

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

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Executive Summary of Luxembourg

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1. General Statement

Most private share deals taking place in Luxembourg are either related to foreign target entities or Luxembourg target entities which are holding foreign assets.

If the target entities are Luxembourg entities, we are generally given the mandate to conduct a due diligence.

2. Summary of Transaction Details

- Number of deals reported:
3

- Maximum, minimum and median deal value of deals reported:
Maximum deal value: 25 million
Minimal deal value: 21 million
Median deal value: EUR 15,3 million

- Maximum, minimum and median percentage of shares acquired in deals reported:
Maximum percentage of shares acquired: 100%
Minimum percentage of shares acquired: 96%
Median percentage of shares acquired: 98,6%

- General information on relevant industries of reported deals:
All the reported deals have been related to real estate transactions.

- General information on Buyers' and Targets' countries of origin:
Buyers' countries of origin: Europe and U.S.A.
Targets' countries of origin: Luxembourg, Hong-Kong, Jersey, France and Germany

- Percentage of deals with targets below/above 200 employees:
100% of the deals had targets with less than 200 employees, which is due to the nature of the transactions.

- Percentage of deals with/without auction:
100% of the deals took place without auction.
- General information on the nature of the transactions:
66% of the transactions were real-estate related.

3. Letters of Intent

No letters of intent were signed in any of the deals which we have analyzed.

4. Due Diligence

- Percentage of transactions with/without vendor due diligence:
100% of the transactions took place without a vendor due diligence.
- Where a vendor due diligence was performed, percentage of cases where the report was/was not disclosed to the Buyer:
N/A
- Percentage of transactions with/without data room:
66% of the transactions were performed with a data room.
33% of the transactions were performed without a data room.
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms
Out of the 66% of the transactions performed with a data room, 100% were performed with virtual data rooms.
- Information on who managed/organized the data room
Service providers in one transaction / the seller and his lawyer in the other
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted
33% of the deals were carried with a formalized Q&A procedure.

5. Purchase Agreement

- Transaction
 - o Percentage of transactions with simultaneous closings vs. non-simultaneous closings:
100% of the transactions took place with non-simultaneous closings and signings.
 - o Information on languages of purchase agreements:
66% of the purchase agreements were drafted in English.
33% of the purchase agreements were drafted in French.
- Purchase Price
 - o Information on forms of consideration
In 100% of the deals the consideration was paid in cash.
 - o 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)
66% of the deals took place without price adjustments.
33% of the deals took place with a price adjustment mechanism (the price was adjusted in accordance with closing accounts).
 - o Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.)
In 33% of the transactions, the price was fully paid at closing.
 - o Information on financing, i.e. use of equity vs. debt (bank, bonds, vendor loans)
33% of the transactions were equity financed.
66% of the transactions were debt financed (bank debt and bonds issuance).
- MAC clause
 - o Percentage of deals with/without MAC clause
100% of the transactions took place without MAC clause.

- Where used, information on MAC clause form, definition and materiality threshold
N/A

- Reps & Warranties
 - Percentage of deals with/without reps&warranties
100% of the deals with reps&warranties

 - Percentage of deals with/without standard reps&warranties
33% of the deals with standard reps&warranties
66% of the deals without standard reps&warranties

 - Information on length and on repetition of reps&warranties as per closing
100% of the deals with extensive reps&warranties
66% of the deals with repetition of reps&warranties on closing
33% of the deals without repetition of reps&warranties on closing

 - Percentage of deals with/without specific indemnifications and nature thereof
33% of the deals with specific indemnifications: Indemnification only if monthly rent under lease agreements entered into by the target entities lower than the amount set out under the SPA.
66% of the deals without specific indemnifications

 - Information on tax warranties vs. tax indemnities
66% of the deals with tax warranties and tax indemnities
33% of the deals without warranties and/or tax indemnities

