



**VENTURE**  
INTELLIGENCE

2018

INDIA PRIVATE EQUITY  
**TREND REPORT**



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# PE Investments in India during 2017

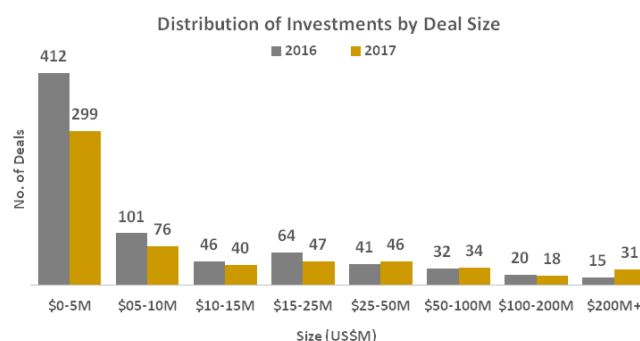
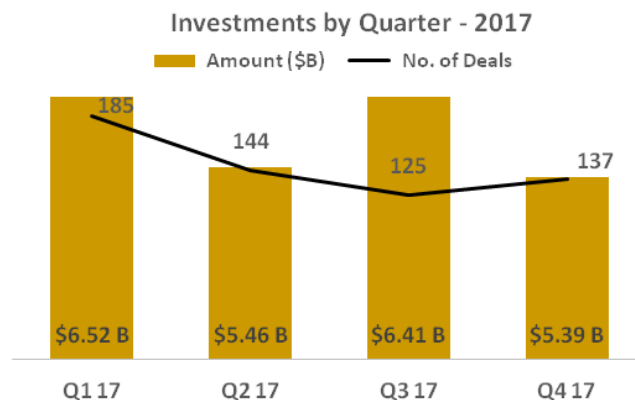
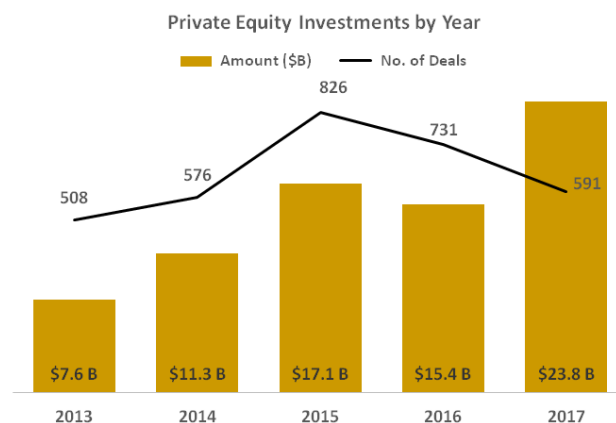
## 591 Deals, \$23.8 Billion

Private Equity firms invested \$23.8 Billion across 591 deals in 2017 making it the biggest year for Private Equity investments in India. The investment value is 39% higher than the previous high of \$17.1 Billion (recorded in 2015) and 55% higher than the \$15.4 Billion invested during 2016. The year witnessed 31 investment deals with size greater than \$200 million, aggregating to \$15.4 Billion or 65% of the total investments. Investment activity (i.e., the number of deals) in 2017 was however down 21% (compared to the 731 investments in 2016).

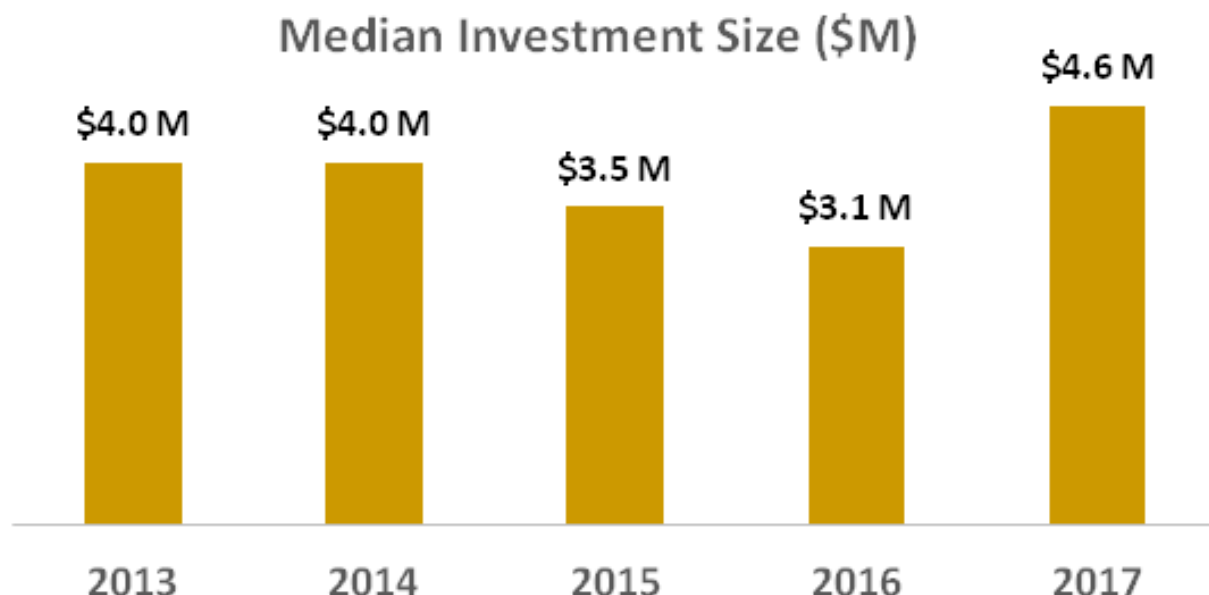
Note: The PE investment figures in Report this include those for VC type investments, but exclude PE investments in Real Estate.

### Other Data Highlights:

- Foreign PE firms accounted for 75% of the investment
- 49 investments were \$100 million or more in 2017 (vs 35 in 2016)
- IT & ITeS companies account for 45% of the value pie, followed by BFSI companies at 19%
- Investments in Hospitals sector nearly doubles compared to 2016 (\$642 M against \$359 M)
- Investments in listed companies (PIPEs) are 3.5 times higher than the previous year



## PE Investments in India during 2017: 591 Deals, \$23.8 Billion

**Top Investments**

The overall all-time high figures for Private Equity in 2017 included new high in terms of as many as four investments worth above \$1 Billion and 49 investments above \$100 million (of which, 31 were \$200 M or more).

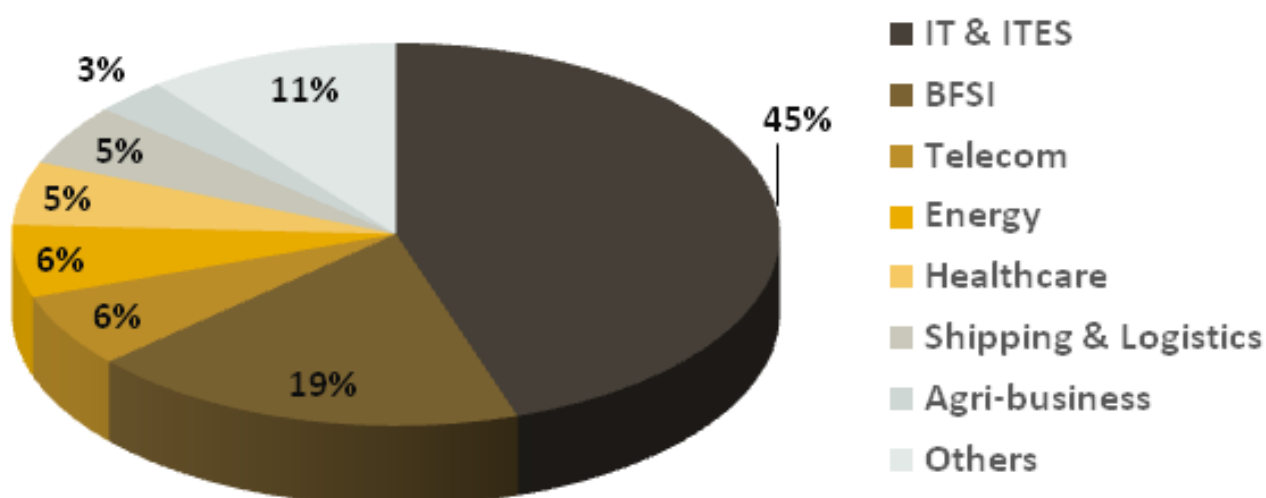
**Flipkart** received India's largest ever PE investment in a single round - \$2.5 Billion from Softbank Vision Fund. Flipkart also raised another \$1.4 Billion from strategic investors Tencent (a leading Chinese Internet company), eBay (which also sold its Indian business to Flipkart) and Microsoft. Flipkart's valuation in 2017 was however lower (at a reported \$11.6 Billion) than the \$15.5 Billion it had last raised capital at (in 2015). Softbank also invested \$1.4 Billion – in an up round - in **One97 Communications** which operates mobile wallet service Paytm. Bain Capital invested \$1.04 Billion in publicly listed **Axis Bank** via preferential allotment.

**By Industry**

IT & ITES companies– led by Flipkart, Paytm and GlobalLogic- accounted for 45% of the value pie attracting \$10.7 Billion across 325 transactions.

PE Investments by Industry – By Value

## PE Investments in India during 2017: 591 Deals, \$23.8 Billion



BFSI (Banking, Financial Services and Insurance) companies continued to enjoy the second spot attracting \$4.40 billion across 61 transactions. The sector was led by Bain Capital's \$1.04 Billion investment in publicly listed **Axis Bank** (the largest ever single investment in the sector) and Warburg Pincus' \$384 million Pre-IPO investment in **ICICI Lombard General Insurance**.

Led by the \$952 million investment by KKR and CPPIB in **Bharti Infratel**, Telecom companies retained the third slot attracting a total of almost \$1.5 Billion (across seven transactions). Similar to 2016, Energy companies came in fourth, attracting \$1.45 Billion across 18 companies led by **ReNew Wind Power** which raised \$350 million from CPPIB (apart from \$200 million from Japan's Utility firm JERA).

