

**International
Comparative
Legal Guides**



Private Equity

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1 Overview

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions?

The Cayman Islands is a key jurisdiction in which to domicile private equity funds in light of its legislative and regulatory framework, tax-neutral status, flexible structuring options and experienced service providers.

While private equity fund establishment for acquisition purposes and co-investment opportunities are most common, Cayman Islands structures are routinely employed in transactional contexts, particularly buy-out and secondary transactions.

The nature, scope and volume of matters being undertaken in the Cayman Islands across the entire financial markets spectrum makes it difficult to identify one specific change that has emerged. At a thematic level, offshore practice continues to evolve, being more multi-jurisdictional due to onshore and global developments, more complex as it addresses different, and at times conflicting, regulatory frameworks and more involved as investors seek tailored structures and products that respond to regional and global events.

1.2 What are the most significant factors currently encouraging or inhibiting private equity transactions in your jurisdiction?

The Cayman Islands continues to be the leading offshore domicile for private equity funds due to the global distribution appeal of Cayman Islands vehicles, their ease of use, speed to market and low cost. The Cayman Islands' tax-neutral status ensures the fund vehicle itself does not create an additional layer of tax, creating efficiencies in raising funds from a potentially global investor base.

The Cayman Islands is a well-regulated, co-operative and transparent jurisdiction and continues to refine its laws and regulatory standards to respond and adapt to international standards. This has been most recently demonstrated by the update to primary legislation governing the most popular entity types; notably, exempted companies, exempted limited partnerships and limited liability companies (“**LLC**”). The global regulatory framework is evolving quickly and this is likely to continue in the near-/mid-term future. The Cayman Islands continues to adopt and embrace international best practice approaches in multiple spheres that interact with private equity, including, by way of example, the regime for anti-money laundering and combatting terrorist financing, economic substance initiatives and tax-transparency reporting obligations.

1.3 Are you seeing any types of investors other than traditional private equity firms executing private equity-style transactions in your jurisdiction? If so, please explain which investors, and briefly identify any significant points of difference between the deal terms offered, or approach taken, by this type of investor and that of traditional private equity firms.

There are a range of investors beyond traditional private equity firms, including family offices and trade buyers, seeking to acquire investments that are structured through Cayman Islands domiciled holding vehicles. Transaction terms, and approach adopted, are dictated by investor profile and other commercial considerations that are not affected by Cayman Islands legal considerations.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction?

The majority of Cayman Islands private equity funds are established as limited partnerships, being the Cayman Islands-exempt limited partnership. It is also possible to structure a Cayman Islands private equity fund as a company, an LLC or a trust.

The Cayman Islands fund vehicle will generally invest via other Cayman Islands vehicles, including aggregator vehicles, or entities domiciled outside the Cayman Islands, such as in Delaware, Luxembourg or Ireland, depending on where the ultimate operating portfolio company or target entity is located. Ultimately, net returns from the underlying company or target will be distributed to the Cayman Islands domiciled fund vehicle, which net returns will in turn be distributed to investors and sponsors and be taxable in accordance with the regimes of the jurisdictions where such investors and sponsors are tax resident.

2.2 What are the main drivers for these acquisition structures?

These structures combine the investor familiarity, sophistication and flexibility of Cayman Islands fund vehicles with the economic and structuring advantages of an underlying holding structure, which satisfies onshore tax and regulatory considerations in an efficient and streamlined manner.

2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

As the majority of Cayman Islands private equity funds are structured as exempted limited partnerships, investors subscribe for an equity interest in the exempted limited partnership in the form of a limited partnership interest. A sponsor/management will typically participate in the performance of the exempted limited partnership as a carry participant either directly as a partner or through a separate vehicle.

2.4 If a private equity investor is taking a minority position, are there different structuring considerations?

Minority investor protections, such as anti-dilution, veto or information rights, which transaction parties agree to accommodate within a structure, can be reflected in the governing documents of any Cayman Islands vehicle. These matters are dictated by commercial considerations as opposed to Cayman Islands legal considerations.

