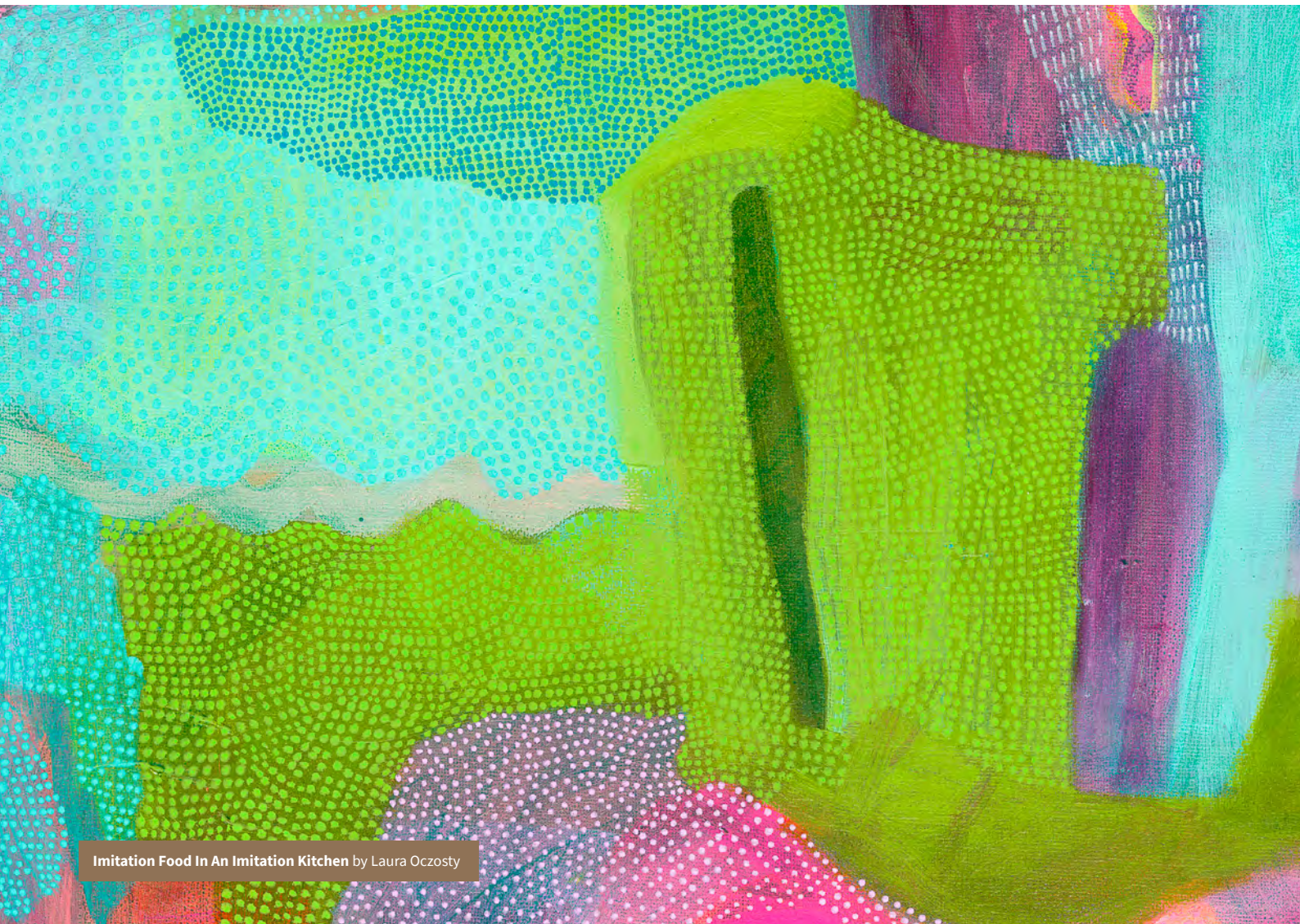


# IN PRIVATE

KWM M&A INSIGHTS | 2025



# WELCOME TO THE LAUNCH EDITION OF *IN PRIVATE*

your essential legal guide to the world of private capital dealmaking and portfolio management.

This publication is part of KWM's refreshed suite of M&A and corporate-focused titles, each designed to help you easily navigate the topics that matter most to you. Our inaugural edition contains six articles covering key trends and topics for private capital sponsors and their portfolio companies.

**"Top 10 PE trends,"** unpacks the latest in private capital across the Asia Pacific region. Discover how geopolitical shifts and economic changes are influencing investment strategies with insights into the markets and sectors attracting the most attention from sponsors.

In **"Data Centres – what next?"** we examine the surge of investments in this critical sector. Private capital is leading the charge as demand for data infrastructure skyrockets. We analyse the factors driving this trend, including the growth of AI and e-commerce to assess the long-term view on an asset class that has seen meteoric growth.

**"Cov-what?"** keeps you across the evolving approaches to leveraged loan financing. We explain sponsors' choice between pricing and flexibility and share observations from international markets on how 'Cov-lite' structures are translating to lower credit risks for financiers.

The way sponsors and markets integrate ESG considerations into their investment strategies continues to evolve. **"Australia's new climate rules are coming"** unpacks how mandatory climate reporting will need to be factored into private capital dealmaking and portfolio management.

We cover the regulatory landscape from two perspectives.

**"Getting sponsors in shape for Australia's Merger Regime"** looks ahead at how Australian's new merger notification rules will require thoughtful and strategic engagement to manage dealmaking risk and timelines.

And **"Private Markets in focus"** providing valuable insight into ASIC's regulatory intent as it formally examines the evolving dynamics between Australia's public and private markets and the potential implications for market participants.

We trust you will find this edition informative and insightful. *In Private* will issue twice annually. We look forward to your feedback, and keeping you informed and engaged.

Enjoy the read!

The In Private Team

## MEET THE EDITORS



MARK  
MCNAMARA  
PARTNER - CO-HEAD  
PRIVATE CAPITAL



NICOLA  
YEOMANS  
PARTNER - CO-HEAD  
PRIVATE CAPITAL



YUEN  
YEE CHO  
PARTNER



MARK  
BAYLISS  
PARTNER



ALEX  
ELSER  
CHAIR



GARY  
HAMP  
PARTNER



## IN THIS EDITION

**1** TOP 10 TRENDS FOR PRIVATE CAPITAL IN AN UNCERTAIN WORLD

**2** PRIVATE CAPITAL LEADING THE SURGE INTO DATA CENTRES

**3** COV-WHAT? FINANCIAL COVENANTS IN LEVERAGED FINANCE DEALS

**4** GET READY TO REPORT: AUSTRALIA'S NEW CLIMATE RULES ARE COMING

**5** GETTING SPONSORS IN SHAPE FOR AUSTRALIA'S NEW MERGER CLEARANCE REGIME

**6** AUSTRALIA'S PRIVATE MARKETS IN FOCUS: ASIC'S TAKING A LOOK

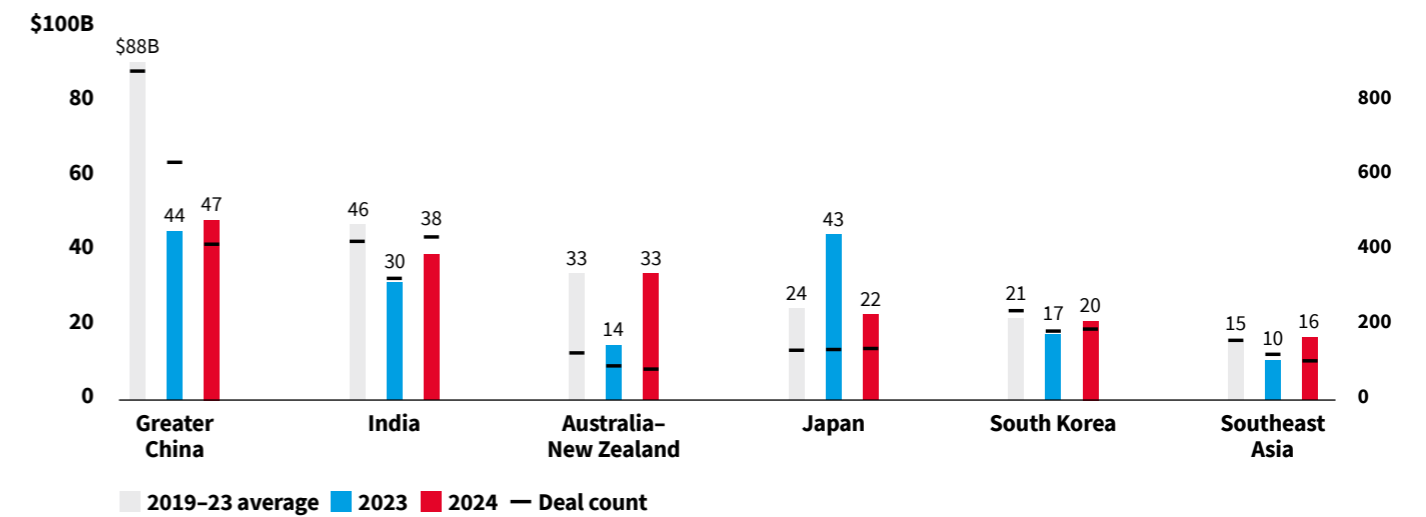
# TOP 10 TRENDS FOR PRIVATE CAPITAL IN AN UNCERTAIN WORLD

With sophisticated investors quickly seeking diversification in response to geopolitical risk, Asia Pacific markets are well-positioned to become an attractive hedge. We are seeing a strong desire to reposition private capital into Asia Pacific as the region continues to reduce its correlation to the US. Market shocks are not masking the underlying fundamentals in the region.

Private capital investment across APAC was already starting to recover from prior year declines.

In 2024, year-on-year dealmaking varied widely across sub-regions.

