LEXOLOGY
Getting The Deal Through

# Private Equity in the United Kingdom

2021 Edition


Dechert LLP

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Dechert LLP

# Private Equity in the United Kingdom

Dechert partnered with Lexology's *Getting the Deal Through* on their annual Market Intelligence Private Equity guide. The guide invites leading practitioners to reflect on evolving legal and regulatory landscapes and global trends in major jurisdictions around the world. Private equity experts from Dechert's Corporate, Finance, Financial Services and Tax practices in London provided the UK chapter content, which is in Q&A format and is reproduced below.

Please click here to access the full Market Intelligence Private Equity Guide.

# Dechert Authors


**Jonathan Angell**
**Partner | Corporate**
London
E: jonathan.angell@dechert.com
T: +44 20 7184 7586



**Daniel Hawthorne**
**Partner | Tax**
London
E: daniel.hawthorne@dechert.com
T: +44 20 7184 7327



**John Markland**
**Partner | Finance**
London
E: john.markland@dechert.com
T: +44 20 7184 7887



**Thiha Tun**
**Partner | Financial Services**
London
E: thiha.tun@dechert.com
T: +44 20 7184 7440

## 1. What trends are you seeing in overall activity levels for private equity buyouts and investments in your jurisdiction during the past year or so?

***Jonathan Angell (JA)***: The year 2020 was, to use the parlance of a football manager (football being used here very much in the United Kingdom (and correct!) sense (i.e., soccer), a game of two halves. In early 2020, private equity (PE) activity in the United Kingdom, along with much of the general M&A market, slowed abruptly as a result of the covid-19 pandemic. Its impact was significant: by way of illustration, May 2020 saw a 70 per cent drop in PE exits compared to May 2019. There was then a significant rebound in activity in H2 2020, a recovery that has showed little signs of slowing in 2021. KPMG's recent UK mid-market PE review reported almost a 50 per cent increase in deal value and more than a 60 per cent increase in deal volumes in H1 2021 as compared to H1 2020, which is perhaps attributable to both the interruption to activity in H1 2020 and the current levels of dealmaking. There is definitely a sense of optimism but, in light of the ongoing effects of the pandemic and the uncertainty that it engenders, it is perhaps best described as cautious optimism.

Within that broader context, the PE market in the United Kingdom and, indeed, much of Europe and elsewhere, remains multilayered. UK PE sponsors have historically operated very successfully across a range of sectors at all levels, from seed and venture capital funding to large (multibillion-pound sterling) PE transactions, including take-privates.

Historically, the United Kingdom has been the largest private equity market in Europe, with a long and proud history in welcoming private equity sponsors who are looking to fundraise and invest there. The United Kingdom also, therefore, has a well-established legal system and regulatory footprint to deal with various outcomes and challenges that the private equity industry may face from time to time. The experience gained by the UK PE industry in the aftermath of the financial crisis in 2008 has resulted in a strong and robust system, and the creation of new asset classes and credit funds that have adapted to the leveraged buyout system.

## 2. Looking at types of investments and transactions, are private equity firms primarily pursuing straight buyouts, or are other opportunities, such as minority-stake investments, partnerships or add-on acquisitions, also being explored?

***JA***: The most common types of PE transactions in the United Kingdom centre around leveraged buyouts (in the form of share or asset acquisitions), take-private transactions, re-financings, flotations and bolt-on transactions.

We expect that traditional PE sponsors will continue to seek innovative investment structures to allow the deployment of capital at attractive valuations, but with a greater degree of downside protection (such as earn-outs, preferred equity or convertible debt).

In the past, the PE industry in the United Kingdom has adapted and driven value creation through its portfolio companies in highly focused and more innovative ways – and there is every reason to believe that it will continue to do so. This will undoubtedly give rise to conventional add-on acquisitions, but also platform deals where PE sponsors rebrand an asset from the outset with a new management team. This will most commonly be achieved through carve-outs of entities from large corporates.

Pre-pandemic, PE firms started, and have continued, to establish long-term funds and deploy long-term capital. This extends the firm's period between its fundraising efforts and also changes its investment life cycle. Most obviously, this will assist with investments and assets that take longer to mature. It may also help change the perception of PE firms in the mind of some public shareholders, which may help PE firms to obtain shareholder approval on take-private transactions.

