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Private M&A

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STRUCTURE AND PROCESS, LEGAL REGULATION AND CONSENTS

Structure

How are acquisitions and disposals of privately owned companies, businesses or assets structured in your jurisdiction? What might a typical transaction process involve and how long does it usually take?

In India, acquisitions and disposals of privately owned companies, businesses or assets are typically structured pursuant to a binding definitive contract or purchase agreement. The local law does not prescribe any format for these purchase agreements and parties have the autonomy to negotiate the terms of the acquisition subject to compliance with applicable law. Additionally, a private company can also be acquired by way of a merger pursuant to a court-approved scheme of amalgamation. However, given that the merger process is court-driven, mergers are not a preferred structure for private acquisitions in India unless there are some mutual tax benefits.

The process of a private acquisition in India varies depending on whether the acquisition is structured as a share purchase, business transfer or an asset transfer, and is driven by several other factors as well such as the number of sellers (in case of a share acquisition), profile of the seller (ie, whether a private equity/venture capital or a strategic player), deal value, deal timeline, the sector in which the target/business operates and the market for the proposed assets/business. Similarly, between a bilateral negotiation and an auction process, an auction process is not that common in India but is a preferred approach where the seller is a private equity fund (and is selling majority ownership interests of an Indian company) or where the target operates in a high-performing sector with a vast secondary market for its shares/business assets.

In India, the sale process can take up to three to six months to close, depending on the parties' level of sophistication, the sector in which the target operates (including the need for any regulatory and third-party consents), and generally, the deal value and other parameters. However, when compared to an auction process, a bilateral negotiation is relatively less streamlined (usually owing to the absence of an investment banker or deal adviser driving the transaction process) and largely involves the following steps:

- parties execute a non-disclosure/non-confidentiality agreement to facilitate discussions on the transaction;
- parties execute a term sheet, outlining the key terms of the transaction (including the exclusivity period);
- the buyer and its advisors undertake due diligence on the target (which is typically undertaken for a look-back period of three years);
- simultaneously with the diligence, a first draft of the transaction documents (which is typically a buyer-friendly or balanced draft) is prepared by the buyer and negotiated between the parties;
- the agreed form of transaction documents are executed; and
- conditions to closing identified during diligence and as agreed in the transaction documents are completed by the parties prior to closing (and where the signing and closing are simultaneous, such conditions are typically completed prior to signing), and the closing actions are undertaken on the closing date.

Law stated - 1 July 2025

Legal regulation

Which laws regulate private acquisitions and disposals in your jurisdiction? Must the acquisition of shares in a company, a business or assets be governed by local law?

The local laws applicable to private acquisitions and disposals in India differ depending on the form of the legal entity which is being acquired or the legal form of the seller in case of a transfer of assets/business. For instance, private acquisitions involving an Indian company are principally subject to the (Indian) Companies Act 2013, which regulates the regime for: (1) transfer or issuance of securities of an Indian company; and (2) the corporate approval requirements for a business or asset acquisition. Similarly, a transaction involving a sale of a limited liability partnership (LLP) or a disposal of business or assets by an LLP is governed by the Limited Liability Partnership Act 2008.

Private acquisitions involving a foreign buyer or seller additionally attracts the applicability of the Foreign Exchange Management Act 1999 (and the regulations/directions issued thereunder), which is the principal law governing both inbound and outbound investments. Additionally, where a target entity is operating in a regulated sector (such as banking or insurance), the acquisition would also trigger the applicability of certain special sectoral laws (such as the Banking Regulation Act 1949 and the Insurance Regulatory and Development Authority Act 1999).

Further, from a nexus perspective, where the contracting parties to an acquisition are domestic/Indian parties, then as a matter of practice, the governing law is the local or Indian law. However, where one of the contracting parties is a foreign party, then the parties have the autonomy to choose law of any jurisdiction as its governing law. Nonetheless, where the governing law is other than Indian law, then from an enforceability perspective, the right choice of the dispute resolution mechanism becomes important, since, unlike arbitral awards passed by an international arbitration institution which are directly recognised and (subject to certain conditions) enforceable in India, judgments passed by courts in a non-reciprocating country (ie, a country which is not included in the list of reciprocating countries as notified by the Indian government) are not directly enforceable in India and a foreign party will need to institute a suit against the Indian resident party in a local Indian court and establish its claim based on the decision passed by the foreign court, which is an inefficient process both from a time and cost perspective.

Law stated - 1 July 2025

Legal title

What legal title to shares in a company, a business or assets does a buyer acquire? Is this legal title prescribed by law or can the level of assurance be negotiated by a buyer? Does legal title to shares in a company, a business or assets transfer automatically by operation of law? Is there a difference between legal and beneficial title?

In India, the mechanism for transfer of legal title to an asset differs depending on the nature of the acquired assets (ie, shares, contracts, tangible moveable assets or immovable property). For instance:

- in the context of physical shares, title is transferred by execution of duly stamped share transfer forms, and endorsing or recording the name of the buyer in the underlying share certificates and the register of members statutorily maintained by the target. On the other hand, where the shares are in a dematerialised form, the transfer is effected electronically through the depository participants (DP) (ie, a registered firm maintaining securities account in which the dematerialised securities are held on behalf of the holder) of the parties, pursuant to written instructions issued by the parties. In fact, recently introduced regulations required mandatory dematerialisation of securities of all private companies (except small companies and government companies) by 30 June 2025 and prescribe that a private company that fails to comply with this requirement will not be permitted to take on record any transfer or issuance of fresh securities after 30 June 2025. However, companies that are incorporated after 31 March 2023 have a grace period of 18 months from the end of the financial year in which they have been incorporated to comply with the mandatory dematerialisation requirement;
- in the context of an asset transfer involving tangible moveable assets, the title to the tangible moveable assets is transferred by delivery of physical possession of the assets pursuant to a delivery note executed between the parties; and
- in the context of a business transfer, while the transaction as a whole is captured in an umbrella purchase agreement, each of the assets forming part of the business are transferred to the buyer pursuant to different mechanisms which are clearly defined in the purchase agreement – for instance: (a) tangible moveable assets are transferred by delivery of possession pursuant to a delivery note, (b) business contracts (including software and licensed IP) are transferred by way of an assignment or novation deed (as applicable, depending on the terms of the underlying contracts); (d) owned intellectual property is assigned to the buyer pursuant to a duly stamped assignment agreement; (e) owned real property (if any) is delivered to the buyer pursuant to duly stamped and registered conveyance deed.

