

# Private Placement –process

September 2005

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## Overview on Private Equity (PE)

- **Due to their limited time horizon, PE investors generally seek companies that are perceived to enjoy high growth potential over the long-term, whether:**
  - because the target company is industry with long-term, high-growth potential,
  - because the target company is developing new products or services that when introduced are likely to garner a significant market share,
  - because the target company is an active force in a rapidly consolidating industry, or
  - because of any combination of these characteristics.
- **With respect to the original shareholders, a private equity investment will often involve having to learn to manage the company with certain restrictions on decision-making.**
- **Investors frequently request representation on the board of directors and rights to veto actions relative to certain key management and operating issues.**
- **In some cases, the investors will even seek direct participation in the day-to-day management of the company. Investors may also wish to provide technical assistance, technology or management services to the company.**
- **With respect to the Investor, the relative illiquidity of the company's shares purchased by the investor generally represents one of the most significant risks in any private equity investment. Accordingly, in order for the investor to be able to realize an acceptable return on its investment, the investor will insist upon negotiating an acceptable exit strategy at the outset of the investment.**
- **Such strategies may include taking the company public (IPO), selling the company to a third party (trade sale), selling the shares back to the original shareholders (pursuant to a put provision in the agreements documenting the private equity investment) or selling the shares to a third party after redemption.**

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- **Once the company has decided to seek private equity, the first step will be the preparation of a detailed business plan or private placement memorandum ("PPM") that describes the Company's business and operations, summarizes its business strategy, describes the relevant market, includes financial statements, if available, and includes detailed financial projections.**
- **The drafting of PPM should be a comprehensive but concise presentation. It must be of the highest quality and easily understandable in order to differentiate it from the competition.**
- **Simultaneous with drafting of the PPM, investment bank usually develops a detailed contact plan supplemented by a selective pre-marketing process. The heart of the plan consists of a list of potential "lead" and "follow-on" investors that may include venture capital investors, mezzanine funds, pension funds, insurance companies and high net worth individuals.**
- **The due diligence review is essential to formulating a valuation by potential investors and for verifying the assets, liabilities and contractual obligations (including any existing or potential contingent liabilities) and financial condition of the company. In order to prepare for the due diligence to be carried out by interested Investors, the company, with advice from its legal counsel, will be responsible for selecting, organizing, and making available for review all relevant documents. In addition, the company will typically arrange for investors to meet at length with management and tour the company's facilities.**
- **Typically, after a potential investor has performed a cursory due diligence and has indicated a serious interest in making an investment, the parties will want to negotiate a term sheet or equivalent letter of intent which sets forth, in detail, the principal terms and conditions on which the investment will be made. (However, it is not uncommon for a term sheet to be negotiated prior to the performance of due diligence by a potential investor.)**
- **Those terms and conditions will be influenced by the amount to be invested, the level of ownership the investment represents, the type of business the company operates, the company's financial situation, and the type of investment (development stage, strategic investment in an ongoing business, recapitalization, or troubled company turnaround).**

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- **The single most important issue to be addressed in the term sheet is determining the value of the company. This issue is the most sensitive matter at the initial negotiation stage, and the investors will generally not go forward with a proposed investment upon the failure to reach agreement.**
- **Other important issues relating to the financial terms of the investment, including the schedule on which capital is to be invested and the nature of the investment (convertible debt, debt with warrants, common stock, preferred stock, etc.), are resolved at this term sheet stage. In most cases, the term sheet also addresses issues relating to company governance and the relationship between the Investors and the original shareholders.**
- **The amount of negotiation on these issues and the extent of the detail included in the term sheet or letter of intent will influence, in an important fashion, the negotiation of the relevant agreements. To the extent the parties are able to reach a detailed agreement at the term sheet stage concerning these issues, there will be a corresponding reduction in the amount of time required to negotiate the documentation of the investment.**
- **Typically, there is significant negotiation between the principals that occurs at the term sheet stage. Once the terms and conditions have been agreed to by all the parties, legal counsel will incorporate the terms into draft documentation.**
- **This generally includes both a securities purchase agreement (containing the price, the nature and terms of the shares, the conditions to closing the investment, the representations of the parties and any indemnity obligations), and a shareholders' agreement, which regulates all aspects of the relationship among the company's shareholders, including the resolution of any controversies that may arise among the parties.**
- **Therefore, because of the pivotal role it plays in the success of the investment, the shareholders' agreement should be drafted in such a way so as to protect all shareholders, represent their interests, and anticipate any kind of controversy by providing an adequate mechanism for its resolution.**
- **It will be the lawyers' responsibility to produce documents that set forth, in a clear manner, all the terms and conditions negotiated by the parties and provide a workable arrangement for the management of the company.**

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- Strategic assesment of the business case
- Analysis and recommendations on the company's business strategy
- Analysis and recommendations of financing alternatives

- Project plan
- Build the investment story
- Investment memorandum
- Financial Model
- Legal documentation
- Road show material
- Identification of potential investors
- Realistic valuation (for interim use)

- Agree on contact list
- Create appetite and competition between financiers
- Potential investors approached
- Investor meetings with management
- Leading all investor discussions

- Recommendations on transaction structure
- Compare offers or build term-sheet
- Co-ordinate due diligence
- Negotiate sale and purchase agreement
- Keep on competitions as long as possible
- Effective deal co-ordination in relation to all parties involved

- Optimize investor's protection mechanisms and corporate governance
- Minimize legal risks in connection to liquidation, profit share, competition restrictions, vesting arrangements, working obligations and liabilities
- Provide information about all relevant financial terms offered by investors

