

Private Equity in Guernsey: Market and Regulatory Overview

by David Crosland, Tony Lane, Emma Penney and Alex Mauger, *Carey Olsen*

Country Q&A | Law stated as at 01-Jun-2023 | Channel Islands-Guernsey

A Q&A guide to private equity law in Guernsey.

This Q&A is part of the global guide to private equity. It gives a structured overview of the key practical issues including, the level of activity and recent trends in the market; investment incentives for institutional and private investors; the mechanics involved in establishing a private equity fund; equity and debt finance issues in a private equity transaction; issues surrounding buyouts and the relationship between the portfolio company's managers and the private equity funds; management incentives; and exit routes from investments. Details on national private equity and venture capital associations are also included.

Market overview

1. What are the current major trends and what is the recent level of activity in the private equity market?

Market Trends

There is generally steady activity in the private equity (PE) industry, with more exits than acquisitions.

On the buy side there is a huge amount of committed capital to deploy. In addition, activity is fuelled by solid debt markets and alternative sources of credit in the form of debt funds, mezzanine funds and direct lending by large investors. On the sell side, the initial public offering (IPO) market remains quiet with trade and secondary sales dominating.

Strong investor interest to participate in co-investment opportunities and invest in alternative fund structures continues.

There is also an increase in investments geared toward sustainability and with that in mind, Guernsey became the first jurisdiction globally to introduce a Green Fund accreditation for a regulated product, followed by a Natural Capital Fund regime.

A key regulatory consideration for fund managers continues to be around economic substance, with firms and managers looking for jurisdictions that can and have met (and are used to operating under) these standards. Guernsey implemented legislative economic substance requirements (which came into force on 1 January 2019) to reinforce its position as a jurisdiction of economic substance, being placed on the EU whitelist in March 2019.

Fundraising

The fundraising market continues to be very positive, with a number of new entrants to the market successfully raising maiden funds and established managers raising successor funds. There continues to be an increase in the number of clients looking to structure their funds in Guernsey as a result of concerns around Brexit and the expenses related to Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD).

Statistics from the Guernsey Financial Services Commission (GFSC) show that the total net asset value of Guernsey funds was GBP297.3 billion (at September 2022).

Investment

Guernsey's economy is dominated by the funds and financial services industry. Guernsey's experience dates back to the early 1980s when PE funds were in their infancy.

In the last decade, a number of local businesses reached a size that brought them into scope for potential investments by PE funds and we have seen a number of acquisitions.

Transactions

PE driven transactions continue to feature in the local market, particularly in the financial services sector and generally by way of buy-outs or bolt-on investments. The choice of deal structure is generally determined outside of the jurisdiction and so follows trends occurring elsewhere, and in the UK in particular, rather than reflecting any sector specific or local variations.

In August 2022, Apex Group (backed by Genstar Capital along with minority investors Carlyle, Mubadala Investment Company and TA Associates) closed the acquisition of Sanne Group plc, which was previously listed on the London Stock Exchange.

Exits

In recent times there has been little deal activity in relation to the realisation by PE funds of investments in assets in the jurisdiction.

2. What are the key differences between private equity and venture capital?

Guernsey law and regulation does not make any form of distinction between PE and venture capital (VC) vehicles and there are no differences in respect of how these vehicles are regulated or treated for tax purposes.

We typically see both PE and VC funds being structured as limited partnerships and generally see PE vehicles buying well-established businesses (from a broad range of sectors) as opposed to start-up companies (most commonly tech companies) traditionally targeted by venture capitalists.

Funding sources

3. How do private equity funds typically obtain their funding?

Investors for both PE and VC structures typically comprise a range of pension funds, insurance companies, funds of funds, sovereign wealth funds, endowments, supra-national investors, family offices and high net worth individuals, and come from a very broad geographic base.

Tax incentive schemes

4. What tax incentive or other schemes exist to encourage investment in unlisted companies? At whom are the incentives or schemes directed? What conditions must be met?

