



Indian Private Equity Trend Report 2016





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Trend Report
2016



Table of Contents

04	PE/VC Investments in 2015
09	Private Equity Exits in 2015
12	Sector Focus - IT & ITeS
15	Indemnity and Limitation of Liability Provisions in Software Product Licensing Contracts
19	The Indian Consumer Story- Bigger and Stronger
22	Sector Focus - Healthcare & Life Sciences
25	Pharma - Thriving with Life
28	Sector Focus - Real Estate
30	Real Estate - The year that was & outlook for 2016
33	Real Estate Sector Reforms - FDI Policy

PE Investments in India during 2015: 661 Deals, \$16.8 Billion

Private Equity investments in India touched a record high of **\$16.8 billion in 2015 (across 661 deals)**, 16% higher than the previous high of \$14.5 billion (across 529 deals) recorded in 2007 and a whopping 50% higher than the \$11.2 billion (across 530 deals) invested during the previous year. The surge was led by continued mega investments in **consumer targeting Internet & Mobile Services companies that accounted for almost \$5.3 billion or 31.5%** of the investment pie during the year.

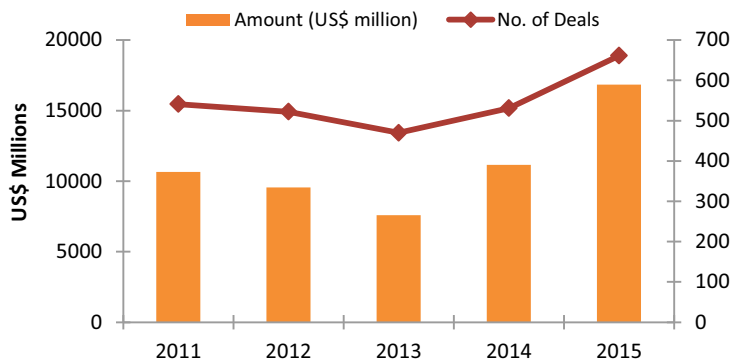
Highlights

- 44 investments of over \$100 million (compared to just 19 investments in 2014)
- IT & ITES companies grab 45% of the investment pie at almost \$7.5 billion (across 386 deals)
- Investments in BFSI surpass Healthcare & Life Sciences
- Buyout deals surge to 18% of the value pie (compared to just 6% in 2014)
- Q4 investments however display downtick on both QoQ and YoY terms

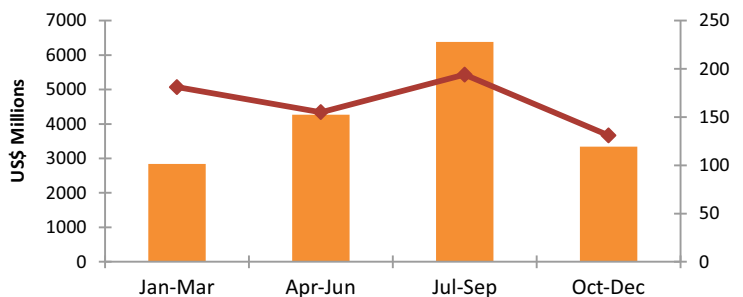
In a continuation from 2014, the leading home grown E-Commerce giants **Flipkart** and **Snapdeal** garnered a total of \$1.45 billion between them, followed by taxi aggregator **Ola Cabs** that gathered \$900 million. Flipkart raised \$700 million at a reported \$15.2 billion valuation in a round that saw participation from existing investors Tiger Global and Steadview Capital and taking the total funding raised by the company to \$3.2 billion. Snapdeal raised \$500 million in August in a round led by Chinese e-commerce firm Alibaba Group, Foxconn Technology Group and existing investor Softbank Group.

The top PE investments in 2015 (by deal value) also consisted large buyout transactions in sectors as varied as Broadband to Cash Management to BPO services. In July, global private equity firm TAAssociates combined with India Value Fund to invest \$500 million to acquire 95% stake in high-speed broadband services provider **Atria Convergence Technologies (ACT)**. In May, Baring Asia acquired 100% stake in cash management services firm **CMS Info Systems** for \$440 million, providing an exit to existing PE investor Blackstone. Blackstone bought **Intelenet BPO** from Serco Plc for \$383 million – re-entering the same business that it (along with the management team) had sold to the UK firm in 2011 for more than \$630 million.

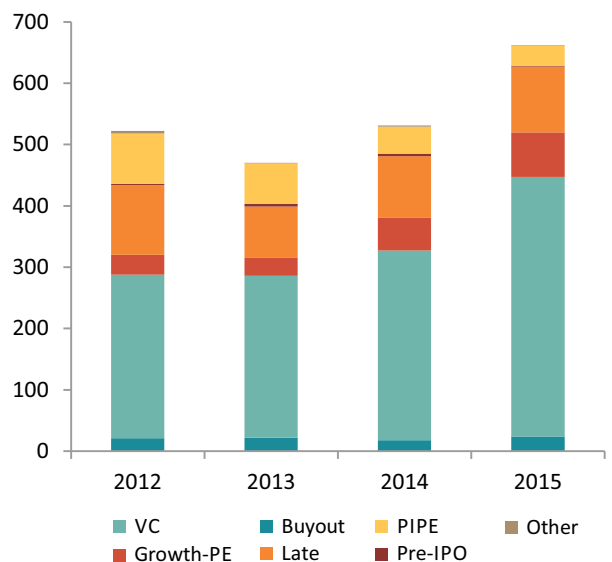
PE Investments in India



Investments by Quarter - 2015



By Stage (Deal Activity)



PE Investments in India during 2015: 661 Deals, \$16.8 Billion

➤ By Stage

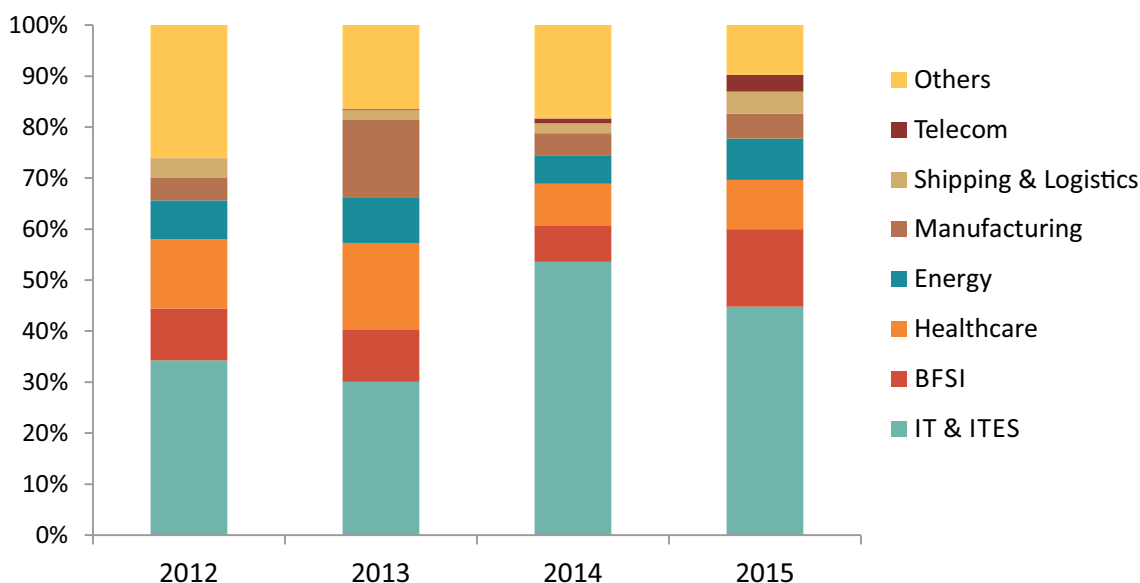
Venture Capital investments, hit historical high figures (at \$1,774 million across 423 transaction), accounted for 64% of the pie in volume terms and 11% in value terms.

Late Stage investments accounted for 36% of the investments by value and about 16% in volume terms during 2015.

On the back of seven mega (\$100 M+) deals, Buyouts surged to 18% of the PE investment pie in 2015, compared to just 6% in 2014. Acquisition of minority stakes in listed companies ("PIPEs") accounted for 12% in value terms (versus 5% in volume terms in 2015).

➤ By Industry

Share of Industry (Value)



IT & ITES companies, which attracted 45% of the investment pie at almost **\$7.5 billion (across 396 deals)** continued to attract a dominant share of the investor interest.

BFSI (Banking, Financial Services and Insurance) companies emerged as the second favorite destination for PE investments in 2015 attracting \$2.5 billion across 42 transactions. Investments in BFSI companies showed a remarkable increase of 3.3 times (in value terms) compared to 2014. The biggest BFSI transaction in 2015 was Apax Partners' \$383 million (INR 2,456 Cr) buyout of TPG Capital's 20% in publicly listed NBFC firm **Shriram City Union Finance**. This was followed by the \$295 million (INR 1,950 Cr) investment by Temasek and PremjiInvest in privately held **ICICI Prudential Life** to purchase a 6% stake from ICICI Bank. Fairfax India Holdings, an investment firm promoted by Canada-based Prem Watsa, acquired 21.85% stake in publicly listed **IIFL Holdings** through a voluntary open offer for roughly \$201 million (INR 1,341 crore) taking its stake to almost 31%. Bain Capital invested \$200 million (INR 1,310 crore) in publicly listed **L&T Finance Holdings** in a mix of preferential allotment and public market deals to acquire 10.22% stake.

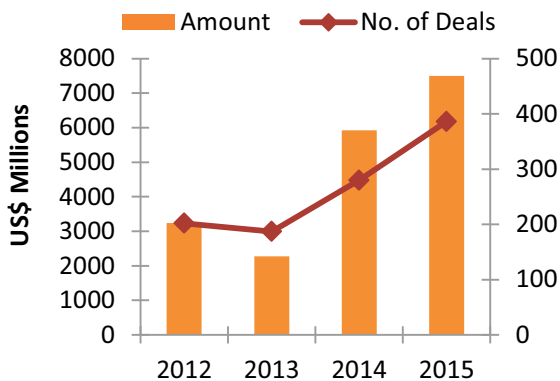
Major buyout deals in the industry were that of Carlyle investing a reported \$200 million (INR 1,200 crore) to buy out the stake held by NSR in **Destimoney Enterprises** and KKR investing \$115 million to buy a 72% stake in homegrown investment bank **Avendus Capital**. Other notable BFSI deals in 2015 included were \$173 million (INR 1,122 Cr) investment in **India Infoline Wealth** by General Atlantic and the \$165 million (INR 1,019 Cr) investment in **Bandhan Bank** led by GIC.

PE Investments in India during 2015: 661 Deals, \$16.8 Billion

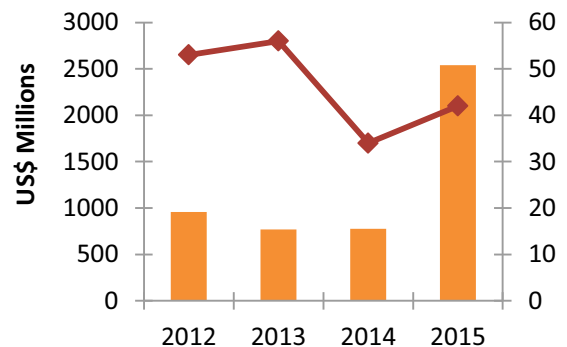
Healthcare & Life Sciences was the third favorite industry among investors in 2014 attracting \$1.5 billion across 51 deals led by the \$294 million investment by Temasek in publicly listed **Sun Pharma**, followed by Capital International's \$203 million in privately held **Mankind Pharma** (via a secondary purchase from existing investor ChrysCapital). Temasek also invested \$151.4 million via a preferential allotment in publicly listed **Glenmark Pharmaceuticals**. In the Hospitals sector, TPG Capital invested \$150 million in **Manipal Health Enterprises**, while **Medanta Medicity** attracted \$113 million from Temasek. Carlyle invested \$128 million to acquire the about 37% stake owned by co-founder G.S.K. Velu in diagnostic chain **Metropolis Healthcare**.

Energy companies attracted investments worth \$1.2 billion (across 27 deals), over twice that in 2014. Major Energy investments comprised of the \$265 million investment in **ReNew Wind Power** led by Abu Dhabi Investment Authority (ADIA) followed by the \$256 million buyout of **Greenko Group's** Indian assets by GIC. The infrastructure focused I Squared Capital invested \$150 million in **Amplus Energy**, the Indian subsidiary of the US energy major AES Corp, which sets up solar power generation projects.

