

PANORAMIC

PRIVATE EQUITY (FUND FORMATION)

Malaysia

LEXOLOGY

Private Equity (Fund Formation)

Contributing Editor

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FORMATION

Forms of vehicle

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

Typically, a private equity (PE) fund in Malaysia may be established as an onshore fund structured as a Malaysian private limited company (a *Sendirian Berhad*), or as an offshore fund in the [Labuan International Business and Financial Centre \(Labuan IBFC\)](#), known as Labuan mutual fund. A Labuan mutual fund can either be in the form of a public fund or a private fund that is commonly structured as a Labuan incorporated company (Labuan Co), a Labuan limited partnership (Labuan LP) or a Labuan limited liability partnership (Labuan LLP).

Sendirian Berhad

A *Sendirian Berhad* is a private limited company and body corporate incorporated and governed under the Companies Act 2016 and has a separate legal personality, essentially being a private limited company. Under the private limited company structure, investors make capital contributions by subscribing to preference shares attached with redemption rights, conversion rights, preferential rights to dividends, liquidation preference rights and limited to no voting rights, whereas the manager holds ordinary shares (whether directly or via a special purpose entity acting as a general partner equivalent) and exercises its right to vote, participate in day-to-day fund management activities and make investment decisions. The board of directors typically consists of the representatives of the manager.

Labuan mutual funds

A Labuan mutual fund is defined under the Labuan Financial Services and Securities Act 2010 as a Labuan company, a corporation incorporated under the laws of any recognised country or jurisdiction, a partnership, a protected cell company, a foundation or a unit trust which:

- collects and pools funds for the purpose of collective investment with the aim of spreading investment risk; and
- issues interests in a mutual fund which entitles the holder to redeem their investments that is agreed upon by the parties and receive an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the aforesaid types of entities, as the case may be, and includes an umbrella fund whose interests in a mutual fund or units are split into a number of different class funds or sub-funds and whose participants are entitled to exchange rights in one part for rights in another.

There are two types of Labuan mutual funds, namely a Labuan public fund and Labuan private fund. The main difference between them is that a Labuan public fund can be offered to any member of general public, whereas a Labuan private fund can only be offered to (1)

a maximum of 50 investors with first-time investment of no less than 250,000 ringgit (or equivalent in foreign currency) per investor; or (2) any number of investors with first-time investment of no less than 500,000 ringgit (or equivalent in foreign currency) per investor. For the purposes of private equity, Labuan private funds are commonly used.

Labuan Co

A Labuan Co is a body corporate incorporated and governed under the Labuan Companies Act 1990 (the LCA) and has a separate legal personality. The Labuan Co fund structure is similar to the Sdn Bhd fund structure as set out above.

Labuan LP

A Labuan LP is a limited partnership formed and governed under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 and does not have a separate legal personality. The legal structure of a Labuan LP is as such that there must be at least one general partner and one limited partner. A limited partner's liability is limited to its capital commitments and the limited partner is not liable for the debts and obligations of the Labuan LP unless it participates in the management of the Labuan LP. On the other hand, a general partner has management control over the Labuan LP, shares the right to use any property of the Labuan LP, and hence is liable for the debts and obligations of the Labuan LP.

Under the Labuan LP fund structure, investors making capital contributions by subscribing to partnership interests become the limited partners whereas the manager becomes the general partner (whether directly or via a special purpose entity). Where required, the fund management activities may be delegated to the manager or another special purpose entity set up by the manager.

Labuan LLP

A Labuan LLP is a limited liability partnership formed and governed under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 and has a separate legal personality. It is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. The legal structure of a Labuan LLP is as such that there must be at least one designated partner and one limited partner. Unlike the Labuan LP, the liability of a partner of a Labuan LLP (whether a designated partner or a limited partner) is limited to its capital commitments and the partner is not liable for the debts and obligations of the Labuan LLP.

Under the Labuan LLP fund structure, investors making capital contributions by subscribing to partnership interests become the limited partners whereas the manager becomes the designated partner (whether directly or via a special purpose entity). Where required, the fund management activities may be delegated to the manager or another special purpose entity set up by the manager.