Guernsey has its own tax regime and does not levy any capital gains, inheritance or value added taxes. Income is taxed at 20% (after allowances) and an individual that is tax resident in Guernsey can elect to cap their tax liability for any year of charge at GBP260,000. In light of this benign tax environment there are no specific tax incentives or schemes with the particular objective of encouraging investment.

Fund Structuring

5. What legal structure(s) are most commonly used as a vehicle for private equity funds?

Guernsey limited partnerships are internationally recognised vehicles for PE and VC funds, with investors attracted by their tax transparent status. Unit trusts are used much less frequently. Similarly, limited companies are occasionally adopted, typically where a listing is desired.

PE and VC funds are typically structured as closed-ended limited partnerships with another limited partnership or corporate entity appointed to act as its general partner. The general partner may or may not delegate certain of its investment management duties to a regulated investment manager. The fund must appoint a locally licensed administrator.

Some PE funds are structured as closed-ended companies with a listing, but these structures are in the minority.

Corporate vehicles are usually used for hedge funds, although it is also possible to use limited partnerships. The Companies (Guernsey) Law, 2008, as amended (the Companies Law) allows for a number of different forms of company, for example incorporated cell companies and protected cell companies. These are commonly used for hedge funds and are particularly useful for managers wishing to establish a number of sub-funds that share many similar features. In this way, the cells can each have different investment objectives, invest in different asset classes, or be hedged against different currencies. The statutory basis for the segregation between cells provides comfort to investors that each cell is properly ring-fenced.

6. Are these structures subject to entity level taxation, tax exempt or tax transparent (flow through structures) for domestic and foreign investors?

Companies and Unit Trusts

Companies and unit trusts registered or authorised as collective investment schemes by the GFSC are eligible to apply for exempt tax status. For tax resident companies, Guernsey operates a business tax regime referred to as "zero/ten". Under this scheme the general rate of tax is 0%. The 0% rate is applied to most Guernsey companies with the following exceptions:

- Rental income from Guernsey property: taxed at 20%.
- Trading activities regulated by the Guernsey Competition and Regulatory Authority, such as telecommunications: taxed at 20%.
- The importation and/or supply of gas or hydrocarbon oil in Guernsey: taxed at 20%.
- Large retail business carried on in Guernsey where the company has taxable profits arising or accruing from which in any year of charge exceed £500,000: taxed at 20%.
- Income from Guernsey property development: taxed at 20%.
- Specific activities within the banking sector (to include custody business): taxed at 10%.
- Activities regulated by the Guernsey Competition and Regulatory Authority: taxed at 20%.
- Fund administration and investment management (in relation to clients that are not funds and are not associated with funds): taxed at 10%.
- Regulated insurance management and intermediary and fiduciaries activities and certain compliance and other related services: taxed at 10%.
- The operation of an investment exchange: taxed at 10%.
- The operation of an aviation registry: taxed at 10%.

Limited Partnerships

Guernsey limited partnerships are tax transparent for Guernsey tax purposes and are therefore not treated as taxable entities in Guernsey. This tax transparent status is internationally recognised. Under current Guernsey law, any income of a Guernsey limited partnership that is wholly derived from its international operations (as defined in the Income Tax (Guernsey) Law 1975, as amended (Income Tax Law)) and any interest paid to a limited partner, is not regarded as arising or accruing from a source in Guernsey in the hands of that limited partner if:

- They are an individual not solely or principally tax resident in Guernsey.
- It is a company not tax resident in Guernsey.

Accordingly, distributions received by partners from their interest in Guernsey limited partnerships are disregarded partnership income for the purposes of Guernsey tax law and practice. This is provided that the income does not arise from a business carried on by the limited partner in Guernsey through a permanent establishment situated in Guernsey. Tax is not deducted in Guernsey from these distributions, whether direct or by way of withholding.

Limited partners that are resident for tax purposes in Guernsey may be liable to tax in Guernsey on income derived from the operations of a PE fund structured as a Guernsey limited partnership.

7. What foreign private equity structures are tax-inefficient in your jurisdiction? What alternative structures are typically used in these circumstances?