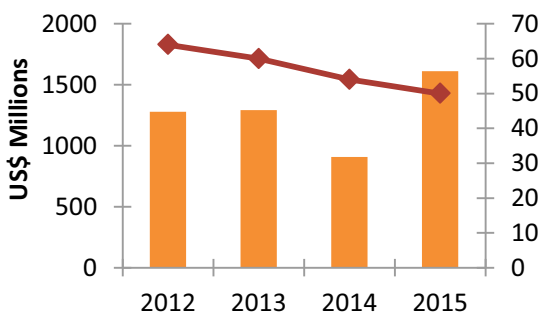
IT & ITES



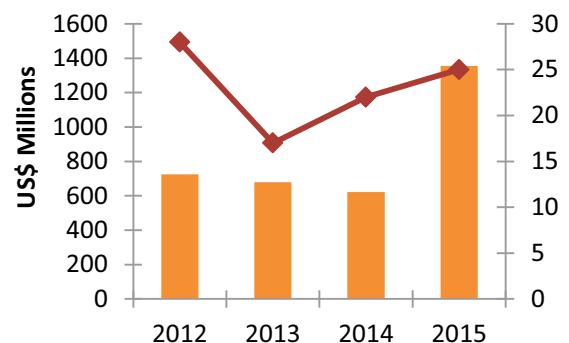
BFSI



Healthcare

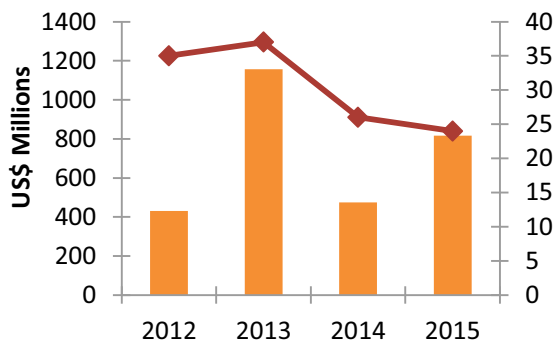


Energy

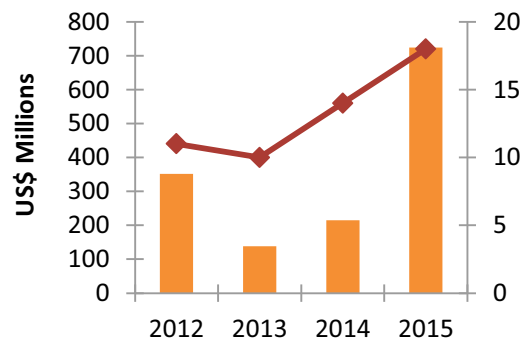


PE Investments in India during 2015: 661 Deals, \$16.8 Billion

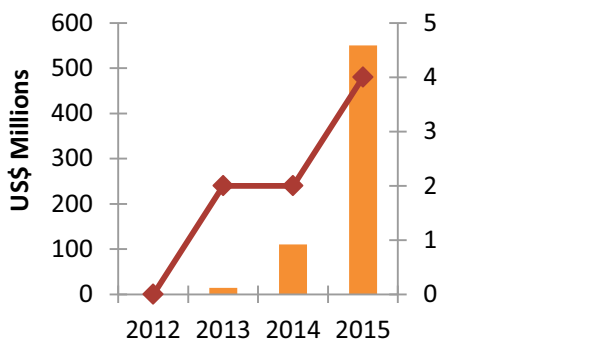
Manufacturing



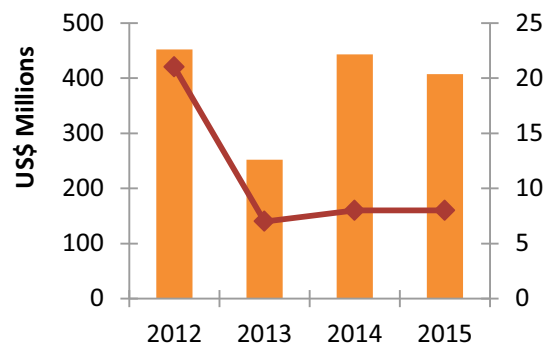
Shipping & Logistics



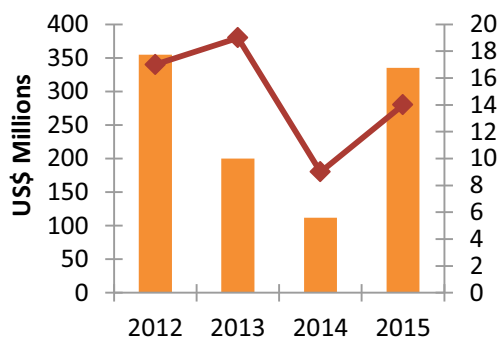
Telecom



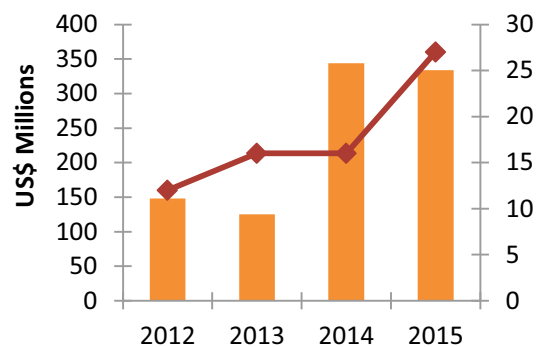
Engineering & Construction



Agri-Business

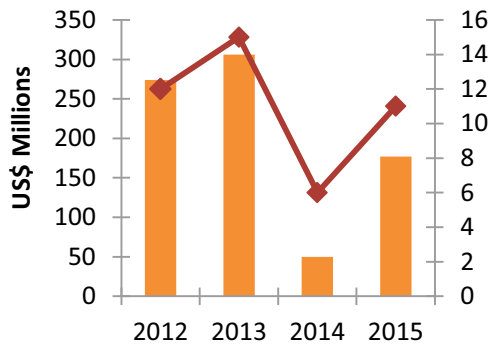


Food & Beverages

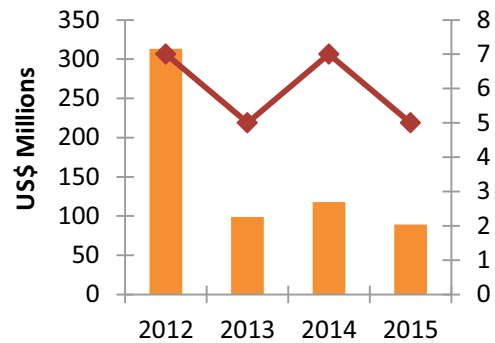


PE Investments in India during 2015: 661 Deals, \$16.8 Billion

Media



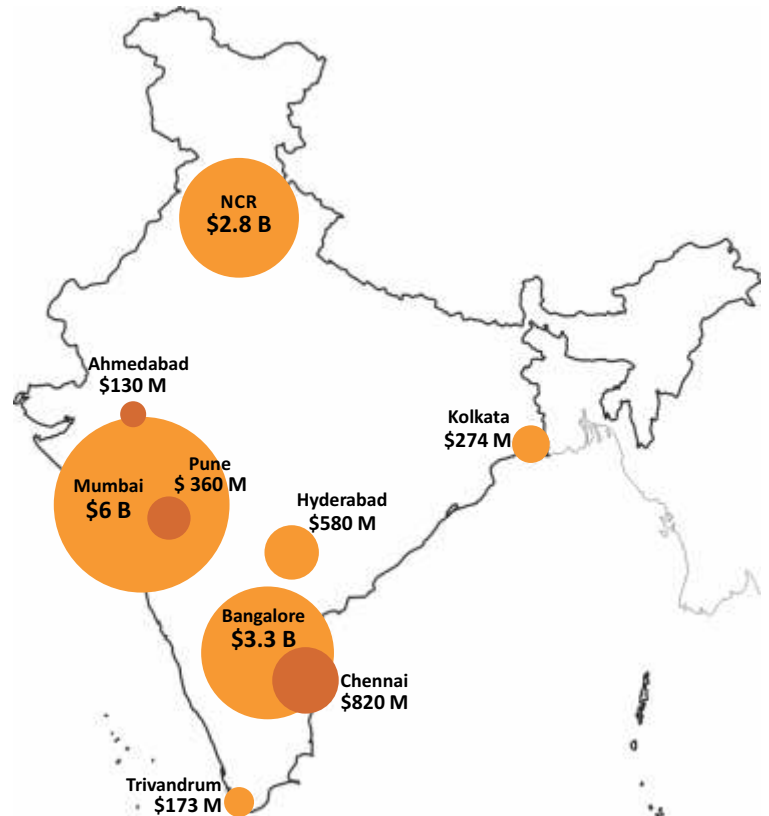
FMCG



➤ PE/VC Investments - By Region

Companies based in Western India (which attracted \$6.2 billion across 207 deals) accounted for almost 40% of the PE investment pie in value terms (31% by volume) during 2015. South India based companies (\$5 billion across 229 investments) followed with a 32% share (35% by volume). Companies in North India attracted investments worth almost \$3.5 billion across 179 deals (22% by value and 27% by volume). Among cities,

Mumbai-based companies attracted the most investments (\$6 billion across 157 investments), followed by Bangalore-based companies (\$3.3 billion across 155 investments). Companies in the National Capital Region attracted 161 investments worth \$2.8 billion.



PE Exits in India during 2015: 236 Deals, \$8.9 Billion

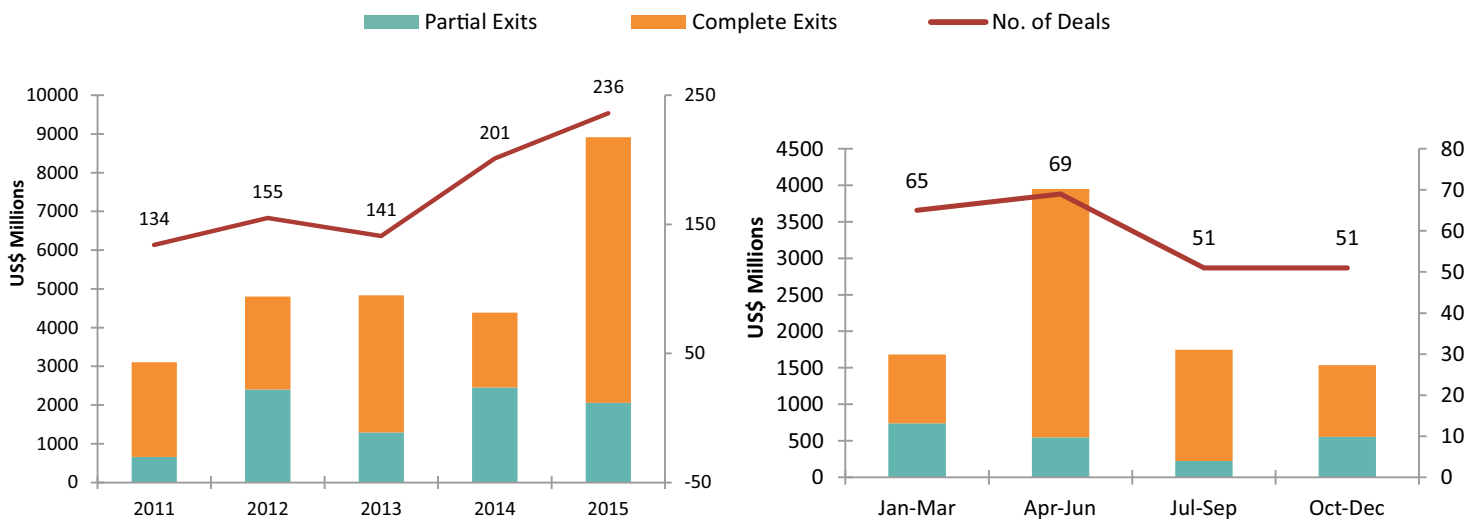
Private Equity exits in India surged by 103% during the calendar year 2015 to touch an all time high of \$8.9 billion* across 236 deals - \$6.9 Billion of which represented complete exits; the remainder being partial ones. The exit value in 2015 surpassed the previous high recorded in 2010 - which had witnessed exits worth \$6.3 billion across 195 deals. These figures, which include VC Exits and exclude PE Exits in Real Estate, take the total realizations by PE firms in the five year period starting January 2011 to about \$26 billion across 867 transactions.

*Note – Value includes stock swap deals.

➤ Highlights

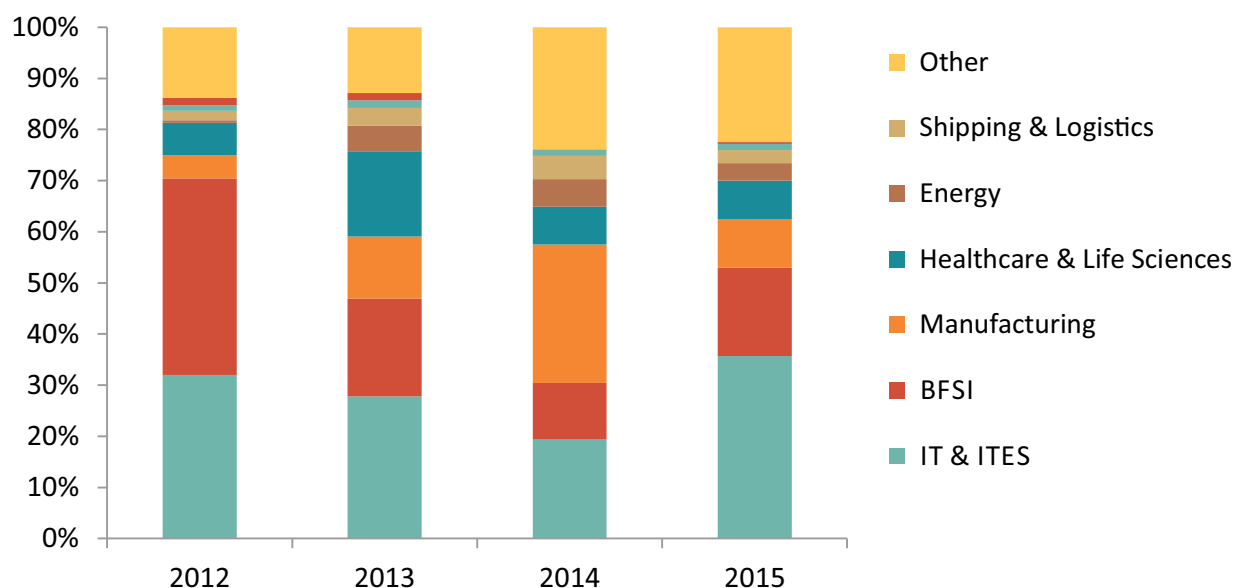
- 22 exits of over \$100 million in value accounts for 62.63% of the value pie
- Exit via Strategic Sales and Secondary Sales touch an all time high of \$2.9B and \$2.4 B
- 6 exits with over 10x return in 2015 compared to 4 in 2014
- IT & ITES exit at all time high of \$3.2 B; account for 36% in value terms (22% by volume)
- BFSI enjoys 2nd best year with \$1.5 B worth of exits (following the \$1.8 B in 2012)
- Helion sells Flipkart stake for over 16x returns, while Tiger Global exits JustDial with 13x

➤ PE Exits



PE Exits in India during 2015: 236 Deals, \$8.9 Billion

➤ PE/VC Exits – By Industry (Value)



With 53 exits worth about \$3.2 billion, Information Technology and IT-Enabled Services (IT & ITES) portfolio companies topped in terms of both exit value (as much as 36% of the pie) and volume (22%) during 2015. Exits in IT & ITES were up a massive 3.8 times YoY in value terms (and almost 23% in volume terms) over the corresponding figures in 2014.

