Giedre.Ciuladiene@trinitijurex.lt