



# Private Equity

in 33 jurisdictions worldwide

Contributing editor: Casey Cogut

# 2011



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# Cayman Islands

**Bryan Hunter and Richard Addlestone**

Appleby

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## 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?

An exempted limited partnership (ELP), which is established under the Cayman Islands Exempted Limited Partnership Law (2010 Revision) (the Exempted LP Law), is the entity that is still most commonly selected in the Cayman Islands to form leveraged buyout funds (LBOs). An ELP does not have a separate legal personality under Cayman Islands law. Investors in an ELP are issued partnership interests and are considered limited partners (LPs) and their liability is limited to their partnership interests (unless LPs take part in the conduct of the ELP's business). An ELP must have at least one general partner (GP) who conducts an ELP's business and the GP (or if there is more than one GP, at least one of them) must be resident in the Cayman Islands or, if a company, be registered under the Companies Law or, if a partnership, be registered under the Exempted LP Law. The GP is usually an entity set up by the manager specifically for each LBO fund.

A Cayman Islands exempted company, which is established under the Cayman Islands Companies Law (2010 Revision) (the Companies Law) may also be used to form an LBO fund. Such a company is a limited liability company formed with share capital, and the liability of the shareholders of an exempted company is limited to the amounts unpaid on their shares, if any.

### 2 Forming a private equity fund vehicle

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

Formation as an ELP is accomplished by filing with the Cayman Islands registrar of exempted limited partnerships a statutory statement signed by the GP that provides the following details:

- the name of the ELP (which must contain the words 'Limited Partnership' or the letters 'L.P.' or 'LP');
- the address of its registered office in the Cayman Islands (which is mandatory);
- the general nature of the business of the ELP;
- the term of the ELP (which can be unlimited);
- the full name and address of each GP; and
- a declaration that the ELP will not undertake business with the public of the Cayman Islands (other than so far as may be necessary for the carrying on of the business of the ELP outside of the Cayman Islands).

A Cayman Islands exempted company is incorporated on the filing of the memorandum and articles of association with the Cayman Islands registrar of companies.

The overall establishment timescale and costs depend on the nature and complexity of the transaction. However, the registration of an ELP or the incorporation of an exempted company can be done on an express basis in 24 to 48 hours. Once Cayman legal counsel has an overview of the particular transaction, an estimate of legal fees can be provided.

The government registration fee for an ELP is US\$1,220 and an annual fee of US\$1,220 are payable to the Cayman Islands registrar of exempted limited partnerships, and for an exempted company a registration fee of US\$732 and an annual fee of US\$732 are payable to the Cayman Islands registrar of companies. The annual fees for an exempted company are based on its authorised share capital of the company and therefore the annual fee could be more than US\$732 if the exempted company is established with an authorised share capital of US\$51,200 or greater, which is usually unnecessary.

At the outset, the only service provider that it is necessary to engage is a Cayman Islands law firm and a registered office service provider. Most law firms have an affiliated management company that can provide registered office services.

There are no minimum capital requirements.

Additionally, as further discussed in question 10, if the equity interests of the LBO are redeemable at the option of the investor it may be required to be registered with or licensed by the Cayman Islands Monetary Authority (CIMA) as a 'mutual fund' pursuant to the Cayman Islands Mutual Funds Law (2009 Revision) (the MF Law).

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### 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?

It is not necessary for a typical LBO fund to have a Cayman Islands-based custodian or administrator. However, the GP has the responsibility for maintaining (or causing to be maintained) a register of mortgages, and also a register of partnership interests recording the name and address and contribution of each partner, the amount of any capital returns and the dates thereof. Such register must be maintained at the registered office of the ELP.

An exempted company is also required to maintain a registered office in the Cayman Islands, a register of mortgages and charges, a register of directors and officers and a register of members.

There is no statutory requirement for an LBO fund to have a corporate secretary but usually one is provided by the registered office service provider.

