

PRACTICE GUIDES

India M&A

Second Edition

Contributing Editor
PM Devaiah



India M&A

Practice Guide

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Contributing Editor

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Representations, Warranties, Indemnities and Insurance in M&A

Sujain Talwar and Aakanksha Joshi¹

A common feature of M&A transactions in India is a robust set of representations and warranties (R&W) backed by indemnities. R&W allocate risks between the acquirer and the seller, target entity or both (warrantor or warrantors), where the warrantor assumes the risk of the veracity of certain statements. R&W are provided as an inducement to enter into a transaction, and their inaccuracy could entitle the promisee to relief, both under contract and law. The preferred contractual remedy for inaccuracy of R&W is an indemnity. However, the lack of an indemnity does not preclude relief in the form of damages or specific performance. In this chapter, we deal with the role and efficacy of these provisions in M&A transactions given common contractual practices as well as their interplay with statute and judicial precedent. We also examine insurance in relation to R&W in M&A transactions.

R&W explained

R&W are statements relating to a period prior to a transaction, asserted to be true on the execution of contract and at the time of completion. The terms are not specifically defined under the Indian Contract Act 1872 (ICA), the statute that primarily governs Indian contract law. However, the ICA is not exhaustive, and contract law is wider than what is contained in the ICA. Therefore, through practice and judicial precedents, principles have evolved in relation to R&W. Additionally, where the transaction relates to the sale of goods, the Sale of Goods Act 1930 (SOGA) would apply. Shares are considered as goods under the SOGA and hence transactions involving share transfers would necessarily attract its provisions.²

1 Sujain Talwar and Aakanksha Joshi are partners at Economic Laws Practice.

2 Section 2(7) SOGA defines 'goods' as every kind of movable property including inter alia stocks and shares.

Although the terms are used interchangeably, they have distinct meanings and their inaccuracy would result in specific consequences under law. Simply put, a 'representation' is a statement of fact relating to an existing or past event based on which an acquirer is induced into entering the contract, while a 'warranty' is an assurance of the continued existence of a certain state.

Representation and warranty: statutory meaning

Although the term 'representation' is not statutorily defined, reference may be made to section 18 of the ICA, which defines 'misrepresentation' *inter alia* as 'a positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true', and 'causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement'. From this, it can be gleaned that a representation would refer to a positive statement or assertion or any act or conduct relating to the substance of the contract. Certain representations may constitute a condition, defined under the SOGA as a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.³

The SOGA defines a 'warranty' as a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.⁴

R&W in M&A transactions

R&W in M&A transactions cover a wide range of subjects touching upon every aspect of the target business and the capacity of the parties to enter into the contract. R&W typically provided by parties in M&A transactions are briefly touched upon below.

Sellers' and target warranties

The acquirer enters into a contract assuming that certain facts are true. Given that the acquirer is a stranger to the business, the warrantor, being in the know, assures the acquirer of their veracity. The warrantor further assures the acquirer of its legal capacity and authority to enter into the contract and the absence of any restrictions under contract, law or judicial pronouncements to do so. Further, since insolvency or other analogous proceedings impose restrictions that may affect the warrantor's ability to perform, R&W in this regard are included. An important representation provided by the warrantor relates to the clear and marketable title to the assets or shares being sold as well as the authority of the warrantor to make such a sale. In this context, it is important to note that section 14 of the SOGA clearly provides that, subject to a contract to the contrary, there is an implied condition that the seller has title to sell the goods as well as implied warranties as to the quiet possession (meaning devoid of the possibility of third-party claims) and the absence of encumbrances in relation to such goods.

Additionally, R&W relating to the target are given by the warrantor. These include matters ranging from compliance with secretarial matters, the target's financial conditions and position, indebtedness, material contracts and related-party contracts, compliance with laws and business licences, title and condition of assets and their fitness for purpose, due payment of

3 Section 12(1) SOGA

4 Section 12(3) SOGA.

taxes, intellectual property rights, employment matters and claims and litigation involving the warrantor.

In some cases, acquirers also seek a representation to the effect that the facts and information disclosed by the warrantor are all the matters that are material and necessary for the acquirer to make its decision. Such a representation could support a claim of fraud if any information is not disclosed, although within the warrantor's knowledge, where the acquirer states that such information was material.

R&W are provided by sellers where they control the target. Sometimes where the sellers retain a stake in the target, the target also provides R&W. However, where acquirers obtain a stake in the target, they prefer obtaining R&W from the sellers exclusively to ensure that the value of their investment value is unaffected.

