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USA

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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.

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ABOUT

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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 has seen an uptick in the first half of 2024, on the heels of depressed activity in 2022 and 2023. M&A deal activity reached approximately US$813.6 billion across 5,928 deals in the first six months of 2024, a year-over-year increase of 39 per cent in value and 33 per cent decrease in volume, according to Refinitiv. M&A activity in the United States accounted for approximately 53 per cent of worldwide M&A activity during the period, an increase from 45 per cent for the same period of last year. In the first half of the year, 2,945 private equity deals were consummated in the United States, a year-over-year decrease of 38.2 per cent for a total deal value of approximately US$372 billion, an increase of approximately 25.4 per cent as compared to the same period during 2023 (Refinitiv). Private equity sponsors have been some of the most active dealmakers this year, as private equity buyout deals accounted for 24 per cent of the global M&A activity during the first six months of 2024. Private equity-backed deals experienced a global year-over-year increase in value of 36 per cent, representing the strongest opening six months for private equity-backed deals in two years. The first half of 2024 ranks as the fourth most active period in private equity dealmaking activity of any opening six-month period for private equity-backed buyouts since 1980 (Refinitiv). 'Mega-deals' – defined as

transactions of US$1 billion or more – have grown from the same period of 2023 in terms of both deal count and value. Mega-deals accounted for US$121.3 billion in deal value in the first six months of 2024, while deals in the range of US$100 million to US$500 million represented the largest share of deal value, accounting for US$136.1 billion over the same period (PitchBook).

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?

Take-private deals have remained popular over the past few years, with 46 take-private deals capturing US$79 billion in value in North America and Europe in 2024, on pace with the 97 take-private deals worth a collective US$153.8 billion during 2023, which was one of the busiest years ever for take-privates. In contrast, sponsor-to-sponsor deals, in which portfolio companies are sold between private equity firms, decreased in frequency in the first half of 2024, as many sponsors held onto assets in hopes of selling down the road in more favourable conditions. In the second quarter of 2024, sponsor-to-sponsor deals accounted for only 21.8 per cent of all US exit value, declining from 38.8 per cent in the first quarter of 2024 and 40.3 per cent across the entirety of 2023. While partial sales, where private equity sponsors sell a minority stake in an existing portfolio company but retain control, have provided an avenue to achieve some liquidity for investors while maintaining exposure for further potential upside in the future. Add-on acquisitions, in which a private equity sponsor acquires a new company via one of its existing portfolio company, have been popular since the increase in interest rates in 2022, accounting for 77.4 per cent of all private equity buyouts, as sponsors have looked to leverage their larger portfolio companies' existing credit facilities to finance acquisitions and continued to put capital to work via existing platforms (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 2024 include:

- the US$25 billion acquisition of Endeavor Group Holdings, Inc. by Silver Lake;
- the US$15.5 billion acquisition of Truist Insurance by an investor group led by Stone Point Capital and Clayton, Dubilier & Rice; and
- the US$10 billion acquisition of AIR Communities by Blackstone Real Estate Partners.

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. More broadly, during the first half of 2024, cross-border M&A activity increased 15 per cent to US$504.5 billion, marking the strongest first opening six months for cross-border M&A since 2022 as pent-up demand and long-held assets are driving increases in global M&A. Similar to 2023, the technology, healthcare and energy sectors made up 40 per cent of cross-border transactions for the first six months of 2024 (Refinitiv).

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 states are passing and implementing state laws prohibiting or otherwise restricting the acquisition of interests in real property located in the state by foreign persons.

Further, the US President signed an Executive Order in August 2023 which establishes an outbound investment screening regime that is intended to regulate investment by US persons into a 'country of concern' relating to certain advanced technology sectors that could impact military, intelligence, surveillance or cyber-enabled capabilities (the Outbound Investment Screening Regime). The Outbound Investment Screening Regime is currently undergoing a rulemaking process by the US Department of the Treasury and is not expected to be implemented until final rules are promulgated. As initially proposed, the Outbound Investment Screening Regime would prohibit or require notification for certain investments in companies engaged in covered national security technologies (initial proposals include semiconductors and microelectronics; quantum information technologies; and certain artificial intelligence systems).