Law stated - 19 February 2025

Forming a private equity fund vehicle

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

Private limited company

The incorporation of a private limited company would require the service of a registered corporate secretarial firm and may take approximately seven to 10 working days subject to the completeness of information and documents provided for submission to the Companies Commission of Malaysia (CCM) and the payment of the registration fee to the CCM. The private limited company shall have at least one shareholder and no more than 50 shareholders, at least one share issued as paid up capital and at least one director who has a principal place of residence in Malaysia. The procedure of incorporating a private limited company includes conducting an availability search with the CCM on the proposed name of the private limited company, applying for the CCM's approval of the proposed name, and lodging with the CCM the relevant incorporation documents. The registration fee payable to the CCM for the incorporation of a private limited company is 1,000 ringgit whereas the typical cost of incorporation is approximately 4,000 ringgit (one-off).

Labuan entities

The incorporation of a Labuan Co and the establishment of a Labuan LP and a Labuan LLP would require the service of a licensed Labuan trust company.

Labuan Co

The incorporation of a Labuan Co may take approximately five to seven working days subject to the completeness of information and documents provided for submission to the Labuan Financial Services Authority (LFSA), the payment of the registration fee to the LFSA, and the clearance on due diligence conducted on the applicant. The Labuan Co shall have at least one shareholder, at least one share and at least one resident director, who shall either be a trust officer of a Labuan trust company approved by the LFSA, or a natural person of any nationality (except Israel and North Korea) and/or residing at any place in the world who has attained the age of 18, has full legal capacity, and has consented in writing to be appointed as a resident director. The procedure of incorporating a Labuan Co includes reserving the proposed name of the Labuan Co and lodging with the LFSA the relevant incorporation documents (including the memorandum and articles of association of the Labuan Co). The registration fee payable to the LFSA for the incorporation of a Labuan Co ranges from US\$300 to US\$ 1,500 depending on the paid-up share capital of the Labuan Co, whereas the typical cost of incorporation is approximately US\$ 4,000.

Labuan LP and LLP

The establishment of a Labuan LP or LLP may take approximately five to seven working days subject to the completeness of information and documents provided for submission to the LFSA, the payment of the registration fee to the LFSA and the clearance on due diligence conducted on the applicant. A Labuan LP shall have at least two partners, in other words, minimum one general partner and minimum one limited partner, and no more than 50

partners, whereas a Labuan LLP shall have at least two partners, in other words, minimum one designated partner and minimum one limited partner. The procedure of establishing a Labuan LP or LLP includes lodging with the LFSA the completed application form for registration of the Labuan LP or LLP and the certified true copy of the partnership agreement between the partners of the Labuan LP or LLP. The registration fee payable to the LFSA for the establishment of a Labuan LP or LLP is US\$300.

In addition to a partnership agreement, the transaction documents that are commonly required for a PE fund formed as a Labuan LP or LLP include a management agreement between the Labuan LP or LLP and the manager in respect of the management of the fund and a subscription agreement between the Labuan LP or LLP and the investors in respect of the making of capital commitments to the fund.

Law stated - 19 February 2025

Requirements

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

Private limited companies and Labuan entities are required to have a local registered office, appoint a secretary and maintain books and records at the registered office. Such requirements can be easily satisfied as they are usually part of the services provided by the corporate secretarial firms/Labuan trust companies as part of an annual retainer package.

With respect to onshore funds, the appointment of a custodian is necessary if the fund is managed by a fund manager licensed or registered by the Securities Commission Malaysia (SC) under the Capital Markets and Services Act 2007 (CMSA) or a registered Private Equity Management Corporation (PEMC) invests in *listed* securities. A custodian is not necessary if the fund managed by a registered PEMC invests in *unlisted* securities, provided that a (1) written acknowledgement and consent has been obtained from the investors; and (2) an independent auditor is appointed to audit the fund's assets on an annual basis and report to the investors.

With respect to offshore funds, the requirement to appoint a custodian only applies to a Labuan *public* fund. It is not applicable for Labuan private funds, which are commonly used as the structure for PE funds.

Law stated - 19 February 2025

Access to information

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

There is no legal obligation to disclose information relating to PE funds to the public in Malaysia. The legal requirement is usually in relation to making the necessary statutory

lodgements and filings to the relevant authority, and the information therein may be available to the public subject to whether the relevant authority has a database accessible by the public.

The basic information where the fund is incorporated in the form of a private limited company can be accessed publicly for a nominal fee through the CCM's online company search portal. This includes the identities of the investors and the amounts of their capital contributions, which are legally required to be lodged with the CCM. Notwithstanding so, fund information such as terms of the fund, rights of the investors and obligations of the manager as agreed in transaction documents is not available on any public forum, unless included in the constitution of the Sdn Bhd, which is required to be lodged with the CCM and can be extracted from the CCM's online company search portal.

