



# Private Equity

in 33 jurisdictions worldwide

Contributing editor: Casey Cogut

# 2011



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# British Virgin Islands

Michael J Burns, Valerie Georges-Thomas, James McConvill and Christian Victory

Appleby

## Formation and terms operation

### 1 Forms of vehicle

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?

A private equity fund may be constituted as a business company limited by shares under the BVI Business Companies Act 2004, as amended (the Act), which is the most common form of vehicle used by private equity funds under British Virgin Islands law. A private equity fund may also be formed as an international limited partnership under the Partnership Act 1996, as amended (the Partnership Act).

A BVI company has a separate legal personality from its shareholders. Section 27 of the Act provides that a company incorporated thereunder is a legal entity in its own right separate from its members and continues its existence until it is dissolved. As such, subject to the Act, the debts and liabilities of a BVI company are its own and not those of its shareholders.

Under BVI law, a BVI limited partnership does not, like a company, have a separate legal personality and the general partners thereof are liable jointly for the debts and obligations of the partnership incurred while each is a general partner of the partnership.

### 2 Forming a private equity fund vehicle

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

#### Formation

The process for the incorporation of a private equity fund as a company (limited by shares) is straightforward. The company is formed by its proposed first registered agent submitting to the registrar of corporate affairs (the registrar) the memorandum and articles of association of the company duly signed by the registered agent as subscriber along with the registered agent's consent to act in the approved form and the prescribed fee. If the registrar is satisfied that the provisions of the Act have been complied with, the registrar will register the memorandum and articles of association, allot a unique number to the company and issue a certificate of incorporation. The company will be incorporated from the date specified in its certificate of incorporation. A company is generally incorporated within one business day of the submission of its documents to the registrar.

There are certain compulsory matters that must be included in the memorandum of association of a company including the name of the company, the type of company, the name and address of its first registered agent and address of its first registered office and, in the case of a company limited by shares, a statement of the maximum number of shares the company is authorised to issue (or that it is authorised to issue an unlimited number of shares), the classes of shares the company will be authorised to issue and a statement of the

rights attaching to each class of shares where two or more classes of shares are authorised. Otherwise, the terms of the memorandum and articles of association of a company are flexible and can be tailored to suit the intended structure of the transaction.

The formation of a BVI international limited partnership is also a straightforward two-step process. Two or more persons (a general partner and at least one limited partner) must execute articles of partnership, which equate to a partnership agreement and essentially contain the internal regulations of the partnership, and submit them to the intended registered agent of the partnership. Thereafter, a memorandum of partnership, which shall be subscribed by the registered agent, must be submitted to the registrar of limited partnerships. The memorandum of partnership must include the name of the partnership, the objects and purposes for which the partnership is established, the term (if any) of the partnership, the name and address of the registered agent of the partnership, the name and address of each general partner and, in the case of an international limited partnership, a statement that the limited partnership will not carry on certain activities as set out in the Partnership Act. Upon receipt of the memorandum of partnership and the prescribed fee, the registrar of limited partnerships will register the memorandum of partnership and issue a certificate of limited partnership to the partnership. The partnership will begin its existence on the date shown in its certificate of limited partnership. A limited partnership can be registered in one business day.

The articles of partnership are required to be submitted to the registered agent of the limited partnership only. They are not required to be filed publicly and are not open to inspection by the public.

#### Regulation

The Securities and Investment Business Act, 2010 (SIBA) and the Mutual Funds Regulations, 2010 (the MFR), which repealed and replaced the Mutual Funds Act, 1996, govern mutual funds under BVI law. A mutual fund is defined thereunder as: a company or any other body, a partnership or a unit trust that is incorporated, formed or organised under the laws of the BVI or of any other country that collects and pools investor funds for the purpose of collective investment; and issues fund interests that entitle the holder to receive on demand or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company or other body, the partnership or the unit trust.