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?

During the first six months of 2024, the debt financing markets trended upwards as a whole, gaining momentum compared to the two relatively slower previous years for debt financing. Even though the second quarter of 2024 marked a 24 per cent decrease quarter-over-quarter, the debt markets nevertheless continued positive motion for the year as the US debt capital markets raised US$1.36 trillion across the investment grade bond, high-yield bond and leveraged loan markets, up 45 per cent year-over-year (PricewaterhouseCoopers).

Unlike 2023, in which dealmakers continued to suffer a year-to-year slowdown in activity, leveraged finance markets experienced a recovery in the first half of 2024. Investors have become more optimistic as interest rates have held steady and fears of a recession have dwindled; the possibility of rate cuts have led investors back to high-yield funds and

collateralised loan obligation issuances. Unfortunately, acquisition-lending activity did not see an equivalent resurgence. Even though issuance for leveraged buyouts increased compared to 2023, dealmaking remained low due to continued negative macroeconomic factors. Institutional loan issuance grew by almost 400 per cent from the first half of 2023, up to US$707 billion. During the same period, global syndicated loan revenue and volume increased year-over-year four per cent up to US$2.5 trillion. The second quarter of 2024 witnessed a four per cent decrease for loan value from the first quarter of the year; however, the first half of 2024 still marked the strongest opening six months for lending in two years. The number of loans was down 18 per cent to only 4,361 deals, reaching a -12-year low. Syndicated lending in the United States represented 70 per cent of the global syndicated loan market by value, an increase of 13 per cent year-over-year in value to US$1.8 trillion but decreased nine per cent in volume with 2,328 deals as compared to the first half of 2023 (all the above information provided by Refinitiv).

Private credit has blossomed alongside the Federal Reserve's rate hikes and the conservative approach to lending by the big banks, increasing lending capacity in the dealmaking environment. As an asset class, private credit is expected to grow to US$2.8 trillion by 2028, which is almost twice as big as its presence in 2022 of US$1.5 trillion (Preqin). The ability of private credit investors to move quickly and nimbly and remove the economic risk associated with syndication strategies will also continue to be very appealing to private equity sponsors. Buyout-related leveraged loan issuance increased by 75 per cent from the first half of 2023 to US$41 billion in the first half of 2024. Direct lending issuances also saw a strong performance in first six months of 2024 with an 89 per cent year-on-year increase. In terms of deal volume, the first half of 2024 saw the best performance to date for direct lending at 37 deals. On the other hand, high-yield bond volumes plummeted from US$9.2 billion in the first half of 2023 to US$4.3 billion in the first half of 2024, with only one leveraged buyout deal backed by high-yield bonds signed in the second quarter of 2024. In the United States, leveraged buyout financings totalled US$146.4 billion in the first six months of 2024, up from only US$107.7 in the opening six months of 2023, and representing an equivalent of about 18 per cent of the United States' total announced M&A in the first half of 2024 (all of the above data provided by Debtwire).

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.

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

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    - 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?

While negative attitudes concerning private equity buyouts seem to have waned over the past few years, shareholder activism associated with M&A activity has remained prominent – irrespective of whether there is any private equity involvement. As a result, private equity sponsors seeking to effect-going private transactions or investing alongside a strategic partner are becoming increasingly mindful of the investor relations aspects of such transactions and are evaluating the risks of potential shareholder activism.

After the high-profile rule-making and record-breaking SEC enforcement activity in 2022, with 760 total filed enforcement actions and US$6.4 billion of recoveries in penalties and disgorgement on behalf of the investing public, SEC regulatory activity remained high in 2023 and is expected to continue throughout 2024. The SEC's main priorities in 2024 have included disclosure rule-making, shareholder proposals, potential rulemaking impacting private companies, technology and enforcement matters. The SEC has passed, and is expected to expand, regulations focused on reporting and disclosures to increase transparency and comparability; rules and regulations related to SPAC disclosures, which would require additional disclosures when a SPAC conducts an IPO and when combining with a target in a de-SPAC transaction; and rules narrowing certain substantive bases within the Exchange Act rules, permitting certain exclusions for shareholder proposals in proxy statements. While the active agenda of the SEC is currently being challenged through planned and ongoing litigation efforts means, the private equity industry can expect a changing and uncertain regulatory landscape throughout 2024 (Ernst & Young).

