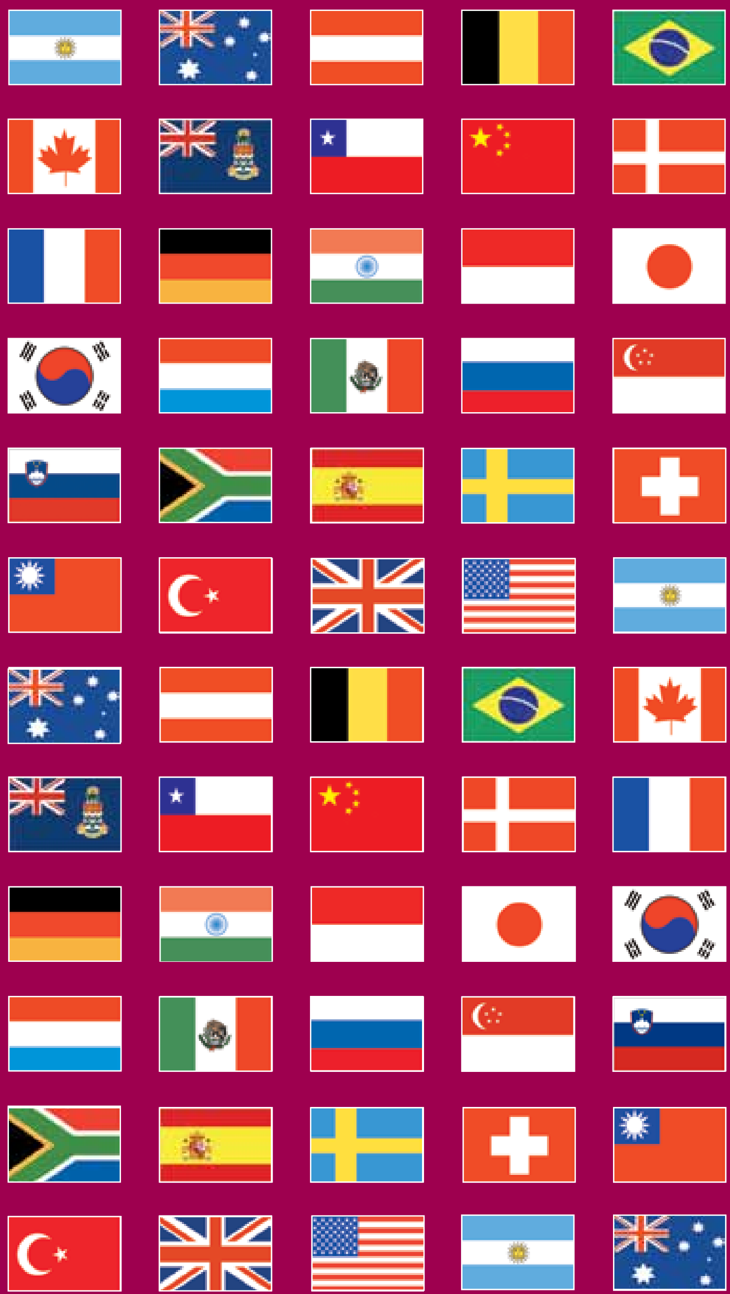
GETTING THE DEAL THROUGH

Private Equity

in 29 jurisdictions worldwide

2014

Contributing editors: Casey Cogut and William Curbow



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10th anniversary edition

Private Equity 2014

Contributing editors:
Casey Cogut and William Curbow
Simpson Thacher & Bartlett LLP

Getting the Deal Through is delighted to publish the fully revised and updated 10th anniversary edition of *Private Equity*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 29 jurisdictions featured. New jurisdictions covered this year include Argentina and Slovenia. The report is divided into two sections: the first deals with fund formation in 19 jurisdictions and the second deals with transactions in 27 jurisdictions.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. ***Getting the Deal Through*** publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. ***Getting the Deal Through*** would also like to extend warm and heartfelt thanks to contributing editor Casey Cogut who has recently retired from Simpson Thacher & Bartlett LLP. Casey has held the position of contributing editor of *Private Equity* since its inauguration 10 years ago, and Casey and his colleagues at Simpson Thacher & Bartlett LLP have been instrumental in the success of the publication. The publisher would like to welcome William Curbow, also a partner at Simpson Thacher & Bartlett LLP, as current and future contributing editor of *Private Equity*. We are delighted to have William on board, and we look forward to future editions in his very capable editorial hands.

