

Private Equity 2021

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Private Equity

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Lexology Getting The Deal Through is delighted to publish the seventeenth edition of *Private Equity*, which is available in print and online at www.lexology.com/gtdt.

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

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Russia. The report is divided into two sections: the first deals with fund formation in 13 jurisdictions and the second deals with transactions in 18 jurisdictions.

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

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

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



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For further information please contact editorial@gettingthedealthrough.com

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FORMATION

Forms of vehicle

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

The formation of private equity funds in the United Arab Emirates (the UAE) is regulated by the Securities and Commodities Authority (SCA). The SCA's regulations concerning private equity fund controls recognise the corporate structure of a private equity fund as that of a 'general and limited partnership fund'. In such a structure, the general partner is an SCA-licensed fund management company, whereas the investors are limited partners.

The SCA's regulations along with the UAE Commercial Companies Law (the UAE Companies Law) provide that the investment funds have their own separate legal personality. This means that funds have 'independent financial liability' such that unitholders cannot be held accountable for a fund's liabilities except to the extent of their own units. However, the general partner is fully liable for the fund's obligations.

In the Dubai International Financial Centre (the DIFC), the financial regulator is the Dubai Financial Services Authority (DFSA) and in the Abu Dhabi Global Market (the ADGM) the financial regulator is the Financial Services Regulatory Authority (FSRA). In both the DIFC and ADGM, the following corporate structures can be used to establish domestic funds including private equity funds: investment company, investment partnership or investment trust. The investment partnership model is the most common structure used by private equity funds. The DFSA and FSRA require the general partner to be licensed to act as a fund manager.

Forming a private equity fund vehicle

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

In accordance with the SCA's regulations, the general partner, who is also known as the founder of the fund, is responsible for submitting the licensing application for the establishment of the private equity fund to the SCA. The licensing application should be supported by a set of required documents, which includes the partnership agreement, contact and identification information relating to the general partners and the limited partners, a declaration from the general partner in respect of the confirmation of the capital requirements, along with any other documents that may be required by the SCA. The founder of the funds should comply with certain conditions, such as appointment of independent custodians, etc. The SCA would provide its decision on the licensing application following submission and review of the complete application.

In the DIFC, a private equity fund can either be formed as an 'exempt fund' or a 'qualified investor fund'. For both of these types of funds, the units should be offered by way of a private placement, and all unitholders must be 'professional clients'. There are differences between the two fund structures that include, inter alia, the minimum subscription requirement and the number of investors. The fund manager should submit the application for registration, along with supporting documents, to the DFSA. The DFSA, following its review, shall issue the notification for registration of the fund.

The ADGM provides the option of setting up an exempt fund or a qualified investor fund, and has a similar registration process to that outlined above.

Requirements

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

Under the SCA's regulations, the fund management company is responsible for the management of the investment fund as well as providing administrative services. The SCA's regulations also stipulate that a management company shall appoint a 'safe custodian', who will ensure that transactions of the fund and transactions made between the fund and its unitholders are concluded through separate accounts with licensed banks and in accordance with the relevant rules.

In the DIFC, the fund manager can host the fund in terms of the latter's registered office and the fund manager will also be responsible for meeting the compliance requirements set out by the DIFC and DFSA, including record-keeping, compliance with corporate filing requirements, etc. A custodian is required to be appointed depending on the type of fund and its property. In the case of external fund managers, a DFSA-licensed fund administrator must be appointed; the fund administrator will act as the local agent of the external fund manager and deal with the DFSA in respect of regulatory requirements.

In accordance with the rules and regulations of the ADGM, the FSRA generally requires the fund manager of a fund to appoint an 'eligible custodian' for the safekeeping of the fund property. In addition, a FSRA-licensed or approved fund administrator will be appointed where there is a foreign fund manager of a domestic fund. The fund manager or fund administrator (if applicable) must ensure compliance with the ADGM regulations.

Access to information

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

The SCA publishes on its website a register of all entities that are listed, licensed and registered with the SCA in accordance with its regulations. The information available includes company details such as the address, the board of directors (if relevant) and information on the meetings of shareholders. (Note that it may be that not all the detail outlined above will be available for each fund.)

