

**AIJA Deal Points Survey - Market Standards for Share Deals  
(M&A Commission)**

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**Executive Summary of Republic of Cyprus**

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## ***Introductory remarks for National Reporters (NRs)***

Deal points studies are often used by deal practitioners as a resource for market trends when negotiating acquisition agreements. The studies usually present a statistical breakdown of how key provisions are treated in a sample of publicly or otherwise available M&A contracts. The value of the deal points studies is that they give the practitioner a much better sense of M&A drafting trends than she or he could get by doing an own research.

Against this background the M&A Commission has decided to launch an “**AIJA Deal Points Survey**” with the goal to gather and analyze market standards for share deals in various AIJA jurisdictions. The overall objective of the survey is to gain a better understanding of market trends in share deals from the perspective of AIJA members so that we may share the insights with all interested AIJA members and thus improve our knowledge and general fitness when it comes to negotiating deal terms in share deals.

The AIJA Deal Points Survey will be conducted on the basis of the following documents:

- **Questionnaires** in the form as attached hereto as Exhibit 1 to be filled out on a case-by-case basis, i.e. one questionnaire each for each transaction covered;
- **Executive Summaries** in the form as set out hereinafter, with the goal of summarizing the findings from the various questionnaires; and
- **General Report** (to be drafted by the General Reporters) on the basis of the Executive Summaries received from the NRs.

The Questionnaires and the Executive Summaries are to be drafted by all interested NRs, i.e. each NR should fill out Questionnaires and provide an Executive Summary in respect of the information she or he put together in the Questionnaires. It may well be the case (and even desired) that there are several NRs in one and the same jurisdiction where each of them is expected to fill out Questionnaires and an Executive Summary (independently from each other or, if they want, in cooperation with each other). Thus, we are looking to receive numerous Executive Summaries and Questionnaires from NRs even if they are in the same AIJA jurisdiction.

The Questionnaires attached hereto are straight-forward and can be answered within reasonable time. Obviously, the more Questionnaires are filled out, the better the sample for the Executive Summaries will be. However, in order to adopt a reasonable and time-efficient approach, we would expect that each NR covers 3 to 5 transactions, i.e. fills out 3 to 5 Questionnaires and drafts 1 Executive Summary covering the respective Questionnaires, unless NRs team-up and provide an Executive Summary in respect of many more Questionnaires. We leave it up to the NRs whether they want to join efforts or not. NRs with highest number of transactions will win a prize!

The transactions to be covered by the NRs should meet the following criteria:

- Private share deals only (not asset deals)
- Survey is not restricted to certain industries
- Deal value at least EUR 1m
- Closings taken place after 1 January 2014

Please note that the Executive Summaries do not necessitate full sentences everywhere. NRs can e.g. simply insert a number where we ask about the number of transactions which fall into a certain category, or they can provide comments/findings in the form of bullet points.

To sum up, each NR is kindly requested to provide us with a completed Executive Summary together with all copies of the completed Questionnaires (including annexes thereto).

**Deadline for submission: 15 January 2016.**

## 1. General Statement

- Based on the information relevant to the reported deals the following general observations could be made: As a rule the English language seems to prevail over the local language. In the majority of the deals with a cross border element, English law was chosen as the governing law of the share purchase agreement. Also it was observed that all deals with a cross-border element provided an arbitration clause and no jurisdiction clause. Tax warranties and indemnifications seem to be a major concern with an increasing number of share purchase agreements including additional purchase contribution clauses with regards to potential tax liability as result of the transaction.

## 2. Summary of Transaction Details

- Number of deals reported: 7
- Maximum, minimum and median deal value of deals reported: EUR 230,522,927, EUR 1,000,000, EUR 41,300,000.
- Maximum, minimum and median percentage of shares acquired in deals reported: 100%, 50%, 70%.
- General information on relevant industries of reported deals: The deals reported ranged in different industries: three deals related to the food and retail industry, one to the tourism industry and one to hotel development & operation, one to the aerospace industry and one related to real estate.
- General information on Buyers' and Targets' countries of origin: The countries of origin of the Buyers were: Cyprus, Germany, the Netherlands, United Arab Emirates and Russia. The countries of origin of the Targets were: Cyprus, Russia, Ukraine and Belarus. It should be noted that Cyprus companies were at times used as special purpose vehicles for the acquisition of the Target or as the subject of the acquisition i.e. the Target which holding subsidiaries with operations in other jurisdictions.
- Percentage of deals with targets below/above 200 employees: 85.7% of the deals involved targets with less than 200 employees and 14.3% with more than 200 employees.
- Percentage of deals with/without auction: 0% of the reported deals were with auction.
- General information on the nature of the transactions: Two of the transactions reported related to the acquisition of the shares held in joint ventures consisting of two members (each holding 50% in the joint venture); one of the partners buying the stake of the other partner. One other deal related to the sale of a holding of 50% in an existing company which was a family business in effect resulting in a new joint venture with a new investor entering the company. Two of the transactions related to the acquisition of a 95% and a 100% of the shares in company in order to gain the know-how and/or the network and goodwill of

the Targets or benefit from licenses obtained by governmental authorities; in one the Buyer was another industry participant whereas the other involved a vertical arrangement with the supplier buying the distributor. Another deal related to the purchase by an alternative investment fund of 100% of the holding in a Target which invested in real estate. Lastly one of the deals related to the acquisition of 70% of the shares in a Target holding immovable property and relevant licenses with main aim the development and operation of hotels.