There is no public access to information of Labuan entities, and one is required to engage the service of a Labuan trust company to conduct searches for a fee at the office of the LFSA and obtain the basic information which includes the identities of the investors and the amounts of their capital contributions. This is however subject to obtaining the prior written consent of the Labuan entities. Fund information such as terms of the fund, rights of the investors and obligations of the manager is not available on any public forum and will not be made available as part of the searches conducted by the Labuan trust company.

Law stated - 19 February 2025

Limited liability for third-party investors

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

Whether a privated limited company or a Labuan Entity (in the various forms), all of the entities would be limited liability and a limited partner's liability is limited to its capital commitments and the limited partner is not liable for other debts and obligations.

Law stated - 19 February 2025

Fund manager's fiduciary duties

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

In Malaysia, the fiduciary duties owed by the manager (or other similar control party or fiduciary) to a PE fund and its third-party investors are founded on principles of common law, company law, trust law, and the applicable securities laws under which the manager is licensed or registered. Such fiduciary duties, which include the duty to exercise reasonable care and skill in managing the investments, the duty to act honestly and fairly, the duty to make decisions in the best interests of the PE fund and the investors, and the duty to ensure there is no conflict of interests, are usually reflected in the fund documents.

While there is no requirement in law for the fund documents to explicitly set out such fiduciary duties, parties to the fund documents cannot contract out of such fiduciary duties by including exclusion of liability clauses for breach of fiduciary duties, which have been ruled by the courts in Malaysia as void and unenforceable. Notwithstanding so, parties may modify such fiduciary duties in the fund documents through limitation of liability clauses and exemptions and waiver/consent requirements for certain circumstances, to the extent that such modifications are not in violation of the applicable laws.

Law stated - 19 February 2025

Gross negligence

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

Yes, 'gross negligence' standard of liability is applicable to the management of a PE fund in Malaysia. To protect the manager's interests, fund documents typically contain limitation of liability clauses for gross negligence by the manager. The liability threshold is usually a point of negotiation for parties, and investors more often than not request for indemnity to be given by the manager in the event of gross negligence. Exclusion of liability clauses for gross negligence are void and unenforceable from Malaysia law perspective.

Law stated - 19 February 2025

Other special issues or requirements

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

Other than the requirements set out above, there are no other special issues or requirements particular to PE fund vehicles formed in Malaysia.

It is possible to re-domicile a foreign vehicle into Labuan, but this is applicable only if the foreign vehicle is in the form of a company. Pursuant to sections 16 and 17 of the LCA, the process of re-domiciliation begins with obtaining a prior approval in principle from the LFSA, followed by the making of an application for the foreign company to be registered as being continued in Labuan within 12 months from the date of the prior approval in principle. The application will be approved by the LFSA upon the LFSA being satisfied that the consent of the shareholders, debenture holders and creditors of the foreign company as well as the consent of the proper officer of the original jurisdiction of the foreign company have been obtained in relation to the re-domiciliation, and that the foreign company has adopted its memorandum and articles of association in compliance with the LCA.

Law stated - 19 February 2025

Fund sponsor bankruptcy or change of control

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

Depending on the relationship between the fund sponsor and the general partner and/or the investment adviser, events such as bankruptcy, insolvency, change of control, restructuring or similar transaction at the sponsor level may lead to the withdrawal and replacement of the general partner and/or the investment adviser or the dissolution of the fund itself. Further, the investment adviser may be required to notify the relevant regulatory authorities on events such as change of control at the holding company level. The fund documents will normally provide for the consequences of the occurrences of such events.

Law stated - 19 February 2025

REGULATION, LICENSING AND REGISTRATION

Principal regulatory bodies

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

The principal regulatory body for an onshore private equity (PE) fund and its manager in Malaysia is the Securities Commission Malaysia (SC) whereas the principal regulatory body for an offshore PE fund and its manager in Labuan is the Labuan Financial Services Authority (LFSA). Each of the SC and the LFSA have the authority to inspect the books and records of PE fund managers from time to time to ensure compliance with the applicable laws.

