We strive to be your business partners – to provide concrete and pragmatic insights that help you achieve your broader goals and exceed your expectations at every turn.

Barry M. Wolf
Executive Partner
Last year marked the end of my fifth year as Executive Partner and 30th year at Weil. Over the past five years, we have seen various shifts in global business cycles and have watched new industries and products develop and flourish. Throughout, our Firm has maintained steadfast and evolving relationships with our longstanding clients while also providing a global platform for newer clients on the vanguard of change – helping them access new markets, providing counsel so that they could change and grow.

When I came into this role, the Firm had expanded to all of the global markets and practices in which we sought to focus at the time. The goal was to continue to build our top base of public company, private equity and financial institutions clients. And to continue to build the future leadership of the Firm – so that our partners could continue to help our sophisticated clients innovate and adapt to changing markets.

Founded on a spirit of collaboration and a culture of entrepreneurialism, Weil has long taken pride in helping our clients forge new ground. Like our clients, we have never been ones to ask: “How was it done last time?” The Firm is built on individuals who thrive on finding new roads to success for our clients. We strive to be your business partners – to provide concrete and pragmatic insights that help you achieve your broader goals and exceed your expectations at every turn.

We also aim to exceed our own expectations of ourselves, and we are proud of the many outstanding results we have worked together with you to produce. But we are not satisfied with where we are today and are always finding new ways to achieve even greater things. All our partners live and breathe our clients’ businesses – so that we can be seamless and proactive in our approach, can anticipate change for our clients and can partner with you on ongoing initiatives.

Looking ahead, we feel a mood of cautious optimism. Market fundamentals are strong in some geographies and practices, but we are also confronting new challenges. Global market conditions continue to change opportunities in Private Equity on a real-time basis; shareholder activism has travelled across the Atlantic; the boom in technology M&A illustrates the importance of understanding new and evolving factors impacting that sector; cybersecurity issues have become a legitimate concern for all organizations; and heightened enforcement efforts are showing the importance of solid compliance programs as well as crisis avoidance and response strategies; to name but a few.

That said, this is an exciting time for businesses willing to capitalize on new and unique opportunities while managing systemic risks – to be a first mover in your market and a forward thinker.

The pieces that follow provide insights on these challenges and new ways to think about market opportunities and risks. And we hope you will find them enlightening and, perhaps, they may even spark conversations within your organizations.

On a sad note, many of you are probably now aware of the news that our partner Harvey Miller passed away. Harvey was our 14th partner and was a leading force in Weil’s transformation into one of the world’s preeminent law firms. He was the premier bankruptcy law practitioner and set the standard for how to approach, develop and expand the practice, not only at Weil but across the legal industry. We will remember Harvey with the utmost gratitude and respect and thank him for the vast contributions he made to Weil’s success over the years.

As always, thank you for entrusting us with your most important legal matters and we look forward to continuing to partner with you on meeting your business goals.

Barry M. Wolf
Executive Partner
New Partners

Fabienne Beuzit  
Business Finance & Restructuring  
Paris

Patrick Bright  
Banking & Finance  
London

Andrew I. Chizzik  
Private Funds  
New York

Edouard de Lamy  
Tax  
Paris

Anish Desai  
Patent Litigation  
Washington, D.C.

Stephen Fox  
Private Funds  
London

New Lateral Partners

Frank R. Adams  
Capital Markets  
New York

Albert S. Cho  
Private Funds  
Hong Kong

Tim Gardner  
Private Equity  
Hong Kong

Reena Gogna  
Banking & Finance  
London

Chris McLaughlin  
Banking & Finance  
London

Jeffrey H. Perry  
Antitrust/Competition  
Washington, D.C.

Lyuba Goltser  
Public Company Advisory Group  
New York

Ariel Kronman  
Structured Finance & Derivatives  
New York

Brian Maher  
Structured Finance & Derivatives  
London

Tom Richards  
Banking & Finance  
London

Gavin Westerman  
M&A  
New York

Caroline Zalka  
Securities Litigation  
New York

Yannick Piette  
Corporate  
Paris

John E. Quattrocchi  
M&A  
Dallas

Damian P. Ridealgh  
Banking & Finance  
New York

Ray C. Schrock, P.C.  
Business Finance & Restructuring  
New York

Andrew J. Wilkinson  
Business Finance & Restructuring  
London
We are pleased to introduce our 23 new partners, comprising strategic lateral hires and internal promotions announced since the start of 2014. Reflecting the strength of our global practice, more than half of our new partners are based outside the United States.
Introduction: Pragmatic Business Partners in a Changing Global Marketplace
Barry M. Wolf, Executive Partner

4 Weil’s New Partners
8 Cybersecurity Pop Quiz
10 What to Expect When You’re Investing
12 Shareholder Activism
  Managing Risk in the Technology Market
  A Transatlantic Analysis

14 Courting Jurors
16 Investigations
18 The French Connection
  France Leads Charge in European Deal Boom
20 Yankee Revolution
22
Global Private Equity
Trends in Minority Investments

26
French Private Equity
Taking Power

30
German Private Equity
What’s Driving German Private Equity in the New Regulatory Landscape

32
Asia Private Equity
Looking Back – 10 Years of Growth in Asia Private Equity

34
Asia Private Equity Fundraising
Considerations for Managers Returning to the Market

36
Private Equity/Energy Outlook 2015
How Sponsors Can Hold On to Value in “Interesting Times”

38
Private Equity: Distressed Investing
in Europe and the United States

40
Central Europe
What Is Next After 10 Years of E.U. Membership and 25 Years of Economic Liberalization?

42
Mergers in the Crossfire
How to Deal with Antitrust Agencies in an Era of Aggressive Enforcement

44
For-Profit Education
Plan Now, or Pay Later

46
Diversity

48
Pro Bono
How to Build a Global Pro Bono Network
Everyone is talking about cybersecurity.

And why not? In the past year, cyberattacks have made headlines as never before. Major companies in a number of industries suffered breaches that not only threatened their underlying businesses, but also became high-profile media events in their own right.

You may be acquainted with these incidents, but are you prepared for one yourself? Do you understand how vulnerable your company or organization may be?

Find out – take our Cybersecurity Pop Quiz. If you’re not sure of the answers to any of these questions, you still have work to do before your company is as safe as it can be.

Weil’s Cybersecurity, Data Privacy & Information Management group develops holistic strategies for mitigating business and legal risks associated with the aggregation, use, dissemination, and storage of information and data, and, in the event of an incident involving that data, addresses any regulatory inquiries or investigations, and defends against shareholder, consumer, employee and other litigation. View more information on our best-in-class capabilities.

Which of the following is not an example of a cybersecurity threat?

(a) GameOver Zeus  
(b) CryptoRansomware  
(c) Alureon  
(d) Thanos  
(e) Kover

Does my company allow remote access to its network, and have the vulnerabilities of such access been thoroughly examined?

What requirements does my company impose on vendors, suppliers, consultants and other third parties with respect to protection of my company’s data?

When did my company last conduct a comprehensive cybersecurity and privacy risk assessment?

Does my company need to comply with COPPA, FCRA, FERPA, GLBA, HIPAA, Reg S-ID, or SEC Reg SP?

Does my company have a written business continuity plan? Does it cover our phone system? When was the last time we tested it?

Is the topic of cybersecurity a regular agenda item for our board’s audit committee?

In what countries are our company’s most sensitive computer-based data and information stored? Do we transfer personal information across international borders?

Does my company store competitively sensitive information in “the cloud,” including private clouds?

How often does my company conduct employee cybersecurity training?

(a) Monthly  
(b) Quarterly  
(c) Annually  
(d) Frequently

If I receive a telephone call from the FBI informing me that my company has been the target of a cyberattack for the past six months, what should I do? Is our response plan in writing, regularly reviewed and updated?

Does my company face gaps in insurance coverage (particularly in D&O, E&O and commercial general liability insurance) due to exclusions for cyber-related incidents?

Randi W. Singer  
IP/Media Partner  
New York

Michael A. Epstein  
Head of Weil’s Technology & IP Transactions Practice Partner  
New York
1: (d) Thanos, a Marvel Comics villain who came to dominate the universe with extraordinary superpowers, is less frightening than GameOver Zeus (botnet), Crypto Ransomware (malware that locks a computer until ransom is paid), Alureon (Trojan) or Kovter (malware).

3: Your security regimen is only as good as that of your partners. Vendors have been responsible for a number of major breaches and vendors who share your company’s data in violation of your privacy policies can cause lawsuits and government investigations.

5: You need to know, because each of these regimens mandates complex security rules including data encryption, reporting, privacy and disaster recovery provisions.

7: Data breaches are business risks – plain and simple – and your audit committee needs to get educated and address cybersecurity regularly. Not sold? One major corporation, a recent victim of a data breach, faced an ISS request for a board shake-up.

9: …and if you do, you should either encrypt the material and hold the encryption key yourself or be prepared to accept the risks of an outside party controlling your secrets.

11: Any after-the-fact response is too little, too late. Drill your people in the plan so that the response is orderly and calm. Make sure every business unit is covered, and the plan spreads out responsibility for execution to avoid single points of failure. And if the documentation is out-of-date or the personnel no longer work there, what good is the plan?

**did you know...**

2: Insecure or improperly used remote access technologies offer a number of vulnerabilities to hackers. Be aware of security issues involving employee use of cloud storage, screen-sharing applications and even VPNs.

4: Less than a year ago, we hope. Cybersecurity and privacy risk assessments should be performed on an annual basis at least, or whenever there is a significant change to your systems – for instance, during a change in a database vendor or when integrating a new acquisition.

6: A comprehensive business continuity plan – practiced during regular “drills” – is one of the soundest investments a company can make. A quarter of businesses will not reopen following a major disruption – will you?

8: Even in the age of distributed storage, location matters. Example: Russian law requires Internet companies that collect personal data from Russian citizens to store that data on Russian servers.

10: (d) Frequently. Will someone from the C-suite click a link in a spear phishing/whaling email? Everyone at every level needs to be kept up on company-wide policies and procedures. But workers with access to sensitive information need to be trained more frequently, as changes in their jobs and current projects require.

12: Some standard policies contain exclusions for losses from cyber-related incidents, while cyber insurance itself routinely excludes coverage for acts of war or terrorism. Review your policies to uncover – and address – your coverage gaps.
Managing Risk in the Technology Market

Last year was a robust year for overall M&A activity, with a total global volume of $3.5 trillion. Strategic acquirors, after sitting on the sidelines for several years, began to feel confident enough to execute deals again. Special attention was paid to the technology marketplace: 2014 was the most active year for announced technology deals since 2000, with worldwide volume reaching $280 billion. This level of activity has continued through the first quarter of 2015.

Not surprisingly, investors wishing to stake a claim in the technology market for the first time may be in uncharted territory – for example, not knowing whether patent trolls should be viewed as a serious threat or minor annoyance and needing to weigh the myriad considerations surrounding licensing rights. Even savvy players in this space face a changing landscape as “big data” looms large on the horizon and standard practices such as representation and warranty insurance have proliferated to include IP.

Some issues to consider when investing in the technology sector:

**Patent Trolls**

Non-practicing entities (NPEs), or “patent trolls,” are a source of concern for every prospective tech investor. Acquirors based in the United States are well acquainted with the damage they have wrought. Investors first entering the U.S. market may not be as familiar with NPEs, partly because of cultural factors, but mainly because foreign laws and related litigation rules governing patents have generally discouraged such activity outside the United States. Nonetheless, this lack of familiarity itself inspires caution.

NPEs hold patent rights without creating products or services based on the patented inventions and enforce their patents in court. Over the last approximately five years, the influence of NPEs more than doubled – by 2013, 67% of all new patent infringement cases were filed by NPEs, up from 28% in 2009. Of late, median damages awarded to NPEs in patent cases have been triple those awarded to practicing entities.

It is critical when investing in the United States to place appropriate bounds around the risk associated with NPEs. Underestimating the risk can result in investment underperformance as NPE-associated costs and distraction sap returns. Conversely, overestimating the risk may cause an investor to pass on opportunities that are, in fact, very attractive.

To arrive at an appropriate valuation for the target and avoid surprises that can turn a successful deal into an unsuccessful one, the risks of litigation...
Since data is central to the competitiveness of any tech company, due diligence regarding the target’s data ownership and usability is imperative in the early stages of a transaction. Some questions to consider:

- How have end-user agreements assigned data rights between the target and its suppliers/customers/users?
- Is data generated by the supply chain owned exclusively by the target or mutually with its partners in the chain? What about predictive analytics generated from use of the data?
- What governing agreements has the target entered with partners for the use of the data, and how will those agreements affect business plans after the transaction closes?
- If the target has partnered with academic or government organizations to gather, produce or use data, how are their rights to the data governed? Do they supersede or otherwise eclipse the target’s rights?
- Where is the data housed, and who owns the underlying infrastructure for collecting and storing it?

