Baker & McKenzie Global Private Equity

Baker & McKenzie

REBOOT

Innovative twists on old ideas

INSIGHTS

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Simon Hughes
Chair of the Global Private Equity Practice Group

WELCOME to our 2014 edition of Insights, an annual look at some global trends affecting private equity and infrastructure investors, in which we share perspectives on the industry and tips to help you get your deals closed.

As we go to press, the general macro outlook looks encouraging. The US economy is strong. The outlook for Europe is stable and recent data from the UK in particular is very positive. Other markets which have been out of vogue for the PE community for some time are beginning to see green shoots. Riverside talk to us about the nascent signs of activity in Spain (page 12). On the other side of the globe, J-Star reflect on the dramatic political change and stimulus being seen in Japan by Abenomics (page 8).

High growth markets continue to be a key area of focus for financial sponsors. Some of the markets we covered last year – such as LATAM and Turkey – remain hot. Others like Central Eastern Europe remain relatively untapped, as Mid-Europa explain to us (page 16). But the brave new world is Africa, which is quickly emerging as the new frontier for private equity and infrastructure funds. Some funds have been doing deals there for some time but there has been a visible increase in the interest in African deals from a new slew of sponsors. We get the perspectives of DPI and Investec PE on the opportunities which Africa brings. We also speak to the head of COMESA on how they are regulating competition on a pan-African basis (page 32).

There are a number of sectors which have experienced greater volumes of activity. We focus upon renewable energy and get SDLC's perspective on where the deals are taking place (page 26).

Moving beyond the macro, there are other encouraging factors which are stimulating PE activity. Goldman Sachs talk to us about the buoyant debt raising environment (page 52). PwC's new capital markets team reflect on the steady increase in IPO exits by PE and infrastructure houses (page 20).

Private equity remains as nimble as ever to create exciting new structures and ideas to generate transactions. Two examples we touch upon are: the growing trend to close high yield issuances into escrow prior to closing deals to avoid the need for a bridge (page 48); and the structuring possibilities which IFRS create for allowing minorities to achieve consolidation – we speak to PwC on the latter topic (page 56).

But it is clear also that PE is becoming more moderated in its message as many realise that the spotlight which has been directed on the industry is here to stay. AIFMD is playing a role in this evolution – we explore the pending asset-stripping rules in the AIFMD and their impact on common structures (page 68). We also talk to EQT about the importance of being a responsible investor and why this is a good thing (page 60). And Edelman share their perspective on managing PR in the wake of the high profile media attention on tax optimisation structures (page 64).

Wrapping up this year's content we catch-up with Willis for the latest stats on Warranty & Indemnity insurance (page 76) and Jamieson Corporate Finance regarding the management perspective on incentive structures (page 73).

All in all we are excited about the opportunities ahead in 2014. Whilst that excitement has to be tempered by the fact that we are not completely out of the woods of the global financial downturn, many of the stars are beginning to align for an uptick in activity. We wish you all the best for 2014 and hope that you are able to capitalise on these opportunities.

“Many of the stars are beginning to align...”

ABENOMICS and the art of rejuvenation

Gregory R Hara, Director and President of Japanese buy-out firm, **J-Star**, summarises the current state of the Japanese PE market.

Congratulations on the closing of your fundraising of Fund II this summer. How challenging was fundraising given LPs historic caution towards Japanese PE?
The outlook of domestic investors and international investors towards Japan has remained very cautious and it has been a competitive fundraising market. Fund II took two years to raise. We had a successful fundraise due to the strong performance of Fund I in relation to which we had a series of strong exits from investments (7.7x, 3.4x, 3.1x) from late 2012 to early 2013. Also, we focus on the mid-market and given that we are local players, investors have confidence in our knowledge of the Japanese market.

The stimulus brought to the economy from Abenomics has certainly made the fundraising market much better since mid 2013; foreign investors have got more used to the Japanese market; domestic investors have more tolerance towards PE and more capital to deploy as a result of the growth of the stock market.

What impact has Abenomics had on your business? Has the stimulus brought to the Japanese economy re-invigorated private equity in Japan or is it too early to say?
Abenomics is functioning well on the whole and is clearly bringing stimulus to the Japanese economy and pushing stock prices up. However, Abenomics is not resolving the demographic issue that Japan is facing, which is that over the next 20-30 years the Japanese market will shrink. The increase in consumption tax could also have been handled better – consumption tax is being increased from 5% to 8% in April 2014, but a further increase to 10% is expected in 2015. A one-time raise would have created greater demand prior to it taking effect.

“Abenomics is functioning well and is clearly bringing stimulus.”

> Abenomics has caused some return to interest in domestic M&A.

Abenomics has had a very positive impact on the exit environment for the Japanese PE industry. We expect the exit market to continue to be very good.

Regarding new money deals, in the last 3-4 years, large Japanese companies have been keen to do overseas deals like Suntory's recent USD16 billion bid for Jim Beam. The focus on outbound M&A has meant that there has been limited competition for domestic M&A. Abenomics has caused some return of interest in domestic M&A. For the time-being it is too early to tell how much of an impact Abenomics will have on deal-flow. If the economic expansion continues then strategic buyers will do more domestic buy-outs and it will be more challenging for us to compete against those players given their comparably low cost of capital. This could push up entry multiples. On the other hand, the domestic stimulus could lead to corporates implementing / considering an increased number of carve-outs, which will create more opportunities for PE. A number of carve-outs have occurred recently such as KKR's buy-out of Panasonic Healthcare and Longreach's acquisition of Hitachi Via Mechanics.

You mention that you have achieved a number of successful exits. What has been your best deal in Fund I so far?

We achieved a 7.7x return on our investment in Iki Iki., a mail order business focusing on the growing elderly population in Japan. We invested into the business in 2009 when the business was in a difficult situation and we introduced various changes which saw EBITDA more than double during our holding period. The business had unique aspects. It publishes magazines primarily to the elderly population. Elderly people tend to be very synergistic and tend not to go out so much so mail order is attractive for them.

How would you describe the debt markets in Japan at the moment? Are you able to raise good leverage on buy-outs in Japan?
The debt markets in Japan remain strong. One of the problems with Japan's banking sector is "over-banking" – there are a large number of banks willing to lend on deals which creates a competitive environment for raising good levels of debt on attractive terms. The banks are hungry to provide LBO financing.

Are you purely focused on originating deals in the Japanese market or do you have a wider focus on Asia? Does the political stand-off with China cause you concern?
We don't invest outside Japan, but we do support Japanese portfolio companies expanding into Asia. We recently invested in a Japanese business with operations in China, Thailand and Vietnam. Japan has strong links with the rest of Asia, which is important given the population problem which Japan is facing.

Regarding China, I am more concerned about the drop in the Chinese market than the political stand-off with China regarding the islands. Growth last year in China was 6-8% which was a big drop from the average of the previous few years.

"The banks are hungry to provide LBO financing."

With the challenges of a long recession still very evident, **Marcos Lladó** of **The Riverside Company** discusses the re-energising of the Spanish private equity market.

SPAIN STEPS UP

There has been a lot of talk in the press about private equity returning to Southern Europe in 2014, both in terms of raising funds and also it becoming a "deal playground". What are your views on this?
The Spanish private equity market has been heavily affected by the long recession. Many private equity firms hold a long list of underperforming companies in their portfolios. Refinancings, restructuring plans, and new equity injections have been priorities for many funds.

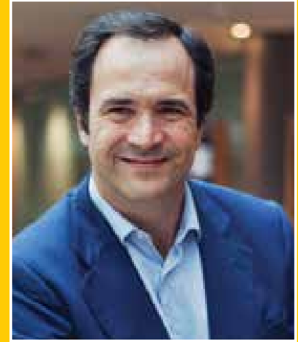
All this has prevented private equity firms from making successful divestments and has expanded investment cycles, negatively affecting returns and the ability to raise new money. As a result, the Spanish private equity market has shrunk significantly, with only a few local firms with money left to invest.

In coming years, we see the Spanish private equity market dominated by international funds, which are starting to look at Spain positively. The recovery of the economy will reactivate the flow of good investment opportunities and attract foreign investors. On the local front, many Spanish players will struggle to raise new funds and will probably disappear, and those succeeding in raising new money will probably be significantly smaller in size compared to pre-recession levels.

Consequently we anticipate an improvement in deal flow of quality deals, while the competitive environment further intensifies in the lower end of the middle market. Having said this, we also foresee less intervention from the central banks in order to allow the system to run on its own after having taken the appropriate adjustment measures. This, together with the continued lack of credit from banks, might again provoke liquidity shortages that should in turn help the multiples to buy out companies come down a bit.

In the last couple of years, the majority of Riverside's investments have been in North America. Do you see that changing in 2014?

Riverside invests wherever the best opportunities arise around the world and its global footprint remains critical as a key differentiating factor to other funds. Having said this, the US economy has outperformed the European economy in recent years, providing a more solid ground to invest. In Europe, and particularly in Southern countries, the economic environment has been very uncertain and earnings visibility reduced. The economic environment was less favourable for investment.



> "We anticipate the deal flow of quality deals improving..."

“We are more selective when looking at opportunities...”

In addition, the deal flow of good companies for sale has been very limited and whenever a good company was up for sale it was at a very high price. Many good companies were not put up for sale as EBITDAs have remained depressed, and hence it was not the right time to sell. The deal flow of restructuring projects has been more abundant, but this is not within our investment strategy. In 2014, we believe earnings visibility will improve and many good companies will see sales recovering, all this leading to a more favourable investment environment and more attractive deal flow.

What opportunities and challenges do you see for Europe in the coming year and, in particular, for Spain?
The lack of competitiveness and stagnant growth will continue to be key challenges for the European economy. In Spain, the situation is even more challenging as a result of high unemployment, lack of credit, and high overall indebtedness, which make it difficult to reactivate consumption and the economy as a whole. Nonetheless, we see productivity increasing as a result of lower salaries and, to a lesser extent, increasing capital investments. Improvement of competitiveness is reflected in the good performance of exports. We see many companies already exporting more than 30% in just a few years. Eventually, all these changes will lead to a progressive recovery of the economy. An upturn of internal consumption coupled by further increases of exports are strong catalysts for investing in Spain in the coming years.

Have the recent economic challenges in Spain changed the way you approach investments or evaluate targets at all?
The essence of our investment criteria has not changed. Our focus is to buy profitable companies that are market leaders in their niches with strong management teams and ambitious business plans. We look to partner up with management teams seeking to grow companies profitably, either organically and/or through acquisitions.

Riverside is particularly strong in projects involving internationalisation and professionalisation. What may have changed is the investment threshold adopted as a result of the difficult economic situation. Making an investment in the current economic environment implies higher risk, and as a result, we are more selective when looking at opportunities. In addition, the lack of credit and lower leverage levels lead to most of the value creation coming from increases in EBITDA, all contributing to raise our investment threshold.

What strengths would you say The Riverside Company has compared to other PE firms?
There are very few private equity firms in the low-middle market with a truly international footprint like Riverside. It enables us to help companies expand abroad, providing access to suppliers, distributors, and customers across Europe, North America, and the Asia-Pacific region. We also help our portfolio companies by conducting international add-on acquisitions and greenfield investments, accompanying them in the process from origination through the execution and integration of acquisitions. Riverside's global footprint also allows us to share with our portfolio companies market intelligence and industry experience through Riverside University and Riverside conferences. Sharing of best practices among management of portfolio companies is highly promoted.

Finally, our hands-on approach is also a differentiator, based on our Riverside Toolkit of experts represented by a wide network of skilled advisors and operating specialists who are available to work with each portfolio company's management team, as well as our internal Operating team made up of former CEOs and executives who are dedicated to optimizing the performance of portfolio companies' financials, management and production.

Marcos Lladó, Partner for Spain and Portugal.

Marcos has headed up the Madrid office for Spain and Portugal since 2007. He joined Riverside from Espiga Capital (Spanish private equity firm managing €120 million), where he was the Investment Director for Spain and Portugal. Prior to that, he worked as a Senior Consultant at The Monitor Company, where he managed a team responsible for the strategic and operational design of the marketing and sales strategy for the third telecom operator in the Spanish market. Before that, he was Assistant Director of Corporate Banking & Structured Finance at Lloyds Bank and Manager of Corporate Banking & Capital Markets at HSBC, managing large and medium sized Spanish corporations.

Marcos has a BA in Economics from the University of Colorado at Boulder and holds an MBA in International Business from Maastricht School of Management.

EAST SIDE STORY

Mid Europa's **Michelle Capiod** looks at the untapped private equity potential in CEE.

MEP has focused on CEE since its inception in 1999. How has the region evolved during this period?
The CEE region has gone through transformational change in the time we've been here as formerly state-controlled economies transitioned to become liberal and stable economies. It is worth noting that since the first wave of EU accession in 2004, CEE has delivered three times higher growth than Western Europe. Today we see CEE as a region that is politically integrated with the EU, and having well-developed legal and regulatory systems which provide a stable investment climate for PE. In essence, the region offers the best of both worlds: superior growth prospects to Western Europe and substantially less risk than emerging market investing.

Has MEP's investment strategy changed during this period?
MEP was one of the first PE funds to capitalise on the growth potential in the region, which was spurred on by a convergence of both consumption trends and standards of living with those of Western Europe. However, the sectors we have focused on have evolved over time. For example, our first fund focused mainly on telecoms and infrastructure opportunities while our second and third funds focused on a wider variety of sectors such as healthcare, retail, energy, logistics and leisure.

What was MEP's motivation behind the shift in sector focus?
Fundamentally, we have always focused on the domestic consumption opportunity, mindful of the convergence of CEE with Western Europe in terms of consumer habits and in terms of the desires of the large and growing middle class. However, our investment criteria, in terms of equity ticket, necessitate investments of a certain size. Back in 1999 it was difficult to find, for example, a healthcare services company of sufficient scale for us to invest in. As the sector has matured we are seeing more and more opportunities for investment. For instance, with the transformation of the private sector and more entrepreneurial activity coming out of the fall of communism, the number of mid-market companies in CEE with revenues in excess of EUR 100m has increased four-fold over the last 10 years.

> "The region offers superior growth prospects and less risk than emerging market investing."

> “You need to think from the outset about how you will position the company for an ultimate exit.”

In addition, we are seeing first generation founders, who set up their businesses shortly after the fall of communism, beginning to reach retirement age in a culture where founders do not necessarily pass companies through the family. This all means that there is a pool of sizeable and highly successful companies available for PE to invest in.

We have seen MEP achieving a number of successful exits in the last 12 months. What are the key factors for a successful exit in today's market?

