Private Equity

Contributing editor
Bill Curbow

2018

GETTING THE DEAL THROUGH

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Private Equity 2018

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Private Equity 2018

Fourteenth edition

Getting the Deal Through is delighted to publish the fourteenth edition of *Private Equity*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Croatia, Israel and Korea. The report is divided into two sections: the first deals with fund formation in 19 jurisdictions and the second deals with transactions in 21 jurisdictions.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Bill Curbow of Simpson Thacher & Bartlett LLP, for his continued assistance with this volume.

GETTING THE DEAL THROUGH

London
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Singapore

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Formation

1 Forms of vehicle

What legal form of vehicle is typically used for private equity funds formed in your jurisdiction? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? In either case, what are the legal consequences for investors and the manager?

In practice, leveraged buyout (LBO) funds formed in Singapore are rare. If the LBO fund is to be established in Singapore, it will take the form of a limited liability corporation that will have separate legal existence from the investors and the manager. The investors and the manager will not be responsible for the obligations of the LBO fund.

2 Forming a private equity fund vehicle

What is the process for forming a private equity fund vehicle in your jurisdiction?

A two-stage procedure comprising reservation of name and submission of application papers, it will take usually less than three business days to complete the incorporation process. The entire process is done electronically and the one-off fee (no recurring fee is payable) payable to the relevant government agency is S$300. There is no minimum capital requirement. Corporate service providers and law firms provide incorporation services.

3 Requirements

Is a private equity fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, or a corporate secretary, and how is that requirement typically satisfied?

There is no requirement for the private equity fund vehicle to maintain a custodian or administrator. The only local requirement is to have a Singapore-resident company secretary (who must be a natural person) and registered office where the corporate secretarial books should be kept. The company secretary is typically a person from an external corporate service provider engaged to provide corporate secretarial services. However, the fund manager of the private equity fund vehicle is required to ensure that assets under management are subject to independent custody, and such independent custodians must be licensed, registered or authorised in their respective jurisdictions.

4 Access to information

What access to information about a private equity fund formed in your jurisdiction is the public granted by law? How is it accessed? If applicable, what are the consequences of failing to make such information available?

Identities of registered shareholders and their paid-up capital amount can be obtained from an online search made with the government agency. Such information is obtained from annual and other periodic returns that an LBO fund has to submit, and the failure to submit the same would render the LBO fund and responsible directors liable to fines. The LBO fund has to file annual audited accounts to the government agency, which are also publicly accessible.

5 Limited liability for third-party investors

In what circumstances would the limited liability of third-party investors in a private equity fund formed in your jurisdiction not be respected as a matter of local law?

The 'corporate veil' will be lifted only where there are abuses of the limited liability status of the corporation, such as where third-party investors induce others to give credit to the LBO fund where they know there is no reasonable expectation that the debt could be repaid.

6 Fund manager's fiduciary duties

What are the fiduciary duties owed to a private equity fund formed in your jurisdiction and its third-party investors by that fund's manager (or other similar control party or fiduciary) under the laws of your jurisdiction, and to what extent can those fiduciary duties be modified by agreement of the parties?

The fund manager's fiduciary duties are not prescribed by law (unless the fund manager is a trustee of an investment trust; the latter is not a vehicle used for LBO funds) and could be modified by agreement in the fund management agreement between the fund and the manager.

7 Gross negligence

Does your jurisdiction recognise a 'gross negligence' (as opposed to 'ordinary negligence') standard of liability applicable to the management of a private equity fund?

Gross negligence as opposed to negligence simpliciter has been judicially recognised in litigation involving a contractual disclaimer clause. While not in the LBO context, the same principle should apply.

8 Other special issues or requirements

Are there any other special issues or requirements particular to private equity fund vehicles formed in your jurisdiction? Is conversion or redomiciling to vehicles in your jurisdiction permitted? If so, in converting or redomiciling limited partnerships formed in other jurisdictions into limited partnerships in your jurisdiction, what are the most material terms that typically must be modified?

There are no special issues or requirements particular to LBO funds formed in Singapore. The Limited Partnership Act came into force in May 2009, and it is possible to form limited partnerships in Singapore by registering with the Accounting and Corporate Regulatory Authority (ACRA). However, conversion or redomiciling of non-Singapore limited partnerships to Singapore limited partnerships is not statutorily recognised.