Non-traditional PE funds (such as sovereign wealth funds, pension plans and family offices) have continued their shift from a minority position to a control or lead-investor-type role on direct investments in the PE space. This trend has been driven by the desire to have greater control, reduced fees and greater returns on invested capital, particularly in the traditional PE space. This shift in focus has, in turn, created additional competition for traditional PE funds. The result has been increased variation in the deployment of capital by these non-traditional PE investors across the capital structure. The UK PE M&A landscape continues to be generally favourable to sellers (both PE and non-PE). Recent trends include:

- An increase in the number of sale processes being run as competitive auctions on a tight timetable;
- Increased prevalence of pre-emptive bids in competitive processes;
- Further growth in the use of warranty and indemnity (W&I) insurance, often with low residual seller liability; and
- Shorter seller liability time periods, in many cases regardless of whether W&I insurance is being used.

Interestingly, at the start of the pandemic, we saw increased time, resources and effort devoted to due diligence, lengthening timetables; that seems to have reversed currently, particularly where there is a competitive process, as we are often seeing a shorter timetable, and light- (or lighter-) touch due diligence. However, as with all trends, there are notable exceptions and PE buyers are well placed to negotiate positions more advantageous than these industry norms, particularly by making use of speed, commerciality and other unique advantages.

Unsurprisingly, some sectors have recovered more quickly than others: TMT, business services and healthcare are receiving the greatest investor interest, while retail, consumer and hospitality have, inevitably, generated less interest. Environmental, social and governance (ESG) considerations, including diversity and inclusion, are likely to remain a key focus, not least in terms of demand from limited partners, consumers and employees, and PE firms are taking a more proactive approach in the area.

## 3. What were the recent keynote deals? And what made them stand out?

***JA***: Two recent deals stand out. The first is the latest in a series of PE bids for UK listed companies: the £6.7 billion all-cash offer by a consortium of PE funds, led by Fortress, for WM Morrison Supermarkets PLC. This sequence (including G4S, John Laing Group, TalkTalk and Sanne Group) has caused some (politicians and trade unions being prime examples) to label the current market as ‘UK for sale’.

The second is a deal in the healthcare and life sciences industry (very much a hot sector, for obvious reasons): the sale by Cerberus Capital Management of Covis Pharma, a global specialty pharmaceutical company (and, therefore, a large, cross-border transaction), to Apollo Global Management, Inc.

## 4. 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? How are those challenges evolving?

***JA***: On the first issue, the answer depends, in large part, on the size of deal. Venture capital investments and mid-market PE transactions tend to have a stronger UK nexus and are often either domestic UK or with limited cross-border involvement. Although somewhat a generalisation, a larger target company or business is more likely to have international operations (or plans) and therefore require cross-border expertise. In addition, many private equity funds are targeted at a specific jurisdiction or region. One trend in this respect, undoubtedly driven by investor appetite but also by the ongoing challenge of deal origination and sourcing, is the proliferation of funds focused on different geographies (emerging markets being a prime example) and non-traditional PE areas (such as credit funds).

With regard to the second question, at its most basic, a cross-border element adds a layer of complexity. Multiple jurisdictions will almost certainly affect the tax structuring and add a layer of complexity to the debt and acquisition financing (both in terms of any debt push-down and security). The challenge is ensuring that this does not become a problem to the overall deal – either substantively or logistically. There is, simultaneously, a positive and a negative aspect to being a UK-based legal adviser. On the plus side, English law is (and, notwithstanding Brexit, continues to be) a significant 'export' of the United Kingdom, generating many cross-border transactions and opportunities. At the same time, the 'Anglo-Saxon deal methodology' that English legal advisers typically adopt may not be familiar (or universally welcome). Whether the transaction involves working with our non-UK offices across the globe or (in jurisdictions where we do not have an office) with independent law firms where we maintain good relationships, the objective is to identify any local law requirements quickly and in a collaborative manner. These requirements can often be procedural or items of detail that are easily solved, but, if left to linger, can become more problematic.

## 5. What are some of the current trends in financing for private equity transactions? Have there been any notable developments in the availability or the terms of debt financing for buyers over the past year or so?

***John Markland (JM)***: The acquisition finance market had a jolt with the covid-19 pandemic but seems to have kicked back into gear during 2021 and the full extent of the repercussions are not yet fully clear.

