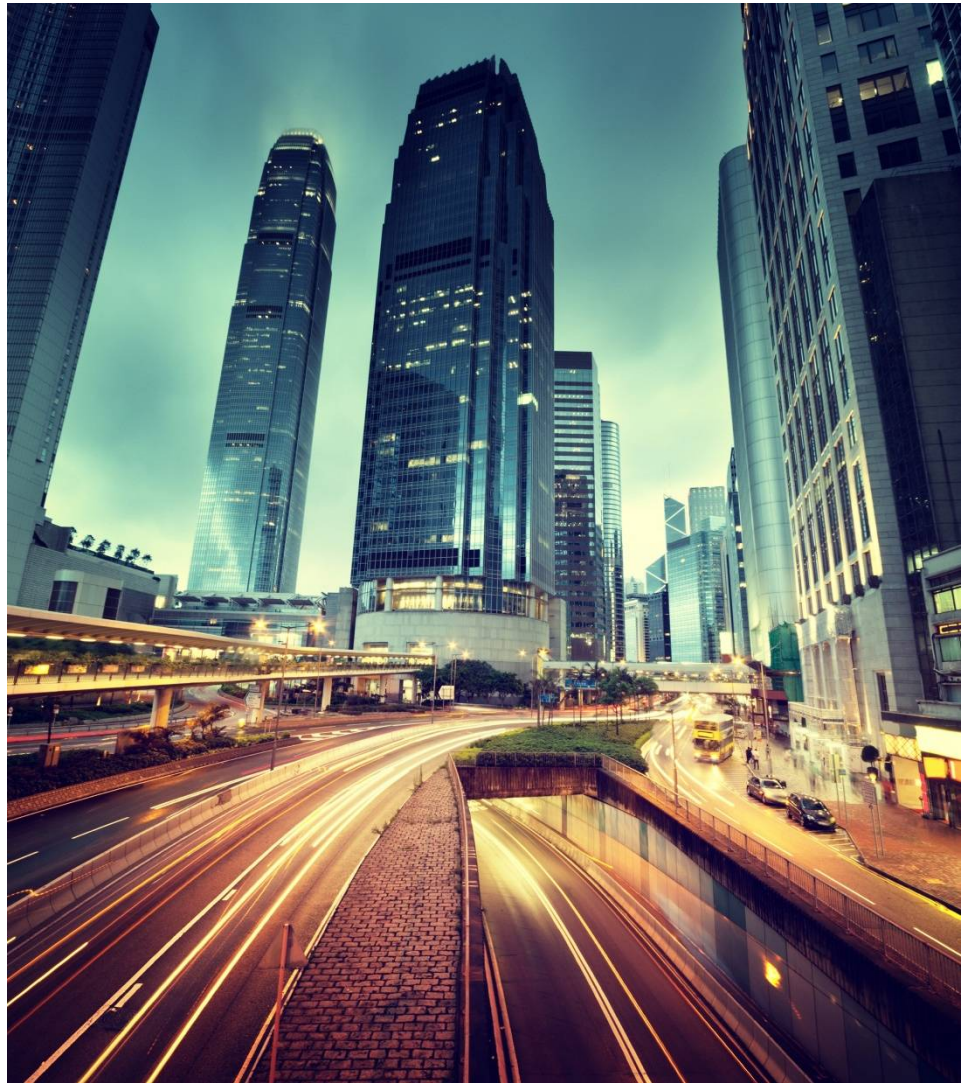


 **NORTON ROSE FULBRIGHT**

Asia M&A Deal Points Study

September 2019

Norton Rose Fulbright LLP



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Welcome to Norton Rose Fulbright's 2018 Asia Private M&A Deal Points Study, analysing 36 private cross-border M&A transactions in Asia with a combined value of close to US\$4 billion for the 2018 calendar year.

During the year, Norton Rose Fulbright was involved in a large number of cross-border deals in the Asian market, and our study provides unique insights into the key trends for private M&A deals in Asia generally. The study also analyses trends on a jurisdictional basis for Hong Kong, Singapore, Japan, mainland China and Malaysia.

The results provide a useful tool for deal teams in Asia, and those exploring opportunities to invest in Asia, to understand market practice for cross-border deals in this dynamic region.

We hope you enjoy reading the results of our 2018 Asia Private M&A Deal Points Study. Please contact a member of our M&A team in your nearest Norton Rose Fulbright office if you have any questions.



Introduction

**Top 10 in Hong Kong M&A League Table for
Legal Advisors by deal count in 2018 Full Year**
Bloomberg



2018 overview



36 sale agreements

Value of deals
US\$3,939 million
Average deal value
US\$109 million



Who we acted for

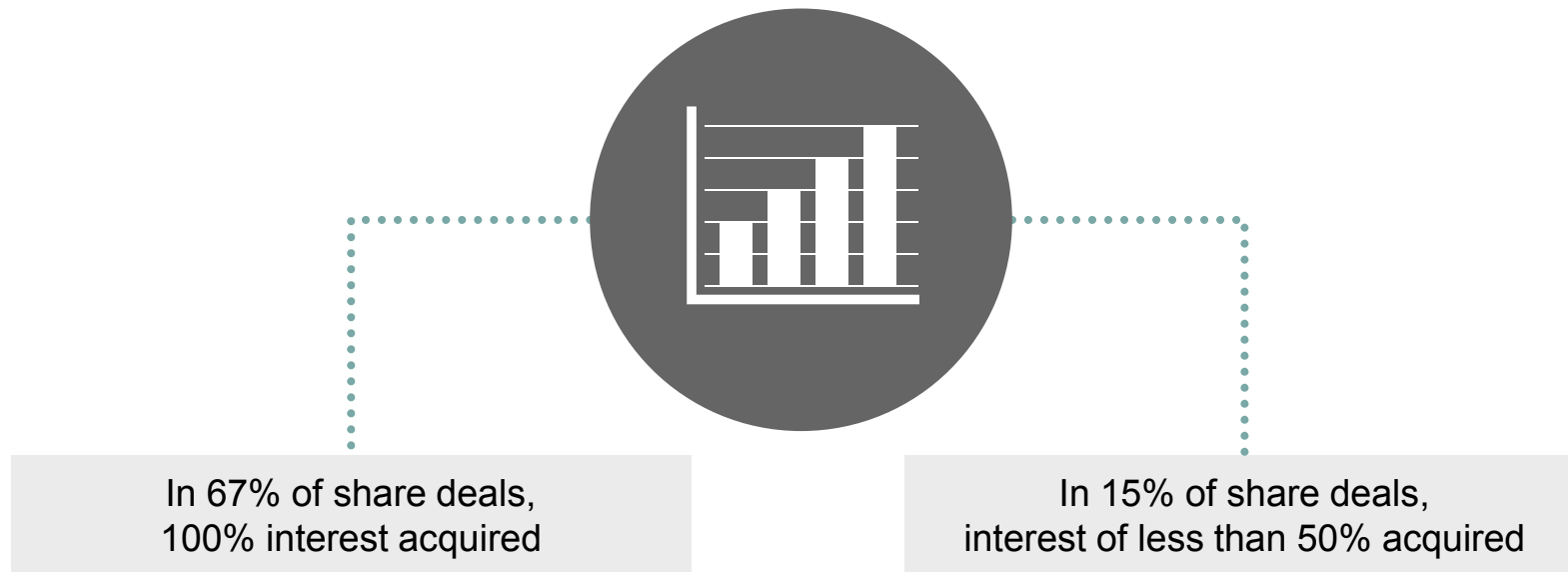
Seller: 39%
Buyer: 42%
W&I Insurer: 11%
Other: 8%



