

Asia M&A Deal Points Study

January 2021



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Welcome to Norton Rose Fulbright's Asia Private M&A Deal Points Study, analyzing a sample of 34 recent private cross-border M&A transactions in Asia with a combined value of over US\$7 billion.

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, Malaysia and Thailand.

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.

Please note that the data analyzed in our study precedes the outbreak of COVID-19 and so our findings do not reflect the impact that Coronavirus has had on deal making in the region and on certain deal terms.

We hope you enjoy reading the results of our 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

An aerial view of the Hong Kong skyline at dusk. The sky is a deep blue with wispy clouds tinged with purple and pink. The city is densely packed with skyscrapers, with the Victoria Harbour in the center. The water reflects the city lights and the sky. In the background, there are mountains under the twilight sky.

**No. 2 in Hong Kong M&A League Table for
Legal Advisors by deal value in 2019 Full Year**
Bloomberg

Overview

34

sale agreements

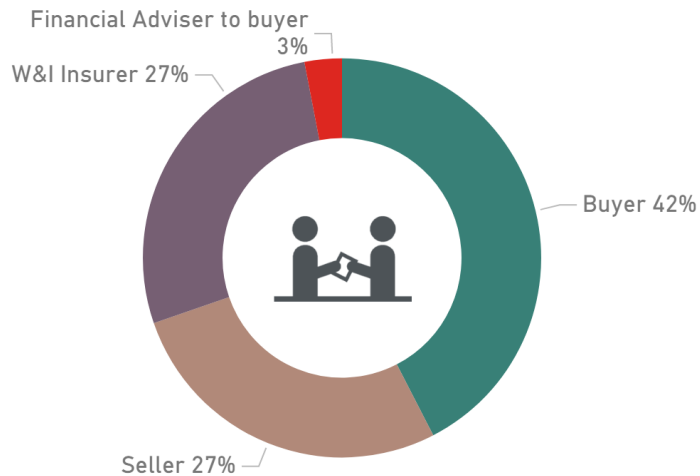
\$7,221M

Total deal value (USD)

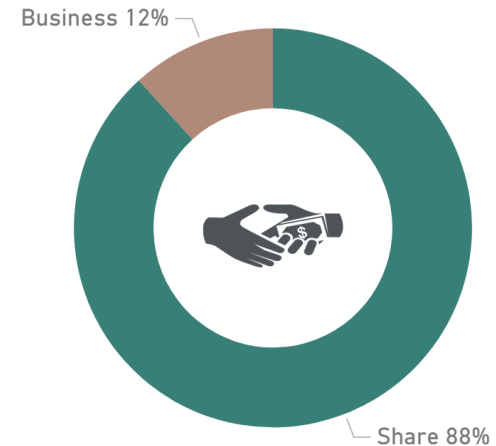
\$212M

Average deal value (USD)

Who we acted for



Transaction type (no. of deals)



Share sale features

60 %

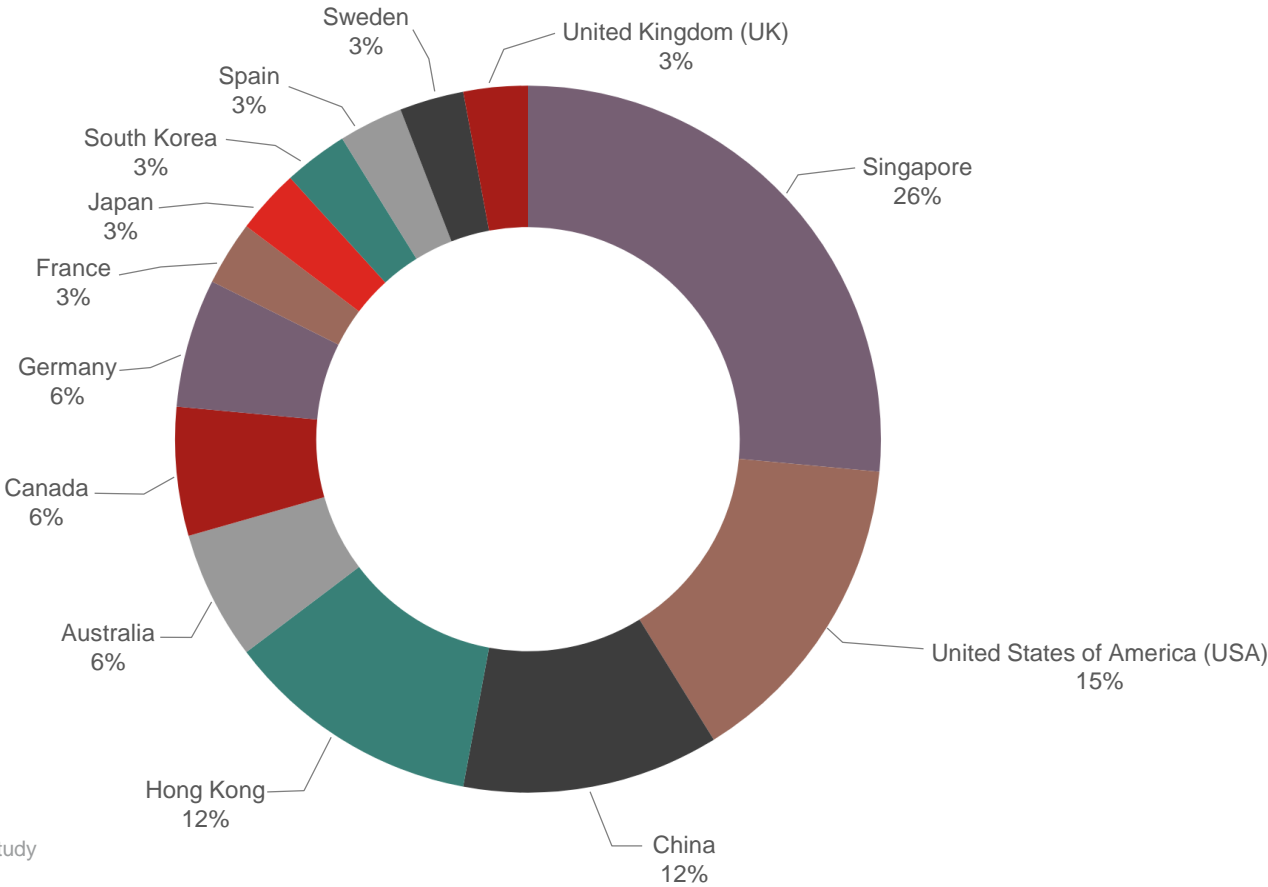
of deals acquired 100% interest



17 %

of deals acquired less than 50% interest

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



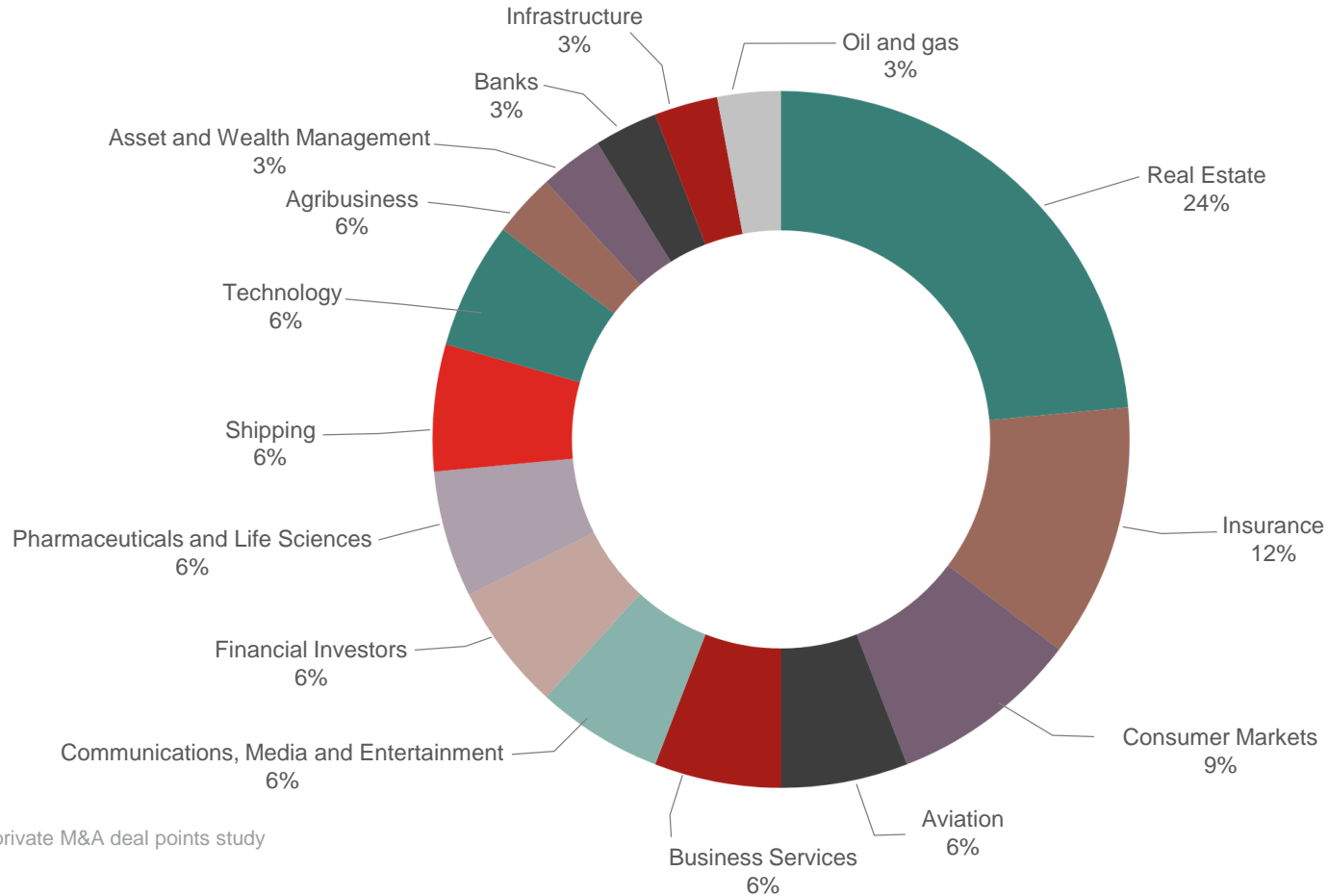
Buyer's ultimate jurisdiction / country of origin and investment amount (by deal number)

