ROPES & GRAY

IN FOCUS

2020 AND THE YEAR AHEAD

THE VIEW FROM ROPES & GRAY

Ropes & Gray is the preeminent international law firm for private capital clients, and, notwithstanding the challenges, 2020 was a very busy year for the London office. As everyone will have experienced, entry into lockdown brought a lot of uncertainty about whether pending processes could complete and if new processes could kick off, as well of course for the impact of the measures taken to combat the pandemic on existing portfolio companies. We saw some processes inevitably fall away. Valuations of many companies became almost impossible. Financing was hard to secure and sponsors looked for other ways to get much needed liquidity. However, a number of processes did continue, new processes started and we helped our international client base complete deals in challenging conditions across the private capital markets. These included cross-border buyouts, M&A, P2Ps, bolt-ons, new financings and refinancings, and minority investments with significant activity across the health care, life sciences and TMT sectors in particular.

We also focused on the support we could give clients in securing their existing workforce and businesses in some of the most impacted sectors. It is at times of crisis that the true benefits of trusted long standing relationships between clients and advisers are shown. The Ropes & Gray team worked hard to provide support and guidance to clients on constantly changing dynamics across the globe and we are proud we were recognised as one of the FT's Most Innovative Law Firms for our work on the COVID response.

You will be able to see some representative matters and also read our reflections on 2020 in more detail in the following pages, together with our current expectations for 2021. We look forward to working with you again this year.

We wish you all a Happy, and most importantly Healthy, New Year and rest of 2021.

Ropes & Gray

2020 NUMBERS UP CLOSE

LONDON

94 **M&A** TRANSACTIONS

Enterprise value of

GBP£56 Billion+

GLOBAL

223 **M&A** TRANSACTIONS

Enterprise value of

US$147 Billion+

Advised on

25

Restructurings in 2020

MARKET RECOGNITION

9 of the **10**

Largest Global PE Funds

– PEI 300 2020

Top 5

Global and US Buyouts + Exits by Deal Count

– MergerMarket2019

KEY DEALS OF 2020

Q1 20

Advised **Veeam Software** on its definitive agreement to be acquired by Insight Partners, a deal valued at approximately $5 billion

Advised a **sovereign wealth fund** on its investment into **Inspired Education**, the international education group

Advised **King Street** and **Arax Properties** on their joint venture acquisition from **Blackstone** of **Alban Gate** in the City of London for £295 million

Advised **Arsenal Capital Partners** on its acquisition of **BresMed Health Solutions**, a provider of health economic research and communications services

Advised **Entertainment Partners**, a **TPG** portfolio company, on its acquisition of London-based filmTech startup, **We Got POP Ltd.**

Advised **Xerox** on its acquisition of **ITEC Connect**, a provider of IT support and managed print services, and **Altodigital**, the UK's largest independent office and technology provider

Advised **Lee Equity Partners** and its portfolio company **K2 Insurance** on its expansion into the UK and its acquisition of underwriting assets from Pioneer

Advised **Avista Capital Partners** on its acquisition of **Vision Healthcare NV**, one of Europe's fastest-growing omni-channel and direct-to-consumer healthcare companies

Q2 20

Advised **Baring Private Equity Asia** on its $1 billion+ acquisition of **Lumenis**, the global leader in the field of minimally-invasive clinical solutions for surgical specialties

Advised **NeoGenomics** on its strategic investment in **Inivata Limited**, and on the formation of a strategic collaboration for the commercialisation of liquid biopsy tests

Advised **Bridgepoint** on its acquisition of **Matrix SCM Group Limited**, a UK-based company engaged in provision of supply chain management solutions

Advised **CSC Holdings, LLC** (a member of the **Altice USA group**) on the issuance of $1.725 billion combined Senior Notes to refinance existing Senior Guaranteed Notes

Advised **Intermediate Capital Group** on its acquisition of a minority stake in **Workhuman**, the performance management platform

Advised **Arsenal Capital Partners** on its P2P acquisition of Cello Health, a listed global healthcare focused advisory group