SIBA does not use the term 'open-ended' or 'closed-ended'. However, pursuant to the definition of a mutual fund, only funds of an open-ended nature, that is, funds that issue and redeem shares on a continuous basis, are funds within the meaning of SIBA. SIBA therefore regulates open-ended funds and their managers and administrators. It does not regulate closed-ended funds. Private equity funds are typically structured as closed-ended with investors not having an ability to realise their investment in the fund until the fund disposes of its underlying investments at the end of a fixed period of operation.

Where a private equity fund is structured as a closed-ended fund, it will not be subject to regulation under SIBA and can commence its business as soon as it has been incorporated or formed under BVI law.

If the private equity fund is structured to operate as an open-ended fund, it must complete the relevant regulatory process under SIBA before it can commence business.

SIBA does, however, regulate and govern persons that carry on 'investment business' within or from the BVI and includes managers, investment advisors, administrators and custodians of closed-ended funds who are formed under the laws of the BVI. Such entities are now, therefore, required to be licensed under SIBA as regards the carrying on of investment business if incorporated or formed under the laws of the BVI.

### Fees

A private equity fund formed as a company limited by shares will be subject to registration fees upon incorporation and annual government licence fees, the amount of which, in each case, is based on the number of shares it is authorised by its memorandum of association to issue. Where the company is authorised to issue no more than 50,000 shares, the registration fees upon incorporation and annual government licence fees will be US\$350. Where the company is authorised to issue more than 50,000 shares, the registration fee upon incorporation and the annual government licence fees will be US\$1,100.

A BVI limited partnership will be subject to a registration fee upon formation and annual government licence fees of US\$500.

If a private equity fund comes under the purview of SIBA, it will be subject to an application fee of US\$700 and an annual recognition fee of US\$1,000 as a recognised private or professional fund.

The private equity fund, whether constituted as a company or as a limited partnership, will be required to appoint a registered agent and have a registered office in the BVI, and will be subject to the annual fees of its duly appointed registered agent for the provision of such services. The quantum of such fees varies among registered agents.

### Services providers

Service providers involved in the constituting of a BVI private equity fund will include BVI legal counsel who will assist with the drafting of the fund's documentation and advise on all BVI law issues and the duly appointed registered agent of the entity who will facilitate the incorporation or formation process.

### Minimum capital requirements

There are no minimum capital requirements under BVI law applicable to a company or a partnership being structured for the purpose of a private equity transaction.

### 3 Requirements

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?

There is no requirement under BVI law for the functionaries of a private equity fund, including its administrator, custodian and corporate secretary, to be domiciled in the BVI.

A company incorporated under the Act must at all times have a registered office and a registered agent in the BVI. Similarly, a limited partnership is required by the Partnership Act to have a registered agent and a registered office in the BVI at all times.

In terms of books and records, a company must keep at the office of its registered agent a copy of its memorandum and articles of association, an imprint of its seal, a register of members and register of directors maintained in accordance with the Act or a copy each

thereof and copies of all notices and other documents filed by the company in the previous 10 years. Copies of minutes of meetings and resolutions of members and directors can be maintained at the registered offices of the company or elsewhere within or outside of the BVI provided that if such records are maintained outside the BVI, the company must provide its registered agent with a written record of the physical address of the place or places at which such records are kept. A company is also required to keep records that are sufficient to show and explain the company's transactions and will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

The general partners of a limited partnership are required to maintain at the registered office of the limited partnership a register of limited partnership interests in which the name and address and amount and dates of contributions of each partner and the amount and date of any payment representing a return of any part of a partner's contribution shall be recorded. A limited partnership is also required to keep such accounts and records as the general partners consider necessary or desirable to reflect the partnership's financial position.

### 4 Access to information

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?