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Global Overview

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Worldwide, private equity buyout transaction activity was flat in 2013, increasing by less than half of one per cent compared to 2012. Buyout transactions represented 12.2 per cent of global mergers and acquisitions activity in 2013, which was an increase from 11.8 per cent of global mergers and acquisitions activity in 2012. Unfortunately, the rise in the US and global stock markets in 2013 did not translate to increased private equity sponsor buyout or mergers and acquisitions activity levels during the period, as buyers lacked market confidence and price conviction. In addition, the rising stock prices made potentially viable private equity targets unappealing for financial sponsors. On the capital-raising side, several notable private equity firms raised mega funds in 2013, which likely consumed fund resources and may have impacted buyout activity.

Americas

Announced mergers and acquisitions deal volume in 2013 in the Americas totalled approximately US$1.23 trillion, reflecting an increase of 2.1 per cent from 2012 levels. US-based buyout transactions increased to approximately US$132.7 billion, which represented an approximately 2.4 per cent increase from the US$129.6 billion of US-based buyout transactions in 2012. In addition, seven out of the 10 largest private equity buyouts in 2013 involved US-based private equity firms. However, the number of private equity deals that closed in 2013 decreased by 14 per cent compared with 2012 which, combined with the slight increase in the value of US-based buyout transactions, resulted in larger average deal sizes. According to PitchBook (www.pitchbook.com), 23 per cent of private equity transactions were for US$2.5 billion or more compared with 10 per cent of such transactions in 2012. In addition, private equity investors increasingly focused their mergers and acquisitions activities on add-on acquisitions, which reflects an increase in the last decade. Add-on acquisitions represented 36 per cent of all private equity buyouts in 2004 and represented 53 per cent of all private equity buyouts in 2013. Notable private equity acquisitions in the Americas included:

- the acquisition of HJ Heinz Company by a consortium comprised of affiliates of 3G Capital and Berkshire Hathaway for approximately US$28 billion;
- the acquisition of Dell Inc by a consortium comprised of Michael S Dell, affiliates of MSDC Capital and affiliates of Silver Lake Partners for approximately US$25 billion;
- the acquisition of BMC Software by a consortium comprised of affiliates of Bain Capital, Elliott Management Corporation, GIC Special Investments, Golden Gate Capital and Insight Venture Partners for approximately US$6.9 billion;
- the acquisition of Neiman Marcus Inc by a consortium comprised of affiliates of Ares Management and CPP Investment Board for approximately US$6.4 billion; and
- the acquisition of Hub International by affiliates of Hellman and Friedman for approximately US$4.4 billion.

Europe, Middle East and Africa

Announced mergers and acquisitions deal volume in Europe, the Middle East and Africa (EMEA) totalled approximately US$628.3 billion in 2013, an approximately 25.5 per cent decrease from 2012. Of this amount, Europe, Africa and the Middle East accounted for approximately US$547.6 billion, US$57.3 billion and US$23.4 billion of total mergers and acquisitions deal volume, respectively. This represents the third consecutive year that there has been an overall decline in EMEA mergers and acquisitions activity. The year-on-year decrease in overall EMEA-targeted mergers and acquisitions was offset by a 29.8 per cent increase in mergers and acquisitions activity involving Africa and the Middle East. This is the second year in a row that mergers and acquisitions activity involving Africa and the Middle East experienced a substantial year-on-year increase. For 2013, despite the decline in overall mergers and acquisitions activity, EMEA-targeted private equity sponsor buy-side activity totaled approximately US$108.3 billion, compared to US$81 billion in 2012; an increase of approximately 33.7 per cent. Financial sponsor buy-side activity in the fourth quarter of 2013 reached approximately US$31.9 billion, which was the highest quarter of financial sponsor buy-side activity in EMEA for the year. Notable European private equity transactions in 2013 included:

- the approximately US$8.6 billion offer for Dutch coffee company DE Masters Blenders 1753 BV by Oak Leaf BV;
- the acquisition of Springer Science and Business Media Deutschland GmbH by affiliates of BC Partners for approximately US$4.4 billion;
- the acquisition of Ista by affiliates of CVC Partners for approximately €3.1 billion;
- the acquisition of CeramTec GmbH by affiliates of Cinven for approximately €1.49 billion; and
- the acquisition of Cerved by affiliates of CVC Capital Partners for approximately €1.13 billion.

Asia-Pacific

Announced mergers and acquisitions deal volume in Asia-Pacific totaled approximately US$534.7 billion in 2013, which represented an approximately 8.4 per cent increase from comparable deal volume in 2012. Announced mergers and acquisitions deal volume in Japan totaled approximately US$80.1 billion, representing an approximately 5.86 per cent decrease in 2013 as compared to 2012. Asia-Pacific private equity activity in 2013 slid to US$29.1 billion in total deal volume, which represented a 3.2 per cent decrease from activity levels in 2012. In addition, the number of buyout transactions in Asia-Pacific slid to 251 as compared to 311 in 2012, which represents an approximate 19.2 per cent decrease. Nearly 60 per cent of buyouts were targeted at Greater China, and only five transactions were larger than US$1 billion in size as compared to 11 such transactions in 2012. Private equity transactions in Asia that were below US$100 million accounted for approximately 67 per cent of all private equity transactions in Asia-Pacific. Notable private equity transactions in Asia included:

- MBK Partners' acquisition of ING Korea Life Insurance Company for approximately US$1.6 billion;
- the investments by Kohlberg Kravis and Roberts in Panasonic Healthcare, Alliance Tire Group, PT Tiga Pilar Sejahtera Food Tbk and Weststar Aviation Services Sdn Bhd;
- the acquisition of AsiaInfo by affiliates of CITIC Capital for approximately US$887 million; and
- the Carlyle Group's acquisition of a 49 per cent stake in two Chinese shopping malls operated by Chinese developer SZITIC Commercial Property.

Debt financing markets

It was widely reported that the debt financing markets remained generally strong throughout the course of 2013 and, as a result, financial sponsors found relatively easy access to debt financing markets during the period. In 2013, debt-to-EBITDA ratios for private equity investments reached 6.2x, which represents a meaningful increase from 5x in 2012. In addition, the average buyout leverage ratio remained generally consistent with the levels in 2012 at approximately 61.2 per cent.

Portfolio company sales and IPOs

Financial sponsors effected approximately US$270.8 billion of exits in 2013 compared to approximately US$298.0 billion in 2012, an approximately 9.1 per cent decrease and the lowest annual value since 2010, when financial sponsors only effected US$249.9 billion of exits. Interestingly, financial sponsors effected 458 exits worth approximately US$87.7 billion in the fourth quarter of 2013, which was 18 per cent higher than the previous quarter of only US$74.3 billion and which represented a 20.6 per cent increase as compared to the fourth quarter of 2012. There was a reversal in the recent trend of US private equity sponsor sales of portfolio companies to other private equity sponsors. Such sales dropped by 28 per cent in 2013, compared to 2012. Notable portfolio company sales included

- the approximately US$8.7 billion sale of Bausch and Lomb by affiliates of Warburg Pincus to Valeant Pharmaceuticals;
- the approximately US$6 billion sale of Neiman Marcus Group Inc by affiliates of TPG Capital to a consortium comprised of affiliates of Ares Management and Canada Pension Plan Investment Board;
- the sale of IMG Worldwide by affiliates of Forstmann Little and Co to affiliates of Silver Lake Partners and William Morris Endeavor Entertainment LLC for a reported US$2.3 billion; and
- the approximately US$1.8 billion sale of Yankee Candle Co by affiliates of Madison Dearborn Partners to Jarden Corporation.