Top Industries attracting PE Investments - By Value

Industry	Volume / No. of Deals		Value / Amount (US\$ M)	
	2017	2016	2017	2016
IT & ITES	325	422	10,668	4,719
BFSI	61	63	4,406	2,809
Telecom	7	3	1,486	1,683
Energy	18	21	1,456	1,594
Healthcare & Life Sciences	52	67	1,273	1,198
Shipping & Logistics	16	12	1,231	403
Agri-business	9	11	711	112

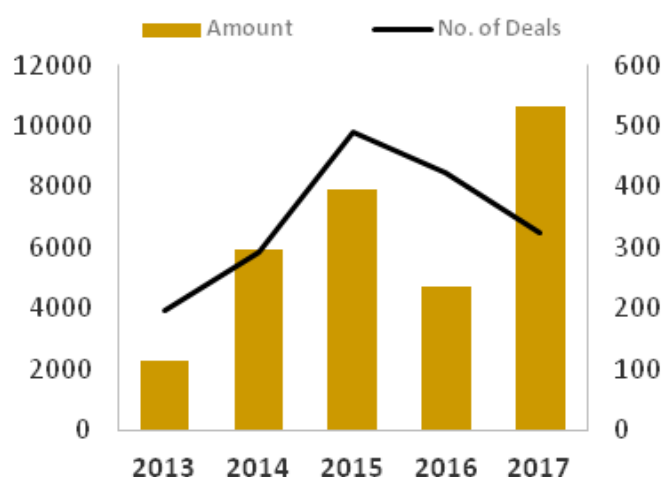
\* BFSI = Banking, Financial Services and Insurance

## PE Investments in India during 2017: 591 Deals, \$23.8 Billion

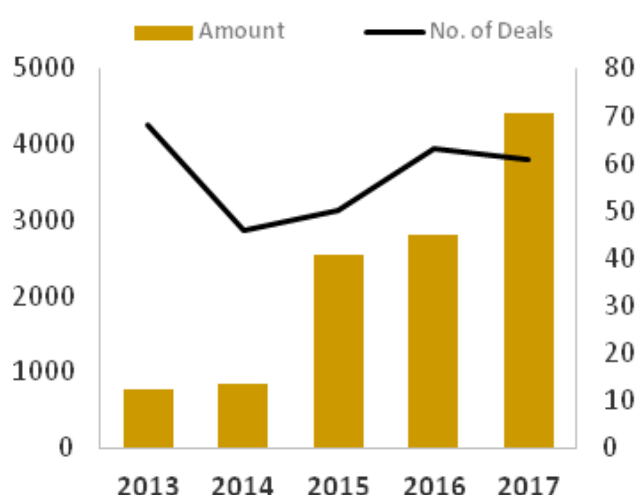
Healthcare & Life Sciences companies attracted \$1.3 billion, 6.3% higher than that in the previous year. The largest investments in the sector were aimed at hospitals operators: TrueNorth's \$200 million investment in **Condis Healthcare**; KKR's \$200 million investment in **Radiant Life Care** and Temasek's \$171 million in **Manipal Health Enterprises**. The investments in the top five hospitals sector investment accounted for 50% of the total investments in the industry during the year, followed by Pharmaceuticals companies that attracted 27%.

Shipping & Logistics investments surged to three times that of the previous on the back of two big ticket investments from long term Canadian investors in newer logistics platforms: while CPPIB committed a \$500 million initial investment towards a Joint Venture, **Indospace Core**, with Everstone's warehousing and logistics real estate arm; **LOGOS India** raised \$400 million (and another \$400 million in debt) from CDPQ and Vancouver-based QuadReal Property Group.