#### 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?

The register of partnership interests of an ELP, mentioned above, is not open to public inspection, but is open to inspection by all partners in an ELP or by any other person with the consent of the GP of the relevant ELP. The registrar is required to maintain a register of each ELP registered under the Exempted LP Law, which shall contain the name of the ELP, the general nature of the business of the ELP, the registered office address of the ELP, the term of the ELP and the name and address of its GPs. The registrar is required to keep such register open to public inspection during normal business hours.

Under the Companies Law, the registers of members and directors of an exempted company are private documents. An exempted company is also required to keep at its registered office a register of all mortgages and charges specifically affecting property of the exempted company. The register of mortgages is open to inspection by any creditor or member of the exempted company. The registrar is required to provide the registered office address of each exempted company.

#### 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?

As indicated above, the limited liability of the LPs of an ELP granted as a matter of law pursuant to the Exempted LP Law may be lost if they take part in the management of the ELP. It should be noted that the list of activities that an LP can undertake without risking loss of its limited liability includes the following:

- holding an office or interest in, or having a contractual relationship with, a GP;
- consenting or withholding consent to any action proposed, in the manner contemplated by the partnership agreement with respect to the business of the ELP;
- calling, requesting, attending or participating in any meeting of the partners of the ELP;
- taking any action that results in the winding up or the dissolution of the ELP;
- taking any action required or permitted in the partnership agreement or by law to bring, pursue, settle or terminate any action or proceedings brought in circumstances where the GPs have authority to do so but refuse, without good cause, to institute such proceedings;
- appointing a person to serve on a board or committee of the ELP, a GP or an LP or removing such person.

If an LP loses its limited liability status, such an LP shall be liable in the event of the insolvency of the ELP for all debts and obligations of that ELP incurred during the period that such LP participated in the management of the ELP as though the LP were for such period a GP, provided always that the LP shall be rendered liable only to a person who transacts business with the ELP during such period with actual knowledge of such participation and who then reasonably believed such LP to be a GP.

Conversely, a Cayman Islands company is regarded as an entity distinct from its members, and the limited liability of shareholders of a Cayman company will generally be respected. Similar to the laws of other jurisdictions, there may be certain circumstances where a Cayman Islands court might pierce the corporate veil and disregard the fundamental principle that a company is a separate legal person from its members and that their respective assets and liabilities are distinct; such unusual circumstances include those in which the company is

deemed to be a sham or considered by the courts to be used as a tool of fraud or other criminality.

#### 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?

It should be noted once more that in accordance with the Exempted LP Law, the management of an ELP is conducted by the GP, which enters into all letters, contracts, deeds, instruments or other documents on behalf of the ELP, and the GP has a statutory duty to act at all times in good faith in the interests of the ELP. As this is a statutory duty, there is little scope to modify this duty. However, the duties owed by the LBO fund's manager will be set out in the management agreement between the manager and the ELP and may be modified in the manner set forth in such agreement.

Similarly, the duties and liabilities of directors of Cayman companies are governed by the Companies Law as supplemented by English common law in so far as common law has not been amended by statutory provisions. English case law is considered as highly persuasive in the courts of the Cayman Islands.

A Cayman company can only act by agents, most usually by directors. Under English common law, directors have certain duties of care, diligence and skill and also a fiduciary duty to act in the best interests of the company. The fiduciary duty of directors differs considerably from that of ordinary trustees, however, because trustees have a duty to be cautious and not take risks – duties that obviously do not apply to directors of a commercial operation such as a company.

The constitutional documents of a Cayman Islands LBO will usually indemnify the GP, or directors, or their respective affiliates for all liabilities, loss, damage, cost or expense, in the absence or fraud, wilful neglect or 'gross negligence'.

It should be noted that the Companies Law was amended in 2009 and introduced criminal offences, including fraud committed in the 12 months preceding a winding up, misconduct in the course of winding up and making material omissions in statements relating to the company's affairs in the course of a winding up. Further, the concept of a shadow director was also introduced and is defined as any person in accordance with whose directions or instructions the directors of a company are accustomed to act. The definition of shadow director states that a person is not deemed to be a shadow director by reason only that the directors act on advice given by him or her in a professional capacity. That said, directors should now bear this statutory concept in mind and ensure that they reach independent determinations and record such determinations and their reasoning.

