Private Equity

Contributing editor
Bill Curbow

2016

GETTING THE DEAL THROUGH

GETTING THE DEAL THROUGH

Private Equity 2016

Contributing editor

Bill Curbow

Simpson Thacher & Bartlett LLP

Publisher
Gideon Roberton
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

First published 2005
Twelfth edition
ISSN 1746-5508

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

CONTENTS

Japan

Makoto Igarashi and Yoshiharu Kawamata
Nishimura & Asahi

Formation and terms operation

1 Forms of vehicle

What legal form of vehicle is typically used for private equity funds formed in your jurisdiction? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? In either case, what are the legal consequences for investors and the manager?

In Japan, a limited partnership formed under the Act concerning Investment Business Limited Partnership Agreements (the AIBLPA, Act No. 90 of 1998) is the most typical vehicle for private equity funds. A limited partnership does not have a separate legal personality from its partners; therefore, the partners are deemed to hold the assets and liabilities of the partnership directly. Usually, an investor becomes a limited partner, whose liability is limited to the amount of its capital contribution, unless otherwise agreed, and the manager becomes, or has its affiliate become, the general partner of the partnership.

2 Forming a private equity fund vehicle

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

To form a limited partnership, a general partner must execute a limited partnership agreement, in writing, with at least one limited partner. In rare instances in Japan, a short-form agreement with a nominee limited partner for formation is used, which is later replaced with an amended and restated agreement upon negotiation and documentation with the initial investors. Therefore, the length of time required for formation depends on the offering activities for fundraising and documentation with the initial investors. Once the general partner executes the limited partnership agreement, it has to register the limited partnership with the relevant local legal affairs bureau within two weeks of the execution. A registration tax of ¥30,000 is imposed for the initial registration. The general partner may file the registration documents themselves, or through an attorney. The registration will be completed within one week or so, upon filing. Under the AIBLPA all the partners are required to make capital contributions to the limited partnership, but there are no minimum capital requirements.

3 Requirements

Is a private equity fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, or a corporate secretary, and how is that requirement typically satisfied?

Under the AIBLPA, the limited partnership needs to have a registered office and a general partner in Japan. The general partner must prepare financial statements, request that a certified auditor audit the statements within three months after the end of each business year and maintain a copy of the audited financial statements, together with a copy of the partnership agreement and the auditor's opinion, at the principal office for a period of five years. Limited partners and creditors to the limited partnership may ask the general partner to allow them to review those documents. The general partner may have to retain a custodian under the FIEA (as referred to below) in order to meet the asset-segregation requirements in connection with its licence or offering activities. There are no requirements for an administrator or a corporate secretary.

4 Access to information

What access to information about a private equity fund formed in your jurisdiction is the public granted by law? How is it accessed? If applicable, what are the consequences of failing to make such information available?

A general partner must register the following information with a local legal affairs bureau within two weeks of the limited partnership agreement becomes effective:

- the business purpose of the limited partnership;
- the name of the limited partnership;
- the date when the limited partnership agreement became effective;
- the duration period of the limited partnership;
- the name and location address of the general partner;
- the location of the office of the limited partnership; and
- any additional dissolution events of the limited partnership that are not set forth under the AIBLPA.

When the information changes, the general partner must register the changed information within two weeks after the change occurs. If the general partner fails to file within this deadline, it may be subject to a monetary penalty of one million yen or less. Anyone may request that the registry issue a certified copy of the registered information, and may also access the information through the website, but information regarding the identities of the investors or the amount of their capital commitment is not publicly available.

5 Limited liability for third-party investors

In what circumstances would the limited liability of third-party investors in a private equity fund formed in your jurisdiction not be respected as a matter of local law?

Generally, the limited liability for third-party investors is respected under the AIBLPA. However, if a limited partner has misled a third party to believe that it has the power or authority to execute the business on behalf of the limited partnership, it shall owe the same responsibilities as the general partner with regard to such third party who entered into a transaction with the limited partnership on the basis of such misunderstanding.

6 Fund manager's fiduciary duties

What are the fiduciary duties owed to a private equity fund formed in your jurisdiction and its third-party investors by that fund's manager (or other similar control party or fiduciary) under the laws of your jurisdiction, and to what extent can those fiduciary duties be modified by agreement of the parties?