As was the case prior to the pandemic, the market is soaring again. There is plenty of liquidity in the market, offered by both banks and by debt funds. In the bank market, the vast majority of lending is cov-lite and the borrower is pushing the terms in which they could add incremental debt to levels never seen before. Although in the direct-lending market (where the lenders are funds) the figures are less readily available, it is fair to say that the borrower is getting the best terms they have ever seen in that market too.

That said, we aren't out of the woods yet. There is no doubt that the pandemic had a dramatic effect on many businesses. But as at the time of writing, government subsidy (for example loans and grants to businesses, and the furlough schemes) has delayed the inevitable reckoning and it is too soon to be able to comment on how the acquisition finance market will fare when subsidies are eventually tapered away.

## 6. How has the legal, regulatory and policy landscape changed during the past few years in your jurisdiction?

***Daniel Hawthorne (DH)***: From a tax perspective there continues to be an increased policy focus on transparency, disclosure and ensuring that businesses pay what is considered to be a fair amount of tax in the correct jurisdictions. In the United Kingdom, a number of new legislative provisions have derived from a commitment to implement the recommendations of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project. In terms of the structure and financing of PE deal structures, both the anti-hybrid legislation (which seeks to counteract 'hybrid mismatches' arising from entities or instruments that are treated differently for tax purposes in different jurisdictions) and the interest barrier rules (that further limit the deductibility of corporate interest by reference to UK taxable earnings before interest, taxes, depreciation and amortisation) continue to influence typical structures. The anti-hybrid rules, in particular, create uncertainty in a number of respects and are subject to ongoing refinement. Further limitations on the avail- ability of double tax treaty relief from withholding tax are another indicator of the direction of travel (whether by reason of the application of the 'principal purpose test' under the BEPS multilateral instrument or more robust beneficial ownership requirements established by EU courts in the 'Danish cases').

Although the tax regime applicable to PE in the United Kingdom remains stable and the incumbent government has signalled an intention to simplify the tax system where possible, the United Kingdom remains committed to the OECD's BEPS objectives and is expected to continue to support global measures designed to address perceived imbalances in the global tax system, all of which may contribute to additional tax complexity, at least in the short to medium term. In addition, in the light of the covid-19 pandemic, it has been announced that the United Kingdom's relatively low corporation tax rate of 19 per cent will increase to 25 per cent with effect from April 2023. On the other hand, the proposed introduction of a UK asset holding company vehicle for alternative fund structures (to rival the intermediate investment vehicles commonly utilised in non-UK fund structures) signals a clear intention on the part of the government to improve the competitiveness of the United Kingdom as a jurisdiction in which to establish funds and is hopefully only the first of a number of such positive measures.

Reform of corporate governance in the United Kingdom was kick-started by the UK government in late 2017 when it published a response setting out 12 reforms that the government intends to make to the UK corporate governance regime. Areas to be reformed include, for example:

- Addressing significant shareholder dissent on executive pay;
- Broadening the role of remuneration committees;
- Use of long-term incentive plans;
- Encouraging investors to make full use of their existing powers on executive remuneration;
- Improving directors' understanding of the enlightened shareholder value model; and
- Improving transparency.

These reforms have been implemented in large part since their announcement by various bodies, from government to Her Majesty's Revenue and Customs, the Financial Reporting Council and, for the asset management industry, by the Investment Association, which published its Good Stewardship Guide in February 2021.

With respect to the financial services industry, including fund management, wide-ranging reforms will take place following the enactment in April 2021 of the Financial Services Act 2021. Some of its provisions have already started to come in force since June 2021, but it will only be in the coming few years that the full set of comprehensive changes and reforms will be felt by the fund management industry.

## 7. What are the current attitudes towards private equity among policymakers and the public? Does shareholder activism play a significant role in your jurisdiction?

***JA***: The typical public view (stoked by some politicians, trade unions and the like) is still that PE generates significant returns for the wealthy at the expense of other stakeholders in the businesses in which they invest: they see PE as willing to sacrifice long-term sustainability in return for short-term gains. The UK PE industry, supported by the BVCA and Invest Europe has, over time, presented a more complete picture.