The BFSI industry came in second garnering \$1,536 million worth of exits across 34 transactions with the \$383 million stake sale by TPG Capital in consumer loans company Shriram City Union Finance to Apax Partners as the top exit deal, followed by TRG Global PE, Baring Asia and Samara Capital's \$250 million strategic exit from Broking firm **Sharekhan** (acquired by BNP Paribas). New Silk Route sold its seven year old investment in **Destimoney** to Carlyle in a reported \$200 million deal.

The Telecom industry came in third with \$1,096 million worth of exits across five transactions led by the ACT Broadband deal (for India Value Fund III) and followed by KKR's selling its holding in Bharti Infratel via public market route for about \$271 million.

Led by the Lafarge India buyback, the Manufacturing industry came in fourth with \$840 million worth of exits across 34 transactions. Bain Capital sold its holding in **Hero MotoCorp** for \$116 million through the stock exchange, while Blackstone sold its majority stake in **Agile Electric** to a consortium led by Igarashi Electric Works.

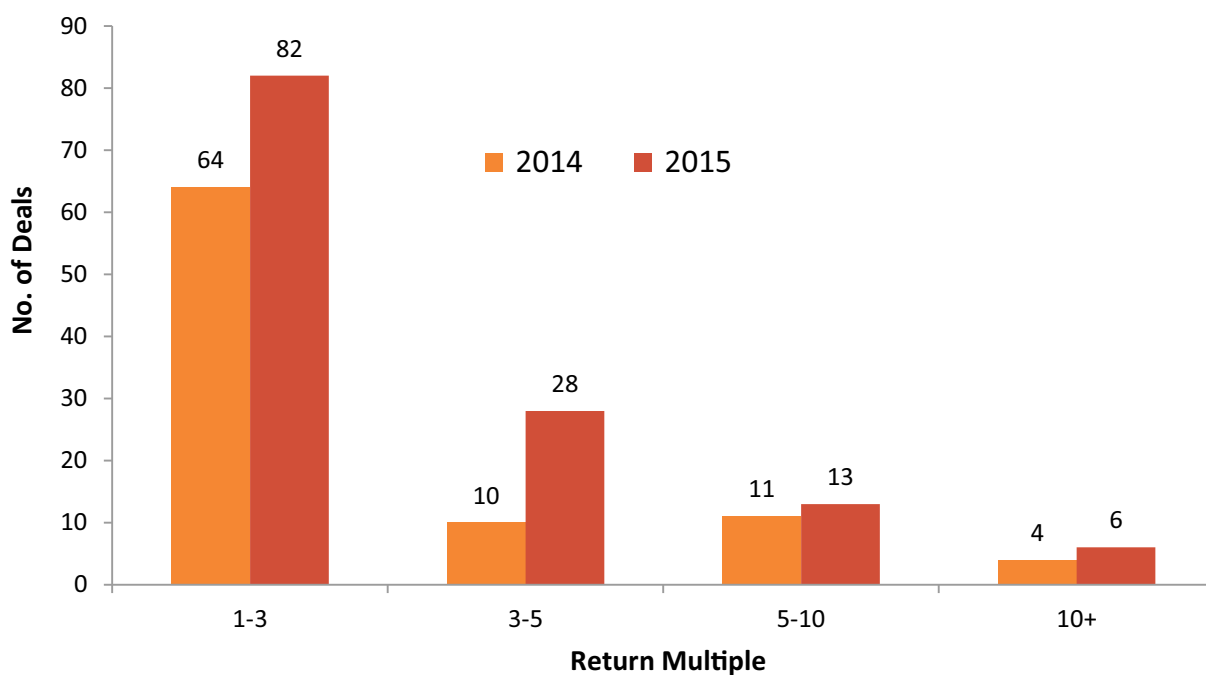
Healthcare & Life Sciences industry was the next largest source of exits in 2015 harvesting \$684 million worth for investors across 22 transactions. Led by the Mankind Pharma, pharmaceuticals firms accounted for half the exits in the industry. Everstone sold its stake in **Global Hospitals** to Malaysia-based Parkway Hospital for \$80 million. The third largest exit took place via the IPO route when TA Associates and Westbridge offloaded their partial holdings worth about \$62 million in diagnostics services firm **Dr. Lal Pathlabs**.

PE Exits in India during 2015: 236 Deals, \$8.9 Billion

➤ Exits by Profitability

Overall 2015 fetched PE investors 129 profitable exits* compared to 89 exits in the previous year. Of these, six exits fetched 10x or higher returns (compared to just four such deals in 2014). On the flip side, investors cut losses in 17 deals (12 of them in listed companies) during 2015. Even here, 2015 compared favorably to 2014 which had witnessed investor book losses in 31 deals (25 of them via the public market sales).

*Among deals for which return data is available



Top PE Exits by Profitability

Company	PE Firm(s)	Type	Acquirer	Return Multiple
Zensar Technologies	Electra Partners	Secondary	Apax Partners	26.5x
Flipkart	Helion Ventures	Secondary	Undisclosed	16.74x
Mankind Pharma	ChrysCapital	Secondary	Capital Intl	13.13x
JustDial	Tiger Global	Public Market	Public Markets	13.12x
Elitecore Tech	Carlyle	Strategic	Sterlite Tech	11.86x
Cloud Nine	Matrix Partners	Secondary	India Value Fund	7.00x
Indian Energy Exchange	Bessemer	Secondary	TVS Capital	7.00x

IT & ITES Investments in India during 2015: 396 Deals, \$7.52 Billion

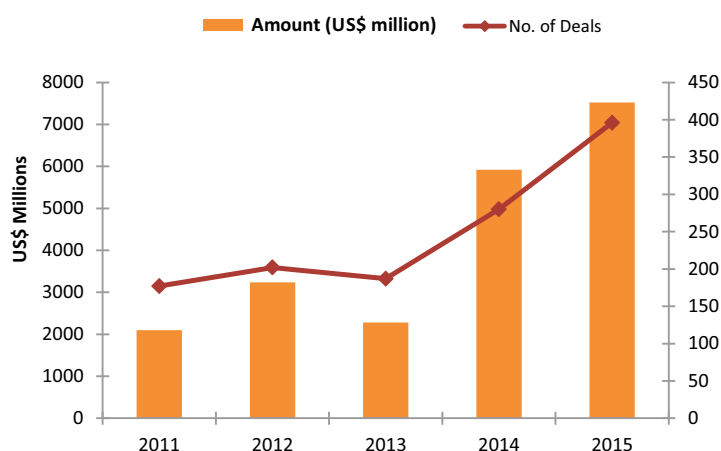
Private Equity investments in India touched a record high of \$16.8 billion in 2015 (across 661 deals) and IT & ITES topped the list of investor's favorite destination by grabbing almost 45% of the total investments .i.e., \$7.52 billion across 396 deals against \$5.92 billion across 285 deals in 2014.

Highlights

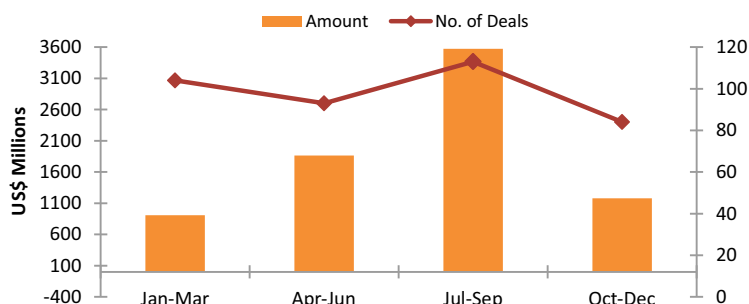
- 16 investments over \$100 million (10 investments in 2014)
- 274 companies received early stage funding in 2015 compared to 167 companies in 2014
- 41% of the exits were provided through acquisitions by PE/VC-backed peers

2015 witnessed 16 investments of \$100 million or more, compared to 10 such deals in 2014. The deal range of \$ 15-25 M witnessed a strong spike up both in terms of No. of deals (up 88%) and total amount invested (up 90%).

IT & ITeS Investments in India



Investments by Quarter



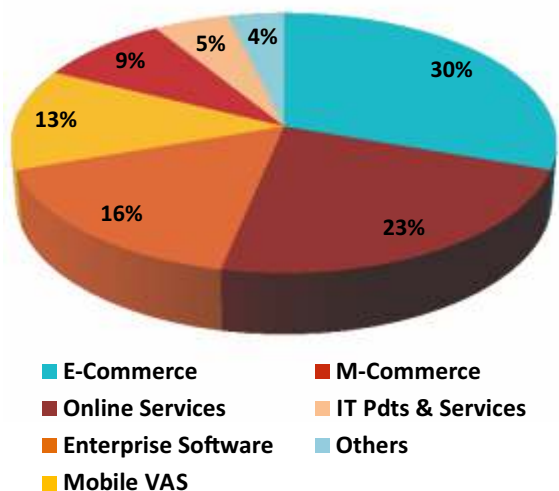
Top IT & ITES Investments

Company	Investors	Investment (Valuation)
Flipkart	Tiger Global, Steadview Capital, Others	\$700 M (\$15.2 B)
Ola	DST Global, Steadview, Falcon Edge Capital, Baillie Gifford, Arun Sarin Family, GIC, Tiger Global, SoftBank Corp, Others	\$500 M (\$5 B)
Snapdeal	Alibaba, Temasek, PremjiInvest, SoftBank Corp, Others	\$500 M (\$5 B)
CMS Info Systems	Baring Asia	\$440 M (\$440 M)
Ola	GIC, Tiger Global, SoftBank Corp, DST Global, Steadview, Accel USA, Falcon Edge Capital, Others	\$400 M (\$2.5 B)

In a continuation from 2014, the leading home grown E Commerce giants **Flipkart** and **Snapdeal** garnered a total of \$1.45 billion between them, followed by taxi aggregator **Ola** that gathered \$900 million. Flipkart raised \$700 million at a reported \$15.2 billion valuation in a round that saw participation from existing investors Tiger Global and Steadview Capital and taking the total funding raised by the company to \$3.2 billion. **Snapdeal** raised \$500 million in August in a round led by Chinese e-commerce firm Alibaba Group, Foxconn Technology Group and existing investor Softbank Group.

IT & ITES Investments in India during 2015: 396 Deals, \$7.52 Billion

By Sector (Volume)

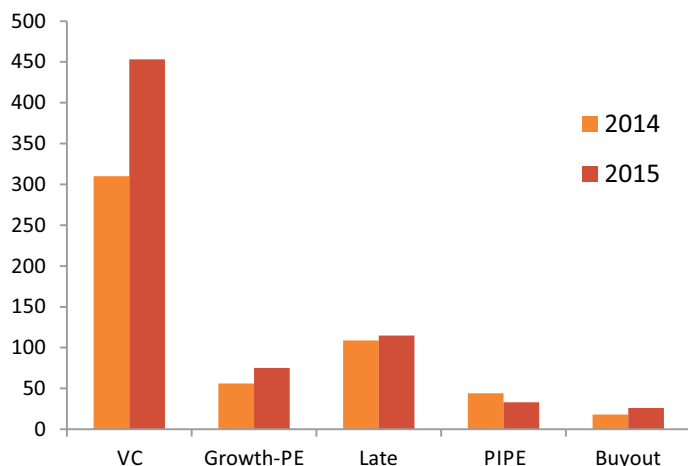


E-Commerce attracted 30% of the pie by volume attracted 120 investments worth almost \$3 billion, followed by other Online Services that accounted for 23% of the pie at 91 deals worth \$860 million. Mobile Tech companies attracted the second highest investments by value (\$1.30B across 50 deals) followed by IT Products and Services (20 deals worth \$1,220 million).

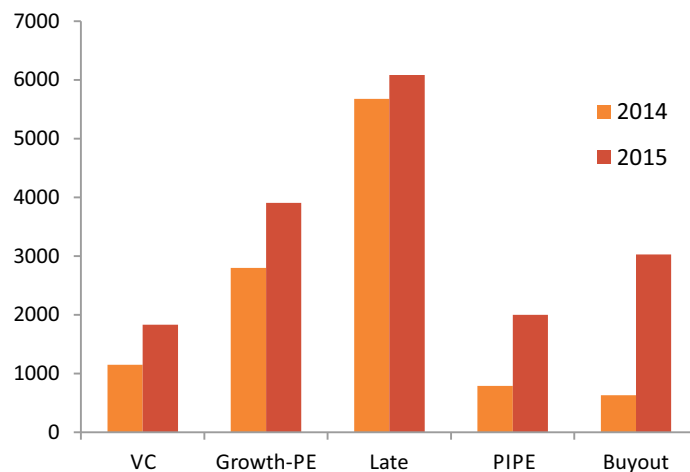
By Stage

IT & ITES investments in the Venture Capital segment witnessed a spurt, with 78% of the investments (by value) accounted for by early stage companies. Buyout deals in IT & ITES witnessed an almost three-fold increase in value terms led by the \$440 million **CMS Info Systems** one and followed by Blackstone's \$383 million purchase of **Intelenet Global Services** from UK-based Serco Plc.