Guernsey limited partnerships benefit from the same tax treatment as limited partnerships in other commonly used jurisdictions such as England, Delaware and the Cayman Islands. Funds structured as unit trusts and companies and that are regulated or authorised by the GFSC can apply for tax-exempt status under Guernsey law.

Fund Duration and Investment Objectives

8. What is the average duration of a private equity fund? What are the most common investment objectives of private equity funds?

Duration

PE funds are typically structured with a term of ten to twelve years, with the possibility of extension with investor consent. VC funds tend to be structured on the basis that all (or the majority) of its capital will be deployed within five years with a return of capital being made to investors within ten years.

Investment objectives

PE funds typically target maximum capital appreciation, with investors receiving a preferred return (typically in the region of 8%) before the manager begins receiving carried interest. The target rate of return for VC funds is generally between 15% to 27%.

Fund Regulation and Licensing

9. Do a private equity fund's promoter, principals and manager require authorisation or other licences?

New fund promoters must be approved as promoters by the GFSC before establishing a fund, and the GFSC has a policy of selectivity with respect to these promoters.

Where a new promoter proposes to launch a collective investment scheme that will be fast tracked as a registered fund or a qualifying investor fund (QIF) (see below), the new promoter approval process is delegated to the fund's locally licensed administrator. The administrator warrants to the GFSC that the promoter meets its requirements as to fitness and propriety.

Any person or entity appointed to carry out specified restricted activities in or from within Guernsey in respect of a fund must be licensed by the GFSC under the Protection of Investors (Bailiwick of Guernsey) Law 2020, as amended (POI Law) before the relevant fund consent can be issued. The long-form application process relating to the issue of a licence under the POI Law usually takes from six to eight weeks. There is a fast-track application process available that will be processed by the GFSC with a view to the licence being provided within ten business days from receipt of the completed application. This is available for parties seeking to provide management services to a QIF or a registered fund (see below).

Directors appointed to an entity licensed under the POI Law must be pre-approved by the GFSC.

10. Are private equity funds regulated as investment companies or otherwise and, if so, what are the consequences? Are there any exemptions?

Regulation

Most Guernsey PE and VC funds constitute closed-ended collective investment schemes for Guernsey purposes and therefore must be registered or authorised by the GFSC under the POI Law.

For registered funds, one application is submitted to the GFSC. The application includes copies of final or near final fund documents including:

- The offering memorandum and investor subscription or application form.
- Constitutional documents and service provider agreements.
- Declarations from the fund's administrator that, among other things, it has performed sufficient due diligence to be satisfied that the promoter and the associated parties to the fund are fit and proper.

The application is processed by the GFSC within three business days.

For a closed-ended authorised fund, an application to the GFSC is necessary for consent under the Authorised Closed-Ended Investment Scheme Rules and Guidance, 2021. An authorised closed-ended fund is authorised by the GFSC following a three stage application process, that usually takes four weeks.

An authorised fund can elect to be a QIF. A QIF is approved by the GFSC within three business days following receipt of the application documents. Only qualified investors are permitted to invest in a QIF. A qualified investor means a professional investor, an experienced investor or a knowledgeable employee. Each is defined in the GFSC's Qualifying Investor Funds guidance note.

For private investment funds (PIF), the GFSC will grant approval within one business day. A PIF need not have an offering document and need not submit its fund documents to the GFSC. The GFSC rely on certain declarations made by the manager of the PIF (which must be a Guernsey entity) about the investors' ability to suffer loss.

Exemptions

There are no express exemptions available. However, the GFSC applies the following criteria in determining whether or not an entity is a collective investment scheme:

- Pooling of contributions of investors.
- Third party management of the portfolio assets.
- Spread of risk.

If any of these features is lacking, the structure may not be regarded as a collective investment scheme. For example, carried interest, executive co-investment schemes and single investor structures typically fall out of scope. Joint venture and club arrangements can also fall outside if it can be shown that there is no true pooling of investor monies. Vehicles formed to acquire a single asset are not treated as funds due to a lack of spread of risk.

