

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

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Executive Summary of Japan

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1. General Statement

- Deals picked up for deal point study for Japan vary in deal size, industry, party's type (PE fund or industrial/ trade), nationality, and parties' negotiation power, thus transaction terms are also affected by those factors.
- As can be seen from the deal study results, Japanese deal agreements have standard terms including reps/warranties, indemnities, condition precedents and other terms, but may tend to be relatively simple in terms of the complexity or depts. of respective provisions, and do not include some of the specific terms described in the Questionnaire including detailed price adjustment clauses, detailed MAC definition, specific time limitations, specific types of disclosures, provision of the seller party legal opinion, restrictive covenants especially in domestic deals.
- Among the reported deals, no particular surprising survey results or prominent deals.

2. Summary of Transaction Details

- 3 deals are selected and reported.
- Deal size ranges from more than 300m EUR to approx. 10m EUR.
- Percentages of shares acquired are generally 100% except for 1 deal in which the percentage of shares acquired is 80%.
- Relevant industry of reported deals varies from energy, foods to IT sector.
- Counties of origin are generally Japan except for 1 cross-border deal, which includes Norway.
- Target employee generally includes more than 200 employees (66%), but 1 deal has less than 200 employees (33%).
- All of those reported deals do not use auction (100%).
- Disposition of the businesses and in that context the shares of the target companies were sold.

3. Letters of Intent

- LoI was signed in 1 deal, but in other deals LoI was not signed.
- Where the LoI was signed, exclusivity clause was not included, but LoI had binding character.

4. Due Diligence

- Vender due diligence was not used for those reported deals (100%).

- In 1 case, data room was used (33%), and that was virtual data room (100%). Investment banker managed/organized the data room.
- When data room was set up, formalized Q&A procedure was followed and right to print/copy was granted (100%).

5. Purchase Agreement

- Transaction
 - o There was no simultaneous closing in the reported deals, and all non-simultaneous closings (100%).
 - o Japanese language was used for the deal between Japanese parties, and English was used for cross-border deal which included foreign party.
- Purchase Price
 - o Cash was used for all of the reported deals.
 - o 2 reported deals used price adjustments with closing accounts (66%), but remaining 1 deal did not use price adjustment (33%).
 - o All of the deals used full payment (100%), but one of those deals also had a component of vendor loan.
 - o Bank loan was used for 1 reported deal.
- MAC clause
 - o MAC clause was used for all of the reported deals (100%).
 - o Where used, in 1 deal MAC was defined, but materiality threshold was not set.
- Reps & Warranties
 - o Reps&warranties were used for all deals (100%).
 - o Standard reps&warranties were used for all deals (100%).
 - o Reps&warranties were repeated at closing, and a list of reps&warranties is extensive.
 - o In 1 deal, specific indemnifications were used (33%), and the matters included in specific indemnifications cover environmental risk, facilities, product liabilities, and contingent liabilities on employment.
 - o Tax warranties were included in all deals, but specific tax indemnity was included in 1 deal (33%).
- Limitation of liability
 - o Time limitation is (i) not specified, (ii) 10 months, or 36 months depending on the deal.
 - o In 1 deal, specific time limitation was provided on tax matter.

- Individual minimum claim amount is specified as approx. 20,000 EUR, and basket is approx. 40,000 EUR in 1 deal, but in another deal minimum claim amount is approx. 77,000 EUR and no use of basket or deductible.
- In 1 deal, liability cap is used as specific amount of approx. 39m EUR, and in another deal liability cap is specified as percentage of purchase price of 20%.
- Specific indemnification matters (environmental risk, facilities, product liabilities, and contingent liabilities on employment) are carve-outs from the limitation of liability.
- Disclosures
 - Disclosures are allowed against warranties in all reported deals (100%), but not for specific indemnities.
 - Percentage of deals with:
 - full data room disclosure (0%)
 - Q&A log (0%)
 - Disclosure letters/schedules (33%)
 - Disclosure of due diligence report (0%)
 - Public information disclosed (0%)
 - Update between signing/closing (33%)

6. Conditions Precedent

- 2 deals with merger filings as CP (66%), and the number of relevant jurisdictions was 2 (33%) and 1 (33%).
- 2 deals with third party consents as CP (66%).
- No deal with certain funds clause as CP (0%)
- 3 deals with the bring-down of warranties as CP (100%)
- 3 deals with MAC clause as CP (100%)
- No deal with seller's legal opinions as CP (0%)
- No deal with retention of key employees as CP (0%)
- Information on opinion coverage is not applicable.

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

- 1 deal with non-compete clauses (33%), and the duration of such clause was 24 months.
- No deal with non-solicit clauses (0%)

- No deal with non-disparagement covenants (0%)
- No deal with non-embarrassment covenants (0%)
- No deal with blue pencil clauses (0%)

8. Governing law & Jurisdiction

- 3 deals with choice of law clauses (100%) and governing laws chosen are Japanese laws (66%) for domestic deals and Norwegian laws for cross-border deals (33%).
- 3 deals with jurisdiction clauses (100%).
- Tokyo District Court for 2 deals (66%), and Sore Sunnmore tingrett for 1 deal (33%).
- Information on arbitration clauses (applicable rules, number of arbitrators, language) – Not Applicable
- Percentage of deals with prior mediation obligation – No deal (0%)
- Percentage of deals with initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects) – No deal (0%)

9. General Information

- 1 deal had cross-border aspect (33%).
- Nishimura Asahi, Mori Hamada & Matsumoto (for domestic deals), and CLP (and cross-border deal)
- Information on whether referrals were made by other AIJA members – Not Applicable

END