



# 2013 Practice Group of the Year

## Private Equity

Even as market dynamics reshape private equity, Kirkland & Ellis LLP attorneys preserved their legacy as one of the industry's go-to firms by creatively structuring agreements to help their clients nail down some of the past year's highest-profile deals, placing them among *Law360's* Practice Groups of the Year.

Kirkland's 400 private equity practitioners give it more manpower than most rival firms, as well as robust end-to-end expertise that extends from fund formation into deal-making and debt finance. That versatility pulled the firm into 68 global buyouts worth nearly \$50 billion combined through the first three quarters of 2013, according to firm figures, dwarfing its nearest competitors.

"What's unique about us is the absolute number of attorneys we have that focus on the various aspects of private equity," said Kirkland partner David Breach, a private equity expert. "It's unparalleled in North America and so it allows us to have a very broad and active client base, and to be involved in some of the most interesting transactions in the marketplace."

The firm's 280-strong client roster holds some of the most prominent U.S. private equity firms, including Golden Gate Capital and Bain Capital LLC, two firms that took center stage as the buyers in one of the heftiest take-private deals to hit the tech sector in 2013.

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In a deal that closed in September, the private equity pair forked over \$6.9 billion for BMC Software Inc., a business software company that had been under activist pressure for more than a year to sell itself in order to

better capitalize on a booming market for cloud-computing technology.

The transaction was widely seen as BMC's best chance at a turnaround after a disappointing run over several quarters that saw it lose more ground to big-name rivals Salesforce.com Inc. and Oracle Corp. Under private ownership, BMC is better positioned to pursue acquisitions and other initiatives to help it reassert itself in the marketplace — one that has continued to be a hotbed of deal-making activity.

Kirkland also had its hand in another closely watched play. Almost a year ago, Kirkland client 3G Capital Management LLC and Warren Buffett's Berkshire Hathaway Inc. rocked the marketplace with a proposal to swallow up H.J. Heinz Co. in an all-cash transaction valued at \$28 billion, the largest ever in the food

industry and one of the biggest of the year in any sector.

The mammoth deal was also noteworthy in that it tethered 3G, a Brazilian private equity house, to Buffett's industrial conglomerate. The unlikely pairing seized on a budding trend of buyout shops joining up with nontraditional equity sources to ink big-ticket deals.

In both the BMC and Heinz transactions, Kirkland attorneys put a new spin on well-traveled go-shop provisions to give the private equity suitors more security in the deal-making process.

The deal agreement for the BMC purchase included a 30-day window for the company to solicit and discuss prospective alternatives to the Bain-Golden Gate offer, a truncated version of more common 45- or 60-day spans. The Heinz deal offered the company no time to sniff out rival proposals, with the buyers agreeing to preferred concessions elsewhere, like preserving the Heinz name and headquarters.

"We took provisions that had become relatively standard in the marketplace and evolved them in creative ways to match the dynamics of the individual transactions and the goals of our clients in each of those transactions," Breach said.

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That kind of crafty and highly specific deal structuring rises out of years of experience in the marketplace, plus a clear understanding of a client and its aims, as well as the overarching private equity climate, somewhat in flux as the economy slowly brightens after a widespread downturn.

"We try to look around corners," said Bruce Ettelson, who heads Kirkland's private equity funds group. "We try to look down the road at our clients' objectives and the firm has always been focused on innovation."

Aside from the BMC and Heinz transactions, Kirkland attorneys guided Bain Capital to four other acquisitions that together were worth more than \$5 billion. They also sealed four more for Vista Equity Partners worth a combined \$3.5 billion.

In addition, Kirkland steered Apax Partners LP to a \$4.4 billion portfolio company sale to another private equity outfit and helped KKR & Co. LP sketch out a \$1 billion deal that gave it ownership of The Crosby Group LLC

and Acco Material Handling Solutions LLC, which both make lifting and rigging equipment used in the energy and mining industries.

Among the new funds formed on Kirkland's watch are Starwood Capital Group's record \$4.2 billion distressed opportunity fund, and a \$3.2 billion buyout vehicle raised by Court Square Capital Partners.

The firm also beefed up its private equity group with a pair of high-profile lateral hires last year. In February, the firm's Los Angeles outpost welcomed partner Rick Madden from Skadden Arps Slate Meagher & Flom LLP. Then, in November, partner Sean Rodgers decamped Simpson Thacher & Bartlett LLP for Kirkland's New York office.

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