Under the Capital Markets and Services Act 2007 (CMSA) regime, a holder of a Capital Markets Services Licence (CMSL) in relation to fund management is required to submit to the SC an anniversary reporting for authorisation of activity within seven business days before or on the anniversary date of the CMSL, a semi-annual compliance report on the fit and proper standing of its licensed representatives within seven business days from the end of their anniversary dates and the auditor's report within three months after the close of each financial year. On the other hand, a registered Private Equity Management Corporation (PEMC) is required to comply with the continuous reporting and disclosure requirements set out in the SC's [Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations](#) (VCPE Guidelines), which include submitting to the SC an annual report within 30 days from each year-end, a mid-year filing within 14 days from 30 June of each year and its latest audited financial statements within three months after the close of each financial year or such further period allowed by the SC.

Under the Labuan laws regime, a licensed Labuan fund manager is required to submit to the LFSA a copy of its audited financial statements within six months after the closure of each

financial year and a copy of the annual compliance report within 30 days after the board meeting in which the said report was tabled at.

Law stated - 19 February 2025

Governmental requirements

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

In Malaysia, there are no specific requirements to obtain approval, licensing or registration for the formation of an onshore PE fund itself other than those necessary for the establishment of the fund vehicle (legal entity).

In Labuan, in addition to the requirements to be met for the establishment of the fund vehicle for an offshore PE fund, there are requirements to give a written notification to the LFSA and to lodge with the LFSA the information memorandum of the fund which must comply with the requirements set out in the LFSA's [Guidelines on the Establishment of Labuan Mutual Funds Including Islamic Mutual Funds](#) before the PE fund is launched as a Labuan private fund. The information memorandum can be lodged through a Labuan trust company, a Labuan bank, a Labuan investment bank or a Labuan fund manager.

Law stated - 19 February 2025

Registration of investment adviser

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

Depending on where (Malaysia or Labuan) and the extent of which the fund management activities are carried out, a PE fund manager in Malaysia is required to hold a CMSL in relation to fund management as issued by the SC or to registered itself as a PEMC with the SC under the CMSA regime, whereas under the Labuan laws regime, the PE fund's manager is required to hold a Labuan fund manager licence issued by the LFSA.

The scope of regulated activities covered under each of the licensing/registration regimes and the licensing/registration requirements for the officers, directors and control persons of the PE fund's manager are as follows:

CMSL in relation to fund management

'Fund management' is defined under the CMSA as undertaking on behalf of any other person the management of a portfolio of securities or derivatives or a combination of both, by a portfolio fund manager, whether on a discretionary authority or otherwise, or an asset or a class of asset in a unit trust scheme by an asset fund manager. Any person carrying on business in fund management or holding himself out as carrying on such business in Malaysia (excluding Labuan) is required to obtain a CMSL.

In relation to PE, the relevant sub-category of fund management activity would be ‘fund management in relation to portfolio management’. A holder of a CMSL for fund management in relation to portfolio management may provide investment advisory services to its clients, pursuant to an advisory mandate.

Any person acting as a representative in respect of the fund management activities carried on by the manager is required to hold a Capital Markets Services Representative’s Licence (CMSRL).

Registered PEMC

A registered PEMC is not required to obtain a CMSL. Pursuant to the VCPE Guidelines, a PEMC is required to be registered with the SC if it is acting or offering to act as an investment manager or co-investment manager of a PE fund in Malaysia (excluding Labuan). The registered PEMC may only offer its fund management services to ‘sophisticated investors’ as described in the SC’s [Guidelines on Categories of Sophisticated Investors](#). Incidental to its fund management activities, a registered PEMC is allowed to deal in securities in relation to arrangements of and investments of funds managed by the registered PEMC and to provide investment advice on venture capital and private equity to its clients or related entities.

A registered PEMC is required to have at least one Responsible Person approved by the SC, who must be a director as defined under the Companies Act 2016 or a partner as defined under the Limited Liability Partnerships Act 2012 or an officer who is responsible for investment strategies and decisions.

Labuan fund manager licence

‘Fund manager’ is defined under the Labuan Financial Services and Securities Act 2010 (LFSSA) as a person who, for valuable consideration, provides management services alone or with investment advice or administrative services in respect of securities for the purposes of investment, including dealing in securities or such other activity as may be specified by the LFSA. Pursuant to the LFSSA, a fund manager carrying on fund management activities in relation to a Labuan private fund is not required to be licensed as a fund manager in Labuan. The licensing requirement is only applicable if the fund manager is managing a Labuan public fund. As such, since PE funds are commonly in the form of Labuan private funds, the PE fund’s manager that is operating in Labuan is not required to be licensed by the LFSA.