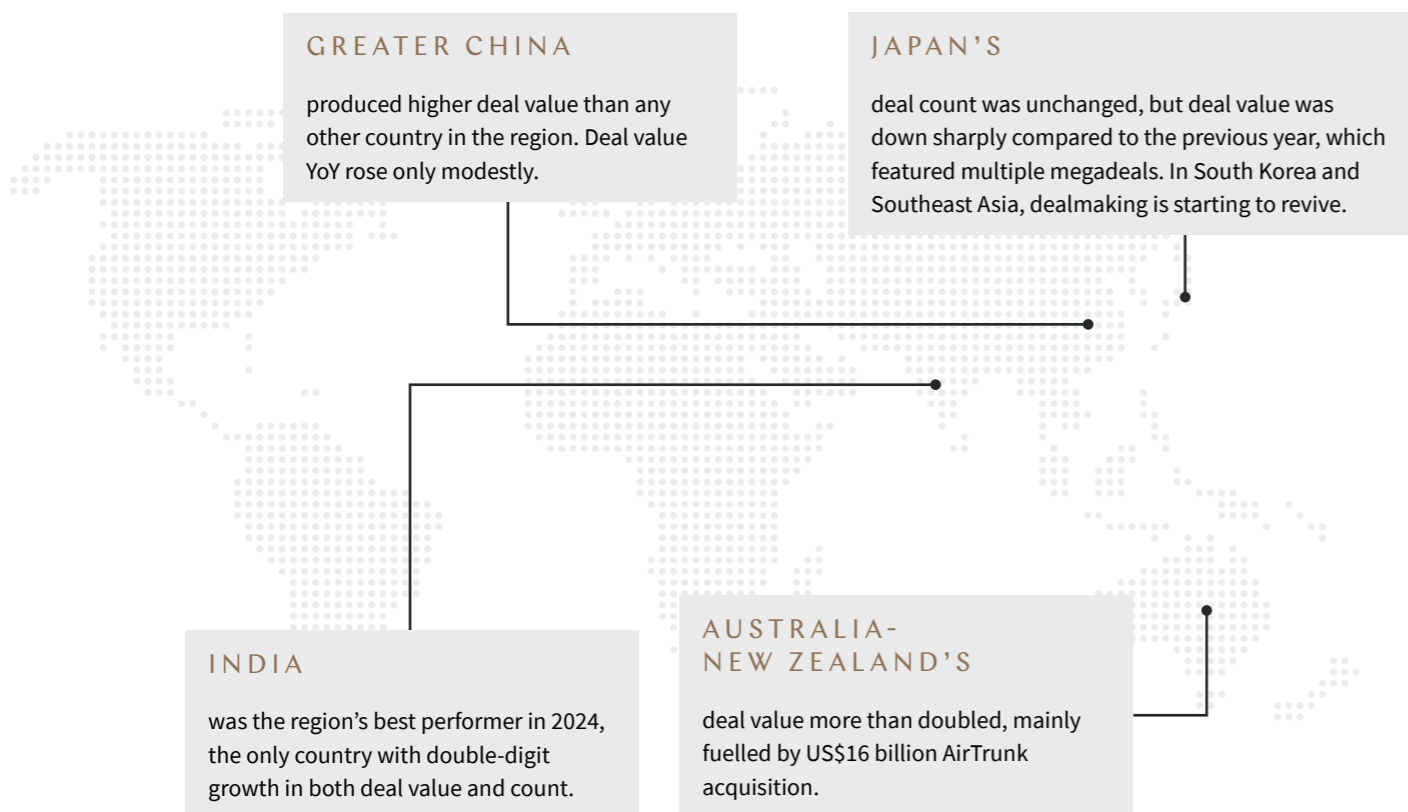
Asia-Pacific private equity deal value, by market (\$B)



Note: Excludes real estate and deals with a value under \$10 million  
Sources: AVCJ; Bain analysis



The volume of dealmaking and market dynamics continue to be unique to each country.



We expect these trends to continue in 2025 with investors' appetite for deals in the region growing. This article explores the key trends reshaping private equity in the region and what makes the Asia Pacific increasingly attractive for global investors.

## 1. CO-INVESTMENTS WILL CONTINUE TO SURGE

GPs are increasingly offering LPs direct capacity in deals. A StepStone survey covering 145 GPs and 420 funds showed that coinvestment volume has risen approximately 30% since before the pandemic. LPs are enthusiastic to get a piece of the action with targeted exposure, potential for superior returns and, in many cases, more control.

In the large-cap segment, there has been a significant increase in demand for direct deal exposure, driven in part by the desire to mitigate fees. We are seeing investment ratios of 1:1 between GPs and LPs becoming common, reflecting a mature and collaborative investment environment.<sup>1</sup>

This trend reflects a broader evolution towards more sophisticated and flexible investment structures in the region. Co-investment allows collaboration on underwriting, capital deployment flexibly and the option to align investments with specific strategic objectives. We are also seeing complex return waterfalls being structured to allow for progressive investment into a single asset opportunity.

1. Co-investment: How Asian GPs are responding to rising demand for direct exposure - ION Analytics



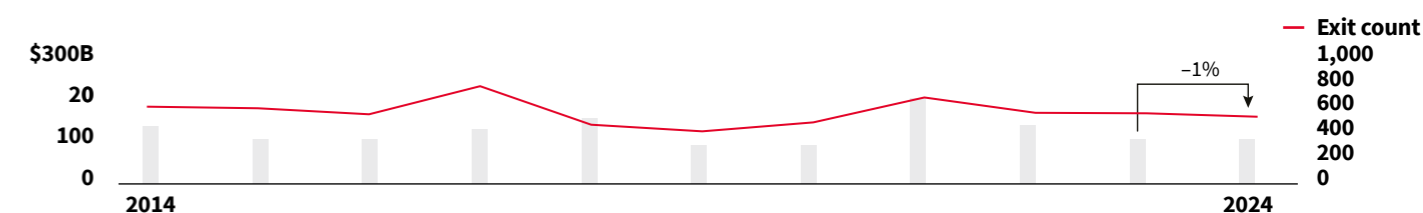
## 2. SECONDARIES AND PARTIAL EXITS RULING THE ROSTER

Overall, Asia Pacific exit value dipped 1% compared with the prior year but manager sentiment on exits improved in 2024. The number and value of exits were roughly flat but a sharp drop in Greater China's exit value masked gains in other countries. Both LPs and GPs see the exit environment as the biggest impediment to strong returns.<sup>2</sup>

This trend reflects a broader evolution towards more sophisticated and flexible investment structures in the region. Co-investment allows collaboration on underwriting, capital deployment flexibly and the option to align investments with specific strategic objectives.

### Asia-Pacific

Buyout-backed and growth exit value



Notes: Includes IPO data; IPO value represents offer amount and not market value of company; North America and Europe—includes partial and full exits; excludes special-purpose acquisition companies and bankruptcies; Asia-Pacific—includes buyout, growth, and venture exits; excludes real estate and deals with announced value less than \$10 million; includes investments that have closed and those at agreement-in-principle or definitive agreement stage  
Sources: Dealogic; AVCJ; Bain analysis

Given the sluggish outlook for IPO exits, the region's secondary market is likely to become even more active as GPs look for ways to accelerate distributions and LPs insist on liquidity.

In 2024, secondary exits accounted for 27% of total exit value, up 10% compared to the previous five-year average with deal values totalling \$181 billion and accounting for 6 of the 10 largest exits globally, including KWM client Blackstone's US\$16 billion acquisition of AirTrunk. South Korea's surge was propelled by two secondary megaexits (exits with a value of \$1 billion or more) with Ecorbit (\$2 billion) and Geo-Young (\$1.4 billion). Southeast Asia's exit value was boosted by the PropertyGuru exit, which was secondary as well.

Another alternative gaining traction is minority stake sales - deals to monetize a slice of a portfolio company either to fund growth or give investors a payout. The minority stake sales value stood at \$71 billion in 2024, or 15% of the exit total. While not a replacement for exits, minority stake sales allow GPs to generate cash and retain exposure to still-ripening assets. With much of the value concentrated into a handful of mega-deals, securing partial exits from a broader portfolio is becoming even more important.

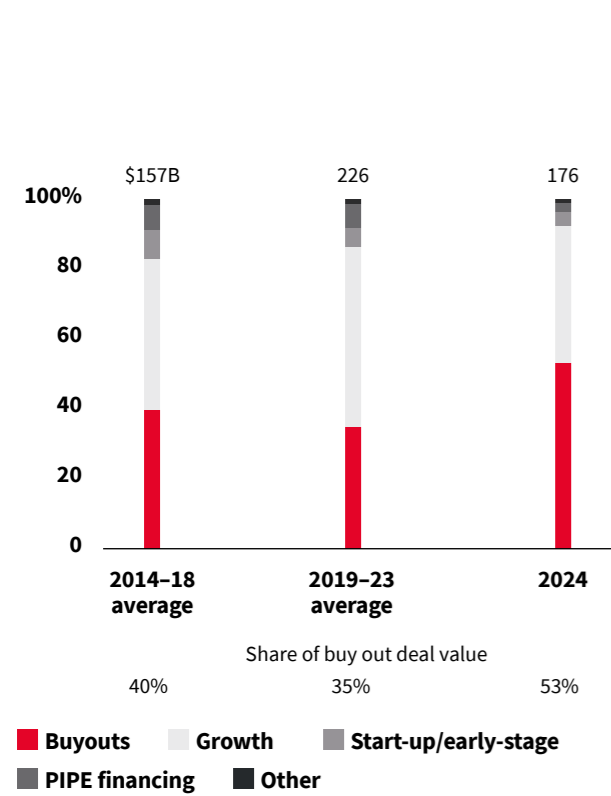
Structuring secondaries and partial exits from a single portfolio company calls for agile strategies to manage different return profiles and complex fund waterfalls. Excitingly, we are seeing this create space for novel structures and increased appetite for innovation in dealmaking. We expect to see GPs become more creative with exit strategies.