#### 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?

Gross negligence is not a fully recognised legal term under Cayman Islands law. If gross negligence is referred to in the constitutional document or agreement of a Cayman LBO fund, it should be defined either by reference to the laws of a jurisdiction that does recognise gross negligence or in some other way.

**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?

It is worth noting that:

- an LP may only transfer its LP interest subject to the express terms of the LP's limited partnership agreement;
- the GP of an ELP may appoint and remove the fund manager; and
- the partnership agreements of many ELPs contain provisions to create advisory committees, which are internal bodies that consent or approve of certain actions by the GP, the members of which can include LPs. Therefore LPs should read the terms of the advisory committee carefully to ensure that actions taken via an advisory committee are not deemed to be managing the affairs of the ELPs and risk losing its limited liability status.

A company with limited liability and having a share capital (transferring foreign company) incorporated under the laws of a jurisdiction outside the Cayman Islands (a foreign jurisdiction) may continue by way of transfer as an exempted company incorporated under the Companies Law, provided that the laws of the foreign jurisdiction where it is incorporated permit or do not prohibit such a transfer. Such transfer by way of continuation does not create a new company or other new legal entity. The transferring foreign company is effectively pulled up by its roots from the foreign jurisdiction and 'replanted' in the Cayman Islands as the same legal entity, but now governed by Cayman Islands law rather than the law of the foreign jurisdiction.

The transferring foreign company may apply to the registrar of companies to be registered by way of continuation as an exempted company in the Cayman Islands. Various documents will need to be filed with the registrar on making such application. In addition, the registrar must be satisfied that the name of the transferring foreign company is acceptable. This can be achieved by providing the name or list of proposed names of the company to the registrar for prior approval. If the proposed name is unacceptable (for example, if there is an existing company in the Cayman Islands with a similar name), the transferring foreign company must change its name within 60 days of registration.

Provisional registration is possible where certain of the conditions are not yet met upon payment of an additional fee.

Further, any partnership established under the laws of a jurisdiction other than the Cayman Islands may, at any time, upon effecting such amendments to the partnership agreement as shall be necessary to comply with the Exempted LP Law and upon filing the statement required by section 9(1), be registered under the Exempted LP Law and, with effect from the date indicated on the certificate of registration issued by the registrar pursuant to section 9(3), shall be governed exclusively thereafter as an ELP in accordance with the Exempted LP Law.

With effect from the date indicated on the certificate of registration described above, the ELP and the partnership interests of the parties therein and their rights and liabilities, as against any person who is not a partner, shall cease to be governed by the laws of such other jurisdiction, as the case may be, save in respect of any act or omission occurring before such date that shall continue to be governed by such law or the laws of such other jurisdiction. Provided always without prejudice to the foregoing generality that such registration shall not operate to:

- create a new legal entity;
- affect the property previously acquired by or on behalf of the ELP;

- affect any act or thing done prior to such registration or the rights, powers, authorities, functions or obligations of the ELP, any partner or any other person prior thereto; or
- render defective any legal proceedings by or against the ELP or any partner or any other person, and any legal proceedings that could have been continued or commenced by or against the ELP or any partner or any other person before its registration hereunder may, notwithstanding such registration, be continued or commenced after such registration and in respect of which such law or the laws of such other jurisdiction shall be of application.

The following material terms are normally amended to ensure compliance with the law:

- the governing law clause is changed to Cayman Islands law;
- the registered office of the ELP must be amended to an address in the Cayman Islands;
- the partnership agreement should be executed as a deed where it contains a power of attorney clause;
- the termination of the partnership on an insolvency event and the appointment of a successor general partner may require amendment to comply with the Exempted LP Law; and
- at least one GP must be either a Cayman Islands company, an ELP or a company (not partnership) incorporated outside the Cayman Islands and registered in the Cayman Islands as a foreign company.

