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Legal Guides

Private Equity 2021

A practical cross-border insight into private equity law

Seventh Edition

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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?

Domestic market activity in Jersey is driven by private equity ("PE") involvement in financial services sector business acquisitions and divestments. This includes transactions involving professional corporate services and trust company businesses, which are the focus of primary and secondary stage investments and market consolidation, by way of follow-on investment activity. Global banking businesses operating with a local presence in Jersey provide non-core business carve-out opportunities for PE sponsors in the local financial services sector.

Separately, a sustained use of Jersey vehicles by leading PE sponsors investing in larger scale primary cross-border deals, including exits by way of initial public offering ("IPO") or public to private ("P2P") acquisitions of quoted companies, has, in recent times, also gained traction.

In using Jersey in more globally focused cross-border transactions throughout 2020, the most significant sector growth has been in the infrastructure space and, in particular, in the following asset sub-classes:

- biotech;
- broadband internet service provision;
- refuse and recycling;
- midstream oil and gas ("O&G"); and
- transport and motorway services.

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

After a sustained period of competitive auctions and pre-emptive bids in the PE equity space, activity at the start of 2020 was heavily focused on complex carve-outs and identifying value in listed target companies with depressed share prices. Steady PE deal-making during the first quarter gave way to the challenges posed by the COVID-19 pandemic.

1.3 What are going to be the long-term effects for private equity in your jurisdiction as a result of the COVID-19 pandemic? If there has been government intervention in the economy, how has that influenced private equity activity?

While the long-term effects for PE of the COVID-19 pandemic in Jersey are difficult to predict with certainty, in the medium-term, appetite for secondary or tertiary stage investment in Jersey corporate and fund administration business has experienced a resurgence. Consistency of corporate client usage and annuity income streams rank among the most attractive features of these types of businesses. COVID-19-induced volatility has improved the attractiveness of P2P opportunities open to PE sponsors. Government intervention in the domestic economy has not impacted PE activity.

1.4 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.

A dramatic build-up in the reported cash balances of US and UK corporate groups has been so significant that such groups are increasingly seen as serious rivals to PE sponsors in targeting undervalued quoted and unquoted businesses. The appetite and buying power of larger businesses in the consumer retail space is noticeable. Some of the main points of difference in deal terms include the basis upon which trade buyers want to go out for warranty and indemnity ("W&I") insurance, the mix of non-cash consideration on offer where the trade buyer forms part of a large listed group and longer lock-in periods for management executives.

2 Structuring Matters

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

Most PE acquisitions in Jersey are structured as private treaty sales with purchase agreements negotiated between the parties. Competitive auction processes are common in the infrastructure space, where prime assets are coveted. Larger transactions involving a Jersey target company or listed targets may proceed by way of a court-sanctioned scheme of arrangement or Takeover Code-governed process (see below). Other acquisition types include statutory mergers and business asset transfers, although these are less frequently encountered.

2.2 What are the main drivers for these acquisition structures?

Most PE deals in Jersey, or those involving Jersey PE acquisition structures, target majority PE fund ownership. Co-investment structures are an increasingly popular way to syndicate the equity contribution to be made. However, it is not uncommon to see primary investment opportunities initially involve PE sponsors acquiring minority interests in target groups pending enterprise valuation adjustments and similar. Acquisitions effected by Jersey court-sanctioned scheme of arrangement have been less frequent in the last 12 to 24 months.

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

PE sponsors use small proportions of equity finance to subscribe for ordinary or preferred ordinary shares in the ultimate acquisition holding or top company. The balance is generally invested as shareholder loans (often structured as payment-in-kind or PIK loan notes), preference shares or hybrid instruments. These instruments represent the institutional strip. Management will generally subscribe for ordinary shares in Topco representing between 10% and 20%, and this interest by management is known as 'sweet equity'. In some PE buyout processes, key senior management who may be rolling over interests invested in a primary transaction may also be invited (or required) to invest in the institutional strip.

Carried interest (which represents a share of the PE fund's overall profits) is typically structured through a limited partnership, with executives or their private investment companies or trusts (or "PICs") as limited partners. Frequently, the carried interest limited partnership is a special limited partner in the investing PE fund. Carried interest or the 'carry' is generally calculated on a whole-of-fund basis after investors have received a return of their drawn-down capital, plus any preferred return accrued and after any agreed hurdles are cleared.

