

Private Equity 2021

Contributing editor
Atif Azher



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent

adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between January and March 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021

No photocopying without a CLA licence.

First published 2005

Seventeenth edition

ISBN 978-1-83862-701-0

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Private Equity

2021

Contributing editor**Atif Azher****Simpson Thacher & Bartlett LLP**

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.



London

March 2021

Reproduced with permission from Law Business Research Ltd

This article was first published in April 2021

For further information please contact editorial@gettingthedealthrough.com

Contents

Global overview 5

Atif Azher, Peter H Gilman, Fred de Albuquerque and Audra Cohen
Simpson Thacher & Bartlett LLP

FUND FORMATION

Australia 8

Ben Landau, Con Tzerefos, Benson Chin and Fergus Calwell
Ashurst LLP

Austria 16

Martin Abram and Clemens Philipp Schindler
Schindler Attorneys

British Virgin Islands 23

Andrew Jowett and Rebecca Jack
Appleby

Cayman Islands 32

Chris Humphries, Jonathan McLean and Simon Orriss
Stuarts Walker Hersant Humphries

Egypt 42

Nora Harb
Thebes Consultancy

Germany 49

Tarek Mardini and Sebastian K apflinger
POELLATH

Japan 57

Makoto Igarashi and Yoshiharu Kawamata
Nishimura & Asahi

Luxembourg 63

Marc Meyers
Loyens & Loeff

South Korea 76

Sungjo Yun, Mok Hong Kim, Ho Kyung Chang, Eugene Hwang and
Seung-Wan Chae
Bae, Kim & Lee LLC

Spain 82

Carlos de C ardenas, Alejandra Font, V ctor Dom enech and
Manuel Garc a-Riestra
Alter Legal

United Arab Emirates 92

Hasan Anwar Rizvi
RIAA Barker Gillette (Middle East) LLP

United Kingdom 98

Robert Lee, Yash Rupal, Amy Fox and Paul Dodd
Simpson Thacher & Bartlett LLP

United States 107

Thomas H Bell, Barrie B Covit, Peter Gilman, Olga Gutman, Jason A
Herman, Jonathan A Karen, Parker B Kelsey, Steven R Klar, Rony L
Rothken, Glenn R Sarno, Peter P Vassilev and Michael W Wolitzer
Simpson Thacher & Bartlett LLP

TRANSACTIONS

Australia	122	Nigeria	187
Anton Harris, Ben Landau, Mark Stanbridge and Stuart Dullard Ashurst LLP		Tamuno Atekebo, Eberechi Okoh, Oyenyi Immanuel and Oluwafeyikemi Fatunmbi Streamsowers & Köhn	
Austria	132	Russia	193
Florian Philipp Cvak and Clemens Philipp Schindler Schindler Attorneys		Laura M Brank, Evgenia Korotkova, Kirill Skopchevskiy, Pavel Dunaev, Tatiana Shlenchakova and Akop Tovmasyan Dechert LLP	
British Virgin Islands	139	South Korea	199
Andrew Jowett and Rebecca Jack Appleby		Sungjo Yun, Mok Hong Kim, Ho Kyung Chang, Eugene Hwang and Seung-Wan Chae Bae, Kim & Lee LLC	
Cayman Islands	145	Spain	204
Chris Humphries, Jonathan McLean and Simon Orriss Stuarts Walker Hersant Humphries		Lucas Palomar and Bojan Radovanovic Cases & Lacambra Abogados SLP	
Egypt	150	Switzerland	211
Aya Sabry and Nora Harb Thebes Consultancy		Patrik R Peyer, Daniela Schmucki, Till Spillmann and Philippe A Weber Niederer Kraft Frey	
France	154	Thailand	219
Saam Golshani, Alexis Hojabr, Estelle Philippi , Franck De Vita, Samir Berlat and Alexandre Balat White & Case LLP		Jirapong Sriwat and Apinya Sarntikasem Nishimura & Asahi	
Germany	161	United Arab Emirates	225
Tim Kaufhold and Tobias Jäger POELLATH		Hasan Anwar Rizvi RIAA Barker Gillette (Middle East) LLP	
India	168	United Kingdom	230
Aakash Choubey and Sharad Moudgal Khaitan & Co		Clare Gaskell, Amy Mahon, Yash Rupal and Kate Sinclair Simpson Thacher & Bartlett LLP	
Japan	180	United States	237
Asa Shinkawa and Keitaro Hamada Nishimura & Asahi		Atif Azher, Peter Gilman and Fred de Albuquerque Simpson Thacher & Bartlett LLP	