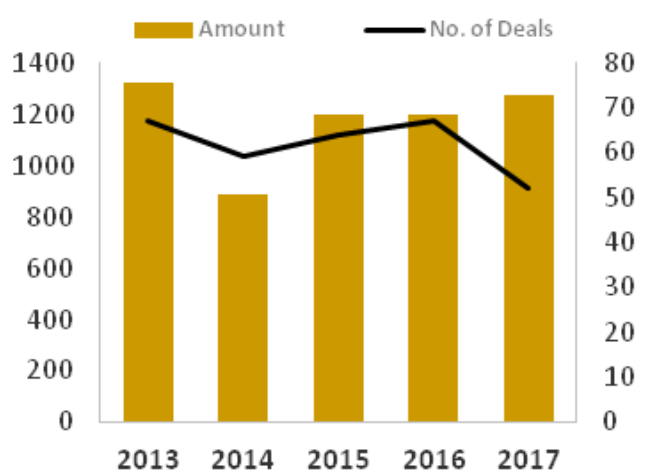
### IT & IES



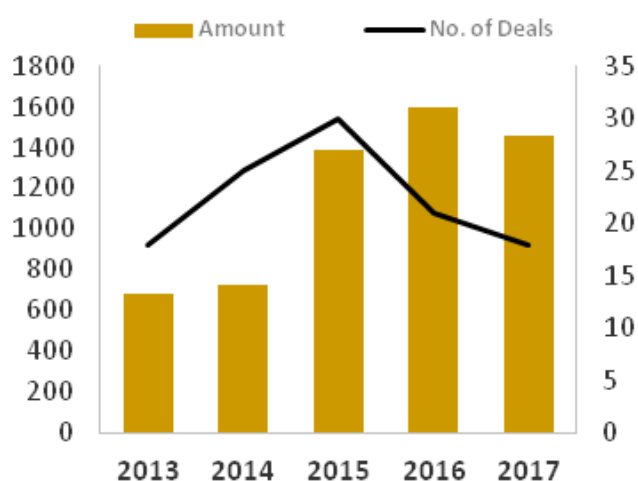
### BFSI



### Healthcare & Life Sciences

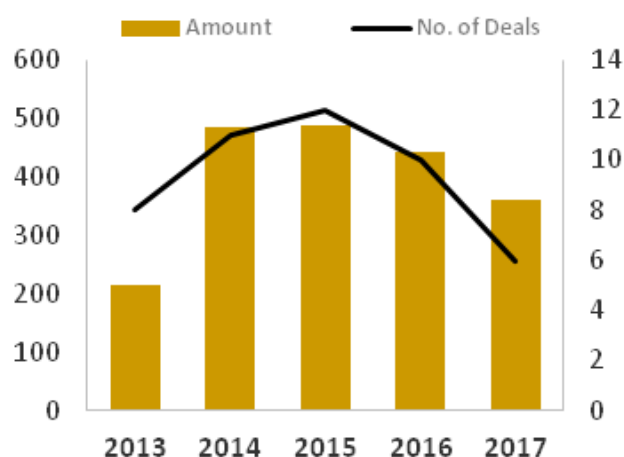


### Energy

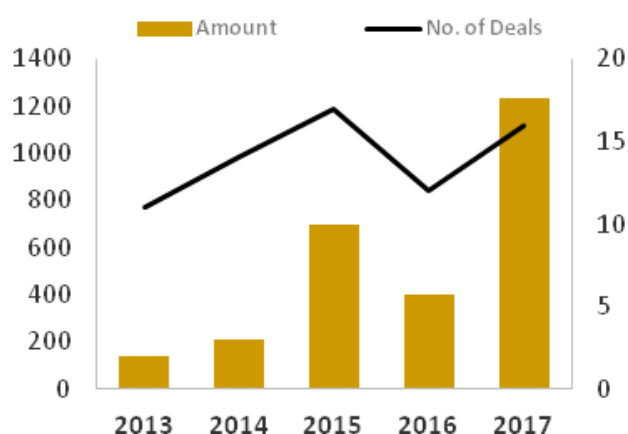


## PE Investments in India during 2017: 591 Deals, \$23.8 Billion

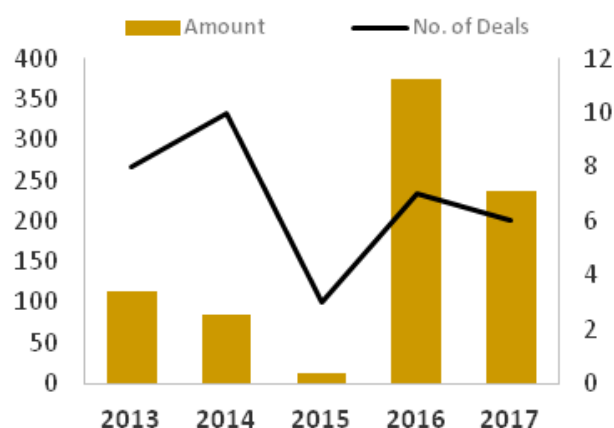
### Engineering & Construction



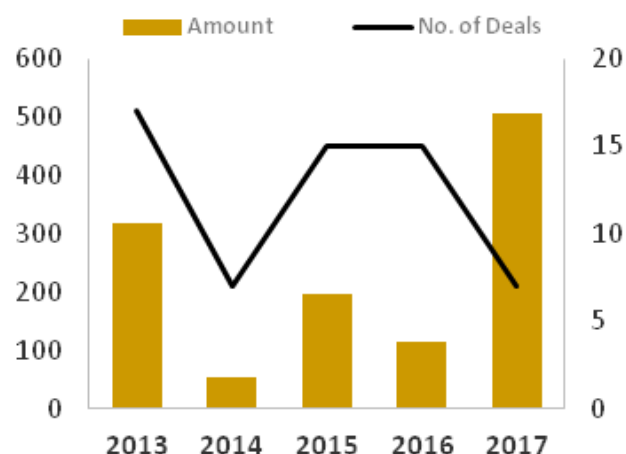
### Shipping & Logistics



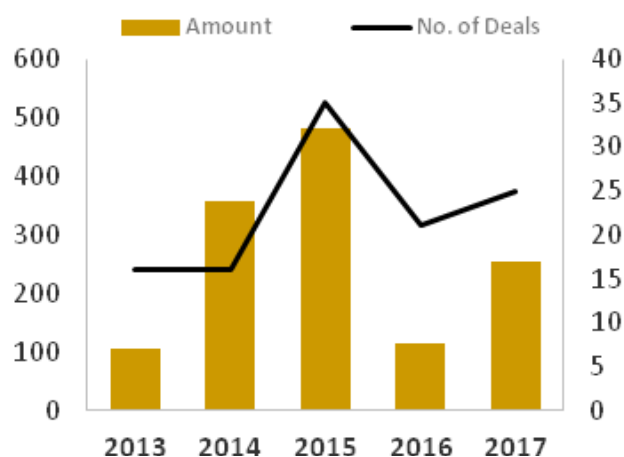
### FMCG



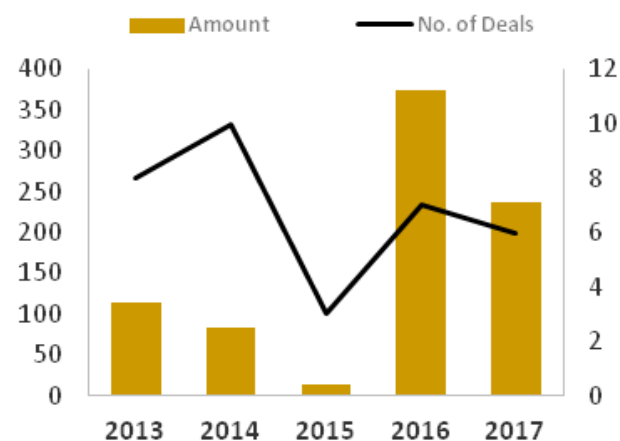
### Media & Entertainment



### Food & Beverages

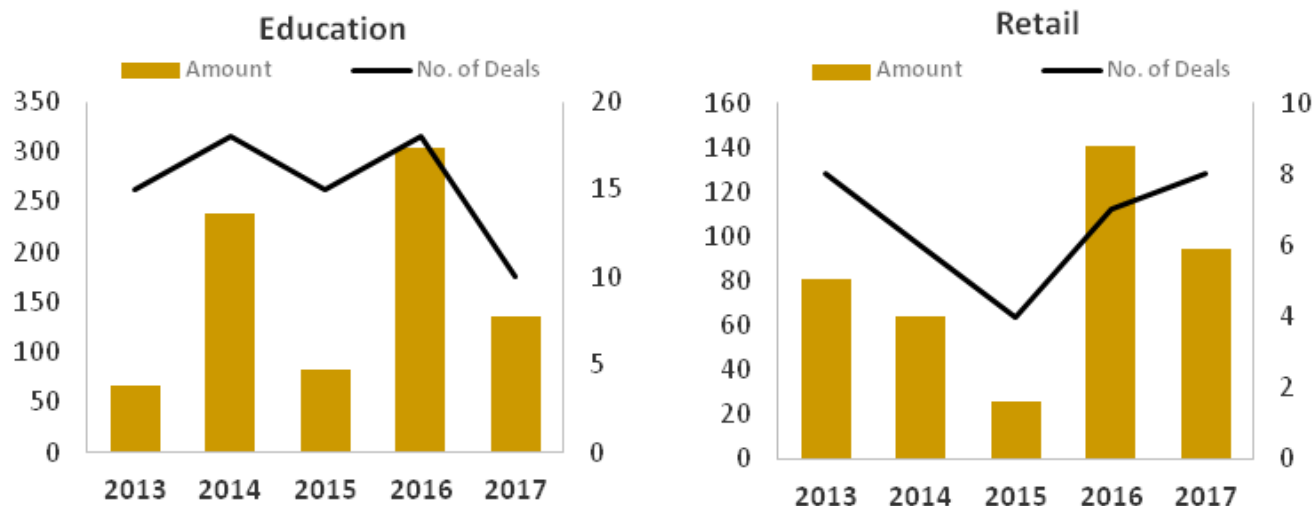


### Textile and Garments





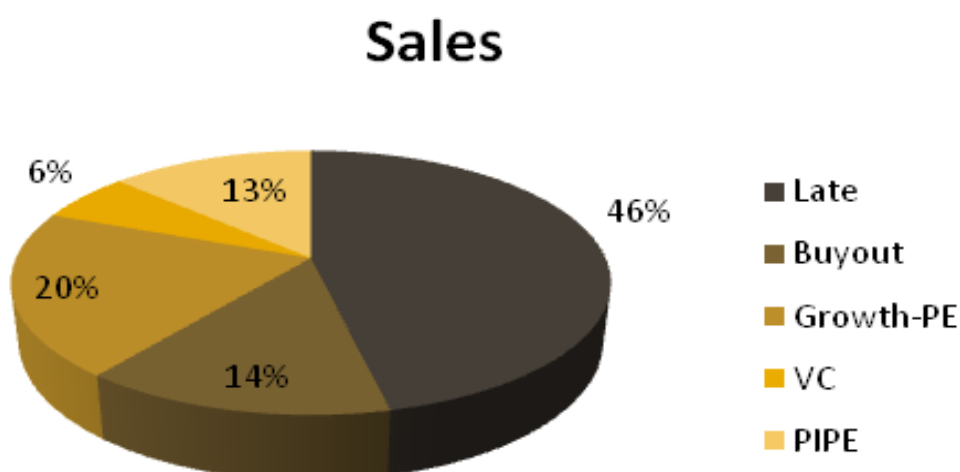
## PE Investments in India during 2017: 591 Deals, \$23.8 Billion



### By Stage

Late Stage companies\* attracted \$10.8 billion worth of PE investments in 2017 - 80% of it from just the top 10 investments. Led by the Axis Bank and Bharti Infratel transactions, acquisition of minority stakes in listed companies ("PIPEs") jumped 3.5 times YoY to top \$2,974 million. The value of Buyout investments - that were led by Devonshire Capital's acquisition of 51% stake in publicly listed edible oil firm **Ruchi Soya Industries** - declined 17% YoY to about \$3.4 Billion. (\* See Appendix for definitions of stages of company developed used.)

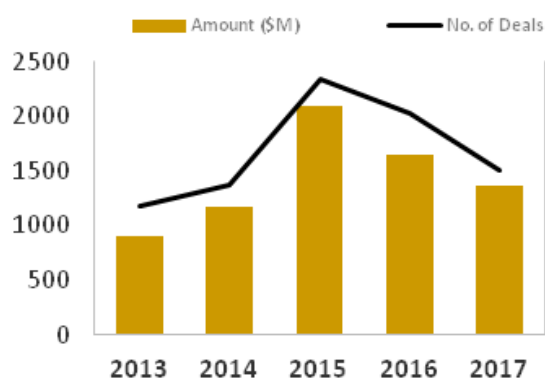
### PE Investments – By Stage (Value)



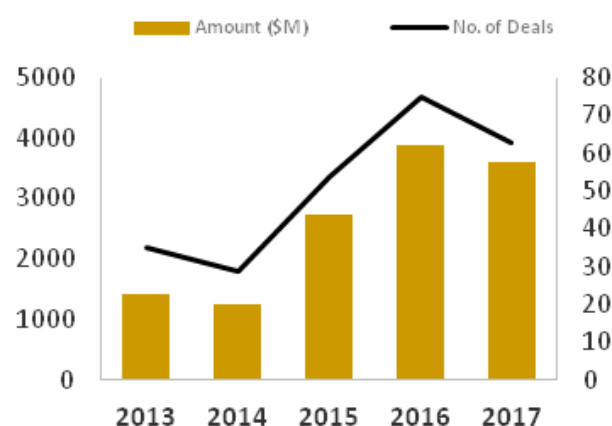
## PE Investments in India during 2017: 591 Deals, \$23.8 Billion

PE Investments by Stage				
Stage of Company Development	Volume / No. of Deals		Value / Amount (US\$ M)	
	2017	2016	2017	2016
Venture Capital	362	487	1363	1649
Growth-PE	73	68	4733	3880
Late Stage	83	103	10850	4806
Pre-IPO	5	1	493	2
PIPE	32	40	2974	856
Buyout	35	31	3363	4045
Other	1	1	0	132