By Stage (Volume)

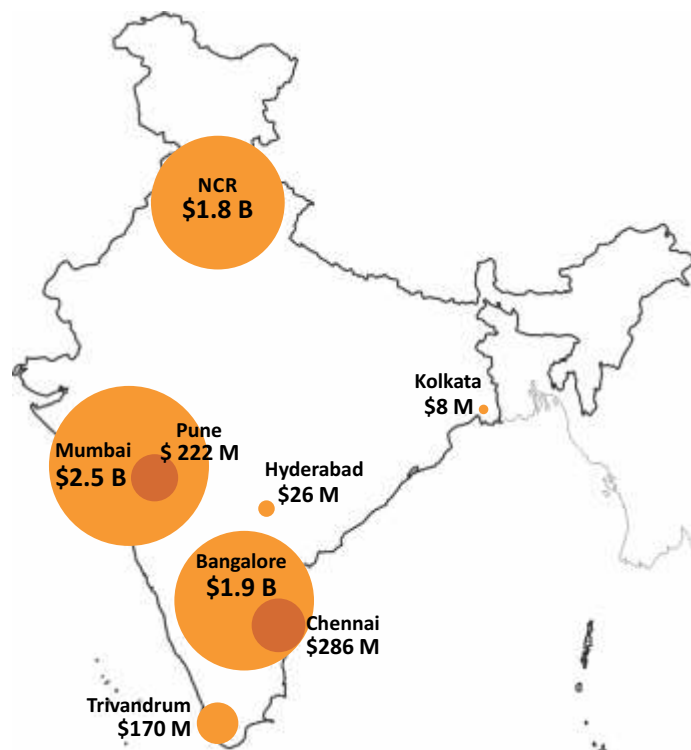


By Stage (\$M)



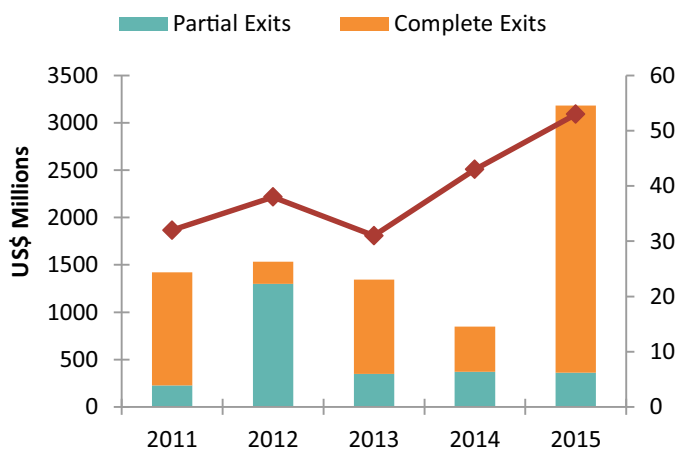
By Region

In terms of activity, the Southern region was the top investment destination for IT & ITES investments, with Bangalore attracting 118 investments (worth \$1.95 billion) followed by the NCR region which attracted 110 investments.



IT & ITES Investments in India during 2015: 396 Deals, \$7.52 Billion

Liquidity Events



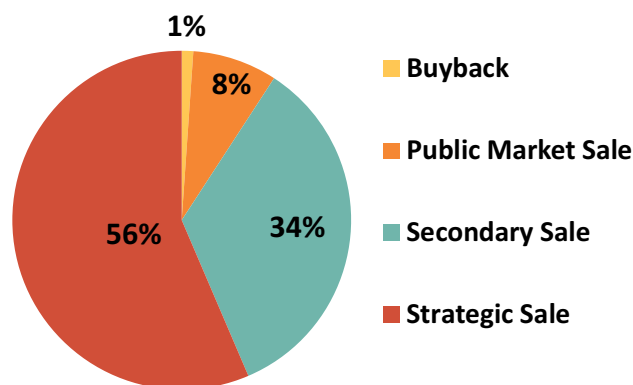
IT & ITES witnessed record high PE exits worth \$3.82 billion* across 53 deals, an exceptional growth of 275% over 2014 that witnessed exits worth only \$840 million across 43 deals. (*Note – Value includes stock swap deals.)

Highlights

- IT & ITES exits grab 43% of the total exits in CY15
- 8 exits of over \$100 M in value, accounts for 69% of the pie
- Helion Ventures sells Flipkart stake for over 16x returns, while Tiger Global exits JustDial with 14x

Exits by Type

Strategic Sales were the most common exit route among IT & ITES companies in 2015 with active acquisitions by companies like **Ola** (which acquired Taxiforsure and Geotagg), **Flipkart** (Dsyn Tech, Guruji.com & MapmyIndia), **Grofers**, **Practo**, **Twitter**, etc. Secondary Sales enabled five exits worth over \$100 million. Electra Partners exited its 16 year old investment in **Zensar Technologies** with a **26.51x** return when Apax Partners purchased its stake in a \$132.6 million deal.



Top PE Exits by Size

Company	PE Firm(s)	Type	Acquirer	Amount (\$M)
iGate	Apax Partners	Strategic Sale	Capgemini	1112
Freecharge.com	Sequoia Capital, Valiant Capital, Ru-Net Holdings, Tybourne Capital	Strategic Sale	Snapdeal	400
CMS Info Systems	Blackstone	Secondary Sale	Baring Asia	250
QuEST Global	Warburg Pincus	Secondary Sale	Bain Capital, GIC	250
IBS Software Services	General Atlantic	Secondary Sale	Blackstone	170

Indemnity and Limitation of Liability Provisions in Software Product Licensing Contracts



» Using his experience compiled over a series of transactions, Raghunath Ananthapur, Partner at Tatva Legal brings these two common contractual provisions into close focus and offers his insights into the 'market standard' and the approaches that work best

» Indemnity

Indemnity and limitation of liability provisions consume the majority of the time that is spent negotiating software licensing contracts. Indemnity is a promise by one party to save the other party from loss or damage. On the other hand, limitation of liability provision limits a party's liability for loss or damages that arise from the software licensing contract. References to software licensing contracts made in this article are to software licensing contracts that are entered by the original design manufacturers and original equipment manufacturers.

The indemnification obligations of the parties in a software licensing contract are mutual but vary in degree and scope.

Indemnification of Licensor

Indemnification of a Licensor would normally cover all liabilities or claims arising from the Licensee's use of the licensed technology (excluding claims alleging infringement of third-party intellectual property rights by the licensed technology).

Indemnification of Licensee

Indemnification of a Licensee is typically limited to third-party claims that the licensed technology infringes intellectual property rights of that third party. The Licensee would also be joined in any such legal proceedings since the Licensee's products would incorporate the licensed technology.

Generally, the Licensor will agree to indemnify the Licensee for any claims that the licensed technology breaches third-party intellectual property rights. The Licensee will however be required to notify the Licensor of any such third-party claims promptly and cede control of the defence and any settlement related negotiations.

If the use of licensed technology is held to constitute infringement and its use is restrained by the court, the Licensor will be required to:

- procure for the Licensee the right to use the licensed technology on same terms as contained in the software licence contract;

Indemnity and Limitation of Liability Provisions in Software Product Licensing Contracts

- modify the licensed technology so as to make it non-infringing while retaining substantially equivalent performance;
- replace the licensed technology with non-infringing substantially equivalent licensed technology; and
- refund all amounts paid under the contract.

Indemnification right of the Licensee for third-party claims usually contains several qualifiers that will require careful examination. Licensors are averse to making any revisions to the original indemnification language. It is common to hear Licensors say that any changes to the indemnification terms would require escalation to senior management and that may delay the contract closure. Further, Licensors also commonly say that the costing provided to the Licensee is based on the standard indemnification provision and any revisions would result in increase in the pricing.

A Licensee generally has little room for negotiation in any contract, particularly, if the Licensor is a market leader, is an effective monopoly, is licensing an established technology or a technology standard or the licensed technology has not been subject to any infringement action since it was first marketed. The bargaining position of the Licensee will however be enhanced if the Licensee commits to provide large volumes of business. Nevertheless, it may be worthwhile to the Licensee, notwithstanding the delays that result from escalations, to pursue revisions to the original indemnification language. At least, the Licensee could use the issues arising on the indemnification provision, or any concessions it makes on them, as bargaining chips to negotiate a more favorable or reasonable position on other terms of the software licensing contract.

Here are a few commonly arising factors affecting the indemnification:

A) The Licensor's obligation to indemnify is generally excluded if the liability or claims result from unauthorized modifications to the licensed technology and where the licensed technology on a stand-alone basis without modifications could not have infringed third-party intellectual property rights. Additionally, if the licensed technology involves standard essential patents (e.g., chipset licensing) and the Licensor has no right to sub-licence the use of the licensed technology, the Licensee would be required to obtain rights to the use of licensed technology from its owners. In such cases, the Licensor will not be liable to indemnify the Licensee against any third-party claims that the licensed technology or the product breaches third-party intellectual property rights.

B) In certain cases, the scope of Licensor indemnification against claims that the licensed technology breaches third-party intellectual property rights is limited to intellectual property rights that are issued or registered in certain specified areas (such as the USA or Europe) as on the date of the software licensing contract.

There are two problems that arise from such language. Firstly, third-party claims covering intellectual property rights issued or registered after the date of the software licensing contract do not fall within the scope of indemnification. Patents may be issued after the date of the contract but carry a priority date much before the effective date of the contract. If such a patent forms the basis of any infringement action covering the licensed technology, it is excluded from the indemnification obligation of the Licensor. Such a restriction should be rejected outright since it will dilute the indemnification right of the Licensee.

Secondly, if the Licensee is distributing products incorporating the licensed technology in a country that is not covered within the scope of indemnification, Licensor will have no obligation to indemnify the Licensee against any claims that the licensed technology breaches third-party intellectual property rights. If the Licensor is not prepared to alter the above limitation and the Licensee is certain about its countries of distribution, the Licensee should propose to the Licensor that the contract should at least include in the scope of indemnification the countries in which the products incorporating the licensed technology would be distributed. A Licensee may also negotiate a reduced royalty or exclude applicability of royalty in countries to which Licensor indemnification is not extended or where the licensed technology is not registered as a patent.

C) Normally, the Licensor indemnification is not limited by time and survives expiry or termination of the software licensing contract. In rare cases though, the contract provides indemnification only during the term of the licence. This provision may appear harmless on the face of it, but if the Licensee wishes to replace the licensed technology with an alternative application and thereby terminates the licence, the Licensee will have no indemnification rights with respect to previous versions of the Licensee's product that incorporate licensed technology provided under the terminated licence.

D) If the use of licensed technology is restrained by a court order and the Licensor fails to provide the Licensee with alternate software containing similar functional features or modify the licensed technology to make it non-infringing, it appears reasonable for the Licensor to be required to refund to the Licensee all monies paid under the software licensing contract. It is very rare for the Licensor to agree to refund full monies paid under the software licensing contract.

What is more commonly refunded is advance royalties (if any) and/or support fees that remain unused on the date of infringement action or the date the Licensee is restrained from producing products incorporating licensed technology. The Licensee may however incur costs in finding a replacement, losses due to stoppage of production, changing the architecture or customization efforts to suit alternate application. These costs may sometimes be regarded as consequential damages, speculative in nature and difficult to measure. Sometimes the

Indemnity and Limitation of Liability Provisions in Software Product Licensing Contracts

software licensing contract may also provide for refund of all monies paid to the Licensor under the software licensing contract as depreciated for the term of the software licensing contract on a straight line basis.

E) The Licensor agrees to indemnify the Licensee against all costs, damages and legal fees as finally awarded in a third-party claim. Usage of term 'final' complicates the indemnity right of the Licensee. It could mean that the Licensee is not entitled to invoke the indemnity right until a third party has obtained a judgment compelling the Licensee to pay damages. It could also mean that Licensee is not entitled to sue on indemnity until the judgment of the highest court is pronounced. An indemnity may not be effective if the Licensee is not entitled to sue until a judgment is pronounced. A Licensee should be entitled to call upon the Licensor to indemnify as soon as a third-party action is threatened against the Licensee.

➤ Limitation of Liability

Limitation to Indemnification of Licensor

Licensee prefers that liability for 'direct damages' should be limited to: (i) the amounts that are paid under the contract; or (ii) a certain sum of money (such as USD 100,000); and prefer that its liability for 'indirect damages' be absolutely excluded.

A Licensor would generally require that the obligation of Licensee to indemnify be either of the following:

- a) unlimited liability for 'direct' and 'indirect' damages arising from breach of any provision of the contract; or
- b) limited liability for 'direct' and 'indirect' damages, except where the liability arises from breach of confidentiality obligations, intellectual property rights and license grant.

Any proposal from the Licensee to limit its liability is generally faced with outright rejection for a number of reasons. In the event of breach of certain provisions (confidentiality, IPR, license grant), the amounts specified under the software licensing contract would not be sufficient to compensate the losses that the Licensor would suffer. Further, providing for such lower threshold (in terms of liability of the Licensee) may potentially act as an incentive for the Licensee to breach the material provisions. If the Licensee proposes any amounts to cover any breach under the software licensing contract, the Licensor will normally seek the basis for such determination. A Licensee's proposal is normally based on the maximum liability that the Licensee is willing to take on with respect to a specific transaction. The damages that arise from intellectual property rights breaches are 'consequential damages' and if 'indirect damages' are excluded the indemnification provision would be too weak.

In most cases, limitation of liability provision remains an open issue with no meaningful negotiations with the Licensor until the contract is overdue for closure. The Licensee usually ends up agreeing to unlimited 'direct' and 'indirect' damages for losses arising from breach of confidentiality and intellectual property rights and the Licensor agrees for unlimited 'direct' and 'indirect' damages for losses arising from third-party intellectual property rights breach.

