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Private Equity 2024

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Luxembourg: Law and Practice

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Maples Group

LUXEMBOURG

Law and Practice

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Contents

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1. Transaction Activity

1.1 Private Equity Transactions and M&A Deals in General

As of 2024, Luxembourg continues to solidify its position as a hub for private equity and M&A activities. The jurisdiction's appeal is largely due to its political and economic stability, favourable tax environment and sophisticated legal framework, which collectively provide an attractive landscape for international investors and companies.

In the current year, a sustained interest in private equity investment funds has been observed, with unregulated funds being the most utilised format. There is a particular emphasis on special limited partnerships (SCSps), which offer significant legal flexibility as well as tax transparency, and are the go-to form of European fund for a global audience of managers and investors.

On the M&A side, share deals involving Luxembourg-resident asset-holding entities remain prevalent. Typically, however, although the holding entity may be located in Luxembourg, the assets are not.

Sectors that have garnered significant attention from investors include fintech, biotech, and sustainable energy, reflecting a global shift towards innovation and sustainability, while areas like healthcare and broader technology also remain popular. Moreover, funds that focus on structured debt and credit continue to attract investors, benefiting from the sophisticated financial infrastructure and the high quality (and often bespoke) fund service capabilities that Luxembourg offers.

Despite a broader interest in diverse investment opportunities, most private equity sponsors in Luxembourg maintain a disciplined approach, adhering to their core investment strategies. There is, however, a noticeable trend towards sector-agnostic investments, as some firms seek to capitalise on special situations and unique opportunities that promise high returns, irrespective of industry.

1.2 Market Activity and Impact of Macro-Economic Factors

There has been a notable slowdown in transactions in the past two years. In 2024, high interest rates and other macroeconomic factors, such as inflationary pressures and supply chain disruptions, had a significant impact on private equity deal activity. These elements have introduced a degree of caution among investors, leading to more rigorous due diligence processes and a heightened focus on the sustainability of target companies' cash flows.

Geopolitical uncertainties and events have also played a role in shaping investment decisions. Investors are increasingly considering political stability and regulatory environments when evaluating potential deals.

Despite these challenges, the resilience of the private equity sector in Luxembourg is evident. The jurisdiction's ability to adapt to changing economic conditions and its commitment to providing a supportive ecosystem for private equity transactions continue to underpin its status as a leading destination for investment in Europe.

2. Private Equity Developments

2.1 Impact of Legal Developments on Funds and Transactions

Over a number of years, Luxembourg has taken steps to position itself as Europe's leading location for both private equity fund vehicles and asset-holding vehicles. Luxembourg partnerships – in particular the SCSp and (albeit to a lesser extent) the simple limited partnership – have become the go-to form of entity for private equity-pooling vehicles, while private limited liability companies (SARLs) remain the preferred asset-holding vehicles for private equity funds globally.

The introduction of the Alternative Investment Fund Managers Directive (AIFMD)-compliant Reserved Alternative Investment Fund (RAIF) regime in 2016 added another available option, and this form is often used by private equity sponsors for pooling vehicles, especially in the context of pan-European marketing to professional investors.

While there has been some movement and developments at European level that impact private equity funds (AIFMD 2.0 and, to some extent, ELTIF 2.0), over the past 12 months, Luxembourg has not implemented any significant changes to its laws or regulations that would impact private equity investment vehicles or their managers.

In the area of taxation, we have noted a continued interest in RAIF funds in non-transparent forms, such as the corporate partnership limited by shares ("SCA") and the public limited company ("SA"). These structures allow for more flexible navigation in the structuring and financing of downstream investments, particularly in light of anti-hybrid rules.

The year was also marked by the entry into force of the new double tax treaty between Luxembourg and the UK, as well as the introduction in Europe of the Global Anti-Base Erosion (GloBE) rules via Council Directive (EU) 2022/2523 of 14 December 2022, known as the "Pillar 2 Directive". This directive provides for a minimum effective taxation applicable to multinational groups and large-scale domestic groups with a presence in the EU and having a minimum consolidated revenue of more than EUR750 million. Like most EU member states, Luxembourg has implemented the Pillar 2 Directive by means of the law of 22 December 2023 on effective minimum taxation, which is applicable to fiscal years starting on or after 31 December 2023.