You need to think from the outset about how you will position the company for an ultimate exit. We have always looked to acquire quality assets that will be of strategic interest on exit and that possess an ability to become "domestic champions" through buy-and-build, consolidation or organic growth. It is also important to invest in assets that can be of interest to multiple parties on exit including, in particular, strategics. For example, if you were to look at our full exits to date, around 75% of them have been to strategics. Even if a strategic does not ultimately acquire the asset, it does help to have one involved to assist in creating competitive tension – this is even more important if you are going through a cycle of weaker macro-economic growth as strategics, who are less dependent on debt funding, will often have a longer term perspective than PE. I think that is what we have got right in our 2013 exits of LUX-MED and SBB Telemach.

Does MEP experience much competition for origination in CEE?

We mostly face competition from strategic investors, though, from time to time, we have run into other PE funds. The reason why we have not experienced as much competition from PE for origination is that we fill a unique position in today's PE landscape in that we have a regional focus, not a country specific focus, and we are in the mid-market (though by CEE standards it's more towards the larger end).

The majority of PE funds, and most of the PE firms in the region, tend to focus on single countries and opportunities with slightly lower equity tickets than us. In fact, we have developed a symbiotic relationship with some of the domestic PE funds whereby, on occasion, we acquire assets from other PE funds that have developed companies to a certain scale, which at such point become of interest to us as targets.

Some commentators regard CEE as slightly over-looked. What do you think?

I think it is quite clear that CEE is underpenetrated and I'd go as far as to say underfunded from a PE perspective, despite having outperformed over a long term horizon. We firmly believe that PE in CEE represents an untapped opportunity. Today we see continued economic growth, in particular relative to the rest of Europe. We see continued convergence of consumption trends and living standards with Western Europe and there is a large and growing pool of target companies providing attractive deal flow.

Why has this region been ignored by PE?

To some extent there has been a general pull back from LPs investing in Europe and this has impacted on investment into CEE. In addition, there is some level of misunderstanding about where CEE sits – is it an emerging market or is it a mature market? I see it as a bit of a hybrid in terms of delivering superior GDP growth but with a very different risk profile than emerging markets. But for others, it gets lost between the emerging and European markets. In addition, there were also a few unfortunate deals that have happened in the region where some PE firms got their fingers burnt, which might have influenced the perception of CEE as a PE market. Whereas in our experience, if you focus on the right countries within the region, you can generate attractive returns with low volatility.

> "CEE is underpenetrated and underfunded from a PE perspective."

Peter Whelan and **James Anderson** from **PwC**'s equity capital markets advisory team sum up the state of play of the IPO markets for PE exits.

TRACKING THE UPSWING

The second half of 2013 has seen a significant uptick in the number of PE investors and infrastructure funds exiting portfolio companies by IPO. What has driven this trend?

We certainly share that observation and it is a very welcome trend. Over the last cycle a degree of tension had built up between PE funds and the institutional investor universe, most noticeably in Europe, and to a lesser extent in the US. There was a degree of scepticism from institutional investors around PE pricing and the nature and motives of PE funds making disposals. That scepticism largely dissipated in 2013. It has partly been helped by market conditions, including a reduction in volatility and increased signs of growth in the UK and Europe, and also a constructive approach to valuations on the part of vendors. Also, the weight of money has shifted out of the bond markets into the equity markets, with large US mutual funds also participating in size in European deals. This has to some extent mitigated the influence on deals of the more traditional UK institutional investors who in some cases were most sceptical around PE exits.

A further factor sustaining the positive trend enabling PE funds to access the IPO markets has been the aftermarket performance of 2013 deals which has been on average positive. Countrywide was a good example of a deal that helped reopen the market in 2Q13, obtained strong levels of support and is currently trading up over 40% on the IPO price 9 months later.

> The weight of money has shifted out of the bond markets into the equity markets

Peter Whelan leads PwC's equity capital markets advisory team. He joined the Firm from Rothschild where he was a Managing Director and Head of Emerging Markets Equity Advisory.

He has over 18 years' ECM experience across a range of markets from the initial IPO of Billiton in bringing the South African company to the London Stock Exchange through to Rosneft, KazMunaiGaz E&P, ENRC and the listing of Rusal in Hong Kong. Most recently Peter worked for a major PE house, advising them on the international IPO of a large consumer business.

IPO activity by the PE community has been active not just in the main money centres but also in domestic markets, for example, the recent IPO of Sanitec on the Swedish stock market. What factors should funds consider in weighing up where to list?

There are always a range of factors to consider in determining the optimal listing location. Perhaps the starting point is that a business would look at the merits of listing on its domestic market. You would then ask whether that market would give an appropriate level of liquidity. Do investors on that market understand your business and industry? Is there an obvious peer group? For a mining company, for example, London might be attractive given the extent of the listed peer group and the concentration of investors which understand mining.

For larger international businesses, the natural choice will more often be the larger exchanges over smaller domestic markets. In this regard, London and New York remain very strong.

There continues to be considerable discussion as to the potential for a shift in IPO activity towards Asia, and we are believers in the long-term potential for growth in the capital markets in the region. Hong Kong is of course a large and established capital centre and Singapore is increasingly being seen as a hub for large global equity funds, many of which have been expanding their presence there.

If you look at the international IPOs that have been successful in Hong Kong they have tended to involve the very recognisable branded businesses, and those companies with a clear Asian story, rather than more mainstream industrial companies. There has perhaps been a greater realisation of that over time among issuers, with one or two companies failing to get their IPOs priced. Singapore remains an interesting alternative for the right story, though experience so far is again that a more local story is required to generate a satisfactory level of liquidity.

Prior to the financial crisis an IPO was seen by some PE sponsors as a complete exit path. Where would you say the market is in relation to the level of roll-over expected of PE funds and management into the IPO, lock-up and likely time-frame for full exit?
Even prior to the financial crisis, 100% exits have been the exception rather than the rule, with most PE funds tending to retain some of their holdings post IPO. For institutional investors there is value to seeing PE sponsors sharing the risk and maintaining a degree of "skin in the game" after the IPO.

In terms of what residual stake is the right amount, there is no single right answer and in practice this will vary from deal to deal. Typically the balancing act is between PE funds needing to give investors confidence that they are sharing aftermarket exposure; ensuring there is enough liquidity; and also making sure that the deal is sized to ensure a good level of coverage. This is a critical judgement call and the solution adopted needs to be properly articulated during the marketing process. If there is a perception that there is insufficient commitment by owners, that can be detrimental to the marketing process. The same is true of lock-ups. Generally the standard today is 180 days for PE funds and management; 360 days for the company. Investors expect to see this and really it's a point that issuers should look to take off the table so it doesn't become a distraction during the marketing process.

The time-period within which PE funds fully exit their investee companies post-IPO varies from deal to deal – the average being around 18 months, though some earlier. The key, of course, is a positive after-market performance, and there have been a number of recent examples where the banks have been willing to waive lock-ups due to strong after-market demand. Investors are generally supportive of that, on the basis of strong demand and an orderly market.

James Anderson joined PwC in November 2013 from Goldman Sachs where he specialised in Equity Capital Markets and Corporate Broking advice to UK and international corporate clients.

James has over 15 years' ECM and broking experience encompassing a broad range of sectors and transactions, including IPOs, follow-on offerings, block trades, equity-linked offerings and broking on M&A transactions.

Exiting a large residual position may be done by means of a series of follow-on sales: over the course of these the dynamic tends to shift from an initial focus on alignment of interests through to looking for the "clean-up" trade which removes a perceived overhang.

What is your outlook for 2014? Do you expect the surge in IPO activity to continue?

In our view the macro factors that were supportive of the resurgence in the second half of 2013 remain broadly in place as we move through the first quarter of 2014. That is true whether one looks to lower volatility, economic data, corporate confidence levels, and a resumption of growth in the UK and, to an extent, continental Europe. That said, the recent crisis in Argentina and the potential knock-on to other emerging markets is a reminder that sentiment can be fragile and that windows for some issuers can close rapidly.

There are an abundance of IPO issues in preparation and February is likely to be very busy in terms of what was starting to be prepared in the second half of 2013. At the same time it is also true that there is increasingly high differentiation between "must have" IPOs – for example Moncler which was 31 times covered – compared to other deals that haven't met with the investor appetite and have had to be pulled. As the volume of deals in preparation becomes even greater, investors will be discriminating carefully. Business plans and management teams will be closely scrutinised and investors are seeking strong, defensible and sustainable equity stories which can continue to deliver over the medium- to long-term.

> "The macro factors that were supportive of the resurgence in 2H13 remain broadly in place."

Is there any advice you would give PE funds or management teams looking to list today?

In our view PE funds and management teams have a good understanding of the opportunity currently being presented by the equity markets, and so the focus is both on creating optionality to list; and on maximising the value achievable.

In order to build real flexibility, businesses can't start getting prepared too early. At the same time, PE funds are rightly also mindful of the need to keep management teams focused on running the business. In practice therefore this means that management teams and their owners are increasingly looking for a higher degree of practical assistance on IPO preparation.

Our own business is structured to help companies prepare for IPO by providing a broad spectrum of practical assistance and support to companies, in addition to high-level strategic and independent equity advice. PwC is rightly well-known for its excellence in delivering financials, but the reality is that as a firm we play a very broad role for management teams and PE sponsors. By engaging early we can help identify and deal with the red flags in the business around readiness for the public markets, including elements such as reporting systems, governance, tax, risk management and many others. Our equity advice draws on the strong sector specialisms within PwC to help craft the IPO story at an early stage, and to sense-test the strategy of the business and the model ahead of engaging with bookrunners. In our advisory role our focus is on sitting alongside owners and management teams, providing advice and support to get the best deal done. In that regard we are highly complementary to the role played by banks, supportive to management, and can usually make an IPO – which is typically an onerous, unpredictable and costly process – much more efficient for all parties.

“PE funds are mindful of the need to keep management teams focused.”

THE CLEAN GENERATION

L. Warren Pimm of **Sustainable Development Capital** provides an overview of the renewables sector.

What is your outlook generally for the renewable energy sector?

Globally the outlook for the renewable energy sector remains constructive. The renewable energy sector has passed a key milestone over the past few years in that renewable energy is no longer considered to be "alternative". The sector has successfully completed its transition and is now an integral part of the mix of general energy infrastructure in most countries.

The path of development and context for renewable energy is different across developed and developing markets. In developing markets renewable energy is being drawn into energy infrastructure systems alongside existing and new conventional energy in a somewhat more managed approach relative to developed markets, principally given that the majority of renewable energy and/or conventional energy being installed in developing countries is in support of natural and robust economic growth. The displacement effect of renewable energy in developing markets is less than is being experienced in developed markets.

Across developed energy markets, the impact of a transition to a low carbon energy market is quickly becoming acute. We see this in Europe, as an increasing number of recently built conventional power plants – mostly high-efficiency combined cycle gas turbine (CCGT) power plants - are being either mothballed or prematurely closed, as profits from gas power generation are eroded, given decreased electricity demand through the financial crisis, changing fuel prices, and depressed carbon prices. As an example, it is estimated that over the course of 2012-13 ten major EU utilities announced the mothballing or closure of over 22GW of CCGT capacity in response to persistently low or negative clean spark spreads. These decisions were motivated by different market and policy factors affecting electricity, coal, gas and carbon prices, however the on-going transition of energy generation to a low carbon system is significantly affecting the traditional business model of utilities.

"The renewable energy sector is no longer considered to be "alternative"."

> ‘Investability’ is determined by local regulatory policies, local economic conditions and the availability of local institutional capital.

Given a broadly supportive political environment globally for renewable energy, a growing experience base among institutional investors, and the continued falling costs of many renewable technologies, there remains continued and significant institutional investor interest in the renewable energy sector from both private equity and infrastructure investors, with new capital continuing to be raised and committed.

In what countries or regions do you believe most activity will be?

The ‘investability’ of a market is determined in part by the local regulatory policies, but equally or even more so by the local economic conditions, and critically on the availability of local institutional investment capital. It remains true that most investment managers tend to make investments in the same country or type of market where their capital is sourced.

Europe: We see most institutional investment activity likely to be focused on the UK, French, German, Dutch, and Nordic markets where the combination of constructive renewable energy policy, stable economic conditions, and importantly the availability of institutional capital is well established. We see investment appetite across renewable energy technologies including solar PV, biomass, waste-to-energy, onshore wind, and offshore wind continuing to be supportive across the Northern European countries.

Southern Europe and the CEE region are likely to see more limited activity, apart from secondary market transactions in Italy and some developments in Poland – principally given smaller local institutional pools of capital to draw on, and continued concern over regulatory and economic uncertainties across those markets.

North America: We see the North American renewable energy markets remaining an active market for institutional investment given the deep pools of institutional capital available, the relatively stable economic environment, and the continuing support across sub-regions in the US and Canada for renewable energy technologies. In the US a number of utility scale solar PV projects are scheduled to come online in 2014-15, which will be available for institutional investment.

Emerging Markets: Across the emerging markets of Asia and MENA, specialist PE/Infra funds are being established that are taking investment in renewable energy projects - however, the scale of capital investment into these markets will remain constrained by the limited availability of local institutional investment capital, and the smaller commitments of capital for international/ emerging markets made by large asset owners in developed countries.

In which technologies do you see the most activity?
Solar PV, onshore wind, and offshore wind in that order.

Solar PV: Institutional investors have a high degree of experience and confidence in solar PV power installations. The risks are well understood, development times relatively short, capital costs have come down over the past few years and continue to fall, and construction times are within months. The challenge has been, and continues to be in the ability of large asset owners to invest capital at scale into solar. From a technology standpoint, institutional investors see solar PV as the least risky renewable asset class.

Onshore Wind: Onshore wind is more complex than solar PV, with increased development risk given development timelines, particularly in countries with complex planning processes such as the UK. Capital costs are higher and construction times are longer than for solar PV, with more completion risk involved. Institutional investors have generally got comfortable with these risks and are making large and long term investment allocations to onshore wind across markets.

“Institutional investors see solar PV as the least risky renewable asset class.”

> There are enough banks in the market to enable projects to be successfully financed.

With onshore wind there is an ability to deploy capital at scale, which meets a key requirement of large asset owners.

We see institutional investor appetite for onshore wind continuing to hold through 2014 – 15, with a number of interesting tie-ups and framework partnerships taking shape between financial investors and utility partners who have a need to manage an asset rotation strategy – a trend that has been developing over the past 12 – 24 months.

Offshore Wind: Offshore wind is a high-profile technology. However, it is quite different from solar PV and onshore wind in terms of maturity and risk profile. Offshore wind projects are industrial scale: development and construction capital costs are multiples higher, running into billions of pounds rather than millions. Development, permitting, and consenting timeframes can take many years for offshore wind projects, and there remains significant uncertainties around the long term operation and maintenance costs due to the lack of long term experience had with fully operational offshore wind projects.