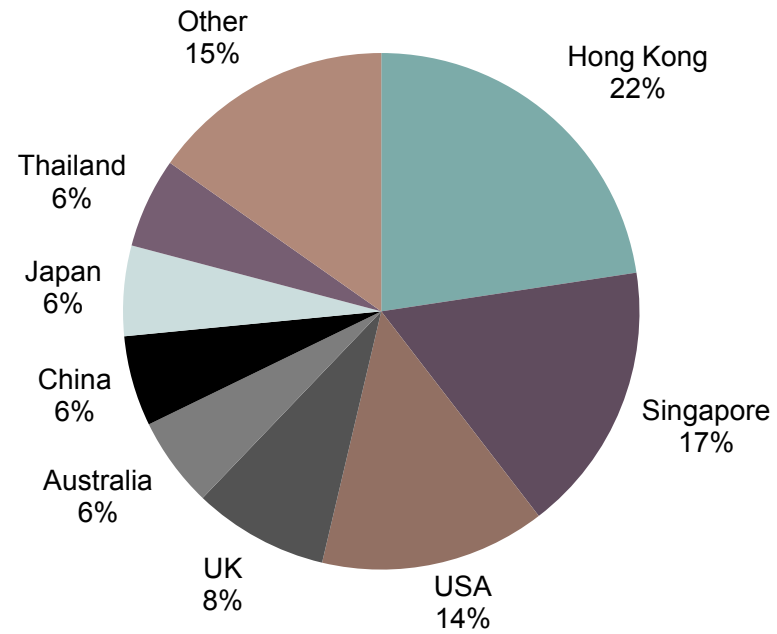
Type of transactions

Share sales: 92%
Business sales: 8%

Share sale features



Seller's ultimate country of origin (by deal number)



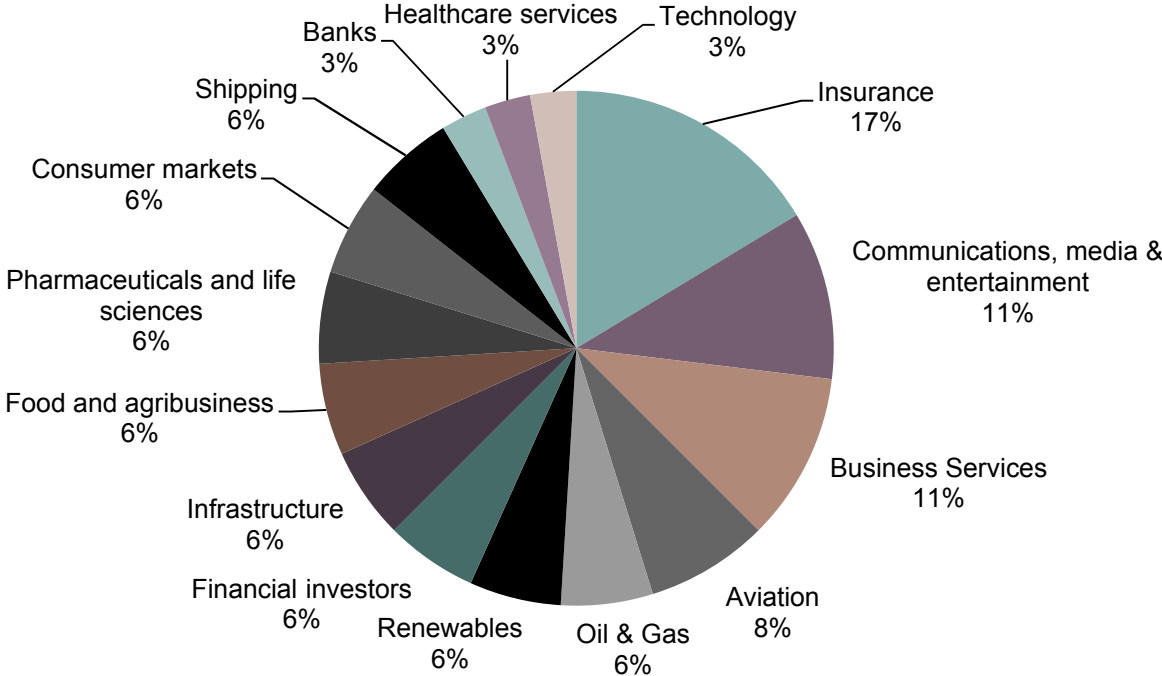
Buyer's ultimate country of origin and investment amount (by deal number)

Country of origin	% deals	Total investment amount (US\$)	% by value	Where are they investing?	(%)
United States of America	14%	949 million	24%	Australia: USA: Singapore: Other:	73% 22% 4% 1%
United Kingdom	14%	149 million	4%	Hong Kong:	100%
Singapore	14%	67 million	2%	Singapore: Philippines: Malaysia:	48% 29% 23%
China	11%	1,251 million	32%	United Kingdom: China: Hong Kong	69% 30% 1%
Other	47%	1,523 million	39%	Hong Kong: Taiwan: Thailand: Singapore: Other:	36% 35% 17% 7% 5%

Target jurisdiction and amount invested (by deal number)

Target jurisdiction	Total amount invested (US\$m)	% deals
United Kingdom	865m	3%
Australia	697m	3%
Hong Kong	696m	31%
Taiwan	530m	3%
China	386m	14%
Thailand	265m	8%
United States of America	173m	3%
Singapore	60m	17%
Other (including Philippines, Malaysia and Indonesia)	54m	18%

Industry (by deal number)