Advised **GHO Capital** on its acquisition of **Envision Pharma**, a UK-based medical and scientific communications company

Advised **Partners Group** on its investment in **Rovensa**, a leading Portuguese-headquartered provider of specialty crop nutrition, biocontrol and protection products, from Bridgepoint

KEY DEALS OF 2020

Q3 20

Advised **TSG Consumer Partners** on its $80 million series D funding in **Revolut**, a consumer fintech firm

Advised **Liberty Global** on the financing arrangements for its proposed $7.4 billion public to private acquisition of Swiss telecoms group **Sunrise Communications Group**

Acting for **Morgan Stanley** as lead bookrunner and the Initial Purchasers in a new offering by Intrum AB of €600 million of its 4.875% Senior Notes due 2025

Advised **SEB** in connection with the refinancing of super-senior and pari passu revolving credit facilities of Intrum, a leading provider of credit management services and solutions

Advised **Altice USA** on the financing of the 49.99% sale of its Lightpath fiber enterprise business to Morgan Stanley Infrastructure Partners

Advised **Virgin Media** and **O2** on the £5.7 billion secured financing in connection with the joint venture combination of O2 and Virgin Media by Liberty Global and Telefonica

Advised **Integrated Media**, a **TPG** portfolio company, on its acquisition of a majority stake in **Goal.com** and related sites from DAZN

Advised **Alibaba** on its US$1.15 billion investment in **Farfetch Limited**, a NYSE-listed leading global online luxury fashion retailer

Q4 20

Advised **Liberty Latin America's** Chilean business arm, **VTR**, on all financing aspects in relation to its senior notes and senior secured notes issuance for $1.5 billion

Advised **Goldman Sachs** in relation to the certain funds staple financing offered to bidders in relation to the acquisition of **Galileo Education** from Providence Private Equity

Advised **Sound United LLC**, a portfolio company of **Charlesbank Capital Partners**, on its acquisition of Bowers & Wilkins, a leading manufacturer of luxury home audio systems

Advised the initial purchasers on **First Quantum Minerals Ltd.'s** offering of $1.5 billion senior notes due 2027

Acting for **SEB** on €250 million second lien liquidity financing for Preem, the second largest refinery business in the Nordics

Advised **Liberty Latin America** in connection with the financing of Cabletica, S.A., a leading fixed-provider in Costa Rica

Advised **Averna Capital** on its investment in **ClimateCare**, a leading profit with purpose environmental and social impact company

Advised **3i Group plc** on its investment alongside management for a majority stake in MPM, an international leader in branded pet food

2020 REVIEW AND MARKET OUTLOOK

INVESTMENT TRENDS

As the UK and other European countries went into lockdown at the end of Q1, April saw the lowest private equity deal activity in Europe since 2013 with 33 buyouts worth EUR 1.6bn according to *MergerMarket*. Selling parties put their plans on hold due to volatility and PE houses generally paused or halted deals with attentions turned to the rescue of portfolio companies.

Whilst restructurings and insolvencies have continued, there has been a moderate recovery as measures to deal with the pandemic have developed. Execution of a number of deals during lockdown however relied on longstanding relationships with assets and their management teams, providing a competitive advantage to those who previously activated those relationships.

Technology deals have unsurprisingly been most popular for private equity investors with 94 deals and EUR 10bn in value announced in H1 2020 according to *MergerMarket*. We have seen the healthcare and industrials spaces also be particularly active.

Public market transactions, including P2Ps continue to be attractive but PIPEs have continued to struggle compared to the US market because of the regulatory regime. We hope to see more SPAC activity in 2021 following the trends in the US this year and potentially loosening of the regulatory regime following Brexit.

Whilst we expect deal activity to remain subdued in the ongoing uncertainty, investors continue to have record levels of dry powder and will be looking to take advantage of opportunities where they are able to differentiate themselves, for example distressed or turnaround M&A, carve outs and sector track record. With an EU trade deal finally executed, we also expect investors to look at the UK with renewed confidence.

