

A low-angle, upward-looking photograph of several modern skyscrapers against a dramatic, orange-hued sky at sunset or sunrise. The buildings are silhouetted and their glass facades reflect the warm light. The composition creates a sense of height and architectural grandeur.

# M&A Dispute Survey 2019

120 Years of Thinking Ahead

**DITTMAR & INDRENIUS**

Creating Sustainable Value



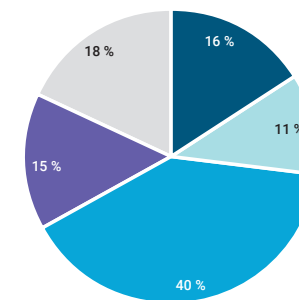
**DITTMAR & INDRENIUS**  
FINLAND M&A LEGAL ADVISER  
OF THE YEAR  
**WINNER 2018**

## M&A Dispute Survey 2019

D&I's M&A Dispute Survey studied the reasons for, the methods of resolving and the impacts of M&A-related disputes. The survey was conducted by interviewing representatives of Finnish listed companies, TE-500 companies (Talouselämä's list of the 500 largest Finnish companies) and private equity houses, who have collectively participated in more than a thousand M&A transactions during the last five years.

The survey was carried out for the third time and was based on responses from 55 corporate executives and experts who had participated in M&A transactions. The interviews were conducted in collaboration with Pohjoisranta BCW in December 2018. The previous M&A dispute surveys were conducted in 2015 and 2011.

**RESPONDENTS' POSITION**



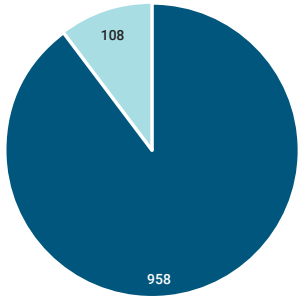
- CEO
- Chief Financial Officer/Administrative Manager
- General Counsel / In-house Lawyer
- Partner/Chairman of the Board
- Other (Strategy Director, Investment & Financial Director, M&A Director, Executive Vice President)

# One in ten M&A transactions leads to a dispute

The proportionate share of M&A transactions that have led to disputes has remained unchanged. The proportion of disputes resolved in settlement negotiations has, however, decreased – just over **2/3** of all disputes were settled through negotiations, while the corresponding figure in the 2015 survey was **9/10**.

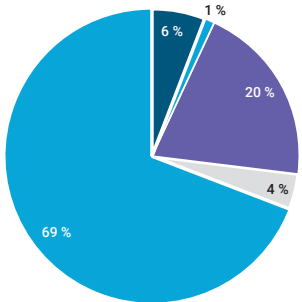
The number of arbitration proceedings has strongly increased – **1/5** of all disputes were resolved in arbitration, whereas the corresponding figure in 2015 was **1/20**.

NUMBER OF M&A TRANSACTIONS IN THE PAST FIVE YEARS



■ Transactions which led to a dispute  
■ Transactions that did not lead to a dispute

METHODS OF RESOLVING M&A DISPUTES

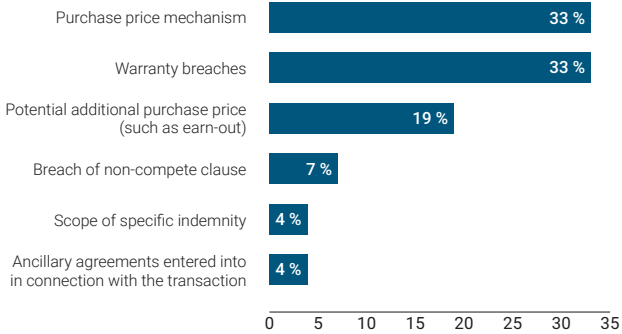


■ Settlement negotiations  
■ Informal mediation  
■ Institutional mediation  
■ Arbitration  
■ General courts of law

# The most common causes of disputes

Particularly breaches of the seller's warranties have become a more common source of conflicts – **1/3** of the respondents reported this to be the most common cause for disputes, whereas in 2015 the corresponding figure was only 6%.

**“The number of M&A transactions has increased during the economic boom of the past few years. As the economic growth slows down, interest towards raising contractual claims may increase. The significance of taking steps to prevent disputes in the contract drafting stages increases.”**



# Preventing disputes

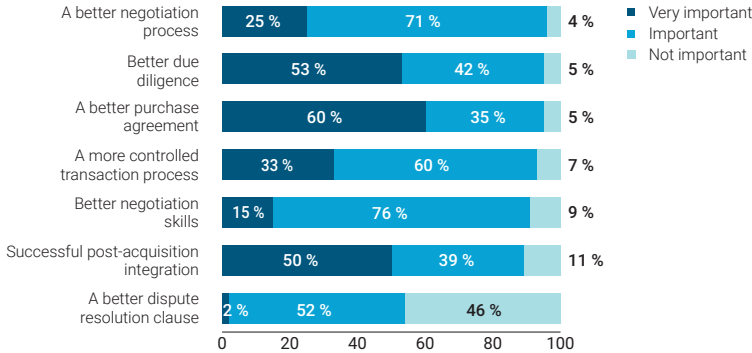
Pre-emptive measures are regarded as increasingly important for preventing disputes.