2.5 In relation to management equity, what is the typical range of equity allocated to the management, and what are the typical vesting and compulsory acquisition provisions?

There can be a broad range of approaches as to how profits and other returns are shared among a management team. This is generally left to the management team to determine with a sponsor and will reflect what is most appropriate with reference to their commercial arrangements and target returns.

The vast majority of Cayman Islands private equity funds are managed by a US or other international domiciled and regulated investment manager. Therefore, vesting and compulsory acquisition provisions relating to the management equity and restraints are typically driven by the onshore legal and regulatory considerations of the fund manager.

2.6 For what reasons is a management equity holder usually treated as a good leaver or a bad leaver in your jurisdiction?

Good and bad leaver provisions, and vesting mechanics more generally, are structured in a wide variety of ways depending on the intention of the transaction parties. These matters are dictated by commercial agreement rather than Cayman Islands legal considerations or restrictions.

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

A Cayman Islands private equity portfolio company can be formed as an exempted company, an LLC or an exempted limited partnership.

For an exempted company, the board of directors is responsible for the overall management and control of the company. The composition of the board of directors of a portfolio company tends to vary depending on the nature of the private

equity transaction. A director of an exempted company is in a fiduciary relationship to the company and owes various duties of a fiduciary nature, which may be broadly characterised as duties of loyalty, honesty and good faith. Every director owes these duties individually and they are owed to the company as a whole. Specifically, they are not owed to other companies with which the company is associated, to the directors or to individual shareholders. In addition to the fiduciary duties, each director owes a duty of care, diligence and skill to the company.

An LLC can be member-managed or can appoint a separate board of managers. There is significant flexibility as to governance arrangements with respect to an LLC, which can be agreed by the parties in the LLC agreement. The default duty of care for a manager or managing member is to act in good faith. This standard of care may be expanded or restricted (but not eliminated) by the express provisions of the LLC agreement.

An exempted limited partnership is managed by its general partner. The general partner has a duty to act in good faith and, subject to the express provisions of the limited partnership agreement, in the interests of the partnership.

Operator information, being director, manager or general partner details (as applicable), can be obtained from the Cayman Islands registry. Commercial arrangements are not publicly available and generally information will only need to be disclosed with consent or in limited, appropriate circumstances, such as with law enforcement agencies or regulatory and tax authorities upon legitimate lawful and proper request.

3.2 Do private equity investors and/or their director nominees typically enjoy veto rights over major corporate actions (such as acquisitions and disposals, business plans, related party transactions, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

This is generally a case-by-case consideration based on the commercial circumstances of each transaction.

Investors in a Cayman Islands private equity fund do not typically enjoy veto rights over major corporate actions. For funds structured as exempted limited partnerships, the general partner must act within any limitations agreed in the limited partnership agreement of the fund (for example, as to business purpose, limitations on investment, limitations on indebtedness and guarantees, etc.). A limited partner advisory committee will often be established to approve any conflict transactions of the general partner or fund manager. A minority investor would not typically enjoy any veto rights.

At an operating company level, it is very common for transaction parties to agree that certain matters will be reserved to shareholders acting by requisite thresholds, which may include veto rights or various minority protections, or require enhanced director approvals. These arrangements would be reflected in the company's governing documents, which would typically include a shareholders' agreement.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

There is no limitation on reflecting veto arrangements in governing documents, although it requires a case-by-case analysis to determine how such arrangements should be accommodated most effectively in a specific context.

