



Private Equity

Fund formation and transactions
in 42 jurisdictions worldwide

2009

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Mauritius

Malcolm Moller

Appleby

Formation and terms operation

1 Forms of vehicle

What legal form of vehicle is typically used for leveraged buyout (LBO) 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 Securities Act 2005 enables collective investment schemes (leveraged buyouts, LBOs) to be constituted in different legal forms. Collective investment schemes may be constituted as a company, a trust (including a unit trust), or any other legal entity prescribed or approved by the Financial Services Commission (the Commission):

- whose sole purpose is the collective investment of funds in a portfolio of securities, or other financial assets (such as real property or non-financial assets as may be approved by the Commission);
- whose operation is based on the principle of diversification of risk;
- that has the obligation, on request of the holder of the securities, to redeem them at their net assets value, less commission or fees; and
- where the participants do not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management.

Collective investment schemes include closed-end funds whose shares or units are listed on a securities exchange. The Commission may, on application, also recognise collective investment schemes established in a foreign country. Recognition may be subject to such conditions that the Commission considers necessary or desirable for the protection of participants in the scheme.

The liability of prospective investors will be limited to the amount remaining unpaid on shares they have subscribed to in the scheme or fund.

2 Forming an LBO fund vehicle

What is the process for forming an LBO fund vehicle in your jurisdiction?

All applications for registration of a scheme or fund must be made through a licensed management company and will require the following documentation:

- constitution (three copies);
- notice of first directors, secretary, management shareholders and location of registered office;
- consent forms of directors, management shareholders and secretary;

- 'know your customer' documentation on the directors, management shareholders and promoters;
- other information that is necessary for the establishment of a company;
- letters of reference from the banker, lawyer and accountant (letters of reference may be dispensed with if the promoter is itself a fund manager authorised in another jurisdiction. In such cases, the letters of reference may be replaced by proof of authorisation in the other territory and a copy of the promoter's latest accounts. Short CVs are needed of the persons to be involved in key positions in the Mauritian company);
- legal certificate from local law practitioner;
- name and address of local representative;
- set of constitutive documents of the scheme (ie, prospectus signed by two directors, custodian agreements, sub-custodian agreement, investment management agreement, administration agreement, investment advisory agreement, secretarial and registrar agreement, etc);
- name and particulars of expatriate staff, if required; and
- brief track record of applicant and detailed business plan.

Registration procedure

The Commission must approve any scheme before it commences business, and in considering an application, the Commission needs to be satisfied of the following:

- the track record and credentials of the promoters;
- the fund structure;
- the objectives of the fund;
- the investors and the market targeted;
- types of investment the scheme will be dealing in;
- the track record of the investment manager, custodian, and administrator; and
- compliance with regulations in countries, as appropriate (eg, the approval of the Securities and Exchange Board of India if investment is to be made in India).

Once the Commission is satisfied, it will issue an approval in principle so as to enable all the constitutive documents to be prepared and the global business fund to be incorporated.

The following government fees are payable to the Commission in advance: application processing fee of US\$1,000, and an annual licence fee of US\$2,500. These are all inclusive of both the company and the licensing fees, but do not include professional fees or those that may be charged by any third party or service provider.

Processing time

The time frame for incorporation and authorisation of collective investment schemes in Mauritius is three to four weeks.

On the assumption that we would be the lead counsel, with

responsibility for drafting the offering document for the fund, we estimate that our typical legal fees and disbursements in connection with the establishment of the fund or funds would be as follows: legal fees for setting up a scheme or fund would be between US\$20,000 and US\$30,000; however, if the client were to engage an onshore firm as lead counsel and engage us as Mauritius counsel as supporting counsel to the lead counsel, our role would be significantly reduced, as we would not be required to draft the offering document for the fund. Instead, we would be required to review the offering document that has been drafted by the onshore counsel to ensure that it is consistent with Mauritius law and then carry out the other tasks described in the first scenario above. In those circumstances, we estimate that our legal fees would be between US\$11,000 and US\$15,000, plus our disbursements as outlined above.

The current regulatory regime also requires that schemes, subject to the prior approval of the Commission, appoint local and duly licensed CIS (collective investment scheme) administrators, managers and custodians and auditors.