United Arab Emirates

Hasan Anwar Rizvi

RIAA Barker Gillette (Middle East) LLP

TRANSACTION FORMALITIES, RULES AND PRACTICAL CONSIDERATIONS

Types of private equity transactions

- 1 | What different types of private equity transactions occur in your jurisdiction? What structures are commonly used in private equity investments and acquisitions?

There are various types of private equity transactions that occur in the United Arab Emirates (the UAE) including leveraged buyouts and venture capital investments. Investors such as local, regional and global private equity firms, sovereign wealth funds, quasi-governmental entities and family offices are active in the market. Transactions could take the form of acquisition of majority or significant minority equity interests.

The UAE Securities and Commodities Authority (SCA) is the relevant regulatory body in the UAE in respect of investment and mutual funds. The SCA's regulations recognise the corporate structure of a private equity fund as that of a limited partnership. In this structure, the general partner is an SCA-licensed fund management company, whereas the investors are limited partners.

In the Dubai International Financial Centre (DIFC) and in the Abu Dhabi Global Market (ADGM), the following corporate structures can be used to establish a domestic fund: investment company, investment partnership or investment trust.

In the UAE, the form of private equity investment structures can vary between the following:

- direct investment by the investor into the target;
- through a fund established by an asset manager; or
- through special-purpose vehicles or holding companies.

Corporate governance rules

- 2 | What are the implications of corporate governance rules for private equity transactions? Are there any advantages to going private in leveraged buyout or similar transactions? What are the effects of corporate governance rules on companies that, following a private equity transaction, remain or later become public companies?

Corporate governance regulations in the UAE are primarily focused on listed companies. The corporate governance regulations applicable in the UAE have been issued by the SCA and are applicable to public joint-stock companies (PJSCs) that are listed on the Dubai Financial Market or the Abu Dhabi Securities Exchange. The board of directors of such companies or, as applicable, its managers, are responsible for the application of the rules and criteria of corporate governance.

The SCA's Corporate Governance Rules set out provisions relating to board composition, committees, remuneration of directors and audits and are applicable to all listed local public shareholding companies.

However, certain parts do not apply to financial institutions that are subject to the supervision of the UAE Central Bank and listed foreign companies.

The 2016 Corporate Governance Rules complement the UAE Commercial Companies Law and aim to increase the sophistication of the corporate governance legislation in the UAE to protect shareholders or investors and promote corporate social responsibility.

The DIFC Markets Law 2012, which is administered by the Dubai Financial Services Authority (DFSA), imposes an overarching governance principle, requiring regulated entities to implement corporate governance frameworks that are adequate to promote prudent and sound management. These principles and standards are set out in the DFSA Rulebook.

As most private equity investments occur in private limited liability companies in the UAE, the impact of applicable corporate governance regulations on such transactions is minimal. However, if the form of a limited liability company (LLC) is changed into a public or private joint-stock company under the UAE Commercial Companies Law, the applicable provisions of the Corporate Governance Rules shall apply.

Investors can require such conversion of company's form in order to gain the benefits of the Corporate Governance Rules applicable to PJSCs. If an initial public offering is an exit mechanism in the private equity transaction, the legal form of the company would need to be converted to a listed PJSC to enable the exit. As one of the listing requirements, the company would be required to adopt a code of corporate governance in compliance with the SCA's Corporate Governance Rules.

Issues facing public company boards

- 3 | What are some of the issues facing boards of directors of public companies considering entering into a going-private or other private equity transaction? What procedural safeguards, if any, may boards of directors of public companies use when considering such a transaction? What is the role of a special committee in such a transaction where senior management, members of the board or significant shareholders are participating or have an interest in the transaction?