LEVERAGED FINANCE

Despite the disruptions caused by the pandemic, UK regulators have made it clear that the deadline of the end of 2021 for transition away from LIBOR still holds. Of particular interest is whether consensus soon builds around spread adjustment methodology. We have seen more lenders propose the mechanics for a switch to risk-free rates in new syndicated facilities. The syndicated loan market has been slow to adopt rate switch mechanics. Instead, lenders have opted to include a pathway to agree amendments once there is market consensus on the relevant terms. We expect a push towards use of rate switch mechanics during the early part of 2021, followed by a wave of amendment requests. With respect to “tough legacy” loans, the Financial Services Bill, which enables the FCA to authorize “synthetic LIBOR” to continue after LIBOR is phased out, is currently before Parliament.

Aside from LIBOR transition, there has been understandable focus in the market on the impact of COVID-19 on financial covenants, EBITDA add backs and cessation of business and MAC events of default in leveraged loan agreements. Amendments have been needed to address revenue losses and short term liquidity issues, including refreshing financial covenant levels, suspending leverage covenants in favour of a minimum liquidity covenant, switching off cash pay interest and facilitating new debt tranches. As a quid pro quo, lenders tried to eliminate the impact of COVID-19 as an Exceptional Item add-back to EBITDA, requesting fees and/or margin step ups, bolstering information undertakings and turning off certain permitted distribution or debt incurrence permissions. We expect these trends to continue as the second wave of the pandemic and a wind down of government support schemes hits home.

2020 REVIEW AND MARKET OUTLOOK

HIGH YIELD

The European high-yield bond market witnessed a rebound during Q2 following the near hiatus in March, largely supported by government and central bank stimulus packages. Although the European market did not show the same sharp increase in issuance as in the US high yield bond market, total European high-yield issuances by volume in the first half of 2020 were only slightly below the equivalent period in 2019, and sponsor-backed issuances increased. Low interest rates have meant that investors have preferred fixed-rate bond debt that was not linked to low interest rates, rather than syndicated loans, although demand for leveraged loans remains strong too. We continue to see many issuers looking to refinance existing high-yield debt on favourable terms and rates, and to extend maturities.

RESTRUCTURING & INSOLVENCY

The Corporate Insolvency and Governance Act 2020 (CIGA 2020) came into force on 26 June 2020, introducing the most significant changes to English insolvency law in a generation. In Europe, we expect to see further changes to restructuring legislation, such as forthcoming Dutch restructuring law, commonly referred to as WHOA or the ‘Dutch Scheme’, and pending German restructuring reforms, expected to come into force in Q1 2021.

On both sides of the Atlantic, governments have introduced comprehensive support measures. This, together with lenders generally taking a supportive approach with their borrowers, the re-opening of the capital markets and many credit funds deploying fresh capital into distressed situations, has ensured that many businesses have been able to weather the pandemic – at least for the short term.

With government support likely to wind down in the months ahead, and business disruption showing little easing as we move into winter, we expect to see more distressed opportunities arising for credit fund clients in the New Year. This will provide opportunities, both in the U.S. and Europe, for credit funds looking to deploy capital in loan-to-own strategies or through new money financing for distressed companies.

2020 REVIEW AND MARKET OUTLOOK

FUNDS

We have seen a general slowdown in buyout fundraises, particularly with the less institutionalized players, with fundraises typically taking longer. It is notable that there is a less substantial decline in PE fundraising activity on a total commitments basis, but instead an increased focus on larger funds and funds sponsored by established PE firms with known track records, as evidenced by the fact that significantly fewer funds have closed in 2020 compared to 2019, despite aggregate commitments not declining materially.

The exception to this is those fundraises that have a specific focus relevant to the time (e.g. credit, health, technology, certain logistics, renewables). We think we will see in 2021 some of the less institutionalized managers out in the market and raising successfully, assuming the impact of the pandemic is improving by then.