11. Are there any restrictions on investors in private equity funds?

The following restrictions apply:

- Authorised closed-ended funds: no restrictions.

- Funds authorised using the fast-track QIF application process: qualified investors only.
- Registered closed-ended funds: no restrictions.
- PIFs: no more than 50 legal or natural persons holding an ultimate economic interest in the private investment fund, save in the cases outlined in the Guidance Notes to The Private Investment Fund Rules and Guidance (2) 2021.

Guernsey funds can generally be marketed to the public in Guernsey (subject to the laws and regulations governing the promotion of such funds to include any Guernsey entity carrying out the promotion being appropriately licensed under the POI Law if necessary). Guernsey collective investment schemes that have obtained exempt tax status should monitor the level of Guernsey resident beneficial owners. This is because if they constitute a majority holding, the scheme's exempt tax status could be compromised.

12. Are there any statutory or other maximum or minimum investment periods, amounts or transfers of investments in private equity funds?

There are no:

- Statutory minimum or maximum investment periods.
- Statutory restrictions on the transfer of interests in PE or VC funds (with transfers being governed by the constitutional documents of the fund).
- Maximum or minimum investment sizes.

13. How is the relationship between the investor and the fund governed? What protections do investors in the fund typically seek?

The relationship between investors and the fund is governed by the fund's constitutional documents (typically the limited partnership agreement, articles of incorporation or unit trust instrument). To supplement these agreements, investors commonly seek bespoke provisions in a side letter.

In PE and VC funds, investors typically negotiate a number of different protections, including:

- Clearly defined investment objectives and limits.
- Key man suspension events.

- The ability to remove the general partner with or without cause.
- The approval of any conflicts of interest by the limited partner advisory committee.

Interests in portfolio companies

14. What forms of equity and debt interest are commonly taken by a private equity fund in a portfolio company? Are there any restrictions on the issue or transfer of shares by law? Do any withholding taxes or capital gains taxes apply?

Most Common Form

Due to Guernsey's benign tax environment and flexible company and partnership laws, PE funds investing into Guernsey are given almost complete flexibility in their deal structuring.

The absence of any capitalisation rules or withholding tax regime means that the deal structuring is driven by external tax factors. There has been extensive use of equity including:

- Ordinary and preference shares.
- Convertible securities.
- Payment in kind (PIK) notes.
- Other debt instruments, senior and mezzanine facilities and other sources of credit.

Other Forms

Shareholder loans are still commonly used and high yield bonds have become increasingly attractive. In particular, quoted Eurobonds are often used to avoid UK withholding tax on interest and appear to be a tried and tested structure for partly debt funded PE acquisition vehicles. TISE is often used to list Eurobonds due to the reduced documentation, administration and flexibility of that stock exchange.

Restrictions

Directors of a Guernsey company can issue shares provided they are permitted to do so by the company's memorandum or articles, or by way of resolution of the company (*Companies Law*).

Shares in a Guernsey company are transferable in the manner prescribed by its memorandum and articles, which may or may not contain restrictions.

The Companies Law does not provide any statutory rights of pre-emption on the issue or transfer of shares.

Taxes

Guernsey currently does not levy taxes on capital inheritances, capital gains, gifts, sales or turnover (unless the varying of investments and the turning of these investments to account is a business or part of a business). In addition, there are no estate duties (apart from registration fees and *ad valorem* duty for a Guernsey Grant of Representation where the deceased dies leaving assets in Guernsey which require presentation of such a grant).

No stamp duty is chargeable in Guernsey on the issue, transfer, disposal or redemption of shares.

Provided a company maintains exempt tax status, shareholders who are not resident in Guernsey, Alderney or Herm for tax purposes can receive distributions from a Guernsey company without deduction of Guernsey income tax and the company is also not required to withhold Guernsey tax on these distributions.

Shareholders who are resident for tax purposes in Guernsey (which includes Alderney and Herm) will incur Guernsey income tax at the applicable rate on a distribution paid to them. The company will be required to provide the Director of Income Tax in Guernsey with such particulars relating to any distribution paid to Guernsey resident shareholders as the Director of Income Tax may require.