The inward redomiciliation regime, introduced in the Companies (Amendment) Act 2017, came into effect in Singapore on 11 October 2017. The inward redomiciliation regime will enable foreign corporations to transfer their registration to Singapore. This will facilitate

the relocation by foreign corporations of their regional or worldwide headquarters to Singapore. Under the proposed regime, an inbound corporation that is redomiciled to Singapore will become a Singapore company and will be required to comply with the provisions of the Companies Act, like any other Singapore company.

9 Fund sponsor bankruptcy or change of control

With respect to institutional sponsors of private equity funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the private equity fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the private equity fund's sponsor?

The insolvency of the sponsor would not have a direct impact on the LBO fund and the fund manager or adviser as the latter are separate legal entities from the sponsor. However, it is common for the legal documentation to provide for consequences in the event of bankruptcy, change of control, restructuring and other analogous events affecting the sponsor, such as the right to remove the fund manager or adviser if they are affiliated entities. It is uncommon to contractually prescribe automatic dissolution of the LBO fund upon such events.

Other regulatory consequences if the sponsor becomes insolvent or undergoes a change of control might be the loss of the fund management licence by the fund manager if it is an affiliated entity of the sponsor, or if the fund manager is exempted from licensing (see question 10) the Monetary Authority of Singapore (MAS) may revoke the ability of the fund manager to operate on an 'exempt from licensing' basis. A mere change of control compared to insolvency is less likely to result in the loss of licensing or exemption from licensing, but the Singapore regulatory authorities would have regard to the circumstances resulting in the change of control.

Regulation, licensing and registration

10 Principal regulatory bodies

What are the principal regulatory bodies that would have authority over a private equity fund and its manager in your jurisdiction, and what are the regulators' audit and inspection rights and managers' regulatory reporting requirements to investors or regulators?

If the LBO fund is offered to the public for investment, a prospectus must be lodged with the MAS, which has the power to require all information it deems necessary before registering the prospectus. If the fund manager manages the LBO fund out of Singapore, it will need to be registered or licensed with the MAS for performing fund management activities. The MAS has untrammelled audit and inspection rights over registered and licensed fund managers in Singapore.

Pursuant to a regulatory change that took effect in August 2012, there are now three categories of fund management companies (FMCs) regulated by the MAS, namely, Registered FMCs, Licensed Accredited/Institutional FMCs and Licensed Retail FMCs. Registered FMCs are FMCs whose assets under management are not more than S$250 million and serve not more than 30 qualified investors (of which not more than 15 are funds), which include closed-end funds and collective investment schemes. The underlying investors of such funds must be accredited investors or institutional investors, or both. Exempt FMCs under the previous regime will be known as Registered FMCs. Licensed Accredited/Institutional FMCs are licensed FMCs who serve only accredited and institutional investors. Where the Licensed Accredited/Institutional FMCs manage funds such as collective investment schemes or closed-end funds, then the underlying investors of these funds must also be accredited investors or institutional investors. Licensed Accredited/Institutional FMCs will only be able to commence business following the grant of their licence in fund management. Licensed Retail FMCs are licensed FMCs who serve retail investors.

For Licensed Accredited/Institutional FMCs and Licensed Retail FMCs, its officers who perform the actual fund management duties need to have a representative licence. The MAS will evaluate the directors and substantial shareholders (entities who control or own at least 5 per cent of the share capital of the fund manager) in considering whether it will grant a licence. Following the award of the licence, any change of director or shareholder controlling 20 per cent of the share capital of the fund manager must receive prior approval from the MAS.

The requirements in the preceding paragraph do not apply to Registered FMCs. Registered FMCs are only required to notify the MAS of the identities of its directors and substantial shareholders at the time of registering themselves with the MAS and subsequently any change of the same. However, the MAS has the power to revoke a registration if it believes it is in the public interest to do so, and in such event the fund manager would either have to obtain a licence or cease its licensable activity in Singapore.

Registered FMCs and Licensed Accredited/Institutional FMCs are required to provide adequate disclosure to their investors on issues such as custodial and fund administration arrangements, compliance arrangements, potential conflicts of interests and professional indemnity insurance arrangements. For Retail FMCs, disclosure requirements are mandated in the prospectus of the fund offerings.