From an institutional investor's perspective, the highest interest point for offshore wind is in the ability to deploy significant capital at proper institutional investor scale. The ability to invest £200m+ into a single project is appealing for larger asset owners and global infrastructure investors.

Construction risk is frequently raised as a barrier to financial investment in infrastructure, including renewables. Do you see this changing?

As with regulatory risk, construction risk can be priced. This means that construction risk is not a barrier per se, but is a risk that can be taken by some investors and not others, having regard to their return requirements and risk appetites. As the volume of successful projects has increased, so has the level of expertise of most institutional investors, which goes back to the question of which technologies are the ones that will see the most growth.

Most investors are now comfortable with the construction risk associated with solar PV installations, less so with onshore wind, and rarely with offshore wind construction risk.

Do you see more debt financing being raised for the development of offshore wind in Europe?

Yes. Some banks continue to be constrained in their ability to provide project financing, however there are enough banks in the market that are not constrained to enable projects to be successfully project financed. As with the equity investor community, the banks that are able to lend have completed the recent projects, and so have developed a deeper understanding of the sector. This begins with the banking teams, then the credit committees, and finally includes the internal management of the banks involved. Amongst the banks that understand the offshore wind power sector, we would see the Japanese banks being particularly active, however they are by no means the only ones.

We also see infrastructure debt funds beginning to enter the market, such as IFM and shortly Blackrock. Other developments on the debt side include the Infrastructure UK's loan guarantee programme, which we believe has potential to unlock additional project finance for offshore wind.

We see the development finance institutions, export credit agencies, and state-backed loan guarantee providers as remaining essential in financing Europe's offshore wind sector simply given the size of investment required for offshore wind projects. Their role would have been required irrespective of the impact of the global financial crisis and capital adequacy regulations on long term bank lending.

Warren joined SDCL with a focus on financial advisory and capital markets. Prior to SDCL, he worked with the corporate finance group of Canaccord Adams Limited (UK) in London. He is a former principal and co-founder of the Canadian investment bank, Berkshire Securities, where he established and led its capital markets group and was responsible for leading the development of Berkshire Securitas into a leading independent Canadian financial services firm, growing the organization from a start-up to over 2,200 professionals and $12.5 billion in client assets across 200 offices. Warren has completed on over 80 separate underwriting transactions collectively raising over $10.5 billion in total equity capital.

AFRICA RISES...

Three pioneers of African business discuss their insights and experiences of working in this vast and fertile continent.

THE PAN-AFRICAN INVESTOR

Runa Alam, CEO and co-founding partner of **Development Partners International** explains her organisation's pan-African approach.

> While Europe and the US suffered a financial downturn, trade in Africa continued to grow.

Many people are describing Africa as the next frontier for Private Equity. DPI has been investing in Africa for many years. Have you noticed a change in the way Africa is perceived in the PE community?

There is a change: the trend is towards more interest in African private equity from global private equity funds, as well as from both African and non-African LPs. Major global PE funds are now operating in Africa, and more indigenous and off-shore first time PE funds are being formed. Africa still has too few PE funds, especially when compared to most emerging markets, but over the next 10 years I expect that this will change.

While there is more LP interest in African private equity, because the general fundraising market for PE is still not as good as a decade ago, it is a more challenging time to fundraise. However, as other LPs have filled their allocations in other emerging markets, or decided not to enter those markets, Africa is increasingly being looked at. I would describe this interest as less of a big picture change in the investor community, and more of a change coming from certain types of investors and certain geographies (like the US endowment community and sovereign wealth funds).

The uptick in interest has been helped by other events. First, while the rest of the world, particularly Europe and the US, suffered a financial downturn in 2008/2009, trade in Africa continued to grow in that period – driven mainly by intra-African trade and investment. From 2001-2010 six of the ten fastest-growing economies were in Africa. Second, Sub-Saharan private equity only really started in the late 1990's. The 10 year records only became available in the late 2000's so investors now have tangible data regarding the returns profile of the region.

Last year the African Private Equity and Venture Capital Association partnered with Cambridge Associates to produce the first PE benchmark for Africa. They also partnered with E&Y to develop the first exits study.

However, there has not been the same rush of large amounts of LP capital into Africa as we have seen with other emerging markets like Turkey, China, India and Brazil. Will Africa's time come? For better or worse, I believe that every part of the world will have its moment in the sun. Africa, as the second largest continent in the world by population, is bound to have big amounts of capital rushing in at some point.

Africa is a very diverse continent with 54 or 55 countries. How would you best describe your strategy to investing in Africa?
DPI's strategy can best be described as pan-African and focused on companies that benefit from the emerging middle class such as banking, insurance, FMCG, housing, pharmaceutical, retail and food companies. Returns come primarily through growth in the companies' earnings and EBITDA, but can also come from efficiency and some debt. We have a track record in delivering returns in these sectors and will continue to keep this strategy.

We think our investment approach triumvirates finding a fast-growing industry, where a rising tide lifts all ships, identifying the "best of class" company, (we don't invest in turnaround or early stage companies), and investing reasonable prices. This strategy is best illustrated by the ADP I portfolio.

> "DPI's strategy is focused on companies that benefit from the emerging middle class."

The portfolio as a whole is growing at around 20% and is profitable enough that out of profits we have returned about 19% of the fund. However, we bought at an average EV/EBITDA of 4.4x for the non-financial services companies, and P/B of 1.3x for the financial services companies. This compares to an EV/EBITDA average of 6-8x in Africa and 9.5x in BRIC markets (according to RisCura 'Bright Africa'). This investment strategy, executed in a disciplined manner, is expected to give a strong return. ADP I had a smallish first partial exit recently at 4x cost. DPI focuses on working with all portfolio companies to get strong returns for all of them, although of course some companies do over-perform.

The Pan-African approach is particularly important to our strategy because we need to look at many companies and industries throughout the continent to find 8 to 12 such portfolio companies. We don't believe that this can be done with a regional or one-country strategy. In addition, we are aware that having a portfolio with companies throughout Africa lessens the sovereign and currency risk. Very few people could have predicted the Arab Spring, the Westgate bombings or the problems in the last decade in Cote d'Ivoire. Outside of the Francophone countries which peg to the Euro, African currencies are generally not correlated to each other, or as a whole, to hard currencies. In a nascent PE market, to have ones eggs in any one market therefore may mean being unable to invest the fund in the investment period, not being able to exit in the given timeframe or, worst of all, losing value in the companies.

"The Pan-African approach lessens the sovereign and currency risk."

Which countries and sectors in Africa present the most interesting investment opportunities for you?

DPI invests in high growth industries such as financial services, telecommunications, FMCG, insurance and pharmaceuticals. These industries are growing in most of Africa's countries as Africa's 300+ million person middle class expands and creates demand.

> Execution risk is the one we think about most.

From a country perspective, as previously mentioned, our strategy is very much a pan-African one, but of course some markets tend to have higher deal volumes. For our ADP I fund we looked at roughly 500 deals to invest in nine companies. Most of these deals came from Africa's larger economies. In North Africa, we have seen the most activity in Morocco and Algeria; in West Africa: Nigeria, Ghana, Cote d'Ivoire and Senegal; in Southern Africa: South Africa and Mozambique; in East Africa: Kenya, Tanzania and Uganda.

What do you see as the biggest challenges to doing deals in Africa?

Aside from the sovereign and currency risks already mentioned, we worry about the same things as our counterparts do in mid-cap UK/US funds. Where are we in the cycle? Should we play defensively or aggressively? How do we meet our projections and 100 day plan? However, of all the risks, execution risk, or the risk of meeting the business plan/projections due to good or bad management decisions and work is the one we think about most. Again, I imagine this is also what PE worries about most globally.

In my experience success in private equity depends on how quickly and well one solves problems. I accept that there will always be problems and challenges. That is why anticipating problems, monitoring, as well as excellent experienced personnel within the PE firm, and strong relationships with portfolio company management teams are so important.

Many people associate Africa with corruption. We have not encountered that. Of course it exists in the region, but we have a zero tolerance policy which we reflect in all of our legal agreements and early discussions. Our strong network in Africa helps us to stay away from those companies and deals which may cause problems. Typically when we are looking at a business someone in our firm (or one of our contacts) has known the business and its management team for some time.

And, of course, during full diligence we run the usual background checks. These checks have so far not surprised us, but sometimes have provided greater granularity around pre-identified issues.

What has been the most successful investment DPI has made to date?

Fortunately, or perhaps unfortunately, there are several contenders for that title. All the nine portfolio companies in ADP I are doing well. Some are "works in progress" while others which are some of the older investments and more established companies are outperforming. Overall, the portfolio is growing and very profitable, and we are already seeing interest from buyers.

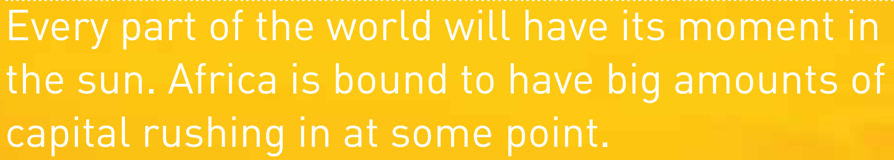
Having said this, CAL bank, which has a listing in Ghana has grown to such an extent that ADP I shares are already at 4x its cash on cash cost. The bank grew 206% at the net income line in 2012 and 117% for the first nine months of 2013.

How easy is it to exit from portfolio companies and what exit routes do you favour?

Exiting is not a problem in Africa if one has a "best of class" company and a carefully planned exit strategy; this strategy has to consider timing, exchange rate movements, and identifying and doing work on the exit routes. E&Y's recent African exit analysis for AVCA shows that the first PE exits are happening in Africa and that most are trade sales. The auction market has also arrived in Africa in the last 3 years – on some deals we have seen auctions with 30-40 bidders, with the outcome being high valuations.

In addition, the London and Johannesburg stock exchanges are increasingly welcoming well run African companies, opening up the dual listing markets, and more African and non-African multinationals are entering new African markets and looking for acquisitions.

> "Many associate Africa with corruption... we have a zero tolerance policy."



Every part of the world will have its moment in the sun. Africa is bound to have big amounts of capital rushing in at some point.

THE REGULATOR

Willard Mwemba of the **COMESA Competition Commission** discusses the implications of new African competition regulations.

In 2013, a new competition regime came into existence covering an integral part of Africa. The Common Market for Eastern and Southern Africa (COMESA) is a collaboration of nineteen member states towards sub-regional economic integration. These member states are: Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. On January 14, 2013 the COMESA Competition Commission (CCC) became operational.

Willard Mwemba, head of the mergers and acquisitions (M&A) Department at the CCC explained to us how this new institution functions and its view on M&A activities taking place within the COMESA. Willard began his career in Competition Law at the Competition and Consumer Protection Commission in Zambia (rising to position of Director) in 2006 before moving to the CCC in January 2013. Willard's role at the CCC is to assess M&A taking place in the Common Market to determine whether such transactions are likely to substantially prevent or lessen competition or be contrary to public interest in the Common Market.

What exactly are the functions of the CCC?
The CCC has several functions but its main function is to apply the COMESA Competition Regulations ("Regulations") in monitoring and assessing agreements between parties, and practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the Common Market. It is also responsible for promoting competition and for consumer protection in the Common Market.

> We do not exist to frustrate business but to facilitate business.

How is the CCC structured?
It is headed by the office of the Director, who is the Chief Executive Officer of the Commission. The CCC has three other functional divisions, namely Mergers and Acquisitions, Enforcement and Exemption and Legal Services and Compliance. It also has the office of the Registrar which falls under the Legal Services and Compliance division.

When does a merger trigger the Regulations?
When both or one of the acquirer and target operate in two or more COMESA Member States and the set threshold is met. The threshold currently is set at zero.

Can you walk us through what happens from the moment you receive a complete filing (procedures and timeline)?
When the CCC receives a complete filing and the merger notification fee is paid, we immediately commence the assessment of the transaction and we have up to 120 days to make recommendation. In practice however, we have made recommendations on all mergers we have assessed within an average period of about 60 days. These recommendations are then presented to the Committee of Initial Determination for decision making. The decision by the Committee must equally be made within 120 days after receiving the notification. This decision can only be made by the Committee of Initial Determination and not the Commission secretariat. The Committee of Initial Determination is composed of three members of the full Board and currently the Board is composed of nine Members appointed by the COMESA Council of Ministers. If the parties do not agree with the decision of the Committee of Initial Determination, they have the right to appeal to the full Board and subsequently to the First Instance Division of the COMESA Court of Justice and finally to the Appellate Division of the COMESA Court of Justice.

What is the track record of the CCC to date? How many filings/ clearance have you received/processed so far?
The CCC has received 14 merger applications as at January 2014, and 10 of these have been assessed and approved.

What is the criteria on which the CCC may block or allow a merger?
The CCC may block a merger is when it is likely to substantially prevent or lessen competition or is contrary to public interest in the Common Market.

We understand that concerns were raised regarding certain provisions of the COMESA Competition Regulations and Rules especially public interest provisions, exorbitant filing (fees up to USD 500,000), 120 days to give consent, the zero threshold and the lack of clear local nexus to COMESA. What is the COMESA doing about it and what are the changes expected in that regard?
The CCC, in collaboration with the International Finance Corporation, are engaging a consultant who will review these provisions. The consultant is expected to be engaged before the end of January 2014 and is expected to conclude his/her work by February 2014. Their recommendations will then be presented to the Council of Ministers who will consider them and if thought fit, give them binding effect. The review of the consultant is expected to address all these areas of concern. For example among the tasks of the consultant is to assist the CCC in establishing and raising the merger notification threshold above the current zero and a more defined nexus to establish community dimension.

“The objective of the CCC is part of the overall objective of regional integration.”

“We welcome any feedback designed to improve the implementation.”

The rationale for establishing the CCC is to have a “one stop shop” dealing with competition issues in the Common Market. However the relationship between the CCC and national competition regulators is not clear and a jurisdictional “turf war” may arise due to the uncertainty. How will the CCC tackle the uncertainties regarding interaction with domestic regimes?
We are currently working with national competition authorities to come up with a cooperation framework to guide our interactions and investigations with the objective of having harmonized laws between all Member States. We also urge Member States to take measures to ensure that their laws are not in conflict with the Regulations. I should emphasize that there is no jurisdictional turf war between the CCC and the Member States. This is because the Regulations are very clear – it provides for a situation where a Member State may request for a merger to be referred to it. It is difficult to imagine under what circumstances a Member State would be requesting such a referral if they also have jurisdiction on mergers with a regional dimension. Further, the CCC has the power to refer or refuse to refer a merger to a Member State. All this confirms that jurisdiction insofar as the assessment of mergers with a regional dimension is concerned, lies with the CCC.

