

FINANCIAL MARKET REGULATION IN SOUTH AFRICA AS GATEWAY TO INVESTMENT IN AFRICA: THE FUNDAMENTALS OF PRIVATE EQUITY FUNDS AND INVESTING IN SOUTH AFRICA

<u>Year:</u>	2024 (June, July)
<u>Course Instructor:</u>	Professor Richard Stevens
<u>ECTS:</u>	4
<u>Target Audience:</u>	Doctoral students
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Overview:

South Africa is Africa's largest economy and probably most developed. It therefore provides an ideal opportunity for various investment forms, including in private equity transactions. Through reading materials, course discussions, and group work, students will gain insight into the fundamental aspects of private equity investing, the perspective of fund managers and investors, those who transact with such funds, and those who regulate the fund industry. The course will provide a unique South African perspective, especially now that South Africa has adopted a Twin Peaks Regulatory Framework, like Australia and the United Kingdom. The course will start with an introduction to the South African regulatory environment in respect of private equity and specifically third-party private equity funds, which represents the dominant organisational form. In addition, the course will discuss private equity in relation to finance, legal practice, tax, types of private equity, fund structuring, latest trends, as well as the key principles of fiduciary law related thereto. At the conclusion of the course it will be clear that South Africa provides sufficient opportunities and protection to international funds which may want to invest in South Africa.

Area of Practice: Corporate Law, Innovation and Entrepreneurship

Teaching Medium: In person

Learning Objectives and outcomes:

The course aims to highlight three(3) key areas of private equity investing, namely:

1. The formation and structure of private equity funds and the key characteristics related thereto within the South African regulatory environment;
2. The importance of corporate governance and fiduciary law as it pertains to the private equity business model; and
3. Current trends and policy considerations that impacts private equity industry.

At the end of the module students should be able to understand the South African Financial Regulation environment and also where private equity fits into this system. Students should also be able to understand which legal forms are ideal to structure funds as well as the duties on fund managers in South Africa.

Grading: The course grade will be based on:

- You have to submit at least four thought papers. Class attendance and class participation will also be assessed.

Schedule:

- The course will commence on Tuesday 11 June 2024.
- The course consists of a total of 24 hours of direct class interaction, which will be split over six (6) classes.

- The dates of the six(6) classes will be:
 - Lecture 1: 11 June 2024 (9h00 – 13h00)
 - Lecture 2: 12 June 2024 (9h00 – 13h00)
 - Lecture 3: 13 June 2024 (9h00 – 13h00)
 - Lecture 4: 2 July 2024 (9h00 – 13h00)
 - Lecture 5: 3 July 2024 (9h00 – 13h00)
 - Lecture 6: 4 July 2024 (9h00 – 13h00)

READINGS

Overview of South African Corporate and Financial Law and Definition and History of Private Equity

Core Reading

1. Companies Act 71 of 2008 and Financial Legislation
2. Oaker, W. (2018). *A critical analysis of the legal environment in respect of the private equity industry in South Africa* (Doctoral dissertation, Stellenbosch: Stellenbosch University). Chapter 1, pages 1-18; chapter 2, pages 115-117, pages 177-218.
3. Cumming, Douglas J., and Sofia A. Johan. *Venture capital and private equity contracting: An international perspective*. Academic Press, 2013.
4. Schell, James M. *Private equity funds: Business structure and operations*. Law Journal Press, 2020.

Additional Reading

1. Lerner, Joshua, Ann Leamon, and Felda Hardymon. *Venture capital, private equity, and the financing of entrepreneurship: The power of active investing*. John Wiley & Sons, 2012.
2. Alexandros S, A comparative examination of private equity in the US and Europe: accounting for the past and predicting the future of European private equity.

Types of Private Equity

Core Reading

1. Cumming, Douglas J., and Sofia A. Johan. *Venture capital and private equity contracting: An international perspective*. Academic Press, 2013.
2. Lerner, Joshua, Ann Leamon, and Felda Hardymon. *Venture capital, private equity, and the financing of entrepreneurship: The power of active investing*. John Wiley & Sons, 2012.
3. Oaker, W. (2018). *A critical analysis of the legal environment in respect of the private equity industry in South Africa* (Doctoral dissertation, Stellenbosch: Stellenbosch University). Chapter 1, pages 19-86.
4. Schell, James M. *Private equity funds: Business structure and operations*. Law Journal Press, 2020.

Additional Reading

1. Private Equity Demystified (2017). Accessed April 2021
https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Finance/Corporate%20Finance/IE_CF_PrivateEquity_0217_draft2.pdf
2. BVCA Guide to Private Equity. Accessed April 2021.
https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Finance/Corporate%20Finance/IE_CF_PrivateEquity_0217_draft2.pdf
3. Jenkins et al (2010), EEag Report on the European Economy 2010. Accessed April 2021.
file:///C:/Users/wentzel/Downloads/Chapter_3_Private_Equity.pdf
4. Hütther, N. (2019). Do Private Equity Managers Raise Funds on (Sur) real Returns? Evidence from Deal-Level Data.