CIS administrators: Under the present regulatory framework, schemes holding category 1 global business licences (GBL1s) in Mauritius, in accordance with the Securities Act and the FSA 2007, must, at all times, be administered by a qualified management company, duly regulated and licensed by the Commission and holding a valid management licence (the CIS administrator). CIS administrators, subject to the prior approval of the Commission and to such terms and conditions the Commission may deem appropriate, may be appointed by collective investment schemes or closed-end funds (or CIS managers acting on their behalf), to provide administrative services. Administration services, under the Securities Act, are restricted to services with respect to the operations and administrative affairs of collective investment schemes or closed-end funds including accounting, valuation or reporting services and the provision of the principal office of a collective investment scheme.

When seeking the approval of the Commission, the applicant must provide details specifying the administrative services that the CIS administrator will provide, full details on the CIS administrator and any other information required by the Commission.

There are minimum capital requirements.

3 Requirements

Is an LBO 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?

The current regulatory regime also requires that schemes, subject to the prior approval of the Commission, appoint local licensed CIS administrators and auditors and also managers and custodians based in any jurisdiction.

Custodians: The assets of the collective investment scheme or closed-end fund cannot be held for safekeeping by a person other than a person approved by the Commission or licensed as a custodian under the Securities Act and who shall be independent from the CIS Manager. Every collective investment scheme or closed-end fund shall appoint and shall at all times have a custodian.

CIS managers: A collective investment scheme or closed-end fund, other than a global scheme.

The Commission may, on application, exceptionally allow a company to be managed by its own board of directors, provided that the board of directors performs the functions of a CIS manager and such directors are jointly bound and responsible to perform the functions of the CIS manager.

Auditors: Under the present regulatory framework, schemes, subject to the prior approval of the Commission, are required to

appoint auditors in accordance with the law. The Commission will not approve an audit firm unless it is satisfied that the audit firm has adequate experience, expertise and resources to carry out such an audit. The Commission may require that the auditor of a scheme submits such additional information in relation to his audit as the Commission considers necessary.

Schemes are, however, not prohibited from instructing overseas investment advisers to manage their assets, and may still execute management decisions in relation to investment and disinvestment overseas. Nothing prevents non-Mauritius based intermediaries from participating as distributors or nominees.

Company secretary

A GBL1 company must have a minimum of one company secretary, who must be a natural person ordinarily resident in Mauritius, although a corporation may act as secretary with the approval of the registrar and subject to certain specified conditions.

Carrying out business in Mauritius

The Financial Services Act 2007 requires that the central administration of any global business fund be situated in Mauritius, and requires that the schemes keep and make available or carry out the following in Mauritius. Global funds should:

- have at least two directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgment;
- maintain at all times its principal bank account in Mauritius;
- keep and maintain its accounting records at its registered office in Mauritius;
- prepare its statutory financial statements or cause to have such financial statements to be audited in Mauritius; and
- provide for meetings of directors to include as least two directors from Mauritius.

4 Access to information

What access to information about an LBO 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?

If the fund is a domestic fund or is listed on the Mauritius Stock Exchange (or both), all information will be publicly available. For domestic companies, the books of the Register of Companies (ROC) are publicly accessible and can be consulted without prior notice being given to the ROC.

The information of schemes and funds is restricted and the books at the ROC relating to schemes and funds are not publicly accessible and cannot be consulted unless duly authorised by the scheme or fund. Information submitted to the Commission (eg, business plans, structure, credentials of promoters) is deemed to be confidential information and is not accessible by the general public.

5 Limited liability for third-party investors

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

Subject to a fund's constitution, third-party investors in the fund shall not be liable for any obligation of the company by reason only of being a shareholder of the fund. The liability of investors or shareholders is usually limited to any amount unpaid on a share held by the shareholder, subject, of course, to its constitution.

6 Fund manager's fiduciary duties

What are the fiduciary duties owed to an LBO 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 performing its duties and exercising its discretions under a relevant agreement, the investment manager shall act in good faith, exercise all the due skill, care and diligence that would be expected of a professional investment manager and operate in accordance with best market practice, in particular when managing the funds, selecting counterparties and evaluating counterparty risk.

