PANORAMIC NEXT

Private Equity

USA

LEXOLOGY

Private Equity

2025

Contributing Editors

Michael Chao, **Mark Myott**, **Peter H Gilman**, **Jessica A O'Connell**, **Russell Reed**, **Faisal Ajam** and **Henry Litwhiler**

Simpson Thacher & Bartlett LLP

Through a series of engaging interviews with leading legal practitioners in key jurisdictions, *Panoramic Next: Private Equity* analyses the biggest trends and most consequential recent developments in private equity activity worldwide. Addressing major market trends and regulatory changes, it offers vital insights relevant to both sides of private equity transactions.

Generated: October 3, 2025

LEXOLOGY

USA

Michael Chao, **Mark Myott**, **Peter H Gilman**, **Jessica A O'Connell**, **Russell Reed**, **Faisal Ajam**, **Henry Litwhiler**
Simpson Thacher & Bartlett LLP

Summary

PROFILES

About

Q&A

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

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

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

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

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

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

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

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

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

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

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

What effect has the AIFMD had or will it have on fundraising in your jurisdiction?

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

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

THE INSIDE TRACK

What factors make private equity practice in your jurisdiction unique?

What should a client consider when choosing counsel for a complex private equity transaction in your jurisdiction?

What interesting or unusual issues have you come across in recent matters?

Profiles

ABOUT

Michael Chao is a partner in Simpson Thacher's corporate department and is based in the firm's New York office. He represents private equity sponsors and public and private companies on mergers and acquisitions, investments, dispositions, joint ventures and other significant corporate transactions across a wide range of industries.

Mark Myott is a partner in Simpson Thacher's corporate department and is based in the firm's Palo Alto office. He represents corporate and private equity clients in connection with leveraged buyout transactions, mergers, spin-offs, recapitalisations, restructurings, growth equity and venture capital investments and other complex transactions across a wide variety of sectors.

Peter H Gilman is a partner in Simpson Thacher's private funds practice and is based in the firm's New York office. He focuses on the sponsoring and management of private investment funds and aspects of private investing in alternative asset classes.

Jessica O'Connell is a partner in Simpson Thacher's corporate department and is based in the firm's New York office. Her practice focuses on the organisation and operation of private funds, including buyout funds, real estate funds and separately managed accounts.

Faisal Ajam is an associate in Simpson Thacher's corporate department and a member of the M&A practice group. He is based on in the firm's Palo Alto office.

Russell Reed is an associate in Simpson Thacher's corporate department and a member of the private funds practice group. He is based in the firm's New York office.

Henry Litwhiler is an associate in Simpson Thacher's corporate department and a member of the private funds practice group. He is based in the firm's New York office.

Q&A

WHAT TRENDS ARE YOU SEEING IN OVERALL ACTIVITY LEVELS FOR PRIVATE EQUITY BUYOUTS AND INVESTMENTS IN YOUR JURISDICTION DURING THE PAST YEAR OR SO?

M&A activity in the United States rebounded in the first half of 2025, following a period of stagnation in 2023 and 2024. Total deal value reached approximately US$857.5 billion, a 13 per cent year-over-year increase (LSEG). Private equity sponsor-led activity followed a similar trajectory, while adapting to challenging market conditions – particularly with respect to exits – by shifting focus to higher valued targets. In the first six months of 2025, 4,429 private equity deals were consummated in the United States at an aggregate value of US$507 billion. While deal count declined by 8 per cent compared to the same period in 2024, the aggregate value rose by 29 per cent. This divergence, fueled by high levels of dry powder, underscores a strategic pivot by sponsors to larger transactions – often referred to as a 'flight to quality'. 'Mega-deals', transactions of US$1 billion or more, have persistently grown since dipping in 2023 and now account for half of all private equity deal value – the largest share on record. By comparison the traditional middle-market segment (US$100 million to US$500 million) was eclipsed in the first half of 2025 by mega-deals, which totaled US$223 billion in value, a 58 per year over year increase. Deal volume under US$1 billion has remained mostly flat since 2022, albeit with some fluctuation: in the opening period of 2025, the segment fell by 18 per cent in transaction value and 8 per cent in deal count (PitchBook). Overall, sponsors were very active dealmakers this year, as buyout deals accounted for 21 per cent of global M&A activity in the first six months of 2025. Private equity-backed deals grew 24 per cent in value compared to the same period in 2024, marking the strongest opening six months for such deals in two years. The first half of 2025 ranks as the third most active period in private equity dealmaking activity of any opening six-month period for private equity-backed buyouts since 1980 (LSEG).

LOOKING AT TYPES OF INVESTMENTS AND TRANSACTIONS, ARE PRIVATE EQUITY FIRMS PRIMARILY PURSUING STRAIGHT BUYOUTS, OR ARE OTHER OPPORTUNITIES, SUCH AS MINORITY-STAKE INVESTMENTS, PARTNERSHIPS OR ADD-ON ACQUISITIONS, ALSO BEING EXPLORED?

While minority investments (whether through new primary capital or secondary investments) have become more common as exits have remained depressed, the buyout remains the most popular form of investment, accounting for 78 per cent of all sponsor-led buyside activity in the United States. Over the past decade, leveraged buyout (LBO)-style transactions have steadily risen in aggregate value, with 2025 continuing the trend: deal value in in the first half of the year rose 17 per cent by value year-on-year, though deal count fell 18 per cent. Take-private activity has slowed, constrained by record equity index levels and the high cost of debt. In the first half of 2025, sponsors completed US$35 billion in US take-privates – unlikely to match the total 61 deals consummated at a value of US$110 billion in 2024, a record year for take privates by count.

Sponsor-to-sponsor deals, where portfolio companies are sold between private equity firms, have remained increasingly important as sponsors looking to deploy capital face pressure to return liquidity to LPs amid elevated dry powder levels. These deals support the private equity flywheel by tackling both the buyside and sellside pressures and are attractive as the target assets have already undergone institutionalisation. In the first half of 2025, sponsor-to-sponsor deals were up 32 per cent by value year over year and accounted for 23 per cent of all US private equity exit value. Such transactions represented 50 per cent of all exits by count, the second highest share of exit count since 2011. Nevertheless, the reduced deal count indicates that sponsors are demonstrating a preference to hold higher quality assets in the hope of selling down the road in a more favourable exit environment.

As sponsors have held assets for longer, add-ons and growth investments have grown in importance. Add-on acquisitions, in which a private equity sponsor acquires a new company via one of its existing portfolio companies, have been more popular since the increase in interest rates in 2022, accounting for 74 per cent of all private equity buyouts by count. These add-on deals allow sponsors to benefit from synergies while leveraging their larger portfolio companies' existing credit facilities and infrastructure, maximising scale and efficiency. Growth and venture-style deals also remain active, reflecting a shift to more flexible capital deployment strategies (PitchBook).