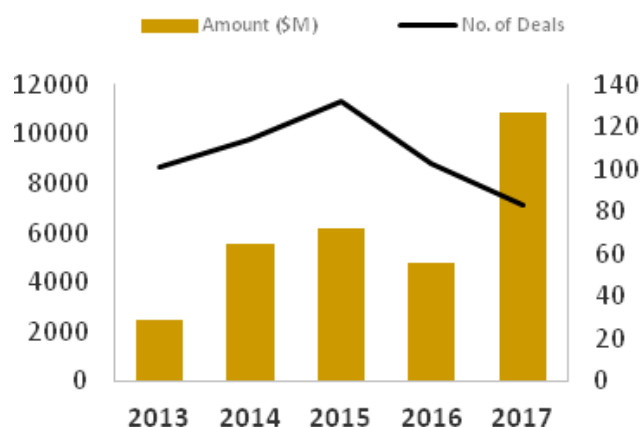
### Venture Capital



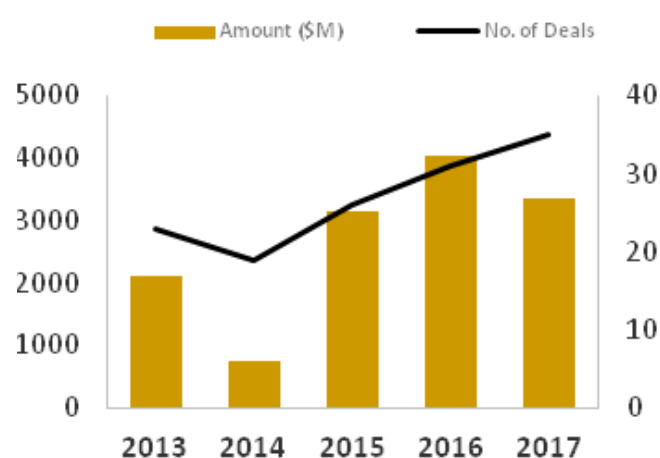
### Growth-PE



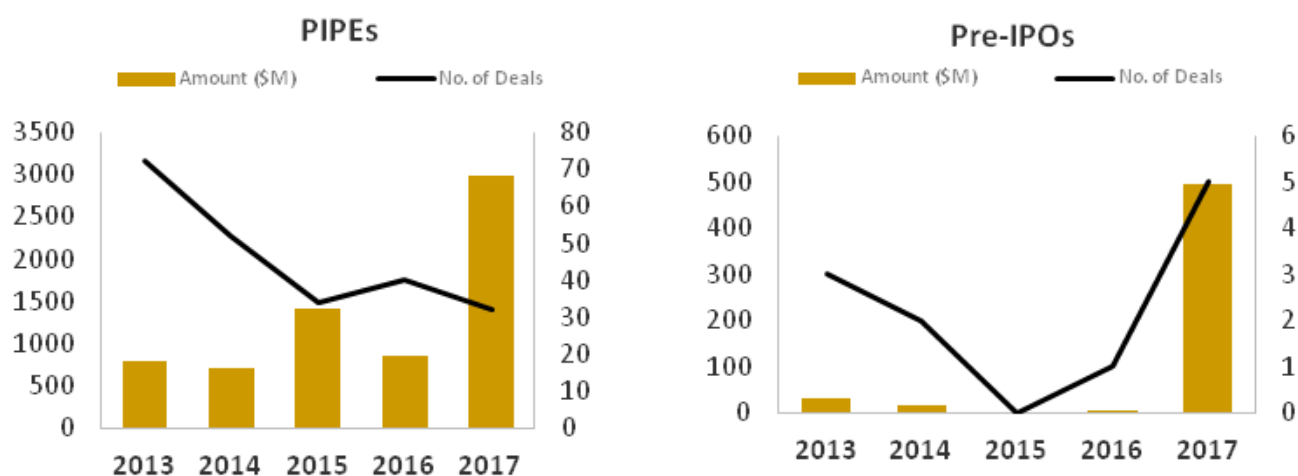
### Late Stage



### Buyouts

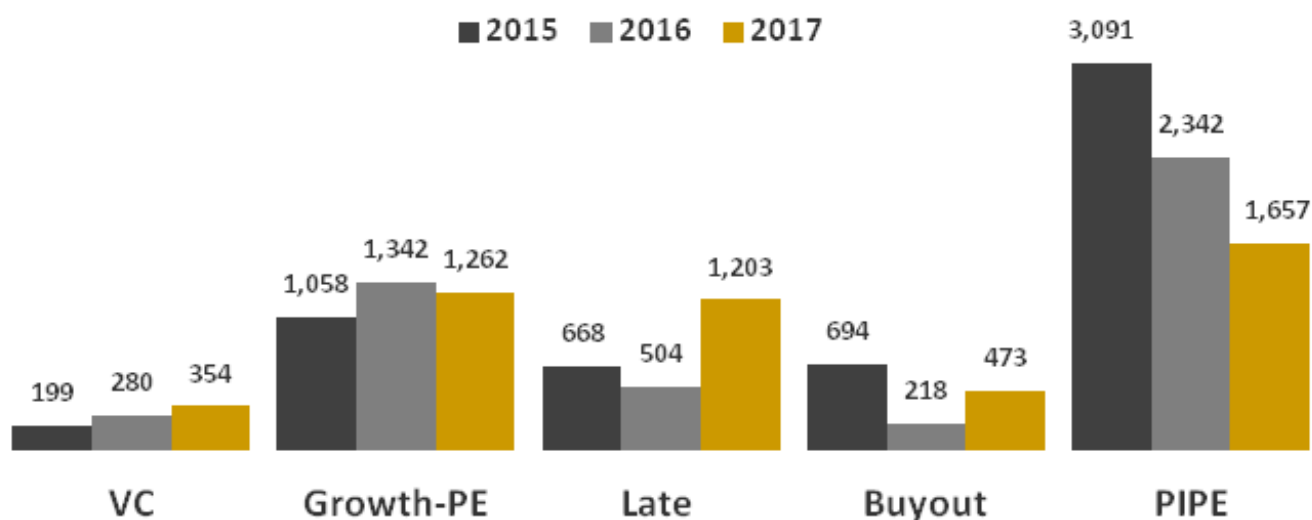


## PE Investments in India during 2017: 591 Deals, \$23.8 Billion



**Median Valuation of companies in the Buyout and Late Stage more than doubled YoY during 2017.**

### Median Valuation (INR Cr)

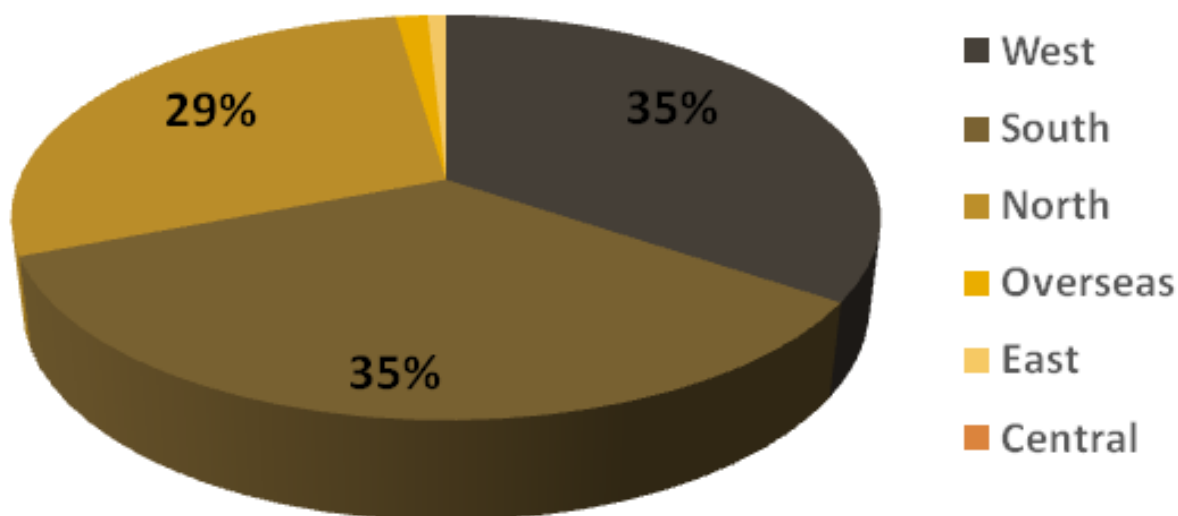


### By Region

Companies based in South India (which attracted \$8.2 billion across 247 deals) accounted for 35% of the PE investment pie in value terms (42% by volume) during 2017. West India-based companies (\$8.2 billion across 172 investments) followed with a 34% share (29% by volume). Companies in North India attracted investments worth almost \$6.8 billion across 153 deals (29% by value and 26% by volume).

Investments by Region (Value) –2017

## PE Investments in India during 2017: 591 Deals, \$23.8 Billion



PE Investments by Region

Region	No. of Investments	Value (US\$M)
South	247	8207
West	172	8206
North	153	6829
Overseas	5	338
East	13	192
Central	1	3

Among cities, Mumbai-based companies attracted the most investments (\$6.8B across 123 investments), followed by companies in the National Capital Region (\$6.7B across 90 investments). Bangalore-based companies attracted 176 investments worth \$6.2B.

Top Cities attracting PE Investments

City	No. Of Deals	Value (US\$ M)
Mumbai	123	6793
NCR*	90	6736
Bangalore	176	6246
Hyderabad	23	848
Pune	20	689
Chennai	30	438
Ahmedabad	13	417

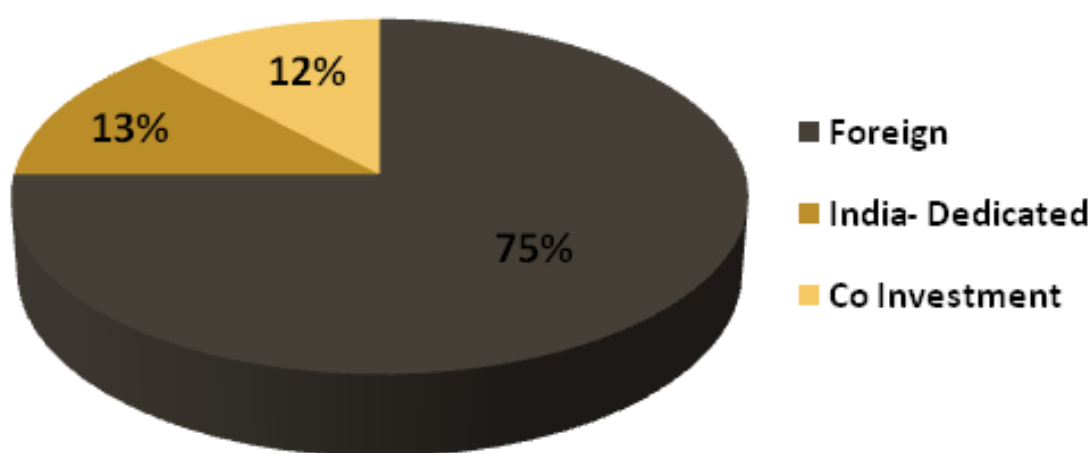
\*NCR includes Delhi, Noida & Gurgaon

## PE Investments in India during 2017: 591 Deals, \$23.8 Billion

### Investments by Fund Type

Foreign PE funds (i.e., funds without an India-dedicated corpus) accounted for as much as 75% of the investment value and 27% of volume during 2017. The average investment size of global funds at \$111 million was around 11 times that of India-dedicated funds (\$9 million).

PE Investment – By Fund Focus (Value)



PE Investments by Fund Focus (Geographical)

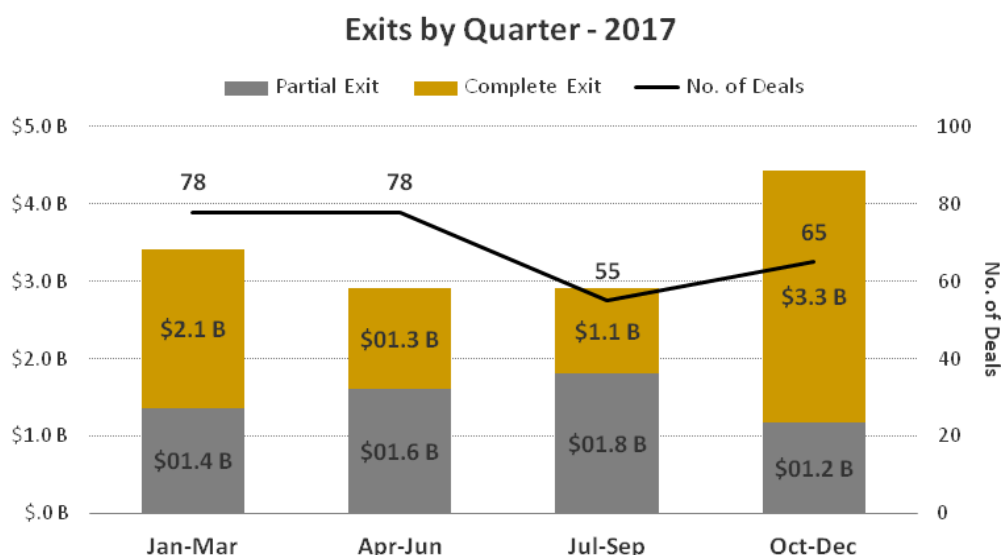
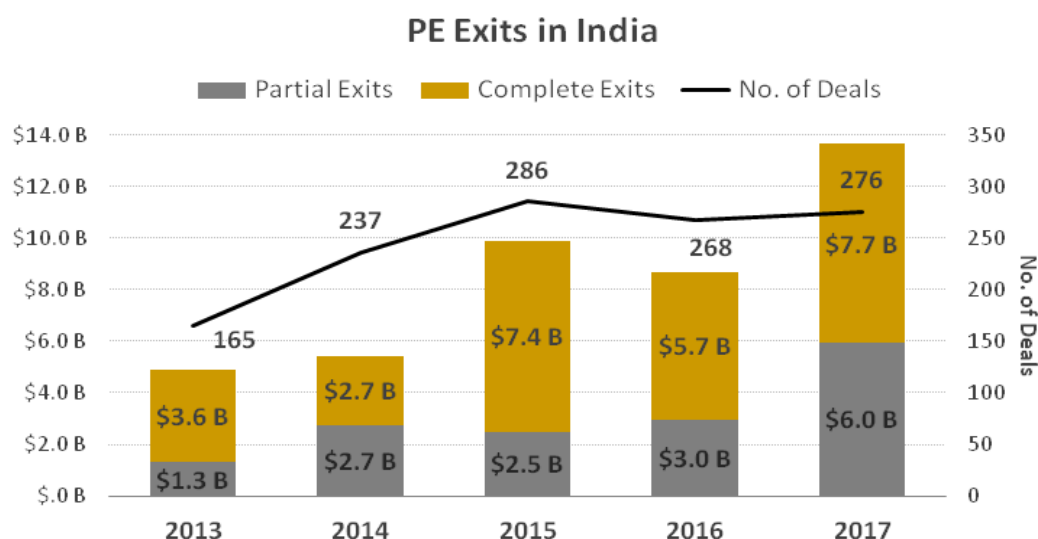
Fund Focus	Volume		Value	
	No of Deals	%	Amount (US\$ M)	%
Foreign	160	27	17817	75
India- Dedicated	307	52	3016	13
Co Investment	124	21	2943	12