2. Asia-Pacific Private Equity Report 2025 | Bain & Company



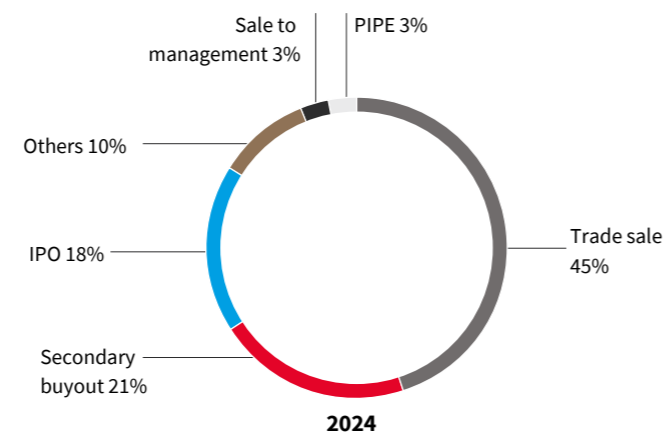
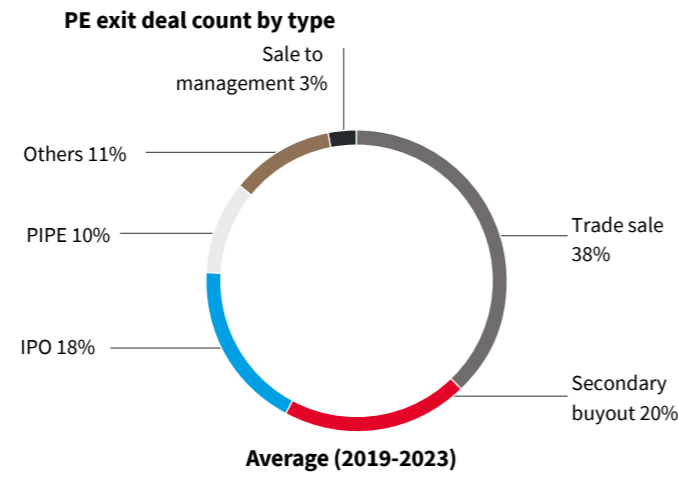
### 3. DON'T DISCOUNT THE BUY-OUT

The share of buyout deals grew to more than 50%, while the percentage of growth deals shrank. In 2024, Asia Pacific buyout investment finished 2024 with \$138 billion of total deal value, up 8.1% from \$127 billion in 2023. This made 2024 the second-best year for buyout dealmaking over the past decade, not accounting for the 2021 peak.



Notes: Excludes real estate and deals with a value under \$10 million; PIPE financing is private investment in public equity; start-up/early-stage investments use financing for product development and initial marketing; the company may be in the process of being organized or may have been in business for a short time, but hasn't sold its product commercially; growth includes expansion, growth, mezzanine, and pre-IPO capital deals  
Sources: AVCJ; Bain analysis

Lower interest rates across most of the region seem to have fuelled more buyouts. Data shows by end of 2024, the 2011-2019 vintage group included more than 200 portfolio companies held for more than four years, thereby, indicating a powerful signal that GPs should be seeking an exit in 2025.



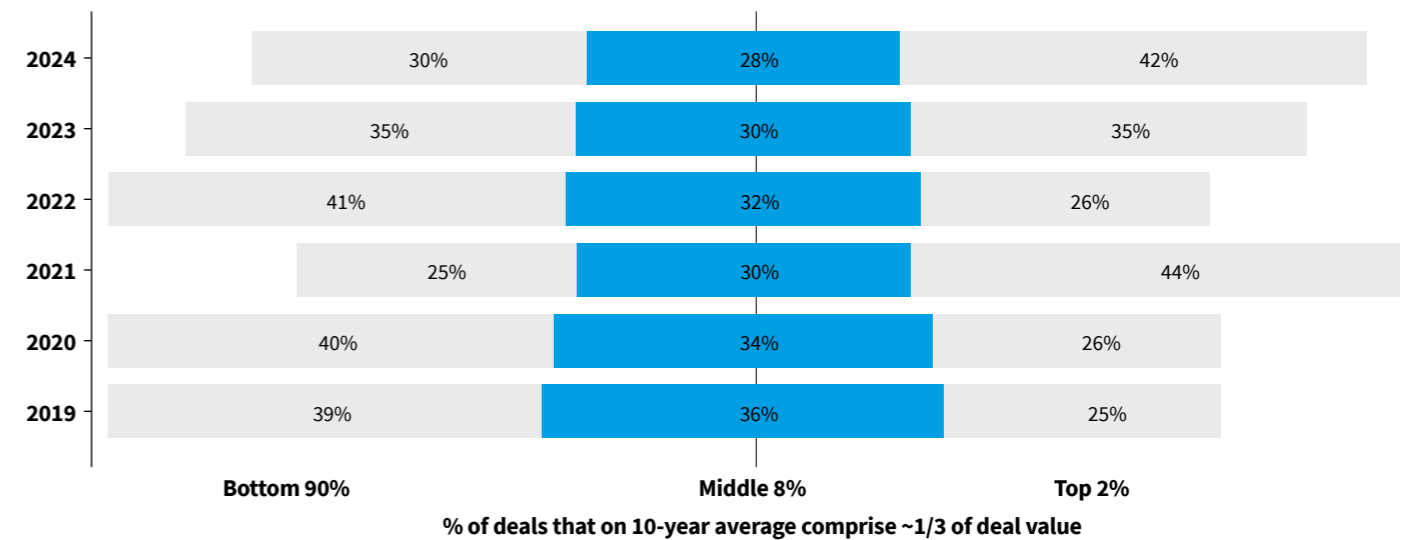
### 4. MIDDLE MISSING: MEGADEALS AND SMALL CAP

Mid-size deals are scarcer, with deal value increasingly coming from the markets' top and bottom. In 2024, the top cohort (top ~2% of deals) accounted for 42% of total deal value, and the bottom cohort (smallest 90% of deals) accounted for 30% of total deal value. This left just 28% of overall deal value coming from the middle segment.

Overall, Asia Pacific deals were larger. Average deal size in the region rose to \$133 million in 2024, up 22% over 2023 and 12% higher than the previous five-year average. The number of megadeals, or deals valued at \$1 billion or more, increased by 50% in 2024 compared to 2023.

We expect this trend will continue into 2025 and beyond making mid-cap deals much harder to exit.

#### Distribution of PE buyout investments by size cohorts



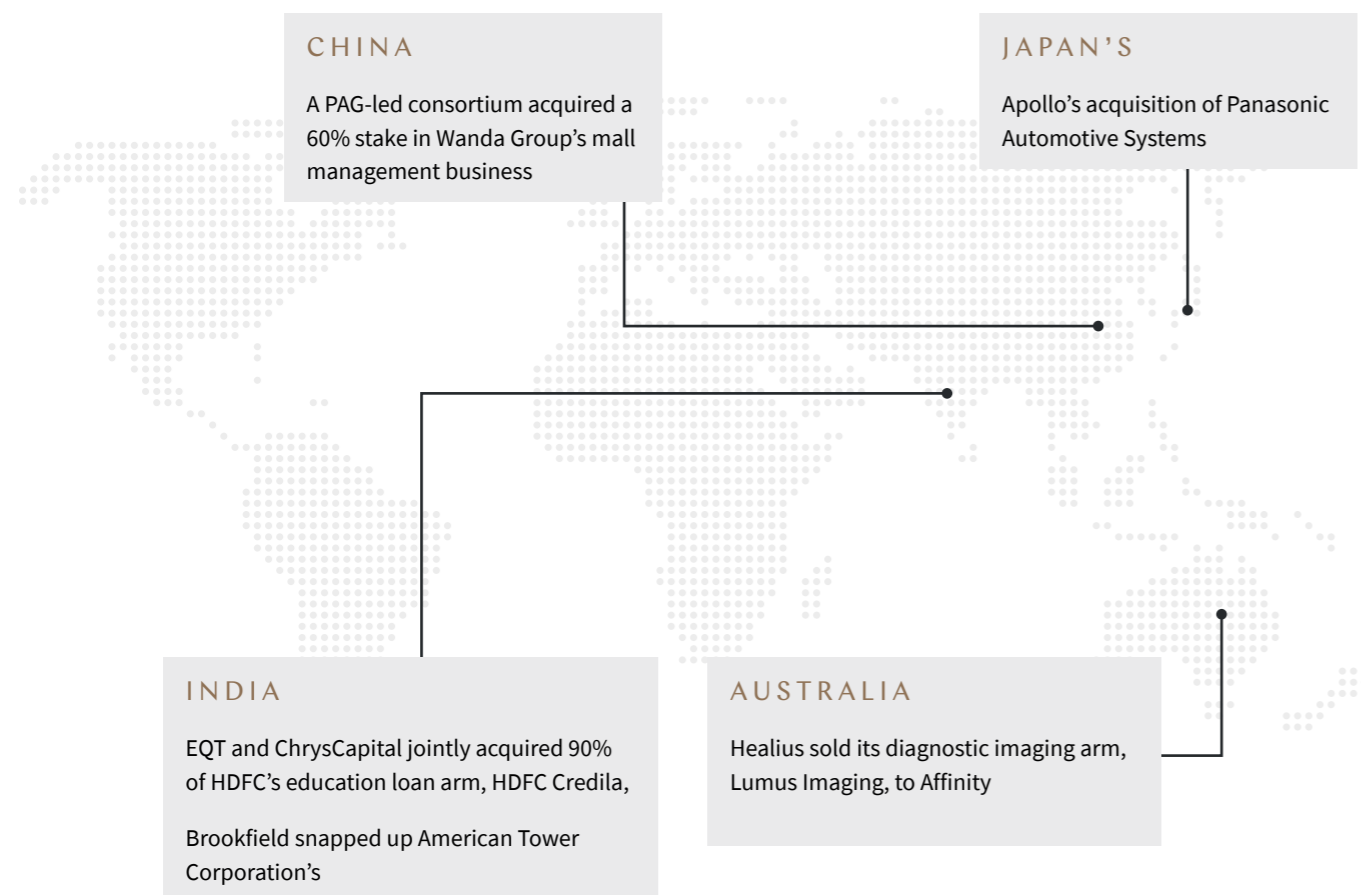
Source: Deloitte analysis, Preqin, Pitchbook, Mergermarket



## 5. THE DEALMAKING WORKSHOP: CARVE-OUTS AND BOLT-ONS FOR THE WIN

In 2024, carve-out deals totalled 20% of all buyouts over \$100 million, up from 11% in 2023. Despite lower average returns, Bain's survey indicates that 44% of Asia-Pacific GPs surveyed consider carve-outs a top investment opportunity, possibly due to immense opportunities in Japan and Korea when conglomerates rationalize operations and divest non-core business units.

