FINANCIAL SERVICES M&A

India

LEXOLOGY
Getting The Deal Through

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MARKET AND POLICY CLIMATE

Market climate

How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

Currently the market for M&A activity in the financial services sector is very active. In 2022, as of February, financial services M&A deals worth US$15.47 billion were announced globally, marking an increase of 43.7 per cent year on year. Total financial services industry M&A deals worth US$7.9 billion were announced globally in February 2022. The top country in terms of M&A deals activity in February 2022 was the US with 58 deals, followed by the UK with 14 and India with nine.

On 30 March 2022, Axis Bank, India's third-largest private sector lender, snapped up Citibank's 100 year-old consumer business franchise in India for US$1.6 billion. In the biggest merger in Indian corporate history, the boards of HDFC and HDFC Bank on 4 April 2022, cleared a US$40 billion amalgamation of the parent housing company with its banking arm. It will mark the largest banking sector M&A globally since April 2017. A consortium led by Bandhan Bank has emerged as the successful bidder for acquiring the mutual fund business of IDFC Limited for US$591 million.

The financial year 2021–22 also witnessed one of the largest deals in this sector, the merger of Shriram City Union Finance with Shriram Transport Finance Co Ltd for a total consideration of US$5 billion. The deal involved scheme of arrangement of three entities: Shriram Transport Finance, Shriram City Union Finance and their promoter entity Shriram Capital and to incorporate Shriram Finance Limited. Other noteworthy deals include Piramal Capital and Housing Finance's (PCHFL) acquisition of Dewan Housing Finance for a reported deal value of US$4.7 billion. This deal was the third largest of the year 2021 and will provide PCHFL access to an estimated one million customers across 24 states in India.

The fintech landscape in India, again saw one of the largest fintech deals, being the acquisition of 100 per cent stake in BillDesk (an Indian digital payment business), by the Prosus-backed Dutch fintech company PayU for an all-cash transaction of US$4.7 billion. This deal is particularly notable as post this acquisition PayU India and BillDesk will be able to create a financial ecosystem handling close to four billion transactions annually. The deal comes as the digital payments industry in India is growing. More specifically, the number of transactions for digital retail payments has grown by more than 80 per cent, from 24 billion in financial year 2018–19 to 44 billion in financial year 2020–21, according the 2021 annual report from the Reserve Bank of India.

The insurance sector again witnessed tremendous deal activity, including the acquisition of 100 per cent stake of Exide Life Insurance Company Limited by private sector life insurer HDFC Life Insurance Company Limited for US$879 million. The acquisition was completed in January 2022 post receipt of relevant regulatory approvals.

Overall, financial services were the second most-targeted sector by value, followed by technology, media and telecommunications law , attracting approximately US$22.1 billion worth investment with close to 23 deals valued over US$1 billion, and Shriram Transport Finance Co Ltd's US$5 billion acquisition, being the highest valued deal for the year 2021.

Law stated - 13 April 2022

Government policy

How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

The government policy regulating the M&A activity in the financial services sector has cautiously but progressively liberalised, to make the sector more attractive for investors. The current policies and legal framework provide for regulatory supervision in case of change of control and other M&A activity. However, at the same time, the restriction in case of foreign investment has been significantly reduced by either increasing the percentage threshold above which foreign investment in a particular financial sector (such as insurance) requires government approval or removing the requirement of government approval altogether such as in the case of investment in financial services activities which are regulated by financial services regulators. Various financial services regulators are also opening up to financial sponsor investments in their respective sectors, realising that there is immense interest from global as well as India financial sponsors in this sector. While the Securities Exchange Board of India (SEBI) is internally discussing and considering allowing financial sponsors to acquire stakes in asset management companies (AMCs) (currently SEBI is averse to this hence there is no investment yet by financial sponsors in AMCs), the Insurance Regulatory and Development Authority of India (IRDAI), the insurance regulator, has already allowed financial sponsors to acquire stakes in insurance companies in 2017, including becoming 'promoters' of insurance companies.