If the CCC wants to convey a message to the public, what would that be?
We do not exist to frustrate business but to facilitate business. The objective of the CCC is part of the overall objective of regional integration and we welcome any feedback designed to improve the implementation of the Regulations for the benefit of all the stakeholders and the Common Market at large.

THE COUNTRY HOPPER

William Alexander of **Investec** outlines risks and opportunities.

William Alexander is an investment principal of the Investec Africa Private Equity Fund, having joined Investec Asset Management in 2007. The Investec Africa Frontier Private Equity team focuses on growth capital and buyout investments in established mid-market companies in Africa, with the objective of supporting the creation of local or regional champions in their respective industries.

How important is it for you to be on the ground in Africa for sourcing deals?
The fact that much of our PE team sits in Cape Town helps, but ultimately we don't have offices in the major African financial centres outside South Africa such as Lagos and Nairobi. More important than having an office in those places is that we spend a lot of time on the ground in the markets we cover. Our PE team works closely with Investec Asset Management's broader investment team and is constantly travelling across the region to build relationships.

One major difference with Africa, compared to more developed markets, is that, in developed markets, almost all deals are intermediated. Company sales are structured as auction processes run by investment banks who approach buyers, so you can choose to be more passive about origination in those markets. Investment opportunities in Africa tend to be much less structured: intermediaries play a role, but to originate proprietary, non-competitive deals we have to look for the opportunities by building relationships with business owners and management teams. Once you have established yourself in a market through making one or two successful investments, more and more interesting opportunities tend to come your way as has been the case for us, for example, in Zimbabwe after our investment in the country's leading supermarket chain in 2010.

We have noticed an increase in the number of foreign PE funds setting up African focused funds or looking to Africa for deal-flow. Is this a good thing for the market?
It certainly has raised the profile of Africa as an investment destination and it's good for the continent that more investors consider Africa to be a worthwhile place to put their capital to work.

> It's good for the continent that investors consider Africa a worthwhile place to put their capital to work.

Of course, it does mean that there is more capital chasing a given universe of opportunities, which will theoretically put upward pressure on asset prices. However, it is probably misleading to view the market for private equity investments in Africa from the top down. Private equity is an opportunistic, bottom-up investment model and the managers of each private equity fund are out there originating investment opportunities that may not have existed had they not actively created them. That said, we have seen several Africa PE funds raised in recent years that are targeting big ticket (USD50m+) investments. We are typically looking to make equity investments of USD15 – 40m and are therefore operating in a different segment of the market to many of the recently raised Africa funds. If you are a fund investing USD50m+ in sub-Saharan Africa, the opportunities are predominantly to be found in Nigeria and South Africa. While we do of course make investments in these markets, we are also able to find deals in some of the smaller markets that the larger funds won't focus on – such as Zimbabwe, Zambia and Mozambique.

Many PE deals in Africa have been minority deals. How important is that for getting deals done in the region and how easy is it for you add value to investments as a minority investor?

While businesses do, of course, come up for sale in Africa and therefore opportunities to acquire controlling positions arise, many PE deals in Africa are growth capital investments. These occur when a company requires additional equity capital to implement its growth plans and its existing shareholders are open to bringing in a new partner. In such circumstances, the existing shareholders are usually not selling any of their shareholding and as a result, the private equity investor is becoming a minority shareholder in the company by virtue of making a capital injection.

Without absolute control, our ability to add value to our investments is primarily a function of our being able to influence and persuade our partners. We try to work with prospective co-shareholders and management teams for at least six months before putting capital in. We formulate an investment plan together and get our partners to buy in to our thinking before we do the deal. We try to invest alongside existing shareholders and management teams who are looking not just for capital but for value-adding partners. There are various things we can offer to help create value: enhancing governance structures, introducing experienced non-execs to the board, helping to implement business processes without depressing the entrepreneurial culture of an organisation, augmenting the current management team, providing better access to capital (debt and equity), introducing bolt-on acquisition opportunities and identifying growth opportunities. In many instances, we are helping the business transition into one that is independent from its founder shareholders. An independent management team is key to allowing the owners to step aside and exit in the future.

Many countries in Africa have experienced political or currency instability over time. What countries do you focus on and how do you go about hedging country risk on single country deals?

As a result of our heritage as an organisation and the composition of our PE team, we have a preference for Sub-Sahara Africa and for Anglophone/Southern African rather than Francophone countries, and our portfolio reflects this with three investments in Nigeria and deals in each of Zimbabwe, Mozambique, Angola and South Africa. We invest in a wide range of businesses: our portfolio includes investments in a towers business, a mobile network operator, a technology business, a supermarket retail chain, an upstream oil and gas company and an outdoor advertising business. Primarily, therefore, we seek to address single country risk through diversification of the portfolio.

While we recognise the benefits for any single company of diversifying its operations across multiple countries, we are wary of the risks that come with trying to grow a business outside its home market. Single-country, market leading businesses are attractive bolt-on targets for trade buyers looking to expand quickly across the continent, which creates a natural exit path.

> We seek to address single country risk through diversification of the portfolio.

When it comes to assessing individual country risk we adopt a medium to long-term term outlook. We expect trade buyers of the companies we invest in to take a similar view if the business has a strategic position that is hard to replicate. One also needs to price in the risk – the higher our view of the risk, the higher our return expectations are. We don't have the same hurdle rate for every investment.

Our investment in OK Zimbabwe, a food retailer, is a good example of our approach. Zimbabwe experienced hyper-inflation prior to adopting the US dollar in 2009. Shortly after that, Investec Asset Management's public investment team visited the country and alerted us to several potential private equity investment opportunities there. With the help of a retired senior retail executive from Europe, we quickly identified OK Zimbabwe as an attractive opportunity for a relatively risky market: the company had a market leading franchise in a defensive sector. We also injected half of our cash as convertible debt to tranche the disbursement of our investment and to secure some downside protection. Since our investment, the company has refurbished half its stores, grown its store footprint and taken annual revenues from USD190m to approximately USD500m.

Many people associate Africa with high risk and high reward. Do you have a different view on risk as a local player?

I don't think we have a different view on risk, but we do have an understanding of the context and environment that new market entrants don't. Investec Asset Management has been investing capital in South Africa for over two decades, our public investment team has invested in Africa for a decade and we have been making PE investments in Africa for seven years. This has taught us how to do business on the continent; what is successful and what is not.

What is your outlook generally for Africa? In what countries do you think the opportunities will be?
Generally the outlook for Africa, from a macro perspective, is overwhelmingly positive. Most of the continent's economies are growing. If a business can supply a service or product, (often latent) demand will come.

If I had to voice a note of caution it would be that the excitement about consumption needs to be tempered. You cannot build an economy on consumption alone: investment is also required. In China/the Far East, early growth was driven by investment rather than consumption. Most African countries need to invest more: growth to date has in many instances been driven predominantly by consumption and I don't think that is sustainable in the long term. However, this is a long term issue and if you are focused on the five year investment horizon it's not an immediate concern.

The outlook for Africa, from a macro perspective, is overwhelmingly positive.

BURNING BRIDGES

Increasingly, M&A transactions are being financed directly with high yield bond issuances, sidestepping bridging loans.

Because of transaction timing issues, high yield bonds have typically not been issued to fund the acquisitions in advance, but instead were issued after the acquisition to refinance the bridge loans taken out on acquisition. Escrow arrangements give a potential acquirer the flexibility to overcome these timing issues and fund an acquisition directly with the proceeds of a high yield bond offering while avoiding the need for a bridge loan.

What are the key features of these escrow structures?
Escrow arrangements used in high yield bond structures typically provide for the initial purchasers (i.e. the underwriters) to deposit the proceeds of the bonds directly into an escrow account. The proceeds are held in escrow until specified conditions precedent have been fulfilled.

If the conditionality is not fulfilled prior to the specified "long-stop date", the issuer is required to redeem all outstanding bonds at a specified price (usually 100% or 101% of face value, plus accrued but unpaid interest). If the long-stop date is a prolonged date, the bond terms may provide for a step-up in redemption price as an incentive for the acquirer to complete the transaction as quickly as possible (e.g., 100% for the first six months, stepping up to 101% thereafter).

The bond proceeds alone are insufficient to pay the full redemption price given the interest and any step-up. To address this issue, issuers must typically "top up" the escrowed proceeds. This may be done directly, by the issuer depositing a sufficient additional amount into the escrow account, or indirectly through a parent or shareholder guarantee.

> "Escrow arrangements give the flexibility to timing issues while avoiding the need for a bridge loan."

Are bridge loans still relevant?
Often bridge loans still have a role to play. An acquirer may fund the acquisition from a combination of escrowed bond proceeds and amounts drawn under a bridge facility. Alternatively, many acquirers put a bridge facility in place as a source of backup funding. If the planned bond issuance is unsuccessful, the backup bridge enables the acquirer to proceed with the acquisition despite the unavailability of bond proceeds. Other acquirers may enter into a bridge facility to fund transaction contingencies, such as a target company's potential obligation to redeem its own outstanding bonds that are subject to a change of control provision.

What are the key issues for acquirers considering an escrow structure?
When deciding whether an escrowed high yield bond is suitable, acquirers should consider the following:

- Timing. The issuance of a high yield bond requires significantly more advance preparation time than entering into a bridge facility.
- Target cooperation. The cooperation of the target company in the preparation of the bond offering memorandum is critical to the acquirer's ability to issue the bonds prior to the acquisition. This may (but not always) prove difficult in auctions.
- Likelihood of a completed acquisition. Where the acquirer's ability to close on its proposed transaction is uncertain (i.e if anti-trust approval is not straightforward), the acquirer may find it more attractive to enter into a bridge facility. The bridge loan would incur interest only after being drawn down; the bonds incur interest while the proceeds are escrowed, and the acquirer may ultimately be required to redeem them in any event.

Who is using these escrow structures?
Escrows have been used in traditional M&A deals by corporate issuers as well as in private equity LBOs.

Recent corporate issues include:

Avis Budget's USD 500 million buyout of Zipcar in March 2013

Barry Callebaut's USD 860 million acquisition of Petra Foods' cocoa ingredients business in June 2013

Liberty Global's USD 23 billion takeover of Virgin Media in June 2013. Liberty Global also used a high yield bond escrow structure to finance its takeover of Unitymedia in 2010.

Recent PE examples include:

Sun Capital's USD 450 million acquisition, through its Albéa subsidiary, of Rexam's personal care cosmetic division in January 2013

CVC Capital Partners' acquisitions of Cerved for EUR 1.1 billion in February 2013 and Ista for EUR 3 billion (announced in April 2013)

KKR's EUR 575 million acquisition of a majority stake in the SMCP Group (announced in April 2013)

Altice's EUR 350 million acquisition of a majority stake in Outremer Telecom (announced in June 2013)

Emma Delta's EUR 650 million acquisition of a 33% stake in OPAP in October 2013

The NOK 6.5 billion acquisition of EWOS by **Altor** and **Bain Capital** in October 2013

Goldman Sachs' GBP 150 million acquisition of a 50% stake in Hastings Insurance (announced in October 2013)

I OWE **WHO**

Following an extended period of growing volumes amid uncertainty in the leveraged finance market going back to the start of the credit crisis, 2013 brought significantly increased issuance and signs of changing times – **Denis Coleman**, Head of Credit Finance in EMEA for **Goldman Sachs** and co-chair of the firm's Capital Committee shares his thoughts on the market and trends for 2014.

What were the highlights of the leveraged loan market in 2013 from your perspective?
Throughout 2013 we witnessed the continuation and acceleration of the shift from bank capital to institutional capital in leveraged deals, as seen in the significant volume in high yield loans issuance, but also in a marked increase in institutional investor appetite for these loans.

Disappointingly, while the European CLO market had appeared to be on track to follow the US new CLO trend with significant new European CLO issuance, certain changes in regulation delayed new European CLO issuance resulting in €7.4bn in 2013 which appears to be a small amount when compared to anticipated CLO outflows for 2013 of €22bn and as compared to new CLO issuance in the US of $82bn in 2013 against $54bn in 2012.

In a more positive development, arguably occurring principally as a result of the regulatory impact on European CLO issuance, the market has started to explore new loan investment vehicles, such as publicly listed vehicles (for instance CVC's new vehicle) and direct investment through the more successful credit managers using separate account money (instead of investing funds in CLO vehicles).

One more factor supporting the growth of the asset class was investors' willingness to finance new LBO transactions in addition to simply refinancing well known existing issuers.

> "The market has started to explore new loan investment vehicles."

> Truly difficult to call any certain trend other than to expect lots of volatility.

What trends do you expect to see developing in 2014?
I would say that we can expect to observe more of each of the following developments:

- Consolidation among investors with US funds buying up EU loan managers, as exemplified in Blackstone's GSO Capital Partners' acquisition of Harbourmaster in January 2012 and KKR's acquisition of Avoca Capital in October 2013
- European leveraged loans becoming an increasingly attractive asset class in view of their low default rates, greater returns and floating rate nature (floating rate notes were less of a natural product particularly in view of the reduction in available European CLO capital)
- An increase in high yield funds with loan capability: instead of cannibalising loan investors by replacing loan assets with bonds (which they have been doing pretty successfully) the high yield funds will now be capable of providing loan capital themselves
- Continued convergence of European loans terms towards US loan market standards throughout 2014 in much the same way the European HY bond asset class has evolved its terms, process and structures to a more consistent global standard
- The continuation of recent inflows to the US equity markets, suggesting that investors are reacting to the low yields offered by debt products, preferring to access equity returns where possible or otherwise seek higher yielding opportunities i.e. more structured, less liquid, new geography etc.

Moving outside of Western Europe, would you say that the emerging markets leveraged space is still a growing hotspot for investors?
Until several months ago there certainly was a big emphasis on emerging markets as investors sought out better yields and tried to benefit from geographic mandate creep. However recent poor performance of a number of emerging market credits seems to have reversed this trend, at least temporarily, leading to an exodus of large investors and those markets more

broadly and a return to borrowers having to rely more on local banks. As a result there is an increased ability for capital market investors to demand a larger premium for such regions. All that said early activity in 2014 shows a decided tightening of peripheral credit and increased capital markets access evidencing a renewal of the risk-on sentiment. Truly difficult to call any certain trend other than to expect lots of volatility. As a consequence, the international PE community is generally quite divided – there are those who will and those who won't, rather than a large cadre who position themselves as opportunistic.

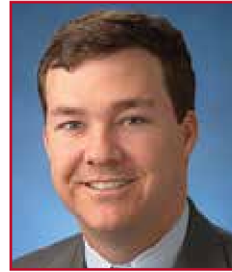
We have been seeing recently a number of sponsors and other funds investing in distressed assets and loan portfolios. What is Goldman Sachs' approach to financing these transactions? Is it something you want to see more of?