In the UAE, the entry into a going-private or a private equity transaction by a listed company would be rare. However, the directors of UAE companies must consider their legal and fiduciary duties when entering into any transaction. Each director is legally responsible towards the company and third party for any fraudulent activities or arrangements that the director carries out. A director is required to:

- act honestly and faithfully, taking into consideration the interests of the company and its shareholders;
- make the utmost effort; and
- comply with the applicable laws, regulations and resolutions, as well as the company's articles of association and internal regulations.

The directors may consider issues such as timely announcements relating to transactions, disclosure relating to any related parties involved in the transaction and all direct and indirect conflicts of interest.

Pursuant to the UAE Companies Law, a director must act in accordance with the company's objectives and the powers granted by the shareholders and must ensure that the required internal approvals have been obtained before entering into any arrangement to bind the company.

The UAE Companies Law stipulates that a member of the board of directors cannot participate, whether directly or indirectly, in any activity that competes with the company or its business without prior permission from the general assembly. This permission must be renewed annually. If a member of the board of directors participates in a competing activity without obtaining prior permission from the general assembly, the company can request compensation or require that the transaction that the director entered into on his or her own behalf be considered as having been entered into on behalf of the company.

Disclosure issues

4 | Are there heightened disclosure issues in connection with going-private transactions or other private equity transactions?

In transactions involving private companies in the UAE, the amended articles of association of the target company specifying the transfer of shares and the new shareholding structure should be filed with the competent authorities.

As going-private transactions are not common in the UAE, it is not possible to comment on the disclosure requirements that may apply in such transactions. It is likely that procedural requirements of the SCA and the relevant stock exchange would need to be satisfied.

For PJSCs, there are certain disclosure requirements to the SCA and the relevant market, including the following:

- all the information and statistics required by the SCA or the market;
- the transactions made on such securities outside the market, prior to entry of the same in the shares register;
- the number of shares owned by the board of directors of the company within 15 days from taking their positions, and at the end of each financial year, and on all the negotiation transactions carried out by the members to the board of directors and the executive managers of the company;
- the details of the sale and purchase of some substantial assets affecting the position of the company;
- the documents relating to the amendments made to the articles of associations of the company, upon approval of those documents;
- any changes relating to the management structure of the company at the board of directors and executive managers level;
- annual, semi-annual and quarterly reports on its activity and the results of its business in a manner disclosing its financial position, immediately upon issuance of those reports, provided that they have been approved by its auditor and include all the information required by the market or SCA from time to time;
- copies of the publications issued for the shareholders of the company, immediately upon issuance of those publications;
- a resolution by the board of directors of the company concerning the distribution of dividends to shareholders, or announcing the profits and losses for the Market's approval of publication of those matters; and
- names of those whose ownership, by themselves or with their minor children, reach 5 per cent or more of the shares of the company, observing this obligation in each case in which the shareholding reaches 1 per cent of the shares of the company over the 5 per cent threshold.

As regards Nasdaq Dubai, the disclosure requirements specified by the DFSA should be complied with by the issuers.

Timing considerations

5 | What are the timing considerations for negotiating and completing a going-private or other private equity transaction?

The timing considerations for private equity transactions in the UAE and the related completion process can to a great extent depend on the legal form of the target entity, the parties involved and seeking different approvals from the competent regulatory authorities. For foreign nationals (excluding a 100 per cent Gulf Cooperation Council national), the approval processes may be extensive. For investment in shares in an LLC, the rights of pre-emption in favour of the existing shareholders would need to be waived as part of the process.

Where foreign investors are involved, additional time will be required for notarisation or legalisation of their corporate or constitutive documents.

On average the transaction period (including the offer, negotiation, drafting of transaction documents and completion of a transaction) can extend over several months.

Dissenting shareholders' rights

6 | What rights do shareholders of a target have to dissent or object to a going-private transaction? How do acquirers address the risks associated with shareholder dissent?

The UAE Companies Law grants every shareholder of an LLC a statutory right of pre-emption in respect of transfer of shares. Such pre-emption rights are applicable unless waived by all shareholders.