Finally, the new Luxembourg government, appointed at the end of the year 2023 for a term of five years, has committed to reinforcing Luxembourg's attractiveness with a series of tax measures and reforms, such as a gradual reduction in the corporate income tax rate, beginning in 2025 with a reduction from 17% to 16%. This will lead to an overall maximum combined corporate income rate of 23.87% for 2025 (in Luxembourg City), compared with the current 24.94%.

3. Regulatory Framework

3.1 Primary Regulators and Regulatory Issues

The *Commission de Surveillance du Secteur Financier* (CSSF) is Luxembourg's regulator for financial services (in addition to other roles). The CSSF has regulatory oversight and, in that capacity, has responsibility for product-regulated investment funds such as specialised investment funds (SIFs) and investment companies in risk capital (SICARs), as well as for investment fund managers located in Luxembourg.

However, the CSSF's oversight authority does not extend to limited partnerships that are not subject to product regulation, nor does it extend to RAIFs (nevertheless, RAIFs' management companies are still subject to regulatory oversight by the relevant financial regulator of the home jurisdiction of the relevant management company – which would be the CSSF for all Luxembourg-based management companies). In a similar fashion, M&A activity would be subject to the relevant rules and regulations in the home jurisdiction of the target entity.

There are no specific rules or restrictions that apply specifically to private equity transactions in Luxembourg, but relevant sanctions and the usual anti-money laundering (AML) and "know-your-client rules" do, of course, apply in the same way as for any transaction. Where multiple AML supervisory regimes come into play in the context of a given transaction, compliance with each regime will be required by the applicable parties.

Following the implementation of the Law of 19 December 2019 and given the situation in Ukraine, there has been an increase in awareness of the need to comply with the Luxembourg sanctions regime. The Law of 20 July 2022 established a Luxembourg financial sanctions committee, which is responsible for monitoring the implementation of financial sanctions issued by the United Nations Security Council, the EU and the Luxembourg Ministry of Finance. There has also been an increased focus on sanctions evasion risk following the Russian invasion of Ukraine. Antitrust regulations would, in the same way, be applied in accordance with the relevant rules in the appropriate jurisdictions.

4. Due Diligence

4.1 General Information

In Luxembourg, legal due diligence is usually of secondary importance to financial and tax due diligence, but it is still carried out and typically consists – in addition to the usual practice of verifying corporate existence, the compatibility of corporate objects, and solvency – of reviewing the corporate governance and past and current activities of the target for compliance with Luxembourg laws and regulations.

The due diligence is usually conducted first via a review of the publicly available documentation (ie, the documents that are required to be filed at, and are available for download from, the Luxembourg Trade and Companies Register), followed by a thorough review of the documentation made available in the data room. Key areas of focus for legal due diligence include:

- company corporate documents – this encompasses the review of the company's articles of incorporation, minutes of shareholders' and board meetings, and any other essential corporate documents to ensure they are up to date and in order;
- regulatory status – ensuring that the company is in compliance with all relevant regulations, including those specific to its industry, and that it has all necessary licences and permits to operate;
- financing arrangements – reviewing the company's financing structures, including existing loans, credit facilities and security interests, to understand the financial obligations and any potential liabilities that may affect the transaction; and
- litigation – conducting investigations into any past, present or potential future litigation that

the target may be the subject of or that might affect the target.

In addition to legal due diligence, tax due diligence is an essential process for investors and companies considering mergers, acquisitions or partnerships. While red flag tax due diligence allows for a quick assessment of major potential concerns and is increasingly becoming the norm, conducting a comprehensive tax due diligence is key not only for gaining an in-depth insight into the tax implications of a transaction but also for facilitating effective post-acquisition restructuring.

4.2 Vendor Due Diligence

Vendor due diligence is an intricate part of practice in private equity transactions in Luxembourg. Advisers will usually rely on vendor due diligence reports if the adviser is of the opinion that the third party who conducted the due diligence is reliable, but at least some independent verification is now the rule rather than the exception.