Representation and Warranty Insurance

Representation and warranty insurance is playing a much larger role in contemporary dealmaking: The use of R&W insurance grew fourfold in 2014, to a total of $12 billion in policies issued (as compared with 2013’s $3 billion).

Strategic investors are beginning to use R&W insurance to protect themselves from misrepresentations or risks related to a target’s intellectual property, and to secure a strategic advantage in negotiations. Consider these situations:

- A seller may represent that the target can conduct its business without violating the IP rights of others, without knowing that another party (an NPE, for instance) might own patents that would interfere with the target’s business.

Licensing Rights

Licensing rights have become exceedingly more complex, and can affect corporate value long after closing.

How can an investor be sure of which licensing rights it will own when the deal closes? How has the target been exploiting its rights in other jurisdictions? Have the agreements exposed valuable IP to the eyes of a competitor—how carefully has it been guarded? In which venues will the rights be enforceable? And how do those rights play into a company’s overall business strategy?

Questions like these make licensing agreements a crucial part of due diligence, deserving a level of attention that is equal to (and sometimes greater than) that accorded to tax, accounting and corporate issues.

Big Data: Big Considerations

Ninety percent of the world’s digital data was created in the last two years, and that astounding rate of growth seems likely to continue, driven by mobile and sensor technologies. Of necessity, every company is now obligated to manage significant, if not massive, amounts of data. Technology targets as a matter of course are attached to more significant data repositories and other data-related assets than companies in other sectors. This adds layers of complexity to any transaction in the industry.

Since data is central to the competitiveness of any tech company, due diligence regarding the target’s data ownership and usability is imperative in the early stages of a transaction. Some questions to consider:

- How have end-user agreements assigned data rights between the target and its suppliers/customers/users?
- Is data generated by the supply chain owned exclusively by the target or mutually with its partners in the chain? What about predictive analytics generated from use of the data?
- What governing agreements has the target entered with partners for the use of the data, and how will those agreements affect business plans after the transaction closes?
- If the target has partnered with academic or government organizations to gather, produce or use data, how are their rights to the data governed? Do they supersede or otherwise eclipse the target’s rights?
- Where is the data housed, and who owns the underlying infrastructure for collecting and storing it?

Representation and Warranty Insurance

Representation and warranty insurance is playing a much larger role in contemporary dealmaking: The use of R&W insurance grew fourfold in 2014, to a total of $12 billion in policies issued (as compared with 2013’s $3 billion).

Strategic investors are beginning to use R&W insurance to protect themselves from misrepresentations or risks related to a target’s intellectual property, and to secure a strategic advantage in negotiations. Consider these situations:

- A seller may represent that the target can conduct its business without violating the IP rights of others, without knowing that another party (an NPE, for instance) might own patents that would interfere with the target’s business.
Over the last two years, discussions of shareholder activist campaigns have moved from the boardroom to the front pages of the papers. The top 50 activist investors alone now manage almost $160 billion in capital and have wagered up to $4 billion on a single investment, in some scenarios, making active shareholders not only brand-name legends in the United States but an asset class unto themselves. In 2014, Activist Insight reported 708 activist investments from regulatory filings – a 43% spike from the prior year’s 494. There has also been a more than 70% rate of success in activist campaigns coupled with a high public awareness of that success, as managers like Bill Ackman and Jeff Smith had banner years and achieved iconic status.

The proliferation of active shareholders and the growth in the number of campaigns in the United States in the last 10 years indicate that this is not a fly-by-night trend but rather a new business reality that public companies of all types and sizes – even those with the largest market caps and brand presence – now need to understand and work with. But what started out as a relatively “American phenomenon” is becoming more global, gaining traction recently in Europe, particularly in the United Kingdom. What U.S. companies have seen may provide valuable lessons for European public companies, but regulatory, corporate governance and cultural differences on both sides of the pond create important distinctions.

Recent U.S. Case Studies
As the chart on the lower right demonstrates, Weil has handled a broad range of activism matters over the past several years and has learned how to establish dialogues with active shareholders and work with boards and companies to achieve successful outcomes in crisis situations. In early 2013, the Board of Directors of Herbalife engaged Weil to provide counsel in the wake of Bill Ackman’s shorting the stock in highly public fashion. Soon thereafter, Carl Icahn backed the company’s stock, and the battle in the court of public opinion ensued. We have helped guide the board of this company through the vicissitudes of this saga, including the media and reputational management.

In a very different scenario, Weil’s work for Health Management Associates during its $7.6 billion sale to Community Health Systems also involved working with an active shareholder but in a transactional context. Ten days before the deal signed, the company’s biggest shareholder, Glenview Capital Management (which held approximately 15% of company stock), challenged the transaction, launching a consent solicitation to oust the board. Within weeks a new board was in place evaluating the transaction. In these situations, companies and boards have to be able to make swift assessments and engage in candid dialogue with the various stakeholders involved. In this transaction, the Weil team was able to illustrate the merit of the deal to Glenview and to the new board and complete the transaction in a manner favorable to all parties. Again, every active shareholder and every situation varies, making deep knowledge of the landscape and the players of paramount importance.
United Kingdom, with virtually no public companies with classes of stock carrying weighted or multiple voting rights.

- No poison pill protections are in place for corporates in the United Kingdom as required under the country’s Takeover Code.

Despite more favorable conditions, signs remain mixed. There were 24 public companies targeted in the United Kingdom in 2013 but that number decreased slightly to 22 in 2014. Still, 40% of activist funds have a European or global investment focus* and several high-profile activist funds have operations in the United Kingdom and Europe.

In addition, in the last few years communications specialists who advise in this space have opened in London, and many investment banks have established units focused on activism in this region. Often campaigns in Europe involve less publicity and are conducted through private contacts between investors and non-executive directors rather than in the media and the courts.

So companies and boards in the United Kingdom and throughout Europe need to be mindful of the changing landscape of activist investing and the new rules of the game that may come into play. Given the newness of the phenomenon and cultural differences at work in the United Kingdom and Europe, companies and boards would be wise to take a constructivist approach to any active shareholders rather than an adversarial one.

To take a lesson from grammar school: no one ever got punished for playing nicely in the sandbox.

Europe and the United Kingdom

For Europe, engagement between public companies and shareholder activists has been more recent and, as noted above, various factors may make the storyline different. Looking, for a moment, at just the United Kingdom, favorable conditions exist for active shareholders there (even as compared to the United States) for the following reasons:

- The United Kingdom has more extensive transparency than the United States surrounding disclosure of interests in public companies, and an activist can easily review the company’s share register (as well as public disclosures about beneficial ownership of shares) and potentially approach shareholders directly on campaigns.

- U.K. shareholders may require a resolution to be proposed at a shareholder meeting when they have as little as a 5% stock position – unlike in the United States, where many Delaware-incorporated companies make no special shareholder meeting provisions or may require 10%, 25% or even 50%-plus ownership threshold.

- There aren’t as many complexities in shareholder structures in the United Kingdom, with virtually no public companies with classes of stock carrying weighted or multiple voting rights.

Since 2012, Weil has advised more than 15 public companies with market caps ranging from under $100M to more than $100B in situations involving the biggest name activists. We have assisted clients in matters involving:

- Barington Capital
- Breeden Partners
- Crescendo Partners
- Glenview Capital Management
- Icahn Enterprises Land & Buildings Investment Management Pershing Square
- Sachem Head Capital Management
- Starboard Value
- Sycamore Partners
- Third Point Management ValueAct Capital

Companies and Boards in Any Jurisdiction Should:

Realize
Stay abreast of trends in the marketplace and what is happening at other companies. Don't assume that this will never happen to you

React
Have a meaningful dialogue with an active investor where you listen and hear what their concerns are

Respond
Establish an action plan that shows you have heard their concerns and moves the ball forward

Respect
Remember that an active shareholder is an owner in your company – not the enemy

*data from Preqin Special Report: Activist Hedge Funds (June 2014)
All trial lawyers, no matter which side of the “v.” they are on, agree that jury selection is one of the most important parts of the trial. But picking the “right” jury – or in many instances avoiding the “wrong” jury – is only one step in the process. Counsel’s interaction with the jury continues throughout the trial and that interaction can be a significant factor in the outcome.

More information is always better and counsel should press for as much voir dire and as extensive a questionnaire as the court will allow. But no matter what type of voir dire you get, one goal should trump all others for defense lawyers: eliminating jurors who are predisposed to be skeptical about the defense story in the case. This includes jurors who clearly want to be on the jury, and those who really do not want to be on the jury. In our experience, these prospective jurors often have unstated agendas that could be harmful to the defense case.

Given the limited time you have with the prospective jurors, it is crucial to use it wisely so that you can zero in on who should be eliminated. How do you do this? Ask open-ended questions to get jurors speaking in their own words about their personal lives, avoid questions that elicit only one-word responses, and do not dance around the uncomfortable areas. If a prospective juror espouses a belief that plays into the plaintiff’s themes in the case, you should follow up and extract as much information about a juror’s personal life as you can to demonstrate that these beliefs are so strongly held that they impair his or her ability to be truly impartial.

Consider the following example. After a series of jurors expressed negative views about large corporations, you ask if anyone else shares that view. After a juror raises her hand:

Defense Lawyer Question: Do you believe this corporation is starting off a bit behind in your mind before you have heard any evidence?
Answer: Probably a little bit.

But the juror is then rehabilitated by the plaintiff’s lawyer in the following manner:

Plaintiff Lawyer Question: Are you willing to put aside any preconceived notions you have and listen to the evidence before reaching your decision?
Answer: Yes.

Notable major jury-verdict awards in 2014 from patent and product liability cases

$60+ billion

approximately

200,000

suits subject to trial a year
Jury Selection and Interaction Do’s and Don’ts

**DO**

- Press for as much voir dire and as extensive a questionnaire as the court will allow
- Eliminate jurors who clearly want to be on the jury, and those who really do not
- Ask open-ended questions and follow up
- Extract information to identify who will not be partial
- Use information gleaned during voir dire to connect with jurors during trial
- Use plain English
- Remember that everything you do will be noticed and judged

**DON’T**

- Ask questions that elicit one-word responses
- Dance around uncomfortable areas
- Spend too much time questioning pro-defendant jurors
- Wear flashy/distracting clothing or jewelry

Depending on your particular judge, it is possible that such a juror would not be excused for cause if that were the extent of the individual questioning. On the other hand, there is a significantly better chance you will succeed on your cause challenge if you take the time to follow up with simple questions like “why is the corporation a little bit behind?” or “what experiences in your life have you had that make you say that?” In our experience, when a biased juror is forced to explain her biases in her own words, the justification for a cause strike often becomes self-evident.

A frequent mistake a trial lawyer can make is spending too much time during voir dire on questioning pro-defendant jurors. That often inadvertently identifies your jurors for the plaintiff whom they may have missed, or, at the least, can increase the odds of a successful cause challenge or a well-used preemptory strike.

**Keeping the Jury on Your Side Throughout the Trial**

Now that the jurors are in place, how do you connect with them? Your interaction with the jury throughout the trial can be a significant factor in the outcome.

As an attorney representing a corporate client, you must always remember that the jury will be watching your every interaction with co-counsel, opposing counsel, court staff and the judge. Everything you do will be noticed and scrutinized. Using plain English and avoiding technical jargon, as well as relating to jurors in demeanor and dress (avoid flashy or distracting clothing or jewelry), will assist in connecting with jurors.

On a deeper level, you should learn as much as you can about the individual jurors so that you can incorporate themes, questions and/or arguments into your trial that may appeal to them. This information can be gleaned through the voir dire process, and even simple Internet research.

For example, discovering that certain jurors are fans of sports or certain teams could present an opportunity to connect with those jurors through questioning of witnesses without seeming like you are pandering. In one case, we learned that an especially inattentive juror was preoccupied by sports. As our most important defense witness testified, our lead attorney elicited the fact that the witness had attended Texas Tech and then let loose with the cheer: “Go Red Raiders!” Roused by the sports reference, the juror paid close attention to our key witness and the rest of the trial – and even became a leader on the jury.

Other examples may be learning that a juror comes from a family of teachers, or works in a factory, or has a number of small children. Those nuggets can be used and incorporated into analogies when, for example, an expert is attempting to explain a complex problem, or you are making your closing argument.

For example, in a complicated patent case, we needed to drive home the point that the patent in question was not ready, despite some very preliminary trials that showed efficacy. Knowing that many of the jurors were mothers of young children, we used an ice-skating analogy: if your daughter continually fell on the ice, and just once made it to the side rail without falling, would you say she knows how to ice skate? The jurors embraced our analogy and found for the defense.
You are the general counsel of a public company. Your company has just celebrated the completion of a large equity offering and has never seemed in better shape. Then it comes. The phone rings.