Buyouts

15. Is it common for buyouts of private companies to take place by auction? Which legislation and rules apply?

Sellers typically use an auction process where potential buyers are likely to be PE funds, rather than trade buyers. Guernsey's involvement in the PE and VC industry largely relates to the establishment and operation of the fund, rather than the buyout transaction itself. In general, Guernsey PE funds acquire companies in other jurisdictions, meaning that the laws and regulations of that other jurisdiction apply to the buyout transaction. If a privately owned and unregulated Guernsey company is the target of the buyout, there are no specific local laws or rules which would govern the buyout process.

16. Are buyouts of listed companies (public-to-private transactions) common? Which legislation and rules apply?

Public-to-private transactions are reasonably common, particularly for companies that have found it difficult to raise capital in recent years and for which a listing may no longer be suitable. The applicable legislation depends on the jurisdiction of the target company. If the target company is a listed Guernsey company, the City Code on Takeovers and Mergers would be likely to apply and govern the process of the offer.

Principal Documentation

17. What are the principal documents produced in a buyout?

Buyouts by Guernsey PE funds do not typically involve a Guernsey target. The principal documents reflect the legal or commercial requirements of the PE fund's deal team, or the target's jurisdiction.

Buyer protection

18. What forms of contractual buyer protection do private equity funds commonly request from sellers and/or management? Are these contractual protections different for buyouts of listed companies (public-to-private transactions)?

The terms of the buyout are rarely determined by Guernsey considerations as the target company is usually located in another jurisdiction. While PE buyouts of Guernsey companies do occur, these are not sufficiently frequent to allow local trends to develop. As a result, the deal terms usually follow the practice of the PE fund's deal team, or the target's jurisdiction. Buyer protection measures are not permitted for buyouts of listed companies governed by the City Code on Takeovers and Mergers.

19. What non-contractual duties do the portfolio company managers owe and to whom?

Non-contractual duties arise under the portfolio company's local law. Most buyouts by Guernsey PE funds do not involve a Guernsey target. If a Guernsey company is the target, the directors and some senior employees of the target owe fiduciary duties to that company (including as to confidentiality) as a matter of common law. All employees owe an implied duty of trust and confidence in relation to the employment relationship. The consent of the portfolio company's board of directors should be obtained before confidential information is provided to the PE fund or possible investors.

20. What terms of employment are typically imposed on management by the private equity investor in an MBO?

PE backed MBOs involving Guernsey employees are rare and there are no typical terms in the local market.

21. What measures are commonly used to give a private equity fund a level of management control over the activities of the portfolio company? Are such protections more likely to be given in the shareholders' agreement or company governance documents?

Most buyouts by Guernsey PE funds do not involve a Guernsey target. The management control measures adopted reflect the legal or commercial requirements of the PE fund's deal team, or the target's jurisdiction. Typically, the minimum requirements include board representation and the right to receive detailed management information. It is common for there to be specified reserved matters, being material actions that can only be taken with shareholder approval.

Debt Financing

22. What percentage of finance is typically provided by debt and what form does that debt financing usually take?

The proportion of the acquisition price comprised of debt varies from deal to deal. Senior loan and mezzanine debt fund launches have provided popular alternative sources of finance. High-yield bonds continue to form an important part of acquisition finance. Senior bank debt still provides the majority of debt finance.

Lender Protection

23. What forms of protection do debt providers typically use to protect their investments?

Security

The primary form of lending to PE funds is in the form of short term bridge or "capital call" facilities where funds are drawn down pending receipt of commitments from investors. Historically the bank has taken security over the fund's bank account and an assignment of the general partner's call rights. In recent years there has been a shift such that many lenders are now willing to accept a mere irrevocable power of attorney from the general partner, granting it authority to issue drawdowns to limited partners on a default event.

Guernsey companies are often used as holding structures and, where leverage is applied in the structure the Guernsey companies often provide security by way of:

- Guarantee.
- First ranking share charge over the shares of any subsidiaries.
- First ranking share charge over the contract rights in respect of the right to call down any intra-group debt.
- Security over any bank account they may hold.

