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Dealmakers Plan to Keep Investing in Private Equity Practices Amid Higher Expectations for 2024

By Patrick Smith
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What You Need to Know

- The buildup of PE money and the abatement of some headwinds has PE attorneys somewhat bullish on 2024.
- The creative elements necessary over the last 18 months will collide with deal volume for a potentially big year.
- But that will likely not start until the middle of the year, experts say.

While private equity deals fell in the last two years, dealmakers say they have high hopes about 2024, especially the second half, and they have kept up staffing in M&A practices, regardless of deal volume in any given quarter.

2024 appears to be a year where creative dealmaking—such as carve-outs, minority-stake deals and even some debt covenant deals—could meet pent-up demand, several M&A and private equity lawyers noted.

"I expect it to be busier and I think the consensus is that more work will be done," noted Sonny Allison, co-chair of Cooley's private equity practice.

Private equity lawyers repeatedly said in interviews that 2024 will be busier than 2023, that deal activity acceleration will likely occur in the second half of the year, but it will look more like 2019 rather than 2021.

Credit: Funtap/Adobe Stock

While work in deal work activity is down compared with the second half of 2020 through 2022, it is mostly in line with where it was prior to the pandemic, according to deal numbers from Dealogic. But those intervening years were impactful in Big Law, and firms felt a sharp adjustment to getting back to more routine deal flow in the last 18 months. We've seen private equity firms and law firms used to handling run-of-the-mill leveraged buyouts become more creative with their approaches.

"The way people filled that hole in 2023 was with a lot of add-ons," said Luke Laumann, a partner in White & Case's M&A group who specializes in private equity work. "We saw some public companies doing carve-outs, and there were willing sellers there. Some companies also did liability management (as a consequence of interest rate hikes that continued through 2023) transactions."

Clay Brett, an energy transactions partner with Baker Botts in Houston who is a former general counsel of an energy investment firm, said transactions involving private equity funds have gotten more complicated.

"The last three years have represented different iterations of unprecedented events in private equity markets. Those events and the future uncertainty has led to really peculiar circumstances facing private equity sponsors," Brett said.

In an October interview, Paul Kukish, global vice chair of Latham & Watkins corporate department, said as evidenced by the output, private equity work has slowed, and in that slowdown, less traditional approaches to doing deals are emerging.

"I think we've seen more creative dealmaking mechanisms from the sponsor clients, and we're certainly seeing a larger amount of minority sale situations, more so than the sort of robust, full-company sale auction market that was pervasive in 2020, 2021 into the mid-part of 2022," he said.

Another interesting development, Brett said, is that private credit funds and banks are putting money into deals, particularly in the energy space. "Clients are making use of private credit to complete an acquisition, which also complicates dealmaking," he said.

The result of these shifts in business strategy by private equity firms has affected deal flow, both potentially positive and negative, the attorneys said.

"Our business is busier," Brett said. "We are completing acquisitions for clients that are paired with acquisition financing. Those are more drawn out and complicated and longer deals to do. A transaction that would take a month under prior practice takes three months and dies twice."

Kukish said something similar, saying that Latham has seen "higher volume on the structured equity side" and that work does generate hours, even in a slower market.

Laumann, the M&A lawyer at White & Case, expects "creative" solutions to continue in 2024. And those new solutions might work in conjunction with more traditional deals in 2024 to produce a significant uptick in deal activity.

Allison, at Cooley, said that as economic headwinds "play out," we are looking at a likely uptick in deal flow.

"I think some of that is starting to play out," he said. "Interest rates hikes have stopped and should come down. Despite some lumpiness, inflation is trending down. In PE, they have to put their capital to work. They can't sit on the sidelines forever. There has been activity in 2023, and those sitting on the sidelines last year, now that we are in 2024, they have to make investments in order to drive value."

Big Law Staffing

When private equity does well, the deals flow and the law firms (mostly) do well. In 2021, there was exponential growth in private equity deals, more than doubling the haul from 2020, topping $1.2 trillion in value for the year, according to data from the London Stock Exchange Group (LSEG).

Partially because of the private equity boom, Am Law 100 law firms generated enormous profits, with their net income growing about 19% in 2021.

What comes up, must come down. The overall value of private equity-backed deals in 2023 reached $566 billion, a decrease of 30% compared to a year prior and the slowest full year for private equity deal-making since 2019, according to LSEG.

While 2023 financial numbers are not available yet for the Am Law 100, the slowdown of deals in private equity as well as capital markets contributed to this group's collective net income sliding down 2.7% in 2022.

As a result of this up-down market, we've seen the see-saw of hirings and layoffs in the legal industry, as law firms bulked up and then trimmed down based on deal work.

If deals do rise again, law firms will again face the question of whether they should hire more or keep their current staffing. But some investment in staffing must come years in advance, law firm partners noted.

"We hire two years out," said Elizabeth Cooper, the co-head of Simpson Thacher & Bartlett's private equity mergers and acquisitions practice, member of the executive committee and co-administrative partner of the firm. "You can't toggle numbers based on current deal flow."

But she said that the firm's allocation of work to lawyers during slower and more active periods differs somewhat, including who would staff certain matters or who would be allowed to lead certain deals.

"Given our hiring cycle and the investment we think is needed to train people, when deal flow is a bit slower, especially at the junior level, we will re-deploy more junior associates to other matters," she said. "That is harder to do at the senior levels."

Peter Martelli, a partner in Kirkland & Ellis' M&A practice and member of the firm's executive committee, said that regardless of market conditions, within reason, the firm is fully committed to the PE ecosystem and has been for a while.

"With us, resources are deployed by the project," he said in response to whether the firm staffed deals differently when times were slow, as opposed to when they were very busy. "Whether busy or slow, it doesn't matter all that much. We are long-term bullish at Kirkland. You don't know when a particular deal will hit, but you continue to focus on what your clients need. It sounds a little fluffy, but it's true."

That investment, for Kirkland, means not only hiring and training more PE attorneys but building out other practice areas that might give the firm an advantage.

"We devote resources across the platform," Martelli said. "We focus on our clients' fundraising work, their secondary transactional work, their fund to fund work, asset management, M&A, all of it, so we are never just sitting idle."

M&A by Feeling

One point by multiple attorneys is that assessing the deal market is not always measurable.

"I think everyone has been waiting for a recession that is a year away for about seven years now," Laumann, of White & Case, said. "They thought 2023 would be the year. Didn't come. Inflation has gone down. Unemployment is low. There are signs that interest rates are going down. This could be the soft landing. It is certainly a feeling, separate from numbers and trends."

Brenda Sapino Jeffreys and Andrew Maloney contributed to this report.