



## **Nordic and Baltic countries: A gateway between East and West – new opportunities or tightening competition?**

**Stephen Denyer, Global Markets Partner, Allen & Overy LLP**  
**29 April 2010**

## A glance at the Nordic and Baltic region from the West

- Roughly one fifth of the population of the EU lives in the vicinity of the Baltic Sea
- Integration within the EU; substantial harmonization within key areas, e.g. the financial markets
- Strong economic fundamentals in the Nordic region
- Generally sophisticated legal markets
- Similarities in terms of history, language, culture, economy and legal systems, but there are also significant differences between the Nordic countries, as between the Baltic countries

## A glance at the Nordic and Baltic region from the West (con't)

- There is a clear Nordic focus:
  - corporate consolidation across the Nordic region includes companies and institutions like Nordea, Arla, Stora Enso, Tieto, NASDAQ OMX, Telia Sonera and Sampo Bank
  - Nordic approach also on investor level, e.g. Altor, Nordic Capital, Ratos, Procuritas, CapMan, FSN Capital, Reiten & Co, Polaris Private Equity, Accent and Ferd
  - law firms are following suit with RoschierRaidla, Hannes Snellman, Magnusson, MAQS and Glimstedt

## Why is the Nordic and Baltic region important to firms like A&O?

- Together the Nordic and Baltic countries comprise the ninth-largest economy in the world
- Sophisticated stock markets
- The region is home to a number of multinational companies
- Significant PE players (EQT, Nordic Capital)
- M&A activity remains relatively robust because of the strong economic fundamentals of the Nordic region
- Certain markets limited in the region, e.g. the debt market

# Opportunities and challenges

## Opportunities

- Fast recovery from the global financial crisis in the Nordic region, but slower in the Baltics
- Favourable business climate across the region
- International banks (mainly Nordic) remain committed to the Baltic region
- Future projects across the Baltics within infrastructure, energy and transport sectors

# Opportunities and challenges

## Opportunities CIS

- Strong trade between the Baltic countries and CIS
- CIS economies expanding, living standards and spending capacity increasing
- Significant natural resources (minerals and hydrocarbons)
- Development of domestic capital markets
- Implementation of privatisation programmes across various sectors
- Pan NordicBaltic approach to legal services
- Highly regarded centres for international arbitration

# Opportunities and challenges

## Challenges and risks

- Some of the CIS countries have yet to transition to market economies
- Investor confidence in the Baltics will be influenced by the speed of adjustment of external and domestic imbalances, the ability to improve price competitiveness and to control the deterioration in public finances
- Challenges remain with regard to combating corruption and reforming the judicial system

# Opportunities and challenges

## Challenges and risks

- Further improvements in the business environment to retain investor confidence required, such as more extensive and consistent enforcement of law
- Gateway concept less important for services in an electronic world, but common history, culture and language still of advantage
- Commoditising of and Anglo-American influence on high end legal services puts local law at risk of erosion
- Civil law heritage and non-litigious business culture
- Arbitration - adverse affect on legal development?

# M&A Outlook for 2010

## Review of M&A activity for 2009

- Aggregate volume of announced global M&A deals was over \$ 1.7 trillion, a 34 per cent decrease compared to 2008
- Over 21,700 deals were announced globally, a 22 per cent decrease compared to 2008
- Deals in the first two quarters attributed as bankruptcy related or “mergers for survival”
- M&A activity in the Americas accounted for over 45 per cent of global deal volume, and EMEA accounted for over 30 per cent