It is also worth checking that at least one GP is incorporated, or registered or resident in the Cayman Islands; the powers granted to LPs under the partnership agreement make it clear that LPs are not taking part in the management of the ELP; and whether LPs can withdraw at their option as this may trigger the need to register as a mutual fund with the Cayman Islands Monetary Authority under the MF Law as further discussed in question 10.

**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?

There are no statutory or regulatory consequences in this regard provided that, in the case of an ELP, a successor GP is appointed and the registrar is notified of the change in GP; and if the fund is CIMA-registered (as discussed in question 10), CIMA is notified of this change or a change of manager. All other consequences are normally governed by the constitutional documents of the fund.

**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?

As stated above, if the equity interests of the LBO are redeemable at the option of the investor and the LBO has more than 15 investors, it is required to register as a 'mutual fund' with CIMA pursuant to the MF Law.

A CIMA-registered LBO fund is required to prepare and submit annual audited financial statements to CIMA. CIMA may require such information or such explanation in respect of the LBO fund as CIMA may reasonably require to enable CIMA to carry out its duties under the MF Law. An LBO fund must give CIMA access to or provide at any reasonable time all records relating to the LBO fund and CIMA may copy or take an extract of a record to which CIMA

is given access. The MF Law provides for substantial fines for failure to comply with any such requests by CIMA and CIMA may apply to the court to have the LBO fund wound up in accordance with the Companies Law.

### 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?

An ELP and an exempted company must undertake not to do business with the public of the Cayman Islands (other than so far as may be necessary for the carrying on of the business of the ELP outside of the Cayman Islands). The only registration requirement would be to register with CIMA under the circumstances mentioned in question 10.

### 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?

Fund managers that are vehicles incorporated or registered in the Cayman Islands, or any person or entity incorporated anywhere else in the world but with an established place of business in the Cayman Islands through which the securities investment business is carried on, will be caught by the Cayman Islands Securities Investment Business Law (2004 Revision) (SIBL) and the licensing requirements set out thereunder, save for the following persons, provided that in each case they file an annual declaration of exemption with CIMA and pay an annual fee (currently US\$4,269) to be registered as an excluded person:

- one of a group of companies carrying on securities investment business exclusively for one or more members of its group (to include direct or indirect subsidiaries of a holding company);
- a person (having a registered office in the Cayman Islands for which services are provided by a licensed person) carrying on a securities investment business exclusively for:
  - a sophisticated person (a person regulated by CIMA, such as a Cayman registered mutual fund, or an overseas regulatory authority; or a person whose securities are listed on a recognised security exchange; or a person who by virtue of knowledge and experience in financial and business matters is reasonably regarded as capable of evaluating the merits of a proposed transaction and each single transaction has a value of at least US\$100,000);
  - a high-net worth person (an individual whose net worth is at least US\$1 million or any person (which term would include any individual or company) who has total assets of not less than US\$5 million); or
  - a company, partnership or trust (whether or not regulated as a mutual fund) of which the shareholders, unit holders or limited partners are one or more persons who are sophisticated persons or high-net worth persons; or
- a person who is regulated in respect of securities investment business by a recognised overseas regulatory authority in the country or territory (other than the Cayman Islands) in which the securities investment business is being conducted.

Most LBO fund managers are able to qualify for registration as an excluded person under SIBL.

### 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?

As long as the fund manager is registered as an excluded person under SIBL (or SIBL does not apply to it), which is normally the case, there will be no qualifications or licensing requirements required under Cayman Islands law for the fund manager and its principals or directors.

### 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 currently no such Cayman Islands rules to describe.

### 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 currently no such Cayman Islands rules to describe.

### 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.

There are currently no such developments in the Cayman Islands to describe.

## 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.

There is currently no income, capital gains or withholding tax imposed in the Cayman Islands, and thus a Cayman Islands LBO fund is not subject to such taxation in the Cayman Islands.

The governor-in-cabinet of the Cayman Islands can grant a tax exemption undertaking in relation to an exempted company confirming that for a period of 20 years in the event of imposition of income, capital gains or inheritance taxes, the exempted company and its shareholders will not be taxed. The governor-in-cabinet can grant a similar tax exemption undertaking in relation to an ELP for a period of 50 years.

