Global Private M&A Guide - Limited External Content - Singapore

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*This content was last reviewed around October 2023. Note: Given the significance of the Significant Investments Review Act (SIRA) that was passed into Singaporean Law in January 2024, a brief summary has been included.*

# Quick reference guide

## Due diligence, pricing and closing

**Due diligence**

Due diligence investigations remain an essential tool for assessing and reducing the risks inherent in a merger or acquisition transaction in Singapore. In the absence of complete knowledge of the operations, the scope of the assets and the extent of the liabilities of the target, due diligence investigations give the prospective buyer an opportunity to assess the legal and financial state of affairs of the target. Due diligence also facilitates effective deal structuring and it is a vital part of most mergers and acquisitions in Singapore.

**Pricing and payment**

There are no legal requirements to carry out a valuation or follow a particular valuation model for determining the purchase price for companies or assets in Singapore. In practice, commonly used valuation methods include net asset value (NAV) and using a debt-free, cash-free basis (representing the enterprise value of the business). Purchase price adjustments are common, based on any shortfall or excess of the target's actual working capital against a target working capital. All types are seen, including working capital adjustment, cash-free, debt-free, NAV adjustments. In addition, more sellers (particularly in private equity transactions and/or auction sales) seek 'locked box' accounts to avoid post-completion adjustments.

No exchange control approvals are required for inward investment into Singapore, for the remittance of dividends or profits, or for the repatriation of capital.

**Signing/closing**

*Is a deposit required?*

The payment of deposits is not common practice in Singapore except in the real estate sector.

*Is simultaneous signing/closing common?*

Signing and closing may occur simultaneously in Singapore. However, where it is necessary to obtain regulatory or other approvals before closing or for the buyer to complete further due diligence after signing the agreement, then a split signing and closing will occur, which is also common in Singapore.

## Approvals/registrations

**Foreign investment restrictions**

Singapore does not have an economy-wide foreign investment law that restricts or regulates foreign investments. That said, there are sector-specific foreign investment legislation/licensing regimes in respect of certain sectors, such as media, financial services, telecommunications and real estate. For further information, see the more detailed section on "Foreign investment restrictions".

**Antitrust/merger control**

Notification of a relevant transaction is not mandatory under Singapore's merger control regime. The competition authority is unlikely to investigate unless a transaction meets certain thresholds it considers are indicative of potential competition concerns. M&A activities are regularly monitored and the authority may approach parties for further information about the transaction. For further information, see the more detailed section on "Antitrust/merger control".

**Other regulatory or government approvals**

For certain sectors, consent from the relevant industry regulator may be necessary, depending on the nature of the target's business. The Section 54 Prohibition does not apply to mergers that are approved by the Minister, the Monetary Authority of Singapore or other regulatory authority. Similarly, the Section 54 Prohibition does not apply to mergers that are under the jurisdiction of other regulatory authority under any written law relating to competition - examples include telecommunications services, and media services.

In some sectors, however, a change of control or transfer of assets may merely require notification to the relevant authorities rather than an obligation to obtain consent.

Other sector-specific regulators also have residual powers to consider competition law provisions as part of their general enforcement powers. For example, the Infocomm Media Development Authority has jurisdiction to enforce competition law principles in respect of the activities of telecommunications and media services in Singapore. Similarly, the Civil Aviation Authority of Singapore has jurisdiction over the operation of airports and the provision of airport services and facilities, while the Energy Market Authority has jurisdiction over the electricity and gas markets in Singapore.

The Electricity Act 2001 administered by the Energy Market Authority (EMA) is also relevant to State Grid’s management and/or operation of their assets in Singapore. The relevant prohibitions under the Electricity Act are:

Agreements, decisions or concerted practices that prevent, restrict or distort competition in any wholesale electricity market or the retail electricity market in Singapore – s 50. (Note: This prohibition also covers acquisition, directly or indirectly, of shares in or the assets of an electricity licensee).

The abuse of a dominant position in any wholesale electricity market or the retail electricity market in Singapore that may affect trade within Singapore.