The implementation of such liberalised policies has led to increased M&A activities in the financial sector and has specifically helped in improving the financial health of the sector, upgrading the technology and ensuring better scale efficiency.

Law stated - 13 April 2022

LEGAL AND REGULATORY FRAMEWORK

Legislation

What primary laws govern financial services M&A transactions in your jurisdiction?

The financial services M&A transactions are governed by certain regulators (ie, Reserve Bank of India (RBI), SEBI and IRDAI) and the primary laws include the following:

- Banking Regulation Act 1949, and the rules and regulations framed thereunder;
- Reserve Bank of India Act 1934, and the rules and regulations framed thereunder, including:
  - Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions 2021;
  - Master Direction – Non-Banking Financial Company –Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions 2016; and
  - Master Direction – Non-Banking Financial Company – Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions 2016;
- Securities and Exchange Board of India Act 1992, and the rules and regulations formed thereunder, including:
  - Securities and Exchange Board of India (Substantial Acquisition of Shares And Takeovers) Regulations 2011;
  - SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015; and
  - Other sector specific regulations such as Securities and Exchange Board of India (Mutual Funds) Regulations 1996;
- Insurance Act 1938, and the rules and regulations framed thereunder, including:
  - Indian Insurance Companies (Foreign Investment) Rules 2015; and
  - Insurance Regulatory and Development Authority (Transfer of Equity Shares of Insurance Companies) Regulations 2015;
- Foreign Exchange Management Act 1999, and rules and regulations framed thereunder, including:
  - Foreign Exchange Management (Non-debt Instruments) Rules 2019; and
  - Foreign Exchange Management (Debt Instruments) Regulations 2019;
- the Companies Act 2013; and
- the Competition Act 2002.

Law stated - 13 April 2022

Regulatory consents and filings

What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

Financial services sector in India is highly regulated with multiple regulatory authorities supervising different types of financial services businesses. For example, banking and non-banking credit institutions are regulated by the Reserve Bank of India, asset management companies are regulated by SEBI, and insurance businesses are regulated by the IRDAI. Specific regulatory approval is typically required for all M&A transactions that exceed the thresholds prescribed by the applicable regulatory authority. In the banking sector, the acquisition of more than 5 per cent of paid-up share capital or voting rights requires prior approval from the RBI. Acquisition of shares carrying more than 10 per cent voting rights in an asset management company requires prior approval from SEBI. Additional thresholds pertaining to specific changes in the control of the respective entity may also require approval even if the share capital or voting rights thresholds are not met. Transfer of insurance business to another insurer or amalgamation of two insurance businesses requires that the scheme of such transfer or amalgamation be approved by the IRDAI. Further, the transfer of shares of more than 5 per cent of the paid-up capital of a listed insurance company or 1 per cent in unlisted insurance companies requires prior approval from the IRDAI. These are only few types of approvals required and there are several other instances that require prior regulatory approvals depending upon the deal dynamics including structure.

There are no specific concessions available for a financial services M&A transaction.

Law stated - 13 April 2022

Ownership restrictions

Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

Entities and individuals holding shares in financial institutions are generally required by the relevant regulator to satisfy ‘fit and proper criteria’ ensuring that they have suitable qualifications, experience, and a good track record in the relevant business and excluding persons subject to previous criminal convictions. Any proposed acquirer of shares in a non-banking credit institution is required to provide information regarding satisfaction of such criteria as part of prior approval for such acquisition. Further, specific regulators impose additional requirements, for example, SEBI requires a person desirous of owning more than 40 per cent of an asset management company to demonstrate a 5-year track record of profitability to be eligible to own such a stake. Financial services regulators also typically seek information about the ultimate beneficial owners of the acquiring entity in order to draw comfort on the background of the acquirer.