Jurisdiction / Country of origin	% deal number	Total investment amount (US\$)	% by value	Where are they investing?	(%)
United States of America (USA)	15%	\$3,383M	47%	Japan: China: United States of America (USA): Singapore:	65% 28% 6% 1%
France	15%	\$52M	1%	Singapore: Hong Kong: Thailand:	90% 6% 4%
Hong Kong	12%	\$511M	7%	Thailand: Hong Kong: Macau:	47% 34% 19%
Singapore	12%	\$404M	6%	Singapore: Spain: Malaysia:	65% 32% 3%
China	9%	\$929M	13%	United Kingdom (UK): Hong Kong:	93% 7%
Other	37%	\$1,941M	27%	South America: Canada: Australia: Singapore: Other:	40% 28% 14% 10% 8%

Target jurisdiction and amount invested (by deal number)

Target jurisdiction	% deals by number	Total amount invested (US\$m)	% deals by investment amount
Hong Kong	32%	\$364M	5%
Singapore	26%	\$540M	7%
Thailand	6%	\$245M	3%
United Kingdom	6%	\$889M	12%
China	6%	\$935M	13%
Other (including South America, Australia, Japan, Malaysia and Canada)	24%	\$4,248M	60%

Industry (by deal number)

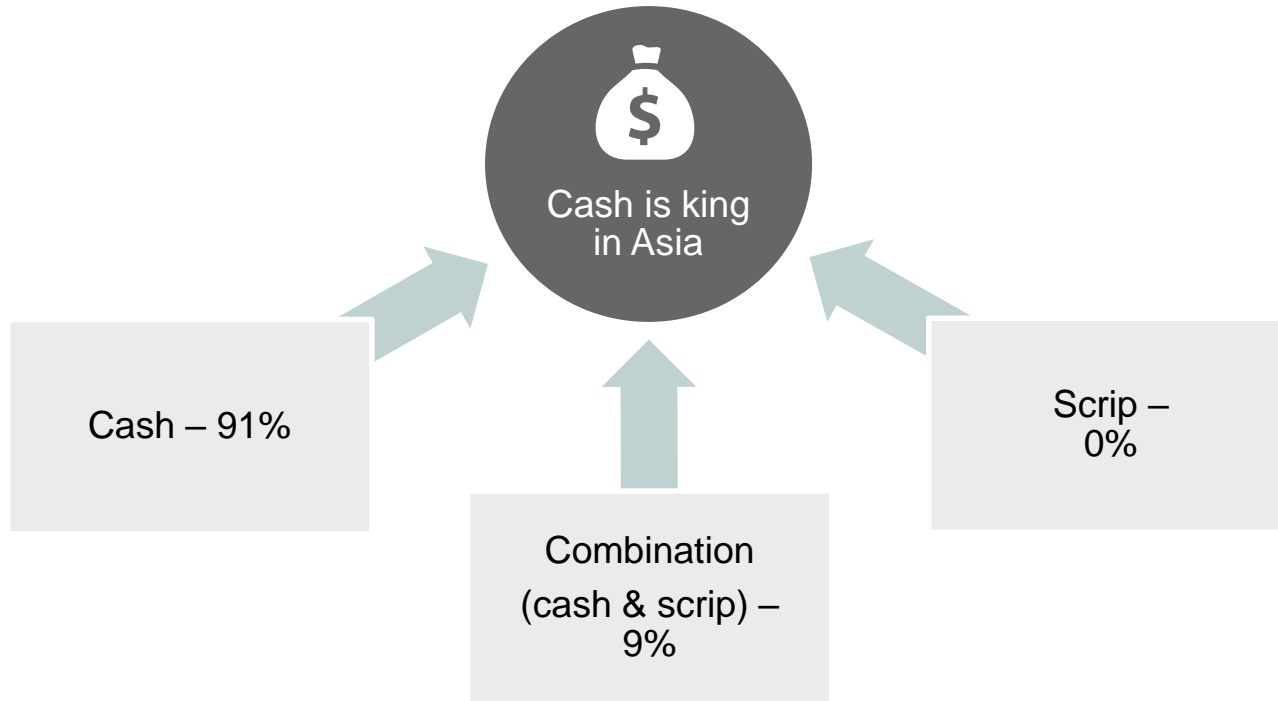




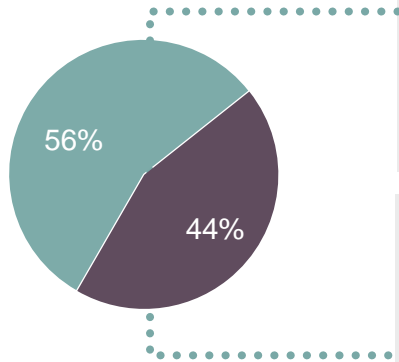
Pricing and valuation

We advised China Mengniu Dairy Company Limited on its AU\$1.5 billion acquisition of Bellamy's Australia Limited by way of a recommended scheme of arrangement.