Any member of the public can carry out a search of the public records of a company available at the Registry of Corporate Affairs for a prescribed fee. A similar search of the public records of a limited partnership can be conducted at the Registry of Limited Partnerships on payment of a prescribed fee. A search of the public records of a company will reveal its memorandum and articles of association and any amendments thereto, its certificate of incorporation, details of whether the annual government licence fees of the company have been paid, details of any charges filed by the private equity company or any chargee on its register of registered charges and any notice of appointment of liquidator where the company is being liquidated. A BVI company is required by law to maintain a register of shareholders and a register of directors and to maintain the registers or copies thereof at its registered offices, but it is not required to file such registers publicly at the Registry. The records of the company maintained at its registered office are confidential and a member of the public will only be able to inspect or obtain copies of such records with the consent of the company.

A search at the Registry of Limited Partnerships of the public records of a limited partnership will yield the memorandum of partnership, and where amendments have been made to the memorandum of partnership, a supplementary memorandum of partnership detailing the amendments and the certificate of limited partnership. The file will also contain details as to whether annual licence fees have been paid and any other documents required by the Partnership Act to be filed at the Registry of Limited Partnerships, such as articles of dissolution where the limited partnership is being wound up. A limited partnership is not required by law to file its articles of partnership or its register of limited partnerships and, therefore, information as to its limited partners and the amount of their capital contributions will not be available to the public.

### 5 Limited liability for third-party investors

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?

Notwithstanding the basic principle of corporate legal personality of a BVI company, which the BVI courts are invariably keen to uphold, the BVI courts will likely be guided by the various decisions of the

English courts in setting aside the separate personality of a company in circumstances where:

- a company is being used for the purpose of fraud or as a mechanism to avoid a legal obligation;
- it is established that there has been dishonesty or abuse of the corporate form; or
- in the case of a group of companies where the justice of the case requires that the companies within that group should be regarded as a single economic entity.

A limited partner is liable to the partnership for the difference between his or her contribution as made and the contribution stated in the articles of partnership as having been made and for any unpaid contribution that the articles of partnership state would be made in the future. However, a limited partner could be held liable as a general partner if he or she is also a general partner or he or she participates in the control of the partnership business and any persons transacting business with the limited partnership reasonably believe, based upon his or her conduct, that he or she is a general partner. The Partnership Act makes provision for circumstances in which a limited partner may be involved in the partnership's activities without danger of liability. For example, a limited partner will not be deemed to be engaged in 'control of the partnership business' (subject to liability to third parties) by reason only of the limited partner being a contractor or agent of the partnership, consulting or advising the general partner, acting as surety or guarantor for the limited partnership or voting on certain matters such as the sale of assets or incurring indebtedness otherwise than in the ordinary course of business.

#### 6 Fund manager's fiduciary duties

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?

The business and affairs of a BVI company under the Act are managed by or under the direction or supervision of its board of directors. The Act gives statutory footing to the equitable and common law duties owed by a director. Accordingly, a director must act honestly and in good faith with and in what the director believes to be in the best interests of the company. A director must also exercise his or her powers as a director for a proper purpose and shall not act or agree to the company acting in a manner that contravenes the Act or the memorandum and articles of association of the company. The Act enshrines the common law duty of care and skill and, accordingly, a director must exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account the nature of the company, the nature of the decision, his or her position and the nature of the responsibilities undertaken by him or her. The duties specified in the Act are not intended to be exhaustive and a director would also be subject to the equitable duty of not putting himself or herself in a position where his or her duty and his or her interest may conflict and he or she may be liable for breach of any secret or unauthorised profit that he or she makes out of his or her office.

The duties owed by the directors to a company are statutory and it is therefore doubtful that they can be varied by agreement and, if the duties are variable by agreement, the extent to which this can be done is likely to be very limited.

The business of a limited partnership is managed and controlled by its general partners. The general partners have a duty in accordance with the Partnership Act to render true accounts and full information of all things affecting the partnership, to account for private profits from any transaction concerning the partnership and a duty not to compete with the partnership. In addition, as a matter of common law, the general partners owe various fiduciary duties to the

limited partners including the duty to act honestly, in good faith and with due care and loyalty. The common law duties of a general partner could likely be varied by agreement of the partners.