Under the AIBLPA, a general partner owes a 'duty of due care of a prudent manager' to the limited partners of the partnership. This duty, according to the prevailing interpretation thereof, requires the degree of care that a prudent and competent person engaged in the same line of business or endeavour would exercise under similar circumstances. If the general partner fails to exercise such due care, it may be liable to compensate the limited partners for the damages resulting therefrom. Upon agreement

with the limited partners, it may modify the scope or extent of such duty, but may not remove such duty entirely. Please note, however, that if the general partner assumes its role as a financial instruments business operator (FIBO) who engages in the discretionary investment management business, the Financial Instruments and Exchange Act (FIEA) expressly imposes on the general partner the duty of due care of a prudent manager and a duty of loyalty to the limited partner, as well as various other regulatory obligations and restrictions. In such an instance, it may not modify the duties to be inconsistent with such regulations.

7 Gross negligence

Does your jurisdiction recognise a 'gross negligence' (as opposed to 'ordinary negligence') standard of liability applicable to the management of a private equity fund?

Japan recognises the gross negligence standard of liability in general, and upon agreement with the limited partners, a general partner may adopt such standard applicable to the management of a private equity fund.

8 Other special issues or requirements

Are there any other special issues or requirements particular to private equity fund vehicles formed in your jurisdiction? Is conversion or redomiciling to vehicles in your jurisdiction permitted? If so, in converting or redomiciling limited partnerships formed in other jurisdictions into limited partnerships in your jurisdiction, what are the most material terms that typically must be modified?

The AIBLPA stipulates certain investment restrictions. A general partner may not invest the assets of the partnership into assets other than those listed under the AIBLPA. The AIBLPA covers almost all asset classes that private equity funds typically invest in, but a limited partnership is subject to a certain portfolio test if it wishes to invest in non-Japanese corporations. It may hold equity interests, warrants, and debts issued by non-Japanese corporations only if the total amount of the investments in non-Japanese corporations does not exceed 50 per cent of the total partnership assets.

Also, the offering activities of the interests in a limited partnership and the investment management activities are generally subject to the regulations under the FIEA. Therefore, unless respectively exempted thereunder, a general partner would have to obtain a business licence to conduct both activities in Japan, file the securities registration statement, prepare and deliver the prospectus to the investors for the public offering of the interests, and continue the timely disclosure after the offering thereunder. In the usual cases, however, a general partner will comply with the requirements of the relevant exemptions, to avoid both licence requirements and public disclosure requirements.

Neither conversion nor redomiciling to limited partnerships in Japan from those of other jurisdictions is allowed.

9 Fund sponsor bankruptcy or change of control

With respect to institutional sponsors of private equity funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the private equity fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the private equity fund's sponsor?

Unless otherwise specifically provided for in the limited partnership agreement, events affecting the fund sponsor's status such as bankruptcy, insolvency, change of control or restructuring will not trigger dissolution of the fund or removal of the general partner. Provided that, only if the sponsor is the sole general partner and becomes bankrupt, the limited partnership shall be dissolved, unless the other partners find a new general partner within two weeks, under the AIBLPA.

Regulation, licensing and registration

10 Principal regulatory bodies

What are the principal regulatory bodies that would have authority over a private equity fund and its manager in your jurisdiction, and what are the regulators' audit and inspection rights and managers' regulatory reporting requirements to investors or regulators?

Unless exempted under the FIEA, the general partner is required to register him or herself as a FIBO that engages in offering fund interest (Type II business) or discretionary investment management business. The Financial Services Agency (FSA) or the local financial bureaus (LFBs) are the principal regulatory bodies over a general partner of the fund. If a general partner registers itself as a FIBO, the FSA or the LFBs have broad power and authority to audit and inspect this general partner. It is also required to regularly provide investment management reports to investors and submit annual business reports to the relevant LFB, although they also are required to follow other continuous reporting requirements.

As a matter of practice, however, most of the general partners rely on the exemption from the above business licence requirements by satisfying certain conditions under article 63 of the FIEA (the QII business exemption). See question 24 for the conditions of such exemption. Even in such a case, the FSA or the LFBs maintain the right to monitor and inspect such general partners, but it is not on a regular basis. Such general partners are required to file and update certain matters with the LFBs, but are not required to submit business reports or other documents unless the LFBs specifically request them.

