

Fund Management 2021

Contributing editor
Oliver Rochman
Morgan, Lewis & Bockius LLP



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Lexology Getting The Deal Through is delighted to publish the seventh edition of *Fund Management*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Oliver Rochman of Morgan, Lewis & Bockius LLP, and to Michelle Moran of K&L Gates LLP for her assistance with previous editions.



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Global overview

Oliver Rochman

Morgan, Lewis & Bockius LLP

First, I would like to thank the contributors to this 2021 edition of Lexology GTDT Fund Management. Colleagues at Morgan Lewis and other experts from across the globe have provided incisive insight into the key legal considerations for the fund management industry and have bravely given their predictions for the year ahead. They have made the role of guest editor a pleasure.

'Unprecedented' has perhaps been overused in the past twelve months – although the pandemic has felt at times as if real-world fundamentals have shifted absolutely. Thankfully, fund managers and the investment products they provide are not to blame in this pandemic-induced financial crisis. In fact, far from being the bad guy in this decade's crisis, the fund management industry has shown the good it can do. To cite just a couple of examples, we have seen funds raising capital and investing with the immediate effect of helping portfolio companies make their payroll and continue operating, with only days to spare; and venture capital investment and private equity financing techniques have been used in the development and procurement of vaccines.

The past year has been challenging but by no means dire for all fund managers. There has been a great variety in experience, challenges and performance across sectors, strategies and geography. The huge liquidity that certain governments have deployed to assist in mitigating the harmful effects of the pandemic has itself created winners and losers in the fund management industry. There is, however, a common theme and the country chapters show the impact the pandemic has had on the industry and also forecast the lasting ongoing effects it is likely to have. In terms of sectors, technology has generally continued strongly. Real estate, especially commercial property, has been difficult to value in the short term and also long term as the very nature of work is reassessed. There is also a regional disparity with, in very general terms, certain Asian economies returning to some normality far earlier and on a seemingly more stable basis than, for example, in Europe and North America.

There will also be the bill to pay for such state-led support. Governments have signalled a willingness to review the tax regimes that apply to the fund management industry and to business more generally. Private equity and venture capital taxation is routinely considered for review and amendment. We expect the taxation of carried interest in the private funds industry to come under fresh scrutiny. We also expect continued discussion on the levelling up of capital gains tax with income tax and a focus on corporate tax rates in an international marketplace. Indeed, the new US administration is leading discussions on a global minimum tax. The pandemic provides both the fiscal need and the openness to disruption that makes governments prompt tax authorities to action.

On the regulatory front, in a direct response to the pandemic, regulators have temporarily allowed more flexibility in compliance with certain requirements such as filing deadlines for hard copy documents. However, leniency will not last longer than absolutely necessary. We can only hope that some of the more efficient practices permitted through exigency are recognised and carried forward into more normal times. Major issues on the regulatory front remain to be addressed. Global political tensions, most notably between China and the United States, are a significant theme. Governments are enacting foreign ownership review and restriction regimes. Fund managers are required to navigate through competing and sometimes conflicting requirements in raising capital, managing their investment business, investing in assets and understanding the impact on the business models of those assets. Sanctions regimes and increasing adoption of extra-territorial legislation are truly globalising the network of laws in which fund managers operate.

Traditional jurisdictions are seeing increased competition for fund management business. To note just a couple of examples, Singapore has introduced several favourable programmes for fund managers, including the variable capital company (VCC); and Ireland, a long-favoured jurisdiction for listed funds, has revamped its private funds toolkit and may become a meaningful alternative to Luxembourg's dominance of the onshore EU private funds market.

I have already mentioned the new administration in the United States, and while it does seem to have an active agenda that will impact on the fund management industry, the Biden-Harris administration is generally expected to provide a more predictable environment for doing business. That said, politics in many major economies is increasingly partisan and potentially less effective in meeting global challenges. On that basis the increased social and political activism of businesses may well continue, impacting on the fund management industry. There are no shortages of challenges that need to be met. While the pandemic has been a priority, it is of course only the most immediate of several major issues. Environmental, social and governance (ESG) investing and particularly ESG reporting is becoming a major theme for the fund management industry. On current trend some form of ESG reporting is set to become ubiquitous in the near future. The industry will also play a major role in allocating private capital to combatting climate change, in particular decarbonisation of the economy.

This 2021 edition of Fund Management will in some ways always be anomalous due to the pandemic (I hope). However, in other ways – showing the resilience of the industry and the constant adaptation of the legal framework in which it operates – it is business as usual.

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