Separately, automatic transfer of title by operation of law is permissible under Indian company law, but only in the context of shares, whereby on the death of a shareholder, the title to the shares is transferred to the legal heir by way of transmission and such change in ownership is registered by the company upon intimation by such legal heir.

Lastly, as far as the beneficial and legal ownership is concerned, Indian company law recognises a distinction between such nature of ownership in the context of shares, whereby: (1) a beneficial owner is one who has paid the consideration for the acquisition of shares and has nominated another person to hold the legal ownership in such shares, (2) a legal owner is one whose is recorded as a legal owner in respect of the shares in the company's statutory records, with the beneficial interest resting with the beneficial owner. In fact, this construct is fairly common in case of wholly owned subsidiaries in India, given the requirement under Indian law for every private company to have a minimum of two shareholders. Where the legal and beneficial owners in respect of a share of an Indian company are different, then both such owners are required to disclose the fact of their separate ownership to the company

in the prescribed format and the company is thereafter required to record such fact in their statutory registers and further report such nature of ownership to the relevant authority.

Law stated - 1 July 2025

Multiple sellers

Specifically in relation to the acquisition or disposal of shares in a company, where there are multiple sellers, must everyone agree to sell for the buyer to acquire all shares? If not, how can minority sellers that refuse to sell be squeezed out or dragged along by a buyer?

In the context of a complete acquisition of a private company with a dispersed shareholding pattern, all sellers have to agree to such the acquisition and are required to undertake certain prescribed actions for the transfer of their respective shares to the buyer. Where there are dissenting sellers, a 100 per cent acquisition can consequently be challenging as Indian law does not provide an absolute right to a buyer or majority seller to force the minority to transfer their shares in a private company. While measures are available under Indian company law to squeeze out the minority shareholders pursuant to a capital reduction or an offer to acquire the minority holding 10 per cent (or less) ownership interest, the success of such procedures is uncertain as the capital reduction process is subject to approval from the company court and as far as the 'squeeze-out' mechanism is concerned, the law provides the minority shareholders the right to challenge the 'squeeze-out' offer before the company court on the ground that the offer is unfair to the minority shareholders.

However, as a matter of practice, it is common for the majority shareholder to put in place a shareholders' agreement in a private company with a dispersed shareholding pattern and such shareholder' agreements often contain a contractually negotiated drag-along right or call option right in favour of the majority shareholder or seller.

Law stated - 1 July 2025

Exclusion of assets or liabilities

Specifically in relation to the acquisition or disposal of a business, are there any assets or liabilities that cannot be excluded from the transaction by agreement between the parties? Are there any consents commonly required to be obtained or notifications to be made in order to effect the transfer of assets or liabilities in a business transfer?

To ensure tax neutrality, business transfers are often structured on a slump sale basis – which is a transfer of a business undertaking as a whole, on a going concern basis (ie, the business is capable of running on its own on a standalone basis without any interruption), for a lump sum consideration (ie, without assigning any individual values to the transferred assets underlying the business). Accordingly, all the assets and liabilities forming part of the business undertaking move to the buyer. However, except goodwill pertaining to the acquired business, in practice there is some leeway for parties to agree on the assets and liabilities which will be acquired or excluded as part of the transaction.

On the other hand, unlike a business transfer, in case of an asset acquisition, the parties have much more flexibility to cherry-pick the assets that form part of the transaction and there are no restrictions from an Indian law and tax perspective.

Where the seller is operating in a regulated sector or is based out of a regulated zone (such as a special economic zone), transfer of business or assets is often subject to prior approval of the relevant regulatory authorities. Separately, a business transfer or asset purchase may also trigger consent or notification requirements (if any) under the operational contracts or loan agreements of the seller or target, and all such consents are typically identified by the parties as part of the due diligence review.

Law stated - 1 July 2025

Consents

Are there any legal, regulatory or governmental restrictions on the transfer of shares in a company, a business or assets in your jurisdiction? Do transactions in particular industries require consent from specific regulators or a governmental body? Are transactions commonly subject to any public or national interest considerations?

In India, free convertibility of capital is not permitted and all investments (whether direct or indirect) into India are regulated by Indian exchange control regulations. Under the Indian exchange control law, a foreign investment is permitted under the following routes: (1) automatic route, wherein foreign investment is allowed up to 100 per cent in permitted sectors (such as IT/ITeS, wholesale trading, manufacturing, and construction) without any government approval; and (2) approval/government route, wherein foreign investment in certain sensitive sectors (such as defence, brownfield pharmaceutical, retail trading, insurance, and print media) require government approval and the investment is subject to sectoral caps and/or other prescribed entry conditions.

Additionally, India had enacted a new regulation in 2020 whereby Indian companies have been restricted from accepting any foreign investments (direct or indirect) from any entity based out of (or whose beneficial owner is situated in or is a citizen of) any of the countries that share a land border with India (including Pakistan, Nepal, Bangladesh, Myanmar and China, which for abundant caution, also includes Hong Kong) without the prior approval of the Indian government.