Limitation to Indemnification of Licensee

Licensors prefer to limit their liability for 'direct damages' to the amounts paid under the software licensing contract (in certain cases, amounts paid in the 12 months preceding the date of claim). Licensors prefer to exclude all liability for any 'indirect damages'. Normally the Licensors succeed in such demand. However, Licensor's liability to indemnify Licensee for 'direct damages' and/or 'indirect damages' arising from third-party actions should be unqualified. There is a possibility that in a third-party action that the licensed technology infringes third-party intellectual property, the Licensee may be required to pay damages exceeding the maximum liability of the Licensor under the software licensing contract.

However, it is important to note that, if the Licensee's liability for 'direct damages' is limited and/or 'indirect damages' is excluded; the same will naturally become applicable to the Licensors. So, if the Licensee at a future time incurs loss pursuant to a third-party claim that the licensed technology infringes third-party intellectual property rights, the Licensee's claim for damages or indemnification from the Licensor would be limited to 'direct damages' cap and if any 'indirect damages' flow from the breach they may not be covered under indemnification.

➤ Conclusion

Licensors are normally reluctant to allow any form of modifications to the indemnification and limitation of liability provisions. Licensees are concerned about the potential unlimited liability that may flow from the software licensing contract. Solutions to these problems are never easily achieved.

While Licensors may agree to minimal modifications that are normally deviations from the standard licensing contracts, they rarely agree to any modifications that would diminish their indemnification rights or enhance their indemnification obligations.

Whatever indemnification and limitation of liability provision finally applies, it is extremely important that the business and technical teams understand the key terms and conditions of the licence and what actions and omissions will give rise to an indemnity claim by the Licensor.

Indemnity and Limitation of Liability Provisions in Software Product Licensing Contracts



Tatva Legal is a full service law firm with offices across five locations in Bengaluru, Chennai, Gurgaon, Hyderabad and Mumbai founded in 2010 with 16 Partners and 80 Lawyers. The firm acts for both national and international clients.

As a full service firm, Tatva Legal provides a broad range of legal services whilst focusing on its core areas of practice corporate advisory, private equity and mergers and acquisitions, banking and finance, infrastructure and real estate.

The M&A team has extensive experience in representing private equity players, venture capitalists and corporates (including several Fortune 500 companies) in a multitude of specialised and sophisticated transactions, in both domestic and cross border deals.

The firm has an active practice in advising Banks and Non-banking Financial Companies in their fund deployment including listed corporate bonds, mezzanine debt and lending.

The firm is highly recommended for Real Estate transactions and has advised Developers, Funds and End Users like Hotels & Hospitals, SEZ, IT Parks across India.


The other areas of Practice include Insurance, Competition / Anti Trust, Projects Technology & dispute resolution.

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Raghunath graduated in law from Bangalore University in 2000 and has also obtained a Master's degree in International Business Laws from the University of Hull, U.K. He is a Solicitor, with the Law Society of England and Wales (non-practising), and Barrister, Lincoln's Inn (non-practising).

Raghunath earlier worked with leading law firms in India and also for a short period was an in-house legal counsel with IT products and Services Company.

Raghunath has published Articles in the field of Information Technology and Data Protection with the Society for Computers and the Law and SCRIPTed- A Journal of Law, Technology and Society. He has also contributed a chapter for WTO Obligations and Opportunities: Challenges of Implementation on TRIPS published by Cameron May, London.

Recently, Raghunath was awarded full scholarship by the World Intellectual Property Organization to attend training on IP Asset Management conducted by the Korean Intellectual Property Office and the Korean Invention Promotion Association at Seoul, South Korea. Raghunath was the only invitee from India to attend the training.

The Indian Consumer Story - Bigger and Stronger



In spite of the economic ups and downs over the last decade and while other sectors have seen their fortunes go up and down, the one story that has remained intact and has in fact strengthened over time is the consumption story. With the GDP growth expected to be between 7-7.5% this fiscal and inching up over the next few years, this momentum is expected to accelerate and present new investment opportunities for the investors' community.

On one hand, increasing economic prosperity and government schemes like "Make in India" and "Skill India" will provide more employment options, putting more money into the hands of the "Aam Aadmi", on the other, easier consumer finance will fuel consumption, not just of basic products but products that were hitherto aspirational for the socio-economic class that one belonged to. Further, the "Aam Aadmi" is itself undergoing a DNA metamorphosis psychologically as well as culturally. There is also an advent of new lifestyles and hence emergence of new "consumer micro-segments" previously unheard of, or insignificant in size (e.g. Single / Bachelor households, Vagabond Couples, Retiring Young households etc.). Some of these micro-segments are becoming large enough in themselves for businesses to take notice of and cater to. Thus, it is not just the demand but the "heterogeneity in demand", driven by new emerging consumer segments, which is giving rise to exciting opportunities.

While the consumption story encompasses a large number of sectors, Wazir sees 7 key trends shaping the consumer facing

» Culturally

- Less rigid. More experimentative
- More aware and engaged
- Acceptance / Admiration for reality
- Change/ Moving on is part of life

» Psychographically

- More confident of future success.
- Aspires higher.
- No longer "guilty" about splurging on self. If you have it, then flaunt it.

sectors and the investment opportunities that they present:

1. Seeking Solutions: In a time-constrained environment, consumers are increasingly looking for trust, assurance and "solutions" which make their daily life more convenient and easy. This on one side is driving the movement from loose to packaged products (read no fuss, assured quality and quantity, printed price, trust) and on the other side is driving the rise of ready made products which help consumers save on time-taking daily chores.

The trend reflects across categories, but to provide a case in point let us look at the growth of a few basic categories like

The Indian Consumer Story - Bigger and Stronger

packaged atta, pulses, ground spices, packaged dahi, readymade idli- dosa batter, bottled pickles etc. The growth of these categories is witness to the trend and there is more to cheer, as we believe this wave will become a tsunami. Product innovation will lead to more products of daily use becoming branded and ready to use e.g. why should there not be large regional brands for roti's just like we have for bread. With traditional structures, family roles and mindsets changing and the skill of a wife being no longer judged by the softness of the rotis she makes, there is no reason why in the next 5 years there will not be a Roti's brand as big as Harvest Gold.

2. Wanting Brands: Indians are brand starved, and this cuts across sectors and categories. The sectors which have a relatively high branded share and per se have many brands also have largely me toos and more labels, that what we can call a "brand".

Lets talk of a category like Men's apparel. It would be difficult for most people to count / recall more than 10-12 brands without any aid. I would make it five times more difficult, if I ask for 5 Indian women's wear brands. This is hopefully going to change in the decade to come and more brands will emerge not just to serve the loosely defined "consuming class" but targeting specific "micro segments" based on new and emerging demographic, psychographic and lifestyle parameters. This will mean diminishing share of "one size fits all" brands, until they re-invent themselves, or are in very commoditized categories.

3. Increasing Technology Acceptance- Technology is becoming a way of life and its acceptance is not just limited to the elite, but cuts across social and economic strata. As far as commerce-enabling technologies are concerned, while many companies are making the mistake of looking at channels as silos, consumers are looking at it just as another way to buy and sell. By 2025, at least 1 in every 4 people will have Internet access and 1 in 6 will have a smart phone. This, supported by the content being hyper-local/ geo-specific and in regional languages will take the market to the next level. It has already been established that the relevance of a Redbus or an OLX or a Flipkart is not just in few urban centers but equally in smaller towns and villages as well. Technologies supporting/enabling consumption, directly or indirectly, will have a huge market and growth potential, if they are developed keeping the consumer at the center.

4. Convenience And Simplification: For the next ten years, an estimated 5.5-6 million households will move up into the socio-economic ladder every year to become a part of the Indian middle class. Growth in the number of middle class households will translate into huge demand for products such as motorcycles, televisions, refrigerators, air-conditioners, microwave ovens and other things that make daily life convenient. They will also need affordable housing, not just a smaller and hence low cost house, but one that is value engineered to provide better living space within a limited price.

Further the socio economic class below, and a much larger number than above, will also move up and become first time user of basic products like pressure cookers, mixer grinders, gas stoves, ceiling fans and other products. Investments in any of these sectors, which simplify and make consumer's life more convenient, are bound to give blockbuster returns.

5. Disposability Not Durability: Durability is dead, or at least has a new definition. With decreasing "time to obsolescence" led by technology and fashion, most consumers across a large number of categories are trading durability for lower cost. Products are being value engineered to cost the same or less (in real terms) over years, but replacement cycles have increased multifold. Count the years for which you used your first mobile phone or your first car. Count it for the second, then the third and then you will realize that. Companies that will engage in value engineering to lower the price and make hitherto aspirational / expensive products available to masses at lower prices will gain huge traction. A case in point is Micromax, whose huge success is witness to this trend.

6. Atmos-fear: Polluted air, adulterated food, diseased water, deteriorating law and order. Consumers are increasingly uncertain about their wellbeing and safety and are seeking products and services that are built to address this need. Growth of categories like water-purifiers, home security systems and other categories that fall in line with this segment, is proof enough. However, much more needs to be done? Why cant there be adulteration proof packaging for milk / other food products? Why aren't vegetables cleaned of pesticides before they reach our kitchens? If a home kit can do pregnancy tests, why can't we have supermarkets selling home kits to test the quality of water we drink? We expect new innovations and adaptations of products already available in the international markets to lead this category. E.g. with the level of air pollution in large Indian cities, in the next 5-7 years we will see all houses having an air purifier just like we have a water purifier. There are home air purifiers already available internationally; they just need to be adapted to Indian conditions.

7. Shift To Better Experiences- Consumer expectations are changing across sectors, and changing fast. Gone are the days when retailers needed "planned chaos" in their stores to give consumers the feel of local bazars. Just as consumers are shifting to better products, they are also graduating to better experiences- from traditional to modern and from unorganized to organized. This trend is visible across products and services from healthcare to retail and from entertainment to education, transcending all consumer-facing businesses.

Thus, while the above trends cover a wide array of sectors, we believe that any company that follows one or more of the above trends will have immense potential and opportunity for growth. Any company servicing the consumers will eventually have to align itself to key consumer trends to succeed, and make a mark.

The Indian Consumer Story - Bigger and Stronger



➤ **Harminder Sahni**
Founder and Managing Director
Wazir Advisors

At Wazir, we specialize in advising Indian and International companies to conceptualize, create and compete in consumer facing sectors.

From Indian to International corporates, from Private Equity groups to family owned businesses, our work centers around enabling our clients make the right moves – from strategy, to implementation, to value delivery and in

We possess more than 400 man-years of cumulative team experience across industries, geographies and economic conditions. We leverage this to value add and get that edge in your business. Powered by our deep insights into the Indian consumers, spread across age, social strata, gender and geography, we put the consumer at the center of the decision making process and bring a unique outside-in perspective, imperative for success in a hyper competitive market.

We extensively work with the PE/ VC sector on deal sourcing, business/commercial due diligence and performance improvement of portfolio companies.

Industries we specialize in:

The industries below have been our primary focus for the past several years.

- Retail – Brick and Mortar Retail and E-retail
- Packaged Consumer Goods
- Fashion & Lifestyle
- Consumer Electronics
- Beauty & Wellness Services
- Food & Beverages
- Automobiles
- Education
- Healthcare
- Financial Services

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Harminder Sahni is Founder and Managing Director of Wazir Advisors – a consulting firm focused on consumer products and services sectors offering a comprehensive range of services to its clients to create, compete and grow their consumer centric businesses in an exciting but challenging Indian market.

- Harminder has worked as a management consultant for over two decades in retail and consumer products sectors. Harminder has been involved in various corporate strategy, business creation, diversification and performance enhancement assignments across sectors for Indian as well as International clients.
- Harminder has also been instrumental in developing India entry strategies for many leading international companies and has also assisted them in finding suitable partners in India for companies like Giorgio Armani, GANT, Tommy Hilfiger, Mothercare, Esprit, Marks and Spencer and Escada, to name a few. Harminder has worked closely with several private equity players for mergers and acquisitions and due diligence of investee companies. Some of the PE funds he has worked with include Carlyle, ChrysCapital, KKR, Oak ventures, Sequoia, PremjiInvest, Everstone, et al.
- Harminder has invested in few startups as angel investor as well as a primary promoter, i.e., InkFruit (www.inkfruit.com) - a crowd sourcing on line business for apparel and accessories, Capillary (www.capillary.co.in) - a mobile phone based customer loyalty solutions company, Tapio Creations (www.tapiocreations.com) – a design to delivery service provider to Indian and International brands like Shopper's Stop, Top Shop, River Island, Giordano, Arrow, Spencer's etc. Latest investment is YFM Uniform Supplies (www.youniform.co.in) a school and corporate uniform business launched in January 2010.
- Harminder has been a guest faculty at NIFT (National Institute of Fashion Technology), IIT (Delhi), IIM (Bangalore, Lucknow and Ahmedabad), ISB (Hyderabad), MDI (Gurgaon) and Pearl School of Fashion.
- Harminder is an Engineer from TITS Bhiwani and an M.B.A from IMS Indore.

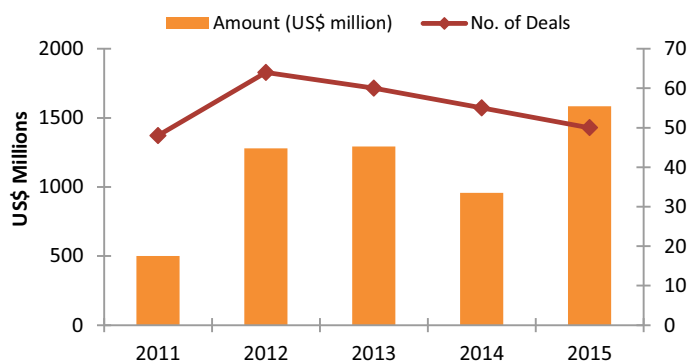
PE Investments in Healthcare & Life Sciences during 2015: 50 Deals, \$1,584 Million

Private Equity investments in Healthcare & Life Sciences sector touched a record high of \$1584 million in 2015 (across 50 deals), 22.45% higher than the previous high of \$1293 million (across 60 deals) recorded in 2013 and a whopping 65.56% higher than the \$957 million (across 55 deals) invested during the previous year. The surge was mainly driven by investment in pharmaceuticals companies which attracted investments worth \$778 million (across 14 deals).