11 Governmental requirements

What are the governmental approval, licensing or registration requirements applicable to a private equity fund in your jurisdiction? Does it make a difference whether there are significant investment activities in your jurisdiction?

Pursuant to a regulatory change that took effect in July 2013, a closed-ended fund will be deemed and regulated as restricted collective investment schemes (CISs) if, among other things, the following is true:

- it falls within the definition of 'collective investment scheme' under section 2(1) of the Securities and Futures Act (SFA);
- all or most of its issued units cannot be redeemed at the election of the unitholders; and
- it operates in accordance with an investment policy under which investments are made for the purpose of giving participants the benefit of the results of the investments, and not for the purpose of operating a business.

Any offer of units in such closed-ended funds must comply with the requirement to submit a notification and annual declaration to the MAS, as well as furnish an information memorandum that complies with specific disclosure requirements.

The matters to be disclosed in an information memorandum issued in connection with an offer of units in such restricted CISs are as follows:

- the investment objectives and focus of the scheme;
- the investment approach of the manager for the scheme;
- the risks of subscribing for or purchasing units in the scheme;
- whether the offer of units in the restricted scheme is regulated by any financial supervisory authority and, if so, the title and jurisdiction of the legislation under which the restricted scheme is regulated and the name and contact details of the authority;
- whether the manager for the scheme and, where applicable, the trustee or custodian, are regulated by any financial supervisory authority and, if so, the name and contact details of the authority;
- the name and place of incorporation or registration of the manager for the scheme and, where applicable, the trustee or custodian for the scheme;
- in the case of a restricted foreign scheme that is a corporation, its place of incorporation and business address;
- where applicable, the policy of the scheme regarding side letters that may further qualify the relationship between the scheme and selected investors and the nature and scope of such side letters;
- where applicable, the past performance of the restricted scheme, or where information on the past performance of the scheme may be obtained;
- the details of where the accounts of the scheme may be obtained; and
- the fees and charges payable by the investors and by the scheme.

It is immaterial whether there are significant investment activities in Singapore.

12 Registration of investment adviser

Is a private equity fund's manager, or any of its officers, directors or control persons, required to register as an investment adviser in your jurisdiction?

Acting as an investment adviser without discretionary investment authority is treated the same way as a fund manager with discretionary investment authority. Hence, other than as described in question 10, there is no other requirement for the fund manager to be licensed or registered as an investment adviser in Singapore.

13 Fund manager requirements

Are there any specific qualifications or other requirements imposed on a private equity fund's manager, or any of its officers, directors or control persons, in your jurisdiction?

FMCs are also required to establish and operate out of a physical office in Singapore and its directors and officers must satisfy the 'fit and proper' criteria of the MAS.

In addition, for a Registered FMC and Licensed Accredited/Institutional FMC, the only requirements (other than as described in question 10) are they need to have a minimum of two full-time individuals (who can be directors or representatives, or both, of the FMC) residing in Singapore, each of whom having a minimum of five years of relevant experience and satisfying the 'fit and proper' criteria of the MAS, which essentially require the applicant to ensure these individuals have the integrity and competence to discharge the duties of a fund manager. The relevance of the individual's experience will be assessed in relation to the function that the individuals will be performing on behalf of the FMC. Registered FMCs must notify the MAS when it ceases operations in Singapore and file an annual return to the MAS to report on the number of 'qualified investors' it acts for and its assets under management (AUM).

For licensed FMCs, the minimum base capital for the applicant is S$1 million or S$500,000 if the applicant does not manage collective investment schemes. The MAS may require that the applicant takes out a professional indemnity insurance policy as a licensing condition. The licensed representatives and directors must also satisfy the 'fit and proper' criteria of the MAS.

Other than as described in question 10, the MAS would expect a Licensed Retail FMC to be the following:

- a reputable entity having at least a five-year track record;
- if it is a subsidiary of a foreign parent company, the latter to have a good reputation in its home country;
- subject to proper supervision by a recognised home regulatory authority;
- to have group AUM of at least S$1 billion if it wants to be a Licensed Retail FMC; and
- to have a chief operating officer with a minimum of 10 years' experience in the financial services industry.