# PE Exits in India during 2017

## 276 Deals, \$13.67 Billion

The value of Private Equity exits in India increased by 57% to hit an all-time high of \$13.67 billion\* (across 276 deals) during the calendar year 2017 compared to \$8.70 billion\* (across 268 deals) in 2016. (The exit value was 38% more than the \$9.9 Billion registered in 2015 – the previous all-time high.) The exit value includes \$7.72 billion of Complete Exits; the remainder being partial ones. 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 2013 to about \$42.64 billion (across 1232 transactions).

\*Note – Value includes stock swap deals.



## PE Exits in India during 2017: 276 Deals, \$13.67 Billion

The largest PE exit (by value) during 2017 happened via the acquisition of global Engineering and R&D (ER&D) service company **Aricent** - by French technology consultancy company Altran - from a group of investors led by KKR, for an enterprise value of \$2 billion (Euro 1.7 B) in cash. In Apr 2006, KKR had acquired a 76% stake in Aricent (then called Flextronics Software Systems) along with Sequoia Capital India (9% stake) for a total of \$765 million. Subsequently, KKR had made additional investments into the Delhi NCR- and Silicon Valley-based company.

The next largest exit deal (by value) during the year was Tiger Global's part exit from **Flipkart** by selling shares worth a reported \$800 million to SoftBank Vision Fund. Tiger Global had invested about \$1 billion in Flipkart across multiple rounds starting from Dec 2009 when the firm was valued at INR 194.96 Cr (\$42 million).

The third largest exit during 2017 was the \$720 million worth stake sale by Apax Partners in IT Services firm **GlobalLogic**. Apax Partners sold half of its 96% stake in GlobalLogic to Canadian pension fund CPPIB.

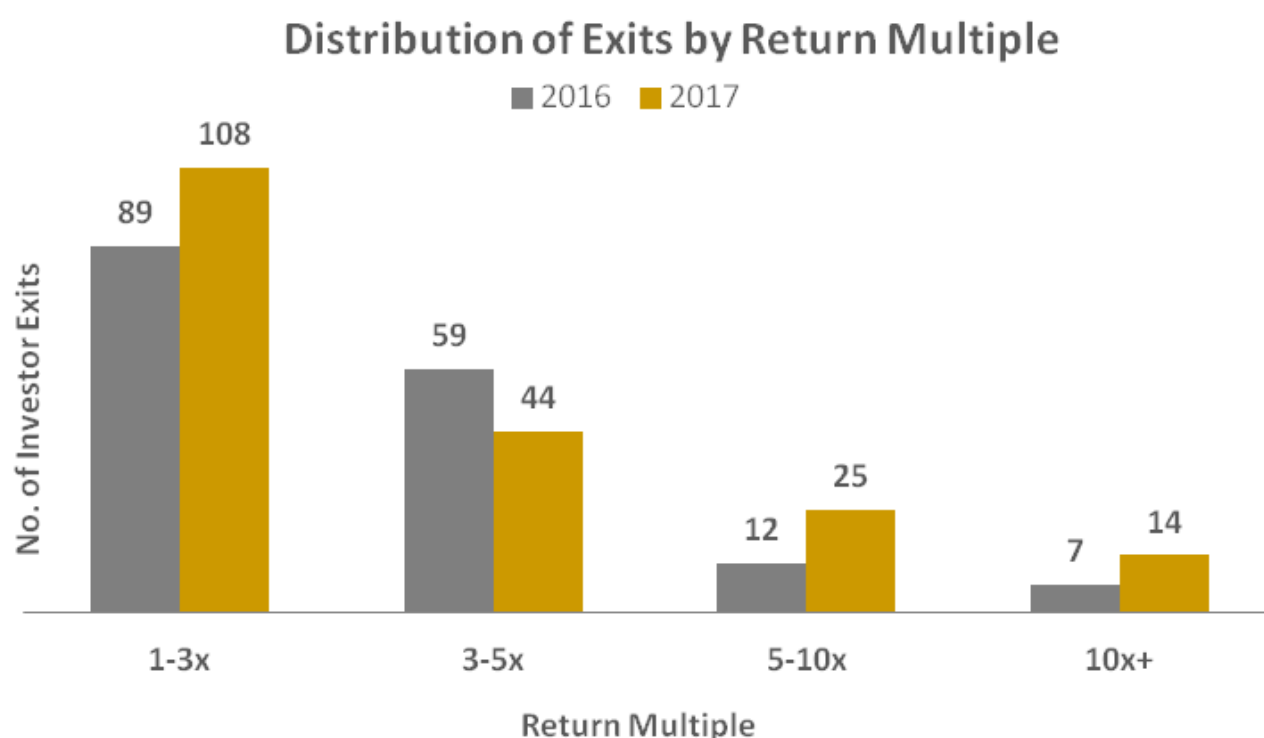
The next largest exit was Bain Capital and GIC part exit deal from BPO giant **GENPACT**. The PE investors sold part of their stake (via NYSE) over two installments: first in Aug 2017 realizing \$287.2 million and the second in Nov 2017 for \$302.60 million. The investors continue holding 24.74% stake in the company.

As part of its \$1.4 billion investment in **One97 Communications** (parent entity of wallet firm **Paytm**), SoftBank also provided a part exit to SAIF Partners India (via a \$400 million secondary share purchase from SAIF and One97 founder Vijay Shekhar Sharma).

### Exits by Profitability

2017 fetched PE investors 83 exits with return multiple of more than 3x (compared to 78 such exits in the previous year). Of these, 14 exits fetched 10x or higher returns (compared to 7 such deals in 2016).

## PE Exits in India during 2017: 276 Deals, \$13.67 Billion



In March, three investors in One97 Communications / Paytm - Saama Capital (SVB), Reliance Venture and Sapphire Ventures (formerly, SAP Ventures) - had sold their combined stake of about 4.3% to fellow investor Alibaba Group. Saama Capital, Reliance Venture and SAP Ventures had made 74.38x, 27.5x and 16.48x returns on their investments respectively. The secondary stake sale valued One97 at close to \$5.7-5.9 billion. In May, SAIF Partners India part exited One97 by selling its shares to SoftBank registering a 26.50x return on its investment.

Sequoia Capital India sold part of its stake in IPO bound mobile games developer and distributor **Nazara Technologies** to IIFL Special Opportunities Fund realizing a reported 40x on its investment. The investor made its first investment in Nazara, via WestBridge Capital Fund II, in Oct 2005 and subsequently invested more in Jan 2008 and Jul 2013.

In Apr 2017, Matrix Partners India exited online rummy gaming firm **Ace2three.com** by selling its stake for \$22.8 million to new investor Clairvest for a 22x return on its INR 7 Cr investment (made in Dec 2010). Bay Capital Investments made a complete exit from **Vini Cosmetics**, the maker of Fogg deodorant, through secondary sale to WestBridge Capital and Sequoia Capital India with a return multiple of 17x on its Feb 2012 investment (when the firm was valued at INR 173.72 Cr). The recent round, which happened in Sep 2017, values the firm at around INR 4,000 Cr.

Motilal Oswal PE sold off its remaining shares of **Dixon Technologies** in Nov 2017 for \$20.89 million fetching a 16.15x return on its Apr 2008 investment. **AU Small Finance Bank** Jul 2017 IPO gave its PE investors including IFC, Warburg Pincus, ChrysCapital and Kedaara Capital exits with returns of 13.34x, 9.16x, 6.78x and 4.37x respectively.