Law stated - 19 February 2025

Fund manager requirements

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

The specific qualifications or other requirements imposed on a PE fund’s manager and any of its officers, directors or control persons are as follows:

CMSL in relation to fund management

- The holder of the CMSL must be a company incorporated in Malaysia with paid-up capital of at least 2 million ringgit and shareholders' funds of at least 2 million ringgit (for fund management in relation to portfolio management).
- There must be at least two CMSRL holders. At least 30 per cent of the CMSRL holders must be Bumiputera.
- There must be a compliance officer.
- There must be at least one director who holds a CMSRL and is approved by the SC to be a licensed director. The licensed director must have a minimum of 10 years of relevant experience in fund management.
- There must be a Bumiputera director.
- At least 30 per cent of employees must be Bumiputera.

Registered PEMC

- The registered PEMC must maintain at all times minimum net assets of 100,000 ringgit.
- There must be at least one Responsible Person approved by the SC, who must be a director as defined under the Companies Act 2016 or a partner as defined under the Limited Liability Partnerships Act 2012, or an officer who is responsible for investment strategies and decisions.
- The responsible person must have a minimum of five years of relevant industry experience at least at a managerial level and must be a fit and proper person.

Law stated - 19 February 2025

Political contributions

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

While there are no specific 'pay-to-play' restrictions in Malaysia, the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) prohibits the offering or acceptance of bribe to or from an officer of any public body. This would include political contributions made by a PE fund's manager or investment adviser or their employees to secure investments from public pension funds and other government-linked entities. Such an act is a criminal offence punishable with hefty fines and imprisonment. With the introduction of section 17A in the MACC Act, companies (including PE firms and fund management firms) and their directors, partners, controllers, officers and any person involved in the management of the company's affairs are equally liable for any bribery acts undertaken by their employees or representatives. The MACC Act provides for an avenue for whistleblowers to report acts of bribery upon noticing improper political contributions made in relation to the PE fund.

Public pension funds in Malaysia would usually have their own internal policies and procedures on anti-bribery and corruption and prevention of conflicts of interest, which are to be strictly adhered by fund managers or investment advisers engaged to manage investments on behalf of such public pension funds. Such internal policies are not typically disclosed nor readily available public information which we are able to comment on.

Law stated - 19 February 2025

Use of intermediaries and lobbyist registration

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

There are no specific rules and restrictions on the engagement of placement agents, lobbyists or other intermediaries in the marketing of a PE fund to public pension plans and other governmental entities and the registration of lobbyists in Malaysia. However, there are legal obligations for disclosure of information on the identities of the placement agents, brokers, distributors and other intermediaries and the fees and commission payable to such intermediaries in the offering documents of the PE fund (including prospectus and information memorandum).

Law stated - 19 February 2025

Bank participation

Describe any key legal or regulatory developments (including those emerging from the 2008 global financial crisis) that specifically affect banks with respect to investing in or sponsoring private equity funds.

Where a PE Fund is set up as a legal entity permitting equity investments, Bank Negara issued [Policy Document Equity Investments \(BNM/RH/PD 028-106\)](#) effective since 1 January 2020 and of which is applicable to licensed bank. A financial institution is required to obtain Central Bank of Malaysia (Bank Negara) approval for the acquisition or holding of material interest in a corporation. Bank Negara generally limits a financial institution from investing in non-financial corporations.

Law stated - 19 February 2025

TAXATION

Tax obligations

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

Malaysia entities

Malaysia entities would include a private limited company (Sdn Bhd) or a limited liability partnership (LLP). Generally, the headline corporate tax rate in Malaysia is 24 per cent. An LLP will be taxed as a corporate entity at 24 per cent.

Labuan entities

Labuan entities (eg, Labuan company, Labuan partnerships, Labuan limited partnerships) undertaking Labuan business activities and meeting the economic substance requirements will be assessable to tax in accordance with the Labuan taxation rules under the Labuan Business Activity Tax Act 1990 (LBATA), unless the Labuan entity has made an irrevocable election to tax its income under the Malaysian Income Tax Act 1967 (MITA), where the headline corporate tax rate is 24 per cent.

If a Labuan entity is undertaking investments only (eg, holding investments in securities, stock, shares, loans, deposits and/or any other properties situated in Labuan) and meeting the economic substance requirements, the income is not chargeable to tax under LBATA.