Auction sales are very, very rare in Luxembourg, and vendors typically only provide a summary corporate due diligence report. There is generally more focus on financial data for auction sales.

5. Structure of Transactions

5.1 Structure of the Acquisition

In Luxembourg, the landscape of private equity acquisitions has remained relatively stable, with most acquisitions by private equity funds being carried out through private treaty sale and purchase agreements negotiated between the parties. Auction sales are less frequent in Luxembourg as very few targets – as opposed to the holding structures – are located in Luxembourg.

5.2 Structure of the Buyer

In Luxembourg, the landscape of private equity acquisitions has remained relatively stable, with most acquisitions by private equity funds being carried out through private treaty sale and purchase agreements negotiated between the parties. Auction sales are less frequent in Luxembourg as very few targets – as opposed to the holding structures – are located in Luxembourg.

5.3 Funding Structure of Private Equity Transactions

Private equity deals are mainly funded through a mix of equity and debt. An equity commitment letter providing contractual certainty of funds is required in the majority of deals. In most transactions in Luxembourg, the private equity fund (together with its co-investors, if applicable) will seek to acquire a majority interest – or, even better, a 100% interest – as opposed to a minority stake, as sponsors tend to value control over the destiny of their investment and the certainty that a majority or outright shareholding can bring.

In many deals, debt funds will commit at signing but, in instances where debt funds are not yet confirmed, bridge funding is often provided by the equity shareholders.

Over the past year, the financing markets for private equity deals have faced challenges due to the increased cost of debt and the reduced accessibility of liquidity in debt markets, given the current interest rates; however, the fundamental approach to financing has not undergone significant changes.

5.4 Multiple Investors

Although some transactions will involve a consortium of private equity sponsors, the majority of deals are still concluded by a single sponsor. In the recent past, there has been a steady increase in co-investments, either between more than one sponsor or with sponsors and their limited partners.

Deals involving co-investments by other investors alongside the private equity fund's investment constitute an increasing proportion of the total transactions. In Luxembourg, both are in evidence, with co-investments between more than one sponsor and co-investments between a sponsor and its own investors increasing year-on-year both in number and as a proportion of the whole. Consortia that include both private equity funds and corporate investors are also present in the market, although they are not the norm.

6. Terms of Acquisition Documentation

6.1 Types of Consideration Mechanisms

In Luxembourg, there is no predominant form of consideration structure used in private equity transactions, as the consideration mechanism will depend very much on the general strategy adopted by each sponsor and the specific requirements of the transaction. It follows that both locked-box and completion accounts mechanisms are seen on a regular basis in transactions involving Luxembourg holding and pooling vehicles. In addition, earn-outs are commonly included where one or more of the founders remain either as minority shareholders or as part of the management group of the target.

The involvement of a private equity fund (whether as seller or as buyer) can affect the type of consideration mechanism used, in that, depending upon the circumstances of the transaction and, in particular, the size of the sponsor and the deal itself, the type of consideration mechanism might be imposed upon the seller rather than driven by the seller.

A private equity seller will generally provide the same types of protection in relation to the various consideration mechanisms as would be offered by a corporate seller.

Similarly, a private equity buyer will generally provide the same types of protection in relation to the various consideration mechanisms as would be offered by a corporate buyer.

6.2 Locked-Box Consideration Structures

Locked-box consideration structures are less common in Luxembourg, with closing accounts still being the preferred option, as they are typically seen as being "fairer" to both parties. If a locked-box consideration mechanism is used, then it would not be common practice for interest to be charged on leakage.

6.3 Dispute Resolution for Consideration Structures

Alternative dispute resolution is in its infancy in Luxembourg and, probably for that reason, separate dispute resolution mechanisms in the transaction agreements are rare regardless of whether a locked-box consideration mechanism or a completion accounts consideration mechanism is used.