For funds formed in the DIFC, the DIFC’s public register, which is accessible through the DIFC website, publishes information that includes the name of the fund, the registration number, address, the names of the directors and shareholders for an investment company and the names of the general partners and limited partners for limited partnerships, and details of the share capital, among other information.

The FSRA of the ADGM maintains a specific register of collective investment funds, which is accessible on the ADGM website. The FSRA’s register contains details such as the fund’s name, reference number, the fund manager, the type of fund and address.

Limited liability for third-party investors

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

In respect of a ‘general and limited partnership fund’, the general partner, who is the fund manager, is liable for the fund’s obligations, whereas limited partners, who are the investors, are liable only to the extent of their respective shares or units in the capital of the fund.

A limited partner may lose its limited liability if it becomes involved in the management of the fund and therefore be seen as assuming the role of a general partner. It should, nevertheless, be noted that the SCA provides a list of actions that a limited partner may undertake without breaching the ‘management’ restriction, which include:

- changing or waiving any condition in the partnership agreement or a related document, or changing the general nature of the partnership operations, or making a decision about a person becoming a partner or terminating his or her partnership, or the termination or extension of the partnership agreement;
- appointing a person to terminate the partnership;
- concluding a contract with the other partners provided that the contract does not involve taking part in the management of the fund’s operations;
- providing a guarantee or acting as a guarantor of the fund, or approving the accounts of the fund, or reviewing or approving an evaluation of the fund’s assets;
- consulting or providing advice to a general partner about the fund’s affairs or accounts; and
- participating in making a decision about approving or allowing a suggestion by a general partner.

In the case of DIFC and ADGM domiciled funds, the liability of investors in a private equity fund would be governed by the fund’s constitution and the applicable rules of the DFSA and FSRA.

Fund manager’s fiduciary duties

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

In respect of the fiduciary duties of the fund manager, the SCA stipulates that the fund manager should manage the fund in accordance with the prospectus of the fund and in line with the applicable legislation. The fund manager should ensure that it provides its services in a manner that preserves the rights of the fund and the unitholders. All procedures are to be handled fairly and the fund manager must achieve ‘best execution’ for any operations undertaken. The SCA’s regulations also state that the fund management company cannot obtain any special gain or privileges from the fund except the management fees agreed upon. Overall, the fund manager is expected to exercise due care while performing its tasks.

In general terms, a fund manager in the DIFC and ADGM must ensure compliance with DFSA and FSRA requirements, and must act in accordance with the applicable laws and rules. The fund manager should manage the fund as per the fund’s constitution and ensure that its dealings do not give rise to a conflict of interest. Specifically, the DFSA sets out 12 principles for ‘authorised firms’, which includes fund managers. These principles include an obligation to observe high standards of integrity and fair dealing; to exercise due skill, care and diligence; to deal with regulators in an open and cooperative manner; and to ensure effective management, among other obligations.

It should be noted that the constitutional documents of a fund, the partnership agreement or the fund management agreement can expand the duties of the fund manager, however the statutory duties specified in the relevant legislation cannot be revoked.

Gross negligence

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

The UAE Federal Civil Transactions Law (the Civil Code) provides that an obligor remains liable for any gross negligence on its part in performing its obligation. Although gross negligence is not defined, such provision shall be applicable to the management of a private equity fund in the UAE.

The definition of gross negligence can be specified in the constitutional documents of a fund, the partnership agreement and/or the fund management agreement.

Other special issues or requirements

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

The SCA’s regulations do not provide any guidance in respect of conversion or redomiciling of private equity fund vehicles or conversion or redomiciling of limited partnerships formed in other jurisdictions into the UAE.

Fund sponsor bankruptcy or change of control

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

The SCA's regulations provide that the changing of the general partner or a limited partner, their bankruptcy, insolvency, loss or lack of capacity, death or termination of legal personality does not dissolve or terminate a fund. However, the SCA's regulations provide that a fund manager will lose its licence if there is an irrevocable judgment declaring the fund manager to be bankrupt. In practice, the general partner may be a separate entity with limited liability and the fund manager may be a separate entity, which is providing services to the general partner under the fund management agreement. The consequence of this arrangement is ring-fencing of the fund manager's liability.

