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The International Comparative Legal Guide to:

Private Equity 2017

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A practical cross-border insight into private equity

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1 Overview

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions? Have you seen any changes in the types of private equity transactions being implemented in the last two to three years?

A broad range of private equity ("PE") transactions are carried out in Ireland, the most common including leveraged buyouts, refinancings, trade sales, secondary buyouts, bolt-on deals and secondary transactions.

Macroeconomic issues such as uncertainty over "Brexit" impacted Irish corporate activity generally in 2016 including PE activity. However the Irish PE market grew in 2016. The last two to three years have seen some new PE entrants to the Irish market with traditional bank acquisition financing being more difficult to obtain, particularly for small to medium sized businesses.

1.2 What are the most significant factors or developments encouraging or inhibiting private equity transactions in your jurisdiction?

Ireland delivers:

- a low corporate tax rate – corporation tax on trading profits is 12.5% and the regime does not breach EU or OECD harmful tax competition criteria;
- the regulatory, economic and people infrastructure of a highly-developed OECD jurisdiction;
- the benefits of EU membership and of being the only English-speaking jurisdiction in the eurozone;
- a common law jurisdiction, with a legal system that is broadly similar to the US and the UK systems;
- refundable tax credit for research and development activity and other incentives; and
- an extensive and expanding double tax treaty network, which includes over 70 countries, including the US, UK, China and Japan.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction? Have new structures increasingly developed (e.g. minority investments)?

PE transactions are usually structured using a holding company ("Holdco") and an indirect wholly-owned subsidiary of Holdco ("Bidco"). Holdco is commonly owned by the PE fund and management, as majority and minority shareholders, respectively. Holdco can take the form of an offshore vehicle, although it is usually Irish or UK tax resident.

Bidco's primary role is to acquire and hold the target's shares and it may also act as borrower under the debt facilities. For tax- and/or financing-related purposes, it is common to have intermediate holding companies inserted between Holdco and Bidco.

For inbound investments, Bidco is typically a private limited liability company resident, for tax purposes, in Ireland. The jurisdiction of incorporation of Bidco can vary and may be onshore or offshore.

Minority investments have become more common. See question 2.6 below.

2.2 What are the main drivers for these acquisition structures?

There are a number of factors which affect the acquisition structure adopted in PE transactions. These drivers include: (i) the tax requirements, capacity and sensitivities of the PE house, management and target; (ii) the finance providers' requirements; and (iii) the expected profile of investor returns.

2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

PE investors typically use small proportions of equity finance to subscribe for ordinary or preferred ordinary shares in Holdco. The balance is generally invested as a shareholder loan (often structured as loan notes issued by Holdco), or preference shares.

Management will generally subscribe for ordinary shares in Holdco representing between 5% and 15%, commonly referred to as "sweet equity". On some buyouts, key senior management with sufficient funds to do so may also be permitted (and/or required) to invest in the institutional strip.

Senior management are usually expected to make sufficient financial investment in the target group to ensure their interests remain aligned with the PE investor and that they remain incentivised to create further value. They will also typically sign up to contractual restrictions (see question 2.5 below).

Other key personnel may be invited to participate in management incentive plans or to become additional employee shareholders.

2.4 What are the main drivers for these equity structures?

Management incentivisation, structural subordination of equity and investor financing, ease of return of funds to investors, and tax considerations generally feature as main drivers for these structures.

2.5 In relation to management equity, what are the typical vesting and compulsory acquisition provisions?

Transaction documents will invariably include provisions enabling the PE fund to compulsorily acquire a manager's shares on termination of his/her employment with the relevant portfolio company.

Documentation will usually include good leaver/bad leaver provisions, which will determine the amount payable to the departing manager. These provisions come in many forms but will frequently define the term "good leaver" by reference to specific circumstances (death, retirement over statutory retirement age, long-term illness, etc.) with all other circumstances constituting a "bad leaver".

A "good leaver" will commonly obtain the higher of cost and fair market value for his/her shares while a "bad leaver" may expect to receive the lower of fair market value and cost.

The relevant documentation may also include vesting provisions that will regulate the proportion of shares for which the departing employee will be entitled to the "good leaver" price (i.e. higher of cost and fair market value) by reference to the length of the period from buyout to termination. Vesting may be straight-line or stepped and full vesting may typically occur after a period of between three and five years.