R&W typical to M&A transactions have evolved with time in order to keep pace with regulatory and business practice changes. For instance, following the implementation of the General Data Protection Regulation by the European Union in 2018, R&W relating to compliance with data privacy laws as well adoption of stringent security protocols have become the norm. Further, considering tax implications, R&W relating to residence are not uncommon. The business being acquired as well as specific factual circumstances could also dictate R&W being required by the acquirer.

To cater to changing circumstances, a warranty as to the absence of material adverse changes (being events that affect the target's business, its financial position or the transaction) is included. Warrantors resist this as it affects transaction certainty and hence negotiate for certain exceptions.

Acquirer's warranties

Although R&W are primarily a mode through which risk is assumed by the warrantor, the warrantor also relies on the acquirer's ability to perform its obligations under contract. Consequently, acquirers represent and warrant as to their legal capacity and authority to enter into the contract without any restrictions. Since the warrantor relies on the acquirer's ability to pay consideration, R&W relating to the absence of insolvency or analogous proceedings, and in some cases (excluding financial investments), its financial wherewithal, are also obtained.

R&W and due diligence

In most M&A transactions, acquirers conduct a due diligence (DD), that is, a review of information relating to the target (and to a limited extent, the seller) to appraise its assets and liabilities, financial position as well as legal risks and have them addressed either through the contract or otherwise. A question may arise as to why a party would conduct a DD despite the warrantor's providing R&W.

Need for DD: interplay with R&W

A DD exercise is carried out since a seller is not required to disclose all relevant facts relating to goods being sold (ie, the principle of caveat emptor or buyer beware is a part of applicable jurisprudence). Although there are implied warranties of title, the law does not imply any other R&W. The exception to section 19 of the ICA provides that if consent to a contract is caused by misrepresentation or silence, fraudulent within the meaning of section 17 of the ICA, the contract would not be voidable if the relevant party had the means of discovering the truth with ordinary diligence. Therefore, unless there is a positive affirmation made without belief in the truth, despite the acquirer's having undertaken a due diligence, relief may be difficult.

A DD usually involves the acquirer or its advisers posing broad questions about the target. If the warrantor does not respond with adequate disclosures, it is easier for an acquirer to claim an active concealment of fact, bringing it within the realm of fraud under section 17 of the ICA. The questions would evidence diligence on the part of the acquirer. Further, in case of active misrepresentation (where the party knew the fact to be false), it is not required that the defrauded party prove that it had no means of discovering the truth with ordinary diligence.⁵

An acquirer may seek specific representations or specific indemnities arising out of the matters discovered during the DD. Where material issues are uncovered during a DD, the acquirer may choose to require the warrantor to resolve or mitigate the issues prior to the transaction or, in some cases, even choose to walk away.

Limitations of DDs

However, DDs are limited in scope and heavily reliant on the information provided. Further, where the target is listed, restrictions are placed on information disclosure to prevent insider trading, inhibiting the DD process.⁶ Publicly available information may provide some direction but is usually inadequate for discovery of all material risks.

A common question that arises is whether an acquirer can claim relief for a breach of representation, where it knows of its falseness. A DD can yield information that flies in the face of representations made. Where a person knows of facts contradicting a representation, but still elects to stand by the contract, he or she is deemed to have ratified the contract and cannot rescind it.⁷ This makes acquirers nervous about DDs as it would be open to a warrantor to claim that the acquirer had knowledge of the facts disclosed. A failure to appreciate the materiality or implication of a certain fact learned during a DD could affect the acquirer's rights.

For this purpose, sandbagging provisions are included in contracts.

Sandbagging and anti-sandbagging provisions

A sandbagging provision provides that an acquirer can seek indemnities from a warrantor for a breach of R&W even where it knew the truth.

An anti-sandbagging provision in contrast clarifies that the acquirer would not be entitled to relief where it knows of the inaccuracy of any representation or warranty prior to consummation of the transaction. An anti-sandbagging provision aligns closely to the Indian law position disentitling an acquirer from relief where it had knowledge.

However, it may still be useful to include sandbagging provisions from an acquirer's perspective as it may bring indemnification claims against breach of warranties as specific indemnities (discussed below).

5 *Niaz Ahmad Khan and Ors v Parsottam Chandra and Ors*, AIR 1931 All 154.

6 Regulation 3 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 2015 prohibits the communication, provision or allowing of access to any unpublished price-sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

7 *Ganga Retreat and Towers Ltd v State of Rajasthan* (2003)12SC C 91.