The Significant Investments Review Act (SIRA) was passed in January 2024 and is expected to come into force later in 2024. The aim of the SIRA is to ensure the continuity of critical entities i.e. entities that are critical to Singapore's national security interests. These entities will be designated and regulated by the investment management regime provided for in SIRA. A number of notification or approval requirements for specific changes in ownership or control of designated entities will be imposed on buyers, sellers and the designated entities, including:

A buyer (in respect of a designated entity) will be required to notify the Minister within seven days after becoming (alone or together with its associates) a 5% controller.

A buyer (in respect of a designated entity) will be required to seek the Minister's approval prior to becoming (alone or together with its associates) a 12%, 25% or 50% controller, an indirect controller, or acquiring as a going concern (parts of) the business or undertaking of the designated entity. The Minister may approve an application if the buyer, and every associate of the buyer that the Minister knows is an associate, is a "fit and proper person".

A seller will be required to seek the Minister's approval when ceasing to be (alone or together with its associates) a 50% or 75% controller.

The Minister's approval will be required for the appointment of key officers such as the chief executive officer, director or chairperson of the board of directors in designated entities. The Minister's approval will also be required for the removal of such officers. The consent of the Minister will be required for designated entities to be voluntarily wound-up (to ensure the security and reliability of their critical functions). Likewise, the Minister will be able to issue special administration orders to direct the assumption of control of the designated entity's affairs, business, and property to ensure their continuity should national security issues arise, or the delivery of essential services be disrupted. The Minister will also have the power to remove key officers in the interests of national security. The Minister will have general powers to review transactions involving entities that have acted against Singapore's national security interests.

The Ministry of Trade and Industry clarified that the SIRA will complement Singapore's existing sectoral legislation which has ownership and control safeguards to monitor and manage entities in the following regulated sectors – telecommunications, banking and utilities.

## Employment

**Acquisition of shares**

Where a transaction takes the form of an acquisition of shares in a company with employees, there are unlikely to be significant employment law issues, as the underlying employment contract (and employee benefits generally) between the target and its employees will usually be unaffected by the change in control. The contracts of key senior personnel should be checked for any change of control provisions. Due diligence should be undertaken to ensure that potential liability for past acts and omissions is known.

**Acquisition of assets**

In a business sale scenario, or in a restructuring involving a merger, take-over, sale of parts of the company or setting up a subsidiary company, the employees of the transferor may be transferred to a related company such as a subsidiary, or to a totally unrelated company by operation of law.

The Ministry of Manpower (MOM) has issued guidance to exclude application of the automatic transfer from the following scenarios:

Transfer of assets only

Transfer of shares

Transfer of operations outside Singapore

Outsourcing of supporting functions.

Unless the employee agrees to changes in the terms, the transferring employee's terms or conditions of employment will remain the same and the transferee employer will take over the transferring employee's contract of service on the existing terms.

The transferring employee has the right to:

Be notified of the transfer and of matters relating to the transfer.

be given the opportunity to consult their employer.

Preserve the original terms and conditions of employment under the new employer.

The transferor will be required to:

Notify the affected employees or their union of the impending transfer within a reasonable time.

Inform affected employees about the terms of transfer, so that they or their union can hold consultations with the company.

Ensure that there is no break in employment during the transfer.

Ensure terms of employment are not less favorable after the transfer.

For the transfer of foreign employees holding work passes, arrangements will have to be made to notify, or make new applications, and/or cancel such work passes with the Ministry of Manpower (MOM) (as the case may be). The buyer should also ensure that it is permitted within its quota to hire any foreign employees on certain categories of work passes.

Employers must make a mandatory retrenchment notification to MOM regardless of the number of employees affected. The Commissioner of Labour may also require any employer to furnish at any time any information on the retrenchment of any employee by an employer.

## Tax

Singapore stamp duty is chargeable on the mortgage of Singapore immovable property and stock or shares, or any transfer of any interest in Singapore immovable properties (including leases) and shares in Singapore companies or companies which maintain a share register in Singapore (Stampable Property).

For a transfer of shares in Singapore companies or in companies which maintain a share register in Singapore, stamp duty is payable at the rate of 0.2% on the higher of: (i) the consideration paid; and (ii) the open market value of the shares. For non-listed companies, where the open market value and fair market valuation are not available, as an administrative practice, the Inland Revenue Authority of Singapore (IRAS) generally accepts the valuation of shares by reference to the net asset value of the target company.