11 Governmental requirements

What are the governmental approval, licensing or registration requirements applicable to a private equity fund in your jurisdiction? Does it make a difference whether there are significant investment activities in your jurisdiction?

As opposed to a corporate-type fund or unit trust, partnership-type funds do not need be registered under the mutual fund law of Japan. However, if the interests are publicly offered in Japan, the general partner has to file the securities registration statement, prepare and deliver the prospectus to the investors, and conduct the ongoing disclosure under the FIEA. In connection with the FIEA, the location of significant investment activities does not make any difference in the application thereof.

See question 10 regarding the licence requirements for the general partner.

12 Registration of investment adviser

Is a private equity fund's manager, or any of its officers, directors or control persons, required to register as an investment adviser in your jurisdiction?

See question 10 regarding the licence requirements for general partners. Once a general partner is registered as a FIBO on an entity basis, the officers or directors do not need to obtain a separate licence (their information is included in the FIBO application documents of the general partner). They may conduct their business as personnel of the licensed FIBO. A control person will, as the case may be, be required to file another report of its shareholding of the licensed FIBO under the FIEA.

There is no such registration requirement if the general partner relies on the QII business exemption (the information regarding the officers or directors is included in the notification (Form 20) to be filed by the general partner), although the requirement to report a control person is not applicable.

13 Fund manager requirements

Are there any specific qualifications or other requirements imposed on a private equity fund's manager, or any of its officers, directors or control persons, in your jurisdiction?

If the general partner registers as a FIBO that engages in discretionary investment management, it must satisfy the following requirements for the registration:

- its permission, approval or registration necessary for financial instrument business under the FIEA or other equivalent non-Japanese laws has not been rescinded within the preceding five years;
- it has not violated the FIEA or other laws, and has not been subject to a fine within the preceding five years;
- it has not engaged in business contrary to the public interest;
- it has sufficient staff to properly conduct financial instrument business;
- it has ¥50 million in stated capital or in total equity;
- it is either a Japanese corporation with a board of directors, or a foreign corporation equivalent thereto;
- it has net assets of at least ¥50 million;
- it does not engage in such business (other than permitted business under the FIEA) that it cannot properly control the risk;
- none of its directors, officers, others who have power to manage it, fund managers or compliance officers fall into any of the excluded categories under the FIEA; and
- if it is a Japanese corporation, none of its major shareholders fall into any of the excluded categories under the FIEA; if it is a non-Japanese entity, the authorities in its home jurisdiction confirm that the solid and appropriate operation of its financial instrument business will not be prevented by any major shareholders.

If the general partner relies on the QII business exemption, there would be no such requirements.

14 Political contributions

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a private equity fund's manager or investment adviser or their employees.

In Japan, no one may accept contributions for political activities from a non-Japanese person or a Japanese entity whose equities are mainly held by a non-Japanese person. Other than this restriction, a general partner may make political contributions, which are in principle disclosed to the public.

15 Use of intermediaries and lobbyist registration

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a private equity fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities. Describe any rules that require a fund's investment adviser or its employees and agents to register as lobbyists in the marketing of the fund to public pension plans and governmental entities.

There is no such restriction or requirement under Japanese law. We have not found any such internal rule or policy of public pension plans or governmental entities, based on publicly available information.

16 Bank participation

Describe any legal or regulatory developments emerging from the recent global financial crisis that specifically affect banks with respect to investing in or sponsoring private equity funds.

This is not a recent legal development, but due to the voting equity holding restriction applicable to banking entities, a Japanese bank would hesitate to hold more than a 5 per cent interest in a partnership-type private equity fund unless specifically exempted thereunder. In the case of a limited partnership under the AIBLPA, a bank may rely on the exemption if certain conditions are met, but usually requests that the general partner make further covenants to ensure its compliance with such regulations.

Taxation

17 Tax obligations

Would a private equity fund vehicle formed in your jurisdiction be subject to taxation there with respect to its income or gains? Would the fund be required to withhold taxes with respect to distributions to investors? Please describe what conditions, if any, apply to a private equity fund to qualify for applicable tax exemptions.

Under Japanese tax law, a limited partnership is itself a non-taxable entity, and income or gain arising from investment through the partnership will be allocated to each partner without imposition of a tax at the limited partnership level. All distributions made by the limited partnership to foreign investors (if they maintain a permanent establishment in Japan) are generally subject to a withholding tax at the rate of 20 per cent. Other than this, neither the limited partnership nor the general partner is required to withhold taxes regarding distributions to partners.