#### 7 Gross negligence

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

As a matter of general principle, BVI law does not recognise a separate tort of negligence amounting to gross negligence.

#### 8 Other special issues or requirements

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?

There are no other special BVI law issues or requirements applicable to a private equity fund formed under BVI law, particularly where the private equity fund is structured as a non-regulated closed-ended fund. We confirm, in particular, that there are no restrictions on transfers and withdrawals of shares or interests other than what may be contained in the fund's documentation, no restrictions on operations generally, no modifications required to ensure fiscal transparency and no special investor rights arising on matters such as the removal of the investment manager or early termination of the entity other than what may be contained in the fund's documentation. There are also no limitations on the number of investors a private equity fund may have unless it is to be structured as a private open-ended fund.

A foreign private equity company may redomicile under the laws of the BVI if the laws of the jurisdiction in which it is registered permit it to continue in another jurisdiction including the BVI. There is no regime under the Partnership Act for the redomiciling of a foreign domiciled partnership under BVI law.

#### 9 Fund sponsor bankruptcy or change of control

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 bankruptcy, insolvency, change of control or restructuring of the institutional sponsors of a BVI-constituted private equity fund will not have any legal or regulatory consequences for the private equity fund under BVI law, particularly if the fund is not regulated under SIBA. In particular, such events will not result in the automatic dissolution of a private equity fund company or limited partnership or the removal of shareholders' rights in the entity.

### Regulation, licensing and registration

#### 10 Principal regulatory bodies

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 audit and inspection rights available to those regulators?

The Financial Services Commission (the Commission) is the principal regulatory body in the BVI. The Commission will have power to inspect the books and records and audit the fund to ensure compliance with SIBA and regulations thereunder only if it is a regulated fund under SIBA. As previously discussed, most private equity funds

fall outside of the scope of SIBA and are therefore outside of the Commission's supervision.

As stated above, if incorporated or formed under the laws of the BVI, the manager of a private equity fund will require to be licensed under SIBA. As such, the Commission will have power to inspect the books and records and audit the manager to ensure compliance with SIBA and regulations thereunder.

#### 11 Governmental requirements

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?

Where the fund is structured as a closed-ended fund and therefore not subject to any regulation under SIBA, it will not be subject to any governmental approvals, licensing or registration requirements (whether as a mutual fund, investment company or otherwise) under BVI law.

If the private equity is within the purview of SIBA, it will be required to be recognised as a private or as a professional fund before it can commence its business or administer its affairs within or from the BVI.

#### 12 Registration of investment adviser

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?

The licensing requirements under SIBA regulating managers, investment advisors, administrators and custodians of private equity funds (whether open or closed-ended) apply only if the manager, investment advisor, custodian or administrator is domiciled in the BVI or is a foreign domiciled manager or administrator operating through a branch or representative office in the BVI. There are no licensing requirements under BVI law for the officers or directors of a BVI private equity fund.

#### 13 Fund manager requirements

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?

There are no prescribed qualifications or other requirements under BVI law applicable to a non-BVI domiciled manager of a BVI private equity fund that is not regulated by SIBA.

If domiciled in the BVI, or if a foreign domiciled manager is operating through a branch or representative office in the BVI, directors and senior officers and any persons having a significant interest in the manager of a private equity fund are required to satisfy the Commission's fit and proper criteria, meaning compliance with the Commission's principles of honesty, integrity and reputation, competence and capability and financial soundness and including confirmation of, among other matters, no previous criminal or disciplinary proceedings. Significant interest, in respect of an undertaking, means a holding or interest in the undertaking or in any parent of the undertaking held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly, to control 10 per cent or more of the voting rights of the undertaking; to a 10 per cent or more share in any distribution of the surplus assets of the undertaking; or to appoint or remove one or more directors of the undertaking.