For conveyance, assignment or transfer of non-residential real property in Singapore between 20 February 2018 to 14 February 2023, buyer's stamp duty is payable at the rates of 1% on the first SGD 180,000 of the purchase price or market value of the real property (whichever is higher); 2% on the next SGD 180,000; and 3% thereafter. On or after 15 February 2023, buyer's stamp duty for non-residential real property is payable at the rates of 1% on the first SGD 180,000 of the purchase price or market value of the real property (whichever is higher); 2% on the next SGD 180,000; 3% on the next SGD 640,000; 4% on the next SGD 500,000; and 5% on the next SGD 1,500,000.

For residential real property, the top marginal rate of buyer's stamp duty is 4% if the conveyance, assignment or transfer is executed between 20 February 2018 to 14 February 2023. On or after 15 February 2023, the top marginal rate of buyer's stamp duty is 6%. There may also be seller stamp duties applicable in the case of the sale or disposal of certain residential and industrial properties, depending on the holding period of the property.

In addition, to the extent that there is a transfer of interests in any entity that: (i) holds any residential property in Singapore; or (ii) beneficially owns (directly or indirectly) any entity that holds residential property in Singapore, it should be considered whether the transaction may trigger additional conveyance duty.

Generally, all taxable supplies of goods and services made in Singapore by a taxable person in the course or furtherance of any business carried on by it are subject to Singapore goods and services tax (GST) at the prevailing rate of 9%. The GST rate was 8% in 2023 and 7% before 2023. Where goods are exported or when international services are supplied, such supplies may be zero-rated.

Share sales are generally exempt from GST. Asset sales that qualify as a transfer of going concern (TOGC) are excluded from GST provided certain conditions are met.

**OECD's Two-Pillar Solution**

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting has put forward a so-called Two-Pillar Solution to address the tax challenges arising from the digitalization of the economy. Pillar Two is intended to introduce a global minimum effective rate of tax of 15% for large businesses in each jurisdiction where they operate and will lead to fundamental changes in the international tax system. It is currently being implemented in a large number of jurisdictions. Singapore plans to implement the global anti-base erosion (GloBE) rules (i.e., income inclusion rule and undertaxed profits rule) and domestic top-up tax from in-scope businesses' financial year starting on or after 1 January 2025. The domestic top-up tax will top up the multinational enterprise groups' minimum effective tax rate in Singapore to 15%.

Businesses will need to consider how the Pillar Two rules could impact on the life cycle of M&A transactions from the pre-acquisition phase (including transaction planning such as the choice of acquisition and financing structure and due diligence of the target group), the acquisition phase (such as contractual risk allocation around Pillar Two) to the post-acquisition phase and the impact of Pillar Two on any post-acquisition integration.

## Post-acquisition integration

For information on post-acquisition integration matters, please see our [Post-acquisition Integration Handbook](https://www.bakermckenzie.com/en/insight/publications/resources/post-acquisition-integration-2023).

# Common deal structures

## What are the key private M&A deal structures?

When a business opportunity has been identified, the buyer and the target can structure the acquisition in several ways. The buyer may either purchase the shares in the target from its shareholders or purchase assets directly from the target. It may also consider a long-form amalgamation as a means to merge the target and its own acquisition vehicle but this remains an untested procedure in Singapore.

Accordingly, the share and asset acquisition route remain the usual forms of acquisition on an arm's length basis. Auction sales are increasingly seen in the Singapore market. Depending on the stage of the process, it is fairly common to see indicative non-binding bid letters in the early stage and binding offer letters in the later stage of the competitive sale process depending on the auction situation.

Scheme of arrangements - there is also a statutory mechanism under the Companies Act 1967  (CA) for a scheme of arrangement, whereby the court is empowered to make certain ancillary orders to facilitate a scheme for the purposes of reconstruction of a company, if under the scheme the whole or any part of the undertaking or property of the transferor company is to be transferred to the transferee company. This process is not commonly used in the context of an acquisition because of the procedures. In terms of process, the CA and local case law have not provided a comprehensive framework of instruction as to how schemes of arrangements are to be passed.