Typical wording in the transaction documents would envisage an immediate recourse to the Luxembourg court system (it is also not usual for Luxembourg transactions to include reference to a choice of foreign law or jurisdiction). However, as awareness of alternative dispute resolution grows in Luxembourg, the inclusion of specific dispute resolution mechanisms in private equity transaction documents in the country is increasing in prevalence.

6.4 Conditionality in Acquisition Documentation

It is common for private equity transactions in Luxembourg to include relevant regulatory conditions. In addition, if the target itself is located in Luxembourg, then shareholder approval requirements are also not uncommon to ensure compliance with the relevant provisions of Luxembourg company law. However, such shareholder approval requirements are often superfluous, particularly if the seller typically owns sufficient equity for separate and specific approvals not to be required (as is often the case).

Material adverse change/effect provisions are fairly common.

It would be unusual for a deal in Luxembourg to be conditional upon third-party consents, such as those of key contractual counterparties. In practice, the lack of such clauses is often due to the fact that key contracts do not usually provide that consent needs to be obtained in the event of a change of control.

6.5 "Hell or High Water" Undertakings

In those deals where there is a regulatory condition, it would be unusual for a private equity-backed buyer to accept a "hell or high water" undertaking in Luxembourg. It would be much more common for completion to be conditional upon the necessary approvals and contractual requirements being fulfilled; the use of clauses in the transaction documents to stipulate such approvals and requirements (including qualitative conditions) is standard practice.

6.6 Break Fees

In such conditional deals with a private equity-backed buyer, neither break fees nor reverse break fees are common. Instead, it is typical for both parties to incur the risks of their costs and expenses until the conclusion of the transaction (and the completion of all relevant conditions). Any break fees that are envisaged must comply with the usual contract law requirements.

In addition, both break fees and reverse break fees should not impose unrealistic penalties, as Luxembourg law provides for the possibility for an excessive contractual penalty – such as a financial sanction that is out of proportion to the loss or harm caused – to be reduced by the courts, even down to an amount of zero.

6.7 Termination Rights in Acquisition Documentation

A private equity seller or buyer may typically only terminate the acquisition agreement in Luxembourg in limited circumstances, including the triggering of a specifically planned escape clause in the transaction documents, not meeting a condition imposed in the agreement between the parties, or (in much rarer circumstances) due to the complete frustration of the object of the agreement. Typically, the long-stop date would depend largely on the nature of the target (private business versus listed entity/regulated activities), and it could range from 6 to 18 months.

6.8 Allocation of Risk

Typically, risk is shared equally, regardless of whether the buyer and sellers are private equity funds. Of course, the share of risk may be pushed further in one direction or another, depending upon the relative bargaining strength of the parties.

The main limitations on liability for the seller will relate to the financial exposure (which would typically be capped) and the length of the liability exposure (which would not generally be limited to a period of two years). The exceptions to these general rules are tax matters, where the relevant period of the statute of limitations will apply and will set the time limit for any liability – which, of course, would probably be to the state rather than the other party. The seller will also typically seek to exclude liability for any known facts resulting from the content of the data room provided to the buyer.

6.9 Warranty and Indemnity Protection

Warranties from a private equity seller to a buyer upon exit are typically limited to the accuracy, completeness and veracity of the information provided to the buyer, and are usually limited in their duration (typically one to two years). The exception, as mentioned in **6.8 Allocation of Risk**, can be tax matters, where the warranties are often extended up to the expiration of the relevant limitation period. Warranties are also usually capped to between approximately 25% and 100% of the acquisition price.

It is unusual for a management team to provide warranties. Instead, earn-out mechanisms and similar contractual provisions typically provide some level of comfort in terms of the management team's sincerity and commitment by aligning the management team's interests with those of the buyer. Any warranties provided by the management team are likely to be heavily limited and/or capped; after all, in most circumstances, it will not be possible to require the management team to become parties to the acquisition contract, and such participation would need to be carefully negotiated.

Whether or not the buyer is also a private equity fund would typically not change the above situation.

Full disclosure of the data room is usually allowed against the warranties.