# M&A Outlook for 2010

## Review of M&A activity for 2009 (con't)

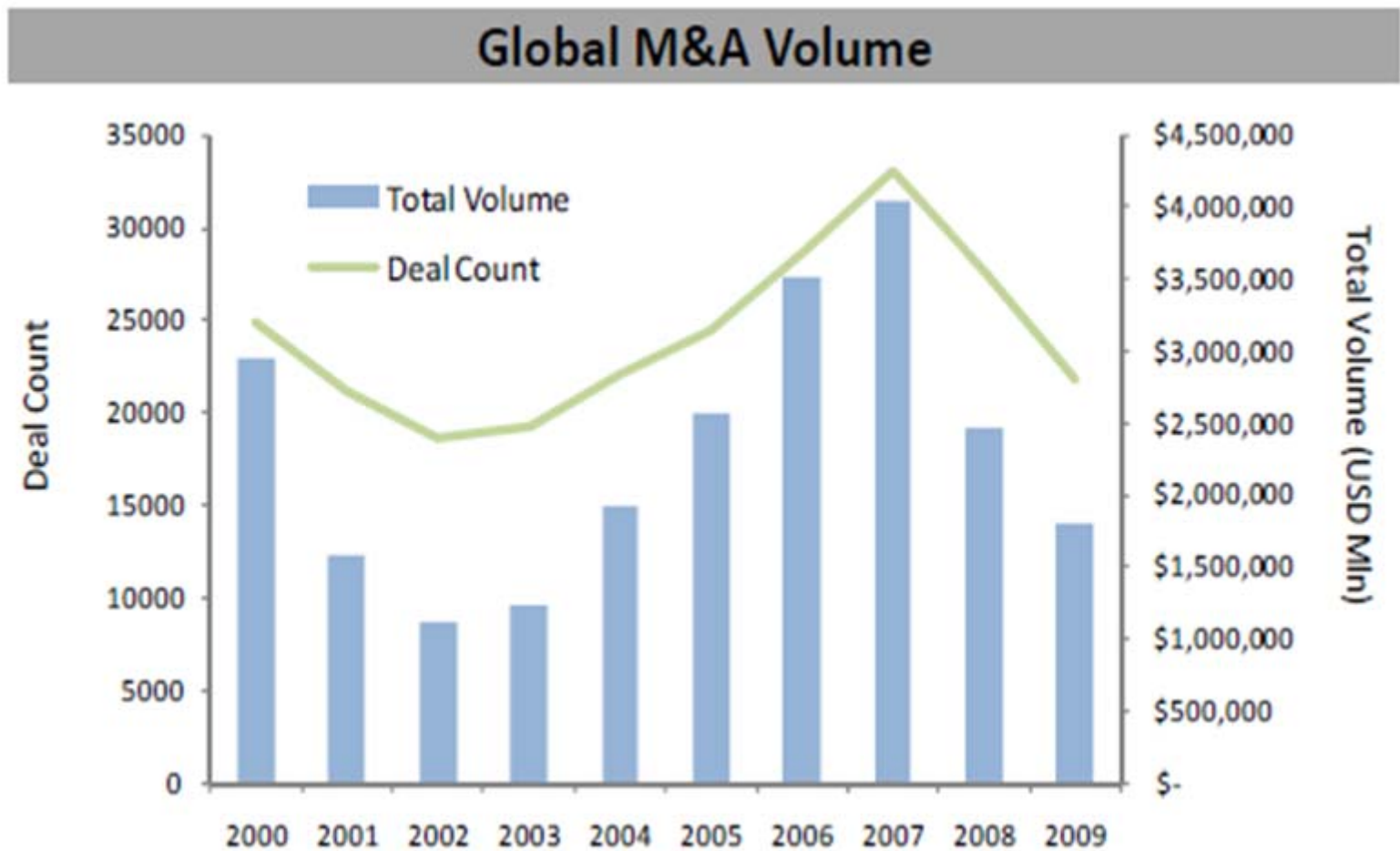
Regional Breakdown by Target Region/Country

1/1/09 - 12/31/09	2009		2008		VOLUME CHANGE
FIRM	VOLUME USD (Mln)	DEAL COUNT	VOLUME USD (Mln)	DEAL COUNT	
<b>Americas</b>	\$809,621	7,861	\$1,099,678	9,520	-26.38%
Latin America	\$86,045	673	\$114,079	879	-24.57%
North America	\$729,265	7,271	\$993,871	8,752	-26.62%
Canada	\$82,827	1,283	\$100,125	1,367	-17.28%
United States	\$635,446	5,826	\$881,441	7,209	-27.91%
<b>EMEA</b>	\$537,817	5,312	\$880,887	8,799	-38.95%
Eastern Europe	\$47,169	583	\$100,558	1,371	-53.09%
Western Europe	\$449,685	4,163	\$733,538	6,681	-38.70%
UK	\$137,251	1,336	\$199,390	2,059	-31.16%
Germany	\$67,520	607	\$94,889	895	-28.84%
France	\$53,477	436	\$37,566	630	42.36%
<b>Asia-Pacific ex-Japan</b>	\$342,912	6,508	\$410,810	7,354	-16.53%
Australia	\$66,030	995	\$77,719	1,146	-15.18%
New Zealand	\$1,323	108	\$3,335	151	-60.34%
China	\$112,119	1,927	\$136,581	2,256	-17.91%
Hong Kong	\$31,004	646	\$27,553	588	12.53%
South East Asia	\$40,239	1,251	\$84,607	1,410	-52.44%
India	\$17,189	575	\$33,848	746	-49.22%
<b>Japan</b>	\$106,782	1,865	\$81,121	1,875	31.63%
<b>Global</b>	<b>\$1,795,684</b>	<b>21,740</b>	<b>\$2,472,503</b>	<b>27,739</b>	<b>-27.63%</b>