Law stated - 13 April 2022

Directors and officers – restrictions

Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

Under the Companies Act 2013, the following persons are not eligible for appointment as a director of a company:

- any person declared by a competent court to be of an unsound mind;

- an undischarged insolvent;
- any person who has applied to be adjudicated as an insolvent and his or her application is pending;
- any person who has been convicted of an offence and sentenced to imprisonment for:
  - a period of more than seven years; or
  - a period of more than five years in the previous five-year period;
- an order disqualifying him or her for appointment as a director has been passed by a court or Tribunal and the order is in force;
- any person who has due and unpaid amounts against calls in respect of any shares held by him for more than six months; or
- any person who has been convicted of an offence dealing with related party transactions during the last preceding five years.

Further, individuals acting as directors in financial institutions are required by the relevant regulator to satisfy 'fit and proper criteria' to ensure that they have suitable qualifications, experience, and good track record in the relevant business and excluding persons subject to previous criminal convictions.

Law stated - 13 April 2022

Directors and officers – liabilities and legal duties

What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Under the Companies Act 2013, a director has a fiduciary duty towards the company and its members. The director's duties and responsibilities include the following:

- to act in accordance with the articles of association of the company;
- promote the objects of the company for the benefits of its members and in the best interests of the company and its employees;
- exercise due and reasonable care, skill, diligence, and independent judgement in the exercise of his or her duties; and
- avoid any conflict of interest.

The directors can also be held liable for certain defaults under the Companies Act 2013.

There are also specific requirements under few specific legislations dealing with few financial services activities.

Law stated - 13 April 2022

Foreign investment

What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

Foreign investment restrictions are different for banks and for other financial service sectors. Foreign investment in private banks is capped at 74 per cent with investment above 49 per cent requiring government approval. All foreign investment in public banks requires government approval and is capped at 20 per cent. Foreign investment in insurance companies is capped at 74 per cent.

There is no additional restriction on foreign investment in other financial services that are under the purview of any specific financial services regulator in India (such as the RBI, SEBI, IRDAI etc), and the regulations applicable to domestic investment (regulatory approval, fit and proper criteria etc) continue to apply.

Law stated - 13 April 2022

Competition law and merger control

What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

The merger control laws under the Competition Act, 2002 will be applicable to an M&A transaction in the financial services sector only if the assets or turnover, or both, of the transacting parties exceed the jurisdiction thresholds and the transaction is not eligible for any exemption under the Competition Act 2002 read with regulations and notifications thereunder.

The Competition Act 2002 contains certain exemption provisions specifically designed to exclude share subscriptions, financing facilities and acquisitions by a public financial institution, foreign institutional investor, bank or venture capital fund, further to a covenant or loan agreement or investment agreement, from the ambit of the suspensory pre-closing provisions of the Competition Act 2002. Such transactions are still required to be notified on a post-closing basis to the Competition Commission of India (CCI).

At the same time, in exercise of its powers under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970, the Central Government of India, through the Ministry of Corporate Affairs, has passed a notification exempting all M&A transactions involving nationalised banks from the scope of the merger control provisions of the Competition Act for a period of 10 years from 2017 to 2027.

Considering the stringently regulated nature of the financial services markets in India and the presence of numerous players and stakeholders across the value chain, no significant competition issues have been witnessed in this sector. In fact, the CCI has not passed any conditional orders in case of any financial services M&A transaction till date and has not blocked a single transaction in this space.

Law stated - 13 April 2022

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

What structures are commonly used for financial services M&A transactions in your jurisdiction?

The regulatory framework has a significant influence on structuring of M&A transactions in financial services sector. Any change of control requires prior approval of the regulators for most of the financial services activities. Share acquisitions are also subject to cross-holding restrictions whereby significant shareholders in one type of financial services entity are restricted from holding significant shareholding in another. For example, a person or entity holding more than 40 per cent of one asset management company cannot hold more than 10 per cent of any other asset management company or have representation on the board of another asset management company.