6.10 Other Protections in Acquisition Documentation

Indemnities from a private equity seller are not common, and even less so from the management team, although, as mentioned in **6.1 Types of Consideration Mechanisms**, earn-out and price adjustment mechanisms may be included in the deal structure if the management team stays on post-transaction or if future revenue is to be taken into account.

Warranty and indemnity insurance is becoming increasingly common in Luxembourg, following the trend in most European jurisdictions. This is perhaps not surprising as the majority of targets – as opposed to the holding structure – are located outside of Luxembourg.

Payment retentions and escrow accounts are utilised much more frequently, with escrow amounts sometimes being held back for more than a year if necessary – eg, until certain post-completion conditions, such as business, tax or any other warranties to back the obligations of a private equity seller, have been met.

6.11 Commonly Litigated Provisions

Litigation in connection with private equity transactions is extremely rare in Luxembourg, notwithstanding the absence of alternative dispute resolution mechanisms in most contracts.

The provisions that are most commonly disputed, even if the dispute does not actually mature into full litigation before the courts, are without doubt those regarding the calculation of the consideration. In turn, disputes over the calculation of the consideration are often based on underlying disputes over the closing accounts that then impact on a closing account consideration mechanism.

7. Takeovers

7.1 Public-to-Private

Public-to-private transactions remain rare in Luxembourg, except (to a limited extent) in relation to utilities and infrastructure assets.

As for all other types of transactions, the target company's board of directors plays a crucial role in evaluating and approving the transaction and has a fiduciary duty to act in the best interests of the company. The board of directors is responsible for reviewing the terms of the acquisition offer and conducting due diligence in particular.

Relationship agreements between the bidder and the target are not very common and are not mandatory, but in some cases, the parties may decide to enter into an agreement to govern their interactions during and after the acquisition process in order to provide clarity and protection for both parties involved.

7.2 Material Shareholding Thresholds and Disclosure in Tender Offers

In a Luxembourg *société à responsabilité limitée* (limited liability company), all shareholders must be disclosed to the publicly accessible Registre de Commerce et des Sociétés de Luxembourg. In a Luxembourg société anonyme (public limited company), no shareholders need to be disclosed. Pan-European reporting obligations need to be met and, as mentioned in **2.1 Impact on Funds and Transactions**, there is a new obligation to disclose the beneficial owner(s) of all Luxembourg entities.

In addition, for public companies incorporated in Luxembourg and listed in Luxembourg or any other EU member state, any shareholder having an entitlement to vote must notify both the company issuing the shares and the CSSF of any acquisition, transfer or similar operation concerning such shares or rights that causes that shareholder's holding to reach, exceed or fall below the thresholds of 5%, 10%, 15%, 20%, 25%, 33.33% (one-third), 50% and 66.66% (two-thirds).

7.3 Mandatory Offer Thresholds

As in most other EU countries, Luxembourg has adopted and imposed a mandatory offer threshold, which provides that any person reaching or exceeding a total of 33.3% (one third) of the voting rights of a listed company, further to an acquisition, transfer or similar operation, has to make a mandatory offer to acquire all the remaining shares of that company at a price at least equivalent to the highest price paid by that person for the same shares over the period of 12 months immediately prior to this mandatory offer.

7.4 Consideration

The vast majority of private equity transactions involving Luxembourg funds and holding entities are cash transactions, but share deals are not uncommon. If the consideration consists of securities that are not admitted to trading on a regulated market, the consideration shall also include a cash alternative. There are no minimum price rules applicable to tender offers in Luxembourg.

7.5 Conditions in Takeovers

In a private equity-backed takeover offer, the percentage of shares a bidder is willing to acquire is not restricted under Luxembourg law (except for mandatory offers, as explained in **7.3 Mandatory Offer Thresholds**); therefore, a bidder may specify in its offer the minimum percentage of shares that it is seeking to acquire. Other offer conditions may be set out, and often are, especially when clearance from competition authorities is required.

However, a takeover offer may not be conditional upon the bidder obtaining financing; a buyer therefore needs to ensure that financing is in place.

