

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

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Executive Summary of India

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1. General Statement

The key findings from the survey, include the below:

- Vendor's due diligence had not been done in any of the deals.
- None of the deals had a competitive bid process.
- All deals contained a limited set of warranties.
- No indemnity caps on limited warranties in 50% deals.

2. Summary of Transaction Details

- Two deals have been reported.
- Deal values are as below:
 1. Maximum - EUR 14 million
 2. Minimum - EUR 1 million
 3. Median - EUR 7.5 million
- Maximum, minimum and median percentage of shares acquired in deals reported are as below:
 1. Maximum percentage – 100%
 2. Minimum percentage – 26%
 3. Median – 63%
- Information on relevant industries is as below–
 1. The SaaS industry which has not traditionally evinced interest from foreign investors, has witnessed an increase in some investment activity.
 2. The hospitality industry is reported to be growing at an extremely fast pace.
- Buyers' and Targets' countries of origin are as below –
 1. Buyer – Singapore and India;
 2. Target - India in all cases.
- All deals had targets below 200 employees.
- All deals were conducted without auction.
- Both transactions were strategic investments. While one was a complete buy-out of the hotel business by another hotel chain, the other involved investment into a business which was of strategic importance to the acquirer's existing businesses in India and would eventually be integrated with the services provided by the acquirer.

3. Letters of Intent

- 50% of transactions did not have LoIs signed.
- Where signed, all LoIs contained exclusivity clauses of more than 1 month.
- Where signed, only certain clauses such as exclusivity, confidentiality, applicable law, dispute resolution had binding character.

4. Due Diligence

- None of the transactions involved vendor due diligence.
- A data room was set up for diligence in all cases of which a virtual data room was set up in 50% cases and physical data room in 50% cases.
- The data room was managed/organized by the Seller / Target in all cases.
- No formalized Q&A procedure was involved in any deal and a right to print / copy provided in all.

5. Purchase Agreement

- Transaction
 1. None of the transactions involved simultaneous signing and closing.
 2. The language of purchase agreements in all cases was in English.
- Purchase Price
 1. Cash consideration was paid in all cases.
 2. No deals involved a price adjustment.
 3. 50% deals involved full payment on closing and 50% with retention of part consideration to be released upon obtaining of certain governmental approvals.
 4. 50% of the deals were financed with combination of debt and equity; unknown in 50%.
- MAC clause
 1. All deals had a MAC Clause.
 2. All deals had MAC as a condition precedent with a right to walk away. Definition of MAC provided in all with no quantified monetary thresholds specified.
- Reps & Warranties
 1. All deals with representations and warranties.
 2. 50% had standard representations and warranties.
 3. Limited list of representations and warranties provided in all which were repeated on closing in all cases.

4. All deals had specified indemnifications –
 - In 50% - penal liabilities for past non-compliances, etc.
 - In 50% - for liabilities associated with non-fulfillment of export commitments undertaken by the target, statutory liabilities, liabilities in respect of the demerger of a restaurant business and specific contraventions with certain company law matters.
 5. 50% deals with only tax indemnity provided and no tax warranties and 50% with both tax indemnity and tax warranties.
- Limitation of liability
1. Time limitations –
 - 50% with 24 months (except in cases of fraud, willful misconduct or gross negligence on the part of the sellers or for litigation or settlement proceedings existing as on the Closing Date);
 - 50% with legal statute of limitation of 36 months except in cases of fraud or active concealment.
 2. Specific time limitations –
 - 50% with legal statute of limitations for all matters;
 - 50% with 24 months (except in cases of fraud, willful misconduct or gross negligence on the part of the sellers or for litigation or settlement proceedings existing as on the Closing Date) for capacity, accounts, title to shares; 60 months for tax matters; and 9 months for failure to comply with export obligations.
 3. Individual minimum claim amounts –
 - None in 50%; and
 - EUR 840 / 0.06% of purchase price in 50%.
 4. Deductibles in none.
 5. Liability caps –
 - None in 50%;
 - EUR 1 million / 100% of purchase price in 50%.
 6. Carve-outs –
 - None in 50%;
 - In 50% - statutory liabilities pertaining to a time period prior to the acquirer obtaining management control over the target to be covered under indemnity.
- Disclosures
1. 50% of deals without disclosures; 50% with disclosures only against warranties; 100% deals with warranties and specific indemnities.

2. Deals with

- full data room disclosure – None
- Q&A log – None
- Disclosure letters/schedules – 50%
- Disclosure of due diligence report – None
- Public information disclosed – None
- Update between signing/closing – Of the ones with Disclosure Letter against warranties, in all cases, the DL was updated at closing.

6. Conditions Precedent

- 100% deals without merger filings.
- 50% deals with third party consents.
- None with certain funds clauses.
- 100% deals with bring down of warranties as CP.
- 100% deals with MAC clause as CP.
- 100% deals without seller's legal opinion as CP.
- 100% deals without retention of key employees as CP.

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

- 100% deals with non-compete clauses without liquidated damages and with a duration of 12 months post-closing / ceasing to hold shares in the target.
- 50% deals with a non-solicit clause without liquidated damages for a period of 12 months after promoters ceasing to be employed by the target.
- 50% deals with a restriction with regard to making of statements in the press.
- None with non-embarrassment covenants.
- 100% deals contain a clause permitting the restrictive covenant to be read down to ensure enforceability to the extent permissible under law.

8. Governing law & Jurisdiction

- All deals had choice of law clauses with Indian law as the governing law.
- All with jurisdiction clauses. 50% with courts in Mumbai and 50% with courts in Delhi.
- All with arbitration clauses:
 1. In 50% cases, arbitration to be conducted as per LCIA India Rules.

2. In 50% cases, arbitration to be conducted as per rules of the Bombay Chamber of Commerce.
- In all cases, the number of arbitrators is agreed as one and the preferred language of arbitration is English.
 - All with prior mediation obligation.
 - None where any formal litigation procedures have been initiated.

9. General Information

- 50% deals involved cross-border element.
- Other law firms involved were Khaitan & Co and Optimus Legal.
- None of the deals were referred by other AIJA members.

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