Dividends

Effective from 1 January 2025 (Year of Assessment 2025), a dividend tax of 2 per cent applies to dividend income received by individuals (resident and non-resident) from Malaysian resident companies (including a Labuan company that has elected to be taxed under MITA) in excess of 100,000 ringgit, on a self-assessment basis. Individuals subject to dividend tax are required to file annual income tax return in Malaysia. Dividend tax does not apply to LLP distribution and dividend/distribution from Labuan entities assessable to tax under LBATA. There is no Malaysian withholding tax on dividends and distributions paid by Malaysian entities (including Labuan entities).

Capital gains tax

Effective 1 January 2024, capital gains tax (CGT) will be imposed on CGT in-scope taxpayers on gains arising from disposal of Malaysian unlisted shares, shares of foreign company that owns/owned substantially Malaysian real properties (directly and indirectly) and foreign capital assets.

CGT would be relevant to gains or profits derived by a company, a LLP, a trust body or a cooperative society (CGT in-scope taxpayers). CGT in-scope taxpayers exclude Labuan entities assessable under LBATA.

Real property gains tax

Real property gains tax (RPGT) is charged on gains arising from the disposal of real property (which is defined as any land situated in Malaysia and any interest, option or other rights in or over such land) or shares in a Real Property Company (ie, shares of company that owns/owned substantially Malaysian real properties (directly and indirectly)). With the recent introduction of CGT, RPGT will no longer be relevant to CGT in-scope taxpayers deriving gains from the disposal of shares in Real Property Company.

Law stated - 19 February 2025

Local taxation of non-resident investors

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

Generally, non-resident investors in a private equity fund are not required to file income tax return, except for individual investors that subject to dividend tax. Individual investors subject to dividend tax are required to file annual income tax return in Malaysia.

For capital transactions such as transfer of shares/interest in the private equity fund, there will be stamp duty adjudication (for transfer of shares/interest in the private equity fund) and filing for capital gains tax returns, in other words, on the disposal of Malaysian companies and foreign companies which own/owned substantially Malaysian real properties (directly and indirectly).

Where Malaysian withholding tax applies (eg, interest and royalty income derived by the non-resident investor), the Malaysian payer is required to prepare the withholding tax return instead.

Where investor has a Permanent Establishment or branch setup in Malaysia, the investor is required to file an annual corporate income tax filing, despite having no income generating activities in Malaysia for as long as its tax file remains open. A tax file may be closed upon a formal application with the tax authorities and a letter confirming that the tax file has been closed is issued.

Law stated - 19 February 2025

Local tax authority ruling

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

It is not necessary, although rulings may be sought for complex situations or where there is uncertainty due to the specific circumstances of the private equity fund being formed. It is, however, pertinent to note that the ruling issued by the tax authorities upon the application of an investors is binding on parties whether or not it is favourable to the investors.

Law stated - 19 February 2025

Organisational taxes

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

Other than those described under 'Tax obligations', there should be no significant organisation taxes to be paid by private equity funds organised in Malaysia. Stamp duty applies to all written instruments (such as agreements) as well as for the transfer of assets, interests or shares, partnership and subscription agreements).

Law stated - 19 February 2025

Special tax considerations

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

Generally, the tax implications and taxability of carried interest are subject to assessment on a case-by-case basis, whether the characterisation of the carried interest is capital or revenue in nature.

Management fees should be subject to the general corporate income tax rules. If management services are provided outside Malaysia by a non-resident fund manager (ie, in the home country without travelling into Malaysia and/or subcontracting to Malaysian tax residents), there is an exemption from Malaysian withholding tax. Subject to further analysis (eg, group/holding structure and the eligibility to meet intragroup service tax exemption), service tax may apply to imported taxable services (eg, management services).

Law stated - 19 February 2025

Tax treaties

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

Malaysia has an extensive network of double tax treaties with over 70 countries, providing relief from double taxation on income such as dividends, interest, royalties and capital gains. Key tax treaties relevant to private equity funds include those with Singapore, Hong Kong, Japan, the United Kingdom, the United Arab Emirates, Qatar, Saudi Arabia and Australia.

In order to claim tax treaty benefits, the non-resident recipient must provide a certificate of tax residency issued by the tax authorities of its home country.

Some of Malaysia's tax treaty partners have excluded Labuan entities assessable to tax under LBATA from the benefits of tax treaties entered into with Malaysia.

Law stated - 19 February 2025

Other significant tax issues

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

Transfer pricing/related party transactions

Private equity funds involved in related party transactions must comply with Malaysian transfer pricing regulations and maintain contemporaneous transfer pricing documentation.