If structured as an exempted company, certain veto arrangements may be better afforded to shareholders as opposed to director nominees in light of the fiduciary duties owed by directors. There is greater flexibility where an LLC is employed. Such vehicles, by way of example, are particularly well suited to joint ventures given the governing documents may authorise a manager to act in the interests of his or her appointing member.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

As a matter of Cayman Islands law, a private equity investor does not generally owe fiduciary duties or any other duties to minority shareholders (or *vice versa*), unless duties of this nature have been contractually agreed between the parties and/or are otherwise expressly set out in governing documents.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

A shareholders' agreement governed by the laws of another jurisdiction (other than the Cayman Islands) is generally enforceable in the Cayman Islands provided that the agreement is not contrary to Cayman Islands law or public policy. With respect to non-compete and non-solicit provisions, such provisions in restraint of trade are presumed to be unenforceable under Cayman Islands law. That presumption can, however, be rebutted by proving that the restraint is "reasonable", both as between the parties and in relation to the public interest, particularly with reference to time and geographical scope.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies?

While there are no Cayman Islands statutory restrictions preventing a private equity investor from appointing a nominee to the board of a Cayman Islands portfolio company, any such director owes fiduciary and other duties to the company as a whole and not to the private equity investor that nominated the director to the board. Consequently, any such nominee director must be mindful to avoid a conflict between their duty to the company and their personal interests (or the interests of the private equity investor) and must at all times act in the best interests of the company. Should a director act in breach of its fiduciary and other duties owed to the company, the director risks incurring personal liability. As noted previously, there can be greater flexibility in this regard if a Cayman Islands LLC is used as the portfolio company.

The concept of a "shadow director" is only recognised in limited circumstances in the context of certain offences in connection with winding up of a Cayman Islands company under the Companies Act (As Revised). In these circumstances, a private equity investor may be considered a shadow director if the nominee director is accustomed to acting in accordance with the directions or instructions of the private equity investor responsible for his or her appointment to the board.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

Directors are required to comply with the conflicts of interest provisions set out in the articles of association of the relevant portfolio company. Typically, the articles of association of a Cayman Islands company permit a director to vote on a matter in which he or she has an interest, provided that he or she has disclosed the nature of this interest to the board at the earliest opportunity. If a director may wish to recuse him or herself from a vote on such a matter, then the articles of association should be sufficiently flexible to enable a majority of directors at an otherwise quorate meeting to proceed with a vote.

Where private equity funds are structured as limited partnerships, a limited partner advisory committee or other independent committee will often be established to approve transactions involving conflicts.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including antitrust, foreign direct investment and other regulatory approval requirements, disclosure obligations and financing issues?

The timetable for transactions is driven by onshore issues, such as regulatory approvals required in the jurisdictions where the assets are domiciled or where the private equity investors are resident.

There are no competition approvals or regulatory approvals required for Cayman Islands private equity structures notwithstanding that certain filings or notifications may need to be made contemporaneously with, or subsequent to, a deal's completion.

4.2 Have there been any discernible trends in transaction terms over recent years (i.e. trends in terms of regulatory approval)?

The trends that develop in the Cayman Islands in the context of private equity funds and transactions reflect the trends experienced or developed in the US, Europe, Asia and other markets as well as broader evolving regulatory trends and globally adopted best practices.

Cayman Islands law, including entity enabling legislation, is sufficiently flexible to allow transacting parties to replicate or accommodate deal terms driven by onshore requirements.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

Generally, the target companies in public-to-private transactions are not based in the Cayman Islands. The applicable considerations to take into account would be determined with reference to the laws and regulations of the jurisdiction where the target company is based.

Where the target company is a Cayman Islands company, then the target would almost certainly be listed on a stock

exchange outside the Cayman Islands. The listing rules of such non-Cayman Islands stock exchange would apply.

If, however, the target company were listed on the Cayman Islands Stock Exchange (the “CSX”), then the Cayman Islands Code on Takeovers and Mergers and Rules Governing the Substantial Acquisitions of Shares would apply (the “Code”), which is administered by a council executive appointed by the Stock Exchange Authority, the CSX’s regulator.

5.2 What deal protections are available to private equity investors in your jurisdiction in relation to public acquisitions?