- Limitation of liability
 - Information on time limitations in general (percentage of months)
66% of the deals with time limitations in general (18 months and 12 months)
33% of the deals without time limitations in general

- Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc.
 - 33% of the deals with a specific 5 year limitation with respect to the title to shares
 - 66% of the deals with a limitation with respect to tax (6 months and 12 months)

- Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles
 - 66% of the deals with individual minimum claim amounts (50,000 EUR and 10,000 GBP)
 - 0% of the deals with the use of deductibles

- Information on liability caps (amount in EUR vs. percentage of purchase price)
 - 66% of the deals with a liability cap (100% of the purchase price with respect to title guarantees and 1 EUR for any guarantees other than title guarantees in one case; 4 million EUR in the other case)

- Information on carve-outs
 - 33% of the deals with a carve-out regarding title guarantees with respect to the shares in target companies.

- Disclosures
 - Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities
 - 100% of the deals without disclosures

 - Percentage of deals with/without
 - full data room disclosure
 - 66% of the deals with full data room disclosure
 - 33% of the deals without full data room disclosure

 - Q&A log

33% of the deals with Q&A log disclosure
66% of the deals without Q&A log disclosure

▪ Disclosure letters/schedules

100% of the deals without disclosure letters

▪ Disclosure of due diligence report

33% of the deals with due diligence report disclosure

66% of the deals without due diligence report disclosure

▪ Public information disclosed

66% of the deals with disclosure of public information

33% of the deals without disclosure of public information

▪ Update between signing/closing

100% of the deals without an update between signing and closing

6. Conditions Precedent

- Percentage of deals with/without merger filings as CP and information on percentage of jurisdictions

100% of the deals without merger filings

- Percentage of deals with/without third party consents as CP

33% of the deals with third party consents as CP

66% of the deals without third party consents as CP

- Percentage of deals with/without certain funds clause as CP

100% of the deals without certain funds clause as CP

- Percentage of deals with/without the bring-down of warranties as CP

100% of the deals without bring-down of warranties as CP

- Percentage of deals with/without MAC clause as CP

100% of the deals without MAC clause as CP

- Percentage of deals with/without seller's legal opinions as CP
33% of the deals with seller's legal opinions as CP
66% of the deals without seller's legal opinions as CP
- Percentage of deals with/without retention of key employees as CP
100% of the deals without retention of key employees as CP
- Information on opinion coverage
Capacity opinion

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
33% of the deals with a non-compete clause (5 years without liquidated damages)
66% of the deals without non-compete clauses
- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses
33% of the deals with non-solicit clauses (5 years without liquidated damages)
66% of the deals without non-solicit clauses
- Percentage of deals with/without non-disparagement covenants
33% of the deals with non-disparagement covenants
66% of the deals without non-disparagement covenants
- Percentage of deals with/without non-embarrassment covenants
100% of the deals without non-embarrassment covenants
- Percentage of deals with/without blue pencil clauses
100% of the deals without blue pencil clauses

8. Governing law & Jurisdiction

- Percentage of deals with/without choice of law clauses and information on jurisdictions chosen
100% of the deals with choice of law clauses (German law/English law/ French law with share transfer provisions subject to the location of the targets)

- Percentage of deals with/without jurisdiction clauses
100% of the deals with jurisdiction clauses

- Information on jurisdictions chosen
Courts of Frankfurt am Main, courts of England and Wales, courts of Paris, France

- Information on arbitration clauses (applicable rules, number of arbitrators, language)
100% of the deals without arbitration clauses

- Percentage of deals with/without prior mediation obligation
100% of the deals without prior mediation obligation

- Percentage of deals with/without initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects)]
100% of the deals without formal litigation procedures

9. General Information

- Percentage of deals with/without cross-border element
100% of the deals with a cross-border element

- Names of involved law firms
Confidential. None of them are National Reporters.

- Information on whether referrals were made by other AIJA members
None of the referrals were made by AIJA members.

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