

# market intelligence

GETTING THE  
DEAL THROUGH 

## Private Equity

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leads the global interview panel*

# 2018

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# market intelligence

Welcome to GTDT: *Market Intelligence*.

This is the 2018 edition of *Private Equity*.

**Getting the Deal Through** invites leading practitioners to reflect on evolving legal and regulatory landscapes. Through engaging and analytical interviews, featuring a uniform set of questions to aid in jurisdictional comparison, *Market Intelligence* offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most interesting cases and deals.

*Market Intelligence* is available in print and online at  
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# PRIVATE EQUITY IN FRANCE

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Sabina Comis is a partner at Dechert LLP. She advises clients on the creation and structuring of private investment funds and is one of the few practitioners in France equipped to handle both tax and regulatory aspects of fund formation. She is also very active in tax structuring of leveraged buyouts.

François Hellot is a partner at Dechert LLP. He focuses on private equity investments for private equity and hedge funds, and

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Antoine Sarailier is a partner at Dechert LLP. He focuses his practice on asset management and advises French and international financial institutions on fund formation and structuring as well as on regulatory matters.

Privat Vigand is a partner at Dechert LLP. He has a deep experience in counselling leading banks and equity sponsors on leveraged financings (senior, mezzanine and unitranche). He also advises on fund financings (equity bridge facilities).



Charles Cardon



Sabina Comis



François Hellot

**GTDT:** *What trends are you seeing in overall activity levels for private equity buyouts and investments in your jurisdiction during the past year or so?*

**Charles Cardon, Sabina Comis, François Hellot, Anne-Charlotte Rivière, Antoine Sarailier and Privat Vigand:**

Regarding buyouts, we continue to see some highly competitive bids with aggressive buyers trying to pre-empt, and in some cases succeeding in pre-empting, the process. By offering attractive management packages, investment funds are able to compete successfully with strategic buyers. In addition, the number of initial public offerings (IPOs) has declined significantly. Major IPOs have been postponed and large sales, which were initially structured as IPOs, such as SMCP, have been sold to private equity funds.

In large-scale transactions, bidders now enter into consortium agreements because of the size of the transactions. For mid-scale and small-scale transactions, private equity funds are looking for new investment opportunities, such as spin-offs from strategic buyers.

Another trend is the increase in the number of players financing leveraged buyouts (LBOs) thus entailing more competition between lenders, including unitranche funds. In addition, we are also seeing new players in the equity and LBO space, such as highly specialised US funds. We recently advised Certares, a US fund very active in the travel business, on its acquisition of Marietton, the largest independent, traditional tour operator in France. We also see family offices acting as direct investors as well as more and more corporate venture funds.

**GTDT:** *Looking at types of investments and transactions, are private equity firms primarily pursuing straight buyouts, or are other opportunities, such as minority-stake investments, partnerships or add-on acquisitions, also being explored?*

**CC, SC, FH, ACR, AS & PV:** Many companies structured under LBOs are looking to expand through external growth. As such, the ability of the investment fund to finance such growth is strongly considered in the process.

In addition, owing to the competitive nature of the bidding process, some funds choose to take an alternative path and opt for a minority-stake participation, which has proved successful on several occasions. This option is being increasingly considered by private equity funds that are seeking investment opportunities in fast-growing companies. For instance, Astorg acquired a stake in Echosens, a leading specialised diagnosis company focused on non-invasive products and associated services dedicated to the assessment of chronic liver diseases, alongside Chinese pharmaceutical company Inner Mongolia FuRui, which remains the reference shareholder.

**GTDT:** *What were the recent keynote deals? And what made them stand out?*

**CC, SC, FH, ACR, AS & PV:** The market has been very seller-friendly this year. Bidders have had to be flexible to meet sellers' demands, in terms of price and certainty of completion. In several recent bid processes, the bidders were successful because they managed to secure a fully financed offer in a short amount of time, with equity commitment and debt commitment letters that the sellers considered satisfactory. In this competitive environment, negotiating the management package, to include reinforced governance rights and incentive instruments, has been a key aspect of the approach. We advised the management of Intech, a global leader in surgical



Anne-Charlotte Rivière



Antoine Sarailier



Privat Vigand

instruments and implants, when it was bought by Eurazeo PME through a secondary LBO. We also advised Caravelle in their acquisition of Tiama, a global leader in hollow glass testing and inspection. These were both complex transactions completed in very short periods of time.

**GTDT: Does private equity M&A tend to be cross-border? What are some of the typical challenges legal advisers in your jurisdiction face in a multi-jurisdictional deal? How are those challenges evolving?**

**CC, SC, FH, ACR, AS & PV:** M&A targets generally have multi-jurisdictional operations. This requires close coordination with the local counsel at the due diligence and negotiation stage, to understand and address local regulatory issues. In competitive bid processes, it is crucial to have reliable local counsel to identify and understand the key concerns, and report and explain them to the client.