REGULATION, LICENSING AND REGISTRATION

Principal regulatory bodies

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

The Securities and Commodities Authority (SCA) is the principal regulatory body in the UAE in respect of a private equity fund and its manager. Under the SCA's regulations, an independent external auditor must prepare annual audited accounts of the fund. Such reports must be prepared in accordance with the International Financial Reporting Standard. In relation to the inspection powers, the SCA can review and request information, documents or statements that it considers necessary for the purpose of controlling or investigating any violation uncovered by an inspection or as a result of a complaint.

For funds domiciled in the Dubai International Financial Centre (the DIFC), the principal regulatory body is the Dubai Financial Services Authority (DFSA). For funds domiciled in the Abu Dhabi Global Market (the ADGM), the principal regulatory body is the Financial Services Regulatory Authority (FSRA). To provide unitholders of a fund with relevant and up-to-date information about the performance and management of a fund, the DFSA and FSRA require the preparation of annual financial reports and may also require interim reports. These reports must be open for inspection by the regulators at all reasonable times.

Governmental requirements

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

The prior approval or licence of the SCA is required for the formation and marketing of a private equity fund in the UAE. The licensing application should be supported by the partnership agreement and any other documents that may be required by the SCA. The fund licence must be renewed annually, and renewal approval will depend on continued compliance with the SCA's rules and regulations.

For formation and marketing of private equity funds in the DIFC and ADGM, the prior approval of the DFSA or the ADGM, as applicable, shall be required.

Registration of investment adviser

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

In the UAE, a private equity fund's manager, promoter and principals are required to be approved or licensed by the SCA. In respect of the marketing of foreign funds in the UAE, the SCA requires a local promoter that satisfies the relevant licensing requirements of the UAE Central Bank and the SCA.

In the DIFC and ADGM, the fund manager must be an authorised firm registered with the DFSA or FSRA, as applicable, that has a licence to undertake the financial services of managing a fund. Additionally, authorised firms are required to appoint individuals for certain mandatory management positions; these individuals are required to be registered with and authorised by the relevant regulator to undertake the specific management roles.

Fund manager requirements

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

A fund manager must be licensed by the SCA to undertake fund management activities. The fund manager can also be a local bank, which is licensed by the UAE Central Bank to manage mutual funds. As set out in the SCA's regulations, the fund manager must have a minimum share capital of 5 million dirhams. The fund manager and its affiliated entities cannot own 30 per cent or more of the units in the funds, which they manage. In addition, the fund manager must appoint individuals who meet the requirements of the SCA for the technical and administrative aspects of practising the business.

For the DIFC, the fund manager must be licensed by the DFSA. The licence will be granted once the DFSA is satisfied that the fund manager will have adequate systems and controls to manage the type of fund that it proposes to establish. In addition, the senior management of the fund manager must be qualified to undertake the mandatory roles stipulated by the DFSA. In its assessment of the senior management, the DFSA will consider the educational qualifications and professional experience of the senior officers.

Political contributions

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

The disclosures requirements and conditions under the competent authority's rules and regulations (ie, the SCA, DFSA, FSRA or other government departments) would apply. In addition, the relevant provisions and requirements under UAE federal laws, DIFC laws and ADGM laws would apply generally and, specifically, the anti-money laundering and anti-bribery laws of the UAE, DIFC and ADGM would be applicable.

Use of intermediaries and lobbyist registration

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

There are no specific restrictions or disclosure requirements in the UAE in relation to the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities. However, the SCA's (or the DFSA's or FSRA's, as applicable) rules regarding marketing and promotion of funds shall be applicable. In addition, the disclosures requirements and conditions under the competent authority's rules and regulations (ie, the SCA, DFSA, FSRA or other government departments) would apply as well as the anti-money laundering and anti-bribery laws of the UAE (or the DIFC or ADGM).

Bank participation

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

The UAE Central Bank is the authority governing and regulating investments by banks in the UAE. The UAE Central Bank requires banks to maintain specific capital adequacy requirements, risk profiles and exposure limits, but does not restrict banks from investing in or sponsoring private equity funds.