### 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?

No, and they would have the benefit of the tax exemption undertaking described in question 17.

**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?

Currently none, other than as described in questions 17 and 18.

**20 Organisational taxes**

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

There are currently no significant organisational taxes in the Cayman Islands. However, there are registration fees payable to the government in connection with the registration or incorporation of an LBO fund in the Cayman Islands, as described above.

**21 Special tax considerations**

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

Currently none, other than as described in questions 17 and 18.

**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.

On 13 August 2009, following the Cayman Islands signing its twelfth Tax Information Exchange Agreement (TIEA), the Organisation for Economic Cooperation and Development (OECD) added the Cayman Islands to its 'white list' of jurisdictions that substantially implement international tax standards. Essentially, TIEAs are bilateral agreements under which jurisdictions agree to cooperate in tax matters through the exchange of information. The Cayman Islands has entered into TIEAs with Australia, Canada, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, Indonesia, Ireland, Japan, Mexico, the Netherlands, Netherlands Antilles, New Zealand, Norway, Portugal, Sweden, the United Kingdom and the United States.

As of 1 July 2005, the EU Savings Directive (2003/48/EC) (EUSD) became effective. The EUSD requires withholding of tax or exchange of tax information on interest paid to EU-resident individuals and certain EU intermediary entities in certain limited circumstances. Distributions made by an LBO fund or income derived from the sale or redemption of the shares should generally not be subject to the EUSD withholding tax or exchange of information. However, if an investor in an LBO fund were to hold its shares through a professional nominee that is based in an EU member state, it is possible that the EUSD may apply to distributions made by the fund to the investor or to the income derived by the investor from the sale or redemption of the shares in the LBO fund. Whether the EUSD would apply in any given case would depend upon the circumstances surrounding the relevant investor and the manner in which the EUSD has been implemented in the relevant EU member state.

Additionally, on 27 November 2001, an agreement between the United States of America and the United Kingdom and Northern Ireland, including the government of the Cayman Islands, the Tax Information Exchange Agreement (TIE), was signed to facilitate the exchange of information relating to taxes. It provides for assistance through the exchange of information relating to the administration and enforcement of US federal income tax laws, including information that may be relevant to the determination, assessment, verification, enforcement or collection of tax claims with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax evasion in relation to such persons. Information may be provided in accordance with TIE whether or not the person to which the information relates is a resident or national of the jurisdiction

answering a request for information, provided that the information is within the territory or in the possession or control of a person subject to the jurisdiction of the party accepting such request. However, TIE does provide for confidential treatment of information exchanged. Information may not be used for purposes other than those contained in TIE without the prior consent of the competent authority that provided the information, and information provided shall be disclosed only to persons or authorities officially concerned with the purposes contained in TIE. Where information is provided, the requesting party may not disclose such information to any third party.

**23 Other significant tax issues**

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

Currently none, other than as described in questions 17, 18 and 22.

**Selling restrictions and investors generally****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.

As indicated above, a Cayman Islands LBO fund is not allowed to carry on business with the public of the Cayman Islands other than so far as may be necessary for the carrying on of the business of the LBO fund outside of the Cayman Islands. As such, Cayman Islands LBO funds are prohibited from offering shares (in the case of an exempted company) unless such shares are listed on the Cayman Islands Stock Exchange.

**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 currently no other Cayman Islands restrictions to describe.

**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 filings or notifications required as regards investors in an exempted company or an ELP. However, as noted above, an ELP must maintain a register of limited partnership interests (showing the identity of the investors) that is open to inspection by all partners of an ELP or by any other person with the consent of the GP of the relevant ELP. In addition, the GP must file a statement with the registrar of exempted limited partnerships where there has been a change in any of the information provided under the section 9 filing described in question 2.

It should also be noted that if the LBO fund is CIMA-registered, to effect the required registration the LBO fund is required to provide CIMA with a summary of the terms of the offering for each class of equity interests and to provide details of the various agents of the fund along with a copy of its offering document. The fund must notify CIMA of any changes in the details of the summary of the terms of the offering and any change in the fund's agents as filed on initial registration and supply copies of any supplements to or revision of the offering document.