Service Tax

Service Tax (6 per cent or 8 per cent depending on the type of taxable service) is charged and levied on:

- any prescribed taxable service provided in Malaysia by a registered person in carrying on his business; or
- any prescribed imported taxable service acquired by any person in Malaysia from any person who is outside Malaysia; or
- digital services provided by a Foreign Registered Person to a consumer in Malaysia.

Any person who provides taxable service is liable to register for Service Tax when the total value of taxable service for a period of 12 months exceeded the prescribed threshold.

Hybrid instruments

Care should be taken with on the issuance of hybrid instruments in structuring a private equity fund to ensure their characterisation, whether as it is capital or revenue in nature is determined and observe the relevant tax treatments and compliance/filing requirements.

Ultra high-net-worth individuals and family office

Ultra-high-net-worth individuals setting up a Single Family Office in Forest City Special Financial Zone (a special financial zone located in the southern region of Peninsular Malaysia) can enjoy 0 per cent income tax rate for up to 20 years. The scheme is expected to be operational by the first quarter of 2025 and coordinated by the SC.

Law stated - 19 February 2025

SELLING RESTRICTIONS AND INVESTORS GENERALLY

Legal and regulatory restrictions

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

The offering of interests in private equity (PE) funds to investors in Malaysia (excluding Labuan) is subject to the following:

Requirement to obtain approval, registration, authorisation or recognition of the Securities Commission Malaysia

Section 212(5) of the Capital Markets and Services Act 2007 (CMSA) provides that any offer for subscription or purchase of unlisted securities requires the recognition of the Securities Commission Malaysia (SC) and the registration of a disclosure document containing information and particulars as may be specified by the SC.

Schedule 5 of the CMSA sets out the exemptions to such requirements for obtaining the approval or the recognition of the SC, which for example include:

- offering for subscription or purchase of securities of a venture capital or private equity fund structured as limited partnership provided that the fund manager is a registered Private Equity Management Corporation (PEMC);
- offering for subscription or purchase of shares of a private company.

On this basis, Schedule 5 would apply in circumstances whereby the PE fund is structured as a private limited company (Sdn Bhd) or a Labuan Limited Partnership (LP) managed by a registered PEMC. Nevertheless, the requirement to register a disclosure document with the SC as required under section 212(5) of the CMSA still remains.

Requirement to lodge a prospectus with the SC

Section 232(1) of the CMSA provides that an offer for subscription or purchase of securities cannot be made unless a prospectus in relation to the securities has been registered with the SC and the prospectus complies with the requirements of the CMSA. However, section 231(1) of the CMSA provides that the prospectus requirement does not apply if the offer constitutes an 'excluded offer' or 'excluded issue' described in Schedule 6 or 7 of the CMSA, which includes an offer for subscription or purchase of securities to a 'sophisticated investor' described in the SC's [Guidelines on Categories of Sophisticated Investors](#). Examples of 'sophisticated investor' include a high net worth individual whose total net personal assets exceed 3 million ringgit or its equivalent in foreign currencies (provided that the net value of the primary residence of the individual contribute not more than 1 million ringgit of the total net assets), a corporation with total net assets exceeding 10 million ringgit or its equivalent in foreign currencies based on the last audited accounts, and a closed-end fund approved by the SC.

On this basis, Schedules 6 or 7 would apply if the interests in the PE fund are offered to 'sophisticated investors'. Nevertheless, if there is an information memorandum issued in relation to the PE fund and the information memorandum contains information on the business and affairs of the PE fund and its manager, the information memorandum is deemed to be a prospectus in so far as it relates to the liability of the manager or its agent for any statement or information that is false or misleading or from which there is a material omission. A copy of the information memorandum must be deposited with the SC within 7 days after it is issued.

Law stated - 19 February 2025

Types of investor

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

Interests in PE funds managed by a registered PEMC can only be offered to 'sophisticated investors' only as described in the SC's [Guidelines on Categories of Sophisticated Investors](#). As for other types of PE funds, it is the market practice in Malaysia for such funds to be participated by high net worth and institutional investors. It is not commonplace for participation on a mass retail level.

Law stated - 19 February 2025

Identity of investors

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

Other than the common corporate secretarial filings for change in shareholders or limited partners of the fund vehicle, there are no specific regulatory filing requirements in respect of the identities of investors in PE funds. A licensed fund manager usually has legal obligations to notify and/or obtain approval from the relevant regulatory authorities on the change in the composition of ownership, management, or control of the manager.