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

Co-investment among sponsors is more of a US PE-driven concept that has started to increase in popularity where US or global PE sponsors are looking to put together 'club' acquisitions of UK and European assets. Broadly speaking, the structuring considerations are the same where a PE sponsor is taking a minority interest in a portfolio company acquisition relative to the size of the minority interest being taken.

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?

Unsurprisingly, incentivisation of management teams is a key feature of PE transactions in Jersey and those that involve Jersey vehicles. Different drivers and expectations from both PE sponsors and the management team come into focus where the market is moving to a more 'patient capital' model, compared to shorter hold periods typically associated with PE in a seller-friendly landscape. Up to 10% of equity participation by management is common, but certain and more entrepreneurial management teams have been able to command a higher proportionate equity ownership share (20%).

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

If managers leave the portfolio business before a certain date, they will normally forfeit their sweet equity. Good and bad leaver provisions are typical, with preferential terms applying to individuals who leave for 'good' reasons. Generally, this includes managers who leave due to illness, death, disability and retirement. Four or five years are typical vesting periods or, otherwise, an exit is the most common. Full vesting on an exit event that takes place earlier than anticipated generally means that everyone benefits.

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?

Entry into an investment or shareholders' agreement that regulates the rights and obligations of the PE acquisition transaction counterparties (i.e. the PE sponsor, portfolio company and management) is the most common form of governance arrangement for PE portfolio companies. Such agreements often include provisions regulating matters such as: (a) restrictive covenants on management with regard to the conduct of the business of the portfolio company; (b) extensive veto rights for the PE sponsor; and (c) restrictions on the transfer of securities in the portfolio company.

Similar to the position under English law, in Jersey, there is no general obligation to file (and make publicly available) a shareholders' agreement. Where a shareholders' agreement entered into by all members of a Jersey company constitutes a special resolution amending a company's articles (or would not be effective for its purpose if not passed as a special resolution), the shareholders' agreement would be required to be filed. However, it is highly unlikely that a shareholders' agreement would be subject to such a filing requirement in Jersey because of the way in which such agreements, and their interaction with a company's articles of association, are structured. The constitutive documents of acquisition structure companies (articles of association, etc.) will also contain certain governance provisions.

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?

Where PE sponsors hold a majority ownership position in a portfolio company asset, they normally enjoy significant veto rights over major corporate, commercial and financial matters pertaining to the portfolio company business, although thresholds are commonly set to ensure that day-to-day decisions can be taken by management.

The extensive veto rights in favour of PE sponsors will typically be split between director veto rights and shareholder veto rights. Such veto rights (or reserved matters) would include amendments to the capital structure, constitutional documents, entering into, amending or terminating material contracts, changing the nature of the business or entering into new business lines, and commencing or settling litigation.

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?

In Jersey, veto rights will constitute the legal, valid and binding obligations of the parties submitting to them, provided they do not constitute a fetter on the Jersey company's statutory powers.

At shareholder level, the investment or shareholders' agreement will address particular veto arrangements and may include procurement obligations to ensure veto powers are given proper effect to. Director nominee level veto rights can be enshrined in the relevant Jersey company's articles of association absent public disclosure sensitivity.

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?

Management shareholders in PE transactions are not afforded greater or different rights than minority shareholders in other situations under Jersey company law. The standard legal protections that exist include claims in relation to minority oppression and unfair prejudice, etc.

It is usual for contractual pre-emption rights in favour of management to exist in relation to sweet equity. Such rights are intended to offer some kind of anti-dilution protection to management. However, if significant additional equity funding is obtained or if a larger number of new or existing management are offered and take up sweet equity, limited pre-emption may not fully or effectively operate as anti-dilution protection.

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)?

Save where a shareholders' agreement fetters the ability of a Jersey company to exercise statutory rights or powers or the subject matter of the agreement offends public policy in some manner, a Jersey court would (if required) uphold the legal validity and enforceability of a shareholders' agreement. Typically, where Jersey companies are involved in cross-border downstream PE transactions, the governing law of the shareholder agreement will not be Jersey law and is more likely to be English law or New York law. Non-compete and non-solicit provisions should follow the local law position where the portfolio company business operates to ensure validity. This is rarely Jersey law.

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?