Consideration



Completion accounting



56% 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

44% 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

18%

of deals used a locked box

Average deal value

\$178M

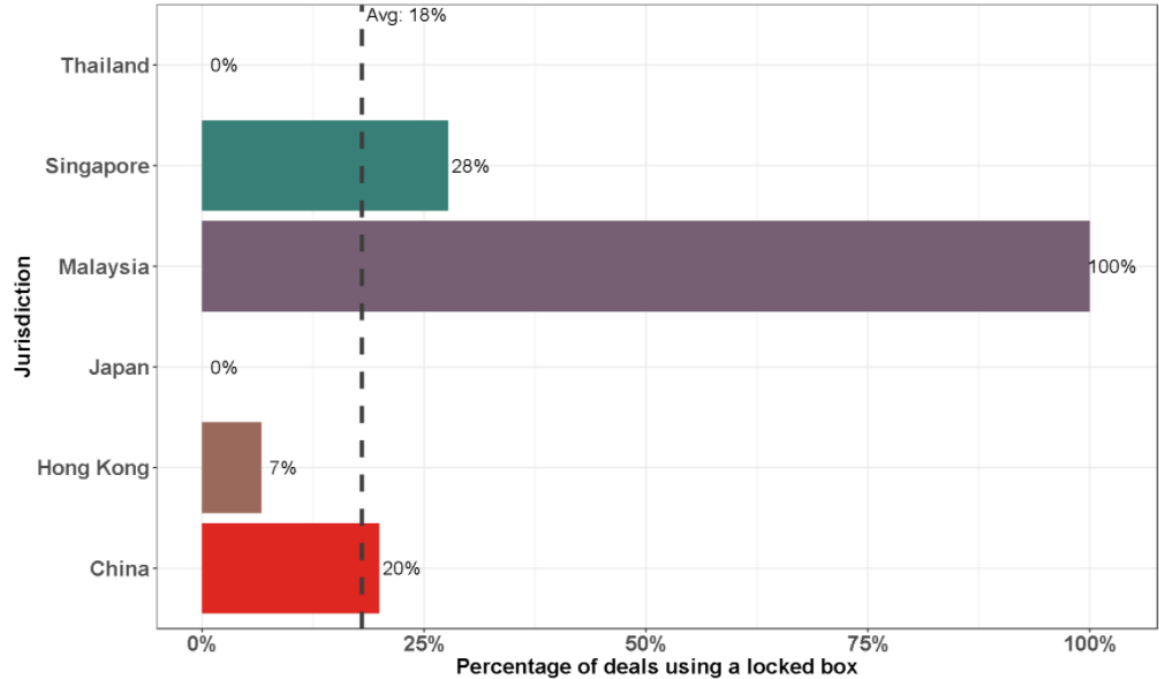
Deals with locked box

\$221M

Deals without locked box

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

Jurisdiction breakdown



Earn out

26%

of deals contained earn-out provisions

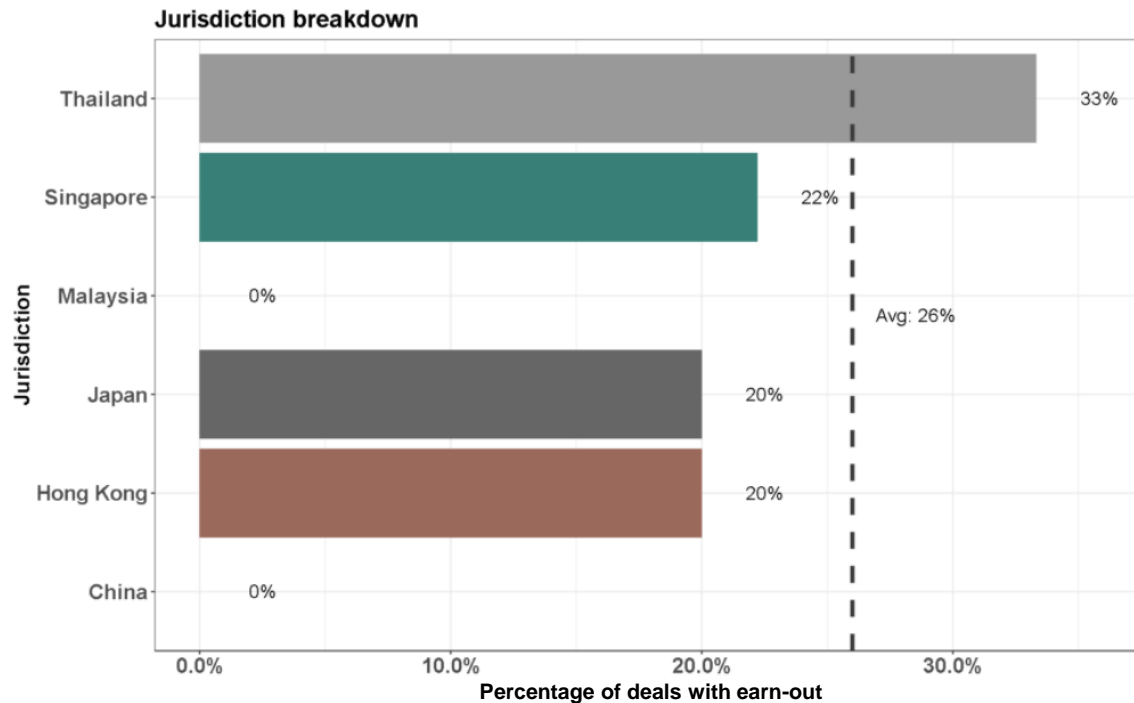
Average deal value

\$77M

Deals with earn out

\$237M

Deals without earn out



An aerial photograph of a large harbor filled with numerous cargo ships. In the background, a dense urban skyline with many high-rise buildings is visible under a clear sky. The water is a deep blue, and the ships are scattered across the harbor, some moving and leaving white wakes.

Conditionality

We advised a subsidiary of Kerry Logistics Network Limited on the formation of a series of joint ventures in Hong Kong, Southeast Asia (including Thailand, Indonesia and Malaysia) and across nine provinces in China between 2017 and 2019, for the purpose of offering international freight forwarding, logistics and other related services.

Conditionality - MAC

38%

of deals had a MAC as a condition

Average deal value

\$626M

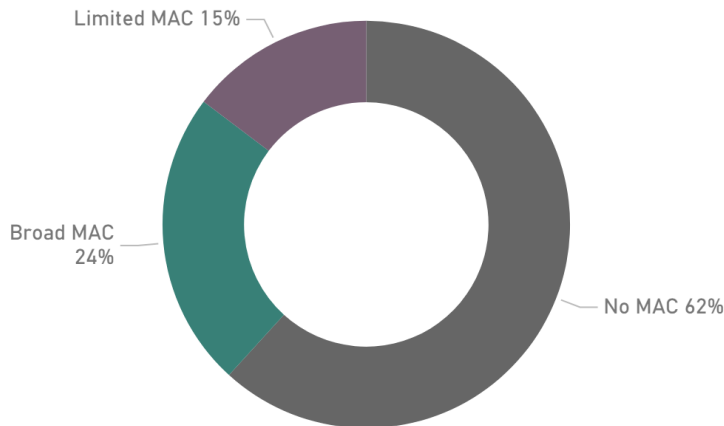
Broad MAC

\$205M

Limited MAC

\$58M

No MAC



Jurisdictional breakdown

Singapore

33%

of deals had a MAC

17%
Broad MAC

17%
Limited MAC

67%
No MAC

China

60%

of deals had a MAC

60%
Broad MAC

0%
Limited MAC

40%
No MAC

Hong Kong

40%

of deals had a MAC

20%
Broad MAC

20%
Limited MAC

60%
No MAC

Japan

80%

of deals had a MAC

60%
Broad MAC

20%
Limited MAC

20%
No MAC

Malaysia

0%

of deals had a MAC

0%
Broad MAC

0%
Limited MAC

100%
No MAC

Thailand

100%

of deals had a MAC

67%
Broad MAC

33%
Limited MAC

0%
No MAC

Conditionality – regulatory approvals

47%

of deals had a regulatory approval condition

12% of deals had a very buyer-friendly general condition that “all necessary” governmental waivers and approvals are obtained

Jurisdictional breakdown

Percentage of deals with regulatory approval condition.

Singapore

61%

China

40%

Hong Kong

27%

Japan

80%

Malaysia

100%

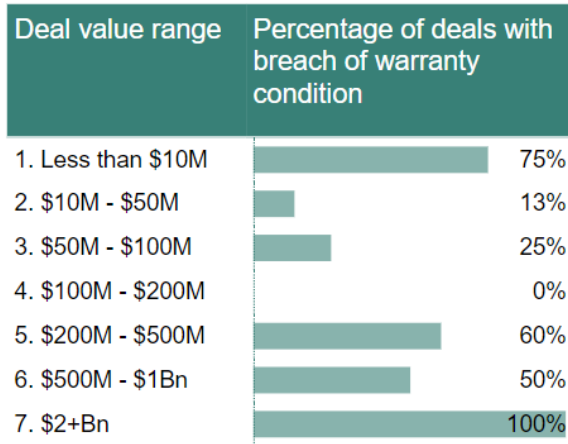
Thailand

67%

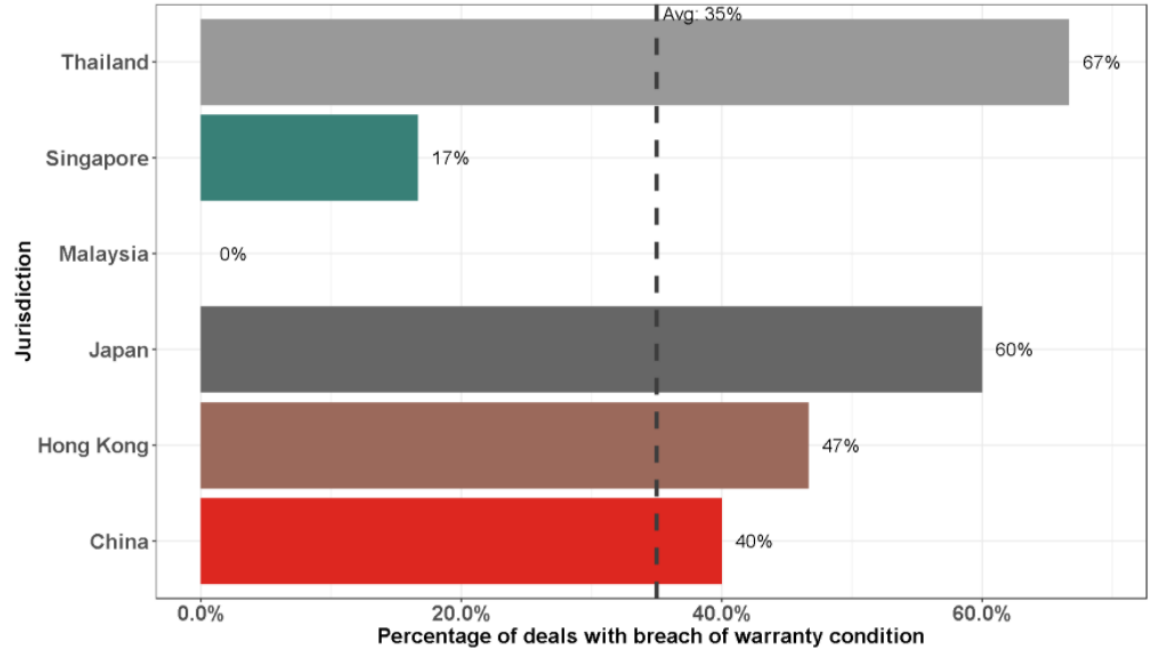
Conditionality – breach of warranty

35 %

of deals had a breach of warranty condition



Jurisdiction breakdown



Other common conditions



Key employees retained

12 %

percent of deals contained this condition



Due diligence

3%

percent of deals contained this condition



Competition authority clearance

15%

percent of deals contained this condition



Pre-completion restructuring

3%

percent of deals contained this condition



Purchaser Finance

6%

percent of deals contained this condition

Warranties and limitation regime

An aerial photograph of Singapore's skyline at dusk. The image shows the Marina Bay Sands hotel on the left, the Singapore Sports Hub, and a dense cluster of modern skyscrapers in the central business district. The sky is a mix of blue and orange, and the city lights are beginning to glow.