WHAT WERE THE RECENT KEYNOTE DEALS? AND WHAT MADE THEM STAND OUT?

Notable private equity transactions in the United States in the first half of 2025 include:

-

the completed US$25 billion acquisition of Endeavor Group Holdings, Inc. by Silver Lake, which is the largest private equity sponsor public-to-private investment transaction in over a decade, and the largest ever in the media and entertainment sector;

- the US$8.4 billion take-private of Smartsheet by funds managed by Blackstone Inc. and Vista Equity Partners and
- the US$1.6 billion equity investment in HUB Internal Limited, a Hellman & Friedman controlled portfolio company, at a US$29 billion valuation by T. Rowe Price Investment Management, Inc., Alpha Wave Global and Temasek.

DOES PRIVATE EQUITY M&A TEND TO BE CROSS-BORDER? WHAT ARE SOME OF THE TYPICAL CHALLENGES LEGAL ADVISERS IN YOUR JURISDICTION FACE IN A MULTI-JURISDICTIONAL DEAL? HOW ARE THOSE CHALLENGES EVOLVING?

Significant cross-border private equity activity is atypical, although there has been steady interest in cross-border deals, particularly among larger funds with the capacity to manage these transactions. Several large-cap private equity sponsors have stand-alone region-focused funds, such as Asia-focused funds, that have mandates to make investments in particular geographic regions. It is more common for non-US private equity sponsors, such as European funds or Asian funds, to look to the United States for potential investment opportunities, subject to the continuously evolving CFIUS regime described below. Asia-Pacific buyers have more than doubled their investment into the Americas, while Americas-based buyers have increased their domestic focus (PricewaterhouseCoopers). More broadly, during the first half of 2025, cross-border M&A activity increased 40 per cent to US$595.2 billion, marking the strongest first opening six months for cross-border M&A in three years as pent-up demand and long-held assets are driving increases in global M&A. Up from 2024, the technology, healthcare and energy sectors made up 50 per cent of cross-border transactions for the first six months of 2024 (LSEG).

The primary challenges to cross-border investments revolve around financing, tax considerations, regulatory compliance and securities laws limitations. In addition, US sponsors offering co-investment opportunities to foreign investors, seeking to sell portfolio companies to non-US buyers, or considering other transactions involving sales to foreign acquirers, should be aware of the possibility of review by the Committee on Foreign Investment in the United States (CFIUS). CFIUS is a multi-agency committee authorised to review transactions that could result in foreign control over US businesses for potential impacts on US national security. Under the Foreign Investment Risk Review Modernization Act (FIRRMA), enacted in 2018, CFIUS is authorised to review certain ‘other investments’ by a foreign person in a US business, including those that do not convey potential control, if the US business: (1) owns, operates, manufactures, supplies or services critical infrastructure; (2) produces, designs, tests, manufactures, fabricates or develops one or more critical technologies; or (3) maintains or collects sensitive personal data of US citizens that may be exploited in a manner that threatens national security (collectively defined in the regulations as TID US Businesses), as well as acquisitions of real estate and leaseholds near sensitive US military or other government facilities. CFIUS has the authority to negotiate and implement agreements to mitigate any national security risks raised by such transactions. If CFIUS determines that such risks cannot be mitigated, CFIUS can recommend that the US President suspend, prohibit or unwind a transaction.

A CFIUS review can add delays and meaningful uncertainty to transactions, depending on the nature of the target business and the identity of the foreign acquirer. In transactions involving the sale of a portfolio company that is in a sensitive industry or that handles sensitive data, especially to buyers that CFIUS considers are from countries of concern, sponsors will be prudent to consider whether a CFIUS filing is advisable or a mandatory declaration is necessary under the Mandatory Regime (described below), to propose reverse termination fees or pre-emptive divestitures, to discuss possible mitigation efforts the buyer is willing to make and to build political support for the transaction. Since 2012, acquisitions involving Chinese acquirers have been the most reviewed transactions pursuant to the CFIUS review process. Given the US government's trade policies, rising anti-China rhetoric, heightened tensions around North Korea and Russia, particularly in connection with the conflict in Ukraine, and with the enactment of FIRRMA, which expanded CFIUS's jurisdiction and created a longer time frame for CFIUS review, among other reforms, many practitioners anticipate a tougher CFIUS hurdle and expect increased scrutiny of inbound investments from Chinese buyers to continue.

CFIUS has also introduced regulations imposing mandatory filing requirements for certain transactions involving target companies active in critical technologies or critical infrastructure, or that have access to the sensitive personal data of US citizens. A failure to satisfy these filing obligations could result in significant fines and penalties for the parties, up to the value of the transaction itself, and introduce additional deal uncertainty and regulatory risks. Parties are required to notify CFIUS of transactions that would result in foreign ownership of a 'substantial interest' in a US business where: (1) the US business involves critical infrastructure, critical technology or sensitive personal data of US citizens; and (2) a foreign government has a 'substantial interest' in a foreign party to the transaction. CFIUS implemented a mandatory filing requirement (the Mandatory Regime) authorised by FIRRMA that expanded CFIUS's jurisdiction by granting it the authority to review controlling and non-controlling 'other investments' made by a foreign person, whether or not controlled by a foreign government, in a company involved in

critical technologies for which a US regulatory authorisation would be required to transfer that critical technology to a foreign investor or a foreign person in the investor's ownership chain and that affords the foreign person: (1) access to any material non-public technical information in the possession of the US business; (2) membership or observer rights on, or the right to nominate, an individual to a position on the board of directors or equivalent governing body of the US business; or (3) any involvement, other than through voting of shares, in substantive decision-making of the US business regarding the use, development, acquisition or release of critical technology. Transactions subject to the Mandatory Regime are subject to mandatory declaration requirements. Although FIRRMA and the Mandatory Regime include certain exceptions for US national-managed investment funds, FIRRMA may increase the number of transactions involving US sponsors and co-investors that would be subject to CFIUS review and investigation, and the timing and substantive risks.

Depending on the nature of the US business, divestiture to an entity with foreign ownership interests may also require other national security regulatory approvals in conjunction with CFIUS reviews, such as from the Federal Communications Commission (with possible referral to the US Team Telecom review process), the Department of Defense's Defense

Counterintelligence and Security Agency with respect to facility security clearances or the Department of State's Directorate of Defense Trade Controls with respect to registrations and licences issued pursuant to the International Traffic in Arms Regulations, among others. Relatedly, a number of US state legislatures have proposed or passed laws that restrict foreign investment in the state, including laws prohibiting or otherwise restricting the acquisition of interests in real property located in the state by certain foreign persons.

Further, the US Department of the Treasury's Outbound Investment Security Program (the Outbound Investment Screening Regime), which became effective on 2 January 2025, provides for a targeted national security regulatory framework directed at regulating outbound investment from the United States into entities from the People's Republic of China, Hong Kong, and Macau engaged in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors. Codified at 31 C.F.R. § 850.101 et seq, the Outbound Investment Security Program imposes notification requirements and prohibitions for certain categories of transactions involving such entities. Given the program's infancy and its evolving interpretation and implementation, it is unclear how it, and any related future regulations, will be interpreted, amended, and implemented by the US government.