7 Gross negligence

Does your jurisdiction recognise a 'gross negligence' (as opposed to 'ordinary negligence') standard of liability applicable to the management of an LBO fund?

No. The recognised standards of civil liability for which civil proceedings may be entered against a CIS manager are negligence, default, breach of trust and breach of duty, where applicable.

8 Other special issues or requirements

Are there any other special issues or requirements particular to LBO 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?

No special issues or requirements are attached to funds in Mauritius except for those commonly prescribed in law. For example, pre-emption rights will apply on transfer of shares if they have not been negated or waived in a fund's constitution.

Funds are capable of being converted and redomiciled under Mauritius law. As regards redomiciliations, this must be specifically allowed under the laws of the jurisdiction of formation of the funds.

Limited partnerships as an investment vehicle do not exist in Mauritius so that foreign limited partnerships would be converted or redomiciled into limited liability companies under Mauritius law. The terms general partner and limited partners will have to be converted to fit the vehicle that will be used; namely that of a limited liability company. A limited partnership agreement will have to be converted to a constitution.

9 Fund sponsor bankruptcy or change of control

With respect to institutional sponsors of LBO funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the LBO fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the LBO fund's sponsor (eg, automatic trigger of dissolution or removal rights at fund level)?

No legal or regulatory consequences arise out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of an LBO fund's sponsor.

The only requirement is that the Commission must be informed forthwith of any change in sponsor, whether due to bankruptcy, insolvency, change of control, restructuring or similar transaction and election of a new sponsor may be reviewed by the Commission who may object to same.

Regulation, licensing and registration**10 Principal regulatory bodies**

What are the principal regulatory bodies that would have authority over an LBO fund and its manager in your jurisdiction, and what are the audit and inspection rights available to those regulators?

The principal regulatory body, as designated under the Securities Act 2005, is the Financial Services Commission of Mauritius.

Under section 43 of the Financial Service Act 2007, the Commission may, at any time, cause to be carried out on the business premises of a licensee an inspection and an audit of its books and records to check whether the licensee is complying or has complied with the requirements of any applicable enactment, or guidelines or the conditions of its licence, authorisation or registration; or satisfies criteria or standards set out in or made under any of the relevant acts under which it is regulated, or any regulations made thereunder.

Without prejudice to his or her powers under the Financial Services Act 2007, where the chief executive of the Commission has reasonable cause to believe that a person has engaged or is engaging in conduct in relation to securities that is not in the interest of the investing public or the public interest, the chief executive may order that an investigation be conducted under section 44 of the Financial Services Act 2007. For the purposes of its investigation, the FSC may enter any premises used or apparently used by the licensee for business purposes, at any reasonable time; search for any document or other thing that he considers may be relevant to the investigation; administer oath, affirmation or declaration; seize any document, article, object or any electronically stored information which the investigator deems necessary; and summon any licensee, or its officers, employees and associates, or any witness necessary for the conduct of the investigation. The licensee, its officers and employees shall give the chief executive full and free access to the records and other documents of the licensee as may be reasonably required for the inspection.

11 Governmental requirements

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

Please see question 1.

12 Registration of investment adviser

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

If an LBO's investment manager or investment adviser are incorporated under Mauritius law, they will need to be registered with and duly licensed by the Commission before they can offer investment and investment advisory services. As regards appointment of foreign investment managers and investment advisers, their appointment must be authorised by the FSC.

13 LBO fund manager – requirements

Are there any specific qualifications or other requirements imposed on an LBO fund's manager, or any of its officers, directors or control persons, in your jurisdiction?

The identity of the investment manager, its track record, and licences or authorisations, if any, held by the investment manager must be disclosed to the Commission.

Taxation**14 Tax obligations**

Would an LBO 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? Please describe what conditions, if any, apply to an LBO fund to qualify for applicable tax exemptions.

The fund, as a company holding a Category 1 Global Business Licence in Mauritius, is tax-resident in Mauritius and is liable to Mauritian taxation at a fixed rate of 15 per cent of its chargeable income. Domestic funds will also be taxed at a fixed rate of 15 per cent of chargeable income. Funds may also be eligible to foreign tax credits on their foreign-source income. After application of the provisions on foreign tax credit, where applicable, the tax rate of 15 per cent set out above may be reduced to 3 per cent.