## PE Exits in India during 2017: 276 Deals, \$13.67 Billion

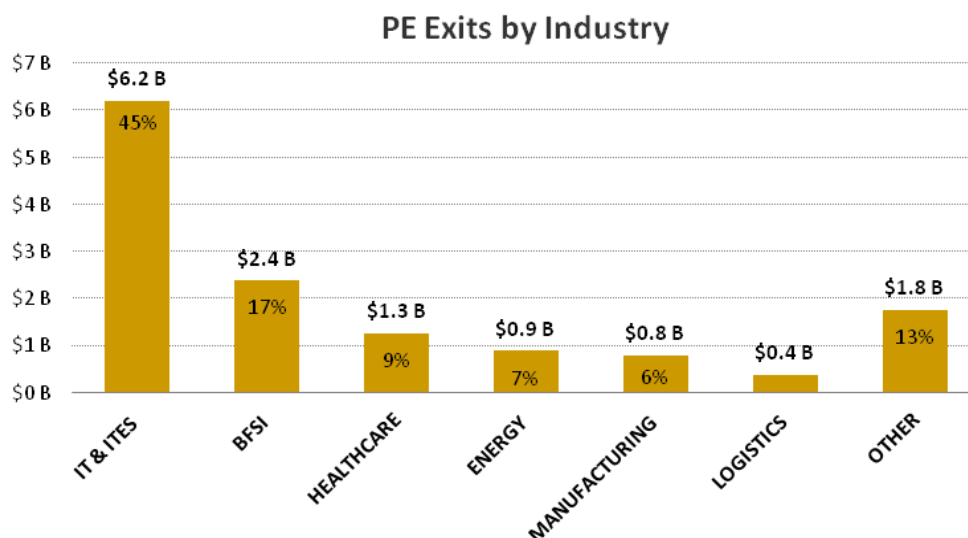
Top PE Exits by Profitability - 2017					
Portfolio Company	PE Firm(s)	Industry	Deal Type	Return	Holding Period (in years)
One97 / Paytm	Saama Capital	IT & ITES	Strategic Sale	74x	10
Nazara Tech	Sequoia Capital	IT & ITES	Secondary Sale	40x	12
One97 / Paytm	Reliance Venture	IT & ITES	Strategic Sale	28x	7
One97 / Paytm	SAIF	IT & ITES	Secondary Sale	27x	10
Ace2three.com	Matrix Partners	IT & ITES	Secondary Sale	22x	6
Vini Cosmetics	Bay Capital	FMCG	Secondary Sale	17x	6
One97 / Paytm	Sapphire Ventures	IT & ITES	Strategic Sale	16x	6
Dixon Tech	Motilal Oswal	Manufacturing	Open Market Transaction	16x	10
AU Finance	IFC	BFSI	IPO	13x	7

### By Industry

With 63 exits worth about \$6.2 billion, IT & ITes companies generated the maximum exit value for investors during 2017, accounting for as much as 45% of the value pie (23% in terms of volume). The KKR, Delta Partners & WestBridge exit from **Aricent** (\$2 B), Tiger Global's part exit from **Flipkart** (\$800 million), Apax Partners' part exit from **GlobalLogic** (\$720 million), Bain Capital and GIC's part exits from GENPACT (\$590 million) and SAIF's part exit from **One97 Communications/Paytm** (\$400 million) topped the tech exits list.

BFSI companies came in second harvesting \$2.4 billion worth of exits across 55 transactions in 2017. The stake sale – via the public markets - by Warburg Pincus in **NBFC Capital First** for \$272.7 million fetched the investor a 4.54x return on its MBO investment. Warburg continues to hold a minority stake of 36.12%. Warburg Pincus also joined IFC, ChrysCapital and Kedaara Capital in making a part exit from **AU Small Finance Bank** as part of the company's IPO which harvested a total of \$246.79 million for the PE investors.

## PE Exits in India during 2017: 276 Deals, \$13.67 Billion



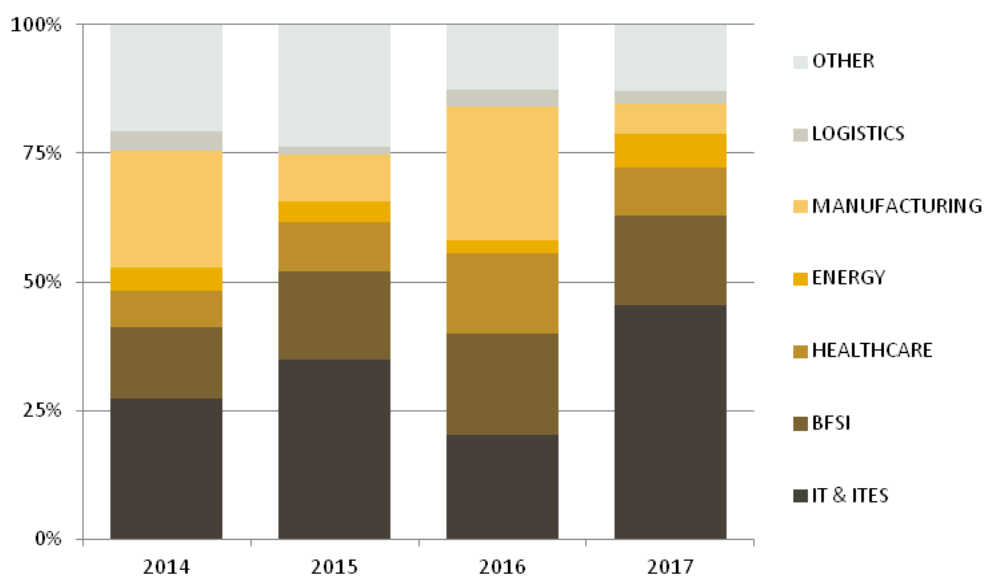
Healthcare & Life Sciences companies came in third harvesting \$1.3 billion worth across 38 exit transactions. The industry was led by the True North's reported \$215 million exit from hospitals firm **Manipal Health Enterprises** and followed by ChrysCapital's selling of its entire shareholding in **Eris Lifesciences** for about \$209.21 million (via an IPO). OrbiMed and Ascent Capital sold their stakes as part of the \$200 million investment by True North in another hospitals operator **Condis Healthcare**. ChrysCapital made part exit from **Intas Pharmaceuticals** by selling its stake worth \$106 million (INR 690 Cr) to Capital International. True North made complete exit from publicly listed CRAMS firm **Syngene International** with a 2.59x return on its INR 380 Cr investment made in Sep 2014 (when the company was still private).

The Energy industry came in next returning \$890 million across 11 exit transactions. Investors in **Mytrah Energy** including Merrill Lynch, IDFC Project Equity, Apollo Management, AION Capital sold their stake as part of the \$266 million buyback deal. The Hyderabad-based renewable energy producer raised \$300 million (INR 1900 Cr) money from Piramal Capital's Structured Finance Group and Dutch partner APG Asset Management (APG) through mezzanine debt instruments to buyout the existing investors. Singapore-based Sembcorp Industries acquired the entire stake held by IDFC.

Alternatives, via by IDFC Private Equity Fund III, in Green Infra for \$220 million (INR 1410.2 Cr). Following the acquisition, Sembcorp will become the sole owner of Green Infra.

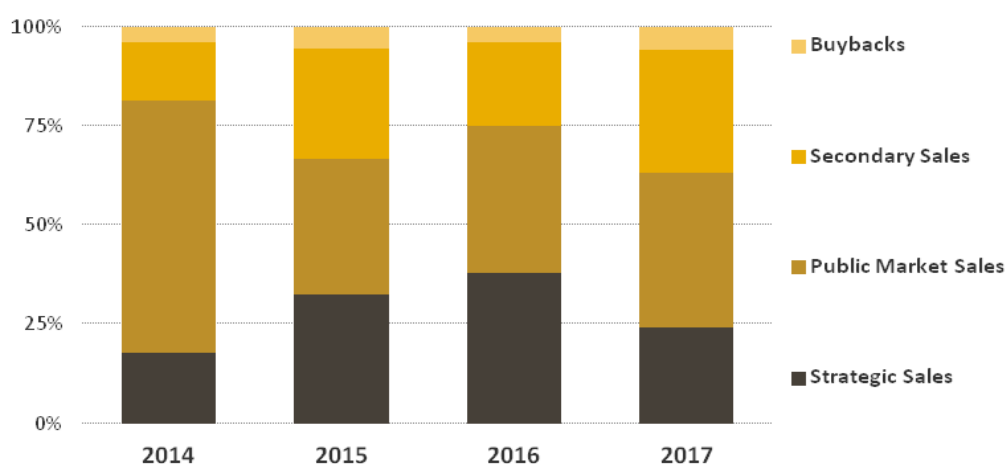
Dominated by the exit of KKR from publicly listed **Dalmia Bharat** for \$240 million, Manufacturing companies emerged as the fifth largest source of exits in 2017, harvesting a total of \$792 million for investors across 33 transactions. GIC made a complete exit from **Hero MotoCorp** through the Public Market Sale of its remaining shares for \$118 million. Tata Capital Growth Fund sold its 34.04% stake in **Agile Electric** to P.Mukund (promoter) fetching \$65.76 million (INR 425 Cr).

## PE Exits in India during 2017: 276 Deals, \$13.67 Billion



### Exits by Type

2017 saw Private Equity investors selling shares via the public markets in 98 listed companies (across 154 deals). Strategic Acquisitions provided 50 exits; Secondary Sales, 52; and Buybacks, 14. Exits via Public Market Sales, Secondary Sales and Buybacks registered growth of 66%, 130% and 136% respectively in terms of deal value over 2016. Only exits via Strategic Sales, which accounted for 24% of the value harvested during 2017, displayed a flat (1%) YoY growth.



## PE Exits in India during 2017: 276 Deals, \$13.67 Billion

PE Exits by Type				
Exit Type	No. of Deals		Amount (US\$ M)	
	2017	2016	2017	2016
Strategic Sales	50	65	3,298	3,275
Public Market Sales	154	138	5,323	3,209
Secondary Sales	52	45	4,220	1,838
Buyback	14	13	798	338

### Strategic Acquisitions

KKR, Delta Partners and WestBridge's \$2 billion stake sale in **Aricent** led the table of Strategic Sale exits, followed by the sale of \$250 million sale by Reliance Venture, Saama Capital, Sapphire Ventures in **One97 Communications/Paytm** and Sembcorp Industries' buy out of IDFC PE in Green Infra for \$220 million. In Jul 2017, a clutch of foreign funds picked up a 4.43% stake in **Reliance Mutual Fund** for \$105.25 million (INR 675 Cr) from prior investor Eton Park.

Other companies from the payments sector that generated exits included digital payments processing firm **TechProcess Solutions** (which was acquired for \$90 million or INR 600 Cr by French electronic payments company Ingenico), providing exit to ICICI Venture and W Capital. Also, US-based, Nasdaq-listed Ebix Inc acquired an 80% stake in Mumbai-based fintech company **ItzCash** for \$123 million (INR 800 Cr) providing exits to VC investors Matrix Partners India, Intel Capital and Lightspeed Venture Partners. Ebix also acquired Bengaluru-based travel portal **Via.com** for \$75 million in Oct 2017. (Via had raised about \$15 million from Kalaari Capital and Sequoia Capital India.)

In Mar 2017, Spanish infrastructure firm Abertis Infraestructuras SA acquired two operational toll road assets in south India (**Trichy Tollway** and **Jadcherla Expressway**) from Macquarie Group Ltd for INR 1,000 Cr (about \$150 million). In Oct 2017, Global insurance and reinsurance company XL Group bought 20% stake in **Mahindra Insurance Brokers**, a part of the Mahindra Group, for INR 260 Cr (\$40 million), from LeapFrog Financial Inclusion Fund.