Other structures such as mergers, business transfers or asset transfers are also commonly employed for financial services M&A transactions. However, these structures also trigger certain considerations for example merger is a time-consuming process, asset transfers can be tax inefficient and business transfers may be subject to restrictions like minimum retention requirements if this business transfer does not amount to full exit from the line of business.

Further, as per restrictions imposed by IRDAI, business transfer is not permitted in insurance sector. Accordingly, different types of structures are used in financial services M&A transactions in India< depending upon the commercial and other considerations of the entities involved. There is no one size fits all kind of structures since the financial services sectors are heavily regulated.

Law stated - 13 April 2022

Time frame

What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

The financial services M&A transactions typically require four to six months for completion but may extend beyond that in some complex cases. The time taken by regulators in granting permissions and approvals is one of the key factors in determining the timelines for completion. Other factors include obtaining approvals from third parties and finalising the commercials of the transaction.

Law stated - 13 April 2022

Tax

What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

The key tax considerations typical to any M&A transaction in India are the withholding tax obligation of the buyer, compliance with tax valuation norms, title protection measures and the structuring of earn-out and employment-linked payments.

In terms of valuation requirements, Indian tax law prescribes strict pricing norms where the sale or acquisition of any shares or securities at a discount to fair market value is taxable in the hands of the transferor and investor respectively; and issuance of shares by closely held companies to Indian residents at a premium in excess of fair market value is taxable in the hands of the issuing company – fair market value for each of these provisions is to be determined as per prescribed rules. Thus, to avoid tax on a deeming basis, the pricing of any M&A transaction should be within the contours of the prescribed 'fair market value' rules and hence this issue often drives structuring discussions especially in cases where the transaction is taking place at a differential price with regard to different investments or different investors.

Additionally, it should be noted that in case of closely-held companies, unabsorbed tax losses would not be available for carry forward or set-off if there is a change in shareholding exceeding 51 per cent; although relief is provided in certain specified cases including where the transaction is undertaken in the form of an amalgamation of certain specified banking companies with a specified bank and in case of notified start-ups. This aspect generally forms part of diligence and commercial discussions, wherein a valuation adjustment is often sought by the buyer to address the issue.

Another relevant issue is the taxability of earn-outs or deferred consideration and employment linked pay-outs. Under Indian tax law, the 'tax trigger' arises on transfer of the relevant assets and hence in case of deferred payments (eg, linked to EBITDA of the target company etc); there is lack of clarity regarding the timing of taxability of such amounts; namely, whether upfront or at the time of receipt of such deferred payment. As far as employment linked payments are concerned, these payments are taxable at a higher rate (as compared to capital gains). Further, in case of ESOPs or other shares receivable based on a vesting schedule, the tax trigger arises at the time of exercise itself and is not deferred up to eventual transfer of shares. Thus, structuring these transactions to avoid any tax leakage is becoming more and more critical given the significant investment activity in the fintech and start-up space and often drives the discussions between investors, founders and promoters.

From a practical standpoint, investors generally seek an indemnity protection from the sellers or target to ensure that these seller or company tax issues do not flow to the investor in any form. Additionally, the tax insurance product has been gaining popularity in recent times, especially in the context of tax treaty relief positions taken by the seller and in the context of business tax warranties provided by the target.

In terms of structuring of the investments, the mode of investment (ie, whether in the form of debt or equity instrument), requires careful planning based on the jurisdiction of presence of the investor and any potential relief that may be claimed by the investor on dividend or interest income and exit gains as per the terms of the relevant tax treaty between India and the jurisdiction of residence of the investor (tax treaty benefits being subject to conditions and requiring a detailed analysis).