There was a marked increase in the value of realisations for private equity sponsors in their portfolio company listings on global exchanges in 2013. By 12 December 2013, 181 private equity backed companies had filed for IPOs, raising approximately US$57 billion, which is more than twice the amount raised by private equity-backed companies during 2012 and the second highest on record. The fourth quarter saw a significant amount of private equity-backed IPO activity, with such companies raising approximately US$20.4 billion in October and November alone. In addition, private equity backed companies are becoming increasingly important to global IPO markets, with such companies comprising nearly 10 per cent of all worldwide companies that went public in 2013. In 2008, private equity backed companies only represented approximately 6 per cent of all companies that went public globally. In addition, in 2013, private equity backed IPOs represented approximately 35 per cent of all proceeds raised in 2013.

IPOs provided private equity sponsors with the opportunity to achieve exits from their European investments in 2013. Ernst and Young reported that there were only six private equity-backed IPOs in Europe in 2012 that raised US$2.3 billion. In 2013, however, by 12 December there were 32 IPOs of private equity-backed companies raising a total of approximately US$16.1 billion. Approximately half of such IPOs were conducted on the London exchange; however, the exchanges in Paris, Frankfurt and Munich each accounted for more than US$1 billion of private equity-backed IPOs in 2013 as well.

Ernst and Young found that, in addition to higher levels of total realisations in private equity-backed IPOs in 2013, such IPOs were generally successful, with an average increase of 13 per cent in their first day of trading as public companies. In the year up to 12 December 2013, such companies were trading 18.6 per cent above their offering prices. Notable private equity portfolio company listings in 2013 included:

- the approximately US$2.3 billion listing of Hilton Worldwide Inc on the New York Stock Exchange;
- the approximately €785 million listing of Moncler SPA on the Milan exchange;
- the approximately US$725 million listing of ARAMARK Holdings Corporation on the New York Stock Exchange; and
- the approximately US$700 million listing of SeaWorld Entertainment Inc on the New York Stock Exchange.

Lastly, Ernst and Young reported that nearly 60 private equity-backed companies have filed for IPOs to be completed in 2014, which could raise approximately US$14 billion. This pipeline of IPO activity reflects continued optimism among practitioners that the public markets will remain open for private equity exits in 2014.

Strong year in private equity fundraising

Private equity fundraising has faced challenges in the last several years; however, there were several noteworthy successes for general partners seeking to raise mega funds in 2013.

According to Preqin, private equity firms raised a total of US$431 billion globally in 2013, which represents an approximate 13 per cent increase compared to 2012. This is the highest amount of annual fundraising since the financial crisis. However, there was continued consolidation in the private equity fundraising market, with fundraising totals for 2013 up and the number of successfully closed funds down year-on-year, reflecting the recent trend of limited partners making larger commitments to fewer, more established sponsors. Preqin noted that the average size of a private equity fund raised in 2013 was US$1.2 billion compared to US$740 million in 2012. In particular, there appeared to be a flight to quality – with quality being perceived as those general partners having brand names. Nearly half of the capital raised by private equity funds in 2013 was raised by general partners with more than US$4.5 billion under management compared to nearly 32 per cent of the capital raised by such general partners managing large private equity funds in 2012.

The increase in private equity sponsor fundraising in 2013 was led by strong activity in funds focused on North America and Europe. Funds focused on Asia and other regions saw a significant drop in fundraising levels. Private equity funds based in North America raised approximately US$266 billion in 2013, which represents an approximately 33 per cent increase compared to 2012. General partners in the United States raised 11 funds larger than US$5 billion in 2013, which is more than the previous four years combined. Notable mega funds raised by general partners in the United States in 2013 include:

- Apollo Global Management, which raised approximately US$17.5 billion;
- the Carlyle Group, which raised approximately US$13 billion;
- Warburg Pincus, which raised approximately US$11.2 billion; and
- Silver Lake Partners, which raised approximately US$10.3 billion.

