NautaDutilh

5 trends in Private Equity

Intro

In the field of Private Equity we identified the following five trends that will shape your agenda in the coming year. The five main developments we have identified are:

#1 M&A: hot, hotter, hottest

#2 SPACs

#3 W&I insurance on the rise

#4 Lev Fin: a New Normal?

#5 WHOA: restructuring made easy

#1

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The M&A market will continue to be extremely competitive

Hot, hotter, hottest?

Despite Covid-19, M&A deals were on the up in 2020. So far nothing less for 2021, in fact, the increased activity we have seen so far suggests that the M&A market will continue to be extremely competitive. This should also not be a surprise given the reported amounts of capital that still need to be put to work. Some of that capital will be allocated to special purpose acquisition companies (SPACs) as their entering the market will continue well into this year (see below). The SPACs add to the already crowded market space. In this space, we've seen a growing number of new investors too. Finally, opportunities for distressed M&A should be on the rise once the real effects of the Covid-19 pandemic begin to show. We would expect these to be in sectors like transport, energy, construction, leisure and hospitality.

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This alternative to the traditional M&A exit started in the United States and is now growing in popularity in Europe

SPACs

The reverse merger using a SPAC came into its own in 2020. This alternative to the traditional M&A exit started in the United States and is now growing in popularity in Europe, as evidenced by the number of reverse listings on Euronext Amsterdam. It can be used for a variety of transactions – such as IPOs and corporate spin-offs – by private equity firms, venture capitalists and other founders. Based on what we see on the market and the deals we are currently working on, we expect SPAC activity to continue in 2021, barring unforeseen events affecting the economy and global capital markets. The ambition of realizing a SPAC listing on Euronext Amsterdam is a process that requires an integrated approach in the capital markets, tax, corporate and regulatory area, which makes our firm uniquely suited for the task.

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We expect W&I insurances to continue expansion into the distressed M&A space

W&I also on the rise

More competitiveness in the M&A market, an increasing number and amount of W&I related claims and less appetite to take on risk has reportedly seen premiums and cover percentages rise. In addition, there are increasingly more types of ancillary insurance products available to allow bidders to be even more competitive in an auction. We'd also expect W&I insurances to continue expansion into the distressed M&A space. This will come with certain challenges with limited possibilities for due diligence, increased complexity and generally more uncertainties. There is an interesting dynamic at play here. The nature of distressed M&A deals would see W&I insurance providers be more prudent and less likely to provide cover. On the other hand, on the buy-side, there should be real demand for adequate cover to be put in place as the insurance is likely to be the only real means of recourse against the seller.

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The leveraged finance market will continue to be competitive

A New Normal?

Optimism about vaccinations and warmer weather makes us think about life and business going ‘back to normal’ (although the pace with which this goes is probably slower than we’d expected). ‘Back to normal’ will go hand in hand with a run-off of support programs put in place by the government. Bankruptcies are at an all-time low and may have been prevented by these programs, but regular payments (and catching up with all what has been deferred so far) will have to resume at some point. This adds to the costs of re-starting businesses and can be significant if you also take into account other or new costs to adapt to a ‘New Normal’. Continued WFH, different office or workplace set-ups, increased safety and health measures etc. are a few things even businesses largely unaffected by (or maybe thriving as a result of) Covid-19 will have to factor in. If your capital structure is fit to deal with this, you’ll continue business as usual, but others may not, and also have to deal with scheduled repayments and upcoming maturity dates. As with M&A, the leveraged finance market will continue to be competitive. Leverage has been at a peak in Private Equity backed deals. Also, we’ve seen flexibility afforded by finance documents still steadily increasing and as long as any of the newly added features will not have to be used or put through a test in a distressed environment, flexibility will align more and more to what is custom in the US market. For those whose financial metrics support a refinancing, 2021 should be a good year to do so before any market changes lead to greater pushback on terms and pricing from lenders (which in our view would be inevitable at some point).

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The WHOA allows for restructuring plans to be pushed through, even if not all creditors agree to such a plan

Restructuring (made easy)

The new *Wet Homologatie Onderhands Akkoord* (WHOA) provides an opportunity to restructure both your balance sheet and long term contracts in a way that was not available prior to 2021 and which follows established restructuring practices in both the US and the UK. If a restructuring is required in the wake of the pandemic, this option should be explored. It allows for restructuring plans to be pushed through, even if not all creditors agree to such a plan. The court can already confirm a restructuring plan if creditors holding 2/3 of the debt support such a plan. At the same time, on the operational side, long term contracts can be addressed as the WHOA gives you the opportunity to request approval for changes to those contracts. If counterparties would not be willing to cooperate, those long term contracts can be prematurely terminated and any resulting claims from those counterparties can be part of the wider restructuring plan. We expect this change in negotiation position to assist you implementing changes that support the business going forward. As always, restructurings require a thorough, timely and pro-active approach to ensure staying in full control of this process.

About our Private Equity team

NautaDutilh's Private Equity team includes corporate and finance lawyers, tax advisers and civil law notaries, all dedicated to combining their individual expertise into one integrated team. This approach enables us to offer our clients a fully integrated and seamless service on all aspects of a Private Equity transaction across the Benelux jurisdictions and together with our global network of high quality independent law firms also beyond into pan European or global transactions.

What Sets Us Apart?
What binds us and sets our team apart from other teams is the combination of top quality and experience with high-end international Private Equity and M&A transactions, and the ability to apply that quality and experience in a pragmatic and solution-oriented way in Benelux Private Equity transactions. We are 'best in class' and knowledgeable as regards 'what is market' in each of the three Benelux countries.

Another element that sets our team apart from others is our ability to be of value during the entire 'Private Equity Life Cycle'. The essence of the Private Equity industry is investing in businesses and selling them with a profit. In the period between the investment in a business and the exit, various initiatives are carried out to increase the value of such a business. Because of the breath of services that NautaDutilh offers as a full service firm, i.e. from employment law to data protection, and the excellent relationships with high quality independent law firms globally, NautaDutilh's Private Equity team is able to add to that value increase throughout the entire life cycle.

By doing so, we create a care-free legal environment for Private Equity sponsors by ensuring the full range of legal and commercial services, at the highest level of quality, with a focus on adaptive solutions that facilitate the business of Private Equity sponsors and help them realize an optimal return.

A Private Equity Powerhouse
International and Benelux private equity sponsors consider us the go-to firm for their structuring and transactional work in the Netherlands, Belgium and Luxembourg, as evidenced by our recent work for clients such as Apax Partners, Apollo, Astorg, BC Partners, HAL Investments, J.C. Flowers & Co, Levine Leichtman Capital Partners, NPM Capital, The Carlyle Group and TPG. Furthermore, we are the referral partner of choice for top-tier international law firms seeking legal advice on private equity matters in the Benelux.

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