18 Local taxation of non-resident investors

Would non-resident investors in a private equity fund be subject to taxation or return-filing requirements in your jurisdiction?

According to a tax authority ruling, investment activities conducted by a general partner on behalf of a limited partnership are generally deemed to be activities jointly carried out by all partners of the partnership. Based on this idea, when a non-Japanese investor becomes a limited partner of a limited partnership, the investor is deemed to have a permanent establishment in Japan so that all investment income derived from the partnership is subject to Japanese taxation, because at least one general partner of the limited partnership is a Japanese resident. Therefore, all distributions made by the limited partnership to foreign investors are generally subject to taxation in Japan. However, there is a statutory exemption, under which a foreign investor as a limited partner of a limited partnership is deemed to have no permanent establishment in Japan. In such cases, distributions made to the limited partner (that would otherwise be subject to taxation because of a permanent establishment) will not be subject to withholding tax in Japan and no obligation to file a Japanese tax return is imposed. To rely on the exemption, a foreign investor who satisfies all of the following requirements must file an application with the Japanese tax authorities via the general partner stating:

- it is a limited partner;
- it does not engage in business operations or management of the limited partnership;
- it does not hold 25 per cent or more of the whole of the partnership interests;
- it does not have any close capital relationship with the general partner; and
- it has no permanent establishment in Japan other than by virtue of having invested in the partnership.

Under Japanese tax law, even if a non-Japanese resident investor does not have a permanent establishment in Japan, when a non-Japanese resident investor possesses 25 per cent or more of the total issued shares of a Japanese corporation at any time within three years prior to the last day of the business year containing the date of transfer, and the investor transfers 5 per cent or more of the total issued shares, the transfer of shares is taxable in Japan (the 25 per cent/5 per cent rule). In calculating these ratios, the number of shares held or transferred by specific persons related to the investor is aggregated, and when the non-Japanese resident investor invests in a limited partnership which invests its partnership assets into shares of Japanese corporations, other limited partners of the limited partnership fall into the category of specially related persons. If, however, a non-Japanese resident investor that is a limited partner in a limited partnership satisfies certain conditions, it may exclude other partners' shares to calculate the 25 per cent/5 per cent rule. This exemption applies when the non-Japanese resident investor satisfies the following requirements:

- it does not have a permanent establishment in Japan;
- either (i) the limited partnership is one to which the previously discussed exemption applies, or (ii) during the relevant three-year period, the non-Japanese resident investor was not involved in the conduct of the operations or management of the limited partnership;

- at any time during the three-year period, no specially related person (other than other limited partners) of the non-Japanese resident investor held 25 per cent or more of the interest of the domestic company;
- the limited partnership held the relevant shares for at least one year;
- the investment target is not a proscribed type of insolvent financial institution; and
- the non-Japanese resident investor files certain documents with the Japanese tax authorities by 15 March of the following year (for an individual investor) or two months after the fiscal year-end (for a corporate investor).

Besides the above, capital gains resulting from any of the following share transfers are subject to Japanese tax unless otherwise exempted:

- the transfer of shares in a Japanese corporation by conducting certain market manipulations or greenmail activities against the Japanese corporation; and
- the transfer of more than 2 per cent (in the case of the listed shares, 5 per cent) of the shares in a corporation that derives 50 per cent or more of the value of its gross assets directly or indirectly from real estate (including related rights over real estate) in Japan by the non-Japanese resident investor and other specially related shareholders.

19 Local tax authority ruling

Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a private equity fund vehicle formed in your jurisdiction? Are there any special tax rules relating to investors that are residents of your jurisdiction?

There is no special necessity to obtain a ruling from the Japanese tax authorities.

20 Organisational taxes

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

To register the formation of a limited partnership, ¥30,000 must be paid as a registration tax.

21 Special tax considerations

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

On the assumption that the general partner is a corporate entity (as opposed to an individual), there are no special considerations regarding carried interest and management fees from the viewpoint of Japanese taxation.

22 Tax treaties

Please list any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

Japan has entered into a number of tax treaties, and how those treaties apply to a specific fund vehicle or its partners depends on the specific facts, including the structure of that fund vehicle and the residence of the relevant parties.