2.6 If a private equity investor is taking a minority position, are there different structuring considerations?

A minority PE investor will typically be more focused on veto rights, given it is unlikely to have board control. Depending on the size of the stake, vesting periods for management shares, good leaver/bad leaver provisions may be somewhat relaxed.

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

PE houses and management will typically enter into a shareholders' agreement to govern their relations as shareholders in the portfolio company. This will likely include, among other provisions: (i) covenants from management with regard to the conduct of the business of the portfolio company; (ii) extensive veto rights for the PE house; (iii) restrictions on the transfer of securities in the portfolio company; and (iv) provisions regarding further issuances of shareholder equity/debt.

In addition, the constitutional documents may include governance arrangements, particularly with regard to the transfer of shares.

3.2 Do private equity investors and/or their director nominees typically enjoy significant veto rights over major corporate actions (such as acquisitions and disposals, litigation, indebtedness, changing the nature of the business, business plans and strategy, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

PE investors normally enjoy significant veto rights over major corporate, commercial and financial matters, although thresholds are commonly set to ensure that day-to-day decisions can be taken by management.

These veto rights will typically be split between director veto rights and shareholder veto rights.

In a minority PE investment, given the PE house is unlikely to have board control, the PE house is typically much more focused on veto controls to the extent that, in certain cases, a minority investment may result in more veto control than might be the case in a majority investment.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

Veto rights will generally be respected by Irish courts, but may be found to be void if they constitute an unlawful fetter on any statutory powers of an Irish company or are contrary to public policy. Generally, appropriate structures can be put in place to ensure that customary veto rights are effective.

A shareholders' agreement is likely to be entered into to ensure that agreed veto arrangements would be upheld at the shareholder level. Such an agreement may also obligate the shareholders to procure that certain actions are taken (or not taken) by the relevant target group companies.

Directors' veto rights need to be balanced with the directors' duty to act in the best interests of the portfolio company. Hence, it is wise to retain shareholder level veto rights.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or vice versa)? If so, how are these typically addressed?

The PE investor itself is not subject to fiduciary or other duties under Irish company law to the minority shareholders (but see question 3.6 below for potential liability as shadow director). Board nominees generally owe duties to the company, but may, in limited circumstances, owe duties to shareholders (for example, regarding information disclosure).

Certain duties may also be owed if: (i) the portfolio company is insolvent or verging on insolvency; or (ii) if a specific special relationship (for example, principal and agent) is established between the nominee directors and the shareholders.

Shareholders may be entitled to bring derivative actions on behalf of the company against the nominee directors (often as a last resort), although it may be difficult to establish the eligibility of the shareholders to bring such an action under company law.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

Save to the extent that they contravene statute or are contrary to public policy, there are no such limitations or restrictions that would apply with respect to an Irish company as regards enforceability. However, if the group structure includes companies from other jurisdictions, the impact of the laws of those jurisdictions will need to be considered. Non-complete restrictions will only be enforced to the extent reasonable in terms of geographical, temporal and sectoral scope. Governing law clauses which set non-Irish law as the law of choice will typically be respected by the Irish Courts.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies under corporate law and also more generally under other applicable laws (see section 10 below)?

PE investors must ensure that nominee directors are eligible to act as directors, including, in particular, that they are not disqualified by statute or restricted from so acting under Irish company law.

In the context of being entitled to nominate directors, PE investors ought to be aware that in certain circumstances they may be construed as "shadow directors" under s. 221 of the Companies Act 2014, if the nominee directors are accustomed to act according to the directions and instructions of the PE fund. If construed as shadow directors, the PE investor would be treated as a director of the portfolio company and directors' duties would apply to it.

Nominated directors risk incurring liabilities if they breach their directors' duties (including their statutory duties under ss. 223–228 CA) and may face the risk of clawback action for certain decisions made during certain periods of time if the company is insolvent or verging on insolvency.

PE investors will typically seek to mitigate the impact of the above risks through directors' and officers' insurance policies.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

Such directors must be mindful that although they are nominee directors, their duties are generally owed to the company itself and not to the party nominating them or other shareholders.

The CA (s. 228(i)(f)) imposes a duty on a director to "avoid any conflict between the directors' duties and… other interests unless the director is released from his or her duty to the company…". Such an actual or potential conflict of interest may arise, for example, with respect to (i) the nominating PE house, or (ii) the directors' other directorial positions.

A specific release passed in general meeting or included within the portfolio company's constitution in relation to any matter of concern would reduce this list.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including competition and other regulatory approval requirements, disclosure obligations and financing issues?