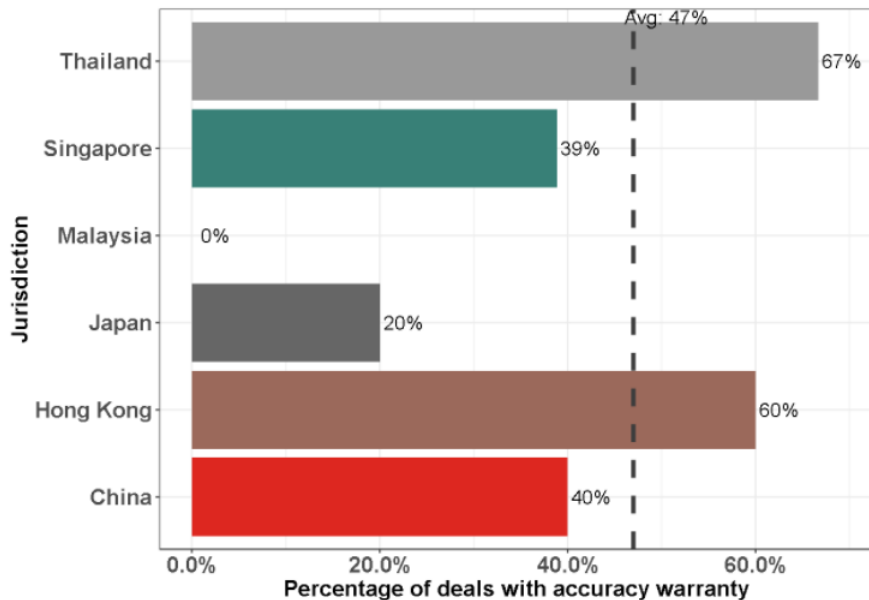
We advised Pavilion Energy Pte Ltd on the acquisition of Spanish energy utility company Iberdrola's portfolio of LNG and gas assets. This deal gives Pavilion Energy a portfolio of prime assets primarily in Europe and the Atlantic Basin and supports the company's global reach with scale and flexibility.

Warranties – disclosure materials

47%

of deals included an accuracy warranty

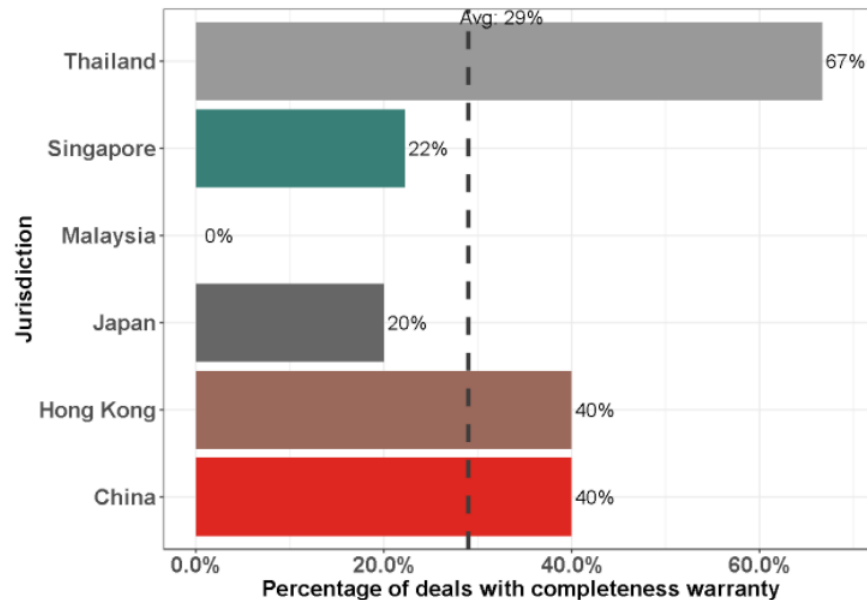
Jurisdiction breakdown



29%

of deals included a completeness warranty

Jurisdiction breakdown

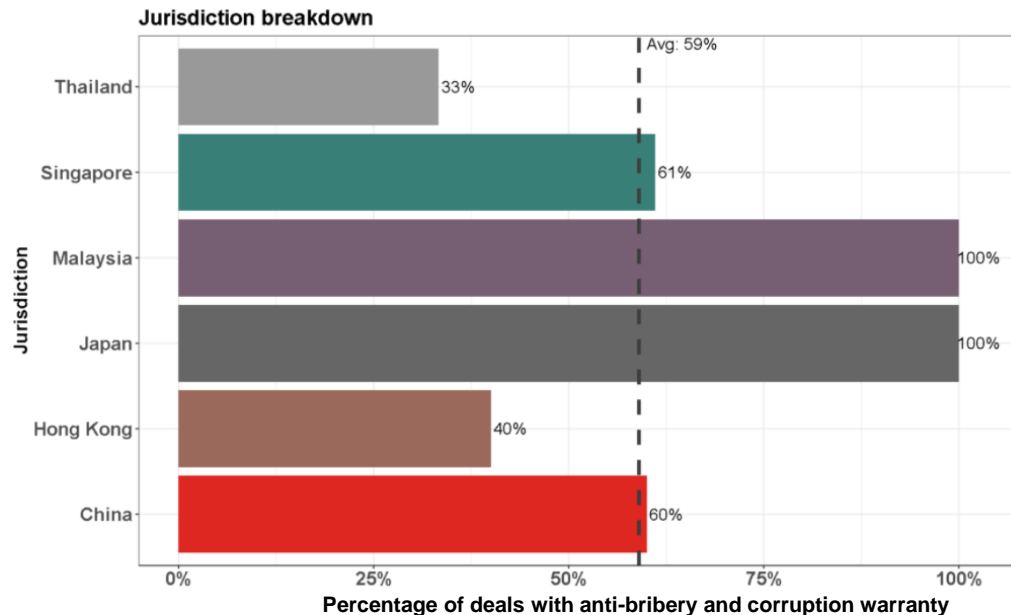


Warranties – anti-bribery and corruption

59 %

of deals contained ABC warranties

Deal value range	Percentage of deals with ABC warranty
1. Less than \$10M	0%
2. \$10M - \$50M	53%
3. \$50M - \$100M	75%
4. \$100M - \$200M	0%
5. \$200M - \$500M	80%
6. \$500M - \$1Bn	100%
7. \$2+Bn	100%

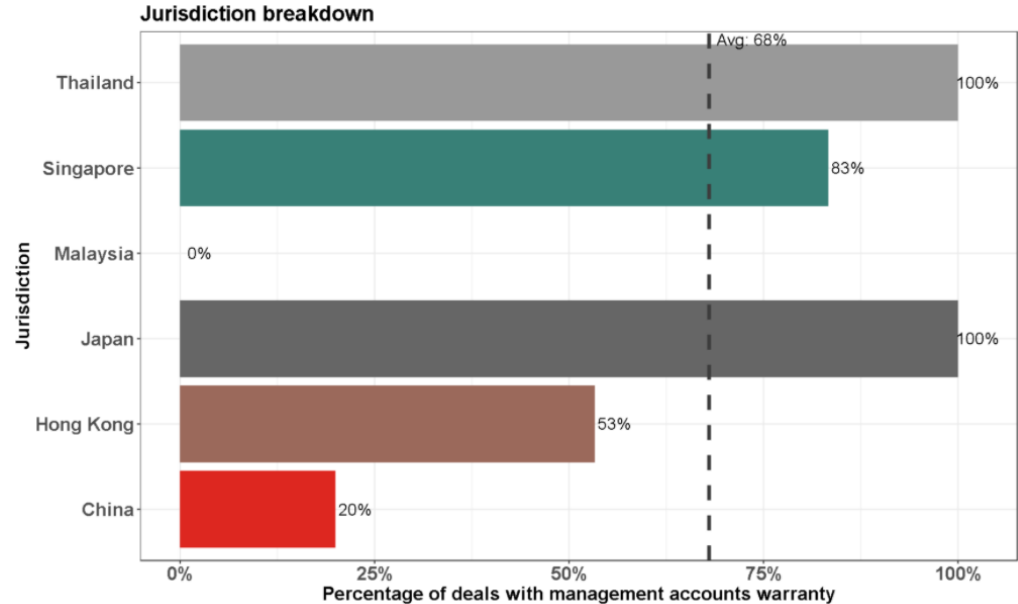


Warranties – management accounts

68 %

of deals had management accounts warranty

Uncommon in Chinese deals. Chinese sellers were reluctant to give it: no Chinese sellers gave a management accounts warranty. Also uncommon with Chinese buyers: only seen in 1/3 of the deals



Warranties – management accounts (cont.)