The emergence of many of these portfolios typically from commercial banks is part of the deleveraging and healing process European banks need to go through. We find it encouraging to see the flows of risk capital willing to buy these assets, and we are keen to help our clients who need financing.

What added value does Goldman Sachs bring to the table for sponsors in 2014 that others might not be able to offer?

Given some of the uncertainty in the capital markets resulting from current regulatory changes and developments, our sponsor clients are looking for funding on a "product-agnostic" basis and they are seeking to obtain this from firms that have a truly global reach with the ability to demonstrate global distribution.

Our clients value an ability to switch rapidly from one product to another in order to seek out the best source of financing available to them at any given time, while always minimising their execution risk. This means that they need a bank who has the capabilities to structure and originate bonds, loans and derivatives on a global basis. Global product-dexterity is going to be crucial and is one area where we have been focused.



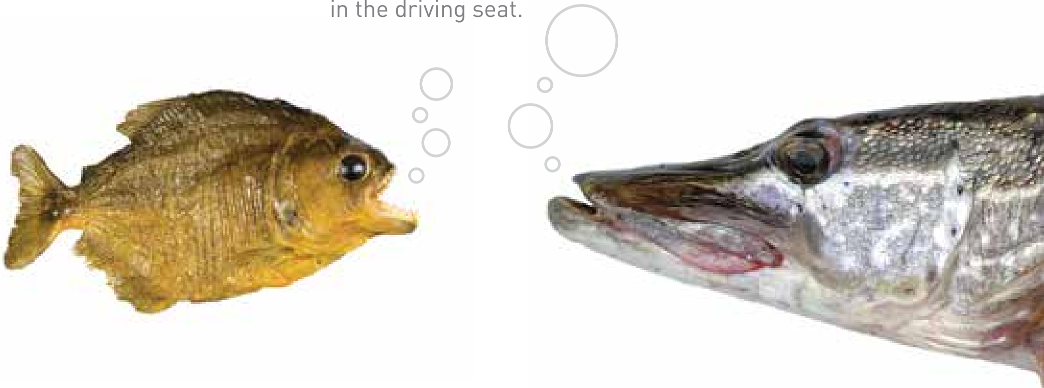
Denis joined Goldman Sachs in 1996 as a financial analyst after graduating from Princeton University. He has held a number of positions within the FICC and IBD divisions of the firm in both New York and London. Currently, he is head of EMEA Credit Finance and Global Co-Head of Leveraged Finance. He also serves as Co-Chairman of the Firmwide Capital Committee.

Will **CONSOLIDATION** make the deal

EASIER TO SWALLOW?

Blaise Jenner, Director of **PwC**'s Structuring Services offering in the Middle East explains.

In many transactions, one party's need to consolidate or not consolidate a target is a key structuring driver. This is because consolidation typically goes with 'control', which means that the party consolidating is in the driving seat.

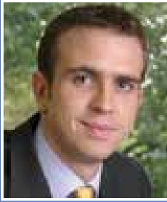


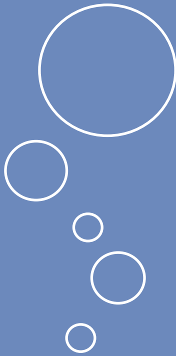
Where a company is acquiring 100% of a target, the analysis is generally straightforward. But where there is risk sharing with another party, this can become more complex, and prospective deal-makers need to be aware of the importance of careful structuring of the contractual, governance and economic relationship between the parties, to achieve the desired accounting outcome.

The recently issued International Financial Reporting Standards guidance for consolidation ("IFRS 10") follows a control framework – where an acquirer controls a target, consolidation is appropriate. The percentage shareholding of parties is only indicative to this assessment – a majority equity shareholder (i.e. holding greater than 50%) will only be required to consolidate a target where control exists.

Hence, transaction structures can be designed to achieve a specific accounting objective. For example enabling a minority shareholder to consolidate, or avoiding the requirement for a majority equity shareholder to consolidate. In all cases, however, there has to be clear substance and there will be a 'control trade off' where majority economic and equity interests of a party is not aligned to control.

"Transaction structures can be designed to achieve a specific accounting objective."





What is the impact of accounting consolidation?
The requirement to consolidate a target can have a fundamental impact on an acquirer's balance sheet and results:

- Impact of consolidation – where an acquirer consolidates, it brings into its group accounts the gross assets, liabilities, revenues and expenses of the target on a line by line basis. This may create sensitivities where the target has a material amount of debt which may impact the acquirer's own debt levels or covenants.
- Impact of not consolidating – where the acquirer has a significant economic interest, but not control, it will typically result in 'equity accounting'. Here it records its share of assets, liabilities, revenues and expenses as net single line items in the group balance sheet and income statement.

How do you decide who controls?
Consolidation will be triggered where an acquirer controls a target. IFRS 10 provides a revised definition of control, requiring the following attributes to be present to support control:

- Power over the target – being the current ability to direct the activities that significantly influence the returns of the target; and
- Exposure to variable returns from the target – whether positive, negative or both.

A common misconception is that a majority shareholder is automatically required to consolidate a target. Whilst this is generally the case, it will only be required where control exists – for instance, substantive veto rights held by a minority partner could weaken or completely eliminate control rights.

What should deal makers keep in mind?

Where the accounting impact of a transaction is critical, it is possible to design structures under IFRS that meet specific parties' objectives, such as:

- **Enabling a shareholder with less than 50% equity in an investee to consolidate** – this may be achieved through establishing voting rights, potential voting rights (i.e. options over shares) or governance structures that enable the shareholder to have control
- **Avoiding the requirement for a shareholder with greater than 50% equity to consolidate** – applying similar principles to the above, where the majority investor does not have the current ability to exercise control
- **Protecting the position of non-controlling shareholders** – this may be achieved through exploring the range and spectrum of protective rights that enable veto rights over certain events outside the 'normal course of business'
- **Enabling different activities of an investee to be controlled by different parties** – for an investor to have control over a target it is not necessary to have control over all aspects of the target. Whilst a highly subjective area of IFRS 10, where an investor can have control over the activity that will most significantly affect returns it is possible to construct an argument for having overall control. Ultimately, however, only one party can have overall control and consolidate a target
- **Restricting the time period for which one party controls and consolidates an investee** – the determination of control is based on current facts and circumstances and is continuously assessed. As a result, time limits may be placed or key investor rights and/ or call options used to impact any future control assessment.

A single transaction structure may incorporate a combination of a number of these features to achieve the desired transaction structure. In each case, the auditor will look to the underlying substance, and will ignore any 'synthetic' structuring. Often, this may require a majority shareholder to cede control which may be commercially challenging (although their position can be protected through some of the mechanisms outlined).

Do the RIGHT THING...

What does good citizenship look like in the Private Equity universe? **Christian Sinding**, Partner at **EQT Partners** and Head of **EQT Equity**, elucidates.

Private equity continues to be criticised by the media for aggressive tax planning. Many PE players say that they are simply acting in the best interests of their investors by maximising returns. Do you see any trade-off between these views?
EQT creates value for the investors by developing portfolio companies rather than just optimizing tax – and there is no trade-off. We believe that PE firms need to transform from being investors only, to becoming owners with a long term perspective for the businesses. This also involves having a broader perspective on society and respecting the various stakeholders.

Most developed countries are now quite restrictive regarding tax planning, for instance, levels of interest deductibility. But ultimately, tax planning is just a commodity – being able to develop a business is not. We want investors to reward EQT precisely for that. The objective is to develop sustainable businesses over time, as responsible owners do.

We have decided to move funds onshore in the EU. The purpose is to come closer to our stakeholders and the societies where the portfolio companies operate. The decision to move has had a marginal increase on the taxes paid but has made the perception of EQT much more transparent.

How does a PE fund's reputation in the community as a "responsible citizen" affect its ability to raise capital and generate deal-flow? If you are delivering strong returns to investors isn't that enough? What else are investors looking for?
Investors are not just interested in strong returns – a GP's responsible investment track-record is almost equally important. Many of EQT's investors have signed the UNPRI – a set of responsible investment principles that the UN has established regarding ethics and governance. Most of EQT's investors are pension funds, which in turn, owe ethical and fiduciary duties to their stakeholders to manage capital in a responsible way. Clearly, it makes sense for them to focus on whether we are acting as responsible citizens. Five to ten years ago, we received only scattered questions regarding CSR initiatives during fundraising. Now, every investor has questions about CSR; some even have hundreds in this important field. There has been an exponential growth in interest in CSR matters.

We do not see high returns and responsible investing as contradictory, rather the opposite – it is an integral part of the value cycle bringing true benefit to LPs. The most important thing in the long term is to truly develop the businesses and to create sustainable value. A skilled and responsible investor and owner with the ability to do this will attract both more deal-flow and the best people. And good people will allow EQT to generate higher multiples in coming exits.

"We do not see high returns and responsible investing as contradictive."

> “Investing in organic growth, add-ons, new factories etc. make the real difference”

Looking at the PE investment advisory firms, it is important to attract and retain the best private equity professionals. The younger generation pays more attention to shared values/corporate social responsibility and it is important for us to act as good citizens to attract and retain the best young talent.

If the status quo in the PE industry is to pursue aggressive tax optimisation structures and you take a more balanced approach, does that put you at a competitive disadvantage?
We believe having a balanced approach regarding tax optimisation structures does not put EQT at a competitive disadvantage. If you look at what has generated returns on EQT's deals, the most important factor has been the ability to create growth. We have done some extensive analysis on EQT's exits and around 80% of the value creation comes from sales growth and margin expansion. Only 5% relates to debt pay-down. Investing in organic growth, add-ons, new factories etc are factors that make the real difference, building stronger companies which are more attractive in the long term. Some of our competitors might be better at financial engineering and implementing sophisticated tax optimisation structures. But those structures only deliver a few basis points here and there. We are targeting big, long-term company improvements rather than smaller or minor efficiencies.

EQT's roots are in the Nordics but you are increasingly being seen as one of the major international players. Does being a responsible investor mean different things in different countries or are you able to adopt a homogenous approach?
EQT, as a firm, has grown organically over time. We have tried to retain our Scandinavian roots and culture, which means working with society rather than against it, respecting the various stakeholders. EQT is now investing in America and Asia, and as the firm expands globally it is clearly more demanding, but ever so important, to nurture our culture.

On a high level, being a responsible investor and owner is similar regardless of where we operate. EQT has declined to make investments in Europe and Asia on CSR grounds in companies whose business practices or tax planning went beyond the structures we found acceptable. The operating environment, however, is clearly different. We have the same overall philosophy but must be sensitive to cultural differences – you can't have the same transparency in an Asian company as you have, for instance, in a Swedish company.

Do you think the PE sector should be doing more to increase diversity?
Yes, more should be done to increase diversity in the industry. For example, recent statistics show that only around 10% of PE professionals in Europe and North America are women. But gender is only one type of diversity – it is also important with diversity in terms of background, experience, age and nationality. We see real benefits in increased diversity. It brings on new perspectives; better decision-making and ultimately stronger companies and better returns.

We have a programme to increase the proportion of women both within EQT and our portfolio companies. As part of that programme, a new head of talent management was recruited in 2012 who divides his time equally between internal EQT talent issues and the development of the industrial network. The programme is really just the start of what we see as a journey – we are now setting tangible goals both internally and in our portfolio companies regarding the benefits of diversity, we are engaging more in relevant conferences etc. We hope that we can make a meaningful change in this area already in 2014.

“We see benefits in increased diversity. It brings better decision-making and better returns.”

MAKING HEADLINES

Businesses across the world are being scrutinised by the media as never before. **James Lundie**, Group Managing Director at **Edelman** explains how to manage reputational risk.

In the last few years we've seen a growing level of public scrutiny of business. At times, the approach taken by media and others has been aggressive. Is this just the natural result of a difficult economic climate or is it evidence of a more fundamental change in the way that the public views business?
It's both. Levels of public trust in business – and other institutions – have fallen in many parts of the world in recent years and not just as a result of the financial crisis. Edelman's annual Trust Barometer has shown falls in trust in businesses in a number of developed economies. The media is therefore reflecting that shift in their scrutiny of business – taking a pro-consumerist approach. Clearly, the more challenging economic circumstances of recent years have also shone a spotlight on corporate behaviour. Expect this heightened and more aggressive scrutiny to be more the norm even as the economy recovers. Whilst the public trust business more than government, they still believe that business needs regulating.

One of the areas in which the public mood has been most at odds with business, in the UK and US but also elsewhere, is in the area of corporate tax. Is this likely to remain a significant reputational risk for international business in the coming months or has the story moved on now?
There will continue to be a higher level of scrutiny on the decisions companies take – on whether they are behaving as good corporate citizens. The particular focus on corporation tax is just one aspect of that. Businesses need to stand ready to explain and defend their decisions – including on tax.

Jamie Lundie is Group Managing Director, Corporate & Financial at Edelman focusing on strategic communications, issues management and corporate strategy. Edelman is the world's largest independent Public Relations Agency, with over 4,800 people in 67 offices worldwide.

> "Companies should understand their reputational risk landscape."

In the face of public scrutiny, it seems that simply showing that you have followed the rules is no longer adequate as a response. Increasingly, there is a "moral" element to the debate. How should businesses factor this into their risk planning?
The smartest businesses understand extremely well that good corporate citizenship is about much more than legal compliance; and they have understood that for a long time. Many companies have an extremely sophisticated approach to corporate citizenship and view being a good corporate citizen as part of being a genuinely successful business.

Businesses need to pay as much attention to their reputational risk landscape as they do to their legal compliance. Undertaking comprehensive risk auditing is a crucial part of corporate planning. It allows companies to take decisions in a more informed way. Asking "would this be a reputational risk for us?" is just as important as asking "is this legal?".

Sometimes there is a rift between what is good for public opinion and what is good for business. How do businesses navigate those competing priorities?
My basic belief is that businesses should take decisions based on a full assessment of the implications. Just as a business shouldn't take a commercial decision solely on the basis of whether it would be popular, nor should they take a decision without any regard to the consequences for public opinion. The essence of good corporate planning is about informed decision-making. The reputational impact of a decision is one important piece of information which needs to be looked at in the round.

> "Many companies... view being a good corporate citizen as part of being a genuinely successful business."

When it comes to planning for reputational issues what do's and don'ts can you share with us? How important is social media preparedness?
The challenge of maintaining a positive reputation is all the greater in an era of super-transparency, where we have witnessed a broad loss of trust in the major institutions and public expectation of businesses being socially and environmentally sustainable. Companies should understand their reputational risk landscape and actively audit the risks that exist and ensure that they have plans in place to deal with them from a communications perspective. Advances in technology have had huge implications for how companies and brands have to behave. The impact of social media is extremely important.