Additionally, the instrument of transfer of shares is required to be signed by the shareholders before a notary public. Each shareholder in an LLC is required to attend before a notary public at the time of the share transfer (in person or by notarised power of attorney) and agree to the transfer in the presence of the notary – even if those other shareholders are not party to the transaction and have waived their rights.

Such legal provisions provide the rights to dissenting shareholders to object to transactions.

Shareholders in a PJSC, unless subject to a contractual agreement, are not subject to any pre-emption rights on a share transfer. However, in order to avoid any issues, the other shareholders should be informed regarding the transaction. If the investor is acquiring shares in a PJSC through a share subscription, then the capital increase would need to be approved by general assembly of the shareholders and the existing shareholders would also need to waive their rights of pre-emption over the issuance of the new shares.

Purchase agreements

7 | What notable purchase agreement provisions are specific to private equity transactions?

A share purchase agreement in the UAE would contain the usual provisions found in similar agreements in other jurisdictions, such as sale and purchase provisions, consideration, completion mechanics, post-completion matters, representations and warranties, indemnities, etc. In private equity transactions, the buyers would require due diligence and conditions precedents. Additionally, the parties may consider specific provisions on claims, limitation of liabilities and restrictive covenants.

Participation of target company management

8 | How can management of the target company participate in a going-private transaction? What are the principal executive compensation issues? Are there timing considerations for when a private equity acquirer should discuss management participation following the completion of a going-private transaction?

The management of the target company is a vital source of information on the target and its business. This is especially important where enough information on a certain company and business is not publicly available. Therefore, in the UAE, it is usually common practice to incentivise the management by entering into new employment contracts with key personnel.

Depending on the shareholding structure of the company and the scope of the transaction, the target’s management may receive bids and act as a mediator for the bidder and the shareholders.

Compensation of board members and senior executives is dependent on shareholder approval. Stock option offerings are not a common practice, especially in private LLCs. For enforceability, any such equity award or stock options to employees would require the name of the employee to be entered into the company’s memorandum of association as a shareholder.

For companies in the DIFC and ADGM, it may be possible to provide stock option or equity award schemes to employees.

Tax issues

9 | What are some of the basic tax issues involved in private equity transactions? Give details regarding the tax status of a target, deductibility of interest based on the form of financing and tax issues related to executive compensation. Can share acquisitions be classified as asset acquisitions for tax purposes?

In the UAE, there are no corporate taxes or personal income taxes currently levied. With the exception of 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 DIFC or ADGM. These 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.

DEBT FINANCING

Debt financing structures

10 | What types of debt financing are typically used to fund going-private or other private equity transactions? What issues are raised by existing indebtedness of a potential target of a private equity transaction? Are there any financial assistance, margin loan or other restrictions in your jurisdiction on the use of debt financing or granting of security interests?

There are no specific requirements in respect of the types of debt financing that a purchaser can arrange to fund the consideration for private equity transactions in the UAE. Typical debt financing sources include financial institutions, banks, debt funds and family offices or high-net-worth individuals. Such debt financing may involve provision of security by the borrower including guarantees, etc. The investors may negotiate taking over or settling existing indebtedness as part of

the transaction. In respect of existing indebtedness, prior consents from the relevant lenders may be required depending on the terms of such financing.

Debt and equity financing provisions

11 | What provisions relating to debt and equity financing are typically found in going-private transaction purchase agreements for private equity transactions? What other documents typically set out the financing arrangements?

Usually the purchase agreement would set out conditions precedent to closing regarding debt and equity financing for the transaction. For debt financing arrangements, additional documents such as loan or financing agreements and related ancillary or security documents would be entered by the borrower with lenders separately.

Fraudulent conveyance and other bankruptcy issues

12 | Do private equity transactions involving debt financing raise ‘fraudulent conveyance’ or other bankruptcy issues? How are these issues typically handled in a going-private transaction?

Each director is liable towards the company and a third party for any fraudulent activities or arrangements and will be required to compensate the company for any losses or expenses incurred owing to:

- abuse of power;
 - violation of the provisions of any law, the company’s memorandum of association or his or her contract of appointment; or
 - gross error.
- In addition, for listed joint-stock companies, a director should:
- act honestly and faithfully, taking into consideration the interests of the company and its shareholders;
 - make the utmost effort; and
 - comply with the applicable laws, regulations and resolutions, as well as the company’s articles of association and internal regulations.