Of the deals that contained management account warranties (MAWs), the following form of wording was used in the percentage shown*:

35%

Fairly presents

30%

Prepared with due care and attention

35%

Reasonable accuracy/view

52%

Consistent with past practice

9%

True and fair view

Jurisdictional breakdown

Percentage of deals with management account warranties (MAWs):

Singapore

83%

of deals had MAWs

China

20%

of deals had MAWs

Hong Kong

53%

of deals had MAWs

Japan

100%

of deals had MAWs

Malaysia

0%

of deals had MAWs

Thailand

100%

of deals had MAWs

Of the total deals with MAWs in each jurisdiction, the standards to which management accounts were warranted:

20%

Fairly presents

40%

Prepared with due care/attention

33%

Reasonable accuracy/view

53%

Consistent with past practice

13%

True and fair view

0%

Fairly presents

0%

Prepared with due care/attention

100%

Reasonable accuracy/view

0%

Consistent with past practice

0%

True and fair view

38%

Fairly presents

13%

Prepared with due care/attention

38%

Reasonable accuracy/view

63%

Consistent with past practice

0%

True and fair view

60%

Fairly presents

40%

Prepared with due care/attention

0%

Reasonable accuracy/view

20%

Consistent with past practice

0%

True and fair view

0%

Fairly presents

0%

Prepared with due care/attention

0%

Reasonable accuracy/view

0%

Consistent with past practice

0%

True and fair view

33%

Fairly presents

0%

Prepared with due care/at...

33%

Reasonable accuracy/view

67%

Consistent with past practi...

0%

True and fair view

Warranties – audited accounts

68%

of deals had warranties relating to audited accounts.

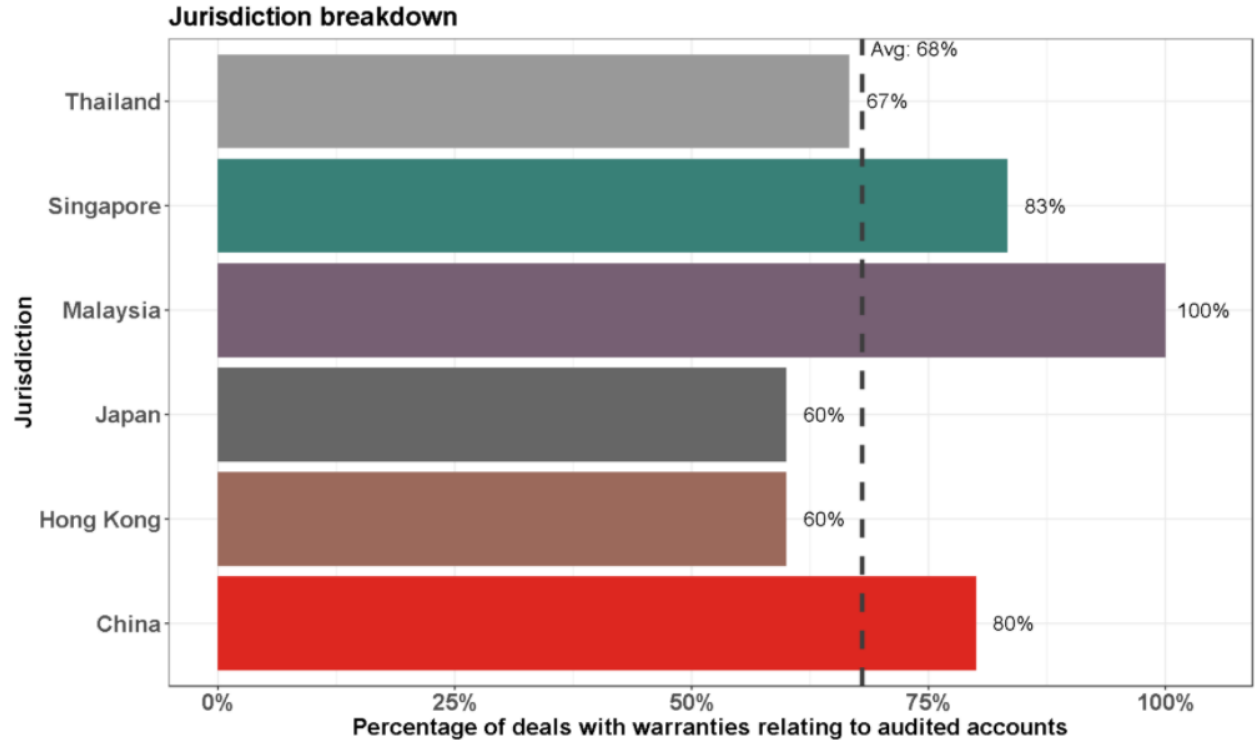
32%

of deals contained no audited account warranties.

Of the deals with warranties relating to audited accounts

83%

included monthly management accounts warranties.

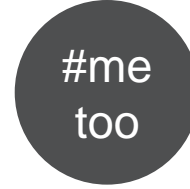


Warranties – other warranties



18%

of deals contained cyber security warranties



12%

of deals contained sexual harassment warranties



44%

of deals contained data privacy warranties



44%

of deals contained sanctions warranties

Warranties – consequences of breach

Percentage of deals with indemnity backing for warranties



Average deal value

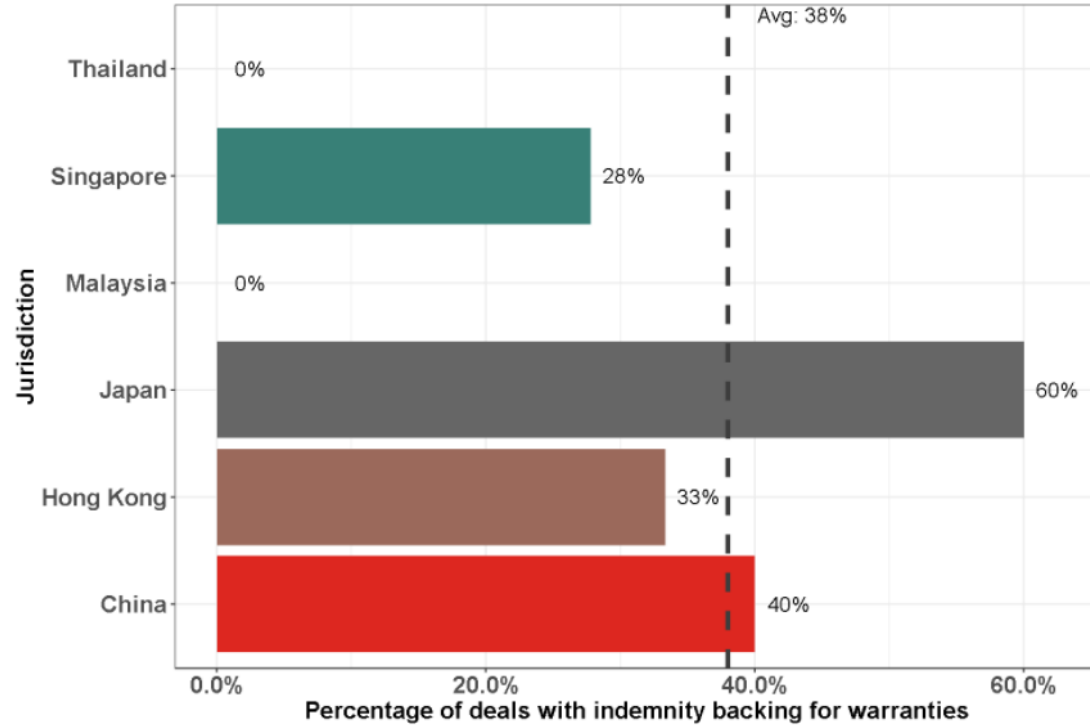
\$172M

with indemnity backing

\$238M

with no indemnity backing

Jurisdiction breakdown



Limitation of liability – monetary liability caps

Monetary liability caps by deal value

Median values of liability cap as a percentage of the purchase price.

< US \$50m	US\$50m - US\$100m	US\$ 100m - US\$200m	US\$200m - US\$500m	> US\$500m	All deals
100%	100%	Uncapped	100%	Uncapped	100%
Max aggregate liability	Max aggregate liability	Max aggregate liability	Max aggregate liability	Max aggregate liability	Max aggregate liability
100%	100%	100%	100%	100%	100%
Title	Title	Title	Title	Title	Title
30%	8%	25%	25%	18%	25%
General	General	General	General	General	General
58%	100%	Uncapped	25%	24%	35%
Tax	Tax	Tax	Tax	Tax	Tax

Limitation of liability – monetary liability caps (cont.)