As previously noted, the target companies in public-to-private transactions are generally not based in the Cayman Islands. In those instances, the considerations that would apply are driven by laws in the relevant jurisdiction(s) where the target is based and/or the rules of the non-Cayman Islands stock exchange on which its shares are listed.

In the case of a CSX-listed entity, the Code contains a number of protections for minority shareholders. These include: mandatory offer rules; an obligation to offer a minimum level of consideration; acquisitions resulting in a minimum level of consideration; and rules against offering favourable conditions except with the consent of the council executive.

More generally, as a matter of Cayman Islands law, there may be other protections available to investors, the nature of which protections will depend on the manner in which the deal is structured. By way of example, if the private equity investors were shareholders in a Cayman Islands-exempt company and the public acquisition were structured by way of a merger, then such investors may be able to avail themselves of dissenting shareholder rights and apply to the Courts seeking fair value for their shares.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

The operating companies and deal terms for specific portfolio investments are generally not governed by Cayman Islands law and are non-Cayman Islands considerations typically driven by onshore tax and regulatory considerations.

6.2 What is the typical package of warranties / indemnities offered by (i) a private equity seller, and (ii) the management team to a buyer?

The operating companies and deal terms for specific portfolio investments are generally not governed by Cayman Islands law and are non-Cayman Islands considerations typically driven by onshore tax and regulatory considerations.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

The operating companies and deal terms for specific portfolio investments are generally not governed by Cayman Islands law and are non-Cayman Islands considerations typically driven by onshore tax and regulatory considerations.

6.4 To what extent is representation & warranty insurance used in your jurisdiction? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such insurance policies, and what is the typical cost of such insurance?

The operating companies and deal terms for specific portfolio investments are generally not governed by Cayman Islands law and are non-Cayman Islands considerations typically driven by onshore tax and regulatory considerations.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

The operating companies and deal terms for specific portfolio investments are generally not governed by Cayman Islands law and are non-Cayman Islands considerations typically driven by onshore tax and regulatory considerations.

6.6 Do (i) private equity sellers provide security (e.g., escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

The operating companies and deal terms for specific portfolio investments are generally not governed by Cayman Islands law and are non-Cayman Islands considerations typically driven by onshore tax and regulatory considerations.

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain in the absence of compliance by the buyer (e.g., equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

The deal terms for specific portfolio investments are generally not governed by Cayman Islands law, nor driven by Cayman Islands considerations. As such, the comfort provided and sellers’ enforcement rights with respect to financing commitments reflect commercially agreed terms and are typically negotiated and agreed by onshore deal counsel.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers’ exposure? If so, what terms are typical?

The operating companies and deal terms for specific portfolio investments are generally not governed by Cayman Islands law and are non-Cayman Islands considerations typically driven by onshore tax and regulatory considerations.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

This will depend primarily on which exchange the initial public offering (“IPO”) is listed; usually, the CSX will not be the primary listing for such transactions.

Note that any listing vehicle will need to be a Cayman Islands-exempt or ordinary company. Limited partner interests in a limited partnership and membership interests in an LLC cannot themselves be the subject of an IPO. Care also needs to be given as to how any proposed conversion is effected, and there should be sufficient flexibility in the documents on acquisition to ensure we have the correct type of entity for listing on an IPO exit.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

This will depend primarily on which exchange the IPO is listed; usually the CSX will not be the primary listing for such transactions.

Typically, these commercial terms are agreed by onshore counsel to the IPO.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

This will depend primarily on which exchange the IPO is listed; usually the CSX will not be the primary listing for such transactions.

We often see private equity sellers pursuing a dual-track exit process. The dual track can run very late in the process. In recent times we have seen more dual-track deals ultimately realised through sale.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (including the syndicated loan market, private credit market and the high-yield bond market).