Law stated - 13 April 2022

ESG and public relations

How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

India is at the cusp of witnessing a paradigm shift in its approach to environmental, social and governance issues (ESG). This shift may be attributed to several factors including greater legislative supervision, India's commitment to the United Nations Sustainable Development Goals (SDGs) and heightened awareness amongst stakeholders. The Indian securities regulator, the Securities and Exchange Board of India has made reporting on non-financial parameters mandatory for the top 1000 listed companies (by market capitalisation) with effect from 1 April 2022. The report, known as the Business Responsibility and Sustainability Report, is modelled on widely accepted international reporting frameworks and global practices in sustainability reporting such as the Global Reporting Initiative, the National Guidelines on Responsible Business Conduct etc. In addition, Indian corporate social responsibility (CSR) norms require certain eligible companies to spend 2 per cent of their annual net profits for CSR activities identified under the Companies Act 2013. Other than these, there are several other regulatory milestones such as introduction of a stewardship code for mutual funds and alternate investment funds, regulation of proxy advisory firms, regulations regarding prohibition of insider trading etc.

With this backdrop, public relation issues in financial services M&A transactions are gaining prominence in India. Investee companies are being examined from an "ESG lens" by inclusion of ESG specific due diligences prior to any investment. Asset allocation and ESG-linked liability from underlying assets are being closely examined and suitably addressed through deal commercials. Greater emphasis is also being placed on setting internal controls, checks and balances towards maintaining data privacy in line with global standards, adopting best in class governance standards and voting polices, and anti-bribery, corruption, and ethics monitoring for internal and external stakeholders. Stakeholder compliances of ESG norms has also gained prominence with institutional investors being required to adhere to stewardship principles with regard to their investee companies. In addition to this, active stakeholder engagement is leading to maintaining uniform compliance standards across industries and asset classes. While the legal framework on ESG is still nascent in India, monitoring ESG related risks and opportunities has become mainstream for most investors and investee companies.

Law stated - 13 April 2022

Political and policy risks

How do the parties address political and policy risks in financial services M&A transactions?

Changes in law or policy that have an impact on a transaction are generally addressed by including these significant changes in law as part of the 'material adverse change' in the transaction documents such that in case of any such 'material adverse change' the buyer is not obligated to close the transaction. In addition, changes in law having retrospective effect can also be included as a trigger event for indemnification.

Law stated - 13 April 2022

Shareholder activism

How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Shareholder activism is gaining significance in the Indian context and has particularly gained more relevance over the past 8-10 years in transactions involving listed companies. Since there are several financial services entities that are listed, shareholder activism is prevalent for such companies. Recent trends indicate that activism is more prevalent by institutional investors and has been fuelled by shareholders voting in relation to appointment and compensation of executives. However, due to the increasing sophistication of modern investors coupled with implementation of digital voting and increased disclosure requirements, further developments of shareholder activism are expected.

Law stated - 13 April 2022

Third-party consents and notifications

What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Third-party consents and notifications required for a financial services M&A transaction include approvals from the regulators, banks and financial institutions who have provided financing to the target companies, debenture-holders, trustee companies and other third party vendors (if so, required under the contractual terms). In addition, as per the data privacy regime in India, consent is also required for sharing any personal information or sensitive personal information of any person (including the customers).

Further, specific consent or notification may be required depending on the type of financial services involved for example an asset management company undergoing any change in control is required to inform the mutual fund unit holders of such change and give them an option to exit their investments and include an advertisement in both a nationally circulated English newspaper, and in a newspaper published in the vernacular of the head office location.

Law stated - 13 April 2022

DUE DILIGENCE

Legal due diligence

What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

For financial services M&A transactions, compliance diligence (including for data privacy or protection aspects) and secretarial diligence is significant. Most of the financials services entities (including banks, non-banking credit institutions, insurance companies, and asset management companies) are required to make periodic disclosures and regulatory filings, and delays or failures are subject to penalties ranging from fines to cancellation of licenses/ permissions to operate. Further, the respective regulators usually conduct periodic inspections or audits to identify non-compliances (including operational) and as part of the legal due diligence these reports are reviewed along with the company's response to the issues raised in the reports and the corrective actions that the company has undertaken. Other than the above, the legal due diligence covers other aspects including review of material contracts, employment-related compliances, ongoing litigations, borrowings, insurance and real estate aspects.