\*Includes Mergers, Acquisitions, Divestitures, Self-tenders and Spinoffs. Excludes Open Market Transactions.

# M&A Outlook for 2010

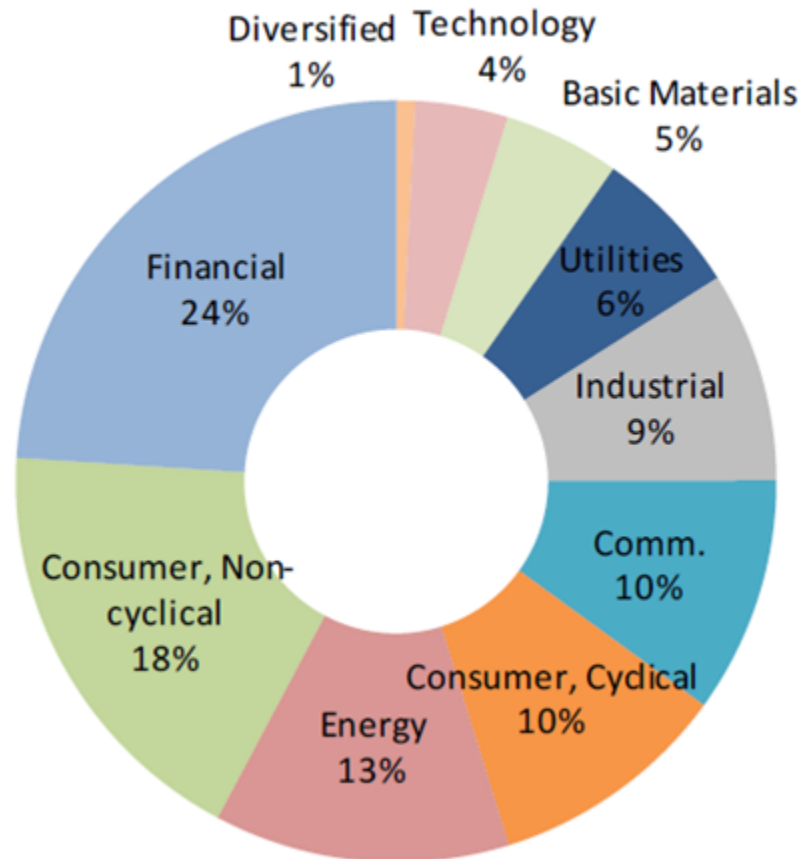
Review of M&A activity for 2009 (con't)



# M&A Outlook for 2010

## Review of M&A activity for 2009 (con't)

### Total Volume by Industry (2009)



# M&A Outlook 2010

## Expert predictions for 2010

- Cautious optimism that there will be increased M&A activity in 2010 relative to 2009 levels
- Private Equity (PE) players will be more active and bank markets will improve, although acquisition finance will remain in scarce supply
- Buyer's market but good assets will still be sold through auctions
- Restructuring work, but a lot of this will be smaller ticket
- Resurgence in the equity capital markets