Consequences of a breach under law

A misrepresentation can entitle the innocent party to rescind a contract,⁸ while a breach of warranty would sound in damages.⁹ However, a party may choose not to rescind a contract and require performance despite the misrepresentation, insisting that it be put in the same place as if the statement it relies upon is true (ie, such a party may claim compensation).¹⁰

A representation may be inaccurate either with or without the belief of the person making the statement. Where a person is induced into entering a contract based on a fact which is untrue, suggested by a person who does not believe it to be true or a fact is actively concealed by a person having knowledge of the fact, with the intent to deceive, the contract is vitiated by fraud¹¹ and be rescinded in the same manner as in the case of a misrepresentation. In case of a fraudulent misrepresentation as against a misrepresentation under section 18 of the ICA, a claim for consequential losses may be made.¹²

In claims for damages for a breach of R&W, the principles of section 73 of the ICA would apply.¹³ This provision limits damages to those that naturally arose in the usual course of events from such breach or which the parties knew would be likely to arise. It expressly excludes remote and indirect loss or damages .

Contractual relief: rescission of contract and indemnity

In addition to the statutory reliefs, contracts may provide specific consequences that are discussed below.

Rescission of contract

Most contracts permit an acquirer to terminate the contract prior to consummation if any representation or warranty is untrue prior to such time. In some rare cases, even after consummation, the contract allows rescission.

Although applicable statutory provisions themselves permit rescission of contracts, it is preferable to specify such a relief in the contract considering the following:

- Breach of warranties can only entitle the acquirer to damages under law. By including the right of termination, a party would no longer be restricted to termination only in case of breach of representations.
- Not every misrepresentation permits a party to rescind a contract under law. Section 19 of the ICA permits a party to avoid a contract if the consent of the party to enter into such contract was caused by the fraud or misrepresentation in question. It has been held that

8 Section 19 ICA.

9 Section 59 SOGA.

10 *RC Thakkar v The Bombay Housing Board*, AIR 1973 Guj 34.

11 Section 17 Contract Act.

12 *National Highways Authority of India v Pune Sholapur Road Development Company*, 2019 (2) ArbLR 382 (Delhi).

13 It has been held that damages for a breach of warranty for a sale of goods would be subject to the principles of section 73 ICA (*Thyssen Krupp Materials Ag v The Steel Authority Of India*, 2017 (3) ARB LR 255 (Delhi)).

the inaccuracy in a representation that is not material would not allow a party to avoid the contract.¹⁴ Such a contractual right would avoid any controversy in this regard.

Indemnity provisions

The term 'indemnity' in its widest sense means recompense for any loss or liability incurred by any person. In M&A transactions, an indemnity is provided against breach of R&W (ie, the promisors undertake to save the promisee from liabilities arising by reason of any breach of R&W).

Indemnification provisions are a part of several commercial contracts and have achieved primacy in M&A transactions owing to certain features that are considered more beneficial as compared with statutory claims for damages.

Indemnities are discussed in more detail below.

Indemnities

The ICA recognises indemnities in section 124 as a contract by which one party promises to save the other from loss caused to it by the conduct of the promisor itself, or of any other person. However, the scope of most contractual indemnities extend beyond a person's conduct, covering a wide range of circumstances, including acts and circumstances within and beyond the promisor's control.

Very early on, it was held that the ICA provisions were not exhaustive of the law of indemnity and courts would apply the same equitable principles as those applied by English courts.¹⁵ Therefore indemnities for the extensive R&W typical to M&A transactions would be enforceable.

Reasons for inclusion of indemnities

Even though breach of R&W has statutory remedies in the form of damages, indemnification provisions are preferred for the following reasons:

- An indemnified party can call upon the indemnifier to make the payment once the liability has accrued. The concept of accrual of loss or liability and the attendant obligation to indemnify can be contractually agreed by the parties. Courts have time and again taken the position that an indemnity holder is entitled to sue the indemnifier even before incurring any actual damage or loss, and an indemnity is not necessarily given by repayment after payment. In contrast, damages can be claimed only after the claimant has suffered actual loss and not merely on accrual of loss.¹⁶ When a person contracts to indemnify another, the latter may compel the indemnifier to place him or her in a position to meet the liability that may be cast upon him or her without waiting until the indemnity holder has actually discharged that liability.¹⁷ The only requirement is that the liability be absolute.¹⁸ However, often words are included that result in restricting the indemnified party from only recovering actual losses.