In 2024, large carve-outs included:



We expect carve outs' potential for value creation and the upside from carve-out discount will see their popularity continue to grow because of their.

Platform investing, where PE creates a large portfolio company through many, relatively low cost bolt-ons, is being embraced by a wider number of GPs as they pivot from growth-oriented investments to value. The bolt-on strategy is attractive because they can help increase value of portfolio companies by building scale at comparatively attractive valuations. At the same time, these are seen as safer plays - bolt-on investments require smaller cheques and do not introduce new risks to the portfolio.

## 6. SECTORS IN THE LIMELIGHT

The technology sector retains highest share of private equity deal value and count across the region. However, GPs seem to be seeking to diversify their exposure in an uncertain environment. At the same time, investment in non-technology-related industries, such as digital infrastructure/ communications, consumer, industrial services and financial services are anticipated to show the highest growth.

	Japan	Australia and New Zealand	China	India	Korea	Southeast Asia	Others (Central Asia, ROW*)	Total deal count	Total deal value (US\$B)
Consumer	82	33	25	23	23	21	16	223	27.9
TMT	52	56	33	18	26	12	23	220	40.6
Industrials	49	10	44	20	18	7	7	155	10.4
Healthcare	20	11	16	27	13	8	13	108	16.3
Business Services	43	25	8	8	10	6	8	108	8.9
Energy, Utilities, Infra. & Real Estate	34	7	21	6	5	1	8	82	14.0
Financial Services	4	18	10	29	5	9	8	83	16.1
Transport & Logistics	9	8	2	1	3	5	2	30	3.6
<b>Total deal count</b>	<b>293</b>	<b>168</b>	<b>159</b>	<b>132</b>	<b>103</b>	<b>69</b>	<b>85</b>	<b>1,009</b>	<b>-</b>
<b>Total deal value (US\$B)</b>	<b>15.9</b>	<b>30.2</b>	<b>28.4</b>	<b>12.8</b>	<b>18.6</b>	<b>9.4</b>	<b>22.5</b>	<b>-</b>	<b>137.8</b>

Cold Hot

Source: Deloitte analysis

\*Note: ROW represents non-Asia Pacific investments made by Asia Pacific PE funds

In 2024, Japan, Australia and New Zealand accounted for almost 50% of deals in digital infrastructure/ communications, perhaps reflecting a preference for mature, stable economies for this sector. The digital infrastructure/ communications sector made up a large portion of big deals - in 2024, out of the 30 deals with \$1 billion deal value, nine of them were digital infrastructure/ communications.

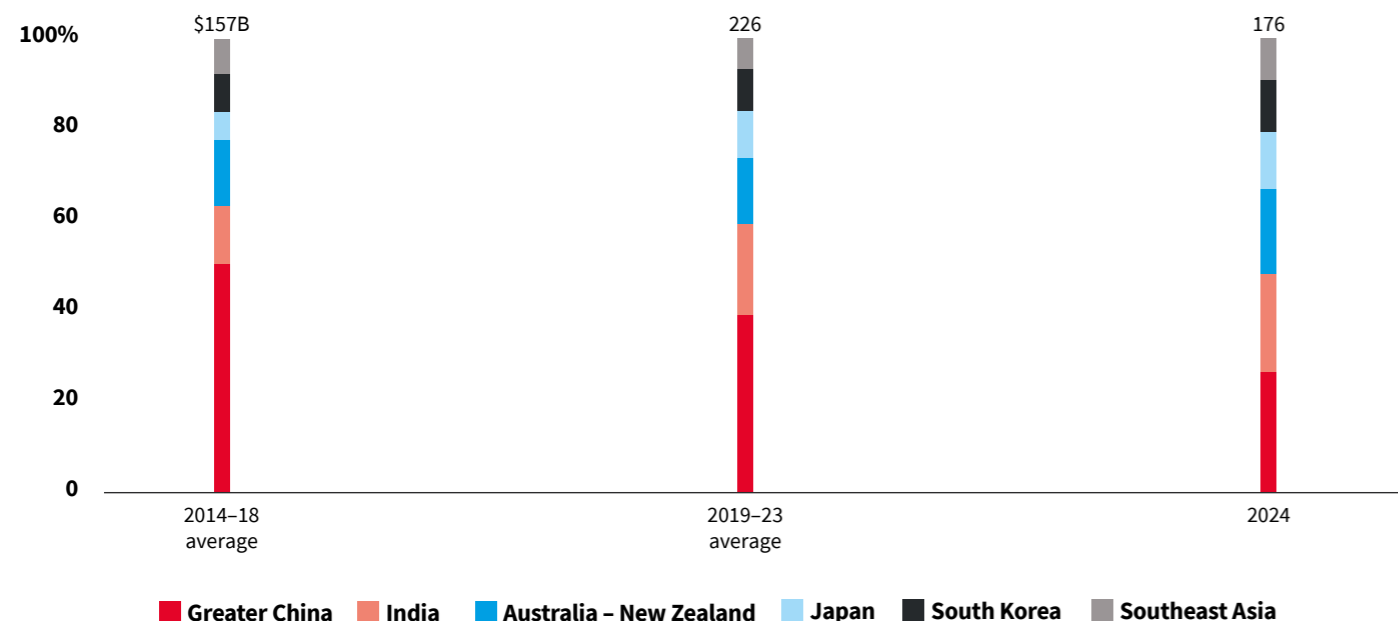
Within this sector, investors particularly favoured investment into the data centre space. We've mentioned Blackstone's \$16 billion acquisition of AirTrunk. Other significant data centre deals included HMC Capital's buyout of Global Switch Australia Data Centres and KKR and SingTel's investment into ST Telemedia Global Data Centres. Fuelled by the demand for robust digital connectivity and advances in AI, the deal frenzy in data centre space will continue.

Consumer sector activity also rebounded strongly in 2024, with deal value increasing 41% YoY to \$27.9B and deal count rising by 12% YoY to 223 deals. Japan led the board with 82 deals in the consumer sector, accounting for 37% of Asia Pacific total and a record high of the past decade. The financial services sector was kept buoyant by the India market, including several sizable deals in property loan and personal loan businesses and this trend is likely to continue in 2025 given the strong demographics and rising middle-class.

## 7. COUNTRY BIAS: INDIA FOR GROWTH AND JAPAN FOR STABILITY

Only India and Japan maintained a deal count in 2024 similar to the previous five-year average.

Share of Asia-Pacific private equity deal value, by region



Notes: Greater China includes China, Hong Kong, and Taiwan; excludes real estate and deals with a value under \$10 million  
Sources: AVCJ; Bain analysis

Major global private equity funds are increasingly regarding India and Japan as key players in Asia Pacific's M&A landscape and plan to deploy more capital in these countries<sup>3</sup>.

Even as India faces macroeconomic challenges including inflation and consumption slowdown, it remains one of the fastest-growing countries in the region based on GDP and investors are drawn to its strong growth fundamentals.

In Japan, the growth story is about stability<sup>4</sup>, and the sense that Japan is far more receptive to global players, expanding deal opportunities. These conditions are supported by a weaker Yen, recent reforms in corporate governance and a backlog of opportunities ripe for private ownership and management, which includes small and medium enterprises offering opportunities for business succession as well as large corporates offering opportunities to restructure and better manage businesses of significant scale.

### THIS IS SHOWING UP IN THREE WAYS:

- 1 More public-to-private (P2P) transactions, spurred by market reforms and increasing pressure on listed companies to improve capital efficiency
- 2 A surge in succession-driven PE investments into small and mid-sized companies, particularly in regional Japan;
- 3 The increasing scale and sophistication of domestic PE funds, often collaborating with global investors on cross-border transactions.

3. Carlyle, for instance, aims to allocate about 30% to 35% of its new pan-Asia fund to India, making it the firm's largest market in Asia. Bain Capital plans to invest 20% of its Asia fund in India and is on track to invest up to \$10 billion in India over the next three to five years.

4. During the pandemic, Japan had relatively lower economic volatility compared to other Asia Pacific markets with a 4.2% GDP decline in 2020 followed by 2.7% growth in 2021 – an overall swing of c.7%, which is one of the lowest compared to other economies in the Asia Pacific region.



## 8. THE ROLLER-COASTER OF HONG KONG PUBLIC MARKETS

Hong Kong's IPO market experienced a remarkable resurgence in early 2025, signalling renewed investor confidence and robust market dynamics. In Q1 2025, the market raised around HK\$18 billion across 15 IPOs, a 25% increase over Q1 2024 with nearly triple the funds raised during the same period in 2024 and marking the highest first-quarter total since 2021. Six of the 15 IPOs raised over HK\$1 billion each, a significant increase compared to just one such deal in the previous year's first quarter.

This strong performance built on the influx of large IPOs completed in the late 2024 and has been further bolstered by the global investors' interest in Chinese Mainland tech and AI companies. This is prompting more early-stage Chinese companies to consider listing in Hong Kong.

The growing momentum is further reflected in the IPO pipeline, which now includes 120 applicants, up from 86 as at 31 December 2024. The uptick can be attributed to 51 companies submitting their first application during Q1, up from 24 in the previous quarter. Notably, some larger A-share listed companies recently submitted applications for listing in Hong Kong to the lucrative "A+H" companies route.

Confidence is certainly affected by recent Hang Seng volatility, but we expect HK markets to support the pipeline throughout 2025.