You hear that your ethics hotline received a call from an employee who has alleged that people in the finance department are using improper accounting practices to boost earnings. You ask yourself questions at a dizzying pace: Do I need to call the auditors? Can I tell the CFO? How do I deal with the employee who made the allegations? Can I handle the investigation or does the Audit Committee need to take charge? How much time do we have to get to the bottom of this – can we file our next SEC report before the investigation is completed? If we miss our reporting deadline, how will we explain this to the market and how will our banks and bondholders respond? If the whistleblower is right and we need to restate, how will our share price react and what’s our litigation exposure? Will this incite the activist in our stock? Is this something we are going to have to report to the government?

Unfortunately, this “nightmare scenario” is an increasingly common challenge for public companies. In the last year, SEC investigations focused on accounting, financial disclosure and internal controls were up 30%, and enforcement actions with this focus climbed 46%. The uptick reflects, in part, the work of the SEC’s Financial Reporting and Audit Task Force, a team of accountants and attorneys formed in July 2013 who are using data analytics, street sweeps, the burgeoning number of whistleblower tips and other tools to hunt for improper practices.
With public companies more likely to have an accounting crisis on their hands than at any time since the last wave of accounting fraud scandals 15 years ago that led to Sarbanes-Oxley:

**what do you need to KNOW?**

You need to know that allegations of accounting improprieties differ significantly from other types of allegations you may be called upon to address. For one thing, accounting allegations often implicate senior management, either directly or by calling into question the “tone at the top.” Second, the outside auditor has “10A” obligations to report to the SEC if it concludes that appropriate investigatory and remedial actions are not being taken, as well as its own regulatory and litigation concerns. As a consequence, the outside auditor will dedicate a team of its own forensic specialists to shadow the investigation of the allegations to ensure that the audit firm is satisfied with the scope, process and findings of the investigation. Third, if the findings require withdrawing reliance on previously issued financial statements, the company will “go dark” until a restatement can be completed, which may result in the company violating reporting covenants in its debt agreements and losing access to the capital markets, among other business fallout. Finally, a drop in the company’s share price will inexorably follow disclosure of any substantiated allegations, as will shareholder class action and derivative lawsuits, attention from the government, and, often, new or heightened interest from shareholder activists. All of this will put great pressure on the board and senior management to complete the investigation quickly, notwithstanding the complexities.

**what do you need to DO?**

These differences affect what you do in response to accounting-related allegations. First and foremost, the investigation of the facts must be done credibly, which means that it likely should be conducted independently by the audit committee (and certainly if senior management is implicated), aided by independent outside counsel and forensic accountants. But because an accounting-related investigation has potential implications far beyond identifying errors in accounting, the investigations team to be assembled should have expertise not only in uncovering the facts, but also in addressing the broad array of public company and other issues that the investigation may raise: disclosure, governance, dealing with government enforcement, dealing with the securities exchange on which the company is listed, banking and finance, securities and derivative litigation, shareholder activism, and employment and benefits (because employees may need to be separated and others hired). The investigations team will need to work constructively and proactively with different constituencies – the board, the auditors, shareholders and creditors – whose interests may not always perfectly align. The investigations team will also need to quarterback the other professionals – including top-notch public relations specialists, investment bankers and compensation experts – whose assistance will be required if the investigation finds a significant problem.

The Best Crisis

Of course, the best crisis is the one that never happens. We offer a few practical suggestions for how to reduce the likelihood of an accounting-related crisis in this era of increased whistleblower activity and heightened enforcement:

- Stress the importance of accurate accounting and financial reporting at all levels of the company.
- Ensure all employees know they are empowered to speak up if they disagree with an accounting treatment or believe a disclosure is necessary.
- Periodically refresh employee education about the various ways to report a problem.
- After each Form 10-K, evaluate the disclosure process to see what worked well and what could be improved for the current year.
- Closely monitor auditor performance and independence.
- Train everyone to be careful about emails – the cost of an injudicious comment today can be enormous when read in hindsight tomorrow.

And, finally, recognize that even the best compliance programs can fail. Develop a crisis management plan that will enable you to answer the dizzying array of questions that will confront you the moment an accounting-related allegation arises – and that will provide as much stability to the company as possible during the early, often turbulent days of an accounting investigation.
France Leads Charge in European Deal Boom

**Overall Surge in Europe**

M&A activity boomed globally in 2014, and Europe was no exception. European businesses clearly renewed their interest in M&A in 2014, with deal value surging 39% year over year to €671.5 billion, and deal count increasing 8% to 6,286 deals.

Buyers from around the world eyed Europe’s premium assets and made transformative plays at a rate not seen since the financial crisis. See: What Sectors Were Hot.

**Focus on France**

In line with overall European activity – and contrary to predictions that a Socialist government in France would hinder foreign investment into the country – France was the most active market for cross-border M&A in 2014. For the first time since 2001, the United Kingdom was no longer the most targeted European country by value as French activity soared to a pre-crisis high. The €120 billion in deals in France during 2014 represented the highest value since 2007 (€149.7 billion), a dramatic 320.6% increase compared with 2013 (€28.5 billion). As a result, France’s market share of European M&A value hit 17.9%, its largest since 2004 (20%).

The top deals highlight the significant boost of cross-border transactions involving French-listed companies, such as the Lafarge/Holcim tie-up (€28.8 billion), the SFR acquisition by Altice (€17 billion) and GE’s acquisition of Alstom’s Power and Grid businesses (€9.8 billion).

**Themes Driving European M&A**

These transactions, as well as others that occurred in Europe last year, point to a number of common M&A trends that are likely to be relevant in the near term:

- **Regulatory interventionism**
  As shown by the three largest transactions in France, the antitrust aspects of deals are becoming increasingly strategic and sensitive as the number of antitrust authorities and prior approval systems increase. In most instances, these authorities add conditions to the deal, creating more uncertainty about both the outcome and timing of certain regulatory processes required for approval (even where the market at issue is not the deal’s center of gravity). A number of high-profile public M&A transactions have been either delayed or blocked by competition regulators. Recently, China’s MOFCOM ruled against a proposed merger of Denmark’s AP Moller Maersk, Switzerland’s Mediterranean Shipping Company and France’s CMA CGM on competition grounds (despite clearance being granted in the United States and European Union), and the European Commission launched an in-depth probe into GE’s partial takeover of Alstom.

- **Government interventionism**
  Governments are increasingly trying to intervene in strategic transactions involving their “national champions.” For instance, the Pfizer-AstraZeneca deal (noted in What Sectors Were Hot), which failed, was subject to significant negative press as well as criticism from the U.S. and U.K. governments. In France, two apparently contradictory trends find the French State divesting its...
The Alstom/GE deal provides an example. Amid media excitement over this deal, France amended its regulation on foreign investments with a decree on May 14, 2014. The decree extended the scope of the “protectionist” rules to include more general business sectors like gas, electricity, transport, water supply, electronic communications and public health, provided that their activities were “essential to ... public order, public security or national defense.” Previously, only deals in a limited number of business sectors (e.g., military or encryption) required prior authorization by the French Ministry of Economy.

However, since the decree of May 14, 2014, there has been a significant shift in the government’s policy, which tends to foster foreign investments in France. It is worth noting that a Chinese consortium has been recently retained by the French government in the privatization of a regional airport.

Shareholder activism
Shareholder activism (see page 12) in Europe is less developed than in the United States, but recent studies anticipate that it will increase in the coming years. If it does, large corporations would likely review their strategies and pursue M&A transactions such as spin-offs.

As economic conditions are uncertain across Europe, it is rather difficult to predict what the European M&A market will look like throughout 2015, though early signs seem favorable and hospitable to deals. We believe that (i) certain industries will continue to pursue consolidation (the French telecom, defense, nuclear and energy, and real estate sectors), and (ii) the following factors will positively influence European M&A:

- Abundant pools of capital and cash reserves
- A low-interest rate environment
- A search for growth outside stagnating home markets
- Government divestment
- Shareholder activism
- Returning U.S. investors, in particular corporates, given the strength of the U.S. dollar

What Sectors Were Hot

The pharmaceutical, medical and biotechnology (PMB) sector showed sizable gains this past year, as volume increased 17% year over year, to 431 deals, and value more than doubled, to €86.2 billion, over the same period. A key trend for PMB companies was the increase in inversion deals. U.S.-based medical device manufacturer Medtronic announced plans to acquire competitor Covidien for €33.9 billion. Initially, the deal was in part aimed at lowering Medtronic’s tax bill, as the company planned to relocate its headquarters to Ireland to avoid paying taxes on offshore earnings. But even after the U.S. Treasury and Internal Revenue Service issued new tax guidelines closing this loophole, Medtronic still pursued the deal, probably because it also included synergistic benefits and expansions into higher-growth emerging markets. Other inversion deals, such as AstraZeneca’s planned acquisition of Pfizer, collapsed amid these changes.

Technology, media and telecommunications (TMT) also had a tremendous year. Transaction volume increased 10% year over year, to 938 deals, while value jumped 18%, to €120.4 billion – driven by a number of factors. In late 2013, the European Commission outlined plans to move toward a single telecom market to reduce roaming fees, improve customer choice, and help consolidate the fragmented industry. This move has encouraged European telecom players to look across borders for acquisitions.
Can you give us a quick primer on Yankee financings?

Mark Donald: Sure. When companies with few U.S. holdings, or none at all, issue debt in the United States under structures governed wholly by New York law, we call the instrument a “Yankee financing.” This style of lending has become enormously popular of late – the total volume of Yankee financings has increased more than 15 times between 2008 and 2014. It’s being widely used by European companies for acquisition financings, refinancings and dividend recapitalizations.

Daniel Dokos: There’s a variety of reasons for their popularity. A New York-style loan structure offers borrowers access to the very large, very robust U.S. loan market. Issuers can take advantage of more favorable terms and better pricing than they might find overseas. Yankee financings are also a popular choice for non-U.S. issuers who seek to diversify their investor base.

MD: An important factor in Yankee financing popularity is that the United States offers debtors more latitude in how they operate their companies, in particular because these loans are typically “covenant-lite,” while European loans traditionally include at least one financial covenant.

Yankee financings really came into their own when U.S. corporate borrowing rates were at record lows. And European lenders were eager to take advantage of the situation to bulk up their own capital levels which suffered in the wake of the financial crisis.

When did Weil start working on Yankee financings?

MD: Weil was actually one of the first...
firms to execute a Yankee financing: we advised Mubadala on the financing for its acquisition of EMI back in 2011 and 2012. All of the debt that was being refinanced in the transaction was U.K. debt; it was refinanced in the United States to take advantage of liquidity. The deal could not have been executed without the Yankee financing element. Also, because of the precedent set by New York law, structuring the arrangement was just easier. Most people at the time didn’t understand what we were doing; it was quite novel. We’ve been working on these types of financings regularly since, so we have a solid understanding of the issues involved.

Tell us about some of the Yankee financings you’ve worked on recently.

DD: In the spring of 2014 we worked on a Yankee financing that funded an enormous merger – D.E Master Blenders and Mondelēz International, two of the world’s largest coffee companies, are putting together a joint venture called Jacobs Douwe Egberts. It will be the world’s largest coffee company when the merger finishes up. The magnitude of the merger is such that the transaction could not succeed unless the players could access the liquidity in the U.S. market.

The financing consisted of two term loans of €2.9 billion and €4.2 billion and a €500 million revolving credit facility; the transaction itself is one of the largest-ever financed through a Yankee structure. We worked for JPMorgan, Bank of America and Morgan Stanley, as lead arrangers; JPMorgan acted as administrative agent.

It was very challenging on a number of levels, most notably the structure of the joint venture, which was quite idiosyncratic. It’s being funded in two steps: D.E Master Blenders made its contribution in 2014; Mondelēz, which faces a longer regulatory approval process, will contribute its assets to the venture when the deal is expected to close later this year.

When you add in the inevitable regulatory issues – the joint venture will comprise businesses in more than 20 non-U.S. jurisdictions – you get a feel for the complexity of the loan and intercreditor agreements we had to put together.

MD: Also, we have advised the arrangers in CVC’s acquisition of a controlling stake in Sky Bet, a U.K. business offering betting services via the Web and mobile devices, which values the company at £800 million. We also recently helped arrange a £1.25 billion refinancing of the debt of RAC Limited, which financed the acquisition of a stake in RAC by the Singaporean sovereign wealth fund GIC. In each of these transactions, the sponsors made a strategic decision to use New York law-governed documents, even though the deals were in sterling – pure U.K. deals.

Do you see any interesting changes or shifts taking place in the market?