The Cayman Islands is a leading “creditor-friendly” jurisdiction, where both Cayman Islands and non-Cayman Islands security packages are respected and recognised. Financing counterparties are very familiar with, and comfortable lending to, Cayman Islands vehicles, which are able to access the full range of debt finance options seen in the market (including through the syndicated loan market and private credit market). Common private equity financing structures include subscription line facilities secured on investors’ capital commitments, and leveraged finance or “NAV” facilities secured by the relevant target group’s assets. Cayman Islands vehicles also feature frequently in lender-side structures in the private credit market.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

There are no specific Cayman Islands statutory restrictions impacting the type of debt financing activity that can be undertaken and Cayman Islands vehicles are generally able to access the full range of debt finance options seen in the market. Restrictions on debt financing may, however, be contained in the constitutional documents of the Cayman Islands vehicle

(such as a limited partnership agreement in the case of a partnership), the terms of which would be agreed by the sponsor and investors on launch of the fund.

8.3 What recent trends have there been in the debt-financing market in your jurisdiction?

There has been a continuation of the use of all subscription and bridge facilities across the private equity market with a marked increase in financings involving the use of wholly owned investment companies incorporated in the Cayman Islands. The vehicles are structured as bankruptcy-remote with at least one independent director or manager, as the case may be, appointed to the board. This satisfies the lender’s bankruptcy concerns and provides strong credit protection for the secured parties. These financings include plain vanilla loans, note issuances and also various derivative transactions including total return swaps and repurchase structures.

9 Alternative Liquidity Solutions

9.1 How prevalent is the use of continuation fund vehicles or GP-led secondary transactions as a deal type in your jurisdiction?

The formation and launch of continuation fund vehicles and other types of private equity secondary transactions (including GP-led secondaries) is prevalent in the Cayman Islands given the jurisdiction’s legislative and regulatory framework, tax-neutral status and flexible structuring options. The volume of secondary transactions in the Cayman Islands, notably GP-led secondaries, has increased in recent years in line with the general industry trends and the increasing number of investment fund vehicles whose terms are expiring and that are seeking liquidity options.

9.2 Are there any particular legal requirements or restrictions impacting their use?

There are no specific Cayman Islands statutory restrictions impacting the formation and launch of continuation fund vehicles or the structuring of other secondary transactions. Such transactions will be subject to the same Cayman Islands laws, general partner fiduciary duties, disclosure obligations and general regulations that apply to private equity funds and related structures in the jurisdiction, as described in more detail in this chapter.

10 Tax Matters

10.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

The Government of the Cayman Islands does not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon: (i) Cayman Islands-exempt companies, exempted trusts, LLCs or exempted limited partnerships established to operate as private equity funds or portfolio vehicles; or (ii) the holders of shares, units, LLC interests or limited partnership interests (as the case may be) in such private equity vehicles. Interest, dividends and gains payable to such private equity vehicles and all distributions by the private equity vehicles to the holders of shares, units, LLC interests or limited partnership interests (as the case may be) will be received free of any Cayman Islands income or withholding taxes.

An exempted company, an exempted trust, LLC or an exempted limited partnership may apply for, and expect to receive, an undertaking from the Financial Secretary of the Cayman Islands to the effect that, for a period of 20 years (in the case of an exempted company) or a period of 50 years (in the case of an LLC, an exempted trust or an exempted limited partnership) from the date of the undertaking, no law that is enacted in the Cayman Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to the vehicle or to any member, shareholder, unitholder or limited partner (as the case may be) thereof in respect of the operations or assets of the vehicle or the interest of a member, shareholder, unitholder or limited partner (as the case may be) therein; and may further provide that any such taxes or any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the vehicle or the interests of a member, shareholder, unitholder or limited partner (as the case may be) therein.

The Cayman Islands is not party to a double tax treaty with any country that is applicable to any payments made to or by private equity vehicles.

10.2 What are the key tax-efficient arrangements that are typically considered by management teams in private equity acquisitions (such as growth shares, incentive shares, deferred / vesting arrangements)?