## 9. GREATER CHINA STAGING A COMEBACK?

As recently as 2020, China represented more than half of all Asia-Pacific deal value but that share declined to 27% in 2024. In recent years, GPs and LPs have channelled a greater share of investment dollars to India and Japan. That trend continued through 2024 with investors already pricing in the impact of expected US policy.

China may well react to Trump's latest tariffs by focussing on a number of measures including fast stimulus, re-oriented trade relationships and a perception of political order. We have already seen an interest from private capital in understanding how China can act as a hedge to the US, with the two economies likely to become further de-coupled. We expect this will have a broader impact on the region with China and Indo Pacific being considered as important for portfolio diversification. Before the tariffs were announced there were strong signs that economic headwinds in China were easing in innovation-based sectors and some investors are anticipating the "China discount" to disappear entirely in these sectors.

China's innovation in technology, healthcare and green energy means Chinese companies are increasingly competing for the moats around which many investment theses depend. In 2025, China launched the world's first sixth-generation fighter jet and the low-cost artificial intelligence system "DeepSeek" within a week. Companies such as Moonshot AI and Zhipu AI have attracted major investments underscoring China's potential in cutting-edge technologies and life sciences, including AI-generated healthcare businesses.

Attractive valuations of Chinese companies will provide opportunities for long-term investors to secure high quality assets at a discount, creating the potential to generate outsized returns. We expect an uptick in investment in Chinese innovation-based investment from non-US investors as private capital looks to hedge its exposure to other volatile markets.

## 10. AUSTRALIA PIVOTING FOCUS TO SOUTHEAST ASIA

Australia's commitment to establish a \$1.3 billion fund to catalyse Australian private sector investment in Southeast Asia indicates a new era of Australian engagement with the region. Prime Minister Anthony Albanese's announcement of c.\$42 million over four years to set up "investment deal teams" based in Singapore, Jakarta, and Ho Chi Minh City, with additional representatives across the ASEAN region is a strong signal in the right direction. The region stands to offer opportunities for Australian businesses in a variety of sectors including energy transition, infrastructure and healthcare.

In particular, the infrastructure sector is expected to receive a significant push with Australia's economic strategy setting aside \$93.3 million for the "Partnership for Infrastructure Program" over the next four years. Southeast Asia has an infrastructure gap of around \$3 trillion. With Australian private sector's expertise in engineering, construction and ICT, there is significant upside for Australian companies to generate high-quality returns in the region's infrastructure sector.



# PRIVATE CAPITAL LEADING THE SURGE INTO DATA CENTRES

## What have we learned and what next?



**Australia and the Asia Pacific Region emerge as a hotbed for data centre investment, as the AI revolution and resulting demand for digital infrastructure surges. Just a trend, or a transformative shift in allocations to real assets?**

Australia and the Asia Pacific region are experiencing a surge of private capital into the data centre sector.

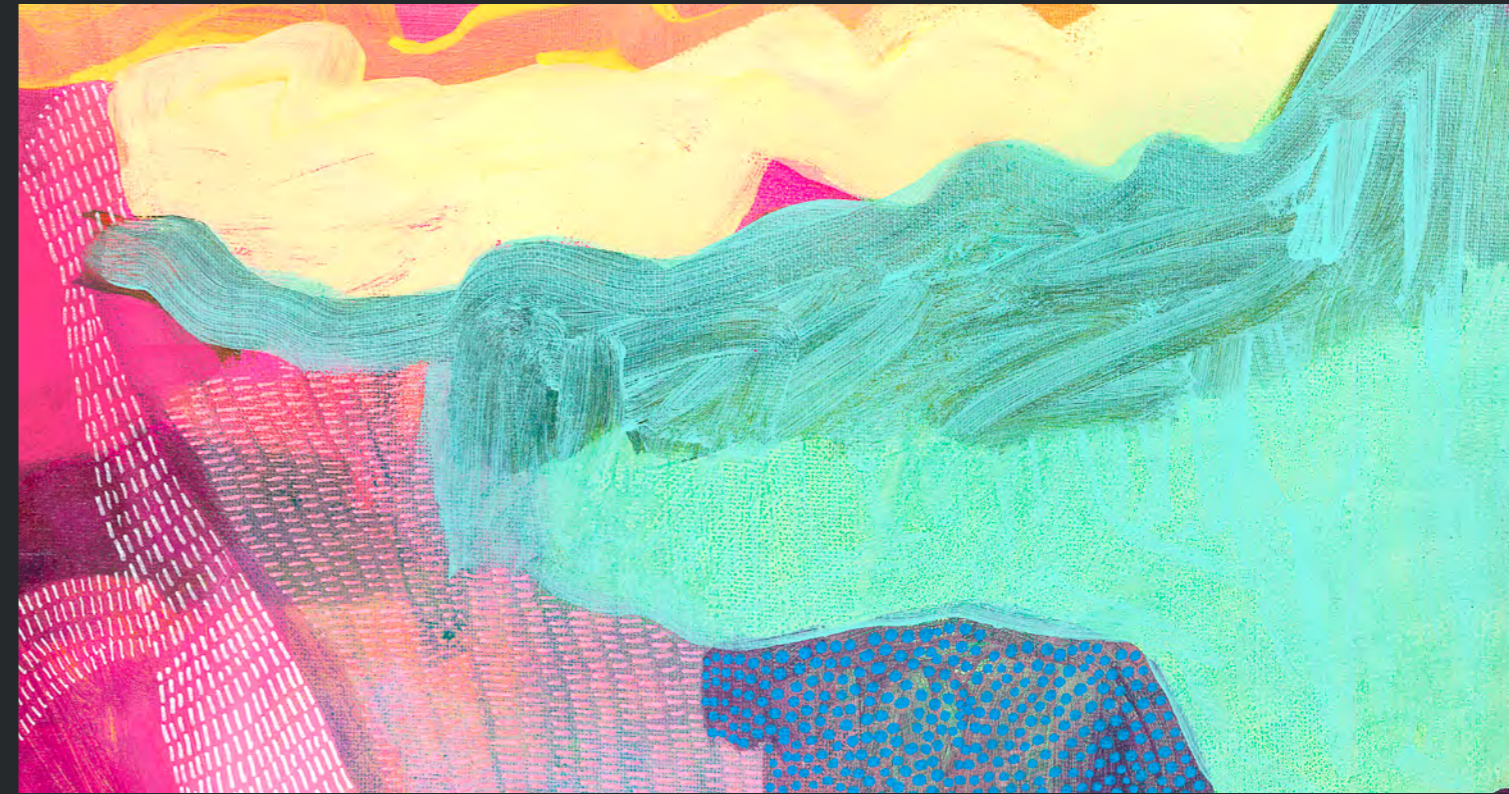
- Blackstone's landmark A\$24 billion acquisition of AirTrunk
- KKR's acquisition of a 20% interest in the Asian data centre of Singtel for S\$1.1 billion (and subsequent partnership with Singtel to invest S\$1.75 billion in ST Telemedia Global Data Centres)
- Partners Group's A\$1.2 billion investment to transform GreenSquareDC into a next-generation data centre platform.

Data centres are increasingly recognised as a distinct asset class, appealing to investors for their potential to deliver sound risk adjusted returns. According to the most recent CBRE APAC Investor Intentions Survey, data centres are the second most preferred alternative asset class for Australian real estate investment in 2024.

Australia's strategic geographic location within the Asia Pacific region, combined with its relative levels of transparency (including rule of law), has long positioned Australia's real asset markets as a prime destination for global private capital. The Reserve Bank of Australia's recent easing of monetary policy, along with similar moves by other central banks, has also buoyed optimism and supported flow into the capital-intensive real assets sector.

Underpinning demand for exposure to data centres is the digital economy's expansion, with AI, e-commerce, and cloud services being key drivers. The cloud-storage market in Australia is currently valued at approximately A\$5.2 billion and is projected to double by 2030, further entrenching Australia as a key player in the global data centre landscape.

Despite robust demand, Australia faces several supply side challenges with limited data centre stock (i.e. approximately 1% only of total warehouse space is dedicated to data centre facility or functionality).



### WATTS CHANGING

- Data centres currently account for around 5% of Australia's total power generation, raising concerns about power consumption. The transition from coal to renewable energy is crucial for the long-term sustainability of data centre facilities. As public scrutiny intensifies, operators are adopting innovative practices, such as advanced cooling technologies and partnerships with renewable energy providers, to enhance their sustainability profiles.

### BRICKS, MORTAR AND MONEY

- The capital-intensive nature of data centre development necessitates creative financing solutions. Investors are increasingly exploring joint ventures and staged developments to align the interests of developers and operators. As the market matures, collaboration between private equity sponsors and core-plus funds is expected to drive further investment activity.

### ISSUES OF LEASE CONCERN

- As investor interest grows, pre-leasing rates are anticipated to exceed 90% by 2025, suggesting that new capacity will be leased before construction is completed. This trend mirrors the experience in North America, where vacancy rates have plummeted to record lows despite significant construction activity.

### BEYOND CITY LIMITS

- To address the constraints of limited urban land, there is likely to be a shift towards developing data centres in less traditional locations, including regional areas. This strategy could alleviate pressure on urban sites while tapping into lower operational costs, making investment returns more attractive.

### FRIEND-SHORING IS CARING

- Regulatory factors are also shaping the data centre landscape. Recent U.S. export control rules on AI diffusion could enhance Australia and the Asia Pacific region's appeal for private capital. Classified as a "tier 1" jurisdiction, Australia in particular benefits from fewer restrictions on the export of advanced computing technologies.

With a commitment to sustainability, innovative financing solutions, and an accommodating regulatory environment, Australia and the Asia Pacific region are strongly positioned to compete for increasing allocations to the asset class.