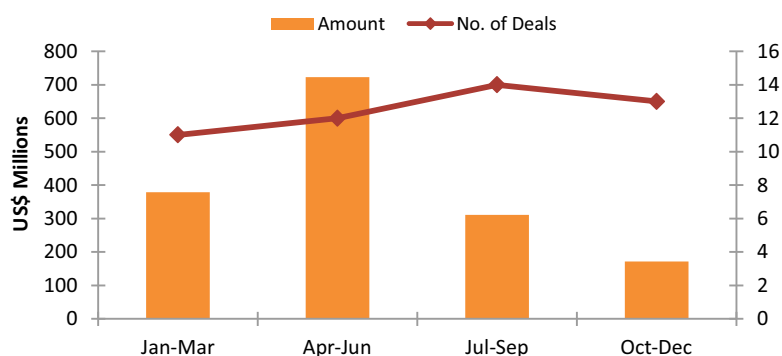
➤ Other Data Highlights:

- 6 investments of over \$100 million (compared to just one investment in 2014)
- Pharma companies grab 48.69% of the investment pie at almost \$778 million (across 14 deals)
- Exit via Public Market Route jump a massive 7.5 times (in Value terms) compared to 2014.

Y-o-Y Investments in HLS



➤ Investments by Quarter - 2015



Top PE Investments

Company	Investors	Investment (Valuation)
Sun Pharma	Temasek	\$294 M (\$35 B)
Mankind Pharma	Capital International	\$203 M (\$1.8 B)
Glenmark Pharma	Temasek	\$151 M (\$4.9 B)
Manipal Health (Hospitals)	TPG Capital	\$150 M (\$595 M)
Metropolis Healthcare (Diagnostic Chain)	Carlyle	(\$128 M)

The 6 investments of over \$100 million in value during 2015, which accounted for just 12% in terms of the deal volume, accounted for as much as 66% of the value pie during the year. Sub-\$10 million investments that accounted for 52% of the deals by volume in 2015, accounted for just 7% of the value pie.

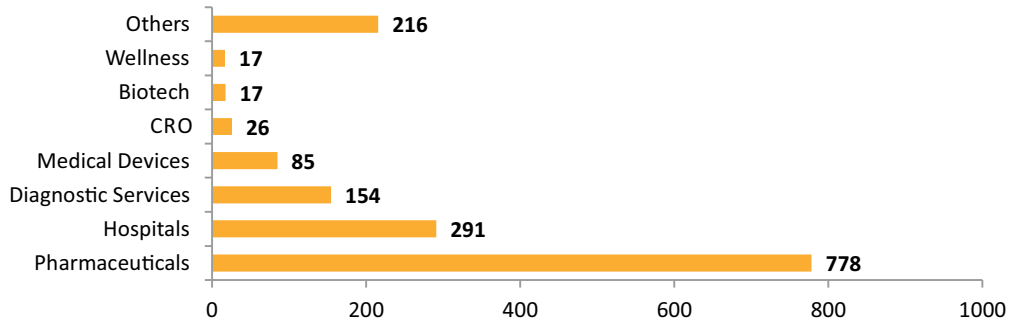
➤ By Sector

Pharmaceuticals companies, which attracted 49.13% of the investment pie at almost \$778 million (across 14 deals) continued to attract a dominant share of the investor interest.

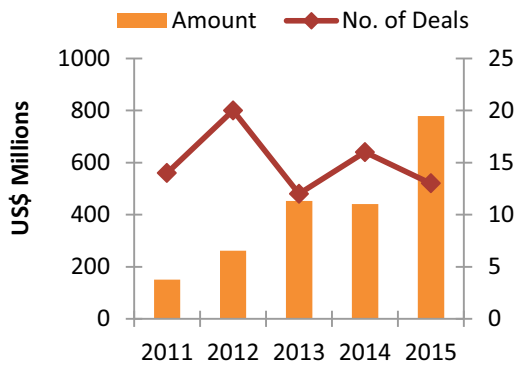
Hospitals emerged as the second favorite destination for PE investments in 2015 attracting \$291 million across 5 transactions

Diagnostics services companies were the third favorite sector among investors in 2015 attracting \$154 million across 4 deals.

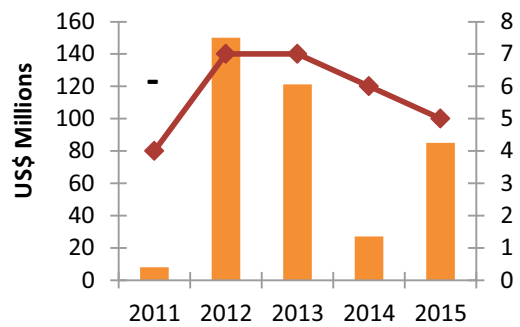
PE Investments in Healthcare & Life Sciences during 2015: 50 Deals, \$1,584 Million



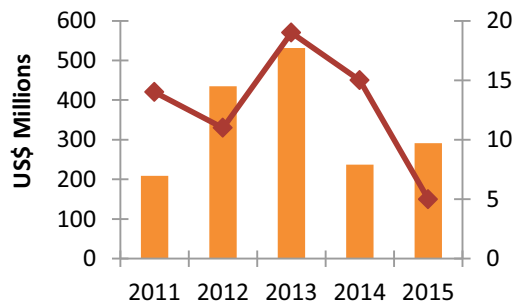
Pharmaceuticals



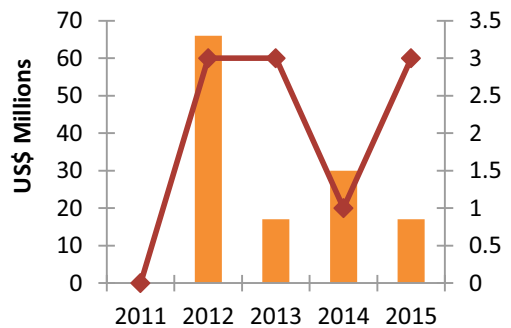
Medical Devices



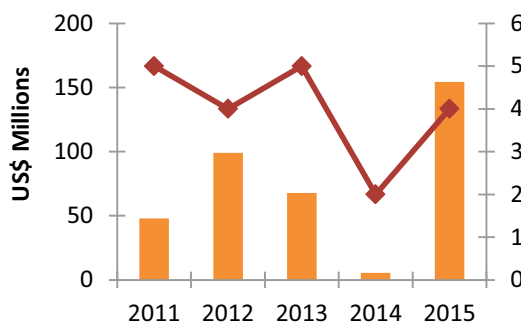
Hospitals



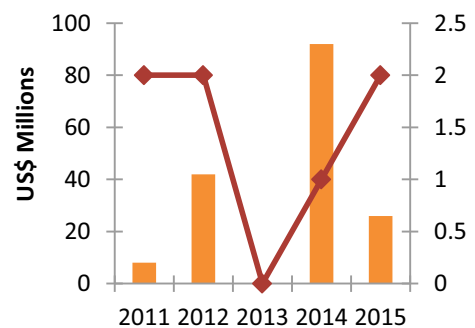
Biotech



Diagnostics Services



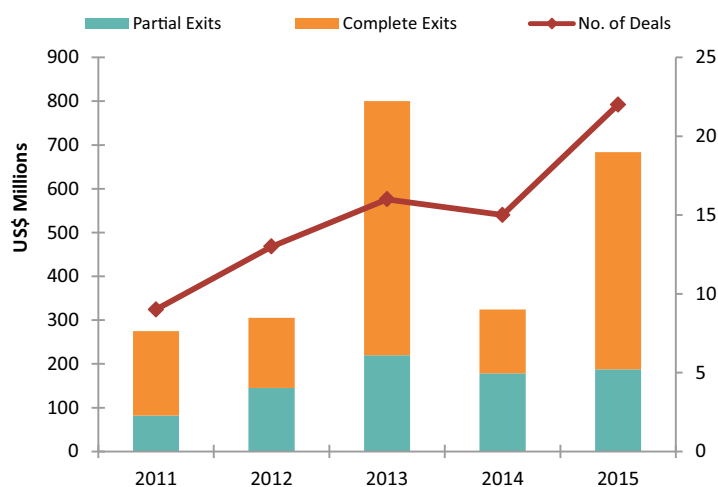
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PE Investments in Healthcare & Life Sciences during 2015: 50 Deals, \$1,584 Million

> Liquidity Events

Private Equity exits in Healthcare & Life Sciences sector surged by 110.8% during the calendar year 2015 to \$684 million across 22 deals - \$496 million of which represented complete exits; the remainder being partial ones.



The largest PE exit announced (in value terms) during the year in the Healthcare & Lifesciences sector was the stake sale worth \$203 million of **Mankind Pharma** by ChrysCapital to Capital International. ChrysCapital realized over 13x return on its 8 year old investment.

The next largest was the reported \$80 million exit by Everstone from **Global Hospital**. The deal involved Everstone exiting the company by selling its holding to the acquirer Parkway Hospital. Everstone reportedly made 2.5x of its investment. This was followed by TA Associates & Westbridge partially exiting their stake worth \$62 million in the initial public offering of **Dr. Lal Pathlabs**. TA Associates registered a 4.00x return on investment whereas Westbridge registered 3.00x.

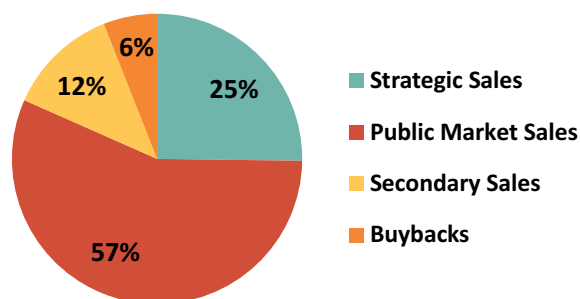
In May, General Atlantic made a complete exit from its 10 year old investment in listed entity **Jubilant Life Sciences** by selling shares on the stock exchange for about \$27.50 million whereas Carlyle sold off its remaining shares in the listed **Claris Life Sciences** for \$26.75 million, fetching 1.4x returns on investment.

Top PE Exits by Size

Company - PE Firm(s)	Acquirer	Amount (\$M)
Mankind Pharma - ChrysCapital	Capital International	203
Global Hospitals - Everstone	Parkway Hospital	80
Dr. Lal PathLabs - TA Associates, WestBridge	Public Market Sale	62
Jubilant Life Sciences - General Atlantic	Public Market Sale	27.5
Claris Lifesciences - Carlyle	Public Market Sale	27

> Exits by Type

2015 saw PE investors selling shares via the public markets in 11 listed Healthcare companies (across 12 deals). Strategic Acquisitions provided 3 exits; Secondary Sales, 4; and Buybacks, 2.



PE Exits in HLS by Type

Exit Type	No. of Deals		(US\$ M)	
	2015	2014	2015	2014
Strategic Sale	3	3	108	103
Secondary Sale	4	3	263	160
Buyback	2	2	94	35
Public Market Sale	12	7	219	26

Pharma - Thriving with Life



The pharmaceutical industry in India is one of the largest and most advanced amongst developing countries. The year 2015 saw numerous significant inbound and outbound transactions in which Indian companies were involved, and also witnessed developments which could have the potential of long-term impact on the industry. This article seeks to discuss important trends in 2015 and the current year, the key legal issues faced by the pharma industry (including allied industries) as well as certain expected or desired changes in policies.

➤ Medical Devices, Clinical Trials and 'Ayush' Drugs

There have been several prior proposals for amendment of the Drugs and Cosmetics Act ("D&C Act") for greater regulation of medical devices and clinical trials. Significant changes were proposed in an amendment bill of 2015 for the regulation of the import, export, manufacture, distribution and sale of medical devices, and also to increase safety in the conduct of clinical trials (at present, only a few medical devices have been notified as "drugs" under the D&C Act). It was also proposed that a Medical Devices Technical Advisory Board would be constituted to advise the central and state governments on technical matters pertaining to medical devices. Per a recent announcement, amendments may also be proposed to ensure safety, quality, access and rational use of traditional medical knowledge of Ayurveda, Naturopathy, Unani, Siddha and Homoeopathy

('Ayush' drugs) – a much needed regulatory intervention for a country where alternative therapies are commonly used. It is hoped that such amendments to the D&C Act eventually see the light of day soon.

In this context, whilst India's FDI policy was amended in January 2015 to allow 100% investment on the automatic route in companies manufacturing medical devices, it is desirable that the Government expressly clarifies that medical devices that are notified as "drugs" under the D&C Act would continue to be treated as medical devices for the purposes of the FDI policy conditions.

➤ M&A Transactions

The Drug Controller General of India (DCGI) has, in January 2016, issued a notice to Drug Manufacturers Associations requesting for suggestions to simplify the business climate and create a favourable atmosphere for the growth of the industry. Given the growth in the industry that has been driven by M&A transactions, the lack of a clear process for transition of licenses under the D&C Act pursuant to M&A transactions should be rectified. Licenses under the D&C Act currently provide that in the event of a 'change in constitution', the existing license can be used for a maximum period of 3 months, after which a new license is required. However, there is neither any clarity with respect to what comprises a change in constitution, nor any specific process for timely clearance of applications for a fresh

Pharma - Thriving with Life

license or transfer of license / change in constitution in the context of M&A transactions, which results in avoidable uncertainties around the continuity of business/manufacturing at the time of closing of M&A transactions. It is hoped that changes are introduced to set up a 'one-stop shop'/single window clearance for transfer of all existing licenses in the context of M&A transactions, along with guidelines/conditions for ensuring certainty of timely transfer of licenses pursuant to M&A transactions.