The timing for transactions is largely affected by regulatory approvals (mainly competition and sector-specific approvals) and the preparation of financials (particularly given the prevalence of locked-box-pricing mechanisms in PE transactions).

4.2 Have there been any discernible trends in transaction terms over recent years?

The M&A landscape remains generally favourable to PE sellers in Ireland. Recent trends include: (i) continuing prevalence of the "locked-box" consideration structure; (ii) increase in deals involving warranty and indemnity insurance; (iii) continuing limited representation and warranty protection from PE sellers; and (iv) reducing limitation of liability periods.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

In public-to-private transactions involving Irish companies, the Irish Takeover Rules ("Takeover Rules") will usually apply. The Takeover Rules regulate the conduct of takeovers of, and certain other transactions affecting, Irish companies listed on certain stock exchanges, and contain detailed provisions covering matters such as confidentiality, announcement obligations, deal timetable, capped break fees and public disclosure. The Takeover Rules are administered by the Irish Takeover Panel (the "Panel"), which has supervisory jurisdiction over such transactions.

While the application of the Takeover Rules means that such transactions are generally subject to a more restrictive framework than a typical private company transaction, there are three particular Irish Takeover Rules features of note:

- A transaction must be independently cash confirmed before a bidder can announce a firm intention to make an offer. For a private equity investor, this means that, at the time of announcement, its funding will need to be unconditionally available to the bidder (including possibly being placed in escrow).
- Once a firm intention to make an offer is announced, a bidder will generally be bound to proceed with the offer. Furthermore, save for the acceptance condition or any competition/anti-trust condition, once an offer is made, the bidder will have limited scope to invoke any other condition to lapse or withdraw the offer. This increases the importance of due diligence for the private equity investor.
- Special arrangements with any category of target shareholder, including management incentivisation proposals, will generally require Panel consent. Such consent may be given subject

to independent shareholder approval at a general meeting. This necessitates the importance of early formulation of such arrangements or proposals and engagement with the Panel.

5.2 Are break-up fees available in your jurisdiction in relation to public acquisitions? If not, what other arrangements are available, e.g. to cover aborted deal costs? If so, are such arrangements frequently agreed and what is the general range of such break-up fees?

Break fees are allowed in relation to public acquisitions with Panel consent. The Panel will typically only consent to break-fee arrangements of up to 1% of the value of an offer, with limited trigger events, including: (i) the withdrawal of an offer recommendation by the target board resulting in the offer being withdrawn or lapsing; or (ii) the success of a competing offer. The mere failure to achieve a minimum acceptance level in the absence of (i) or (ii) would not typically be an acceptable trigger for payment of a break-fee.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

"Locked-box" structures are generally preferred by PE sellers as they offer certainty in the purchase price from the outset, greater control over financial information, potentially reduced contractual liability, cost savings and prompt distribution of sale proceeds to investors/sellers after completion. The buyer will be compensated for any "leakage" of value from the target group following the "locked-box date" (save to the extent the parties agree such leakage is to be treated as "permitted" (and so not to form the basis of any adjustment)).

Other consideration structures commonly used may involve adjustments by reference to working capital and net debt. These structures rely on a statement or set of accounts drawn up shortly after completion and adjustments are made to the purchase price based on deviations from reference balance sheets/accounts, drawn up prior to execution of the share purchase agreement (and on which the pricing has, in theory, been based).

6.2 What is the typical package of warranties/indemnities offered by a private equity seller and its management team to a buyer?

A PE seller usually only provides warranties regarding title to its own shares, capacity and authority.

The target's management will often (subject to their percentage ownership and on the basis they are usually better placed to) provide business warranties, under a separate management warranty deed. The key rationale for the warranties is generally to elicit full disclosure regarding the target during the due diligence process, although the negotiated warranty package may form the basis for warranty and indemnity insurance protection.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

A PE seller will usually provide pre-completion undertakings in relation to no-leakage (in a locked-box pricing structure) and assistance with regulatory filings and, in some cases, undertakings regarding the conduct of the target business pre-completion (although frequently limited to exercise of voting in a manner aimed at achieving such outcome rather than an absolute procure covenant).

A PE seller is very unlikely to provide non-compete covenants, but these may be provided by members of management who are exiting the target business. Typically non-solicitation of employees covenants will be acceptable to a PE seller.