5. Southern African Venture Capital and Private Equity Association (SAVCA) (2020), Industry Report. Accessed April 2020. <https://savca.co.za/wp-content/uploads/2020/03/SAVCA-2020-Private-Equity-and-Venture-Capital-Impact-Survey.pdf>

Characteristics and Legal Structure of Private Equity Funds

Core Reading

1. Lerner, Joshua, Ann Leamon, and Felda Hardymon. *Venture capital, private equity, and the financing of entrepreneurship: The power of active investing*. John Wiley & Sons, 2012.
2. Oaker, W. (2018). *A critical analysis of the legal environment in respect of the private equity industry in South Africa* (Doctoral dissertation, Stellenbosch: Stellenbosch University). Chapter 1, pages 86-113; chapter 2, pages 114-273, pages 427-438.
3. Cumming, Douglas J., and Sofia A. Johan. *Venture capital and private equity contracting: An international perspective*. Academic Press, 2013.
4. Schell, James M. *Private equity funds: Business structure and operations*. Law Journal Press, 2020.
5. Private Equity: A Brief Overview An introduction to the fundamentals of an expanding, global industry By David Snow, Executive Editor, PEI Media.
6. Center for Private Equity and Venture Capital (2020), Key differences in the US and European private equity investment process Accessed April 2021. https://cpevc.tuck.dartmouth.edu/uploads/centers/files/PARUSHEV_Todor_KeyDifferences_P_E_EU_US_TransactionStructure_PAPER.pdf

Additional Reading

1. BVCA Guide to Private Equity. Accessed April 2021. https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Finance/Corporate%20Finance/IE_CF_PrivateEquity_0217_draft2.pdf
2. The German Private Equity Market in 2020 Report. Assessed April 2021. https://www.bvkap.de/sites/default/files/page/presentation_bvk_annual_statistics_2020.pdf.
3. PE Investment Process, Masters Thesis (2017)_Uppsala University
4. Groh, Alexander, et al. "The venture capital and private equity country attractiveness index 2018." *Retrieved December 23* (2018): 2019.
5. Lerner, J., Mao, J., Schoar, A., & Zhang, N. R. (2019). *Investing Outside the Box: Evidence from Alternative Vehicles in Private Equity*. Harvard Business School.
6. Phalippou, Ludovic. "A note on carried interest in private equity." *Available at SSRN 2640498* (2015).

Corporate Governance and Fiduciary Law including insider trading

Core Reading

1. Oaker, W. (2020). Unfettered discretion is paramount: the governance relationship between the private equity firm and the underlying portfolio investee company. *Stellenbosch Law Review*, 31(1), 158-176.
2. Cumming, Douglas J., and Sofia A. Johan. *Venture capital and private equity contracting: An international perspective*. Academic Press, 2013.
3. Schmulow, A. (2020). Consumer Financial Well-Being in South Africa's Twin Peaks Regulatory Regime: From Measurement, to Confidence in Outcomes. *Schmulow, Andrew, "Consumer financial well-being in South Africa's Twin Peaks regulatory regime: from measurement, to confidence in outcomes", The International Review of Financial Consumers*, 5(2), 11-18.
4. Schoenmaker, D., & Véron, N. (2018). A 'twin peaks' vision for Europe.
5. Oaker, W. (2018). *A critical analysis of the legal environment in respect of the private equity industry in South Africa* (Doctoral dissertation, Stellenbosch: Stellenbosch University). Chapter 3, pages 276-331.
6. Lerner, Joshua, Ann Leamon, and Felda Hardymon. *Venture capital, private equity, and the financing of entrepreneurship: The power of active investing*. John Wiley & Sons, 2012.

7. Schell, James M. *Private equity funds: Business structure and operations*. Law Journal Press, 2020.
8. Section 77, 78, 79, and 82 of the Financial Markets Act 19 of 2012
9. *Zietsman and Another v Directorate of Market Abuse and Another* [2015] ZAGPPHC 651 (24 August 2015)
10. *Speed v Transamerica Corp* 99. F. Supp. 808 (DD 1951)
11. *SEC v Texas Gulph Sulphar* 401 F.2d 833 (2nd Cir. 1968)
12. *Feldman v Simkins industries Inc* 269 F.2d (9th Cir 1982)
13. *SEC v Materia* 745 F.2d 197 (1984)
14. *United States v Carpenter* 791 F.2.d 1024 (2nd Cir. 1986)
15. *Carpenter v United States* 484 U.S. 19 (1987)
16. *United States v O'Hagan* 117 S. Ct. 2199 (1997)
17. *SEC v Falbo* 14 F Supp 2d 508 (SDNY 1998)

Additional Reading

1. BVCA Guide to Private Equity. Accessed April 2021. https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Finance/Corporate%20Finance/IE_CF_PrivateEquity_0217_draft2.pdf
2. Gompers, Paul, Steven N. Kaplan, and Vladimir Mukharlyamov. *What do private equity firms say they do?*. No. w21133. National Bureau of Economic Research, 2015.
3. Godwin, A. (2017). Introduction to special issue—the twin peaks model of financial regulation and reform in South Africa.
4. Shirwa, H. A., & Onuk, M. (2020). Corporate Governance Models and the Possibility of Future Convergence. *Corporate Governance*, 4(1).