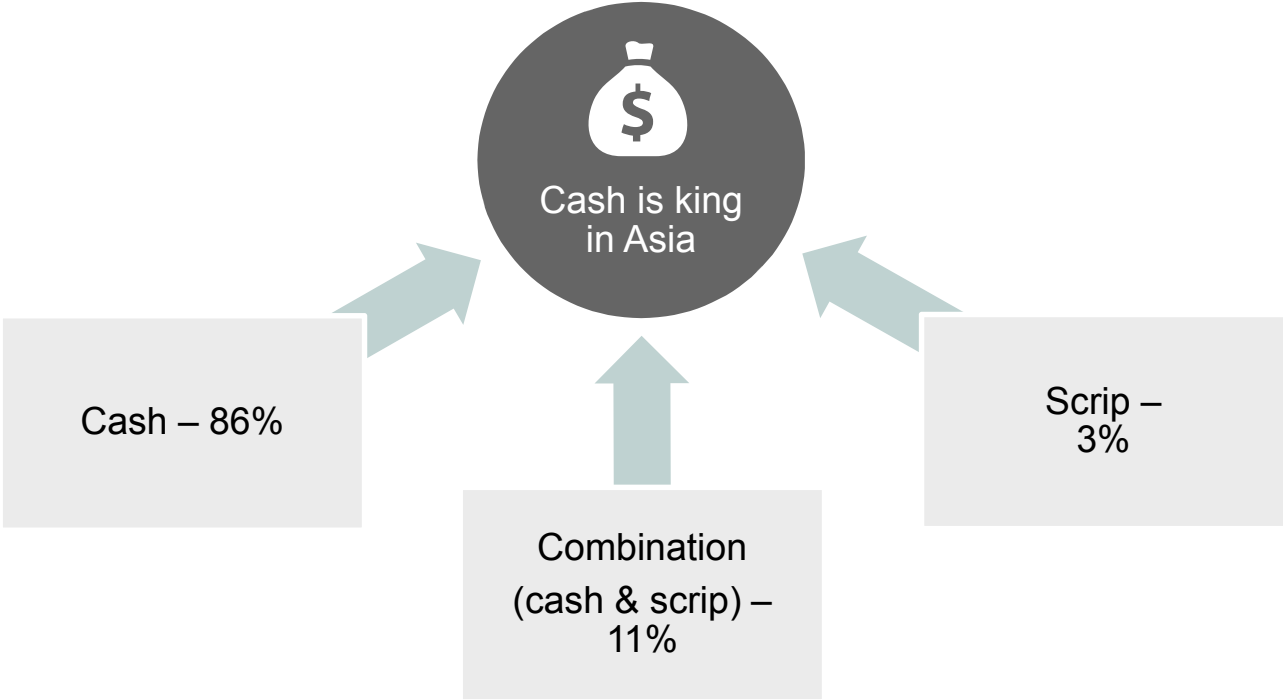




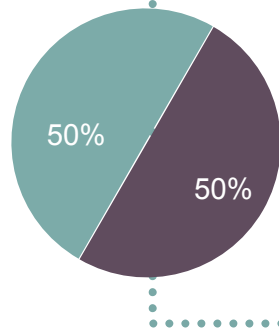
Pricing and valuation

We advised Renhe Commercial Holdings Company Limited on its HK\$6.3 billion acquisition of the land and properties on which Renhe Commercial operates its agricultural wholesale markets in Hangzhou, China.

Consideration



Completion accounting



50% of deals had no post-completion price adjustment mechanism

- Although this number seems high, reasons for no adjustment are
 - Locked box used
 - Parties were connected in some way and Buyer familiar with asset
 - Acquisition of minority stake
 - Valuation was a CP

50% of deals did have a post-completion price adjustment mechanism.

- The most common were
 - Net assets adjustment
 - Working capital adjustment
 - Combination of working capital & net cash adjustment

Locked box

19%

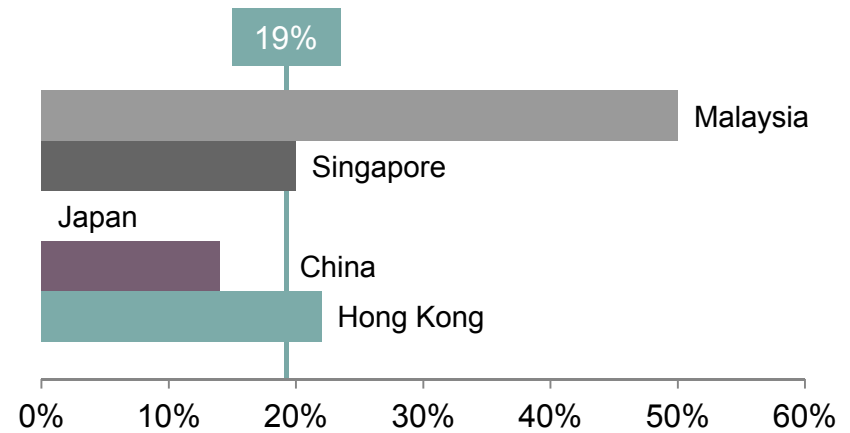
of deals used locked box

Locked box typically used for **higher value deals** (The average deal value was US\$205 million compared to an average deal value of US\$86 million for “non-locked box” deals)

Use of locked box **more common in Asia** than Australia - shows preference or price certainty among both buyers & sellers

Jurisdiction breakdown

% of deals with locked box



Earn out

17%

of deals contained earn-out provisions

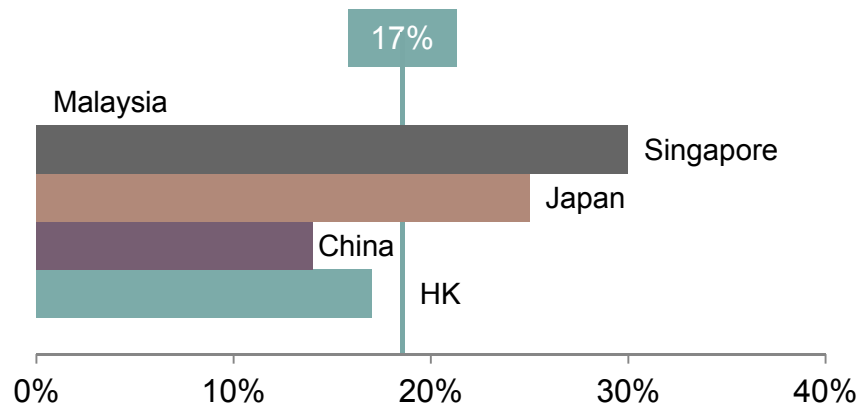
Earn out is usually more common for **lower value, more speculative deals** the average deal value of US\$54

Some key features

- Holdback period: range from 14 – 54 months
- The triggers for earn-out payment were calculated by reference to general revenue (50%) or EBITDA targets (17%), or specific targets (33%)

Jurisdiction breakdown

% of deals with earn-out





Conditionality

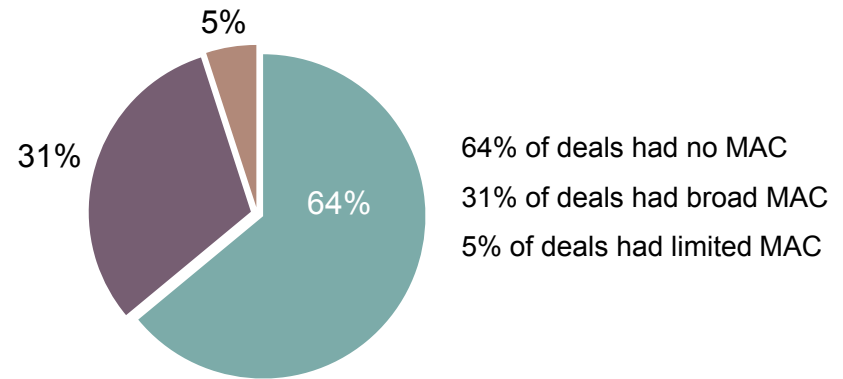
We advised Hyperion Insurance Group Ltd in relation to the US\$120 million acquisition by Howden Broking Group Limited of 60% of the issued share capital of IPG Asia Holdings Limited.