Monetary liability caps by jurisdiction

Median values of liability cap as a percentage of the purchase price.

Singapore	China	Hong Kong	Japan	Malaysia	Thailand
100% Max aggregate liability	Uncapped Max aggregate liability	100% Max aggregate liability	Uncapped Max aggregate liability	100% Max aggregate liability	88% Max aggregate liability
100% Title	59% Title	100% Title	100% Title	100% Title	100% Title
25% General	24% General	30% General	17% General	30% General	63% General
35% Tax	30% Tax	50% Tax	21% Tax	30% Tax	63% Tax

Deals with no liability caps by jurisdiction

Percentage of deals with no monetary liability caps.

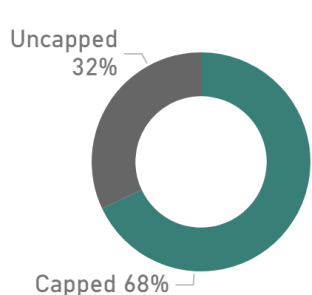
21%

of all deals have no monetary liability caps.

Singapore	China	Hong Kong	Japan	Malaysia	Thailand
- No liability caps	60% No liability caps	33% No liability caps	20% No liability caps	- No liability caps	- No liability caps

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

Title warranties



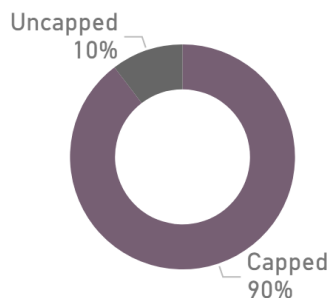
Time limits (months)

44.29	Average (mean)
36	Median
12	Mode
84	Maximum
12	Minimum

Time limits (by deal value)	Percentage of deals	Avg time limit (months)
-----------------------------	---------------------	-------------------------

Capped	68%	44.3
2. \$10M - \$50M	32%	37.5
3. \$50M - \$100M	4%	72.0
4. \$100M - \$200M	4%	36.0
5. \$200M - \$500M	16%	48.0
6. \$500M - \$1Bn	12%	51.0
Uncapped	32%	

General warranties



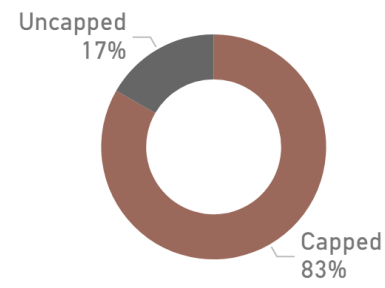
Time limits (months)

20.31	Average (mean)
19	Median
18	Mode
36	Maximum
2	Minimum

Time limits (by deal value)	Percentage of deals	Avg time limit (months)
-----------------------------	---------------------	-------------------------

Capped	90%	20.3
1. Less than \$10M	10%	22.0
2. \$10M - \$50M	38%	20.6
3. \$50M - \$100M	10%	28.7
4. \$100M - \$200M	3%	18.0
5. \$200M - \$500M	14%	14.0
6. \$500M - \$1Bn	14%	18.8
Uncapped	10%	

Tax warranties



Time limits (months)

61.50	Average (mean)
61	Median
60	Mode
84	Maximum
12	Minimum

Time limits (by deal value)	Percentage of deals	Avg time limit (months)
-----------------------------	---------------------	-------------------------

Capped	83%	61.5
1. Less than \$10M	4%	72.0
2. \$10M - \$50M	33%	52.0
3. \$50M - \$100M	13%	76.0
5. \$200M - \$500M	17%	49.8
6. \$500M - \$1Bn	17%	78.8
Uncapped	17%	

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

Singapore		China		Hong Kong		Japan		Malaysia		Thailand	
Title warranties		Title warranties		Title warranties		Title warranties		Title warranties		Title warranties	
38.73 Average	30 Median	39.00 Average	39 Median	44.00 Average	48 Median	53.00 Average	72 Median	12.00 Average	12 Median	18.00 Average	18 Median
12 Mode	84 Maximum	18 Mode	60 Maximum	60 Mode	72 Maximum	12 Mode	75 Maximum	12 Mode	12 Maximum	12 Mode	24 Maximum
12 Minimum		18 Minimum		12 Minimum		12 Minimum		12 Minimum		12 Minimum	
27% Uncapped deals (%)		60% Uncapped deals (%)		40% Uncapped deals (%)		25% Uncapped deals (%)		- Uncapped deals (%)		- Uncapped deals (%)	
General warranties		General warranties		General warranties		General warranties		General warranties		General warranties	
20.69 Average	19 Median	16.50 Average	17 Median	20.00 Average	23 Median	21.00 Average	21 Median	12.00 Average	12 Median	18.00 Average	18 Median
18 Mode	30 Maximum	15 Mode	18 Maximum	24 Mode	36 Maximum	12 Mode	30 Maximum	12 Mode	12 Maximum	12 Mode	24 Maximum
12 Minimum		15 Minimum		2 Minimum		12 Minimum		12 Minimum		12 Minimum	
- Uncapped deals (%)		60% Uncapped deals (%)		15% Uncapped deals (%)		- Uncapped deals (%)		- Uncapped deals (%)		- Uncapped deals (%)	
Tax warranties		Tax warranties		Tax warranties		Tax warranties		Tax warranties		Tax warranties	
64.75 Average	61 Median	78.00 Average	78 Median	59.00 Average	61 Median	76.00 Average	80 Median	60.00 Average	60 Median	42.50 Average	43 Median
84 Mode	84 Maximum	72 Mode	84 Maximum	72 Mode	84 Maximum	84 Mode	84 Maximum	60 Mode	60 Maximum	24 Mode	61 Maximum
24 Minimum		72 Minimum		18 Minimum		61 Minimum		60 Minimum		24 Minimum	
8% Uncapped deals (%)		60% Uncapped deals (%)		18% Uncapped deals (%)		- Uncapped deals (%)		- Uncapped deals (%)		- Uncapped deals (%)	

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

De minimis

<US\$50m	US\$50m - US\$100m	US\$100m - US\$200m	US\$200m - US\$500m	>US\$500m	All deals
0.10%	0.05%	0.10%	0.04%	0.03%	0.10%
Mode	Mode	Mode	Mode	Mode	Mode
0.28%	0.06%	0.10%	0.08%	0.05%	0.17%
Average	Average	Average	Average	Average	Average
53%	50%	-	20%	40%	44%
Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)

Basket

<US\$50m	US\$50m - US\$100m	US\$100m - US\$200m	US\$200m - US\$500m	>US\$500m	All deals
0.90%	0.12%	1.00%	1.00%	0.11%	1.00%
Mode	Mode	Mode	Mode	Mode	Mode
1.17%	0.29%	1.00%	0.95%	0.48%	0.91%
Average	Average	Average	Average	Average	Average
42%	50%	-	20%	20%	35%
Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)