Statutory amalgamation — the CA outlines procedures for a form of amalgamation of companies in Singapore. Before the amendments were introduced, commercial transactions commonly referred to as a merger were, in fact, asset acquisitions. The CA allows for a more efficient statutory form of amalgamation. It provides for the amalgamation of two or more Singapore incorporated companies into a single entity that may be either one of the amalgamating companies or a new company. Note that despite the introduction of the statutory form of amalgamation, the existing forms of asset transactions known as 'mergers' will still continue to be relevant. One reason for this is that where the merger is between companies that are not in the same group, directors of the new amalgamated company may have certain reservations about making solvency statements for the combined entity. Another reason is that the amalgamation regime also creates some uncertainties that have yet to be dealt with conclusively — in particular, there are still certain accounting concerns as to how the cancellation of shares in the amalgamating companies will be accounted for, particularly if the horizontal form of amalgamation is used.

## Which entity is likely to be the target company (on a share sale) or the seller (on an asset sale)?

Business in Singapore may be conducted through a variety of vehicles, including limited liability companies and partnerships. The choice of organizational form will be dictated partly by the activities that are intended to be carried on in Singapore and partly by tax considerations.

## What are the different types of limited liability companies?

In Singapore, a limited liability company is a separate entity from its shareholder(s). Equity participation by Singaporeans is generally not a requirement. A foreign company can thus set up a wholly owned subsidiary in Singapore. Joint ventures may also be established using a limited liability company and indeed this is the usual structure for joint ventures in Singapore.

There is no minimum capitalization requirement and shares of a company no longer require par or nominal value. Bearer shares are not recognized.

A Singapore company must have a minimum of one director resident in Singapore. An expatriate in Singapore on an employment pass will also meet this requirement. If the requirement is not satisfied, the Accounting and Corporate Regulatory Authority and the courts may compel members of a company to appoint one director that is resident in Singapore. Members of a company may also be made liable for the debts of the company if it continues operating for more than six months without a resident director. All directors must be natural persons. Where the company has only one director, that director must not also function as the company secretary.

## Is there a restriction on shareholder numbers?

A private limited company shall have at least one member and not more than 50 members, and for completeness, transfers of its shares shall be restricted (although form of restriction is not statutorily prescribed).

## What are the key features of a share sale and purchase?

The sale and purchase of shares in a target company will take place between an existing shareholder and a third-party potential shareholder. A share acquisition involves a transfer of ownership only of the shares in the target. The sale and purchase will not involve the creditors of the target company unless there are pre-existing covenants with them requiring their approval for a change of control of the company. A transfer of shares in the target also transfers all of the target's assets and liabilities to the buyer. As a legal person, the target has the capacity to incur contractual, tortious and criminal liabilities, some of which may not have been properly disclosed to the buyer.

## What are the key features of an asset sale and purchase?

Some investors may prefer to purchase specific assets in a target company as opposed to shares in the target. The purchase of assets enables them to avoid the liabilities of the company and to 'cherry pick' only the viable parts of the business. Buyers of assets will not generally inherit the target's liabilities.

An asset acquisition requires the passing of title to assets from the target to the buyer. The target's assets may include land and premises, stock and work-in-progress, book debts, intellectual property rights, goodwill, insurance, leases, hire purchase and other contracts, employees, shares in other entities, and plant and machinery. It will therefore be necessary to transfer each asset, or category of asset, from the target to the buyer by way of different conveyances, assignments and transfers.

This can be rather cumbersome. In addition, a share acquisition may be necessary if the target's assets are not amenable to transfer, for example if the target has non-transferable government licenses or has entered into licensing or distribution arrangements that are not assignable.

# Preliminary documents

## Is it customary to prepare a letter of intent or term sheet and, if so, to what extent are they binding on both parties?

It is common to prepare a letter of intent or term sheet before parties enter into definitive agreements in respect of a proposed transaction. Typically, the letter of intent or term sheet will not be binding on the parties except for certain provisions such as relating to exclusivity and confidentiality.