Conditionality – MAC

36%

of deals had a MAC as a condition

- Broad MACs used for **higher value deals** (The average deal value was US\$184 million compared to an average deal value of US\$23 million for limited MACs and an average deal value of US\$81 million for deals without MACs)
- Use as renegotiation tool if potential MAC arises?
- MAC conditions typically less common in Hong Kong (and this year less common in Singapore and Malaysia too)



Jurisdiction breakdown

	HK	China	Japan	Singapore	Malaysia
% of deals no MAC	72%	57%	50%	80%	100%
% deals broad MAC	28%	43%	50%	20%	-
% deals limited MAC	-	-	-	-	-

Conditionality – regulatory approvals

39%

of deals had this condition

8% of deals had a very buyer-friendly general condition that “all necessary” governmental waivers and approvals are obtained

Jurisdiction breakdown

	HK	China	Japan	Singapore	Malaysia
% of regulatory approvals condition (any)	17%	43%	25%	40%	100%
% with very “buyer-friendly” broad regulatory approvals condition	-	14%	-	10%	-

Conditionality – breach of warranty

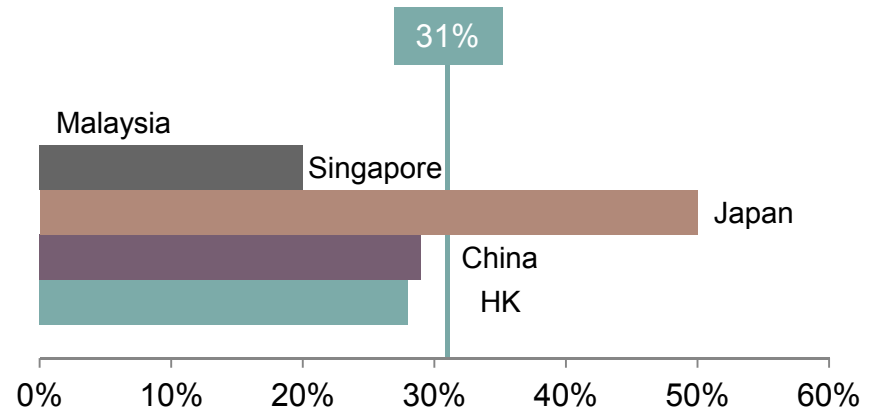
31%

of deals had this condition

- Seen across the spectrum of deal sizes (most common in deals in the range of US\$200 million to US\$500 million)

Jurisdiction breakdown

% of deals with breach of warranty condition



Other common conditions



Key employees retained
Condition seen in 11% of deals



Due diligence
Condition seen in 11% of deals



Competition authority clearance
Condition seen in 11% of deals



Pre-Completion restructuring
Condition seen in 22% of deals



Purchaser finance
Condition seen in 14% of deals

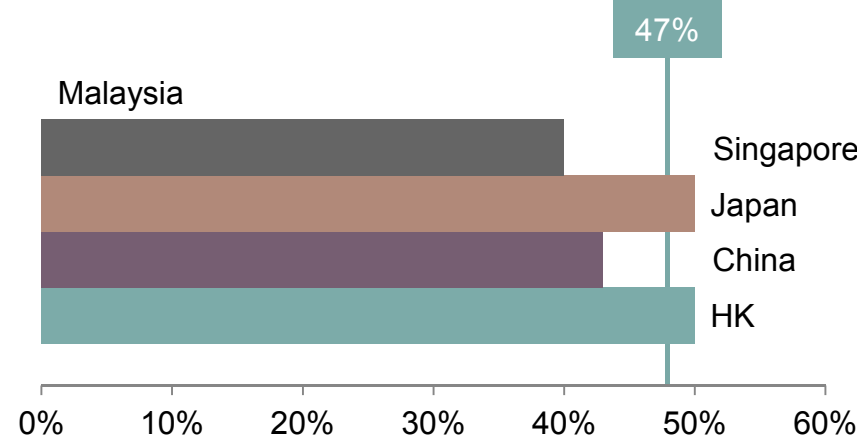


Warranties and limitation regime

We advised Michelin on its US\$ 545 million acquisition of PT Multistrada Ara Sarana Tbk (a listed public company in Indonesia) pursuant to a private sale and purchase agreement and a subsequent mandatory tender offer.

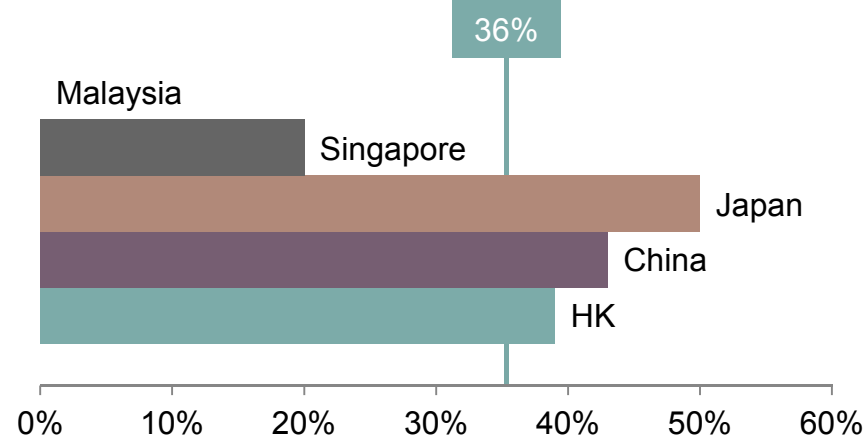
Warranties – disclosure materials

Accuracy warranty – in 47% of deals



Jurisdiction breakdown
% of deals with accuracy warranty

Completeness warranty – in 36% of deals



Jurisdiction breakdown
% of deals with completeness warranty

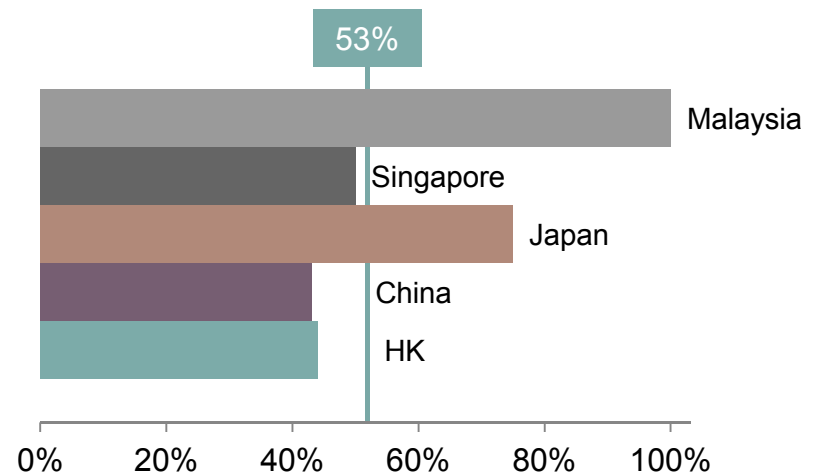
Warranties – anti-bribery and corruption