In addition to CFIUS, many jurisdictions around the world restrict foreign direct investment, and heads of state and regulatory bodies have the authority to block or impose conditions with respect to certain transactions, such as investments, acquisitions and divestitures, if the transaction threatens to impair national security. In addition, many jurisdictions restrict foreign investment in assets important to national security by taking steps including, but not limited to, placing limitations on foreign equity investment, implementing investment screening or approval mechanisms, and restricting the employment of foreigners as key personnel. For example, the United Kingdom commenced a national security screening process in January 2022 pursuant to the country's National Security and Investment Act 2021. There have been several similar initiatives in a number of jurisdictions across the European Union over the past few years. Elsewhere, legislation passed in Australia in 2020 expanded the criteria used to determine whether

a transaction must be notified to the country's Foreign Investment Review Board (FIRB) and afforded the government new powers to review transactions that could pose a national security risk. FDI regimes in many countries impose mandatory filing requirements or have the ability to require the parties to submit an application to the relevant ministry – often with disclosure and reporting obligations concerning an investment fund's limited partners or equity investors – and regulators usually have the authority to block or impose conditions with respect to any such acquisition or investment. These regimes can apply even when a transaction target, such as a US parent company, maintains foreign subsidiaries, operations or assets, meaning that a comprehensive multi-jurisdictional FDI assessment that considers applicable filing requirements on a global basis is often prudent. Mandatory triggers ordinarily involve sensitive industries such as defence, energy, telecommunications, critical infrastructure, healthcare, advanced technologies (such as artificial intelligence), financial services and sensitive personal data, among others. But some can also be triggered merely by the ownership profile of the investor, such as in the case of India's Press Note 3 (2020 Series), which imposes restrictions on investments in Indian entities by parties from neighbouring countries like China, or where certain government investor thresholds are exceeded such as in the case of Australia's FIRB. All cross-border transactions should be evaluated to determine whether consents or approvals are required under these and other foreign direct investment regulations around the world to avoid the potential for penalties and intervention by foreign regulators, understand the impact that they may have on the regulatory closing timeline, build in necessary closing conditions to transaction documentation and engage with regulators when necessary or advisable.

While the regulatory and other challenges in cross-border sponsor exits and other transactions, including CFIUS review, are often manageable in many contexts, they increase the level of resources required and may otherwise complicate the process for executing such transactions.

WHAT ARE SOME OF THE CURRENT ISSUES AND TRENDS IN FINANCING FOR PRIVATE EQUITY TRANSACTIONS? HAVE THERE BEEN ANY NOTABLE DEVELOPMENTS IN THE AVAILABILITY OR THE TERMS OF DEBT FINANCING FOR BUYERS OVER THE PAST YEAR OR SO?

The majority of leveraged buyouts today are financed through private credit direct lending arrangements, rather than the broadly syndicated loan (BSL) market. In the open to 2025, 81 per cent of all LBOs were financed by private credit arrangements (PitchBook). As an asset class, private credit is expected to grow to US$2.6 trillion by 2029, a significant jump from its US$1.7 trillion value in 2023 (Preqin). In 2022, private credit overtook syndicated loans by value on the LBO market. When volatility spiked in 2022 and rates soared, the syndicated loan market closed to all but the highest-quality issuers, causing a hard pivot by sponsors to seek financing from private credit funds. Private credit arrangements offered better deal certainty as they eliminate the risk caused by lengthy syndication periods and provide borrowers with open access to capital, albeit at a higher cost of borrowing and with tighter covenants.

As the broadly syndicated loan market has reopened, competition between syndicated loans and private credit has intensified. Sponsors are reducing their reliance on private credit arrangements, with many notable refinancings this year of private credit facilities into syndicated debt. In the quarter of May through July roughly US$14 billion of private credit loans were refinanced in the broadly syndicated loan market, the largest quarterly total ever on record. Overall, new sponsor-backed syndicated loan issuance volumes have greatly exceeded the private credit market since the close of 2023 (Pitchbook). The current period of competition between the traditional broadly syndicated lending market and private credit should provide sponsors with more favourable debt financing terms and spreads, and leverage to negotiate more relaxed operating covenants, thereby lowering the cost of debt.

A key structural issue to monitor is the significant funding gap between private equity buyout fund dry powder and private credit dry powder, with the former (~US$1 trillion) being over 3 times larger than the latter (~US$300 billion) (Preqin). For example, the middle market relies almost exclusively on direct lending, reaching a 90 per cent financing market share in 2024 (LSEG). This imbalance the raises the risk of a capital crunch, particularly if the syndicated loan market tightens again. In that case, sponsors may need to commit more equity to close transactions, which would lower internal rates of return and create valuation pressures. To bridge this gap, during the recent period of heightened borrowing costs, sponsors have utilised co-investment arrangements with their LPs to reduce their initial capital outlay. Co-investment is an attractive option for LPs as it provides them more control over the investment at a lower carry and fee basis.

HOW HAS THE LEGAL, REGULATORY AND POLICY LANDSCAPE CHANGED DURING THE PAST FEW YEARS IN YOUR JURISDICTION?

Most private equity firms continue to be required to register with the Securities and Exchange Commission (SEC) as investment advisers, and the SEC has continued to focus on examining private equity firms with the goal of, among other things, promoting compliance with certain provisions of the Investment Advisers Act that the SEC deems of particular importance. In recent years, certain private equity industry practices have received significant attention from the SEC, which has led, in certain cases, to enforcement actions against private equity fund advisers.

There have been attempts by the SEC in prior administrations to increase the regulatory burden on private equity firms. In August 2023, the SEC adopted new rules and amendments which would have resulted in more transparency into private funds, while also limiting the flexibility of governance at the fund-level. In June 2024, that set of rules was struck down by a federal appeals court. The new administration has not shown an appetite to pursue a similar course, instead preferring to support a more flexible regulatory regime.