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

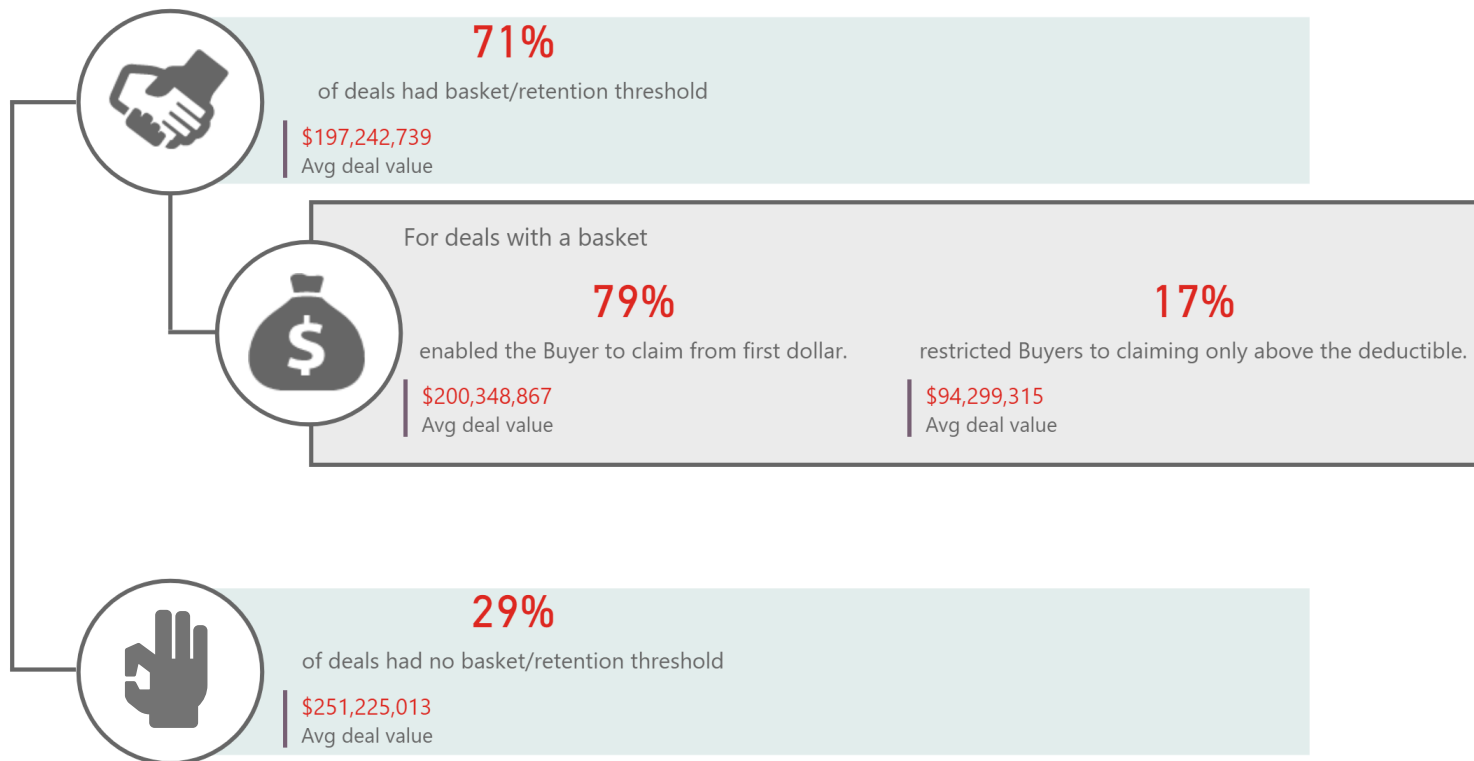
De minimis

Singapore	China	Hong Kong	Japan	Malaysia	Thailand
0.10%	0.03%	0.03%	0.05%	0.20%	0.13%
Mode	Mode	Mode	Mode	Mode	Mode
0.21%	0.04%	0.17%	0.08%	0.20%	0.48%
Average	Average	Average	Average	Average	Average
22%	60%	53%	40%	-	-
Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)

Basket

Singapore	China	Hong Kong	Japan	Malaysia	Thailand
0.90%	0.11%	1.00%	0.20%	2.00%	0.90%
Mode	Mode	Mode	Mode	Mode	Mode
1.03%	0.36%	1.02%	0.83%	2.00%	1.30%
Average	Average	Average	Average	Average	Average
17%	60%	47%	40%	-	-
Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)	Deals uncapped (%)

Limitation of liability – basket and retention threshold



Limitation of liability – seller knowledge qualifier

76%

of deals qualified some warranties by reference to Seller/Warrantor knowledge.

The qualifier was expressed on the basis of the actual knowledge of the seller in

27%

of deals

and Constructive or Actual and Constructive knowledge in

73%

of deals.

Seller knowledge qualifier (by deal value)

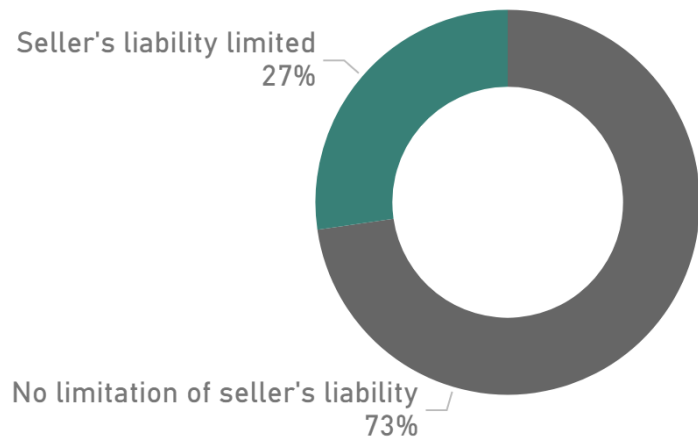
Seller/Warrantor knowledge qualification	1. Less than \$10M	2. \$10M - \$50M	3. \$50M - \$100M	4. \$100M - \$200M	5. \$200M - \$500M	6. \$500M - \$1Bn	7. \$2+Bn
Knowledge qualification	50%	79%	75%	100%	100%	75%	100%
Both actual and constructive		43%	50%		40%	75%	
Actual	25%	21%		100%	20%		100%
Constructive	25%	14%	25%		40%		
No qualification	50%	21%	25%			25%	

Seller knowledge qualifier (by jurisdiction)

Seller/Warrantor knowledge qualification	Hong Kong	Japan	Malaysia	Singapore	Thailand	China	Total
Knowledge qualification	53%	100%	100%	89%	67%	60%	76%
Actual	13%	40%		22%	67%	20%	21%
Both actual and constructive	20%	40%		50%		40%	38%
Constructive	20%	20%	100%	17%			18%
No qualification	47%			11%	33%	40%	24%

Limitation of liability – buyer knowledge qualifier

Percentage of deals where seller's liability is limited by buyer's knowledge



0%

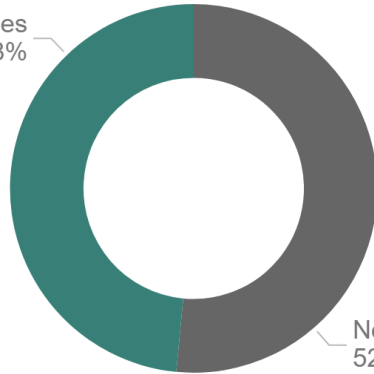
of these agreements were limited by the **constructive knowledge** of the buyer.

100%

of these agreements were limited by the **actual knowledge** of the buyer.

Limitation of liability – public searches

Limitation of liability for public searches
48%



No limitation of liability for public searches
52%

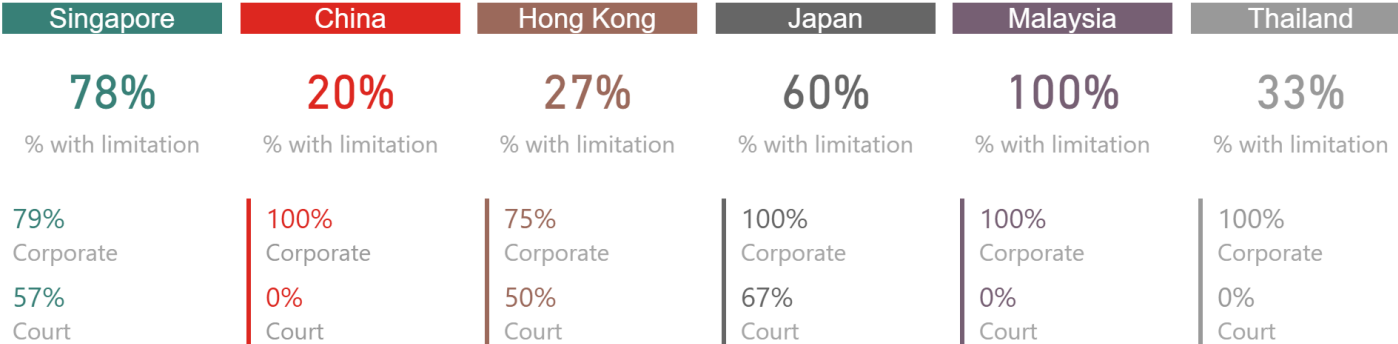
Of those deals containing a limitation of liability for public searches:

81%

Corporate searches

63%

Court searches



Limitation of liability – disclosure shield

88%

of deals limited liability on basis of Seller disclosure.

90%

applied against all warranties

10%

applied only against certain warranties

Percentage of all deals where a disclosure letter is used (by jurisdiction)

Hong Kong	China	Japan	Singapore	Malaysia	Thailand
53%	40%	100%	89%	100%	67%

Disclosure letter used and disclosure shield limited liability (by jurisdiction)

Hong Kong	China	Japan	Singapore	Malaysia	Thailand
89%	100%	100%	76%	100%	50%

Percentage of deals with disclosure shields (by jurisdiction)

Hong Kong	China	Japan	Singapore	Malaysia	Thailand
53%	40%	100%	100%	100%	100%

Percentage applied against all warranties

Hong Kong	China	Japan	Singapore	Malaysia	Thailand
88%	100%	100%	83%	100%	67%

Percentage applied against only some warranties

Hong Kong	China	Japan	Singapore	Malaysia	Thailand
13%	-	-	17%	-	33%

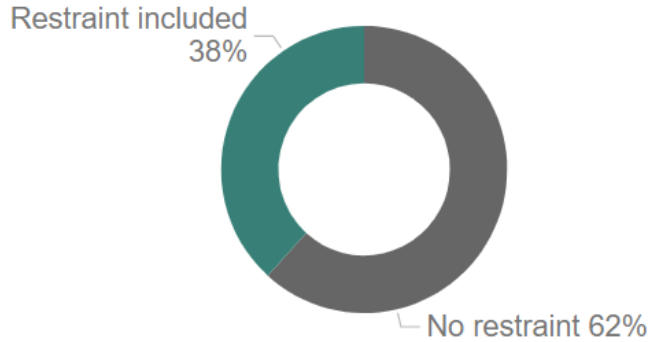
74%

of all deals used a disclosure letter.