Law stated - 13 April 2022

Other due diligence

What other material due diligence is required or advised for financial services M&A transactions?

Financial services entities are generally required to comply with certain prudential norms such as the requirement of minimum net owned funds, minimum capital ratio, leverage ratio etc. Hence, specific diligence to verify compliance with such norms is important in addition to the typical financial and tax diligences.

Law stated - 13 April 2022

Emerging technologies

Are there specific emerging technologies or practices that require additional diligence?

Financial services entities collect and store financial information of individuals, which is classified as 'sensitive personal data or information' (SPDI). As per the legal requirement, entities collecting or handling SPDI need to communicate their privacy policy to the data subjects detailing inter alia , the nature of the information collected and the purposes of use. In addition, the Indian government has enabled customer identification using Aadhaar, which is a 12-digit biometric based identification number that can be used to comply with the strict 'Know Your Customer' requirements.

Collection of SPDI or use of Aadhar-based identity authentication is subject to various legal and technical requirements. For example, all entities collecting or using Aadhaar must obtain a licence and comply with prescribed information security requirements. Additional diligence is required to review compliances with these emerging technologies and practices undertaken by the financial services entities.

Law stated - 13 April 2022

PRICING AND FINANCING

Pricing

How are targets priced in financial services M&A transactions? What factors typically affect valuation?

Target prices are being determined basis competitive strengths of the target business in its domain. In the insurance space, distribution channels have heavily influenced valuation with franchises having access to bancassurance networks with good penetration or scalable insure-tech distribution models commanding a significant premium. In the lending and consumer banking space, the availability of affluent customers with good credit scores have influenced valuation. In the asset management space, assets under management have influenced valuation. In fin-tech, practical use case and active users have influenced valuation.

Law stated - 13 April 2022

Purchase price adjustments

What purchase price adjustments are typical in financial services M&A transactions?

Post-closing adjustments and earn-outs are common in financial services M&A transactions. In addition, in certain financial services practices, such as in the case of an asset management company, (1) purchase price is typically linked to the quantum of assets under management (AUM), and in case of a significant change between the execution date and completion date, buyers would build in a downward purchase price adjustment if the AUM reduces beyond a specific threshold, and (2) any change of control requires giving an option to the unit-holders of the mutual funds administered by such asset management company to exit at the prevailing net asset value without any exit load. In such cases, the pricing of the transactions is typically subject to an adjustment mechanism to accommodate for the cost burden of providing such exit to the unit-holders.

Law stated - 13 April 2022

Financing

How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

Acquisitions in the financial services sector are generally funded by internal reserves. These entities tend to be cash-rich and are averse to raising debt for acquisition transactions. Debt financing may also affect the respective entities' ability to meet legally prescribed financial and prudential norms. In addition, there are certain restrictions from a regulatory perspective, for example, while NBFCs are permitted to borrow under the external commercial borrowing route, the minimum average maturity period of such borrowing must be 10 years.

Law stated - 13 April 2022

DEAL TERMS

Representations and warranties

What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

In financial services M&A transactions, all the representations and warranties typically made in general M&A transactions are made including authority, capacity and power to enter into the transaction and representations and warranties in relation to the financials, operations, material contracts, employment related compliances, ongoing litigations, borrowings, insurances, real estate and intellectual property rights.

Furthermore, certain additional areas are covered in greater detail in the case of financial services entities, for example, warranties in relation to all the licences required for the business of the company, compliance with prudential norms, KYC requirements, ability to enforce remedies against the borrowers, absence of non-performing assets (other than as set out in the accounts of the company) and specific financial position of the company.

Law stated - 13 April 2022

Indemnities

What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Sellers in M&A transactions typically provide indemnities against breach of representations and warranties, breach of material covenants of the transaction documents and fraud, in addition to any specific indemnification matters that may be identified basis the due diligence exercise.