Areas that the SEC continues to highlight as areas of particular concern include, among others, the following:

- the allocation of expenses (including for the compensation of operating partners, senior advisers or consultants and employees of private equity fund advisers or their affiliates — and including seconded employees) for providing services (other than advisory services) to funds and portfolio companies, as well as for payments of a private equity fund adviser's regulatory compliance expenses to funds or portfolio companies, or both;
- full allocation of broken deal expenses to funds instead of allocating a portion of such expenses to separate accounts, co-investors or co-investment vehicles, in each case without pre-commitment disclosure and consent from investors;
- the receipt by private equity firms of transaction-based compensation or other fees or compensation from funds or portfolio companies, or both, outside of the typical management fee or carried interest structure (eg, an acceleration of monitoring fees and compensation for the provision of brokerage services in connection with the acquisition and disposition of portfolio companies without being registered as a broker-dealer) without a corresponding management fee offset;
- the allocation of investment opportunities by private equity sponsors among the investment vehicles and funds that they manage;
- the allocation of co-investment opportunities;
- the disclosure of conflicts of interest to investors, including those arising out of:
    - the outside business activities and financial interests of a private equity firm's employees and directors;

    - investments made by affiliated different funds managed by a private equity firm in different levels of a company's capital structure;
    - financial relationships between private equity firms and select investors in their funds (eg, seed investor relationships);
    - portfolio companies' use of affiliated service providers affiliated with the private equity firm or its principals;
    - fund restructurings; and
    - 'cross transactions' between funds managed by the private equity firm;
- the receipt of service provider discounts by private equity firms that are not given to the funds or portfolio companies;
- marketing presentations and the presentation of performance information generally; and
- policies and procedures relating to the receipt of material, non-public information (MNPI).

We continue to believe that larger, established private equity firms that continue to provide robust pre-commitment disclosure of and obtain consent for conflicts of interest, in addition to maintaining and enforcing sound compliance policies and procedures to mitigate such conflicts of interest, continue to be better positioned to absorb the incremental costs and compliance burdens associated with such scrutiny.

WHAT ARE THE CURRENT ATTITUDES TOWARDS PRIVATE EQUITY AMONG POLICYMAKERS AND THE PUBLIC? DOES SHAREHOLDER ACTIVISM PLAY A SIGNIFICANT ROLE IN YOUR JURISDICTION?

Attitudes toward private equity buyouts remain mixed. Private equity continues to play a central role in M&A activity, while some concerns persist about its influence on corporate governance and long-term value creation. On the regulatory side, the SEC's enforcement and rulemaking powers have been curbed by the federal judiciary. Under the prior administration, the SEC brought a record number of enforcement actions. In 2024, however, the Supreme Court restricted the SEC's ability to adjudicate cases in-house, forcing most enforcement activity into federal courts. And in early 2025, a federal appeals court struck down certain SEC orders approving a series of NASDAQ rules in favour of diversity. The appeals court held such action was outside of the limited purview of the Securities Exchange Act of 1934 – the statute which underpins the SEC – thereby narrowing the SEC's authority over private equity activity. These developments are illustrative of the judicial trend to limit the reach of federal administrative agencies. At the same time, new SEC leadership has signaled interest in lighter-touch regulation compared with prior years. Enforcement levels have declined sharply, with 583 enforcement actions in 2024 dropping to just 57 standalone actions and 27 follow-on actions since 20 January 2025. In a similar vein, new rulemaking at the SEC and policy from the White House suggests a friendliness to entertain sponsor side innovation. The President recently signed an executive order to broaden the scope of 401(k) plans, of which there is nearly US$9 trillion dollars housed in across all plans, to include certain alternative assets including private market investments. And the SEC has approved Capital Group's and KKR's creation of a hybrid retail private and public market fund, the first of its kind. Nevertheless, SEC enforcement and regulation of the investor market remains highly political and uncertain, and the private equity industry can expect more of the same volatility throughout the next decade.

Stockholder activism is common in the United States, albeit with more of a focus on corporate governance and board elections rather than M&A. Activism in the M&A space can take two forms. The first is where an activist who is dissatisfied with a company's performance pressures the board to effectuate a sale. It is difficult to drive operational change as a stockholder, so a sale is often a better channel to help activists realise a return on their investment. Private equity funds do often play the role of a buyer in such scenarios. The second is when the activist takes a position in the company following the announcement of a sale seeking to raise the deal consideration. This scenario, also known as 'bumpitrage', is where an activist may build positions late in a deal to pressure the buyer to deliver a higher payout by exerting influence on the stockholder base before the vote. Typically, however, M&A advisers are aware of the risk and carefully study the target's capitalisation and external market conditions to avoid such a scenario – so this threat has been more conceptual in recent years.

WHAT LEVELS OF EXIT ACTIVITY HAVE YOU BEEN SEEING? WHICH EXIT ROUTE IS THE MOST COMMON? WHICH EXITS HAVE CAUGHT YOUR EYE RECENTLY, AND WHY?

Private equity-backed exit activity has remained relatively stable over the last decade, with the notable exception of 2021, which marked an exceptional year of exits. After a slow 2024, activity rebounded in early 2025: the first half of this year recorded 732 exits at a combined value of US$340 billion, an 18 per cent year over year increase from 2024 in count and a 105 per cent increase in value. Q1 was especially strong, but Q2 showed a slow-down, creating uncertainty for the remainder of the year. Sponsors continue to face challenges from unfavourable valuations, high underwriting requirements in public markets, volatile financial conditions, and elevated interest rates. In this environment, sponsors remain focused on add-on transactions to scale platforms and better position those assets for a strong exit.

The median holding time for an exit dipped modestly versus 2024, while the median age of assets still in private equity portfolios rose. The pandemic era of dealmaking brought a sharp spike in US private equity-backed company inventory, now at an all-time high of 12,552, which has proven challenging to offload. To bridge the liquidity gap without being forced to sell at a discount, sponsors have deployed a variety of strategies. GP-led secondary sales of portfolio companies to continuation funds continue to grow with a year over year increase of 13 per cent in the opening six months. Continuation vehicles have proven a durable tool to return capital to liquidity hungry LPs, while preserving upside for patient capital and avoiding fire-sale dynamics. Another tool GPs use to return liquidity to LPs has been the dividend recapitalisation, where a portfolio company will borrow money, thereby accelerating cash flows of the asset, to make a distribution to its stockholders – here being the private equity sponsor and its affiliated funds. Dividend recaps

have been a growing part of the private equity playbook in 2024 and 2025, given both the constrained exit market and the reopening of the broadly syndicated loan market. In a similar vein, GPs may utilise a net asset value (NAV) credit facility, borrowing at the fund level rather than at the asset level, to make distributions to LPs.

IPO activity ticked up in 2025 on the back of a few mega listings, but activity levels remain far below the 2021 peak. Historic index valuations, with commensurate high underwriting requirements, poor investor outlook, and a general contraction of the number of public companies since before the crisis have resulted in the IPO being a limited exit route. In 2021, public listings were the top exit strategy by aggregate value, with 142 exits. By contrast, only 11 exits via public listing have taken place in the opening half of 2025, falling far short of 2021 levels (PitchBook). Even when a sponsor initiates the IPO process, it will typically be dual-track, meaning simultaneous to an M&A auction for the portfolio company. IPOs remain viable for the largest portfolio companies, but structural challenges in public markets continue to limit their role as a mainstream exit channel. Nevertheless, public markets are highly sentiment-driven, a shift in investor appetite could quickly reopen the IPO window and restore it as a more prominent path to liquidity.