14 Political contributions

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a private equity fund's manager or investment adviser or their employees.

Not applicable.

15 Use of intermediaries and lobbyist registration

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a private equity fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities. Describe any rules that require a fund's investment adviser or its employees and agents to register as lobbyists in the marketing of the fund to public pension plans and governmental entities.

Not applicable.

16 Bank participation

Describe any legal or regulatory developments emerging from the recent global financial crisis that specifically affect banks with respect to investing in or sponsoring private equity funds.

On 5 July 2010, the MAS issued its response to feedback received on its 16 December 2009 consultation paper entitled 'Consultation paper on proposed requirements for bank's private equity and venture capital investments' (the Consultation Paper). The banking regulations (the Regulations) have been amended with effect from 5 July 2010 and a revised version of MAS Notice 630 – Private Equity and Venture Capital Investments (the Notice) has been issued to implement the proposals in the Consultation Paper.

Under section 32 of the Banking Act (the Act), banks are prohibited from acquiring or holding major stakes in any company without the MAS' approval. Regulation 7 of the Regulations excludes private equity and venture capital (PE/VC) investments from the ambit of section 32. The Consultation Paper had proposed changes in three main areas to provide banks with greater scope and flexibility in their PE/VC investments: scope of PE/VC investments; duration of investments; and bank's involvement in management.

Scope of PE/VC investments

The characterisation of PE/VC investments in the Regulations and Notice has been expanded to include a wider range of investments. Under the revised scope, PE/VC investments would include investments where significant stakes are taken in companies with potential for high growth or value creation. However, an investment in a company carrying on a financial business that has such potential would not qualify as a PE/VC investment. The MAS has also clarified that the PE/VC exclusion under the Regulations is not intended to apply to investments in property-related activities.

Duration of investments

The duration of investments has been reduced to a seven-year limit (previously 10 years) for direct PE/VC investments or investments in funds managed by the banks, and a 12-year limit (previously 15 years) for PE/VC investments in independent funds. Banks may hold a PE/VC investment in a fund that is managed by the bank or a party related to the bank for 12 years if the bank's investment in the fund is less than 50 per cent of the total fund size within five years from the date of the inception of the fund, or if the duration of investment for each underlying PE/VC investment in the fund is less than seven years. The MAS will permit existing PE/VC investments to be held for the duration that was previously allowed under the Notice.

Management involvement

Bank executives under the bank's private equity business line would be allowed to be involved in matters that are typically discussed at board level or strategic issues. This should not pertain to the day-to-day operational matters of the PE/VC investees, or where involvement may give rise to conflicts of interest in the investee's transactions with the bank.

Taxation

17 Tax obligations

Would a private equity fund vehicle formed in your jurisdiction be subject to taxation there with respect to its income or gains? Would the fund be required to withhold taxes with respect to distributions to investors? Please describe what conditions, if any, apply to a private equity fund to qualify for applicable tax exemptions.

The LBO fund would be subject to corporate income tax on its income just like any Singapore incorporated company. There is no capital gains tax in Singapore. There is no withholding tax on dividend distributions by the LBO fund to non-resident investors. If any interest or royalty is paid by an LBO to non-resident investors, withholding tax at the rate of 15 per cent is applicable.

The LBO fund may apply to the MAS to be approved as a Singapore tax-resident fund to enjoy certain tax incentives under section 13R of the Singapore Income Tax Act (the Scheme). Under the Scheme, as long as the conditions set out below are met, the fund will be exempted from most forms of Singapore income tax, including the gains or profits realised from the acquisition and divestment of portfolio investments that might otherwise be taxable as trading income. Note that the Scheme will not exempt the fund from income tax arising from the holding of Singapore immovable properties or Singapore-sourced interest.

The conditions under the Scheme are as follows:

- the fund must be a Singapore incorporated company and Singapore tax resident;
- the fund must not be 100 per cent beneficially owned by Singapore resident persons;
- the fund must be managed or advised directly by a Singapore fund management company and use a Singapore-based fund administrator if the administration is outsourced by the fund manager;
- the fund must incur at least S$200,000 in local business spending each year. The expenses can include the fund management fees; and
- the fund must not change its investment objective or strategy after being approved for this tax incentive scheme.