The usual range of company law restrictions in relation to director eligibility apply to PE transactions in which PE sponsors appoint nominees to boards of portfolio companies. PE sponsors should be aware of corporate governance and tax residency-related concerns in appointing nominee directors. For example, where a Jersey PE acquisition holding company is required to be tax resident in the UK, it would be usual for the board to comprise UK resident individuals.

In terms of risks and potential liabilities for PE investors in appointing a nominee director, in Jersey, a director is defined as a person occupying the position of director by whatever name they are called. This results in a more than theoretical risk that if the PE investor appointor, in exercising its director nominee appointments, acts in such a way so as to exert control or quasi-control of the relevant Jersey company, then the investor may face exposure to liability for acting as a *de facto* or shadow director. The impact of this is that all the attendant Jersey law duties, responsibilities and liabilities of being a director would apply to the PE investor appointor.

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?

Jersey company law operates on a permissive basis in relation to director conflicts of interest on the basis of disclosure. A director must disclose any direct or indirect interest they have in any transaction entered into by the company that materially conflicts with the company's interests. Positions held by nominated directors on a range of portfolio company boards can similarly be addressed and sanctioned via a series of appropriate disclosures. Directors owe duties to the company and not their appointors.

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?

Apart from the timing issues associated with competitive auction processes, pre-empts and deal execution, the external issues impacting timing for transactions are largely affected by application for regulatory authorisations such as anti-trust/competition, financial services, regulatory, change of control and various other sector-specific consents. While there is no foreign direct investment regime that is applicable in Jersey, there are a number of other real estate-related, fundraising and domestic approvals that may be needed to acquire a Jersey target business.

4.2 Have there been any discernible trends in transaction terms over recent years?

Depressed valuations, the confluence of post-Brexit trading conditions and the impact of the COVID-19 pandemic mean that conditions continue to favour PE sponsors. Trends that play to the advantage of PE sponsors include:

- relatively light touch legal/other due diligence being run on acquisition transactions;
- minimising deal execution risk by limiting termination rights;
- the 'outsourcing' of warranty coverage to W&I insurers; and
- involvement of PE sponsors as alternate credit providers.

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?

The UK City Code on Takeovers and Mergers ("Takeover Code") applies to certain transactions involving Jersey companies. Takeover Code compliance is implemented by the UK Takeover Panel, as the designated authority under primary Jersey legislation.

A Jersey company is subject to the Takeover Code if any of its securities are listed on a regulated market or multilateral trading facility in the UK or on any stock exchange in the Channel Islands or the Isle of Man. This includes being listed on the main board of the London Stock Exchange ("LSE") and on the Alternative Investment Market. A Jersey company that has shares listed on other exchanges, such as NYSE and NASDAQ, may also be subject to the Takeover Code if the Panel considers that the company's management and control is in either the UK, the Channel Islands or the Isle of Man.

The certainty of funds cash confirmations required to be given by purchasers to sellers of a target business has become a staple feature of a P2P transaction and often results in first interim and then senior credit arrangements to be put in place.

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

Deal protection measures like break fees have not featured in Jersey transactions involving PE-backed buyers. In larger cross-border transactions with a Jersey element, break fees were more common prior to their abolition, as a result of changes to the Takeover Code in September 2011.

Reverse break fees are not customary in Jersey transactions involving PE-backed buyers. However, as they are not prohibited by the Takeover Code, they are permissible, subject to Jersey law rules on excessive penalties, which are, broadly speaking, similar to those that apply under English common law.

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?

There is generally no restriction on the type of consideration that can be offered on a private treaty sale or negotiated offer. Consideration can therefore include, among other things, cash, loan notes and shares. In a Takeover Code-governed mandatory offer, the consideration must be cash, or be accompanied by a cash alternative, and comply with minimum consideration requirements.

There is no predominant form of consideration structure used in these types of transaction. Fixed-price, locked-box and completion accounts mechanisms are variously seen on Jersey PE transactions, with locked-box transactions typically being preferred by buy-side PE sponsors. Protection afforded by PE buyers and sellers in relation to the consideration mechanism is generally the same in terms of the protection provided by corporate buyers/sellers.

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?

Warranty coverage in PE transactions in Jersey is generally limited to title of target shares or assets, capacity and authorisation to enter into the transaction, solvency and accuracy and completeness of information provided to the buyer. Warranties are usually limited in duration to a 12–24-month claim period. While most primary PE investment transactions in Jersey involve a management team standing behind the deal terms and providing certain limited warranties, other deal protection measures such as earn-outs and lock-ins provide more comfort to PE-backed buyers.