Liquidity

Core Reading

1. Maurin, Vincent, David T. Robinson, and Per Strömberg. "A Theory of Liquidity in Private Equity." *Available at SSRN 3527298* (2020).
2. Cumming, Douglas J., and Sofia A. Johan. *Venture capital and private equity contracting: An international perspective*. Academic Press, 2013.
3. Lerner, Joshua, Ann Leamon, and Felda Hardyman. *Venture capital, private equity, and the financing of entrepreneurship: The power of active investing*. John Wiley & Sons, 2012.

Additional Reading

1. Albuquerque, Rui A., et al. "Liquidity provision in the secondary market for private equity fund stakes." *Available at SSRN 3182481* (2018).
2. Prencipe, D. (2017). *The European venture capital landscape: an EIF perspective. Volume III: Liquidity events and returns of EIF-backed VC investments* (No. 2017/41). EIF Working Paper.
3. Vanacker, T., Forbes, D. P., Knockaert, M., & Manigart, S. (2020). Signal strength, media attention, and resource mobilization: evidence from new private equity firms. *Academy of Management Journal*, 63(4), 1082-1105.

Regulation and Industry Trends

Core Reading

1. European Securities and Market Authority: Alternative Investment Fund Managers Directive (AIFMD). Accessed at April 2021. https://www.esma.europa.eu/sites/default/files/library/esma34-32-352_qa_aifmd.pdf
2. AIFMD Checklist <https://assets.kpmg/content/dam/kpmg/nl/pdf/2020/services/Checklist%20AIF.pdf>
3. Schmulow, A. (2020). Consumer Financial Well-Being in South Africa's Twin Peaks Regulatory Regime: From Measurement, to Confidence in Outcomes. *Schmulow, Andrew, "Consumer*

financial well-being in South Africa's Twin Peaks regulatory regime: from measurement, to confidence in outcomes", *The International Review of Financial Consumers*, 5(2), 11-18.

4. Schoenmaker, D., & Véron, N. (2018). A 'twin peaks' vision for Europe.
5. Cumming, Douglas J., and Sofia A. Johan. *Venture capital and private equity contracting: An international perspective*. Academic Press, 2013.
6. The Markets in Financial Instruments Directive (MIFID II). Accessed at April 2021 https://marcuardheritage.com/app/uploads/2020/08/MHEU_MiFID_II.pdf

Additional Reading

1. The German Private Equity and Venture Capital Association (BVK) eleventh issue of the Private Equity Investor Brief. Accessed April 2021. https://www.bvkap.de/sites/default/files/bvk_investorenbrief_rz_kurz_0.pdf.
2. Ferranni and Moloney: Reshaping Order Execution in the EU and the Role of Interest Groups: From MiFID I to MiFID II. Accessed April 2021. https://www.researchgate.net/publication/259429799_Reshaping_Order_Execution_in_the_EU_and_the_Role_of_Interest_Groups_From_MiFID_i_to_MiFID_II
3. The German Private Equity Market in 2020 Report. Assessed April 2021. https://www.bvkap.de/sites/default/files/page/presentation_bvk_annual_statistics_2020.pdf.
4. Groh, Alexander, et al. "The venture capital and private equity country attractiveness index 2018." *Retrieved December 23 (2018): 2019*.
5. Boogaard, R. et al, Chapter 23 AIFMD and Private Equity, in *The Alternative Investment Fund Managers Directive*, 3rd edition by Zetzche, D.
6. The Fourth Money Laundering Directive (MLD4) How it affects your Business Monica Fahmy. Accessed April 2021. http://expertdirectory.sge.com/data/files/GlobalRiskProfile_MLD4_whitepaper.pdf
7. The Fifth Anti-Money Laundering Directive (AML5) (2019) by KPMG. Accessed April 2021. <https://assets.kpmg/content/dam/kpmg/mt/pdf/2019/01/aml5-directive.pdf>
8. German Private Equity Barometer: 3. Quartal 2018. Accessed April 2021. file:///C:/Users/wentzel/Desktop/Private%20Equity%20Course_TUm_June%202021/6.Regulation%20and%20Industry%20Trends/German%20Private%20Equity%20Barometer,%203.%20Quartal%202018.pdf