MD: Yankee financing arrangements took off because European companies weren’t getting the terms they needed through traditional European financing. It was a practical matter at the time, but now European markets are reacting to this trend and easing up on certain loan terms (such as increased flexibility in restricted payment baskets and incurrence of indebtedness, and the inclusion of a springing financial covenant (European cov-lite)). In essence, the financing terms on either side of the Atlantic are converging; Yankee financing is now a strategic choice, not a necessity. The convergence has also impacted the manner in which the intercreditor terms have evolved in the Yankee financings. We have spent a lot of time reviewing and negotiating the detail around the intercreditor provisions to encompass the European/LMA style protections relevant in multi-jurisdictional structures.

DD: Right; tapping the U.S. markets through these instruments is slowly becoming just another tool for securing the best pricing and terms. The interesting thing to look for in 2015 is how Yankee financings will be used – issuers now have a much greater number of debt options at their disposal. Cov-lite is available on European market terms and not just through Yankee financings. We are likely to see greater competition given the increased overlap between debt products and debt providers, impacting pricing and terms.

MD: Another factor is the strong performance of the U.S. economy, which may drive European acquisitions “over there” in 2015; increased cross-border M&A activity would likely rely in part on Yankee financings. Finally, the recently released updates to the Interagency Guidance on Leveraged Lending may have an impact on how Yankee financings are structured. We’re still waiting to see if that will affect the drive of European companies to the United States.

Weil’s Experience with Yankee Financings

**APR 2013**
Doncasters refinancing and Advent/Allnex (Cytec) acquisition financing closes

**JUL-OCT 2013**
Weil closes six Yankee financings including: OXEA dividend recap and Charterhouse/Armacell, Carlyle/Chesapeake and Centerbridge/syncreon acquisition financings

**FEB-SEP 2014**
Weil closes more than $15 billion in Yankee financings, including for Montagu’s acquisition of divisions of Rexam, the Chesapeake/Multi Packaging Solutions merger, Goldman Sachs Merchant Banking Division and Koch Industries’ acquisition of the Flint Group, and the D.E Master Blenders and Mondelēz joint venture

**DEC 2014**
Carlyle and GIC/RAC acquisition financing closes and CVC/Sky Bet signed
The Trend for Minority Investments by Private Equity Sponsors

The years prior to the financial crisis saw fewer minority or non-majority investments made by private equity sponsors in Europe and the United States, where sponsors instead tended to favor buyouts resulting in control of the portfolio company. In contrast, the reverse trend was observed in most markets in Asia, where the equity investment market was historically dominated by minority investment opportunities and leveraged buyouts were limited to more developed geographical markets.

Since then, given the more limited number of buyout opportunities available in an increasingly competitive environment across Europe, the United States and Asia, and with a limited supply of transactions relative to the demands of sponsors looking to invest their “dry powder,” the market has seen sponsors finding ways to invest through more diverse strategies. It has become increasingly common in Europe and the United States for sponsors to participate in transactions by making co-investments alongside other investors or by making minority or non-control investments into mature businesses where existing shareholders retain an overall majority (or a significant) holding. These transactions often involve a smaller amount of leverage compared with traditional buyouts or no leverage at all.

To What Extent and How Do Private Equity Sponsors Maintain Control of Their Minority Investments?

Compared with control buyout structures, minority investments present an obvious governance challenge to sponsors. Without overall control of the investee companies, different mechanisms must be incorporated into the structure to address a range of matters, including two key areas: governance and liquidity.

We have included the following summary of certain key terms related to governance and liquidity which are commonly seen in minority and non-control investments in Europe, the United States and Asia. The summary also identifies significant differences in the rights that sponsors can expect to receive where their equity holdings are less than 25% compared with holdings between 25% and 50%.

Key Observations

- Minority investments are more situation-specific/custom-made to fit both the sponsor investor and the investee business than full leveraged buyouts. The terms of minority investments also vary by reference to the goals of the specific investor, the size and nature of the investee business, the industry in which the business operates, the size of the investment and the nature of the shareholder base (individual or institutional).
- This more bespoke nature means that there are fewer specific regional trends than might be seen from a similar comparison of other types of acquisition or investment activity, for which more recognized regional norms have become established. Regardless of jurisdiction, minority investors have significant flexibility in which to negotiate deal terms within a wider market framework.
- Across Europe, the United States and Asia, minority investors holding more than 5% to 10% of the equity should still generally expect to maintain reasonable control over their investments through minority representation on the board and a negotiated set of reserved matters that require their consent.
- Liquidity is maintained through transfer rights, which usually apply after an initial lock-up and is subject to rights of first offer/refusal and/or consent by any majority shareholder. Minority shareholders holding more than 25% of the equity will have stronger structured liquidity rights (for example, the right to force an IPO, a sale, or a put option with the other shareholders).
**Review Findings**

This table summarizes customary contractual rights and protections related to governance and liquidity seen in recent minority and non-control transactions across Europe, the United States and Asia.

<table>
<thead>
<tr>
<th>Right or Protection</th>
<th>Findings for Smaller Minority Investments (Less than 25%)</th>
<th>Findings for Larger Minority Investments (25% to 49%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Control</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Ability to appoint directors and vote at board meetings | - Investors holding more than approximately 5% to 10% may appoint a fixed number of directors to the board, usually no more than one  
- Board representation above 5% to 10% often proportionate to size of shareholding  
- Each director has one vote at meetings, with decisions made by a simple majority  
- Investor-appointed directors often also entitled to representation on board committees  
- Investors holding less than 5% generally not represented on board | - Similar position to that for smaller minority investments  
- As size of shareholding increases, proportionate representation on the board tends to increase, as does representation on board committees |
| Board meeting quorum requirements | - In most cases, at least one director appointed by the minority investor is required for a board meeting to reach a quorum, but in some, a quorum may be achieved without the attendance of the minority investor director  
- If a quorum is not reached due to the absence of a particular director, the adjourned meeting does not require a non-controlling investor director to achieve a quorum (i.e., the minority investor cannot frustrate a decision by absence) | - In most cases, at least one director appointed by the minority investor is required for a board meeting to reach a quorum  
- As with smaller minority investments, repeated non-attendance of a director appointed by the minority investor can rarely frustrate a decision |
| **Veto rights**     |                                                        |                                                      |
| More limited reserved matters require consent of the minority investor (or its appointed director) | - The most typical veto rights are in relation to fundamental matters that impact the value of the investee business, such as acquisitions and disposals, dividends and share repurchases, new equity issuances, increased borrowing and changes to constitutional documents  
- Veto rights are less common (although still relatively widespread) in relation to operational matters, such as settling material litigation, changing accounting policy, or capital expenditure  
- Most investment documentation also provides for additional, transaction-specific reserved matters, such as consent to begin considering an IPO (other than a defined “Qualified IPO”), or consent controls relating to certain share option schemes and other employee incentives | - Generally have consent rights over a broader set of reserved matters than those in smaller minority investments (e.g., generally more operations-level reserved matters)  
- As a matter of local corporate law, shareholders with a stake of 25% or more may also veto certain decisions in their shareholder capacity (e.g., by voting against special resolutions which require supermajority shareholder approval) without such matters being designated as reserved veto rights |
| **Control reduction provisions** | - Reduction or withdrawal of board control rights and veto rights should ownership percentage of minority investor fall below a certain threshold  
- Generally, most veto and other governance rights are lost when shareholding falls below 5% to 10%  
- In certain transactions, particularly those where the minority investor holds a preferred series of shares, no minimum shareholding thresholds apply to governance rights | - Similar position to that for smaller minority investments  
- Usually limited to reduction through share transfers, not as a result of dilution |
<table>
<thead>
<tr>
<th>Drag and Tag Rights</th>
<th>Findings for Smaller Minority Investments (Less than 25%)</th>
<th>Findings for Larger Minority Investments (25% to 49%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tag-along right</strong></td>
<td>In the United States and Asia, tag-along rights typically apply to any transfer of shares, although sometimes subject to a <em>de minimis</em> exception, particularly for transfers made by founder shareholders</td>
<td>Similar position to that for smaller minority investments</td>
</tr>
<tr>
<td></td>
<td>In Europe, tag-along rights are usually applicable provided the proposed sale is for a certain “threshold” percentage of shares (usually 30% to 50%) or would result in the third-party purchaser holding that threshold as a result of the transfer</td>
<td></td>
</tr>
<tr>
<td><strong>Right to drag other shareholders</strong></td>
<td>Smaller minority investors generally do not have the ability to drag other investors in a sale, but it is seen in certain specific circumstances</td>
<td>Larger minority investors are usually able to obtain rights to drag other shareholders</td>
</tr>
<tr>
<td></td>
<td>The drag is generally exercisable after an initial lock-up period and often subject to certain conditions (see “Drag conditions” below) — in some cases certain conditions may only apply for a specified period of time</td>
<td></td>
</tr>
<tr>
<td><strong>Right of other shareholders to drag minority investor</strong></td>
<td>Minority investors’ shares may generally be dragged in a sale by a lead investor, provided the relevant drag conditions are met</td>
<td>Similar position to that for smaller minority investments</td>
</tr>
<tr>
<td></td>
<td>Again, drag rights will often (but not always) be subject to certain conditions (see “Drag conditions” below) for the minority investor to be dragged, at least for a certain period of time</td>
<td>In some circumstances, a large minority stockholder may have a drag right, especially in founder/non-institutional investors-controlled companies or in connection with liquidity rights (discussed below)</td>
</tr>
<tr>
<td><strong>Drag conditions</strong></td>
<td>Generally, drag rights may only be exercised over the minority investor provided the sale is of at least a certain threshold percentage of the shares in the investee company (usually 50% to 66% in Europe and Asia, although there appears to be no prevailing market threshold in the United States)</td>
<td>Similar position to that for smaller minority investments</td>
</tr>
<tr>
<td></td>
<td>Minority shareholders sometimes receive a minimum price protection applicable to any sale of their shares by operation of the drag by another shareholder</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The price protection is usually set so that the minority investor may only be dragged if it would obtain a certain minimum IRR threshold or multiple of return through the proposed sale. In some investments, the level of price protection is higher for earlier years of the investment</td>
<td></td>
</tr>
<tr>
<td><strong>Transfer Restrictions and Liquidity Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Lock-up period/ general transfer restrictions</strong></td>
<td>Initial lock-up period of between two and five years, where share transfers by all shareholders generally prohibited, save for certain “permitted” transfers</td>
<td>Similar position to that for smaller minority investments</td>
</tr>
<tr>
<td></td>
<td>Permitted transfers typically include: (i) transfers relating to management incentive plans; (ii) transfers in connection with bolt-on acquisitions; or (iii) transfers with the consent of the board or a controlling shareholder</td>
<td></td>
</tr>
<tr>
<td></td>
<td>After the lock-up period, minority investors may sell their shares, subject to certain conditions (see “Right of first refusal/right of first offer” below)</td>
<td></td>
</tr>
<tr>
<td><strong>Right of first refusal/right of first offer</strong></td>
<td>Following any lock-up, minority investors may sell their shares, subject to ROFR or ROFO (each seen with similar frequency) and tag rights in favor of other shareholders</td>
<td>As with smaller minority investments, transfer rights following any lock-up are usually subject to tag rights in favor of other shareholders</td>
</tr>
<tr>
<td></td>
<td>Right to transfer may also be subject to consultation with or approval of the board and/or the lead investor (which is sometimes also a requirement in smaller minority investments)</td>
<td></td>
</tr>
</tbody>
</table>
## Transfer Restrictions and Liquidity Rights (continued)