Further, Indian antitrust law also prescribes certain assets/turnover-based thresholds (for instance, where the value of the buyer and target entity's combined Indian assets exceeds 25 billion Indian rupees or combined Indian turnover exceeds 75 billion Indian rupees) to determine whether an acquisition is notifiable to (and requires approval from) the Indian antitrust regulator (ie, Competition Commission of India (CCI)). Where a merger or an acquisition breaches any of the prescribed thresholds, the parties are required to notify the CCI and obtain its prior approval for the completion of the transaction.

Transactions meeting the assets/turnover-based thresholds can avail an exemption from CCI notification and approval where either the target's total value of: (1) Indian assets does not exceed 4.5 billion Indian rupees; or (2) Indian turnover does not exceed 12.5 billion Indian rupees in the immediately preceding financial year (small target exemption).

With effect from 10 September 2024, India has also enforced an additional 'transaction value' based notification threshold, ie, the deal value threshold whereby global M&A deals will require CCI notification and approval if: (1) the value of the transaction exceeds 20 billion Indian rupees; and (2) the target has 'substantial business operations in India'. The assets/turnover-based thresholds and the deal value threshold are independent thresholds and either of them being exceeded would trigger a notification. Also, parties meeting the deal value threshold cannot use the small target exemption.

Nonetheless, if any assets/turnover-based threshold or deal value threshold is met, parties can still avail certain additional exemptions (such as minority acquisition exemption and ordinary business course exemption) from CCI notification under the antitrust rules.

Finally, transactions in regulated sectors (such as banking or insurance) may also require approval from the respective sector regulator under the sectoral laws. For instance, acquisition of more than 5 per cent of the paid-up share capital of an insurance company requires the prior approval of the Insurance Regulatory and Development Authority of India.

Law stated - 1 July 2025

Consents

Are any other third-party consents commonly required?

Under Indian company law, any transfer or sale of shares does not require the approval of the shareholders. However, in the context of a private company with dispersed shareholding pattern, it is common for the shareholders to restrict the transfer of shares of the target company in the shareholders' agreement and/or the articles of association, in which case such share transfers are subject to shareholders' approval.

On the other hand, in the case of a sale of substantial or whole undertaking by a private company, private companies are exempted from the shareholder approval under Indian company law. However, despite the exemption, it is standard for private companies with investors to have restrictions in the charter documents (or shareholders' agreements) subjecting transfer of assets or business to shareholders' approval.

Separately, any other third-party consent requirements (in the context of a change in ownership or control of a company or transfer of business or assets) would typically flow from the operational and financing arrangements that the target company or seller has in place.

Law stated - 1 July 2025

Regulatory filings

Must regulatory filings be made or registration (or other official) fees paid to acquire shares in a company, a business or assets in your jurisdiction?

Other than any antitrust filings described above (if applicable), domestic acquisitions do not trigger any regulatory filings or registrations, unless the target operates in a regulated sector (for instance, banking, insurance or defence).

On the other hand, a share acquisition involving a non-resident seller or a buyer requires the Indian resident party to report the transaction to the Reserve Bank of India (RBI) in the prescribed manner. Similarly, under Indian exchange control laws, any acquisition of shares of an Indian company by another Indian company (which is foreign owned and controlled) is required to reported by such company to RBI, subject to certain prescribed conditions.

Law stated - 1 July 2025

ADVISERS, NEGOTIATION AND DOCUMENTATION

Appointed advisers

In addition to external lawyers, which advisers might a buyer or a seller customarily appoint to assist with a transaction? Are there any typical terms of appointment of such advisers?

Other than external lawyers, advisers are typically engaged by the parties depending on certain factors such as deal complexity, deal value, target's sector, regulatory interface and whether the deal is structured as an auction deal or otherwise. For instance, in case of an auction deal, it is common for the seller to appoint a transaction or financial adviser to lead and manage the auction process. Additionally, in addition to customary finance and tax diligence, if a buyer wishes to conduct a due diligence in respect of technical and environmental matters, then in addition to financial and tax advisors, the buyer will appoint additional specialists to carry out such diligences and assist with resolving the issued flagged pursuant to their diligence review.

These professional advisers, in most cases, have standard terms of engagement that may be negotiated to some extent by parties. Further, the quantum and nature of fees differs across advisers. For instance, investment bankers typically charge a success fee that amounts to a certain percentage of the deal value and would be contingent on the completion of the deal. Whereas the billing arrangement with other advisers (including legal or financial advisers) varies from a lump sum rate to hourly rates depending on the service provider, scope of services and the service provider's relationship with the client.

Law stated - 1 July 2025

Duty of good faith

Is there a duty to negotiate in good faith? Are the parties subject to any other duties when negotiating a transaction?

Unlike certain foreign jurisdictions, the doctrine of good faith is not statutorily recognised in India, and the extent of its application and scope of interpretation is primarily driven by Indian courts and is specific to the facts of each case. Accordingly, under Indian law, parties are generally free to pursue their own interests while entering into a contract. However, parties may agree to contractually impose such obligations on each other.

Separately, under Indian company law, the directors of an Indian company are generally bound by certain codified duties which require them to always act in good faith, with due and reasonable care, and in the interests of the company, its shareholder, its employees and

the community at large. However, there are no such statutory obligations or duties imposed on the shareholders of a private company.

Law stated - 1 July 2025

Documentation

What documentation do buyers and sellers customarily enter into when acquiring shares or a business or assets? Are there differences between the documents used for acquiring shares as opposed to a business or assets?

