Private Equity

Private equity fund success often hinges on structure. Eversheds Sutherland’s fund formation practice builds a fund to win for sponsors and investors alike.

Eversheds Sutherland’s private equity team is adept at working on either side of a transaction, and is supported by strong corporate, tax and energy practices.

Eversheds Sutherland works both sides of the street in private equity, either as counsel for the issuer or as legal advisers to investors. We believe that knowing the concerns and ambitions of both sides enables us to serve each group better than by just concentrating on one or the other. Consequently, we advise issuer clients on the formation, organization, structuring, financing and operations of all types of private investment funds. We also advise large institutional clients on their investments in private equity funds, including negotiating side letters and structuring such investments to ensure favorable tax treatments for both U.S. and offshore investors.

The appeal of private equity is partially its relative freedom from regulation. We are thoroughly familiar with SEC exemptions and interpretive positions as to when operating companies cross the line and become investment companies, and we regularly advise clients on how to avoid that status. Commodities regulation issues can also affect private equity funds, and our attorneys regularly deal with the CFTC on novel and complex questions.

One of the biggest developments in this field is private equity platforms establishing both publicly traded vehicles and private funds. They do this to maximize assets under management and provide an investment mechanism for a broad spectrum of investors. We work with numerous sponsors to harmonize the investment strategies, co-investment opportunities and the related management and advisory arrangements needed to make this structure efficient and effective.

**Why Eversheds Sutherland**

**Perspective.** Our legal team is comfortable working on the issuer’s side with matters like fund structuring, formation and taxes or on the investor side on issues like side letters, offshore structures and tax issues for foreign investors.

**Comprehensive practice.** We advise clients on the formation, organization, structuring, financing and operations of all types of private investment funds, including mezzanine funds, private equity funds, venture capital funds and investment funds structured as REITs.
**Strong on investment legislation.** We have extensive knowledge of laws affecting private investments including the Securities Act of 1933, the Securities and Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940 as well as investment advisory agreements, federal and state tax matters, compliance and corporate governance. We continuously advise our clients on the Dodd-Frank Wall Street Reform and Consumer Protection Act as well as developments in implementing this legislation.

**Smart on fund-related structure requirements.** Many transactions often have specific fund-related structural requirements that necessitate complex multi-entity structuring, negotiation of earn-outs for prior owners, formation of blockers for tax purposes and similar types of private investing activity. We understand all the subtleties.

**Regulatory experience.** Many of our attorneys have experience as legal staff of federal agencies like the SEC, FINRA and the DOJ. This gives them insight into the concerns these regulatory bodies have and an understanding of the hot issues of the day.

**Strong support from other practices.** Our private equity clients are also served by our securities and general corporate practice, our tax practice and even our energy practice (for commodity investors).

**Solid experience.** Our attorneys have negotiated and structured limited partnership agreements including management fees with hurdle rates and high-water marks.

**Nuts and Bolts**
- We have experience in formation of all types of funds including:
  - Private equity funds
  - Mutual funds
  - Hedge funds
  - Venture funds
  - Domestic and offshore structures
  - Timber funds
  - Real estate funds
  - LBO funds
  - Mezzanine funds
- We represent private equity investors and funds (including venture capital and leveraged buyout funds) in all aspects of their businesses:
  - Fund formation
  - Evaluation of investment opportunities
  - Negotiation and documentation of investment transactions
- Portfolio acquisitions and dispositions
- Exits from investments

- Our practice has intimate knowledge of methods and practices used by portfolio companies of private equity firms to raise or structure capital, including:
  - Senior debt
  - Mezzanine debt
  - Common equity
  - Preferred equity investments

- Our attorneys have engaged in every type of growth strategy for such funds:
  - Leveraged buyouts
  - Management buyouts
  - Acquisitions
  - Unit divestitures
  - Roll-ups
  - Mergers
  - Dividend recaps

- They are well-versed in the relevant Acts of Congress and the latest developments in their enforcement:
  - The Securities Act of 1933
  - The Securities and Exchange Act of 1934
  - The Investment Company Act of 1940
  - The Investment Advisers Act of 1940
  - The Dodd-Frank Wall Street Reform and Consumer Protection Act
  - The JOBS Act

**Take Action**

Eversheds Sutherland’s private equity practice attorneys lead their field in all facets of formation, operation and termination of private equity investments. Supported by our highly regarded securities and general corporate and tax and energy practices, they offer a unique breadth and depth of service to our clients.

**Experience**

Represented private equity fund in a broad range of matters.

Helped create massive global timber fund.

Tech startup counseled by the firm in multimillion dollar private placement.

Represented a building supply portfolio company of MSouth Equity Partners, LLC, in its acquisition of six similar businesses.