Funds that are centrally controlled and managed in Mauritius can, with the approval of the commissioner of income tax also accede to the benefits of double taxation agreements.

Other fiscal incentives associated in Mauritius are:

- no withholding taxes on dividends paid out of income from approved global business activities;
- no withholding tax on interest;
- no capital gains tax; and
- no estate duty or inheritance tax payable on the inheritance of shares in a global business entity.

15 Local taxation of non-resident investors

Would non-resident investors in an LBO fund be subject to taxation or return-filing requirements in your jurisdiction?

No, this is not applicable.

16 Local tax authority ruling

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

It is not necessary or desirable to obtain a ruling from the local tax authorities with respect to the tax treatment of an LBO fund vehicle formed in Mauritius.

Investors ordinarily resident in Mauritius are not allowed to invest in global business funds unless this has been approved by the Commission. As regards investors in domestic funds, investors will be taxed at a fixed rate of 15 per cent of their chargeable income.

17 Organisational taxes

Must any significant organisational taxes be paid with respect to LBO funds organised in your jurisdiction?

No organisational taxes are payable.

18 Special tax considerations

Please describe briefly what special tax considerations, if any, apply with respect to an LBO fund's sponsor.

There are no special tax considerations other than set out above.

19 Tax treaties

Please list any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

Mauritius has concluded 33 tax treaties and is party to a series of treaties under negotiation.

The treaties currently in force are as follows: Barbados, Belgium, Botswana, China, Croatia, Cyprus, France, Germany, India, Italy, Kuwait, Lesotho, Luxembourg, Madagascar, Malaysia, Mozambique, Namibia, Nepal, Oman, Pakistan, Rwanda, Senegal, Seychelles, Singapore, South Africa, Sri Lanka, Swaziland, Sweden, Thailand, Uganda, United Arab Emirates, United Kingdom and Zimbabwe.

Funds that are centrally controlled and managed in Mauritius can, with the approval of the commissioner of income tax, accede to the benefits of double taxation agreements.

20 Other significant tax issues

Are there any other significant tax issues relating to LBO funds organised in your jurisdiction?

Funds may be eligible to foreign tax credits on their foreign source income. After application of the provisions on foreign tax credit, where applicable, the tax rate of 15 per cent set out above may be reduced to 3 per cent.

Selling restrictions and investors generally**21 Legal and regulatory restrictions**

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

With regards to the requirements for the offer and issue of securities under Mauritius law, the Securities Act 2005 (the Act) and the Securities (Public Offers) Rules 2007 (the Rules) apply in the following manner. The Act provides that a person is deemed to make an offer or distribution of securities where that person invites another person to:

- purchase or subscribe to securities that have never been issued;
- enter into an agreement for the underwriting of securities;
- purchase securities underwritten;
- distribute securities previously offered without a prospectus; or
- purchase securities, other than securities acquired on a securities exchange in normal market operations, previously issued and held by a person, including an issuer, and where the offer or distribution is made from Mauritius, or received in Mauritius.

Requirement for a prospectus: except for collective investment schemes authorised by the regulator, the Financial Services Commission, a person can make an offer of securities to the public where:

- the entity whose securities are being offered is in existence at the time of the offer;
- the offer is made in a prospectus that complies with this part; and
- the Commission has given a provisional registration to the prospectus. In case where an offer is made by an investment dealer acting for an issuer; or any person holding securities on behalf of the issuer, the prospectus shall be established by the issuer or the person holding the securities.

A person cannot distribute an application form to the public for an offer of securities unless the registration of the prospectus has

become effective and the form is attached to or accompanies the prospectus. The information in a prospectus should be in the English or French language and should be up to date at the time of issue of the securities.