In India, a share acquisition, asset transfer or business transfer entered by parties is documented in a purchase agreement. Other than the purchase agreement, an indicative list of the documents that the parties typically enter into are as following:

- a non-disclosure and confidentiality agreement regulating the exchange of proprietary and confidential information to facilitate the transaction;
- a non-binding term sheet outlining the key terms of the transaction agreed between the parties in case of a bid process undertaken by the seller, a binding bid offer letter setting out the terms of the offer agreeable to the buyer;
- in the context of share acquisitions, amended and restated employment agreements and/or retention bonus letters may also be executed with members of the senior management of the target;
- disclosure schedules setting forth the specific disclosures that qualify the respective representations and warranties included in the purchase agreement; and
- documents to effect the closing of the transaction, which would include share transfer forms (in case of a share acquisition), and delivery note along with IP assignment deeds (in case of asset or business transfers).

Separately, the form and substance will differ depending upon whether it is a share acquisition or business or asset transfer. For instance, a share purchase agreement will have a more robust representations and warranties package and the seller will typically stand behind the indemnity. On the other hand, the representations and warranties in a business or asset purchase agreement are more focused on the business or assets and come from the seller entity itself and, depending on the bargaining power and the financial wherewithal of the seller entity, the shareholder may or may not stand behind the indemnity.

Law stated - 1 July 2025

Documentation

Are there formalities for executing documents? Are digital signatures enforceable?

While there are no prescribed formalities in terms of executing documents in an M&A transaction in India, parties typically exchange board resolutions (or such other entity-level or individual authorisation document as may be applicable) whereby the authority to sign

has been delegated to signatories to ensure that signatories of the respective parties have the requisite authority to execute and deliver the transaction documents.

While Indian law recognises the use of digital signatures, its use is restricted by certain prescribed criteria or thresholds – for instance, the digital signature should be based on an asymmetric crypto system and hash function, and should be able to detect any changes to the document or signature once the digital signature has been affixed. Accordingly, the use of digital signatures is not prevalent in Indian M&A and from an enforceability perspective, parties prefer to execute the transaction documents in wet-ink such that the documents would be enforceable before Indian courts without any challenge as to the authenticity of the signatures in the documents. Additionally, in case of cross-border deals or domestic deals where parties are in different locations, parties typically complete the execution formalities by exchange of the PDF signature pages over email and the transaction document recognises such constructs as a valid approach for the execution of the document.

Law stated - 1 July 2025

DUE DILIGENCE AND DISCLOSURE

Scope of due diligence

What is the typical scope of due diligence in your jurisdiction? Do sellers usually provide due diligence reports to prospective buyers? Can buyers usually rely on due diligence reports produced for the seller?

The scope of a legal due diligence on private company in India differs across deals and it is driven by several factors such as deal timelines (including any exclusivity period), transaction structure, relevant sector in which the target operates, scale of target's business operations, buyer's risk appetite, and the commercial understanding between the parties.

As a general matter, the scope of diligence of a private company is usually broad and includes the following areas: corporate governance, share capitalisation, exchange control compliance, employment arrangement and labour compliance, intellectual property, real estate, litigations, contracts, insurance, data privacy and regulatory.

Sellers typically do not provide due diligence reports to prospective buyers. In fact, as a matter of practice, buyers prefer to conduct their own due diligence (even where due diligence reports have been provided by the seller), the scope of which usually depends on the commercial understanding between the parties. For instance, the buyer may elect to conduct the due diligence in two phases, whereby phase one will identify the key roadblocks that may potentially impact closing of the acquisition (such as share capitalisation, exchange control compliance, regulatory approvals and other material third-party consents) and the phase two would be a more deep-dive diligence in all the above-mentioned diligence areas.

Law stated - 1 July 2025

Liability for statements

Can a seller be liable for pre-contractual or misleading statements? Can any such liability be excluded by agreement between the parties?

While a seller would usually argue to limit their liability in the transaction documents to claims for breach of explicit representations and warranties and exclude any liability for any pre-contractual or misleading statements, a seller can be made liable for pre-contractual or misleading statements (particularly, in case of fraud or misrepresentation) by adding an express provision in the document or the buyer relying on the rights available under the Indian contract law in case of fraud or misrepresentation by the seller.

Law stated - 1 July 2025

Publicly available information

What information is publicly available on private companies and their assets? What searches of such information might a buyer customarily carry out before entering into an agreement?

Under Indian company law, a private company is required to disclose certain mandatory information and documents to the Ministry of Corporate Affairs, Government of India (MCA) and such documents are publicly available (on payment of a nominal fee) on MCA's website. Some of the key corporate records that are publicly available are as follows:

- charter documents (including any modification thereto);
- directors report, audited financial statements and shareholding pattern (on an annual basis);
- shareholder resolutions;
- encumbrance or charge created by the company;
- details of the board directors (and any changes thereto); and
- details of beneficial owners or significant beneficial owners.

Further, buyers can undertake lien searches on the corporate records that are maintained by the MCA to identify/confirm if any encumbrances have been created by the company on its assets. However, this public search is not comprehensive and should not be solely relied upon by a buyer (in substitution of the legal due diligence review), since such public records maintained by the MCA are based on the information and documents that are disclosed by an Indian company to the MCA and the regulatory authorities in India do not undertake any separate exercise to collate the records confirming creation of any liens on the assets of a company. Further, details in respect of the registered trademarks and copyright of the company are also publicly available on the online portal that is maintained by the Indian Trade Marks Registry and Copyright Office respectively.

Lastly, the litigation records of the Supreme Court of India and the various state high courts have been digitised and are publicly available on the websites of these judicial authorities. However, litigation searches are also not exhaustive since the litigation records of local or district courts are not yet fully digitised or available for public inspection.

Law stated - 1 July 2025

Impact of deemed or actual knowledge

What impact might a buyer's actual or deemed knowledge have on claims it may seek to bring against a seller relating to a transaction?

Where a buyer makes a claim with actual or deemed knowledge, such claim would not get automatically excluded and courts would make a determination of such claims on a case-by-case basis.

As a matter of practice, from an enforceability perspective, buyers usually negotiate sandbagging clauses (ie, where buyers have the right claim indemnity even where they had prior knowledge of the breach in question) in the transaction documents.