LOOKING AT FUNDS AND FUNDRAISING, DOES THE MARKET CURRENTLY FAVOUR INVESTORS OR SPONSORS? WHAT ARE FUNDRAISING LEVELS LIKE NOW RELATIVE TO THE PAST FEW YEARS?

There continues to be robust investor demand for opportunities to invest in private equity funds, though the market is also facing headwinds due to macroeconomic uncertainty. However, many funds are also performing well enough to raise and are returning back to the market in force. During the first half of 2025, the number of funds on the fundraising trail hit record levels, although the aggregate amount of capital being targeted has declined slightly. In this competitive and otherwise challenging private equity fundraising landscape, the current market appears to favour those sponsors who are experienced, with strong track records and pre-existing limited partner relationships.

Global private equity fundraising in the first half of 2025 decelerated in the aggregate relative to the same period in 2024. Aggregate fundraising volume fell 17 per cent year-on-year, to US$384 billion (all statistics in this section provided by Private Equity International). The total number of funds identified as holding final closings during the first half of 2025 increased over 20 per cent to 1,053, compared to 861 during the same period last year. However, the average size of funds closed during the first half of 2025 decreased to US$625 million, down from an average of US$698 million during the first half of 2024. The decline in overall fundraising was driven by a dip in total capital raised by mega-funds, only one of which raised more than US$20 billion. Consistent with recent prior periods, capital was nevertheless concentrated at mega-funds (ie, funds raising approximately US$5 billion or more) of the recognised top-performing sponsors. This concentration demonstrates the continued consolidation in the private equity industry in favour of larger, established sponsors with proven track records as a result of institutional limited partners seeking to make larger commitments to fewer funds, consolidate manager relationships and invest with sponsors with whom they had prior relationships. Specifically, in the first half of 2025, the 10 largest funds together raised US$115 billion, which represents about 30 per cent of the total capital raised during this period.

Regarding the distribution of capital across different types of private equity funds, buyout funds accounted for 50 per cent of capital raised during the first half of 2025, down sharply from 70 per cent during the first half of 2024, while growth equity and venture capital funds constituted only 14 and 11 per cent of capital raised, respectively. Buyout funds, however, made up only about 31 per cent of funds closed, while venture capital funds accounted for nearly 43 per cent.

Geographically, fundraising was concentrated in North America during the first half of 2025, in line with 2024. North America-focused funds accounted for 50 per cent of all capital raised in the first six months of this year, a marked increase from 40 per cent in 2024. By comparison, the proportion of total capital raised by Europe-focused funds was 15 per cent, and by Asia-Pacific-focused funds, just 4 per cent. Compared with the first half of 2024, as recorded thus far, in the first half of 2025 Europe-focused funds raised nearly US$3 billion less capital than in the prior period, while Asia-Pacific-focused funds raised US$23 billion less capital than in the prior period. Additionally, funds targeting multiple geographic regions attracted US$116 billion, or 30 per cent, of aggregate capital raised during the first half of 2025.

It is expected that overall fundraising levels will remain steady in the near term. There are 5,844 private funds in the market as of 1 July 205 seeking to raise US$1.1 trillion in total capital, compared to 5,573 funds that were targeting US$1.16 trillion at the same time last year. The considerable increase in the number of funds in the market without a corresponding increase in targeted capital suggests some tempered expectations around ultimate fund size.

Many investors are expected to continue to favour managers with established track records that have navigated a number of past economic cycles. Larger institutional investors will continue to consolidate their relationships with experienced fund managers and competition for limited partner capital among private equity funds will continue to increase, with alternative fundraising strategies (eg, customised separate accounts, co-investment structures, continuation funds, early-closer incentives, umbrella funds, anchor investments, core funds, growth equity funds, impact funds, GP minority stakes investing, secondaries and complementary funds (ie, funds with strategies aimed at particular geographic regions or specific asset types)) playing a substantial role. As a result, established sponsors with proven track records should continue to enjoy a competitive advantage and first-time funds in particular will need to accommodate investors by either lowering fees, expanding co-investment opportunities, focusing on unique investment opportunities or exploring alternative strategies. It should be noted that of the US$1.1 trillion in total capital targeted as of July 2025, approximately 17 per cent is being sought by the 10 largest funds, which are overwhelmingly managed by established sponsors. Moreover, it is anticipated that private equity fundraising will continue to focus on established, dominant markets in North America and Europe. Finally, it is also expected that the SEC will continue to focus on transparency (eg, full and fair pre-commitment disclosure and informed consent from investors) with respect to conflicts of interest (including, among others, conflicts of interest arising from the allocation of costs and expenses to funds and portfolio companies, the allocation of investment opportunities and co-investment opportunities and the calculation and receipt of other fees and compensation from funds, portfolio companies or service providers). Given this, larger private equity firms with the resources in place to absorb incremental compliance-related efforts and costs are likely to continue to enjoy a competitive advantage over their peers.

TALK US THROUGH A TYPICAL FUNDRAISING. WHAT ARE THE TIMELINES, STRUCTURES AND THE KEY CONTRACTUAL POINTS? WHAT ARE THE MOST SIGNIFICANT LEGAL ISSUES SPECIFIC TO YOUR JURISDICTION?

The characteristics of a typical fundraise reflect persistent upward trends in investor demand for opportunities to invest in private equity funds and the consolidation of investor capital in experienced fund managers. Fundraising in today's environment has become less episodic and more resource-intensive, with fund structures, terms and marketing timelines customised to most effectively address the business objectives of sponsors, particularly experienced sponsors with proven track records. The following is a simplified framework and timeline for a typical private equity fundraising.

In most cases, typical fundraising will begin with the preparation and distribution of a private placement memorandum to investors, which includes important information about the sponsor and the fund, including a term sheet setting forth the key terms of the fund and the offering of interests, along with additional disclosure information pertaining to the fund. Many private equity funds are structured as Delaware limited partnerships, but the structure and jurisdiction of the fund will depend largely on the sponsor and the asset class, geographic focus, and anticipated investor base of the fund. It is not uncommon for private equity funds to be organised in jurisdictions outside the United States (eg, the Cayman Islands, Ireland or Luxembourg).

Legal counsel will work closely with the sponsor as part of the fundraising to prepare the draft limited partnership agreement, investment management agreement, subscription agreement and related fund documents, which are the definitive agreements governing the operation of a private equity fund. Key contractual points in the fund documents will vary on a case-by-case basis, but often include economic arrangements (eg, management fees and carried interest), tax structuring provisions and minimisation covenants, investment allocation provisions, limited liability protections, standards of care, governance rights, co-investment arrangements and allocations of expenses. It should be noted that increased regulatory scrutiny has resulted in a change in how marketing and offering documents are prepared. Environmental, social and governance (ESG) factors have also emerged as a fundamental underwriting criterion for investors. As a result, drafting fund documents is now a resource- and time-intensive exercise, as pages and pages of granular disclosure are often added to these documents and more frequent updates are often made throughout fundraising in an effort to increase transparency.