14 *Bhagwani Bai v Life Insurance Corporation of India*, Jabalpur AIR 1984 MP 126.

15 *Gajanan Moreshwar Parelkar v Moreshwar Madan Mantri*, AIR 1942 Bom 302.

16 *Osman Jamal & Sons Ltd v Gopal Purshattam* (56 (1928) Cal 268); *Khetarpal Amarnath v Madhukar Pictures*, AIR 1956 Bom 106; *Jet Airways (India) Limited v Sahara Airlines Limited* (2011) 113 (3) BLR 1725.

17 *Ultratech Cement Ltd v Sunfield Resources Pty Ltd*, 2018 (3) ARB LR 394 (Bom).

18 *Reliance Industries Limited v Balasore Alloys Limited*, 2014 (1) Arb LR 457 (Bom).

Words such as 'make good' or 'compensate' can be interpreted to only obligate indemnification of actual losses, thereby diluting its efficacy.

- Section 73 of the ICA limits a party to recovering losses that arose in the natural course and specifically excludes remote or indirect losses. An indemnity, as usually worded, includes all losses and not just direct losses. Therefore, an indemnity could permit the recovery of remote, consequential or indirect losses and damages, although this position is not free from doubt. However, words excluding indirect losses are often included that would result in the indemnified party being limited to direct losses as under section 73 of the ICA.
- Section 73 of the ICA requires that the loss naturally arose in the usual course of events from such a breach. Accordingly, a clear nexus between the loss and breach would need to be established. However, depending upon the wording of the indemnity (with phrases such as 'arising out of', 'in connection with' and 'as a result of'), this requirement can be diluted.
- By inclusion of a sandbagging provision, even where the indemnified party knows of information rendering a representation or warranty inaccurate, it may be entitled to relief on the basis that the indemnity, being a specific indemnity, is not restricted by the provisions of section 19 of the ICA.
- A contract of indemnity is separate from the main contract and hence is not subject to the same limitation as the main contract. This would mean that, depending on the contract's terms, a claim for an indemnity may subsist even after claims are not admissible in relation to the main contract.¹⁹

Indemnities for breach of contract

Contracts contain several covenants in addition to R&W and indemnities. Sometimes indemnification is also sought for breach of contract in addition to R&W to enable a claim for damages beyond the remit of section 73 of the ICA.

In typical M&A transactions, there are standstill covenants prior to consummation and conditions subsequent thereafter. These are sought to be brought within the indemnification umbrella.

Duty to mitigate

Parties providing indemnities should consider that, in a claim for damages, the means which existed of remedying the inconvenience caused by the non-performance of the contract would be taken into account for estimating damages under section 73 of the ICA. This indirectly places upon the promisee an obligation to mitigate its losses. Losses under indemnity may not need to take into account mitigation measures and hence an indemnifier may require the inclusion of such a position in order to limit its liability.

Specific indemnities

In addition to the general indemnification for R&W, where specific risks are identified prior to execution of the contract (usually during the DD process), acquirers seek specific indemnities against such risk. This ensures that the acquirer can claim indemnity against such risk despite its knowledge thereof. Further, it is not uncommon for specific indemnities to be unlimited.

¹⁹ *Deepak Bhandari v Himachal Pradesh State Industrial Development Corporation Limited*, AIR 2014 SC 961.

Third-party beneficiaries

Indemnities often include parties other than the acquirer as beneficiaries, such as its affiliates, officers and employees. Although the doctrine of privity of contract is well recognised in India, third-party beneficiaries are permitted to sue under contracts. There are mainly three types of third-party beneficiaries; first, where the performance of the promisee constitutes a gift to the beneficiary, the beneficiary is a donee beneficiary. Second, if the performance of it will satisfy an actual or supposed asserted duty of the promisee to the beneficiary, the beneficiary is a creditor beneficiary. Third, in all other cases, the beneficiary is deemed to be an incidental beneficiary. A donee or creditor beneficiary has a right to enforce contracts made by others for its benefit.²⁰

Indemnity payments to non-residents

Indemnity payments from resident warrantors to foreign acquirers are restricted under extant foreign exchange laws. Until 2016, indemnity payments would require the prior approval of the Reserve Bank of India (RBI). However, on 20 May 2016, the RBI issued a notification providing that in a share sale, an indemnity may be provided for up to 25 per cent of the sale consideration and for up to 18 months from the date of payment of the full consideration without RBI approval. Any indemnity payments beyond this limit and indemnities in other M&A transactions would still require approval of the RBI.