Law stated - 1 July 2025

PRICING, CONSIDERATION AND FINANCING

Determining pricing

How is pricing customarily determined? Is the use of closing accounts or a locked-box structure more common?

In the context of M&A deals in India, while closing accounts has gained more acceptance over the years, a locked-box structure is still the prevalent pricing model among buyers for determining the purchase consideration for an acquisition.

Separately, the determination of the purchase consideration for an acquisition is also driven by certain tax and regulatory considerations. For instance, under Indian tax law, if the price per share is less than the fair market value as determined by a registered valuer in accordance with Indian tax laws, deemed tax implications arise for both the seller and the buyer. Similarly, in the context of cross-border deals involving a non-resident buyer and resident seller (or vice versa), the price is required to comply with the prescribed pricing guidelines (for instance, where a non-resident is buying shares from a resident, a minimum floor price applies which is the fair market value of the shares supported by a valuation report issued by a registered chartered accountant) and parties are not permitted to defer the consideration for an amount of more than 25 per cent of the total consideration for more than 18 months (except with an approval from the Reserve Bank of India).

Law stated - 1 July 2025

Form of consideration

What form does consideration normally take? Is there any overriding obligation to pay multiple sellers the same consideration?

Under Indian law, there is no restriction on the form of consideration (whether cash or non-cash) that can be paid by a buyer to a seller. However, cash is the most prevalent form of consideration in Indian M&A deals. Further, in terms of non-cash consideration, shares of the buyer entity or the buyer's ultimate parent company are typically offered by buyers as the preferred form of consideration. Nevertheless, while shares are used as consideration in

domestic merger deals, they are rarely used as consideration in cross-border deals due to certain regulatory approval requirements under the Indian exchange control law.

Separately, in case of a share acquisition involving multiple sellers, the consideration payable to a seller per share in a transaction needs to be the same.

Law stated - 1 July 2025

Earn-outs, deposits and escrows

Are earn-outs, deposits and escrows used?

Earn-outs are commonly used in strategic acquisitions of founder-driven private companies (especially, in the IT/ITeS sector) and are typically linked to the performance of the acquired target company for a period of one to three years post-acquisition. Further, while deposits are a rare feature in Indian M&A deals, escrow arrangements are a fairly common measure to facilitate indemnity claims by the buyer.

However, in the context of cross-border deals, structuring of earn-outs and escrow arrangements are relatively challenging owing to the restrictions prescribed under Indian exchange control law. For instance, in the context of a share acquisition, a buyer cannot defer beyond the consideration and time linked thresholds under Indian exchange control law (ie, deferred amount cannot exceed 25 per cent of the total consideration and will need to be paid within 18 months).

Law stated - 1 July 2025

Financing

How are acquisitions financed? How is assurance provided that financing will be available?

In India, banks are generally not permitted to finance acquisition of shares of a company. Accordingly, at least in the context of domestic M&A deals, in terms of debt financing, issuance of unlisted non-convertible debentures is the preferred form of debt financing, and it is not common for the buyers to seek external financial assistance from banks to finance acquisitions. Additionally, where debt financing is not feasible, buyers usually utilise internal accruals or raise additional equity capital from its shareholders to fund their acquisitions. On the other hand, in the context of cross-border deals, it is common for non-resident buyers to utilise off-shore funds from global banks to fund their acquisition of Indian companies/assets.

Separately, in the context of domestic deals, while it is not common for buyers to provide any assurance (including in the form of representations on their credit worthiness or financing of the deal), more sophisticated sellers do insist on such assurances in some form or the other. For instance, where the credit worthiness is doubtful, then a seller may ask for the holding/parent company or another creditworthy affiliate of the buyer to stand behind the funding obligation of the buyer under the transaction documents.

Law stated - 1 July 2025

Limitations on financing structure

Are there any limitations that impact the financing structure? Is a seller restricted from giving financial assistance to a buyer in connection with a transaction?

Unlike public companies who are restricted from funding their own acquisitions, private companies are not subject to any such express restriction under Indian company law.

However, in the context of inbound cross-border acquisitions, where non-resident buyers utilise off-shore funds from global banks, buyers are restricted from securing acquisition finance against a pledge on the shares (or a charge in the assets) of the Indian target company in favour of an overseas bank without approval from the Reserve Bank of India.

Law stated - 1 July 2025

CONDITIONS, PRE-CLOSING COVENANTS AND TERMINATION RIGHTS

Closing conditions

Are transactions normally subject to closing conditions? Describe those closing conditions that are customarily acceptable to a seller and any other conditions a buyer may seek to include in the agreement.

In private acquisitions in India, closing conditions are a widely accepted deal protection measure for buyers. Common closing conditions sought by buyers which are customarily acceptable to sellers include:

- rectification of the issues identified during diligence;
- receipt of applicable regulatory approvals (including antitrust and foreign direct investment approvals) and approvals from third parties (including customers, lenders, and lessors or landlords);
- absence of material adverse change or effect between signing and closing;
- representations and warranties being true, correct, complete and not misleading as on the signing date and closing date;
- in the context of a share acquisition, delivery of no-objection certificates issued by tax authorities (or at least a certificate issued by a reputed charted accountant, along with screenshots from the tax portal indicating any pending proceedings) in respect of the sale shares (and their transfer thereof); and
- procurement of requisite valuation reports under Indian foreign exchange control laws or tax laws to support the determination of the purchase price.

Law stated - 1 July 2025

Closing conditions

What typical obligations are placed on a buyer or a seller to satisfy closing conditions? Does the strength of these obligations customarily vary depending on the subject matter of the condition?