Shareholder activism has steadily increased in the UK public markets. A recent example concerns Countrywide, a UK estate agent: in October 2020, the board announced that it had accepted a £90 million investment from Alchemy Partners (which would have increased its stake from 50.1 to 67.7 per cent), subject to share- holder approval; activist shareholders objected, the financing was rejected (and the board changed). Countrywide was subsequently acquired by another estate agent. On the plus side, activist shareholders taking positions in UK listed companies may drive corporate break-ups, creating carve-out and acquisition opportunities for PE firms.

## 8. 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?

***JA***: The pandemic affected PE exits as much as PE investments in the early part of 2020; although there was a marked increase in Q4 2020, with PE exits (certainly in the mid-market) reaching the highest level for three years. Anecdotal evidence suggests a slight drop in PE exits (in terms of volume but not value) in H1 2021, mainly as a result of a drop in Q1 2021, with an uptick in Q2. There has been competition on PE exits from rival potential buyers, both trade and PE, with PE firms frequently willing to increase their pricing to match or outbid trade, or (at least) to compete aggressively on price, taking advantage of both the equity funds at their disposal and the favourable debt markets.

A recent notable example is the sale by Nordic Capital of Itiviti, a leading provider of trading technology and services to financial institutions worldwide, to Broadridge Financial Solutions, Inc in a transaction valued at €2.143 billion.

## 9. 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?

***Thiha Tun (TT)***: According to *PitchBook* data, fundraising in the first half of 2021 has been healthy with 207 funds closing with US$180 billion. What is striking over a five-year period, 2015–2020, is the ever-growing average size of a private equity fund. The average size of a buyout fund in 2015 was approximately US$650 million and for all private equity funds, approximately US$615 million. By 2018, these numbers were, respectively, US$983 million and US$936 million. However, these numbers were significantly overshadowed by 2019's numbers, which were, respectively, US$1.69 billion and US$1.57 billion. It is expected that 2021 will exceed 2019's numbers.

In 2021, there have been three noticeable trends in private equity fundraising:

- Secondaries and, in particular, general partner (GP)-led secondaries have truly come of age as an asset class in their own right. This is reflected by the number of secondaries funds being raised (55 in 2020 versus 25 in 2015), the number of GP-led transactions almost doubling in 2021 over 2020 and an ever-increasing number of entrants into the market, whether on the sell side or the buy side, as they find these sorts of transactions the most favourable liquidity solution to maturing private equity funds and their assets. The secondaries market started 2021 with a capital overhang of 2.9x, equating to around US$180 billion of dry powder against deal volume for the previous 12 months, according to McKinsey's Private Markets Annual Review 2021.
- As private fund sponsors look to increase their assets under management, what started a few years back as an opportunistic 'reach out' to retail and semi-retail investors has become a concerted effort. Sponsors are utilising a number of structures to tap into the 'mass affluent' market, taking advantage of (1) new fund vehicles such as the European Long-Term Investment Fund and its UK sister, the UK Long-Term Investment Fund and the more recently announced UK Long-Term Asset Fund, which allow private assets to be held in funds marketed to retail investors, (2) regulatory changes in the US such as the widening of the definition of 'accredited investor' to cover certain types of natural persons and family offices, and (3) joint ventures with mutual fund managers and private wealth channels.

- ESG. With the clearly observable effects of climate change on developed and developing nations, supply chain bottlenecks and the United Nations push of its Sustainable Development Goals, there have been plenty of ESG funds launched in the past 18 months. However, not all ESG funds are what they claim to be and in response to this 'green-washing' concern, the European Union has enacted the Sustainable Finance Disclosure Regulation (SFDR). Although the United Kingdom has not onshored SFDR into its legislation following Brexit, the Financial Conduct Authority (FCA) has announced that it will introduce a new chapter to its Handbook of Rules and Guidance, to be called the 'ESG Sourcebook'. An important distinction between the proposed UK rules and the SFDR is that while the SFDR covers all ESG issues, the UK rules will focus almost exclusively on climate change-related matters.

The bargaining power between investors and sponsors has been quite balanced in 2021, although in some hot areas like venture and growth capital and secondaries, sponsors with good track records seem to have the greater bargaining power. With the continuation of the trend in mega-funds, certain sponsors have a greater ability to withstand investor demands but, with the sophistication of the industry at that scale of fundraising, the largest investors continue to put pressure on the level of fees that general partners compensate for through large fundraisings.