The ownership details and title information may be covered by the seller’s warranties in the purchase agreement. Any breach of such warranties would provide the purchaser with a right to terminate or rescind the transaction.

In relation to bankruptcy, the provisions of the UAE Federal Bankruptcy Law would be applicable in relation to companies in the UAE.

SHAREHOLDERS’ AGREEMENTS

Shareholders’ agreements and shareholder rights

13 | What are the key provisions in shareholders’ agreements entered into in connection with minority investments or investments made by two or more private equity firms or other equity co-investors? Are there any statutory or other legal protections for minority shareholders?

The shareholders’ agreement can include provisions that mandatorily require the prior consent of the minority shareholders for specified reserved matters. It is also recommended that such reserved matters should be specified in the memorandum and articles of association of the company.

The shareholders’ agreement or memorandum and articles of association can provide the following protections for the minority shareholders:

- appointment of representative director (including compulsory attendance and vote of the minority shareholders’ representative director);

- reserved matters both at the shareholder and board levels;
- share transfer restrictions including a right of pre-emption or tag-along by the minority investor;
- access to company information, books and records;
- entering into material contracts or debt agreements;
- changes to share capital;
- other rights attached to shares; and
- declaration and payment of dividends, etc.

In addition, the UAE Companies Law requires all shares to be equal in value and have equal voting rights. For a limited liability company, various matters are stipulated in the memorandum and articles of association of a company (such as the name and details of the shareholders of the company, the objects of the company, the capital structure, the governance structure, dividend distribution, etc), and any changes therein would require an amendment to be signed by all shareholders before a notary public.

Additionally, for private equity investors, the shareholders' agreement should specify the exit mechanism, such as sale of shares in an initial public offering, priority right to sell shares, sale of shares to other investor, put options or tag-along rights.

ACQUISITION AND EXIT

Acquisitions of controlling stakes

- 14 | Are there any legal requirements that may impact the ability of a private equity firm to acquire control of a public or private company?

A private equity investor seeking to acquire control of a limited liability company (LLC) or a public listed company may be subject to foreign ownership restrictions. Some of the considerations can include mandatory shareholding of at least 51 per cent to be held by UAE nationals in the company. There are certain sectors and activities pursuant to the Foreign Direct Investment Law that allow a higher level of foreign shareholding.

For free zones, there are no limitations on foreign investors to own shares in companies incorporated in the free zones.

For specific sectors such as banking, telecommunications and oil and gas, etc, there are specific ownership requirements that may affect acquisition of control by investors.

Exit strategies

- 15 | What are the key limitations on the ability of a private equity firm to sell its stake in a portfolio company or conduct an IPO of a portfolio company? In connection with a sale of a portfolio company, how do private equity firms typically address any post-closing recourse for the benefit of a strategic or private equity acquirer?

For sale of shares in an LLC, the consent of all shareholders of the company would be required. The process will need an amendment to the memorandum and articles of association of the company and all shareholders must attend and sign the amendment before a notary public.

Similarly, for an IPO, the consent of the shareholders' general assembly shall be required.

A shareholders' agreement would usually contain restrictions on the transfer of shares including but not limited to right of first refusal, pre-emption rights, lock-in period, etc. Any post-closing recourse would generally be addressed through escrow arrangements, limitation of liability and indemnity for the benefit of strategic or private equity acquirers.

Portfolio company IPOs

- 16 | What governance rights and other shareholders' rights and restrictions typically survive an IPO? What types of lock-up restrictions typically apply in connection with an IPO? What are common methods for private equity sponsors to dispose of their stock in a portfolio company following its IPO?

Following a company IPO, the governance rights and other shareholders' rights and restrictions would be derived from the constitutional documents of the company and the applicable regulations of the Securities and Commodities Authority (SCA) and the stock exchange.

There are lock-up restrictions for transfer of founders' or sponsors' shares in the event of an IPO. For disposal of shares through an IPO, there are certain thresholds that should be considered such as a ceiling on the number of shares that can be offered by way of public subscription.