> E-Pharmacies

In October 2015, the All India Chemists and Druggists Organization (AICDO) raised strong objections to sale of medicines through the internet. Towards the end of the year, the office of the DCGI issued a notice to all Drug Controllers stating that the current regulatory regime does not distinguish between 'conventional' and 'over the Internet' sale/distribution of drugs, but both must comply with the extant regime. Further, the DCGI stated that an analysis of representations revealed concerns of violations of the D&C Act by e-Pharmacies including issues such as rendering pharmacovigilance machinery ineffective, rendering drugs recall impossible, compromising storage conditions, encouraging drug addiction, etc.

A sub-committee has also been constituted by the Drugs Consultative Committee (under the D&C Act) to examine issues pertaining to sale of drugs via the internet. It is submitted by the authors that rather than a ban (in any form) on the sale of medicines through the internet, the regulators should consider appropriate systems, checks and maintenance of records that would ensure that regulatory requirements such as validation of prescriptions, conditions to sale of drugs, etc. are complied with for online sales. In fact, if such checks are implemented and enforced (including stricter conditions for the sale of sensitive medicines), not only would incidents of misuse of internet sales end up being significantly lower than such incidents at pharmacies, but it may also be possible to track offenders more easily than in the case of pharmacies.

The issue of 'retail trading' also continues to cloud the e-pharmacy business. With a majority of e-pharmacies operating on the 'marketplace' model where the company operating the platform does not hold a pharma retail license under the D&C Act, it is hoped that the amendments that are being proposed by the Department of Industrial Policy and Promotion to clearly permit FDI in the e-commerce marketplace model would also provide clarity for e-pharmacies. Needless to say, prescribing a uniform system for ensuring compliance with the requirements under the D&C Act pertaining to drug sales even under the marketplace model (for e.g. the requirement that the holder of the ultimate retail license must employ a registered pharmacist who

can validate the prescriptions, etc.) would also go a long way in clearing ambiguities for e-pharmacies.

> Code of Pharmaceutical Marketing Practices

A mandatory code is set to replace the voluntary Uniform Code of Pharmaceutical Marketing Practices (UCPMP) by June 2016. This would prohibit the practice of offering gifts to doctors in return for prescribing their products. The UCPMP was introduced as a voluntary code with effect from January 2015 for a period of 6 months, after which a mandatory code was to be introduced. However, this 'voluntary compliance' period has been extended thrice and is now in effect up to March 2016. It remains to be seen whether the government will eventually enforce the mandatory code.

> Make in India

The Government is planning to set up 6 pharma parks and 2 clusters for manufacturing medical devices in the country and bulk drugs parks. These will be another nudge in the right direction as they will help in getting affordable and unencumbered large parcels of land for the industry, thereby reducing manufacturing costs, which should make the Indian pharma industry more competitive. Recommendations by the Katoch Committee (set up to identify gaps in production of drugs, vaccines etc. in various therapeutic categories and to suggest remedial action) are also being considered or are likely to be implemented soon. Importantly, the government is also pushing for a separate Ministry of Pharmaceuticals and Medical Devices, so as to give a boost to the sector (a majority of functions relating to pharmaceuticals are currently overseen by the Ministry of Health).

To reduce India's dependence on other countries for bulk drugs / active pharmaceutical ingredients, the government has also promised introduction of a bulk drug policy by March 2016. Reports suggest that India imports more than 75% of its bulk drugs; and in order to promote local manufacture, the highlights of this policy are likely to be a boost for public sector enterprises, tax - free status for manufacturers and cluster development.

Whilst 2016 is expected to be a good year for the further development and establishment of the maturing pharma and allied industries, it is hoped that the numerous changes that have been proposed or are under consideration, are taken to their logical conclusion during this year to ensure that this industry continues to thrive with life.

Pharma - Thriving with Life

VERITAS LEGAL

ADVOCATES & SOLICITORS

Veritas Legal is a law firm established in 2015, specialising in the following areas:

- Mergers and Acquisitions & Private Equity
- General Corporate & Compliance Advisory
- Regulatory advisory & representations
- Competition law
- Litigation and arbitration
- Real estate, retail & franchise

Veritas was established by Abhijit Joshi, who was formerly the CEO & Senior Partner of AZB & Partners.

Veritas has been recognised as the best new law firm of 2015 and also one of the firms to watch out for in 2016 by several leading publications. The firm has completed close to 30 M&A and Private Equity transactions in its first year (including several notable M&A and Private Equity transactions), and is also involved in approximately 150 litigation filings in various judicial forums across the country.

Veritas currently has a team strength of about 30 lawyers, most of whom have significant prior experience at a variety of India's leading law firms. The firm's aim is to provide clear client-focused legal advice and solutions based on an in-depth knowledge of the legal, regulatory and commercial environment in India. The firm's clients benefit from the past experience of its lawyers, blended with the personal attention and streamlined advice that the firm provides.

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 **Nandish Vyas**
 Partner
 Veritas Legal, Mumbai

Nandish Vyas is a partner at Veritas Legal since its inception. He was a previously partner at AZB & Partners, where he focused on Mergers & Acquisitions & Private Equity, Corporate Laws and Regulatory Advisory including competition advisory. Nandish started his career at the distinguished litigation firm Federal & Rashmikant and thereafter joined AZB & Partners in 2006.

He has previously been the Research Assistant for the 9th edition (2004) of 'Kanga, Palkhivala and Vyas – The Law and Practice of Income-tax', authored by Mr. Dinesh Vyas, Senior Advocate. He has also advised the Ministry of Corporate Affairs in the framing of regulations and rules under the Competition Act, 2002 and the Companies Act, 2103.

Rebha Dakshini is an associate at Veritas Legal who has had several years of prior litigation experience and is currently focusing on Mergers & Acquisitions and regulatory advisory.

PE Investments in Real Estate in India during 2015: 90 Deals, \$5.0 Billion

Private Equity-Real Estate firms disclosed **90 investments** in India during 2015. Of these, 85 transactions had an announced value of \$5,061 million. While the activity level was 20% higher compared to the 75 investments in the previous year, the transaction values spiked significantly (2014 had witnessed reporting of \$2,214 million across 57 deals with announced value).

Residential projects accounted for over 71% of the investments by volume (and almost 80% including townships) during 2015, followed by commercial projects with a 10% share of the pie.

The year witnessed several Joint Venture (JV) platforms being created between large investors and established developers. Standard Chartered announced that it will invest \$302 million or INR 2,000 crore in **Tata Realty & infrastructure** to form a INR 3,000 Cr investment platform to buy commercial assets across the country. Goldman Sachs committed \$300 million or INR 1,850 crore to a 74:26 JV with listed developer **Nitesh Estates** again focused on commercial real estate assets. Warburg Pincus invested \$175 million in a JV with the **Embassy Group** (which invested \$75 million) to build warehouses across the country.

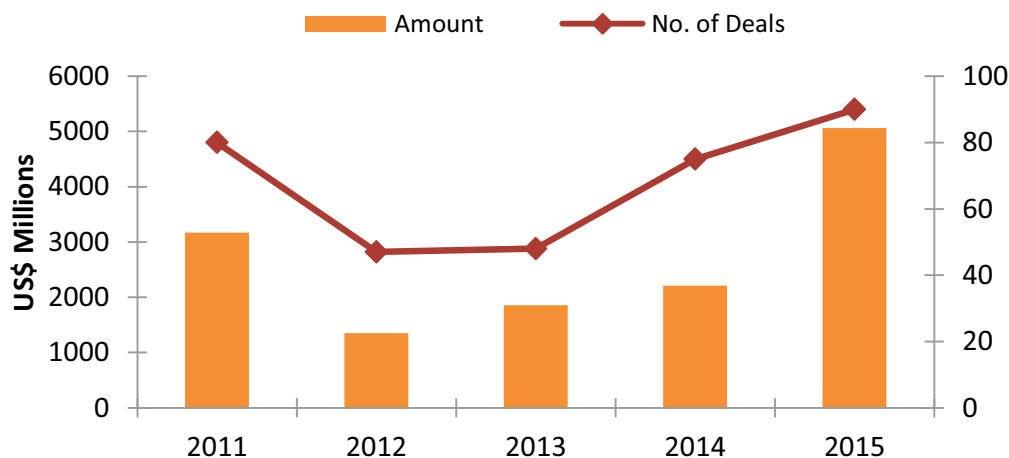
Piramal Realty attracted minority equity investments of \$150 million (INR 900 crore) from Goldman Sachs and \$284 million

(INR 1,800 crore) from Warburg Pincus to be used for its residential projects in Mumbai. StanChart PE, IFC and ADB together decided to invest \$200 million (INR 1,280 crore) for a 70% stake in a joint venture with **Shapoorji Pallonji Group** that will focus on the affordable housing segment.

Among the bigger transactions in 2015 was Blackstone's buyout of Gurgaon-based builder **Alpha G: Corp** for \$301 million or INR 1,600 crore. The deal marks the first full buyout of a real estate company in India. Singapore sovereign wealth fund GIC formed a joint venture with **DLF Home Developers**, a wholly-owned subsidiary of publicly listed DLF, to invest \$300 million or INR 1,990 crore to develop projects in two land parcels acquired by **DLF** in Delhi. Blackstone invested \$165 million or INR 1,050 crore to buyout **247 Park**, a large commercial property in the eastern suburbs of Vikhroli from Milestone Capital and HCC. GIC acquired a nearly 2 million sq ft IT SEZ building in Chennai (part of Shriram Gateway SEZ) for \$136 million or INR 860 crore.

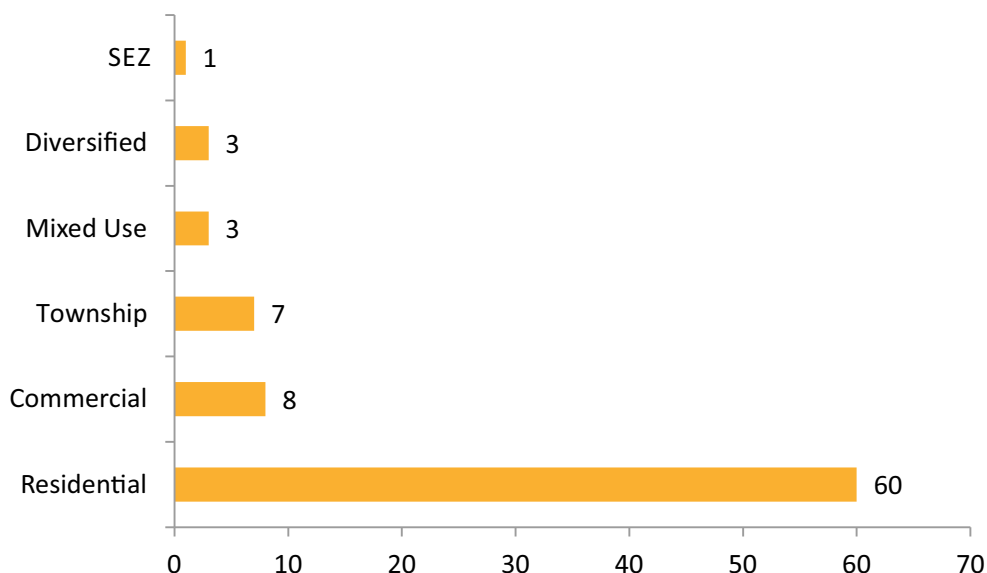
Piramal Fund was the most active PERE investor during the year announcing 13 new investments in 2015, followed by **Edelweiss Capital** (6 deals). **GIC, Goldman Sachs** and **India Infoline RE** reported four deals each. **Aditya Birla PE, ASK Group, Blackstone, Essel Finance, HDFC Venture, IFC, KKR** and **Motilal Oswal** were among the funds reporting three deals each.

PE Investments in Real Estate



PE Investments in Real Estate in India during 2015: 90 Deals, \$5.0 Billion

PERE Investments by Type (Volume)



> Liquidity Events

PE-RE firms announced 25 exits during 2015 compared to a total of 24 exits announced during 2014. 17 of exits were through buybacks which was followed by Secondary Sale (ie, sale of stake to another PE investor) which accounted for five exits and Strategic Sale (sale to another developer) that accounted for two exits.

Among buybacks, a wholly owned subsidiary of publicly listed Prestige Estates Projects paid over INR 876 crore to acquire a 62.54% stake in **Exora Business Park** from Red Fort Capital helping the PE firm exit its March 2011 investment. Piramal Fund exited Omkar Realtors & Developers' luxury residential project, **Omkar 1973**, in Worli, Mumbai for about INR 500 crore. The exit provided the fund with returns of around 2.46x on its INR 200 crore investment in 2011.

Pune-based public listed realtor Kolte-Patil bought out the 63% equity from its two joint venture partners - ICICI Venture Funds Management Company Ltd (which held 37% stake) and an unnamed individual investor (who held 26% stake) – in its SPV **Corolla Realty** for \$25 million or INR 164 crore. ASK Group exited its stake in **Raj Altezza** (a project by Rajguru Developers),

Amit Sereno (Amit Enterprises Housing) and **Skyone** (Paranjape Schemes Construction) by selling stake back to promoters.

Among secondary transactions, New Vernon exited Chennai-based IT Park **SP Infocity** - a JV formed with Shapoorji Pallonji in which New Vernon later acquired the complete stake – via sale to CPPIB for \$220 million.