23 Other significant tax issues

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

As with many other jurisdictions, the tax rules in Japan are complex and intricate. Nevertheless, tax matters occupy an important position in fund structuring, and we highly recommend that you consult with tax advisers regarding the specific fund structure and investment.

Selling restrictions and investors generally

24 Legal and regulatory restrictions

Describe the principal legal and regulatory restrictions on offers and sales of interests in private equity funds formed in your jurisdiction, including the type of investors to whom such funds (or private equity funds formed in other jurisdictions) may be offered without registration under applicable securities laws in your jurisdiction.

In connection with the private placement exemption for marketing interests in partnership-type funds, fewer than 500 investors in Japan shall acquire the interests, and the investors shall be notified that the offer of the interests has not been or will not be registered on the ground that they are securities set forth in article 2, paragraph 2, item 5 of the FIEA and that the offer of the interests falls under the category of a small number private placement exemption. Further, if the general partner relies on the QII business exemption, it shall comply with the following conditions:

- it has at least one qualified institutional investor (QII) limited partner;
- it has no more than 49 non-QII limited partners;
- it has no disqualified investors listed in the FIEA;
- it complies with the transfer restrictions, in which the QII may not transfer its interests to a person other than a QII and a non-QII may not transfer its interests to more than one person. A QII is defined in article 2, paragraph 3, item 1 of the FIEA.

In relying on the exemption, the general partner must file a notification (Form 20) with the relevant office of the LFB prior to any solicitation.

25 Types of investor

Describe any restrictions on the types of investors that may participate in private equity funds formed in your jurisdiction (other than those imposed by applicable securities laws described above).

As set forth in question 24, if a general partner relies on the QII business exemption, at least one limited partner shall be a QII, and the number of non-QII limited partners shall be 49 or less. Further, it may not accept a disqualified investor (such as certain special purpose companies and certain funds of funds in which a non-QII invests).

26 Identity of investors

Does your jurisdiction require any ongoing filings with, or notifications to, regulators regarding the identity of investors in private equity funds (including by virtue of transfers of fund interests) or regarding the change in the composition of ownership, management or control of the fund or the manager?

If a general partner relies on the QII business exemption, it must specify at least one QII's name, and the name of the fund in the notification (Form 20) to be filed with the LFBs. Also, the general partner is required to update the notification without delay if any matter described therein is changed. Also, in connection with the registration with the legal affairs bureau, it must update any registered matter to be changed, within two weeks after the change is effective.

27 Licences and registrations

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

Unless otherwise exempted, a general partner or outside placement agents who offer fund interests are required to register themselves as a FIBO that engages in Type II business. However, if the general partners rely on the QII business exemption, they do not have to register as a FIBO for offering their fund interests. See question 24 for the conditions of such exemption.

Update and trends

In May 2015, a bill to amend parts of the FIEA regulating the QII business exemption passed the Japanese Diet. It will greatly increase the regulatory burden of a general partner who relies on the QII business exemption. Some of the regulatory burdens will be on a similar level to a licensed FIBO engaging in Type II business and investment management business. Please see question 24 for the current conditions of this exemption.

Although the published draft revisions of the Cabinet Order and Ordinance regulating the QII business exemption have not yet been finalised, this amendment to the FIEA and the draft revisions of the Cabinet Order and Ordinance may change, among other things, the following:

- Questions 3 (requirements) and 31 (legal and regulatory restrictions) – A general partner who relies on the QII business exemption must segregate the partnership assets from its own assets in accordance with the FIEA regardless of whether it retains a placement agent in Japan;
- Question 10 (principal regulatory bodies) – A general partner who relies on the QII business exemption must prepare and maintain records on its business, and must prepare and submit an annual business report to the authorities, and must make some parts of its business report available to the public at their relevant offices or on its website;
- Question 13 (fund manager requirements) – A general partner who relies on the QII business exemption must satisfy certain conditions, for example, it has not violated the FIEA or other laws, and has not been subject to a fine within the preceding five years. If the general partner is a non-Japanese person, it must appoint a representative in Japan;
- Question 24 (legal and regulatory restrictions) and 25 (Types of investor) – The conditions of the QII business exemption will be stricter. Among other things, the range of non-QIIs who can invest in funds based on the QII business exemption will be narrowed to, among others, FIBOs, parent companies and subsidiaries of a general partner and officers/employees thereof, listed companies, Japanese juridical persons with ¥50 million or more in stated capital or of net assets, foreign juridical persons, individuals who hold investment-type financial products equivalent to ¥100 million or more and opened securities accounts at least one year ago, and other certain persons; and
- Question 26 (identity of investors) – All QII names must be specified in the notification (Form 20) to be filed with the LFBs, but their names are not publicly available.