For a private equity fund constituted as a company, the Act provides that the following would be disqualified for appointment as the director thereof:

- an individual who is under 18 years of age;
- a person who is a disqualified person within the meaning of section 260(4) of the Insolvency Act;

- a person who is a restricted person within the meaning of section 409 of the Insolvency Act;
- an undischarged bankrupt; and
- a person who, in respect of a particular company, is disqualified by the memorandum and articles of association from being a director of the company.

#### 14 Political contributions

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.

There are no such rules under BVI law.

#### 15 Use of intermediaries

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.

There are no such rules under BVI law.

#### 16 Bank participation

Describe any legal or regulatory developments emerging from the 2008 financial crisis that specifically affect banks with respect to investing in or sponsoring private equity funds.

Under the BVI's Regulatory Code, 2009, as amended, (the Code), which has the status of law in the BVI, a BVI bank shall not, without the prior written approval of the Commission: incorporate, form or acquire a subsidiary; acquire a significant interest in a company, other than a subsidiary; make an investment or acquisition that is equal to or exceeds 10 per cent in value of the bank's capital base; or purchase, or acquire an interest in, any property if the purchase or acquisition would result in the bank exceeding the aggregate investment limit specified for that type of property.

Further, a BVI bank shall ensure that at all times the aggregate value of its investment in the shares or interests in a company or unincorporated body that is not a subsidiary does not exceed 25 per cent of its capital base and would include investment in a private equity company that is not a subsidiary of the BVI bank. In addition, a BVI bank shall notify the Commission in writing of any investment or acquisition that it makes that, in value, exceeds five per cent and is less than 10 per cent of its capital base. This requirement applies with respect to a purchase or acquisition made by a subsidiary of a BVI bank as if the purchase or acquisition had been made by the bank itself.

The maximum exposure limits specified in the Code are intended to be regarded as absolute maximums, but the Commission expects BVI banks to establish significantly lower limits unless there are exceptional reasons to the contrary.

#### Taxation

##### 17 Tax obligations

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? Please describe what conditions, if any, apply to a private equity fund to qualify for applicable tax exemptions.

A BVI company and all dividends, interests, compensation and other amounts paid by the company to persons who are not resident in the BVI are exempt from the BVI Income Tax Act and any capital gains

realised with respect to the shares, debts obligations or other securities of the company by persons who are not resident in the BVI are exempt from all forms of taxation under BVI law.

An international limited partnership is also exempt from the provisions of the Income Tax Act. All payments made by an international limited partnership to persons not resident in the BVI and all capital gains realised with respect to an interest in an international limited partnership held by persons who are not resident in the BVI are exempt from the Income Tax Act.

There is no stamp duty payable on instruments relating to transfers of property to or by a company or an international limited partnership, on instruments relating to transactions in respect of the shares of a company or the interests of an international limited partnership, or on instruments relating to the business of a company or an international limited partnership. No BVI estate, inheritance, succession tax or other charge is payable by persons not resident in the BVI with respect to any shares of a company or an interest in an international limited partnership.

The fund will not be required to withhold taxes under BVI law with respect to distributions made to investors.

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#### 18 Local taxation of non-resident investors

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

Non-resident investors in a BVI private equity fund would not be subject to taxation or return filing requirements under BVI law.

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#### 19 Local tax authority ruling

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 would not be necessary for the fund to obtain any such opinion under BVI law.

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#### 20 Organisational taxes

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

There are no organisational taxes to be paid under BVI law with respect to the organisation of a private equity fund under BVI law.

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#### 21 Special tax considerations

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

No special tax considerations will apply with respect to a private equity fund's sponsor under BVI law.

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#### 22 Tax treaties

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

To date, the BVI has signed 20 tax information exchange agreements (TIEAs) with Aruba, Australia, France, Germany, Portugal, Denmark, Ireland, the Netherlands, the Netherlands Antilles, New Zealand, the Nordic Alliance including Sweden, Norway, Finland, Iceland, the Faroe Islands and Greenland, the People's Republic of China, the United Kingdom and the United States.