More careful drafting of purchase agreements, more thorough due diligence and successful post-acquisition integration of the target were identified as the most significant means of avoiding disputes.

With the exception of the drafting of the dispute resolution clause, all of the pre-emptive measures suggested in the survey were regarded as important or very important.

“No single pre-emptive measure stands out as decisive for preventing disputes – instead the transaction and post-acquisition integration as a whole should be a well-implemented process in order to successfully prevent future disputes.”

THE MOST IMPORTANT MEANS TO PREVENT DISPUTES

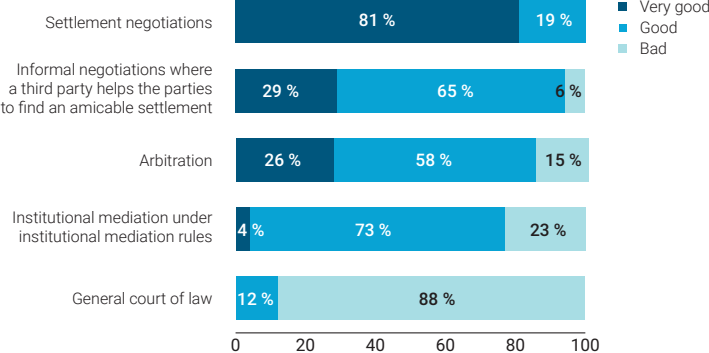


# A settlement is worth investing in

Approximately 1/2 of the respondents have used multi-tier dispute resolution clauses, where the parties are required to satisfy certain steps in an attempt to amicably resolve the dispute prior to commencing arbitration or litigation. Respondents are increasingly willing to use mediation and when they do, informal mediation is the preferred option.

1/4 of all disputes end up in either litigation or arbitration proceedings, and out of these 5/6 are arbitrations. The confidence in general courts of law as the forum for resolving M&A disputes has not improved.

POPULARITY OF METHODS FOR RESOLVING M&A DISPUTES



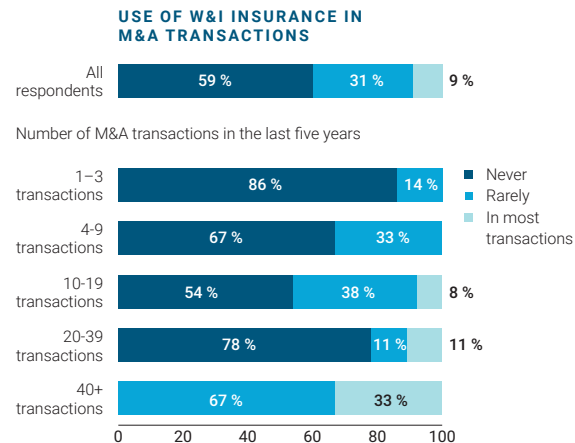
# Use of W&I insurance has increased

The number of respondents having used W&I insurance has tripled since the 2015 survey – the more M&A transactions a company has made, the likelier it is to be using W&I insurance.

According to the survey, **2/5** of the respondents have used W&I insurance. **2/5** of the respondents say that W&I insurance has typically been taken out at the seller's request.

The respondents' satisfaction with the W&I insurance as a product is divided – just over **1/2** were fairly satisfied or very satisfied.

**“During the past few years W&I insurance as a product has developed, the procurement and underwriting process has become more streamlined, the offering has expanded and the costs have decreased. In particular when a clean exit is sought, for instance when a private equity investor is looking to exit a portfolio company, the W&I insurance can be a very useful product.”**

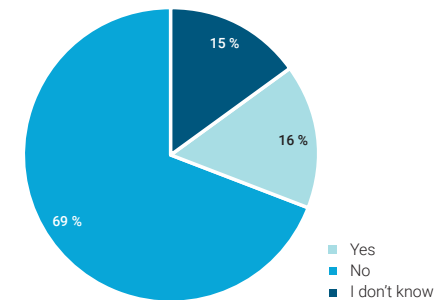


# Artificial intelligence not about to replace humans as resolver of disputes

Despite the technological disruption being evident in the legal market, **2/5** of the respondents do not consider it possible that their disputes could be resolved using artificial intelligence in the near future.

**“Artificial intelligence will not resolve disputes in the near future. Human contact and dialogue have a significant role in reaching an end result that satisfies both parties, especially when mediating disputes.”**

**COULD AI RESOLVE M&A DISPUTES IN THE NEAR FUTURE?**



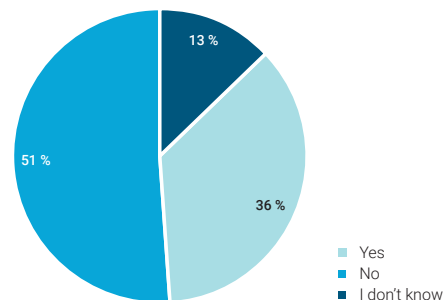
# Brexit

More than **1/2** of the respondents would not accept English law as the applicable law in their M&A contracts. Approximately **1/4** of the respondents say that their attitude towards English law as the applicable law in M&A contracts has changed due to the imminent Brexit.