In respect of investment activities of a bank, the UAE Central Bank has applied certain restrictions in respect of purchasing shares of commercial companies by banks.

TAXATION

Tax obligations

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

In the UAE, there are no corporate taxes or personal income taxes currently levied. Except for foreign banks and oil production companies, no income tax is currently levied on businesses.

Private equity firms usually structure their investments through corporate vehicles established in the Dubai International Financial Centre or Abu Dhabi Global Market. The free zones are tax-free jurisdictions.

The UAE has implemented the imposition of a value added tax (VAT). VAT is applicable on taxable activities undertaken by entities incorporated in the UAE mainland and in the free zones on supplies of goods or services.

Local taxation of non-resident investors

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

At present, there are no specific taxation or return-filing requirements imposed on non-resident investors in private equity funds in the UAE. It should, however, be determined whether UAE VAT would be applicable.

Local tax authority ruling

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

It is not necessary, but may be desirable, to obtain a ruling from local tax authorities with respect to the tax treatment of a private equity fund vehicle formed in the UAE.

Organisational taxes

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

At present, there are no significant organisational taxes required to be paid with respect to private equity funds in the UAE. It should, however, be determined whether UAE VAT would be applicable.

Special tax considerations

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

At present, there are no special tax considerations applicable with respect to a private equity fund's sponsor in the UAE.

Tax treaties

- 22 List any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

The UAE has entered into double taxation agreements (DTA) and bilateral investments treaties (BIT) with several countries. Lists of these DTAs and BITs are available on the website of the UAE Ministry of Finance.

Other significant tax issues

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

Since, at present, there are no specific taxes imposed on private equity funds in the UAE, there are no significant tax issues relating to private equity funds organised in the UAE. It should, however, be determined whether UAE VAT would be applicable. In addition, the taxation regime in the UAE is subject to change by the competent authorities.

SELLING RESTRICTIONS AND INVESTORS GENERALLY

Legal and regulatory restrictions

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

Under the Securities and Commodities Authority's (SCA's) regulations, an offer and sale of interests in private equity funds in the UAE (or private equity funds formed in other jurisdictions) should be made to specific type of investors such as 'qualified investors'. All type of funds must be registered with the SCA. There are certain exemptions that are permitted under the SCA's regulations in respect of private placements.

Types of investor

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

The SCA's regulations provide that 'qualified investors' may participate in private equity funds formed in the UAE. A qualified investor should run its own investments such as governmental bodies, international organisations, licensed practitioners of investment activities or an individual with an annual income of at least 1 million dirhams or owns net equity of at least 4 million dirhams, excluding their main residence, or an investor represented by a SCA-licensed investment manager.

The Dubai Financial Services Authority (DFSA) and the Financial Services Regulatory Authority (FSRA) have stipulated the criteria for participation in exempt funds and qualified investor funds.

Identity of investors

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

The fund manager should maintain a register of unitholders, including the following information:

- the name and address of each unitholder;
- an identification number;
- the number of units held by each unitholder; and
- the date on which the unitholder became the register holder of the relevant units.

Licences and registrations

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

In the UAE, the marketing and promotion or offering of interests in a private equity fund require prior licensing or registration with the SCA.

In the Dubai International Financial Centre (the DIFC) and Abu Dhabi Global Market (the ADGM), the marketing and promotion or offering of interests in a private equity fund require prior licensing or registration with the DFSA or the FSRA, as applicable.

Money laundering

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

The relevant laws, rules and regulations of the UAE (and DIFC or ADGM, as applicable) and, specifically, the following laws, rules and regulations relating to anti-money laundering, terrorist financing, financing of illegal organisations and sanctions compliance would be applicable:

- Federal Law No. 7 of 2014 on Combating Terrorism Offences;
- Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations;
- Federal Cabinet Decision No. 10 of 2019 on the Implementing Regulations of Federal Law No. 20 of 2018;
- Federal Cabinet Decision No. 20 of 2019 regarding Terrorism Lists Regulation and Implementation of UN Security Council Resolutions on the Suppression and Combating of Terrorism, Terrorist Financing and Proliferation of Weapons of Mass Destruction, and Related Resolutions;
- Chapter 2 (Anti-Money Laundering Compliance) of Part 4 of DIFC Regulatory Law 2004 (DIFC Law No. 1 of 2004), as amended;
- Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook; and
- ADGM Anti-Money Laundering Sanctions, Rules and Guidance.