Aside from fees, investors continue to focus on a well-defined set of terms, track record, transparency, governance, co-investment rights and, in particular, ESG policies.

## 10. 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 jurisdiction?

***TT***: There is really no such thing as a typical fundraising process and time frames can vary dramatically. This is particularly true given the covid-19 environment in the PE industry, which already encompasses a wide range of strategies and industries.

According to *Private Equity International* data, in the first half of 2020, the average time on the road for private equity funds was around 12 months, while fundraising of more than US$5 billion would average around 15 months on the road. We have, however, seen some sponsors with very good to excellent track records, or sponsors with a clear and focused investment strategy combined with access to a tight and motivated group of investors, achieve a first close of a fund within six months of hitting the road and then go on to achieve their target within nine months. We believe that these timelines have generally remained the same in 2021 albeit for a few new reasons: covid-19 lock-downs have not been lifted uniformly across the world and with varying travel restrictions, many sponsors and investors are still faced with the challenges of virtual due diligence and geopolitical concerns have made investors wary of investing with sponsors in certain parts of the world.

The key fundamentals of a successful fundraising remain the same: keep close to your investors and give them what they want; use a fund structure, jurisdiction and terms that are familiar to and acceptable by your investors; and present your investors with a great pipeline of deals. In the covid-19 and, possibly, post covid-19 context, we may add that, if one is looking for a speedy fundraising, it might be easier to close successor funds with well-known limited partners, rather than target new strategies with new investors.

Having said all this, there are basic steps all sponsors need to consider when launching a fund.

The first question centres on when the right time is to fundraise:

- Are there restrictions in existing fund documents that prevent you from raising a new fund?

- Where are you in deploying the committed capital you still have?
- Are you coming into the market off a good (or great) exit track record?
- What will your investors think about capacity issues if you focus on a fund- raising, leaving aside successor fund restrictions?

Once the client has decided that the time is right, we typically work with them on a teaser with key outline terms and a fund structure or, in certain circumstances, a more fully developed term sheet. The structure will have been tested and discussed from a commercial, legal, regulatory and tax perspective, to make sure that it appeals to the target investor base, but does not involve an unnecessary level of regulation, complexity and cost. The nuances inherent in that analysis have changed in the past few years, but, as before, the aim is to have a structure that fits both sponsors and investors. Here we would, of course, now take into account Brexit and the related regulatory challenges, as well as rapidly changing international tax regulation and best practices.

Testing the market may take two weeks, two months or more. Once the sponsor has identified its cornerstone investors, or otherwise gained some traction, we then move to full-form documentation. If there is a regulatory approval process, then that will drive the timetable; if not, then we work with the sponsor and service providers to get draft documentation into a data room as quickly as is sensibly possible.

The next key step is investor negotiations. Principal-to-principal discussions normally precede our re-engagement in the process, but we then focus on agreeing amendments to constitutional documents – typically a limited partnership agreement – to the extent required or on negotiating side-letter terms. Investors increasingly have a list of points that they intend to raise (the Institutional Limited Partners Association has done a good job of framing some of those discussions) and large investors tend to have their preferred form of side letter. The points usually break down into:

- Commercial points (eg, key man or fee provisions, or restrictions around post-in- vestment period drawdowns or recycling);
- Regulatory points (such as restrictions on certain types of investment or leverage); and
- Tax points (such as ensuring that there is adequate tax reporting and compliance).

We are frequently seeing relatively detailed negotiations, with one or two corner- stone investors, before other first-close investors engage, particularly where those cornerstone investors are known in the market to be prepared to test terms. We are also seeing an increase in the use of the ‘strategic limited partner’ concept to attract investors who are not just large investors but who are seen by the sponsor as bringing an expert perspective or other strategic value to the table. Where you have strategic limited partners, it is important to pay attention to the most favoured nation clause in your side letter, since the strategic limited partner concessions will be bespoke and should not be a general most favoured nation term.

In terms of governing law, due to Brexit, but also other regulatory and tax considerations, UK fund managers might choose to use EU onshore fund vehicles. It might be required, or simply more appropriate, to subject certain agreements or constitutional documents to the local foreign law, while the management or advisory agreements as well as deal documentation usually remain governed by English law. Such choice of law clauses specifying English law as the governing law of contractual and non-contractual obligations should continue to be recognised by EU courts, based on Rome I and Rome II EU Regulations. In the United Kingdom, the necessary corresponding legislation was passed in March 2019, ensuring that substantively same rules will continue to apply in the United Kingdom in relation to the choice of foreign law.