In private acquisitions in India, closing conditions are a widely accepted deal protection measure for buyers. Common closing conditions sought by buyers which are customarily acceptable to sellers include:

- rectification of the issues identified during diligence;
- receipt of applicable regulatory approvals (including antitrust and foreign direct investment approvals) and approvals from third parties (including customers, lenders, and lessors or landlords);
- absence of material adverse change or effect between signing and closing;
- representations and warranties being true, correct, complete and not misleading as on the signing date and closing date;
- in the context of a share acquisition, delivery of no-objection certificates issued by tax authorities (or at least a certificate issued by a reputed charted accountant, along with screenshots from the tax portal indicating any pending proceedings) in respect of the sale shares (and their transfer thereof); and
- procurement of requisite valuation reports under Indian foreign exchange control laws or tax laws to support the determination of the purchase price.

Law stated - 1 July 2025

Pre-closing covenants

Are pre-closing covenants normally agreed by parties? If so, what is the usual scope of those covenants and the remedy for any breach?

The obligations (whether absolute or pegged to an efforts standard) placed on a party to satisfy closing conditions would typically depend on the nature and materiality of the closing condition, the regulatory profile of the transaction and on the bargaining power of the parties. For instance, in case of any regulatory approvals, the obligation to procure such approval as a condition to closing is not absolute and is subject to a best efforts standard. On the other hand, it is common for buyers to impose an absolute obligation on the sellers to procure a valuation report justifying the price both from a tax and regulatory perspective.

Law stated - 1 July 2025

Termination rights

Can the parties typically terminate the transaction after signing? If so, in what circumstances?

Where the acquisition agreement is structured as a staggered sign and close document, it is customary for sellers or target companies to agree to interim covenants and other standstill obligations, which protects the buyer from any material impact to the business or the ability of the parties to consummate the deal in the manner contemplated in the

transaction documents. Depending on whether the acquisition is a share acquisition or a business or asset transfer, an indicative list of such customary pre-closing covenants or standstill obligations are as follows:

- issuance of new securities or modification of rights of existing classes of securities;
- changing the shareholding pattern;
- raising any indebtedness or writing off any debt;
- disposal of or creation of lien on the assets of the target;
- amendment of charter documents of the target (except to facilitate the transaction or an agreed pre-closing internal reorganisation);
- change in senior management/key employees of the target, or their terms of engagement;
- starting a new line of business or closing an existing line of business;
- entering into material contracts in excess of an agreed threshold; and
- settlement of litigations involving the target.

Additionally, sellers typically make representations in the agreement and/or the closing certificate to the effect that none of the pre-closing covenants have been breached and breach of any of the pre-closing covenants would qualify as an indemnity event.

Law stated - 1 July 2025

Termination rights

Are break-up fees and reverse break-up fees common in your jurisdiction? If so, what are the typical terms? Are there any applicable restrictions on paying break-up fees?

Break-up fees and reverse break-up fees are not very common in India due to absence of statutory recognition and certain regulatory restrictions. For instance, where the recipient of a break-up fee is non-resident, the approval of the Reserve Bank of India may be required for the remittance of such break-up fee by the resident seller to the buyer.

Law stated - 1 July 2025

REPRESENTATIONS, WARRANTIES, INDEMNITIES AND POST-CLOSING COVENANTS

Scope of representations, warranties and indemnities

Does a seller typically give representations, warranties and indemnities to a buyer? If so, what is the usual scope of those representations, warranties and indemnities? Are there legal distinctions between representations, warranties and indemnities?

It is customary for a seller to give representations, warranties and indemnities to a buyer. However, the scope of representations, warranties and indemnities usually depends on the

nature of the transaction (ie, share acquisition or business or asset transfer), the diligence issues identified, bargaining power of the parties and the negotiations among the parties. Nevertheless, in the context of share acquisitions, the standard ask is for the seller to provide a comprehensive pack of representations and warranties, which typically includes the following:

- capacity and authority of the seller to execute, deliver and perform the transaction documents;
- title to the shares;
- the share capital and shareholding pattern;
- basis of preparation of the financial statements;
- tax and financial compliance aspects; and
- operational aspects of the company or business in respect of employees, financing, contracts, real estate, information technology, compliance with laws, exchange control, litigation, data privacy, information technology and insurance.

On the other hand, in the context of a business or asset transfer or in case of an auction deal, the scope of the representations and warranties package is usually narrower. In addition to the representation in respect of title, authority and capacity, the scope of representations is limited to the assets or business of the seller (for instance, in respect of the adequacy and condition of assets proposed to be acquired).

As far as indemnity is concerned, the scope largely remains the same but the limitation of liability may vary depending on whether it is a share acquisition or a business or asset transfer.

Nevertheless, the seller may also disclose certain specific facts (including the identified diligence issues) against the representations and warranties (except fundamental warranties), and to that extent, the representations will be qualified and the buyer will not be able to claim indemnity (unless parties have agreed to it as a specific indemnity item).

Separately, in the context of M&A deals in India, it is common for the buyer to rely on indemnification provisions, however, where the purchase agreement does not contain any such indemnification regime, then in case of breach, the buyer can make a claim for damages under (and in compliance with) Indian law. However, in case of a claim for damages, the buyer is required to establish certain pre-requisites as required under Indian law – for instance, breach, causation (ie, breach-cause linkage), proof of actual loss/damage and remoteness of damage.

Law stated - 1 July 2025

Limitations on liability

What are the customary limitations on a seller's liability under a sale and purchase agreement?

Limitation on a seller's liability is negotiated and is largely dependent on bargaining power of the parties. Sellers typically negotiate to limit their liability on account of indemnity claims by the buyer by making such claims subject to: (1) a de minimis (ie, where a single claim must

exceed a minimum threshold to be eligible for an indemnification claim), (2) a deductible basket (ie, where the aggregate of all eligible claims must exceed a specified threshold before a buyer can claim, and such claim can only be for the amount of losses in excess of the threshold); however, a tipping basket is more common than a deductible basket where the a buyer can claim for the entire claim amount once all eligible claims exceed the basket, and (3) an indemnity cap equivalent to the purchase price (or a percentage thereof); however, buyers typically push back on any such caps in respect of fundamental warranties (ie, warranties in respect of title, authority, capacity, etc).