<table>
<thead>
<tr>
<th>Other exit/liquidity rights</th>
<th>Europe</th>
<th>United States</th>
<th>Asia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Investors often acknowledge a shared intention to work toward an exit following the initial lock-up period</td>
<td>Unlike in Europe, most U.S. investment documents do not contain an acknowledgment among investors of an intention to work toward an exit</td>
<td>Many investment documents contemplate a specific IPO timeline and include efforts-based covenants (ranging from “commercially reasonable efforts” to “best efforts”) given by the main shareholders to consummate a defined “Qualified IPO” within such timeline</td>
</tr>
<tr>
<td></td>
<td>Investors usually agree to consider the merits of an IPO as an exit strategy</td>
<td>For shareholdings of 5% to 10% or more, demand and piggy-back registration rights are common as part of the investor shareholders’ exit package where IPOs are contemplated</td>
<td>For shareholdings of 5% to 10% or more, demand and piggy-back registration rights are common as part of the investor shareholders’ exit package where U.S. IPOs are contemplated</td>
</tr>
<tr>
<td></td>
<td>▪ As with smaller minority investments, investors usually acknowledge an intention to work toward an exit (including through an IPO)</td>
<td>Some larger minority investors have the right to force an exit either through: (i) an explicit ability to force a sale or IPO (often subject to minimum IRR and/or multiple of return thresholds) and/or (ii) the ability to force the investee business to redeem the non-controlling investor’s shares</td>
<td>▪ As with smaller minority investments, most investment documents contemplate a specific qualified IPO timeline</td>
</tr>
<tr>
<td></td>
<td>▪ Larger minority investors may have the right to require the board to consider a sale. There may also be a hard liquidity put right, which the minority shareholder may exercise to realize its investment</td>
<td>There has been a recent trend in competitive deals for the lead shareholder to determine how to satisfy a liquidity request once it has been made</td>
<td>▪ Occasionally, larger minority investors have the right to force an IPO (rather than an efforts-based covenant from the company or founder/majority shareholders to effect an IPO)</td>
</tr>
<tr>
<td></td>
<td>▪ Larger minority investors sometimes have the ability to force an IPO, a so-called “Qualifying IPO,” depending on factors such as price, the exchange on which the IPO may be listed, the underwriters that may be used, size of float, etc.</td>
<td>Again, demand and piggy-back registration rights and rights of redemption are relatively common</td>
<td>▪ Again, demand and piggy-back registration rights and rights of redemption are relatively common</td>
</tr>
<tr>
<td></td>
<td>▪ There has been a recent trend in competitive deals for the lead shareholder to determine how to satisfy a liquidity request once it has been made</td>
<td>While forced redemption rights were prevalent in the past, they are much rarer and have significant legal limitations</td>
<td></td>
</tr>
</tbody>
</table>

### Pre-Emption Rights

<table>
<thead>
<tr>
<th>Pre-emption rights on further issuance</th>
<th>All non-controlling investors receive pre-emption rights on future issuances</th>
<th>Carve outs to pre-emption rights common for: (i) acquisition issuances; (ii) management incentive plan issuances or other board-approved matters; and (iii) issuances under the terms of convertible securities are often included</th>
<th>Similar position to that for smaller minority investments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Carve outs to pre-emption rights common for: (i) acquisition issuances; (ii) management incentive plan issuances or other board-approved matters; and (iii) issuances under the terms of convertible securities are often included</td>
<td>In Europe (but not typically in the United States or Asia), there is also a carve out for emergency share issuances with rights to “catch up” within a short period</td>
<td></td>
</tr>
</tbody>
</table>

---

**Pre-Emption Rights**

- All non-controlling investors receive pre-emption rights on future issuances
- Carve outs to pre-emption rights common for:
  - (i) acquisition issuances;
  - (ii) management incentive plan issuances or other board-approved matters;
  - (iii) issuances under the terms of convertible securities are often included
- In Europe (but not typically in the United States or Asia), there is also a carve out for emergency share issuances with rights to “catch up” within a short period

---

**Pre-Emption Rights**

- Similar position to that for smaller minority investments
Taking Power

Thanks to secondary LBOs some management teams have gained the expertise, confidence and wealth to consider taking control of their company with the support of a financial sponsor.

David Aknin
M&A/Private Equity Partner
Paris

A Bit of History

Widespread use of MBOs began in the ‘80s. In France, the most widely publicized MBO involved Darty, a well-known electronic products retailer. Hundreds of employees of Darty took control of the company in a deal that was singled out for its financial and social innovation until ... the company filed for bankruptcy protection. Another well-known example of an MBO in the French market was the acquisition of Spie from Schneider, in which U.K. construction group AMEC backed a transaction led by hundreds of employees. MBOs were welcomed by the French government and the public at large. They were viewed as the perfect marriage between capitalism and socialism, a kind of co-op where employees use a financial tool to own and manage their business. Substantial tax benefits were provided to encourage employees to take control of their companies, until it became clear that leverage carries financial risks and that the difficulties of a company are amplified when the savings of hundreds of its employees are at stake.

In fact, the absence of even a minority-position-holding private equity sponsor in the capital structure proved to be an inherent weakness in all these deals. They lacked the support of a strong shareholder to back the growth of the companies and to guide them in troubled times.

As a consequence, MBOs then almost disappeared from the private equity scene to be replaced by leveraged buyout transactions led and controlled by a sponsor. Yet in LBOs, management is an important part of

Owning a minority stake remains an unusual position for private equity sponsors, but dealing with a majority owner which also manages the business is another challenge.
the capital structure. In addition to their equity investment, managers receive an incentive, known as ratchet, which corresponds to a share of the capital gain realized by the sponsors.

Thanks to secondary LBOs, the equity stake of management teams has grown in importance over time. This is particularly true in France, where a combination of a strong entrepreneurial approach, a tax regime that favors reinvestment over cash-out and generous management packages have led managers to own a substantial share of the equity, sometimes close to 50%.

Today, private equity bidders face an increasing number of situations where management teams wish to acquire control of their companies. These managers are looking for a strong shareholder that is willing to bring its financial support and expertise, but is simultaneously prepared to accept a minority position.

**MBOs Today**

Compared with a traditional sponsor-led LBO, MBO transactions involve additional layers of complexity. To be sure, owning a minority stake remains an unusual position for private equity sponsors but dealing with a majority owner which also manages the business is another challenge. The following are some of the key topics to consider in an MBO.

**Initial Capital Structure**

There are no clear guidelines as to how big a share of the equity management must own to become the majority owner. A straightforward answer would be that no control should be granted unless management contributes 50% or more of the total equity sources, but the reality is much more complex.

In Europe, the equity capital structure in leveraged transactions is often split between ordinary shares and shareholders loans, with management investing a disproportionate amount of ordinary shares. This scheme allows management to own more shares than the sponsor for the same equity amount. This is a matter of negotiation, but sponsors expect management to have substantial “skin in the game,” and less than one-third of the total equity need will be seen as insufficient to claim majority control.

**Financing Build-Up**

The equity financing of build-up transactions is an important issue for management teams that often lack the “dry powder” to make further equity investment in the company. Any MBO transaction must therefore address at which point management dilution in the equity capital structure warrants a shift of control from management to sponsor. While certain powerful management teams are able to negotiate that sponsors bring additional equity to finance build-up in an instrument that does not carry voting rights, others – and they are the vast majority – accept that sponsors gain control once the equity in the hands of managers is below a certain threshold (set between 33% and 50%).

**Organizing Control**

Organizing control of the management equity is a complex issue when the equity is owned by tens, if not hundreds, of employees. In the most straightforward deals, the issue is addressed by regrouping the employees in one or more special purpose vehicles whose control is vested with the lead manager, usually the company’s CEO, who represents the equity owned by the management team and interacts with the sponsor on all key shareholder issues such as the choice of the exit route.

**Governance Rights**

Governance rights are rarely a disputed issue between management teams and sponsors. In fact, both see governance as an area where each party shares its skills and expertise: management proposes the business directions, which are confirmed by sponsors. The list of veto rights for sponsors is therefore comprehensive. It covers all key areas such as the business plan and annual budget, material investments and disposals, capital increases, recruitment or dismissal of key managers, material new indebtedness and employees’ incentive schemes.

A more controversial issue concerns the enhanced rights that sponsors expect in distressed situations. At a first level of underperformance, sponsors will expect the right to review the business and financial situation in depth and define remedial actions with management. When difficulties continue, certain sponsors seek the right to replace key executives or appoint a chief restructuring officer to implement remedial actions.

In cases of substantial material underperformance, the issue becomes more complex. Most sponsors seek to replace all or part of the management team, gaining effective control of the company. There is no rule for what constitutes a substantial underperformance. It is often pegged to a level of shortfall from the initial agreed-upon business plan or to a targeted minimum equity value. When the acquisition debt financing for the...
MBO contains financial covenants, the breach or anticipated breach of financial covenants is certainly a trigger. In cases of the departure of the CEO or key managers, or gross negligence by the management team, sponsors will seek to gain control of the company and have the power to change management.

Exit
In MBO deals, the timing and choice of exit route is challenging, compounded by the fact that managers are in control. This is especially the case when managers are looking to reinvest in a new buyout and may be less sensitive to the exit price. This inherent conflict of interest needs to be overcome to reconcile the objectives of management and sponsor. Is management financially interested in reaching the best possible price? A combination of a priority yield attached to the sponsor’s equity, a ratchet that incentivizes management to reach the best price, or a cap on the exit proceeds that management may reinvest are sometimes provided to rebalance the structure.

Which exit rights favor alignment of interest? While managers may want to veto trade buyers, excluding them is rarely an option for sponsors who are looking for competitive tension in an auction. Sponsors will want to keep the right to organize an auction process which is open to a large group of interested buyers, even though they may agree to favor an IPO – or even a new buyout led by the incumbent management. These mechanisms include the right for management to make a first offer before an auction, the right to trigger an IPO and the right to exclude one or more bidders (typically direct competitors) when IRR/multiple thresholds are satisfied. The timing of the exit is less controversial. Often, after a lock-up period, a priority is given to the sponsor to request an exit.

Conclusion
Thanks to the development of secondary buyouts, management teams have become more confident in their ability to create value. They have gained financial expertise and, in some instances, substantial wealth. But being a majority owner is not an objective in itself; management teams are looking for a degree of control in the direction of their company and the choice of exit route.

On the other hand, sponsors are often uneasy with MBO deals as they may find themselves restrained in their ability to guide the company and look for the best exit value for shareholders. The success of any MBO relies on a clear alignment of interests between management and sponsor. Parties must make sure that they are aligned on their financial interests, the company’s strategic direction and their exit objectives. A well-balanced shareholders agreement is of course essential, but it will never correct fundamental misalignments of interest.
What’s Driving German Private Equity in the New Regulatory Landscape

Deal activity in the German private equity market has been on a steady rebound, with aggregate deal volumes and numbers of announced and completed deals on a consistent, yet careful, rise.

Key Market Drivers
The most important drivers of the upswing in the German market include:

- Reduced funding costs – enabling firms to more frequently recapitalize existing portfolio assets through leveraged loans
- Continued availability of funds – reflected in increasing assets under management as unrealized value in existing portfolios and “dry powder” for new investments
- Reduced market uncertainty, coupled with increasing appetite – and pressure – to invest, as well as attractive overall valuations

New investments and buyouts are on the rise and the number of exits are relatively stable, indicating the willingness of sponsors to increase their German market exposure. Financing conditions are improving, and the level of satisfaction with fund performance is at a constant high. Germany continues to be one of the principal private equity markets in Europe.

Post-Lehman Regulation
In the midst of this upswing, financial institutions transactions have been at the center of German market activity, mirroring certain specifics of the post-crisis German regulatory environment.

Key trends reflecting the German post-Lehman landscape include:

- A variety of rescue acquisitions of troubled financial institutions by the Deposit Protection Fund of the Federal Association of German Banks and acquisitions of distressed financial institutions by sponsors
A number of divestitures of loan portfolios and non-core assets by financial institutions as a result of increased pressure to comply with tightened bank regulatory requirements – these include Tier 1/Tier 2 capital structure requirements resulting from Basel III, as well as investments by sponsors in complex equity instruments of financial institutions that were designed to comply with German capital structure requirements.

Increased regulatory scrutiny and tightened capital/substance requirements imposed by the German Federal Financial Supervisory Authority (BaFin) with respect to foreign acquirors of German financial institutions.

**Weil Case Studies**

From the start, Weil has been at the forefront of these trends, advising investors, creditors, and financial institutions alike in connection with some of the current and recent landmark deals involving financial institutions in Germany.

One type of bank rescue action seen in the German market is private investment support, where a struggling bank is not rescued by the mechanisms provided by the banking sector itself, but is realigned by a financial investor with the relevant restructuring experience. Weil represented Lone Star in the first deal of this type in the German market. Lone Star acquired the German bank Corealcredit Bank (formerly Allgemeine Hypothekenbank Rheinboden) and subsequently recapitalized and repositioned it.

Lone Star later sold the bank to MDAX-listed Aareal Bank in the largest bank transaction in Germany in 2013.

Deals involving German “Landesbanken” – banks that are owned by a federal state – also feature prominently in the German deal landscape. These deals typically require, among other things, specific attention to German bank regulatory matters, including BaFin consent requirements and state guarantees, as well as the cross-border interplay with the Bank Holding Company Act in cases of U.S.-regulated investment entities.

A current bank deal highlight in Germany is the proposed sale by Hypo Real Estate of its core business Deutsche Pfandbriefbank in a dual track sale/IPO process. This process has just started. Weil is advising potential buyers.

Loan portfolio and non-core asset deals in the German market often involve residential and commercial real estate portfolio financings and the prerequisite complex restructurings as a result of which mortgage-backed loans are divested. In that area, one of our engagements was representing Macquarie in an auction process relating to the acquisition of a real estate loan portfolio that formed part of the non-core division of Royal Bank of Scotland. In another matter, two Weil teams comprehensively advised a major German financial institution in its capacity as mortgage-backed creditor in connection with the proposed disposal of a €700 million loan portfolio and in the potential workout scenario of that loan portfolio, respectively.