Another consideration arising from the Scheme is that 'qualifying investors' of the fund will be effectively exempted from all Singapore tax on distributions made by the fund to them. However, there will be a punitive effect on 'non-qualifying investors' who shall be required to pay a financial amount to the Inland Revenue Authority of Singapore based on its share of the fund's income (as reflected in the fund's audited accounts) multiplied by the corporate income tax rate (currently 17 per cent). The following persons will be regarded as 'qualifying investors':

- any natural person investing in the fund;
- any bona fide non-Singapore tax resident investor that:
  - does not have a permanent establishment in Singapore (other than a fund manager); or
  - has a permanent establishment in Singapore but does not use funds from its Singapore operations to invest in the fund;
- any person so designated by the MAS; and
- any person not covered above and who does not (on its own and with his or her affiliates) own more than 30 per cent of the fund's equity if the fund has fewer than 10 investors, or 50 per cent of the fund's equity if the fund has 10 or more investors.

Any person who is not a 'qualifying investor' shall be a 'non-qualifying investor'.

The LBO fund may also apply to the MAS to be approved as a Singapore tax-resident fund to enjoy certain tax incentives under section 13X of the Singapore Income Tax Act (the Enhanced-Tier Scheme). Under the Enhanced-Tier Scheme, as long as the conditions set out below are met, the fund will be exempted from most forms of Singapore income tax, including the gains or profits realised from the acquisition and divestment of portfolio investments that might otherwise be taxable as trading income. Please note that the scheme will not exempt the fund from income tax arising from the holding of Singapore immovable properties or Singapore-sourced interest.

The conditions under the Enhanced-Tier Scheme are as follows:

- the fund must be a Singapore incorporated company, trust or limited partnership and Singapore tax resident;
- the fund must have a minimum fund size of S$50 million in committed capital;
- the fund must be managed or advised directly by a Singapore fund management company and use a Singapore-based fund administrator if the administration is outsourced by the fund manager;
- the fund management company must employ at least three investment professionals;
- the fund must incur at least S$200,000 in local business spending each year. The expenses can include the fund management fees;
- the fund must not change its investment objective or strategy after being approved for this tax incentive scheme; and
- the fund must not concurrently enjoy other tax incentives.

18 Local taxation of non-resident investors

Would non-resident investors in a private equity fund be subject to taxation or return-filing requirements in your jurisdiction?

No, except to the extent the LBO fund qualifies under the Scheme, a non-resident investor who is or becomes a 'non-qualifying investor' as described in question 17 would have to pay the punitive financial amount as described in question 17.

19 Local tax authority ruling

Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a private equity fund vehicle formed in your jurisdiction? Are there any special tax rules relating to investors that are residents of your jurisdiction?

None is required unless the LBO fund wishes to qualify under the Scheme, in which event an application to the MAS (and not the Singapore tax authorities) is required. There are no special rules relating to investors that are Singapore residents other than in connection with the Scheme as described in question 17.

20 Organisational taxes

Must any significant organisational taxes be paid with respect to private equity funds organised in your jurisdiction?

No.

21 Special tax considerations

Please describe briefly what special tax considerations, if any, apply with respect to a private equity fund's sponsor.

The management fees and carried interest payable to the fund manager would be taxable in Singapore as fee income if the fund manager is tax-resident in Singapore. There is a tax incentive scheme known as the Financial Sector Incentive Scheme – Fund Management (FSI-FM), which a fund manager may apply for, and if awarded at the discretion of the MAS, a concessionary tax rate of 10 per cent under the FSI-FM scheme will apply to the fee income. The standard corporate income tax rate is currently 17 per cent. Under the Scheme, if any investor of the LBO fund is not a 'qualifying investor' as described in the response to question 17, the fund manager (if it is awarded the FSI-FM tax incentive) will lose the concessionary tax rate of 10 per cent for the full year of assessment relating to the financial year in which the fund has a non-qualifying investor.

22 Tax treaties

Please list any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

The LBO fund would be able to access any of the tax treaties entered by Singapore (currently 82 comprehensive avoidance of double taxation agreements, which generally cover all types of income) since the LBO will be resident in Singapore.

