

What is a private equity fund?  
Key corporate issues for private equity acquisitions

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*Key corporate issues for private equity acquisitions*

### **1.1 Overview**

- Financial investors in equity & quasi-equity securities in unlisted entities
- Early stage / expansion / buyout

### **1.2 Typical structure**

- Management company – small teams, mix of investment banking / consulting / finance / operational backgrounds, many owned by principals, but some owned or affiliated with institutions
- Investor base – funds of funds, superannuation & pension funds, institutional and government investors, management & associates

### **1.3 Fund terms**

- Committed capital: available for draw-down on an as required basis (10-14 days notice)
- 4-5 year investment period, 8-10 year fund term
- Investment restrictions: vary according to focus & nature of fund. May include
  - deal size – eg, 20% of total capital of the fund
  - geographic restrictions – eg. Australia / NZ / Asia
  - industry restrictions – eg, buyout funds may be restricted from property / resources / finance / technology / public entities
  - bridge finance – eg, bridge finance provided by the fund not to exceed 20% of total capital of the fund
  - others – control / minority, follow-on deals, fund-specific terms
- Manager remuneration:
  - Management fee: % of committed capital
  - Performance fee (carried interest):
    - return of invested / committed capital
    - preferred return to investors
    - then split profits 80/20 between investors and manager / principals
- Expenses: fund pays some / all deal expenses

#### **1.4 Private equity fund structures**

- Separate management company
- Fund vehicles
  - wholesale unit trust/s
  - incorporated limited partnership / VCLP
  - investment company
  - offshore structures
  - retail unit trust
- Co-investors
- Dual / multiple structures

#### **1.5 Private equity deal types**

- Proprietary vs. auction
- MBO / MBI – spin-offs, family / entrepreneur / other private businesses
- Public to private
- Investee acquisitions / divestments / JV's
- Corporate joint ventures
- Secondary acquisitions & refinancings

#### **1.6 Work streams**

- Acquisitions
  - due diligence – commercial / legal / accounting / tax / financiers
  - sale & purchase agreement
  - conditions precedent / dealings with third parties and regulatory bodies
- Equity / quasi-equity – NewCo / structure, subscription agreement, shareholders agreement, constitution, management agreement, shareholder loans
- Management
  - terms: share / option plans, executive contracts, warranties, shareholders' agreement, pre-existing management equity
  - deal considerations: access to management, conflicts, confidentiality, departing / incoming executives
- Financing
- Project management

**1.7 *Specific issues for private equity investors***

- Deal certainty / broken deal costs – impacts on deal process, due diligence phases, conditions precedent, time when financiers are brought into the deal
- ‘Ring-fencing’ – no shareholder guarantees / security, trustee limitation clauses
- Draw-down timing and completion
- Exit options – tag, drag, put & call, trade sale & IPO provisions
- Clean exits