Further, sellers also usually negotiate to define a time period for the survival of these representations and warranties after which a buyer cannot bring any indemnity claims against the buyer. For instance, the survival for operational or business warranties is usually between 12 to 36 months, whereas fundamental warranties survive for a longer period (sometimes, even till the statutory limitation period). The survival period for tax warranties is typically aligned to the statutory limitation period.

Lastly, the scope of losses in terms of indemnity claims is also negotiated between the parties, whereby sellers typically want to exclude any indirect, incidental, consequential, special, and punitive losses and on the other hand, buyers negotiate to include all such losses within the purview of its indemnity claims against the seller.

Law stated - 1 July 2025

Transaction insurance

Is transaction insurance in respect of representation, warranty and indemnity claims common in your jurisdiction? If so, does a buyer or a seller customarily put the insurance in place and what are the customary terms?

While a representations and warranties insurance has not been historically common in the context of private M&A deals in India, it is definitely gaining traction, particularly where the sale or divestitures of securities is by a financial sponsor or private equity fund.

The scope of such insurance is limited to the representations and warranties agreed under the transaction documents and it typically excludes claims in respect of the following:

- fraud, bribery, corruption and money laundering matters;
- environment matters;
- transfer pricing issues;
- matters where the buyer had prior knowledge of the breach or where the breach was disclosed in the disclosure letter;
- stamp duty;
- pension or gratuity underfunding;
- secondary tax liabilities;
- purchase price adjustments or leakages;
- criminal fines and penalties;

- documents which were disclosed in the data room; and
- issues which have been identified in the due diligence reports and where specific indemnity has been granted by the seller.

In terms of coverage, typically, such policies coverage can range from 10 to 30 per cent of the enterprise value of the target, with a retention (ie, an aggregate amount up to which the claims are not reimbursed by the insurer) of 0.5 to 1 per cent of the enterprise value. Further, the period of such policies may differ across the nature of the warranties. For instance, in case of title warranties, the period may be in the range of seven to 12 years whereas for business warranties, it may be for two to three years.

Separately, as a matter of practice, a transaction insurance is taken by the buyer and the cost may be in the range of 2 to 4 per cent (depending on the negotiations with the insurer), however, the cost allocation of such insurance is typically negotiated between the parties. From a timing perspective, depending on the insurer, it can take three to four weeks to put in place a transaction insurance.

Law stated - 1 July 2025

Post-closing covenants

Do parties typically agree to post-closing covenants? If so, what is the usual scope of such covenants?

It is common for parties to a private acquisition to agree to post-closing covenants. These post-closing covenants would usually include parties undertaking post facto regulatory filings (for instance, foreign exchange control filings in terms of a share acquisition) and filings with the tax authorities. Additionally, buyers also seek that sellers agree to post-closing confidentiality obligations and other post-closing restrictive covenants in terms of non-solicitation of buyer's employees and non-competition with the buyer. However, under Indian law, enforcement of non-competition restrictions on the seller in the context of an acquisition is challenging where such acquisition does not involve any sale of goodwill.

Law stated - 1 July 2025

TAX

Transfer taxes

Are transfer taxes payable on the transfers of shares in a company, a business or assets? If so, what is the rate of such transfer tax and which party customarily bears the cost?

Transfer of shares of an Indian company attracts stamp duty at the rate of 0.015 per cent of the total consideration payable for the sale shares. Under Indian law, the obligation to pay such stamp duty is on the seller. However, as a matter of practice, the allocation of this cost (similar to any other transaction cost) is subject to commercial discussions between the parties.

Further, in the context of sale of assets/business, where such sale involves any transfer of owned real estate, stamp duty and registration fees at the prescribed rates (which may differ across Indian states) is payable on such transfer of property and as a matter of practice, typically, such costs are borne by the buyer.

Additionally, in the context of an asset purchase, the sale of assets may also attract goods and service tax (GST) liability. The rate of GST will depend on the nature of the assets and may be in the range of 5 to 28 per cent.

Law stated - 1 July 2025

Corporate and other taxes

Are corporate taxes or other taxes payable on transactions involving the transfers of shares in a company, a business or assets? If so, what is the rate of such transfer tax and which party customarily bears the cost?

In India, corporate taxes are payable on the capital gains arising from transactions involving the transfers of shares in a company, a business, or assets. For instance:

- In share acquisitions, depending on how long the shares have been held by the seller, the applicable tax rate on the gains of a resident seller would be 12.5 per cent (where the period is more than 24 months) or 30 per cent (where the period is less than 24 months), plus applicable surcharge and cess. Where such seller is a non-resident, the long-term capital gains would be taxed at 12.5 per cent (plus applicable surcharge and cess) and short-term capital gains would attract tax at up to 40 per cent (plus applicable surcharge and cess).
- In the context of a business transfer, depending on how long the business has been owned and held by the seller, the applicable tax rate on the gains of a resident seller would be 12.5 per cent (where the period is more than 36 months) or up to 30 per cent (where the period is less than 36 months), plus applicable surcharge and cess.
- In the context of an asset transfer, the tax rates will depend on the assets being acquired as part of the transaction.

Separately, non-resident sellers might also have certain tax benefits available to them under bilateral tax treaties between their host country and India. However, the availability of such benefits is transaction specific and subject to various conditionalities. Accordingly, sellers typically engage tax advisors to undertake an assessment of tax benefits available (if any).

In terms of cost allocation, taxes on capital gains of the seller are typically borne by the respective sellers themselves.