Update and trends

Following the amendments to the Companies Act, Singapore companies and limited liability partnerships, as well as foreign companies registered to do business in Singapore, are required to keep registers of significant controllers and nominee directors at prescribed places (eg, the company's registered office or the registered office of the registered filing agent). The registers will not be open to inspection by the public but must be available for inspection by the Accounting and Corporate Regulatory Authority (ACRA) and law enforcement agencies. The aim of the requirement for the maintenance of registers of significant controllers is to make the ownership and control of corporate entities more transparent and reduce opportunities for the misuse of corporate entities for illicit purposes.

A controller is defined as an individual or a legal entity that has a 'significant interest' in or 'significant control' over the company. A controller who has significant control over a company is a person who:

- holds the right to appoint or remove directors who hold a majority of the voting rights at directors' meetings;
- holds more than 25 per cent of the rights to vote on matters that are to be decided upon by a vote of the members of the company; or
- exercises or has the right to exercise significant influence or control over the company.

An individual or legal entity has significant interest in a company having a share capital if:

- the individual or legal entity, as the case may be, has an interest in more than 25 per cent of the shares in the company or foreign company; or
- the individual or legal entity, as the case may be, has an interest in one or more voting shares in the company; and the total votes attached to that share, or those shares, is more than 25 per cent of the total voting power in the company or foreign company.

An LBO fund that is structured as a Singapore company will be required to:

- take reasonable steps to identify its registrable controllers and obtain information on its registrable controllers, by sending out notices to anyone whom it knows or has reasonable grounds to believe to be registrable controllers; or who knows the identity of the registrable controllers or is likely to have that knowledge;
- ensure that the registers of controllers are up to date by updating the registers within two days of receiving information on the controllers; and
- declare in its annual return filed with ACRA that its registers of controllers are kept up to date.

In addition, if the LBO fund that is structured as a Singapore company knows or has reasonable grounds to believe that a relevant change has occurred in the particulars of a registrable controller, it must give notice to the registrable controller to confirm if there has been a change and find out details of the change.

23 Other significant tax issues

Are there any other significant tax issues relating to private equity funds organised in your jurisdiction?

No.

Selling restrictions and investors generally

24 Legal and regulatory restrictions

Describe the principal legal and regulatory restrictions on offers and sales of interests in private equity funds formed in your jurisdiction, including the type of investors to whom such funds (or private equity funds formed in other jurisdictions) may be offered without registration under applicable securities laws in your jurisdiction.

An offer of interest in an LBO fund that is made in Singapore would prima facie require an accompanying prospectus lodged with, and registered by, the MAS unless the offer falls within one of a few 'safe harbours' in the SFA. There are prescribed disclosure requirements for the prospectus in the SFA.

For an LBO fund, the available 'safe harbours' are as follows:

- where the offers are made only to institutional investors as prescribed in the SFA, for example, insurance companies and pension fund managers; and
- the 'private placement exemption', which is available if the offer is made to no more than 50 entities in any 12-month period, subject to aggregation rules.

25 Types of investor

Describe any restrictions on the types of investors that may participate in private equity funds formed in your jurisdiction (other than those imposed by applicable securities laws described above).

If a prospectus is lodged with, and registered by, the MAS, there is no restriction on the types of investor that may participate in the LBO fund. If a 'safe harbour' is relied upon, depending on the category relied upon (as described in question 24), the investors that may participate have to be restricted accordingly. There is no restriction on the types of investor if the safe harbour is the private placement exemption as described in question 24.

26 Identity of investors

Does your jurisdiction require any ongoing filings with, or notifications to, regulators regarding the identity of investors in private equity funds (including by virtue of transfers of fund interests) or regarding the change in the composition of ownership, management or control of the fund or the manager?

None, except where the LBO fund is listed on an approved securities exchange in Singapore (namely, the Singapore Exchange Securities Trading Limited, which is the only approved equities securities exchange), any person who becomes a substantial shareholder of the LBO fund (entities who control or own at least 5 per cent of the share capital of the fund) has to notify the LBO fund and the Singapore Exchange Securities Trading Limited within two business days. Any change of interest held by a substantial shareholder that exceeds the threshold of 1 per cent must be reported to the LBO fund and the Singapore Exchange Securities Trading Limited within the same time frame. See question 10 in relation to notification requirements for change in control of the fund manager.