Contractual and Structural Mechanisms

Contractual subordination is common under Guernsey law. It is usually achieved by entering into a subordination agreement or an inter-creditor agreement.

An agreement between a Guernsey company and any of its creditors as to the subordination of the debts due to that creditor to the debts due to the company's other creditors is recognised in the liquidation of a Guernsey company (section 419(1)(c), Companies Law).

Financial Assistance

24. Are there rules preventing a company from giving financial assistance for the purpose of assisting a purchase of shares in the company? If so, how does this affect the ability of a target company in a buyout to give security to lenders? Are there any exemptions?

Rules

Financial assistance is lawful in Guernsey provided that the directors of the Guernsey company giving the financial assistance certify, among other things, that the Guernsey company will, immediately after giving the financial assistance, satisfy the solvency test prescribed by the Companies Law. Broadly speaking, this test provides that the company must be able to pay its debts as they become due and that the value of its assets is greater than the value of its liabilities.

Exemptions

No relevant exemptions apply.

Insolvent liquidation

25. What is the order of priority on insolvent liquidation?

Partnerships

On the dissolution of a limited partnership, the assets of the partnership are distributed in the following order:

- Creditors other than partners, to the extent otherwise permitted by law, in satisfaction of partnership debts.
- Limited partners that are creditors and not also general partners, to the extent otherwise permitted by law, in satisfaction of partnership debts other than debts described in the next bullet point.
- (Subject to the provisions of the partnership agreement), partners in the following order:
 - limited partners for the return of their contributions or, where appropriate, for the release of their obligations to make contributions;
 - limited partners for their share of the profits on their contributions;
 - general partners other than for capital and profits;
 - general partners in respect of capital;
 - general partners in respect of profits.

(Section 32, LP Law.)

Companies

On a Guernsey company's winding-up, the company's assets are realised and applied in satisfaction of the company's debts and liabilities proportionally) Any surplus is then distributed (subject to the company's articles of incorporation) to the members of the company.

This general rule is subject to any:

- Rule of law as to preferential payments.
- Agreements between the company and any creditor as to subordination.
- Agreement between the company and any creditor as to set-off.

The Preferred Debts (Guernsey) Law 1983 (as amended) ranks classes of debt that are paid in priority to all other debts in insolvency proceedings. These include:

- Any rents owing to a landlord by their tenant secured by goods subject to tacit hypothecation.
- Tax payable to the Guernsey authorities on a Guernsey employee's wages.
- A proportion of an employee's wages.
- Holiday pay.
- Unpaid income tax.
- Unpaid social security contributions.
- The costs of the liquidator in a winding-up.

Creditors with security interests are entitled to enforce their security interest outside of the insolvency of the company, and therefore their claims are satisfied in priority to other claims.

If the secured party or its nominee is not registered as the holder of the collateral, the secured party's priority is preserved when any insolvency proceedings begin in Guernsey against the debtor. However, if Guernsey law applies, title to the collateral may vest in the relevant insolvency officer for the purposes of realisation of the collateral.

Where a security interest is created in the collateral (including registration of the secured party or its nominee as registered holder of the collateral), the Royal Court has the power in *désastre* proceedings to both:

- Vest the secured party's rights in the arresting creditor.
- Direct that the collateral secured by the security agreement is sold or applied by HM Sheriff in the following order:
 - payment of the costs and expenses of the sale;
 - discharge of any prior security interest;
 - discharge of all monies properly due to the secured party;
 - payment, in priority order, of any other secured parties; and
 - if any balance remains, payment to the debtor or other appropriate person in the event of the debtor's insolvency.

In relation to security over real estate, the first in time of registration prevails. Bonds registered on the same day have equal priority.

In relation to security over intangible movable property, priority between security interests in the same collateral is determined by the order of creation of those security interests (Security Interests Law).

Equity Appreciation

26. Can a debt holder achieve equity appreciation through conversion features such as rights, warrants or options?

Guernsey companies can, subject to any restrictions in their constitutional documents or other agreements binding on the company, grant rights to subscribe for or to convert any security (including debt securities) into shares. This is subject to the directors having authority to issue shares as required by the Companies Law.