**GTDT: What are some of the current trends in financing for private equity transactions? Have there been any notable developments in the availability or the terms of debt financing for buyers over the past year or so?**

**CC, SC, FH, ACR, AS & PV:** In our view, the main trends can be summarised as follows:

- leveraged loans and high-yield bonds are in decline;
- there has been a re-emergence of bank lenders;
- French and European debt funds have continued to develop strongly, benefiting from a favourable regulatory environment;
- there has been a convergence of terms between US and European term loans and high-yield bonds (ie, loosening of financial covenants and lender protection, and increase of flexibility for borrowers); in general, the

US-style provisions appear more and more frequently in European credit agreements;

- covenant-lite terms have become available to strong credits in European deals; and
- development of unitranche solutions.

**GTDT: How has the legal, regulatory and policy landscape changed during the past few years in your jurisdiction?**

**CC, SC, FH, ACR, AS & PV:** A significant reform of French contract law took place in October 2016. One of the goals of this reform is to improve the competitiveness of French law compared to other legal systems. So far, it has been globally recognised as being a positive change, in particular regarding its impact on M&A transactions, though some areas of uncertainty remain.

In addition, further to the presidential elections in 2017, the new government introduced a series of reforms in favour of investment that led to, inter alia, (i) a progressive reduction of the standard rate of corporate income tax from 33.33 per cent to 25 per cent by 2022, (ii) a significant change in the taxation of individuals with respect to capital gains, dividends and interest, which are now all taxed at a 30 per cent flat tax rate, (iii) a new reform of the tax and social security contributions regime of the free shares and (iv) the implementation of a regime of a 'trust' to enable monitoring security interests more efficiently in syndicated financings.

**GTDT: What are the current attitudes towards private equity among policymakers and the public? Does shareholder activism play a significant role in your jurisdiction?**

**CC, SC, FH, ACR, AS & PV:** We believe the perception of private equity funds has improved among policymakers and the public. Large French companies have been sold to private equity funds over the past few years and these funds have been instrumental in initiating a new development

strategy, including providing new money and leading the renegotiation of debt in distressed M&A deals.

Shareholder activism plays a significant role in the squeeze-out process. Under French stock exchange rules, in order to complete a squeeze-out following a tender offer, minority shareholders must not hold more than 5 per cent of the share capital and voting rights following the offer. In several public-to-private deals, funds have acquired a minority shareholding participation following the announcement of the offer to impede the squeeze-out and to force the bidder to offer a higher price.

**GTDT: What levels of exit activity have you been seeing? Which exit route is the most common? Which exits have caught your eye recently, and why?**

**CC, SC, FH, ACR, AS & PV:** There is a strong appetite for acquisitions through LBOs. Private equity funds have raised significant amounts of capital to be invested and, as a result, secondary and tertiary LBOs are very frequent. This is particularly the case for mid- and small-cap companies as private equity funds have the financial capacity to conduct the deal alone, and the company's management tends to have a strong preference for a new private investor, to enhance the development of the company and generate significant value over a four- to five-year period.

**GTDT: Looking at funds and fundraising, does the market currently favour investors or sponsors? What are fundraising levels like now relative to the past few years?**

**CC, SC, FH, ACR, AS & PV:** Fundraising activity in France has been very dynamic over the past two years. In our experience, successful asset managers (ie, managers with a good track record) do not have any difficulty when raising capital, and their funds are usually oversubscribed. The process for such managers is quick and certain funds are now able to finalise their fundraising with a single closing instead of having a one- or two-year subscription period. In this respect, managers are currently favoured on the French market (it being understood that new managers, or managers with a poor track record, may have trouble successfully raising a new fund). However, limited partners have more leverage nowadays with respect to the fees charged by the managers. Most institutional investors have now formalised their investment process and call upon legal advisers to negotiate their investment.

**GTDT: Talk us through a typical fundraising. What are the timelines, structures and the key contractual points? What are the most significant legal issues specific to your jurisdiction?**

**CC, SC, FH, ACR, AS & PV:** The timeline of fundraising in France depends on the manager. French private equity funds with total commitments in excess of €1 billion have recently been raised in less than four months over a single closing. However, some fundraisings can last for up to 12 or 18 months, even in the current favourable market conditions. In the past, private equity funds have been structured as *fonds professionnels de capital investissement* or as *fonds professionnels spécialisés*, which are two forms of French regulated funds. Now, more funds are structured as *société de libre partenariat*, a form of limited partnership established in 2015 with legal personality, with the objective, among others, to attract foreign investors and which can offer the same tax advantages as the *fonds professionnel de capital investissement*.