Weil’s Frankfurt and Munich offices provide seamless support to domestic and international clients, handling sophisticated cross-border transactions and multi-jurisdictional disputes.

Our private equity, M&A and restructuring practices are recognized as among the best in the country. Our lawyers have advised clients on a number of high-profile transactions, including the largest bank transaction in Germany in 2013. Our remarkably diverse client base is engaged in various industries and includes some of the world’s leading financial institutions as well as many major international corporations. Selected clients include:

- Eli Lilly
- Adobe Systems
- Micron Technology
- Grohe
- Villeroy & Boch
- MorphoSys
- Centerbridge Partners
- General Atlantic
- Lone Star
- Summit Partners
Looking Back — 10 Years of Growth in Asia Private Equity

Just over 10 years ago, Weil opened its first office in China. A number of our clients were then starting to focus more of their attention on Asia generally, and on China in particular. Private equity was in its infancy in the region. Only a few of the now-major global firms were present; regional funds were emerging.

Evolving Market

Ten years ago, many of the businesses in emerging Asian markets most attractive to private equity were founder-controlled. These founders were not interested in relinquishing control to private equity sponsors — they were looking for capital to expand their business while retaining control.

As a result, sponsors in this market predominantly focused on minority growth capital investments rather than conventional private equity control acquisitions. Operational input by sponsors was often limited to minority board seats and veto rights over major items, with founders remaining in control of operations. IPOs were the principal exit opportunity. There were exceptions to this — in several countries, sponsors were able to engage in traditional LBO control transactions. However, minority investments were typically used to deploy capital in emerging markets like China.

Move Towards Larger Deals and More Control Deals

Over time, and with more capital focused on Asia for investment, the demand for transactions increased significantly, while several developments with founders led to changes in market dynamics.

First, shareholders and founders became more willing to consider selling controlling stakes, rather
than an IPO or a minority stake sale. This was partly due to volatility and uncertainty in local IPO markets. Also, succession planning in these businesses can be difficult, especially if there is no family member ready to take the reins.

Second, in the past few years, some founders, particularly in China, who previously raised capital in the U.S. capital markets, became frustrated by the burden of being a listed company in the United States and the low valuations of some Asian companies. More founders then became willing to pursue going private transactions, partnering with sponsors to delist their companies with a plan to relist on an Asian exchange down the line.

In addition, some sponsors found that minority investments don’t necessarily provide sufficient input or visibility into the business to protect their investments – particularly during difficult economic or financial periods. Enforcing rights as a minority investor has proved challenging, even when the transaction documentation provides for significant rights to the investor.

The result: there is now more opportunity and desire for private equity firms to pursue control transactions (and, in many cases, larger deals). Concurrently, Asian private equity firms have become willing to pursue outbound deals by acquiring U.S. or European businesses with significant operations in Asia, or where Asia is the next main growth market for that business.

**Increasing Use of Leverage**

Ten years ago, there were very few leveraged deals in the region (except for certain markets, like Australia). The increased volume and sophistication of transactions has been accompanied by a significant growth in the use of acquisition financing.

A driving factor has been the increased focus by sponsors on control deals. In addition, international and Asian banks have helped develop the market. We often see international, regional and local country banks in Asia (including China, Korea and Taiwan) participating in deals.

Deal terms for acquisition financing in Asia are gradually moving towards U.S. and European market terms, but convergence has been limited by the lack of a strong institutional investor base in Asia (for example, Term Loan B lenders). Lack of investor base depth and jurisdictional challenges hindering the LBO structures used in other markets have kept the structure of acquisition financing in Asia simple. The lending market remains dominated by senior banks, leverage multiples are lower than in the United States and Europe, and covenant packages still tend to be tighter and “old fashioned.”

Sponsors in the region also have increasing access to U.S. and European debt markets for outbound and Asia-focused deals and can sometimes obtain financing for minority investments.

**Conclusion**

The market for private equity transactions in Asia has seen enormous growth over the past decade, but it is still developing. Some major markets have grown to the point that investors can pursue a variety of investment options, from minority investments to more sophisticated control transactions. But other countries remain focused on smaller minority investments. As investors deploy more capital, and banks provide more leverage, the size and sophistication of private equity transactions in Asia will continue to increase. We look forward to looking back on these developments a decade from now.
Considerations for Managers Returning to the Market

The fundraising market has become highly competitive for Asia-focused private equity managers and investors looking to invest in leading Asia-focused funds. There has been a marked flight to quality in the Asia private PE funds market over the past two years as limited partners have consolidated their relationships with general partners in Asia and allocated their commitments to a select group of GPs.

Market Developments

Surge. The global financial crisis was followed by a period of rapid growth in the Asia PE fundraising market. During the 2010-2012 boom years, several new Asia-focused GPs entered the PE fundraising market, including new pan-Asia funds established by high-profile investment professionals in Asia, country-focused teams spinning out of global and regional PE firms, and locally successful GPs seeking institutional capital outside their home markets for the first time.

At the same time, a record amount of investor capital was invested in Asia-focused PE funds. Incumbent fund-of-funds and sovereign wealth funds were joined by a new generation of Asia fund-of-funds, sovereign wealth funds with nascent alternative investment programs, and U.S. and European PE investors looking to add emerging markets to their portfolios.

Slowdown, Shakeout and Shift. By 2013, the Asia PE fundraising market had begun to soften, with LP commitments to the region declining, fewer PE funds meeting their fundraising targets, closings taking longer and fewer new GPs entering the market. This was due to the inability of Asia-focused GPs to return distributions to LPs as economic growth slowed, exits through IPOs stalling and competition for deals increasing, particularly in China and India. It was also due to relatively attractive valuations in developed markets and renewed perceptions of risk in emerging markets after the global financial crisis.

While LP commitments to the Asia-Pacific PE market rebounded in 2014, LPs have begun selectively concentrating their commitments on established “brand-name” GPs.
and newer GPs that are perceived to be the “best-in-class.” While brand-name GPs have had to demonstrate the ability to return cash to LPs, newer GPs have not necessarily been held to the same standard. A newer GP in favor with LPs may be able to raise a fund as a “continuation” of its prior fund with very few or no exits, with LPs investing in the new fund principally on faith.

Considerations for GPs Returning to Market

The current fundraising environment presents opportunities and challenges for a favored Asia GP when returning to the market.

A favored GP may have to choose whether to secure a larger amount of capital on more LP-friendly terms or to leverage current market conditions to preserve GP-friendly economic (e.g., management fee) and governance terms, or even to selectively introduce GP-friendly terms, while raising a lesser amount.

The GP may also try to use the fundraise as an opportunity to introduce new terms designed to provide the GP with greater flexibility going forward. For example, given the increased globalization of certain Asian economies and the fierce competition for deals in certain Asian markets, a GP may seek to broaden its investment scope to include cross-border deals or additional geographies in Asia.

The GP could also seek to improve certain sub-optimal economic or governance terms or eliminate certain preferential terms negotiated by LPs in their earlier funds before those terms become entrenched.

By the same token, returning LPs, particularly if they are recommitting for greater amounts, may want to reopen certain fund terms and, if they were anchor investors in the prior fund, maintain preferential terms enjoyed in that fund. New LPs generally expect to be allowed to negotiate some or all of the fund terms when entering into any new relationship with a GP.

While this LP-GP dynamic is not necessarily unique to Asia, it is pronounced there, as institutional LPs now want to invest only with a select group of high-quality GPs and, by the same token, those GPs may want a greater proportion of their investor commitments coming from the same set of institutional LPs despite the fact that those LPs tend to actively negotiate or renegotiate fund terms.

By sizing the new fund to be oversubscribed, the GP may create sufficient negotiating leverage to defend key terms. The GP could allot most or all of the fund interests – at least for purposes of the initial closing – to a predetermined club of investors, ideally with the understanding that they will largely accept the terms of the prior fund (with potential improvements, as described above). While sizing the fund in this manner may require the GP to return to market sooner, a GP in favor now is likely to be in favor two to four years later, particularly given the shakeout of some GPs from the market.

If ownership of the prior fund was concentrated in the hands of a few larger LPs (including anchor investors with preferential terms), the GP should also consider diversifying the LP base of the new fund and perhaps avoiding having to grant the same types of anchor rights with respect to the new fund.

Conclusion

The current trend in the Asia PE fundraising market is leading to larger but fewer funds and, in some cases, improved fund terms for the select group of GPs who are the beneficiaries of this trend. Global LPs are now placing fewer but – given pressure on these LPs to deploy large amounts of capital – often larger bets with favored GPs in Asia. With increasing amounts of “dry powder” concentrated in the hands of fewer GPs in the region, the extent to which these GPs will be able to deploy this capital and returns on deployed capital by the next fundraising cycle will be closely watched.

The current fundraising environment presents opportunities and challenges for a favored Asia GP when returning to the market.
How Sponsors Can Hold On to Value in “Interesting Times”

With world oil prices halved since June 2014, and uncertainties persisting about the depth and length of the sector’s disruption, private equity firms with investments in the energy sector have been forced to make some important reassessments.

Some portfolio companies are struggling to make it through the current downturn, facing liquidity and capital needs challenges. In response, sponsors have been reviewing their investments – looking for favorable terms to restructure or put additional capital into their portfolio companies, reviewing their existing assets and seeking out new opportunities to invest.

How can a sponsor hold on to value in the midst of the recent oil slump?

Rodney L. Moore
Private Equity
Co-Managing Partner – Dallas

Inspecting the Asset Pipeline

Assets mature and change. A portfolio company that required significant capital to maintain drilling obligations five years ago may have far less need for immediate cash today, with more assets held by production. Firms should review the portfolio as a whole and assess how capital needs have settled across the investments.

The sector with the most immediate impact is oil field services, where reductions in capital budgets have significantly reduced demand and revenue. Sponsors with investments in oil field services need to take stock of the company’s current cash position and customer activity. If relief from creditors is necessary, address those issues now to keep them from turning into a crisis later.

Upstream

The years 2008 and 2009 were rife with upstream investment opportunities, thanks to the credit and liquidity issues faced by producers during the financial crisis and the decline of crude oil prices that took place in 2008. But the prospects and landscape of 2015 differ substantially. The ability to defer drilling obligations and work with lenders, combined with a consensus that the current price drop is a relatively short-term issue, have left fewer options for sponsors seeking distressed-level pricing upstream opportunities. (One possible exception is non-operated working interests and non-core assets, particularly with production that is not hedged.)

However, there will be some upstream opportunities for savvy investors. Not
While it’s true that upstream assets took a big hit in the current downturn, midstream companies did not escape unscathed, falling victim to the effects of decreased drilling and production. The degree of impact on the midstream sector will depend, at least in part, on the nature of the companies’ contracts for the transportation and processing of production, as well as commitments to complete construction of facilities within required time frames to preserve contracts with producers.

Sponsors with midstream assets should consider the following when evaluating these issues:

- **Creditworthiness of their producers**
  Can the producer make the take-or-pay payments that may be called for under their contracts, given the reduction in drilling? Can they provide corresponding relief on these obligations given their current drilling programs?

- **Buying time**
  Often, a portfolio company can address upcoming deadlines with construction extensions, providing corresponding relief on obligations that were in place when the contract was signed.

**Investing Opportunities**

all companies were positioned to weather the price drop, and the longer it stays flat, the more opportunities will appear. We are starting to see some of these pure acquisition opportunities appear as some companies begin to sell off non-core assets to shore up capital and provide liquidity to support core assets. Sponsors also can provide E&P companies that are not yet in a disposition mode with capital to create financial flexibility through creative deal structures and financings.

**Midstream**

Attractive assets in the midstream are less clear – fear of falling prices and decreased volume can put pressure on returns. Nonetheless, new infrastructure is still in demand, and it’s driving continued development. Service sector opportunities will be more widely available in the near term as well.

Sponsors should consider opportunities to join with other firms to invest in midstream projects that are already in process – opportunities abound when initial cash flows are not at expected levels. Finally, sponsors should consider partnerships with E&P companies. Together, they can preserve cash for upstream production, rather than deploying it for midstream assets.

**Drilling for Terms**

Many energy sector investments were hammered out when crude oil prices were rising or sitting steady at favorable prices. Depending on the overall investment strategy, the governing agreements may allow a sponsor to infuse capital on favorable terms dilutive to other co-investors. How should a firm approach such a situation?

- **Protect the investment.**
  In investments shared with other limited partners, we generally suggest provisions allowing the sponsor to contribute capital at current market rates or preferred terms during down-round or distressed financings.

- **Pay attention.**
  Scrutinize options provided by the governing documents, as well as the impact of new capital infusions on management incentive packages.