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

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?

Indemnities from a PE seller and/or management team are not common in an MBO context. Earn-outs, lock-ins and price adjustment provisions are often negotiated as part of the management's specific terms of an acquisition agreement or rollover investment/shareholders' agreement. A tax covenant and deed of indemnity is also a relatively common feature and further allows the allocation of risk as between buyer and seller. Dollar-for-dollar recovery for unexpected tax liabilities arising as a result of pre-completion profits or events occurring prior to completion provides buyer protection.

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?

Buyer W&I-insured deals are increasingly common following the trend in the UK and elsewhere. W&I coverage increases the relatively low level of protection that management teams are able to provide and PE sellers are not prepared to consider. The additional diligence and input from a seller on an insured deal is often accepted as necessary from a buyer's perspective. The cost of insuring known risks is generally prohibitive and, therefore, is less common.

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

In Jersey, market practice is a more powerful driver in respect of the allocation of risk between parties to a PE acquisition transaction than the type or nature of the parties involved. The extent to which PE sellers assume ongoing liability in a divestment is very limited. In buyer-insured transactions, nominally capping seller liability will result in only theoretical risk for PE sellers.

The main ways a PE seller will look to limit liability include negotiating:

- caps on financial exposure;
- time periods by which claims can be made (e.g. 12 to 24 months);
- *de minimis* claim levels (individual and aggregate);
- regulating the conduct of a dispute regarding a breach of warranty or any third-party claims; and
- obligations on buyers to mitigate loss suffered.

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)?

It is rare for a PE seller to provide any form of cash-backed or other security for warranties/liabilities. The risk of claim is considered low by buyers where PE sellers provide limited warranties (title, capacity and authority, etc.). Also, a focus on a short period of time post-completion for any no-leakage/true-up payments, etc., means PE sellers are focused on returning exit proceeds to their investors as soon as possible post-completion.

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.)?

Comfort is typically provided by the PE buyer to the seller in the form of a certain funds cash confirmation or debt/equity commitment confirmation once interim credit arrangements are put in place (as to which, see further below). Suing for damages for contractual breach is the primary right of enforcement that sellers typically obtain to protect against non-compliance by buyers.

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

See response to question 5.2.

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?

As most PE transactions in Jersey are of financial services sector/regulated businesses, auction sales to strategic trade buyers and other PE sponsors (in secondary or tertiary transactions) are all normal. In 2020, given the COVID-19-induced volatility in the capital markets and in relation to FX currency trading, IPOs have been the least attractive form of exit strategy. Dual-track (IPOs and private sale) processes running concurrently have, in the last eight years in Jersey, become more common. However, it is interesting to note that during this time, only three Jersey PE-owned portfolio companies have conducted successful IPOs, implying that a higher rate of success has been achieved with private sale processes. Reinvestment by PE sponsors (save for an IPO exit scenario) is not typical. Please also see our response to question 11.1.

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

In a successful IPO exit, a PE sponsor (as selling shareholder) will be 'locked up' for up to six months with management locked up for a somewhat longer time, e.g. 12–18 months. Relationship agreements covering lock-up and other management and transitional matters are generally entered into between the PE sponsor seller and the listed company.

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?

See the responses to questions 7.1 and 11.1.

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 (particularly the market for high yield bonds).

Generally, PE transactions are financed via a mix of equity contributions sourced from investing PE funds and external debt/leverage provided by syndicate banks, institutional financiers and a range of alternate credit providers. For larger transactions, accessing funding from the debt capital markets, i.e. bridge to high-yield bond financing, is attractive from a cost of funds perspective. Unitranche financing, which involves a hybrid loan structure, combining senior and subordinated debt into one loan facility at a blended interest rate, has also proved attractive to PE sponsors.

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?

Generally speaking, there are no relevant legal requirements or restrictions that would impact the nature or structure of the credit arrangements to be entered into by a PE sponsor buyer or the type of debt financing obtained. Practical deal terms are significant in dictating the ultimate financing structure.

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

See the response to question 8.1.