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 remained low in the first half of 2024, which was consistent with the exit activity trends of the past couple of years. According to data supplied by PitchBook, as of the end of the second quarter of 2024, US private equity sponsors executed 424 exits that aggregated to approximately US$141.4 billion, a decrease of approximately 67 per cent in exit value and 50 per cent in exit count as compared to its peak in the first half of 2021. Facing a continued struggle against unfavourable valuations, a relatively slower market for IPOs, volatile public financial markets, high interest rates and uncertain economic outlooks, private equity sponsors are choosing to hold portfolio companies longer to allow the potential for valuations to recover rather than sell for less favourable prices. Despite the slowdown in exit activity, one trend that has maintained momentum in 2024 has been general partner (GP)-led secondary sales of portfolio companies to newer funds established by the same GP or to continuation funds established by the GP, with 45 exits via continuation funds through the second quarter of 2024. Such a structure provides earlier investors in a private equity fund a path to liquidity while still allowing the GP and other investors to remain invested in highly prized portfolio company assets for a longer hold period.

IPO exits saw a welcomed uptick in the activity levels in the second quarter of 2024 from the same periods of 2022 and 2023. While the first half of 2024, with US$16.8 billion of completed deal value, was far behind the record levels for IPO exits during the same period in 2021 (US$170 billion), IPOs accounted for 11.9 per cent of the private equity-backed exit

value recorded for the opening six months of 2024, as compared with only a 2.9 per cent share of exit value for the first six months of 2023. However, only nine private equity-backed IPO exits have been registered year-to-date for 2024, with three IPOs in the first quarter and six in the second quarter, accounting only for 1.2 per cent, and 3.4 per cent, respectively, of total exit count in the United States (PitchBook). Consistent with the trend of 2023, the market for SPAC IPOs continued to shrink after fuelling much of the M&A activity seen in 2020 and early 2021.

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 market in force. During the first half of 2024, 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 2024 accelerated in the aggregate relative to the same period in 2023. Aggregate fundraising volume rose 9 per cent year-on-year, to US$409 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 2024 decreased nearly 20 per cent to 861, compared to 1073 during the same period last year, which reflects the lengthening of average fundraising periods observed in the first half of 2024, as discussed further in section 10. However, the average size of funds closed during the first half of 2024 increased to US$475 million, up from an average of US$349 million during the first half of 2023. The increase in overall fundraising was driven largely by mega-funds, the top three of which raised at least US$20 billion each, as further discussed, below. Consistent with recent prior periods, capital was 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 2024, the 10 largest funds together raised US$150 billion, which represents about 37 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 70 per cent of capital raised during the first half of 2024, while growth equity and venture capital funds constituted only 9 and 12 per cent of capital raised, respectively. Buyout funds, however, made up only about 32 per cent of funds closed, while venture capital funds accounted for nearly 48 per cent.

Geographically, fundraising was concentrated in North America during the first half of 2024, in line with 2023. North America-focused funds accounted for 40 per cent of all capital raised in the first six months of this year, a similar proportion as in prior years.

Comparatively, the proportion of total capital raised by Europe-focused funds was 10 per cent, and by Asia-Pacific-focused funds, 7 per cent. Compared with the first half of 2023, as recorded thus far, in the first half of 2024 Europe-focused funds raised nearly US$17 billion less capital than in the prior period, while Asia-Pacific-focused funds raised US$3 billion more capital than in the prior period. Additionally, funds targeting multiple geographic regions attracted US$172 billion, or 42 per cent, of aggregate capital raised during the first half of 2024.