Portfolio Company Management

27. What management incentives are most commonly used to encourage portfolio company management to produce healthy income returns and facilitate a successful exit from a private equity transaction?

The terms of management incentives within the portfolio company are rarely determined by Guernsey considerations as the portfolio company, and its management, is usually located in another jurisdiction. As a result, the deal terms usually follow the practice or requirements of the PE fund's deal team, or the practice in the portfolio company's jurisdiction.

28. Are any tax reliefs or incentives available to portfolio company managers investing in their company?

The tax regime that is applicable to portfolio company managers depends on the tax residency of those managers and it is highly unlikely that these managers will be tax resident in Guernsey. If any of these managers are tax resident in Guernsey, the absence of capital gains tax provides structuring opportunities.

29. Are there any restrictions on dividends, interest payments and other payments by a portfolio company to its investors?

Companies

There are no restrictions on returning capital to shareholders, provided that the company is solvent. A Guernsey company can pay distributions and dividends out of any source (not merely from profits available for distribution) provided that the company is able to satisfy the requirements of the solvency test under the Companies Law and meets any applicable requirements of its constitutional documents.

Limited Partnerships

There are no restrictions on returning capital to limited partners, provided that the limited partnership is solvent. The return of capital can be clawed back within one year of the distribution if the partnership either:

- Is insolvent immediately following the payment.
- Becomes insolvent within six months of the payment.

30. What anti-corruption/anti-bribery protections are typically included in investment documents? What local law penalties apply to fund executives who are directors if the portfolio company or its agents are found guilty under applicable anti-corruption or anti-bribery laws?

Protections

It is an offence for a person or their agent to corruptly accept or obtain (or attempt to give or obtain) any gift as a reward for (or an inducement to) doing any act or making any omission in relation to their office or position, or their principal's affairs or business (Prevention of Corruption (Bailiwick of Guernsey) Law 2003, as amended (Corruption Law)). The Corruption Law applies the offence to any person in public office in any country.

It is an offence for a Guernsey person or company to do or to omit to do anything in a country outside of Guernsey, if the act or omission would, if done in Guernsey, constitute an offence under the Corruption Law. Where a Guernsey company is found guilty of such an offence, the directors may also be found guilty, if the offence is proved to have been committed with their consent or connivance (or to be attributable to any neglect on their part).

Foreign enforcement agencies can attempt to prosecute Guernsey companies and their directors, if both:

- They are involved in bribery or corruption.
- They or the company have a link with that foreign jurisdiction.

In particular, the UK Bribery Act has implications for additional jurisdictions including the Channel Islands. This is because bribery offences that are committed outside the UK can be prosecuted in the UK if the person offering or accepting the bribe has a close connection to the UK (Bribery Act). A close connection includes being a British citizen, British Overseas Territories citizen or a British National. The Bribery Act also includes non-UK (that is, Guernsey and Jersey) companies and partnerships that carry on a business, or part of a business, in any part of the UK.

Penalties

Under the Corruption Law, bribery is a serious criminal offence which is punishable with up to 7 years imprisonment and an unlimited fine.

Exit Strategies

31. What forms of exit are typically used to realise a private equity fund's investment in a successful company? What are the relative advantages and disadvantages of each?

There are no Guernsey-specific issues in relation to exit. See [Question 32](#).

32. What forms of exit are typically used to end the private equity fund's investment in an unsuccessful/distressed company? What are the relative advantages and disadvantages of each?

There are no Guernsey-specific issues in relation to exit. Please refer to [Question 33, Private Equity in UK \(England and Wales\): market and regulatory overview](#).

Reform

33. What recent reforms or proposals for reform affect private equity?

Substance Requirements

Guernsey's substance requirements are contained in the Income Tax (Substance Requirements) (Implementation) Regulations, 2021 (Substance Regulations), which came into force on 30 June 2021. The Substance Regulations are designed to ensure that certain Guernsey tax resident companies and partnerships are carrying on real economic activity in Guernsey in respect of their profits and income.