83%

of deals used a disclosure letter where a disclosure shield limited liability.

Restraint



Restraint period (months)

37.46
Average (mean)

36
Median

24
Mode

82
Maximum

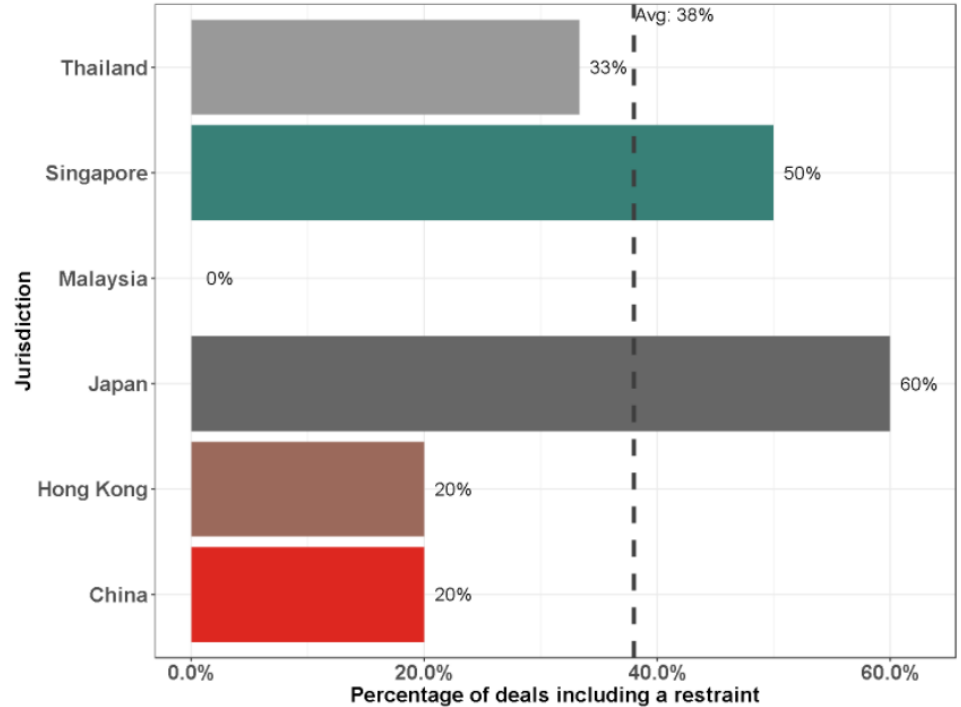
12
Minimum


Average deal values

\$231,091,138
Deals with restraint

\$201,994,812
Deals with no restraint

Jurisdiction breakdown





We advised Sumitomo Chemical Company Limited on its AUD\$1.188 billion (approximately JPY 70 billion) agreement to purchase Nufarm Limited's crop protection business in Brazil, Argentina, Colombia and Chile.

Deal protection

Deal protection – deposit

24%

of deals require the Buyer to pay a desposit

87.5%

Deposit refundable

12.5%

Deposit not refundable

Deposit as a percentage of deal value

14%	10%	1%
Average (mean)	Median	Mode
50%	1%	
Maximum	Minimum	

Singapore

33%

deposit required

14%
Average
10%
Median
50%
Maximum
1%
Minimum

China

20%

deposit required

19%
Average
19%
Median
19%
Maximum
19%
Minimum

Hong Kong

20%

deposit required

10%
Average
11%
Median
19%
Maximum
1%
Minimum

Japan

20%

deposit required

7%
Average
7%
Median
7%
Maximum
7%
Minimum

Malaysia

-

deposit required

-
Average
-
Median
-
Maximum
-
Minimum

Thailand

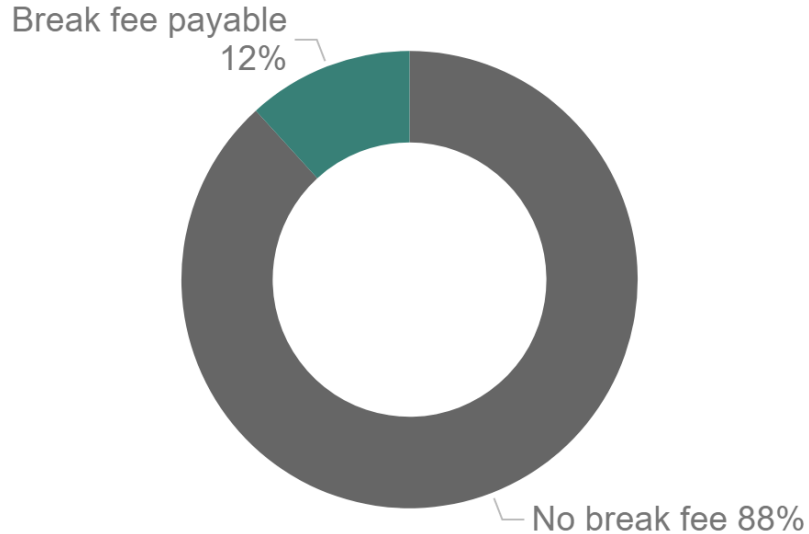
33%

deposit required

1%
Average
1%
Median
1%
Maximum
1%
Minimum

Deal protection – break fee

Proportion of deals where break fee is payable if the deals did not go ahead



Average deal values

\$471M

Deals with break fee

\$179M

Deals with no break fee

Break fee range as a percentage of deal value

0.00003%

Minimum

6.64%

Maximum

Deal protection – guarantees

21%

of deals guaranteed buyer or seller obligations

Buyer obligations

18%

of deals guaranteed buyer obligations

\$349,617,462

Avg. deal value (guaranteed buyer obligations)

Seller obligations

9%

of deals guaranteed seller obligations

\$326,134,620

Avg. deal value (guaranteed seller obligations)

Hong Kong

27%
Buyer obligations

-
Seller obligations

China

20%
Buyer obligations

-
Seller obligations

Singapore

17%
Buyer obligations

17%
Seller obligations

Japan

20%
Buyer obligations

40%
Seller obligations

Malaysia

-
Buyer obligations

-
Seller obligations

Thailand

-
Buyer obligations

-
Seller obligations

Escrow



9%
of deals had an escrow account



\$365M
avg. value of deals with an escrow account
(generally used on higher value deals)



Escrow period (months)
24 | **12**
Maximum escrow period | Minimum escrow period



Each escrow used for a particular purpose.

Retention amounts



3%
of deals had retention amounts
(more common on lower value deals)



Amount withheld (percentage of purchase price)
44%



Retention period (months)
12



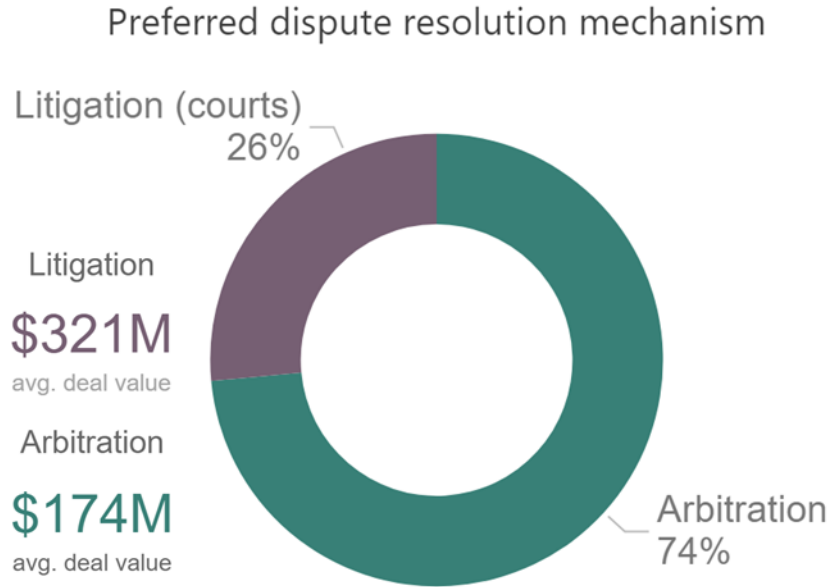
Not common for a Buyer to be able to deduct amounts for losses resulting from breaches of warranty.



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



1 Arbitrator	3 Arbitrators
28%	72%
% of deals	% of deals
\$35,467,028	\$228,167,284
Avg. deal value	Avg. deal value

Most common arbitration forums

- Singapore (SIAC) (40%)
- Hong Kong (HKIAC) (36%)
- England (LCIA) (8%)
- New York (ICC) (4%)
- Singapore (ICC) (4%)
- Shanghai (CIETAC) (4%)
- Sweden (Stockholm Chamber of Commerce) (4%)

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