### **3. Letters of Intent**

- Percentage of transactions with LoIs signed/not signed: LoIs were signed in 71.4% and not signed for 28.6% of the reported deals.
- Where signed, information on how many contained exclusivity clauses together with information on percentage of LoIs with exclusivity clauses up to/more than 1 month: In all reported deals where a Lol was in place it contained exclusivity clauses and in all cases they lasted for more than one month.
- Where signed, information on binding character: In only one of the reported cases the LoI had non-binding character.

### **4. Due Diligence**

- Percentage of transactions with/without vendor due diligence: 57.1% of the transactions was without a vendor due diligence and 42.8% was with vendor due diligence.
- Where a vendor due diligence was performed, percentage of cases where the report was/was not disclosed to the Buyer: In no deal (0%) there was disclosure of the vendor due diligence to the Buyer.
- Percentage of transactions with/without data room: 14.3% of the transactions were without a data room and 85.7% were with a data room.
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms: 66.7% of the transactions were with a virtual data room and 33.3% were with a physical data room.
- Information on who managed/organized the data room: In 33.3% of the transactions the data room was managed by an investment banker, in 16.7% by a law firm and in 50% by the Seller.
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted. In 85.7% of the reported transactions a formalized Q&A was followed and in 85.7% of the reported cases there was a right to print/copy data/information.

### **5. Purchase Agreement**

- Transaction
  - Percentage of transactions with simultaneous closings vs. non-simultaneous closings: 14.3% of the transactions involved simultaneous signing and closing and 85.7% non-simultaneous.
  - Information on languages of purchase agreements: In all (100%) reported deals the purchase agreements and ancillary documents were in English.
- Purchase Price
  - Information on forms of consideration: In all (100%) cases the consideration was in cash.
  - Information on purchase price determination (percentage of deals without price adjustments, including information on use of locked-box, vs. percentage of deals with closing accounts): In 42.9% of the transactions the price was determined without a price adjustment (of which 50% involved the use locked-box) and in 57.1% of the transactions provided for price adjustment.
  - Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.) 57.1% of the transactions involved full payment on closing and 42.9% involved payment in instalments with part of the payment being paid in escrow accounts.
  - Information on financing, i.e. use of equity vs. debt (bank, bonds, vendor loans): In 42.9% of the reported cases financing was by the use of equity, in 14.3% by a combination of debt and equity and in the rest of the cases (32.8%) the source of financing was not known.
- MAC clause
  - Percentage of deals with/without MAC clause: 71.4% of the deals included a MAC clause and 28.6%% did not contain a MAC clause.
  - Where used, information on MAC clause form, definition and materiality threshold: The MAC clause was a condition precedent in 42.9% of the reported deals. In other cases there was a back-door MAC through the warranties. In two cases the MAC clause was defined and there was a materiality threshold.
- Reps & Warranties
  - Percentage of deals with/without reps&warranties: In all (100%) reported deals there were reps & warranties.
  - Percentage of deals with/without standard reps&warranties: In all (100%) reported deals reps & warranties were standard.
  - Information on length and on repetition of reps&warranties as per closing: In 86.7% of the deals the warranties were lengthy and in all cases they were repeated at closing.

- Percentage of deals with/without specific indemnifications and nature thereof: In 14.3% of the deals there were no specific indemnifications and 85.7% included indemnifications. The most common indemnifications related to taxation matters. Other indemnifications addressed losses or damages from potential or known or outstanding claims against the Target, obligations of the Target towards employees relating to the period prior to closing, intellectual property and specific lease agreements in place.
- Information on tax warranties vs. tax indemnities: In 37.5% of deals there were both tax warranties and tax indemnities in place. In all other cases there were only tax warranties but no tax indemnity.
- Limitation of liability
  - Information on time limitations in general (percentage of months): In all deals reported (100%) there were provisions for limitation of liability. 14.2% made reference to the statutory limitation period. The average time of limitation agreed contractually was 27 months.
  - Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc.: In most reported cases there were no specific time limitations for title to shares, capacity, accounts, labor, environment and criminal and thus the statutory limitations or the contractually agreed general limitations were applicable. In the majority of the reported deals (71.4%) there were specific time limits as regards taxation (66.7% of which were 84 months i.e. statutory time limitation for tax authorities to bring a claim against the Target plus 12 months and in 33.4% of the deals the time limitation was shorter).
  - Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles: In 28.6% of the deals no minimum individual claim amounts were provided and in 71.4% minimum claim amounts were provided. The individual minimum claim amounts ranged from EUR 5,000 to EUR 200,000 with the average being EUR76,250. In none of the reported deals there was provision for the use of deductibles on the individual minimum claim amounts. An aggregate minimum claim was provided in 42.9% of the reported cases. The value of the aggregate minimum ranged from EUR100,000 to EUR1,500,000 with the average being EUR866,666.67. In none of the cases the value of the minimum individual claim and the aggregate minimum claim were expressed as percentage of the purchase price.
  - Information on liability caps (amount in EUR vs. percentage of purchase price): In 42.9% of the reported deals there was no liability cap and in 57.1% there was a cap. Of the deals with a cap in 75% the limit was the purchase price and in the rest (25%) a cap higher than the purchase price applied.