**27 Licences and registrations**

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

Ordinarily no, unless the person is domiciled in Cayman or carries on business in the Cayman Islands.

**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 Cayman Islands LBO fund is responsible for the prevention of money laundering and is required to obtain a detailed verification of a subscriber's identity and the source of payment. Depending on the circumstances of each application, a detailed verification might not be required where:

- the subscriber is a recognised financial institution that is regulated by a recognised regulatory authority and carries on business in a country listed in schedule 3 of the Money Laundering Regulations (2010 Revision) of the Cayman Islands (as amended from time to time);
- the subscription application is made through a recognised intermediary that is regulated by a recognised regulatory authority and carries on business in a schedule 3 country – in this situation the fund may rely on written confirmation from the intermediary that the requisite identification procedures on the subscriber for business have been carried out; or
- the subscription payment is remitted from an account (or joint account) held in the applicant's name at a bank in the Cayman Islands or a bank regulated in a schedule 3 country. The fund may therefore require evidence identifying the branch or office of the bank from which the moneys have been transferred, verify that the account is in the name of the subscriber and retain a written record of such details. Normally the fund and its general partner (or directors if it is an exempted company) reserve the right to request such information as is necessary to verify the identity of a subscriber.

Any failure or delay by a subscriber to produce any information required for verification purposes could result in the fund refusing to accept the subscription application and the subscription moneys relating thereto.

If any person who is resident in the Cayman Islands (including the GP or a director) has a suspicion that a payment to the fund (by way of subscription or otherwise) contains the proceeds of criminal

conduct, that person is required to report such suspicion pursuant to the Proceeds of Crime Law, 2008.

**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?

While it is possible for an LBO fund, set up either as an exempted company or as an ELP, to apply for a listing on the Cayman Islands Stock Exchange (CSX), it would be unusual for an LBO fund to do so. The advantage of obtaining a listing is that the fund's securities would be listed on a recognised exchange, which some institutional investors may require. The disadvantage would be that it would add another layer of expense and formation procedures, which may not be necessary in order to facilitate a private equity transaction.

The CSX listing rules are available online at [www.csx.com.ky](http://www.csx.com.ky) and the principal initial and ongoing requirements for listing are set out in chapter 9 of the CSX listing rules. For a mutual fund the principal disbursement to expect in connection with the listing on CSX of the shares in the fund will be the listing fee of US\$2,500. In addition, there will be an annual fee of US\$2,500, which is payable both initially and annually. A summary of some of the key requirements under the CSX listing rules is as follows:

- CSX must be satisfied that the directors of the mutual fund and its investment manager have adequate expertise and experience in the management of mutual funds;
- as discussed in question 30, the securities of the mutual fund must be freely transferable, but may be subject to certain transfer restrictions if they are adequately disclosed and approved by CSX;
- the mutual fund must appoint a custodian that is acceptable to CSX to safeguard its assets. The custodian must be a separate legal entity from the mutual fund, its directors, the investor manager, the investment adviser and the administrator, but may be an associate of any of them;
- the mutual fund must appoint an independent auditor to carry out annual audits of its financial statements;
- the net asset value of the mutual fund must be calculated at least quarterly and the method of valuation of the assets should be in accordance with the applicable accounting standards for the mutual fund; and
- the mutual fund must appoint a registrar and transfer agent in the Cayman Islands or other financial centre acceptable to CSX.

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**30 Restriction on transfers of interests**

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

Chapter 9 of the CSX listing rules provides that securities must be freely transferable, but certain transfer restrictions are allowed if they are adequately disclosed and approved by CSX, such as where transfer restrictions are required in order to avoid breaching the securities laws of any relevant jurisdictions.

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**Participation in private equity transactions**

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**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 currently no such restrictions in the Cayman Islands.

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**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 currently no such issues in the Cayman Islands that affect compensation and profit-sharing. The structuring of such matters in a Cayman Islands LBO fund is normally driven by the legal or regulatory requirements of certain onshore jurisdictions.

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