Qualifications and limitations of liability

Transaction documentation contains provisions that limit the liability of the warrantor, usually including the following. Any clauses that limit the liability of parties to a contract are to be strictly construed.²¹

Disclosures

Parties making representations are permitted to disclose facts as against representations provided. The other party, having knowledge of such facts, is then precluded from making claims based on such facts being contrary to representations provided. Acquirers prefer that such disclosures are as specific as possible to narrow the scope of defence. However, warrantors seek to enlarge the scope to include publicly available information and DD information. However, DD information is often voluminous, and the acquirer being a stranger to the business may be unable to assess each risk from it. Hence from the acquirer's perspective, this should be avoided. Warrantors often seek the right to update their disclosures with matters occurring between the signing of the contract and consummation of the transaction, to which acquirers are sometimes resistant.

Knowledge

Warrantors seek to limit certain representations with reference to their specific knowledge of the matter concerned. The rationale for this is that it may not be possible for the warrantor to know of certain things such as claims filed against it for which no notice is received or latent defects. By limiting the representation to knowledge, the acquirer cannot claim relief if there is a breach of a representation that is unknown to the warrantor. Warrantors seek to define knowledge as

20 *Essar Steel Ltd v Gramercy Emerging Market Fund*, 2003 116 CompCas 248 Guj.

21 *United Insurance Company Limited v Blue Dart Express Limited* in CS (OS) 78/2002 in Delhi High Court.

actual knowledge as against the acquirer who seeks to define knowledge as constructive knowledge (ie, knowledge the warrantor is presumed to have or ought to have regardless of whether it actually has it (eg, patent defects)).

Materiality thresholds

Warrantors seek to limit claims from acquirers to only material claims by including the term 'material' in the representations and warranties. Considering the subjectivity of the term 'material', a monetary threshold is agreed upon and claims below this amount cannot be brought against the indemnifier. Such a threshold can be made to apply to a single claim or a cluster of claims. The concept of a tipping basket – the ability of the indemnified party to seek indemnity for claims below the threshold where aggregate claims exceed the agreed threshold – is often seen. The thresholds are either expressed as a definite number or a percentage of the consideration value.

Caps

The overall liability under indemnification is usually capped to a definite amount, expressed as a percentage of the consideration. The cap usually ranges from 25 to 100 per cent depending on the transaction size. Often certain R&W, contractually termed as 'fundamental warranties' (relating usually to title and capacity), and liability for fraud are uncapped or capped at 100 per cent (while the rest of the warranties have a lower cap).

Periods of limitation

As indemnity contracts are independent of the main contract and hence not bound by the same periods of limitation, it becomes necessary to contractually limit the period of its applicability. Warrantors need certainty of the period of their liability. It is usual to align the contractual limitation periods to statutory periods for such claims (which vary depending on the R&W being covered). Usually fundamental warranties are unlimited in time, while other R&W are limited to 18 to 36 months, except tax warranties for which seven years is the norm. In cases where the seller is seeking a complete exit from the relevant jurisdiction, shorter timelines are sought.

Exclusive remedies

In order to ensure that acquirers are restricted to the remedies prescribed within the contract, an agreement is sought to the effect that the acquirer is only entitled to such remedies. While it is debatable whether such an exclusion of statutory remedies is enforceable, acquirers often seek the ability to go beyond the contract for non-monetary reliefs including specific performance and injunctions.

Restitution

Where an indemnified party later recovers the claim amount (through dispute resolution process or insurance), an indemnifier who has honoured the indemnity could require restitution (ie, repayment of such amount by the indemnified party).

Joint versus several liability

Where there is more than one seller, the sellers may insist that their liability is several and not joint. This would mean that claims may be made against them only to the extent of the obligations

taken on by them. This would result in a seller being liable only for specific representations provided by it or where the representations are joint, then only to the extent of the ratio of consideration paid to it (when read in conjunction with the liability cap). Joint liability, on the other hand, would make all the sellers liable to the full extent of the liability. Joint and several liability would leave it open for the indemnified party to apportion a part or whole of the liability to any one or more of the sellers. Where the target is one of the warrantors, the acquirer should insist on several liability.

Safeguards sought by acquirers

Acquirers seek to limit recourse by the sellers to the target by disallowing restitution where the target is a warrantor. Further, where there are liabilities imposed on the company, acquirers may seek a gross-up of claim amounts and, in some cases, require the sellers to pay into the target.