Following delivery of the fund documents to investors, counsel and the sponsor will work closely with investors to resolve any questions or comments. Once a critical mass of investors' subscriptions has been secured, the fund will hold an initial closing. Fundraising timelines in private equity can vary significantly depending on the sponsor involved and the type and size of fund being raised, running anywhere from a few months to a few years. Once an initial closing has been held, a private equity fund will typically be permitted to hold subsequent closings over a period of 12 to 18 months. The average fundraising period has trended steadily towards the upper end of that range, reaching 17 months for funds holding their final close in the first half of 2025, as compared to 8 months recorded in 2020. That figure is, however, down slightly from an all-time-high of 18 months in the first half of 2024. As the regulation of private equity funds continues to increase, it remains very important for sponsors to work closely with counsel to ensure that all necessary steps are taken to permit marketing in each jurisdiction in which fund interests are to be marketed.

HOW CLOSELY ARE PRIVATE EQUITY SPONSORS SUPERVISED IN YOUR JURISDICTION? DOES THIS SUPERVISION IMPACT THE DAY-TO-DAY BUSINESS?

Private equity firms are subject to substantial regulation and supervision in the United States, and the regulatory environment in which private equity firms operate is becoming increasingly complex. The regulation and supervision of private equity firms affects not only the manner in which interests in private equity funds are marketed and sold to investors but also the day-to-day business and operations of private equity firms themselves.

The principal laws and regulations applicable to private equity firms affecting their day-to-day business and operations include, among others:

- the Securities Act of 1933 (affecting the manner in which private equity funds market and sell interests to investors);
- the Securities Exchange Act of 1934 (affecting ongoing reporting obligations and placing practical limitations on the number of investors in private equity funds);
- the Advisers Act (imposing substantive regulations and reporting provisions on many private equity fund advisers);
- the Investment Company Act of 1940 (establishing certain eligibility requirements and limitations on investors in private equity funds);
- the Commodity Exchange Act (regulating the ownership of commodities by private equity funds); and
- the Employee Retirement Income Security Act of 1974 (imposing restrictions and onerous fiduciary requirements on private equity funds deemed to hold 'plan assets').

Since the SEC gained oversight of the industry under the Dodd-Frank Act, private equity firms remain the subject of regulatory and public scrutiny. While tempered as of late, the SEC is expected to continue its scrutiny of private equity firms, particularly related to expenses and expense allocation, conflicts of interest and other disclosure matters and, most recently, fee increases and the allocation of profits. Private equity firms with dedicated compliance, investor relations and administrative resources necessary to manage the increased regulatory and compliance burdens in addition to investor demands in today's competitive fundraising environment are likely to continue to enjoy an advantage in the future.

WHAT EFFECT HAS THE AIFMD HAD OR WILL IT HAVE ON FUNDRAISING IN YOUR JURISDICTION?

The AIFMD has resulted in two approaches to fundraising in the European Economic Area (EEA) by US fund managers:

- the use of national private placement regimes (NPPRs); and
- the use of hosted solution platforms.

Some US managers avoid active marketing in the EEA but will admit investors to their fund at the initiative of the investor (reverse solicitation). Although reverse solicitation is sometimes referred to as a way of marketing in the EEA, it is an exclusion that allows investors domiciled or established in the EEA (EEA investors) to invest in funds at their own initiative without thereby subjecting the fund manager to compliance with the AIFMD. As it is not a method of active fundraising (or, if used to that effect, it would be a circumvention of the AIFMD) it is not considered further here.

The two approaches to fundraising reflect the options available under the AIFMD depending on whether the fund manager is:

- a non-EEA alternative investment fund manager (non-EEA AIFM); or
- an authorised EEA alternative investment fund manager (EEA AIFM).

For marketing by a non-EEA AIFM, the AIFMD allows national authorities to operate (at their option) an NPPR. In countries that permit marketing under NPPRs, a non-EEA AIFM may market an alternative investment fund solely within the territory of the relevant country, provided that the non-EEA AIFM complies, at a minimum, with a limited subset of AIFMD requirements. By contrast, for an authorised AIFM, the AIFMD provides a streamlined passport system that (subject to certain limitations) permits the marketing of EEA funds to professional investors anywhere in the EEA. The AIFMD makes provision for the possibility of extending this passport system to non-EEA AIFMs, but there is, as yet, no indication as to when or if it will ever become available to US fund managers.

To understand why the AIFMD has resulted in a bifurcation between NPPRs and hosted solutions, it is useful to consider further aspects of each approach.

National private placement regimes

There is no requirement for EEA member states to allow non-EEA fund managers to privately solicit investors in their member state. Where it is permitted, the member state is required to impose at least the following requirements:

- pre-investment disclosure;
- periodic reporting (Annex IV reporting);
- annual report; and
- if applicable:

- notification and disclosure requirements in relation to the acquisition of significant stakes or control of non-listed companies and issuers; and
- restrictions on certain distributions, capital reductions and share redemptions in respect of portfolio companies (the anti-asset-stripping rules).

Member states are free to impose more stringent measures than those listed above. At present, some EEA states do not operate NPPRs at all. Some EEA states apply the minimum requirements described above, others require the minimum plus, for example, the appointment of a depositary, and some require compliance with substantially all of the AIFMD, making it impossible or practically impossible for a non-EEA AIFM to market a fund in that member state.

The process for obtaining marketing approval under an NPPR (where it is allowed) varies, though it usually requires the advice of local counsel and is therefore costly and time-consuming. This has resulted in a number of US private equity funds, particularly smaller firms that do not have the necessary compliance and fundraising infrastructure in place, to be disadvantaged by the complexity and cost, especially where there is no certainty of raising capital. Further, the minimum requirements noted above (and, if applicable, the appointment of a depositary) create an ongoing administrative and compliance burden for the life of the fund (or until registration is terminated).

Notwithstanding these obstacles, for some non-EEA AIFMs, NPPRs have facilitated the repeated raisings of large funds. They has proven to be a reliable and predictable process that is minimally disruptive to the sponsor's existing business model, as costs are known (many are one-off), ongoing compliance for annual reports and regulatory reporting is incremental, and it does not involve a long-term or open-ended commitment to an establishment in the EEA or to complying with EU laws, as they may evolve or be extended in the future.

The EEA has recently introduced a formal legal framework for 'pre-marketing' of a fund. This permits preliminary discussions with potential investors using early stage or 'draft' fund documentation without the need to complete the full NPPR approval process. Instead, a short notification letter is sent to the regulator of the specific EEA jurisdiction into which the non-EEA AIFM wishes to pre-market. Non-EEA AIFMs are increasingly taking advantage of this regime in those jurisdictions where it is available (as with the NPPR regime, not all EEA states extended this to non-EEA AIFMs) to ascertain whether there is sufficient interest from investors to make incurring the time and resources of a full marketing filing (which must be in place in order to send final form documentation to investors and to admit an investor into the fund) worthwhile.