# M&A Outlook 2010

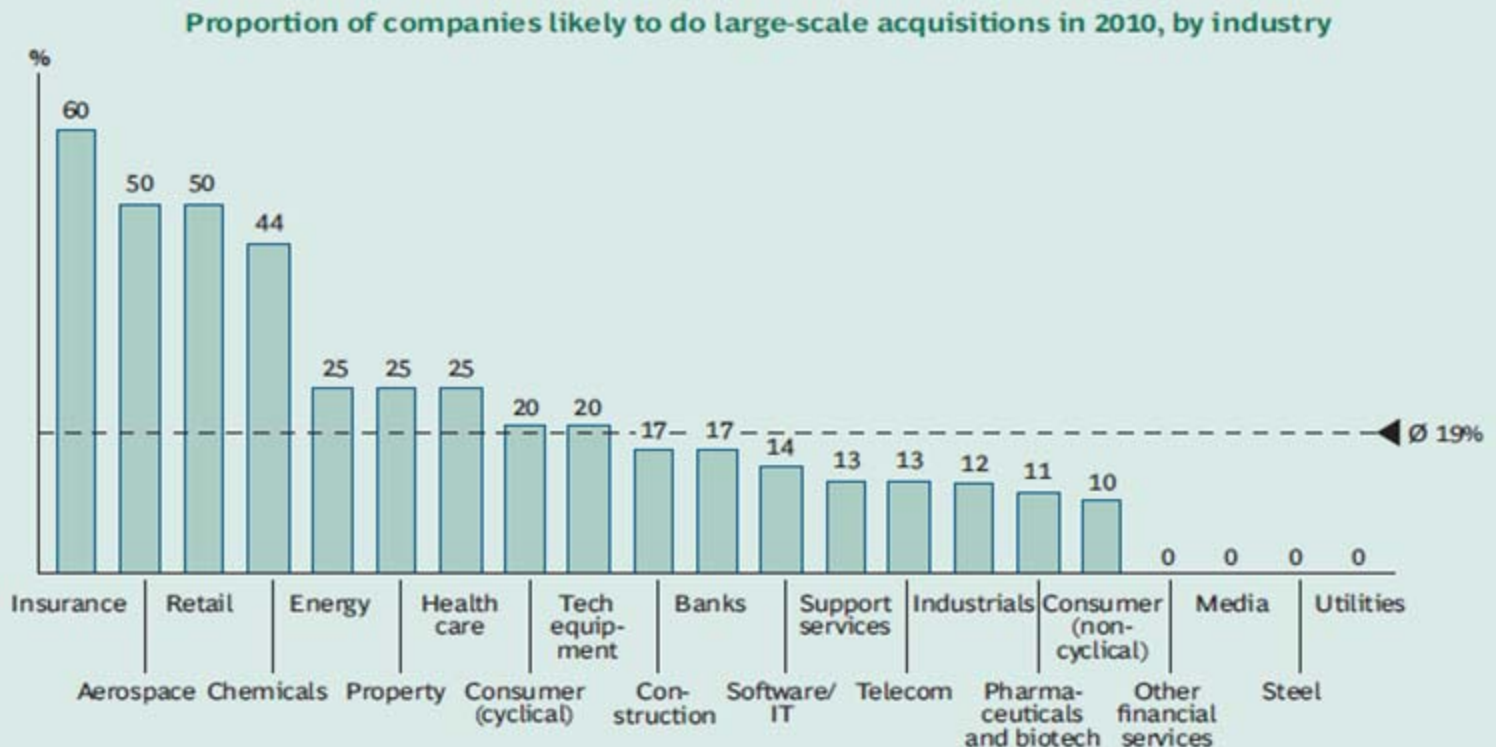
## Expert predictions for 2010 (con't)

Sector	High	Medium	Low
Insurance	●		
Technology	●		
Telecoms	●		
Life Sciences	●		
Consumer & Retail	●		
Media	●		
Financial services		●	
Industrials/Chemicals		●	
Private Equity		●	
Utilities		●	
Oil & Gas		●	
Infrastructure		●	
Aerospace & Defence			●
Tobacco			●
Metals & Mining			●

# M&A Outlook 2010

## Regional outlook Europe

### One in Five Companies Place a Large-Scale Acquisition in 2010, and Some Industries Expect to Be Even More Active



# M&A Outlook 2010

## Regional outlook Europe

### Growth Will Be the Main Driver of M&A Activity in 2010, and Horizontal Consolidations Will Be the Dominant Type of Deal



