

# market intelligence

# Private Equity

Cautiousness prevails through  
macroeconomic uncertainty

*Global interview panel covering  
key economies led by Bill Curbow*

# market intelligence

Welcome to *GTDT: Market Intelligence*.

This is the third annual issue focusing on global private equity markets.

**Getting the Deal Through** invites leading practitioners to reflect on evolving legal and regulatory landscapes. Through engaging and analytical interviews, featuring a uniform set of questions to aid in jurisdictional comparison, *Market Intelligence* offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most interesting cases and deals.

*Market Intelligence* is available in print and online at [www.gettingthedealthrough.com/intelligence](http://www.gettingthedealthrough.com/intelligence)

**Getting the Deal Through**

London

October 2016

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Published by

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Tel: +44 20 3780 4104  
Fax: +44 20 7229 6910  
©2016 Law Business Research Ltd  
ISSN: 1746-5524



Strategic Research Sponsor of the  
ABA Section of International Law



Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112

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# PRIVATE EQUITY IN THE CAYMAN ISLANDS

Simon Raftopoulos represents clients in a wide variety of corporate finance transactions, including private equity and fund finance, joint ventures, mergers, acquisitions, leveraged buyouts, initial and secondary public offerings and private placements of equity and debt securities. In the private equity space, Simon also represents clients on large private equity transactions and his team has a deep PE formation and transactional presence in Cayman.

Simon has been consistently ranked since 2012, and is highly rated globally across the leading legal directories. Most recently,

*Chambers Global 2016* quoted Simon to have earned his praise within the legal industry for his 'precise and definitive' advice. *Chambers Global 2015* refers to Simon as a 'great banking lawyer who is extremely practical' and *Legal 500 2015* reports that he is a 'technically brilliant' global private equity head. Simon was also recently listed in *Who's Who Legal: Corporate – M&A and Governance 2015*, *Who's Who Legal of Mergers & Acquisitions 2014* as well as *Who's Who Legal: Insurance & Reinsurance 2014*.

*What trends are you seeing in overall activity levels for private equity firm buyouts and investments in your country during the past year or so?*

**Simon Raftopoulos:** The bulk of activity continues to occur in the middle market in Cayman. Significant investments by private equity firms into multi-jurisdictional trusts and corporate services continue as well. Recently, the acquisition by Bridgepoint of the Appleby Fiduciary and Administration Business (AFB) highlights this.

Asset classes that provide key historic earnings growth, the potential for strong new business flows and opportunities for expansion are always going to be attractive. I would also not be surprised if we see more substantial acquisitions for this sector and perhaps a few exits in the luxury real estate sector. Five Mile Capital's significant investment into Cayman has elevated the Ritz Carlton to the premier resort destination in the Caribbean. They may exit this year and this, I suspect, will encourage further PE investments into this sector in Cayman.

Globally, so far, 2016 has seen a continuation of the follow-on investment trend. In June, Cayman joined in the party when Intertrust BV snapped up Elian from majority-owned Electra Partners.

*Looking at types of investments and transactions, are private equity firms continuing to pursue straight buyouts or are other opportunities, such as minority-stake investments, partnerships or joint ventures, also being considered?*

**SR:** Globally, minority stakes remain popular. The thawing of the equity market in Q2 saw a few IPOs get away. Generally, equity cheques (as a percentage) remain elevated and, given the multinational nature of many operating companies coupled with recent uncertainty in debt markets, potential external shocks (such as securing favourable debt and servicing it, and foreign exchange concerns) seem to be keeping the market moving quickly.

Luxury real estate and corporate and trust services remain an attractive asset class in Cayman and will continue to do so in the future. A stable political landscape and certainty of rule of law is certainly not discouraging PE firms from divesting their capital into jurisdictions like Cayman.

*What were the recent keynote deals? And what made them stand out?*

**SR:** The acquisition of AFB by Bridgepoint was key in terms of continuing interest in this market sector and as an indication that all M&A deals tend to be cross-border. A standout for me was the deal needed to seamlessly close with numerous regulatory consents across multiple jurisdictions in multiple time zones. The recent sale of Elian in June this year by majority-owned Electra Partners to Intertrust was also important. It was a successful exit for Electra (so PE houses and investors take notice of that) and it



Simon Raftopoulos

also allows Intertrust to increase its global footprint complexity and suite of services.

*Does private equity M&A tend to be cross-border? What are some of the typical challenges legal advisers in your jurisdiction face in a multi-jurisdictional deal? Are those challenges evolving?*

**SR:** Yes, we are seeing private equity M&A as being almost exclusively cross-border, involving the use of Cayman Islands structures for the pooling and staging of the investment monies, with onward investment subsequently being made in another, onshore jurisdiction. Typical challenges include regulatory risk and consents, governing law issues and actual due diligence protocols. Cross-border deals sometimes have laws that are just similar enough to be dangerous, so great care and attention is needed across jurisdictions to ensure that the deal is legal and binding, and obligations are enforceable.

Generally, clients' expectations are also higher.

Cross-border work is more demanding than ever before in this increasingly complex regulatory and compliance environment.