9 Tax Matters

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

The operation of a tax-neutral environment in Jersey for international businesses that feature Jersey corporate holding structures means that there are limited Jersey tax considerations for buyers or sellers structuring a cross-border transaction. Where the target is a Jersey corporate services and fund administration business, the main consideration will be the income tax that business is liable to account for as a Financial Services Company for Jersey income tax purposes. However, Jersey not levying any stamp duty or transactional imports like capital gains tax again means that tax does not feature prominently in the structuring of a local acquisition transaction.

9.2 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)?

The use of Jersey PE acquisition holding structures generally provides UK resident non-UK domiciled target management with remittance-based taxation options for future exit. This can be achieved by the issuance of and subscription for management loan notes, which may require listing on an HMRC-recognised stock exchange if such loan arrangements are to qualify for certain UK withholding tax exemptions.

9.3 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?

There are no rollover-associated Jersey tax considerations for Jersey target management teams to consider.

9.4 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?

Jersey implemented The Taxation (Companies – Economic Substance) (Jersey) Law 2019 ("ES Law"), which came into force with effect from 1 January 2019.

The ES Law applies to a company incorporated or tax resident in Jersey, which generates income from a 'relevant activity', including, among other activities, fund management business, holding company business or financing and leasing business.

As Jersey tax resident companies in PE acquisition structures are generally fully administered and managed companies, certain activities conducted by the Jersey administrator in Jersey will assist the company to meet the economic substance test under the ES Law with limited additional impact or burden.

10 Legal and Regulatory Matters

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

PE sponsors that are focused on turnaround style assets are likely to benefit from a recent change in the Jersey prospectus rules, which have the effect of sponsors not needing to seek a prospectus consent in Jersey for certain types of acquisition transactions that involve debt-for-equity swaps with listed note or bond holders. In summary, certain Jersey private companies will not now come within the definition of issuing a prospectus, which means they will not be supervised by the Takeover Panel in its administration of the Takeover Code.

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

Mainstream PE investors will not be subject to enhanced regulatory scrutiny in Jersey on the basis of national security grounds. The Jersey Financial Services Commission ("JFSC") does maintain a sound business practice policy that identifies certain types of industry sectors and activities in relation to which the JFSC is interested in closely scrutinising counterparties or transactions that are connected to national defence/security activities or operations.

10.3 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.)?

While PE investors typically conduct relatively detailed legal due diligence, a noticeable recent trend is that legal due diligence completed by PE investors prior to committing to acquisitions has reduced in scope and coverage. Confirmatory legal due diligence is acceptable in a wide variety of mid-market PE transactions.

Vendor due diligence ("VDD") reports featuring as part of PE transactions depend almost entirely upon the shape of the target group structure and the underlying asset class. VDD is often not comprehensive and, in Jersey, is not generally considered a substitute for a buyer's own due diligence. A VDD report may provide a helpful start to the due diligence process. An obvious advantage is where a vendor is prepared to make representations and warranties, or provide indemnities, in the transaction documents in relation to information contained in the VDD report.

10.4 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.)?

Relevant ABC sanctions, anti-money laundering and Know Your Customer rules apply to PE transactions in Jersey. There are no PE specific restrictions.

10.5 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?

In both of these contexts, Jersey company law contains the concepts of separate legal personality and limited liability. It recognises that the legal personality of a company is separate to that of its shareholders. Limited liability is the principle that protects shareholders from claims over assets other than those legally owned by a company. In practice, in the context of a private limited Jersey company, this principle operates to effectively limit the liability of PE investors and portfolio companies.

11 Other Useful Facts

11.1 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?

One of the most interesting developments (not necessarily a concern) for PE investors in Jersey is the advent of European SPACs, which are expected to come to market in Autumn 2021. A SPAC is a type of company formed to raise money from investors, which it then uses to acquire another operating business.

The number of potential PE private investors in public equity ("PIPE") looking to invest via SPACs is significant. The LSE is well positioned to establish itself as a market of choice for PIPE investors focused on investing in European SPACs.

Paul Burton is the head of the Jersey corporate team at Maples and Calder, the Maples Group's law firm. Paul advises a broad range of clients, including PE sponsors, on the most complex cross-border downstream M&A transactions, including leveraged buyouts, infrastructure and consortium investment transactions. Over many years he has represented institutional investors and financial sponsors in all stages of the investment cycle and across a range of sectors. Paul holds a special interest in downstream PE, infrastructure and growth capital investment activity. He also has extensive debt capital markets and alternative credit experience.

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