## Does a term sheet, in this context, customarily include provisions on exclusivity, break fee or confidentiality?

**Exclusivity**: It is common in a typical bilateral sale to include binding exclusivity provisions in a letter of intent or term sheet even where the letter of intent/term sheet itself is not binding, although this is a commercial term that is usually subject to negotiation.

**Break fee**: It is not common to use break fees in private acquisition agreements but we do see it from time to time, e.g., in a competitive auction process where the conditions precedent are the primary responsibility of the buyer.

**Confidentiality**: It is very common to include binding confidentiality provisions in a letter of intent or term sheet even where the letter of intent/term sheet itself is not binding.

## Are exclusivity, break fee and confidentiality provisions supplemented with separately negotiated agreements?

If there are binding terms on confidentiality, exclusivity and break fee(s) in the term sheet then it would be very unusual to have separately negotiated agreements on these matters prior to execution of the definitive transaction documents (SPAs, etc.). To the extent any terms in the term sheet are expressed to be binding, the scope of these contractual terms should be sufficiently defined and certain to be legally enforceable and so there should be no need for additional agreements. In the case of exclusivity provisions, the exclusivity period and prohibited conduct should be set out clearly. Of course, the definitive transaction agreements may include confidentiality provisions and break fee clauses to deal with the position post-signing of the SPA in which case the prior provision in the term sheet would usually fall away.

A separate confidentiality agreement is usually negotiated as a preliminary agreement prior to the exchange of any information. Indeed this is always the case in the context of a competitive auction process where term sheets are not typical. The term sheet is far more common in a bilateral process but may be preceded by a confidentiality agreement so that the parties can conduct discussions over a draft term sheet and document the main terms of their proposed transaction in confidence.

## Is there a duty or obligation to negotiate in good faith?

Under Singapore law, pre-contractual agreements to negotiate in good faith (i.e., "lock in" agreements) are generally unenforceable, unless the agreement is to negotiate for a particular period or to use reasonable endeavors to come to an agreement as a result of the negotiations. That said, these exceptions have not been tested in Singapore courts, so parties should exercise particular caution in drafting such clauses. On the other hand, pre-contractual agreements not to enter into negotiations with any third party (i.e., "lock out" agreements) will be enforceable if there is sufficient certainty (e.g., duration).

The fact that a purchase agreement is not signed following the entry of the parties into a pre-contractual agreement, e.g., a letter of offer or term sheet, does not automatically provide a party who loses time and money any contractual recourse against the other party, unless it can be shown that the other party has breached its binding obligations under the pre-contractual agreement (in which case, the claiming party would be able to seek recourse against the defaulting party for a breach of contract).

In the case where a purchase agreement is signed, typically the parties will agree that the terms of the purchase agreement will supersede any pre-contractual agreement previously entered into by the parties in relation to the transaction. As such, if following signing the transaction does not complete, any recourse available to the parties will be determined in accordance with the terms of the signed purchase agreement.

# Agreeing to the acquisition agreement → Purchase price

## Is a purchase price adjustment common?

Frequency/market practice: Very common.

## What type of purchase price adjustment is common (e.g., debt-free, cash-free)?

Cash free/debt free coupled with a normalized level of working capital is popular for Singapore and South-east Asia deals. Locked box adjustments are also increasingly common on deals where the price payable is based on a historic set of accounts pre-signing which are subject to a due diligence review by the buyer. NAV / EBITDA adjustment is rarely seen unless the target is a listed target.

## Is there a collar on the purchase price adjustment?

Frequency/market practice: Rarely unless public companies are involved.

## Who usually prepares the closing balance sheet (where applicable)?

Frequency/market practice: The buyer usually has the responsibility of ensuring the target company prepares this, but the seller can also be responsible, especially where the seller stays on, e.g., in owner-managed companies with earn-out arrangements.

## Is the balance sheet audited (where applicable)?

Frequency/market practice: Rarely; it is typically reviewed by the auditors but not fully audited.

## Is an earn-out common?

Frequency/market practice: Fairly common in tech and industrials sectors and in private equity transactions when the sellers continue to manage the target company after closing. It is less common where the seller is completely exiting. Earn-outs are commonly capped. Recommend including worked examples or illustrations of the earn-out mechanics in the purchase agreements.

