

# Book Review: STRUCTURING VENTURE CAPITAL, PRIVATE EQUITY, AND ENTREPRENEURIAL TRANSACTIONS by Jack Levin

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Jack Levin of Kirkland & Ellis is no stranger to M&A TAX REPORT readers. Indeed, anyone involved in the merger and acquisition field is likely to recognize his name. As a leading tax practitioner in a leading firm, he is probably best known for his collaboration with Professor Martin Ginsburg of Georgetown University Law Center.

Together they authored the massive multi-volume treatise MERGERS, ACQUISITIONS, AND

BUYOUTS. Although Jack Levin's name is alone on the spine of this single volume on structuring VC and private equity deals, the 2008 edition lists as "special editors" Martin Ginsburg of Georgetown and Don Rocard of Kirkland & Ellis. (For recent review of MERGERS, ACQUISITIONS, AND BUYOUTS, see Wood, *Book Review: MERGERS, ACQUISITIONS, AND BUYOUTS*, M & A TAX REP., May 2009, at 5.)

Jack Levin has now benefitted us all once again with a comprehensive one volume guide to structuring venture capital, private equity and other types of transactions. This is a strongly practitioner-oriented book with enormous scope. Levin has done a magnificent job of demystifying this area. He provides structural advice, numerous alternatives and an admirable nontax focus, while at the same time being ever-mindful of tax considerations.

### Just the Basics

Levin starts with an introductory chapter that distinguishes private equity and venture capital investing from other types of investing. This chapter contains a useful history, all of the necessary nomenclature for dealing with private equity and VC investments, and a review of the myriad and diverse circumstances in which these vehicles are employed.

Chapter 2 commences an examination of the all-important structural possibilities, focusing primarily on nonconvertible debentures and preferred stock. Levin addresses such nontax concepts as structuring control of the board of directors, dilution issues, private offerings as well as initial public offerings. He addresses compliance with Securities and Exchange Commission rules, including private offerings and the various types of restrictions on resale that are typically imposed.

Chapter 3 addresses flow-through structures, including partnerships, LLCs and S corporations. The author does an admirable job of weaving together the various considerations, including mechanics and nontax considerations, as well as the tax advantages and limitations present within each sphere.

Chapter 4 is entitled "Structuring Growth-Equity Investment in an Existing Company." This chapter deals with what may be the hardest topic to address: the alteration of an existing company structure to facilitate investments. Levin covers redemptions (both tax and nontax), recapitalizations, preferred stock dividend structures and many others. He even discusses the applicability of the anti-estate freeze rules.

### New Funds and Reorganized Funds

In his explication of the rearrangement of an existing company through a recapitalization or otherwise, Levin addresses seriatim such

important issues as the impact (both tax and economic) on holders of stock options, accounting rules for options, stock sales and stock grants, and many other topics.

Chapter 5 covers buyouts, with an emphasis on the structural considerations for same. For each structure, the author points out the key acquisition issues (providing a helpful checklist). He also addresses the pluses and minuses of each approach from a tax, mechanical and even regulatory viewpoint.

There is significant attention given to liabilities and how they should be addressed. In these trying economic times, that focus is especially appropriate. Levin discusses key debt financing issues with aplomb, suggesting which things are most important, what you as a negotiating lawyer should request and various ways in which to attempt to negotiate the relative rights of various financing parties.

He addresses the various players, including mezzanine lenders, and suggests how to reconcile all of the competing interests. Interestingly, sandwiched into the middle of Chapter 5 is the discussion of the federal income tax aspects of buyouts. Once again, Levin methodically walks through the various structural choices, describing the tax advantages and disadvantages of each.

He then reviews private company buyouts separately, followed by public company buyouts. The author concludes Chapter 5 with what are primarily accounting rules regarding recapitalizations. Throughout, examples and planning pointers are sprinkled liberally. They make the book into an enormously valuable practitioner tool.

Chapter 6 discusses debt and equity securities and executive deferred compensation rules. The latter have become especially important (and especially tricky). Although there is a great deal more in the chapter, the author's discussion of Code Sec. 409A and its requirements and compliance regimes is particularly lucid.

Chapter 7 discusses consolidations of fragmented industry players. This chapter has little bearing to my practice, but I nevertheless found its discussion interesting. The author takes a deal structure viewpoint, analyzing each prospective roll-up by starting out with a way to structure it and then walking through each consequence. Levin does this with a:

- holding company structure;
- partnership or LLC holding company with corporate subsidiaries;
- partnership or LLC holding company, which itself has partnership or LLC subsidiaries;
- single corporate structure;
- single partnership or LLC structure; and finally,
- direct ownership of individual corporations by shareholders (with no holding company).

### Turn-Arounds and Exits

Levin's eighth chapter deals with the structural aspects of turnarounds of troubled companies. The book retains its theme of architecture, but this chapter is peppered with structuring advice about net operating losses and other tax advantages, and the special rules of Code Sec. 382(l)(5).

Finally, Chapter 9 of Levin's book addresses exit strategies. This miscellany covers sales and IPOs and is a wealth of practical business advice, securities rules and requirements, tax advice and various mechanical approaches.

There is one remaining chapter in the book before we reach the Appendix material, and that is Chapter 10 concerning "Structuring Formation of Private Equity Fund." Personally, I would have preferred this chapter earlier on in the volume, since it contains so much

helpful advice about how to apply what you have learned. This is a quibble, however, and it may be that most readers will appreciate Chapter 10 appearing where it does, serving as a kind of summary application of the various rules that have preceded it. Chapter 10 actually refers to the different forms of the fund, profit and loss allocation suggestions, management and management fees, and many applicable laws that will be triggered.

The Appendices contain a collection of Internal Revenue Code sections, regulations, pertinent revenue procedures, revenue rulings and so on. Perhaps more helpful than any of this, the Appendices also contain a variety of securities and bankruptcy law sections. Corporate, partnership and LLC statutes under Delaware law are included, as are key Bankruptcy Code rules. On top of everything else, Levin includes various SEC regulations, something that tax lawyers are not used to looking up.

All in all, Levin's book is more than worth the price. It is available from Aspen Publishers, part of Wolters Kluwer, for \$270 for the book alone. The combined print and CD price is \$440, or you can buy the CD alone for \$285. Details are at [www.aspenpublishers.com/Product.asp?catalog\\_name=Aspen&product\\_id=0735574685&promoID=EE99](http://www.aspenpublishers.com/Product.asp?catalog_name=Aspen&product_id=0735574685&promoID=EE99).