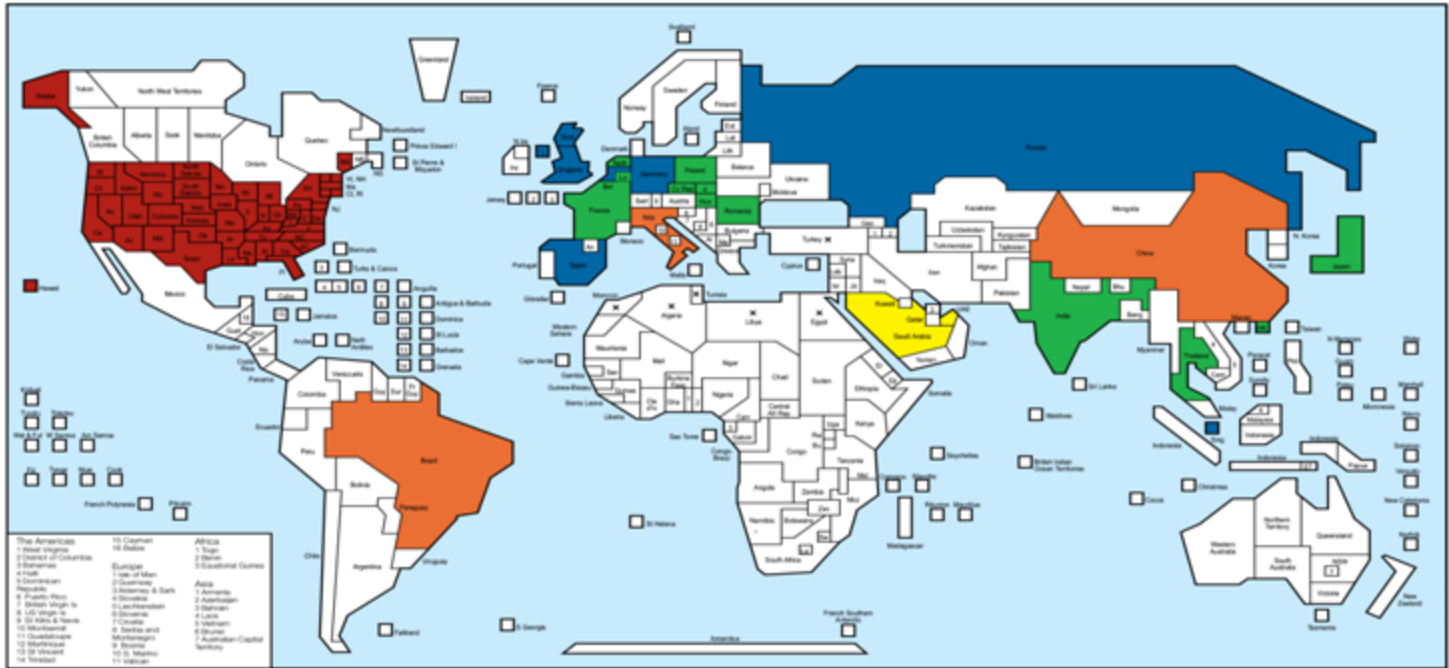
Source: UBS and BCG CEO/Senior Management M&A Survey 2009.

Note: A total of 166 publicly listed European companies participated in the survey; the responses "Other" and "Don't know" are not shown.

## Differences in M&A

- Transactions in Europe tend to have an accepted understanding about what is market practice
- As you go further East, the transactions are more bespoke and the solutions more ad hoc
- Much less record keeping and weaker corporate governance
- Timing is more uncertain (e.g. processes for regulatory approvals unclear)
- A&O comparisons show that M&A practices are relatively uniform throughout Europe, but differ in relation to the US

# Differences in M&A (con't)



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- US style
- Combination  
(tending towards US)
- Combination
- Combination  
(tending towards UK)
- UK style

This map reflects our general experience of private M&A trends in the jurisdictions in which we have offices (and India where we have a non-exclusive referral arrangement with local firm, Trilegal). However, the nationality of the parties to any given transaction may dictate a different approach.