Anything else you think business leaders should be aware of?
Good corporate reputation is a function of what you DO, not of what you SAY. Communications has a crucial role to play in making people aware of a business' citizenship strategy but it cannot be divorced from the reality of what a business is doing. Reputation is defined by other people. Businesses are responsible for their decisions and the choices they make. The public and other stakeholders will decide what they think about them. One cannot tell people that one has a good reputation. You either do or you don't. Margaret Thatcher said, "If you have to tell someone you're powerful, then you're not," so by the same token companies have to demonstrate their reputational credentials, not just talk about them.

When an issue does blow up, what are the golden rules for how a business should respond?

- Don't communicate before you know the facts
- Engage with media and understand the role they have to play
- Ensure that there is one channel for communication (both internal and external) and not lots of different parts of the business trying to talk at the same time.

"Good corporate reputation is a function of what you DO, not of what you SAY."

no stripping

Who will be impacted by new EU-wide **asset stripping** provisions? What is the scope of these provisions and the potential impact they may have on common private equity deal structures?

22 July 2013 marked the deadline for European Union member states to implement the Alternative Investment Fund Managers Directive ("AIFMD"). However, whilst most other provisions of AIFMD have been discussed in detail (for example, those in relation to transparency, remuneration, leverage and structuring) there has been much less discussion around the effect of the asset stripping rules on private equity deal structuring.

Timing and Scope

AIFMD allows for a transitional period for compliance, giving existing fund managers until 22 July 2014 to comply with the regime. However, this transitional period has been applied in varying degrees across the EU. The UK has taken a copy-out approach to the implementation of AIFMD and the UK regulations (the Alternative Investment Fund Managers Regulations 2013) do provide for a transitional period for certain fund managers existing before 22 July 2013. As such, the following provisions may not be applicable to some fund managers until July 2014.

Articles 26 to 30 set out disclosure obligations and asset stripping restrictions on fund managers managing alternative investment funds ("AIFs") that acquire control of both listed and non-listed EU companies. "Control" is defined by reference to the acquisition of shares or voting rights. For private companies, control means more than 50% of the voting rights of the company. For listed companies, control is defined by reference to each relevant member state, however, this is generally over 30% of the voting rights. When calculating the percentage, regard must be had to both direct and indirect holdings.

These rules have a broad reach and apply to both EU and non-EU managers who are caught by AIFMD, notwithstanding that a non-EU manager cannot benefit from the passporting regime under AIFMD until 2015.

Small and medium sized enterprises (generally defined as enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million) and special purpose vehicles with the purpose of purchasing, holding or administering real estate are not caught by the asset stripping provisions.

"These rules have a broad reach..."

THE RULES...

Distributions

Distributions (which includes payments of dividends and interest relating to shares) to shareholders and the acquisition of own shares are prohibited if they would result in the net assets being lower than the amount of subscribed capital plus undistributable reserves, by reference to the company's annual accounts for the previous financial year. Distributions to shareholders are also prohibited if they would exceed the distributable profits of the company, again by reference to the company's annual accounts for the previous financial year. Although UK private companies already face restrictions on distributions under the Companies Act 2006, these are only by reference to the distributable profits of such company. AIFMD imposes an additional test on private companies that requires them to consider the net assets; a test that is broadly similar to provisions under UK companies law for public companies only.

Share buy backs/ redemptions

AIFMD prohibits the acquisition of a company's own shares in the first two years post-acquisition if it would have the effect of reducing the net assets below the amount of subscribed capital plus undistributable reserves. Additionally, AIFMD appears to prohibit share redemptions by the portfolio company in any circumstances during the first two years post-acquisition. However, the UK Regulations provide for the same limited carve out for share redemptions as for acquisitions of own shares. For private companies in the UK, the Companies Act 2006 permits acquisition of own shares and share redemptions out of capital where certain requirements are met. As such, the position under AIFMD imposes a significant restriction on the available options by a private company for share buyback and redemption.

Capital reductions

Capital reductions also face a blanket prohibition, except where there is a reduction in the subscribed capital to offset losses incurred or to move a sum of money to a undistributable reserve, provided that the amount of such reserve is not more than 10% of the reduced subscribed capital. Again, AIFMD appears to significantly restrict the circumstances in which capital can be reduced. The default position under the Companies Act 2006 is that a limited company is free to reduce its share capital by a special resolution of its members (supported by either court approval or, for private companies only, a solvency statement), provided that the reduction is not prohibited by its articles.

THE IMPACT...

When an AIF, individually or jointly, acquires control of a non-listed company or an issuer, for 24 months following the acquisition of control, the asset stripping provisions restrict it from making distributions, capital reductions, share redemptions and buy backs in relation to the relevant company in certain circumstances. There are a number of common PE structures which will be impacted by these rules in the first 2 years following a buy-out, namely leveraged recapitalisations; certain categories of post-completion debt push-down structures; deals where debt is kept at a level above the portfolio company (which is common on regulated utility deals) and the portfolio company needs to pays dividends (or otherwise return capital) to the holding company to enable it to service its debt. Each deal will need to be considered on a case by case basis but here are a couple of points to consider in deciding whether this completely changes the game, or can be managed:

- The definition of "control" is calculated on the basis of the shares to which voting rights are attached. On this basis, AIFMD would not appear to catch a situation where there is an acquisition of control of the board of the company, but no acquisition of shareholder control
- The asset stripping restrictions relate to shares in a company, as such, distributions made in respect of shareholder debt remain permissible under the rules. When putting in place capital structures this will have an impact on the choice of instruments and for example would be a factor in favour of a shareholder loan over a preference share. Similarly, in jurisdictions like Luxembourg, there may be hybrid instruments which can be created which avoid the tentacles of the asset stripping provisions
- Structuring can be undertaken pre-closing to maximise shareholder debt which can subsequently be utilised to repatriate cash either for debt pay-down purposes or to return value to shareholders. It is generally the case that a dividend declared constitutes a debt owing to a shareholder. This may cause closer examination of the distributable reserve position in groups and the declaration of more dividends before closing of deals. Clearly, once intra-group debt is in place it is often relatively straightforward to move receivables around group structures to facilitate cash repatriation planning
- Some debt push-down techniques will not be impacted by the asset stripping rules. For example, the merger of operating companies with leveraged holding companies does not appear to be addressed by AIFMD. Similarly, movements of cash around group structures pursuant to cash pooling arrangements and profit or loss sharing arrangements are not regulated and are useful means to enable debt service from a liquidity perspective.

SWEET INSPIRATION

Management play a critical role on a deal. We speak with **Stuart Coventry**, Partner at **Jamieson**, about how the management team can work with their stakeholders to ensure the successful outcome of a deal for all parties.

Does the private equity model for incentivising management teams still work?

Yes, managers have the opportunity to own a percentage of the ordinary equity at preferential prices (the 'sweet equity') in the company they manage. Nonetheless, managers' and sponsors' interests must be balanced. Selecting an appropriate capital structure is crucial to motivating management teams. Recently, deals have resulted in sponsors doubling their returns, whereas managers have received little of these proceeds despite growing the company's earnings. The contracted sponsor return, ahead of the ordinary equity, is the trade-off a manager makes for participation in the ordinary equity for a modest investment. However, the PE model offering managers a large percentage of the equity, above a high hurdle return, is now met with more caution.

What is the level of personal commitment expected from management?

This is a key term for new sponsors as they want to ensure management teams are financially committed to the deal. It is important to distinguish between a first time buyout and a secondary buyout (sale between sponsors). For a first time deal, the investment is typically around 1x salary. For a secondary buyout, the market rate is typically 25% to 50% after tax proceeds (increasingly at the upper end of that range), with 1x salary in the sweet equity and the remainder invested alongside the sponsor, on exactly the same terms. Managers should consider the amount of cash they want out of the business, and how much they are prepared to invest. The decision to invest requires an understanding of the terms of the investment and where it sits in the capital structure, as well as the conditions imposed on their investment such as the repurchase rights on leaving the business. Ideally, the investment is layered across the finance instruments to spread risk.

"Managers' and sponsors' interests must be balanced."

How should management get the most from a sale when their current incentive is small and they are asked to invest further into the new deal?
If a manager's sweet equity is underwater at the time of a sale process, address it upfront. This is known as the exit bonus debate. Risk of tax inefficiencies can result from agreeing terms within a short time period, but management will have visibility on what they can expect to earn from the sale, and subsequently invest in the new deal. We would not expect management to make a further investment in another sponsor deal. Unfortunately, we often see the bonus debate left to the end of the process. In this instance, the seller sponsor believes it is a buyer issue, and vice versa, with management squeezed in the middle. In addition, the requirement for management to provide warranties makes it unpalatable, placing more emphasis on agreeing exit terms and funding before the sale process.

What pitfalls should management be aware of?
A large percentage of ordinary equity is worthless against a wall of expensive finance. Using the PE model, sponsor investment is leveraged with preferred equity and loans. Over the past few years, the pricing of preferred equity in the UK and Europe has been 12% to 15%+ compounding annually. Current market pricing is slightly lower at 10% to 12%, which is still 3% to 4% above bank debt pricing. This has a big impact on the value of management's sweet equity at different return points. A highly leveraged model may result in little or no value of ordinary equity in the first year following a buyout, therefore some commercial terms such as leaver provisioning are irrelevant if the economic terms are not right. European structures contrast with US structures where unlevered equity deals are common, and whereas US management incentives are typically structured as options, they participate at low sponsor return points, for example 1x capital invested.

We are often asked if managers today would trade a lower sweet participation percentage in return for lower pricing on the preferred equity, or trade tax inefficiency for a lower point of participation in the capital structure. We think it is important to have some incentive lower down the structure, albeit limited, as well as having the main pot linked to delivery of the plan.

Members of the management team will unlikely see out the full investment term. Is this manageable?
Yes, succession and transition planning is good practice, particularly in the secondary and tertiary buyout market. Sponsors are often sympathetic to the challenge of succession planning, when carefully managed. Managers who invested in the previous deal are not necessarily the same managers driving the next business plan, so different perspectives must be taken into account.

Management should be clear with their intentions from the outset. Sponsors want CEOs to identify who should be involved in the deal, and to secure their commitment. A CEO wants to ensure the reward for his or her managers. If managers are locked in until the exit, it is important to determine how much value a departing manager would receive. We recommend clearly defining a transition period based on discussions with the board. For example, if a two-year transition period is agreed, negotiate the amount of a manager's investment and sweet participation. It is rare for a manager to crystallise their investment until the sponsor exits, and it is likely that performance conditions are in place to retain the sweet equity if a manager leaves.

Is equity still the best way to incentivise management teams?

Often referred to as the 'capital versus income debate', the answer is yes. Capital incentives remain the most tax efficient schemes, and planning can reduce taxes to 10%, and, in some cases, to nil on exit. However, it is a question of individual risk versus reward. In the US, the overall size of a target pot is comparable with European deals, but management incentives have more optionality. Managers participate at a much lower point in the capital structure i.e. from return of capital invested (1.0x), rather than at a contracted sponsor rate of return, which at 12% over 4 years is 1.5x. Finally, beware of over allocating sweet equity across the management team. As a target, a senior manager's equity should be at least 4x to 5x their salary at the next exit. Target pots must be achievable and meaningful. If not, then consider rewarding bonuses to keep the equity tightly held amongst the executive management team.

> "Is equity still the best way to incentivise management teams? Yes..."

WARRANTY & INDEMNITY
INSURANCE UPDATE OF **2013**

Brian Hendry, Practice Leader of **Willis**' Transaction Solutions team, outlines the latest W&I trends.

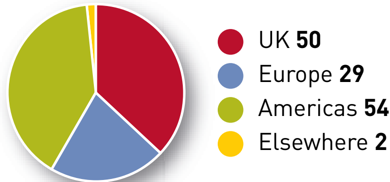
Based on our growth and from conversations with the market we anticipate that the market generally has seen an increase in the region of 20%-25% in the number of policies placed (compared to 2012) and on a global basis you are probably looking at well over 750 policies. 2013 has been an incredibly busy year with little if any drop off in the enquiry or deal level throughout the year. Interest in transaction insurance products has grown significantly and we see this as a combination of a number of factors: from where we sit we have the view that deal levels have increased (particularly in the last 2 quarters of 2013); the knowledge of the product has increased as more people have experienced its successful use within transactions, which in turn has led to more people considering its use; and there are more people in the market presenting the product. With regard to this final item, the small teams of practitioners at brokers and insurers have been growing, established insurers have been strengthening their teams and "new players" have entered the market. This trend is going to continue in 2014 and we expect that there will be at least three new entrants into the insurance market. Finally, one of the largest areas of growth for the product has been in the US where not only Willis but other brokers and markets have seen an almost 100% increase in the numbers of policies placed. One underwriter put cover in place for 15 US deals in the month of October alone.

While the fundamental profile of the policies is not going to change to any great extent, it will be interesting to see how the new insurers create a foothold for themselves and what impact this may have on pricing, policy structure and the details of the terms and conditions. We anticipate that buyer-side cover will remain the predominant product but we are aware that interest in the more contingent policies that deal with tax or "known risks" will continue to gain ground with insurers, where they can offer creative ways to transfer balance sheet risks for target businesses.

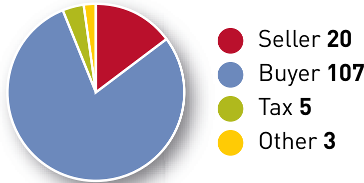
> One of the largest areas of growth has been in the US... an almost 100% increase in the numbers of policies placed.

Claims: Outside of the US claims, statistics have proved difficult to gain detail on, however, we are aware of a number of sizeable claims (USD 50m+) that are in the market and for which insurers are currently responding to. The impact of these potential losses is yet to be fully understood as they work their way through the various layers of insurance and reinsurance but we are not aware that they are going to lead to an increase in rates for 2014, at least on a market basis. It will be interesting to see if on a region or insurer basis, there is a fall out from the claims (either from a tightening of terms or repositioning on certain areas of risk) but with the new players joining the market we continue to be bullish that cover will be available at competitive terms for most regions.

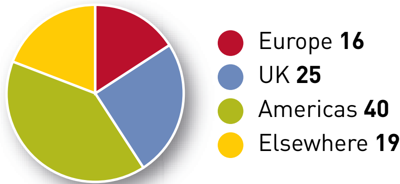
W&I placements by Willis by target domicile



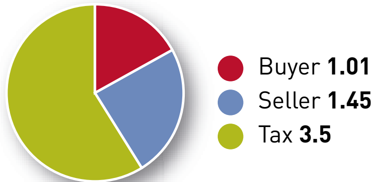
W&I placements by Willis by policy type



Estimated global split of all W&I policies brokered (%)



Average Premiums excluding Americas (%)



There has been a slight increase in rates in Americas with average for both seller and buyer reps & warranties pushing over 2.5%.