As the Cayman Islands is a tax-neutral jurisdiction, these arrangements are typically driven by the tax laws of the jurisdictions where the management team is located. However, Cayman Islands law allows for significant scope and flexibility to structure management equity programmes in a wide variety of ways.

10.3 What are the key tax considerations for management teams that are selling and/or rolling-over part of their investment into a new acquisition structure?

As the Cayman Islands is a tax-neutral jurisdiction, these arrangements are typically driven by the tax laws of the jurisdictions where the management team is located.

10.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

The Cayman Islands has signed an inter-governmental agreement to improve international tax compliance and the exchange of information with the United States (the “**US IGA**”). The Cayman Islands has also signed, along with over 100 other countries, a multilateral competent authority agreement to implement the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (the “**CRS**” and, together with the US IGA, “**AEOI**”).

Cayman Islands regulations have been issued to give effect to the US IGA and CRS (collectively, the “**AEOI Regulations**”). All Cayman Islands “Financial Institutions” (as defined in the relevant AEOI Regulations) are required to comply with the registration, due diligence and reporting requirements of the AEOI Regulations, unless they are able to rely on an exemption.

11 Legal and Regulatory Matters

11.1 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

The Cayman Islands continues to refine its laws and regulatory framework to ensure that it meets the ever-increasing demands of the private equity industry. This ability to respond and adapt has resulted in the following legal developments over recent years:

- Since late 2022, it has also been possible to register a Cayman Islands limited liability partnership (“**LLP**”) under the Limited Liability Partnership Act (As Revised). The registration process for an LLP is similar to that for other forms of Cayman Islands vehicles. An LLP combines the flexible features of a general partnership but has the benefit of separate legal personality and affords limited liability status to all its partners. In the context of private equity, an LLP’s features and flexibility provide additional structuring options for general partner or management vehicles or fund of funds or holding partnerships. The Private Funds Act (As Revised) (the “**PF Act**”) (as defined below) makes provision for registration of an LLP as a private fund. Given the relative infancy of the LLP and recognising that it has been predominantly adopted by Cayman Islands-based professional services firms to structure their businesses, this chapter does not address the LLP in any material detail.
- The PF Act came into force in 2022. Certain closed-ended funds (termed “private funds”) are required to register with the Cayman Islands Monetary Authority (“**CIMA**”). The adoption and implementation of the PF Act reflects the Cayman Islands’ ongoing commitment as a co-operative jurisdiction, is responsive to EU and other international recommendations and covers similar ground to existing or proposed legislation in a number of other jurisdictions.
- On 27 December 2018, the Cayman Islands published the International Tax Co-operation (Economic Substance) Act (As Revised) as a response to global OECD Base Erosion and Profit Shifting (“**BEPS**”) standards regarding geographically mobile activities. The Cayman Islands Economic Substance regime robustly addresses the ethos of the legislation without materially impacting the private equity industry. Requirements of this type are rapidly being implemented on a level playing field basis by all OECD-compliant “no or only nominal tax” jurisdictions.
- The Cayman Islands was an early introducer of comprehensive and strict anti-money laundering laws and “know your client” rules and regulations, and continues to adapt these rules and regulations in line with international standards. Additional updates continue to be made in a continuing effort to meet international standards, with the most recent revisions to the Cayman Islands Anti-money Laundering Regulations being introduced in April 2024. Revisions in recent years reflect the ongoing evolution of international standards, including by applying sanctions, including administrative penalties, that are intended to be effective, proportionate and dissuasive and by way of introducing provision for certain documentation to be provided in electronic form.
- The Limited Liability Companies Act provides for the formation of Cayman Islands LLCs. Since their introduction in 2016, we have seen LLCs used in private equity structures, particularly as GP governance vehicles, aggregator vehicles (where multiple related funds are investing

in the same portfolio investment) and holding companies/blockers in portfolio acquisition structures.