Hosted solutions

The main disadvantages to NPPRs are:

- it is either not permitted or not practical in certain key countries in western Europe;
- NPPRs have a patchwork of notification and application procedures across the member states where they are permitted (and in some cases, approval from the regulator can take months); and
- Annex IV reporting must be submitted in different formats through different electronic portals to each member state where the alternative investment fund is registered for marketing.

The main alternatives to NPPRs are forming an entity to become authorised as an EEA AIFM and engaging a hosted solution.

Forming a legal entity in an EEA member state and obtaining authorisation as an AIFM is a significant business commitment. Although a small number of US managers have established, or acquired, authorised AIFMs, it is not a plausible alternative for most sponsors and is not often considered further.

A hosted solution involves engaging an authorised EEA AIFM that agrees to manage and market a fund sponsored by a non-EEA AIFM. Typically, a new alternative investment fund is established in the EEA, commonly in Luxembourg or Ireland. The EEA AIFM (the host) agrees to manage the alternative investment fund and market the fund in selected member states under its marketing passport. The EEA AIFM will typically either delegate management to the non-EEA AIFM or engage the non-EEA AIFM to provide investment advice. Increasingly, delegation seems to be more popular than an advisory arrangement, even though it may subject the delegate to certain remuneration rules.

The marketing passport is only available for the marketing of an EEA alternative investment fund and, then, only if the EEA fund is not a feeder fund to a non-EEA master or not a feeder fund to an EEA master that is not managed by an authorised EEA AIFM. For this reason, the hosted solution is commonly used in a parallel investment structure with a non-EEA AIF, which avoids a master–feeder structure.

The right to market under the passport is that of the EEA AIFM – the AIFM has access to the marketing passport, but that does not allow the non-EEA AIFM to market on its behalf in the EEA. The most straightforward solution to this problem is to engage a placement agent authorised in the EEA to act as an intermediary to market on behalf of the AIFM. The EEA's 'pre-marketing' regime also applies a 'passport' thereby allowing for discussions with potential investors to commence prior to there being substantive fund documentation available or the 'full' marketing passport being obtained. As with the marketing passport, this requires a filing to be made by the AIFM to its home state regulator although it can be made within two weeks following the commencement of the pre-marketing activity rather than having to be in place in advance.

EEA investors are familiar with the hosted solution model, and there is no indication that the involvement of a third-party AIFM adversely affects their investment decision – possibly the opposite is the case for some institutional investors, insofar as they prefer to invest in an EEA alternative investment fund with the full protections of the AIFMD. For a similar reason, regulators may prefer the model to an NPPR, for example, because the alternative investment fund and AIFM are within the regulatory perimeter and EU investors receive the full protection of the AIFMD.

A hosted solution addresses most of the shortcomings of marketing under NPPRs, but most importantly it allows access to all countries in the EEA. However, it does entail:

- negotiating a set of service agreements (with the AIFM, and possibly with the depositary and fund administrator);
- establishing an EEA alternative investment fund;
- working with, or under, an entity that is itself subject to all of the requirements of the AIFMD;
- establishing a parallel investment structure; and
- engaging a marketing intermediary.

These factors do mean that the costs, which continue for the life of the fund, may only be justified if the marketing effort results in the raising of a significant amount of capital from investors from whom capital could not otherwise be raised under NPPR.

In summary, the AIFMD contemplated marketing by non-EEA AIFMs under NPPRs. While NPPRs are workable and preferable for some non-EEA AIFMs, the advantages of the marketing passport combined with the attractiveness to some institutional investors of investing in an EEA alternative investment fund, managed by an authorised EEA AIFM, has spawned an industry of hosted solution platform providers.

Finally, it is worth noting that the AIFMD is being amended (AIFMD II) with effect from April 2026 – among other things, it will introduce new, more onerous requirements for EEA AIFMs managing funds which originate loans.

The AIFMD and the United Kingdom

Following the United Kingdom's withdrawal from the European Union at the end of 2020, the UK is no longer a member of the European Economic Area and therefore the EEA AIFMD regime described above no longer applies in the UK. Nonetheless, AIFMD has been retained as part of the law of the United Kingdom, and as yet no substantive amendments have been made. The UK's Financial Conduct Authority operates the UK's equivalent NPPR regime and registration under this regime remains available for non-UK AIFMs who wish to market their funds in the UK. The UK's filing process has always been among the most straightforward and this has remained the case post 'Brexit'. In addition, it is possible to engage in 'pre-marketing' of a fund in the UK to determine whether there is sufficient interest from UK institutional investors prior to making the UK NPPR filing. Unlike in the EEA, the UK regulator does not require any filing to be made to engage in this type of pre-marketing.

Much of the ongoing compliance requirements post-registration remain aligned between the AIFMD regime applicable in the EEA and the equivalent regime in the UK. The main substantive difference relates to the requirements that arise when acquiring/disposing stakes in non-listed companies and issuers. Under the EEA AIFMD regime, these rules now do not apply to the acquisitions/disposals of stakes in UK established companies, and vice versa under the UK AIFMD regime these rules do not apply to the acquisitions/disposals of stakes in EEA established companies. That being said, as the EEA and the UK now seek to develop their own respective regulatory regimes, divergences are arising (eg, in the form of AIFMD II in the EEA) and further divergences are likely to arise in the future. Checking this should be factored into the process when deciding whether to register under the respective regimes.

WHAT ARE THE MAJOR TAX ISSUES THAT PRIVATE EQUITY FACES IN YOUR JURISDICTION? HOW IS CARRIED INTEREST TAXED? DO YOU SEE THE CURRENT TREATMENT POTENTIALLY CHANGING IN THE NEAR FUTURE?

US tax rules are very complex, and tax matters play an important role in both fund formation and the structure of underlying fund investments. US private equity funds are generally structured as pass-through entities for US tax purposes. Acquisitions by private equity firms can sometimes be structured such that the target is also a pass-through entity for US tax purposes. This allows the sponsor to avoid or minimise the effect of double taxation that results from US corporate income tax and may also permit a private equity sponsor to monetise a step-up in the tax basis of the assets of the target. However, such flow-through structures could create US tax issues for tax-exempt and non-US limited partners of private equity funds that require special fund structures to address (which may include the use of corporate 'blocker' entities). Private equity transactions may also involve investments in target entities that are treated as corporations for US tax purposes. Generally, the substantial amount of debt involved in leveraged buyout transactions affords a target company significant interest expense deductions that could be available to offset taxable income, subject to certain limitations. Given the importance of the availability of interest deductions to modelling leveraged acquisitions, careful attention must be paid to the terms of the acquisition debt and the limitations on the deductibility of interest under the US tax rules. Consultation with dedicated tax advisers with respect to the structuring of specific transactions and related tax issues is highly recommended.