53%

of deals had ABC warranties

- 100% of deals with Malaysian targets had ABC warranties
- Otherwise, target jurisdictions varied
- Seen in deals of all sizes, but common in higher value deals (the average deal value was US\$143 million compared to an average deal value of US\$72 million for deals without the warranty)

Jurisdiction breakdown
% of deals with ABC warranty



Warranties – management accounts

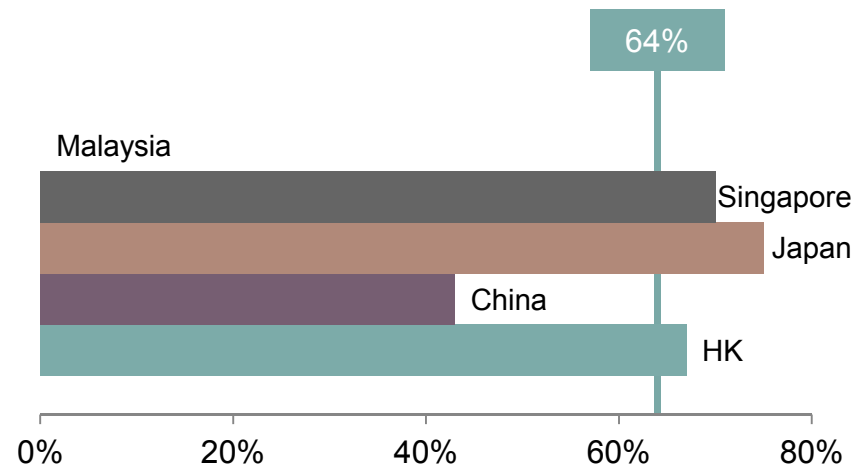
64%

of deals had management accounts warranty

Less common in Chinese deals (43%). Chinese sellers were reluctant to give it: no Chinese sellers gave a management accounts warranty. Also uncommon with Chinese buyers: only seen in 25% of the deals

Jurisdiction breakdown

% of deals with management accounts warranty



Warranties – management accounts (cont.)

Standard to which management accounts were warranted

Jurisdiction breakdown

	HK	China	Japan	Singapore	Malaysia	All deals
Fairly presents	33%	-	67%	-	-	22%
Prepared with due care and attention/reasonable care	42%	-	33%	29%	-	30%
Reasonable view	17%	100%	-	-	-	22%
Prepared on a consistent basis with past practice	8%	-	-	29%	-	13%
True & fair view (audit standard)	-	-	-	43%	-	13%

Warranties – audited accounts

75%

of deals had warranties relating to audited accounts

25%

of deals which did not contain audited accounts warranties explained by:

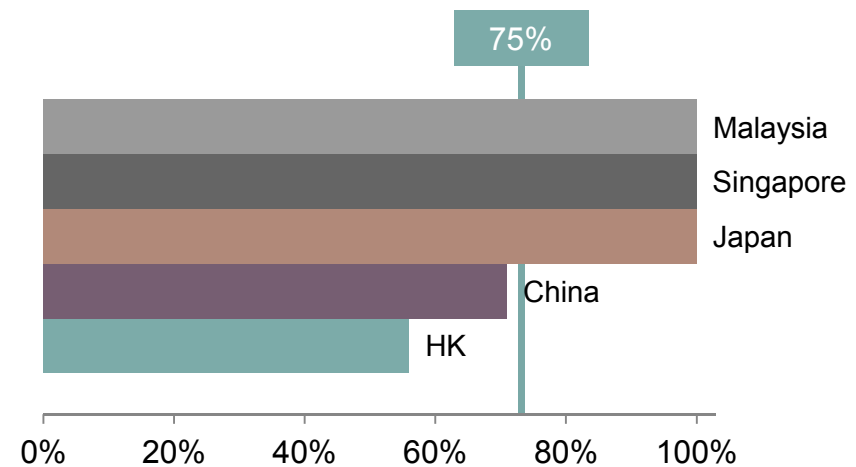
- <100% interest acquired / being an existing shareholder
- Delivery of a valuation report was a CP to completion
- Business sale
- No requirement for audited accounts in target's jurisdiction

70%

of agreements which contained audited accounts warranty also included monthly management accounts warranty

Jurisdiction breakdown

% of deals with audited accounts warranty



Warranties – consequences of breach

36%

of deals had indemnity backing for breach of warranty

- **Larger deal value** (average US\$184 million)

64%

of deals did not

- **Smaller deal value** (average US\$68 million)

Who is resisting giving indemnity backing?

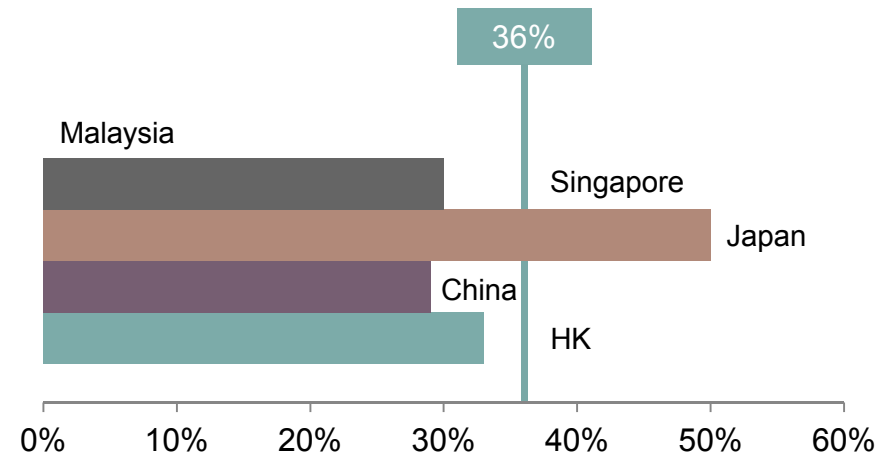
- US, UK and Japanese sellers all resisted
- All Chinese sellers gave indemnity backing

Who really cares about this?

- Japanese and US buyers sought it
- 75% of Chinese buyers didn't have indemnity backing
- No UK or Australian buyers received indemnity backing

Jurisdiction breakdown

% of deals with indemnity backing for warranties



Limitation of liability – monetary liability caps

	<US\$50m	US\$50m - US\$100m	US\$100m - US\$200m	US\$200m - US\$500m	>US\$500m	All deals
Max aggregate liability	100%	Uncapped	60%	100%	55%	100%
Title	100%	100%	100%	100%	59%	100%
General	40%	17%	20%	25%	14%	30%
Tax	40%	Uncapped	18%	25%	20%	30%

* Very few of these deals were subject to any cap.

Limitation of liability – monetary liability caps (cont.)