The key contractual points discussed in France are linked to the following: fault or no-fault divorce clause, key man clause, fees, costs and expenses, and transparency-related clauses (eg, reporting and valuation).

**GTDT: How closely are private equity sponsors supervised in your jurisdiction? Does this supervision impact the day-to-day business?**

**CC, SC, FH, ACR, AS & PV:** Private equity sponsors are rare in France, with the exception of banking or insurance companies that invest in management companies or historic shareholders in management companies. These entities are not supervised as sponsors of private equity funds, but are usually subject to their own sets of regulations. As a result, French regulations (eg, the Law on the Separation and Regulation of Banking Activities), European regulations (eg, Solvency II and CRD IV) and US regulations (eg, the Dodd-Frank Act or BHC Act) may have an impact on the day-to-day business of managers.

**GTDT: What effect has the AIFMD had on fundraising in your jurisdiction?**

**CC, SC, FH, ACR, AS & PV:** The AIFMD has not had a material effect on fundraising in France, as private equity funds are usually set up as regulated funds.

# THE INSIDE TRACK

## *What factors make private equity practice in your jurisdiction unique?*

- The role of the management, in particular its expectations in terms of financial incentives. The management generally hires, at the purchaser's cost, a financial and a legal counsel.
- The impact of tax regulation in the structuring of the deal and of the management package. Several tax reforms have been implemented since 2012 and now 2018, which have significantly changed the taxation of capital gains under management package schemes.
- The expectations of the sellers that are not ready to grant operational representations and warranties other than capacity and ownership of the transferred securities. In case of reinvestment, sellers usually ask for very favourable minority rights, in terms of governance (veto rights) and liquidity (exit mechanism).
- The impact of insolvency legal provisions in the structuring of financings, which need to be carefully tackled so as to offer sufficient comfort to the lenders participating in the transaction while providing flexibility for borrowers to grow their business efficiently.

## *What should a client consider when choosing counsel for a complex private equity transaction in your jurisdiction?*

- The experience and track record of the legal counsel. Our lawyers are 'solution-oriented' when addressing clients' concerns arising from due diligence or in the negotiation. This requires the skill to find innovative solutions that meet all the parties' expectations and a good knowledge of the market.

- The responsiveness and involvement of the counsel. Our team is fully dedicated to our clients' requests, in order to be able to offer a high-value service to ensure the success of the transaction.
- The various practices and the international network of the law firm. Our private equity and M&A, tax, finance and antitrust and deregulatory departments work very closely together on LBO deals. Regulatory and antitrust matters are increasingly complex, and potential concerns must be identified and addressed very quickly in the deal. The counsel should also be familiar with the complex regulations of regulated sectors, such as life sciences and antitrust. Financing structures have also become more and more elaborate over the years and need to be manoeuvred by true experts.

## *What interesting or unusual issues have you come across in recent matters?*

We advised the sellers and the management in the sale of the Lafayette Group, the French leader in the low-cost retail pharmacy business, through an LBO, to Five Arrows, the corporate private equity firm of Rothschild, which is focused on investing in lower middle-market companies in western Europe. We also advised the sellers in their reinvestment in the Lafayette Group and the management in structuring and negotiating their management package.

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**GTDT: What are the major tax issues that private equity faces in your jurisdiction? How is carried interest taxed? Do you see the current treatment potentially changing in the near future?**

**CC, SC, FH, ACR, AS & PV:** The main tax issue within the framework of a private equity structuration relates to the tax deductibility of interest charges, particularly regarding the tax deductibility of the interest under related-party loans, which is currently aggressively challenged by the French tax authorities. Furthermore, it should be noted that the tax structuring of the private equity deals must now be determined taking into account that most of the private equity funds finance part or all of their investment at closing through an equity bridge financing.

Regarding the carried interest, it is in principle taxed as employment income, but a favourable tax regime exists in France if certain conditions are met. In this case, carried interest is taxed as capital gains (ie, at a 30 per cent flat tax rate). In

addition, further to the Brexit vote, the Prime Minister announced that the taxation of carried interest as capital gains may become 'systematic' for individuals who relocate in France. We have no additional information at this point but are following this subject closely.

**GTDT: Looking ahead, what can we expect? What might be the main themes in the next 12 months for both private equity deal activity and fundraising?**

**CC, SC, FH, ACR, AS & PV:** Two major trends may have an impact over the next 12 months. The first is the strong appetite of private equity funds to make acquisitions, with a focus on primary LBOs; and the second is the ongoing development of debt funds pursuant to the reform that entered into force in January 2018 (as of 2016, since French funds have been authorised to directly originate loans this has resulted in an increase in the offer of debt funds on the French market).

*Also available online*



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