Seller's liability for indemnification is normally capped at the amount invested by the buyer. Indemnification claims for business warranties usually survive for 18 months to three years, tax liabilities or breach of tax related warranties usually survive for seven years, and the survival period for specific indemnification matters may vary depending on the nature of the matter.

A common requirement for indemnification claim is a de minimis and basket thresholds, wherein a buyer cannot claim indemnification unless the damages sustained by the buyer exceed a certain monetary threshold. Typically, the de minimis is 0.1 per cent of the purchase consideration and basket is 1 per cent of the purchase consideration.

Representation and warranties indemnity insurance is also increasingly being used in financial services M&A transactions.

Typical terms for indemnities in financial services M&A is more or less the same as M&A in other sectors.

Law stated - 13 April 2022

Closing conditions

What closing conditions are common in financial services M&A transactions?

Common closing conditions in financial services M&A transactions include the following:

- approvals from the relevant financial services regulator for the transaction;
- issuance of public notice or newspaper advertisements about the transaction;
- approval from the lenders (including banks, financial institutions, debenture-holders and debenture trustees);
- consent from the persons whose personal information or sensitive personal information may be shared or transferred as a result of the transaction; and
- absence of any material adverse effect.

Law stated - 13 April 2022

Interim operating covenants

What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

In the interim period between execution and closing, buyers require sellers to continue to conduct their business in the ordinary course, in the manner identified as part of diligence. Generally, sellers are also restricted from taking actions on the most significant matters over which the investor will have a veto right after closing.

Further, investors require the sellers to record and disclose any events identified in the transaction documents as a materially adverse event. These may include events that adversely affect the valuation of the seller or its assets, or which materially impair the ability of the buyer to exercise the benefits of any right or privilege under the transaction documents. Adverse events caused by changes in applicable law are also generally included within this requirement.

Law stated - 13 April 2022

DISPUTES

Common claims and remedies

What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

Financial services entities are commonly set up in a conglomerate structure. Large financial services conglomerates are involved in multiple sectors with different entities acting as non-banking credit institutions, mutual funds, housing finance companies, insurance companies and other financial services entities and such structures often result in cross-defaults and disputes.

Other common causes of disputes across the financial services sector include misrepresentations and issues pertaining to valuation such as price adjustment.

Law stated - 13 April 2022

Dispute resolution

How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

ADR, especially institutional arbitration is frequently used in dispute resolution in financial services M&A. In transactions involving foreign players, arbitration in neutral venues such as Singapore and London are common. In transactions where a foreign seated arbitration is chosen, parties contract out of their right to approach Indian courts for interim relief and the tribunal has powers to grant interim relief. Institutional arbitration (as opposed to ad-hoc arbitration) is more prevalent in financial services M&A transactions.

Law stated - 13 April 2022

UPDATE AND TRENDS

Trends, recent developments and outlook

What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

Foreign direct investment regime has been liberalised substantially in the financial services sector. The most recent significant development has been the increase of the sectoral cap from 49 per cent to 74 per cent in the insurance sector. Indian policymakers have been inclined towards making the financial services sector more attractive to the investor, which has led to tremendous M&A activity in the sector in recent times.

Further developments are expected to make the sector more lucrative. One of the most awaited developments is allowing private equity players to invest in and control asset management companies. Traditionally, the Securities Exchange Board of India (SEBI) has preferred permanent capital from strategic players with long track record to participate in asset management companies, taking the general view that short-lived private equity funds do not align with the objectives of asset management companies. Recent developments indicate that SEBI may be relaxing this stance and may permit private equity funds to invest in asset management companies subject to certain guarantees of longevity of the investment.

Law stated - 13 April 2022

Jurisdictions

Egypt	Soliman, Hashish & Partners
France	Bredin Prat
India	Khaitan & Co
Indonesia	ABNR
Japan	Mori Hamada & Matsumoto
Mexico	Creel García-Cuéllar Aiza y Enriquez SC
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