EXCHANGE LISTING

Listing

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

In the UAE, public joint-stock companies and certain public funds can be listed on the stock exchanges in Dubai or Abu Dhabi, subject to obtaining the approval of the Securities and Commodities Authority (SCA).

In the Dubai International Financial Centre, private equity funds are not permitted to be listed on Nasdaq Dubai.

Restriction on transfers of interest

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

The SCA can specify any restrictions in respect of the transfer of interests of a listed fund. In addition, the transfer of interests of a listed fund shall be subject to the applicable listing rules and regulations and the constitutive documents of the fund.

PARTICIPATION IN PRIVATE EQUITY TRANSACTIONS

Legal and regulatory restrictions

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

Funds formed in the UAE shall be subject to statutory restrictions that are contained in the UAE Commercial Companies Law as regards ownership of shares in companies. Under the Securities and Commodities Authority's (SCA's) regulations, an independent custodian may be required to be appointed to hold the assets or property of a fund.

In the Dubai International Financial Centre (the DIFC) and Abu Dhabi Global Market (the ADGM), the fund assets must be held by a custodian deemed 'eligible' in accordance with the Dubai Financial Services Authority's (DFSA's) and Financial Services Regulatory Authority's (FSRA's) requirements.

In respect of private equity funds established in the DIFC, a private equity fund manager can appoint an 'investment committee'. The investment committee must be formed of at least three experts who are independent from the fund manager and have been appointed by the unitholders of the fund. The committee will not be involved in the day-to-day management of the fund; however, it will be responsible for reviewing investment opportunities.

In addition, the fund manager must ensure that it does not invest more than 25 per cent of the fund in a single venture unless the purpose of the fund is to invest in a single venture. The DFSA also prohibits the fund manager from investing in companies that are 'related parties' in relation to either the fund or the fund manager, unless the requisite compliance measures have been undertaken.

Compensation and profit-sharing

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

Under the SCA's regulations, the management fees should conform to the risks and interests of the fund and with the interests of its unitholders. The management fees must be clearly defined in the constitutional document or management agreement of the fund and should include any incentive fees as applicable. The SCA also stipulates that the fund manager and any of its employees may not be entitled to any special gains or privileges from the fund other than the management fee that has been agreed upon.

In the DIFC, and similarly in the ADGM, the fund manager cannot make any charge in respect of the issue or sale of units except in accordance with the constitution of the fund. The DIFC rules also specify that no payment may be made or benefit given to the fund manager out of the fund property, whether for remuneration of services, reimbursement of expenses or otherwise unless it is permitted by the constitution. Additionally, the fund manager must not introduce a new category of remuneration or make any increase in the current rate or amount of remuneration payable unless it has given not less than 90 days' written notice to the unitholders and the same has been approved by a special resolution of the unitholders.

UPDATE AND TRENDS

Key developments of the past year

33 What are the most significant recent trends and developments relating to private equity funds in your jurisdiction? What impact do you expect such trends and developments will have on global private equity fundraising and on private equity funds generally?

No updates at this time.



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Coronavirus

34 What are some of the significant developments and initiatives relating to the covid-19 pandemic that have impacted private equity fund formation?

In April 2020, the Dubai Financial Services Authority (DFSA) announced a number of initiatives relating to regulatory measures in response to the covid-19 pandemic. Among these initiatives, an extended timeline relating to the authorisation process was permitted for the formation of new funds and fund managers in the Dubai International Financial Centre, application fees were reduced by up to 50 per cent and, in the case of domestic funds, a waiver of registration fees was applicable. The DFSA also extended regulatory relief measures to existing authorised firms through an extension of the time frame in relation to filing requirements, as well as waivers of certain fees. Such regulatory relief measures were applicable up to 31 December 2020.

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