## Is a deposit common?

Frequency/market practice: Rarely except for sale of target companies holding real-property assets (where a 10% deposit is common)

## Is an escrow common?

Frequency/market practice: Fairly common; escrows are commonly used by private equity investors and strategic buyers. Private equity sellers are resistant to agreeing an escrow on the basis that it will not be able to distribute any contingent element of the consideration.

## Is a break fee common?

Frequency/market practice: Not common. Payment for exclusivity is rare, seller more likely to require buyer to enter into a binding term sheet.

# Agreeing to the acquisition agreement → Conditions precedent

## Express Material Adverse Event (MAE) closing condition?

Frequency/market practice: Rarely except for sale of target companies holding real-property assets where it is included either as a MAE or material damage; but seen - whether expressed as a condition or as a right to terminate - where there is a long delay between execution and completion.

## Is the MAE general or specific?

Frequency/market practice: General MAEs are seen, although MAEs are more likely to be specific.

## Is the MAE quantified?

Frequency/market practice: Fairly common; there is a tendency to encourage clients to be more specific. MAEs may be drafted in reference to a quantum or drafted in financial metrics, in particular any decrease in gross profit of the target company. It is more common for Singapore deals to have the MAE quantified (e.g., a 20% decline in revenue as compared to previous period quantified as an MAE). Quantum of threshold will depend on the industry involved, and the “lumpiness” of the target business.

# Agreeing to the acquisition agreement → Covenants

## Is a noncompete common?

Frequency/market practice: Fairly common.

## Is it common to use waterfall or blue pencil methods to interpret contractual provisions?

Frequency/market practice: Waterfall provisions are rarely used.

## Are nonsolicitation provisions (of employees) common?

Frequency/market practice: Fairly common (in conjunction with a non-compete). Common if sellers are exiting completely.

## Are nonsolicitation provisions (of customers) common?

Frequency/market practice: Fairly common (in conjunction with a non-compete) Common if sellers are exiting completely.

## Are seller restrictions usually imposed on the target business between signing the purchase agreement and closing?

Frequency/market practice: Fairly common, usually set out as a scheduled list of restrictions on seller preventing the target from actions adversely affecting the value of the target or having material effect on the target's business, and requiring the target to continue in the "ordinary course of business" pending completion and giving the buyer veto rights (subject to both applicable competition law and carve-outs).

## Is there broad access to books, records and management between signing and closing?

Frequency/market practice: Fairly common; this should generally be requested for private deals subject to common competition law compliance issues around potential "gun-jumping", such as the sharing of confidential information prior to completion of the transaction.

## Is it common to update warranty disclosure or notify of possible breach?

Frequency/market practice: Rarely, unless there is a significant gap (six months or more) between signing and closing, although limited to matters that have arisen since signing of the purchase agreement. Notification of breach is fairly common. In the case of a material breach, buyer typically negotiates for a right to terminate in the purchase agreement.

# Agreeing to the acquisition agreement → Representations and warranties

## Materiality in representations — how is it quantified (e.g., by a USD amount)?

Frequency/market practice: Fairly common; materiality qualifiers commonly seen but are often not quantified (other than specific warranties, e.g., contract value). Very common to see “de minimis” trigger (tipping basket) to warranty (and other contractual) claims.

## How is knowledge qualified (e.g., specific people, actual/constructive knowledge)?

Frequency/market practice: Knowledge qualifiers are often limited to the actual knowledge and reasonable enquiry of a specified list of members of senior management. We have seen deals involving multiple sellers where the purchase agreement separately defines the knowledge of each of the sellers.

## Is a warranty that there is no materially misleading/omitted information common?

Frequency/market practice: Fairly common; this is commonly requested in the buyer's draft, and can be contentious. Rarely in competitive auction seller's draft.

# Agreeing to the acquisition agreement → Repetition of representations and warranties

## Is it common to repeat warranties at all times between signing and closing?

Frequency/market practice: Rarely

## Is a bring-down certificate at closing common?

Frequency/market practice: Bring-down certificates are not very common.