Outside of fundraises, we have seen many more secondary processes underway in 2020, and multiple GP recapitalizations. Coupled with this, we have seen multiple single asset fundraises and increased coinvestment activity. Specifically there has been an uptick in non-traditional co-investment deals. Primary fund investors have come in to provide top-up funding for selected assets in GP portfolios, and we have also seen a flurry of single asset deals. Some GPs have been reluctant to exit, so have turned to the secondaries market, which has been willing to take on single assets from funds and then offer further co-investment for these deals.

As with previous years, we expect to see an increasing focus on ESG and the development of ESG policies and procedures, anticipating increasing investor demand (particularly from institutional investors in Canada and Europe), but also increasing regulation from the EU and, with the Biden presidency, the US too – this coupled with a general sense that a focus on these issues is important and timely among the players in the industry.

2021 promises to be just as busy with some of these themes continuing and with fundraises paused or delayed in 2020 coming to the fore in the early to mid-part of 2021. Investors will also come back to the market, many having used a great deal of their 2020 on some of the big fundraises that occurred in the early part of 2020 and pre-COVID.

REAL ESTATE

The events of 2020 have unquestionably created some uncertainty in real estate markets, however, transactional activity has remained relatively strong. We continue to see clients investing in those sectors for which the fundamentals made sense prior to COVID, and where those fundamentals hold true in a post-COVID world, including logistics and light industrial assets, data centres, residential development and real estate life sciences.

As we approach 2021 and beyond, with an anticipated wave of distress we expect increased transactional activity for our opportunity-led clients across a variety of sectors both in the UK and across Europe.

TAX

HMRC has launched a second stage consultation on the tax treatment of UK holding companies in fund structures. The UK already has an attractive regime for equity investments which is widely used for UK transactions and for some international transactions. However, there are some drawbacks to the current UK regime, particularly for debt investments or investments which include a combination of debt and equity.

Recent changes following the OECD's BEPS project have also led a number of managers to pursue a strategy of making investments through a master holding company, often in the same jurisdiction as the main fund vehicle. The combination of these and other factors has led a number of UK based managers to prefer to structure funds and investments through non-UK vehicles in jurisdictions such as Luxembourg, Ireland and the Netherlands and to expand their operations in those jurisdictions.

The consultation seeks to promote the use of UK vehicles by establishing a special regime for "asset holding companies". The regime would apply in the context of widely held fund structures and so apply to most, but not all, structures that UK fund managers might establish. Ambitiously, it would apply across asset classes, with UK real estate being the only real exception. Given the increasing focus on substance in the tax world, the use of UK vehicles by managers which have their main European operations in the UK is a natural fit.

The regime envisaged in the consultation – no tax on capital gains, no tax on dividends, deductibility for results dependent interest, no withholding tax, no stamp duty, predictable transfer pricing, treaty qualification – sounds extremely attractive. Asset holding companies will pay 'no more tax than is commensurate with their intermediate role in the fund structure'.

However, the consultation document also expresses reservations about the risk that such a regime could be used for tax avoidance. This creates cause for concern that the regime will be excessively complicated. The UK certainly has form for this.

If HMRC is able to curb this tendency to complexity, this is a well-timed and well directed consultation that could result in an attractive and user-friendly regime that will significantly help to support the attractiveness of the UK as a hub for asset management.

2020 REVIEW AND MARKET OUTLOOK

REGULATORY

From a regulatory perspective, 2020 has seen operational resilience, market abuse and individual accountability continue to be at the top of the regulators' agenda. COVID-19 has shone the spotlight on these topics even further. ESG has also continued to be a priority, and new rules impacting the industry will see that these continue to be a hot topic for 2021 and beyond.

Looking ahead to next year, key areas asset managers in particular should be focused on are the LIBOR transition, changes in capital requirements, financial crime, new cross-border marketing rules and, of course, the implications of Brexit.

SPECIAL SITUATIONS

Many special situations investors looked at liquid secondary debt trading during 2020. This started with a bang in late March and continued for much of year, but the real window only lasted a matter of weeks. It once again highlighted the need to act quickly and to continuously track names. For many illiquid opportunities, many investors were denied opportunities by either shareholders putting more into their portfolio companies (including on a senior or even super senior basis) or by governments around the world providing unprecedented levels of business and employee support. It proved difficult for investors to compete.