27 Licences and registrations

Does your jurisdiction require that the person offering interests in a private equity fund have any licences or registrations?

If the person offering the interest is the LBO fund itself offering shares for subscription, no licence or registration (other than registration of a prospectus where required as described in question 24) is necessary. A broker-dealer or other financial intermediary marketing the interest in the LBO fund will require a licence from the MAS for dealing in securities.

28 Money laundering

Describe any money laundering rules or other regulations applicable in your jurisdiction requiring due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a private equity fund or the individual members of the sponsor.

There are general laws in Singapore applicable to everyone that prohibit money laundering. These laws do not prescribe any rule on how due diligence, record keeping or reporting of suspicious transactions should be carried out. Whistle-blowing on suspected money laundering transactions is mandatory, with only qualified Singapore

advocates and solicitors excused by legal communication privilege for not whistle-blowing.

Financial institutions involved in granting credit, marketing securities (such as interest in an LBO fund) or management of funds are subject to guidelines from the MAS on anti-money laundering. Essentially, these financial institutions must establish internal 'know your client' procedures to establish the bona fides of their clients, perform enhanced due diligence if the client is a 'politically exposed person' and maintain documentary records relating to their clients' identities and transactions undertaken for a minimum period of five years. The MAS is the designated suspicious transaction reporting office for financial institutions to whistle-blow on suspected money-laundering transactions.

Exchange listing

29 Listing

Are private equity funds able to list on a securities exchange in your jurisdiction and, if so, is this customary? What are the principal initial and ongoing requirements for listing? What are the advantages and disadvantages of a listing?

LBO funds may list as an investment fund on the Singapore Exchange Securities Trading Limited (which is the only approved equities securities exchange in Singapore) but none has been listed to date. For an LBO fund denominated in Singapore dollars, the main listing criteria are a minimum asset size of at least S$20 million and at least 25 per cent of the fund's share capital must be held by at least 500 public investors. For an LBO fund not denominated in Singapore dollars, the main listing criteria are a minimum asset size of at least US$20 million (or equivalent in foreign currency) and a spread of holders necessary for an orderly market in the shares. The continuous listing requirements are largely the same as any listed issuer on the Singapore Exchange Securities Trading Limited with the notable exception that a weekly reporting of the LBO fund's net tangible asset value to the Singapore Exchange Securities Trading Limited is required. Listing will allow investors of the LBO fund to exit their investment if the LBO fund does not offer redemption of shares. The disadvantage of listing is that closed-ended investment funds listed on the Singapore Exchange Securities Trading Limited have traditionally traded at a significant discount to their net tangible asset values and there is little investor awareness and trading volume on such listed stocks.

30 Restriction on transfers of interests

To what extent can a listed fund restrict transfers of its interests?

As trading of listed stock is carried out through an electronic trading system operated by the Singapore Exchange Securities Trading Limited, for listed shares it is not feasible for the fund manager to impose restrictions on transfers of interests to certain parties. If shares of promoters of the fund are to be placed under a transfer moratorium, the practice is to require these shares not to be deposited with the central depository (or deposited but endorsed as 'under moratorium'), which is a prerequisite for the trading of shares on the Singapore Exchange Securities Trading Limited.

Participation in private equity transactions

31 Legal and regulatory restrictions

Are funds formed in your jurisdiction subject to any legal or regulatory restrictions that affect their participation in private equity transactions or otherwise affect the structuring of private equity transactions completed inside or outside your jurisdiction?

No, unless such funds are authorised or recognised collective investment schemes (a prerequisite to offer such funds for sale to the public), which must comply with prescribed investment restrictions. These investment restrictions generally require authorised and recognised collective investment schemes to invest only in listed equities securities or debt securities that are rated investment grade.

32 Compensation and profit-sharing

Describe any legal or regulatory issues that would affect the structuring of the sponsor's compensation and profit-sharing arrangements with respect to the fund and, specifically, anything that could affect the sponsor's ability to take management fees, transaction fees and a carried interest (or other form of profit share) from the fund.

There is no legal or regulatory issue that will affect compensation of the fund manager.

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