- Information on carve-outs: Carve-outs ranged from losses or damaged relevant to specific outstanding claims or resulting from specific matters e.g. changes for tax legislation and tax rates. Notably there were cap limitations for indemnifications for specific indemnities, breaches of specific warranties, tax covenants etc.
- Disclosures
  - Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities: In all reported cases (100%) disclosures were allowed; in 71.4% disclosures were only against warranties and in the rest (28.6%) the disclosures were against the warranties and specific indemnities.
  - Percentage of deals with/without
    - full data room disclosure: 57.1%
    - Q&A log: 57.1%
    - Disclosure letters/schedules: 100%
    - Disclosure of due diligence report: 0%
    - Public information disclosed: 71.4%
    - Update between signing/closing: 14.3%

## 6. Conditions Precedent

- Percentage of deals with/without merger filings as CP and information on percentage of jurisdictions: 57.1% of the deals included provision for merger filings as CP and 42.9% included no such CP. Filings ranged from 1 to 5 jurisdictions.
- Percentage of deals with/without third party consents as CP: 42.9% of the deals included provision for third party consents as CP and 57.1% included no such CP.
- Percentage of deals with/without certain funds clause as CP: No deal (0%) included a CP for the financing of the Buyer.
- Percentage of deals with/without the bring-down of warranties as CP: 71.4% of the deals were with the bring-down of warranties as CP.
- Percentage of deals with/without MAC clause as CP: 42.9% of the deals made the MAC clause a CP.
- Percentage of deals with/without seller's legal opinions as CP: 71.4% of the deals required seller's legal opinion(s) as CP.
- Percentage of deals with/without retention of key employees as CP: 14.3% of the deals included provisions for the retention of key employees as a CP.



- Information on opinion coverage: All opinions that were required related to corporate status and the valid, binding and enforceable nature of the agreement.

## **7. Non-Competition/Non-Solicitation/Restrictive Covenants**

- Percentage of deals with/without non-compete clauses and information on duration and the use of liquidated damages clauses: 71.4% of the deals included non-compete clauses, none of which provided for liquidated damages.
- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses: 71.4% of the deals included non-solicit clauses, none of which provided for liquidated damages.
- Percentage of deals with/without non-disparagement covenants: 57.1% of the deals included non-disparagement covenants.
- Percentage of deals with/without non-embarrassment covenants: 14.3% of the deals included non-embarrassment covenants.
- Percentage of deals with/without blue pencil clauses: 0% of the deals had a blue pencil clause.

## **8. Governing law & Jurisdiction**

- Percentage of deals with/without choice of law clauses and information on jurisdictions chosen: 100% of the reported deals had choice of law clauses. In 42.8% the applicable law was English law, in 28.6% Cyprus law and in 28.6% was Dutch law.
- Percentage of deals with/without jurisdiction clauses: In 28.6% of the deals there were jurisdiction clauses in the remaining 71.4% there was provision for binding and conclusive arbitration arrangements and thus no jurisdiction clause was included.
- Information on jurisdictions chosen: In 100% of the deals that included a jurisdiction clause the Cyprus courts were specified.
- Information on arbitration clauses (applicable rules, number of arbitrators, language): 85.7% of the deals included provisions for arbitration, of which 16.7% provided for a single arbitrator and 83.3% for three arbitrators.
- Percentage of deals with/without prior mediation obligation: None (0%) of the deals included an obligation to refer to mediation.
- Percentage of deals with/without initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects): No formal litigation procedures were initiated for any of the reported deals.

## **9. General Information**

- Percentage of deals with/without cross-border element: 71.4% of the deals reported had a cross-border element.
- Names of involved law firms: White & Case (London), DLA Piper (London), Allen & Overy (Amsterdam), Loyens & Loeff (Rotterdam) Allen & Overy (Moscow), Baker Botts (Moscow), Orrick (Moscow), Ilyashev (Ukraine), Sorrainen (Belarus), Revera (Belarus), Papadopoulos, Lycourgos & Co LLC (Cyprus), Eliades Partners LLC (Cyprus), Chrysis Demetriades LLC (Cyprus), Pamporidis LLC Cyprus), Christodoulou LLC (Cyprus).
- Information on whether referrals were made by other AIJA members: 0% of the deals resulted from AIJA referral.

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