Morgan Stanley (15% stake) C&C Alpha (50% stake) and G: Corp Group (30% stake) received full exits as part of Blackstone's buyout of Alpha G:Corp Development for \$150 million or INR 1000 crore. Morgan Stanley had invested INR 314.16 crore in the company over two rounds while C&C Alpha Group had invested INR 1070.06 core over four rounds.

Blackstone's acquisition of **247 Park** at an enterprise value of INR 1,050 crore paved way for the exit of existing investors Milestone Capital and listed construction firm HCC. Milestone Capital, via IL&FS Milestone Fund, had invested INR 575 crore (including INR 348 Cr in assumed debt) in 247 HCC Park in June 2010 and held 74% in the property with the rest being held by HCC.

Real Estate - The year that was & outlook for 2016



Charles Darwin's immortal words *"It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is most adaptable to change."*

This theory holds relevance today for Indian real estate like never before. The challenging times of past two years has manifested radical transformations which we are about to witness in 2016 and years to come. The seriousness of talks about housing for all, smart cities, urban revamp, affordable housing, easing FDI norms has been visible to all of us. The opaque industry is set for a much needed makeover with the Real Estate (Regulation & Development) Bill coming to fore. Muted demand, soaring inventory levels and depressed prices have pulled down India's Real Estate markets in 2015. Meaningful recovery in consumption led sales can be expected once prices stabilize but only if developers honor project delivery schedules.

Private Equity investments in Real Estate during 2015 crossed \$5 Billion mark increasing thereby 20% over 2014 levels. We expect the trend to continue in 2016 as the industry continues to mature and developer's community continue to gear up their operations to become more organized and transparent to attract greater attention from domestic and offshore investor base. But the investments will only increase in proportion to the positive

exit track records of developers. Some PEs have definitely burnt their fingers in the past on some portfolios though specific instances may not be known in the public domain.

For the year 2016 and few more to come, there is not much margin available with asset managers with respect to return expectations when it comes to investments by PEs and NBFCs as compared to 2014 and 2015. The key therefore will be to identify the micro markets, product segments and specific developers who are capable of demonstrating 7% to 10% escalation in pricing. This is a big ask given the sluggish sales of 2015 and can only be addressed where developer's delivery track record is immaculate. The Private Equity investor community is alert to these factors and will be most choosy while deploying.

The Private Equity investments in Real Estate is now entering a new phase of maturity as the investment managers innovate newer strategies and look for more stability in their portfolio investments. There is a better understanding of the Indian Real Estate opportunities and the risks thereof which has led to regaining of momentum lost due to Global Financial Crises in 2008. Private Equity Investment in the Real Estate sector achieved its peak during 2007–08 followed by a steep fall in

Real Estate - The year that was & outlook for 2016

activity till 2009–10. However, there was a gradual pick up since then and a steady growth in activity has been visible. The decade long ups and down was followed by the formation of a new government in the 2014 general elections which then triggered the pace in the Real Estate financing space. Post 2014 there is increased optimism which was witnessed among domestic and foreign investors which has provided the much needed fillip to the Fund raising environment. 2015 saw real estate developers turning to private equity funds to refinance high cost funds raised from non-banking finance companies (NBFCs) and private lenders post 2008 financial crisis. Come 2016 we expect revival of industry fortunes hinging a great extent on fund houses participation in financing of developers.

The new era has led to the advent of long term partnerships, platform-level deals, with developers that have an established track record. This allows developers to scale up for big-ticket development projects with the support of a financing partner supporting them. While majority of the funding activity has recently been focused on residential project, there has been a significant increase in appetite for industrial and warehouses asset. Moreover, good quality office assets, available at utmost reasonable cost, have been attracting the attention of domestic and offshore investors. Come 2016, we expect a shift in focus from residential real estate to other asset classes.

We expect going forward the property prices across the major locations should stabilize which, coupled with the reduced rate of interest, should boost consumer confidence and industry sentiments should only improve from here. The stakeholders have been demanding industry status for the sector which should help bring in requisite improvement in the overall environment. The key factor remains demonstration of delivery and growth.

The Central Government has displayed sensitivity to the pain points of FDI investors. Projects have been stuck in ever increasing list of statutory approvals which has led to erosion of markets to competitors or just reduction of demand due to the end users' loss of faith. The Central Government's proactive change of stance is visible from the recent relaxation in the FDI norms related to entry conditions (quantum of investment and

size of projects) as well as exit conditions (lock-in period and phase-wise exits). Such moves by the regulatory bodies are expected to unravel a new wave of FDI inflows into the sector in the foreseeable future which will help bridge liquidity gap which the sector is reeling under. Such easing of investment restrictions will also be immensely helpful in monetization of completed commercial assets.

On this account the developers will be keen to target refinancing of high cost debt with lower cost debts especially where projects are seeing some movement after initial sluggishness. NBFCs and Overseas raised funds are likely to bag some lucrative investment opportunities in the refinancing space. This route should also shore up the positive sentiments and allow a slower sales velocity to be sustainable for the developers while presenting healthy returns to the investors.

Finally the end user stands to benefit the most since he is likely to be spoilt for choice if he has the budget in the coming two to three years. More percolation of the benefits of policies needs to be seen for the end users' mindset to turn positive. Greater clarity on job security and business / career growth is needed for the end users to firm up their intent to buy or lease. The PE industry will remain guarded until real cash flows are seen to be improving but the investments need to be chosen now.

In conclusion a well researched asset manager will be the one to make the smart investments.

Real Estate - The year that was & outlook for 2016



Formed in 2007, Milestone Capital Advisors has raised & distributed over Rs. 3700 crores across real estate, bullion, education & healthcare. Having invested across 25 million square feet of residential, commercial, warehousing & IT/ITeS buildings. Milestone advisors investments of over 14000 HNI investors & institutions across 8 funds, including India's first REIT like structures. Structured Debt, Bullion products apart from portfolio management systems. Headquartered in Mumbai, Milestone manages 57 investee developers & projects through a highly qualified team of professionals who provide a 360° support to their operational & financial processes. Being India's first ISO 9001:2008 PE house, Milestone is rated as one of the top domestic real estate PE houses in India. Following a stringent quality procedure, Milestone adopts a true "Active Management" style to fund management. Having in-house project development & property management capabilities, Milestone ensures value addition through partnership & joint operations to achieve high fund throughput.



➔ **Rubi Arya**
Executive Vice Chairman
Milestone Capital Advisors

Rubi has over 19 years of professional experience in Business Strategy, Real Estate and General Management. At Milestone, she is responsible for designing Milestone's overall corporate strategy, vision and future initiatives for business expansion, as well as the company's representative at Global as well as Indian investor forums.

Under her leadership, Milestone has showcased its full cycle capability of fund raise, deployment, nurturing and profitable divestments and has invested as well as returned over Rs. 2800 crores to the investors by way of timely exits and investment income across all funds.

At Milestone, Rubi leads and mentors the top management and continues to drive the company's active management philosophy and devotes her time to putting together the team's combined knowledge and experience towards securing profitable deals, right from investment to divesting.

Engineering graduate from BITS (MESRA), MBA from XLRI, Jamshedpur, Executive Programme (Real Estate) at Harvard Business School.

Rubi also holds **Certificate of Excellence** from "The Directors' Club", a unique accredited certification program by Hunt Partners and Board Evaluations Ltd. (UK) aimed at elevating effective governance on the board of directors at Indian as well as global organisations.

Real Estate Sector Reforms - FDI Policy



➤ Introduction

The real estate sector in India has assumed growing importance since the department of industrial policy and promotion (DIPP) issued the Press Note No. 12 of 2015 dated November 24, 2014, liberalising foreign direct investment (FDI) in the construction sector (Press Note). The Indian real estate market has a huge potential to attract large foreign investments. However, being largely an unorganised sector with a few major players in each city, it creates apprehensions in the minds of foreign investors. With the objective of reforming this position and simplifying the flow of foreign capital into the realty sector, the Government has put in motion a number of reforms in the construction sector.

➤ Simplification of Investment in Construction Sector

The Press Note has done away with some of the restrictive conditions of the past, such as:

(i) Minimum area of development

The requirement to develop a minimum floor area of 20,000 square meters in case of construction-development projects has been removed.

(ii) Minimum capitalisation

The requirement of the investee company to bring minimum FDI of US\$ 5 million within 6 months of commencement of the project has been removed.

(iii) Exit

A foreign investor may now exit and repatriate the foreign investment before completion of the project, provided that a lock-in-period of three years, calculated with reference to each tranche of foreign investment has been completed. This lock-in period will now not apply to hotels and tourist resorts, hospitals, special economic zones, educational institutions, old age homes and investment by Non Resident Indians (NRI).

The removal of requirements relating to minimum area of development and minimum capitalisation will definitely increase FDI for smaller projects. The Press Note has further relaxed the following conditions in the construction sector:

(i) Investment in completed projects

100% FDI under the automatic route continues to be permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres. Now, consequent to the Press Note, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, the three year lock-in-period calculated with reference to each tranche of FDI will be applicable, and transfer of immovable property or part thereof will not be permitted during this period.

(ii) Transfer of shares pending completion of the project

Prior to the Press Note, transfer of stake from one non-resident to another non-resident, or repatriation of investment, before completion of the project required prior consent of Foreign

Real Estate Sector Reforms - FDI Policy

Investment Promotion Board. Now any transfer of stake amongst non-residents without repatriation of investment will not be subject to any lock-in period nor require any Government approval.

(iii) Leasing business

The definition of 'Real Estate Business' has been amended to exclude earning of rent/ income on lease of the property (not amounting to transfer), from the purview of real estate business. This addition is aimed at encouraging investment in completed commercial buildings and leased properties. DIPP has been liberalising its stand on real estate business and this exclusion is in furtherance of the clarification issued earlier by the DIPP dated September 15, 2015, which excluded leasing arrangements for facility sharing arrangement between group companies through leasing/sub-leasing arrangements from 'real estate business', provided that such arrangements are at an arm's length price in accordance with the Income-tax Act, 1961 and annual lease rent earned by the lessor company should not exceed 5% of its total revenue.

The above move will also pave way for foreign investment in the investment vehicles like Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InvIts). Recently, the Government has also amended (on November 16, 2015) the permissible capital account transactions and has excluded investment in REIT from the purview of 'real estate business' (which is a prohibited sector for foreign investment), and thereby allowing foreign investment in REIT. Further, persons resident outside India (other than an individual who is citizen of or any other entity which is registered/incorporated in Pakistan or Bangladesh), including an Registered Foreign Portfolio Investor (RFPI) or a NRI are now allowed to acquire, purchase, hold, sell or transfer units of an Investment Vehicle, in the manner and subject to the terms and conditions specified in newly introduced Schedule 11 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

(iv) Phase-wise development

Each phase of the construction development project will be considered as a separate project, for the purposes of FDI Policy. The consideration of each phase as a separate project, the ability to exit after the lock-in period without requiring government approval, and the relaxation in the conditions relating to transferring stake amongst non-resident investors provide greater flexibility to investors in relation to structuring their exit options.

*Investment Vehicle is defined to mean an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.

➤ Looking Forward

In addition to the above mentioned reforms, there are a series of policy reforms expected to be implemented this year.

(i) Real Estate (Regulation and Development) Bill, 2015

The Real Estate (Regulation and Development) Bill has been cleared by the Union Cabinet and now is to be considered and passed by the Lok Sabha and the Rajya Sabha. Some of the key highlights of the Bill are as follows:

- The Bill establishes state level regulatory authorities called Real Estate Regulatory Authorities;
- Residential real estate projects and real estate agents dealing in these projects need to be registered with the Real Estate Regulatory Authorities;
- 70% of the amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project; and
- The promoter must upload details of the project on the website of the Real Estate Regulatory Authority and shall not change the design/plan without prior consent of the consumer.

(ii) Maharashtra Housing (Regulation and Development) Act 2012

The Maharashtra Housing (Regulation and Development) Act 2012 has been cleared by the Maharashtra Legislative Assembly and shall replace the erstwhile Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 in the state of Maharashtra. Some of the key highlights of the Bill are as follows:

- The Bill aims to establish a Housing Regulatory Authority and a Housing Appellate Tribunal;
- The Bill requires the Promoter to register all the projects and display all the projects on the website of the Housing Regulatory Authority;
- The Bill requires that the entire amount collected from buyers be used only for purposes collected; and
- The Bill is silent on regulation of agents.

The proposed Bills aim to improve investor as well as consumer confidence and transparency in the real estate market and penalise malpractices by promoters and builders. Overall the Bills are a much welcome step towards regulation of the sector, though the implementation of the Bills is still awaited.

DISCLAIMER: This article has been authored by Darshan Upadhyay, who is a Partner, Bhavin Gada, who is an Associate Partner and Tanya Chib, who is an Associate at Economic Laws Practice (ELP), Advocates & Solicitors. They can be reached at DarshanUpadhyay@elp-in.com, BhavinGada@elp-in.com or TanyaChib@elp-in.com for any comment or query. The information provided in the article is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein.

Real Estate Sector Reforms - FDI Policy



Economic Laws Practice ("ELP") is a leading full-service Indian law firm established in the year 2001 by eminent lawyers from diverse fields. The firm's Private Equity & Venture Capital practice brings onboard a unique understanding of commercial matters and legalese to be able to provide effective solutions to all stakeholders in a transaction. The team looks at providing a bespoke legal service experience, which is sector agnostic in nature and driven towards successful consummation of the relevant transactions.

ELP advises clients on all aspects of private equity and venture capital transactions, whether from a fund formation perspective or a potential portfolio investment or a relevant exit transaction. Our services include right from conceptualising a structure, to conducting the legal due diligence exercise, to the preparation of the relevant documentation, to providing assistance to the final closure including negotiations and corporate secretarial assistance.

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