Prospectus not required: there are instances where a prospectus shall not be needed. These are as follows:

- an issue of securities of a company at or in connection with the formation of the company, where no solicitation is made for the purchase of the securities;
- the transmission of securities by succession;
- the vesting or transfer of securities by operation of law or by order of a court;
- an offer or issue of securities that is a private placement;
- an offer or issue of securities that is made only to sophisticated investors;
- an offer or issue of securities only to related corporations of the issuer of the securities; or
- an offer by an issuer to allow the exercise of an exchange, conversion, or subscription rights previously issued for securities held by a reporting issuer or under a subscription plan, a share dividend plan or a dividend reinvestment plan or under an employee share plan or a similar plan and is made only to officers or employees of the issuer, where the issuer has complied with its obligations under this Act, any regulations made under this Act or any FSC Rules as to disclosure in relation to the securities; employment and directors share plan, etc.

For the purpose of the Act, 'private placement' means an offer of securities where the total cost of subscription or purchase for each person to whom the offer is made is at least equal to the amount determined by FSC Rules (FSC Rules are pending) and where each person subscribes or purchases for his or her own account and no publicity is made by the person making the offer. A 'sophisticated investor' means:

- the government of Mauritius;
- a statutory authority or an agency established by an enactment for a public purpose;
- a company, all the shares in which are owned by the government of Mauritius or a body specified in the point above;
- the government of a foreign country, or an agency of such government;
- a bank;
- a collective investment scheme manager, namely, fund manager;
- an insurer;
- an investment adviser;
- an investment dealer; or
- a person declared by the Commission to be a sophisticated investor.

For private placement there are no restrictions on a minimum investment amount or minimum denomination. However, based on our experience (the market practice in Mauritius) a person is treated as a sophisticated investor or an expert investors where such person is:

- an investor who makes an initial investment, for his or her own account, of no less than US\$100,000; or
- a sophisticated investor as defined in the Act or any similarly defined investor in any other securities legislation (as further expanded under the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008).

There is no limit to the number of offerees that would trigger a public offer if sold to sophisticated investors or as a private placement.

22 Types of investor

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

Please see above restrictions and definitions.

23 Identity of investors

Does your jurisdiction require any ongoing filings with, or notifications to, regulators regarding the identity of investors in an LBO fund (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?

Yes. All changes regarding the composition of the ownership, management or control of the fund or the fund manager must be communicated to the relevant authorities in Mauritius, namely the Commission and the ROC (where applicable) and may be subject to prior approval of the regulators. Ongoing filings and notifications are therefore required.

24 Licences and registrations

Does your jurisdiction require that the person offering interests in an LBO fund have any licences or registrations?

There is no such requirement locally.

25 Money laundering

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 an LBO fund or the individual members of the sponsor.

In Mauritius, a number of legislative changes have been introduced in the past to enhance the existing anti-money laundering and combating the financing of terrorism (AML/CFT) legal framework. AML/CFT in Mauritius is governed by the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA) and the Financial Intelligence and Anti-Money Laundering Regulations 2003 (the Regulations). The Commission has also published its code on the Prevention of Money Laundering and Terrorist Financing, which requires the carrying out of due diligence, record keeping, disclosure of identities of investors and individual members of the sponsors.

The Commission has been given statutory responsibility for supervising and enforcing compliance by licensees (including management companies) of the requirements imposed under the FIAMLA and regulations or guidelines which are made under the FIAMLA.

Exchange listing

26 Listing

Are LBO 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?

LBO funds are capable of being listed on the Stock Exchange of Mauritius (SEM).

A fund, whether incorporated in Mauritius or overseas, seeking a listing on the Official List of the SEM should:

- demonstrate an adequate trading record with published or filed accounts for the three years preceding the application for listing;

Update and trends

The most recent significant development relating to funds including LBO funds in Mauritius is the Securities (Collective Investment Scheme and Closed-end funds) Regulations 2008 (the Regulations). The new Regulations provide a detailed regulatory framework for regulating collective investment schemes in Mauritius (CIS). For instance, they set out, inter alia, the types of CIS authorised under the Securities Act and the conditions for licensing, authorisation and approval of a CIS. A CIS may be constituted as a company or trust or any other legal form as authorised by the FSC. The Regulations lay down the steps to follow to obtain the authorisation for a CIS or a global scheme and the conditions applying thereto. The Regulations specify the terms upon which the approval of a CIS administrator is acquired from the FSC. A CIS administrator provides administrative services with respect to a CIS. The Regulations stipulate the rules governing the CIS manager, starting with his or her appointment to the

termination of his office. CIS managers have general duties to ensure that the assets of a scheme are clearly identified and left separate from any other assets and must ensure that the assets are entrusted to a custodian and manages the assets according to the Regulations and the constitutive documents. The Regulations also establish the prudential and conduct of business rules. A CIS manager holding a licence issued by the FSC is required to maintain a minimum stated capital of at least 1 million Mauritian rupees (approximately US\$38,000) or an equivalent amount. A minimum amount of 50,000 rupees applies for the CIS manager.