The most common security measures sought by bidders are break fees, which are permitted and not specifically regulated under Luxembourg law (with the exception of the provisions on penalties, as mentioned in **6.6 Break Fees**). However, the board of directors of the target company should consider carefully before agreeing to accept break fees, as it could be deemed as not being in the best corporate interest of the target company unless, in the circumstances in which the break fees are triggered, the termination of the agreement is also in the best corporate interest of the target company.

7.6 Acquiring Less Than 100%

If a bidder does not seek or ultimately obtain 100% ownership of a target, then the main additional governance right a private equity bidder could seek outside of its shareholding is the right to present a list of candidates for board-level director positions at the shareholders' meetings.

A bidder willing to acquire the entire ownership of a target can force the other shareholders to sell their shares to the bidder when the bidder has acquired at least 95% of the capital carrying voting rights and 95% of the voting rights of the target. However, if a target has issued more than one class of securities, then the "squeeze-out" right applies individually to each class of securities.

Thresholds vary according to the type of entity, but typically for an SA and a SARL, which are the most common forms of targets, the threshold for the bidder to be able to do a debt push-down would be 66.6% of voting rights in an SA and 75% in a SARL.

7.7 Irrevocable Commitments

It is quite common for the bidder to seek irrevocable commitments from the principal shareholders of the target to tender or vote. However, there is no provision in Luxembourg law ensuring the enforceability of such commitments, so damages could ultimately only be awarded in the event of a breach of the commitment – compulsion via a mandatory injunction is not possible. The negotiation of such commitments in the case of a voluntary takeover offer is usually undertaken at the pre-bid stage.

8. Management Incentives

8.1 Equity Incentivisation and Ownership

Equity incentivisation of the management team is a common feature of private equity transactions in Luxembourg, but the level of incentive would generally be limited to between 5% and 20% of the equity, depending on the size of the transaction, the industry, the specific company's growth prospects, and the negotiation between the private equity investors and the management team.

8.2 Management Participation

Management participation in private equity transactions is typically structured via both sweet equity (ordinary shares and/or options issued at a lower price to management to create motivation to increase the value of the acquired company with the incentive of a higher price on exit) and institutional strip (corresponding to the cash injected by the private equity investors to acquire the target, although key management may also be required to invest in the target to bind their interests to those of the private equity investors) in Luxembourg-based deals, depending in the main upon the private equity strategy.

In the same way, managers could be offered ordinary equity, but with limited participation that would not trigger any blocking thresholds in terms of decisions or preferred equity deprived of voting rights but granted with incentive financial rights. In the latter case, the preferred instrument used would be preferred shares with no voting rights and preferred rights to dividend. This structure enables managers to share in the financial success of the company while maintaining a clear separation between ownership and control.

The use of these instruments is subject to ongoing evolution, reflecting changes in market conditions, regulatory frameworks and the strategic objectives of private equity investors. It is important to note that the specific terms and conditions of sweet equity and institutional strip arrangements, as well as the use of preferred instruments, can vary significantly from one transaction to another. These structures are often complex and tailored to the unique circumstances of each deal, taking into account the objectives of all parties involved.

8.3 Vesting/Leaver Provisions

The typical leaver and vesting provisions for management shareholders would grant options that would vest with a minimum period of three years (sometimes extended to five years). The award agreement may contain performance goals and measurements such as sales, earnings, return on investment or earnings per share. The exercise period is generally quite long (up to ten years for certain structures). However, all vested-but-not-exercised rights would be lost as soon as the holder ceases to be employed by the company or an affiliate.

8.4 Restrictions on Manager Shareholders

In terms of restrictive covenants agreed to by management shareholders, non-compete and non-disparagement undertakings are often part of the contractual arrangements. However, enforcement can sometimes be difficult, with prohibitive injunctions generally available only under limited circumstances.

Non-compete clauses, in any event, need to be limited to the Luxembourg territory, and for a limited period of time that needs to be agreed as reasonable. A non-compete clause that would prevent the manager from being able to work because it is too broad, either in scope or in time, will not be enforceable. Non-solicitation clauses are less strictly regulated and are therefore often included and more liberally applied.