A listed company would need to comply with the SCA's corporate governance rules including in relation to:

- appointment of independent and non-executive directors to the board;
- appointment of board committees such as audit, etc; and
- adoption of a corporate governance code for the company.

Target companies and industries

- 17 | What types of companies or industries have typically been the targets of going-private transactions? Has there been any change in industry focus in recent years? Do industry-specific regulatory schemes limit the potential targets of private equity firms?

In the UAE, going-private transactions are not common. Subject to any foreign ownership restrictions, there is no restriction on the potential targets of private equity firms. Some of the sectors that have specific ownership requirements include:

- banking and financial services;
- telecommunications and media;
- healthcare;
- education;
- oil and gas; and
- utilities, etc.

SPECIAL ISSUES

Cross-border transactions

- 18 | What are the issues unique to structuring and financing a cross-border going-private or other private equity transaction?

In a cross-border private equity transaction, the foreign investor would be required to comply with the foreign ownership restrictions applicable in the case of onshore limited liability companies in the UAE. If the target entity is located in a free zone in the UAE, there are generally no foreign ownership restrictions.

Under the Foreign Direct Investment Law, there are certain specified sectors in which a higher level of foreign ownership is permitted subject to the satisfaction of conditions. The Foreign Direct Investment Law also sets out a negative list relating to certain sectors that are not eligible for foreign ownership:

- exploration and production of petroleum materials;
- investigations, security, military sectors, manufacturing of arms, explosives and military equipment, devices and clothing;
- banking and financing activities, payment systems and dealing with cash;

- insurance services.
- *hajj* (pilgrimage) and *umrah* services, providing employment and recruitment services for staff and servants;
- water and electricity services;
- services related to fisheries;
- postal, telecommunications and audio and video services;
- land and air transport services;
- printing and publishing services;
- commercial agents' services;
- medical retail such as private pharmacies; and
- blood banks, venom and quarantine centres.

The UAE Council of Ministers may, by resolutions it issues, add to or remove from the negative list any sectors or activities mentioned above.

Club and group deals

19 | What are some of the key considerations when more than one private equity firm, or one or more private equity firms and a strategic partner or other equity co-investor is participating in a deal?

Where there is more than one private equity firm, or other investors are participating in a deal, it is good practice to enter into a shareholders' agreement to set out the rights and restrictions of the investors. For such transactions, parties can enter into joint investment arrangements pursuant to which the private equity firm controls the investment, including the exit options, and the strategic investor is generally involved in a passive role with board representation and reserved rights for specified matters.

It is common for the transactions to be structured through free zone jurisdictions (such as the Dubai International Financial Centre or Abu Dhabi Global Market). The tax implications arising from such structures should be considered.

Issues related to certainty of closing

20 | What are the key issues that arise between a seller and a private equity acquirer related to certainty of closing? How are these issues typically resolved?

Some of the key issues that arise with respect to closing of transactions involve satisfaction of conditions precedent, timing, regulatory approvals, validity or renewal of licences, execution of necessary documents, third-party consents, employee-related issues, financing arrangements, payment of liabilities, other operational matters, etc.

Such issues are usually resolved by the parties through mutual agreement, waiver or extension of time frames. The different approaches often depend on the commercial understanding of the parties and their objectives to close the underlying transaction. A private equity investor may also seek compensation for premature termination on account of failure by the seller to satisfy its conditions precedent or a breach of pre-closing warranties. This situation can also lead to potential disputes.

UPDATE AND TRENDS

Key developments of the past year

21 | Have there been any recent developments or interesting trends relating to private equity transactions in your jurisdiction in the past year?

No updates at this time.



Hasan Anwar Rizvi
hasan.rizvi@riaabg.com

Dubai International Financial Centre
Gate Village Building 2, Level 3, Suite 301
PO Box 507014
Dubai
United Arab Emirates
Tel: +971 4 4019410
www.riaabarkergillette.com/uae

Coronavirus

22 | What are some of the significant developments and initiatives relating to the covid-19 pandemic that have impacted private equity transactions in your jurisdiction?

No significant developments or initiatives.

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security			
Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)