It is expected that overall fundraising levels will remain steady in the near term. There are 5,573 private funds in the market as of 30 June 2024 seeking to raise US$1.16 trillion in total capital, compared to 4,516 funds that were targeting US$1.24 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 who have navigated several 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$1.16 trillion in total capital targeted as of June 2024, approximately 14 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 recent 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, and although North America and Asia have lagged behind Europe in the adoption of ESG principles, the prevalence of these factors in recent client fundraising due diligence indicates that implementation is accelerating across all regions. 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, however, trended steadily towards the upper end of that range, reaching 18 months for funds holding their final close in the first half of 2024, as compared to eight months recorded in 2020. 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. The SEC continues to find more regulatory lapses among private equity firms, particularly related to expenses and expense allocation, conflicts of interest and other disclosure matters and, most recently, MNPI policies and procedures. 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 funds 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 several US private equity funds, particularly smaller firms that do not have the necessary compliance and fundraising infrastructure in place, being 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 have 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 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 before 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.

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 before 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 stakes in non-listed companies and issuers. Under the EEA AIFMD regime, these rules now do not apply to the acquisitions of stakes in UK established companies, and vice versa under the UK AIFMD regime these rules do not apply to the acquisitions 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 likely to arise. 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.

Private equity sponsors must also consider the impact of potential tax reform. President Biden's administration has indicated that one of its top legislative priorities is significant tax increases and various other changes to US tax rules. Legislation has been proposed

that includes, among other changes, certain changes to the taxation of carried interest, as discussed further below. Whether any of these changes will be enacted and their impact on private equity are uncertain.

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. Additionally, Congress has recently considered 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.

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?

The first three months of 2024 continued the prior trend of slower deal activity from 2022 and 2023. However, private equity deal activity rebounded in the second quarter, with volume and value in private equity transactions roughly in line with pre-covid activity levels, which had been considered strong years before the record explosion in dealmaking activity in late 2020 and 2021. With the increase in activity towards the end of the first half of 2024, private equity M&A dealmaking is trending higher than the same period of 2023. The private equity share of the overall M&A deal activity increased from the first

to second quarter of 2024, and the general trend of private equity's share of the overall M&A deal activity is beginning to trend upwards again, driven in part by the increasing activity in partial exits and sales of minority stakes. Private equity dealmaking in the United States was greatly affected by many macroeconomic factors, including high inflation, elevated interest rates and financing costs spurred on by the hawkish policies of the US Federal Reserve and other central banks throughout the world, the sustained gap between buyer and seller perspectives on valuations and global geopolitical uncertainty, which collectively slowed the overall increase in private equity dealmaking (PitchBook). While interest rates have held steady as of late, the anticipated drop in interest rates later this year may encourage increased private equity deal activity. At the same time, regulators have continued their intense antitrust scrutiny of M&A in the US, which has manifested in both aggressive merger challenges on a wide range of novel theories as well as a raft of procedural proposals – such as new proposed merger guidelines and submission forms – that, if implemented, will present additional hurdles to achieving regulatory clearance and completing deals. In combination with the political uncertainty that comes with an election year, many market participants are taking the wait-and-see approach to steer the deal activity based on the outcome of the present political and legal challenges (Boston Consulting Group). Globally, M&A activity was down by 12 per cent in the second quarter compared to the first quarter of this year, totalling US$741.1 billion in the second quarter of 2024. Transactions of US$10 billion or more witnessed a significant increase in activity during the first half of 2024, as 20 deals of US$10 billion or more with an aggregate value of US363.4 billion were completed, marking a 70 per cent increase from 2023 levels and the strongest opening six months for deals of US$10 billion or more, in terms of value, since 2022. M&A activity for deals valued under US$500 million was down 13 per cent year-to-year, totalling US$354.3 billion worldwide (Refinitiv).