# COV-WHAT?

## A SHORT PRIMER ON THE DIFFERENT APPROACHES BEING TAKEN TO FINANCIAL COVENANTS IN LEVERAGED FINANCE DEALS

### WHAT'S IN A NAME?

The local leveraged finance market has shifted in recent years with a willingness from some lenders prepared to offer “cov-lite” terms. What does that mean? There are really four categories of deals:<sup>1</sup>

<b>Covenanted</b>	A deal with at least one maintenance financial covenant (usually a net leverage ratio, sometimes also an interest cover ratio or fixed charge cover ratio and more rarely a debt service cover ratio or an annual capex covenant). Historically set with headroom to the lender financial model and stepping down (or up) to enforce some de-leveraging over the life of the loan
<b>Cov-Loose</b>	A Covenanted deal with way more headroom than normal (whether because of day 1 headroom, lack of stepdowns, the ability to adjust EBITDA beyond recognition and/or very infrequent testing (eg annually in some Asian deals)). We often hear the complaint that a deal is covenant loose because if EBITDA has declined to the point where the leverage ratio is tripped (remembering there is no amortisation in these deals) the Borrower has long ceased to be able to service cash interest
<b>Cov-Lite</b>	A deal with a ‘springing’ financial covenant if certain conditions are met – eg the revolver on a TLB deal – see below
<b>No-Covenant</b>	A deal with no maintenance financial covenant at all (not even a spring) – eg a 2L TLB

The relaxation on financial covenants for non-Covenanted deals is generally also accompanied with greater general flexibility for sponsors (eg on acquisitions, debt incurrence, etc) – so can be an attractive package for Sponsors (but for a price!)

### COV-LITE

What are the key features of a cov-lite deal?

- **The covenant ‘springs’** – this means that it only tested on a calculation date if the testing condition is satisfied at that time.
  - The testing condition is a matter for negotiation – the general principle is that your working capital facility is drawn above an agreed metric (the thinking being that the borrower is experiencing a level of financial distress if it can’t manage its working capital to get below this level).
  - For Sponsor deals, there are various business levers which can be pulled to make sure the testing condition is never met. There are also documentation points around components of the test and when you test (eg can you retest post calculation date and pre compliance certificate delivery?).
- **Only a sub-set of lenders have the benefit of the covenant** – those lenders (in a TLB, the revolving capital facility lenders) are the only ones who can (i) agree amendments/waivers to the financial covenant and (ii) call an event of default for breach. Even if the covenant has sprung and the compliance certificate shows a breach of the required level, if the RCF lenders do not elect to accelerate, then the term lenders have no rights. All the more reason for Sponsors to stay close to their RCF Lenders!

### HISTORY, A LESSON

Historically, when a firm handshake and an old school tie were the only necessary pre-conditions to being a leveraged finance banker, deals had covenants and:

- there were at least 2;
- they were tested at all times (although query how that worked practically); and
- if breaches were going to be cured, it was done by paying down debt.

For a brief period prior to the GFC, these rules were relaxed in our markets, the number of covenants were reduced and (for example) EBITDA cures were fairly common for top tier sponsor deals. According to those previously referred to old school bankers, this led to untold disasters (including the GFC) and terms were wound back in lenders’ favour.

### WHERE ARE WE NOW

In Australian leveraged finance land:

- Covenanted deals are found in the mid-market
- Competitive bank processes and non ‘mega’ unitranche are trending towards Cov-Loose (ish)
- RCFs in TLBs and some very bespoke ‘Aus Style’ TLBs are Cov-Lite
- ‘Mega’ unitranche and the term loan tranches of TLBs are No-Covenant

In Asian markets, the vast majority of deals are still Covenanted or Cov-Loose – as the investor base is predominantly commercial banks as the institutional investor market has not taken off in Asia in the same way as in US, EU and Australia. There are a number of reasons for this but the main factor is the low pricing that sponsors can obtain in Asia given the low costs of capital and high levels of liquidity from Asian banks – particularly when sponsors tap the “onshore” market as is increasingly the case. The differential in pricing is such that the Sponsors are willing to accept more restrictive (although still pretty loose) terms because the price of flexibility is higher.

### WHAT'S NEXT

Our US and EU colleagues have observed that the better credit borrowers have access to Cov-Lite loans, meaning those borrowers only able to access Covenanted loans can be worse performing credits – so counterintuitively lenders with a mandate requiring a covenant can end up with relatively worse book. We operate in different markets (with different competing products) so interesting to see if this will apply here.

For now, being Covenanted opens the universe of potential lenders that can participate in a transaction. However, the ability to agree to a Cov-Lite or No Covenant deal (even if reluctantly) remains a competitive advantage for the large cap Private Credit houses in Sponsor led deals where they are competing against other products (or smaller private credit houses).

Sponsors will continue to weigh up flexibility versus price and Lenders need to be eyes open on understanding the runway that the covenant choice provides them.



<sup>1</sup> Incurrence covenants (ie you can incur additional indebtedness so long as, pro forma for that incurrence and the use of such proceeds, your leverage ratio does not exceed an agreed threshold) are a topic for another day.



# GET READY TO REPORT: AUSTRALIA'S NEW CLIMATE RULES ARE COMING

AND THEY'RE NOT JUST FOR TREE HUGGERS!



2025 marks a fresh chapter for sustainability reporting in Australia, with large entities kicking off their first full financial year of reporting from 1 January 2025. This article explores what this new regime means for private equity sponsors in Australia.

## WHO IS AFFECTED?

The new legislation applies to entities that must lodge financial reports with ASIC under Chapter 2M of the Corporations Act 2001 (Cth). This means:

- Excluded entities: Partnerships and trusts (except registered management investment schemes and superannuation funds) don't need to report.
- Foreign managers: GPs / managers incorporated outside of Australia and not conducting business in Australia also don't need to report.
- Local sponsors: GPs / managers incorporated in Australia or conducting business here will need to report if they meet the reporting thresholds (see below).

## KEY REPORTING THRESHOLDS

The legislation introduces a phased reporting approach based on specific thresholds. Here's a quick breakdown:

GROUP	REPORTING START DATE	RELEVANT THRESHOLDS <sup>1</sup>
Group 1	1 January 2025	\$500 million revenue, \$1 billion assets, 500+ employees
Group 2	1 July 2026	\$200 million revenue, \$500 million assets, 250+ employees
Group 3	1 July 2027	\$50 million revenue, \$25 million assets, 100+ employees

1. The entity must meet at least 2 of the listed thresholds



## IMPORTANT CONSIDERATIONS FOR SPONSORS

For sponsors, the new regime requires careful evaluation from 2 angles:

- Sponsor on a standalone basis: Assess if the sponsor's total fee income and carry interests on a standalone basis (i.e. excluding portfolio companies or AUM) meet the financial thresholds.
- Consolidation of investee / portfolio companies: Determine if the sponsor needs to consolidate the revenue, gross assets and employee count of its portfolio companies for purposes of qualifying as Group 1, 2 or 3.

The test for consolidation of portfolio companies is the 'control' test established under Australian accounting standards (AASB 10). This is different to the test for 'control' under the Corporations Act. The test under AASB 10 focuses on:

- Decision-making authority: Scope of control exercised by sponsor over investee companies.
- Removal rights: Rights of others to remove or replace the sponsor or alter each investee company's strategy.
- Remuneration model: Incentives created by the sponsor's remuneration structure.
- Return variability: Exposure to variability of returns from other interests in each investee company.

The characteristics of ordinary debt (i.e. private credit) don't confer control on sponsors and don't need to be consolidated for testing whether the sponsor is Group 1, 2 or 3. Similarly, structured products like preference shares are unlikely to require consolidation until exercised.

## SO, YOU NEED TO REPORT - WHAT DOES THAT MEAN?

Reporting entities will need to include climate-related disclosures as part of a Sustainability Report<sup>2</sup>, the contents of which must include:

- material climate-related risks and opportunities;
- resilience to at least 2 climate scenarios;
- disclosure of Scope 1, 2 and 3 greenhouse gas emissions (Scope 3 emissions reporting starts in year 2); and
- a transition plan for meeting GHG emissions targets.



2. The Sustainability Report can be included as part of the financial report in the annual report, as a standalone document as part of annual reporting or included as a separate report to the financial report in the annual report.



## SCOPE 3 EMISSIONS

Scope 3 emissions include those from:

- Equity investments: minority and non-controlling interests;
- Debt investments: loans and debt instruments;
- Project finance: emissions from financed projects; and
- Managed investments: emissions from these activities.

Sponsors who expect to be caught by the climate reporting regime may face challenges in collecting climate data from portfolio companies and borrowers if they don't have relevant information rights in their shareholders agreements or debt documents and management or other investors are resistant to its collection or disclosure. Separately, it will be important for reporting sponsors to ensure that their portfolio companies and borrowers have systems in place to collect and report reliable, transparent and timely data to the sponsors, so that the sponsors have confidence in their own reporting. For these reasons, starting early on identifying obligations, putting in place information rights and appropriate data gathering systems will be crucial for robust disclosures. This is likely to become especially important since ASIC will pay careful attention to which sponsors are reporting under the new regime, and how they are doing so, consistent with ASIC's increased focus on private markets and demonstrated commitment to taking on greenwashing.<sup>3</sup>

## CONCLUSION

Private capital sponsors must determine if they or their portfolio companies need to report under Australia's new sustainability regime. If reporting is required, they need to prepare and they need to ensure that their portfolio companies and borrowers are preparing for Scope 1, 2 and 3 emissions disclosures, along with climate-related risks and opportunities.

# GETTING SPONSORS IN SHAPE FOR AUSTRALIA'S NEW MERGER CLEARANCE REGIME

## NEW MERGER CONTROL REGIME IN AUSTRALIA

**From the beginning of next year, a new merger clearance regime will mean that larger scale financial sponsors will see most of their future transactions in Australia - including 'serial acquisitions' - likely require regulatory approval to proceed.<sup>1</sup>**

Under the new mandatory and suspensory regime, the ACCC must be notified of transactions that meet certain filing triggers - i.e. where the transaction is a 'notifiable acquisition', above a value threshold<sup>2</sup> or other specific industry threshold. These transactions must receive ACCC clearance before they can proceed. The change brings Australia into line with most foreign jurisdictions.

