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## COMPETITIVE CAPITAL ENVIRONMENT

Over the past 24 to 30 months, India's private equity and broader M&A landscape has shifted towards larger, more concentrated bets on a select pool of high-quality assets, particularly in infrastructure and renewables, financial services, healthcare, technology and consumer businesses. India's sustained GDP growth trajectory, deepening domestic capital markets, and the continued influx of global institutional capital – drawn by India's scale, demographic dividend and policy-driven sectoral opportunity – have together reinforced this trend. Deepening capital pools and sustained sponsor interest have driven up deal values and ticket sizes, with sale processes for sought-after assets increasingly run as structured, multi-bidder auctions.

As competition intensifies, pricing and execution packages are being calibrated against a new, seller-tilted baseline. Auction dynamics are compressing negotiation windows, limiting scope for buyer-dominated positions and allowing sellers to demand greater deal certainty and reduced post-closing exposure. In response, buyers are being pushed to 'price in' risks while selectively negotiating targeted protections that can underwrite concentrated exposures without undermining competitiveness.

We analyse how auction-driven processes and heightened seller leverage are reshaping deal architecture in Indian private equity and M&A transactions, focusing on the redistribution of risk, responsibility and deal economics.

## AUCTION-DRIVEN PROCESSES AND SELLER NEGOTIATING STRENGTH

For high-quality and scale assets, auction or bid processes are increasingly utilised to discover value. This typically results in: (i) seller-friendly legal and commercial terms, (ii) limited scope for 'good to have' buyer positions, and (iii) time-compressed negotiation windows. Bidders are effectively competing on a combined package of price, conditionality and execution certainty, as also management incentivization and upside sharing.

In more competitive processes, experienced sellers are pushing, and often achieving the following positions which reflect their enhanced negotiating strength:

*If you have any questions regarding the matters discussed in this publication, please contact the attorney(s) listed above or call your regular contact at Anagram.*

### Limited conditionality

Conditions precedent are increasingly limited and confined to regulatory and truly material third-party approvals. In such transactions, buyers are expected to price in residual risk. In highly competitive transactions, buyers may in fact be required to provide undertakings to pursue approvals, offer behavioral or structural remedies and not terminate solely because approval is delayed or conditional.

### Limited recourse exits

Parties are pushing towards warranty and indemnity insurance ("W&I") backed deals, with limited recourse to sellers. Sellers are negotiating recourse for identified matters only (such as known operational matters which are not covered by W&I insurance and, in certain cases, breach of title or other fundamental warranties). These no-recourse structures are gaining particular traction where sellers are financial sponsors or do not have a presence in India and therefore do not want to submit themselves to the Indian jurisdiction for any dispute resolution. Notably, as the W&I insurance market in India matures with a growing number of international insurers actively underwriting Indian M&A risks, the scope and quality of cover available has improved, making these structures increasingly viable across a wider range of transaction types and sectors.

### Equity commitment as a seller protection

As deal certainty becomes a priced term, seeking equity commitment letters has become increasingly common in sponsor-backed transactions. Typically, the buyer fund provides an equity commitment in favour of its special purpose vehicle ("SPV") for the transaction, for an amount up to the full purchase consideration, which can be drawn upon by the SPV to fund closing. Sophisticated sellers will often seek to negotiate third-party beneficiary status and step-in rights under the ECL, enabling them to procure (or, in the case of step-in rights, to themselves initiate and pursue) enforcement of the commitment if the SPV fails to perform the transaction. Sponsors, by contrast, generally resist direct seller enforcement, and instead offer a more limited undertaking not to amend, terminate or waive the ECL without the seller's consent. In some transactions, sellers ask for the ECL to be supplemented by a sponsor guarantee in favour of the seller, to cover for claims in respect of pre-closing breaches resulting in termination of the transaction (i.e., where the ECL itself would not be triggered).

### Clean pricing mechanics

While post-closing price adjustment mechanisms (for example, completion accounts with net debt and working capital true-ups) remain the prevailing approach in Indian M&A, there is a gradual increase in interest from sellers in locked-box structures, or narrower and more tailored adjustment regimes that reduce scope for post-signing price chips. It remains to be seen whether, over the coming years, locked-box mechanics will gain broader traction.

### MAC/MAE

From a negotiation standpoint, buyers typically push for broad, forward-looking formulations that capture 'any event' which 'directly or indirectly' is 'reasonably likely' to be materially adverse to the business, assets or financial condition of a company, in some cases, supplemented by specific deemed MAC events (for example, rating downgrades in financial services, sustained under-performance of generation output

in renewable energy projects). Sellers are increasingly demanding narrower, objective tests focused on serious, long-term deterioration in the business 'taken as a whole', with extensive exclusions for general economic, industry-wide, political, pandemic and 'act of God'-type events. Buyers seek to counter-balance such position where an excluded event has a disproportionate impact on the target company compared to other industry-players. The result is that, in competitive Indian processes, MAC clauses are less about giving buyers broad post-signing optionality and more about allocating truly exceptional risk (other than systemic risk) to the seller, in a manner that reflects sellers' improved negotiating positions.

### **Short exclusivity and disciplined timetables**

Exclusivity periods are sized to keep pressure on selected bidders, often backed by detailed signing and closing timetables in the term sheet or short pre-completion periods under the share purchase agreement. Long stop dates are drafted by reference to actual expected timelines (without excessive buffer) for anti trust and key sectoral approvals, coupled with automatic extension mechanisms where filings are made on time and diligently pursued.

### **Reverse break fees**

As competitive tension and seller leverage increase, while still not common, it is likely that reverse break fee structures will be used by sellers to assess a buyer's commitment to a deal and to put tangible economics behind the buyer's closing obligations. Structuring and operationalising reverse break fees in the Indian context requires careful navigation of the Foreign Exchange Management Act, 1999 and Reserve Bank of India regulations, requiring advance consideration of the regulatory framework at the term-sheet stage.

### **IMPACT FOR DEALMAKERS**

India's shift towards larger, more competitive private equity and M&A transactions is structurally reshaping how parties allocate risk, price transactions and govern portfolio companies. In competitive processes for sought-after assets, sellers - particularly financial sponsors and sophisticated promoter groups - increasingly command tight conditionality, limited recourse, clean pricing mechanics and robust deal-certainty protections.

For sponsors and strategic buyers, the implication is not a retreat from Indian opportunities but a recalibration of how risk is priced and shared. Winning bids will increasingly be those that marry conviction on India's long-term fundamentals with documentation and structuring that explicitly recognise a market characterised by:

- ▶ Deeper and more diverse capital pools competing for a finite set of quality assets;
- ▶ An evolving regulatory architecture that rewards early engagement and sophisticated structuring;
- ▶ Sellers who are better advised, more process-savvy and more willing to extract value from competitive tension; and
- ▶ A maturing W&I insurance market that is enabling cleaner exits but also demanding more rigorous due diligence.

The dealmakers who will thrive in this environment are those who can move quickly, structure creatively and accept that the days of buyer-dominated term sheets in competitive Indian processes are decisively behind us.

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0402-2026