### Public Market Exits

2017 witnessed investors offloading shares worth over \$5.3 billion via the public markets across 154 transactions. Out of the 22 PE-backed IPOs in 2017, 18 issues saw PE investors selling as

## PE Exits in India during 2017: 276 Deals, \$13.67 Billion

part of the IPO. (2016 had witnessed 16 PE-Backed IPOs, of which PE investors sold as part of 15 issues.) 16 out of the 22 PE-backed IPOs (73%) in 2017 happened in the second-half of the year.

The INR 1912.51 Cr (about 297 million) IPO of **AU Small Finance Bank** saw an offer for sale by PE firms of INR 1590.31 Cr (\$247 million). **Eris Lifesciences** raised INR 1741.16 Cr (\$270.37 million) through its IPO and provided exit route for ChrysCapital which sold shares worth INR 1347.34 Cr at a return of 6.91x. The entire INR 1,000 Cr (about \$154 million) IPO of **Indian Energy Exchange** was an offer for sale from PE investors (INR 661.92 Cr) and from other existing shareholders.

Temasek sold shares worth INR 565.80 Cr (\$87 million) via the IPO of **Godrej Agrovet**, making a return of 2.98x on its investment. SSG Capital sold shares worth INR 519.76 Cr through the IPO of **Future Supply Chain** in Dec 2017. PE-backed insurance companies that got listed in 2017 included **HDFC Life** (whose investors include PremjiInvest and UC-RNT), **SBI Life Insurance Company** (Temasek and KKR) and **ICICI Lombard General Insurance** (Warburg Pincus).

The **Bombay Stock Exchange** (BSE) raised INR 1243.43 Cr (about \$ 182.86 million) via its IPO in Feb 2017 which fetched its PE investors a flat return. Fairwinds Private Equity (earlier known as Reliance Private Equity) sold all its shares as part of footwear manufacturer **Khadim India's** IPO realizing 4.88x. **Mahindra Logistics'** INR 828.83 Cr (about \$127.51 million) IPO comprised completely of Offer for Sale from existing shareholders. Contract Manufacturing firm **Dixon Technologies'** INR 599.28 Cr (about \$93.64 million) IPO saw Motilal Oswal PE make an partial exit as part of the issue and sell off the balance shares post listing to realize a 16.15x return on its 2008 investment.

Other PE Backed IPOs during the year were those of **Matrimony.com**, **S.Chand & Company**, **Security and Intelligence Services India**, **Shankara Building Products**, **MAS Financial Services**, **Prataap Snacks**, **Tejas Networks**, **CL Educate**, **Jash Engineering**, **Capacite Infraprojects** and **Sanghvi Brands**.

Among sale of shares in already listed companies, Bain Capital and GIC part exited from **GENPACT** (by selling shares worth \$590 million) and registered 2.39 x return. Warburg Pincus part exited from Capital First (by selling shares worth \$273 million) fetching a 4.54x return and KKR completely exited from Dalmia Bharat (selling shares worth \$240 million) with a 4.27x return. In addition, Goldman Sachs made a 3.73x return (on its INR 831.46 Cr investment) by selling its remaining stake in Max Group firms.

Norwest realized 7.28x returns via sale of its shares from **RBL Bank**, 7x returns from **IndusInd Bank**, 4.17x returns from **Cholamandalam Investment and Finance Company** and 2.83x returns from **Thyrocare Technologies**. Carlyle realized 4.3x returns when it made complete exit from **Edelweiss Capital**. SAIF Parnters India, which had also invested in Edelweiss Capital, made a

## PE Exits in India during 2017: 276 Deals, \$13.67 Billion

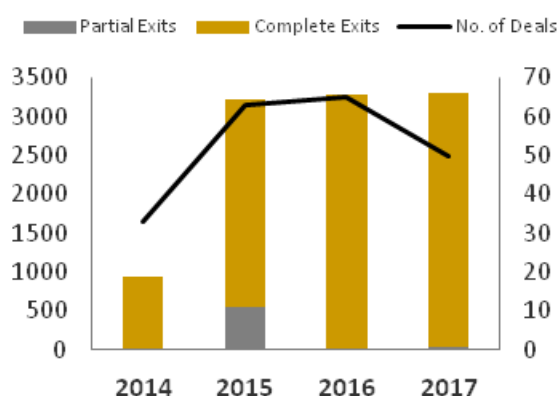
part exit with 5.63x return, 4.25x return from **Blue Star** and 3.42x return from **Atul Ltd.**. Creador Capital made complete exit from **Somany Ceramics** with 5.93x return.

Rabo Equity continued selling its shares in **LT Foods** during 2017 and made 10.44x return on its investment. Gaja Capital made part exit from **TeamLease Services** with 7.52x return on its investment. CX Partners made part exit from **Natco Pharma** with 6x return. TA Associates made complete exit from **Dr. Lal PathLabs** with a 5.54x return. Paragon Partners made part exit from **Capacite Infraprojects** with 4.29x return. Fairwinds Private Equity made complete exit from **Shankara Building Products** realizing 4.86x.

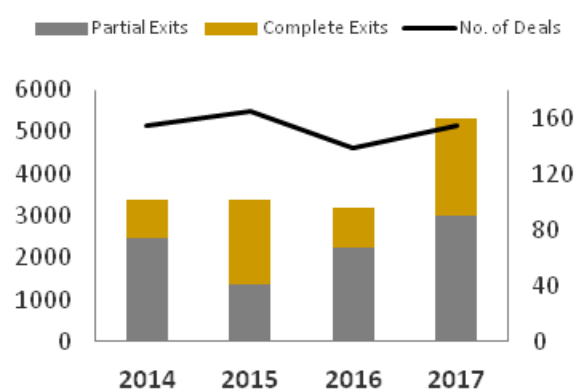
### Secondary Sales

Prominent among Secondary Sale deals was Tiger Global's part exit from **Flipkart** when it sold shares worth a reported \$800 million to Softbank fetching a 3x return. Apax Partners sold half of its 96% stake in **GlobalLogic** for \$720 million. SoftBank Corp also provided part exit to SAIF Partners from **One97 Communications/Paytm** by buying shares worth \$400 million.

#### Strategic Sales



#### Public Market Sales

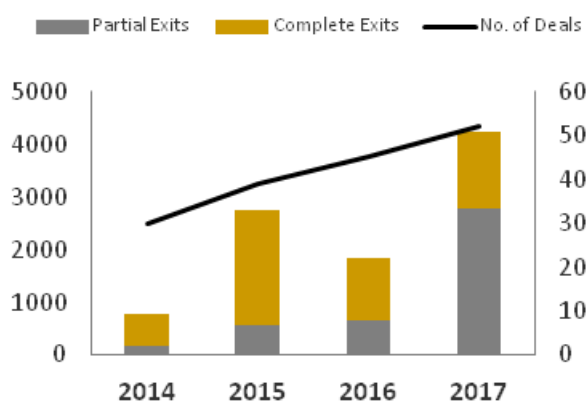


## PE Exits in India during 2017: 276 Deals, \$13.67 Billion

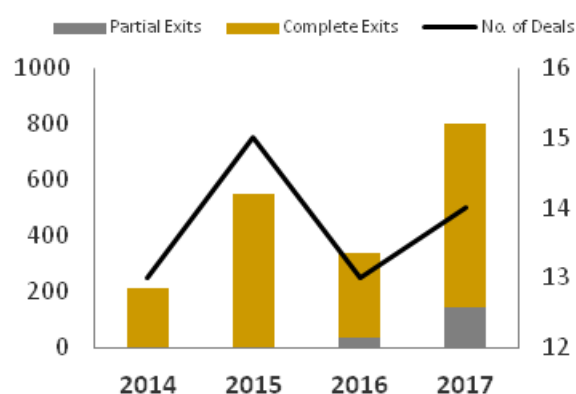
### Buyback

Prominent among exits via Buyback was **Merrill Lynch, IDFC Project Equity, Apollo Management** and **AION Capital**, exit from Mytrah Energy. The promoters of **Jagran Media Network**, the publisher of newspaper 'Dainik Jagran', also purchased the entire stake held by private equity investor Blackstone Group in the company.

#### Secondary Sales



#### Buybacks





## MEDICAL DEVICES RULES, 2017

### IN THE PURSUIT OF ORDER AND INNOVATION

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As per the government's Make-in-India survey, the medical devices industry in India is presently valued at \$5.2 billion, and contributes approximately 4-5% to the \$96.7 billion Indian healthcare industry. The Indian medical devices industry has steadily grown and witnessed a surge from \$2.02 billion in 2009 to \$3.9 billion in 2015 at a CAGR of 15.8%. The Indian medical devices market is dominated by imported products, which comprise around 70% of total sales and manufacture of low-end products for local and as well as international consumption. As per industry estimates, the Indian medical devices market will grow to a \$50 billion industry by 2025. Currently, the Government's move to allow 100% FDI in the sector has also helped the Indian medical devices industry in attracting foreign capital.

The most significant development concerning the medical devices industry has been the notification of the Medical Devices Rules, 2017 ('Rules'), which became effective from January 1, 2018. The Rules have been framed in conformity with the Global Harmonisation Task Force (GHTF) (now 'International Medical Devices Regulators Forum') framework and seek to put the Indian regulatory framework at par with international best practices. Introduction of the Rules signals the Government's step in the right direction, in finally acknowledging the existence of a distinct industry within the ambit of the healthcare industry, and the need to regulate medical devices separately from that of pharmaceutical/ drugs industry. Prior to the notification of the Rules, there were no specific rules governing the manufacture of medical devices. Moreover, manufacture/ import of certain notified medical devices were regulated as drugs within the ambit of Drugs and Cosmetics Rules, 1945. The notification of the Rules finally puts an end to the regulatory absence, and provides clear set of norms governing the medical devices industry.

Although, the power to notify devices under Section 3 of the Drugs and Cosmetics Act, 1940 ('Act') throws the field wide open, it has the significant demerit of continuing to consider medical devices a 'drug' as opposed to its own separate category of healthcare products. These Rules are co-extensive with the Act, so medical devices are doubly regulated by the Act and the Rules. Rule 96 of the Rules, however, removes some confusion by clarifying that in case of a conflict between the Drugs and Cosmetics Rules, 1945, and the Rules, the latter will prevail.