## What is the applicable repetition standard, e.g., true in all material respects or Material Adverse Effect?

Frequency/market practice: True and accurate in all material respects is common but often carve out for fundamental representations and representations on regulatory compliance, which must be absolutely true.

## Is double materiality common (a materiality qualification in bring-down at closing and in representation(s))?

Frequency/market practice: Rarely; double materiality is usually avoided.

# Agreeing to the acquisition agreement → Limitations on liability

## What is the common cap amount (as a percentage of purchase price)?

Frequency/market practice: 20%-50% as common for business warranties, especially on auction sales. Fundamental warranties are limited at 100%. Any leakage from locked box to the seller's benefit have to be reimbursed on a dollar-for-dollar basis post-closing if identified before the typical limitation period of 3 to 12 months.

## Does the cap (and other liability limitations) apply to the whole agreement or just warranties (or particular terms)?

Frequency/market practice: Both seen regularly although buyers resist the whole agreement.

## What are the common exceptions to the cap?

Frequency/market practice: Fundamental warranties are sometimes accepted (e.g., title, capitalization, authority). Often, tax and specific areas of concern are also accepted, sometimes with specific higher caps. Separate for fundamental, tax and business warranties caps can be negotiated.

## Is a deductible or basket common?

Frequency/market practice: Deductible is usually resisted and a tipping basket is more common.

## Is a de minimis common?

Frequency/market practice: Fairly common: 0.1-0.3% for individual claims and 1-3% on basket claims.

## How long does seller liability survive?

Frequency/market practice: This is tied to one, and in rarer cases two, full year audit. Tax is commonly tied to the statutory limitation period (generally four years for Singapore income tax, and five years for Singapore goods and services tax, subject to exceptions). Title/capacity warranties usually have a longer period or are based on statutory limitations period (six years for Singapore). Locked box liability is typically limited to between three and 12 months.

## Are there any common carve-outs from limitation on seller liability (e.g., fraud, tax, key warranties)?

Frequency/market practice: Fraud is usually carved out. Tax is commonly longer (three to four years for Singapore) than general warranties.

## Is warranty insurance common?

Frequency/market practice: Used in private equity exits, becoming more common. Coverage options for warranty insurance products are increasing and in some instances, can be adapted to cover specific identified risks.

# Agreeing to the acquisition agreement → Set-offs against claims

## Is a set-off against claims for tax benefits common?

Frequency/market practice: Fairly common.

## Is a set-off against claims for insurance proceeds common?

Frequency/market practice: Fairly common for actually received insurance proceeds.

## Is a set-off against claims for third-party recoveries common?

Frequency/market practice: Fairly common for actually recovered from third parties.

# Agreeing to the acquisition agreement → Damages, knowledge

## Is there an obligation to mitigate damages?

Frequency/market practice: Mitigation is required by law and buyer's draft usually exclude the application of seller's limitations on liability for seller warranties from affecting common law rules on mitigation.

## Is there an exclusion of consequential damages?

Frequency/market practice: Fairly common.

## Are provisions that there is no liability if the buyer has knowledge common, or does buyer knowledge have no effect?

Frequency/market practice: It is fairly common to address the point as buyer's draft will often seek to exclude.

# Agreeing to the acquisition agreement → Dispute resolution

## Does local law allow for a choice of governing law?

Frequency/market practice: Yes

## What is the common governing law?

Frequency/market practice: Singapore law is generally adopted.

## Is litigation or arbitration more common? If arbitration, where?

Frequency/market practice: Arbitration in Singapore is very common but also Singapore courts, especially if contracting parties are both in Singapore.

# Agreeing to the acquisition agreement → Stamp duty and tax

## If stamp duty is payable, is it normally shared?

Frequency/market practice: The Singapore Stamp Duties Act requires the buyer to bear the expense of stamp duty, unless there is an agreement to the contrary. In practice, it is also common for the buyer to bear the amount of stamp duty.

## Is a separate tax covenant/indemnity or tax deed common?

Frequency/market practice: Rarely. It is more common to have a tax indemnity included in the purchase agreement. Warranty insurance coverage for tax related liabilities are increasingly being used in private equity deals.

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