Law stated - 1 July 2025

EMPLOYEES, PENSIONS AND BENEFITS

Transfer of employees

Are the employees of a target company automatically transferred when a buyer acquires the shares in the target company? Is the same true when a buyer acquires a business or assets from the target company?

In a share acquisition, the employees of the target company remain employed with the target company and become the responsibility of the buyer.

On the other hand, even in case of business or asset transfer which involves a transfer of employees to the buyer, Indian law does not provide for an automatic transfer of such employees. There are two options for effecting such transfer of employees from an Indian law and practice perspective (ie, transfer on a 'continuity of service' basis or 'resign and hire', but each of these options requires the prior written consent of a transferred employee). Where the transfer is on a 'continuity of service' basis (ie, without any break in the service tenure), the buyer is required to offer no less favourable employment terms, and acknowledge the past services of the employees (and their tenure of service with the transferor) for computation of statutory retiral benefits that are a function of employees' length of service (ie, gratuity).

Under the 'resign and hire' option, all employees are provided an opportunity to voluntarily resign from their employment with the seller (with all their employment dues being settled by the seller), and such employees would then be hired by the buyer on fresh employment terms, immediately after their release by the seller. Although in this option, the buyer would be free to offer employment terms as it prefers, from an employee retention perspective, buyers generally offer terms of such employment offers which are not less favourable or at least comparable in aggregate (specifically in terms of the existing remuneration and other benefits) to their existing terms of employment.

Law stated - 1 July 2025

Notification and consultation of employees

Are there obligations to notify or consult with employees or employee representatives in connection with an acquisition of shares in a company, a business or assets?

While there is no general requirement under Indian law to seek the consent of or consult the employees of a company (or their representatives) in case of a share acquisition or sale of assets or business, given that Indian law does not contemplate an automatic transfer of employees, as a matter of practice, prior written consent is obtained from the employees for such transfer as a part of the transfer process in the case of business or asset transfer.

Further, contractual arrangements between the company and labour union or any similar organisation representing the employees may also contain obligations for consultation with such organisation in connection with any transfer of employees or change in terms of employment.

Law stated - 1 July 2025

Transfer of pensions and benefits

Do pensions and other benefits automatically transfer with the employees of a target company? Must filings be made or consent obtained relating to employee benefits where there is the acquisition of a company or business?

In case of an acquisition of shares of a private company, the employee benefit and retirement plans maintained by the target company remain with the target company, and the buyer becomes responsible for maintaining such plans after acquisition.

Further, in the context of business or asset transfers (where employees are also transferred), employee benefits do not get automatically transferred with the employees of the target company. Where employees are transferred by the target company to the buyer on a 'continuity of service' basis (ie, without any break in the service tenure), the target may transfer and the buyer may agree to assume certain accrued employee benefits, such as gratuity.

Even in such cases, employee benefits such as accrued employee provident fund and pension fund balances do not get automatically transferred with the employees. Upon on-boarding of the employees by the buyer, the transferred employees are required to make statutory filings with the relevant authority for the release and transfer of their accrued employee provident fund and pension fund balances from the target company's account with the relevant authority to the account of the buyer.

Law stated - 1 July 2025

UPDATE AND TRENDS

Key developments

What are the most significant legal, regulatory and market practice developments and trends in private M&A transactions during the past 12 months in your jurisdiction?

While the global M&A market is still in full recovery mode and correcting itself to the pre-pandemic numbers, deal activity in India has remained strong, with aggressive domestic consolidations driving the India growth story. The Indian government's growing focus on investor-friendly programmes and schemes, reinforced with favourable factors such as the rebalancing of the global supply chain, digital innovation and the availability of a skilled workforce across industries, have also piqued investor interest in the Indian market in the past year. For instance, the Indian government has announced several production-linked incentive schemes across strategic manufacturing sectors (such as large-scale electronics (mobile phones and components), IT hardware (laptops, servers, tablets etc), semiconductors, electronic components, and telecoms and networking products), which offer strong entry points for global manufacturers and component suppliers that are looking to expand into India's electronics supply chain.

Similarly, to position India as a leading destination for foreign investments and pave way for easier deal structuring, the government has further liberalised the foreign exchange control regime by allowing the cross-border swap of equity instruments in secondary sales and permitting fast-track cross-border mergers between a foreign parent and its wholly owned Indian subsidiary without obtaining the approval of the tribunal. This relaxation has created

a simplified and efficient path for Indian start-ups that are exploring a 'reverse-flipping' (ie, moving their parent company's domicile from overseas back to India) and a potential listing on Indian stock exchanges.

Interestingly, the government has also clarified that downstream investment by foreign owned and controlled companies in India will be treated at par with foreign direct investment, which effectively now allows Indian companies with majority foreign ownership to structure deferred payment mechanisms and share swaps when acquiring the equity securities of other Indian companies. Further, to bring greater clarity and predictability for minor or technical violations and encourage voluntary rectification of historical non-compliance under foreign exchange law, the government has also capped the penalty for miscellaneous non-reporting contraventions at 200,000 Indian rupees per offence.

Separately, in terms of investor strategy and valuation corrections, the past year again witnessed an increased: (1) usage of escrow arrangements and holdbacks in domestic and cross-border transactions within regulatory restrictions; and (2) focus on material adverse effect and force majeure clauses. Additionally, there has also been a shift in preference of pricing models adopted by buyers, with buyers increasingly relying on closing account as a more accurate pricing methodology to determine the purchase price payable to sellers in a transaction.

Finally, earn-out structures continue to be popular, and the last year also saw an increased usage of convertible securities (preference shares and warrants for fund raises) in private acquisitions with the conversion linked to projected revenues with ratchets. There was also an increased preference for a simultaneous or shorter period between signing and closing, and straight-jacketed conditions were common as parties pushed for deal certainty with limited walkaway opportunities for the buyers.

Law stated - 1 July 2025