Special consideration is given to structuring the carried interest such that it is treated as a partnership allocation eligible for taxation on a flow-through basis. It is sometimes desirable to separate the GP (namely the recipient of the carried interest) and the investment manager (namely the recipient of the management fee) into separate entities for state tax and other purposes. Section 1061 of the Internal Revenue Code typically requires the GP of a private equity fund to hold an investment for three years in order for the carried interest to be treated as capital gains for tax

purposes. Private equity sponsors must also consider the impact of potential tax reform. Congress has previously proposed legislation that would, among other changes, increase the corporate and capital gains rates and subject the carried interest and gain on the sale of investment service partnership interests to higher rates of US federal income tax than under current law. Whether any of these changes will be enacted and their impact on private equity are uncertain.

Private equity sponsors must also be aware of management and employee compensation tax issues, which will be relevant to structuring management's investment and post-closing incentives. An example of one such tax issue is that compensation triggered by a change of control, including certain severance and consideration for equity holdings, may be excess parachute payments, which are subject to a 20 per cent excise tax (in addition to ordinary income taxes) and may not be deducted by the target.

Another example involves the tax treatment of different types of stock options. If an option is an incentive stock option, under typical circumstances, no income is realised by the recipient upon grant or exercise of the option and no deduction is available to the company at such times. Employees recognise tax at capital gains rates when the shares acquired upon option exercise are ultimately sold (if the applicable holding period requirements are met) and the company takes no deduction. If the award is a non-qualified stock option, no income is recognised by the recipient at the time of the grant and no deduction is available to the company at such time. Rather, income is recognised and the deduction is available to the company at the time of option exercise. There are a number of limitations on incentive stock options, and private equity sponsors generally prefer to maintain the tax deduction. Accordingly, non-qualified stock options are more typical.

A final example involves non-qualified deferred compensation. If a deferred compensation plan is non-qualified, all compensation deferred in a particular year and in prior years may be taxable at ordinary income rates in the first year that it is not subject to substantial risk of forfeiture, unless payment is deferred to a date or event that is permitted under the Internal Revenue Code section 409A's rules governing non-qualified deferred compensation.

LOOKING AHEAD, WHAT CAN WE EXPECT? WHAT MIGHT BE THE MAIN THEMES IN THE NEXT 12 MONTHS FOR PRIVATE EQUITY DEAL ACTIVITY AND FUNDRAISING?

Private equity deal activity is up 29 per cent by value in the first half of 2025, and the trend is expected to continue as funds deploy record levels of dry powder into attractive, high-valued targets. While dealmaking slowed in April when consumer sentiment fell to a three-year low amid heightened geopolitical tensions and reciprocal tariffs, confidence has since begun to recover as the markets adjusted (University of Michigan). The resilience of investor appetite and a friendly regulatory regime, combined with the gradual re-entry of banks into the acquisition financing and the expected competition from private credit, points to a more favourable environment for dealmaking for the remainder of the year. Inflation, however, remains a pain point, and attention is affixed on the Federal Reserve's ability to deliver anticipated rate cuts without undermining price stability. Should easing proceed as expected, sponsors will benefit from the improved cost of capital and renewed momentum across the M&A market. Fundraising is expected to remain depressed in the immediate future as the constrained exit environment has limited distributions to LPs, dampening their appetite to participate in new fundraises. As exit conditions improve, LP capacity to recommit should improve, supporting new fundraises. Even if progress proves uneven, the combination of record buyside reserves and mounting sellside backlogs will continue to exert pressure on both ends of the market, supporting a sustained level of activity through the second half of 2025, and positioning the private equity industry for a more decisive recovery in 2026.

The Inside Track

WHAT FACTORS MAKE PRIVATE EQUITY PRACTICE IN YOUR JURISDICTION UNIQUE?

The United States's private equity market is the largest globally. The industry has scaled tremendously, with US firms now managing over US$3 trillion in assets (S&P Global) – a seven-fold increase since 2020. What distinguishes the US is a liberalised legal framework that gives sponsors broad freedom to private order and design highly tailored structures, while negotiating bespoke terms. This flexibility, coupled with a deep and diverse pool of capital – from institutional investors to private credit markets – enables sponsors to execute and finely tune transactions across the full risk-return spectrum. Sophisticated fund managers and their advisers take advantage of these features to deploy capital and generate liquidity in increasingly innovative ways as market conditions continue to evolve.

WHAT SHOULD A CLIENT CONSIDER WHEN CHOOSING COUNSEL FOR A COMPLEX PRIVATE EQUITY TRANSACTION IN YOUR JURISDICTION?

Every transaction ultimately turns on two prices, first, the accounting price expressed in dollars and cents, and second, the economic price embedded in the deal documents. The accounting price is set by the parties, but counsel's diligence is important to shaping it – by surfacing risk factors that influence working capital targets, escrows, or price purchase adjustments. The economic price, however, is where lawyers are indispensable: the allocation of risk between the through the negotiation of deal key terms such as representations and warranties, covenants, indemnification, deal conditions such as financing, and termination mechanics. The ability to achieve an optimal allocation is born of judgement and market-tested experience among the deal's negotiators, supported by careful study of the company by a deep and coordinated team of attorneys across a wide spread of disciplines. Given these demands and the overall competitiveness of the market, it is no surprise that sponsors typically turn to a small group of repeat-player firms with proven deal judgement and execution discipline.

WHAT INTERESTING OR UNUSUAL ISSUES HAVE YOU COME ACROSS IN RECENT MATTERS?

Sponsors have implemented innovative approaches to generate liquidity and provide distributions to LPs in today's subdued exit environment. GP-led secondaries, partial sales, private reinvestment, and dividend recapitalisations of portfolio companies have all established themselves as tools to satisfy investors' demands while allowing sponsors to hold onto assets that are not ready for a full exit. In parallel, many firms have focused on expanding their perpetual capital vehicles and evergreen structures to reduce their reliance on the traditional GP-LP relationship. Another notable development has been the changing composition of the investor base itself, as sponsors increasingly design vehicles which provide retail and individual investors access to private equity investments. This 'democratisation' of the investor class is complemented by the rise of secondaries, which have become the second-largest private equity strategy after the buyout. The largest fund close in the first half of 2025 was a secondaries focused fund, raising US$30 billion – the largest such raise on record. Sponsors react as quickly as the market shifts, and today we are in a period of change as sponsors re-engineer both capital structures and their investor relationships.

Simpson Thacher

Michael Chao	michael.chao@stblaw.com
Mark Myott	mark.myott@stblaw.com
Peter H Gilman	pgilman@stblaw.com
Jessica A O'Connell	jessica.o'connell@stblaw.com
Russell Reed	russell.reed@stblaw.com
Faisal Ajam	Faisal.Ajam@stblaw.com
Henry Litwhiler	henry.litwhiler@stblaw.com

Simpson Thacher & Bartlett LLP

Read more from this firm on Lexology