- A comprehensive review and update to the Exempted Limited Partnership Act has taken place in recent years, and additional enhancements are anticipated to take effect in late 2024. While neither the current law nor the proposed revisions make fundamental alterations to the nature, formation or operation of exempted limited partnerships, the statute promotes freedom of contract and includes provisions to deal specifically with issues and concerns raised and suggestions made by the industry to bring the Exempted Limited Partnership Act even further in line with Delaware concepts and developing industry practices, including electronic closing platforms and other beneficial features.
- On 24 November 2023, the Parliament of the Cayman Islands passed the Beneficial Ownership Transparency Act, 2023, which was later gazetted on 15 December 2023 (the “**BOTA**”). It is anticipated that elements of the BOTA will need to be complied with by 1 January 2025. Once in force, the BOTA will implement a number of changes to the existing Cayman Islands beneficial ownership regime (the “**BOR**”), including as follows: (i) *Single Act*: The BOTA consolidates various existing pieces of legislation relating to the BOR into a single Act (along with its accompanying Regulations and Guidance Notes); (ii) *New In-Scope Entities*: The current BOR applies only to companies, LLCs and LLPs. The BOTA brings additional types of entity into scope, including exempted limited partnerships; (iii) *Definition of Beneficial Owner*: The BOTA provides for an updated definition of “beneficial owner” (based on ownership and/or control) or, where there is no beneficial owner, the legal person will need to identify a “senior managing official” to be notified to the Registrar; and (iv) *Removal of Exemptions*: The majority of the exemptions that apply under the current BOR will be removed or significantly restricted in favour of certain “alternative routes to compliance”, meaning that the in-scope entity would not (where applicable) be required to report its beneficial owners, nor establish a beneficial ownership register, but rather report limited “required particulars”. Registered investment funds, such as a private fund registered under the PF Act, will be able to elect to establish and maintain a beneficial ownership register or avail of an “alternative route to compliance” by which such vehicles may elect to appoint certain licensed persons, such as its Cayman Islands-based registered office services provider or fund administrator, to act as its authorised contact through which the competent authority can obtain relevant beneficial ownership information.

11.2 Are private equity investors or particular transactions subject to enhanced regulatory scrutiny in your jurisdiction (e.g., on national security grounds)?

Certain private funds set up as Cayman Islands partnerships, companies, unit trusts and LLCs are required to register with CIMA pursuant to the PF Act unless out of scope on the basis set out in the PF Act. The PF Act also applies to non-Cayman Islands private funds that make an “invitation to the public in the Islands”. Private funds registered with CIMA are required to have their accounts audited annually by an auditor approved by CIMA. A private fund is also required to submit its audited accounts, along with the Fund Annual Return to CIMA within six months of the end of each financial year. Registered private funds are also subject to certain operational requirements

regarding valuation of assets, safekeeping of fund assets, cash monitoring and identification of securities.

In addition, CIMA issued new Rules on Corporate Governance and Internal Controls (the “**Rules**”), which took effect in October 2023 and require registered Cayman Islands investment funds, including private funds registered under the PF Act, to establish, implement and maintain a corporate governance framework and adequate and effective internal controls. The Rules create new regulatory obligations for private funds. The new obligations do not impact current operating practices in a material manner and there is flexibility in how and when the arrangements are implemented. CIMA expressly recognises that each private fund’s corporate governance framework and internal controls should reflect its size, complexity, structure, nature of business and risk profile (by reference to, for example, assets under management, number of investors, complexity of the structure, nature of investment strategy, or nature of the operations). CIMA expressly contemplates that it is possible for a private fund to rely on arrangements in place with its investment manager and other service providers to ensure compliance with these regulatory obligations. There is also a requirement for the “operator” or “governing body” of the private fund (being the board of directors where the fund is a company, the general partner where the fund is a partnership and the manager (or equivalent) where the private fund is a limited liability company and, in each case, needing to comprise at least two suitable natural persons) to hold at least one meeting annually in order to, in summary, review and monitor the private fund’s activities and strategy, any conflicts of interest, financial statements and the activities and functions of service providers.