Management will also generally provide pre-completion undertakings regarding the conduct of the target business pre-completion.

6.4 Is warranty and indemnity insurance used to "bridge the gap" where only limited warranties are given by the private equity seller and is it common for this to be offered by private equity sellers as part of the sales process? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such warranty and indemnity insurance policies?

Yes, buyer warranty and indemnity insurance policies are an increasingly common tool for "bridging the gap", and preliminary terms for buy-side insurance are commonly included by PE sellers as part of the initial sell-side transaction documentation, for buyer and insurer to agree during negotiation of the sale and purchase documentation.

These will typically be given on the basis of a set of business warranties given by management, but subject to limitations designed to ensure that personal liability of management is limited.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

On the basis that a PE seller's warranties will generally be limited to title, capacity and authority, a PE seller's warranties are usually either subject to a cap equal to the aggregate purchase price or uncapped.

Liability under any "no-leakage" covenant will likely be limited to a relatively small amount which is commonly escrowed.

Managers can limit their liability under the warranties by: (i) giving them severally (each manager is only liable for its proportionate share of liability for any claim and/or its own breach) and subject to awareness; and (ii) capping maximum liability for any warranty claims.

In a transaction including warranty and indemnity insurance, the cap on management liability for warranties will often be set at the level of the insurance deductible/excess.

General limitations include time limits within which claims may be brought, and *de minimis* and basket thresholds.

6.6 Do (i) private equity sellers provide security (e.g. escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

Escrow retention accounts do feature in some transactions but PE sellers typically look to resist such arrangements. PE buyers will, as an alternative to a retention, look to include warranty breaches within the compulsory purchase/good leaver/bad leaver provisions.

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain if commitments to, or obtained by, an SPV are not complied with (e.g. equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

The PE fund usually gives a direct commitment to the seller to fund Bidco with the equity capital committed to the transaction, subject only to the satisfaction of the conditions in the share purchase agreement and financing being available. The seller can generally enforce this commitment directly against the PE fund to the extent it becomes unconditional and the PE fund fails to fund Bidco.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

Reverse break fees are relatively unusual in private equity transactions in Ireland but may be used in certain circumstances.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

Typically an Irish IPO will be part of a dual-listing with either a UK or US listing. There are a number of key issues which need to be considered by PE sellers considering an IPO exit, including the following:

- Market risk: unlike certain other PE exit routes, PE sellers are exposed to market risk when looking to access institutional investor capital through an IPO process. Sellers can look to mitigate this risk by commencing a pre-marketing campaign earlier in the deal timeline to try and secure a successful outcome (equally, however, this means that if there is a need to postpone the transaction for whatever reason, it can be seen as a more significant failure by the investor community).
- Lock-ups/selling restrictions: PE sellers may not be able to dispose of their stake in the business completely at the time of the IPO. The PE sellers may be subject to a lock-up period during which they would be unable to sell some, or all, of their stake in the business to prevent detrimental effects on the valuation of the company immediately after the IPO. As such, there would be a delay between the time of the IPO and the time at which the PE fund would fully realise its investment. Please see the response to question 7.2 for further commentary on the duration of lock-ups.
- Contractual obligations relating to the IPO: the PE seller will be required to be a party to the underwriting agreement entered into with the investment banks underwriting the IPO. The PE seller will be expected to give a suite of representations and warranties to the banks as to a range of matters relating to itself and the shares it owns and, to a more limited extent, the company being floated and its business. It will also be expected to give the underwriting banks a broad transaction indemnity covering any losses they may incur in connection with the transaction.
- Corporate governance: on the IPO, depending on the listing venue, companies are often required to adopt a particular corporate governance framework. Therefore, whilst the PE seller may have enjoyed contractual rights to board representation and other matters prior to the IPO, these are likely to be significantly constrained on completion of the IPO (please see further the response to question 7.3 below).

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

The duration of the lock-up provided by the PE seller will vary from transaction to transaction, but is typically for a period of six months following the IPO. As a result, the PE seller will be exposed to market risk for the duration of the lock-up period in respect of any stock it retains, with no ability to sell if the market begins to turn or the company's performance declines.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

Almost all Irish transactions in recent years have concluded through a sale rather than an IPO. Typically, a PE seller looking to exit by way of an IPO will look to an IPO by way of a dual-listing in Ireland and either the US or UK.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (particularly the market for high yield bonds).