Law stated - 19 February 2025

Licences and registrations

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

Unless reverse enquiry exemptions apply, any person offering interests in a PE fund in Malaysia may need to hold a Capital Markets Services Licence and/or Capital Markets Services Representative's Licence or be a registered PEMC.

Law stated - 19 February 2025

Money laundering

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

PE funds or individual members of the fund sponsor are required to adhere to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA). Further, the SC has issued the [Guidelines on Prevention of Money Laundering, Countering Financing of Terrorism, Countering Proliferation Financing and Targeted Financial Sanctions for Reporting Institutions in the Capital Market](#) which is applicable to, inter alia, reporting institutions which are persons carrying on regulated activities or registered under the CMSA as specified under the First Schedule of the AMLA including its branches and majority-owned subsidiaries outside Malaysia which carry out, among others, the activities as listed in the First Schedule of the AMLA.

Law stated - 19 February 2025

EXCHANGE LISTING

Listing

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

Private equity (PE) funds in the form of companies (as a legal entity) may be able to list on Bursa Malaysia, though it is generally not customary for PE funds to be listed in Malaysia. Most PE funds in Malaysia are structured as special purpose vehicles and are targeted at high net worth and institutional investors, not retail investors.

Law stated - 19 February 2025

Restriction on transfers of interest

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

It is unlikely that a listed fund can restrict transfers of its interests that are traded publicly.

Law stated - 19 February 2025

PARTICIPATION IN PRIVATE EQUITY TRANSACTIONS

Legal and regulatory restrictions

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

Private equity (PE) funds in Malaysia are generally not restricted from participating in PE transactions.

However, in relation to a PE fund managed by a registered Private Equity Management Corporation (PEMC), the VCPE Guidelines sets out the restrictions on making investments in listed securities. The registered PEMC may only invest up to 20 per cent of the PE fund's committed capital in listed securities, and the 20 per cent threshold can only be crossed if:

- the investment was made prior to the listing of the venture corporation;
- holding of listed securities was the result of corporate action involving a venture corporation;
- the investment was for the purpose of taking the venture corporation private; or
- the investment is a private investment in public equity,

provided the investment is not for the purposes of trading and is in line with the investment strategy of the PE fund.

Another factor that may affect a PE fund's participation in PE transactions especially those outside Malaysia is the foreign exchange rules set out by the Central Bank of Malaysia (BNM). BNM's approval may need to be obtained in order to invest funds abroad or repatriate proceeds back to Malaysia.

Law stated - 19 February 2025

Compensation and profit-sharing

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

While there are no specific laws or regulations on the amount that can be charged as management fees, transaction fees and carried interest or the structuring of the profits with respect to PE funds in Malaysia, it is a requirement by the Securities Commission Malaysia that such fees must be fair, reasonable and transparent, and the fund documents must set out clearly the fees to be charged by the manager and the sponsor as well as the returns anticipated to be received by the investors.

Law stated - 19 February 2025

UPDATE AND TRENDS

Key developments of the past year

What are the most significant recent trends and developments relating to private equity funds in your jurisdiction? What impact do you expect such trends and developments will have on global private equity fundraising and on private equity funds generally?

In mid-2024, the Malaysian government announced the launch of the Government-linked Enterprises Activation and Reform Programme (GEAR-uP) programme under the Government's EKONOMI Madani framework

Government-Linked Investment Companies (GLICs) have made commitments and pledges of up to 25 billion ringgit to be mobilised in 2025 through the GEAR-uP programme. There are six GLICs involved in the GEAR-uP programme being Khazanah Nasional Berhad (Khazanah), the Employees Provident Fund (EPF), Kumpulan Wang Persaraan (Diperbadankan) (KWAP), Permodalan Nasional Berhad (PNB), Lembaga Tabung Haji, and Lembaga Tabung Angkatan Tentera (LTAT).

Of note is the Dana Pemacu initiative launched by KWAP which will see investments of up to 6 billion ringgit (of which 3 billion ringgit is in Shariah compliant investments), targeting key economic sectors including food security, education, silver economy and healthcare, energy transition, digital economy, financial inclusion, and other impact-related critical themes under the Ekonomi MADANI framework.

The Dana Pemacu initiative will be executed through separately managed account funds in partnership between local talent and top international investment managers across three different asset classes: private equity, infrastructure, and real estate with four funds in each asset class for a total of 12 funds to be created. The 12 funds shall be managed by a partnership between local talents and international fund managers, which is a key feature of the Dana Pemacu initiative.

Law stated - 19 February 2025