## Risks related to the private fundraising

- **Private equity investments pose risks for both the original shareholders and the investors, in addition to the business and valuation risks that all companies face.**
- **Past experience has shown that the more significant factors which have given rise to problems in private equity investments which have included, among others:**
  - **disagreements on the value of the company, the sales price of the investors' participation and the appropriate valuation procedures;**
  - **disagreements on exit formulae for the investment;**
  - **the conflicting business cultures of the original shareholders and the investors;**
  - **the reluctance of original shareholders to permit investors to participate in management of the company; and**
  - **the inability of the local judiciary system to resolve controversies efficiently.**
- **As in any direct investment, there is the risk of changes in or disagreements with regard to either the goals of the company or the interests and expectations of the original shareholders and investors.**
- **Therefore, it is important that the parties negotiate clear and effective mechanisms to regulate the relationship among all shareholders, especially the terms and conditions dealing with governance, financial decisions, day-to-day management, dispute resolution, and exit strategies.**
- **An additional risk faced by the original shareholders is the potential for dilution of their interests. Private equity investment is often attracted to businesses and industries with strong prospects for growth. As a result, Investors often make an investment in a company in anticipation of the pursuit of an aggressive growth strategy, which may impose significant and continuing capital needs on a company. Depending on their resources, the original shareholders may experience dilution as investors or other capital sources make contributions in excess of their ratable interest.**

## Replicon Corporate finance Ltd.

- Replicon group is independent Finnish corporate finance and consulting house based in Helsinki.
  - Replicon provides highly specialized and quality-oriented corporate finance and consulting services for growth companies and their potential partners as well as venture capital and private equity funds.
  - Replicon's special focus area are innovative growth companies.
  - Regardless of the service or transaction, we offer flexible, cost-saving execution process combined with deep knowledge of the industry and private equity market, based on education, experience, established network and daily contact with leading companies and private equity investors
  - The fundamental objective of Replicon Corporate Finance and Consulting is to provide services of unrivalled quality with a deep commercial and legal understanding and a practical, constructive and innovative approach.
  - Our team is fully committed to each client and to achieving professional excellence in every assignment
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- **OUR INNOVATIVE FEE STRUCTURE TARGETS TO CLOSING, NOT MAXIMIZING CONSULTANCY HOURS**
  - **COMBINATION OF FINANCIAL, STRATEGIC, SCIENTIFIC AND LEGAL KNOWHOW MINIMIZES OUR CLIENTS COSTS AND RISKS IN EVERY GIVEN TRANSACTION**
  - **WE CONDUCT PRELIMINARY LEGAL DOCUMENTATION RELATED TO PRIVATE FUNDRAISING; THIS MEANS NOTABLE SAVINGS IN TRANSACTION COSTS OF PLACEMENT PROCESS.**

## Replicon value added

- **Replicon Corporate Finance, acting as an intermediary between our clients and potential investors, provides a buffer against unproductive solicitations, coordinates required due diligence process, screens out inappropriate investors, and ensures the smooth management of the fund-raising process until all investment commitments have been secured and documents signed.**
- **Through our mediation, management can avoid the more tedious aspects of the capital raising process and remain focused on day-to-day operations.**
- **Replicon Corporate Finance contacts potential investors, forwards placement memorandums to interested parties, places follow-up calls to answer questions, and arranges presentations. In meetings orchestrated and attended by Replicon, management completes its investor presentation and responds to detailed questions. Subsequent due diligence requests, meetings, or discussions are arranged with the goal of moving rapidly to a commitment. In tandem with our client, we negotiate with the lead investor(s) and immediately thereafter, draft relevant legal documentation.**
- **Although the investor universe in private funding is strong and growing rapidly, it nonetheless evolves continuously, making it difficult to keep abreast of private capital market conditions. Our investor database and network of professionals help clients to navigate this unfamiliar territory. In addition, increasing industry talk from credible sources helps foster an environment where an investment decision will be made, rather than delayed.**
- **Working with our clients, we structure the security, terms, and valuation that will best meet the market and case specific requirements.**

## Replicon's services in detail

- **Reviewing and discussing the client company's funding requirement in regard to the company's business plan;**
- **Advising on the most appropriate capital structure for the company;**
- **Managing and co-ordinating the finance raising process including assisting in identifying and/or financial investors and participating in negotiations with prospective investors;**
- **Assisting in the preparation of an information memorandum and a management presentation for the company, for distribution to potential investors, subject to appropriate confidentiality undertakings, and assisting in determining the appropriate recipients of the information memorandum;**
- **Arranging the marketing of the transaction and the company to appropriate potential investors;**
- **Assessing the likely, realistic, valuation of the company and devising an appropriate strategy to maximize the valuation of the company (in parallel consulting process with preparation of information memorandum);**
- **Receiving on the company's behalf indications of interest from potential investors interested in providing finance to the company, whereupon Replicon will make available to such persons additional information relating to the company as may be agreed. In consultation with the company, Replicon will consider bona fide offers by investors and advise the company as to the merits of the offers so made;**
- **Replicon will, if required, advise the company with regard to the commercial aspects of any memorandum of understanding/heads of agreement to be entered into prior to the signing of final legal documentation;**
- **Provide preliminary legal documentation necessary for full completion of the transaction in accordance with the Finnish Law and common private equity practise. Such documentation will include, but is not limited to: term-sheets; letters of intent; convertible preferred shares and bonds; shareholder agreements and side-letters; board decisions; decisions of extraordinary general meetings; changes in the company's article of association and temporary or final certificates of given instrument; and**
- **Such other assistance, as requested by the company and as may be agreed with Replicon in relation to the transaction.**

## Replicon Contact Information

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