	HK	China	Japan	Singapore	Malaysia	Median – all deals
Max aggregate liability	100%	100%	20%	100%	75%	100%
Title	100%	59%	100%	100%	100%	100%
General	30%	18%	20%	30%	30%	30%
Tax	28%	30%	20%	40%	30%	30%

A significant number of deals (19%) had **no monetary liability caps** at all

	HK	China	Japan	Singapore	Malaysia	All deals
No liability caps	17%	57%	-	-	-	19%

Limitation of liability – general comments



Title warranties

Generally set at 100%
of purchase price
irrespective of deal value



General warranties

Tended to be higher for
smaller deal values
(range 40% - 100%) but
lower for higher deal
values (10% - 30%)



Tax warranties

Generally set at or just
above general warranties
irrespective of deal value

Limitation of liability – time limits (general)

		Title warranties (months)	General warranties (months)	Tax warranties (months)
Uncapped		22% of deals had uncapped time limits for title warranties	19% of deals had uncapped time limits for general warranties	31% of deals had uncapped time limits for tax warranties
Capped deals	Mode	12 & 36	18	36 (followed by 72)
	Average	36.7	21.1	50.7
	High	84	36	84
	Low	12	12	12

Limitation of Liability – time limits (months, by deal value)

	<US\$50	US\$50m – US\$100m	US\$100m – US\$200m	US\$200m – US\$500m	>US\$500m	All deals
Title	36.3 Uncapped: 25%	48.0 Uncapped: -	33.5 Uncapped: 33%	24.0 Uncapped: 25%	46.0 Uncapped: -	36.7 Uncapped: 22%
General	21.3 Uncapped: 25%	27 Uncapped: -	24.3 Uncapped: -	16.0 Uncapped: 25%	18.0 Uncapped: -	21.1 Uncapped: 19%
Tax	46.4 Uncapped: 38%	60.0 Uncapped: -	48.0 Uncapped: 33%	38.3 Uncapped: 25%	80.0 Uncapped: -	50.7 Uncapped: 31%

Limitation of Liability – time limits (months, by jurisdiction)

	HK	China	Japan	Singapore	Malaysia
Title	Mode: 36 High: 84 Min: 12 Av: 32.9 Uncapped: 17%	Mode: 72 High: 72 Min: 18 Av: 49.5 Uncapped: 43%	Mode: - High: 72 Min: 12 Av: 40.0 Uncapped: 25%	Mode: 12 High: 84 Min: 12 Av: 30.0 Uncapped: 10%	Mode: - High: 18 Min: 12 Av: 15.0 Uncapped: -
General	Mode: 18 High: 36 Min: 12 Av: 23.3 Uncapped: 17%	Mode: 18 High: 24 Min: 18 Av: 20.0 Uncapped: 57%	Mode: - High: 30 Min: 12 Av: 21.0 Uncapped: -	Mode: 12 High: 30 Min: 12 Av: 19.2 Uncapped: -	Mode: - High: 18 Min: 12 Av: 15.0 Uncapped: -
Tax	Mode: 36 High: 84 Min: 12 Av: 40.7 Uncapped: 28%	Mode: - High: 84 Min: 36 Av: 64.0 Uncapped: 57%	Mode: - High: 84 Min: 36 Av: 60.3 Uncapped: -	Mode: - High: 84 Min: 24 Av: 54.0 Uncapped: 20%	Mode: - High: 60 Min: 18 Av: 39.0 Uncapped: -

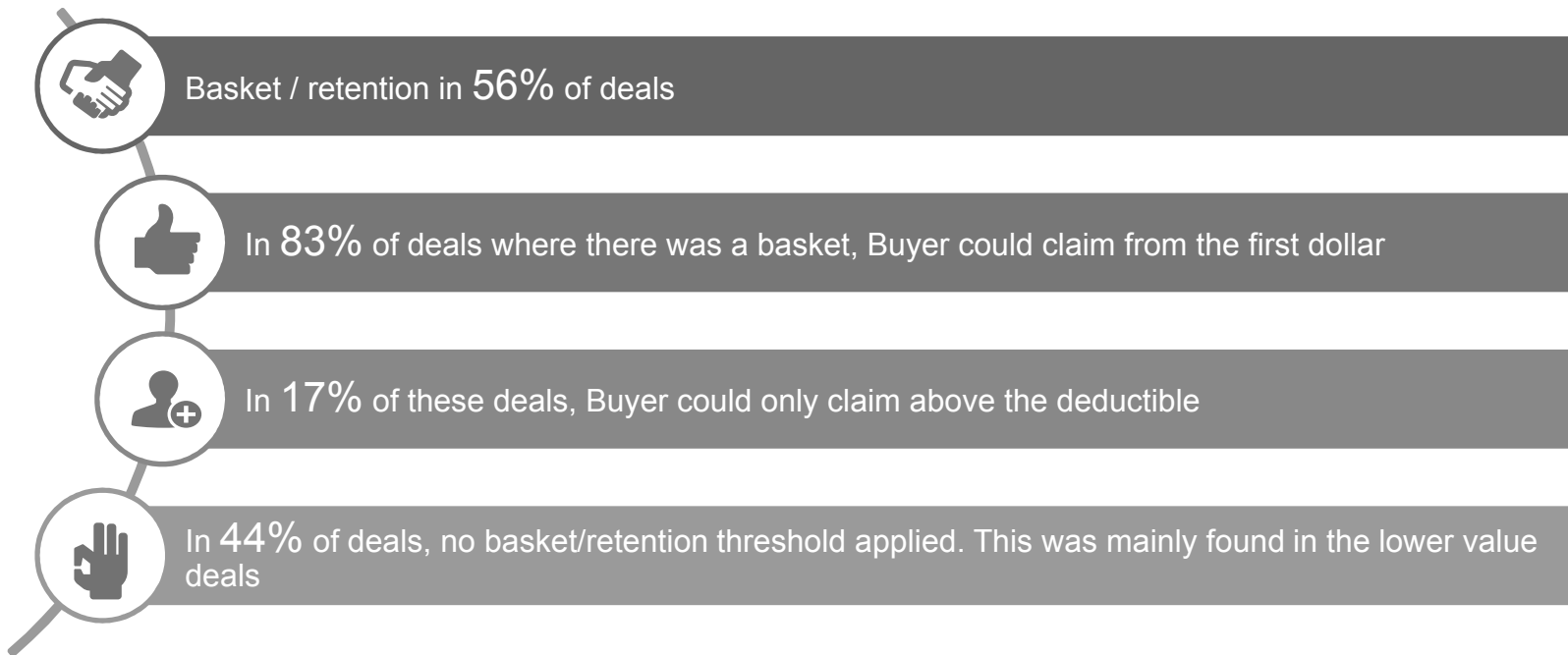
Limitation of liability – de minimis and basket (by deal value)

	<US\$50m	US\$50m - US\$100m	US\$100m - US\$200m	US\$200m - US\$500m	>US\$500m	All deals
De minimis	Mode: 0.1%	Mode: -	Mode: 0.1%	Mode: -	Mode: 0.1%	Mode: 0.1%
	Av: 0.98%	Av: 0.08%	Av: 0.11%	Av: 0.09%	Av: 0.08%	Av: 0.55%
	Uncapped: 50%	Uncapped: -	Uncapped: -	Uncapped: 25%	Uncapped: -	Uncapped: 36%
Basket	Mode: 2.0%	Mode: -	Mode: -	Mode: 1.0%	Mode: -	Mode: 1%
	Av: 4.53%	Av: -	Av: 0.78%	Av: 1.1%	Av: 0.8%	Av: 3.08%
	Uncapped: 50%	Uncapped: 100%	Uncapped: -	Uncapped: 25%	Uncapped: 33%	Uncapped: 44%