Restrictive covenants would typically be part of both the equity package and employment contract.

In conclusion, while restrictive covenants are a common and necessary feature of agreements with management shareholders in Luxembourg, their enforceability hinges on a balance between protecting the company's interests and ensuring that the restrictions do not unreasonably impede the individual's ability to work and compete in the market. It is essential that these covenants are drafted with precision and a clear understanding of the legal framework within which they operate.

8.5 Minority Protection for Manager Shareholders

Manager shareholders are not usually granted greater protection than other minority shareholders. It is worth noting that, under Luxembourg law, minority shareholders do not benefit from any form of special protection regime; there is only an anti-dilution mechanism provided in the law for shareholders in a société anonyme.

On a contractual basis, an anti-dilution mechanism could be agreed upon between the shareholders, but in most deals it is unusual for a majority shareholder to agree to such an anti-dilution mechanism on a voluntary basis. In the same way, management rarely enjoys veto rights, except over a limited number of matters related to the business.

The typical deal structure of a private equity transaction would not allow a management team to have a right to control or influence the exit of the private equity fund as the fund will, on the contrary, wish to ensure that it has full freedom to decide the time, form and mechanism of its exit.

9. Portfolio Company Oversight

9.1 Shareholder Control and Information Rights

Assuming that it has at least a majority shareholding, a private equity shareholder ultimately has total control over a portfolio company, although it would be unusual for the shareholder to interfere in the operations of the board on a day-to-day basis.

A private equity fund shareholder would generally, as a minimum, have the final say in the majority of the appointments to the portfolio company's board, thus indirectly ensuring control over the management.

When only a minority stake is taken, the private equity shareholder will typically require a right of veto over key decisions, whether at board or shareholder level, such as the disposal of assets, entering into new or amended financing arrangements, a change in key executives, or the entering of new investors into the structure.

9.2 Shareholder Liability

The concept of a separate legal identity for a corporation is recognised and enforced in Luxembourg, and the corporate veil would only be pierced in extreme circumstances in the event of insolvency of the company and actions inconsistent with the position of the shareholder on the part of the fund.

Limited partners of a limited partnership are generally only liable for the debts of the partnership if they have interfered in its management, and a (non-exclusive) list of limited partner prerogatives is enshrined in law. Shareholders of limited liability companies generally have the ability to influence the actions of the company via their voting rights.

10. Exits

10.1 Types of Exit

The authors are not aware of any other form of private equity exit other than a sale to other private equity-backed investors or corporates in the past 12 months. The typical holding period for private equity transactions before the investment is sold or disposed of varies depending upon a variety of factors. Due to a slowdown in M&A activity, coupled with valuation challenges over the last few years, this period has increased from an average of three to five years to five to seven years.

The most common form of private equity exit is via a share sale to a third party (often a secondary transaction with another private equity sponsor). IPOs are becoming more and more frequent, in part due to the growth of the capital market's appetite for technology and healthcare businesses in particular. Dual-track exits – ie, an IPO and sale process running concurrently – are unusual.

Depending upon the terms of the fund and the timing of the transaction, private equity sellers typically reinvest as soon as a suitable new target has been identified and the terms of the new transaction agreed.

10.2 Drag and Tag Rights

Drag-and-tag rights are typical in equity arrangements, although rarely enforced, with a sale of all shares with the consent of all shareholders being more usual. There is no typical drag or tag threshold in Luxembourg, although the majority control threshold would be more frequent than other thresholds. The threshold usually depends on the terms of the transaction.

10.3 IPO

On an exit by way of IPO, the typical lock-up arrangement will seek to prevent insiders from selling for a minimum period of between three and six months. In addition, where the seller retains a significant interest, a relationship agreement would be expected for the benefit of the new investors. Regulatory requirements often drive lock-up periods; where regulatory requirements dictate, most transactions do not extend lock-ups beyond the regulatory periods.

It should be noted that the IPO would very rarely take place in Luxembourg; in most of the cases, the IPO will be on a major market such as New York, London or Paris and therefore led by the regulations of the jurisdiction chosen for the IPO.

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