During the first six months of 2024, fundraising has outperformed expectations, tracking ahead of the first half of 2023, which was the second best opening six-month period for private equity fundraising in history. Deployment and realisation have improved so far in 2024 with deployment outpacing fundraising. United States private equity funds closed at US$155 billion raised across 129 funds. Despite the strong fundraising performance in the first half of 2024, exits have remained relatively slow, and the decreased appeal of private equity capital allocations to investors resulted in challenges securing LP commitments and an increase in the closing times of larger funds as the median time to close continued to grow to 18.1 months, as compared to 14.7 months in 2023. Buyout funds have continued to dominate the share of capital raised in 2024, accounting for 86 per cent of total capital raised. Even with the longer times to close, large sponsors with strong pre-existing limited partner relationships and consistent, ongoing fundraisings in the process weathered off the challenging fundraising environment. We believe that competition for investor capital among private equity funds will persist, with alternative fundraising strategies and strategic relationships continuing to play a substantial role. Likewise, we believe that allocation decisions by risk-averse limited partners will continue to favour larger, established sponsors with strong track records and the ability to absorb the incremental burdens associated with today's market environment as well as the continued scrutiny and enhanced regulation of the private equity industry. In addition, we believe that private equity funds will continue to encounter valuation issues as uncertainty and volatility within the markets remain. Finally, with the strength of large stock indexes, returns are expected to increase, although at a considerable lag to the public markets (PitchBook).

In conclusion, with the potential easing of macroeconomic headwinds, including the potential for decreasing interest rates and inflationary pressures, we remain cautiously optimistic that, during the second half of 2024, private equity activity levels will continue to trend upwards, similar to the trends from the first half of the year. On the other hand, on the regulatory front, antitrust regulators seem so far undeterred by their mixed track record in court, and the enforcement environment is likely to remain just as challenging depending on the outcome of the U.S. presidential election. If conditions improve, many dealmakers are hoping for an uptick in activity as investors have been largely sitting on the sidelines for a number of quarters and will need to deploy capital soon. Levels of dry powder remain historically high, and the S&P Global reports that they have reached US$2.62 trillion as of July 2024 – with KKR & Co being the US-listed alternative asset manager with the most dry powder available for private equity investments (at approximately $44 billion). In addition, the record levels of unexited assets that have been held in private equity portfolios for longer periods than prior fund cycles may create liquidity crunches for limited partners and incentivize exit activity in spite of less-than-ideal valuations and returns. Overall, while we expect continued increases in activity for the remainder of 2024, it appears unlikely that we will see an immediate reversion to the historic activity levels seen in 2021.

The Inside Track

WHAT FACTORS MAKE PRIVATE EQUITY PRACTICE IN YOUR JURISDICTION UNIQUE?

Overall, the United States continues to rank as the top market for private equity. As the traditional base of private equity, the United States has attracted the lion's share of capital over the years, and 2024 has been no different thus far, as US private equity firms raised a total of US$155 billion committed across 129 funds, which is about a one per cent increase from the same period of last year's fundraising activity (PitchBook). The private equity industry has matured, and the experience of fund managers has broadened such that investors continue to view the United States as an attractive jurisdiction for their investment.

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

Depth of experience in the private equity sector and a creative and commercial approach to problem-solving. Practical experience combined with industry acumen, including expertise in relevant regulatory domains, is also critical, and counsel should have insight into the needs of every participant. As such, a client would benefit from counsel that offers cross-practice excellence.

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

After private equity deal activity rapidly fell in 2022 and 2023, private equity firms in the United States have continued to use add-on acquisitions to boost the profiles of their existing portfolio companies. GP-led secondary sales of portfolio companies to newer funds established by the same GP or to continuation funds established by a GP and private investment in public equity have been increasingly used as a means to deploy capital. Additionally, after several months of calm from new large LBO credit commitments, large

banks have started to rejoin the market in making new commitments to large take-privates in the first half of the year, which helped take-private transactions stay relatively on track with 2023 activity levels across 46 take-private deals, capturing over US$79 billion in value. In the second quarter of 2024, take-privates surged to US$61.2 billion in value from only US$15.6 billion in the first quarter, marking the highest quarterly total in two years (PitchBook). Most notably, Silver Lake's blockbuster acquisition of Endeavor Group, the sports and entertainment company, marked the largest private equity backed take-private in ten years at an enterprise value of US$25 billion.

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