Limitation of liability – de minimis and basket (by jurisdiction)

	HK	China	Japan	Singapore	Malaysia
De minimis	Mode: 0.10%	Mode: -	Mode: 0.10%	Mode: 0.10%	Mode: -
	Av: 0.73%	Av: 0.12%	Av: 0.10%	Av: 0.50%	Av: 0.45%
	Uncapped: 39%	Uncapped: 57%	Uncapped: -	Uncapped: 20%	Uncapped: -
Basket	Mode: 1.00%	Mode: -	Mode: -	Mode: -	Mode: -
	Av: 4.22%	Av: 1.20%	Av: 0.80%	Av: 1.87%	Av: 1.79%
	Uncapped: 44%	Uncapped: 57%	Uncapped: 25%	Uncapped: 30%	Uncapped: -

Limitation of liability – basket and retention threshold



Limitation of liability – seller knowledge qualifier



In **78%** of deals a selection of warranties were qualified by reference to Seller/Warrantor knowledge.

- In **25%** of these deals the qualifier was expressed to be on the basis of **actual knowledge** of seller
- In **75%** of these deals the qualifier was expressed to be on the basis of **constructive knowledge** (or both actual and constructive)

Use of “actual” knowledge places higher burden on the Buyer to prove “actual” knowledge.

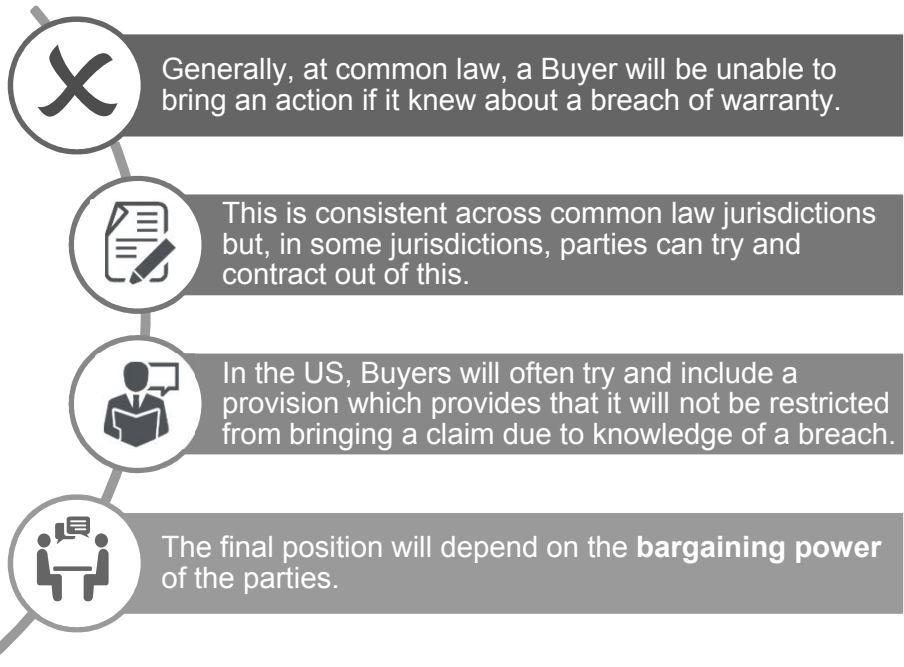
By deal value


	<US\$50m	US\$50m - US\$100m	US\$100m - US\$200m	US\$200m- US\$500m	>US\$500m	All deals
Total qualified	75%	50%	100%	75%	100%	78%
Actual	17%	-	-	67%	67%	25%
Constructive / Both	83%	100%	100%	33%	33%	75%

By jurisdiction


	HK	China	Japan	Singapore	Malaysia
Total qualified	72%	71%	100%	80%	100%
Actual	31%	-	25%	-	-
Constructive / Both	69%	100%	75%	100%	100%

Limitation of liability – buyer knowledge qualifier





In **36%** of agreements, Buyer knowledge limits Seller liability on warranty claims.



8% of these agreements were limited by the constructive knowledge of the Buyer.

92% of these agreements were limited by the actual knowledge of the Buyer.

Limitation of liability – public searches

44%

of agreements contained a limitation of liability for public searches, of which:

100% corporate searches (e.g., companies registry or similar)

63% court searches

13% “all registers open to the public”

By jurisdiction

	HK	China	Japan	Singapore	Malaysia
% of agreements with limitation	33%	43%	75%	60%	100%
Corporate searches	100%	100%	100%	100%	100%
Court searches	83%	33%	67%	67%	-
All registers open to the public	-	-	-	33%	-

Limitation of liability – disclosure shield



Seller disclosure limited liability of Sellers in 78% of sale agreements.

- In 93% of these agreements, the disclosure applied against all warranties.
- In remaining 7% agreements, only certain warranties were disclosed against.



	HK	China	Japan	Singapore	Malaysia
% of agreements with limitation	72%	57%	100%	100%	100%
% applied against all warranties	100%	100%	100%	90%	100%
% applied against some only	-	-	-	10%	-

	HK	China	Japan	Singapore	Malaysia
% of all deals	56%	43%	100%	80%	100%
% of deals where disclosure shield limited liability	77%	75%	100%	80%	100%



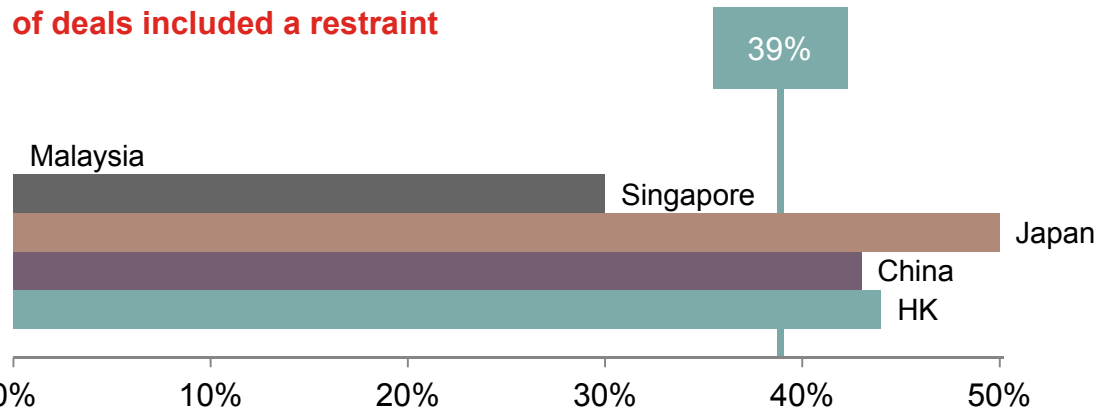
Disclosure letter used:

- in **58%** of all deals
- in **75%** of deals where disclosure shield limited liability

“**Fairly disclosed**” is the most common disclosure standard, followed by “disclosed” and “fully and fairly disclosed”

Restraint

39%
of deals included a restraint



Restraint area

Target jurisdiction	HK	China	Japan	Singapore	Malaysia
Most common:	Worldwide (i.e., any location where the business operates)	PRC	Worldwide (i.e., any location where the business operates)	South East Asian countries	N/A



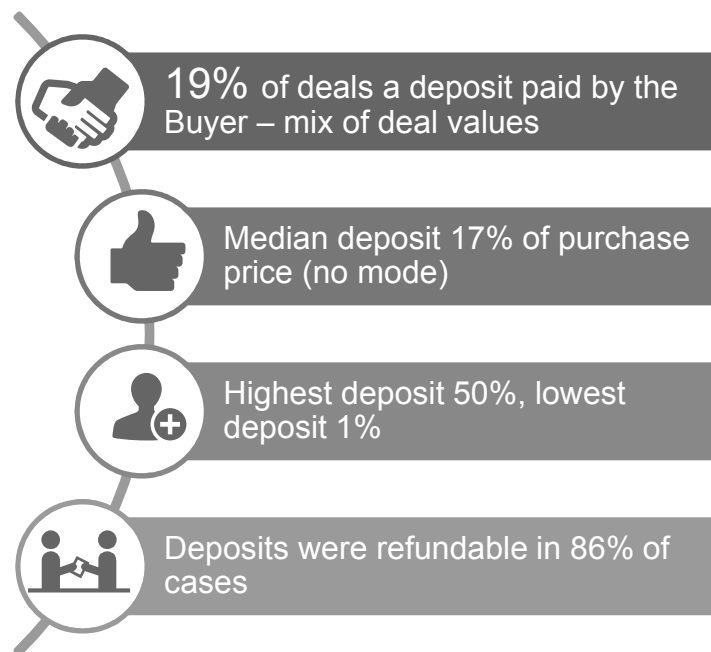
- Use did not depend on deal value
- Restraint period:
 - Mode: 2 years & 3 years
 - Low : 1.5 years
 - High: 7 years



Deal protection

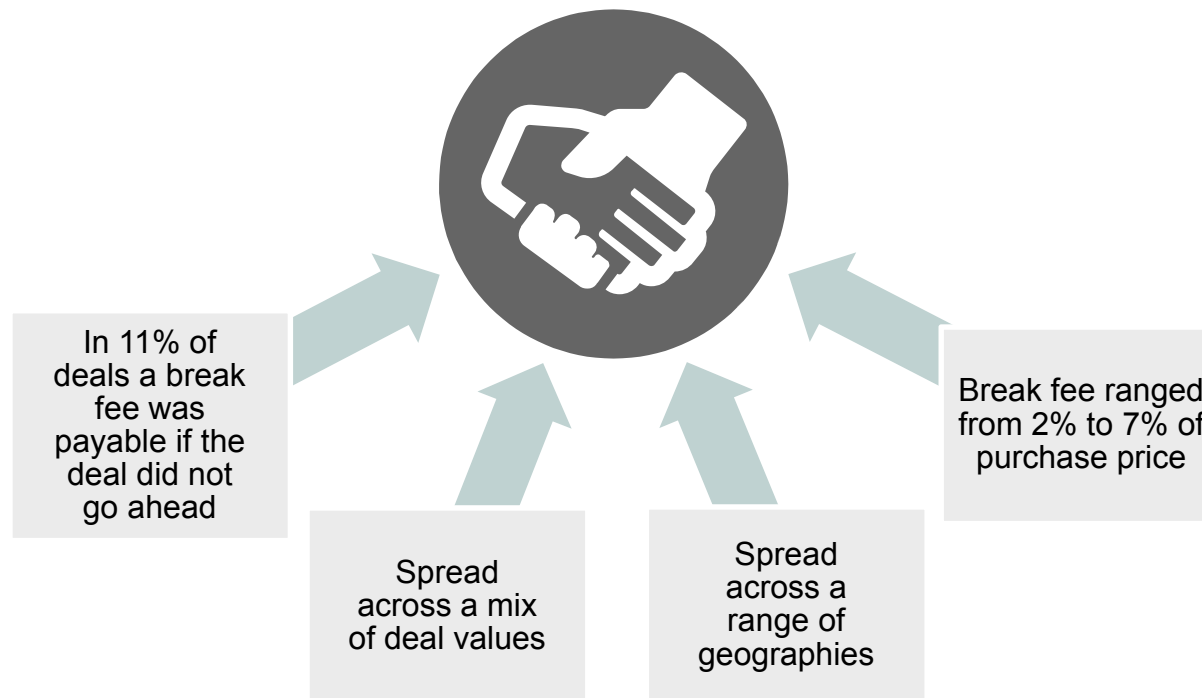
We advised Japanese power companies JERA Co., Inc. and TEPCO Power Grid on an agreement to invest up to £25 million in the UK battery storage developer and operator, Zenobe Energy. The investment is one of the largest direct investments from Japan into the UK battery storage sector.

Deal protection – deposit



	HK	China	Japan	Singapore	Malaysia
% of all deals	17%	14%	-	30%	-
% of PP (median)	17%	40%	-	4%	-
% of PP (high)	50%	-	-	9%	-
% of PP (low)	1%	-	-	1%	-
% of deals with deposit where deposit was non-refundable?	-	-	-	67%	-

Deal protection – break fee



Deal protection – guarantees



	HK	China	Japan	Singapore	Malaysia
Guarantee of Buyer's obligations	17%	14%	25%	10%	-
Guarantee of Seller's obligations	22%	14%	25%	10%	-

Escrow



Only 14% of deals had escrow account



Generally used on higher value deals



Escrow periods ranged from
12 to 18 months



Each escrow used for a particular purpose

Retention amounts



11% of deals had retention amounts
(more common on lower value deals)



The amount withheld ranged from 25%
to 48% of purchase price



Retention periods ranged from
2 to 14 months



Not common for a Buyer to be able to
deduct amounts for losses resulting from
breaches of warranty



Dispute resolution

We advised petrochemical company IRPC Public Company Limited on its equity investment in Guangzhao Saiju Performance Polymer Ltd. by way of subscription of newly increased capital and the simultaneous establishment of a joint venture company in Thailand.

Dispute resolution



- **Arbitration** is preferred dispute resolution mechanism (61% of deals)
- **Litigation** dispute resolution in 39% of deals

	HK	China	Japan	Singapore	Malaysia
Arbitration	56%	71%	100%	70%	100%
Litigation	44%	29%	0%	30%	0%

Most common arbitration forums

- Singapore (SIAC) (41%)
- Hong Kong (HKIAC) (36%)
- England (LCIA) (14%)
- Hong Kong (ICC) (9%)

Number of arbitrators

- 77% of deals had 3 arbitrators
 - Average deal value was US\$154 million
- 23% of deals had 1 arbitrator
 - Average deal value was US\$22 million

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