Insurance

Increasingly, M&A transactions in India are being covered by R&W insurance or warranty and indemnity (W&I) insurance, given the increase in the sophistication of the transactions and parties in this jurisdiction. This insurance covers the seller's liabilities arising from the R&W and indemnities in the contract. A large part of the negotiation of M&A transactions revolves around these provisions and their limitations, and they are often hotly debated. The availability of insurance can drastically reduce the time taken for negotiations and can also affect the price, since sellers often price their post-transaction risks into the consideration sought. These policies enable an acquirer to claim beyond limitations in the contract. However, any information that an acquirer knows would disentitle an acquirer from making a claim and therefore specific indemnities would not be covered. Where the seller obtains the insurance, the seller is liable for claims under the contract beyond the insurance policy. Further, if the seller knows of any inaccuracy in any R&W, no claims can be made.

Although both parties can obtain such insurance, usually acquirers prefer that the sellers obtain such insurance since the acquirer would have recourse to the seller if the insurance claim is rejected.

R&W insurance and W&I insurance typically have limitations, including retentions and de minimis thresholds built in. The time limitations mirror those under the main contract subject to a maximum of seven years for fundamental and tax warranties and three years for the remaining. Insurers also undertake their own DD to assess their risks.

In this context it is pertinent to note that contracts for insurance are considered as *uberimae fidei* (ie, contracts of utmost good faith). The insurer's liability is voided if any facts are either omitted, hidden, falsified, distorted or incorrectly presented by the insured. The insured and the insurer would both have to disclose all facts relevant.²² Where the seller obtains R&W or W&I insurance, it is duty-bound to make as many disclosures as possible to ensure that it can claim the insurance. Towards the acquirer, it is adequate that any non-disclosure is not fraudulent

Although more prevalent, parties are still wary of such insurance considering that it requires the conduct of a detailed DD and it would not usually cover undisclosed liabilities.

22 *Modern Insulators Ltd v Oriental Insurance Co Ltd*, 2000 (2) SCC 734.

Conclusion

R&W and indemnities in M&A transactions in India follow well established principles arising from both law and practice. They have evolved over time in line with changed developments in law and business practices. India, being a dynamic jurisdiction, has witnessed increasing M&A activity through the years (many involving foreign jurisdictions), leading to a greater exchange of ideas and adoption of international contractual developments. However, this dynamism is attended by a lack of uniformity and therefore many approaches to these typical issues are common. Reliance on insurance has brought around some amount of consistency owing to strict requirements from insurers. In any case, a cautious and careful approach towards these provisions is required to ensure fair allocation of risk, which is the *raison d'être* of R&W, indemnities and insurance.

Appendix 1

About the Authors

Sujain Talwar

Economic Laws Practice

Sujain Talwar is a co-founding partner of Economic Laws Practice (ELP) and is responsible for transactions primarily in the infrastructure and hospitality sectors. With over 25 years' experience, Sujain is a qualified solicitor in India as well as in England and Wales.

Sujain has worked extensively on infrastructure projects in the region, including in Djibouti, Fujairah, the Maldives and Yemen. He has also been instrumental in developing ELP's hospitality practice and has acted (usually for owners) in several hotel transactions involving almost every international hotel operator in India. He also serves as an independent director on some boards.

Prior to ELP, Sujain worked as a qualified English solicitor with Pinsent Masons, UK, where he served for nine years. He trained as a solicitor with Crawford Bayley & Co, Mumbai.

Aakanksha Joshi

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Aakanksha Joshi is a partner in the energy and infrastructure, hospitality, corporate and commercial, private equity and real estate practices of Economic Laws Practice (ELP).

Aakanksha has been involved in various infrastructure, corporate and hospitality transactions ranging from drafting and review of fuel supply agreements, power purchase agreements, construction contracts, concession agreements, bid documents and hotel agreements. She also advises on joint venture and private equity transactions, primarily in the infrastructure and hospitality space. She has represented various kinds of clients ranging from government bodies, international cement companies, construction companies, power generation companies, international hotel management companies, hotel owners and private equity funds.

Aakanksha has been ranked by *Chambers Asia-Pacific* for her expertise in projects, infrastructure and energy. The *IFLR1000 Energy & Infrastructure guides* have recommended her as a Rising Star in India and she has been recognised as a Next Generation Partner by *The Legal 500*.

Prior to joining ELP, Aakanksha served with DSK Legal, where she worked on corporate and real estate transactions.

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