The Rules provide for a risk based classification of medical devices whereby low risk medical devices are classified as 'Class A' medical devices, the devices having low moderate risk are classified as 'Class B' medical devices, the devices having moderate risk are classified as 'Class C' medical devices and devices having high risk are classified as 'Class D' medicate devices. The parameters for determining the classification of medical devices have also been specified in the Rules, clearly stating the criteria to be taken into account for determining the exact class in which a medical device will fall into. For instance, as per the Rules, classification of a medical device will be governed on the basis of its intended use and if a device is intended to be used in combination with another device, the classification rules will apply separately to each of the devices.



## MEDICAL DEVICES RULES, 2017 -IN THE PURSUIT OF ORDER AND INNOVATION

In order to render more objectivity in the classification of medical devices, the Central Drugs Standard Control Organization (CDSCO) issued a notification classifying more than 550 medical devices in Class A, Class B, Class C and Class D, respectively, including approximately 200 in vitro diagnostic medical devices. The aforementioned classification is not exhaustive and CDSCO will be further expanding the list, from time to time, in the future. It is important to note that CDSCO's classification of medical devices is not cast-in-stone and is merely intended to provide guidance to applicants. As such the CDSCO has left it to the applicants to assess the risk and pursuant to such assessment, make the requisite application before the relevant licensing authority.

This also means that these classifications cannot be appealed. While this will have the effect of preventing powerful medical lobbies from strong-arming their way into a lower risk classification, it does, fail to account for improvements in science and technology that could improve the safety levels of devices over time. It would be more appropriate if some periodic review mechanism were integrated into the Rules to prevent devices being governed by parochial risk assessments.

In what could be a trend-setting precedent in the Indian scenario, the Rules stipulate for two very important aspects. The first is the time-bound disposal of applications, and the second is the online single window application portal ('sugam' portal of the Government of India). The Rules clearly lay down the requisite application forms in which various applications (for manufacture, import, clinical investigation etc.) are required to be made, and provide for a clear timeline within which the applicant will be either granted or refused the license/ registration. Apart from the end-to-end timelines, each stage of the application process (such as inspection of the application, audit of manufacturing site, etc.) is required to be completed within the timelines prescribed under the Rules. The online single window application portal would prove to be a game changer for the industry as it would do away with bureaucratic procedures typically involving physical applications. Further, online applications would make it easier in tracking applications and faster result in resolution of any queries associated with the application.

As for renewals of a granted license, the Rules provide that the licenses/ registration are granted in perpetuity, subject to payment of renewal fee at specified periods. For instance, Rule 29 of the Rules provides that a manufacturing license is granted in perpetuity requiring only a renewal fee to be paid every 5 years. While some deregulation is always conducive to the smooth conduct of business, this could give rise to some concern over the lack of checks and balances. There should be some pre-emptive system of checking, at least with respect to the higher risk classifications, perhaps once a decade, to ensure that the manufacturer is maintaining quality standards and is otherwise complying with the conditions of his license.

Chapter VII of the Rules extensively discusses the conditions, pre-requisites and requirements for clinical trials of medical devices and clinical performance evaluations of in vitro medical devices. This can go a long way towards ensuring patient protection, provided that the letter of the law is truly implemented in its spirit. Rule 122DD of the Drugs and Cosmetics Rules, 1945 has been

## MEDICAL DEVICES RULES, 2017 -IN THE PURSUIT OF ORDER AND INNOVATION

extended to medical devices. While there are many procedural conditions prescribed, there is little specific reference to the standards of clinical trials, such as requirements for control groups, the need to get informed consent, protection of human rights etc., suitably tailored to the challenges of testing medical devices. Some inspiration can be found in the Helsinki Declaration on Ethical Principles for Medical Research Involving Human Subjects. It is hoped that this is rectified soon.

With the ambitious Make-in-India program of the Government yet to achieve full swing, notification of the Rules signals the Government's intent to give fresh impetus to indigenous manufacturing to a sector that has the potential of carving a niche for the country's manufacturing industry. India is already a leader in generic drug manufacturing and Indian pharmaceutical companies have made their presence felt across the globe.. The framing of a clear regulatory framework along with congenial conditions for manufacturing, innovation and intellectual property protection is bound to add a fillip to the medical devices manufacturing industry.

## About JSA

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## **Aarthi Sivanandh – Partner, Chennai**

Aarthi focusses her practice on the full spectrum of corporate transactional and other matters, including M&A, de-mergers & spin-offs, foreign collaborations – Joint Ventures, strategic alliances & licensing transactions, restructurings, Private Equity and Venture Capital transactions.

She has represented buyers & sellers in acquisitions and divestures; has handled, negotiated & contested situations – including stock sales & purchases, Joint Ventures, advance preparation for prospective targets, asset sales & purchases, recapitalizations, strategic mergers and acquisition through tender offers.

Aarthi has had substantial transactional involvement in numerous industries, including Energy, Financial Institutions, Service industries, Microfinance, Health Care, Information Technology, Knowledge Based industries, Media & Telecommunications, Industrial Products and Retail.

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He has been representing multi-national companies in cross-border transactions, advising on foreign direct investments, outbound investments, Joint Ventures, technology transfers and commercial contract issues. He has also handled some of the Capital Market related transactions such as FCCBs (Foreign Currency Convertible Bond) and GDRs (Global Depositary Receipts).

His work experience includes advising Indian and foreign parties on Private Equity investments in India and advising companies engaged in the Financial Services sector including non-banking financial services companies and brokerages.

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# THE DISCIPLINARIAN RERA

## A Consideration of the Separate Account

It has now been well over a year since the central government enacted the Real Estate (Regulation and Development) Act, 2016 (“Act”). The mechanism for the implementation of the Act is slowly taking shape with most states establishing Regulatory Authorities and some states taking steps towards adjudicating complaints. The Act seeks to level the playing field between buyers and developers. The Act attempts to achieve this through various provisions such as mandating registration of all projects, requiring promoters to obtain all approvals before commencement of sales, and requiring promoters to establish association of members. One of the salient features of the Act is that it attempts to instill financial discipline amongst developers and responsible marketing amongst the intermediaries involved in the real estate market.

We discuss one such attempt of the Act i.e., requiring promoters to maintain a separate bank account with a scheduled bank, what has come to be popularly (and rather inaccurately) known as an ‘escrow account’. Section 4(1)(D) of the Act creates an obligation on the promoter of a project to deposit 70% of the sale proceeds of the project in a separate account opened with a scheduled bank. The Section also requires the Promoter to use these proceeds only for the purpose of cost of construction and land cost. The promoter is required to withdraw money from this account in proportion to the percentage of completion of the project. The promoter may withdraw these funds only upon producing certificates from an engineer, architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.

The language of the provision warrants certain clarifications and from a developer’s perspective, it clearly creates rather serious liquidity issues. One of the questions that arises is that how does promoter determine how much construction has been completed? What percentage should be attributed to foundation work and finishing work? What weightage should be provided to landscaping and amenities? The state of Maharashtra has addressed these questions in the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (“MH General Regulations”) to some extent by prescribing formats for the certificates to be issued by the engineer, architect and the chartered accountant in practice. However, most of the other states have not prescribed formats of these certificates. In these states, where formats have not been prescribed, this has led to some degree of confusion with certain banks demanding that the promoters provide certificates to enable the bank to release funds while at the same time being unable to provide formats of the certificates to the promoters. We understand that some banks in these states have worked out a solution whereby they have adopted the formats prescribed under the MH General Regulations. We expect that in due course, formats of these certificates may be prescribed by the various states and this will only create certainty for developers with regard to compliance with these provisions.

One of the positive consequences of Section 4(1)(d) may be that it can ensure solvency of the project. In general, where a certain sector and its participants are sought to be regulated, the regulations have required the participating institutions to maintain a minimum net worth, in

## THE DISCIPLINARIAN RERA: A Consideration of the Separate Account —

essence ensuring solvency. The Act does not impose such capitalization / net worth requirements on promoters. However, through Section 4(1)(d), the Act seeks to ensure that at least the project is solvent at all times. The intention clearly is to ensure that the promoters are not overly reliant on sale proceeds to fund the development. Promoters may now have to invest more capital at least initially so that they are able to complete a significant part of the initial construction and withdraw larger sums from the separate account in addition to the 30% that is not subject to these restrictions. Thus, the provision should ensure that the promoter has higher pre-arranged capital or increases its borrowings solely for the purposes of the project. Therefore, besides the obvious intent of combating misapplication of sale proceeds, the expectation appears to be that builders with sufficient capital or good credit worthiness will undertake projects, thereby ensuring completion and timely delivery of projects.

Apart from consolidating the real estate market and increasing buyer confidence, this provision has offered foreign investors a regulatory mechanism to ensure better management of the cash flows of projects. In debt transactions, in addition to regulating the separate account under investment agreements, investors are opting to control utilization of the 30% of the sale proceeds on which the Act does not place any restrictions. For instance, such investors are now mandating that these free proceeds should first be used to service interest on their debt, followed by servicing of construction loans. Investors have also recognized the constraints that have been placed under the Act on the promoter's cash flows. Accordingly, in some cases, debt investors are allowing a moratorium over interest payments to promoters for the first 12 to 18 months. Once a substantial portion of the sale proceeds are free to be withdrawn, the promoters are required to pay off the accrued interest as well as commence servicing of interest. In this manner, the provision has offered greater comfort to investors on the utilization of the sale proceeds.

The other aspect of this provision is the uses or purposes towards which the funds may be deployed. The funds in the separate account may only be used for land cost and cost of construction. The terms 'land cost' and 'cost of construction' have not been defined in the Act and consequently, we need to look to the rules of various states for guidance on this issue. As one would expect, the rules vary from state to state on this point and there is not much consistency in these definitions. For instance, the rules of the Maharashtra clearly provide that any payment principal and interest would be considered 'cost of construction'. However, there is some ambiguity on whether payment of principal would amount to 'cost of construction' under the rules of Karnataka, even though payment of interest clearly falls within the definition. It also remains to be seen if operating costs of a promoter such as rent for office space, salaries of employees etc. can be treated as 'costs of construction'. This would be critical as these costs form a considerable part of a promoter's costs even if, in many cases, they are not project specific and may be incurred on a group-wide basis.

Although we are still in the nascent stage of the implementation of the Act, the overall impact of this provision appears to be positive. It is obvious that the efficacy of this provision will depend on how it is enforced. It would be interesting to see how the authorities interpret the provision and one can only hope that the interest and business necessities of the sector will weigh on the minds of the authorities while interpreting and enforcing the provision.

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Karthik has worked on several large M&A transactions in the real estate and other sectors as well as handled complex due diligences and land related documentation.



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