General partners raising private equity funds in Europe found success in 2013 as well, raising approximately €73.8 billion of capital through 10 December 2013, which exceeded the capital raised in all of 2012 and which represented the best year of private equity fund-raising in Europe since the financial crisis. One of the reasons practitioners believe that general partners had a successful year of fundraising in Europe in 2013 was because European-focused private equity funds made approximately US$52.9 billion of distributions in the first half of 2013, which represented a 23 per cent increase relative to 2012. The optics of such distributions to limited partners could not have come at a better time. In addition, similar to US private equity fundraising, general partners seeking to raise mega funds found success in 2013. According to Preqin, larger funds such as CVC Capital Partners, Cinven, Apax Partners and Triton Partners raised approximately one-third of the total capital raised by general partners in all of Europe.

Unfortunately, general partners in Asia had a second consecutive difficult year raising private equity funds in 2013. According to Asia Private Equity Review, approximately US$29.8 billion was raised by sponsors in Asia in 2013, compared to approximately US$39.4 billion in 2012 and US$51.6 billion in 2011. Many practitioners believe that general partners found a difficult fundraising environment in Asia because limited partners may hold a negative sentiment stemming from the significant lack of exits or distributions from prior investments in Asia. Interestingly, pan-Asian funds accounted for approximately US$13.4 billion of all private equity fund-raising in 2013, representing nearly 45 per cent of all private equity capital raised in Asia. This may have been driven by the recent economic slowdowns facing China and India, and a desire to commit capital to funds seeking a more diversified investment mandate within Asia. Despite the reduction in total capital commitments to Asian-based private equity funds, limited partners that allocated a portion of their capital to Asia tended to provide capital commitments to the larger, more well-established sponsors. Also, continuing the trend seen in the United States and in Europe, the average fund sizes in Asia have increased despite the decline in the overall capital raising. The average fund size increased from US$256 million in 2012 to approximately US$422 million through September 2013. For example:

- Kohlberg Kravis and Roberts raised US$6 billion of capital for its KKR Asia Fund II in 2013, which is the largest Asian-based private equity fund raised to date;
- Affinity Asia Pacific Fund raised US$3.5 billion in 2013; and
- MBK Partners Fund raised approximately US$2.7 billion in 2013.

In addition, TPG Capital, The Carlyle Group, RRJ Capital, CVC Capital Partners and Blackstone Real Estate Partners are currently in the market seeking to raise Asian-based mega funds.

According to Preqin (www.preqin.com), 2,084 private equity funds are currently fundraising and are seeking to raise an aggregate of US$750 billion in capital commitments.

Outlook for 2014

Practitioners remain uncertain as to how global mergers and acquisitions buyout activity will fare in 2014. There appears to be some trepidation as valuations remain high, and many sponsors are focused on potential exits as there is a robust pipeline of private-equity backed companies that are in registration for an IPO as of the beginning of 2014. Financial sponsors remain hopeful that capital markets will remain strong and will carry forward well into this year. Practitioners are also hopeful that secondary sales of portfolio companies to other private equity sponsors will rebound from 2013 and help provide alternatives to potential IPO exits for private equity sponsors.

Debt financing markets remain stable at the moment, and with a number of general partners having raised large buyout funds globally in 2013, there is a large amount of available capital to be deployed in 2014. But with seller valuation expectations at current levels, it may be difficult for private equity sponsors to deploy their capital and they may have to find opportunities in new markets that they have little prior experience investing in. For example, Kohlberg Kravis and Roberts made its first investments in both Indonesia and Malaysia in the last year. Private equity sponsors may begin seeking to achieve above-market returns by investing in companies in smaller and emerging markets. However, investments in these markets tend to be small, and larger buyout shops will likely continue looking in the mature markets in the United States, Europe and Asia to deploy larger amounts of capital in their investments.

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