For 2021, there is an expectation that, as secondary debt prices stabilise, investors will need to look at illiquid opportunities once again. Sourcing is likely to remain competitive and so investors may look further afield to try and find elusive proprietary opportunities – whether that is by sector or jurisdiction. Opportunities in sectors that have been hardest hit in 2020 may present themselves as the world enters, what everyone is expecting to be, the beginning of the end of COVID-19. But with the ramping up of vaccinations around the world and the ramping down of government support measures, many opportunities might depend on how the two overlap and how investors view the risk around the emergence of new variants of the virus. But even in those sectors, opportunities can present themselves. Asset financing, royalty financings and other business division financings are all being used to find access to opportunities whilst maintaining the appropriate downside protections.

Many investors who bought into stressed and distressed debt in 2020 are likely to have stayed in during the early part of 2021. Although many will have the opportunity to trade out and cash in their gain, others may end up in a wider restructuring. That may present opportunities to provide rescue financing or even a stepping stone to a distressed M&A transaction. But with so many companies operating under cov-lite structures, liquidity will really be the only trigger for bringing people round the table.

2020 PRO BONO

Lawyers Without Borders

LEPG lawyers spent a week in Nairobi training 20 Kenyan prosecutors as part of the final session in Lawyers Without Borders' two year programme to establish a prosecutor training institute in Kenya

Parkinson's UK

Our lawyers prepared the contract between a pharmaceutical company and Parkinson's UK regarding their offer to provide some of its specialist nurses without charge to handle increased call volume on its helpline due to the pandemic

Kenya Human Trafficking Legislative Gap Analysis

Worked closely with the Counter Trafficking in Persons (CTIP) Secretariat in Kenya for the past year to help draft policies to combat human trafficking

The 2020 Vault "Best Law Firms to Work For"

Ropes & Gray was ranked number 3 among US firms in the "Pro Bono" category

LONDON PARTNER CONTACTS

PRIVATE EQUITY

Helen Croke helen.croke@ropesgray.com
John Newton john.newton@ropesgray.com
Will Rosen will.rosen@ropesgray.com
Kiran Sharma kiran.sharma@ropesgray.com
Elizabeth Todd elizabeth.todd@ropesgray.com

PRIVATE EQUITY REAL ESTATE

David Seymour david.seymour@ropesgray.com

FINANCE

Robert Haak robert.haak@ropesgray.com
Michael Kazakevich michael.kazakevich@ropesgray.com
Aditya Khanna aditya.khanna@ropesgray.com
Alex Robb alexander.robb@ropesgray.com
Jane Rogers jane.rogers@ropesgray.com
Carol Van der Vorst carol.vandervorst@ropesgray.com

CAPITAL SOLUTIONS & FINANCE

Matt Czyzyk matthew.czyzyk@ropesgray.com
Sam Norris samuel.norris@ropesgray.com

TAX

Brenda Coleman brenda.coleman@ropesgray.com
Andrew Howard andrew.howard@ropesgray.com

ASSET MANAGEMENT

Tom Alabaster tom.alabaster@ropesgray.com
Eve Ellis eve.ellis@ropesgray.com
Anna Lawry anna.lawry@ropesgray.com

IP, PRIVACY & CYBERSECURITY

Rohan Massey rohan.massey@ropesgray.com

LITIGATION & ENFORCEMENT

Amanda Raad amanda.raad@ropesgray.com
Judith Seddon judith.seddon@ropesgray.com

ANTITRUST

Ruchit Patel ruchit.patel@ropesgray.com

60 LUDGATE HILL
LONDON EC4M 7AW
ropesgray.com

T +44 20 3201 1500
F +44 20 3201 1501

ROPES & GRAY

BOSTON | CHICAGO | HONG KONG | LONDON
NEW YORK | SAN FRANCISCO | SHANGHAI | SEOUL
SILICON VALLEY | TOYKO | WASHINGTON, D.C.