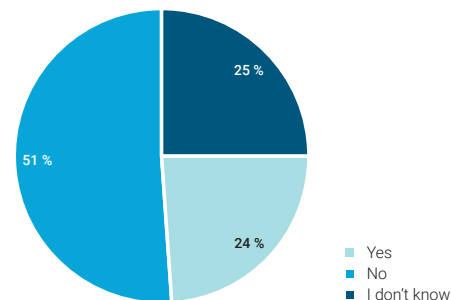
Responses to the open-ended questions further show that attitudes towards English law as the applicable law has become more cautious and that Brexit has increased uncertainty.

“Brexit has increased doubts and uncertainty. Trust in English law has clearly weakened.”

WOULD YOU ACCEPT ENGLISH LAW AS THE APPLICABLE LAW IN M&A CONTRACTS?



HAS YOUR ATTITUDE TOWARDS ENGLISH LAW AS THE APPLICABLE LAW IN M&A CONTRACTS CHANGED DUE TO BREXIT?

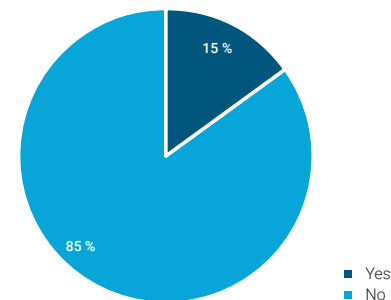


# Third-party funding

In third-party funding a third party pays for the legal costs of one of the parties in litigation or arbitration. A few respondents have already encountered disputes funded by a third party. Nearly **1/6** of all respondents consider it possible that their disputes will in the near future be funded by a third party.

“There are no third-party funders in the Finnish market yet. International funders are, however, increasingly interested in the Finnish market. Third-party funding has started to emerge in the Nordic countries. Therefore, it is possible that the marketing of third-party funding will increase also in Finland and consequently become one of the methods of funding disputes.”

DO YOU CONSIDER IT POSSIBLE THAT YOUR DISPUTES WILL IN THE FUTURE BE FUNDED BY A THIRD PARTY?

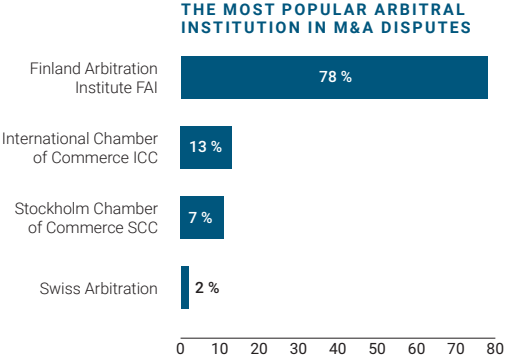


# Arbitration institutions

The responses indicate strong confidence in the Finland Arbitration Institute (the “FAI”) and the institute’s Arbitral Rules, which went through an overhaul in 2013.

Respondents also show confidence towards traditional arbitral institutions, such as the ICC and SCC

“It is worth choosing an arbitral institution, whose rules are familiar. It is also recommended to use the institutions’ model arbitration clauses.”



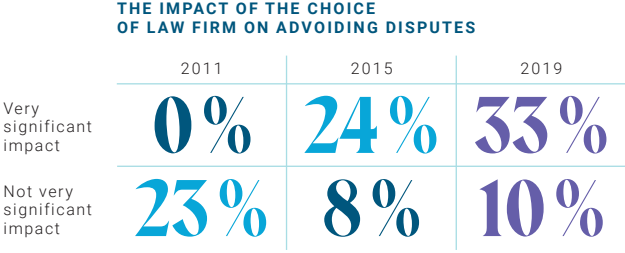
# Choice of law firm increasingly important

1/5 of the respondents say that the choice of lawyer and law firm in M&A transactions has a very significant impact on preventing future disputes – 9/10 consider the choice at least fairly important.

9/10 of the respondents say that they at least usually use the same law firm in the transaction and a related subsequent dispute.

“It has been debated whether the same or a different law firm should be used in the transaction and a related dispute. The survey shows that using the same law firm is clearly preferred.”

“Nowadays, much more is expected of a legal advisor than just knowledge of the law. The role of the lawyer as a strategic sparring partner who also understands the client’s business operations and needs becomes increasingly important. A well-managed M&A process can contribute significantly to the transaction’s overall success also after closing.”



# 1

## Powerhouse

One team, one efficiently managed process, one point of contact

# 2

## Mega-Deals

The largest corporate transaction ever involving a Finnish company, the largest corporate split-up ever, the largest energy related deals and the largest circular economy transaction in Finland and the largest public tender offer for a Finnish listed company

# 3

## Top Clients

D&I represents more than half of the 50 largest listed corporations in Finland and more than every third Dow Jones Industrial Average company in their operations in Finland

# 4

## Legal Adviser of the Year

Winner of Mergermarket's European M&A Award – Finland M&A Legal Adviser of the Year 2018

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