Baker & McKenzie Global Private Equity Deals List, 2012-2013

A summary of some of the recent key private equity deals on which we have advised.

Deal size:
Small = USD50m or less
Lower-mid = USD50m – USD250m
Upper-mid = USD250m – USD500m
Large = USD500m +

Party for which Baker & McKenzie acted on the deal is in **bold**.

EMEA

Target	Transaction Description	Deal Size	Deal Geography
Consumer and Retail			
Centrale Suiker Maatshappi	Advised **Centrale Suiker Maatshappi** on the sale of its bakery supplies business to Rhone Capital	Large	(i) Netherlands (ii) USA
Global Blue	Advised the **management of Global Blue** on tertiary buy-out from Equistone Partners to Silver Lake and Partners Group	Large	Global
Fiberweb	Advised **Fiberweb** on the PTP from Polymer Group, a portfolio company of Blackstone	Upper-mid	(i) United Kingdom (ii) USA
Contego Cartons	Advised **Platinum Equity** on the disposal of the cartons business of Contego Packaging to Graphic Packaging	Lower-mid	(i) United Kingdom (ii) Netherlands
Dynaco Europe	Advised **KBC Private Equity** on exit to Assa Abloy	Lower-mid	(i) Belgium (ii) Sweden
Ideal Standard	Advised **Bain Capital** and **Ideal Standard** on the restructuring of the MENA operations of Ideal Standard into a stand-alone group and the sale of a 40% interest therein to Roots Group Arabia.	Lower-mid	MENA
Anatolia	Advised **Ashmore** on exit to MKS Logistik Internatioanale Schwertransporte	Small	Turkey
Attica	Advised **Ashmore** on exit to Turkish individuals	Small	Turkey
Bang & Olufsen	Advised **A CAPITAL** on investment together with Sparkle Roll Holdings Limited	Small	(i) Denmark (ii) Germany (iii) Hong Kong
Bernard Matthews	Advised **Bernard Matthews** on sale of a majority interest to Rutland Partners	Small	United Kingdom
Ipek Kagıt Sanayi ve Ticaret	Advised **Georgia-Pacific Expansion** on exit to Eczacibası	Small	Turkey
Numarine	Advised **Abraaj Capital** on exit to private investor Omer Malaz	Small	(i) Turkey (ii) UAE
SKINS International	Advised **SKINS International and Jaimie Fuller**, the Switzerland-based private investor and CEO of SKINS International, on the buy back of a 36 per cent stake interest from Equity Partners	Small	(i) Australia (ii) Switzerland
Behr	Advised **Mahle** on acquisition of Behr from BWK	Confidential	Germany
Boards & More Group	Advised Airesis on exit to EMERAM Capital Partners	Confidential	(i) Austria (ii) France (iii) Germany (iv) Switzerland

Target	Transaction Description	Deal Size	Deal Geography
Cash Converters	Advised **MBO Partenaires** on its investment in Cash Converters	Confidential	(i) Australia (ii) France
Dugas	Advised **Chevrillon & Associes**, together with Francois-Xavier Dugas, the France-based private investor, on the acquisition from CL Financial	Confidential	France
Gehring Technologies	Advised **Penta Investments** on acquisition of a majority interest from Ostfildern, Baden-Württemberg	Confidential	Global
Haworth	Advised **Haworth** on exit to Mutares	Confidential	(i) Germany (ii) Italy (iii) USA
Lilestone Plc	Advised **Jynwel Capital** on acquisition from the Duet Group	Confidential	(i) Hong Kong (ii) United Kingdom
Penti Group	Advised **Carlyle** on acquisition of 30 per cent interest from founders	Confidential	(i) Romania (ii) Turkey (iii) United Kingdom
Putzmeister Group	Advised **Karl Schlecht Familienstiftung** on exit to Sany Heavy Industries	Confidential	(i) China (ii) Germany
Vangsgaard	Advised **Brand Factory**, a portfolio company of Scope Growth, on acquisition from Vangsgaard from founders	Confidential	(i) Denmark (ii) Sweden
Work Service	Advised **PineBridge** on its investment into Work Service	Confidential	(i) Poland (ii) Russia
Healthcare			
BSN Medical	Advised **EQT** on secondary buy-out from Montagu Private Equity	Large	Global
Russian Corporation of Nanotechnologies	Advised **Russian Corporation of Nanotechnologies** on investment by Domain Associates	Large	Russia
Gasmedi	Advised **Air Liquide** on acquisition from Mercapital	Upper-mid	(i) France (ii) Spain
Contego Healthcare	Advised **Platinum Equity** on exit to Filtrona plc	Lower-mid	(i) France (ii) Germany (iii) Ireland (iv) Italy (v) Luxembourg
Euromedic International	Advised **Montagu Private Equity** on acquisition, with Ares Life Sciences, of a majority interest from North Cove Partners	Lower-mid	(i) Europe (ii) USA
Arkaz Saglik Isletmeleri Anonim Sirketi	Advised **Arkaz Saglik Isletmeleri Anonim Sirketi** on exit of 51 per cent interest to Turkven Private Equity	Small	Turkey
Bavet Ylac Sanayi ve Ticaret A.S.	Advised **NBK Capital** on acquisition of a 50 per cent interest	Small	Turkey
Grupo Sendal SA 2013	Advised **CareFusion Corporation** on acquisition of Grupo Sendal SA from GED Iberian Private Equity SA	Small	Spain
Swiss Smile	Advised **EQT** on acquisition of a minority interest in Swiss Smile	Small	(i) Germany (ii) Sweden (iii) Switzerland
ABC Chemicals SA	Advised **Indufin Capital Partners** on acquisition (together with Domica and other investors) from Vemedia Pharma	Confidential	Belgium
Biofarma	Advised **Horizon Capital** on acquisition alongside FMO, of an interest in the company	Confidential	Ukraine
IMH Saglik Hizmetleri	Advised **Argus Capital** on exit of a 40 per cent interest	Confidential	Turkey
Terveystalo	Advised **EQT** on secondary buy-out from Bridgepoint	Confidential	(i) Finland (ii) United Kingdom

Target	Transaction Description	Deal Size	Deal Geography
Telecommunications, Media and Technology			
jobs.ch	Advised **jobs.ch** and its majority shareholder, **Tiger Global Management**, on exit to Tamedia and Ringier	Large	Global
AB Skruvat Reservdelar	Advised **Scope Growth** on its agreement to acquire a 40 percent stake from Silver Fish Industries	Confidential	Sweden
ACB	Advised **ACB** on a management buy-in, to Eurefi and Synergie Finance Gestion SAS and private investors Gilles Rigon and Humbert de Sallmard	Confidential	(i) Belgium (ii) France
Ascom Austria	Advised **Ascom Holding** on MBO	Confidential	(i) Austria (ii) Switzerland
Investment fund	Advised **Kazyna Capital Management** on the establishment of and investment into a joint venture nanotechnology investment fund with Russian Corporation of Nanotechnologies	Confidential	(i) Belgium (ii) France
Mateco Group	Advised **TVH Group** on its acquisition from Odewald & Co	Confidential	Germany
Natural Resources and Industry			
Caterpillar's Third Party Logistics business	Advised **Platinum Equity** on the non-US aspects of its acquisition of a majority interest from Caterpillar	Large	Global
Reservoir Group Ltd.	Advised **ALS Limited** on acquisition from SCF Partners	Large	(i) Australia (ii) United Kingdom
Electrawinds	Advised **Electrawinds** on a business combination with European CleanTech, a	Upper-mid	Belgium
Ekomak Endustriyel Kompresor ve Makina Sanayi ve Ticaret	Advised **Atlas Copco** on acquisition	Small	Turkey
Electrawinds' Windpark	Advised **Electrawinds** and DG Infra+ on a sale of a 49 per cent interest	Confidential	Belgium
Ideal Enerji	Advised **Aquila Capital** on acquisition from Akfen	Confidential	(i) Germany (ii) Turkey
Sovitec	Advised the **management of Sovitec** on MBO, backed by Gilde	Confidential	(i) Belgium (ii) Netherlands
Financial Services and Funds			
AESF V Fund	Advised **AXA Private Equity** on the establishment and structuring of a private equity fund	Large	France
A CAPITAL China Outbound Fund	Advised **A CAPITAL** on the establishment and structuring of a fund	Upper-mid	(i) Germany (ii) Hong Kong
Fondo Italiano per le Infrastrutture and F2i	Advising **Ardian** on acquisition of units in Fondo Italiano per le Infrastrutture and shares of the F2i management company	Lower-mid	France
KBC Private Equity assets 2012	Advised **KeBeK Management** on a secondary acquisition from KBC Private Equity	Lower-mid	Belgium
TMS Brokers	Advised **Nabbe Investments** and **Pinebridge Investments** on a PTP	Lower-mid	Poland
EasyPack	Advised **PineBridge Investments** on a joint investment with Integer. pl Group	Confidential	(i) Luxembourg (ii) Poland (iii) USA
United Oilfield Services	Advised **Enterprise Investors** in connection with its investment into United Oilfield Services	Confidential	(i) Cayman Islands (ii) Poland (iii) USA
Spin-off fund from ABN Amro Regional Fund	Advised **Kuwait Investment Office** on subscription as a limited partner into a fund which is a spin-off from ABN Amro Regional Fund	Confidential	(i) Belgium (ii) Kuwait (iii) Luxembourg (iv) Netherlands

Target	Transaction Description	Deal Size	Deal Geography
Platinum Bank OJSC	Advised **Horizon Capital** on sale of Platinum Bank OJSC to a consortium of investors, including European Infrastructure Investment Company and FinBank	Confidential	(i) Luxembourg (ii) Nigeria (iii) Ukraine
Portigon (subscription finance portfolio)	Advised **Portigon AG** on exit to Wells Fargo & Company	Confidential	Germany
SVG Investment Managers	Advised **Hansa Aktiengesellschaft** on acquisition from SVG Capital	Confidential	(i) Switzerland (ii) United Kingdom
Uni-Invest	Advised **Uni-Invest** on exit to TPG Capital LP and Patron Capital	Confidential	(i) Netherlands (ii) USA (iii) United Kingdom
Infrastructure			
Challenger LBC Terminal Jersey	Advised **PGGM**, **APG** and **Australian superannuation investor** on the acquisition of a 70 per cent interest from Challenger Infrastructure Fund	Large	(i) Australia (ii) Channel Islands (iii) Netherlands
ALPINE-ENERGIE Holding AG	Advised **Fomento de Construcciones y Contratas SA** on exit to Triton Partners	Lower-mid	(i) Austria (ii) Spain (iii) United Kingdom
Flughafen Zurich	Advised **CP2** on block offering of shares	Lower-mid	(i) Australia (ii) Switzerland
Newcastle International Airport	Advised **Copenhagen Airports** on exit to Strategic Infrastructure Trust of Europe	Lower-mid	United Kingdom
Viking	Advised **Abraaj Capital** on acquisition, with Dalea Partners LP, from TransAtlantic Petroleum	Lower-mid	(i) Bulgaria (ii) Romania (iii) Turkey
New Forests Company	Advised **DEG (Deutsche Investitions- und Entwicklungsgesellschaft mbH)** on investment into New Forests Company	Small	(i) Africa (ii) Germany (iii) United Kingdom
Karasular Enerji	Advised **Aquila Capital** on its acquisition of 60 percent interest in Karasular Enerji A.S.	Confidential	Turkey
Thames Water	Advised **Kemble Water International Holdings Limited** on exit of a 13 per cent interest to the BT Pension Scheme	Confidential	United Kingdom
Real Estate			
The Townsend Group	Advised **Catalyst Capital** on acquisition of 30 German retail properties	Lower-mid	Germany
Shopping centre owned by Deutsche Bank	Advised **Deutsche Bank** on exit to a private equity fund and an insurance company	Small	Germany
Finzels Reach	Advised **The Government Pension Fund of Thailand** (through Lake Erie LP) on its investment into this project through a single investor investment platform managed by the Townsend Group	Confidential	(i) Thailand (ii) United Kingdom
Goodman commercial properties	Advised **Employee Provident Fund of Malaysia** on acquisition of a 70 per cent interest in each of 7 commercial properties from Goodman	Confidential	Germany
Hotel Saint-Barth Isle de France	Advised **AJ Capital Partners** on exit to LVMH Moet Hennessy Louis Vuitton SA	Confidential	(i) France (ii) USA
Republika Academic Apartments	Advised **Abraaj Capital Holdings Limited** together with BLG Capital, on acquisition from Bilgili Holding	Confidential	(i) Turkey (ii) UAE

Asia Pacific and Americas

Target	Transaction Description	Transaction Value	Deal Geography
Consumer and Retail			
Billabong International Limited	Advised **Altamont Capital** on joint bid with VF Corporation	Large	Australia
Capital Safety Group	Advised **Kohlberg Kravis Roberts** on acquisition from Arle Capital Partners	Large	(i) Australia (ii) South America (iii) United Kingdom
PT Matahari Department Store	Advised **UBS**, **Morgan Stanley** and **CIMB Bank** as lead underwriters on the secondary offering of shares by CVC Capital Partners	Large	Indonesia
7 Days Group	Advised **7 Days Group** on a PTP whereby a consortium of investors including affiliates of the Carlyle Group, Sequoia Capital China, Actis and Jaguar Investment and certain existing shareholders acquired the 7 Days Group	Large	China
Barbeques Galore	Advised **Ironbridge Capital** on exit to Quadrant Private Equity as part of a dual track sale	Upper-mid	Australia
PT Myltipolar Tbk.	Advised **Temasek** on its subscription for exchangeable rights issued by PT Myltipolar Tbk.	Upper-mid	Singapore
Touch Solutions	Advised **TE Connectivity** on exit to The Gores Group	Upper-mid	Global
Escort, Inc.	Advised **Monomoy** on the acquisition finance elements of their acquisition of Escort, Inc.	Lower-mid	USA
Konsortium Logistik	Advised **Ekuinas** on the disposal of a 61.6 per cent interest to KL Airport Services	Lower-mid	Malaysia
Witchery Australia	Advised **Gresham Private Equity** on its exit to Country Road	Lower-mid	Australia
Godaco Seafood	Advised **Navis Capital** on acquisition of a 48.8 per cent interest from existing shareholders	Small	(i) Malaysia (ii) Vietnam
Green's General Foods	Advised **Guinness Peat Group (Australia)** on exit of its 72.5 per cent interest to a management-led consortium	Small	Australia
Li Ning Company Limited	Advised **founding shareholder of Li Ning Company Limited** on exit to TPG	Small	Hong Kong
Next Athleisure	Advised **Next Capital Partners** on acquisition of a majority interest from Archer Capital	Small	Australia
Tokai Trim Holdings Co. Ltd.	Advised **J-Star Co. Ltd.**, on joint investment with Supply Chain Support Fund	Small	Japan
Baroque Japan	Advising **CLSA Sunrise Capital, L.P.** on the sale of its 54.94 per cent interest to CDH Investments and Belle International	Confidential	(i) Hong Kong (ii) Japan
Big Tex Trailer	Advised **management** in an MBO backed by HIG Capital LLC	Confidential	USA
Bodytech	Advised **Teka Capital** on acquisition	Confidential	Colombia