The regime also introduces new statutory timeframes, filing fees and penalties for failure to file and prescribed filing requirements.<sup>3</sup>

## WHAT DOES THIS MEAN FOR FINANCIAL SPONSORS?

Financial sponsors should think strategically and thoughtfully about efficiently engaging the ACCC under the new merger clearance regime to enable (at least for most of the non-contentious transactions) a smooth review process resulting in a quick and simple review process.<sup>4</sup>

Financial sponsors and their portfolio companies can also take steps to mitigate delay and completion risk by ensuring they have systems and processes in place to navigate the new regime when new deal opportunities arise.

The key to success is understanding pre-emptively what information and documents are required under the new regime and being conscious of the applicability of the transitional provisions in all upcoming acquisitions.

## What is needed for a filing?

The Treasury has released an exposure draft Ministerial Instrument which provides short and long forms of notification.<sup>5</sup> Merger parties will have the choice of making a short form notification or long form notification and are encouraged to engage with the ACCC regarding which form to adopt. Merger parties should use the 'simple' short form of notification where they do not expect the acquisition to raise competition concerns.

The table below summarises the required types of information and documents parties need to provide in a short form notification.<sup>6</sup>

The long form notification requires merger parties to provide significantly more information, data and documentation. Most critically, this includes board documents for the past 3 years that describe the rationale, assess or analyse the acquisition or assess or analyse the valuations of the target.<sup>7</sup> Both forms will require an authorised person to complete a declaration.

<sup>3</sup> See KWM's client alerts (here and here) dealing with ASIC enforcement of greenwashing claims. For this reason, sponsors should seek advice early on their reporting obligations and stay up to date on how industry is addressing - and ASIC is responding to - mandatory climate reporting.

1. For a more detailed overview of the draft ministerial instrument regarding notification thresholds, see our previous article here: [https://www.kwm.com/au/en/insights/latest-thinking/instrumental-changes-treasury-consults-on-draft-notification-thresholds-instrument.html?utm\\_campaign=20250328%20INSIGHT%20GLOBAL%20CA%20merger%20reform%20process%20guidance&utm\\_medium=email&utm\\_source=Eloqua](https://www.kwm.com/au/en/insights/latest-thinking/instrumental-changes-treasury-consults-on-draft-notification-thresholds-instrument.html?utm_campaign=20250328%20INSIGHT%20GLOBAL%20CA%20merger%20reform%20process%20guidance&utm_medium=email&utm_source=Eloqua).

2. For a more detailed overview of the new regime, see our previous article here: <https://www.kwm.com/au/en/insights/latest-thinking/the-eagle-has-landed-new-merger-reform-bill-introduced-into-parliament-today.html>.

3. For a more detailed overview of the new regime, see our previous article here: <https://www.kwm.com/au/en/insights/topic/australian-merger-control-a-new-regime.html>.

4. The ACCC has provided greater timing certainty for some deals, ranging from a 15 business-day fast track approval process for deals that do not raise competition concerns, to a 90 business-day timeframe for more complicated deals.

5. See Part 6 of Competition and Consumer (Notification of Acquisitions) Determination 2025 - Exposure Draft at <https://treasury.gov.au/consultation/c2025-644619>.

6. For further detail, see Division 2 of Part 6 of Competition and Consumer (Notification of Acquisitions) Determination 2025 - Exposure Draft at <https://treasury.gov.au/sites/default/files/2025-03/c2025-644619-exposure-draft.pdf>.

7. For further detail, see Division 3 of Part 6 of Competition and Consumer (Notification of Acquisitions) Determination 2025 - Exposure Draft at <https://treasury.gov.au/sites/default/files/2025-03/c2025-644619-exposure-draft.pdf>.

CATEGORY	INFORMATION/DOCUMENTS TO BE PROVIDED
<b>Parties to the acquisition</b>	Party identification details, including ABN and contact details.
<b>Details of acquisition</b>	Non-confidential summary of the acquisition, including party descriptions, products/services supplied and transaction process and structure details. Commercial rationale and transaction value of the acquisition, including each party's GST turnover in the three years leading up to the notification.
<b>Past relevant acquisitions</b>	Details of acquisitions made by the parties in the three years prior to the notification.
<b>Competitive effects of acquisition</b>	Information regarding the relevant products/services supplied by parties to the acquisition, including details of geographical areas, key suppliers and relevant market definition. <sup>8</sup> For each party (including connected entities and key suppliers) to the acquisition, the estimated market shares for the three years prior to the acquisition.
<b>Competitor and customer contracts</b>	Contact details for certain competitors and customers for each relevant product/service.
<b>Additional information</b>	Information regarding any goodwill protection provisions in the sale documents and/or a certificate of transfer (if relevant). Any other information or documents that would reasonably be considered by an objective third party to be relevant to the Commission's assessment of the acquisition.
<b>Further documents</b>	Most final versions of all transaction documents, financial reports, income statements relevant to the supply of relevant products/services and diagrams/charts relating to the organisation and transaction structures.
<b>Declaration</b>	Declaration by an authorised person of each notifying party.

8. A product or service is 'relevant' if the parties to the acquisition supply, or potentially supply, similar products or services in the same or a similar geographical area. It is also 'relevant' if the parties have a supply relationship, or where the products or services are related in some other way.



### Will the transitional provisions apply to my deal?<sup>9</sup>

If a transaction closes after 31 December 2025, the new mandatory merger laws will apply.

Under the transitional provisions, deals that receive ACCC clearance under the current regime between 1 July to 31 December 2025 can rely on that clearance for 12 months post-clearance (i.e. without seeking a new clearance under the new mandatory regime).

However, if ACCC clearance is not received by 31 December 2025, the deal will need to be cleared under the new regime.

- The ACCC has given guidance that any clearance applications received after 'early October' – even simple cases with no material competition issues – risk not obtaining clearance before 31 December 2025, given the anticipated backlog at the end of the year. For deals that raise substantive competition issues, this 'deadline' is materially earlier.
- To address this issue, parties are able to seek clearance under the new regime from 1 July 2025 (i.e., the current and new regimes will operate in parallel in the last 6 months of the year).

The ACCC has confirmed that deals which receive ACCC clearance before 1 July 2025 will require an updated informal view from the ACCC if they will not complete by 31 December 2025. If the ACCC issues an updated view, there is no need to notify under the new regime, provided the deal completes within 12 months of the clearance letter. Without this updated view, parties will need to re-file or apply for a waiver after 1 January 2026.

9. For more information about the transitional regime, see our previous article here: <https://www.kwm.com/au/en/insights/latest-thinking/merger-clearance-reform-accc-transitional-guidelines-released.html#takeaways>.



# AUSTRALIA'S PRIVATE MARKETS IN FOCUS: ASIC'S TAKING A LOOK

**As the gravitational balance between our public and private markets has shifted over time, ASIC has decided it is time to understand better the possible risks and vulnerabilities that our private markets might bring to Australia's overall financial system and also to investors participating in those private markets.**

In February, ASIC released its discussion paper on the evolving dynamics within Australia's public and private markets (see paper [here](#)). At a high level, the paper canvasses:

- key and emerging issues relating to public and private markets;
- an overview of international market developments and regulatory initiatives; and
- ASIC's preliminary views on some of these matters.

Australia's public equity markets are estimated to be worth around A\$3 trillion. In ASIC's view, they are broadly accessible markets with high standards of governance, transparency, and market integrity. However, the number of Australian IPOs is the lowest it has been in over a decade. Our public markets are also skewed towards the financial and mining sectors, and less represented in sectors that are expected to drive growth in an increasingly digital world.

This public market position can be contrasted with the relative growth of private markets globally and in Australia. Capital under management within the private markets globally is estimated to be around US\$15 trillion. While Australia's share of that is relatively small, it has seen strong growth over the last 15-20 years, in part driven by the growth of Australia's superannuation system (that is estimated to have around A\$4 trillion under management) and its attractiveness to foreign sponsors as a reliable source of quality investment flow in a stable market. Because of its scale and reach, the superannuation sector has increasingly become a conduit between public and private markets – operating in both.

## WHAT ARE THE KEY TAKEAWAYS?

### A focus on retail

Although the paper recognises that there are multiple different categories of investors participating in our private markets, you don't need to dig too deep to sense that ASIC is primarily focused on the retail cohort of that investor base, particularly in the private credit space. In ASIC's view, heightened risks are faced by retail investors in private markets (when compared with public markets), citing examples such as limited access, liquidity challenges, complexity, information asymmetries and adverse selection risks. Drawing from parallels in other offshore markets, ASIC specifically canvasses certain risks to the fair treatment of those investors including:

- conflicts of interest - examples such as misaligned incentives, related-party transactions and treatment of confidential information to name a few;
- governance; and
- valuation practices - ASIC believes that a lack of transparency in private market transactions poses valuation challenges for investors when making investment decisions and challenges for regulators when making judgments about systemic risks.

### Increased surveillance and tackling leaks

ASIC is doubling down on its surveillance of private markets, especially when it comes to major auctions and transactions. We expect that this isn't just about keeping an eye out; it's also about bettering ASIC's understanding of private markets more generally.

ASIC also appears to be stepping up its efforts in targeting and prosecuting leaks to uphold the integrity of Australia's broader capital markets. This focus is likely exacerbated by recent deal leak data, which places Australia 5th globally in the leak rankings.<sup>1</sup>

### Information harvesting

A recurring theme throughout the discussion paper is the relative dearth of information and transparency that ASIC considers it has on Australia's private markets relative to their regulatory counterparts in other major markets offshore (and relative to information they can currently gather on Australia's public markets). They stress the need for complete, high-quality, and timely data on private markets to better develop policies and supervise the sector. More on this later as we suspect this is likely to be one of the areas that gains some traction in any suggested reforms that may be advanced by ASIC.