## 11. How closely are private equity sponsors supervised in your jurisdiction? Does this supervision impact the day-to-day business?

***TT***: There has, unsurprisingly, been an increase in supervision of PE and other fund sponsors. That is entirely consistent with the direction of travel in the asset management industry in general.

PE sponsors located in the United Kingdom are typically regulated by the FCA as either investment managers (and there are a couple of types of these depending on size of funds, the investment strategy and whether there is another management entity in the fund structure) or advisers.

The rules of the FCA, which frame the conduct of PE (and other) sponsors, are currently still based on EU legislation. The FCA has, historically, taken a pragmatic approach to the implementation of those provisions, such as making it easy to register funds for marketing in the United Kingdom or permitting application of proportionality principles to remuneration rules. However, with the Financial Services Act 2021 receiving royal assent on 29 April 2021 and coming into force, the next few years will see significant changes to existing UK financial services regulations as well as new laws and regulations coming into effect that will impact the fund management industry as a whole, including private fund managers and sponsors. We expect the FCA to publish amendments to its Handbook of Rules and Guidance, and introduce new chapters and sourcebooks including in relation to an 'Overseas Funds Regime', funds listing on the London Stock Exchange, the United Kingdom's approach to crypto-assets and tokens, and a framework for cross-border financial services.

The United Kingdom has now left the European Union and the transition period running until 31 December 2020 has ended. The United Kingdom is now a third country from the perspective of EU laws and regulations. As at the time of writing, no significant changes have been enacted to the UK regulatory environment, other than the Financial Services Act 2021 and with regard to certain temporary permissions regimes announced by the FCA, which allowed certain EU managers to continue providing services in the United Kingdom and which allowed certain EU funds to continue to be marketed in the United Kingdom for a limited period of time that has been extended to 2025.

## 12. What effect has the AIFMD had on fundraising in your jurisdiction?

***TT***: The year 2021 is a significant one for cross-border fundraising in the United Kingdom and the European Union.

Inconsistencies in the manner in which AIFMD was implemented by EU countries in terms of the interpretation of 'pre-marketing', 'marketing' and the regulatory notification processes have been harmonised through the Cross-Border Distribution of Collective Investment Undertakings Directive (Directive (EU) 2019/1160) and the Regulation on Facilitating Cross-Border Distribution of Collective Investment Undertakings Regulation (Regulation (EU) 2019/1156) (collectively, CBD/R). At the time of writing, the United Kingdom has indicated that it will not adopt CBD/R as UK law. Accordingly, now that the United Kingdom is a third country for the purposes of the AIFMD, UK managers will be in the same position as managers from other third countries such as the United States, Singapore or Japan. Marketing to EU investors will need to be made on the basis of the National Private Placement Regimes (NPPR) of EU countries under article 42 of the AIFMD. A pre-condition to accessing the NPPR under article 42 is that there is a cooperation agreement in place between the United Kingdom and the relevant EU 27 member state. On 1 January 2021, several memoranda of understanding (MOU) came into effect, including a multilateral MOU between the FCA and EU and EEA national competent authorities covering, among other things, investment services and asset management activities. Accordingly, UK managers can raise funds from EU/EEA investors on the basis of an article 42 private placement, albeit with certain changes likely to come about due to the CBD/R. For example, the CBD/R contains a recital that states that national rules cannot disadvantage EEA AIFMs as compared to non-EEA alternative investment fund managers (AIFMs). As a result, we are likely to see some form of 'levelling-up' of NPPRs to bring them in line with the CBD/R rules on pre-marketing and discontinuation of marketing.

## 13. What are the major tax issues that private equity faces in your jurisdiction? How is carried interest taxed? Do you see the current treatment potentially changing in the near future?

***DH***: Current challenges for PE managers continue to derive from the measures coming out of the OECD's BEPS project. Such measures include the potential application of the United Kingdom's anti-hybrid rules (and the wider EU measures introduced under Anti-Tax Avoidance Directives) to both pre-existing and new cross-border structures, which, in many instances, will lead to a denial of UK deductions where previously they would have been available. Coupled with the consequences of the interest barrier rules, this has led to a revaluation of the usefulness of particular hybrid instruments and hybrid entities that were, historically, commonly used as part of a typical PE investment structure. From an international point of view, attention is focused on the increased entity substance rules introduced in commonly used low-tax jurisdictions such as the Channel Islands and the Cayman Islands, and the possibility that the new rules may encourage further structures onshore.