- **Work with banks.**
  Alternative sources of security are available in 2015 that were not on the table immediately following the financial crisis. Banks are far more willing to work with sponsors to address covenant and other credit agreement issues without necessarily requiring immediate infusions of capital – especially if sponsors provide the lenders with guarantees or other assurances that the sponsor will provide additional capital under certain scenarios.

- **Be cautious.**
  When exploring these alternatives, pay close attention to multiple layers of debt. Ensure that second lien debt is tied up to allow portfolio companies to achieve the flexibility they require.
Despite different economic landscapes in Europe and the United States, private equity firms in the distressed investing field on both sides of the Atlantic are faced with the same challenge: the need to be more aggressive. In the current climate, a number of these firms risk not capitalizing on opportunities.

In Europe: A Large Pool of Capital, a Jumble of Jurisdictions

With European banks deleveraging and shedding many non-core assets at a faster pace, investment opportunities for private equity firms are growing as the continent begins to address widespread and much needed reorganization and recapitalization. (About €879 billion in troubled European bank loans have been identified, and some U.S. PE firms have been heavily involved in distressed loan deals in Europe in 2014.) Restructuring is especially focused on real estate, energy, infrastructure and mining. Overall, €91 billion in loan portfolio transactions were recorded in 2014, an increase of about 40% over 2013, with €45 billion worth already in progress in 2015.

However, there is a very large pool of capital chasing these deals. In Europe, there are many funds, ranging from PE credit funds to established New York-based investors to new hedge fund startups, out to capture distressed opportunities. Even a conservative estimate of the capital allocated to European distressed opportunities would exceed $100 billion before taking leverage into account. Since the distressed investing environment has become extremely competitive, the challenge for PE firms is clear.

Given the strength of financing markets, there are many more options for new money, particularly at the senior end of the capital structure and a particular focus on high-yield restructuring for...
The U.S. Challenge: Getting a Toehold in the Target

As the economy continues to improve and cost-effective capital is available from debt and equity markets, PE firms need a sharp eye to spot good distressed opportunities – even more so now than in the aftermath of the financial crisis.

A significant challenge for U.S. private equity looking for distressed opportunities is that these firms are competing with traditional distressed debt players that are very active in the market and often already have toeholds in distressed targets. Oftentimes the fund documents of PE firms limit their ability to take meaningful and longer-term positions in debt, which is one reason why it is somewhat unusual for a PE firm to do pure distressed debt investing.

PE firms, therefore, need to differentiate themselves by:
- Funding unique opportunities and bringing operating capability through new management teams
- Bringing new equity to the table
- Helping to restructure the capital

The challenge for private equity is getting a toehold in the target company’s debt or, where possible, taking a big enough position to be able to take the whole company. Once again, sponsors are up against more aggressive distressed debt funds that take large positions in the debt at issue. By doing so, those funds gain a great influence in the outcome of a chapter 11 proceeding or an out-of-court restructuring because they have the leverage, the fulcrum. As an added burden, the PE firm needs to find an asset that is able to produce cash and has near-term growth potential, which typically means staying away from startups.

PE firms look, for instance, for an overleveraged industrial or retail company. Still, firms should realize that although the leverage levels are high now, they are not as high as during the downturn of 2008 to 2009. Banks are more disciplined about the amount of leverage they are allowing. Many companies have been able to restructure their debt over the last few years. It remains to be seen how long that trend will last.

Distressed investing PE firms in the United States understand the restructuring process, whether it’s chapter 11 or a 363 sale or an out-of-court workout. But it is a tough process, and some PE sponsors can be averse to the litigation risk, where they are competing with senior or junior creditors and dealing with the company and its constituencies, whether equity or management. Those PE firms that are less familiar with the distressed market should take the time to learn the landscape. These 363 and chapter 11 deals are often no more complex – just different – than the transactions PE firms typically engage in. By not widening that scope, they may be missing opportunities.

For PE firms that are knowledgeable as well as aggressive, there are attractive distressed investing opportunities on both continents.


deals done when the markets opened after the global financial crisis. These deals have seen little deleveraging because economic growth in Europe, with the exception of the United Kingdom and Germany, remains extremely weak.

Shocks to the market could, of course, open up even more opportunities for distressed investors. In Europe, these might include the slowdown of Chinese growth, fallout from recent events in Ukraine and Russia, a possible Greek exit from the eurozone, and collapses like those of Phones4U and Espírito Santo Bank. (Continued)

low oil prices are already having a clear effect in the United States and Canada, and increasingly in Europe.) Mitigating these possible disruptions in Europe are the relatively benign credit markets, with the probability that quantitative easing and very low interest rates will continue and make refinancing more straightforward.

One note of caution is that as PE distressed investors step up their efforts to capitalize on new opportunities in Europe, they need a thorough understanding of the very different environment in Europe compared with that in the United States. Each of the many European national jurisdictions has its own legal issues. The United Kingdom remains the jurisdiction of choice in Europe for restructuring deals, even as other countries try to catch up by reforming their restructuring regimes. But the issues can be complex.


€879 billion in trapped European bank loans identified (2014)
What Is Next After 10 Years of E.U. Membership and 25 Years of Economic Liberalization?

2014 marked an important milestone for Poland, the Czech Republic and Hungary, as well as Slovakia: 10 years of European Union membership and 25 years since the liberalization of their economies following the fall of communism.

During this time, we have witnessed tremendous change in our individual countries and economies in Central Europe, as well as in Europe as a whole. The economic divide that separated Europe is no longer between the West and the East; the axis has now shifted to a divide between the North and the South, with the current situation in Greece serving as a prime example. As we look ahead, we recognize there are still challenges to overcome, including increasing access to liquidity and financing in the region.

Since joining the European Union in May 2004, our respective economies have
Weil entered Central Europe in 1991 and has advised clients on milestone transactions in the region, including:

- The first cross-border consent solicitation in the Czech Republic
- The largest-ever merger executed through a share exchange in Poland
- The largest-ever IPO on the Warsaw Stock Exchange
- A leading bidder in Hungary’s largest-ever privatization
- One of the 15 largest-ever M&A transactions involving a Hungarian target
- The first mandatory takeover bid under a new Czech civil and corporate law recodification
- The largest-ever private equity transaction in Poland

Weil’s History in the Region

We experienced significant growth. Based on average GDP growth, Poland, the European Union’s sixth-largest economy, has outperformed most other European countries. In fact, when growth in the region slowed during the financial crisis of 2008, Poland was the only economy in Europe to avoid recession. Poland is now seen as one of the major players in the European Union, alongside Germany, Britain, France, Italy and Spain.

The Czech Republic and Hungary also witnessed rapid growth following their accession to the European Union; however, they did experience a decline following the financial crisis. Nevertheless, according to GDP data from the World Bank, from 2003 through the end of 2013, the Czech Republic outperformed France, Germany and Britain, and Hungary had a solid performance, coming in ahead of France and placing close to Germany.

This success was built upon an aggressive growth strategy implemented in the 1990s that was centered on major market reforms such as privatizations and other economic liberalization. In the beginning, due to the dramatic cultural shift involved, this process brought about radical and often painful change; however, in the end, it successfully led to rising productivity and increased wealth.

We opened our offices in Warsaw and Budapest in 1991, and followed with the opening of our Prague office in 1992. Initially, these offices focused on inbound investments to the region, especially from private equity funds. All of the offices now primarily serve domestic clients, including those in connection with significant outbound investments. All three offices are ranked as leaders in their respective markets by leading international legal publications.

Despite all of Central Europe’s accomplishments, we know our region faces many hurdles. These range from demographic changes due to low birth rates, emigration and an aging population to a need to invest in growth industries and increasing innovation and efficiency.

From our vantage point, one challenge in particular stands out as it relates to the businesses of our clients: the need to solidify the leading position of the Warsaw Stock Exchange, which is by far the largest stock exchange in Central and Eastern Europe, generating more than half of all equity trading across the region. The second-largest is Vienna’s stock exchange, the Wiener Börse, which sits at the top of the Central and Eastern Europe Stock Exchange Group that includes the Prague and Budapest exchanges, among others, and has links to the global investor community. In late 2013, we represented the Warsaw Stock Exchange in connection with a potential merger of the two exchanges, which ended in late 2014 without a result.

However, even though the potential merger between the two exchanges did not come to fruition, the Warsaw Stock Exchange continues to provide access to liquidity and financing for companies and investors from across the region.
How to Deal with Antitrust Agencies in an Era of Aggressive Enforcement

The Federal Trade Commission’s recent 3-2 decision to challenge the Sysco/US Foods deal sends a clear signal that a pro-antitrust enforcement majority has taken charge and may remain in place for at least the next few years. The stakes for companies pursuing mergers and acquisitions, regardless of size, are high. Whether in the United States or abroad, knowing how to manage the process of interacting with the FTC and Department of Justice, including knowing when to play nice and when to show you’re prepared to fight if necessary, is key to dealing effectively and efficiently with the agencies.

Today’s aggressive antitrust enforcement environment is, in part, a reflection of current personnel leading the agencies. After Chairman Jon Leibowitz stepped down from the FTC in early 2013, the two Democrats and two Republicans remaining faced an increased likelihood of deadlocking the Commission in 2-2 votes along party lines, particularly when deciding whether to challenge “close call” deals. Recent FTC merger challenges, including Sysco/US Foods, suggest that Commissioner Terrell McSweeney’s arrival in April 2014 has solidified the increasing alignment of pro-enforcement philosophies between the FTC and DOJ (now under Assistant Attorney General Bill Baer at the DOJ and Chairwoman Edith Ramirez and Bureau of Competition Director Debbie Feinstein at the FTC).

Even an increasing flow of deals has not weakened the agencies’ resolve: both the FTC and DOJ have strong litigation talent and have bolstered their ranks by recruiting senior antitrust lawyers from firms to meet the litigation workload. In addition, the agencies are increasingly relying on sophisticated econometric tools to calculate the potential impact of mergers on pricing. These economic tools may embolden the agencies to challenge more deals than in the past, though their validity has yet to be tested in antitrust cases and will likely prove a hot issue in court.

In light of these changes, now more than ever it is crucial that companies and their attorneys understand the deal approval process at the FTC and DOJ to achieve a successful outcome and avoid a litigation challenge.

How do you do this? One of the most important lessons I learned in my years at the FTC was the importance of engaging with agency staff early and often in the process and making your case to them. Gone are the days when bypassing the investigative staff and appealing directly to management or the Commission will win the day.

I managed investigations that could have been resolved or settled many months earlier and for millions of dollars less had the company and its counsel engaged with agency staff earlier in the process. A constant back and forth with staff helps counsel understand the agency’s concerns and pinpoint the most persuasive arguments they can make. My strategy is constant engagement and friendly but consistent “challenging” of the staff’s concerns in a productive way. In order to be effective and efficient, you can’t operate in a vacuum.
Beyond immediate engagement with staff, my experience of more than a decade as an agency official provides insight into which arguments generally will be compelling to staff. Oftentimes, the most value we offer our clients is telling them which arguments not to make to agency staff. After reviewing hundreds of deals in my tenure at the agency, I can advise our clients that certain arguments – even ones they strongly favor – are just not going to work. My litigation experience also enables me to give solid advice on which arguments will resonate with a federal district judge, should it come to that, because these are often different than the points that appeal to staff. But a judicial opinion in a merger case is costly, and going to court should be avoided whenever possible.

As deals become more multinational in scope, it is also vital that companies work with attorneys who are well acquainted with antitrust agencies around the world, which are playing a bigger role than ever in transactions. It is not uncommon – and typically is in clients’ interests – for agencies to share information with each other, and companies should ensure that their arguments are consistent across jurisdictions. It is also critical for a client to understand the timing of the various regulatory reviews in order to coordinate their efforts across jurisdictions and plan for closing. Obtaining clearance in one jurisdiction may be of little value if another jurisdiction will not clear the transaction for many months.

Above all, companies with mergers under review need to know which arguments will work and allow them to close their deal without conditions or subject to an acceptable consent agreement. The alternative, an agency challenge, is expensive and time-consuming, and often a deal breaker. The agencies are loath to reveal too much about how they reach their decisions and generally only do so when they go to court. Attorneys who already know how agency staff think, who follow every decision the agencies issue, and who constantly engage with staff at all levels on their client’s behalf can not only spare millions of dollars in costs but may also save a deal that could transform the company and the industry.

### Significant FTC Cases: 2009 to 2014

#### Kroger/ Harris Teeter
- **January 2014**
- The FTC decides the $2.5 billion acquisition of Harris Teeter does not violate antitrust law.

#### Office Depot/ OfficeMax
- **November 2013**
- After a seven-month investigation, the FTC allows the $1.2 billion merger to proceed.