A private equity transaction to acquire a business located in or regulated in the Cayman Islands such as a local bank, insurance company or utility services provider may be subject to scrutiny by CIMA and the Cayman Islands Trade and Business Licensing Board.

11.3 Are impact investments subject to any additional legal or regulatory requirements?

Cayman Islands domiciled private equity impact funds are not subject to any additional laws or regulations in the Cayman Islands. In most cases, such private equity funds will be making impact investments in foreign jurisdictions outside of the Cayman Islands. As a general observation, the formation and launch of impact funds and ESG funds in the Cayman Islands is increasing in-line with the global investment funds market given the jurisdiction’s leading legislative and regulatory framework, tax-neutral status, flexible structuring options and experienced service providers.

11.4 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g., typical timeframes, materiality, scope, etc.)?

The approach to legal due diligence depends on the particular sponsor and may also vary on a transaction-by-transaction basis.

11.5 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors’ approach to private equity transactions (e.g., diligence, contractual protection, etc.)?

The Cayman Islands’ Anti-Corruption Act (As Revised) (the

“AC Act”) came into force on 1 January 2010 with the intent of giving effect to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as well as the United Nations Convention Against Corruption. The AC Act replaced the provisions relating to anti-corruption and bribery that previously existed under the Penal Code, and provides generally for four categories of corruption offences: Bribery (both domestic and foreign); Fraud on the Government; Abuses of Public or Elected Office; and Secret Commissions. There are also ancillary offences for failure to report an offence. The impact of the AC Act on private equity transactions in the Cayman Islands, given the sophistication of the parties involved and the nature and quality of their transactions, has been minimal, although more commonly transaction documents now include a warranty relating to compliance with such laws.

11.6 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

As a general rule, in the absence of a contractual arrangement to the contrary, the liability of a shareholder of a Cayman Islands-exempt company that has been incorporated with limited liability and with a share capital is limited to the amount from time to time unpaid in respect of the shares he or she holds. A Cayman Islands company has a legal personality separate from that of its shareholders and is separately liable for its own debts due to third parties. Accordingly, a company’s liability does not generally pass through to its shareholders.

The general principles regarding corporate personality under Cayman Islands law are similar to those established under English law, and a Cayman Islands Court will regard English judicial authorities as persuasive (but not technically binding). Accordingly, from the date of incorporation of a Cayman Islands

company, it is a body corporate with separate legal personality capable of exercising all the functions of a natural person of full capacity. This includes the ability to own assets, and perform obligations, in its own name as a separate legal person distinct from its shareholders (*Salomon v. Salomon & Co.* [1897] A.C. 22).

As a matter of English common law, it is only in exceptional circumstances that the principle of the separate legal personality of a company can be ignored such that the Court will “pierce the corporate veil”. These circumstances are true exceptions to the rule in *Salomon v. Salomon*, and there is now a well-established principle under English law that the Court may be justified in piercing the corporate veil if a company’s separate legal personality is being abused for the purpose of some relevant wrongdoing.

12 Other Useful Facts

12.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

Cayman Islands private equity vehicles play a well-established and growing role in private equity fund structures. This role is evidenced by the growing number of exempted limited partnership registrations in the Cayman Islands. Statistics issued by the Registrar of Partnerships have confirmed that in the years since the 2008 financial crisis, the Cayman Islands has seen a consistent increase in the number of annual exempted limited partnership registrations. In 2023, the number of active exempted limited partnerships stood at 38,223, compared with 36,756 in 2022, 34,343 in 2021, 31,144 in 2020 and 28,469 in 2019. This continued rise in the popularity of Cayman Islands private equity structures can be attributed in part to the Cayman Islands’ commercial and industry-specific laws, transparency initiatives and compliance with international standards, coupled with the Cayman Islands’ flexibility to implement change and adapt to new opportunities and challenges.



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