The Regulations prescribe the general rules of conduct and internal control of the CIS manager. Every CIS manager is required to subscribe to an insurance policy to cover risks such as fraudulent activities of employees and instructions and legal liability to third parties arising from breaches of professional duty.

- have an expected market capitalisation of not less than 20 million Mauritian rupees (approximately US\$593,000); and
- issue at least 25 per cent of the shares to the public, with a minimum of 200 shareholders, though this threshold may be phased in, with companies issuing 15 per cent of their shares initially, increasing this proportion to 20 per cent within three years and 25 per cent by the end of five years.

Other listing requirements comprise the submission of various documents, which provide detailed information on the company, an undertaking to conform to the rules and regulations of the SEM, and listing particulars to be issued to the public prior to the listing.

A new applicant must be duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment, and be operating in conformity with its memorandum and articles of association or constitution or equivalent constitutive documents. Where a company is incorporated in Mauritius, it must be and remain a public company. A new applicant must have published or filed audited accounts which cover at least three years and the latest accounts must be in respect of a period ending not more than six months before the date of the listing particulars. In exceptional cases the SEM may accept accounts in relation to a period of less than three years. Before submitting an application for listing, a new applicant may seek any required information from the listing

division regarding the application process and listing requirements.

The listing particulars must contain all documents provided for in the listing rules to enable investors to be reasonably well informed about the securities quoted and the issuer, including the following:

- the assets and liabilities of the issuer;
- the financial position of the issuer;
- the stated capital of the issuer;
- the profits and losses of the issuer;
- the directorship of the issuer;
- the rights attaching to the securities; and
- the prospects of the issuer.

An issuer seeking listing on the official list of the SEM shall:

- file with the listing division of the SEM a draft formal application for listing in the form set out in the listing rules and the initial application documents set out in the listing rules. The application shall be considered initially by the listing division, which shall then advise the listing executive committee of the eligibility and suitability of the issuer for listing;
- issue listing particulars which comply with both the prospectus requirements of the Securities Act 2005 and the content requirements for listing particulars set out in the listing rules;

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- make provision in its constitution for various matters set out in the listing rules; and
- enter into a listing undertaking in the form set out in the listing rules.

In gauging the suitability for listing of a new applicant, the SEM may have regard to the continuity of management of the new applicant throughout the three years covered by the accounts mentioned above.

For this purpose, the SEM will consider whether:

- the current executive directors have had, collectively, direct management responsibility for all the group's major businesses and key executive directors have played a significant role in the group's activities; and
- the senior management of the group taken as a whole has changed materially.

The directors of a new applicant that is a company must have collectively appropriate expertise and experience for the management of its business. The company must ensure that each of its directors is free from conflicts between duties to the company and private interests and other duties, which might be detrimental to the business or prospects of the applicant, unless the applicant can demonstrate that arrangements are in place to avoid detriment to its interests. Directors must also satisfy the SEM that they are of good character and integrity. To that effect, each director and proposed director of a new applicant will have to make a declaration and undertaking in the form set out in the listing rules and submit same to the SEM.

27 Restriction on transfers of interests

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

There are no restrictions under Mauritius law. It is solely up to the board and management of the fund to restrict same either in its offering memorandum or prospectus or in the fund's constitution.

Participation in LBO transactions

28 Legal and regulatory restrictions

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

If the funds are structured as a scheme or funds, they will only be allowed to carry out their business activities outside Mauritius by virtue of their status as global business funds and by virtue of their category 1 global business licences.

29 Compensation and profit-sharing

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.

No restrictions and contractual arrangements will apply accordingly.

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