This amendment to the FIEA, together with the related amendment to the Cabinet Order and Ordinance, will take effect by June 2016 (it is expected to be implemented a few months before June 2016).

28 Money laundering

Describe any money laundering rules or other regulations applicable in your jurisdiction requiring due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a private equity fund or the individual members of the sponsor.

The Act on Prevention of Transfer of Criminal Proceeds (APTCP) requires that a general partner who is registered as an FIBO or relies on the QII business exemption, before accepting a new investor, complete the investor identification process in accordance with the APTCP. At a minimum, the general partner must verify the identity of its investor prior to the execution of the subscription agreement with that investor and maintain records of the information used to verify the investor's identity. The general partner must promptly report to the regulatory authority if the general partner suspects that property received from an investor relating to its investment management business may be from criminal proceedings, or that an investor may have engaged in criminal conduct in connection with any transaction relating to its investment management business. The administrative guideline requires that the general partner avoid contact with 'antisocial forces'. An organised crime group, a member of an organised crime group, a quasi-member of an organised crime group, a related company or association of an organised crime group, a corporate racketeer and other equivalent groups are included in antisocial forces. The general partner shall not enter into any agreement with antisocial forces or entities controlled by antisocial forces.

Exchange listing

29 Listing

Are private equity funds able to list on a securities exchange in your jurisdiction and, if so, is this customary? What are the principal initial and ongoing requirements for listing? What are the advantages and disadvantages of a listing?

Under the FIEA it is technically possible, but no securities exchanges in Japan have rules that assume partnership interests are to be listed on the exchanges. Therefore, based on the current situation, private equity funds formed as partnerships are unable to be listed on securities exchanges in Japan.

30 Restriction on transfers of interests

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

Not applicable under the current exchange rules.

NISHIMURA & ASAHI

Makoto Igarashi **m_igarashi@jurists.co.jp**
Yoshiharu Kawamata **y_kawamata@jurists.co.jp**

Otemon Tower
1-1-2 Otemachi, Chiyoda-ku
Tokyo 100-8124
Japan

Tel: +81 3 6250 6200
Fax: +81 3 6250 7200
info@jurists.co.jp
www.jurists.co.jp/en

Participation in private equity transactions

31 Legal and regulatory restrictions

Are funds formed in your jurisdiction subject to any legal or regulatory restrictions that affect their participation in private equity transactions or otherwise affect the structuring of private equity transactions completed inside or outside your jurisdiction?

Other than those described above and below, there are no explicit legal or regulatory restrictions that a general partner should be concerned with when it establishes a limited partnership as an investment vehicle for private equity investments.

If the general partner retains a placement agent in Japan who is a FIBO engaging in Type II business, it must make sure to segregate partnership assets from its own assets, in accordance with the FIEA. Also, in connection with the foreign exchange regulations of Japan, the general partner should ask its non-Japanese limited partners to file prior notification or a report of the acquisition of an equity share when the limited partnership acquires an equity share in a certain category of Japanese corporation, since such acquisition would be deemed to be direct investment by such non-Japanese limited partners of a part of the equity share, owing to the legal transparency of the limited partnership.

32 Compensation and profit-sharing

Describe any legal or regulatory issues that would affect the structuring of the sponsor's compensation and profit-sharing arrangements with respect to the fund and, specifically, anything that could affect the sponsor's ability to take management fees, transaction fees and a carried interest (or other form of profit share) from the fund.

There are no specific issues regarding this topic.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Arbitration
Asset Recovery
Aviation Finance & Leasing
Banking Regulation
Cartel Regulation
Class Actions
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Executive Compensation & Employee Benefits
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Labour & Employment
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Restructuring & Insolvency
Right of Publicity
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com

Law Business Research

Private Equity
ISSN 1746-5524

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

LACCA
LATIN AMERICAN CORPORATE COUNSEL ASSOCIATION

Official Partner of the Latin American Corporate Counsel Association

ABA Section of International Law
Your Gateway to International Practice

Strategic Research Sponsor of the ABA Section of International Law