A Guernsey tax resident company or partnership (resident entity) is subject to substance requirements where and to the extent that it is within any one of the following categories:

- It carries on one or more of the following relevant activities: banking, insurance, fund management, financing and leasing, headquartering, shipping and distribution and service centre activities (in-scope entity).
- It is a holding entity and has as its primary function the acquisition and holding of shares or equitable interests in other bodies and it carries on no commercial activity (pure equity holding entity).
- It derives income from intellectual property (IP company).

An in-scope entity must comply with the following in relation to the activities that trigger substance requirements:

- It is directed and managed in Guernsey.
- It carries on applicable core income generating activity (CIGA) in Guernsey.
- It has an adequate level of appropriately qualified employees in Guernsey (whether or not employed by the in-scope entity or another entity, and whether on temporary or long-term contracts) proportionate to the level of activity carried on in Guernsey.
- It has an adequate level of expenditure in Guernsey that is proportionate to the level of that activity carried on in Guernsey.
- It has an adequate physical presence (including offices and/or premises) in Guernsey proportionate to the level of that activity carried on in Guernsey.

Pure equity holding entities are subject to reduced substance requirements and IP companies are subject to enhanced substance requirements.

Regulated funds that are not self-managed continue to be out of scope of substance requirements.

For the funds industry, the most relevant of the above activities for in-scope companies are:

- Fund management, which is "management" within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law 2020 (POI Law) when carried on by a licensee under that law in connection with a collective investment scheme within the meaning of that law.
- Financing and leasing, which is drafted widely and captures all lending for interest or other consideration, whether by an originator or an assignee.
- Headquartering, which relates to the provision of certain intra-group services to a non-resident group member (such as the provision of senior management, the assumption or control of material risk for activities carried out by, or assets owned by, any of those intra group persons, and the provision of substantive advice in relation to the assumption or control of risk for such activities or assets).
- Distribution and service centre which, while focused on goods, also captures a resident company or exempt company whose sole or main purpose is to provide services to non-resident group members.

Substance requirements depend on which of the above categories apply to the resident company or exempt company. Given that the POI Law and the associated rules and guidance issued by the Guernsey Financial Services Commission already require

a high level of governance and substance from a regulatory perspective, it is generally expected that in-scope companies which conduct fund management will be able to readily comply with the new substance rules in relation to fund management.

The following entities are not in scope of the substance requirements:

- Collective investment schemes that are not self-managed.
- Trusts.

Contributor Profiles

David Crosland, Partner

Carey Olsen

T +44 (0)1481 741556

E david.crosland@careyolsen.com

W www.careyolsen.com

Professional qualifications. England and Wales, Solicitor, 2004; Advocate of the Royal Court of Guernsey, 2011

Areas of practice. Corporate and commercial; investment funds and PE; listing services; establishment of institutional closed-ended investment funds particularly PE, real estate and infrastructure funds.

Tony Lane, Partner

Carey Olsen

T +44 (0)1481 732086

E tony.lane@careyolsen.com

W www.careyolsen.com

Professional qualifications. England and Wales, Solicitor, 1998 (currently non-practising); Advocate of the Royal Court of Guernsey, 2010

Areas of practice. Corporate and commercial; investment funds and PE; listing services; mergers and acquisitions.

Emma Penney, Senior Associate

Carey Olsen

T +44 (0)1481 732058

E emma.penney@careyolsen.com

W www.careyolsen.com

Professional qualifications. England and Wales, Solicitor, 2007

Areas of practice. Corporate and commercial; investment funds and PE;; mergers and acquisitions; restructuring and insolvency; banking and finance.

Alex Mauger, Senior Associate

Carey Olsen

T +44 (0)1481 741520

E alex.mauger@careyolsen.com

W www.careyolsen.com

Professional qualifications. England and Wales, Solicitor, 2009

Areas of practice. Corporate and commercial; investment funds and PE; restructuring and insolvency; mergers and acquisitions; banking and finance.

END OF DOCUMENT