Favourable capital gains tax treatment for carried interest remains available in the United Kingdom in certain circumstances, although a higher special rate of 28 per cent applies to carried interest (as compared to the standard 20 per cent rate for capital gains). In addition, consideration needs to be given to the 'income-based carried interest' regime that, broadly, looks to the weighted average investment holding period of fund investments in determining whether capital gains treatment should be avail- able. An average investment holding period of at least 40 months is generally required for full capital gains tax treatment, with an average holding period of less than 36 months leading to full income tax treatment. These rules have introduced additional complexity and uncertainty for managers, and have obviously restricted the range of funds in respect of which tax-efficient carried interest is available. Following a recent review of the capital gains tax regime by the Office for Tax Simplification, it is possible that the UK capital gains system may be subject to change and that capital gains tax rates will be more closely aligned with income tax rates. At the time of writing, no such changes have been announced but it would be no surprise if capital gains tax rates (including the rate applicable to carried interest) rise in the short to medium term.

## 14. Looking ahead, what can we expect? What might be the main themes in the next 12 months for both private equity deal activity and fundraising?

***JA***: The covid-19 pandemic has undoubtedly replaced Brexit as the key external influence on PE transactions in the United Kingdom. Brexit, and its consequences, have been a constant refrain for the past few years (since the UK referendum in June 2016). However, (successful) PE sponsors and investors have adjusted to the changing Brexit dynamic on several occasions and we expect that to continue.

After a brief hiatus caused by the covid-19 pandemic, PE sponsors have been on a dealmaking run. Looking forward, on the plus side there remain the significant (and growing) amounts of dry powder available to PE funds, coupled with optimism that the worst of the pandemic may be (or may soon be) behind us. But, by way of counterbalance, it is not unbridled optimism: there is uncertainty over the post-pandemic, post-Brexit M&A landscape, and the shape and role of the UK PE industry within it.

Deal teams with the deep sector expertise required to understand the effects of the pandemic on their target industry and the ability to execute transactions in distressed environments will be best placed to take advantage of the opportunities presented in the market, including corporates divesting non-core businesses to bolster their own balance sheets in response to revenues damaged by lockdown.

# Dechert's Private Equity Practice

## Overview

For more than 35 years, Dechert has been at the forefront of advising private equity firms, and currently represents over 300 clients in the industry. Our team advised on one of the largest private equity buyouts since the great financial crisis and on the largest PE exit in 2019. Dechert's globally integrated team of more than 250 private equity lawyers advises private equity, private credit and other alternative asset managers on flexible solutions at every phase of the investment life cycle. In recent years, Dechert has earned international recognition for its global private equity practice in prominent league tables, legal directories and publications, including *Bloomberg, Chambers and Partners, The Legal 500, The Deal, Law360, IFLR1000, Mergermarket, Private Equity International, PitchBook, Refinitiv, Preqin* and *JUVE*.

## Recent Transactions

Examples of recent transactions on which Dechert advised include:

- **Endless** on the acquisition of Hovis, a leading UK-based bakery brand.
- **Further Global Capital Management** on (i) the acquisition of a majority stake of Progeny, a leading professional advisory platform; and (ii) the acquisition of AA Ireland Limited.
- **GIC** on (i) the US$27 billion sale of Refinitiv by a consortium to London Stock Exchange Group plc; and (ii) the £6.9 billion bid by the Fortress Investment Group-led consortium to acquire Wm Morrison Supermarkets plc.
- **HRA Pharma**, a portfolio company of **Astorg** and **Goldman Sachs Asset Management**, on its proposed sale to Perrigo Company plc in a transaction valued at €1.8 billion, or approximately US$2.1 billion in cash.
- **Mid Europa Partners** on the acquisition of Pigu and the combination of Pigu and Hobby Hall Group.
- **Nordic Capital** on the €2.143 billion sale of Itiviti, a leading provider of trading technology and services to financial institutions worldwide, to NYSE listed Broadridge Financial Solutions, Inc**.**
- **One Equity Partners** on the acquisition of BRUSH Group, a leading independent provider of equipment, services and solutions for electrical power generation and distribution.