### Cues from abroad

There is little doubt that ASIC is keenly aware of the position some of its peer regulators (principally in the US and UK) hold when it comes to data provision and enhanced regulatory controls over participants in those private markets. The issues that have been identified and tackled in those markets are many of the same issues that ASIC has highlighted for discussion in its paper. Whether this also means that ASIC will feel inclined to adopt the same position as those other US and UK regulators will be interesting to observe. For financial sponsors already operating and complying with the enhanced positions in those markets, the prospect of ASIC seeking some level of regulatory alignment on key areas may not be that daunting. Conversely, for those financial sponsors who do not have to comply with the US or UK positions, the prospects of better alignment are likely to be viewed negatively.

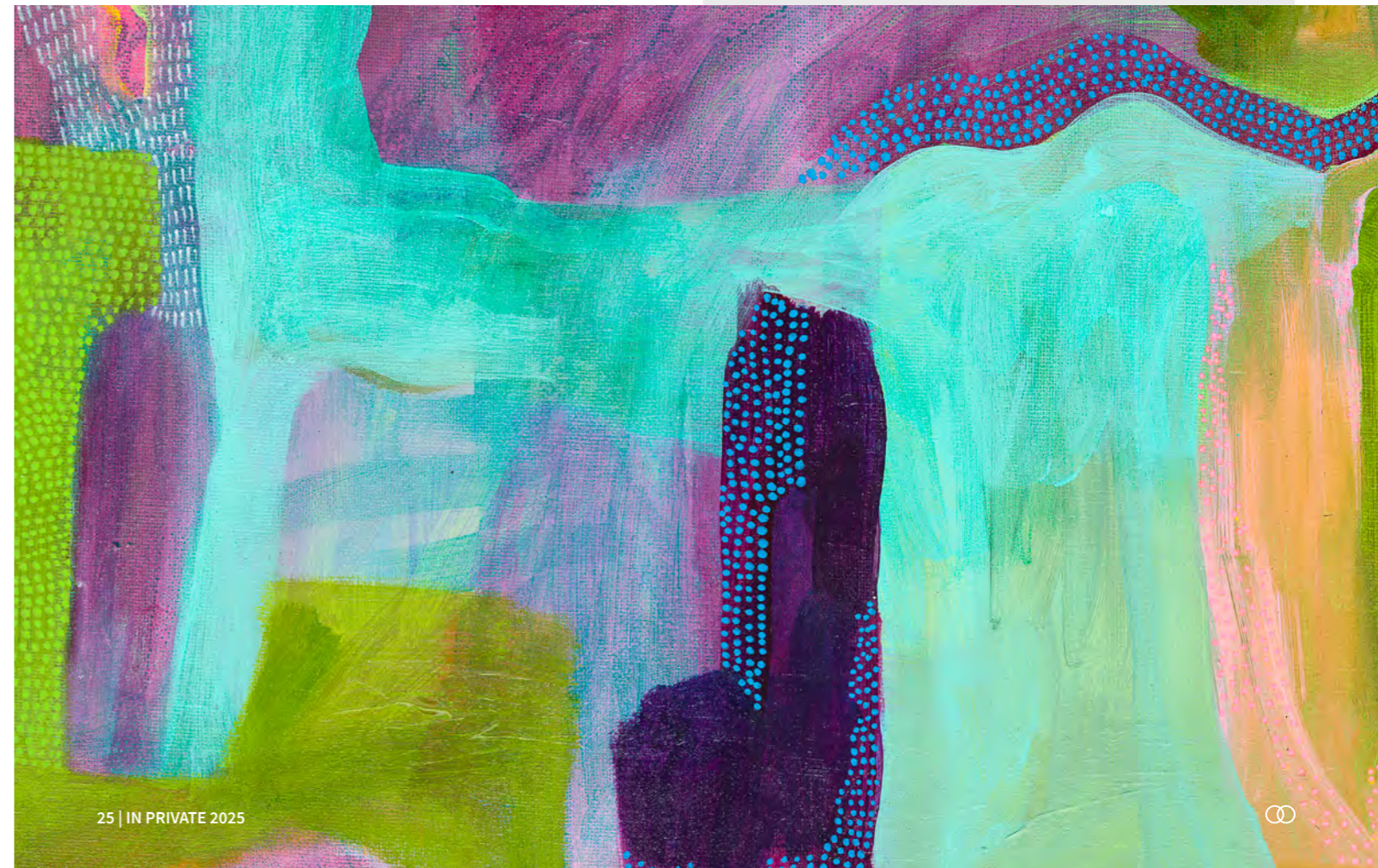
## WHAT'S NEXT?

ASIC is posing 15 questions to market participants in the hope of gaining insights on whether and, if so, how best to enhance the operation of Australia's capital markets. The questions fall under five key themes: (1) global capital market trends and their impact on Australia, (2) characteristics of public equity markets, (3) risks, efficiencies and confidence in private markets, (4) retail investor roles in private markets, and (5) transparency and monitoring of the financial system.

Notably, six of ASIC's 15 questions are distinctly focused on private markets. A further two questions are directed at monitoring and transparency of our capital markets including the private markets.

As an adviser to clients active in our public and/or private markets, KWM will be preparing its own detailed submission to ASIC, outlining our views on the questions raised and what we consider would be the right policy path for Australia in the future. If you have thoughts on any of the questions posed by ASIC, please do not hesitate to reach out to any of the *In Private* team – we'd be delighted to hear your views. Feedback to ASIC closes on 28 April 2025.

<sup>1</sup> 2024 M&A Deal Leaks Report by SS&C Intralinks and the M&A Research Centre (MARC), Bayes Business School, City, University of London - 2024.



## THE IN PRIVATE TEAM



**MARK MCNAMARA**

PARTNER - CO-HEAD PRIVATE CAPITAL  
SYDNEY

TEL +61 2 9296 2064  
MOB +61 411 568 277  
EMAIL mark.mcnamara@au.kwm.com



**NICOLA YEOMANS**

PARTNER - CO-HEAD PRIVATE CAPITAL  
SINGAPORE

TEL +65 6991 6538  
MOB +65 8339 5896  
EMAIL nicola.yeomans@sg.kwm.com



**YUEN YEE CHO**

PARTNER  
SYDNEY

TEL +61 2 9296 2343  
MOB +61 407 069 310  
EMAIL yuen-yee.cho@au.kwm.com



**MARK BAYLISS**

PARTNER  
SYDNEY

TEL +61 2 9296 2670  
MOB +61 419 729 795  
EMAIL mark.bayliss@au.kwm.com



**ALEX ELSER**

PARTNER  
SYDNEY

TEL +61 2 9296 2300  
MOB +61 421 209 091  
EMAIL alex.elsers@au.kwm.com



**GARY HAMP**

PARTNER  
SINGAPORE

TEL +65 6991 6501  
MOB +65 9385 3678  
EMAIL gary.hamp@sg.kwm.com

## CONTRIBUTORS



**INDRANEIL GHOSH**

PARTNER  
SINGAPORE

TEL +65 6991 6522  
MOB +65 8332 5251  
EMAIL indraneil.ghosh@sg.kwm.com



**YOSHIKI TSURUMAKI**

PARTNER  
TOKYO

TEL +81 3 5218 6714  
EMAIL yoshiki.tsurumaki@jp.kwm.com



**GARY LOCK**

PARTNER  
HONG KONG, CHINA HONG KONG SAR

TEL +852 3443 1020  
MOB +852 9819 2328  
EMAIL gary.lock@hk.kwm.com



**DAN FLANAGAN**

PARTNER  
SYDNEY

TEL +61 2 9296 2473  
MOB +61 429 483 286  
EMAIL dan.flanagan@au.kwm.com



**WILL STAWELL**

PARTNER  
SYDNEY

TEL +61 2 9296 2441  
MOB +61 418 322 298  
EMAIL will.stawell@au.kwm.com



**TIM BEDNALL**

PARTNER  
SYDNEY

TEL +61 2 9296 2922  
MOB +61 414 504 922  
EMAIL tim.bednall@au.kwm.com

## MEDIA ENQUIRIES



**JAMES BENNETT**

SENIOR MANAGER, CORPORATE AFFAIRS  
MELBOURNE

TEL +61 3 9643 5338  
MOB +61 476 009 133  
EMAIL james.bennett@au.kwm.com

## CLIENT ENQUIRIES



**ROBERTA RIVETT-CARNAC**

SENIOR CLIENT RELATIONSHIP MANAGER  
SYDNEY

TEL +61 2 9296 3709  
MOB +61 456 622 111  
EMAIL roberta.rivett-carnac@au.kwm.com



**CHRISTOPHER KOK**

PARTNER  
SYDNEY

TEL +61 2 9296 2518  
MOB +61 400 720 426  
EMAIL christopher.kok@au.kwm.com



**JARED NICKIG**

SPECIAL COUNSEL  
SYDNEY

TEL +61 2 9296 2728  
MOB +61 421 724 795  
EMAIL jared.nickig@au.kwm.com



**MICHAELA ASPPELL**

SENIOR CLIMATE ADVISOR  
SYDNEY

TEL +61 2 9296 3740  
MOB +61 424 355 386  
EMAIL michaela.aspell@owladvisory.com



# ABOUT KING & WOOD MALLESONS

A firm born in Asia, underpinned by world class capability. With over 3000 lawyers in 29 global locations, we draw from our Western and Eastern perspectives to deliver incisive counsel.

We help our clients manage their risk and enable their growth. Our full-service offering combines un-matched top tier local capability complemented with an international platform. We work with our clients to cut through the cultural, regulatory and technical barriers and get deals done in new markets.

#### Disclaimer

This publication provides information on and material containing matters of interest produced by King & Wood Mallesons. The material in this publication is provided only for your information and does not constitute legal or other advice on any specific matter. Readers should seek specific legal advice from KWM legal professionals before acting on the information contained in this publication.

#### Asia Pacific | North America

King & Wood Mallesons refers to the network of firms which are members of the King & Wood Mallesons network. See [kwm.com](http://kwm.com) for more information.

[www.kwm.com](http://www.kwm.com)

© 2025 King & Wood Mallesons

#### JOIN THE CONVERSATION



SUBSCRIBE TO OUR WECHAT COMMUNITY.  
SEARCH: KWM\_CHINA