



Private equity sound bite

Conscious uncoupling: What to consider before dismissing a senior executive

Reed Smith LLP Key PE contacts

Perry Yam – London
+44 (0)20 3116 2626
pyam@reedsmith.com

Mark Pedretti – New York
+1 212 549 0408
mpedretti@reedsmith.com

Ben Davis – London
+44 (0)20 3116 3819
ben.davis@reedsmith.com

Dr. Justus Binder – Munich
+49 (0)89 20304 127
jbinder@reedsmith.com

Marc Fredj – Paris
+33 (0)1 44 34 80 63
mfredj@reedsmith.com

Lucas d'Orgeval – Paris
+33 (0)1 44 34 80 65
ldorgeval@reedsmith.com

Emmanuel Vergnaud – Paris
+33 (0)1 44 34 80 56
evergnaud@reedsmith.com

Franck Coudert – Paris
+33 (0)1 76 70 40 11
fcoudert@reedsmith.com

Tahira Bano – London
+44 (0)20 3116 2666
tbano@reedsmith.com

James Cross – London
+44 (0)20 3116 2627
jcross@reedsmith.com

Thomas Ince – London
+44 (0)20 3116 2998
tince@reedsmith.com

While it may be best employment practice to dismiss an employee by (1) identifying a fair reason and (2) following a fair (and sometimes protracted) process, this may not make commercial sense when it comes to terminating a senior executive. Where a business has lost faith in its leadership, or simply wishes to make a clean break, following a lengthy process can be unsettling to the business and put it at risk. It is advisable, however, to think strategically about how to put the business in the best position before taking steps to remove a senior figure. We set out some suggestions below.

Think about cost. Cost will usually be the first point to consider. The executive's negotiating power for any settlement will be determined by his/her potential claims: usually unfair dismissal and any contract claims. Compensation for unfair dismissal is capped unless this can be linked to allegations of discrimination or whistleblowing, so this is something that the executive may raise as a negotiating tactic. The impact of any exit on incentive arrangements is likely to be a primary concern for a senior executive particularly if this affects how he/she will be categorised in terms of "Good Leaver/Bad Leaver" status.

Protect the business. Safeguarding confidential information from misuse by the executive will be of paramount importance. The business should consider whether the executive's access to systems should be removed immediately. Any settlement negotiation is likely to include how confidential information, such as contact lists, should be protected and whether any restrictive covenants in the executive's contract should be amended.

Choose your speed. The relationship between the parties, the reason for the exit and the scope for the executive to damage the business will determine the method of termination. A quick exit may minimise disruption, allow a swift change in leadership and protect the business in one scenario, whereas in another a smooth handover over some months may be preferred. If the executive is to work his/her notice period, it may be useful to put an incentive in place to ensure that this is effective. In some cases, the business may decide to enter into an investigation into the executive's conduct or give the executive the chance to improve performance which will draw out the process.

Remember the contract. Think about the mechanics of the exit. The contract should be checked to determine the length of notice, whether there is a fixed term in place and whether the executive may be put on garden leave.

Be wary of email. The exit of senior executives is more likely to take place by brief and frank discussions rather than following a detailed procedure. Be aware that email exchanges will be made available to a

court/tribunal in the event of any litigation. A decision will also need to be taken about how the departure is communicated internally and externally, and this will often be agreed in any settlement agreement.

Consider company law issues. If the executive is a board member he/she will need to be removed from the board as well as being dismissed as an employee. Think about whether shareholder approval will be needed for any pay-out. Sums paid may also need to be disclosed in the company accounts.

We would be very happy to talk through the relevant issues with you. For any questions, please contact Thomas Ince at tince@reedsmith.com, Eleanor Winslet at ewinslet@reedsmith.com or Carl De Cicco at cdecicco@reedsmith.com.

Transaction highlights

Recent deals across our platform

TARGET PARTNERS

Our Munich and London team, led by Justus Binder, has advised long standing venture capital client Target Partners on a €10 million financing for tado, the European market leader in intelligent climate control for consumers. This new investment will help tado to expand sales of its products to all major European countries.



A team led by associate Nicholas Williams, and including new leveraged finance partner Ben Davis and relationship partner Philip Taylor, advised CBPE Capital on the refinancing of the credit facilities put in place to support its acquisition of the Xafinity Consulting from Equiniti Group. Xafinity Consulting provides actuarial, pensions, healthcare and other employee benefits consulting and administration services.



A London team, including Perry Yam and Emilia Valvano, acted for the Russian purchaser on the acquisition of certain assets and the takeover of the Lincrusta business (a luxury wallcoverings business) from CWV Limited.

Roundtable event review

The state of the leveraged finance market



On 1 July, partners Perry Yam and Ben Davis, along with contacts of corporate finance advisory firm Livingstone Partners, hosted a roundtable lunch at the Reed Smith London office for clients and contacts including private equity funds, private funds and banks to discuss the state of the leveraged finance market. The Lord Mayor of London attended and gave a keynote address.

There were a number of themes that emerged from the discussions. The private debt funds had made substantial progress in the market during 2013 and it is clear that they have a competitive advantage through the absence of regulatory capital constraints. Furthermore, the private debt market is expanding with new entrants joining the market and new funds being raised. The banks remain under substantial pressure to lend to SMEs, but with repayments and refinancings reducing their loan book they need to lend aggressively just to stand still and maintain the size of their loan book. The market is therefore awash with liquidity from both banks and funds, which is leading to a return to some aggressively levered transaction structures and borrower-friendly terms as market participants compete to win mandates. This is, in turn, feeding through into high multiples being offered by private equity funds on competitive bid processes for good businesses, particularly given the generally low M&A volumes and re-opening of public markets seen in the first half of 2014. The key challenge for private equity funds is therefore to maintain price discipline.

These developments in relation to liquidity are being felt most keenly in the mid to upper mid-market as that is where many private debt funds focus their attention. However, at the lower mid-market there is still a high level of competition between the traditional banks. The private debt funds have established a firm footing in the UK and French market, with more limited unitranche financings seen in Germany and other key European markets. The heightened competition between providers of debt finance in the private equity sector may, over time, lead to more debt being made available to sponsor-less corporates as the private debt funds look for opportunities to deploy capital.