## Awards and Recognition

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|---|---|
| The Legal 500 United Kingdom | Ranked as a leading firm for **Private Equity: Transactions – High-value Deals (£250m+)** (2022) |
| The Private Equity Awards 2021 realdeals | Named "**Pan-European Legal Adviser of the Year**" by *Real Deals* (2021) |
| Mergermarket An Acuris company | Ranked **#3 for U.S. Buyouts** and **#7 for Global Buyouts** by deal value in *Mergermarket*'s Global & Regional League Tables – Legal Advisors Report (1H 2021) |
| REFINITIV | Ranked among **the top law firms for value and number of Global Private Equity and LBO deals** (2020) |
| Law360 Group of the Year Private Equity | Named '**Practice Group of the Year**' for Private Equity (2019) |

# About Dechert

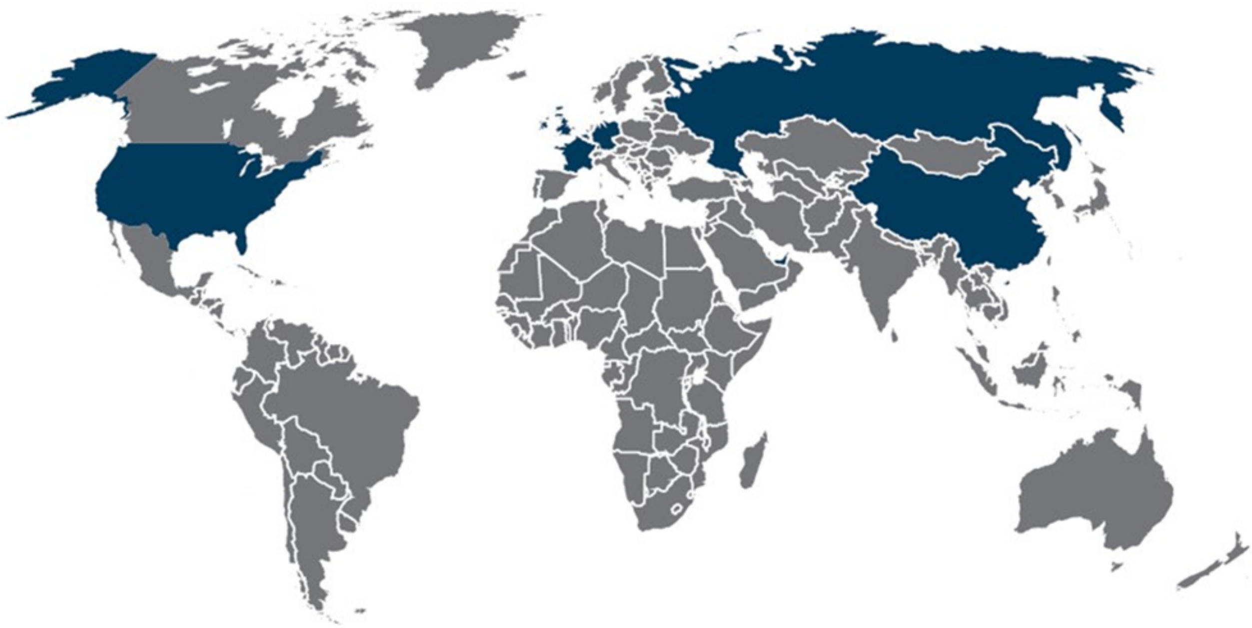
## Dechert is a global law firm.

Focused on sectors with the greatest complexities, legal intricacies and the highest regulatory demands, we excel at delivering practical commercial judgment and deep legal expertise for high-stakes matters.

In an increasingly challenging environment, clients look to us to serve them in ways that are faster, sharper and leaner without compromising excellence.

We are relentless in serving our clients – delivering the best of the firm to them with entrepreneurial energy and seamless collaboration.

## Dechert Around the World



We are strategically located throughout the United States, Europe, Asia and the Middle East.

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## Dechert's Private Equity Podcast Series

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Dechert practices as a limited liability partnership or limited liability company other than in Dublin and Hong Kong.

*Dechert lawyers acted on the matters listed in this presentation either at Dechert or prior to joining the firm.*