Target	Transaction Description	Transaction Value	Deal Geography
Color Siete	Advised **Teka Capital** on acquisition	Confidential	Colombia
Escort, Inc.	Advised **Monomoy Capital Partners** on acquisition from a consortium of investors led by Falconhead Group	Confidential	USA
Grupo Phoenix	Advised **One Equity Partners** on the acquisition of a significant minority equity interest	Confidential	(i) Colombia (ii) Mexico (iii) Venezuela (iv) USA
InStaff Holding Corporation	Advised **InStaff Holding Corporation** and its private equity owner, North Texas Opportunity Fund LP, in the sale of all of its assets to LTN Staffing	Confidential	USA
Mamee Double-Decker	Advised **Pacific Global Ventures** on exit to Headland Capital Partners	Confidential	(i) Hong Kong (ii) Malaysia
Metrics Sistemas de Informacao, Servicos e Comercio	Advised **Metrics Sistemas de Informacao** on exit to EFI Brazil	Confidential	Brazil
MPI International	Advised **Monomoy Capital Partners II** on acquisition from Revstone Industries	Confidential	USA
Niro Ceramic Sdn Bhd	Advised **CIMB Private Equity** on acquisition	Confidential	Malaysia
Quality Control Corp.	Advised **Promus Equity Partners LLC** on acquisition	Confidential	USA
Healthcare			
EUSA Pharma	Advised **EUSA Pharma** on PTP by Jazz Pharmaceuticals	Large	(i) Canada (ii) Europe
Liberty Dialysis Holdings	Advised **Fresenius Medical Care** on acquisition from KRG Capital Partners	Large	(i) Germany (ii) USA
Physio-Control division	Advised **Medtronic** on exit of its Physio-Control division to Bain Capital	Upper-mid	Global
54 dialysis clinics	Advised **Fresenius Medical Care** on exit to DSI Renal and Golub Capital	Upper-mid	(i) USA (ii) Germany
CHAMP Ventures and Healthe Care Australia	Advised **CHAMP Ventures** and **Healthe Care Australia** on a restructuring and financing for further acquisition and development of private hospitals in Australia	Confidential	Australia
GenesisCare	Advised **Kohlberg Kravis Roberts**. on the management equity plan for the management team's investment	Confidential	Australia
Medical Collective Intelligence	Advised **GCA Savvian** as the financial advisor to Itochu Corporation and a number of venture capital funds on exit of a majority interest to Diversified Agency Services	Confidential	(i) Japan (ii) USA
Queensland Eye Hospital.	Advised **Cura Day Hospitals** (an Archer Capital portfolio company) on senior debt financing for acquisition	Confidential	Australia
Showa Yakuhin Kako	Advised **Tokio Marine Capital** on exit to Unison Capital	Confidential	Japan

Target	Transaction Description	Transaction Value	Deal Geography
Telecommunications, Media and Technology			
Jupiter Shop Channel	Advised **The Bank of Tokyo-Mitsubishi** on the financing of Bain Capital's acquisition from Sumitomo Corporation	Large	Japan
APN News and Media	Advised **APN News and Media** on its 50:50 joint venture with Quadrant Private Equity for the expansion of its outdoor advertising business	Upper-mid	Australia
Pitney Bowes Management Services Inc.	Advised **Pitney Bowes Inc.** on exit to Apollo Global Management	Upper-mid	USA
Asahi Tec Corporation	Advising the arrangers and lenders led by **Mizuho Corporate Bank** on the debt financing of Unison Capital's takeover bid	Lower-mid	Japan
Nexbis	Advised **Agathis Capital** on PTP	Lower-mid	(i) Australia (ii) Malaysia
Escort Inc.	Advised **Monomoy Capital Partners II, L.P.** on acquisition of Escort Inc., from a consortium led by Falconhead Capital LLC	Confidential	USA
Primagest Inc.	Advised **J-Star Co. Ltd.**, on underwiting of shares of BT Investments	Confidential	Japan
Natural Resources and Industry			
AgraQuest 2012	Advised **AgraQuest Inc.**, on sale to Bayer CropScience	Large	(i) Italy (ii) Mexico (iii) USA
Capital Safety Group	Advised **Kohlberg Kravis Roberts** on acquisition from Arle Capital Partners	Large	(i) Australia (ii) Brazil (iii) Columbia (iv) Mexico
Barminco	Advised **Barminco Holdings**, backed by Gresham Private Equity on a high yield bond offer	Large	(i) Australia (ii) Singapore (iii) USA
Mastika Lagenda	Advised **1Malaysia Development Berhad** on acquisition from Genting Power Holdings Limited	Large	Malaysia
Mold-Masters Group	Advised **Mold-Masters** on sale to Milacron by the 3i Group	Large	(i) Canada (ii) USA
Ontario Teachers Pension Plan Board	Advised **Ontario Teachers Pension Plan Board** as consortium member together with Hastings Managed Infrastructure Funds Utilities Trust of Australia and The Infrastructure Fund, on the consortium's successful bid to lease and refinance of the Sydney desalination plant	Large	Australia
Paloma Partners	Advised **shareholders of Paloma Partners II** on exit to Marathon Oil Corp.	Large	USA
Radish Boya	Advised **JAFCO Co. Ltd.**, on exit to NTT Docomo	Large	Japan
Empresa de Energia de Boyaca	Advised **Brookfield Asset Management** on acquisition pursuant to privatisation	Upper-mid	Colombia
Antioxidant and UV stabilizer business	Advised **Chemtura Corporation** on exit to SK Capital	Lower-mid	USA
OMNI Petromaritime	Advised **Ekuinas** on merger of two offshore support vessels companies, Tanjung Kapal Services and OMNI Petromaritine to create to form Icon Offshore Berhad	Lower-mid	Malaysia
Tanjung Kapal Services	Advised **Ekuinas** on acquisition from Tanjung Offshore Berhad	Lower-mid	Malaysia

Target	Transaction Description	Transaction Value	Deal Geography
Waterloo Wind Farm	Advised **Palisade Investment Partners** and **Northleaf Capital Partners** on acquisition	Lower-mid	Australia
El Dorado Storage Terminal	Advised **Rimrock Midstream** in connection with acquisition from Enbridge Pipelines	Small	USA
INSER	Advised **Transfield Services (Australia)** on acquisition of 40 per cent interest	Small	Chile
Dixie Electric	Advised **Lone Star CRA Fund** on exit to an affiliate of One Rock Capital	Confidential	USA
Green Energy Oilfield Services	Advised **Lone Star CRA Fund** on acquisition	Confidential	USA
Proserv Group	Advised **Weatherford International** on disposal of assets comprising its subsea controls business in exchange for an equity interest in Proserv Group	Confidential	Global
Sonneborn. and Sonneborn Refined Products	Advised **One Equity Partners** on acquisition from Sun Capital Partners	Confidential	(i) Netherlands (ii) USA
State Service	Advised **Lone Star CRA Fund** on acquisition of a 50 per cent interest	Confidential	USA
Tanjung Offshore Bhd.	Advised **Ekuinas** on acquisition from a substantial shareholder of Tanjung Offshore	Confidential	Malaysia
Walter Meier (Manufacturing)	Advised **Walter Meier** on sale of Walter Meier (Manufacturing) to Tenex Capital Management LP	Confidential	USA
Financial Services and Funds			
Bank Islam Malaysia Berhad	Advised **BIMB Holdings Bhd** on acquisition from Dubai Financial LLC and Lembaga Tabung Haji	Large	Malaysia
Gateway Real Estate Fund IV, L.P.	Advised **Gaw Capital Partners** on the establishment and restructuring of a real estate fund	Large	Hong Kong
OMERS portfolio	Advised **AXA Private Equity** on a secondary acquisition from Ontario Municipal Employees Retirement System (OMERS)	Large	Global
Tokyo Star Bank	Advised **Chinatrust Commercial Bank** on acquisition from Lone Star Funds, Credit Agricole SA, Shinsei Bank Limited and Aozora Bank Limited	Large	(i) Japan (ii) Taiwan
ASEAN Infrastructure Fund	Advised **Asian Development Bank** on the incorporation of an infrastructure fund	Upper-mid	South East Asia
Empresa de EnergÃa de BoyacÃ¡ S.A	Advised **Brookfield Asset Management** on an acquisition from the government of Colombia	Upper-mid	Colombia
Prostar Global Natural Resources Fund I L.P. and Prostar Global Energy Infrastructure Fund I, L.P.	Advised **Prostar Capital** on the establishment and structuring of private equity funds	Upper-mid	Hong Kong
Amata B.Grimm Power Infrastructure Fund	Advised **Amata B.Grimm Power Company** on the establishment of the first energy-related infrastructure fund in Thailand	Lower-mid	Thailand
ClearView Wealth Limited	Advised **ClearView Wealth** on a PTP by Crescent Capital Partners	Lower-mid	Australia
Crystal Retail Growth Leasehold Property Fund	Advised **SCB Asset Management Company** on the establishment of the Crystal Fund, which will invest in The Crystal Shopping Mall and the Crystal Design Center	Lower-mid	Thailand

Target	Transaction Description	Transaction Value	Deal Geography
Envision Taiwan Opportunity Fund I L.P	Advised **Envision (H.K.) Limited** on the formation of Envision Taiwan Opportunity Fund I L.P.	Lower-mid	Hong Kong
Harmony Fund II	Advised **COLI ICBCI China Investment Management (Cayman Islands) Limited** on the formation of Harmony China Real Estate Fund II, L.P.	Lower-mid	China
Scottish Pacific	Advised **Next Capital** on acquisition from Lazard Australia Private Equity.	Lower-mid	Australia
Souls Private Equity	Advised **Souls Private Equity Limited** on a PTP by Soul Pattison and Company Limited	Lower-mid	Australia
Austock Property Funds Management	Advised **Austock Group Limited** on exit to Folkstone Limited	Small	Australia
EQ Partners Co. Ltd.	Advised **Reorient Financial Markets Limited** on acquisition of a 25 per cent interest from Dongah Tire and Rubber Co. Ltd.	Small	(i) Hong Kong (ii) South Korea
ETFS Physical Gold ETF; ETFS Physical Silver ETF; and ETFS Physical Platinum ETF	Advised **ETF Securities (HK) Limited** on the listing of 8 new Exchange Traded Funds (ETFs)	Confidential	Hong Kong
Ikiiki	Advised **J-STAR Number One Investment** on exit to NK Relations Co.	Confidential	Japan
Novotech (Australia)	Advised **Novotech (Australia)**, on the sale of its 30 percent interest to Mercury Capital Partners	Confidential	Australia
Infrastructure			
Avanza Agrupacion para el Transporte SL	Advised **Autobuses de Oriente** on acquisition from Doughty Hanson & Co.	Large	(i) Mexico (ii) Spain (iii) United Kingdom
Costanera Group	Advised **Atlantia** on exit to Canadian Pension Plan Investment Board	Large	Chile
Leighton Holdings Ltd.	Advised **Ontario Teachers' Pension Plan** as the successful bidder for various telecommunications assets from Leighton Holdings Ltd.	Large	Australia
Government Pension Fund of Thailand	Advised the **Government Pension Fund of Thailand** on the appointment of Townsend Group to deploy funds into core and special situations funds in North America, Europe and Asia	Upper-mid	Global
Fleetplus	Advised **Fleetplus** on the leveraged management buyout by its principal shareholder	Lower-mid	Australia
Al-Tala'a International Transportation Company	Advised **Al-Tala'a International Transportation Company** on sale to Bin Sulamain Holdings Ltd. by NBK Capital	Confidential	(i) Kuwait (ii) Saudia Arabia
Port of Brisbane	Advised **La Caisse de dépôt et placement du Québec** on acquisition from Global Infrastructure Partners	Confidential	(i) Australia (ii) Canada
VinaCapital Group	Advised **VinaCapital Group** on buy-out by a consortium of existing shareholders	Confidential	(i) British Virgin Islands (ii) Hong Kong (iii) Vietnam

Target	Transaction Description	Transaction Value	Deal Geography
Real Estate			
Algeco	Advised **TDR Capital**, as owners of Algeco Scotsman Group (Algeco), in relation to Algeco's debt refinancing	Large	(i) Australia (ii) United Kingdom (iii) USA
Invesco Core Real Estate - USA, L.P.	Advised **Invesco Institutional** on the establishment and structuring of a fund	Large	USA
Guangzhou International Finance Center	Advised **Yuexiu Real Estate Investment Trust** and **Yuexiu Property Company Limited** on Yuexiu REIT's investment in Guangzhou International Finance Center	Large	(i) China (ii) Hong Kong
Four multifamily properties in the US	Advised **Amli Residential** on joint venture partnership with Canada Pension Plan Investment Board in connection with the acquisition of four multifamily properties in the US	Upper-mid	USA
Novotel Nathan Road Kowloon	Advised **Gaw Capital Fund III** and **CSI Properties** on the establishment of a joint venture to acquire a hotel from LaSalle Investment Management	Upper-mid	Hong Kong
Son Kim Land Corporation	Advised **EXS Capital** on its investment into Son Kim Land Corporation	Lower-mid	(i) Vietnam (ii) Hong Kong
SingXpress Property Development Pte. Ltd.	Advised **Everview Capital Partners (HK) Limited** on the acquisition of a 18.4 per cent shareholding from SingXpress Land Ltd.	Small	(i) Singapore (ii) Hong Kong
Eurobras Group	Advised **Algeco Scotsman**, a portfolio company of TDR Capital, on acquisition	Confidential	Brazil
Grupo El Florido real estate portfolio	Advised **Grupo El Florido** on disposal of a real estate portfolio, to LaSalle Investment Manangement	Confidential	Mexico

Baker & McKenzie Private Equity

We act for a wide range of sponsors, portfolio companies and management teams around the world. Globally, we have nearly 300 private equity lawyers across EMEA, North America, Latin America and Asia Pacific. We operate across all sectors and we bring the industry expertise developed through long standing relationships with our corporate clients to bear on our deals. Examples of these industries are:

TMT

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We have leading industry knowledge in the oil and gas, power and mining sectors, where we act for many of the established players across the M&A and project development areas.

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We do repeat deals for a number of infrastructure funds and understand the mindset of infrastructure funds on issues like yield, exit horizons, financing and management incentivisation. We have specific expertise in infrastructure deals relating to roads, ports, water and aviation and airports.

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