Traditional bank-led leveraged loan financing remains the most common source of debt finance used to fund both mid-market and large private equity transactions in Ireland.

However, in recent years there has been increasing competition between traditional bank lenders and non-bank (or "alternative") lenders and funds, which has resulted in a wide array of other debt products being offered to market participants to replace and/or supplement traditional senior secured bank loans. These include term loan B ("TLB") facilities, mezzanine and unitranche loans and second lien loan products. For certain transactions, some market participants have also been able to turn to direct lending funds.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

There are no particular legal requirements or restrictions that would affect the choice or structure of debt financing of private equity transactions in Ireland generally. However, market participants should be aware of, and ensure compliance with, any industry specific laws and regulations, as well as the broader regulatory regime affecting private equity transactions.

For example, market participants need to be especially careful in regards to compliance with anti-bribery, corruption and sanctions laws. Aside from local laws, borrowers and sponsors should also be aware of the expansive nature and potential extraterritorial reach of such laws and regulations in the United States, which can necessitate compliance by many non-US entities (or entities that have only limited US ties).

9 Tax Matters

9.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

When investing in an Irish target, key tax considerations for private equity investors will include the choice of holding structure, transaction tax costs, debt financing considerations, and the management of tax costs on the flows of cash from the portfolio companies.

In terms of Ireland as a holding company jurisdiction, Ireland offers an attractive tax regime for holding companies. Irish holding companies can receive dividends from their Irish subsidiaries tax-free and from foreign subsidiaries on an effective Irish tax-free basis (or with a very low effective rate of Irish tax). This is due to a combination of Ireland's low corporation tax rate and the availability of Irish credit relief for foreign taxes.

Ireland's "substantial shareholders" exemption relieves Irish holding companies from Irish capital gains taxation on the disposals of subsidiaries. Two main conditions apply: (a) the subsidiaries must be resident in the EU or in a country with which Ireland has a tax treaty, and (b) a minimum 5% shareholding must have been held for a continuous period of at least 12 months within the previous 24 months.

There are broad exemptions from Irish withholding taxes on dividends, interest and royalties, including exemptions for payments to persons resident in tax treaty countries (and additionally, in the case of dividend payments, to companies controlled by persons resident in tax treaty countries).

Ireland has no controlled foreign company ("CFC") rules and no general thin capitalisation rules.

In terms of transaction tax costs, this can depend on how the investment is structured. Where the target is an Irish incorporated company, an Irish stamp duty cost will generally arise upon the acquisition, at a rate of 1% on the consideration paid (or market value, if higher), depending on how the investment is structured.

In terms of share acquisitions generally, appropriately structured, an interest deduction should be available for interest paid by an Irish holding company in connection with an acquisition of shares (subject to certain conditions being satisfied). Provided certain conditions are met, this tax deduction can be offset against the profits of the Irish target group. Appropriately structured, Irish withholding tax on the payment of interest can be reduced or eliminated.

As alluded to above, Ireland is also an attractive holding company location for private equity investments outside Ireland.

Finally, Ireland has a beneficial tax regime applying to Irish domiciled investment funds (which can provide an attractive holding structure for private equity investors).

Ireland is widely recognised as one of the world's most advantageous jurisdictions in which to establish investment funds. Our investment funds offering was bolstered in 2015 by the introduction of the Irish Collective Asset-management Vehicle ("ICAV"). The ICAV is a corporate entity that is able to elect its classification under the US "check the box" tax rules. Irish domiciled funds have a variety of attractive tax attributes, in particular that income and gains can accumulate free of Irish tax within the fund and that returns can be paid to non-Irish investors free of Irish tax provided certain declarations are in place. The ICAV has great potential in the context of private equity transactions.

As regards whether off-shore structures are common, in short, it depends. Given the attractive features of Ireland's holding company regime as set out above, Irish structures often feature. However, that said, we do see off-shore structures used from time-to-time, the choice of structure depending on the factors set out in the first paragraph above.

9.2 What are the key tax considerations for management teams that are selling and/or rolling-over part of their investment into a new acquisition structure?

A key tax consideration for management teams based in Ireland will be to ensure that any shares acquired as part of a roll-over will consist of an investment acquired in their capacity as a shareholder in the target or acquisition structure, and not in their capacity as an employee (and be documented as such), in order (as appropriate) to avail of capital gains tax ("CGT") rates on the return on the investment (and not the marginal rates of income tax, universal social charge and social security).