# Deal trends and key differences in M&A terms

- Assume a corporate seller in a competitive auction process
- Market position in the UK/Europe differs significantly from the position in the US on a number of key issues

# Deal trends and key differences in M&A terms; Material Adverse Change

## Material Adverse Change

### UK/Europe

- Pre-credit crunch, a UK seller would expect to sell without a MAC (or equivalent). Purchasers will now push for a MAC termination right, with a trend towards more specific MAC termination events. Where the gap period is relatively short (say two to three months), certain bidders may be more willing to proceed without a MAC (and obtain "certain debt funds" for the gap period), with other protections, so sellers may still be able to negotiate SPAs without a MAC.
- We would expect purchasers to argue strongly for a termination right if, prior to closing, there is a breach of the warranties given at signing, most likely subject to some materiality qualification.
- Along with a discussion around MAC, the issue of repetition of warranties will need to be dealt with as part of the issue of risk of a material change in the interim period. We would expect sellers to be able to resist this, particularly wholesale repetition, but some may need to accept some repetition or a MAC condition or termination right.

### US

- The concept of a Material Adverse Event condition is accepted practice, with much greater debate over the precise formulation and exceptions rather than the concept itself.
- It is standard practice for it to be a condition to closing that there is no breach of any warranty as of the closing, subject to a materiality or material adverse affect qualification (i.e. the representations are "brought-down" to closing).

# Deal trends and key differences in M&A terms; Warranties and disclosures

## Warranties and Disclosure

### UK/Europe

- We expect that a seller will need to give a reasonably comprehensive set of warranties. It is generally accepted that the seller can disclose the data room/disclosure bundles on a general basis. Where there is competitive tension, we don't expect significant change in this practice, although if accepted we do expect purchasers to push for exceptions where certain specific warranties require specific disclosure and for some contractual basis for what amounts to a "fair disclosure".
- Even at the height of the seller's market it was difficult to say that warranty ringfencing was common; we expect greater resistance from purchasers on this.

### US

- The concept of general disclosure of the data room or disclosure bundles is not market practice in the US, where specific disclosure against specific warranties remains the norm.
- Ringfencing of warranties is reasonably common in the US, particularly for intellectual property, employee benefits and environmental representations and warranties.

# Deal trends and key differences in M&A terms; Limitation of liability

	UK/Europe	US
De Minimis/Threshold/ Deductible	<ul style="list-style-type: none"><li>• We don't believe there is a market norm de minimis for (non-title/non-tax) warranties expressed as a percentage of deal value. For deals above €50m we would expect a de minimis of at least €25,000, and we would say that the range is €25,000 to €100,000 for private M&amp;A deals (although we have seen higher de minimis numbers).</li><li>• For a UK deal, we believe that it is more common to find thresholds agreed in the range of 1% to 2% of deal value. Once the threshold is reached, it is regularly the case that the purchaser can claim for the whole amount and not solely the excess.</li></ul>	<ul style="list-style-type: none"><li>• A de minimis limitation is common but not standard. Depending on deal size, we would say the range is \$10,000 to \$100,000 (perhaps more towards the lower to mid point of the range).</li><li>• Deductibles in the range of 0.5% to 1.5% are standard, depending on deal size.</li></ul>

# Deal trends and key differences in M&A terms; Limitation of liability (con't)

	UK/Europe	US
Cap on Liability	<ul style="list-style-type: none"><li>• Caps at less than 100% of price have become increasingly common in the UK, although not universal. In our view, a purchaser is more likely to accept a cap at less than 100% as the deal size increases. On a relatively sizeable deal, we would expect the sellers to be able to negotiate a cap at between 20% to 50% of the consideration received.</li></ul>	<ul style="list-style-type: none"><li>• Caps at less than deal size are standard, with amounts that range from 10% to 50%. It is also common for the cap to be equal to an amount in escrow supporting indemnity.</li></ul>
Time Period for Claims	<ul style="list-style-type: none"><li>• Non-title/non-tax warranty limitation periods are commonly settled somewhere between 12 and 18 months (enough time to get through one audit cycle after a reasonable period of ownership).</li><li>• For tax claims, the time period is the corresponding period during which the tax authorities can investigate historic taxes (plus a short period). Hence in the UK it is common to agree seven years. However, for certain targets with simple tax structures and histories, shorter periods have been known (say three or four years).</li></ul>	<ul style="list-style-type: none"><li>• The position in the US is substantially similar, though the market norm limitation period is probably 12 to 24 months.</li></ul>

# Questions?

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