*What are the current themes and practices in financing for transactions? Have there been any notable developments in the availability of debt financing or the terms of financing for buyers over the past year or so?*

**SR:** Secured bank financing continues to be used, given the relatively cheap cost of debt capital resulting from prevailing low interest rate levels. This theme has been consistent for the past several years. Sponsors have been able to obtain covenant-lite

## ***“Luxury real estate and corporate and trust services remain an attractive asset class in Cayman and will continue to do so in the future.”***

packages to go along with the larger equity cheques (in historical context).

Going forward, macro issues and global uncertainty (US elections, Brexit, political instability, central bank interventions, etc) will probably play, in turn, into the price of debt packages.

***How has the legal and policy landscape changed during the past few years in your country?***

**SR:** The Cayman Islands have recently enacted legislation introducing limited liability companies in the jurisdiction. We have already seen significant uptake on these structures, which was expected given their familiarity and popularity in other jurisdictions such as Delaware. Cayman continues to have a stable political landscape and a sophisticated regulatory and legal framework. Private equity firms continue to look at the Cayman political and legal framework with a fair degree of certainty and confidence. I do not see this changing anytime soon.

***What are the attitudes to private equity among policymakers and the public? Has there been any noteworthy resistance to private equity buyouts by target boards or shareholders? Does shareholder activism play a significant role in your country, and if so, how has it impacted private equity M&A?***

**SR:** The policymakers in the Cayman Islands tacitly recognise the importance of the role private equity shops play in driving forward the global economy. No specific legislation or policy statements have been made favouring private equity investors over any others, but this is, perhaps, anticipated given the Cayman Islands’ government’s policy of creating a prevailing business-friendly environment to all commercial enterprises through its overarching legal and policy strategies.

***What levels of exit activity have you been seeing? Which exit route is the most common? Which exits have caught your eye recently, and why?***

**SR:** So far, we are not seeing a significant uptick in investors making exits in Cayman in 2016 (save for Electra, as mentioned above). Instead, private equity firms appear to be ‘doubling-down’ on their existing investments, with increasing acquisitions in their portfolio. The thawing of the equity markets should allow for an increase in IPOs quarter-on-quarter. Elevated inventory levels and shorter holding periods for secondaries both tie in with market themes around plenty of ‘dry powder’ and a lack of original target that fit within model parameters. I suspect luxury high-end real estate may be a sector where PE firms may look to enter into and also, perhaps even exit this year.

***Looking at funds and fundraising, does the market currently favour investors or sponsors? What are fundraising levels like now relative to the past few years?***

**SR:** Sponsors with solid track records and great brand recognition seem to find no shortage of outsized limited partnership (LP) commitments, raising jumbo funds with relative ease. Despite all of the existing dry powder collected by sponsors, fundraising continues to gobble up dollars. An encouraging trend was the successful closing of a number of smaller funds early in the year. While energy focused funds have fallen out of favour with the price of oil, restructuring and distressed funds have stepped forward into the spotlight.

On the investor side, we are seeing some LPs pushing terms and getting special treatment. Generally, their success rate on terms increases with the size of their commitment to the fund.

***Talk us through a typical fundraising. What are the timelines, structures, and the key contractual points? What are the most significant legal issues specific to your country?***

**SR:** This would all be pretty market standard. Raising a new fund has never been a simple task, especially now with the increase in raising well-established PE firms’ mega-follow-on funds. Much of the fundraising is done where the LPs are based, which is not often in Cayman, so there is not much to add here.

***How closely are private equity sponsors supervised in your country? Does this supervision impact the day-to-day business?***

**SR:** The Cayman Islands provides a generally robust regulatory environment – this is applicable across the board and not to any one specific segment (such as private equity sponsors). However, such regulation is purpose-based and preserves the individual right



to contract while not being overly intrusive in its approach.

*What effects has the AIFMD had on fundraising in your jurisdiction?*

**SR:** The AIFMD private placement regimes allow Cayman Islands funds to be marketed in a vast majority of EEA member states, so many funds wanting to do business in the region have not been swayed by the regulatory changes imposed by the AIFMD.

Although ESMA has deferred its assessment on whether it would recommend extending the AIFMD marketing passport to the Cayman Islands, we are confident that the Cayman Islands can satisfy any concerns ESMA may have and be granted the passport in the near future.

*What are the major tax issues that private equity faces in your jurisdiction? How is carried interest taxed? Do you see the current treatment changing?*

**SR:** The Cayman Islands presently impose no taxes on profits, income, capital gains or otherwise.

*Looking ahead, what can we expect? What will be the main themes in the next 12 months for both private equity M&A and fundraising?*

**SR:** Pricing, pricing, pricing. PE firms have a glut of dry powder and a very competitive market for original targets causing pricing issues. Additionally, macro issues have caused debt pricing to remain uncertain, which disproportionately disadvantages sponsors, particularly in auction scenarios.

## THE INSIDE TRACK

*What factors make private equity practice in your jurisdiction unique?*

The presence of large well-established sponsors, market recognition and certainty of jurisdiction.

*What three things should a client consider when choosing counsel for a complex transaction in your jurisdiction?*

Three things that should be considered are:

- trust and similar working practices with your counsel;
- relevant geographic reach; and
- intellectual acumen combined with commercial sense and experience.

*What is the most interesting or unusual matter you have recently worked on, and why?*

I know this sounds clichéd, but all my deals are interesting to me. What makes them interesting is the relationships I have formed with clients and colleagues alike. The PE world is full of smart, friendly and crazy people. It keeps me on my toes.

**Simon Raftopoulos**  
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