Management teams will also be keen to ensure that "share-for-share" CGT relief will be available (where preferable) in order to defer any potential CGT in respect of the disposal of their holding in the target.

Stamp duty roll-over relief may also be relevant in the context of Irish target companies.

On an ongoing basis, the potential to avail of employee incentives such as SARP (the special assignee relief programme), and FED (the foreign earnings deduction), and any tax reliefs in the context of share awards will also be relevant.

9.3 What are the key tax-efficient arrangements that are typically considered by management teams in private equity portfolio companies (such as growth shares, deferred / vesting arrangements, "entrepreneurs' relief" or "employee shareholder status" in the UK)?

In general, whilst share incentivisation is common in Ireland, the tax treatment of most forms of share incentivisation is not particularly advantageous for employees/directors based in Ireland, with (broadly) marginal rates of income tax, universal social charge and social security applying on any benefits obtained. However, if the shares that the employees receive qualify as "restricted shares" (under Irish tax rules), there could be a material abatement of up to 60% of the taxable value of the shares for Irish tax purposes (subject to certain qualifying conditions being met). This is, potentially, very favourable for employees/directors.

Ireland has a specific tax regime for the return (known as "carried interest") received by venture capital managers for managing investments in certain venture capital funds. The regime operates by treating certain carried interest received by a partnership or a company as being subject to chargeable gains and applying a reduced rate to such carried interest. The share of profits which benefit from the reduced rate must relate to an investment in a trading company, which remains in place for at least six years and carries on qualifying "research and development" or "innovation activities", and satisfies certain additional conditions.

9.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

There are currently no tax changes expected, which would affect private equity investments in or from Ireland. However, the European Commission has presented a package of tax transparency measures, the main component of which is a proposed European Directive that has required Member States to exchange tax rulings issued in respect of certain "cross-border transactions" on a quarterly basis with effect from 1 January 2017. In addition, Irish Revenue have issued new guidance on the validity period of opinions/confirmations issued by Irish Revenue, which are stated to be subject to a maximum validity period of five years, or such shorter period as may have been specified by Irish Revenue when providing the opinion/confirmation.

10 Legal and Regulatory Matters

10.1 What are the key laws and regulations affecting private equity investors and transactions in your jurisdiction, including those that impact private equity transactions differently to other types of transaction?

PE investors and transactions are subject to a broad array of Irish statutes applicable in the context of corporate transactions. Key legislation includes the Companies Act 2014, the Takeover Rules (in the context of public-to-private transactions) MIFID, the Investment Intermediaries Act, AIFMD and various taxation statutes.

10.2 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

The AIFMD has resulted in private equity funds which operate in the EU becoming subject to additional regulation. In relation to private equity transactions, the new regulation imposes new disclosure requirements in relation to portfolio companies and new restrictions on the ability of private equity fund buyers to release assets from portfolio companies (the so-called "asset-stripping" rules). These obligations apply to all private equity funds that are managed within the EU and also any private equity funds that are marketed to investors in EU Member States pursuant to the AIFMD private placement regimes.

10.3 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g. typical timeframes, materiality, scope etc.)? Do private equity investors engage outside counsel / professionals to conduct all legal / compliance due diligence or is any conducted in-house?

The level of legal due diligence will vary from transaction to transaction. Typically, diligence will be conducted over a three- to six-week period. Materiality thresholds will vary from sector to sector but in a business with a small number of key contracts, a PE buyer may set no materiality threshold on those key contracts. Typically outside counsel are engaged to conduct diligence.

10.4 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g. diligence, contractual protection, etc.)?

PE sellers are increasingly concerned with compliance with anti-corruption/bribery legislation principles, particularly given increasing regulatory scrutiny of corporate conduct and potentially significant financial penalties and reputational damage resulting from non-compliance. Typically this concern is addressed by warranty protection regarding compliance with such laws.

10.5 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

Generally, an Irish court will not "pierce the corporate veil" so as to impose liability on a shareholder for the underlying activities/liabilities of its subsidiary/investee company, provided the portfolio company is a limited liability company. If an unlimited company or partnership is used, its shareholders/partners can be liable for the entity's debts.

11 Other Useful Facts

11.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

Ireland provides an economically attractive venue for private equity investment and the private equity industry. There are attractive tax structuring options for non-Irish PE investors (e.g. ICAV structure). See section 9 above.

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The authors would like to thank **Brian McCloskey** for his invaluable contribution towards this chapter.

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