The TIEA with the US provides for the competent authorities in the US and the BVI to cooperate on the provision of information relating to the administration and enforcement of the domestic laws of each jurisdiction concerning taxes and tax matters covered by the TIEA. Such information must be provided on request, in accordance

with the requirements of the TIEA and without regard to whether the conduct being investigated would constitute a crime had it occurred in the territory of the requesting party.

The TIEAs between the BVI and the UK and Australia were signed in October 2008 and will enter into force upon each jurisdiction completing its legislative procedures. The TIEAs will enable the jurisdictions to request information relevant to a tax matter under investigation in order to enforce their domestic laws. In addition to the TIEAs, the BVI and the UK also signed an agreement for the avoidance of double taxation with respect to taxes on income that will benefit BVI and UK residents. The BVI and Australia also signed an agreement for the allocation of taxing rights with respect to certain income of individuals.

The remaining TIEAs were recently concluded and will enter into force upon each jurisdiction completing its legislative procedures, and will enable the jurisdictions to request information relevant to a tax matter under investigation in order to enforce their domestic laws.

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#### 23 Other significant tax issues

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

No.

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#### Selling restrictions and investors generally

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##### 24 Legal and regulatory restrictions

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 current local law, there are no legal or regulatory restrictions under BVI law on the offering or sale of interests in a BVI-constituted private equity fund, including no restrictions or requirements with regard to the types of investors to whom the fund may be offered.

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##### 25 Types of investor

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).

There are none.

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##### 26 Identity of investors

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?

There are no ongoing filings with or notifications required to be made to the Commission with regard to the identity of investors in a private equity fund constituted under BVI law. If the private equity fund is a non-regulated fund under BVI law (that is, if it is a closed-ended fund), it would not be required to make any filings or notifications to the Commission upon a change of ownership, management or control of the private equity fund or its manager.

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##### 27 Licences and registrations

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

No.

**Update and trends**

The most recent significant development relating to private equity funds in the BVI has been the coming into force of the Securities and Investment Business Act, 2010 (SIBA). SIBA regulates and governs persons that carry on 'investment business' within or from the BVI and includes managers, investment advisors, administrators and custodians of closed-ended funds who are formed under the laws of the BVI. Such managers, investment advisors, administrators and custodians are now, therefore, required to be licensed under SIBA as regards the carrying on of investment business if incorporated or formed under the laws of the BVI.

**28 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 a private equity fund or the individual members of the sponsor.

A BVI-constituted private equity fund will be subject to and must comply with the Anti-Money Laundering Regulations, 2008 (the Regulations) and the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (the Code of Practice). The fund must obtain verification of the identity of all persons subscribing for shares or interests in the private equity fund and confirmation of the source of any funds received by the fund from subscribers. The Regulations specify certain circumstances in which verification of the identity of a subscriber may not be required, for example, where the subscriber is a 'regulated person' or a 'foreign regulated person' as defined in the Regulations, but the exceptions will not apply where the fund or the person handling the transaction on behalf of the fund knows or suspects that the subscriber is engaging in money laundering.

In terms of record keeping, the Regulations require the private equity fund to maintain a record of all transactions carried out by or on behalf of the fund (such as records sufficient to identify the source and recipient of payments from which investigating authorities will be able to compile an audit trail for suspected money laundering) and any reports made by it to the BVI Financial Investigations Agency (FIA) and all inquiries relating to money laundering received by it from the FIA.

**Exchange listing****29 Listing**

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?

There is no securities exchange in the BVI. BVI private equity funds can and frequently do list on securities exchanges in other jurisdictions including the Bermuda Stock Exchange, AIM and the Irish Stock Exchange. BVI funds can also now list on the Hong Kong Stock Exchange.

**30 Restriction on transfers of interests**

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

As noted in question 29, there is no securities exchange in the BVI.

**Participation in private equity transactions****31 Legal and regulatory restrictions**

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?

There are no legal or regulatory restrictions.

**32 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.

There are no legal or regulatory issues under BVI law.

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