#### Pinnacle/ Ameristar
- **May 2013**
- The $2.8 billion casino deal is challenged and litigation begins. The case is settled after Pinnacle agrees to divestitures.

#### OSF Healthcare/ Rockford Health System
- **November 2011**
- The FTC challenges the hospital acquisition, and a federal judge sides with the FTC, halting the deal, which the parties then abandon.

#### Phoebe Putney/ Palmyra
- **April 2011**
- The FTC challenges the hospital deal. After a Supreme Court win, the agency restarts litigation and then ultimately accepts a settlement agreement resolving the matter.

#### ProMedica/ St. Luke’s
- **January 2011**
- The FTC challenges the acquisition. After an agency challenge, FTC staff win a 10-week trial, and the Sixth Circuit upholds the decision to block the deal. ProMedica petitions for Supreme Court review.

#### Whole Foods/ Wild Oats
- **January 2009**
- The FTC challenges the acquisition. After the agency loses in trial, the D.C. Circuit reverses. The case settles after Whole Foods agrees to conditions, including selling the Wild Oats brand and 31 of 110 Wild Oats stores it acquired.
Plan Now, or Pay Later

For-profit education, a sector that generated $28 billion in annual revenues in 2014, has become increasingly volatile, having fallen victim to a number of economic and legal pressures. The numbers are grim, with enrollment in for-profit schools continuing to drop.

Companies in the sector are facing increasing financial and regulatory pressures, often with embarrassing public results. In 2014 alone, several for-profit giants suffered staggering setbacks. Education Management Corporation, which serves more than 100,000 students nationwide, suffered a 97% drop in stock value amid negative press and investigations. ITT Educational Services faced legal and regulatory scrutiny, and its stock lost more than 70% of its value by year’s end. Most famously, Corinthian Colleges collapsed altogether last summer under a U.S. Department of Education plan to sell 85 of its 97 schools and close the rest.

Trends

The shakeout in this sector will continue to build steam over the next few years, forcing more institutions into crisis and causing some to close their doors permanently. There is no single cause for this disruption—companies are vulnerable to a number of threatening trends:

- Many for-profit educators accumulated considerable debt in recent years from a spate of acquisitions, real estate transactions and high-yield financings.
- Enrollments have been dropping significantly due in part to the reluctance of students to take on student loan debt in a sluggish economy.
- High unemployment rates and intense media focus have eroded the perceived value of degrees generally; the high loan default rate among for-profit school students casts additional doubt on the value of for-profit degrees.
- State and federal governments and regulatory bodies have launched a number of investigations looking into the industry’s allegedly aggressive recruiting, marketing and lending practices.
- New gainful employment regulations, launched in October 2014, threaten federal aid for for-profits if they cannot improve economic outcomes for their students.
- Recent proposals from the White House would increase competition by heavily subsidizing public community colleges.

Together, these trends promise a rough road ahead for for-profit educators in the near term. But a regulatory obstacle unique to the sector further complicates the outlook.

Joseph H. Smolinsky
Business Finance & Restructuring Partner
New York
Lack of an Effective Restructuring Regime

For-profits derive a hefty portion of their funding from taxpayer subsidies, with many institutions receiving as much as 90% of their funding through federal programs. Because of their dependence, for-profits are vulnerable to provisions of the Higher Education Act of 1965, which sets out the terms for financial assistance to students. Statutory limitations were introduced to Title IV of the Act in 1992 that make an institution restructuring in bankruptcy ineligible to receive federal funding. The amendment was intended to prevent institutions from using bankruptcy laws to escape action by the Department of Education. However, when Congress passed the law, it did not anticipate the future need for an alternative to bankruptcy protection and made no provision for troubled educational institutions.

To declare bankruptcy is to lose funding, making chapter 11 an effective death sentence for most for-profit education providers. To make matters worse, the industry has responded by adopting a reluctant stance toward crisis planning generally: for-profit educators tend to stigmatize non-chapter 11 solutions as well, such as workouts and financial restructuring – even when exploring these alternatives is prudent.

Short of a congressional overhaul of the current system, for-profit educators need to change their basic attitude toward crisis planning and embrace thoughtful, thorough restructuring planning while trouble is still on the horizon. Institutions that take restructuring seriously will be positioned to unlock value and take advantage of opportunities and strategic alternatives.

How to Respond?

Even without chapter 11 as a viable option, for-profit educators can implement a number of restructuring initiatives to help stabilize financial and operational performance.

Even in relatively stable situations, crisis planning is a must. Regular, basic reviews of costs and expenses, long-term business plan development and protective actions that anticipate possible shifts in regulation are all positive moves. For example, some for-profits now offer “nanodegree” products – short-term courses that reduce expenses for the institution while sidestepping the student debt burdens associated with traditional degrees.

When an institution faces more serious uncertainty, such as a government investigation, pursuit of a responsible out-of-court restructuring process can demonstrate good faith to regulators and creditors, and provide a more effective backdrop for negotiating settlements with government authorities and third-party litigants.

If closing a school or program outright is unavoidable, educators can implement partial “teach-outs” and other plans that minimize disruption to students and faculty and create avenues to settle bet-the-company litigation. These strategies are designed to mitigate risks under Department of Education regulations, preserve all necessary licenses and accreditations, and ensure continuity of operations. But they require careful consideration of real estate and other issues.

In some instances a sale of assets is the path toward maximizing value. Due to the regulatory overhang, sales take considerable time to implement. Waiting for a time of limited liquidity to complete a sale more often than not will lead to firesale prices.

No matter the severity of the situation, every for-profit educator must learn a basic lesson: planning for a possible restructuring is not a self-fulfilling prophecy. Careful, long-term planning will maintain cooperative and profitable relationships with creditors, regulators, partner institutions and, most important: students.

The Future

It may be time for a change. A restructuring alternative should be attainable that achieves the overall goals of the Department of Education. Congress might reconsider the outright ban of funding in chapter 11, or the U.S. Department of Education might institute alternative regimes that permit institutions to pass through filing quickly and efficiently – so long as they demonstrate that they’ll operate within acceptable business norms once the restructuring is completed.

Weil has been at the forefront of proposing legislation to augment available restructuring tools in circumstances where existing laws are deficient. It’s our belief that with minor adjustments to the Bankruptcy Code, both for-profit educators and regulators can be protected during these tumultuous times.
A goal of gender diversity and inclusion is to engage and promote women in the workplace. But to ensure that women have equal access to opportunities, organizations should engage an often untapped resource: men.

**Why Engage?**

The primary focus of gender diversity efforts has naturally been the empowerment and advancement of women – fostering opportunities to network, be mentored and find ways to manage work with personal responsibilities. Changing the way women engage and support one another in the workplace has had an incredibly positive impact on the global business culture.

But gender diversity efforts that fail to enlist the support and enthusiasm of men are deprived of crucial allies who might otherwise help advance the cause. Academic studies show that gender diversity initiatives are more successful when men are included as part of the effort. And additional research shows that financial performance improves when there is greater gender diversity in decision-making roles. Rather than a zero-sum game, a level playing field is a win-win for organizations and individuals when everyone has an opportunity to succeed. It’s an idea that’s

**TOWER Co-Chairs**

Jacqueline Marcus  
Business Finance & Restructuring Partner  
New York

Britta Grauke  
Head of German Litigation Practice Partner  
Frankfurt

David M. Blittner  
Private Equity Partner  
New York
Integrated Leadership

Weil's Management Committee – the Firm’s senior leadership organization – is connected to the Firm’s affinity groups in a compelling way.

The Firm’s ongoing Taskforce on Women’s Engagement and Retention (TOWER) includes male and female partners from around the globe. While TOWER was established to address women’s development and advancement, men have been and will continue to be integral to the effort – more than 40% of this task force’s members are men, including one of the co-chairs. Women@Weil’s Management Committee Sponsor, Michael Francies, who is Managing Partner of the London office, also serves as a special advisor to TOWER. Weil has also tackled these subjects in our diversity education programs, using interactive diversity theater to bring to light generational differences in work/life priorities and fathers who take parental leave.

Most important: when men actively engage in gender diversity programs, they are required to see familiar situations from a different perspective – that of a woman. When male attorneys hear firsthand from their female colleagues, they gain a deeper understanding of how gender can impact one’s experience at the Firm.

The Weil Approach

At Weil, we’re working hard to ensure that men are integrated and engaged in our gender diversity efforts.

Male partners are integrated into mentoring circles formed by Women@Weil, the Firm’s female affinity group. These mentoring circles were designed first and foremost to encourage informal mentoring for female associates with partners and peers. Each mentoring circle includes a male partner, a female partner and five female associates or counsel. This model activates the reciprocal power of mentoring, from which both associates and partners benefit. Associates gain access and guidance from partners, while both male and female partners come away with a better understanding of what female associates experience.

The Firm’s ongoing Taskforce on Women’s Engagement and Retention (TOWER) includes male and female partners from around the globe. While TOWER was established to address women’s development and advancement, men have been and will continue to be integral to the effort – more than 40% of this task force’s members are men, including one of the co-chairs. Women@Weil’s Management Committee Sponsor, Michael Francies, who is Managing Partner of the London office, also serves as a special advisor to TOWER. Weil has also tackled these subjects in our diversity education programs, using interactive diversity theater to bring to light generational differences in work/life priorities and fathers who take parental leave.

It’s our way of recognizing the evolving nature of gender diversity in the home and in the workplace. And it’s a great way to enable men to see that “women’s issues” are their issues, too.

The Management Committee assigns a sponsor from its own ranks to each of The Firm’s affinity groups.

The twist? The sponsor selected for any given affinity group must come from outside the group’s traditional membership.

For example, Daniel Dokos, Head of the Global Finance Practice – and a Management Committee member – serves as the committee’s sponsor for Latinos@Weil. In this capacity, Daniel, who is not Latino, attends important Latinos@Weil meetings, offers advice, fields questions and concerns, and acts as a liaison for the group to the Management Committee.

In addition, as an active member of the Firm’s LGBT Association, he can also share insights and strategies between both groups on an ad hoc basis.

This cross-integration of the Firm leadership serves two immediate purposes:

- Affinity groups are represented at the highest levels of the Firm’s leadership structure.
- Senior Firm leaders gain invaluable insight into the goals and activities of groups to which they do not belong.

On a broader level, this cross-integration binds the Firm together, forging a distinct and inclusive culture.
Like most other things in the world, pro bono is globalizing. As organizations operate increasingly on a global scale, they bring their commitment to provide access to justice and to exercise good corporate citizenship to more countries. At the same time, political and social changes are occurring in many jurisdictions, creating an environment where more pro bono involvement is appropriate. Public funding of legal advice for people who cannot afford it is under significant pressure, especially in the United Kingdom and other parts of Europe, where it has traditionally provided a solid safety net. All of these factors have changed the landscape of pro bono from being something primarily undertaken in the United States to something embraced by lawyers around the world.

Moreover, pro bono legal work is not just conducted by law firms: an important contribution is now made by lawyers working for corporations around the world, both in larger and smaller legal departments. Partnerships with law firms can often help legal departments to promote and energize their pro bono programs.

But how do you build and sustain a successful global pro bono program? In one obvious way, it takes the same building blocks needed for a successful program in the United States: dedicated attorneys, close cooperation with not-for-profits, pro bono partnerships with clients and service providers, and a top-down commitment that makes a passion for pro bono work part of your organization’s culture. It is equally important to recognize that one size does not fit all, and new approaches have to be developed for pro bono practice that take full account of local circumstances and legal systems.

It is critical to have solid infrastructure in place to create efficiency, solidity and sustainability.
This also allows an organization to take on big cases or projects, such as major constitutional litigation or multinational matters that require mobilizing large teams locally and internationally.

To develop a global pro bono practice, an organization must commit real resources to international work: a designated senior leader, ideally someone who has a connection to the organization’s international platform, in addition to dedicated staff with specific responsibilities for identifying and promoting local and international pro bono opportunities, as well as related public service and social responsibility engagements.

Equally important is developing formal business plans in each office, bearing in mind the different cultural expectations and approaches to legal work in each of the jurisdictions.

Of course, it is also vital to forge partnerships with clients, pro bono clearinghouses, legal services organizations and NGOs. These partnerships can enable your organization to make a greater impact on the community. For example, Weil works with clients such as General Electric through the Iraqi Refugee Assistance Project to help Iraqi and other refugees in the Middle East and North Africa whose lives are in imminent danger to safely resettle. We advised Scope, the United Kingdom’s leading disability charity, in its £20 million social bond listing on the Luxembourg Stock Exchange, helping to pioneer the field of social finance. We also assist City is for All, which provides the homeless with free legal advice in Budapest.

Weil is widely perceived in both the business community and the legal community as an innovator in pro bono, and we are happy to work in partnership with clients on new ideas that can help the most vulnerable in communities around the globe.